

Cabinet

Date of meeting: 11 July 2016

Report title: Article 4 direction for change of use from office to residential

Wards: Clapham Town / Coldharbour / Ferndale / Gipsy Hill / Larkhall / Oval / Prince's / Vassall

Report Authorised by: Strategic Director Neighbourhoods and Growth: Sue Foster

Portfolio: Cabinet Member for Regeneration, Business and Culture: Councillor Jack Hopkins,

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Report summary

In March 2016 the government confirmed that permitted development rights allowing change of use from office (planning use class B1(a)) to residential (planning use class C3) would be made permanent from April 2016, by an amendment to the General Permitted Development Order 2015. Previously these rights, first introduced in May 2013, were set to expire in May 2016. This means that local planning authorities cannot control changes of use from office (B1(a)) to residential (C3) as planning permission is not required.

To address this issue, it is proposed that the Council as Local Planning Authority (LPA) make an Article 4 direction to protect offices in some parts of the borough from change of use to residential without an application for planning permission first needing to be made to and approved by the LPA. An Article 4 direction removes a specified permitted development right in a defined area: proposed development that would otherwise be automatically permitted would require planning permission through the normal planning application process. This allows the LPA to determine whether or not the proposed development is acceptable under its Local Plan policies and having regard to any other material considerations.

A targeted approach is proposed as a proportionate means of removal of the relevant permitted development right in those areas of the borough where there is the strongest need to retain office floor space. The use of a non-immediate direction is recommended so that the applicable permitted development right can be withdrawn on notice to affected property owners/occupiers. The proposed areas to be covered by the Article 4 direction are Brixton town centre, a set of sites in and around Clapham Town Centre, and ten of the borough's designated Key Industrial and Business Areas (whole or part). The text of the proposed direction and maps is included in appendix 1. A summary of the evidence justifying the need for the proposed direction is included in appendix 2.

The process for implementing a non-immediate Article 4 direction requires an initial decision by the council to make the direction. This is followed by notification to affected property owners/occupiers and the Secretary of State and the setting out of a specified period during which representations may be made to the Council about the direction. Any representations received must be considered by the Council. The notification will set out, amongst other matters, the date when the Council intends that the direction would come into force in the event that it is confirmed. The decision whether or not to confirm the direction is a separate decision that will need to be made in due course taking into account any representations that are received following the making of the direction. This report seeks authority only in relation to the making of the direction and the consequential publication of the direction and the seeking of representations.

Finance summary

The cost of making the Article 4 direction and associated notifications is estimated to be £6,000 in the financial year 2016/17 and will be funded from existing approved budgets in the Planning, Transport and Development division.

Recommendations

- (1) That the Council as Local Planning Authority make a non-immediate Article 4 direction with an intended coming into force date of 15 September 2017 to remove permitted development rights for change of use from office (use class B1(a)) to residential (use class C3), to cover Brixton town centre, parts of Clapham and ten Key Industrial and Business Areas (whole or part), in the terms set out in Appendix 1.
- (2) That Cabinet delegates to the Programme Director of Planning, Transport & Development the preparation of the Article 4 direction and instructs officers to carry out all necessary consequential arrangements to give effect to the terms of Recommendation 1 which shall include publishing the making of the direction, notifying affected property owners/occupiers and the Secretary of State and seeking representations on the making of the direction.

1. Context

- 1.1 In May 2013, the government introduced a new permitted development right by amendment to the Town and Country Planning (General Permitted Development) Order 1995 to allow change of use from office (planning use class B1(a)) to residential (planning use class C3). The government's stated aim was to help promote the supply of new housing by removing planning barriers. This meant that local planning authorities (LPAs) could no longer control changes of use from office to residential as planning permission would not be required. The new permitted development right was initially introduced on a temporary basis for three years until May 2016. The government said it would review the position towards the end of this period and consider whether or not to extend the new provision.
- 1.2 LPAs were allowed to apply for an exemption from the new temporary permitted development right for particular areas. The government allowed an exemption for the whole of London's Central Activities Zone (CAZ). In Lambeth, this covers Waterloo and Vauxhall. However, Lambeth's application for exemption for its major town centres and Key Industrial and Business Areas was not successful.
- 1.3 In March 2016 the government announced that the new permitted development right would be made permanent from April 2016, by an amendment to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO"). It also announced that the previous provision for exempt areas would not be continued, although the exemptions would not expire until May 2019. This means that London's CAZ, and therefore Waterloo and Vauxhall, will continue to be exempt until that date.
- 1.4 Under the permitted development right, change of use from office (B1(a)) to residential (C3) requires an application for prior approval to the LPA. In determining a prior approval application, the LPA can only consider impacts of the proposed development on transport, contamination, flooding and noise; plus, since March 2016, the impact of noise from neighbouring uses on the proposed residential use. Local Plan policies relating to matters such as protection of employment land, quality of new housing, or affordable housing cannot be applied. Section 106 planning obligations (including financial contributions) cannot be sought unless the subject matter of the section 106 obligation is necessary in order to enable prior approval to be granted. However, development of this nature that has secured a prior approval is liable for Community Infrastructure Levy (CIL).
- 1.5 The only mechanism available to LPAs to remove permitted development rights is through a direction under Article 4 of the GPDO. An Article 4 direction removes a specified permitted development right in a defined area: proposed development that would otherwise be automatically permitted then requires planning permission to proceed. This allows the LPA to determine the merits of the proposed development in the ordinary way in light of its Local Plan policies and having regard to any other material considerations.
- 1.6 National Planning Practice Guidance (NPPG) provides guidance to LPAs on Article 4 directions and states that their use to remove national permitted development rights should be limited to situations where this is considered necessary to protect local amenity or the wellbeing of an area. The potential harm that the direction is intended to address must be clearly identified. It states that particularly strong justification is required where prior approval powers are available to control permitted development, which is the case for the

permitted development right for change of use from office to residential. The Secretary of State has the power to intervene in an Article 4 direction made by an LPA by modifying or cancelling it.

- 1.7 If a planning application is required solely because permitted development rights have been removed by an Article 4 direction, no planning application fee is payable.
- 1.8 There are two types of direction under the GPDO: non-immediate directions and directions with immediate effect. An immediate direction withdraws permitted development rights with immediate effect but affected property owners whose land suffers a loss in value as a result of the direction may be entitled to compensation. Where a non-immediate direction is used, however, provided that permitted development rights are withdrawn in the prescribed manner, there will be no entitlement to seek compensation. This includes where at least 12 months' notice has been given of the date when it is proposed that the direction will come into force.
- 1.9 As part of the non-immediate Article 4 direction process, the LPA is required to notify the land owners/occupiers affected and to publish the making of the direction by various means including site notices and notices in the press. A period must be allowed during which representations may be made to the LPA. Any representations received must be considered by the LPA in deciding whether or not to proceed to confirm the direction. The process of confirmation is what brings a direction into force, if that is what the LPA decides to do. In summary, the process for making a non-immediate direction is as follows:
 1. LPA decide to make the direction.
 2. Serve notice (by letter to the land owners/occupiers within the affected areas/sites, plus site notice and advertisement) giving at least 21 days to make representations to the LPA. This notice must include the date that it is intended that the direction would come into force.
 3. Simultaneously send a copy of the direction and notice to the Secretary of State.
 4. Consider any representations received.
 5. LPA decide whether or not to confirm the direction, taking into account any representations received.
 6. If the decision to confirm the direction is made, serve notice (by letter to land owners/occupiers, plus site notice and advertisement) of the confirmation of the direction.
 7. Simultaneously send a copy of the direction as confirmed to the Secretary of State.

The matters with which this report is concerned, and in respect of which Cabinet is asked to make a decision, are limited to those at steps 1 to 3 above.

- 1.10 At the point that it is made, a direction does not interfere with the exercise of permitted development rights. Those rights are removed with effect from the specified date of coming into force of the direction, but only if the direction is subsequently confirmed by the LPA. The specified date of coming into force is the date that the LPA specifies when it gives notice of the making of the direction.

1.11 The intended date of coming into force of the direction to which Cabinet is asked to agree is 15 September 2017. Further detail about the proposed timetable is set out at section 9 of this report.

2. Proposal and Reasons

2.1 Since the introduction of the original permitted development right in May 2013, Lambeth has received 235 prior approval applications for change of use from office to residential. Of these 137 (58%) have been approved, 75 (32%) refused and 23 (10%) withdrawn. For the period to April 2015, the approvals would equate to the loss of approximately 14,000 m² of B1(a) office floor space and the creation of 508 new residential units, if all the approvals were implemented (by March 2015, the rate of implementation for those granted since May 2013 was 73%). In the majority of cases, transport, contamination, flooding and noise considerations have not provided sufficient grounds for refusal of these prior approval applications.

2.2 The loss of this quantity of B1(a) office space in an unplanned and uncontrolled way is harmful to Lambeth's economy and to its stock of business space. At an employment density ratio of 10.8 square metres per worker (source: London Office Policy Review update 2014), the loss of 14,000m² of B1(a) floor-space equates to 1,296 jobs. Given the high rate of implementation of prior approvals, it can be expected that a significant proportion of these jobs had already been lost by March 2015 and that more will be lost in the period after that date. This activity therefore directly undermines the borough's potential for economic growth and development, including scope for business start-up and expansion, job retention and creation, and future employment opportunities for local people.

2.3 Evidence about supply of, and demand for, office floor-space in the borough and the impact of the permitted development right is summarised in appendix 2 and is addressed below.

2.4 Whilst Lambeth supports the creation of more housing to meet and exceed its housing target, there is sufficient land to do this effectively in the borough without the uncontrolled loss of essential office floor space through permitted development rights. The Council publishes an annual housing implementation strategy, which sets out the evidence for this in accordance with the requirements of national planning policy. Housing is not always suitable or appropriate in employment areas and, in addition, in some areas its introduction next to other businesses (particularly light industrial or waste uses) undermines their future viability because residential occupiers complain about impacts on their amenity from noise, dust or smells. There is also no control over the quality of housing created through this permitted development right, nor the ability to secure affordable housing.

2.5 It is therefore proposed to introduce a non-immediate Article 4 direction in Lambeth to remove the permitted development right allowing change of use from office (B1(a)) to residential (C3) in specific locations where the impact of loss of offices is expected to be greatest. The use of a non-immediate Article 4 direction is proposed to allow owners and occupiers sufficient time to plan how to use their properties in an orderly way.

2.6 When the permitted development right was first introduced in 2013, a change of use from office (B1(a)) to residential (C3) would have needed to be carried out no later than 30 May

2016 in order to benefit from the right. When the government made the permitted development right permanent, no general replacement 'long-stop' date was given for the exercise of the right (although developments where prior approval is granted must now be completed within 3 years of the date of grant of prior approval). It is proposed that properties that have obtained prior approval for change of use from B1(a) to C3, or are deemed to obtain it under the procedures that apply where the LPA fails to determine the prior approval application within the requisite time period, prior to the intended date of coming into force of the direction (15 September 2017), will be exempt from the direction. This approach recognises that those properties will have already obtained the necessary prior approval for the exercise of the right before the intended date of coming into force of the direction.

2.7 For Waterloo and Vauxhall, which are still covered by the CAZ exemption until May 2019, it is proposed to delay consideration of the making of a corresponding Article 4 direction until 2017/18.

2.8 For the rest of the borough, it is proposed to adopt a targeted approach and make one Article 4 direction covering:

- Brixton town centre;
- specific sites in and around Clapham town centre; and,
- ten designated Key Industrial and Business Areas (KIBAs), whole or part.

These locations have been identified on the basis of the evidence of the quantity and concentration of B1(a) space in those locations; levels of occupation; their contribution to meeting local demand for office space; and therefore the resulting harm that would occur should this stock of space be lost. The proposed locations are set out in maps at appendix 1 of this report. A discussion of the reasoning for identifying each of these areas is summarised below.

Brixton

2.9 Brixton Major Town Centre is a key location in Lambeth for small businesses and is experiencing strong growth in higher value creative and professional sectors that occupy B1(a) offices, including ICT and digital activities (over 50 businesses), media and broadcasting (over 20 businesses) and wider professional services (over 80 businesses). Some high profile businesses are investing in new office space in the centre, such as the architects Squires and Partners. There are four workspace hubs comprising a mixture of studio, office and co-working space within the B1(a) use class. However, in comparison with other major town centres in inner London (such as Camden Town, the Angel or Lewisham town centre), there is a marked shortage of B1(a) office space in Brixton in the context of rising demand in the sectors identified above (see summary of evidence in appendix 2).

2.10 There are a number of recent examples of prior approvals for change of use from office to residential in or close to the town centre that illustrate how damaging this permitted development right is to the stock of office space. These include:

- The Piano House: just outside the town centre boundary, this has been a long-standing and well-regarded hub for flexible and low-cost small business-space, fully

occupied by a range of mainly creative sector firms. Despite being protected as a Key Industrial and Business Area (see paragraph 2.15 below), the majority of the B1(a) floor space has received prior approval for change of use to residential under the permitted development right (approximately 2,733m²).

- 32 Acre Lane: the first and second floor offices have changed use to eight residential units following a prior approval.
- 409-411 Brixton Road: the first floor offices have received prior approval for change of use to a residential dwelling.
- 373-375 Brixton Road: the offices at first and second floors have changed use to provide four residential units following prior approval.

2.11 It is expected that prior approval applications in Brixton will continue to be made, given its sustained popularity as a residential location and the continuing increase in residential property values in and around the town centre (according to Land Registry data, see summary in appendix 2).

Clapham

2.12 Clapham District Town Centre has a mix of office space providing for small and large companies, ranging from architects' practices and firms of solicitors to Experian, which occupies a number of premises in Clapham Old Town (7 Old Town and George West House, 2-3 Clapham Common North Side). Other significant office locations are Scout Lane, Wingate Business Exchange at Wingate Square, and Bromell's Road (Spectrum House and Polygon House).

2.13 Clapham is one of the highest value residential locations in Lambeth, so offices in the area have become particularly vulnerable under this permitted development right (according to Land Registry data, see summary in appendix 2).

2.14 Clapham High Street offers some office accommodation, primarily above shops, although this is scattered and ancillary to other uses on the ground floor, often in combination with storage use. The proposed approach is to limit the removal of the permitted development right to specific clusters of office space. Clusters of office space are considered to offer greatest potential for economic growth and companies can benefit from locating close to each other. As a result, the loss of these clusters causes particular harm to the existing local economy and potential for growth. It is therefore proposed that Article 4 direction is limited to office clusters located in and around Clapham Old Town.

Key Industrial and Business Areas (KIBAs)

2.15 KIBAs are areas of land protected for employment uses by the Lambeth Local Plan: development in KIBAs is permitted only for business, industrial, storage and waste management uses (principally uses in the B1(a), B1(c), B2 and B8 use classes). They equate to 'Locally Significant Industrial Sites' as defined in the London Plan 2015 and represent the borough's strategic reservoirs of land for business use. There are currently 28 designated KIBAs, varying in character from those comprising almost exclusively B1 office and light industrial space to those encompassing a range of small office, light industry and manufacturing, storage and waste management uses. Council officers have recently reviewed all of the KIBAs to establish current uses and occupancy and assess planning history. This has established that the level of occupation of B1 floor space in KIBAs is high

(typically vacancy rates are between 5 and 10 percent, which is considered a normal level of 'frictional' vacancy allowing for churn in tenancies), which suggests that demand remains strong and that there is not an over-supply of available space.

2.16 The analysis undertaken by officers has informed the identification of ten KIBAs (or parts of KIBAs) to be the subject of the proposed Article 4 direction. These are the KIBAs with all or a very high proportion of the KIBA in B1 use. Where only one area of a KIBA is in B1 use (and the rest is in other types of employment use such as B2, B8 or *sui generis* employment uses), then only the part in B1 use is proposed to be included in the direction. Many of the areas identified are managed by specialist work-space providers (such as Workspace, Bizspace and Need Space). The ten KIBAs (or parts of KIBAs) are:

- Clapham North Industrial Estate;
- Durham Street (also known as Westminster Business Square or Vox Studios);
- Eurolink Business Centre;
- Kennington Business Park;
- Lion Yard;
- Park Hall Trading Estate;
- Part of Shakespeare Business Centre (Bizspace-managed site only);
- Part of Southbank House & Newport Street (only the Workspace-managed site at Southbank House);
- Part of Stannary Street (offices at 184-186 Kennington Park Road; 206-212 Kennington Park Road & 18-26 Stannary Street); and,
- Part of Timber Mill Way (Needspace-managed site known as Clapham North Art Centre).

3. Finance

3.1 The costs associated with making an Article 4 direction arise from consultation and press notices (as identified in Steps 1 and 2 in para 1.9).

3.2 The 2016/17 costs are estimated to be £6,000 and will be funded from existing general fund budgets.

3.3 Dependent on whether the process progresses through to completion – there would be further costs associated with later steps yet to be identified but likely to be similar to the first rounds of costs.

3.4 Cabinet may wish to note that if the Article 4 direction were to be made and later confirmed, planning applications that are rendered necessary by the direction will not attract a fee (see paragraph 1.7 above). Whilst this would cause some pressure in the running of the development management service, the overall effect is not likely to be significant.

4. Legal and Democracy

4.1 The detailed procedure for the making of a non-immediate Article 4 direction is contained in paragraphs 1(1) to 1(18) of Schedule 3 of the GPDO.

- 4.2 Those requirements include the obligation to provide notification to owners/occupiers of land affected by the direction of the making of the direction, as well as providing certain other information (such as an explanation of the effect of the direction and its intended date of coming into force). Details must be provided of how representations may be made to the LPA about the making of the direction. The minimum period for receipt of such representations is 21 days. It is also necessary to notify the Secretary of State of the making of the direction.
- 4.3 Once the period for making representations has ended, the LPA must consider any representations received.
- 4.4 This proposed key decision was entered in the Forward Plan on 24 May 2016 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

- 5.1 If Cabinet agrees to make the direction, owners/occupiers of the affected land will be notified by individual letter about the making of the direction and how representations will be made. The placing of the necessary site and press notices will also be carried out.
- 5.2 It is also proposed to put a copy of the direction on the Council's website together with details of when and how representations may be made.
- 5.3 Whilst the statutory requirement is for a period of at least 21 days to submit representations to the Council, it is proposed to extend this to 8 weeks (56 days) as the period for receipt of representations will include the month of August. This is to allow a reasonable time for submission of representations.
- 5.4 The Council will need to consider any representations received and take them into account when deciding whether or not to confirm the direction.

6. Risk management

- 6.1 Provided that the direction is made and published in accordance with the statutory requirements, the mechanics of the making the direction is not associated with the generation of risk.
- 6.2 The process of introducing a non-immediate Article 4 direction builds in provision for representations to be made to the LPA, and for the LPA to take those representations into account when deciding in due course whether or not to confirm the direction.

7. Equalities impact assessment

- 7.1 There are potential equalities impacts of this proposal, but these are very hard to quantify and assess. They could arise indirectly from any socio-economic pattern in the ownership and/or occupation of the properties affected, but comprehensive data on this is not available so it is not possible to make a reliable assessment. Other impacts could arise indirectly in relation to the jobs that currently exist, and might exist in the future, in the premises to be covered by the Article 4 direction. However, again there is insufficient data about the nature of these jobs and the type of people who occupy them to undertake a valid assessment of equalities impacts.
- 7.2 Once the notification of the making of the direction has taking place, and depending on the content of any representations received, any data available can be used to inform an equalities impact assessment. This will be considered alongside the assessment of the representations received, and reported to Cabinet in due course.

8. Community safety

None for the purposes of this report.

9. Organisational implications

- 9.1 Environmental
None.
- 9.2 Staffing and accommodation
None.
- 9.3 Procurement
None.
- 9.4 Health
None.

10. Timetable for implementation

The timetable below relates to the process up to the making of the direction and the associated publication/notification and representations received will be analysed during autumn 2016 and will be reported to Cabinet in due course:

Non-immediate Article 4 direction process	Date
LPA decision to make the direction	July 2016
Notify land owners/occupiers by post, site notice and press advertisement that the direction has been made	July/August 2016
Council website entry	July 2016
Notify the Secretary of State that the direction has been made	July 2016
8 week period for representations by owners/occupiers	29 July to 23 September 2016
Intended date of coming into force	15 September 2017

Audit trail				
Consultation				
Name/Position	Lambeth cluster/division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director Neighbourhoods and Growth	08.06.16	08.06.16	2.2, 3.3
Sandra Roebuck	Assistant Director Neighbourhood Investment	26.05.16	26.05.16	2.5
Peter Flockhart	Legal Services	26.05.16	16.06.16	Throughout
David Rose	Democratic Services	16.06.16	20.06.16	Throughout
Andrew Ramsden	Enabling/Integrated Services	26.05.16	16.6.16	Section 3
Cllr Jack Hopkins	Cabinet Member for Regeneration, Business and Culture	09.06.16	13.06.16	2.10
Cllr Clair Wilcox	Chair of Planning Applications Committee	15.06.16	21.06.16	2.2

Report history	
Original discussion with Cabinet Member	19/05/16
Report deadline	29/06/16
Date final report sent	30/06/16
Report no.	259/16-17
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	24 May 2016
Key decision reasons	Community impact
Background information	Town and Country Planning (General Permitted Development Order) (England) 2015 as amended National Planning Policy Guidance
Appendices	Appendix 1 - Proposed Article 4 direction Appendix 2 – Summary of evidence