

Title of Report	Confirmation of Article 4 Direction to remove permitted development rights for change of use from Use Class E to residential in the District Centres and Local Shopping Centres		
Key Decision No	CHE S184		
For Consideration By	Cabinet		
Meeting Date	24 April 2023		
Cabinet Member	Cllr Nicholson, Deputy Mayor for Delivery, Inclusive Economy & Regeneration		
Classification	Open		
Ward(s) Affected	All wards with the exception of Hoxton West		
Key Decision & Reason	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Yes</td> <td>Significant in terms of its effects on communities living or working in an area comprising two or more wards</td> </tr> </table>	Yes	Significant in terms of its effects on communities living or working in an area comprising two or more wards
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Implementation Date if Not Called In			
Group Director	Rickardo Hyatt, Group Director of Climate, Homes and Economy		

1. CABINET MEMBER'S INTRODUCTION

- 1.1. In 2020, the Government amalgamated several different Planning 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 Permitted Development rights (PDRs) allowed uses within Class E to change to Class C3 dwelling house without the need for Planning permission.

- 1.2. These changes meant that Hackney's previously adopted Article 4 Directions (A4Ds) designed to protect office and town centre land use changes in the borough, were no longer enforceable. Landowners and applicants wishing to use the latest PDRs only have to apply for *prior approval* under which the principle of development is automatically agreed and only if certain issues are present could the change of use be stopped. These issues include flood risk, noise, contamination, highways and natural light. It must be noted that this process does not allow for a full assessment by the Council's Planning Authority.
- 1.3. The new Class E allows for a broad range of other uses. Therefore to ensure a balanced offer of commercial, business and community uses in Hackney's local centres and high streets that is as set out in Hackney's Local Plan (LP33) the A4D will ensure that any change of use of floorspace or a building to a residential use is given due consideration through the Planning process.
- 1.4. At Cabinet in January 2022, Hackney approved the 'making' of a non-immediate A4D to withdraw the PDRs for change of use of a building and any land within its curtilage from a use falling within Class E within specific parts of the borough. This included within Hackney's major town centres and a second paper specifically included the District Centres and Local Shopping Centres.
- 1.5. A full year is required between 'making' an A4D, the first step required to implement an A4D, and 'confirming' the second and final step of full implementation.
- 1.6. This report seeks to compliment the other A4D paper on the agenda and asks for Cabinets approval to confirm the non-immediate A4D to withdraw the PDRs for change of use of a building and any land within its curtilage from a use falling within Class E specifically within Hackney's District Centres and Local Shopping Centres.
- 1.7. I commend this report to Cabinet.

2. **GROUP DIRECTOR'S INTRODUCTION**

- 2.1. This report seeks Cabinet's approval to confirm the Article 4 Direction (A4D) made on 10th February 2022 (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 District Centres and Local Shopping Centres (as shown in Appendix 2).

- 2.2. The making of the Article 4 Direction was agreed at Cabinet on 24th January 2022 and was officially made on 10th February 2022. It is a non-immediate Direction, so a one year notification period has passed and it is proposed that the Article 4 Direction is confirmed.

3. **RECOMMENDATION**

Cabinet is recommended to:

- 3.1. **Approve the confirmation of an 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 District Town Centres and Local Shopping Centres (as shown in Appendix 2).**

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 amenities, economy and jobs 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. These A4Ds are considered necessary because the Council’s town centre, retail and employment planning policies are based on robust evidence which establishes a need to protect commercial and employment uses to ensure the vitality and viability of Hackney’s town centres and economy. The permitted development rights would undermine the operation of these policies and may impact negatively on the provision of commercial spaces, employment 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.

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. 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).
- 6.3. This PD right constitutes a threat to the offices, shopping centres and amenities of the Borough and prejudices the proper planning of the Borough, because it allows a change of use to residential without proper planning consent. It is therefore necessary to make this A4D to ensure that the offices, commercial, business and services within the district and local shopping centres continue to be protected. Due to the ease with which offices can now become commercial units and vice versa, the A4D removes this PD right from all uses in Class E.
- 6.4. The Council made the relevant Article 4 Direction on 10th February 2022 (as agreed at Cabinet on 24 January 2022) and the one year notification period has now passed so the Direction can be confirmed.

7. **Policy Context and Impacts**

- 7.1. The permitted development right allowing change of use from Class E to residential is set out in Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") 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.
- 7.2. The Article 4 Direction supports the implementation of various LP33 policies including LP32 Town Centres; LP34 Stoke Newington; Stamford Hill and Finsbury Park; LP35 Local Shopping Centres and LP26 New Employment Floorspace; LP27 Protecting and Promoting Office Floorspace in the Borough and LP29 Affordable Workspace and Low Cost Employment Floorspace.

- 7.3. The Article 4 Direction protects the district and local shopping centres, which are accessible spaces that meet the day to day needs of Hackney communities, and provide local employment opportunities.
- 7.4. The confirmation of the Article 4 Direction is in compliance with paragraph 53 of the National Planning Policy Framework (NPPF) (2021) which states that A4Ds should be used in “situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts”.
- 7.5. The Article 4 Direction will be confirmed in line with the regulations set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ‘Procedure for article 4(1) directions without immediate effect.

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) was 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.
- 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. Representations on two Article 4 Directions were invited between 10 February and 24 March 2022. This was advertised on the Council website, in Hackney Gazette, and by public site notices. Nine responses were received to the consultation. Five organisations supported the proposals - Theatres Trust, Mayor of London, Transport for London, Historic England, and Atom Gallery - and there were four no comments. The Consultation report can be seen in Appendix 5.

11. **Risk Assessment**

- 11.1. The confirmation of the Article 4 Direction seeks to mitigate the risks associated with the unregulated loss of retail, office and other uses within the borough's district centres and local shopping centres.
- 11.2. The only risk remaining is that the Secretary of State cancels or modifies the Direction once it has been confirmed.

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. Article 4(1) of the The Town and Country Planning (General Permitted Development) Order 2015 (as amended) ('the GPDO'), enables permitted development rights granted under the GPDO to be withdrawn by an Article 4 Direction ("A4D") provided that the Local Planning Authority considers it expedient that development should not be carried out unless permission is granted following the submission of a planning application.
- 13.2. Cabinet is authorised to make a determination on whether to approve the confirmation of the proposed Article 4 Direction by virtue of Articles 13.5 and 13.6 which authorises Cabinet to determine key decisions (such as the present matter), which are significant in terms of their effects on communities living or working in an area comprising two or more wards in the area of the Council.
- 13.3. On 24 January 2022 Cabinet approved the making of an Article 4 Direction to withdraw the permitted development rights under 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).

- 13.4. The Article 4 Direction was made on 10 February 2022. Following the making of the direction, notice was published in the Hackney Gazette and London Gazette, in Hackney libraries and within the town centres and the notice specified that the direction would not come into force until the 11th February 2023.
- 13.5. Before an Article 4 Direction takes effect, it must be confirmed by the local planning authority. In deciding whether to confirm a direction the local planning authority must take account of any representations received. Nine responses were received to the consultation, five in support of the proposals and four no comments. All responses, save one, were from strategy bodies. Those representations have been considered and, for the reasons given in this report, confirmation of the direction is recommended.
- 13.6. Once the direction has been confirmed, the local planning authority must give notice of such confirmation and the date in which the direction will come into force and send a copy of the direction to the Secretary of State. The notice requirements are the same as those which applied when the direction was made
- 13.7. The confirmation date will exceed a period of 12 months since the Article 4 Direction was made. This means that the council will not be liable to pay any compensation to parties who may be adversely affected by the withdrawal of the permitted development rights, the subject of this Article 4 Direction.
- 13.8. The withdrawal of permitted development rights under the confirmed Article 4 Direction will mean that deemed planning permission is no longer granted automatically by the GPDO and that a planning application will need to be made to the Local Planning Authority (LPA) for development that would otherwise have been permitted by the GPDO. The Article 4 direction will not prohibit development but enables the Council to exercise planning control over the proposed development. The planning application will be considered on its merits and the Council will assess the proposed development in the light of policies in its development plan documents and consider any other material factors.

APPENDICES

- Appendix 1 - [A4D Legal Direction 10.02.22 District and Local Centres.pdf](#)
- Appendix 2 - [A4D Appendix 2 Map Local and District Centres.jpeg](#)
- Appendix 3 - [A4D Appendix 3 Justification - District and Local centres.pdf](#)

Appendix 4 - [A4D UCO E to C3 Cabinet Report District and Local Centres.pdf](#)

Appendix 5 - [FINAL EqIA for District_Local A4D 2022.pdf](#)

Appendix 6 - [A4D consultation report April 2022](#)

BACKGROUND PAPERS

None

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