

Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken	Cllr Pascall, Lead Member for Planning and Transport	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
	Date that decision is implemented (i.e. not before): 1 November 2018	
	Forward Plan reference: KD05315/18/T/A	
Report title (decision subject)	THE CONFIRMATION OF THE NON-IMMEDIATE ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR CHANGES OF USE FROM OFFICES (CLASS B1(A)) TO RESIDENTIAL (CLASS C3) ACROSS THE BOROUGH	
Reporting officer	Graham Stallwood, Executive Director, Planning and Borough Development	
Key decision	Yes	
Access to information classification	Public	

1. EXECUTIVE SUMMARY

- 1.1 In May 2013, national permitted development rights were amended to allow the change of use from office (Class B1(c) use) to residential (Class C3 use) through a 'prior approval' process rather than through the normal planning permission process. The Council was successful in securing a Borough-wide exemption for this permitted development right meaning that planning permission is still required for such a change of use.
- 1.2 On 6 April 2016 the Government enacted a statutory instrument¹ amending The Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO'). This will remove the Borough's exemption. This provision will come into being on 31 May 2019.
- 1.3 This means that come May 2019 the need for planning permission for changes of use of office to residential would be replaced by a system of prior approval.
- 1.4 Given the likely loss to the Borough's office stock that could occur were planning controls removed, and the impact that this may have to the local and to the wider economy, it is essential that the Council retains control over changes of use from offices to residential. This control will allow the Council to consider the planning policies within the development plan when assessing the application. This will not equate to a blanket ban on such changes of use as officers will have regard to the particular circumstances of the case when determining an application.
- 1.5 To this end the Council has initiated the process of removing the relevant permitted development rights. It "made" a borough-wide non-immediate Article 4 direction for office uses on 3 July 2017.
- 1.6 The Article 4 direction does not come into force unless it is confirmed by the local planning authority. This process must take place before 31 May 2019. Without confirmation the Article 4 direction will fall away.
- 1.7 Having had regard to the representations received in response to the initial "making" of the direction, the Lead Member for Planning and

¹ The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016

Transport is **recommended to confirm the non-immediate Article 4 direction and for it to come into force from 31 May 2019.**

2. RECOMMENDATION

- 2.1 The Lead Member for Planning and Transport is recommended to confirm the non-immediate Borough-wide Article 4 direction to remove the forthcoming permitted development rights granted by Class O, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This relates to changes of use of offices (Use Class B1(a)) to dwellinghouses (Use Class C3).
- 3.1 The Article 4 direction , if confirmed , would be intended to “come into force ” on 31st May 2019.

3. BACKGROUND AND THE CONFIRMATION OF THE ARTICLE 4 DIRECTION

Liberalisation of planning regulations

- 3.2 In May 2013, national permitted development rights were amended to allow the change of use of offices (Class B1(a) use) to residential (Class C3 use) through a ‘prior approval’ process rather than through the normal planning permission process. The Council was successful in securing a Borough-wide exemption for this permitted development right meaning that planning permission is still required for such a change of use.
- 3.3 However, on 6 April 2016 the Government enacted a statutory instrument² amending Class O of Part 3 of Schedule 2 of the GPDO. This will remove the Borough’s exemption (as article 2(5) land) to the 2013 office to residential liberalisation. The exemption will be removed with effect from 31 May 2019.
- 3.4 On 31st May 2019, the need for planning permission will be replaced with a system of prior approval. When determining a change of use of an office to residential the Council will only be able to consider:
- transport and highways impact of the development;
 - contamination risks on the site;
 - flooding risks on the site; and

² The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016

- impact of noise from commercial premises on the intended occupiers of the development.
- 3.5 We will not be able to consider the contribution that the occupier of the existing office has upon the economy, its role in maintaining a diversity of uses, its contribution to meeting the objectively assessed need for offices, or the nature of the housing being provided.
- Impact of liberalisation*
- 3.6 Given the narrow scope of what the Council will be able to be consider the Council is concerned that, unfettered, the new system of prior approval will result in the wholesale loss of the Borough's stock of office floorspace. This will have a detrimental impact on the diversity of uses in the Borough, so essential to its special character. It will also have a significant impact upon employment opportunities within the Borough, and upon the local and the wider economy.
- 3.7 The impact of the liberalisation has been set out in some detail in the initial [KD report of July 2017](#).
- 3.8 In essence the differential in value between residential and office land uses means that the proposed liberalisation would see the wholesale loss of business uses to residential. The Council's consultants have concluded that an uplift of more than 40% is likely to be sufficient to prove a compelling financial case for conversion, and that a 30% uplift in value may be all that is required. In much of the Borough the residual value of buildings in residential use is considerably more than double that of buildings occupied by offices. In the highest value areas the differential will be much greater.
- 3.9 There has been a recent levelling out of residential values following the uncertainty of the EU referendum. Office values have also increased. This is due, largely, to the strengthening office market, but also in part to a reduction in available premises as a direct result of the original liberalisation. This has not changed the fundamental differential in value between residential and office uses.³
- 3.10 It is the differential in value which will drive the loss of office floorspace rather than any inherent weakness in the office market as the Borough's office sector is viable and vibrant.
- 3.11 In some locations, including the Latimer Road area, the differential will be less. Whilst this may reduce the pressure on office uses it does reduce the value of those office uses which remain.

³ Frost Meadowcroft, February 2017, per comms.

- 3.12 In the second quarter of 2018 the vibrancy of the office market was demonstrated by an exceptionally low vacancy rate of 2.1%⁴, which is a quarter of the 8% level considered by the GLA to be healthy and to allow for natural churn. This indicated a tight market, with little available space, driving up rental values.
- 3.13 The demand for additional office floorspace across the borough is further illustrated by the Mayor's macro forecasting through the London Office Policy Review of 2017. This suggests a forecast demand of 45,000 sq m between 2016 and 2028. When including the B1(a) floorspace lost since 2016 this translates to a net demand of 47,100 sq m. This demand is only likely to be met if existing office stock is retained. This was not disputed at the recent examination in to the Council's Local Plan Partial Review, a document expected to be adopted later this year.
- 3.14 The consultants⁵ commissioned to consider the magnitude of the impact estimated that:
- 3,500 firms being at significant risk of having their current premises converted from their current commercial use into residential dwellings;
 - 44,000 jobs being at risk; and
 - an economic impact of up to £3.25 billion (GVA).
- 3.15 The impact of the loss would have a secondary impact upon those office uses which remain.
- 3.16 Many of the occupiers of the Borough's office premises have chosen to locate where they have in order to take advantage of relationships with others in the area. By locating close to one another businesses benefit from agglomeration economies – the external benefits that arise when economic activity takes place in a concentrated space. If offices are allowed to convert to residential, the very reason for the Borough's competitive advantage will be threatened.
- 3.17 The harm is likely to take two forms. First, there is the immediate physical effect of the building no longer being able to be used for an office use, which diminishes the opportunities for increased agglomeration. Secondly, there is the impact that the initial office to residential conversion has on the potential for future office

⁴ Q2 Market Update, Frost Meadowcroft (2018)

⁵ Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential, TBR, (Feb 2016)

development. Regardless of the merits of any case, residential uses often perceive business uses as un-neighbourly, associated with traffic deliveries and unsocial operating hours. Complaints to environmental health teams and objections to new planning applications can drive out existing uses.

The GLA and support for the Article 4 direction

- 3.18 In February 2018 the Mayor published strategic evidence to support London borough Article 4 Directions⁶. This evidence was explicit in recognising that this Borough is part of an "*internationally and nationally significant office location*", an area where offices, "*and their contribution to the London and the UK economy should continue to be safeguarded.*"
- 3.19 The Mayor supports a co-ordinated approach to the introduction of Article 4 directions. This support includes that for a borough-wide Article 4 direction for Kensington and Chelsea.

Housing supply

- 3.20 Officers recognise that the Government appears to be linking Article 4 directions and the Council's ability to meet the housing delivery test. Whilst we note that the Secretary of State can choose to cancel or modify the Direction any time we have no reason to believe that he will do so. As set out in paragraph 4.5 below, the Secretary of State was notified (through the National Planning Unit) of the making of the Direction but chose not to comment.
- 3.21 Furthermore, the Council is satisfied that it has successfully demonstrated a five year supply of housing. This issue was discussed at length at the examination hearings of the Council's Local Plan Partial Review in February and March 2018. The Inspector has confirmed in his 'interim' findings letter that that he is minded to support the Council's approach, although we await formal confirmation later this autumn.

Article 4 Direction: making

- 3.22 The Council was satisfied that the removal of these permitted development rights through an non -immediate Article 4 direction was appropriate due to there being a real and specific threat posed to the proper planning of the area. 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, 2012 (NPPF, paragraph 200) and guidance within the National Planning

⁶ Strategic evidence to support London borough Article 4 Directions in London's nationally significant office locations. GLA. (February 2018)

Practice Guidance (NPPG) on 'When is permission required?' (ID: 13-038) in being "*necessary to protect local amenity or the wellbeing of the area.*"

- 3.23 Only by the use of the Article 4 direction, and through the requirement to seek planning permission, can the Council have regard to the relevant policies within its own Local Plan, within the London Plan and within any relevant Neighbourhood Plan.
- 3.24 The Council had also considered the geographic extent of the Article 4 direction. Given the geographical spread of the Borough's office uses, and the nature of the existing clusters, the Council is seeking to confirm the non -immediate Article 4 direction which covers the whole of the Borough. This reflects the full Borough exemption, sought, and granted, to the original office to residential liberalisation in 2013.
- 3.25 The Council "made" the non-immediate Article 4 direction on 3 July 2017. This was the first formal stage of a two stage process. The KD to "make" the Direction was considered by the Public Realm Scrutiny Committee of 10 July 2018, where it was supported.
- 3.26 For the non -immediate Article 4 direction to come into force it must be confirmed. The purpose of this KD is to seek authority to take the necessary steps to confirm the original direction.

Article 4 Direction: confirmation

- 3.27 Regulations allow the Council to confirm the Article 4 direction between 25 October 2017 (after the completion of the initial consultation on the making) and 3 July 2019 (or two years after the making itself). Only after confirmation will the provisions of the Article 4 direction come into being, and the permitted development rights be removed.
- 3.28 At least a year *must* elapse between making and the Direction coming into effect if the Council is not to be liable for compensation associated with the Direction. The Direction was made in July 2017, the year elapsed in July 2018, and we intend the Direction to come into effect in May 2019. No compensation will be payable.

4. CONSULTATION ON THE ARTICLE 4 DIRECTION

- 4.1 As part of the process of making the Article 4 direction the Council has consulted the statutory consultees, the public, local amenity groups and the Secretary of State. This consultation period ended on 24 October 2017. The Council must take account of all the

representations received before deciding whether it is appropriate to confirm the Article 4 direction.

- 4.2 Nine representations were received. These are set out in full in Appendix A.

Statutory consultees

- 4.3 The Port of London Authority and Natural England confirmed that they do not wish to comment on the consultation.

- 4.4 Historic England were supportive of the Direction, suggesting that it would allow the Council to continue to plan for “sustainable mixed uses” in the borough - uses which are “*an integral and positive element of character*”.

Secretary of State

- 4.5 The Secretary of State was notified of the Article 4 direction, through the National Planning Casework Unit. The NPCU replied with its generic response asking if the Council would like to submit any more supporting information. No further substantive response was received.

Comments from individual residents

- 4.6 Four of the five individual local residents who responded were fully in favour of the Article 4 direction. They suggested that:

- without intervention many small business facilities would be lost and the area’s economic life would be choked; and,
- the proposal protects the community from commercial interest provision of unneeded luxury flats.

- 4.7 Those that had a view, supported the borough-wide extent of the Direction.

- 4.8 One resident took a diametrically opposite view. He felt that any initiative that hindered the provision of additional housing was “*against the will of the people*” and ultimately would lead to the Council’s downfall. He suggested that the Council should take a much more ambitious approach to the creation of more housing, an approach which should include wholesale demolition and re-development.

- 4.9 Whilst the Council recognises the need to increase housing supply, it does not concur with the view that any approach which resists further provision is “*against the will of the people.*” Indeed ongoing engagement would suggest that the need to maintain a diversity of uses is supported. The Council recognises that there is a need for

additional housing, but that this should not be at the expense of all other uses.

- 4.10 Despite the consultees assertion that the Council's five year housing supply is "*laughable*" (and incidentally "*almost justifies the need for the removal of the existing Council*"). The Council has a good track record of granting planning permissions but has limited powers to influence these permissions to be realised as completions. Further, the Council is satisfied that we do have a five year supply. We expect this to be confirmed by the Inspector later in the autumn.

St Quintin and Woodlands Neighbourhood Forum (SQWNF)

- 4.11 The SQWNF objects to the Article 4 direction including the upper floors of the properties within the northern part of Latimer Road, the part of the Employment Zone which lies within the St Quintin and Woodlands Neighbourhood Plan (SQWNP) area. The objection is on a number of grounds. These are summarised below, each followed by the Council's response.

The KD report which lays out the case for the direction fails to give proper weight to the Neighbourhood Plan.

- 4.12 The Council fully recognises the role of the SQWNP. The Neighbourhood Plan forms part of the development plan for the area, and will be used to inform planning decisions. The proposed Main Modifications to the emerging Local Plan Partial Review are intending to make this very clear, with the third bullet of para 29.1.2 noting that, "*once made the policies in the neighbourhood plan will take precedence over the non-strategic policies of this Local Plan.*"
- 4.13 The initial KD report is explicit in its recognition that the authors of the SQWNP did not support the direction, and in their view there is "*a danger that such an approach lacks the necessary flexibility regarding the retention of business premises which have no long term future.*"
- 4.14 The initial report was also correct in noting that the whilst the Neighbourhood Plan has been approved at referendum it had yet to have been formally made as it was subject to a legal challenge. This is no longer the case. The legal challenge was dismissed in January 2018 and the plan formally confirmed by the Council in July 2018.
- 4.15 One of the key purposes of the "making" of the non immediate Direction was to initiate a period of consultation. Any comments received have to be fully considered before the decision whether or not to confirm the direction is made. The objections received are considered within this report.

The proposed Article 4 direction runs counter to the policies and aims of the Neighbourhood Plan. The Neighbourhood Plan seeks to introduce a wider range of uses within the Latimer Road Employment Zone to attempt to address the underinvestment within the area.

- 4.16 As set out above, the purpose of the Article 4 direction is to ensure that the development plan policies for the area can be considered. This includes those within the London, Local and the Neighbourhood Plan. It does not, in itself, preclude the loss of offices within the Neighbourhood Area.
- 4.17 Indeed, whilst the SQWNP supports a wider range of uses within the relevant part of the Employment Zone, it does not contain any policies which support the loss of office uses to residential.
- 4.18 *Policy LR1* of the SQWNP “allows residential use on the upper floors of the redeveloped B class buildings for Units 1-14 Latimer Road.” The policy requires the ground and mezzanine floors to remain in a commercial use.
- 4.19 The introduction of residential uses on the upper floors will require planning permission where they relate to an increase in overall floorspace and not to a change of use. The need for planning permission for the creation of such homes on the upper floors is not dependent on the existence of the Article 4 direction.
- 4.20 Without the Article 4 direction planning permission would not be required for the change of use of the lower floors to residential uses. This could see the wholesale loss of commercial use to residential across the Employment Zone. This is not the intention of the Neighbourhood Plan.
- 4.21 *Policy LR2* allows a range of A1 and D class uses within Latimer Road where “these contribute to the vitality of the street and to the wider neighbourhood area.” This policy does not support the loss of B class uses to residential. This policy would have little value without the Direction, as could not be used to resist the wholesale loss to residential.
- 4.22 *Policy LR4* is concerned with mixed use policies for Latimer Road, encouraging uses which will increase employee numbers on site within a full range of A, B and D class uses. Without the Direction there would

be no ability to rest the wholesale progression of the Employment Zone to residential. LR4 does not support changes of use to C3 uses.

The forum suggest that an Article 4 direction "should be sought to maintain ground floor B1 space in Latimer Road, whilst allowing the flexibility to convert space to residential on the upper floors." This is supported by Action LR(ii)

- 4.23 As set out above, none of the policies within the Neighbourhood Plan support the change of use of B1(a) office floorspace to residential. The Article 4 direction is essential to ensure that the ambitions of the NP are to be achieved. Without it, the loss of B1 floorspace to residential could not be controlled.
- 4.24 Whilst the SQWNP supports a greater diversity of uses within the Employment Zone it does not support changes of use of offices to residential. However, were it to do so in the future, the Council would consider any policies as and when an application were made.
- 4.25 It should also be noted that the Council has no power to modify the non immediate Article 4 Direction already made. To modify an article 4 direction, the Council would have to cancel the existing non immediate direction and prepare a replacement direction incorporating the required modifications in accordance with the legislation. Only the Secretary of State has the power to modify Article 4 Directions made by the Council. As such, the necessary steps would have to start again and could lead to a Direction not being in force before 31st May 2019.

RBKC's own report in to the likely impact of permitted development of offices to residential in the Borough, does not consider that a direction preventing it would be justified in the Latimer Rd/Freston Rd Employment Zone.

- 4.26 The Council recognises that at the time of writing the TBR report in 2016⁷ the differential in value between business and residential uses is less in the Latimer Road than on some other parts of the Borough. This may mean that there is less pressure on existing business uses. However, this does not lessen the importance of the business sector in the Latimer Road area, important in its own right and as part of a wider central/west London cluster. The Direction allows the Council to

⁷ Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential for RBKC, TBR (February 2016)

assess the importance/ viability of an office premises if and when an application is made.

The Borough's record on housing delivery does not justify the blanket approach to permitted development for office to residential being proposed by RBKC.

- 4.27 The Council is satisfied that it has successfully demonstrated that it has a five year supply of housing. This issue was discussed at length at the examination hearings of the Council's Local Plan Partial Review in February and March 2018. The Inspector has confirmed in his 'interim' findings letter that he is minded to support the Council's approach, although we await formal confirmation later this autumn.
- 4.28 The Council recognises that there has been a mismatch between permissions granted and actual delivery of homes, a mismatch shared with the majority of London Borough's. This will be addressed by the recently issued National Planning Policy Framework. This introduces a Housing Delivery Test. Ultimately, if the housing built within the Borough falls substantially below the housing requirement a "*presumption in favour of sustainable development*" will apply. This means that there will be tilted balance in favour of granting new homes when assessing planning applications which include the creation of additional housing. The existence, or otherwise, of the Article 4 direction itself will not alter the pressure to allow additional homes. Any assessment will have to balance the need for housing with the need for business premises, the ability to meet the Borough's objectively assessed need for offices and the contribution of the businesses within the premises to the economy.
- 4.29 In addition, it should be noted that the Government has been notified of the proposed Article 4 direction. No comment was received.

5. CONFIRMATION OF THE ARTICLE 4 DIRECTION

- 5.1 Once the non-immediate Article 4 direction has been confirmed by the Council, the Council must, as soon as practicable, give notice of its confirmation by way of local advertisement and site notices and it must send a copy of the direction to the Secretary of State.
- 5.2 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 at

least a 12 month “notice period” between the initial making and the taking effect of the Article 4 direction.⁸

- 5.3 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 An Equalities Impact Assessment (EqIA) was undertaken for the original Core Strategy (now known as the Local Plan) in 2010. Whilst the Article 4 direction would allow the Council to implement its adopted policies for the majority of relevant premises across the borough, it is unlikely to have a significant impact upon any “protected characteristic group.”
- 6.3 The Council has carried out an Equalities Impact Assessment (EqIA) for the initial key decision to “make” the Article 4 direction. This has been reviewed as part of the process to consider whether it is appropriate to “confirm” the direction. Given that the result of the (if confirmed) Article 4 direction will be a continuation of existing powers (i.e. that planning permission will continue to be required for a change of use of an office use to residential), no specified groups will be disadvantaged. The Article 4 direction is likely to have a positive impact upon the borough’s employment opportunities, but this impact will not be skewed for (or against) any specific protected group. The Equality Impact Analysis Tool is included as Appendix B.
- 6.4 The Council has fulfilled its public sector equality duty contained in section 149 of the Equality Act 2010.

Legal implications

- 6.5 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. The Council’s legal services team have been consulted on this KD and comments

⁸ The Town and Country Planning Act 1990 (as amended) s108 (3B) (a) and (3C).

that the necessary statutory procedures and considerations are contained in the report. It should be noted that only the Secretary of State has power to modify the Article 4 Direction - the Council cannot modify the article 4 direction as explained in the report.

Financial and resource implications

- 6.6 Confirming the non-immediate Article 4 direction could have an additional cost to the Council in that applicants will be exempt from paying the fees for a prior approval for the change of use. At just £96 for a change of use of a building this will not be significant. In addition given the strong policy presumption against such changes of use, a policy presumption which is likely to discourage speculative applications. The service is therefore confident that any cost impact will be contained within the existing budget envelope.
- 6.7 The Council will not be liable for compensation where the Article 4 direction comes into force 12 months after being made, as it will be in this case.
- 6.8 There are wider impacts referenced in this report on maintaining an appropriate balance of office/residential space in support of the local economy but this decision enables the Council through planning policy and Strategic decision making to enable adjustment to the balance if circumstances dictate rather than leave in the hands of the property market.

Sustainability implications

- 6.9 Both the original iteration of the Local Plan (the Core Strategy) and the Local Plan Partial Review were subject to a Sustainability Appraisal / Strategic Environmental Assessments (SA/SEA). These included consideration of the protection of offices. The use of an Article 4 direction will allow the Council to continue to make use of the policies within the Local Plan. It allows the positive impact to continue to be implemented.
- 6.10 In particular, an Article 4 direction which allows the Council to continue to protect offices uses would directly support the SA Objective 3, to “*support a diverse and vibrant local economy to foster sustainable economic growth.*” Given the links between employment opportunities and social inclusion, this approach will also directly support SA Objective 4, to “*encourage social inclusion, equality, the promotion of equality and respect for diversity.*”

6.11 This must be weighed against the negative impact that such an approach may have upon housing supply (SA Objective 13) “*to aim that the housing needs of the Borough’s residents are met*”. As discussed above the Council is satisfied that it has a five year housing supply.

7. OPTIONS

- a. **Recommended:** Confirm the non-immediate Article 4 direction, remove the forthcoming permitted development rights granted by Class O, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for changes of use from offices (Use Class B1(a)) to dwellinghouses (Use Class C3). The Direction shall come into force on 31st May 2019. It shall be borough-wide.
- b. **Rejected option:** Do not confirm and cancel the existing Non Immediate Article 4 Direction and make a new non-immediate Borough Wide Article 4 Direction on the same terms except excluding the properties in Latimer Road which lie within the SQWNP. Rejected for the reasons set out above.
- c. **Rejected option:** Do not confirm the non-immediate Article 4 direction. Rejected for the reasons set out above.

Graham Stallwood

Executive Director for Planning and Borough Development

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report

Appendix A: Responses received

Appendix B: Equality Impact Assessment

Contact officer(s): *Chris Turner, Senior Planning Officer, Royal Borough of Kensington and Chelsea. Tel: 020 7361 3236. Email: chris.turner@rbkc.gov.uk*

Cleared by Finance (officer's initials)	NP
Cleared by Legal (officer's initials)	WH/HS

Appendix A: Comments received

Stakeholder	Comment
DCLG	<p>I refer to your letter dated 12 September 2017 notifying the Secretary of State about an article 4 Direction made on 12 September 2017. If confirmed, the Direction would withdraw permitted development rights for buildings and any land within its curtilage which fall within Class B1(a) use of the Schedule of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2015, to convert to Class C3 use of that Schedule being development comprised within Class O of Part 3 of Schedule 2 to the said Order and not being development comprised with any other Class.</p> <p>The Secretary of State is considering whether there is cause for him to use his powers of intervention under article Schedule 3, Paragraph 1(13) of the 2015 Order. The Secretary of State will consider whether the Direction fulfils national policy set out in Paragraph 200 of the National Planning Policy Framework¹ on the use of article 4 directions, and whether it is in accordance with guidance on the use of article 4 directions as set out in National Planning Practice Guidance.</p> <p>The Secretary of State is grateful to the Council for the material already provided about its decision to make this Direction, and now invites the Council to submit any further evidence it considers relevant to support and justify the making of the Direction, in particular evidence about how it accords with the National Planning Policy Framework and Departmental guidance.</p>
Historic England	<p>The control of this change will enable the Council to ensure continued, sustainable mixed use in areas of the borough where this is an integral and positive element of character.</p>
Natural England	<p>Natural England does not consider that this Article 4 Direction for changes of use from offices to residential poses any likely risk or opportunity in relation to our statutory purpose, and so does not wish to comment on this consultation.</p> <p>The lack of comment from Natural England should not be interpreted as a statement that there are no impacts on the natural environment. Other bodies and individuals may wish to make comments that might help the Local Planning Authority (LPA) to fully take account of any environmental risks and opportunities relating to this document.</p>
Port of London Authority	<p>Thank you for consulting the Port of London Authority (PLA) on the proposal on the Non-immediate Article 4 Direction: office to residential for the Royal Borough of Kensington and Chelsea's planning polices:</p>

	<p>I have now had the opportunity to look through the submitted documents and have attached the required response form – The PLA has no comments regarding the proposed continuation of an article 4 direction covering the entirety of the borough for the withdrawal of permitted development rights for office to residential proposals.</p>
<p>St Quintin and Woodlands (STQW) Neighbourhood</p>	<p>The St Quintin and Woodlands (STQW) Neighbourhood Forum and Neighbourhood Plan covers an area of North Kensington bounded by Latimer Road to the West, Dalgarno Gardens to the north, St Marks Road and St Helens Gardens to the east and the Westway to the south. The Neighbourhood Plan was supported by 92 per cent in the referendum held on 26 February 2016 .</p> <p>For the reasons given below the STQW Forum objects to the council’s proposal for a borough wide Article 4 Direction withdrawing the national permitted development right for change of use from B1 offices to C3 residential.</p> <p>1. The Key Decision report laying out the case for such a direction fails to give proper weight to the STQW Neighbourhood Plan.</p> <p>By its nature, a borough wide exemption from national policy such as the council is seeking would include the area of the Neighbourhood Plan. Yet in section 4 of the key decision report covering “the planning policies/guidance of particular relevance” to the issue, no mention at all is made of the Plan. It is mentioned, and then only in passing, in section 6 of the key decision report, which deals with previous consultations on the issue of office conversion. This states:</p> <p><i>A number of these representations relate to those with a particular interest in the Latimer Road area and the St Quintin and Woodlands Neighbourhood Plan. This Neighbourhood Plan has been approved at referendum, but still awaits being formally made as it is subject to a legal challenge.</i></p> <p>While it is the case that the Plan is currently subject to a legal challenge, this nevertheless greatly underestimates the weight that should properly be given to it in any matter that involves the area it covers. The position on this is correctly explained elsewhere on the RBKC planning portal, in the section covering the STQW plan, as below:</p> <p><i>Following the successful referendum a key decision to ‘make’ the plan so that it becomes part of the Council’s Local Development Plan has been delayed. This is because the Council’s decision to accept the recommendations of the Examiner’s report and to send the plan to referendum is the subject of a judicial review. The Forum’s website can be found at www.stqw.org. Nevertheless, the Neighbourhood Plan is part of the Royal Borough’s Development Plan and its policies will be used by decision makers to guide development in the Neighbourhood Area following the enactment of the Neighbourhood Planning Act 2017. (emphasis added)</i></p>

In this case the Neighbourhood Forum was not consulted, and the Neighbourhood Plan has not been taken into consideration

2. The proposed Article 4 Direction runs counter to the policies and aims of the STQW Neighbourhood Plan

The principal commercial area covered by the STQW Neighbourhood Forum and Neighbourhood Plan is Latimer Road. The condition and vitality of this street has long been a source of concern to the STQW Neighbourhood Forum, and local people generally. As part of the Latimer Road/Freston Road employment zone the range of uses permitted by RBKC in the street was tightly restricted before the Neighbourhood Plan took effect, particularly with regard to new residential accommodation.

The Neighbourhood Forum concluded when it was working on the Neighbourhood Plan that these restrictive policies, dating back to the 1990's, had left Latimer Road in need of regeneration and an injection of new life, and that as part of this mixed uses – including residential - should be encouraged in the street.

As sections 8.1.1 and 8.1.2 of the Plan put it Latimer Road has become a street where potential remains unfulfilled, buildings are outdated, occupied at levels beneath average capacity for office premises in the Borough and little investment is being made....a change in planning policy is needed for Latimer Road. This part of the neighbourhood is not currently contributing to sustainable development.

Looking to the future, the Neighbourhood Plan specifically addressed what should happen were the Government to withdraw RBKC's borough wide exemption from the permitted development right for change of use from office to residential. The Plan's conclusion, given in Action L11 of the section on Latimer Road, was that an Article 4 Direction should be sought to maintain ground floor B1 space in Latimer Road, while allowing the flexibility to convert space to residential on the upper floors

Now that the whole borough exemption has indeed been withdrawn, the STQW Neighbourhood Forum feels strongly that, rather than simply applying for the previous exemption to be reinstated via an Article 4 Direction, RBKC should adopt a more tailored approach to the areas such a direction might cover, which would allow Action L11 to be implemented.

3. RBKC's own report in to the likely impact of permitted development of offices to residential in the Borough, does not consider that a direction preventing it would be justified in the Latimer Rd/Freston Rd Employment Zone.

The differential between office and residential values in the Borough is at the heart of RBKC's case for an Article 4 Direction. If offices can freely convert in such an expensive borough, runs the argument, there soon will not be many left. In fact it has not turned out that way in other parts of London, which also have a high differential between office and residential values and where the permitted development right has operated for some four years without business space disappearing from their streets.

Nevertheless, in the view of the key decision report: *This uplift in value will form the basis for whether or not conversion is likely. The Council's consultants conclude that an uplift of more than 40% is likely to be sufficient to prove a compelling financial case for conversion. A 30% uplift in value may be all that is required.*

To establish how great a risk the permitted development right supposedly poses to the borough, the council commissioned a report from the consultancy TBR on how big an uplift to values change of use would produce across ten "submarkets" covering the borough.

In nine out of the ten, TBR concluded the uplift in value would range from 45% in Knightsbridge to 90% in Earls Court. But in the Latimer Road/Freston Rd Employment Zone the report found that the uplift in value would be just 16%, leading it to conclude that:

*On this basis all submarkets, **with the exception of the Latimer Rd/Freston Rd Employment Zone** (emphasis added) are fit for inclusion within an application for an Article 4 direction to prohibit residential conversion when the temporary exemption from this policy, which currently covers the Royal Borough of Kensington and Chelsea in its entirety, expires in May 2019.*

If both the Neighbourhood Plan and RBKC's own report says that the part of the Latimer Rd/Freston Rd Employment Zone covered by the STQW Plan should not be included in a wide ranging Article 4 Direction, surely the Council should take note.

4. The Borough's record on housing delivery does not justify the blanket approach to permitted development for office to residential being proposed by RBKC.

Ever since the introduction of permitted development for offices to residential use, the Government has been clear that where planning authorities wished to restrict the new right they should not seek to do so disproportionately. The Chief Planning Officer's letter on the subject of 24 Jan 2013 made plain that exemptions must be limited to a justifiable geographical area.

In his Written Ministerial Statement of 6 February 2014, referring to the permitted development of offices to housing, the then Planning Minister, Nick Boles, reminded local authorities that *Ministers are minded to cancel Article 4 directions which seek to re-impose unjustified or blanket regulation, given the clearly stated public policy goal of liberalising the planning rules and helping provide more homes.*

In March this year the Government signalled that in future the extent of an Article 4 Directions to remove office to residential permitted development rights will be judged against a local authority's housing delivery performance. In the letter to Lord True, cited in the RBKC consultation, the minister explained that

"In future, those areas that are meeting their housing requirement will be afforded greater flexibility in respect of the area to be covered by an Article 4 direction removing the permitted development right to change from office to residential use.

Where a local planning authority achieves 100% of its housing delivery requirement; and can demonstrate that it can continue to do so after removal of the right.... the Secretary of State will look more generously at the area across which the direction would apply and not seek to limit a direction applying to that area. ... The flexibility in respect of the area covered by Article 4 directions will apply to those authorities that are meeting 100% of their housing requirement as measured by the housing delivery test.

The policy therefore is clear: the Government will be looking at housing delivery, in the present as well as the future. As the RBKC key decision report acknowledges in para 4.34:

Whilst the Housing Delivery Test is not yet in effect, and its detailed workings have not yet been consulted on, it is clear that the Government intends to consider Article 4 directions in light of housing delivery.

So how is the Borough doing on housing delivery? The latest figures for the recent and current performance are given in Appendix R of the council's 2016 Annual Monitoring Report. They show that since the start of this decade the number of new homes completed has only risen above 50 per cent of the Borough's London Plan target in one year 2014/2015.

Between 2010/11 and the current year 2017/18 against a cumulative target of 5492 completions, only 2728 will have been delivered – again just under 50 per cent of the target. This comes nowhere near the Government's benchmark of 100per cent.

How about the future? RBKC claims in the key decision report to have a sufficient housing land supply to fulfil its London Plan targets. But it admits the margin is very marginal indeed, 4,416 deliverable

sites up to 2021 as against a requirement for 4,398. And the figure does not apparently take account of amalgamations. According to a Planning Inspector who very recently decided an appeal at Queen's Gate Place

*The Council state the housing supply of 4406 units does not account for the loss of units resulting from amalgamations. As stated above the Council suggest this would be around 50 a year. When this is accounted for, and based strictly on the figures before me, the five year supply becomes 4156 homes, which is somewhat below the five year target. **The Council accept they are most likely to be unable to meet their target.**(emphasis added)*

Appeal Decision 25 September 2017 on 12 & 13F Queens Gate Place, London SW7 5NX

Further forward into the 2020's the RBKC projections were heavily dependent on new units coming forward on estate regeneration schemes, but these are now suspended following the tragedy at Grenfell Tower. Very recently, the Council has published a set of modifications to the local plan, taking the consequences of this into account. Para 40.1.8 of this document states:

The housing trajectory currently shows a total development pipeline of 10,651 net additional units for the 15 year period 2017/18 to 2031/32. The total target over the same period is 10,995 units. Therefore the total capacity is 344 units below the borough target over the same period.

RBKC has pledged an early review of the Local Plan. But it may also be that when the Government's new Housing Delivery Test is introduced, the Borough's target will be further increased. All of which makes it difficult to see how RBKC can be said to meet the Government's criteria for allowing an all-encompassing Article 4 Direction, of the sort it is seeking.

Conclusion

A lot of work, time and thought went into making the STQW Neighbourhood Plan, and as part of that process a lot of consideration was given to the future of Latimer Road and specifically to what should happen if the Government removed RBKC's whole borough exemption from the permitted development right for change of use from office to residential.

The Plan's conclusion was action L11 in the section on Latimer Road, which calls for an Article 4 Direction to maintain ground floor B1 space in Latimer Road, while allowing the flexibility to convert offices to residential on the upper floors. This was integral to the Plan's ambition to see the street develop as a mixed use area.

	<p>The importance and weight that should be attached to Neighbourhood Plans has been repeatedly emphasised by the Government. Ministers have also stressed that Article 4 directions curbing permitted development should not be applied disproportionately. In this instance not only does the Neighbourhood Plan specifically not support the inclusion of Latimer Rd in an Article 4 direction of the sort the council is now seeking, nor does RBKC's own research commissioned from TBR.</p> <p>The STQW Neighbourhood Forum therefore urges RBKC not to try to include Latimer Road in the blanket Article 4 direction it is seeking, but instead to propose a separate Article 4 direction for the street covering only ground floor B1 space in accordance with action L11 of the Plan. If that is considered impractical for any reason – and it is hard to see what that might be - then the Council should simply remove Latimer Road from the proposed Article 4 direction, as its own research advises. StQW Neighbourhood Forum October 2017</p>
Charles Bezoari Elder	<p>Such action by the Council would be against the will of the people. The people of RBKC desperately want and need MORE HOUSING. This is the single biggest issue facing a Council that continues to ignore the needs of the residents. After the Grenfell disaster, it is clear that the current Council is not fit for purpose. And its continuing attempts to block, impede, interfere with the National commitment to liberate/allow/make simpler the conversion of offices to residential housing to meet the needs of the residents is another DISGRACE. The Council should all resign as a matter of course after Grenfell, and its abject failure on matters related to Housing should at least have generated more humility and understanding of the needs of the residents. And yet, here again, we see the Council going along as before, having learned nothing about its failures, and its arrogant behaviour which is no longer tolerated by the residents. The fact that a Labour MP was elected in RBKC for the first time ever, should have been warning enough- and that was BEFORE Grenfell. If you get the Housing question wrong yet again, and continue to behave with indifference to the expressed housing needs of the residents, then Labour and other parties will sweep the next elections. I have never voted Labour, but if there is no evidence of the existing Council changing its behaviour on Housing (by making it substantially easier to build more /convert etc then I will vote Labour</p> <p><i>Comments on the spatial element</i></p> <p>The over-riding objective that must be adopted by the Council if it wishes to continue and not be thrown out, must be to adopt an ambitious program of creating more housing. This can be done by conversion of offices/retail etc to housing. It can also be achieved by allowing development of housing without all the "subject to's" that the Council usually attaches to make it completely uneconomical. The Council also needs to review its existing long list of impediments to allowing old buildings that are no longer fit for purpose to be torn down and redeveloped as modern housing. Preserving old, unfit buildings in pseudo "conservation areas", serves no one. The residents want more housing, a small bunch of vocal people want to block any change of anything anywhere in the Borough. The Council has</p>

	<p>to stop pandering to these people, and focus on creating more housing. Lack of housing is driving families apart, creating the isolation of generations as grown up children cannot afford to live near their parents. This than puts a huge burden of social care on the Council, as older people who would otherwise benefit from the closer presence of their grown up children, have no one to rely on locally. Allow easily and quickly redevelopment that adds floors to building and spaces, rather than forcing people to become like moles and live underground in basement bunkers.</p> <p>The existing Council will not survive if it continues to behave as before. The hearings on Grenfell begin shortly, and they will result in a huge condemnation of the Council. It is time to start showing the residents that the Council is responsive, and is putting into place a new approach to Housing that will result in a very clear liberalization of the existing impediments and barriers to building/converting/developing more housing.</p> <p><i>Comments on the EquIA</i></p> <p>This document that is laughable in its assertion that the "Council is satisfied about its housing plan over the next 5 years". This statement, on which the Assessment is based, is so far removed from the reality of its residents that it almost justifies, on its own, the need for the removal of the existing Council -as they are clearly far out of touch with the needs and requirements of the local residents.</p> <p>You should reconsider this very carefully as it is going to be used by the media, and those who have the Council's failures on Housing in their sights with Grenfell as a glaring example of how out of touch , and arrogant the current Council is. You should change this completely and urgently</p>
Greg Hammond	<p>I strongly support the Council's Article 4 direction. Without this intervention, many small business facilities would be lost to residential use and the area's economic life and services would be choked.</p> <p>It is entirely appropriate to include the whole RBKC area in the Article 4 direction as all areas of the Royal Borough would be vulnerable without it</p>
Marianne Harris	<p>I support the proposal that RBKC should make a article 4 direction. From a national perspective, the borough is exceptional in the wide range of values given to different land uses and it must keep as many powers as needed to protect the community from commercial interests that only want to make money.</p>
Thomas Newman	<p>I agree with the Council doing so. Economics are such that most commercial properties in RBKC would all be converted to housing if there was no constraint, leaving fewer commercial services and higher rates for residents and only the developers benefiting.</p>
Mrs Greig	<p>It is very good to see that the Council has ensured Planning Permission will be required for change of use.</p>

	<p>We have in the past in Chelsea lost so much of value, buildings of their own sake or for commercial use. Surely there must be a limit to 'luxury flats' in the borough. Soon there will be nothing left except them! We don't just want the rich, old, foreign people living there, do we.</p>
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Appendix B: Equality Impact Assessment for Article 4 for offices to residential (Confirmation)

Overall Information	Details of Full Equality Impact Analysis
Financial Year and Quarter	2018/19 Q3
Name and details of policy, strategy, function, project, activity, or programme	<p>Article 4 direction for office to residential uses throughout the Borough.</p> <p>In May 2019 the provisions of national planning regulations will change. A system of prior approval will replace the existing need for planning permission for changes of use from offices (Class B1(a) uses) to residential.</p> <p>An Article 4 Direction was “made” in September 2017 to initiate the process to ensure that these newly granted permitted development rights will be removed before they come into being, by May 2019. The purpose of this Key Decision is to confirm the Article 4 direction.</p>
Lead Officers	<p>RBKC</p> <p>Name: Chris Turner Position: Senior Planning Policy Officer Email: chris.turner@rbkc.gov.uk Telephone No: 020 7361 3236</p>
Lead Borough	Chris Turner
Date of completion of final EIA	10 October 2018
Section 02	Scoping of Full EIA

Plan for completion	Timing: The KD will be made in November 2018 Policy Team	
Analyse the impact of the policy, strategy, function, project, activity, or programme	Analyse the impact of the policy on the protected characteristics (including where people / groups may appear in more than one protected characteristic). You should use this to determine whether the policy will have a positive, neutral or negative impact on equality, giving due regard to relevance and proportionality.	
	Protected characteristic	Impact: Positive, Negative, Neutral
	Age	Neutral
	Disability	Neutral
	Gender reassignment	Neutral
	Marriage and Civil Partnership	Neutral
	Pregnancy and maternity	Neutral
	Race	Neutral
	Religion/belief (including non-belief)	Neutral
	Sex	Neutral
Sexual Orientation	Neutral	

Section 03	Analysis of relevant data Examples of data can range from census data to customer satisfaction surveys. Data should involve specialist data and information and where possible, be disaggregated by different equality strands.	
Documents and data reviewed	See EqIA for original Core Strategy (adopted 2010 available from www.rbkc.gov.uk/planningpolicy). Also see 2011 Census Briefing available from https://www.rbkc.gov.uk/council/consultation/2011-census-briefings IIA Report – Submission (May 2017) https://planningconsult.rbkc.gov.uk/gf2.ti/f/799106/26692389.1/PDF/-/IIA_Report_Submission_Arcadis_May_2017.pdf	

	IIA Addendum Report (July 2018) https://planningconsult.rbkc.gov.uk/gf2.ti/f/799106/39250533.1/PDF/-/180718_IIA_Addendum_Report_FINAL.pdf
New research	No new research required

Section 04	Consultation
	Complete this section if you have decided to supplement existing data by carrying out additional consultation.
Consultation in each borough	The initial making was consulted on in July to September 2017. Public Realm Scrutiny Committee may choose to consider the KD in November 2018.
Analysis of consultation outcomes for each borough	The comments of the PRSC will be considered before the KD is confirmed.

Section 05	Analysis of impact and outcomes
Analysis	<p>What has your consultation (if undertaken) and analysis of data shown? You will need to make an informed assessment about the actual or likely impact that the policy, proposal or service will have on each of the protected characteristic groups by using the information you have gathered. The weight given to each protected characteristic should be proportionate to the relevant policy (see guidance).</p> <p>The making of the Article 4 direction will allow the Council to continue to require planning permission for changes of uses of offices to residential uses. The Article 4 direction will cover the entire Borough. This reflects the wide spread distribution of offices premises across the Borough and the role that these premises have upon wider clusters of business uses.</p>

	<p>Whilst this proposal is likely to result in the protection of a particular sector of the local economy it is unlikely to have any specific impact upon wider equality issues, other than to help maintain employment opportunities for a wide range of people and ensure that the local and the wider economy is supported.</p> <p>Similarly, the proposed Article 4 direction may have an effect on the provision of new housing, as office uses will be protected from changes of use to residential. The council is satisfied that it has a five year housing supply without resorting to the loss of existing premises. No particular sector of society will be more, or less, affected than any other.</p> <p>The spatial element of the Article 4 direction will also have no particular impact, as the intention is to protect the office premises across the Borough. Again no specific protected characteristic group will be impacted more than any other or more than the general population.</p>
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Section 06	Reducing any adverse impacts and recommendations
Outcome of Analysis	<p>Include any specific actions you have identified that will remove or mitigate the risk of adverse impacts and / or unlawful discrimination. This should provide the outcome for each Borough, and the overall outcome.</p> <p>None. The Council monitors trends in development in its Monitoring Report on an annual basis. https://www.rbkc.gov.uk/planning-and-building-control/planning-policy/monitoring-report</p>

Section 07	Action Plan
Action Plan	<p>Note: You will only need to use this section if you have identified actions as a result of your analysis</p>

	Issue identified	Action (s) to be taken	When	Lead officer and borough	Expected outcome	Date added to business plan	
	Monitoring development trends	Monitoring Report	Annual	Chris Turner, Senior Planning Officer, RBKC	Ongoing	Ongoing	

Section 08	Agreement, publication and monitoring
Chief Officers' sign-off	Name: Graham Stallwood Position: Executive Director for Planning and Borough Development Email: graham.stallwood@rbkc.gov.uk Telephone No: 020 7361 2612
Key Decision Report (if relevant)	Date of report to Cabinet/Cabinet Member: xxxx Key equalities issues have been included: Yes
Lead Equality Manager (where involved)	N/A