

<b>Committee(s):</b> Planning & Transportation Committee	<b>Dated:</b> 12/05/2021
<b>Subject:</b> Approval of a Non-Immediate Article 4 Direction to remove permitted development rights for the change of use of offices (Class E(g)(i)) to residential (Class C3)	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	2,4,7,10
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>N</b>
<b>If so, how much?</b>	<b>£0</b>
<b>What is the source of Funding?</b>	
<b>Has this Funding Source been agreed with the Chamberlain's Department?</b>	<b>N/A</b>
<b>Report of:</b> Director of the Built Environment	<b>For Decision</b>
<b>Report author:</b> Peter Shadbolt, Department of the Built Environment	

### Summary

The City of London currently has an Article 4 Direction which has removed national permitted development rights for the change of use of offices (Class B1(a)) to residential (Class C3). Revisions to the Use Classes Order in September 2020 introduced a new E Use Class (Commercial, Business and Service), which incorporates the previous B1 office use class and A1, A2 and A3 retail use classes. Under amendments to the General Permitted Development Order, a new national permitted development right for the change of use from Class E to residential will come into effect on 1 August 2021, with existing office to residential Article 4 Directions, including that in the City of London, lapsing a year later on 31 July 2022.

Loss of local planning control over the change of use of offices to residential could impact on the beneficial cluster of offices in the City, disproportionately impact the supply of smaller offices suitable for SMEs and start-ups, and result in the introduction of residential uses into commercial areas, potentially impacting on the 24 hour nature of much of the City and resulting in a poor residential environment.

To ensure that the City Corporation retains local planning control over proposals for changes of use from offices to residential, a new Article 4 Direction removing permitted development rights from offices (Class E(g)(i) to residential (Class C3) is required. A non-immediate Article 4 Direction is therefore proposed to come into effect from 1 August 2022.

### Recommendation(s)

Members are asked to:

- Approve the making of a non-immediate Article 4 Direction for the whole of the City of London, removing permitted development rights granted by Class MA, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 for the

change of use of a building or any land within its curtilage from offices (Use Class E(g)(i)) to residential (Use Class C3), as set out in Appendix 1 to this report.

## **Main Report**

### **Background**

1. In May 2013, the Government introduced a temporary permitted development right to allow the change of use from offices (Class B1(a)) to residential (Class C3) without the need for planning permission. The City Corporation applied for and was granted by the Secretary of State a local exemption from this permitted development right. This exemption ceased on 30 May 2019. To ensure that the City Corporation could retain local planning control over the change of use of buildings from offices to residential, the Planning & Transportation Committee approved the introduction of a non-immediate Article 4 Direction to remove the national permitted development right within the City. This Direction came into force on 31 May 2019. The effect of the Article 4 Direction is to require proposals for the change of use from office to residential development to be subject to local planning control, with planning applications determined having regard to the policies in the London Plan and the City of London Local Plan.
2. On 1 September 2020, an amendment to the Use Classes Order came into effect (The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020). This amendment created a new Use Class E (Commercial, Business and Service), incorporating the previous B1, A1, A2, A3 use classes and elements of the previous D1 and D2 use classes. A report outlining the implications of the change for the City of London was considered at the Planning & Transportation Committee on 8 September 2020.

### **Article 4 Direction**

3. An Article 4 Direction is a direction under Article 4 of the General Permitted Development (England) Order 2015 (GPDO) which enables a local planning authority, or the Secretary of State, to withdraw specified permitted development rights across a defined area. A Direction does not prevent the development to which it is applied, but instead requires that a planning application be submitted to the local planning authority. Where a local planning authority seeks to implement an Article 4 Direction there is a requirement for public consultation and notification to the Secretary of State. The Secretary of State has the power to cancel or modify an Article 4 Direction at any time before or after it is confirmed, including the extent of the Direction and its geographic coverage.
4. The GPDO states that the local planning authority may make a Direction where it "is satisfied that it is expedient that development ... should not be carried out unless permission is granted". The National Planning Policy Framework at paragraph 53 indicates that use of Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the wellbeing of an area, and that the potential harm that the Direction is intended to address is clearly identified. The national Planning Practice Guidance (ref: 13-038-

20190722) further advises that provided there is justification for both its purpose and extent, it is possible to make an Article 4 Direction covering an area of any geographical size; there should be particularly strong justification for the withdrawal of permitted development rights relating to a wide area (e.g. covering the entire area of a local planning authority, as is proposed in this Report). Recent consultation on further changes to the NPPF proposes more onerous policy tests. It is proposed Article 4 Directions relating to change of use to residential should be limited to circumstances where they are essential to avoid wholly unacceptable adverse impacts or alternatively to situations where they are necessary to protect an interest of national significance. It is also proposed they be limited to the smallest possible geographical area. These proposed policy tests are not (and may not be) adopted so are of limited weight. In any event, it is considered the proposed tests would be met by the justification set out in Appendix 2.

5. There are two types of Article 4 Direction: immediate and non-immediate:
  - Immediate directions are where permitted development rights are withdrawn with immediate effect;
  - Non-immediate directions are where permitted development rights are withdrawn only upon confirmation of the direction following public consultation.
  
6. The Town and Country Planning Act 1990 allows developers to claim compensation from the local planning authority for the loss of the permitted development right if a permission is refused for a development which would otherwise have been permitted, or if permission is granted subject to conditions other than those conditions imposed by the GPDO. Compensation can be claimed in respect of abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development right. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works. Compensation is only payable if an application for planning permission for certain development formerly permitted by the GPDO is made within 12 months of the Direction taking effect. Where between 12 and 24 months prior notice is given of the withdrawal of permitted development rights, through the use of a non-immediate direction, no compensation is payable.

### **Current Position**

7. The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 has introduced a new class of permitted development, Class MA, which will come into effect from 1 August 2021, under which development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E to a use falling within Class C3 is permitted development and not subject to the requirement for planning permission. Proposals for change of use are, however, subject to a prior approval process with the local planning authority.
  
8. The new permitted development right for the change of use from E to C3 is subject to a number of conditions, including:

- The building must have been vacant for 3 months prior to the application for prior approval (excluding any vacancy due to Covid-19 restrictions);
  - The building must have been in Class E (or the equivalent previous use classes) for 2 years before the prior approval application;
  - The floorspace subject to the change of use must be under 1,500 square metres.
9. Listed buildings are exempt from the permitted development right, but it does apply in conservation areas.
10. Following representations by the City Corporation, the GLA and other local planning authorities and developers, where an existing Article 4 Direction removing permitted development rights for the change of use of offices to residential is in place immediately before 1 August 2021, then this can continue to have effect on the relevant office use within the wider E Use Class until 31 July 2022. The effect of this is that the City of London's existing Article 4 Direction will remain in force until 31 July 2022.
11. The City Corporation worked in close liaison with the GLA and other Central London boroughs in the development of an evidence base to support the existing Article 4 Direction. This evidence base has been updated (Appendix 2) and the position re-evaluated in the light of current circumstances. It is considered that the justification remains very strong. The City Corporation continues to work with the GLA and Central London boroughs to review the implications of the amendments to the GPDO and the need for wider co-ordination of evidence and policy on Article 4 Directions.

## Options

12. There are two realistic options open to the City Corporation in relation to the continuation of an Article 4 Direction to remove office to residential permitted development rights:
- a) No Article 4 Direction: If the City Corporation were to take no action, the existing Article 4 Direction removing office to residential permitted development rights in the City of London would expire on 31 July 2022. This would threaten harm to the City's position as a global commercial centre, potentially resulting in a significant loss of offices and allowing residential uses within the city's core office locations. Further information on the implications for the City are set out in the evidence base document attached at Appendix 2 to this report.
  - b) Make a non-immediate Article 4 Direction: This requires publicity to be given to the making of the notice. An Article 4 Direction must be confirmed by the City Corporation before it can come into force, and any representations received during the consultation period (which must be at least 21 days) must be taken into account in deciding whether or not to confirm the Article 4 Direction. The date a non-immediate Article 4 Direction comes into force must be between 28 days and two years following the date the representation period began. In this case it is proposed that the Direction will come into force

on 1 August 2022, which is the day immediately following the date on which the City of London's current Article 4 Direction will lapse.

13. There is technically a third option of making an immediate Article 4 Direction without public consultation at any time prior to the expiry of the City of London's current Article 4 Direction, but this is not considered to be a realistic option given the potentially substantial compensation liabilities that could arise.
14. The changes to national permitted development rights apply to any Class E use seeking to change to residential, including from retail uses. This could potentially impact on the viability and vibrancy of the City's Principal Shopping Centres and Retail Links, introducing residential uses into commercial areas. Such changes of use would impact on the activities of commercial uses elsewhere in the affected buildings. In theory it would be possible to seek a non-immediate Article 4 Direction that applied to the full range of uses within the E use class. However, further evidence would be required on the potential impact of the permitted development right, particularly on retail provision in the City. Prior to the revised GDPO coming into effect, a limited permitted development right existed allowing the change of use of small retail units, up to 150 square metres, to residential. This permitted development right has not been exercised in the City of London, suggesting that there has so far been little interest in changing small retail units to residential using this permitted development right.
15. Under the revisions to the GPDO, permitted development rights for change of use of the retail and non-office elements of the E Use Class to residential will come into force on 1 August 2021. To remove these rights, an immediate Article 4 Direction would be required, but this would be subject to potential compensation payments. If a non-immediate route were pursued, then the permitted development right would have been in place for at least 12 months before any Article 4 Direction took effect. Seeking to control all changes from Class E might also be less likely to be allowed by the Government than just removing rights in relation to offices as it might be considered to be frustrating national policy unreasonably and also would potentially conflict with the ambition for flexibility in town centres to help them recover from Covid.
16. Officers consider, on balance, that seeking a wider Article 4 Direction to remove all permitted development rights from Class E to Class C3 should not be pursued at this time. This will be kept under review, and liaison with the GLA and other Central London boroughs will continue. If evidence emerges of adverse impacts from the permitted development right on the City's commercial function, then a further report will be brought to this Committee.

## **Proposals**

17. It is recommended that the City Corporation make a non-immediate Article 4 Direction, removing the permitted development right for the change of use from offices (Class E(g)(i)) to residential (Class C3), covering the whole of the City of London. The proposed Direction and map outlining the extent of the Direction are attached at Appendix 1. The evidence base is attached at Appendix 2, with the key justification summarised in paragraphs 18 to 20 below.

18. The permitted development right for the change of use of offices (Class E(g)(i)) to residential (Class C3) could lead to a significant loss of existing smaller and older offices in the City of London, which play an important role in accommodating start-ups and SMEs. At 31 March 2020, of the 1,589 office addresses in the City, 739 (46.5%) were under 1,000 square metres in area. The number of addresses below 1,000 square metres had increased by nearly 39% since 2011. In 2019, 99% of the City's 24,000 businesses were SMEs employing under 250 people and, in 2020, there were around 818 new start-ups registered in the City. 90% of SMEs occupy units of less than 2,000 square metres and over 50% occupy units of less than 500 square metres. It is clear that SMEs in the City are reliant on smaller office units, generally below the 1,500 square metre threshold at which the new permitted development rights would apply. The loss of smaller offices is therefore likely to disproportionately impact on the supply of accommodation suitable for SMEs. As the City of London looks to recover from the Covid-19 Pandemic, the role of SMEs in driving new business opportunities, innovation and cultural activities will be crucial. Retention of space suitable for new and growing business will therefore remain a key priority.
19. Not only would the loss of offices impact on the potential for business development, and the potential to accommodate new jobs, the uncontrolled spread of housing across the City into commercial areas could impact on the 24 hour operations of many existing City businesses and frustrate future commercial development.
20. The Government has previously recognised the important role that the City plays in the national economy by granting an exemption from national permitted development rights and the City currently has an Article 4 Direction in place to retain local planning control over the change of use of offices to residential. The proposed new Article 4 would be an extension of the existing local planning policy approach in the City, an approach supported by the City of London Local Plan 2015, the draft City Plan 2036 and the London Plan 2021.
21. The current Article 4 Direction applies to the whole of the City of London. The City of London, being just over one square mile in size, is significantly smaller than all other local authorities and is host to an intensive concentration of interconnected and mutually supporting commercial activities which extend across virtually the whole of the City. Although individual sectors congregate in different sub-localities of the City, the essential character of the City is that of a unified and integrated business district. This provides justification for an Article 4 Direction which continues to apply across the whole of the City of London and will provide continuity in terms of existing planning controls and development management.
22. Despite the short term uncertainty about the pace and scale of future growth in the City following the immediate impact of Covid-19, the longer term geographical, economic and social fundamentals underpinning demand remain in place and it is expected that the City will continue to be an attractive and sustainable meeting place where people and businesses come together for creative innovation. Adopted Local Plan and draft City Plan 2036 policies seek to facilitate a healthy and inclusive City, new ways of working, improvements in

public realm, urban greening and a radical transformation of the City's streets in accordance with these expectations.

23. As indicated at paragraph 3 above, an Article 4 Direction does not necessarily prevent the development to which it is applied but requires that a planning application be submitted for consideration by the local planning authority. The retention of local planning control is crucial to enable the City Corporation to continue its longstanding policy approach of steering new housing to locations within or near existing residential areas in order to maintain the City of London's role as the world's leading international financial and professional services centre, while also seeking to ensure a good level of amenity for the City's residential communities. Applicants will still be entitled to submit planning applications for office to residential conversions and these will be considered carefully on their merits in the policy context provided by the London Plan and the City's Local Plan.
24. The Chief Planning Officer and Development Director has delegated authority under the Scheme of Delegation to serve and erect the required statutory notices of the Article 4 Direction and to notify the Secretary of State. In accordance with the Regulations, notices will be displayed at no fewer than 2 locations across the City for a period of 6 weeks. Subject to Government restrictions, this will include the Guildhall and/or City libraries. Notices will also be posted virtually on the City Corporation's website and statutory and other planning consultees will be specifically informed via email. Notice will also be given through advertisement in a newspaper circulating in the City. Representations received will be taken into account in deciding whether or not to confirm the Article 4 Direction. This decision whether or not to confirm the Article 4 Direction will be referred to your Committee for consideration in the light of representations received.

## **Corporate & Strategic Implications**

### Strategic implications

25. The making of an Article 4 Direction would be in accordance with the City of London Local Plan 2015, the draft City Plan 2036 and the London Plan 2021, which seek to maintain the City's role as a strategically important, globally orientated financial and business centre. The Direction would accord with the Vision and Strategic Aims of the Corporate Plan which seek to support and promote the City as the world's leading financial and professional services centre

### Financial implications

26. The making and confirmation of a non-immediate Article 4 Direction, as set out above, would mean that compensation for the removal of permitted development rights would not be payable.

### Resource implications

27. There are no resource implications, the required officer time can be provided within existing resources and Local Risk budgets.

### Legal implications

28. The proposed Article 4 Direction would remove permitted development rights in the City of London for the change of use from offices to residential. The Comptroller and City Solicitor has been consulted on this report.

### Risk implications

29. There are no risk implications.

### Equalities implications

30. An Equality Analysis Test of Relevance screening has been undertaken which has concluded that no group with protected characteristics will be negatively impacted by this proposal.

### Climate implications

31. There are no implications for the Climate Action Strategy.

### Security implications

32. There are no security implications.

## Conclusion

33. The City of London currently has an Article 4 Direction which removes national permitted development rights for the change of use of offices (Class B1(a)) to residential (Class C3). Under amendments to the General Permitted Development Order, this Article 4 Direction will lapse on 31 July 2022, after which national permitted development rights for the change of use between Class E (Commercial, Business and Service) and Class C3 (residential) will operate in the City of London.

34. Loss of local planning control over the change of use of offices to residential could impact on the beneficial cluster of offices in the City, disproportionately impact the supply of smaller offices suitable for SMEs and start-ups, and result in the introduction of residential uses into commercial areas, potentially impacting on the 24 hour nature of much of the City and resulting in a poor residential environment. To ensure that the City Corporation retains planning control over proposals for changes of use from offices to residential, a new Article 4 Direction is required. A non-immediate Article 4 Direction is therefore proposed to remove permitted development rights from offices (Class E(g)(i)) to residential (Class C3), to come into effect after 31 July 2022.

## Appendices

- Appendix 1 – Proposed Article 4 Direction
- Appendix 2 – evidence base supporting the application of the proposed Article 4 Direction

## Background Papers

Report to the Planning & Transportation Committee, 08/05/2018: Confirmation of the non-immediate Article 4 Direction to remove permitted development rights for the change of use of offices (B1(a)) to dwellinghouses (C3) following consultation



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