

	<h2>Planning Committee</h2> <h3>25<sup>th</sup> June 2018</h3>
<p style="text-align: center;"><b>Title</b></p>	<p>Non Immediate Article 4 Direction – office to residential, light industrial to residential and warehouse to residential</p>
<p style="text-align: center;"><b>Report of</b></p>	<p>Deputy Chief Executive</p>
<p style="text-align: center;"><b>Wards</b></p>	<p>All</p>
<p style="text-align: center;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: center;"><b>Urgent</b></p>	<p>No</p>
<p style="text-align: center;"><b>Key</b></p>	<p>Yes</p>
<p style="text-align: center;"><b>Enclosures</b></p>	<p>Appendix 1: Draft Article 4 Direction Notice use class B1a (office)                  Appendix 2: Draft Article 4 Direction Notice use class B1c (light industrial)                  Appendix 3: Draft Article 4 Direction Notice use class B8 (storage and distribution centre)                  Appendix 4: Justification for Article 4 Directions for employment uses                  Appendix 5: Table 1 - Proposed Article 4 locations for B1a B1b and B8                  Appendix 6: Maps of the Proposed Article 4 Direction sites</p>
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## Summary

The Council intends to introduce Article 4 Directions under the Town and Country Planning (General Permitted Development) (England) Order 2015/596 (“GPDO”) which withdraw permitted development rights for conversions from planning use classes B1a (office), B1c (light industrial) and B8 (storage and distribution centre) to use class C3 (dwelling house). The Article 4 Directions will cover specific town centres, designated employment areas and

other selected sites across the borough. Subject to responses from the consultation process the Council will be able to confirm the Directions in June 2019. From that date any proposal to convert an office, light industrial unit or storage and distribution centre (warehouse) unit within the Article 4 areas will then require planning permission.

## **Recommendations**

- 1. That the Committee approve the making of a non-immediate Article 4 Direction to withdraw permitted development rights for changes of use from offices (Use Class B1a) to residential use (Use Class C3) at the locations shown in Appendix 1.**
- 2. That the Committee approve the making of a non-immediate Article 4 Direction to withdraw permitted development rights for changes of use from light industrial (Use Class B1c) to residential use (Use Class C3) at the locations shown in Appendix 2.**
- 3. That the Committee approve the making of a non-immediate Article 4 Direction to withdraw permitted development rights for changes of use from storage and distribution centre (Use Class B8) to residential use (Use Class C3) at the locations shown in Appendix 3.**
- 4. The Committee approves consultation on the three non-immediate Article 4 Directions.**

### **1. WHY THIS REPORT IS NEEDED**

#### **OFFICE TO RESIDENTIAL**

- 1.1** In order to speed up the delivery of new homes the Government introduced office to residential conversion in May 2013 as a temporary permitted development right. From this date, applicants were permitted to convert existing office accommodation to residential dwellings without seeking planning permission. Instead, applicants were required to make a 'prior approval' application. This is a light-touch application process by which a local planning authority is permitted only to consider transport and highways impacts, contamination risks, flooding risks and impacts of noise from commercial premises on the intended occupiers of the development.
- 1.2** Under the prior approval process, the local planning authority has no discretion to consider or apply any other planning policies in determining the prior approval application. This means that, for example, authorities may not seek to enforce minimum space standards, design quality policies or seek affordable housing contributions where these would otherwise have been required.

- 1.3 The Government made the temporary right permanent in May 2015. Local planning authorities (including the London Boroughs of Croydon, Richmond and Bromley) have since used Article 4 Directions to manage the impact which removes the permitted development right.
- 1.4 It is important to recognise that while an Article 4 removes permitted development rights it does not prevent making planning applications for a change of use. If a valid planning application is received for a use in a location covered by an Article 4 Direction it is subject to full consideration of policy for that use. This will ensure that the impacts of the proposal are considered and where appropriate mitigated. For changes of use for B1a, B1c and B8 uses to residential the assessment would include the impact of the loss of employment on the local economy.
- 1.5 The Government sets out in both the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) that an Article 4 Direction must be justified. This justification is set out at Appendix 4.
- 1.6 The Royal Institute of Chartered Surveyors (RICS) released a report in May 2018 investigating the impact of office to residential permitted development. *Extending permitted development rights in England: the implications for public authorities and communities*. The report looks at 5 case study local authorities (Camden, Croydon, Leeds, Leicester and Reading). Of the 568 conversions that had occurred through the prior approval process 45 were examined in detail. The findings indicated:
  - Only 30% of units delivered through PD met national space standards.
  - 77% of units were studios or one beds compared to an average of 37% for planning permission units.
  - A potential loss of income of £10.8 million and 1,667 affordable housing units (calculated using local policy for each local authority) with a further loss of £4.1 million from planning fees.
- 1.7 A recommendation of the RICS Report 2018 is for local authorities to make use of Article 4 Directions.
- 1.8 The RICS investigation also reflects Barnet's experience of PDR. Between May 2013 and March 2017 nearly 41,000m<sup>2</sup> of office floorspace has been converted to residential creating 688 units.
- 1.9 In 2017 an Employment Land Review (ELR) was commissioned to support Barnet's emerging Local Plan. The ELR provides a detailed analysis of employment land and buildings in the Borough highlighting that while Barnet has a relatively large stock of offices, the quantum has been shrinking in the past decade (due mainly to losses to residential development) and there has been very little renewal. The Valuation Office Agency Business Floorspace Statistics 2016 states that Barnet's stock of office floorspace stands at 343,000m<sup>2</sup>. Loss of office stock in Barnet since

2004 amounts to a 13% reduction. By comparison, office stock across Outer London fell by 9% over the same period.

- 1.10 The ELR draws on projections from the London Office Policy Review 2017. These suggest demand for net additional office floorspace in Barnet of 67,000 – 106,000m<sup>2</sup> over the period 2016-36. The ELR acknowledges that in quantitative terms the outcome of the proposed office development at Brent Cross will determine whether demand for office floorspace is above or below this range. The ELR is positive about the proposed office floorspace at Brent Cross but recognises that it is an untested market and therefore provides a range of alternative outcomes. Even in the unlikely scenario that no office floorspace is built at Brent Cross there is still a residual office floorspace demand in Barnet of 28,000 m<sup>2</sup> over the period 2016-36.
- 1.11 The ELR assessment of employment sites identifies the locations which are considered viable for longer term economic use and recommends their protection. The introduction of the Article 4 enables the Council to better protect these sites and consider proposals in line with the Local Plan. Viable employment locations with the prospect of longer term economic use have been identified by the ELR as the basis of the Article 4 Directions. The ELR assessment supports existing clusters of employment land with a focus on small businesses. Table 1 in Appendix 5 identifies the proposed locations across Barnet where the permitted development right to convert from offices (Use Class B1a) to residential use (Use Class C3) will be withdrawn. Maps of the boundary of the locations set out in Table 1 are at Appendix 6.
- 1.12 Uncontrolled loss of offices (Use Class B1a) has a negative impact on the local jobs market. The ELR estimates the loss of office floorspace through permitted development rights represents around 2,550 jobs being displaced.

#### **LIGHT INDUSTRIAL AND STORAGE AND DISTRIBUTION CENTRE (WAREHOUSE) TO RESIDENTIAL**

- 1.13 A temporary PDR for warehouse (B8) to residential conversions was introduced in April 2015. The temporary right has been extended to 1<sup>st</sup> October 2020 . The PDR applies to small warehouse premises of less than 500m<sup>2</sup> gross floorspace that have been in use as a warehouse as of March 2014 or before. It is expected that the warehouse to residential conversion will be made permanent.
- 1.14 Light industrial to residential conversions were introduced in October 2017 as a temporary PDR. This extends until 1<sup>st</sup> October 2020. Again, it is expected that this PDR will be made permanent. The PDR applies to small light industrial premises of less than 500m<sup>2</sup> gross floorspace that has been in use as light industrial at March 2014 or before.

- 1.15 In order to benefit from these new PD rights applicants are required to make a 'prior approval' application. This light-touch application process is similar to that for offices. The local planning authority is permitted to consider transport and highways impacts, contamination risks flooding risks and impacts of noise from commercial premises on the intended occupiers of the development. In addition, if the building to which the development relates is located in an area that is important for providing storage or distribution services or industrial services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.
- 1.16 As with offices under the prior approval process, the local authority has no discretion to consider or apply any other planning policies in determining the prior approval application.
- 1.17 Barnet's existing industrial estates are small scale serving local needs and are generally comprised of more units under 500m<sup>2</sup> gross floorspace than larger industrial areas. Introducing residential uses into Barnet's existing Locally Significant Industrial Estates may jeopardise their ongoing viability and functionality. Changes in these industrial estates need to be managed through the planning system to protect local amenity and the wellbeing of the area.
- 1.18 The ELR identified that Barnet has a relatively small scale industrial market in comparison to neighbouring outer London boroughs. The Valuation Office Agency Business Floorspace Statistics 2016 states that Barnet's stock of industrial floorspace stands at 312,000 m<sup>2</sup> compared to 417,000 sq. m in 2001 – a fall of 25%. Across Outer London, industrial stock fell by 9% over the same period.
- 1.19 Despite the significant fall in industrial stock the ELR references the London Industrial Land Demand Study (2017) which identifies Barnet as a borough that should retain its industrial land.
- 1.20 The ELR assessment of sites identifies the locations which are considered viable for longer term economic use. The introduction of the Article 4 enables the Council to undertake a full assessment of any proposals in these locations. Not all employment locations are covered by the Article 4 as not all employment locations are considered viable for longer term economic use. This will support existing clusters of employment land. Table 1 in Appendix 5 identifies the proposed locations across Barnet where the permitted development right to convert from light industrial (Use Class B1c and B8) to residential use (Use Class C3) will be withdrawn. Maps depicting the boundary of the locations in Table 3 are at Appendix 6.

#### **Article 4 Directions**

- 1.21 An Article 4 Direction made under Town & Country Planning (General Permitted Development) Order 2015 suspends particular PD rights that

otherwise would be available under that Order. Article 4 Directions do not mean that planning consent would not be granted; it merely means that an application has to be submitted so that the Council can examine the proposal in detail.

- 1.22 Article 4 Directions are intended for use in exceptional circumstances where it is necessary to protect local amenity or the wellbeing of an area (Para 200, NPPF). A robust evidence base is essential in order to justify its purpose and extent.
- 1.23 There are two types of Article 4 Directions under the 2015 Order: non-immediate directions and directions with immediate effect. An immediate Direction withdraws permitted development rights with immediate effect; however, a local planning authority may be liable to pay compensation to a landowner when PD rights are removed by an immediate Article 4 Direction if planning permission is subsequently refused for the development to which the Direction applies. For certain types of PD rights (including the change of use of an office to residential use) a local planning authority is not liable to pay compensation provided that the bringing into force of the Article 4 Direction is stayed for 12 months.
- 1.24 With the removal of PDR through a confirmed Article 4 Direction a planning application for any change in use from an office or light industrial unit to a residential use is required. An application is exempt from the usual planning application fee. The application will be considered against policies in Barnet's Local Plan in particular:
  - CS06: Promoting Barnet's Town Centres:
  - CS08: Promoting a Strong and Prosperous Barnet: and
  - DM14: New and Existing Employment Spaces.
- 1.25 An Article 4 Direction can remain in place permanently once it has been confirmed. However, local planning authorities should regularly monitor any Article 4 Directions to make certain that the original reasons the Direction was made remain valid. Where an Article 4 Direction is no longer necessary it should be cancelled.
- 1.26 A local planning authority must, as soon as practicable after an Article 4 Direction has been made, inform the Secretary of State via the National Planning Casework Unit. The Secretary of State has the power to modify or cancel this type of Article 4 Direction at any time after it is made and before it is confirmed.
- 1.27 A six week consultation will be undertaken in accordance with Barnet's Statement of Community Involvement, although comments can be accepted until the end of the 12 month period. More detail on the consultation the will be undertaken is available in paragraph 5.7.1 of this report.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Introducing an Article 4 Direction to manage office to residential conversions and light industrial and warehouse to residential conversions through the planning system supports the protection of employment space. Barnet's existing Local Plan 2012 was supported by a comprehensive evidence base including assessments of employment land and town centres. Barnet originally made a case for exemption from office to residential prior approval rights in part based on this evidence in 2013. This case for exemption was not accepted by Government. The only areas in London to gain this exemption were the following: the Central Activities Zone (CAZ); the commercial area in the north of the Isle of Dogs; Tech City, in the City Fringe opportunity area in east London; and London's Enterprise Zones in the Royal Docks.
- 2.2 The areas identified for Article 4 Directions have been carefully assessed and are supported by the 2017 Barnet Employment Land Review. This new evidence has assessed the economic sustainability of Barnet and the impact on the Borough of the relaxation of Permitted Development since 2013. This creates a robust justification for the 30 areas selected for Article 4 Direction. In 2013 the Secretary of State did not support Barnet's case for exemption from the relaxation of Permitted Development. The Council's justification in 2013 was largely based on the adoption of the Barnet Local Plan in 2012. With the support of new evidence specifically commissioned to support the new Local Plan and the making of Article 4 Directions, together with an assessment of other successful Article 4 Directions made in other Boroughs, the Council is much better placed to convince the Secretary of State of the merits of this approach.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 One option is to do nothing and accept that the Council has no control over the loss of office (Use Class B1a), light industrial (Use Class B1c), and warehouse (B8) floor space through PDR. This is not recommended as it would impact the supply of both office, light industrial and warehouse floor space in the Borough which would in turn impact employment growth and jobs creation. This would also prevent minimum housing space standards or affordable housing contributions from being sought and other relevant planning requirements.
- 3.2 Another option is to introduce an immediate Article 4 which will make the Council liable to compensation to landowners for the withdrawal of PDR. This is not recommended as compensation sums could be significant given the potential size of employment floorspace involved.

- 3.3 The final option is to apply the Article 4 Direction to the whole Borough. There is a risk that such a comprehensive approach could be challenged by Government as NPPG states that there should be particularly strong justification for the withdrawal of PDR relating to a wide area.

#### **4. POST DECISION IMPLEMENTATION**

- 4.1 The work around making and confirming the non-immediate Article 4 Directions (which requires 12 months' notice) involves the following stages:
- The making of the non-immediate Article 4 Direction – June 2018
  - Advising the Secretary of State of the non-immediate Article 4 Direction - July 2018;
  - Consultation on Article 4 Direction - Publication by local advertisement, site notice and notice to owners and occupiers in the area covered by the Article 4 Direction where this is reasonably possible - 21 days for representations.- July/August 2018;
  - Confirming Article 4 Direction - June 2019;
  - Publication and notification of confirmation
  - Advising the Secretary of State of the confirmation and
  - Implementation and monitoring – post July 2019.
- 4.2 The Article 4 Directions being made are for non-immediate Article 4 Directions. The Directions will therefore not be confirmed for 12 months. For these change of use permitted development Article 4 Directions a local planning authority is not liable to pay compensation provided that the Article 4 Directions are not brought into force immediately.
- 4.3 Developers can still apply for Prior Approval for these changes of use within the 12 month period before the Directions are confirmed. Prior Approvals granted in the 12 months will have 3 years to complete.

#### **5. IMPLICATIONS OF DECISION**

##### **5.1 Corporate Priorities and Performance**

- 5.1.1 The Council's Corporate Plan 2015 - 2020 identifies that "Barnet is a successful, thriving borough, part of a successful, thriving London. Economic growth will drive prosperity and bring opportunities to residents; businesses; and the Council..." It highlights that
- "the Council will capitalise on the opportunities of a growing economy by prioritising regeneration, growth and maximising income - Article 4 Directions for office, warehouse and light industrial floorspace will help the borough to retain viable employment space and support a growing economy
  - implement its Entrepreneurial Barnet Strategy which aims to make

Barnet the best place in London to be a small business – the areas covered by Article 4 Directions for office, warehouse and light industrial floorspace focus on viable employment locations which provide space for small business therefore will help Barnet to be the best place in London to be a small business

- continue to work with business and local communities to ensure that Barnet’s town centres benefit from growth, with a tailored package of support to help them adapt successfully to a changing world.” – the areas covered by Article 4 Directions for office, warehouse and light industrial floorspace include viable employment locations in nine town centres which will help these places benefit from employment growth

5.1.2 Barnet’s Housing Strategy 2015 to 2025 includes the following key priorities: increasing housing supply, sustaining quality, particularly in the private rented sector, and delivering homes that people can afford. Article 4 Directions for office, warehouse and light industrial floorspace will help Barnet to provide quality homes where conversion is allowed through the planning system. Limiting the Article 4 Direction to specific areas will ensure that conversions can continue through the permitted development route therefore continuing the supply of housing from this source.

## **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 .Following the confirmation of the Article 4 Direction the Council will be able to charge for applications in accordance with the Town and Country Planning (Fees for Applications, Requests and Site Visits) (England) Regulations 2012 (as amended); that were introduced in January 2018.

5.2.2 In order to avoid any possible claims for compensation, the Council will provide 12 months advance notice of the Article 4 taking effect (a non-immediate direction). Compensation is payable where a planning application relating to an Article 4 Direction development is subsequently rejected or permission is granted with more onerous conditions than that under the GPDO. Section 108(3) (C) of the Town and Country Planning Act enables Councils to avoid compensation claims provided that the notice is published, as prescribed by the GPDO, not less than 12 months or more than 24 months before the withdrawal takes effect and the development has not commenced before the notice is published.

## **5.3 Social Value**

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. The Article 4 Directions will ensure that there

where they are considered through the planning system decisions are considered in line with the Local Plan.

- 5.3.2 Social benefits will be secured through opportunity to help the borough to provide quality homes where conversion is allowed through the planning system. Where conversion is not allowed it will help maintain the supply of viable employment space and provide for small business and support economic growth supporting the retention of jobs in the Borough.
- 5.3.3 Economic benefits will be delivered through preventing and managing the loss of employment space in the Borough where the Article 4 Direction applies. This will help maintain the supply of viable employment space and provide for small business and support economic growth supporting the retention of jobs in the Borough.
- 5.3.4 Environmental benefits will be delivered where conversion is allowed through the planning system by ensuring that biodiversity, climate change mitigation and adaptation, sustainable travel, flood risk management and improved air and water quality are considered as part of planning decisions.

#### **5.4 Legal and Constitutional References**

- 5.4.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) empowers the planning authority to withdraw specified PD rights which would otherwise apply under the GPDO. If an Article 4 Direction is in place, planning permission will be required for the development covered by the direction.
- 5.4.2 The Council's Constitution, Responsibility for Functions, paragraph 7.5 and accompanying table – details the terms of reference of the Planning Committee which includes responsibility for considering the approval of Article 4 Directions for consultation.
- 5.4.3 The Council can by making a subsequent direction, cancel any direction made by them under article 4(1) of the GPDO.

#### **5.5 Risk Management**

- 5.5.1 The management of risk is undertaken on a continual basis and reported as part of the Council's Quarterly Performance regime and considered as part of the Performance and Contract Management Committee quarterly monitoring report. Risks are managed through the project boards and are reviewed and revised at board meetings.
- 5.5.2 Failure to introduce Article 4 Directions would impact the supply of office, warehouse and light industrial floorspace in the Borough. This would impact on employment growth and delivery of new employment land identified in the ELR [as increased employment floorspace has been lost]. This may be challenged at the Local Plan examination.

5.5.3 Failing to introduce an Article 4 Direction would also result in Council aspirations and priorities set out in the Employment Strategy – Entrepreneurial Barnet not being fully achieved with small businesses not suitably supported.

## **5.6 Equalities and Diversity**

5.6.1 The Equalities and Diversity Act, 2010 outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to: -

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act, 2010;
- Advance equality of opportunity between people of different groups; and
- Foster good relations between people from different groups.

Relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

5.6.2 The introduction of Article 4 Directions to control employment land aims to support economic growth and support fully inclusive opportunities for office, warehouse and light industrial to be managed to retain viable employment space and support a growing economy.

## **5.7 Consultation and Engagement**

5.7.1 Consultation will be undertaken in accordance with Barnet's Statement of Community Involvement which requires following the making of an Article 4(1) Direction, the Council will:

- publish a notice of the direction in the local press
- display at least two site notices for a period of at least six weeks
- notify the owners and occupiers of the affected properties and land, unless this is impractical, and
- publish a notice of the Article 4(1) Direction on the Council's website.
- a copy of the Article 4(1) Direction will be sent to the Secretary of State.

## **6 BACKGROUND PAPERS**

6.1 [Barnet Local Plan Core Strategy](#), September 2012

6.2 Barnet Development Management DPD, September 2012

6.3 [Barnet's Statement of Community Involvement](#), July 2015

6.4 [Extending permitted development rights in England: the implications for public authorities and communities.](#) RICS 2018