

Cabinet Member Delegated Decision 21 March 2018

Report title: Article 4 direction for change of use from office to residential in the Central Activities Zone

Wards: Prince's, Bishops and Oval

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

Portfolio: Councillor Matthew Bennett, Cabinet Member Planning, Regeneration and Jobs

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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. It also announced that the previous provision for exempt areas would not be continued, although the exemptions would not expire until May 2019. The government had previously allowed an exemption for the whole of London's Central Activities Zone (CAZ). In Lambeth, this covers Waterloo and Vauxhall. This means that after 31 May 2019 London's CAZ, and therefore Waterloo and Vauxhall, will no longer be exempt from the permitted development right.

To address this issue, it is proposed that the Council as Local Planning Authority (LPA) make a non-immediate Article 4 direction to protect offices in the Central Activities Zone (as it relates to Lambeth) 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 development plan policies and having regard to any other material considerations.

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 £5,000 in the financial year 2017/18 and will be funded from existing approved budgets in the Planning, Transport and Development division.

Recommendations

- (1) To agree that the Council as Local Planning Authority make a non-immediate Article 4 direction with an intended coming into force date of 31 May 2019 to remove permitted development rights for change of use from office (use class B1(a)) to residential (use class C3), to cover the whole of the London Central Activities Zone as it relates to Lambeth, in the terms set out in Appendix 1.
- (2) To delegate authority to the Assistant Director of Planning, Transport & Development to prepare the Article 4 direction and to instruct 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.
- 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 after 31 May 2019 London's CAZ, and therefore Waterloo and Vauxhall, will no longer be exempt from the permitted development right.
- 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. Development 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 development 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 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.

1.8 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 bringing into effect a non-immediate direction is as follows:

1. LPA decides 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 the Cabinet Member is asked to make a decision, are limited to those at steps 1 to 3 above.

1.9 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.

1.10 In July 2016, the Council made an Article 4 direction removing permitted development rights for change of use from office (planning use class B1(a)) to residential (planning use class C3), which covered 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). This direction came into force on 15 September 2017.

2. Proposal and Reasons

2.1 It is proposed to make a non-immediate Article 4 direction to remove permitted development rights for change of use from office (planning use class B1(a)) to residential (planning use class C3) in the Central Activities Zone (CAZ) as it relates to Lambeth. 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. The intended date of coming into force of the direction to which the Cabinet Member is asked to agree is 31 May 2019. Further detail about the proposed timetable is set out at section 9 of this report.

- 2.2 If the proposed Article 4 direction is not made, from 31 May 2019 land in B1a use that was in that use on 29 May 2013, and land no longer in use on that date but in B1a use when last in use, within the CAZ as it relates to Lambeth would be able to change use to C3 residential under permitted development rights, subject to prior approval.
- 2.3 The London CAZ is a strategic planning policy designation within the Mayor's London Plan 2016 (consolidated with alterations since 2011). The designation is proposed to be maintained within the draft new London Plan published for consultation in November 2017. The boundary of the CAZ as it relates to Lambeth is shown on the Lambeth Local Plan Policies Map September 2015 and can be seen on Map 1 in Appendix 1. There is no proposal to change this boundary in the current partial review of the Lambeth Local Plan.
- 2.4 The Greater London Authority (GLA), on behalf of the Mayor, has drawn together the strategic evidence and rationale for protecting offices in the CAZ (see Appendix 2). Each other London borough that falls within the CAZ is also in the process of introducing a non-immediate Article 4 direction to remove permitted development rights for change of use from office (planning use class B1(a)) to residential (planning use class C3) in the CAZ as it relates to their area. Drawing on this evidence the Mayor has stated his support for the CAZ boroughs to introduce Article 4 Directions to remove office to residential permitted development rights for the currently exempted areas set out above prior to the expiry of these exemptions in May 2019 (page 5 of the Mayor's evidence document at Appendix 2).
- 2.5 The Mayor's strategic evidence (included at Appendix 2) states that his objectives on this matter are to safeguard, enhance and promote the agglomerations of nationally significant offices in the capital and their contribution to the London and UK economy; to support a co-ordinated approach to the introduction of Article 4 Directions by the relevant boroughs for the areas currently exempt from office to residential permitted development rights; and to optimise the potential for housing deliver in appropriate locations. The strategic evidence to support the introduction of Article 4 Directions by CAZ boroughs relates to:
- Safeguarding the contributions of London's nationally significant office locations to the London and national economy
 - Office floorspace stock
 - Agglomeration benefits
 - Employment growth
 - Contributions to strategic infrastructure
 - Central London office market trends
 - Office and residential values
 - Unintended impacts and consequences and the permitted development right
 - Delivery of housing
- 2.6 The GLA's strategic evidence is supplemented by Lambeth-specific evidence summarised in Appendix 3. This focusses on forecast demand for office space in Lambeth and the Lambeth part of the CAZ; the supply of office space in the borough and the Lambeth part of the CAZ; jobs growth in the Lambeth part of the CAZ; the impact of the permitted development right since 2013 in those parts of Lambeth outside the CAZ; and house price trends in the Lambeth part of the CAZ.
- 2.7 In summary, the Lambeth portion of the CAZ is projected to be able to accommodate 10,836 additional office jobs in principle over the period 2016 to 2041, which equates to about 80 per cent of the figure for Lambeth as a whole (London Office Policy Review 2017). However, this potential would be constrained if the supply of office floorspace is not protected. The overall supply of B1a office floorspace in Lambeth has

experienced a net loss of some 116,000 sqm since 2007. The planning pipeline of new office floorspace going forward is stronger but not yet close to the total projected demand of 160,627 sqm by 2041 (see Appendix 3 section B).

- 2.8 Since the introduction of the original permitted development right in May 2013, Lambeth has received 311 prior approval applications for change of use from office to residential outside of the CAZ area. Of these 166 (54%) have been approved, 110 (36%) refused and 32 (11%) withdrawn. In the majority of cases, transport, contamination, flooding and noise considerations have not provided sufficient grounds for refusal of these prior approval applications.
- 2.9 For the period to from May 2013 to January 2018, the prior approvals would equate to the loss of approximately 48,167sqm of B1(a) office floor space and the creation of 744 new residential units (with no affordable housing), if all the approvals were implemented (by March 2017, the rate of implementation for those granted since May 2013 was 66%). At an employment density ratio of 11.3sqm per worker (source: London Office Policy Review 2017), the loss of 48,167sqm of B1(a) floor-space equates to 4,262 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 2017 and that more will be lost in the period after that date (see Appendix 3 section D). This activity 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. This is particularly critical for the CAZ area in Lambeth, given it accounts for 30 per cent of all employment in Lambeth and has experienced significant growth in jobs and businesses since 2012 (see Appendix 3, section C).
- 2.10 Given very high residential values in the CAZ area (data in Appendix 3 section E shows house prices in Lambeth CAZ postcode districts consistently above the average for the borough and on an upward trend over the past five years), it is to be expected that a similar rate of loss to residential through permitted development rights could occur in that area once the current exemption ends in May 2019. This may particularly affect smaller office spaces that command lower rents: these smaller offices play an essential role in meeting demand from micro and small businesses, which account for approximately 96 per cent of all business in Waterloo and Southbank, and across the CAZ as a whole (source ONS UK business count 2017, see Appendix 3 section C).
- 2.11 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 from office to residential in the CAZ. The Council publishes an annual Housing Implementation Strategy (most recently the [Lambeth Housing Implementation Strategy September 2017](#)), which sets out the evidence for this in accordance with the requirements of national planning policy and shows Lambeth's consistently strong record. Between 1 April 2007 and 31 March 2017, a total of 14,813 net additional dwellings were completed in Lambeth, which is 2,506 units more than the cumulative housing target for that period. For the current 10 year London Plan housing target period (2015/16 to 2024/25) cumulative net additional completions are predicted to exceed the cumulative target plus 5 per cent buffer by 1,646 dwellings.
- 2.12 There is no control over the quality of housing created through the office to residential permitted development right, nor the ability to secure affordable housing.

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 2017/18 costs are estimated to be £5,000 and will be funded from existing general fund budgets. This cost arises from the requirement to write to all properties in the CAZ as it relates to Lambeth (approximately 11,000 addresses within the CAZ).
- 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.

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 15 December 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 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 the Cabinet Member agrees to make the direction, all owners/occupiers in the affected area 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 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 of 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 (and impacts can be either positive or negative), but these are expected to be very hard to identify. Impacts could for example arise indirectly from any socio-economic pattern in the ownership and/or occupation of the properties affected. 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, and in relation to jobs that might cease to exist in those premises and/or residential accommodation that might come forward were the direction not to be made.
- 7.2 Once the notification of the making of the direction has taken place, and any representations received have been able to be considered, it is proposed at that stage to prepare an equalities impact assessment. That assessment, to the extent it is able to be made, can then be used to inform any consideration of whether the Article 4 direction (if made) should proceed to be confirmed.

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:

Non-immediate Article 4 direction process	Date
LPA decision to make the direction	March 2018
Notify land owners/occupiers by post, site notice and press advertisement that the direction has been made	March 2018
Council website entry	March 2018
Notify the Secretary of State that the direction has been made	March 2018
8 week period for representations by owners/occupiers	2 April to 28 May 2018
Intended date of coming into force	31 May 2019

Audit trail

Consultation				
Name/Position	Lambeth directorate/ division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director Neighbourhoods and Growth	06/02/18		
Sandra Roebuck	Director Planning Growth and Employment	28/02/18	28/02/18	
Rob Bristow	Assistant Director Planning, Transport and Development	28/02/18	28/02/18	
Susan Boucher	Legal Services	28/02/18	02/02/18	Throughout
Maria Burton	Democratic Services	28/02/18	06/03/18	
Andrew Ramsden	Corporate Resources	28/02/18	05/02/18	
Cllr Matthew Bennett	Cabinet Member Planning, Regeneration and Jobs	08/02/18		

Report history

Original discussion with Cabinet Member	14 December 2017
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	15 December 2017
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 – Mayor’s strategic evidence Appendix 3 – Summary of Lambeth evidence

APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature _____ **Date** _____

Catherine Carpenter, Delivery Lead Planning Strategy and Policy, Neighbourhoods and Growth

I approve the above recommendations:

Signature _____ **Date** 20 March 2018

Councillor Matthew Bennett, Cabinet Member for Planning, Regeneration and Jobs

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None