

<b>Item No.</b> 9.	<b>Classification:</b> Open	<b>Date:</b> 19 September 2017	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>		Article 4 Direction to withdraw the permitted development rights for a change of use from light industrial to residential	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Planning	

## RECOMMENDATIONS

That the Planning Committee:

1. Approve the making of an immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 (c) (Light Industrial) to C3 (Dwelling houses). This Article 4 Direction will cover any property located within South East Bermondsey and Old Kent Road Strategic Preferred Industrial Locations and Parkhouse Street and Mandela Way Local Preferred Industrial Locations. The Article 4 will apply to selected site allocations in the Peckham and Nunhead Area Action Plan (2015) and selected emerging site allocations in the New Southwark Plan Preferred Option Version 2017 and Old Kent road Preferred Option Version (2016). All areas to which the Article 4 direction will apply are shown on the table of sites in Appendix B and the maps in Appendix C of this report.
2. Approve the notice contained in Appendix A of this report.
3. Delegate authority to the Director of Planning to carry out all publicity / consultation arrangements set out in paragraph 60 of this report.
4. Notes the equalities analysis of the proposed Article 4 Directions (Appendix D).

## BACKGROUND INFORMATION

5. By Article 8 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016, the government introduced a permitted development right into the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2015 under Class PA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO") to allow a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwelling houses) of that Schedule, to last for three years (from 1 October 2017 until 30 September 2020), for which prior approval is granted before 1 October 2020.
6. According to the GPDO, development is not permitted under Class PA if:

- (a) an application for prior approval is received by the local planning authority on or before 30 September 2017;
  - (b) the building was not used solely for a light industrial use on 19 March 2014 or, in the case of a building which was in use before that date but was not in use on that date when it was last in use;
  - (c) the prior approval date falls on or after 1 October 2020;
  - (d) the gross floor space of the existing building exceeds 500 square meters;
  - (e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;
  - (f) less than one year before the date the development begins:
    - (i) an agricultural tenancy over the site has been terminated, and
    - (ii) the termination was for the purpose of carrying out development under this class, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;
  - (g) the site is, or forms part of – (i) a site of special scientific interest; (ii) a safety hazard area; (iii) a military explosives storage area;
  - (h) the building is a listed building or is within the curtilage of a listed building; or
  - (i) the site is, or contains, a scheduled monument.
7. The conditions in relation to the permitted development right are as follows. Before beginning the development, the developer must –
- (a) Submit a statement, which must accompany the application referred to in paragraph (b), to the local planning authority setting out the evidence the developer relies upon to demonstrate that the building was used solely for a light industrial use on 19 March 2014;
  - (b) apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to –
    - (i) transport and highways impacts of development
    - (ii) contamination risks in relation the building
    - (iii) flooding risks in relation to the building
    - (iv) where the authority considered the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of a building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services,

and the provisions of prior approval of (Paragraph W of Part 3 of the GDPO) apply in relation to that application.

8. Furthermore development under Class PA is permitted subject to the condition that it must be completed within a period of three years starting with the prior approval date.
9. It is considered that this new permitted development right would have adverse impacts on the proper planning of the borough, with the council being unable to manage the process of change in use class from B1 (c) to C3 and being unable to oversee the quality of new homes as a result. Application of this permitted development right could result in an unmanaged loss of employment space, and consequently jobs, due to the loss of existing and potential floorspace from light industrial sites. The council would have less opportunity to manage land release and support new employment uses in line with adopted and emerging policies with the prospect of negatively impacting the economy.
10. A number of local planning authorities across London have recently implemented similar Article 4 Directions with regard to the withdrawal of permitted development rights for a change of use from B1 (c), light industrial to C3 residential and for similar reasons. Local planning authorities seek to ensure they maintain the ability to manage the release of land and the loss of valuable employment sites to support both local economies and the wider London economy. Southwark Council are aware of the following authorities making similar directions; Camden, Hackney, Islington, Royal Borough of Kensington and Chelsea, Hounslow and Waltham Forest.
11. There is an immediate risk that the conversion of light industrial uses to residential will occur in industrial areas when the permitted development rights come into force. The council has received applications relating to Class O permitted development rights for the conversion of offices located in industrial areas to residential accommodation. These are not in typical office locations but rather lawful B1a (office) uses situated within industrial areas with high concentration of B1c industrial uses.
12. There are two examples within Preferred Industrial Locations at St James' Road (Old Kent Road area) and Parkhouse Street (Camberwell) for which the council received prior approval applications for conversions to residential use. These applications undermine the ability to achieve re-provision of employment floorspace within comprehensive redevelopment schemes for which the council received prior approval applications for conversions to residential use and undermine the ability to achieve re-provision of employment floorspace within comprehensive redevelopment schemes for which the council is encouraging a range of mixed employment uses (including industrial).
13. They also restrict the ability for the council to ensure a high standard of residential accommodation is achieved, including protecting amenity on existing industrial sites and without any provision of affordable homes. This is similar to the risk of converting railway arches in light industrial uses to residential accommodation for which the restriction of permitted development by way of an Article 4 Direction already applies in Southwark.
14. The Article 4 Direction would not impede the council's ability to deliver borough housing targets. Each of the sites included in this Article 4 Direction have been considered by both existing and emerging development plan documents. The sites identified are predominantly proposed site allocations in the Old Kent Road AAP and

the New Southwark Plan. In these areas the council expects to see comprehensive mixed use development, including achieving a significant uplift in housing to address the borough's housing needs, as well as achieving high quality employment space including an uplift in the number of jobs.

15. The higher land values that can be achieved for residential uses over commercial uses, particularly where the residential use has no affordable element, could also affect the viability of any subsequent residential development and therefore the opportunity to meet Southwark's affordable housing targets.
16. There is a strong need for new affordable housing in Southwark. All major development providing 10 or more homes is required to provide a proportion of homes as affordable homes, subject to viability. Application of the permitted development right would undermine the council's ability to maximize affordable housing contributions. Firstly, any change of use to residential made under the permitted development right would not be required to provide any affordable housing. Secondly, any change of use to residential will ratchet up the land value of the site. This would reduce the viability of any subsequent comprehensive redevelopment and would result in affordable housing obligations being reduced or unviable which would therefore affect Southwark's ability to meet affordable housing targets.
17. The making of this Article 4 Direction is considered to be in compliance with paragraph 200 of the NPPF which states that Article 4 Directions should be used in "situations where this is necessary to protect local amenity or the well-being of the area". The Article 4 Direction is also considered to be in compliance with NPPF and London Plan policies supporting the provision of viable employment land, as well as the Core Strategy (2011), saved policies in the Southwark Plan (2007) and the emerging New Southwark Plan. Relevant policies are considered by the 'Local evidence of employment land use and demand' section of this report.
18. The permitted development right will be in place for a temporary three year period until 30 September 2020. However, as with the office to residential permitted development right, there may be scope to extend the time period further or to make it permanent. It is considered necessary to make the Article 4 Direction now to ensure the council will be able to continue managing development proposals through the planning application process during this period.
19. It is considered that the withdrawal of permitted development rights for change of use from light industrial to residential will reduce risks to the amenity of the Borough, including the provision of employment land, employment opportunities and by reducing the council's ability to effectively manage comprehensive mixed-use redevelopment. This position is supported by the policy context, outlined in the Key Issues for Consideration section of this report.
20. The areas that will be subject to the Article 4 Direction include all land within South East Bermondsey and Old Kent Road Strategic Preferred Industrial Locations and Parkhouse Street and Mandela Way Local Preferred Industrial Locations. The Article 4 Direction will also apply to selected site allocations in the Peckham and Nunhead Area Action Plan (2015) and selected emerging site allocations in the New Southwark Plan Preferred Option Version 2017 and Old Kent Road Preferred Option Version (2016). In addition Vanguard Court has been included. This site was consulted on in the NSP Options Version (which preceded the Preferred Option).

21. The council's evidence base demonstrates that B1 (c) light industrial activity is undertaken at the aforementioned locations. It is the council's intention to ensure comprehensive mixed-use redevelopment of these sites continues to be managed in accordance with emerging policies in the New Southwark Plan and Old Kent Road as well as existing guidance. All areas to which the Article 4 Direction will apply are illustrated on the map in Appendix C of this report. These sites are also listed in the table of sites shown in Appendix B.
22. Emerging policies in the New Southwark Plan: Preferred Options Version set out a strategy for regeneration from 2018 to 2033. Alongside continued major growth in housing development, there is a focus on ensuring a strong economy. There is a commitment to review these designations, with site specific policies (site allocations) to be set out in the Old Kent Road AAP and the New Southwark Plan. These will aim to intensify development, increase job numbers and promote growth of business uses within new mixed use neighbourhoods.
23. The Article 4 Direction will enable the council to ensure the carefully planned release of any industrial land and, in many cases, re-provision of industrial uses. The council also wishes to ensure that any loss through comprehensive development of industrial areas is not undermined, particularly in order to ensure high quality residential development can be achieved as well as the provision of affordable housing.
24. Existing policies recognise the importance of supporting local employment opportunity and protecting employment land including B1(c) floorspace across the borough. It is a strategic objective to ensure a wide range of employment opportunities are supported to aid regeneration. The Southwark Employment Land Review (ELR) (2016) identifies Southwark as one of London's largest and fastest growing employment locations. The ELR notes that just under half (46.5%) of all jobs in Southwark are in B-Space activities, industrial employment represents 5% of this total or 10,622 jobs.
25. The ELR highlights that commercial property in Southwark as elsewhere in London is experiencing severe competitive pressure, particularly from the residential market. It is noted that the extension of permitted development rights has caused a particularly sharp uptick in conversion activity.
26. There are 9,500 jobs within the Old Kent Road Opportunity Area currently and the Old Kent Road Area Action Plan seeks to increase the number of jobs within the opportunity area by at least 5,000. Ensuring industrial uses are re-provided within mixed use development is an important component of the AAP to ensure this uplift in jobs and new employment space can be provided
27. In 2015 the Department for Communities and Local Government (DCLG) published Land value Estimates for Policy Appraisal. In Southwark, post permission residential land value was estimated as being £49,000,000 per hectare. This compares favourably against average industrial land value estimates for the London region at £2,733,000 per hectare. This has a negative impact on the viability of mixed use employment and residential schemes. The higher differential values could lead to increasing development pressure for conversion to higher value residential use.
28. Viability and other matters can be fully addressed through the planning application process. The withdrawal of permitted development rights from light industrial uses would not necessarily mean planning consent would not be granted for any change of use, but will enable the council to subject the any proposed development , including

potential impacts on the amenity of the surrounding area, to the planning application process.

29. Given the above, Southwark Council is satisfied that it is expedient. This is in accordance with paragraph (1) of article 4 of the GDPO that development normally benefitting from permitted development rights should not be carried out unless permission is granted on application in accordance with the London Plan, the Core Strategy (2011), saved policies in the Southwark Plan (2007), the Core Strategy (2011), and adopted area action plans.

#### **Article 4 Directions**

30. 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 would need to be submitted that would then be determined in accordance with the development plan. Article 4 Directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.
31. The government's national planning practice guidance (NPPG entitled "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 038).
32. 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 045). In the case of this report, the council is proposing to make an immediate Article 4 Direction for which the process is as follows:
  - Stage 1 (the current stage) - The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect.
  - Stage 2 – Publication/Consultation stage. The council:
    - publishes the notice of the Direction in a local newspaper;
    - 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;
    - and place notices up on site for not less than six 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 powers to modify or cancel a Direction.
  - Stage 4 – Confirmation 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 six months to decide whether to go ahead and confirm the Direction, taking into account any

representations which have been received. If confirmation this does not happen within six months, the Direction will lapse.

## **Compensation**

33. 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.
34. 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.
35. 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.
36. 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:
- 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.
37. Permitted development rights granted by Schedule 2, Part 3, Class PA is prescribed development, which means that compensation will only be payable for 12 months from the date that the immediate Direction comes into force.

## **Planning applications**

38. 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. The development

plan includes the London Plan, the Core Strategy (2011), saved policies in the Southwark Plan (2007) and adopted area action plans.

39. Relevant Southwark Plan saved policies relating to change of use from B1(c), light industrial to C3, residential include policy 1.2 (strategic and local preferred industrial locations) and policy 1.4 (employment sites outside the preferred office locations and preferred industrial locations). Relevant Core Strategy policies include Strategic Objective 1A (create employment and link local people to jobs), Strategic Targets Policy 1 (achieving growth), Strategic Policy 1 (sustainable development), Strategic Policy 10 (jobs and businesses). Policies contained within the London Plan and the NPPF are also relevant as discussed further in the policy context section of the report below.
40. 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**

### **Why B1 (c), 'Light Industrial' Land Use Matters**

41. 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.

### **Local evidence of employment land use and demand**

#### Southwark Employment Land Study – Part 1 (2016)

42. The Southwark Employment Land Review (ELR) (2016) identifies Southwark as one of London's largest and fastest growing employment locations. Employment in Southwark has grown rapidly since 2000, increasing 41% or 74,000 jobs, from 2000 to 2013.
43. The study outlines that across the borough as a whole employment is under strong pressure for conversion to residential. There is a substantial value differential between commercial and residential property. The ELR states that with forecasts of continued high population growth and a housing-friendly planning regime, pressure for residential development will continue for the foreseeable future. In the absence of protection for employment uses many businesses on developable land may then be faced with the choice of seeking locations outside of Southwark or having to settle for poorer quality space.
44. The ELR identifies that just under half (46.5%) of all jobs in Southwark are in B-class activities. Of this total 5% are in industrial employment. Industrial jobs are more strongly represented in the Central Activities Zone (CAZ) representing 63% of the total. Table 1 below illustrates industrial B-space jobs in Southwark by Land-use type.



**Table 1: B-Space Jobs in Southwark by Land-Use Type**

	<b>CAZ</b>	<b>Hinterland</b>	<b>South</b>	<b>Southwark</b>
Manufacturing	966	614	378	1,951
Other Industrial	2,588	582	330	3,486
Wholesale	3,143	1,598	454	5,185
<b>Total Industrial Jobs</b>	<b>6,697</b>	<b>2,794</b>	<b>1,162</b>	<b>10,622</b>
Manufacturing	49.50%	31.50%	19.40%	100%
Other Industrial	74.20%	16.7%	9.50%	100%
Wholesale	60.60%	30.80%	8.80%	100%
<b>Total Industrial Jobs</b>	<b>63.00%</b>	<b>26.30%</b>	<b>10.90%</b>	<b>100%</b>

*Source: Southwark Employment Land Study – Part 1 (2016) (p27)*

Commercial to Residential Conversion Activity:

45. The ELR highlights that commercial property in Southwark as elsewhere in London is experiencing severe competitive pressure, particularly from the residential market. It is noted that the extension of permitted development rights has caused a particularly sharp uptick in conversion activity.

Southwark Employment Land Study – Part 2 (2016)

46. The Southwark Employment Land Study – Part 2 sets out an assessment of the future development potential of the Old Kent Road Opportunity Area for employment uses. The Old Kent Road is currently recognised as a Strategic Preferred Industrial Local (PIL) in the saved policies of the Southwark Plan (2007). Such locations are safeguarded to ensure that a range of industrial and storage functions continue in the borough. However, the policy context is changing.
47. The study outlines that in the 2015 London Plan the Old Kent Road was designated as an Opportunity Area. These are the capital's principal reservoir of brownfield land. Opportunity Areas should seek to optimise residential and non-residential development and densities, provide necessary social and other infrastructure to sustain growth and, where appropriate, a mix of uses.
48. The study identifies that the Old Kent Road is probably a unique location in London given its mix of industrial characteristics and proximity to central London. At the time of publication the Old Kent Road supported around 9,500 jobs in a mix of warehouses, industrial estates, high street businesses, retail parks and community use. Around 75% of businesses are independent businesses occupying single sites and these businesses account for 40% of the jobs in the OKR area.

The Southwark Industrial and Warehousing Land Study (2014)

49. The Southwark Industrial and Warehousing Land Study (2014) suggests that there has been strong demand for good quality, flexible industrial space in the borough (e.g. Class B1b, B1c and B8). This is linked to the growth of the CAZ service economy, including activities such as printing and food supplies, both in the CAZ Fringe and CAZ Hinterland. Southwark's central location and proximity to the CAZ are key features of

this economy, combined with its good value in property terms. This study emphasises the importance of employment land supply around Old Kent Road, and the important role of railway arch sites in the north of the borough.

50. While traditional manufacturing and industrial activities have been declining rather than growing, some parts of Southwark (including parts of Old Kent Road and the railway arches) provide hard-to-find space for 'dirty' activities close to central London. Some of these activities, such as those which generate sawdust, may relate to relatively light rather than heavy industry. This study suggests that, if these areas are to be redeveloped to encourage more dense employment uses and / or a mix of uses, thought needs to be given to where these activities can be located.

## **Policy Context**

51. The Article 4 Direction is considered to be compliant with national, regional and local planning policy for the provision and protection of viable employment land that is considered to have a reasonable prospect of being used for that purpose. The following policies in particular support the proposal for making this Article 4 Direction.
52. Paragraph 22 of the NPPF warns against the long term protection of employment sites where there is no reasonable prospect of a site being used for that purpose. Alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities. As outlined below the council's employment policies are supported by robust evidence.
53. The importance of protecting employment land as being crucial to the growth of the London economy as outlined in the London Plan, namely:
  - Policies 2.10 and 2.11: Central Activities Zone: confirm the importance of this area to the growth of London's economy;
  - Policy 2.13: Opportunity Areas and Intensification Areas: this policy references Annex 1 of the London Plan which sets indicative housing and employment targets for these locations within London.
  - Policy 4.1: Developing London's Economy: strives to ensure the availability of sufficient and suitable workspaces in terms of type size and cost, supporting infrastructure and suitable environments of a range of business types and sizes;
  - Policy 4.4: Managing Industrial Land and Premises: promotes a rigorous, evidence based approach to reconcile demand and supply of industrial land and to take account of the needs of industrial and related uses.
54. Additional to this context the London Industrial Land Study (2017) recommended consideration of Article 4 Directions to preserve light industrial space from being changed to residential use.
55. In support of the NPPF and the London Plan, saved policies in the Southwark Plan (2007), Southwark's Core Strategy (2011) and the emerging New Southwark Plan include the following policies addressing employment land. In addition evidence is supplied via the Southwark Industrial and Warehousing Land Supply Report (2014) and the Southwark Employment Land Review Parts 1 and 2 (2016).

### Saved policies in the Southwark Plan (2007)

- Policy 1.2: Strategic and Local Preferred Industrial Locations: Seeks to protect strategic and local preferred industrial locations by only granting planning permission for B Use Classes.
  - Policy 1.4: Employment Sites Outside the Preferred Office Locations and Preferred Industrial Locations: Protects sites located outside Preferred Industrial Locations which have an established B Class Use and which meet identified criteria. It is also stated that development would be permitted provided that the proposal would not result in a net loss of floorspace in Class B use.
56. To update information quoted under Policy 1.4: In 2015 the Department for Communities and Local Government (DCLG) published Land Value Estimates for Policy Appraisal. In Southwark, post permission residential land value was estimated as being £49,000,000 per hectare. This compares favourably against average industrial land value estimates for the London region at £2,733,000 per hectare. It is also considered important to protect land for industrial and warehousing purposes so that businesses which require segregation from other uses can operate without adversely affecting the amenity of surrounding sensitive land uses, such as residential uses. Furthermore, sites located outside Preferred Industrial Locations which have an established B Class Use and which meet identified criteria are protected although development would be permitted provided the proposal would not result in a net loss of floorspace in Class B use. A number of exceptions are also identified.
57. The council can use these policies to support refusal of planning applications for change of use from B1(c) light industrial use to C3 residential use both within and outside Preferred Industrial Locations. This flexible approach has been effective in protecting Preferred Industrial Locations while also allowing mixed use development to come forward on sites located outside these areas when suitable.

### Core Strategy (2011)

- Strategic Objective 1A: Create Employment and Link Local People to Jobs: Seeks to ensure Southwark is a prosperous borough providing a wide range of employment opportunities that facilitate regeneration. It is outlined that the Central Activities Zone will contain a mix of tourism, cultural and creative industries, finance and office jobs. Local centres will provide retail, services and local employment whilst of greatest relevance to this report preferred industrial locations provide places for small businesses and industry. It is noted that Southwark will be without concentrations of poverty and with good opportunities because there is good access to jobs and residents will have the training and skills needed by businesses.
- Strategic Targets Policy 1: Achieving Growth: Seeks to ensure development improves the places in which people live and work and enable a better quality of life for Southwark's diverse population. The council sets out that it will work with partners, local communities and developers to ensure developments achieve the required growth and improvements to achieve targets.

Targets of relevance to this report include:

- 32,000 net new jobs; and
- 425,000 - 530,000 sqm additional business floorspace between 2011 and 2026.
- Strategic Policy 1: Sustainable Development: Seeks to ensure development improves the places people live and work in and enable a better quality of life for Southwark’s diverse population. This policy states that it will help meet the needs of a growing population in a way that respects the limits of the planet’s resources and protects the environment.
  - The supporting text outlines that new development should contribute to sustainable development rather than building for building’s sake. A wide range of factors are considered to this end including helping people into jobs.
  - Strategic Policy 10: Jobs and Businesses: Seeks to increase the number of jobs in Southwark and create an environment in which businesses can thrive. The council also wish to ensure that local people and businesses benefit from opportunities which are generated from development. The council will do this by:
    - Protecting industrial and warehousing floorspace and enabling growth in new sectors such as green manufacturing and technology in the following strategic and local preferred industrial locations:
      - South East Bermondsey;
      - Old Kent Road;
      - Parkhouse Street; and
      - Mandela Way.
    - Protecting small units in the locations listed above and encouraging provision of flexible space.
    - Targeting new jobs and training opportunities which arise from development towards local people.

#### New Southwark Plan: Preferred Option

58. The New Southwark Plan will replace Saved policies in the Southwark Plan (2007) and the Core Strategy (2011). The Preferred Option Version of the New Southwark Plan, containing development management policies and area visions, was published in October 2015. The Preferred Option Version of the New Southwark Plan containing Area Visions and Site Allocations was published in January 2016, after consultation amendments to both documents were published in June 2017. Although not yet adopted, under the NPPF, decision-takers may also give weight to relevant policies in emerging plans such as this.
59. The plan sets out a strategy for regeneration from 2018 to 2033. Alongside continued major growth in housing development, including new affordable housing, there is a focus on ensuring a strong local economy.

- Strategic Policy 4: Strong and Healthy Economy: Seeks to make sure that Southwark has a strong economy, beneficial to all residents.
- Specific policies are proposed for the promotion of small business units and the Plan includes a commitment to ensure delivery of 500 new affordable business units within the borough. The Plan also proposes site allocations which require the re-provision of employment space on a number of sites which currently provide light employment space.

### Policy Summary

60. Southwark's adopted and emerging policies recognise the importance of supporting local employment opportunities and protecting employment land including B1 (c) floorspace across the borough. It is a strategic objective to ensure a wide range of employment opportunities are supported to aid regeneration. It is also recognised that preferred industrial locations provide places for small businesses and industry. The policy outlines that 32,000 net new jobs and 425,000 to 530,000 sqm of additional business floorspace, including B1 (c) floorspace, should be provided between 2011 and 2026. Helping people into jobs is seen as a priority with new opportunities arising in green manufacturing, biosciences and the knowledge economy. Policies seek to protect industrial and warehousing floorspace and support growth in new sectors such as green manufacturing and technology.
61. Furthermore, the council is committed to maximize the delivery new high quality homes including affordable. The permitted development right would limit the council's ability to ensure new homes built under the right are high quality. The permitted development right also enables the delivery of new housing that need not contribute towards the borough's much needed affordable housing supply. Furthermore, any changes of use made under the provisions of the permitted development right could ratchet up land values thereby reducing the viability of any subsequent comprehensive redevelopment to comply with the council's affordable housing requirements for reasons of viability.

### **Conclusions**

62. An Article 4 Direction can be made if the council is satisfied 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.
63. By Article 8 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016, the government introduced a permitted development right into the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2015 under Class PA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO") to allow a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwelling houses) of that Schedule, to last for three years (from 1 October 2017 until 30 September 2020), for which prior approval is granted before 1 October 2020.
64. Emerging policies in the New Southwark Plan: Preferred options version set out a strategy for regeneration from 2018 to 2033. Alongside continued major growth in housing development, there is a focus on ensuring a strong economy. There is a

commitment to review these designations, with site specific policies (site allocations) to be set out in the Old Kent Road AAP and the New Southwark Plan. These will aim to intensify development, increase job numbers and promote growth of business uses within new mixed use neighbourhoods.

65. The areas that will be subject to the Article 4 Direction include all land within South East Bermondsey and Old Kent Road Strategic Preferred Industrial Locations and Parkhouse Street and Mandela Way Local Preferred Industrial Locations. The Article 4 Direction will also apply to selected site allocations in the Peckham and Nunhead Area Action Plan (2015) and selected emerging site allocations in the New Southwark Plan Preferred Option Version 2017 and Old Kent road Preferred Option Version (2016). In addition Vanguard Court has been included. This site was consulted on in the NSP Options Version (which preceded the Preferred Option).
66. The council's evidence base demonstrates that B1 (c) light industrial activity is undertaken at the aforementioned locations. It is the council's intention to ensure comprehensive mixed-use redevelopment of these sites continues to be managed in accordance with emerging policies in the New Southwark Plan and Old Kent Road as well as existing guidance. All areas to which the Article 4 direction will apply are illustrated on the map in Appendix C of this report and shown in Appendix B the table of sites.
67. Existing policies recognise the importance of supporting local employment opportunities and protecting employment land including B1(c) floorspace across the borough. It is a strategic objective to ensure a wide range of employment opportunities are supported to aid regeneration. The Southwark Employment Land Review (2016) identifies Southwark as one of London's largest and fastest growing employment locations. The ELR notes that just under half (46.5%) of all jobs in Southwark are in B-class activities, industrial employment represents 5% of this total, which is 10,622 jobs.
68. The ELR highlights that commercial property in Southwark as elsewhere in London is experiencing severe competitive pressure, particularly from the residential market. The ELR notes that the extension of permitted development rights has caused a particularly sharp uptick in conversion activity.
69. Viability and other matters can be fully addressed through the planning application process. The withdrawal of permitted development rights from light industrial uses would not necessarily mean planning consent would not be granted for any change of use, but will enable the council to subject any proposed development, including potential impacts on the amenity of the surrounding area, to the planning application process.
70. The council is satisfied that permitted development rights granted by Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 (c) (Light Industrial) to C3 (Dwelling houses) prejudice the proper planning of the Borough, particularly those sites illustrated in Appendix C.

## **Consultation**

71. Consultation on the Article 4 Directions will comply with provisions set out in the GPDO. Notice of the Directions will be made by:

- Local advertisement in the press
- Site notices placed in visible locations at the sites affected, including at the entrance and at each junction for a period of at least 6 weeks
- Written notification sent to every owner/occupier of properties within the affected areas specifying a period of at least 21 days in which representations can be made
- Email to all those on the planning policy mailing list.

72. Following consultation and within 6 months, a report recommending whether the Direction should be confirmed will be reported back to planning committee.

### **Community impact statement**

73. Southwark council is committed to achieving the best quality of life for its residents. This includes maintaining a strong local economy and supporting housing growth for communities across Southwark. It is vital that the aims of Southwark's emerging policy framework are robustly defended, including: intensifying development, increasing job numbers and promoting growth of business uses within mixed use neighbourhoods to ensure the council's commitments to local communities are met.

74. 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**

75. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by the GPDO the council has a potential liability for compensation. In the case of Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 (c) (Light Industrial) to C3 (Dwelling Houses) this 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.

76. 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. This position will be monitored and any award that cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council reserves.

77. 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.

78. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

79. Planning committee is being asked to approve the making of the Article 4 Direction as detailed in paragraph 1 of this report; and to approve the draft Article 4 Direction as found annexed at Appendix A.
80. 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.
81. In regard to compensation matters, 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.
82. Section 107 of the 1990 Act which sets out the entitlement to compensation where planning permission has been revoked and modified is of relevance here as section 108 of the 1990 Act extends the entitlement for compensation under s107 to circumstances where planning permission granted by a development order has been withdrawn by an Article 4 Direction.
83. In regard to the immediate Article 4 Directions withdrawing rights granted under Schedule 2, Part 3, Class PA is a 'prescribed description' development and because it is an immediate direction (the council is not giving more than 12 months notice of the making of the direction) then the council will need to pay compensation for claims made within 12 months of the date of the direction.
84. The value of the claim for compensation would differ in each individual case but in the event that claims are between £5,000 and £50,000 then they would be sanctioned by the relevant cabinet member under Part 3D paragraph 5 of the constitution. Any compensation claims over that amount would require the approval of full Cabinet.

### **Human rights and equalities**

85. 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
86. 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.



87. In consulting upon the confirmation of the 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 updated Equalities Analysis can be found at Appendix C to this report.
88. 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**

89. This report is requesting the planning committee to approve the making of an immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 (c) (Light Industrial) to C3 (Dwelling houses). This Article 4 Direction will cover any property located within South East Bermondsey and Old Kent Road Strategic Preferred Industrial Locations and Parkhouse Street and Mandela Way Local Preferred Industrial Locations. The Article 4 will apply to selected site allocations in the Peckham and Nunhead Area Action Plan (2015) and selected emerging site allocations in the New Southwark Plan Preferred Option Version 2017 and Old Kent road Preferred Option Version (2016). All areas to which the Article 4 direction will apply are illustrated on the map in Appendix C of this report they are also shown on the table of sites in Appendix B.
90. The report is also requesting the planning committee to approve the notice contained in Appendix A of this report.
91. The report is also requesting the planning committee to delegate to the Director of Planning to carry out all publicity / consultation arrangements set out in paragraph 60 of this report and note the equalities analysis of the proposed Article 4 Directions (Appendix D).
92. The strategic director of finance and governance notes that the proposed Directions may make the council liable for compensation claims but it is not possible to gauge the magnitude of such claims as circumstances vary. It is noted that 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.
93. 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.
94. 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.2.southwark.gov.uk/downloads/download/4441/core_strategy_and_saved_southwark_plan_policies">http://www.2.southwark.gov.uk/downloads/download/4441/core_strategy_and_saved_southwark_plan_policies</a>	planningpolicy@southwark.gov.uk
The Core Strategy 2011	<a href="http://www.2.southwark.gov.uk/downloads/download/4441/core_strategy_and_saved_southwark_plan_policies">http://www.2.southwark.gov.uk/downloads/download/4441/core_strategy_and_saved_southwark_plan_policies</a>	planningpolicy@southwark.gov.uk
New Southwark Plan Preferred Option	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan?chapter=4">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan?chapter=4</a>	planningpolicy@southwark.gov.uk
Southwark Industrial and Warehousing Land Supply Report (2014)	<a href="http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/evidence-base/economy-employment-and-business">http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/evidence-base/economy-employment-and-business</a>	planningpolicy@southwark.gov.uk
Southwark Employment Land Study – Parts 1&2 (2016)	<a href="http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/evidence-base/economy-employment-and-business">http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/evidence-base/economy-employment-and-business</a>	planningpolicy@southwark.gov.uk
General Permitted Development Order 2015	<a href="http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf">http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf</a>	planningpolicy@southwark.gov.uk

## APPENDICES

No.	Title
Appendix A	Draft Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 (c) (Light Industrial) to C3 (Dwelling houses).
Appendix B	Schedule 1: Table of Sites
Appendix C	Schedule 2: Maps area subject to proposed Article 4 Direction
Appendix D	Initial Equalities analysis (available on the council's website)

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Mark Spence, Senior Planner	
<b>Version</b>	Final	
<b>Dated</b>	6 September 2017	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET 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>		7 September 2017