



City of Westminster

Planning & City Development Committee

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Title: Article 4 Directions in Westminster

Report of: Director of Policy and Projects

Financial Summary: The implications will be managed within existing resources.

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1. Executive Summary

1.1 This report provides an overview of recent changes to permitted development rights and the council's Article 4 Directions restricting certain permitted development rights.

2. Recommendation

2.1 Members are asked to note the content of this report.

3. Permitted Development Rights and Planning Policy

3.1 The national planning practice guidance defines permitted development rights as:

...a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.

3.2 Permitted development rights therefore by-pass the local planning authority's policies contained in its development plan, with the grant of permission only subject to the conditions and limitations set out in legislation. These are often highly specific and limited to a few issues.

3.3 In Westminster's case this means that these types of development (including changes of use) that meet the conditions prescribed in legislation must be granted without consideration of any of the policies in the City Plan or London Plan (or any neighbourhood plans). The principle of development has been presumed appropriate by the granting of national rights.

- 3.4 Since 2013, government has gradually expanded the remit of permitted development rights, which were until then reserved for small-scale development or changes of use with limited local impacts, to encompass many more types of development. Expanding permitted development rights was a way of speeding up the planning system by limiting determination of a broader range of developments to specific issues such as flood risk, land contamination and transport impacts, and shortening the timescales in which decisions were taken.
- 3.5 Nevertheless, the expansion of these rights also meant that additional considerations have been added to the conditions used to control them. This has resulted in the creation of a two-tier planning system with permitted development often undergoing application for 'prior approval' to allow decision-makers to consider these prescribed issues, whereas other forms of development are still subject to traditional planning permissions, which allow for the consideration of the statutory development plan. In many cases the difference between the two approaches is marginal.
- 3.6 In 2021, permitted development rights were further expanded to encompass an even wider variety of changes from commercial to residential use. This means that buildings falling within the new Class E (commercial, business and service) use have the right to change to residential use, without the need for planning permission. The commercial, business and service use encompasses a wide range of land uses including offices, shops, cafes and restaurants, indoor sports facilities, medical services and nurseries. Whilst there are restrictions to this right, the aims of the council's City Plan (and the policies therein) to carefully balance the needs of commercial and residential uses in Westminster has been somewhat undermined.

4. Article 4 Directions – Background

- 4.1 An Article 4 Direction is a mechanism that a local planning authority can employ to restrict permitted development rights. It is named after Article 4 of the General Permitted Development Order. An Article 4 Direction removes permitted development rights over a specifically defined area and requires full planning permission to be obtained. This gives the local planning authority scope to consider other planning matters that are within policies in its development plan, rather than only those issues specified by legislation.
- 4.2 Traditionally, Article 4 Directions were used to limit specific forms of permitted development in a specific area (for example to control changes of window materials in a conservation area to protect the historic environment); however, the expansion of permitted development rights has also broadened the use of Article 4 Directions.
- 4.3 The local planning authority can issue an Article 4 Direction at any time, although these cannot apply retrospectively. There are two types of Article 4 Direction, immediate and non-immediate. An immediate direction removes permitted development rights from the day it is issued, and it can then be confirmed or withdrawn following a consultation. A non-immediate direction only comes into effect following a 12-month grace period. This is to ensure the council is not subject to potential compensation claims from developers for costs incurred in abortive works or expenses such as the planning application fee, professional fees (for architects etc) and, in cases where planning permission is refused "any loss or damage directly attributable to the removal of the permitted development rights", including any loss of value to the property.
- 4.4 The Secretary of State has powers to cancel or modify an Article 4 Direction at any time. To ensure the aim of delivering more homes under the latest permitted development rights are not undermined, the government has indicated that it will be

scrutinising local authorities' use of Article 4 Directions to restrict permitted development rights. A revised National Planning Policy Framework (NPPF) was published in July 2021, containing policy on the use of Article 4 Directions for the first time, stating that they should:

“be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)”.

and,

“be based on robust evidence, and apply to the smallest geographical area possible”.

The council will need to be mindful of this policy when considering the use of Article 4 Directions and their scope.

5. Westminster's Article 4 Directions

- 5.1 Westminster has had Article 4 Directions in place to control minor alterations in some of its conservation areas for a number of years. To control land use the council also introduced Article 4 Directions to control basement development and changes from shops to financial and professional service uses. The latter has now been superseded by the amalgamation of these use classes under Class E.
- 5.2 The council also introduced an Article 4 Direction to control the change of use from offices (Class B1) to residential (Class C3) use in the Central Activities Zone (CAZ) in 2019. Despite offices now being classified under Class E and therefore being captured by this new use class, transitional arrangements in legislation (which the council successfully lobbied for) mean that this Article 4 Direction remains in place until August 2022.
- 5.3 To address the impact of new permitted development rights allowing changes from Class E to residential use, the council introduced a new Article 4 Direction in June 2021, with a formal consultation held between July and September 2021. This Direction will come into force in August 2022 to replace the existing direction covering office to residential changes of use and has been expanded to cover all Class E to residential changes of use in the CAZ. The basis of the direction is to protect the secure an appropriate balance of uses in the CAZ and facilitate economic recovery. In particular it will help ensure the availability of a range of commercial space to support the delivery of good growth in Westminster – which brings the maximum benefits for residents, workers, visitors and businesses in accordance with the objectives of City for All, and the policies in the Westminster City Plan.
- 5.4 The council has now issued a further Article 4 Direction to address the impacts of Class E to residential permitted development rights in specific locations outside of the CAZ, with a formal consultation period to follow. The locations selected are those designated by the City Plan as 'town centres', which are important for their assortment of commercial activity. There are over 30 locations with a town centre designation that fall outside of the CAZ. These range from the larger 'major centre' at Queensway/ Westbourne Grove and 'district centres' of Harrow Road, Church Street/ Edgware Road and St. John's Wood, to the smaller 'local centres' including Elizabeth Street in Belgravia, Kilburn Lane in Queen's Park, and Clifton Road in Little Venice.

- 5.5 The Article 4 Direction will ensure these town centres continue to offer a range of shops and services to local residents and provide employment opportunities by ensuring that proposals for changes of use from commercial, business and service uses to residential use are fully assessed in accordance with development plan policies. Securing the vitality and viability of these town centres is in accordance with the objectives of City for All, and the policies in the Westminster City Plan, particularly Policy 14 'Town Centres, High Streets and the CAZ'. The Article 4 Direction will come into force following the expiry of the 12 month grace period.

6. Financial Implications

- 6.1 The implications of introducing new Article 4 Directions will continue to be managed within existing resources.

7. Legal Implications

- 7.1 The rules for making and confirming an Article 4 Direction are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, and updates set out in The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021. Taken together this legislation defines the classes of permitted development, exceptions to permitted development, and outlines the process for making an Article 4 Direction. The compensation arrangements are set out in sections 107-109 of the Town and Country Planning Act 1990.

8. Conclusion

- 8.1 Members are asked to note the content of this report and the implications that permitted development rights and associated Article 4 Directions will have for planning decision-making in Westminster.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Michael Clarkson (mclarkson@westminster.gov.uk; 07811677027).

Background Papers:

[Cabinet Member Report, June 2021 – Making of Westminster's Article 4 Direction for changes of use from Class E \(commercial, business and service uses\) to Class C3 \(dwellinghouses\)](#)