

ARTICLE 4 DIRECTIONS - OFFICE BUILDINGS AND PRIMARY FRONTAGES

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Wards affected:	Ewell Village Ward; Stoneleigh Ward; Town Ward;
Urgent Decision?	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1 – Employment office buildings Article 4 directions Appendix 2 – Primary retail frontages Article 4 directions

Summary

In June 2015 the Licencing and Planning Policy Committee agreed to the introduction of an Article 4 Direction to three retail areas in the borough to prevent shops changing use to financial and professional services without the need for planning permission. The Article 4 directions were made (came into effect) in July 2015 and confirmed (made permanent) in October 2015.

In December 2015 the Licencing and Planning Policy Committee agreed to the introduction of an Article 4 Direction to withdraw permitted development rights that enable the conversion of office floorspace to residential (C3) use from 16 office buildings in the borough.

Since the Article 4 directions were confirmed (made permanent) there have been changes to the Town and County Planning (Use Classes Order) and subsequently the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (known as the GPDO). The result of these changes is that the Article 4 directions no longer serve their intended purpose.

National planning policy advises that Article 4 Directions should be cancelled in such circumstances. It is recommended that the Committee approves cancelling of the Article 4 directions relating to employment office buildings and primary retail frontages under the GDPO.

Recommendation (s)

The Committee is asked to:

- (1) Approve the cancellation of the Article 4 directions confirmed in December 2015 relating to changes of use from employment office buildings to residential use (C3) contained in Appendix 1.**
- (2) Approve the cancellation of the Article 4 directions confirmed in October 2015 relating to changes of use in retail frontages contained in Appendix 2.**

1 Reason for Recommendation

- 1.1 The Council is required to monitor the effectiveness of Article 4 directions made in the borough. Following national changes to the Town and Country Planning (Use Classes Order) by the introduction of Use Class E (Commercial, Business and Services) in 2020 which combined several use classes together.
- 1.2 Subsequently amendments were made to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (known as the GPDO) which grants planning permission for specified forms of development, known as permitted development.
- 1.3 The result of these changes is that the Article 4 directions have 'expired' and therefore no longer serve a purpose.
- 1.4 Although an Article 4 Direction can remain in place permanently once it has been confirmed, the government's National Planning Practice Guidance (NPPG) recommends that local planning authorities 'monitor any Article 4 Directions regularly to make certain that the original reasons the Direction was made remain valid'. It further highlights that an Article 4 Direction can be cancelled if it is no longer considered necessary¹.

2 Background

Introduction of Use Class E (Commercial, Business and Services)

- 2.1 Use Class E came into effect from the September 2020 following changes to the Use Classes Order 1987 (as amended) which consolidated the use classes order and combined several uses classes together that used to be separate use classes, for example:
 - Offices (previously use class B1a)
 - Light industrial (previous use class B1c)

¹ National Planning Practice Guidance (2014) para. 019, ref. ID: 13-049-20140306.

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- Shops (previously use class A1)
- Financial services (previously use class A2)
- Cafes and restaurants (previously use Class A3)
- Creche, day nursery or day centre.
- Indoor sport, recreation or fitness
- Medical or health services

2.2 A change of use of land or buildings requires planning permission if it constitutes a material change of use. Many uses in town centres fall within Commercial, Business and Service use class. Movement from one primary use to another within the same use class is not development, and does not require planning permission. However, external alterations to a building will require planning permission.

Permitted Development Rights

2.3 The GPDO grants planning permission for specified forms of development. The forms of development for which permission is granted are set out in Schedule 2 of the GPDO. These are known as permitted development rights (referred to here as PDRs).

2.4 The forms of development that benefit from these PDRs are extensive and wide ranging. They encompass various minor alterations to dwelling houses, minor operations, temporary uses and specified infrastructure development, as well as many other forms of development.

2.5 Permitted development has long been an important part of the planning system and allows minor development which would be unlikely to detrimentally affect the amenity of an area to proceed without the need for planning permission. It also facilitates development of essential infrastructure. Over recent years there has been an expansion of permitted development rights in England as part of a wider move towards deregulation.

2.6 The introduction of a PDR for changes of use from office to residential (Part 3 of Schedule 2, Class O) in 2013 represented a major change in how PDRs are used. This was initially introduced as a temporary measure, for three years, to bring forward more housing supply and to make better use of buildings that are no longer needed or are unsuitable for their original purpose. However, this PDR was made permanent in 2016.

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- 2.7 The introduction of the new Use Class E meant that there was a need for the government to amend and consolidate many of the PDRs. As noted above, use Class E covers many uses. A single PDR (Class MA) for changes of use from Use Class E to C3 residential came into effect on 1 August 2021.
- 2.8 The Class MA PDR is accompanied by a list of forms of development that are not permitted, such as if the building is nationally listed or if the building hadn't been vacant for at least 3 months prior to the application.
- 2.9 It is important to note that a prior approval process is required, which means that an applicant has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed.
- 2.10 The local planning authority may only consider prior approval applications against a set of specific conditions set out in the relevant part of Schedule 2 of the GPDO, meaning that only specific matters can be considered, for Class MA these include:
- Transport and highway impacts
 - Flooding
 - Noise from commercial premises
 - Natural light in all habitable rooms
 - Fire safety impacts on the occupants
- 2.11 It is important to note that prior approval is more of an exercise of assessing technical compliance as opposed to an opportunity for considering the overall planning balance, as would be the case for a planning application.

Article 4 Directions

- 2.12 Under Article 4 of the GPDO, a planning authority or the Secretary of State can remove specified PDRs and require that a planning application be made. This is known as an 'Article 4 direction'. Schedule 3 of the GPDO provides more detailed legislation on the process to be followed in making such directions.

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- 2.13 The introduction of an Article 4 direction does not mean that development cannot take place. Its purpose is to bring consideration of the development within the remit of the local planning authority by way of a planning application. This must be determined in accordance with the development plan and other material considerations.
- 2.14 Under Article 4 of the GPDO, a direction can be made that removes specified permitted development rights (PDRs) and requires anyone proposing that form of development to submit a planning application. This is known as an 'Article 4 direction'.
- 2.15 The process for making such a direction is set out in Schedule 3 of the GPDO. The National Planning Policy Framework (NPPF), as well as Planning Practice Guidance (PPG), sets out expectations for when these directions can be used. Of particular note is the NPPF that requires that any Article 4 direction that restricts changes of use to residential to be limited to situations where the direction is necessary to avoid 'wholly unacceptable adverse impacts'.

Epsom and Ewell Office Article 4 Directions

- 2.16 In December 2015 the Licencing and Planning Policy Committee agreed to the introduction of non- immediate Article 4 Direction to withdraw a permitted development right that enabled the conversion of office floorspace to residential (c3) use at 16 office buildings in the borough which are detailed in Table 1 below:

Table 1 – Epsom Office Buildings covered by Article 4 directions	
Adelphi Court, East Street	Horizon House, Upper High Street
A-Plan House, 30-38 High Street	Newplan House, 41 East Street
Bradford House, 39a East Street	Nightingale House, East Street
Eastleigh House, East Street	Oaks House, West Street
Emerald House, East Street	Parkside House, Ashley Avenue
Epsom Chase, 1 Hook Road	Sollis House, 20 Hook Road
Epsom Gateway, Ashley Avenue	The Kirkgate, Church Street
Global House, Ashley Avenue	The Wells, Church Street

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- 2.17 Following the changes to the Use Classes Order and GDPO, the office to residential Article 4 directions that applied to the 16 sites detailed above expired on the 1 August 2022. As a result, the Article 4 directions no longer serve a purpose as the permitted development right that they removed no longer exists.
- 2.18 It is important to note that following the expiry of the Article 4 direction, prior approvals have been received and granted for several of the office locations to enable the conversion of office accommodation to residential use. These prior approvals count towards the boroughs housing land supply.
- 2.19 In addition, it is important to highlight that planning applications have been approved for the change of use of both Parkside House, Ashley Road and the Wells building on Church Street from office use to academic use for use by the University of Creative Arts. This demonstrates the changing nature of demand for office demand in the borough and how vacant office floorspace can be repurposed for alternate uses that support the local economy.

Epsom and Ewell Primary Retail Frontage Article 4 directions

- 2.20 In June 2015 the Licencing and Planning Policy Committee agreed to the introduction of an Article 4 Direction to the following three retail areas in the borough to prevent shops changing use to financial and professional services without the need for planning permission:
- Epsom Town Centre Primary Frontage
 - Ewell Village Primary Frontage
 - Stoneleigh Broadway Primary Frontage
- 2.21 The Article 4 directions were made (came into effect) in July 2015 and confirmed (made permanent) in October 2015 and removed the permitted development right that was enabled by Class D of Part 3 of the GDPO which enabled development consisting of a change of use of a building from Class A1(shops) to Class A2 (financial and professional services).

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- 2.22 Following the changes to the Use Classes Order in 2020 which put both shops and financial services into the same use class (Class E), as shown in Table 2 below, the permitted development right specified in the Article 4 direction (Class D of Part 3 of the GDPO) were omitted (deleted) from the GDPO in 2021².

Use	Use Class up to 31 August 2020	Use class from 1 September 2020
Shop	A1	E
Financial and professional services (not medical)	A2	E

- 2.23 Therefore, the Primary Retain Frontage Article 4 directions no longer serve a purpose as the permitted development right that they removed no longer exists.

3 Recommendation

- 3.1 It is recommended that the Article 4 directions relating to both office accommodation and primary frontages should be cancelled as they are no longer fulfil their intended purposes following changes to the Use Classes Order and GDPO. It is worth noting that all Article 4 directions appear on local authority searches until they are cancelled and therefore this recommendation will reduce administration time for officers.
- 3.2 In order to cancel the existing Article 4 directions, the General Permitted Development Order requires a 'new' direction to be made to cancel the existing Article 4 direction.
- 3.3 It is not recommended that new Article 4 directions are introduced at the locations detailed above to remove the Class MA PDR that subject to prior approval enables the conversion of Class E floorspace to C3 dwellings.

² Statutory Instrument, 2021, No 814

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- 3.4 This is because we would need to evidence the harm of enabling Class E floorspace to be converted to residential use, which have applied in the borough for a several years now and as noted in this report some of the office locations detailed in the 2015 employment article 4 direction (Table 1) have prior approval to convert to residential use or have planning permission to be converted to non-Class E uses (such as use for higher education use). In addition, we would need to consult landowners in accordance with the GPDO and it is worth noting that the Secretary of State can amend or cancel Article 4 directions following their confirmation by a local planning authority.
- 3.5 It is important to note that Article 4 directions that remove permitted development rights that could enable the creation of additional dwellings, are coming under a high level of scrutiny given the governments aspiration to deliver new homes in England.
- 3.6 Given that the Council is currently unable to demonstrate a four year housing land supply and is failing the housing delivery test, officers consider that there is a high chance that any attempt by the council to remove Class MA PDRs through an Article 4 would receive a high level of objection from property owners and that it is likely the Secretary of State would cancel or modify the direction.

4 Risk Assessment

Legal or other duties

- 4.1 Equality Impact Assessment
- 4.1.1 None arising from this report.
- 4.2 Crime & Disorder
- 4.2.1 None arising from this report.
- 4.3 Safeguarding
- 4.3.1 None arising from this report.
- 4.4 Dependencies
- 4.4.1 None arising from this report.
- 4.5 Other
- 4.5.1 None arising from this report.

5 Financial Implications

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5.1 No financial implications.

5.2 **Section 151 Officer's comments:** None arising from the contents of this report.

6 Legal Implications

6.1 The procedures for making and cancelling an article 4 direction are set out in schedule 3 of the General Permitted Development Order.

6.2 **Legal Officer's comments:** None arising directly from the contents of this Report.

7 Policies, Plans & Partnerships

7.1 **Council's Key Priorities:** Not applicable

7.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.

7.3 **Climate & Environmental Impact of recommendations:** Not applicable

7.4 **Sustainability Policy & Community Safety Implications:** None

7.5 **Partnerships:** There are no partnerships issues arising from this report

8 Background papers

8.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Licencing and Planning Policy Committee (17 September 2015) - Article 4 Directions on Primary Retail Frontages
- Licencing and Planning Policy Committee (10 December 2015) - Epsom Town Centre Office at Risk of Conversion to residential: Proposed Article 4 Direction

Other papers: None