

Contents

All.....	2
Director of Planning and Growth.....	2
1. RECOMMENDATIONS.....	2
2. BACKGROUND INFORMATION.....	3
3. ARTICLE 4 DIRECTIONS PROCESS.....	5
4. COMPENSATION.....	7
5. PLANNING APPLICATIONS.....	8
6. EFFECT ON EXISTING ARTICLE 4 DIRECTIONS.....	8
7. PRIOR APPROVAL.....	9
8. KEY ISSUES FOR CONSIDERATION.....	11
SOUTHWARK PLAN 2022.....	11
SUMMARY OF EVIDENCE TO SUPPORT MAKING THE ARTICLE 4 DIRECTION.....	11
9. CONSULTATION.....	13
10. COMMUNITY IMPACT STATEMENT.....	16
11. FINANCIAL IMPLICATIONS.....	16
12. SUPPLEMENTARY ADVICE FROM OTHER OFFICERS.....	17
13. BACKGROUND DOCUMENTS.....	18
14. APPENDICES.....	19
15. AUDIT TRAIL.....	19

Item No. 7	Classification: Open	Date: 18 Jan 2022	Meeting Name: Planning Committee
Report title:		Confirmation of Article 4 Directions relating to demolition and change of use from commercial buildings to residential	
Ward(s) or groups affected:		All	
From:		Director of Planning and Growth	

1. RECOMMENDATIONS

That the Planning Committee:

1. Approves the confirmation of a non-immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for changes of use from office use (Class E(g)(i)) to a dwellinghouse (Class C3) in the Central Activities Zone and railway arches in Southwark.
2. Approves the confirmation of an immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for changes of use from Commercial, Business and Leisure (Class E - except offices) to a dwellinghouse (Class C3) in the Central Activities Zone and railway arches in Southwark.
3. Approves the confirmation of an immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for changes of use from Commercial, Business and Leisure (Class E) to a dwellinghouse (Class C3) in the following locations:
 - Town centres including protected shopping frontages and Southwark Plan 2022 Site Allocations inside town centres
 - Protected shopping frontages
 - Southwark Plan 2022 Site Allocations outside of town centres
 - Southwark Plan 2022 proposed Strategic Protected Industrial Land
4. Approves the confirmation of a non-immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 20, Class ZA (amended) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for demolition of commercial buildings and construction of new dwellinghouses in the following locations:
 - Central Activities Zone
 - Town centres including protected shopping frontages and Southwark Plan 2022 Site Allocations inside town centres
 - Southwark Plan 2022 Site Allocations outside of town centres
 - Southwark Plan 2022 proposed Strategic Protected Industrial Land

5. Notes the equalities impact assessment of the proposed Article 4 Directions (Appendix A).
6. Notes the consultation report (Appendix B).
7. Delegates to the Director of Planning and Growth the arrangements for confirming the Article 4 Directions including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2. BACKGROUND INFORMATION

8. On 20 July 2021, Planning Committee approved the Article 4 Directions listed in the recommendations above to remove the relevant permitted development rights. The Article 4 Directions were made on 28 July 2021 and therefore must now be confirmed by Planning Committee. The Immediate Article 4 Directions need to be confirmed within six months from the date they were made otherwise they will expire.
9. The July 2021 Committee Report sets out the evidence base and associated risks relating to Permitted Development Rights (PDR) for the different areas of the borough for which the Article 4 Directions have been made. These draw on the evidence base recently examined in detail by the Inspectors at the Examination in Public of the New Southwark Plan (now referred to as the Southwark Plan 2022). The introduction of permitted development rights to change Class E premises to residential would undermine the council's ability to proactively implement the Southwark Plan 2022 policies as recently examined and meet its identified strategic targets for commercial development and affordable housing.
10. Under the provisions set out in the GPDO, consultation was undertaken on the Article 4 Directions from 29th July to 16th September 2021, a summary of the consultation responses is provided later in the report.
11. The changes to the Use Classes Order came into effect in September 2020 which amalgamated many uses which were formally contained in Class A1-A3 (retail), Class B1 (offices, research and development and light industrial) and Class D (leisure and community) into a new Class E and new Class F. Changes of use between any of the uses listed in Class E (ranging from certain retail, employment, health, leisure and education uses) no longer constitute development.
12. Article 4 Directions relating to Use Classes before 1 September 2020 remained in effect until 31 July 2021. This applied to a number of the Council's Article 4 Directions up to that time.
13. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020, Part 1 Schedule 2 Part 20 introduced new permitted development rights which came into force on 31 August 2020. This included Class A, AA, AB, AC and AD which allowed "upward extensions" (subject to prior approval) to build additional storeys of residential on top of existing blocks of flats or detached or terraced commercial buildings or houses. The amendment also introduced Class ZA, which, subject to prior approval, permits the demolition of existing vacant buildings (vacant for a period of at least 6 months prior to the date of the application) and the construction of new dwellings in their place. The

new permitted development right ZA applies to a single purpose-built detached block of flats and any other single detached building comprising either one or a combination of the former Class B1 (a-c) uses which includes offices, research and development and light industrial uses.

14. On 3 December 2020, the government published a consultation which included proposals for a new Use Class E to residential Permitted Development Right (PDR). This consultation closed on 28 January 2021. The Government's intention behind these changes is to provide greater flexibility to meet the challenges of changing consumer behaviour, faster planning decisions, and the delivery of more homes to tackle the housing shortage. The consultation responses highlighted considerable concerns about the negative impact of this change.
15. On 31 March 2021, the government announced that it is introducing legislation for England to bring forward the new Use Class E to residential PDR from 1 August 2021, with some amendments from the consultation proposals. The proposal would allow all uses within Class E (commercial, business and service) to change to use Class C3 residential under a new class MA in the General Permitted Development Order (GPDO).
16. To take advantage of the PDR, applicants need to submit a prior approval application. Prior approval is not a planning application because permission has been granted via the GPDO and so only certain conditions prescribed by law can be considered. The prior approval process contains a wider range of conditions than previously suggested in the original consultation (such as natural daylight, sustainability of conservation areas, incompatibility in industrial areas, impact on registered nurseries/health centres). There is a size limit of 1,500sqm and the premises must have been in commercial use for 2 years and vacant for three continuous months prior to an application for prior approval.
17. The local authority considers whether the proposal meets the requirements of the PDR conditions in determining the application, rather than applying planning policies. There is a statutory period of determination and if a decision is not made within 56 days prior approval is automatically granted (unless an extension of time is formally agreed). The right will attract a fee of £100 per dwellinghouse, up to a maximum of £5,000. The PDR for Class E is only for changes of use and does not allow for operational development.
18. On 13 May 2021 the Government opened a technical consultation on the consequential changes to permitted development rights. This is predominantly to align the General Permitted Development Order 2015 (as amended) with the new Class E rights. It proposes to delete, amend or supersede many of the existing permitted development rights which relate to the old use classes. The consultation closed on 3 June 2021. The consultation responses received are still be analysed.
19. To reflect recent changes the NPPF was updated in July 2021, paragraph 53 which deals with Article 4 Directions reads:

The use of Article 4 directions to remove national permitted development rights should:

- *where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core*

of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)

- *in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
 - *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*
20. The Planning Practice Guidance (paragraph 038) requires that Article 4 directions should be very carefully targeted, applying only to those locations where they are necessary to avoid wholly unacceptable adverse impacts. The geographical coverage of all Article 4 directions should be the smallest area possible to achieve the aim of the Article 4 direction. In respect of historic high streets and town centres, this is likely to be the irreducible core of a primary shopping area. It is very unlikely to be applicable to a wide area, and is not expected to be applied to an entire local authority area. Local authorities will need to have robust evidence to justify the Article 4 direction and the area it covers.
21. On 23 March 2021 the Housing, Communities and Local Government Committee launched a new inquiry to examine the Government's approach to permitted development rights. This included a call for evidence from interested parties. A number of sessions of the Inquiry took place between May and June 2021. A report was published in July 2021 by the Housing, Communities and Local Government Committee which sets out a number of recommendations including that the Government should:
- pause any further extensions of permitted development for change of use to residential, including the new class MA right, which took effect on 1 August;
 - conduct a review of the role of PDRs for change of use to residential within the wider planning system and explain how it aligns with plan-led development and local democratic involvement, two areas of emphasis in the Government's Planning for the future White Paper; and
 - consider amending the prior approval process to require PDR housing to have outdoor private or communal amenity space, and to enable councils to require that PDR housing contributes overall to the delivery of the right mix of housing for their area. In particular, the report recommends that local authorities be able to prevent the siting of homes in inappropriate locations, such as business and industrial parks.
22. No further changes have been proposed to date.

3. ARTICLE 4 DIRECTIONS PROCESS

23. 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 ensures 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.
24. Article 4 Directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.

25. The government's on-line 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).
26. 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. The process for making and 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 (the current stage) – Confirmation 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.*
27. The process for making and confirming an **immediate Article 4 Direction** 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 the 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 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 (the current stage) – 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.

28. The council has followed stages 1 to 3 as set out above for both the non-immediate and immediate directions. Public consultation was undertaken on the Article 4 Directions from 29th July to 16th September 2021, a consultation report is provided at Appendix B and a summary of the consultation responses is provided at Section 9 of this report.

4. COMPENSATION

29. 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 were not for an Article 4 Direction; or
- Grant planning permission subject to more limiting conditions than the GPDO would normally allow.

30. 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.

31. 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.

32. 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.

33. Permitted development rights granted by Schedule 2, Part 3, Class MA are prescribed development, which means that compensation may 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 as in the case of the non-immediate Directions proposed for Class MA (Class

E(g)(l) offices in the CAZ and railway arches and Class ZA for demolition of commercial buildings and construction of new dwellinghouses in the Central Activities Zone, Town centres including protected shopping frontages and Southwark Plan 2022 Site Allocations inside town centres, Site Allocations outside of town centres, Strategic Protected Industrial Land.

34. Compensation is only liable for the two immediate Directions as set out at Paragraphs 2 and 3 in the recommendations to Committee.

5. PLANNING APPLICATIONS

35. 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 Southwark Plan 2022 will replace the Core Strategy and Southwark Plan and adopted area action plans once it is adopted.

6. EFFECT ON EXISTING ARTICLE 4 DIRECTIONS IN SOUTHWARK

36. The new permitted development right for Class MA will replace Class O and part of Class M as they previously related to the change of use of office and retail premises to dwellings. Through the technical consultation, the Government propose to amend the Class M PDR to continue to allow the change of use from hot food takeaways, betting offices, pay day loan shops or launderette (which are sui generis uses) to residential C3 use. The right will provide for prior approval on the adequate provision of services only as a launderette. All other details remain unchanged, including the lower maximum 150sqm size limit. The Article 4 Direction relating to change of use from Class M (including hot food takeaways, betting shops, pay day loan shops or laundrettes) to residential use in railway arches will continue to apply.
37. The GPDO legislation provides that any existing Article 4 Directions which protects office floor space (previously B1a) from being converted to residential (C3) will remain in effect until 31 July 2022. The following Article 4 Directions will remain in place until 31 July 2022 when they will be replaced by the proposed non-immediate directions proposed in this report.
- Change of use from **offices** to residential in the **CAZ**
 - Change of use from **offices** to residential in **railway arches**
38. The council's existing Article 4 Directions relating to the following expired on 31 July 2021 and were replaced by the immediate Article 4 Directions for Class MA.
- Changes of use in **town centres** (these directions were affected by the use classes changes in 2020 and updates to the General Permitted Development Order)
 - Changes of use from **light industrial** to residential in site allocations and industrial land (PDR rights Class P and PA relating to Class B1c (light industrial) and B8 (storage and warehousing) have expired, however light

industrial uses will now be able to change to residential under the new Class E to C3 PDR Class MA).

- Changes of use from light industrial and storage (B1c) and distribution uses (B8) to residential in **railway arches** has expired. Changes of use from Class M (retail) to residential in railway arches will partially be replaced by the Class MA Direction which will capture the update to Class E (retail uses). The Class M Article 4 Direction in railway arches insofar as it relates to betting shops, payday loan shops, laundrettes and hot food takeaways will still apply.

39. The council's existing Article 4 Directions relating to the following will remain in place and are unaffected by the changes:

- Demolition, change of use or alteration of **pubs**
- **Heritage** Article 4 Directions (Sunray Estate and the Old Southern Railway Stables and Forge)
- Change of use from dwellings to **Houses in Multiple Occupation** in Bywater Place and Henshaw Street

7. PRIOR APPROVAL

40. Prior approval is an application to discharge the conditions pertaining to the PD right so the scope of the issues which are material to the prior approval application are fixed and fixed exclusively by the terms of the order. Therefore, no consideration can be given to the statutory development plan or the National Planning Policy Framework (NPPF) unless the GPDO specifically provides for this.

41. Below are the list of conditions required to be assessed under prior approval for Class MA:

- the impact of that change of use on the character or sustainability of the conservation area;
- transport impacts of the development, particularly to ensure safe site access;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- impacts of noise from commercial premises on the intended occupiers of the development;
- where
 - the building is located in a conservation area; and
 - the development involves a change of use of the whole or part of the ground floor,the impact on the local provision of the type of services lost.
- the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
- where the development involves the loss of services provided by a:
 - registered nursery; or
 - health centre maintained under section 2 or 3 of the National Health Service Act 2006

42. In addition, developers will need to submit a floor plan showing the total floor space in square metres of each dwellinghouse. This will be subject to the national space

standards requirements. There is a requirement to notify adjoining owners and occupiers of the intended change of use.

43. The list of conditions for Class MA of the GPDO is substantially longer and more ambiguous than the existing classes (O and M – offices and retail to residential). Some of the prior approval assessment conditions are ambiguous and would normally require a matter of judgement based on amenity policies in the local plan. However these conditions will now become a matter of law some which may require legal definition. The confusion surrounding these points (and others) could result in refusals, more appeals, more litigation, and the intended benefits of the PDR never being realised.
44. For Class ZA (relating to demolition of flats or commercial buildings), where the existing building is situated on land that forms part of a conservation area, a site of special scientific interest; or the building is listed or on land within its curtilage or a scheduled monument or land within its curtilage, it does not benefit from permitted development. The existing building must have been constructed before 31 December 1989 and the footprint must not exceed 1,000 square metres and the height must not be greater than 18 metres or 7 metres higher than the existing building (whichever is lower). Further restrictions are detailed in the legislation.
45. The Town and Country Planning (Use Classes) (Amendment) England Regulations 2020 Regulation 3 provided for a “material period” for the transition of the former use classes to the new use classes which expired on the 31 July 2021. The new Article 4 Direction for Class MA refers to the new legislation in place from 1 August 2021. The Government’s technical consultation outlined the changes that were suggested for Class M and Class ZA to take into account the new Town and Country Planning (Use Classes) Order 1987 (as amended 2020). However the results of the consultation have yet to be published and new legislation has not yet been made.
46. The only amendment to Class ZA proposed in the technical consultation indicated that *‘Minor technical changes will be made to update the right to align with the current use classes: E (g). All other details remain unchanged’*. It was considered appropriate therefore to make an Article 4 Direction in July this year with reference to the existing use classes as legislative changes to the GPDO were believed to be imminent and could have been introduced before the Direction was published. Planning Committee therefore gave delegated authority to the Director of Planning and Growth to amend the Direction to include reference to the new use classes if necessary. However, the Government is still considering the consultation responses and there have been no changes to the law. If and when new legislation is introduced, the Article 4 Direction will remain valid notwithstanding any later amendments as the Direction is clear what uses are covered and what Permitted Development Rights are being withdrawn.
47. Class M currently allows for the change of use of shops (A1), financial and professional services (A2), and hot food takeaways (A5) betting office, pay day loan shop or launderette, to residential (C3). There is currently a size limit on this of maximum 150sqm. Premises for the display or retail sale of goods, and financial, professional, or other services now fall within Class E and therefore benefit from the Class MA right (maximum 1,500sqm size limit). However through the technical consultation, the Government propose to amend the Class M right to continue to allow the change of use from hot food takeaways, betting offices, pay

day loan shops or launderette to residential C3 use. The right will provide for prior approval on the adequate provision of services only as a launderette. All other details remain unchanged, including the lower maximum 150sqm size limit. This permitted development right will continue to be restricted in railway arches based on the council's current Article 4 Direction in place.

48. There is no exemption from CIL from PDR but usually the in-use building exemption will apply if at least part of the building has been occupied for a lawful use for at least six months continuously in the last three years.

8. KEY ISSUES FOR CONSIDERATION

SOUTHWARK PLAN 2022

49. The Southwark Plan 2022 (SP2022) (previously referred to as the New Southwark Plan) has been through independent examination and the examination closed on 17 November 2021 when the Inspectors issued their final report and Main Modifications recommended to the plan for adoption. On 7 December 2021, Cabinet recommended the approval of the Southwark Plan 2022 at Council Assembly for final adoption. Since the plan was submitted, significant changes have been made to legislation relating to the Use Classes Order and the Main Modifications to the Plan subsequently included changes to policies to ensure the Plan is up to date.
50. The council was required to submit evidence on strategic matters to ensure the plan is sound. This included ensuring the council had clear and justified targets based on evidence of need for future office, industrial and retail provision in the borough.

SUMMARY OF EVIDENCE TO SUPPORT MAKING THE ARTICLE 4 DIRECTION

51. As set out earlier in the report, the NPPF sets out that the use of Article 4 Directions to remove permitted development rights should be based on robust evidence and apply to the smallest geographical area possible. As such significant justification and evidence was provided in the July 2021 Committee Report.
52. Article 4 Directions 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.
53. The use of an Article 4 Direction would not restrict development altogether, but instead ensure that development requires planning permission. Planning permissions including residential development would ensure the balance between office and residential uses is appropriate. They would ensure that new homes are of good quality with access to sufficient amenity space, play space, parking and social infrastructure. They would secure affordable housing, housing for people with specialist needs, family housing and contributions to strategic infrastructure. Where required by planning policy, they will achieve an uplift or re-provision of the

amount of employment floorspace on the site, including affordable workspace and support for existing businesses.

54. PD rights for change of use and demolition of commercial buildings have been introduced with the intention of making better use of vacant commercial buildings for housing. In Southwark's case, despite the pandemic, vacancy rates are lower than the national average and the evidence base supporting the recently adopted London Plan and the recently examined Southwark Plan 2022 show the projected need and demand for office, industrial, retail, leisure and community floorspace and the planned future growth for these uses in the CAZ, town centres, site allocations and industrial intensification areas. Railway arches are not suitable for residential homes due to safety and amenity concerns.
55. Whilst there is a recognition of the governments intent to reform the planning system, in part through the provision of greater flexibility, the recent changes to the Use Classes Order have gone a significant way in achieving this and the proposed new permitted development right will have a negative impact on town centre vitality and viability. In particular, through the loss of:
 - Retail
 - Offices and other employment floorspace
 - Health services and other social infrastructure.
56. This PD right may have the effect of reducing active frontages in town centres, high streets and key employment locations. Significant stretches of inactive frontages (with aesthetically incongruous former shop fronts) will undermine their long-term sustainability, vitality and viability, and diminish the ability of the council to ensure quality place-making. The reduction in active ground floor uses, would have a negative impact on the public realm, footfall and economic renewal.
57. The PDRs will create a loss of affordable housing delivery, and contributions to infrastructure and public services through S106 contributions. Through full planning applications, local planning authorities are able to secure affordable housing through S106 agreements with the developer which would serve as an obligation on the developer to either provide affordable housing on site, or an agreement to pay the local authority an agreed sum to fund the delivery of affordable housing elsewhere.
58. The PDRs would affect how local planning authorities monitor the delivery and quantum of retail, employment and social infrastructure, against local evidence of current need and future demand. The introduction of PDR would limit the ability of Southwark to achieve its targets outlined in the Southwark Plan 2022 as existing stock could be converted to housing, reducing the net uplift required in the borough as a whole, through the plan period to 2036. It will also reduce the availability of small, affordable commercial premises for shops, offices, workspaces and light industrial units.
59. The Article 4 Directions would prevent the unintended harm of commercial to residential permitted development rights on existing occupiers and their contribution to the character of the area, employment, the overall functioning of the CAZ, town centres, local shopping areas and industrial areas and the wider economy.

60. The council is satisfied that permitted development rights granted by Schedule 2, Part 3, Class MA and Schedule 2, Part 20, Class ZA would create wholly unacceptable adverse impacts in the areas proposed for the Article 4 Directions for the reasons set out above and the detailed reasons set out in the July 2021 Committee Report.

UPDATED SITE ALLOCATION AND DEVELOPMENT PLAN DOCUMENT REFERENCES

61. As the Southwark Plan 2022 has been published since the Article 4 Directions were made the site allocations and Development Plan Document references have since been updated and this affects two of the Article 4 Directions as follows:

Immediate Article 4 Direction for Class MA for changes of use from Commercial, Business and Leisure (Class E) to a dwellinghouse (Class C3) in the following locations:

- Town centres including protected shopping frontages and Southwark Plan 2022 Site Allocations inside town centres
- Protected shopping frontages
- Southwark Plan 2022 Site Allocations outside of town centres
- Southwark Plan 2022 proposed Strategic Protected Industrial Land

Non-immediate Article 4 Direction for Class ZA (amended) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for demolition of commercial buildings and construction of new dwellinghouses in the following locations:

- Central Activities Zone
- Town centres including protected shopping frontages and Southwark Plan 2022 Site Allocations inside town centres
- Southwark Plan 2022 Site Allocations outside of town centres
- Southwark Plan 2022 proposed Strategic Protected Industrial Land

62. The Directions must be confirmed in their existing form but Appendix C provides a Schedule for information only on the updated site allocation references within the Southwark Plan 2022.

9. CONSULTATION

63. Under the provisions set out in the GPDO, consultation on the Article 4 Directions took place from 29th July to 16th September 2021. Notice of the Directions was made by:

- Local advertisement in the press;
- Site notices placed in visible locations on principle streets in Southwark's CAZ, town centres, site allocations, industrial areas and railway arches;
- Notification to the Secretary of State.

64. Following sending the notification to the Secretary of State, on 9 September 2021 the council received a letter from the Department for Levelling Up, Housing and

Communities (DLUHC) asking for further evidence. The council responded on 17 September 2021 providing the evidence set out in the July 2021 Committee Report and referring them to the strategic evidence from the GLA.

65. On 25 October 2021 DLUHC wrote to inform the Council that the Article 4 directions have been passed to the policy team for further assessment. They stated that they will consider whether the directions fulfil national policy set out in Paragraph 53 of the National Planning Policy Framework on the use of Article 4 directions, and whether there is cause for the Secretary of State to use his powers of intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. Their consideration does not stop the Article 4 directions process. DLUHC stated they would inform the Council in writing of the Secretary of State's decision in due course.
66. The Secretary of State has not yet given any indication whether he will use his powers of intervention. The Council considers on the basis of the evidence and justification provided, the Article 4 Directions should be confirmed.
67. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) Schedule 3 Article 4 states that the local planning authority need not serve notice on an owner or occupier in accordance with sub-paragraph (1)(c), if they consider that –
 - (a) individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person or
 - (b) the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.
68. Due to the number of properties in the areas specified in the Article 4 Directions and the ongoing COVID-19 pandemic, the council considered it was impracticable to serve notice on all properties individually. However the council made additional notification as follows:
 - Mail out to over 20,000 email addresses on the council's planning policy consultation notification mailing list;
 - Mail out to business contacts and organisations including the five Business Improvement Districts;
 - Article 4 Direction council webpages updated with relevant information on the Direction, the representation period, the planning committee report and other supporting documents were available to view and download; and
 - Online Consultation Hub Page, which provided information on the Directions and a portal for submitting representations.
69. In total, there were 16 responses to the consultation. Eight respondents were in support of the directions, three had no comments, one asked for further information and four objected to the directions. Representations were made by email and through the Consultation Hub. The table below provides a breakdown of the representations received.

	Number of responses	Statutory consultees	Individuals	Business Community Groups etc
Emails	9	7	0	2

Hub	7	0	7	0
Total	16	7	7	2

70. The majority were in support and commented that the Article 4 Directions will help maintain the mixed supply of business, leisure uses and sustain the night-time economy, character and vitality of areas including town centres and historic environments.
71. Representatives in support of the Article 4 Directions were concerned about the negative effects of permitted development. The Theatre Trust highlighted the threat of permitted development on theatres and performance venues.
72. The Mayor of London and Transport for London are in support of the Article 4 Directions, they are in compliance with planning and transport policies of the London Plan.
73. Four representatives objected to the Article 4 Directions. A respondent noted that the areas covered by the directions are too large and included areas of a predominantly residential character. However, representations in support noted that the Article 4 Directions are well targeted and necessary to sustain areas with significant commercial, business, cultural and innovative centres.
74. Respondents against the Article 4 Directions highlighted that the directions will restrict development of homes and any redevelopment of industrial areas into productive uses.
75. Conversely, Team London Bridge state that the directions will not compromise housing delivery in London Bridge. The representative noted that the location, scale and phasing of new residential development will be effectively managed through submission of planning applications. Likewise, a member of the public highlighted that Article 4 Directions in place will help eliminate the risk of low quality and poorly designed housing. It will improve diversity and vibrancy for small commercial, business and leisure especially within the Railway Arches, which houses a range of small business and leisure uses.
76. Thames Water stated the change of uses of Class E to C3 would have an impact on the timing and volume of flows going into the sewer network, which has the potential to result in adverse impacts e.g. flooding. The requirement of planning permission will ensure Thames Water will be consulted and necessary upgrades to the network are delivered.
77. The three representations with no comments concluded that they had no specific comments.
78. Policy officers answered a number of queries from interested members of the public and explained the reason and effect of the Article 4 Directions.
79. A summary of the consultation responses and officer responses can be found in the consultation report attached at Appendix B.

80. If the Directions are confirmed by Planning Committee, the Article 4 Directions site notices will be updated and placed in the following areas:

- Major streets in Southwark's CAZ such as Shad Thames, Tooley Street, Blackfriars Road and Southwark Street.
- Town centres
- Site allocations
- Industrial areas
- Railway arches

10. COMMUNITY IMPACT STATEMENT

81. The council is working to improve the economic wellbeing of residents and to ensure that Southwark has a strong local economy with opportunities for employment, vibrant centres to do business in and residents equipped with skills and knowledge to access employment. The Article 4 Direction seeks to protect the contribution of offices to the local economy and economic wellbeing.

82. The equalities impact assessment (Appendix A) has concluded that the Article 4 Direction will have a positive impact on equalities and it will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

11. FINANCIAL IMPLICATIONS

83. Should the local authority refuse planning permission for development that otherwise would have been granted by Class MA in the locations outlined on the immediate Article 4 Direction, the council's potential liability for compensation is limited to one year from the date the Directions are 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.

84. At the date of this report, there have been no claims for compensation since the Article 4 Directions were made in July. The council has made immediate Article 4 Directions previously and no claims for compensation were made. However it is important to note that there is a risk that compensation claims could be made as a result of the new immediate Article 4 Directions within the next 6 months.

85. Any claims 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. 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.

86. The non-immediate directions have more than one year before the expiry of the existing exemption from the permitted development right (by Southwark's existing Article 4 Direction) so applicants will not be entitled to claim compensation.

12. SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Law and Governance (MF)

87. Paragraph 10 of Part 3F of the Council's Constitution states that it is the responsibility of Planning Committee to authorise directions under Article 4. On 20 July 2021 Planning Committee considered the detailed report which forms a background document to this report and determined, in accordance with the legal test in article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'), that it was expedient, in light of the reasons and evidence presented in the report, to approve the making of the four Article 4 directions (two 'immediate' and two 'non-immediate' Directions) referred to in the recommendations section of this report. Delegated authority was given to the Director of Planning and Growth to carry out the statutory notification requirements prescribed in Schedule 3 of the GPDO and described in paragraph 26 of this report. Section 9 of this report confirms that the statutory consultation took place between 29 July and 16 September 2021, a period which exceeds the minimum 21 days required by law and the section also describes the various methods employed to notify the public about the Directions and invite representations.
88. Paragraph 9 of Schedule 3 of the GPDO prescribes that, in deciding whether to confirm a direction made under article 4, the local planning authority must take into account any representations received during the consultation period. Members are therefore asked to carefully consider the consultation report at Appendix B and the summary of the responses outlined in section 9 above.
89. Paragraph 10 of Schedule 3 prescribes that the local planning authority must not confirm a direction until at least 28 days has expired after the latest date on which any notice relating to the direction was served or published or such longer period as may be specified by the Secretary of State. In the present case, the Secretary of State has been notified about the Directions but has not specified any timescales for confirmation and Planning Committee can proceed to confirm the Directions if they so determine.
90. Members will note that Paragraph 2 of Schedule 3 of the GPDO prescribes that an immediate direction 'expires at the end of the period of 6 months beginning with the date on which it comes into force unless confirmed by the local planning authoritybefore the end of the 6 month period.' The Directions listed at numbers 2 and 3 of the recommendations will therefore expire on the **28 January 2022** unless they are confirmed before that date.
91. Should Planning Committee confirm the Directions then further delegated authority is sought for the Director of Planning and Growth to carry out the post confirmation notifications required by law and prescribed in Schedule 3 of the GPDO. These include sending a copy of the confirmed Directions to the Secretary of State.
92. Members will note paragraphs 64 to 66 of the report and the references to the powers of intervention of the Secretary of State. Pursuant to paragraph 1(13) of the GPDO the Secretary of State may make a direction cancelling or modifying any direction under article 4(1) made by a local planning authority **at any time before or after its confirmation**. To date, the Secretary of State is still

considering whether the Directions comply with the criteria in paragraph 53 of the updated National Planning Policy Framework (NPPF) referred to in paragraph 19 of this report. However, but this does not prevent Planning Committee from proceeding to confirm the Directions.

Strategic Director of Finance and Governance (CE21/059)

93. This report is requesting planning committee to approve confirmation of two immediate Article 4 Directions and two non-immediate Article 4 directions to withdraw the permitted development rights as part of the schedule 2 of the Town and Country Planning (General Permitted Development) (GPDO) Order 2015 (as amended), as detailed in the recommendations. Full details and background are contained within the main body of the report.
94. The report is also requesting the planning committee to note the equalities analysis of the proposed Article 4 Directions and to note the consultation report and also delegate to the Director of Planning and Growth the arrangements for confirming the Article 4 Direction including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Full details and background is provided within the main body of the report.
95. 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.
96. 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.
97. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

13. BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
GLA strategic evidence to support London borough Article 4 Directions	https://www.southwark.gov.uk/assets/attach/50974/GLA-Strategic-evidence-2021.pdf	Planningpolicy@southwark.gov.uk
Planning Committee Report July 2021	https://www.southwark.gov.uk/assets/attach/50970/Article-4-Planning-Committee-Report-2021.pdf	Planningpolicy@southwark.gov.uk
Article 4 Direction (Class MA-Class E) – immediate	https://www.southwark.gov.uk/assets/attach/50997/Article-4-Direction-	Planningpolicy@southwark.gov.uk

	Class-MA-Class-E-immediate.pdf	
Article 4 Direction (Class MA-Class E(a-f)(g)(ii-iii) – immediate	https://www.southwark.gov.uk/assets/attach/50998/Article-4-Direction-Class-MA-Class-E-a-f-g-ii-iii-immediate.pdf	Planningpolicy@southwark.gov.uk
Article 4 Direction (Class MA-Class E(g)(i) offices) – non-immediate	https://www.southwark.gov.uk/assets/attach/50976/Article-4-Direction-Class-MA-Class-E-g-i-offices-non-immediate.pdf	Planningpolicy@southwark.gov.uk
Article 4 Direction (Class ZA) – non-immediate	https://www.southwark.gov.uk/assets/attach/50977/Article-4-Direction-Class-ZA-non-immediate.pdf	Planningpolicy@southwark.gov.uk
Maps relating to the Article 4 Directions	https://www.southwark.gov.uk/assets/attach/50971/Maps-relating-to-Article-4-Directions-2021.pdf	Planningpolicy@southwark.gov.uk
Housing, Communities and Local Government Committee - Permitted Development Rights Third Report of Session 2021–22	https://publications.parliament.uk/pa/cm5802/cms/elect/cmcomloc/32/32.pdf	N/A

14. APPENDICES

No.	Title
Appendix A	Equalities Impact Assessment
Appendix B	Consultation Report
Appendix C	Schedule on the updated site allocation references within the Southwark Plan 2022

15. AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Laura Hills, Planning Policy and Monitoring Innovation Manager	
Version	Final	
Dated	17 December 2021	
Key Decision?	Non-key	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Finance Director	Yes	Yes

Cabinet Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team		17 December 2021