

Brighton & Hove City Council

Tourism, Equalities, Communities, and Culture Committee

Agenda Item 59

Subject: Article 4 Direction - Changes of Use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses)

Date of meeting: 12 January 2023

Report of: Executive Director, Economy Environment & Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 This report seeks authorisation to confirm an Article 4 Direction for specific parts of the city which will have the effect of removing Class MA permitted development rights, which allow changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses) without the need for a planning application. Planning permission would then be required for such changes of use in the normal manner.
- 1.2 The Article 4 Direction is attached to the report in Appendix 1 with a map showing its extent in Appendix 2.

2. Recommendations

- 2.1 That the Committee notes the representations made during the consultation which took place from 31 January to 14 March 2022.
- 2.2 That the Committee authorises the confirmation of the Direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove the Class MA permitted development right for changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses).
- 2.3 That the Committee notes that the Secretary of State is expected to modify the geographical extent of the Direction in due course.

3. Context and background information

- 3.1 At the November 2021 meeting, the Tourism, Equalities, Communities & Culture Committee authorised the making of a non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove the Class MA permitted

development right which relates to changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses).

3.2 A non-immediate Direction was subsequently made on 1 February 2022 to come into force one year hence, subject to confirmation by the Committee following a minimum three-week consultation period. The proposed area (illustrated with a map in Appendix 2) covers the parts of the city where it is considered that use of the permitted development right would be particularly harmful and includes:

- an area broadly corresponding to the council's original office to residential A4D area which was in place from July 2014 until lapsing in July 2022, with a small extension to include the east side of Valley Gardens, including the Circus Street development;
- the primary retail frontages of Brighton regional centre, Hove and London Road town centres and the district centres of St. James's Street, Lewes Road and Boundary Road/Station Road;
- 17 Local Centres (identified in City Plan Part 1, Policy CP4);
- 10 Important Local Parades (identified in City Plan Part 2, Policy DM13).

3.3 Consultation on the proposed Direction occurred from 31 January to 14 March 2022. Thirty-nine responses were received, of which 29 were in favour of implementing the Direction, five were neutral and there were five objections. A summary of the responses is set out in Appendix 3.

3.4 The Secretary of State (SoS) is informed when an Article 4 Direction is made and has the power to intervene to modify or cancel a Direction at any point, i.e. both before or after it comes into force. Following the making of the Direction in February 2022, a response from the SoS was received via officers at the Department for Levelling Up, Housing and Communities (DLUHC). It requested that the Council reconsider the proposed Direction to ensure that the proposed area fully meets the updated criteria for introducing Article 4 Directions as set out in paragraph 53 of the revised National Planning Policy Framework (2021), i.e. that it is necessary to avoid wholly unacceptable adverse impacts and applies to the smallest possible geographical area¹.

3.5 Council officers have been in an ongoing dialogue with DLUHC to address their specific concerns and have now submitted detailed amended proposals which would reduce the extent of the Direction area. This is following extensive assessment and supported by further justification and a fine grain analysis of the revised area to demonstrate that it complies with the NPPF policy. It should be noted that whilst the revised area has been reduced significantly, the majority of premises in a Class E use within the original Direction area will remain covered. The revised area has not yet been formally agreed by the SoS. DLUHC's intention is for the SoS to use their powers to modify the Direction once agreement has been reached with the Council regarding its revised extent (see appendix 4).

¹ The criteria in the updated 2021 National Planning Policy Framework set a significantly higher bar for introducing Article 4 Directions than the previous version of the Framework.

3.6 However, as the date for the Direction to come into force is approaching, it is important that it is confirmed by the council now, otherwise it would lapse and would not be able to come into force in any form. The process would need to restart from scratch.

3.7 Confirmation would bring it into effect on 1 February 2023 in the form originally agreed by TECC in November 2021. It is then expected that the SoS will intervene to the modify the Direction in due course.

4. Analysis and consideration of alternative options

4.1 The alternative option is not to confirm the Article 4 Direction. The council would have little control over the conversions of premises currently in E class to residential, with consequent adverse impacts on the sustainability of retail centres and parades in the city and balance of land uses in the city centre.

5. Community engagement and consultation

5.1 Following the making of the Article 4 Direction, a consultation period took place for six weeks, in excess of the minimum of 21 days required by the Town and Country Planning (General Permitted Development) (England) Order 2015. Strong support was demonstrated for the confirmation of the Direction.

6. Conclusion

6.1 Evidence previously presented to the TECC Committee was considered to justify an Article 4 Direction relating to remove the Class MA permitted development right. Consultation responses indicate strong support for the proposal and it is therefore considered appropriate to confirm the Direction, whilst noting that it is likely to be modified by the Secretary of State in due course.

7. Financial implications

7.1 There are no direct financial implications arising from the recommendations of this report. The cost of officer time, document production and consultation associated with the recommendations in this report are contained within existing service budgets. Any significant variations to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted: 24/11/22

8. Legal implications

8.1 There are no direct legal implications arising from the recommendations in this report, on the basis that the correct administrative procedures have been followed.

Name of lawyer consulted: Katie Kam Date consulted 24//11/2022:

9. Equalities implications

- 9.1 Confirmation of the Article 4 Direction will assist in maintaining offices, shops and services in the city and within local communities, particularly important for residents who find it less easy to move around the city.

10. Sustainability implications

- 10.1 Confirming the Article 4 Direction is important in maintaining the sustainability of the city's primary commercial areas and important local centres by enabling local determination through the planning application process for changes of use using the city's adopted local planning policy framework.
- 10.2 Unfettered use of the permitted development right could result in large scale unmanaged changes from recently vacated retail units in the city's local centres to residential, without allowing time for a more natural evolution and repurposing of sites to other uses within class 'E' shaped and encouraged by planning policy. The result could be pepper-potting of residential sites within areas traditionally associated with business, leisure and retail uses, and a hollowing out of urban centres.
- 10.3 Local centres and important local parades provide an important local retail and services function which can reduce the need for residents to make longer journeys into larger town and district centres. Reducing the need to travel is particularly important for more vulnerable residents and those without access to a car. This could lead to undesirable increases in traffic movements and congestion, and negative effects on air quality and would be inconsistent with national and local carbon reduction targets. Maintaining local provision of important services will contribute towards the zero-carbon agenda and support the '20-minute neighbourhood' initiative that gained support at full council on 22 October 2020.

Supporting Documentation

1. Appendices

1. Article 4 Direction
2. Map showing the extent of the Direction
3. Summary of Consultation Responses
4. Proposed amended Article 4 Direction Map

2. Background documents

1. City Plan Part One
2. City Plan Part Two
3. National Planning Policy Framework