

<b>Title of Report</b>	CHE S228 Confirmation of Article 4 Direction to remove permitted development rights for change of use from Use Class E to residential in Hackney's Designated Industrial Areas	
<b>Key Decision No</b>	CHE S228	
<b>For Consideration By</b>	Cabinet	
<b>Meeting Date</b>	25 September 2023	
<b>Cabinet Member</b>	Cllr Guy Nicholson, Deputy Mayor for Delivery, Inclusive Economy & Regeneration	
<b>Classification</b>	Open	
<b>Ward(s) Affected</b>	De Beauvoir Hackney Downs Cazenove Hackney Central Homerton London Fields Clissold Lea Bridge King's Park Shacklewell	
<b>Key Decision &amp; Reason</b>	Yes	Significant in terms of its effects on communities living or working in the affected wards
<b>Implementation Date if Not Called In</b>	4 October 2023	
<b>Group Director</b>	Rickardo Hyatt, Group Director of Climate, Homes and Economy	

1. **Cabinet Member's Introduction**

- 1.1. This report seeks approval for a planning Article 4 Direction to help strengthen and support the delivery of Hackney's inclusive economy and employment opportunities. It will help ensure that the right amount of employment land and commercial floorspace is provided for in the borough to support a thriving local economy, and that a range and balance of industrial and other employment led uses is provided for.

- 1.2. By ensuring that new development is considered through the planning application process the Council will be able to not only effectively manage land uses in the borough but also secure community benefits such as affordable workspace and job outcomes alongside securing the highest standards in sustainability to enable the delivery of Hackney's climate change objectives.
- 1.3. At Cabinet in July 2022, Hackney approved the 'making' of a non-immediate Article 4 Direction to withdraw the permitted development right for change of use of a building and any land within its curtilage from a use falling within 'Use Class E', which includes most uses in the commercial, business and service sectors, within the designated industrial areas of the borough - these being Hackney's 'Priority Industrial Areas' and 'Locally Significant Industrial Sites'.
- 1.4. The Article 4 Direction withdraws the permitted development right granted by the Government which allows commercial uses to change into residential use without the submission of a full planning application. By introducing the Article 4 Direction, any proposed changes from industrial, office, retail uses to residential in Hackney's designated industrial areas will require a full planning application.
- 1.5. A full year is required between 'making' an Article 4 Direction, the first step required to implement an Article 4 Direction, and 'confirming' the second and final step of full implementation.
- 1.6. At Cabinet in April 2023, Hackney confirmed two non-immediate Article 4 Directions relating to the same permitted development rights covering Hackney's section of the Central Activities Zone, the City Fringe, designated Major Town Centres, District Centres and Local Shopping Centres.
- 1.7. This report seeks to complement the two confirmed Article 4 Directions and asks Cabinet to confirm this non-immediate Article 4 Direction to withdraw the permitted development rights for change of use of a building and any land within its curtilage from a use falling within Class E within the designated Industrial Areas.
- 1.8. 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 made on 21st July 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 Designated Industrial Areas (as shown in Appendix 2).

- 2.2. The making of the Article 4 Direction was agreed at Cabinet on 18th July 2022 and was officially made on 21st July 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 Designated Industrial Areas (as shown in Appendix 2).**

4. **Reasons for Decision**

- 4.1. The Council considers that the permitted development right allowing change of use from Use Class E (commercial, business and services) to C3 (dwellinghouse) 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. The Article 4 Direction is considered necessary because the Council’s designated industrial areas planning policies are based on robust evidence which establish a need to protect industrial and employment uses in the Priority Industrial Areas and Locally Significant Industrial Sites. The Article 4 Direction enables full consideration of proposals at the planning application stage. The permitted development rights would undermine the operation of these policies and may impact negatively on the provision of industrial 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 Article 4 Direction. 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 the provision of jobs, and in the longer term possibly change the character, function and commercial viability of the designated industrial 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) permitted development rights. 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 Designated Industrial Areas 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 Article 4 Direction to ensure that the offices, commercial, business and services within the Designated Industrial Areas continue to be protected.
- 6.4. The Council made the relevant Article 4 Direction on 21st July 2022 (as agreed at Cabinet on 18th July 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 LP26 Employment Land and Floorspace, LP28 Protecting and Promoting Industrial Land and Floorspace in the Borough, and LP29 Affordable Workspace and Low Cost Employment Floorspace.
- 7.3. The Article 4 Direction ensures more control over proposed changes in the designated industrial areas, which generally provide affordable workspace, floorspace for activities that may not be appropriate in other locations and 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 Article 4 Directions 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. The Equalities Impact Assessment can be seen in Appendix 4.

## 9. **Sustainability**

9.1. The Article 4 Direction will enable the Council to continue to protect employment uses within the proposed area. The retention of office, industrial and other commercial floorspace in these 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 Article 4 Direction will, by removing permitted development rights and requiring proper assessment through a planning application, also enable the Council to consider proposals against planning policies which seek to deliver sustainable development.

9.3. The requirement for a full planning application will enable environmental sustainability issues to be considered in decision making. This supports Hackney’s carbon reduction ambitions and commitment to net zero.

## 10. **Consultations**

10.1. Representations on this Article 4 Direction were invited from 23rd July to 1st September 2022. This was advertised on the Council website, on the local press, in Hackney Gazette, in London Gazette and by public site notices. Nine responses were received to the consultation, 3 in support of the proposals and 6 no comments. All responses were from strategy bodies. Three organisations supported the proposals - Mayor of London, Transport

for London and Historic England. 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 light industrial, office and other uses within the borough's designated industrial areas.
- 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 Interim Group Director, Finance**

- 12.1. The Article 4 Direction aims to withdraw the permitted development rights for changing the use of buildings and land within specific areas falling under Class E (commercial, business, and service uses) to residential use (Class C3) in Hackney's Designated Industrial Areas.
- 12.2. The report outlines the background, reasoning, policy context, and impacts of the proposed Article 4 Direction. It highlights the potential negative impacts on the local economy, jobs, and strategic aims if these permitted development rights are not withdrawn. The report also details the consultations, risk assessments, and the legal and governance considerations associated with the confirmation of the Article 4 Direction.
- 12.3. The recommendation is for the Cabinet to approve the confirmation of the Article 4 Direction, which would effectively remove the automatic permitted development rights for changing use from Class E to residential within the Designated Industrial Areas.
- 12.4. There are no direct financial implications to the report's recommendation other than business as usual.

13. **Comments of the Acting Director of Legal, Democratic and Electoral 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 of the Constitution. They provide that Cabinet shall 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 18th July 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 GPDO”) for changes of use from Class E to a dwellinghouse (Class C3).
- 13.4. The Article 4 Direction was made on 21st July 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 21st July 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, 3 in support of the proposals and 6 no comments. All responses were from strategic bodies. Three organisations supported the proposals - Mayor of London, Transport for London and Historic England. All responses 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 development management 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 Designated Industrial Areas\_Direction.pdf

Appendix 2 - A4D Designated Industrial Areas map.pdf

Appendix 3 - A4D Designated Industrial Areas Evidence Report.pdf

Appendix 4 - EqIA for A4D Designated Industrial Areas 2022.pdf

Appendix 5 - A4D consultation report (Designated Industrial Areas)  
November 2022

### **Background Papers**

None

<b>Report Author</b>	James Gleave Strategic Planning Manager Tel : 020 8356 8753 <a href="mailto:james.gleave@hackney.gov.uk">james.gleave@hackney.gov.uk</a>
<b>Comments for and on behalf of the Interim Group Director, Finance</b>	Nurur Rahman Group Accountant <a href="mailto:nurur.rahman@hackney.gov.uk">nurur.rahman@hackney.gov.uk</a>
<b>Comments for and on behalf of the Acting Director of Legal, Democratic and Electoral Services</b>	Sam Woodhead Lawyer Tel: 0020 8356 6184 <a href="mailto:sam.woodhead@hackney.gov.uk">sam.woodhead@hackney.gov.uk</a>