

Cabinet, 23 March 2017

Report title: Confirmation of the non-immediate Article 4 direction for change of use from office to residential

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

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

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

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Report summary

On 11 July 2016 Cabinet agreed to the making of a non-immediate Article 4 Direction to remove permitted development rights in certain parts of the Borough allowing change of use from office (Use Class B1a) to residential (Use Class C3). These permitted development rights had been made permanent in April 2016 by an amendment to the General Permitted Development Order 2015. The permitted development right means that local planning authorities have limited control over changes of use from office to residential as planning permission is not required.

The relevant direction was made on 25 July 2016 in respect of 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 (in whole or in part). The intended coming into force date of the direction, subject to confirmation, was given as 15 September 2017.

Following the making of the Article 4 direction, affected property owner/occupiers and the Secretary of State were notified and representations were invited between 29 July and 23 September 2016.

Cabinet is now asked to consider any representations received and to decide whether the Article 4 direction should be confirmed.

It is recommended that the Council proceeds to confirm the Article 4 direction and that necessary consequential steps are delegated to officers. If the direction is confirmed the removal of the relevant permitted development right will take effect from 15 September 2017.

Finance summary

The cost of confirming the Article 4 direction and associated notifications is estimated to be £2,000 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 proceeds to confirm the Article 4 direction made on 25 July 2016 and coming into force on 15 September 2017.
- (2) That Cabinet delegates to the Assistant Director of Planning, Transport & Development any consequential arrangements to give effect to the terms of Recommendation 1 which shall include publishing confirmation of the direction, notifying affected property owners/occupiers and the Secretary of State.

1. Context

- 1.1 In May 2013, the government introduced a new temporary permitted development right by amendment to the Town and Country Planning (General Permitted Development) Order 1995 to allow change of use from office (Use Class B1a) to residential (Use Class C3) which meant that local planning authorities (LPAs) could no longer control change of use from office to residential as planning permission would not be required. The General Permitted Development Order 1995 was replaced by the General Permitted Development Order 2015 and the relevant class of permitted development rights relating to change of use from office to residential were carried forward into the 2015 Order. The Government announced that the permitted development right was to be made permanent from April 2016.
- 1.2 Under the permitted development right, change of use from office (B1a) 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. An Article 4 direction is a means of withdrawing permitted development rights that are granted by the General Permitted Development Order.
- 1.3 The background to the process of making an Article 4 direction is set out in the report to the meeting of Cabinet of 11 July 2016 available via this [link](#).
- 1.4 On 11 July 2016 Cabinet agreed to the making of a non-immediate Article 4 direction to remove permitted development rights allowing change of use from office (B1a) to residential (C3). The Article 4 direction was duly sealed on 25 July 2016 and notice given to relevant parties of the making of the direction, as explained in section 2 of this report. The intended coming into force date was specified as 15 September 2017.
- 1.5 The Article 4 direction applies to land in the following areas (identified more precisely in the maps appended to the direction):
 - Brixton Town Centre
 - Specific sites in and around Clapham Town Centre
 - Ten designated Key Industrial and Business Areas (KIBAs) (whole or part):
 - 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).

2. Proposal and Reasons

- 2.1 Following the making of the Article 4 direction, the Council notified affected owners/occupiers and the Secretary of State in accordance with the requirements of the General Permitted Development Order 2015. 49 site notices were erected in the affected areas, 767 letters were sent to the affected owners/occupiers, a public notice was placed in the Lambeth Weekender and details were made available on the Council's webpages. A notification letter was sent to the Secretary of State.
- 2.2 Representations about the making of the Article 4 direction were invited to be made during the period between 29 July and 23 September 2016. One representation was received and no other representations have been received since then.
- 2.3 The representation received observed that cities such as London regularly change and that commercial occupiers should have the flexibility to change their properties to residential if they wished to do so. It also raised concern that if offices were no longer required then they would remain vacant which would have a negative impact on the borough by being left derelict.
- 2.4 Officers have considered the representation but do not consider that it would amount to a justification not to proceed to confirm the Article 4 direction for the following reason. The Article 4 direction would not amount to an absolute prohibition on the change of use of a property; its effect is to require an application for a planning permission to be made for the proposed change of use. The determination of an application for planning permission would entail the proposed loss of office space being assessed against relevant planning policies and consideration being given to any other material considerations. This process would likely to include consideration of the level of evidenced demand for office space in the relevant areas.
- 2.5 The Secretary of State was notified of the making of the Article 4 direction but no comments were received apart from a request for additional information, which the Council then provided.
- 2.6 Officers do not consider that there have been any changes to planning policy (at national, London-wide or borough level) since the making of the Article 4 direction that would have any bearing on the decision whether to confirm it. Similarly, they do not consider that the land use context described in the previous report to Cabinet for its meeting on 11 July 2016 has changed since that report.
- 2.7 Cabinet is therefore asked to decide that the Council proceeds to confirm the Article 4 direction made on 25 July 2016 such that the direction will come into force on 15 September 2017 and to delegate to officers all necessary tasks to give effect to the confirmed direction (including notifying affected property owners and the Secretary of State).

3. Finance

- 3.1 The costs associated with confirming the Article 4 direction arise from notifying owner/occupiers, site notices and a public notice.

3.2 The 2016/17 costs are estimated to be £2,000 and will be funded from existing budgets within Planning, Transport and Development division.

4. Legal and Democracy

4.1 The detailed procedure for confirming an Article 4 direction is contained in Schedule 3 of the GPDO.

4.2 Those requirements include the obligation to provide notification that the Article 4 direction has been confirmed by local advertisement, through site notices at no fewer than two locations within the area to which the direction relates and by notifying every owner/occupier of every part of the land within the area or site to which the direction relates (unless it is impracticable to do so). It is also necessary to notify the Secretary of State that the Article 4 direction has been confirmed.

4.3 This proposed key decision was entered in the Forward Plan on 30 January 2017 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 Cabinet. 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 Details of the representation period and any responses received are set out in section 2 of this report.

6. Risk management

6.1 The permitted development rights in question are being withdrawn on notice to affected property owners/occupiers.

6.2 The procedures for confirming an Article 4 direction are set down in legislation as noted in section 4 of this report and are not considered to give rise to a need for additional risk management steps.

7. Equalities impact assessment

7.1 An Equalities Impact Assessment (Appendix One) has been undertaken and has identified there will be no direct negative impacts on any groups with protected characteristics. It has identified there will be positive impacts on BME groups, young people, those of working age and those with the pregnancy and maternity protected characteristic.

8. Community safety

None

9. Organisational implications

None

10. Timetable for implementation

The timetable below relates to the process of confirming the Article 4 direction and the associated publication/notification. The decision to confirm the Article 4 direction cannot be enacted until the 5 day call in period has expired:

Non-immediate Article 4 direction process	Date
Decision to proceed to confirm the Article 4 direction	23 March 2017
Notify land owners/occupiers by post, site notice and press advertisement that the direction has been confirmed	Early April 2017
Council website entry	Early April 2017
Notify the Secretary of State that the direction has been confirmed	Early April 2017
Intended date of coming into force	15 September 2017

Audit trail				
Consultation				
Name/Position	Lambeth directorate or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director Neighbourhoods and Growth	30/01/2017	01/02/2017 10.03.17	-
Sandra Roebuck	Assistant Director Investment and Growth	30/01/2017	01/02/2017	-
Doug Black	Programme Director Planning, Transport and Development	30/01/2017	01/02/2017	-
Peter Flockhart	Legal Services	02/02/2017	08/02/2017	Throughout
Wayne Chandai	Democratic Services	02/02/2017	09/02/2017	Section 10
Andrew Ramsden	Corporate Resources	02/02/2017	21/02/2017	Section 3
Cllr Jack Hopkins	Cabinet Member for Regeneration, Business and Culture	09/02/2017	09/02/2017	-
Cllr Clair Wilcox	Chair of Planning Applications Committee	06/02/2017	-	-

Report history	
Original discussion with Cabinet Member	26 January 2017
Report deadline	
Date final report sent	10.03.17
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	30 January 2017
Key decision reasons	3. Meets the community impact test
Background information	Town and Country Planning (General Permitted Development Order) (England) 2015 as amended

Appendices

Equality Impact Assessment