

<b>Item No.</b> 10.	<b>Classification:</b> Open	<b>Date:</b> 11 October 2016	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>		Article 4 directions to withdraw the permitted development rights granted by Schedule 2, Part 3, Class M, Schedule 2, Part 3, Class O, Schedule 2, Part 3, Class P and Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) in any railway arches in Southwark	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Planning	

## RECOMMENDATIONS

That the Planning Committee:

1. Confirms the three immediate Article 4 directions (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class M, Schedule 2, Part 3, Class O and Schedule 2 Part 3, Class P of the Town and Country Planning (General Permitted Development) Order (GPDO) 2015 (as amended) for changes of use from shops (Class A1), financial and professional services (Class A2), betting offices, pay day loan shops or launderettes (Sui Generis use), offices (Class B1a), or storage and distribution (Class B8) to a dwelling-house (Class C3) in any railway arches in Southwark (Appendix B).
2. Confirms the non-immediate Article 4 direction (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 for changes of use from light industrial (Class B1c) to a dwelling-house in any railway arches in Southwark (Appendix B).
3. Confirms that more than 12 months notice has been given and that the direction will come into effect on 1 October 2017, which is consistent with the date in which the GPDO specifies that Class PA comes into effect.
4. Notes the updated equalities analysis of the Article 4 directions (Appendix C).

## BACKGROUND INFORMATION

5. There are over 800 railway arches in Southwark, which are located on key connecting railway routes which extend across the river from Blackfriars Bridge southwards through Elephant and Castle and Camberwell, across Cannon Street Railway Bridge through London Bridge station, and southwards to Bermondsey. Additional arches are located around routes east-west from London Bridge station towards Waterloo and around Herne Hill and Peckham town centres. The extent of railway arches in Southwark is shown on the maps at Appendix B.
6. Most of the railway arches are located on land owned and managed by Network Rail. Many arches have been redeveloped and provide a variety of new uses from light

industrial units, warehousing and storage, office space, retail units, food manufacturing or breweries. The emerging New Southwark Plan proposed policy DM25 seeks to encourage the use of railway arches for business (B Use Classes), retail (A Use Classes) or community facilities (D Use Classes).

7. The General Permitted Development Order 2015 consolidated permitted development rights for England and introduced new provisions. Some of these provisions include changes of use to dwelling-houses without the need for a full planning application. Some railway arches in use as offices, storage or distribution units, retail units or betting shops would therefore be permitted to change to residential units under these provisions. The GDPO was amended in 2016 with some new provisions and amendments to permitted development coming into force on 6 April 2016, including the addition of launderettes within Class M. The provision for light industrial change of use to dwellings will come into force on 1 October 2017.
8. The council is aware of recent interest in converting arches to residential dwellings. There are concerns with regard to creating residential units in railway arches which should be subject to a robust analysis in determining whether such a use would be acceptable. Converting railway arches to dwellings could result in negative impacts on residential amenity through restricted access to outdoor space, restricted access to natural light and fresh air, exposure to excessive noise and vibration from the railway, safety concerns and incompatibility with surrounding uses.
9. On 25 May 2016, planning committee resolved to make three immediate Article 4 directions to remove permitted development rights granted by Schedule 2, Part 3, Class M, Class O and Class P and one non-immediate Article 4 direction relating to Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) in railway arches in Southwark. The regulations require the council to take into account any representations received during the consultation period when confirming an Article 4 direction. These are outlined within the report. The immediate directions must be confirmed within 6 months of the date in which the direction came into force (30 November 2016) to prevent expiration of the direction in accordance with Schedule 3, part 2 (6) of the Town and Country Planning (General Permitted Development) Order 2015.

#### **Article 4 directions**

10. An Article 4 direction can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether, but instead ensure that development requires planning permission. A planning application for the proposal would need to be submitted that would then be determined in accordance with the development plan.
11. Article 4 directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.
12. The government's online National Planning Practice Guidance (NPPG) titled 'When is permission required?' sets out guidance on the use of Article 4 directions. The NPPG states that an Article 4 direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (paragraph 38).

13. Article 4 directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 45). In the case of this report, the council has made three immediate Article 4 directions for which the process is as follows:

- Stage 1: The council makes an Article 4 direction withdrawing permitted development rights with immediate effect
- Stage 2: Publication/consultation stage - the council:
  - 1) publishes the notice of direction in a local newspaper
  - 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the direction relates over a period of 21 days
  - 3) and place notices up on site for 6 weeks.
- Stage 3: On the same day that notice is given under stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a direction
- Stage 4: Confirmation stage (the current stage) - the direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and 6 months to decide whether to go ahead and confirm the direction, taking into account any representations which have been received. If this does not happen within 6 months, the direction will lapse.

14. The process for confirming a non-immediate Article 4 direction is as follows:

- Stage 1: The council decides whether to go ahead and introduce a direction setting a date in the notice for when the direction will come into force which must be at least 28 days and no more than 2 years after representations can first be made, which is usually after the last publication/service date
- Stage 2: Publication/consultation stage. The council:
  - 1) publishes the notice of direction in a local newspaper
  - 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the direction relates over a period of at least 21 days
  - 3) and places notices up on site for 6 weeks
- Stage 3: On the same day that notice is given under stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a direction.

- Stage 4: Confirmation Stage (the current stage) - the council cannot confirm the direction until after a period of at least 28 days from publication/service of the notice. Once a direction has been confirmed, the council must give notice of the confirmation in the same way as it gave notice of the initial direction, and must specify the date that the direction comes into force. A copy of the direction as confirmed must also be sent to the Secretary of State.
15. The council made the Article 4 directions on 31 May 2016. Notification of the Article 4 directions was given to the Secretary of State. The Secretary of State requested further justification in relation to Class O (change of use from offices to residential) which was subsequently provided. Notification was published in Southwark News, site notices were placed in railway arch locations across the borough and owners and occupiers of land within railway arches were notified by letter. Formal public consultation took place between 2 June and 21 July 2016. The Article 4 directions and reports were published on the council's website, and email notification was sent to all those on the planning policy email database. Comments were invited via email, post or via the council's consultation hub.
  16. Any representations received during consultation must be taken into account by the local planning authority in determining whether to confirm a direction.
  17. Immediate Article 4 directions will expire six months after they come into force, unless confirmed (Schedule 3, GPDO 2015). Therefore this report sets out the justification for the continued implementation of the directions and recommends confirmation before the expiry date of 30 November 2016. The confirmation is also recommended to take place for the non-immediate direction which will come into force next year.

## **Compensation**

18. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 directions. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 direction withdraws, if they:
  - Refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction or
  - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 direction being in place.
19. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
20. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
21. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning

(Compensation) (England) Regulations 2015 (as amended). In cases such as these compensation is not payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act 1990 (as amended):

- The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended)
  - The permitted development right is withdrawn in the prescribed manner
  - Notice of withdrawal is given in the prescribed manner:
    - Not less than 12 months before it takes effect
    - Not more than the prescribed period of two years.
22. Permitted development rights granted by Schedule 2, Part 3, Classes M, O, P and PA are prescribed development, which means that compensation will only be payable for 12 months from the date that the immediate direction comes into force. If more than 12 months notice of the withdrawal were given no compensation would be payable (in the case of the Class PA non-immediate direction).

### **Planning applications**

23. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan, the Core Strategy, saved policies in the Southwark Plan and adopted area action plans. The relevant saved policies relating to change of use in the Southwark Plan are policy 1.2 (strategic and local preferred industrial locations) where the railway arch is located within a designated industrial area, policies 1.7 and 1.10 relating to retail uses and policy 1.4 where the railway arch has an established B use class.
24. Notwithstanding any change of use which may occur, the main reasons for the Article 4 directions are in relation to residential amenity for future occupiers and the quality of residential accommodation. The relevant policies that would therefore apply would be saved Southwark Plan policies 3.2 (protection of amenity) policy 3.12 (quality in design), policy 4.2 (quality of residential accommodation). The council's Residential Design Standards SPD (2015) also contains a wealth of guidance relating to the quality of residential accommodation which would be applicable in the determination of planning applications for dwelling-houses in railway arches. Many other policies would also apply relating to energy efficiency in design, conservation of the historic environment and transport impacts.
25. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 direction, the council cannot charge a planning application fee.

### **KEY ISSUES FOR CONSIDERATION**

26. As is noted above, the NPPF advises that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the

NPPG which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.

27. There are five relevant classes within Schedule 2, Part 3 of the GPDO which allow changes of use to dwelling-houses subject to prior approval which could all apply to railway arches. Schedule 2, Part 3, Class N relates to two sui generis uses; casinos and amusement centres which would be permitted to change use to residential. It is not proposed to implement an Article 4 direction relating to Class N as this is unlikely to affect Southwark. New proposals for such development would require planning permission and would not be eligible for permitted development in the future due to the restrictions on Class N. The 2016 amendment to the GPDO introduced a new provision (Class PA) to change the use of light industrial units to dwellings; however this will not come into force until 1 October 2017. It is considered this will also impact on railway arches for the same reasons and therefore a non-immediate Article 4 direction is appropriate.
28. Schedule 2, Part 3, Classes M, O, P and PA of the GPDO requires prior approval from the local authority for a determination of the transport and highways impacts of the development, and contamination and flooding risks in relation to the building. Class O was amended in 2016 which now requires consideration of the impacts of noise from commercial premises on the intended occupiers of the development. The temporary provisions of Class O have been made permanent. Class P is a temporary provision until April 2018 and requires consideration of air quality on the intended occupiers of the development, noise impacts of the development, in addition to whether the introduction of residential uses would have an adverse impact on important industrial areas to deliver services. The latter consideration is also applicable to Class PA. Class M also requires assessment as to whether the change of use of a retail unit or launderette would have an impact on shopping/similar facilities in the area, in addition to prior approval for the design and external appearance of the building.
29. Whilst these criteria go some way in constraining unsuitable development, it is considered that the local authority would need to consistently assess these criteria in detail for the redevelopment of railway arches. Many railway arches in Southwark are located within goods yards or located adjacent to busy roads, and noise mitigation for future occupiers would always be a priority concern for above passing trains. Furthermore there is no opportunity to consider whether railway arches would be suitable for the delivery of good quality accommodation and to protect the amenity and safety of future residents. The prior approval process also offers no opportunity for the local authority to impose conditions on development to protect future occupiers. For these reasons and the detailed considerations outlined below, it is considered that all proposals for changes of use to residential within railway arches should be subject to a planning application where a thorough assessment can be given to the merits of the proposal.

### **Implications for residential amenity**

30. There are clear problems associated with residential amenity for surrounding residents and future occupiers associated with the conversion of railway arches to dwellings, with no opportunity for the council to consider these issues when determining a prior approval application. Railway arches have one principal elevation, with limited ability for the dwelling to receive an appropriate level of daylight and sunlight. Principal

habitable rooms created inside the arch, such as bedrooms, may be windowless and receive no natural light, and the only windows that could be created on the principal elevation are potentially restricted by privacy issues. The lack of natural light in a dwelling could have implications for public health.

31. There will also be limited ability for new dwellings to provide any outside amenity space. Railway arches do not traditionally encompass any curtilage and land outside the railway arches would not lend itself to provide garden or external amenity space. For these reasons it is also unlikely any external car or cycle parking or bin storage would be able to be accommodated adjacent to dwellings in railway arches. Many arches are located within goods or storage yards, distribution centres, adjacent to highway land or on land to the rear of existing development. There are access and safety concerns for future occupiers of dwellings created within the arches. In many cases vehicular access to the arches is difficult, which has a negative impact for access for emergency vehicles. The arches are often located to the rear of existing development which results in an urban environment that faces away from the arches. As a result many routes to the arches are unlit, poorly integrated with existing urban development and may result in concerns of the safety of new residents.
32. Railway arches are also often located to the rear of existing residential properties, and are overlooked by gardens and back windows. There would therefore be further amenity considerations with regard to overlooking, privacy and security for both existing residents and future occupiers of railway arches.
33. The conversion of railway arches for use as residential dwellings would need a bespoke ventilation system to compensate for the lack of windows and fresh air to the property. The prior approval process does not require assessment of the air quality impacts for new residents in relation to Classes M, O and PA (the conversion of retail, offices and light industrial). In order to safeguard future residents from poor ventilation, the council should ensure such bespoke systems are fully assessed and a planning condition requiring their use would be essential. This is not possible to achieve through the prior approval process for permitted development.
34. One of the major concerns for residential amenity arising from permitted development rights in railway arches is the impact of noise from passing trains on occupiers of potential dwellings beneath the lines. In many areas in Southwark, multiple lines pass over the arches, particularly on the north-south routes to London Bridge station. Therefore occupiers would be subject to regular train movements overhead, posing potential significant noise and vibration issues. Trains to and from London Bridge and the surrounding routes also carry trains operating throughout the daytime, late at night and early in the morning.
35. A noise report for development within railway arches indicates that train passes would almost double the highest recommended target internal noise level for passing trains. This level is reported to still be audible but at a level that has not been found to cause disturbance to most people. However this target level is significantly higher than the guideline internal noise level for dwellings (between 30dBA at night and 35 - 40dBA in the daytime). Vibrations were also found to occur in all parts of the archway, most significantly occurring towards the highest part of the arch. Whilst there do exist methods of insulation and construction techniques which could reduce noise and vibration to a safer level, it is considered this would need to be of a significant quality and will be unlikely to reduce noise to guideline internal noise levels for the average dwelling. It is vital that the council assess noise mitigation techniques for proposed

residential conversions in railway arches in order to determine whether it would be safe for future occupiers. It is considered a full planning application would be required to assess and provide conditions for noise mitigation in all cases of conversion.

### **Implications for use**

36. As many railway arches are located in informal industrial areas, distribution centres or yards, it is considered there would frequently be an issue of compatibility with adjoining uses. Parts of the arches to the north of Old Kent Road/Bermondsey are located within a Preferred Industrial Location (PIL) and in operation for industrial uses. The introduction of residential dwellings within working yards or industrial areas would have implications for compatibility in relation to heavy traffic movements, noise from adjoining uses, odours, pollutants and dust which are not suitable neighbouring activities for residential development. There would also be safety concerns for accessing dwellings within railway arches situated within working yards. Whilst Schedule 2, Part 3, Class P and Class PA require assessment as to whether the introduction of residential uses would have an adverse impact on important industrial areas to deliver services, the incompatibility of uses within railway arch locations in Southwark would be a consistent concern justifying the need for individual planning applications for converting railway arches.
37. The conversion of railway arches to dwellings could also pose a domestic fire risk. This would be a significant risk to the rail network above which could result in damage to railway infrastructure, unprecedented train delays and potential risk to railway staff and passengers.

### **Areas affected**

38. The NPPG states that an Article 4 direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. For the reasons outlined above it is considered necessary to remove all permitted development rights relating to conversion to residential in Southwark's railway arches. Within the Central Activity Zone (CAZ), there are already exemptions relating to Schedule 2, Part 3, Class O (conversion of offices to residential) which would also apply to railway arches. However this exemption will not be extended after 2019 and the council will need to implement a further Article 4 direction to continue to restrict the conversion of offices to dwellings. It is therefore not considered that railway arches in the CAZ should be excluded from the proposed Article 4 direction relating to Class O development.

### **Consultation**

39. The council made the Article 4 directions on 31 May 2016. Notification was given to the Secretary of State. Subsequently, notification was published in Southwark News, site notices were placed in railway arch locations across the borough and owners and occupiers of land within railway arches were notified by letter. Formal public consultation took place between 2 June and 21 July 2016. The Article 4 directions and reports were published on the council's website, and email notification was sent to all those on the planning policy email database. Comments were invited via email, post or via the council's consultation hub.



40. The council received 10 responses to the consultation. 7 respondents expressed support for the Article 4 directions restricting residential use of railway arches. The reasons given include:
- Railway arches add character of the local area and have become a focal point for local businesses across the creative, manufacturing, culinary and service industries and contribute a huge amount to the character of the area.
  - TFL support the safety reasons and protection from domestic fire risk and highlight that arches often used as cycle hubs, bike repair shops and cafes which encourage more cycling
  - Railway arches are more appropriate for other uses e.g. garaging/storage
  - It will prevent inappropriate residential property in Southwark
  - It will help prevent longstanding small businesses from being displaced from the arches which play an important role in community life and historic continuity.
41. Two respondents raised objections or concerns with the Article 4 directions:
- Tas Restaurant Ltd objected on the basis that the directions restrict the use of their property which has been granted by central government. This may have an effect on the future value and sale of the property and businesses are struggling to survive with high rents and business rates
  - Undercurrent Architects express concern that the Article 4 directions are a drastic measure that does not plan proactively for alternative uses for railway arches such as live/work units that can overcome amenity concerns with exceptional design quality.
42. Other comments raised issues with existing industrial uses in railway arches creating noise and disturbance to nearby residents, whilst some responses sought further clarification.
43. In response to the objections raised, the council's priority is to maintain the highest level of residential quality and amenity for residents. The reasons the council has concerns with residential amenity are clearly expressed in paragraphs 29 - 36 of this report. The permitted development rights that may permit conversion of railway arches to residential use do not allow the council to ensure that residential amenity could be protected and that the highest design quality could be achieved. The Article 4 direction does not preclude the submission of a planning application whereby the decision would be based on planning merits.
44. It should be noted that impact on property values is not a material planning consideration and therefore this should not be taken into account in planning decision-making.
45. The consultation responses received have been fully considered in making the recommendation to confirm the Article 4 directions.

## **Conclusions**

46. An Article 4 direction can be made if the council is satisfied that it is expedient that development should not be carried out unless planning permission is granted on application and that in the case of immediate directions, development presents an immediate threat to local amenity or prejudices the proper planning of an area. The council is aware of recent interest in converting arches to residential dwellings and immediate Article 4 directions are considered appropriate.
47. The use of an Article 4 direction would not restrict development altogether, but instead ensure that development requires planning permission. It is recognised that converting railway arches is an efficient use of space and is a creative way to accommodate small businesses, shops and community facilities which can add character to an area. However there are concerns relating to the suitability of railway arches for residential use, which should be subject to a full planning application and assessment by the local authority. The specific nature, purpose and location of railway arches differs from conventional office, retail and light industrial units which would not lend itself to conversion to residential dwellings without unique circumstances and innovative design.
48. The council is satisfied that permitted development rights granted by Schedule 2, Part 3, Classes M, O, P and PA would present a significant risk to the provision of good quality residential accommodation in relation to dwellings within railway arches and would be incompatible with surrounding uses and consequently prejudice the proper planning of the borough. This presents an immediate threat to the residential amenity of future occupiers and the compatibility of uses in railway arch locations.
49. Taking into account the representations submitted as part of the consultation, it is recommended that the Article 4 directions are now confirmed.

## **Community impact statement**

50. Southwark Council is striving to deliver quality homes of every kind to meet the needs of a diverse range of households and families within the borough. The council is working hard to deliver new housing with a strong commitment to the delivery of new affordable homes. The demand for housing in Southwark and across London is extremely high, and it is vital that a strong policy framework ensures new housing maintains a high quality of design of residential accommodation and protects the amenity of residents. The Article 4 directions seek to protect the conversion of potentially unsuitable railway arches for residential occupation and is part of a longer term strategy to provide good quality residential accommodation in the borough.
51. The equalities analysis (Appendix C) has concluded that the Article 4 directions will have a positive impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

## **Financial implications**

52. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by Schedule 2, Part 3, Classes M, O and P, the council's potential liability for compensation is limited to one year from the date the direction is introduced. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning

permission or to abortive expenditure. Therefore there is a risk that the proposed directions will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the planning division's budget. Should this not be possible, support from council reserves would be sought.

53. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

54. Planning committee is being asked to confirm the directions as detailed in paragraph 1 and 2 of this report and which can be found at annexed at Appendix A.
55. Part 3F of the constitution under the section titled 'Matters reserved for decision by the planning committee' at paragraph 10 reserves to planning committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This therefore confirms that planning committee has authority to take these decisions.
56. Section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order.
57. Section 108 has been recently amended to deal with those circumstances where permission granted under a development order has been withdrawn for development of a 'prescribed description' which is defined in section 2 of the Town and Country Planning (Compensation) (England) Regulations 2015. The effect of these new provisions is to limit the circumstances where compensation is payable for 'prescribed description' development. In cases where notice of the withdrawal of the permitted development rights was published at least 12 months before the direction took effect NO compensation will be payable, even if the claim was made within 12 months of the direction coming into effect. Therefore, NO compensation would be payable relating to non-immediate direction but compensation may be payable in regard to the three immediate directions where the claim is brought within 12 months of the date that the immediate directions came into force as explain in the above paragraphs 17 to 21.

### **Human rights and equalities**

58. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various convention rights may be engaged in the process of making, considering and confirming Article 4 directions such as Article 1 of the First Protocol of the Convention. The European Court has recognised that 'regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole'. Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a convention right must be necessary and proportionate.

59. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of all of the owners have been considered under the Human Rights Act 1998, in particular those contained within Article 1 of the First Protocol the Convention which relates to the protection of property.
60. In consulting upon the confirmation of the immediate and non-immediate Article 4 directions the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. The equalities analysis can be found at Appendix C to this report.
61. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

### **Strategic Director of Finance and Governance**

62. This report is requesting planning committee to confirm Article 4 directions to withdraw the permitted development rights granted by Schedule 2, Part 3, Class M, Schedule 2, Part 3, Class O, Schedule 2, Part 3, Class P and Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as detailed in the report. The report is also requesting planning committee to note the updated equalities analysis of the Article 4 directions (Appendix C).
63. The strategic director of finance and governance notes that there is a risk that the proposed directions may lead to potential compensation claims but it is not possible to gauge the magnitude of such claims. Any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
64. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from councils reserves are requested.
65. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Saved Southwark Plan 2007	<a href="http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan">http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan</a>	planningpolicy@southwark.gov.uk
The Core Strategy 2011	<a href="http://www.southwark.gov.uk/info/200210/core_strategy">http://www.southwark.gov.uk/info/200210/core_strategy</a>	planningpolicy@southwark.gov.uk
Residential Standards SPD 2015	<a href="http://www.southwark.gov.uk/downloads/download/2257/residential_design_standards_spd">http://www.southwark.gov.uk/downloads/download/2257/residential_design_standards_spd</a>	planningpolicy@southwark.gov.uk
General Permitted Development Order 2015	<a href="http://www.legislation.gov.uk/ukxi/2015/596/pdfs/ukxi_20150596_en.pdf">http://www.legislation.gov.uk/ukxi/2015/596/pdfs/ukxi_20150596_en.pdf</a>	planningpolicy@southwark.gov.uk

## APPENDICES

No.	Title
Appendix A	Article 4 directions to withdraw the Permitted Development Rights granted by Schedule 2, Part 3, Class M, Class O, Class P and Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
Appendix B	Maps of railway arches subject to Article 4 directions
Appendix C	Equalities analysis

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Laura Hills, Senior Planning Policy Officer	
<b>Version</b>	Final	
<b>Dated</b>	29 September 2016	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional Team</b>	29 September 2016	