

# THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

23 FEBRUARY 2017

## EXECUTIVE DIRECTOR DECISION REPORT

### THE CONFIRMATION OF THE NON-IMMEDIATE ARTICLE 4 DIRECTION MADE ON 22 JULY 2016 TO COME INTO FORCE ON 23 JULY 2017 TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR CHANGES OF USE FROM LAUNDERETTE TO RESIDENTIAL FOR 154 CROMWELL ROAD, 111 EARL'S COURT ROAD, 28 AND 52 GOLBORNE ROAD, 341 LADBROKE GROVE, 395 KING'S ROAD AND 76 TAVISTOCK ROAD.

#### 1. EXECUTIVE SUMMARY

1.1 On 22<sup>nd</sup> July 2016 the Council "made" a non-immediate Article 4 direction on the following launderettes within the Royal Borough:

- 154 Cromwell Road, SW7 4EF
- 111 Earl's Court Road, SW5 9RL
- 28 Golborne Road, W10 5PF
- 52 Golborne Road, W10 5PR
- 341 Ladbroke Grove, W10 6DW
- 395 King's Road, SW10 0LR
- 76 Tavistock Road, W11 1AN

1.2 This initiated the process of removing the permitted development rights ordinarily allowed under Class M, Part 3 of Schedule 2 of the GPDO (as amended), or the change of use from "retail and specified sui generis uses to dwellinghouses."

1.3 The Council has until 22<sup>nd</sup> July 2017 to confirm the Article 4 direction if it is to become permanent. It is only at this time that the provisions of the Article 4 direction come into being, and the specified permitted development rights are removed.

1.4 Having had regard to the representations received in response to the consultation regarding the initial "making", the Executive Director of Planning and Borough Development is **recommended to confirm the non-immediate Article 4 direction for the seven properties in question, to come into force on 23<sup>rd</sup> July 2017.**

## **2. RECOMMENDATION**

2.1 The Executive Director for Planning and Borough Development is recommended to confirm the non-immediate Article 4 direction to come into force on 23<sup>rd</sup> July 2017, removing the permitted development rights ordinarily allowed under Class M, Part 3 of Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended) or for “retail and specified sui generis uses to dwellinghouses” for the following properties.

- 154 Cromwell Road, SW7 4EF
- 111 Earl’s Court Road, SW5 9RL
- 28 Golborne Road, W10 5PF
- 52 Golborne Road, W10 5PR
- 341 Ladbroke Grove, W10 6DW
- 395 King’s Road, SW10 0LR
- 76 Tavistock Road, W11 1AN

2.2 These properties are currently in use as launderettes, a specified sui generis use, in terms of Class M, Part 3 of the GPDO.

## **3. BACKGROUND AND THE MAKING OF THE ARTICLE 4 DIRECTION**

3.1 On 6<sup>th</sup> April 2016 the Government enacted a statutory instrument which replaced the need for planning permission for the change of use of a launderette (when outside of a conservation area) with a system of prior approval (Class M, Part 3 of Schedule 2 of the GPDO as amended). The Council was concerned that this liberalisation was problematical as it could result in the degradation of the Borough’s stock of premises for social and community uses (as defined in the Local Plan).

3.2 As such the Council was satisfied that the removal of these permitted development rights through an Article 4 direction was appropriate, in that it followed the legal requirement in being “*expedient that development described... should not be carried out unless permission is granted for it on an application*” (Article 4(1) of the GPDO 2015 (as amended)). By the same measure, the Council was also satisfied that the making of the Article 4 direction is in accordance with the policy within the National Planning Policy Framework (NPPF, paragraph 200) and guidance within the National Planning Practice Guidance (NPPG) on ‘When is permission required?’ ([ID: 13-038](#)) in being “*necessary to protect local amenity or the wellbeing of the area.*”

- 3.3 A non-immediate Article 4 direction was made by the Council on 22<sup>nd</sup> July 2016 to ensure that planning permission would continue to be required for the change of use of the existing sui generis launderette use at the seven named properties.
- 3.4 The Council can confirm the Article 4 direction at any time between the completion of the consultation (see next section) on the making of the Direction and 2 years after the Article 4 direction was made. Only on confirmation will the provisions of the Article 4 direction come into being, and the permitted development rights removed. A year must elapse between making and confirming if the Council is not to be liable for compensation associated with the Direction.

#### **4. CONSULTATION ON THE ARTICLE 4 DIRECTION**

- 4.1 As part of the process of making the Article 4 direction the Council has notified the owners and the occupiers of the properties in question, the Secretary of State as well as members of the public and local amenity groups. This consultation period ended on 2<sup>nd</sup> September 2016. The Council must take account of all the representations received before deciding whether it is appropriate to confirm the Article 4 direction.
- 4.2 Four representations were received. One, from agents acting on behalf of the owners of No. 152/154 Cromwell Road, raised an objection. The other representations supported the making, and the ultimate confirmation, of the Direction.
- 4.3 The objection was based on the grounds that there was not a "particularly strong justification" for the Direction. It suggests that in altering the provisions of the GPDO, and introducing the system of prior approval, the Government was satisfied that the launderettes which fulfil a genuine community purpose will be safeguarded. The objection is also based on a concern that the Council is unreasonable in seeking to try retain a premises used by a launderette for an alternative social and community use. They suggest that there is no evidence that the laundrette premises are "suitable, or reasonably capable" for an alternative social and community use, or that "there is any evidence of a shortage of premises whether generally or specifically for any social and community use or uses in the vicinity of any of the properties concerned." The objection goes on to explain that the premises at No. 152/154 is "unsuitable" for an alternative social and community use, and that "there is no evidence of a shortage of premises" for alternative social and community uses.

- 4.4 The Council does recognise that the system of prior approval will allow the protection of a launderette which serves a real need. However, it does not allow the use of the policies within the Local Plan which would require the retention of a social and community use in the premises if the loss of the launderette itself was acceptable. In addition the use of the Article 4 direction merely requires a planning application if a change of use is sought. The suitability, or not, of a premises for an alternative social and community use will be assessed at this time. Any assessment will have regard to the particular characteristics of the site. It would be at this stage that an applicant would be given an opportunity to demonstrate that the various stages of the Local Plan Policy CK1 (Social and Community Uses) sequential test are met and that the premises really is inappropriate for any alternative social and community use.
- 4.5 The Secretary of State was notified of the Article 4 direction, through the National Planning Casework Unit. The Unit was also sent a copy of the objection to the proposed Article 4 direction from the owners of No. 152/154 Cromwell Road. The Secretary of State confirmed, in a letter dated 20 September 2016, that no objection was raised.
- 4.6 Officers remain of the view that an Article 4 direction remains appropriate for all the named launderettes, as it meets the relevant legal test and “the development to which the direction relates would be prejudicial to the proper planning of [the] area” (clause 2(1)(a) of Schedule 3 of the GPDO, as amended).

## **5. CONFIRMATION OF THE ARTICLE 4 DIRECTION**

- 5.1 Once the non-immediate Article 4 direction has been confirmed by the Council, it must, as soon as practicable, give notice of its confirmation and send a copy of the direction to the Secretary of State.
- 5.2 This can be done immediately upon an Executive Director decision, as it is now more than 28 days after the initial notice to “make” the Article 4 direction was served.
- 5.3 The Council must specify the date on which the Article 4 direction will come into force. It must be within 2 years of the date of the initial “making”. For the Council not to be liable for compensation for the “*abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights*” there must be a 12 month “notice period” between the initial making and the final confirmation of the Article 4 direction.<sup>1</sup>

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<sup>1</sup> The Town and Country Planning Act 1990 (as amended) s108 (3B) (a) and (3C).

5.4 The notice of confirmation is just that – it is not a further period of consultation.

## **6. EQUALITY, FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS**

6.1 The equality, financial, legal and resource implications were considered as part of the decision making process for the making of the non-immediate Article 4 direction. These have been repeated/ updated to reflect the confirmation below.

### *Equality*

6.2 The Article 4 direction will have a positive impact on equalities as without it the Council will be unable to implement the policies within its Local Plan. The original iteration of the Local Plan (the Core Strategy) was subject to an equality impact assessment.

### *Legal implications*

6.3 The legal implications are explained in the report as are the processes to be followed to confirm the Article 4 direction. The notice of confirmation will be drafted by the Legal Services Team.

### *Financial and resource implications*

6.4 Confirming the non-immediate Article 4 direction could have an additional cost to the Council in that applicants will be exempt from paying the planning application fees. This impact is likely to be minimal. Similarly the cost to the Council through the “opportunity cost” of continuing to let the three Council owned launderettes as launderettes rather than as residential units is likely to be minimal as the Council would not be expected to seek to carry out any development which would not be supported by the Council’s Local Plan.

6.5 The Council will not be liable for compensation where the Article 4 direction comes into force 12 months after being made.

### *Sustainability implications*

6.6 The original iteration of the Local Plan (the Core Strategy) was subject to a Sustainability Appraisal / Strategic Environmental Assessment (SA/SEA). This included consideration of the protection of launderettes and other social and community uses. The use of an Article 4 direction

will allow the Council to continue to make use of the policies within the Local Plan.

- 6.7 Protection of launderettes, a social and community use, would directly support the SA Objective 12, in that it would help “*ensure that social and community uses which serve a local need are protected*”. The Council does note that there is an opportunity cost in that housing supply could be marginally reduced. This element could appear to be contrary to the SA objective 13, “*to aim that the housing needs of the Borough’s residents are met.*” The Council does, however, note that it is currently meeting its identified housing need, both over the next five years and over the lifetime of the plan. This includes the 20% buffer. This is set out within the Monitoring Report 2016.

## 7. OPTIONS

- 7.1 **Recommended:** Confirm the non-immediate Article 4 direction, to come into force on 23<sup>rd</sup> July 2017, on the following launderettes within the Royal Borough:

- 154 Cromwell Road, SW7 4EF
- 111 Earl’s Court Road, SW5 9RL
- 28 Golborne Road, W10 5PF
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- 341 Ladbroke Grove, W10 6DW
- 395 King’s Road, SW10 0LR
- 76 Tavistock Road, W11 1AN

- 7.2 **Rejected option:** Amend the properties included within the Article 4 direction.

- 7.3 **Rejected option:** Do not confirm the non-immediate Article 4 direction.

I agree with the recommendation

*Graham Stallwood*

*Executive Director for Planning and Borough Development*

*Date:*

**Contact officer(s):** *Chris Turner Tel: 020 7361 3236*