

Subject:	Article 4 Direction - Changes of Use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses)		
Date of Meeting:	25 November 2021		
Report of:	Executive Director - Economy Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks authorisation for making an Article 4 Direction (A4D) to remove permitted development rights which allow changes of use from premises in Class E (commercial, business and service uses) to Class C3 (dwellinghouses).
- 1.2 The A4D is required because of a government decision to introduce new permitted development rights (known as Class MA) allowing the change of use of a wide range of commercial floorspace (including offices, retail, restaurants, cafes) to residential use, without the need for planning permission. Officers consider that without an A4D, this could result in a wholly unacceptable negative impact on the vitality and sustainability of commercial activity and local services in the areas of the city proposed for the A4D.

2. RECOMMENDATIONS:

- 2.1 That the Committee authorises the making of a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove the Class MA permitted development right for changes the use from Class E (commercial, business and service uses) to C3 (dwellinghouses) for the reasons outlined in this report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 In September 2020, the Town and Country Planning (Use Classes) Order 1987 was amended with the aim of providing greater flexibility for the diversification of high streets and town centres. This introduced a new Class E (commercial, business and service uses) which brought together under this new use class several uses previously considered separately – including offices, retail, restaurants and cafes, indoor sport facilities and some healthcare facilities. As a result of this, uses within the new Class E are interchangeable without the need for planning permission as the change no longer constitutes ‘development’.

- 3.2 The government subsequently consulted on changes to Permitted Development Rights (PDRs) from December 2020 to January 2021. At the core of this consultation, to which the Council responded, was the proposed change of use PDR from Class E to Class C3 (residential). In the Council's response (included in Appendix 1), strong concerns were raised that the proposed PDR would undermine the city's sustainability, tourism, employment and commercial roles, particularly in central Brighton, Hove and London Road town centres, other high streets and local parades.
- 3.3 The new PDR came into force on 1 August 2021, replacing existing PDRs expiring on 31 July 2021 which had allowed for the change of use from office to residential and from retail to residential (based on the previous use classes). The broader scope of class E means a wider range of uses are now able to change to residential through the new PDR (e.g. offices, light industrial, retail, restaurants, indoor sport facilities, some community facilities). A number of conditions have been included within this legislation, including:
- a size limit whereby the right only applies to sites that would result in the loss of no more than 1500sqm of class E floorspace;
 - that existing Article 4 Directions will continue to have effect until 31st July 2022. This means that the council's existing A4D relating to office to residential changes of use will remain in effect until this date. This A4D came into force on 25 July 2014 and covers Central Brighton, the New England Quarter, London Road Area, the Edward Street Quarter and the City Park office development¹;
 - a vacancy test, meaning that the right only applies to premises that have been vacant for 3 months before the application;
 - that the right does not apply to listed buildings; and
 - that the building must have been in Class E use for at least 2 years before being able to change to residential under the PDR.
- 3.4 Revisions to the text of the National Planning Policy Framework in 2021 set a higher bar for councils seeking to implement A4Ds. Where they relate to changes from non-residential use to residential use, the NPPF requires them to be limited to situations where they are necessary to avoid wholly unacceptable adverse impacts. They must also apply to the smallest geographical area possible.

Proposed Article 4 Direction

- 3.5 Given the high bar for the justification required to support an A4D careful consideration is required in determining appropriate areas of the city to include. The proposed area is illustrated with a map in Appendix 2 and includes:
- an area broadly corresponding to the council's existing office to residential A4D area which has been in place since July 2014 with a small extension to include the east side of Valley Gardens, including the Circus Street development.
 - the primary retail frontages of Brighton regional centre, Hove and London Road town centres and the district centres of St. James's Street, Lewes Road and Boundary Road/Station Road.

¹ For further information see www.brighton-hove.gov.uk/content/planning/planning-applications/offices

- 17 Local centres (identified in City Plan Part 1, Policy CP4)
 - 10 Important Local Parades (identified in the Proposed Submission City Plan Part 2, Policy DM13)
- 3.6 The area of central Brighton proposed for inclusion A4D largely mirrors that of the existing office to residential A4D area which remains in force until 31 July 2022, with a small amendment to include the eastern side of Valley Gardens and the Circus Street development. This A4D was introduced in 2014 supported by robust evidence and accepted by government. The proposed area also includes the primary retail frontages of the Brighton regional centre, the town centres of Hove and London Road and the district centres of St. James's Street, Lewes Road and Boundary Road/Station Road, Portslade. The 17 local centres identified in City Plan Part One Policy CP4 and the 10 important local parades set out in City Plan Part Two Policy DM13 are also included.
- 3.7 Evidence to justify the proposed A4D is set out in detail in a supporting document included in Appendix 4 with the key points summarised below.
- 3.8 Brighton & Hove is known for the strength of its small business economy. Around 14,610 businesses in the city are 'micro' in size, employing fewer than 10 people (92% of all businesses) (ONS, UK Business count 2020). It is considered that the PDR could greatly reduce the stock of smaller business premises in the city, of the type that could be attractive to small business start-ups and for move-on accommodation and would have long-term impacts in terms of supporting the city's jobs, business base and economic output.
- 3.9 In Brighton & Hove the tourism sector is a key driver of the local economy with the character of the city centre and its associated retail and leisure industries being an important facet of the city's tourism offer. The potential loss of these premises and hollowing out of areas where they are currently located with residential properties through the PDR risks undermining their unique character and vibrancy.
- 3.10 It could result in large scale changes from recently vacated retail units in the urban centres to residential, without allowing time for a more natural evolution and repurposing of sites to other uses within class 'E' shaped and encouraged by planning policy. Buildings converted to residential use are highly unlikely to revert back to class 'E'. The result could be pepper-potting of residential sites within areas traditionally associated with business, leisure and retail uses, and a hollowing out of urban centres.
- 3.11 Local centres and important local parades are important for the sustainability of residential neighbourhoods. They provide an important local retail and services function which can reduce the need for residents to make longer journeys into larger town and district centres. Reducing the need to travel is particularly important for more vulnerable residents and those without access to a car. This could lead to undesirable increases in traffic movements and congestion, and negative effects on air quality and would be inconsistent with national and local carbon reduction targets. Maintaining local provision of important services will contribute towards the zero-carbon agenda and support the '20-minute neighbourhood' initiative that gained agreement at full council on 22 October 2020.

- 3.12 The introduction of an A4D does not mean that all planning applications for a change of use will be refused. It requires the submission of a planning application for consideration by the Local Planning Authority, with applications determined on their merits having regard to the policies in the development plan and any other material considerations.
- 3.13 Two types of A4D can remove permitted development rights. An A4D can take effect immediately, but this must be confirmed by the local planning authority following consultation within six months or it will lapse. Secondly, a non-immediate A4D may be made which results in development rights being withdrawn only upon confirmation of the Direction following local consultation
- 3.14 A Direction coming into effect immediately would have the clear advantage of immediately allowing the Council to manage changes of use to residential in the proposed A4D area. However, it would also expose the Council to potentially very high levels of compensation liability, under sections 107 and 108 of the Town and Country Planning Act 1990, in cases where applications submitted within the first 12 months of the removal of the permitted development rights were refused or granted subject to conditions. Such compensation would be based on abortive expenditure incurred or other sustained loss or damage directly attributable to the removal of the PDR.
- 3.15 A non-immediate direction, with a prior notice period of 12 months, would avoid compensation liability and also allow the results of local consultation to be taken into account in advance of the Council deciding whether to confirm the direction and remove permitted development rights. The decision to confirm the Direction would be taken by this Committee following the consultation. However, there would be a delay in the Council's ability to manage changes of use from E class to C3 during the notice period, although the transitional arrangements whereby the existing office to residential A4D remains in place until 31 July 2022 will provide some protection against the potential harmful effects of the PDR until this date.
- 3.16 Given the potentially high compensation payments arising from an immediate Article 4 Direction, it is considered that a non-immediate Article 4 Direction is the preferred option.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 A number of alternative options have been considered. Not seeking an Article 4 Direction would undermine the council's ability to appropriately plan for the future of the proposed areas in an evidence-based and consultative way taking into account local needs and changing local circumstances.
- 4.2 Consideration was also given to including the city's protected primary industrial estates and business parks in the A4D area. However, one of the prior approval conditions that must be satisfied for development under the PDR to occur is consideration of the impact of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses. Additionally, most premises in these locations are unsuitable for conversion to residential without

more extensive internal and external works which would require planning permission. These factors are considered to afford adequate protection to the protected industrial estates and business parks. Furthermore, office floorspace is also present in some of these areas. Monitoring indicates that although they are not covered by the existing office to residential A4D area, there have been no prior approval decisions for conversion to residential, indicating that specific protection through the proposed A4D would not be justified.

- 4.3 In coming to these conclusions on alternative options regard has been had to the new NPPF requirement that A4Ds apply to the smallest geographical area possible.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Following the making of an Article 4 Direction, a consultation period must take place for a minimum of 21 days, as required by the Town and Country Planning (General Permitted Development) (England) Order 2015. A report will be brought to a future TECC Committee with details the responses received to inform a decision whether to confirm the A4D. Consultation details will be published on the council's website.

6. CONCLUSION

- 6.1 The Class MA permitted development right for changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses) is considered necessary to avoid wholly unacceptable adverse impacts on the sustainability of the central Brighton business area and other town, district and local centres in the city.
- 6.2 An Article 4 Direction would remove these permitted development rights and allow proposals for change of use within the proposed area to be considered in a planned way against the council's adopted development plan policies.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no direct financial implications associated with the implementation of a citywide non-immediate Article 4 Direction. The costs associated with consultation and notice period will be contained within existing service budgets. This will be monitored and reported as part of TBM (Targeting Budget Monitoring) process.

Finance Officer Consulted: John Lack

Date: 14/10/21

Legal Implications:

The legislative background to the report's recommendation is set out in the body of the report.

Lawyer Consulted:

Hilary Woodward

Date:21/10/21

Equalities Implications:

- 7.2 Introduction of an Article 4 Direction as described in the report will assist in maintaining local shops and services in the city, particularly important for residents who find it less easy to move around the city.

Sustainability Implications:

- 7.3 The Article 4 Direction is considered important in maintaining the sustainability of the city's primary commercial areas and important local centres for the reasons set out in the report.

Brexit Implications:

- 7.4 None identified

Any Other Significant Implications:

None identified.

SUPPORTING DOCUMENTATION

Appendices:

1. Council's response to the government consultation on changes to Permitted Development Rights (PDRs) from December 2020 to January 2021
2. Draft map showing the extent of the Proposed Direction
3. Draft Article 4 Direction
4. Evidence supporting the Article 4 Direction

Background Documents

1. City Plan Part 1
2. Proposed Submission City Plan Part 2
3. Existing office to residential Article 4 Direction

