

Leadership Team meeting 7 July 2021

ITEM A09:

ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR CHANGES OF USE FROM COMMERCIAL, BUSINESS AND SERVICE (USE CLASS E) TO RESIDENTIAL (USE CLASS C3) - ADDENDUM

Sue Harris, Executive Director for Environment and Communities

1 PURPOSE OF THIS ADDENDUM

- 1.1 On 1 July the Government published a “Written Ministerial Statement” (WMS) setting out imminent changes to national policy. As these changes are of direct relevance to the proposed Article 4 direction it is helpful to set these out in some detail here.

2 PROPOSED CHANGES TO GUIDANCE CONCERNING EXTENT OF FUTURE ARTICLE 4 DIRECTIONS

- 2.1 In paragraph 5.56 to 5.60 of the main report, officers set out the then guidance as to the extent of Article 4 directions. The National Planning Policy Framework (NPPF) stated that the test of making an Article 4 direction was that the decision making body had to be satisfied that the removal of national permitted development rights is “*necessary to protect local amenity or the wellbeing of the area.*”
- 2.2 In paragraph 5.58 officers noted that the Government was in the process of amending the NPPF and was likely to raise the bar significantly in this regard.
- 2.3 On 1 July 2021 a WMS was published which confirmed the Government’s intention to amend the NPPF. Whilst this amendment will be made “*later in the year*”, the statement makes it clear that the Minister expects “*local authorities to follow this new policy when they consider making new Article 4 directions.*” The statement also notes that the “*officials [will] look closely at all new Article 4 directions to check that they comply with the new policy*”.
- 2.4 The relevant part of new paragraph 53 of the NPPF will read:
- The use of Article 4 directions to remove national permitted development rights should:*
- *where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously*

undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)

- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*

2 POSSIBLE IMPLICATIONS AND RISK OF INTERVENTION

- 2.1 The new wording within the NPPF makes it clear that a whole-borough Article 4 direction, such as that recommended, may prove problematic. We note that even an Article 4 direction which covers a whole town centre may not be straight forward. The ministerial statement is explicit in noting that, an Article 4 direction, “*is not expected to be applied to an entire local authority area.*”
- 2.2 However, the new wording within the NPPF (rather than the WMS) does not absolutely preclude such a direction, merely requiring that it should, “*apply to the smallest geographical area possible*” and only apply to those areas “*where they are necessary to avoid wholly unacceptable adverse impacts.*”. The inference in both the NPPF and the WMS is that a “large scale” direction may be appropriate where justified by robust evidence.
- 2.3 Officers are satisfied that we do have the necessary evidence, that this new test is met and that a whole borough Article 4 direction is appropriate. The justification for the borough-wide Article 4 direction as set out in detail in section 5 of the original report remains relevant.
- 2.4 In particular:
- the Borough is geographically the smallest borough in London (apart from the City of London) being less than 5 sq. miles in size. A borough-wide direction in our borough may be significantly smaller than a partial direction elsewhere.
 - Our offices are situated across the entire borough and not concentrated in a small number of areas.
 - It is this scatter of offices which form the clusters so essential to the local and to the wider economy.
 - Unfettered liberalisation is likely to result in the loss of 14,600 office jobs.
 - The Borough is in a unique position of being given a borough-wide exemption in 2013 from the initial office to residential liberalisation. Little of substance has changed in the interim period in terms of the nature of the office sector, its value, and the pressure it is under from higher value residential uses.
 - The value of all of our town centres, and the contribution that they make in meeting the needs of our residents.
 - With amongst the highest residential property values in the country it will be the differential in value between a residential and any other use which will drive the loss, rather than any intrinsic weakness on the existing commercial sector.

- 2.5 In addition, we note that the GLA is currently preparing a separate piece of higher level evidence to support both CAZ wide Article 4 direction and our own borough-wide direction.
- 2.6 Members should note that it is entirely possible that the Secretary of State may instruct the Council to cancel or amend the proposed Article 4 direction if he / his officers take a different view as to the appropriate extent of the direction.
- 2.7 Whilst this intervention can occur at any time up to (and beyond) the confirmation of the direction, we would expect to be alerted to any concerns soon after we notify the Secretary of State of the making of the direction.
- 2.8 Intervention from the Secretary of State would not preclude the Council from seeking to reduce the extent of the proposed direction in the future. This could take the form of an amendment to the initial Article 4 direction or, where we are instructed to cancel our direction, the re-issuing of a new direction.