

Report Title:	Article 4 Direction – removal of permitted development rights to change of use from Class E (commercial class) to C3 (residential)
Contains Confidential or Exempt Information	No - Part I
Cabinet Member:	Councillor Bermange, Cabinet Member for Planning, Legal and Asset Management
Meeting and Date:	Cabinet, 13 December 2023
Responsible Officer(s):	Andrew Durrant, Executive Director of Place Services & Adrien Waite, Assistant Director of Planning
Wards affected:	All

REPORT SUMMARY

The report recommends that the Cabinet approves the preparation of an Article 4 Direction to remove the permitted development rights to change use from Class E (commercial, business or service) to C3 (residential) on protected employment sites within the Borough and to prepare and undertake a public consultation.

An Article 4 direction enables a local planning authority to withdraw specified permitted development rights across a defined area. Whilst this does not prevent the change of use or development in that location, it ensures that it requires full planning permission and therefore can be more robustly scrutinised by the local authority in relation to their planning policies.

Between 2013 and 2022, about 32,000 sqm of office floorspace (equivalent to about 2,300 jobs) was lost through permitted development rights in RBWM, with a pipeline of unimplemented prior approvals. The BLP states that the uncontrolled losses of highly accessible office sites cannot be sustained in the long term and commits to the early introduction of an Article 4 direction.

It is recommended that the Article 4 direction introduced is non-immediate and covers protected employment sites set out in BLP Policy ED2. The Article 4 Direction would be subject to public consultation and would, if subsequently confirmed by Cabinet, and subject to there being no intervention by the Secretary of State, come into effect one year after the initial notice is published (early 2025).

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- (i) **Agrees a non-immediate Article 4 direction be made to remove the permitted development rights (within Schedule 2 of the General Permitted Development Order 2015 (as amended)) to change use from Class E (commercial, business or service) to C3 (residential) on protected employment sites as shown in Appendix B and to prepare and undertake a public consultation.**

- (ii) **Delegates authority to the Assistant Director of Planning in consultation with the Cabinet Member for Planning, Legal and Asset Management, to approve and publish any minor changes to the Article 4 direction and supporting documents, prior to its publication.**
- (iii) **Agrees that the Article 4 direction would be taken back to Cabinet after consultation following a review of the responses received, for a decision on whether it can be confirmed.**

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

Options

Table 1: Options arising from this report.

Option	Comments
<p>To consult on introducing a non-immediate Article 4 direction to remove the permitted development rights to change use from Class E (commercial, business or service) to C3 (residential) on protected employment sites.</p> <p>This is the recommended option</p>	<p>Non-immediate Article 4 directions take longer to put in place but avoid the risk of compensation having to be awarded to landowners of affected sites. The result of consultation will be reported back to Cabinet for a decision on whether to confirm the Article 4(1) direction.</p>
<p>To introduce an immediate Article 4 direction to remove the permitted development rights to change use from Class E (commercial, business or service) to C3 (residential) on protected employment sites.</p> <p>This is not recommended</p>	<p>Immediate Article 4 directions can be put in place more quickly but require councils to pay compensation to all landowners whose permitted development rights are restricted if they apply for planning permission for development that would have been allowed by the permitted development right for the first 12 months that the Article 4 direction is in place.</p> <p>The scale of the compensation that would be required is unknown but could be significant.</p>
<p>Do Nothing</p> <p>This is not recommended</p>	<p>Continued loss of loss of employment floorspace through the conversion of offices to residential (under prior approval).</p>

- 2.1 The Government introduced provisions in 2013 to allow for conversion of offices to dwellinghouses under a prior approval process. From 2016 to 2021, this was known as Class O (office to residential) but in 2021, Class O was replaced by Class MA, which allows a wider range of commercial, business and service uses (Use Class E) to change their use to residential without the need for planning permission to be applied for.
- 2.2 Sites wishing to benefit from Class MA change of use rights still need to meet the qualifying criteria and requirements, including:
- vacancy of at least three months,
 - cumulative floorspace below 1,500 sqm and
 - they must not be a listed building.
- 2.3 Between 2013 and 2022, about 32,000 sqm of office B1 (a) floorspace, equivalent to about 2,300 jobs if it was all re-used, was lost and 386 new dwellings have been completed through permitted development rights in the Royal Borough. There is a pipeline of unimplemented prior approvals totalling c. 31,000 sqm that would create 428 dwellings. Many councils have cited concerns over the delivery of poor-quality dwellings (often very small and lacking natural light), a lack of outdoor space and the failure to provide any affordable housing and vital infrastructure from such prior approval schemes.
- 2.4 The Borough Local Plan (BLP) states in paragraph 8.9.6 that “uncontrolled losses of highly accessible sites, suitable for high trip generating office uses, cannot be sustained in the long term” and commits to the introduction of an Article 4 direction “as soon as possible”. The evidence produced for the BLP¹ explained that an Article 4 Direction to control future losses of office space via the permitted development route is justified because “the Council is reaching the point where further losses of stock would necessitate the allocation of new, greenfield and likely out of centre allocations to replace them.” Although the BLP is now adopted, the continued loss of office floorspace on key employment sites would increase the amount of such land needed when the plan is next reviewed, and this is likely to necessitate greenfield allocations.
- 2.5 Therefore, it is recommended that an Article 4 Direction is introduced that would cover all key employment sites as defined in Policy ED2 of the BLP as these are the most important sites protected by the policy in RBWM. For avoidance of doubt this does not include any of the town centres. This is because the town centres cover a large area and a diverse range of uses. In addition, it is noted that Reading Borough Council recently attempted to introduce an Article 4 Direction that covered much of their Town Centre, but the Secretary of State intervened and removed part of this on the basis that it did not take a sufficiently targeted approach.

3. KEY IMPLICATIONS

¹ [Employment Land Needs in RBWM October 2019 Topic Paper \(Peter Brett Associates\)](#)

- 3.1 The key positive implication of introducing an Article 4 Direction is that it would ensure that the Council keeps a greater level of control over employment floorspace on the highest quality sites. The continued loss of such floorspace is of concern given the highly constrained supply of development land within the Borough. As stated above, further losses of employment floorspace would likely necessitate the allocation of new, greenfield sites to replace them when the BLP is next reviewed. There would, however, be a reduction in the number of (albeit poor quality) dwellings being delivered on such sites. The planning application process would provide more control over design (and living conditions of future occupiers) than a prior approval application.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Making of non-immediate Article 4 direction	non-immediate Article 4 direction not made	non-immediate Article 4 direction made in January 2024	n/a	n/a	January 2024

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 With regards to financial implications, there would be a loss of fee income from prior approval applications on sites within the Article 4 area, although this is likely to be partially or fully offset by an increase in planning application fee income on such sites. Also, a planning application for new dwellings will require financial contributions to be made through CIL and S106 agreements and provision of affordable housing (likely to be 30% of the total units, depending on site threshold). Developments subject to prior approval do not make financial contributions for either on-site or off-site infrastructure provision or affordable housing.
- 4.2 There would be some modest financial costs for progressing with the Article 4 Direction. These would include placing local advertisements (c. £2,000.) Depending on the outcome of the consultation, there may be a need to strengthen the evidence base/justification, which could involve the use of specialist consultants. There would also be resource implications in terms of officer time, potentially resulting in other work (such as SPDs) taking longer to produce.

5. LEGAL IMPLICATIONS

- 5.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (known as the GPDO) grants planning permission to a number of specified forms of development. The forms of development for which permission is granted are set out in Schedule 2 of the GPDO.

- 5.2 Article 4 of the GPDO allows the local planning authority to make a direction that removes specified permitted development rights within a defined area if those rights would be prejudicial to proper planning of their area or constitute a threat to the amenities of the area. Schedule 3 of the GPDO describes the process by which these Article 4 directions are made. Paragraph 1 of Schedule 3 deals with non-immediate directions.
- 5.3 The Town and Country Planning Act 1990 is also relevant. Section 108 deals with compensation arrangements and is applicable to a situation where permitted development rights are removed. Section 108(3C)(c) states that at least 12 months' notice of the withdrawal is required to avoid the ability for compensation claims to be made.

6. RISK MANAGEMENT

Table 3: Impact of risk and mitigation

Threat or risk	Impact with no mitigations in place or if all mitigations fail	Likelihood of risk occurring with no mitigations in place.	Mitigations currently in place	Mitigations proposed.	Impact of risk once all mitigations in place and working	Likelihood of risk occurring with all mitigations in place.
The Secretary of State has the power to modify or cancel an Article 4 Direction and may require further evidence and justification.	Major 3	High	The evidence base produced for the BLP can be used.	Actions set out in recommendation	Minor 1	Low
An immediate Article 4 would put the Council at risk of claims for compensation.	Major 3	High	A non-immediate Article 4 is recommended	Actions set out in recommendation	Minor 1	Low

7. POTENTIAL IMPACTS

- 7.1 Equalities. An Equality Impact Assessment is available as Appendix A.

- 7.2 The approval of the non-immediate Article 4 will have a positive impact in relation to protecting employment sites and a reduction in the number of poor quality dwellings being delivered.
- 7.3 Data Protection/GDPR. The consultation on the non-immediate Article 4 will be undertaken by the council in accordance with the Data Protection Act 2018 and the General Data Protection Regulation. There are not anticipated to be any impacts.

8. CONSULTATION

- 8.1 The process of adopting an Article 4 direction includes a formal consultation for a minimum of 21 days with those most likely to be affected and statutory consultees, including the Secretary of State. A public notice must be published by local advertisement. The regulations require that the council serve notice on the owner and occupier of every part of the land within the area or site to which the direction relates, unless this impracticable which is likely to be the case here.
- 8.2 Following this consultation (which will run for 4 weeks in accordance with the council's consultation guidance), all responses would be carefully considered, and a report would be taken to Cabinet with a recommendation to either confirm the direction or not to do so. If the direction is confirmed, the Secretary of State must be notified and this must be publicised, along with the date that the direction would come into force. The Secretary of State can order the Article 4 direction to be cancelled or amended at any point (even after it has come into effect). The Secretary of State has in some cases previously intervened to prevent blanket Article 4 direction, and therefore the extent of the approach needs to be considered and justified.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Implementation date if not called in: January 2024. The full implementation stages are set out in table 4.

Table 4: Implementation timetable

Date	Details
January 2024	Publish Notice of Article 4 Direction for at least 21 days consultation and notify Secretary of State and others
Spring 2024	Review consultation responses and take a report back to Cabinet with recommendation on whether to confirm the Article 4 Direction or not.
January 2025	If confirmed in Spring 2024, Article 4 comes into effect 12 months after initial Notice published.

10. APPENDICES

- 10.1 This report is supported by 3 appendices:

- Appendix A – Equality Impact Assessment
- Appendix B – Draft Article 4 Direction (including plans)

- Appendix C – Report on the justification for introducing an Article 4 Direction

11. BACKGROUND DOCUMENTS

11.1 This report is supported by 3 background documents:

- Royal Borough Windsor and Maidenhead Borough Local Plan 2013-2033 [Adopted local plan | Royal Borough of Windsor and Maidenhead \(rbwm.gov.uk\)](#)
- [Employment Land Needs in RBWM Topic Paper \(Peter Brett Associates, October 2019\)](#)
- National Planning Policy Framework (NPPF) [National Planning Policy Framework - GOV.UK \(www.gov.uk\)](#)

12. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory:</i>		<i>Statutory Officer (or deputy)</i>	
Elizabeth Griffiths	Executive Director of Resources & S151 Officer	7.11.23	
Elaine Browne	Deputy Director of Law & Governance & Monitoring Officer	7.11.23	14.11.23
<i>Deputies:</i>			
Andrew Vallance	Deputy Director of Finance & Deputy S151 Officer	7.11.23	22.11.23
Jane Cryer	Principal Lawyer & Deputy Monitoring Officer	7.11.23	
<i>Mandatory:</i>		<i>Equalities Officer – to advise on EQiA, or agree an EQiA is not required</i>	
Ellen McManus-Fry	Equalities & Engagement Officer	10.11.23	17.11.23
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Stephen Evans	Chief Executive	7.11.23	22.11.23
Andrew Durrant	Executive Director of Place	7.11.23	22.11.23
<i>Assistant Directors (where relevant)</i>			
Adrien Waite	Assistant Director of Planning	7.11.23	23.11.23
<i>External (where relevant)</i>			
N/A			

Confirmation relevant Cabinet Member(s) consulted	Adam Bermange, Cabinet Member for Planning, Legal and Asset Management	Yes
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REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Cabinet report: Key decision First entered into the Cabinet Forward Plan: 06/07/2023	No	No

Report Authors: Ian Motuel, Planning Policy Manager & John Maniscalco, Senior Policy Planner
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Appendix A - Equality Impact Assessment

For support in completing this EQIA, please consult the EQIA Guidance Document or contact equality@rbwm.gov.uk

1. Background Information

Title of policy/strategy/plan:	<u>Article 4 Direction – removal of permitted development rights to change of use from Class E (commercial class) to C3 (residential)</u>
Service area:	<u>Planning</u>
Directorate:	<u>Place</u>

Provide a brief explanation of the proposal:

- What are its intended outcomes?
- Who will deliver it?
- Is it a new proposal or a change to an existing one?

The report recommends that a non-immediate Article 4 Direction restricting PDR for Class E to residential conversions on all protected employment sites be pursued and to prepare and undertake a public consultation.

The Consultation will be delivered by Planning Policy Officers.

This is a new proposal.

2. Relevance Check

Is this proposal likely to directly impact people, communities or RBWM employees?

- If No, please explain why not, including how you've considered equality issues.
- Will this proposal need a EQIA at a later stage? (for example, for a forthcoming action plan)

Yes, the public consultation will directly impact people and the local community throughout the Borough as they will all have the opportunity to provide comment on the non-immediate Article 4 Direction restricting PDR for Class E to residential conversions on all protected employment.

The Article 4 Direction itself will also directly impact people and the local community throughout the Borough. The principal purpose of the Article 4 is to protect designated employment areas in RBWM.

If 'No', proceed to 'Sign off'. If unsure, please contact equality@rbwm.gov.uk

3. Evidence Gathering and Stakeholder Engagement

Who will be affected by this proposal?

For example, users of a particular service, residents of a geographical area, staff

The Article 4 Direction is aimed at the Protected Employment sites (BLP Policy ED2) therefore, the occupants and businesses will be affected.

The proposal will also benefit the whole community (including potential occupants of development) by ensuring that developments that would result in new dwellings are subject to a planning application process that ensures that impacts on the amenity of the area are considered.

Council Planning Officers will also be affected as planning applications received will be subject to the planning permission process. This will consider all of the many impacts on the amenity of the area and on the potential residents.

Among those affected by the proposal, are protected characteristics (age, sex, disability, race, religion, sexual orientation, gender reassignment, pregnancy/maternity, marriage/civil partnership) disproportionately represented?

For example, compared to the general population do a higher proportion have disabilities?

The adopted Borough Local Plan was subject to Equality Impact Assessments in 2017 and 2019, which did not identify any negative impacts for any group with protected characteristics.

The Article 4 Direction provides further protection on the application of policies in the Borough Local Plan. It does not create new policy.

Future planning applications will need to comply with Borough Local Plan policy. There is nothing in the Article 4 Direction which is considered to disproportionately impact on any particular individual or group.

What engagement/consultation has been undertaken or planned?

- How has/will equality considerations be taken into account?
- Where known, what were the outcomes of this engagement?

No previous engagement has taken place. This Report recommends holding a 4-week public consultation. The results of this consultation and engagement will be reported at a future Cabinet meeting.

What sources of data and evidence have been used in this assessment?

Please consult the Equalities Evidence Grid for relevant data. Examples of other possible sources of information are in the Guidance document.

The Council's parish profiles and the Council's Equalities Evidence Grid.

4. Equality Analysis

Please detail, **using supporting evidence**:

- How the protected characteristics below might influence the needs and experiences of individuals, in relation to this proposal.
- How these characteristics might affect the impact of this proposal.

Tick positive/negative impact as appropriate. If there is no impact, or a neutral impact, state 'Not Applicable'

More information on each protected characteristic is provided in the Guidance document.

	Details and supporting evidence	Potential positive impact	Potential negative impact
Age	<p>The Article 4 Direction provides further protection on the application of policies in the Borough Local Plan. It does not create new policy.</p> <p>There is nothing in the Article 4 Direction which is considered to disproportionately impact on any particular individual or group in terms of age.</p>	Not applicable.	
Disability	<p>There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person with a disability.</p> <p>The introduction of an Article 4 direction will give better control over the standard of residential units being created and will therefore be easier for the council to ensure that appropriate accessibility standards are met for new developments.</p>	Not applicable.	
Sex	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person on the basis of their sex.	Not applicable.	
Race, ethnicity and religion	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person on the basis of their race, ethnicity or religion.	Not applicable.	
Sexual orientation and gender reassignment	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person on the basis of their sexual orientation or gender.	Not applicable.	
Pregnancy and maternity	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person who is pregnant or a mother.	Not applicable.	
Marriage and civil partnership	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person on the basis of their marital status.	Not applicable.	

Armed forces community	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person who is in the armed forces community.	Not applicable.	
Socio-economic considerations e.g. low income, poverty	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person on the basis of their socio-economic situation.	Not applicable.	
Children in care/Care leavers	There is nothing within the Article 4 Direction which is considered to disproportionately impact or discriminate against a person who is in care or a care leaver.	Not applicable.	

5. Impact Assessment and Monitoring

If you have not identified any disproportionate impacts and the questions below are not applicable, leave them blank and proceed to Sign Off.

<p>What measures have been taken to ensure that groups with protected characteristics are able to benefit from this change, or are not disadvantaged by it? For example, adjustments needed to accommodate the needs of a particular group</p>
<p>This Report recommends a 4-week public consultation with Local Stakeholders and the members of the community. The results of this consultation and engagement will be reported at a future Cabinet meeting.</p>
<p>Where a potential negative impact cannot be avoided, what measures have been put in place to mitigate or minimise this?</p> <ul style="list-style-type: none"> For planned future actions, provide the name of the responsible individual and the target date for implementation.
<p>Where persons with protected characteristics are adversely affected, this would increase the likelihood of the consultation not picking up all issues within the local area. However, the proposal for an Article 4 direction will provide more certainty through the planning process. Potential developments will not detrimentally impact the quality of life and physical and mental health. Potential developments could also contribute to Affordable housing and mitigate infrastructure impacts.</p>
<p>How will the equality impacts identified here be monitored and reviewed in the future? See guidance document for examples of appropriate stages to review an EQIA.</p>
<p>If the Article 4 direction is approved, residents will have further opportunity to comment on future planning applications as part of the normal planning application determination process.</p>

6. Sign Off

Completed by: John Maniscalco	Date: 07/11/2023
Approved by: Adrien Waite	Date: 23/11/2023

If this version of the EQIA has been reviewed and/or updated:

Reviewed by: Ellen McManus-Fry

Date: