



Article 4 Direction to remove permitted development rights for change of use from Use Class E to residential in Hackney's CAZ, City Fringe, and Major Town Centres

Key Decision No. NH S031

**CABINET MEETING DATE
(2021/22)**

24 January 2022

CLASSIFICATION:

Open

WARD(S) AFFECTED

Hoxton East and Shoreditch, Hoxton West, Haggerston, London Fields, De Beauvoir, Dalston, Homerton, Hackney Central and Victoria

CABINET MEMBER

Councillor Guy Nicholson, Deputy Mayor and Cabinet Member for housing supply, planning, culture and inclusive economy

KEY DECISION

Yes

REASON

Affects two or more wards

GROUP DIRECTOR

Ajman Ali, Group Director of Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

- 1.1. Ensuring the right amount of employment land and commercial floor space is essential for supporting job creation, economic growth and inclusive regeneration in Hackney. Economic and employment activities in the Borough's town centres are of vital importance in creating vibrant and active places that meet the needs of local communities and visitors alike, creating vibrant destinations and supporting a thriving local economy.
- 1.2. The Council actively seeks to support the delivery of new spaces but also protect and improve commercial, business and service land and floorspace. This is facilitated in part through the Planning process by developing Planning policies that protect viable and important employment land and floorspace, and maintaining a range and balance of retail, employment and community uses in the town centres through the Planning process.
- 1.3. Changes to permitted development ("PD") rights imposed on local communities by central Government over recent years now allow for various changes between different use classes without the need for Planning permission. The Council in response confirmed several Article 4 Directions ("A4Ds"), including an *Office to Residential A4D*¹, and a *Retail and Residential A4D*². Hackney's A4Ds removed the PD rights in defined areas, and meant that Planning applications were required for any change of use of a building or any land within its curtilage from an office or retail use to a dwelling house. This allowed the Council to manage through the Planning process, any potential future change of use of a building to residential.
- 1.4. The Government in 2020 amalgamated several different use classes, Class A1-A3 (retail), Class B1 (offices, research and development and light industrial) and some Class D (leisure and community) into a new Class E (commercial, business and services). In addition, with effect from 1 August 2021, a change to the PD rights allowed Class E to change to Class C3 dwellinghouse without the need for planning permission.
- 1.5. These latest changes mean that the existing A4Ds will not be enforceable, and the existing *Office to Residential A4D* will fall away on 31 July 2022, while the *Retail to Residential* ceased to exist on 31 July 2021. Landowners and applicants wishing to use the latest PD right will have to apply for *prior approval* under which only certain conditions can be considered. This process does not allow for a full assessment by the Council, which a Planning application would.

¹ A4D (time limited) May 2013-May 2019. Confirmed as permanent April 2019.

² A4D confirmed in September 2016, and extended to include the new centres designated in LP33 in February 2019/

- 1.6. As such, this report seeks approval to issue a non-immediate Article 4 Direction to withdraw the PD rights for change of use of a building and any land within its curtilage from a use falling within Class E.
- 1.7. Class E allows for a broad range of other uses, therefore to ensure a balanced offer of commercial, business and services that meets the objectives and needs as set out in the Borough-wide Local Plan (LP33) the proposed non-immediate A4D will ensure that any change of such floorspace and building to a residential use is given due consideration in the Planning process.
- 1.8. I commend this report to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. This reports seeks Cabinet approval to make an A4D to withdraw the permitted development rights rights for change of use of a building and any land within its curtilage from a use falling within Class E of Schedule 1 to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule, contained in Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO"). The Direction will apply to the Shoreditch area of Hackney, along Wenlock Basin and the main road corridors to the Dalston and Hackney Central town centres. It will be a non-immediate Direction so a one year notification period has passed and it is proposed that the Article 4 Direction is confirmed in January 2023.
- 2.2. The A4D will replace two existing Hackney A4Ds (1) Office to Residential, and (2) Retail to Residential. Due to recent Government changes to the Use Classes Order and the General Permitted Development Order, the Retail to Residential ceased to be applied on 31 July 2021, and the Office to Residential A4D will fall away on 31 July 2022.
- 2.3. The A4D will mean that a planning application would be required for any potential future change of use of a building and any land falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouse). This action is required so that the Council can manage any future use in town centres through the planning process.
- 2.4. This action is required so that the Council can manage any potential future change of use of offices, shops, restaurants and other community uses that fall within class E to residential through the planning process, in line with its objectives to support the growth of jobs and business in the Borough, and ensure a sustainable balance of land uses. It helps to protect the vibrancy of some of the best designated business land /office floorspace in the Borough, and the two largest town centres.

- 2.5. The Shoreditch area is part of the Central Activity Zone and City / Fringe which contributes significantly to the national economy, and is a desired location for international national firms as well as smaller localised local businesses in a broad range of industries. Allowing land and buildings to convert to residential use under PD rights will impact upon the Council's ability to match infrastructure needs with growth through the collection of s106 and Community Infrastructure Levy (CIL) as well as ensure minimum standards are met in terms of design, energy efficiency, parking and space standards.

3. RECOMMENDATION

Cabinet is recommended to:

- 3.1. **To approve the making of a non-immediate Article 4 Direction (A4D) (Appendix 1) to withdraw the permitted development ("PD") rights granted by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GDPO") for changes of use from Class E to a dwellinghouse (Class C3) in Hackney's CAZ, City Fringe, and Major Town Centres area (as shown in Appendix 2).**
- 3.2. **To delegate authority to the Director of Legal and Governance Services to carry out all publicity/consultation arrangements set out in paragraph 10.1-10.2 of this report and to disapply paragraph 1(1)(c) of Schedule 3 of the GPDO (not to serve individual owner or occupier notice of the A4D because their number makes individual service impracticable).**

4. REASONS FOR DECISION

- 4.1. The Council considers that the PD right allowing change of use from Use Class E (commercial, business and services) to C3 (dwellinghouse) without planning permission may constitute a threat to the economy, jobs and amenities of the Borough and would be prejudicial to the proper planning of the Borough, in particular the Council's ability to prevent the loss of uses which contribute to the wider strategic aims for the area.
- 4.2. This A4D is considered necessary because the Council's employment and retail planning policies are based on robust evidence which establishes a need to protect employment and commercial uses to ensure the vitality and viability of Hackney's economy. The permitted development rights would undermine the operation of these policies and may impact negatively on the provision of employment spaces, commercial spaces and jobs in the Borough.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1. The alternative option is not to confirm the A4D. This has been rejected because the Council would be unable to protect commercial, business and service floorspace in accordance with adopted planning policies and this would negatively impact on provision of jobs in the areas, retail, community facilities associated with the town centres would reduce, and in the longer term possibly change the character, function and commercial viability of the areas.
- 5.2. The making of an immediate A4D was rejected because it could result in potential compensation implications for the Council under sections 107 and 108 of the Town and Country Planning Act 1990. It will also allow the Council to take into account consultation responses before the A4D is confirmed and made effective.

6. BACKGROUND

- 6.1. In September 2020, changes to the Use Classes Order came into effect. Class A1-A3 (retail), Class B1 (offices, research and development and light industrial) and Class D (leisure and community) were amalgamated into a new Class E (commercial, business and services) and new Class F (local community and learning). Changes of use between the uses listed in Class E are allowed and are no longer considered development.
- 6.2. Class E contains the following provisions:
- E(a) Display or retail sale of goods, other than hot food'
 - E(b) Sale of food and drink for consumption (mostly) on the premises
 - E(c) Provision of:
 - E(c)(i) Financial services,
 - E(c)(ii) Professional services (other than health or medical services), or
 - E(c)(iii) Other appropriate services in a commercial, business or service locality
 - E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms)
 - E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
 - E(f) Creche, day nursery or day centre (not including a residential use);
 - E(g) Uses which can be carried out in a residential area without detriment to its amenity:
 - E(g)(i) Offices to carry out any operational or administrative functions,
 - E(g)(ii) Research and development of products or processes

- E(g)(iii) Industrial processes.

- 6.3. On 1st August 2021, the Government introduced legislation for England for a new Use Class E (Commercial, business and service) to residential (C3) PDR. The legislation allows all uses within Class E to change to use Class C3 dwellinghouse under a *new class MA* in the General Permitted Development Order (GPDO).
- 6.4. For this, applicants do not need to submit a planning application, but a Prior Approval application under which only certain conditions prescribed by law can be considered. The Prior Approval process contains conditions including natural daylight, sustainability of conservation areas, incompatibility in industrial areas and impact on registered nurseries/health centres. There is a size limit of 1,500sqm and the premises must have been in commercial use for 2 years and vacant for three continuous months prior to an application for prior approval.
- 6.5. The new permitted development (PD) right for Class MA replaces Class O and part of Class M which previously related to the change of use of office and retail premises to dwellings.
- 6.6. The GPDO legislation provides that any existing A4Ds which protect office floor space (previously B1a) from being converted to residential (C3) will remain in effect until 31 July 2022.
- 6.7. This PD right constitutes a threat to the offices and amenities of the Borough and prejudices the proper planning of the Borough. It is therefore necessary to make this A4D to replace the existing A4Ds to ensure that the offices, commercial, business and services within the CAZ, City Fringe and the major town centres continue to be protected. Due to the ease with which offices can now become commercial units and visa versa, the A4D proposes to remove this PD right from all uses in Class E.
- 6.8. The creation of the E use class and the changes to PD outlined in paragraphs 6.1-6.7 has direct implications for two existing Hackney A4Ds:
- *Office to Residential A4D* (confirmed as Temporary May 2013 -May 2019, and made permanent in 2019)³. This A4D restricts the PD right that allows the change of use of a building from an office to a residential use, without the need to apply for planning permission. The

³ In May 2013 Government made the permitted development right through Class O of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, which allowed for a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a falling within Class C3 (dwellinghouses) without requiring planning permission.

geographical area covered is the same as the proposed A4D. This A4D will remain in effect until 31 July 2022.

- *Retail to Residential A4D* (confirmed 2016)⁴. This A4D covered the town centres and local shopping centres designated in the Local Plan, and restricts the PDR which allows the change of use of a building from retail to residential without the need to apply for planning permissions. This A4D fell away on 31 July 2021.

6.9. The use classes covered by these two A4Ds now fall within Class E, and while the retail to residential A4D fell away on 31st July 2021, the office to residential will fall away on 31st July 2022. This proposed A4D will replace these two A4Ds to reflect the new use class and the PD right.

6.10. The National Planning Policy Framework (NPPF) sets out direction around Article 4 Direction:

The use of Article 4 directions to remove national permitted development rights should:

- *where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)*
- *in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible. Planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. (SoS for MHCLG⁵ Written Statement 1 July 2021)*

6.11. It should be noted that the withdrawal of PD right does not mean that planning consent would not be granted for any of the changes of use outlined above, but an A4D would enable the Council to weight up the

⁴ In 2015, the Government introduced permitted development rights (PDR) granted by Schedule 2, Part 3, Class M of the GPDO which allowed for a change of use of a building and any land within its curtilage from a use falling within *Class A1 (shops)* or *Class A2 (financial and professional services)* to a use falling within *Class C3 (dwellinghouses)* without requiring planning permission.

⁵ Minister of Housing Communities and Local Government renamed Department for Leveling Up, Housing and Communities (DLUHC) wef September 2021

impacts of any proposed change of use and on the vitality, viability and amenity of the area in line with the Borough-wide Local Plan.

- 6.12. This report outlines the reasons for the geographical areas covered by the proposed A4D. The evidence by the GLA also supports this approach (Appendix 3). As required by the NPPF, the report justifies why, in the areas outlined, an A4D is necessary to avoid wholly unacceptable adverse impacts on the CAZ, City City Fringe and the major town centres of Hackney Central and Dalston.

7. Policy Context and Impacts

- 7.1. The making of this A4D is considered to be in compliance with the National Planning Policy Framework (NPPF) which states that A4Ds should be used in where it *“is necessary to avoid wholly unacceptable adverse impacts “situations where this is necessary to protect local amenity or the well-being of the area”*.
- 7.2. The London Plan recognises that the CAZ is of international, national and London-wide importance, based on its agglomeration and rich mix of strategic functions. These functions include the headquarters of businesses related to finance, business, professional bodies, associations and institutions. There are also uses connected to science, technology, media, culture, education / research and medicine. The southern part of the Shoreditch area lies within the CAZ boundary, and within the City Fringe / Tech city area, which is recognised as an area that has a specialist cluster of activity such as arts, cultural and creative sectors, and includes areas of retail clusters.
- 7.3. The attractiveness of the CAZ for businesses is reflected in Hackney’s Local Plan (LP33), which includes the area being designated as Priority Office Areas (POAs). In POAs, the Council seeks to retain employment land and buildings, and promote employment-led development, especially offices, but allows for other commercial uses and residential.
- 7.4. The activities associated with the arts, cultural and creative sector developed upwards along Kingsland Road to Dalston and along Hackney Road and Mare Street towards Hackney Central. The Borough’s two main town centres are where the majority of the retail and commercial use are located. London Plan policies that recognise town centres as the heart of their communities; as well as the Local Plan which encourages development that sustains and enhances the vitality and viability of town centres.

- 7.5. The Council recognises the importance and significance of town centre uses to meet the needs of local communities throughout the Borough. The Council's planning policies are flexible in that they, firstly, seek to protect a core of retail uses, while allowing for a range of other uses (e.g. financial services, restaurants) to ensure a balanced offer; and secondly, they take account of market signals through the requirement for the submission of marketing evidence when seeking to release retail floorspace and other uses.
- 7.6. The A4D area proposed comprises the Central Activities Zone (CAZ) area within Hackney, and routes linking to the Borough's major town centres. It is home to Tech City which includes two significant town centres; Dalston and Hackney Central. Combined these centres are of strategic importance to Hackney, London and the national economy and are recognised as important areas of employment land in London. It's considered to be appropriate as it contains the key areas for growth. It includes the main employment and business area in the Borough, alongside the two main town centres with the main arterial road linking them together. These areas are likely to be under pressure from the use class E to residential PD right.

Why a A4D is required

- 7.7. The A4D will enable the Council to manage the rate of change, including growth of residential, ensure a sustainable balance of land uses, and the protection of viable employment use, and that physical and social infrastructure accommodate any growth in a sustainable way. This includes ways to comprehensively bring large sites / designated sites forward.
- 7.8. This is supported from a planning perspective by the Council's Local Plan 2033 policies, and also national and regional planning policy and guidance. As such, it is considered that the Council has the policy foundation to issue the A4D. The commitment to these areas is demonstrated by the extensive Commonplace engagement with stakeholders to inform direction and aims of specific plans and strategies pertaining to certain parts of the proposed area, such as :
- Emerging Future Shoreditch Area Action Plan
 - Draft Dalston Plan (2021)
 - Hackney Central SPD and the emerging Hackney Central Town Centre Strategy
- 7.9. All of these local strategies and plans seek to create better places for their communities physically, economically, environmentally and socially. They will provide guidance on employment, retail, community safety, development and the quality of the environment. The plans will be guided

by the overall aim of delivering sustainable more equitable growth set out in LP33 and Hackney's Inclusive Economy Strategy.

- 7.10. The A4D allows the Council to implement and deliver the aims, objectives and priorities of the area specific plans, as well as Borough-wide as outlined in the Local Plan, Economic Strategy, Transport and Climate change strategies.
- 7.11. Hackney was one of London's fastest growing boroughs over the last five years (pre-pandemic) and is in the top three fastest growing boroughs for employment and business growth⁶. LP33 sets out Borough-wide requirement of approximately 117,000sqm of new business floorspace⁷, and 34,000sqm of new retail and leisure floorspace⁸ by 2033. Most of this growth is directed towards identified growth, including much of the areas proposed in Appendix 1.
- 7.12. The significance of the CAZ and City Fringe in terms of contribution to national and local economic prosperity, employment, and reputation is proven. The CAZ which is spatially about 3% of London contributed to 11% of the UK's output, and account for 4.4% of all employment in the country⁹. This equates to around 1.4 million people working in the CAZ area. Although primarily a business area, the area provided around 260,000 (16%) of London's 1.2 million retail and other services jobs.
- 7.13. The larger corporate offices in the south of Hackney's CAZ area, as well as smaller studios /workspaces for creatives and cultural activities, co-working and SMEs will benefit from the A4D, especially as the area seeks to recover from recent events. It will help ensure that there is supply of workspaces and areas to accommodate a variety of business in terms of size, and budgets. The creative sectors cover a broad range of activity and type of business with dense concentrations of activity in and around Shoreditch, Dalston, Hackney Central Mare Street and Hackney Wick.
- 7.14. The safeguarding of uses for commercial, business and service purposes, especially at ground level in the town centres will help maintain the role and function as employment, commercial, leisure, community, healthcare, educational, civic centres serving local and wider communities. By having primarily active functions they will help attract commercial investment and occupiers. The absence of an A4D may undermine the offer not just in the

⁶ Hackney Economy, Workspace and Social Value Study, Hatch Regeneris et al (March 2019)

⁷ Hackney Employment Land Study, Boyer (2017)

⁸ LBH Town Centre and Retail Study, GVA (2017)

⁹ GLA Strategic Evidence to Support London Borough Article 4 Direction (June 2021)

centres, but the quality of life and well being of communities, as they may need to travel further to access facilities and goods.

- 7.15. The Council has in recent years delivered about 98% of its housing targets, and has sufficient sites allocated in the Development Plan to meet future targets. This housing growth will be accompanied by planned investment in physical, social and green infrastructure. In addition, planning permission for new housing will need to meet local standards and qualities that are / will be beyond the national provisions set out in the prior notification process, and may occur in unsuitable locations.
- 7.16. Finally, the Council's LP33 which was only adopted in July 2020, includes a policy that seeks affordable housing contributions either on-site or payment in lieu. Alongside the longstanding policy position of contributions from larger schemes i.e 10 residential units or more, contributions also are required for schemes proposing 1-9 units. Preferable on site, however, financial contributions of £60,000 per unit in the City Fringe, and £50,000 per unit elsewhere in the Borough has been adopted by the Council¹⁰. This will no longer be implementable under the new PD right, and there will also be a loss of CiL contribution.

8. Equality Impact Assessment

- 8.1. This Article 4 Direction will mean that the Council's adopted planning policies will be applied when assessing applications for changes of use from office, retail and community to residential in the proposed area.
- 8.2. A full Equalities Impact Assessment (EqIA) will be undertaken to support this Article 4 Direction proposal.

9. Sustainability

- 9.1. The A4D will enable the Council to continue to protect employment uses within the proposed area. The retention of office, retail and other commercial floorspace in these key locations provides jobs and has an important role to play in achieving sustainable and resilient neighbourhoods by providing employment opportunities to support a growing population.
- 9.2. The A4D will also enable the Council to consider proposals against planning policies which seek to protect retail units and encourage a balanced and diverse range of uses to ensure that local residents, workers and visitors have reasonable access to a range and choice of commercial , business and services that have an important role to play in achieving attractive viable centres.

¹⁰ Hackney S106 Planning Contributions SPD (July 2020)

- 9.3. Hackney residents, particularly those with accessibility needs, should be able to easily access town centres to visit shops and other facilities that provide for day-to-day needs, and facilities that appeal to a wider catchment area.

10. Consultations

- 10.1. Consultation on the A4D will comply with legal requirements. The non-immediate A4D notice will be in the Hackney Gazette, on the Council website over a minimum consultation period of 21 days, and at least 2 site notices in each of the affected areas, and notification sent to the Secretary of State.
- 10.2. Following the consultation and, if necessary reviewed, if the A4D is confirmed at least 12 months after the date on which the notice is first published, notification will be given to the Secretary of State, and published on the Council's website, the Hackney Gazette and on site. Individual owners and occupiers will not be served with notices at either the making or the confirmation stage of the A4D.

11. Risk Assessment

- 11.1. A principal concern for the Council is the liability to compensation associated with removing PD rights through an Article 4 Direction. It is for this reason that a non-immediate A4D is being proposed in this instance which involves a 12 month notification period. This notification period before the A4D comes into force removes compensation liability for the Council.
- 11.2. During the 12 month notice period, permitted development for the relevant changes of use in the identified areas would exist and landowners may be more likely to take advantage of these rights before the A4D comes into force. However this risk is considered more manageable than the potential compensation liability that would exist if the Council were to remove these PD rights with immediate effect.
- 11.3. There is also the risk that the Secretary of State cancels or modifies the A4D once confirmed. This risk has been reduced by only applying the A4D to specific designated areas.

12. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 12.1. There are no direct financial implications to the report's recommendation

13. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES

- 13.1. Cabinet is authorised to approve the Recommendation in paragraph 3 of this report by virtue of:

Article 13.5 of the Council's Constitution - A key decision is a Cabinet decision which is likely to

- i) Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decisions relates, or
- ii) Be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council.

Article 13.6 - Key Decisions can be taken by the Elected Mayor alone, Cabinet collectively, individual Cabinet councillors and Office.

- 13.2. Para 53 of the NPPF says the use of Article 4 Directions to remove national permitted development rights should:

i) where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre).

- 13.3. A non-immediate direction would allow all consultation views to be taken into account before the direction was confirmed and made effective, usually a year after it's made. It would also reduce or eliminate the likelihood of compensation being payable to affected landowners under sections 107 and 108 of the Town and Country Planning Act 1990.

- 13.4. Once the Direction has been made, it needs to be published and served in accordance with Schedule 3(1) of the Town and Country Planning (General Permitted Development) England Order 2015.

- 13.5. Once the notice has been served and published, notice needs to be given to the Secretary of State as required by Schedule 3(1)(6).

APPENDICES

Appendix 1 - Proposed A4D Notice

Appendix 2 - Map of the area for which the A4D is proposed

Appendix 3 - Evidence to Support the Article 4 Direction

BACKGROUND PAPERS

None

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