

Report Title:	<b>Article 4 Direction</b>
Contains Confidential or Exempt Information?	NO - Part I
Member reporting:	Councillor D Wilson, Lead Member for Planning
Meeting and Date:	Cabinet - 24 August 2017
Responsible Officer(s):	Russell O'Keefe, Executive Director
Wards affected:	All

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## REPORT SUMMARY

1. There are over 120 public houses and bars in the Royal Borough. Their owners hold 'permitted development rights' allowing them to redevelop, demolish or change the use of the premises without planning permission. The option to sell or redevelop these sites is becoming increasingly lucrative; the Campaign for Real Ale (CAMRA) claim that on average 21 pubs in the UK close every week.
2. Councils hold powers under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 to remove a property's permitted development rights. Rights are removed in situations where a local amenity is in need of protection.
3. The Secretary of State must be notified of an Article 4 direction. The direction may not be confirmed by the council until at least 28 days after it has been served or published or any longer period of time as notified by the Secretary of State. Government retains a right to modify the directions if they are considered 'inappropriate' or 'disproportionate'. A non-immediate Article 4 direction takes one year before it comes into effect. For an immediate direction, the council would be liable to pay compensation.

## 1. DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That Cabinet notes the report and:

- i. **Delegates authority to the Executive Director to progress a non-immediate Article 4 direction in accordance with the legal requirements.**

## 2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 Paragraph 200 of the National Planning Policy Framework (NPPF) states that the use of Article 4 directions to remove national permitted development rights should only be used in situations where it is necessary to protect local amenity or the wellbeing of the area. Justification must be provided for the purpose and extent of the Article 4 direction.
- 2.2 Article 4 (1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 itself states the council, when making a direction, must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. An Article 4 direction can cover:

- Any geographic area from a specific site to a whole local authority;
  - Permitted development rights relating to operational development or the change of use in the land;
  - Permitted development rights with temporary or permanent effect.
- 2.3 It is proposed that the council introduces a non-immediate Article 4 direction covering the whole borough to remove permitted development rights for use class A4 to use class C3 on a non-immediate basis. A non-immediate basis is recommended; this requires a 12-month notice period to be given before the Article 4 direction, if confirmed, takes effect to avoid any compensation claims.
- 2.4 The local planning authority (LPA) can confirm directions, with no requirement to obtain approval from the Secretary of State. The Secretary of State still needs to be informed and reserves the right to influence or even prevent confirmation of an Article 4 direction should they consider it unnecessary, unreasonable or unjustified. Legislation requires that a consultation process of no less than six weeks is conducted and that the Order is not confirmed until the council has given consideration to the responses received to the public consultation.
- 2.5 In August 2016, the London Borough of Wandsworth passed a non-immediate Article 4 direction to remove permitted development rights from 120 of its public houses and bars. These directions come into effect on 23 August 2017.
- 2.6 The London Borough of Southwark announced an immediate Article 4 direction in March 2017 to withdraw permitted development rights from 188 pub sites. Southwark made the decision to implement immediate directions as they claimed any development would present an immediate threat to local amenity. The council anticipates that they will be liable to compensate developers or landowners whose developments are affected by their Article 4 direction.

**Table 1: Options**

<b>Option</b>	<b>Comments</b>
To do nothing	Properties could continue to be nominated through the Assets of Community Value process by local communities.
Progress a non-immediate Article 4 direction to remove permitted development rights relating to pubs. <b>The recommended option.</b>	This would allow the local authority control and would be in the interest of residents as pubs make an important contribution to communities in the Borough.
Progress an immediate Article 4 direction. This would be subject to compensation to the owners of the properties, which could be significant. It is also unlikely that a qualifying case could be made for an immediate direction or that the Secretary of State would approve it.	The Neighbourhood Planning Act includes provisions for the Secretary of State to amend the General Permitted Development Order to remove the right for pubs to change use class; this has not yet been enacted through secondary legislation but it is expected imminently.

### 3. KEY IMPLICATIONS

**Table 2: Key implications**

<b>Outcome</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date of delivery</b>
Evidence in place to support non-immediate Article 4 direction produced for the purposes of consultation.	1 January 2018	By 31 December 2017	Before 1 December 2017	By 1 November 2017	31 December 2017
Public consultation exercise of not less than six weeks commenced.	1 April 2018	By 31 March 2018	Before 1 March 2018	By 31 January 2018	31 March 2018
Non-immediate Article 4 direction in place following consideration of consultation responses	1 January 2019	By 30 September 2018	By 31 July 2018	By 1 May 2018	30 September 2018

### 4. FINANCIAL DETAILS/ VALUE FOR MONEY

- 4.1 Based on the experience of other local authorities that have recently conducted this work, costs are estimated to be in the region of £4,000 for 2017-18 and a further £4,000 for 2018-19. These spends will cover the cost of obtaining legal advice, printing Article 4 direction notices and placing public advertisements in local newspapers. This will be funded from within existing budgets.

**Table 3: Financial impact of report's recommendations**

<b>REVENUE</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Addition	£0	£0	£0
Reduction	£0	£0	£0
Net impact	£0	£0	£0

<b>CAPITAL</b>			
Addition	£0	£0	£0
Reduction	£0	£0	£0
Net impact	£0	£0	£0

## 5. LEGAL IMPLICATIONS

- 5.1 The Council will give notice of the Article 4 direction and views and representations will be sought in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 2015, as amended. Notice of the Article 4 direction shall be given by the Council:
- By local advertisement;
  - By site notices at no fewer than two locations within the area to which the direction relates for a period of not less than six weeks.
- 5.2 The notice will invite representations to be sent to the council within a maximum of 21 days. The Secretary of State will also be notified on the same day the Article 4 direction is first published.

## 6 RISK MANAGEMENT

**Table 4: Impact of risk and mitigation**

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
Property owners take legal action for loss or damaged directly attributed to with drawl of permitted development rights.	High	Council follows the due legal process.	Low

## 7 POTENTIAL IMPACTS

- 7.1 The introduction of a non immediate Article 4 direction will assist the Council in maintaining mixed and balanced communities.

## 8 TIMETABLE FOR IMPLEMENTATION

**Table 5: Implementation timetable**

<b>Date</b>	<b>Details</b>
31 March 2018	Public consultation commenced.
30 September 2018	Non-immediate Article 4 direction in place

- 8.1 Implementation date if not called in: Immediately.

## 9 APPENDICES

None.

## 10 BACKGROUND DOCUMENTS

None.

## 11 CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr D Wilson	Lead Member for Planning	28/06/17	
Alison Alexander	Managing Director	28/06/17	03/08/17
Russell O'Keefe	Executive Director	28/06/17	
Andy Jeffs	Executive Director		
Rob Stubbs	Section 151 Officer		
Terry Baldwin	Head of HR		
Mary Kilner	Head of Law and Governance		
	Other e.g. external		

### REPORT HISTORY

<b>Decision type:</b> Key decision	<b>Urgency item?</b> No
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