

Three Rivers District Council

# Committee Report

Date: 11<sup>th</sup> March 2024

Report Originator: Aaron Roberts	Head of Service sponsor: Marko Kalik	Date Originated: 09.02.2024
Lead Member Name: Councillor Stephen Giles-Medhurst	Area of Responsibility: Planning Policy	
CMT Date:	20.02.2024	
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<b>REASON FOR REPORT</b>		
Reason	JLT/CMT Feedback for Officer and further instructions	Recommendation to JLT/CMT:
Consultees consulted	Finance Yes/No Date:	Legal Yes/No Date:
Consultees to be consulted following CMT before report publication	Chief Executive	Shared Director of Finance
<b>PROPOSED ROUTE FOR FURTHER APPROVAL</b>		
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Committee: POLICY AND RESOURCES COMMITTEE		11.03.2024
Council (if required)		

**POLICY AND RESOURCES COMMITTEE  
11<sup>th</sup> March 2024**

PART I

**NOTIFICATION OF ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS (EIP)**

**1 Summary**

- 1.1 This report provides notification to Members that the Secretary of State has issued an amended Article 4 Direction, which comes into force 29 March 2024 restricting Class MA Permitted Development Rights that came into effect from 1<sup>st</sup> August 2021. Cass MA relates to change of use from Class E (commercial, business and services) to Class C3 (residential).
- 1.2 The Council is in the process of 'serving notice' which involves publicising the Article 4 Direction through the Watford Observer, the Council website and putting up site notices within each of the areas subject to the Article 4 Direction, to keep the public informed.

**2 Background**

- 2.1 Changes to the Use Class Order (September 2020)

- 2.1.1 Significant changes to the Use Classes Order came into force on 1<sup>st</sup> September 2020. Many town centre and employment uses now fall under the new Class E (commercial, business and service use). This means there is now far greater flexibility for changes of use without the need to obtain planning permission, as shown below:

Table 1

Use	Use Class	
	Up to 31.08.2020	From 01.09.2020
Shop – unless now F.2 (see below)	A1	E
Shop not more than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop	A1	F.2
Financial and professional services	A2	E
Café or restaurant	A3	E
Pub or drinking establishment	A4	Sui generis
Hot food takeaway	A5	Sui generis
Offices	B1(a)	E
Research and development	B1(b)	E
Light industry	B1(c)	E
General industry	B2	B2
Storage and distribution	B8	B8
Hotels, boarding and guest houses	C1	C1
Clinics, health centres, crèches, day nurseries, day centre	D1	E
Museums, public libraries	D1	F.1
Cinemas, concert halls, bingo halls and dance halls	D2	Sui generis
Gymnasiums, indoor recreation not involving motorised vehicles or firearms	D2	E

## 2.2 Class MA Permitted Development Right

- 2.2.1 In March 2021 the Government published legislation<sup>1</sup> in England to introduce a new and much broader permitted development right (PDR) - new class MA. The Class MA enables changes of use from Class E to residential without the need for planning permission from 1<sup>st</sup> August 2021. Prior approval from the local planning authority is still required on various planning matters.
- 2.2.2 There are some limitations included in these PDRs. The PDR does not apply if more than 1,500 sqm of cumulative floorspace is to be converted. This is a significant restriction for office to residential conversions. There are also limitations relating to location of development, longevity of existing use and vacancy.
- 2.2.3 The premises must have been vacant for at least three months prior to the date of the prior approval application.
- 2.2.4 Developers also have several other hurdles to overcome to benefit from class MA in terms of the impact of noise from commercial premises on intended occupiers, conditions in relation to the loss of social infrastructure uses, the provision of adequate natural light in habitable rooms and must meet the minimum national space standards for housing conversions. These are assessed through an application for “Prior Approval”. This allows the Local

<sup>1</sup> 1 Statutory Instrument 2021 No.428. The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

Planning Authority to consider the proposals and their likely impacts in regard to certain factors (i.e. transport and highways, flood risk, and how these can be mitigated). In addition, in Conservation Areas the Council can take account of the impact that the change of use will have on the character or sustainability of the Conservation Area if the change of use involves the ground floor.

2.2.5 Use Class E includes offices, the research and development of products or processes, and any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area). These are the uses that relate to the District's employment areas.

## 2.3 Article 4 Directions

2.3.1 Under Article 4 of the General Permitted Development Order (GPDO) the local planning authority (or the Secretary of State) can withdraw specified Permitted Development Rights (PDRs). Article 4 Directions can restrict the scope of PDRs in relation to a particular area and in relation to a particular PDR. Where an Article 4 Direction is in place, a planning application will be required where otherwise the development would fall within PDRs. Article 4 Directions provide an essential and necessary tool to allow councils to consider proposals where PDR could be particularly detrimental.

2.3.2 In 2016, the Council made three non-immediate Article 4(1) Directions to remove permitted development rights for changes of use from office and light industrial to residential in the District's three allocated employment areas:

- Croxley Green Business Park – Article 4 Direction to remove permitted development rights for change of use from offices to residential
- Maple Cross/Maple Lodge Employment Area – Article 4 Direction to remove permitted development rights for change of use from offices to residential
- Tolpits Lane Employment Area – subject to Article 4 Direction to remove permitted development rights for change of use from offices and light industrial to residential

2.3.3 Under the transitional arrangements, where there were existing Article 4 Directions relating to office to residential PDRs (Class O), these remained effective until 31<sup>st</sup> July 2022. From 1<sup>st</sup> August 2022 these Article 4 Directions ceased to exist. As such, since 1<sup>st</sup> August 2022 Three Rivers' employment areas have not been protected from PDRs.

2.3.4 It is considered that there is a continuing need to protect employment areas from the change of use from offices and/or light industrial to residential through permitted development. Class MA PDRs will essentially reduce the scope of office to residential (due to there being more prior approval criteria to address) while increasing the scope for change of use from retail to residential as well as introducing new PDRs for various other town centre uses, to change to residential. As shown in Table 1 above Use Class E includes a wider range of uses than just those relating to employment. It includes commercial uses such as shops and cafes amongst others. In order to reinstate the requirement for planning permission for conversions from offices and light industry to residential within the District's allocated employment areas new Article 4 Directions are considered necessary.

- 2.3.5 The test for the use of Article 4 Directions has been amended by the revised National Planning Policy Framework (NPPF). Previously it was stated that the use of Article 4 directions should be limited to situations where it 'is necessary to protect local amenity or the wellbeing of the area'. The revised NPPF has imposed a much more stringent test where the development relates to a change from non-residential to residential (paragraph 53). In this scenario the use of Article 4 directions should be limited to situations where it 'is necessary to avoid wholly unacceptable adverse impacts'. Additionally, in all cases, Article 4 Directions should be 'based on robust evidence and apply to the smallest geographical area possible'.
- 2.3.6 These amendments to the NPPF limit the ability for local planning authorities to use Article 4 directions unless they have real justification and evidence for it; certainly the extent of land included in the directions will now be under more scrutiny. It should be noted that any application for making an Article 4 Direction can be delayed or even rejected by the Secretary of State.
- 2.3.7 Neighbouring authorities in South-West Hertfordshire have had the process delayed by requests for further justification from the Secretary of State and several London Boroughs have had their Article 4 Directions rejected. These authorities had applied for Article 4 Directions in defined geographical areas however the Secretary of State rejected these saying they failed to take a sufficiently targeted approach and should look at a smaller geographical area.
- 2.4 What actions have been undertaken by the Council?
- 2.4.1 On 18<sup>th</sup> August 2022, the Policy & Resources Committee approved the making of anon-immediate Article 4 Direction to withdraw permitted development rights (PDR) granted by Class MA in Part 3 of Schedule 2 of the GPDO 2015 for development, in parts of the District. See Appendix 1 for the Article 4 Direction (and associated boundaries) approved by the Policy & Resources Committee in August 2022.
- 2.4.2 It was agreed at this meeting that the Council should make a non-immediate Article 4 Direction with a 12-month notice period. This removed the Council's liability to compensate landowners affected by the removal of their permitted development rights, when they would otherwise have been approved had the permitted development rights not been withdrawn or where planning permission is granted subject to more limiting conditions than the GPDO
- 2.4.3 The GPDO 2015 requires Local Planning Authorities to conduct a minimum 21-day period of public consultation prior to the confirmation of any Article 4 Direction and stipulates that, in deciding whether or not to confirm a direction, the local planning authority must take into account any representations received during the specified consultation period. The Article 4 Direction was subject of a 6 week public consultation exercise running from 23<sup>rd</sup> September 2022 until 4<sup>th</sup> November 2022, during which no responses were received from the public.
- 2.4.4 As part of the consultation, notice was given by local advertisement and site displays. Site notices were put in place at no fewer than 2 locations within each area or site to which the Direction related for a period of at least 6 weeks and by placing a copy of the Public Notice in the Watford Observer dated 23<sup>rd</sup> September 2022. A copy of the Direction and relevant maps were sent to the Secretary of State on the same day that the notice was first published (in line with the procedures set out in Schedule 3 of the GPDO 2015) and a copy of the Direction including its associated maps to which it applies was made available on the Council's website and at the Council's Offices.

- 2.4.5 In summary, the issuing of a non-immediate Article 4 Direction was agreed at Policy & Resources Committee on 18<sup>th</sup> August 2022. The Article 4 Direction began in September 2022 so should have come into force September 2023, however, the Council was waiting for a response from the Secretary of State.

### **3 Details**

#### **3.1 Intervention from the Secretary of State**

- 3.1.1 Once a Local Planning Authority has made an Article 4 Direction, it can subsequently cancel or vary it under Article 6 by a further Direction. The Secretary of State has the power in paragraph 1(13) of Schedule 3 to the General Permitted Development Order 2015, at any time (even after an Article 4 Direction has been confirmed by a Local Planning Authority), either to modify a Direction or, if he so chooses, cancel the Direction.
- 3.1.2 For the avoidance of doubt, from a procedural perspective neither the Council nor the Secretary of State can recommend new or additional areas to be added.
- 3.1.3 The Secretary of State wrote to the Council on 18<sup>th</sup> January 2023 inviting submissions of further evidence to support the making of the non-immediate Article 4 Direction. This was followed up with a meeting request held on 9<sup>th</sup> February 2023 with DLUHC Officers. Subsequently, the Council responded to two further requests for information and clarification in support of the Council's proposed Article 4 Direction.
- 3.1.4 The Secretary of State has undertaken minor amendments to the boundaries of town centre locations subject to the Article 4 Direction. The amended boundaries can be seen at Appendix 2.
- 3.1.5 The extent of the employment areas subject to the Article 4 Direction remain as agreed by Members at the Policy and Resources Committee in August 2022.
- 3.1.6 Following correspondence with the Secretary of State since 18<sup>th</sup> January 2023 and following the requested modification to boundaries, the Secretary of State has issued an amended Article 4 Direction restricting Class MA Permitted Development Rights that came (change of use from Class E (commercial, business and services) to Class C3 (residential)), which has now come into force.
- 3.1.7 In line with correct procedure, the Council is in the process of 'serving notice' which involves publicising the Article 4 Direction through the Watford Observer, the Council website and putting up site notices within each of the areas subject to the Article 4 Direction, to keep the public informed.

#### **3.2 What does the Article 4 Direction coming into effect mean for the Council?**

- 3.2.1 In the nine allocated areas where the Article 4 Direction is in place, a planning application will be required where otherwise the development would fall within permitted development (for Class MA). This allows the Local Planning Authority greater control over development in areas identified as being susceptible to adverse harm, in this case employment areas and town centres.
- 3.2.2 A brief summary of the increased planning control and planning gains from assessing schemes via a planning application can be seen below:

- Planning applications allow a more detailed assessment of matters such as Green Belt, impact on character, parking, levels of amenity space, housing mix and greater weight to be given to TRDC planning policies
- Planning applications allow for planning gains such as affordable housing contributions (where viable) and infrastructure contributions, whereas prior approval applications do not
- Planning applications can be called into Planning Committee, whereas Prior Approval applications cannot
- Planning applications fees are significantly higher than Prior Approval Applications

#### **4 Options and Reasons for Recommendations**

- 4.1 This report is to notify Members that the Secretary of State has issued an amended Article 4 Direction, which has now come into force.
- 4.2 As the amended Article 4 Direction has been issued by the Secretary of State and has now come into force there is no requirement by the Council to consult on the changes to the Article 4 Direction and the changes do not need to be agreed by Members. This report is to inform Members only and is not seeking a decision.

#### **5 Policy/Budget Reference and Implications**

- 5.1 The recommendations in this report are within the Council's agreed policy and budgets

#### **6 Financial, Legal, Staffing, Equal Opportunities, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

- 6.1 None specific.

#### **7 Legal Implications**

- 7.1 Given that the Article 4 Direction has been issued by the Secretary of State, it is not considered that there are any legal implications for the Council.

#### **8 Staffing Implications**

- 8.1 It is not considered that there are any staffing implications. Any work relating to the Article 4 Direction will be covered by the existing planning policy team.

#### **9 Customer Services Centre Implications**

- 9.1 The Customer Service Centre will be briefed with regards whom to contact with any queries relating to the Article 4 Direction.

#### **10 Communications and Website Implications**

- 10.1 The planning policy section of the TRDC website will be updated to include the Article 4 Direction now in place and any associated documents.



## **11 Recommendation**

- 11.1 That Members note the contents of this report, that the Secretary of State has issued an amended Article 4 Direction, which comes into force following the serving of the notice on 29 March 2024.

Report prepared by: Aaron Roberts, Senior Planning Officer

## **12 Background Papers**

National Planning Policy Framework (2023)

Planning Practice Guidance

Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011)

Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

## **13 APPENDICES / ATTACHMENTS**

**Appendix 1** – Article 4 Direction (and associated boundaries) approved by the Policy & Resources Committee in August 2022.

**Appendix 2** – Boundary maps altered by the Secretary of State.

**Appendix 3** – Article 4 Direction (and associated boundaries) issued by the Secretary of State.



