

CABINET

19 January 2021

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| Title: Article 4 Direction – Removal of Permitted Development Rights for Upward Extensions on Certain Buildings | |
| Report of the Cabinet Member for Regeneration and Social Housing | |
| Open Report | For Decision |
| Wards Affected: All wards | Key Decision: Yes |
| Report Author: Tim Thomas – Head of Transport, Infrastructure and Policy Planning, Be First | Contact Details: Tim.Thomas@befirst.london 07834 014334 |
| Accountable Director: Caroline Harper – Chief Planning Director, Be First | |
| Accountable Strategic Leadership Director: Graeme Cooke, Director of Inclusive Growth | |
| Summary <p>New permitted development regulations, adopted from August 2020 onwards, grant the rights to extend various buildings upwards, including blocks of flats, dwellinghouses and commercial units, through the prior approval process.</p> <p>The prior approval process affords the local authority limited criteria set in law against which to examine proposals and only allows limited contributions to mitigate their impact on local infrastructure or ensure the provision of affordable housing through a S106 planning obligation. This will have a significant negative impact on local communities as their local services become strained from major developments which do not contribute to local infrastructure. The Council would also have no control on the design of these types of development, therefore undermining the Council's ambitions for improving the design quality of new developments within the Borough.</p> <p>To safeguard the future regeneration and growth of the Borough, it is proposed that the Cabinet approves the withdrawal of a specific set of permitted development rights within designated non-industrial areas of the Borough - in this case, the rights to build additional storeys on existing buildings - under Article 4 of the General Permitted Development Order (GPDO) 2015.</p> <p>This paper sets out the reasoning for the proposed removal of the permitted development right for additional storeys on certain buildings within specific areas of the London Borough of Barking and Dagenham and also considers how not withdrawing these permitted development rights could impact on the Borough's growth ambitions.</p> | |
| Recommendation(s) <p>The Cabinet is recommended to:</p> | |

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| <p>(i) Agree to adopt the Article 4 Direction, under the General Permitted Development Order 2015, to remove the permitted development rights in relation to additional storeys above certain buildings within specific areas of the London Borough of Barking and Dagenham; and</p> <p>(ii) Delegate authority to the Director of Inclusive Growth, in consultation with the Cabinet Member for Regeneration and Social Housing and the Director of Law and Governance, to vary the extent of the Article 4 Direction in relation to industrial areas in the Borough as deemed appropriate.</p> |
| <p>Reason(s)</p> <p>To assist the Council to achieve its priorities of 'Inclusive Growth' and 'Well Run Organisation'.</p> |

1. Introduction and Background

- 1.1 An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order (GPDO), which enables the Secretary of State, or the Local Planning Authority, to withdraw specified permitted development (PD) rights across a defined area.
- 1.2 Provided that there is justification for both its purpose and extent, an Article 4 direction can:
- Cover an area of any geographic size, from a specific site to a local authority-wide area
 - Remove specified permitted development rights related to operational development or change of use
 - Remove permitted development rights with temporary or permanent effect.
- 1.3 The National Planning Policy Framework advises that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area. A justification for the removal of the permitted development rights for additional storeys above certain buildings can be found within **Appendix 1** of this report.
- 1.4 The London Borough of Barking and Dagenham's draft Local Plan outlines a target to build 50,000 new homes and create 20,000 new jobs over the next 20 years. This, in itself, creates significant pressures for new and upgraded social infrastructure to support the delivery of new homes, along with the delivery of the types and tenures of new homes that reflect the needs of the local community.
- 1.5 The majority of new infrastructure will be funded through developer contributions, although not all necessary infrastructure can be funded this way and there will be tough choices on how the Borough will prioritise the necessary infrastructure to bring positive benefits to local communities from the delivery of new development. A framework to best manage these needs will be brought forward in the forthcoming Planning Obligations (Section 106) Supplementary Planning Document.

2. Proposal and Issues

2.1 The legal framework for the introduction of the new permitted development rights to add additional storeys on certain buildings is outlined in **Appendix 1**. In the context of the London Borough of Barking and Dagenham, these rights will create significant additional impacts over and above the existing pressures for infrastructure in the Borough, as the Council will only be able to secure limited contributions for new or improved infrastructure or affordable housing through a S106 agreement to mitigate their impact.

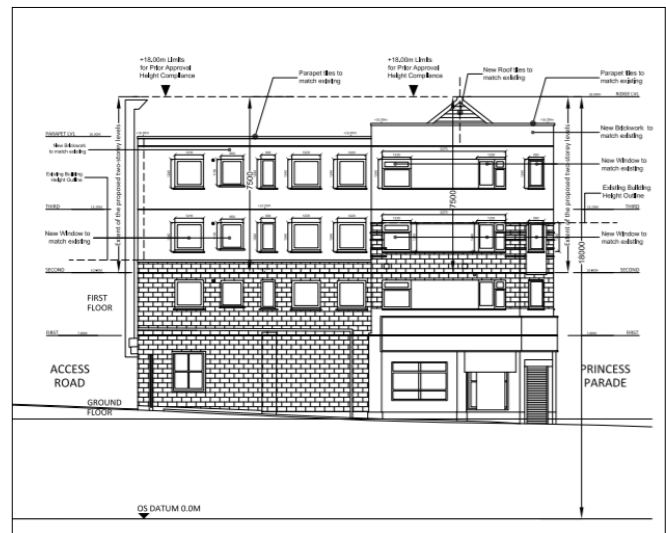
2.2 In addition, on 21 July 2020 the Government published a research paper into the quality of houses delivered through “change of use” permitted development rights that identified a number of concerns, including space standards, adequacy of natural light for occupiers, access to amenity space, the effects of surrounding land uses, and the mix of housing provided.

2.3 We are already seeing the types of development which will be coming forward through the new permitted development right through new prior approval applications, for example:

- An application at Princess Parade, Dagenham (20/02241/PRIADB) for the construction of two additional storeys on top of an existing terraced building to create 44 new units.



Existing side elevation

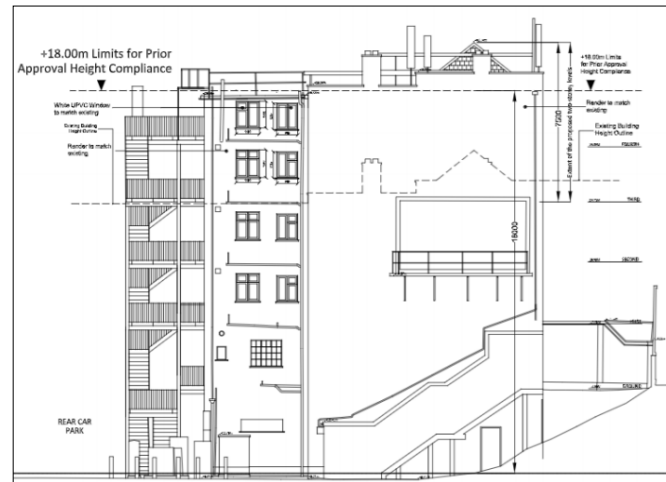


Proposed side elevation

- An application at Gale Street, Dagenham (20/02225/PRIADA) for the construction of two additional storeys on top of a detached dwelling to create 20 additional units.



Existing side elevation



Proposed side elevation

- 2.4 Our evidence suggests that the greatest impact of the permitted development right will be on existing residential areas and not on the industrial areas within the borough, therefore the Council should exempt industrial areas and focus on protecting our existing residential areas.
- 2.5 It is therefore proposed to use the Article 4 direction to remove the permitted development right for additional storeys on certain buildings within the residential areas of the Borough of Barking and Dagenham, excluding industrial areas as set out on a map prepared by Planning Policy. Industrial areas include Strategic Industrial Land and Locally Significant Industrial Sites as defined in the Local Plan. This will mitigate the significant impacts of these schemes on top of the large scale growth already planned for the area and to ensure that any such schemes can be properly supported by the planning system and benefit the wider community.
- 2.6 This will ensure that applications to add additional storeys to buildings within residential areas are considered through a full planning application, where planning officers can consider the local impact of high-density schemes on social infrastructure and secure the necessary financial contributions or new and upgraded infrastructure to mitigate any negative impacts.
- 2.7 Officers will also be able to negotiate the appropriate affordable housing, tenure and type of housing to reflect the needs of local communities and reduce the scope for poor quality residential accommodation which does not meet criteria such as Internal Space Standards. This will also ensure that the development is of a high standard of design and accords with local design standards.

3. Options Appraisal

3.1 The options for consideration here were:

- Do not implement an Article 4 direction in the Borough.
- Implement an immediate Article 4 direction in the Borough.

- Implement a non-immediate Article 4 direction in the Borough.

3.2 The first option is considered unviable for reasons outlined in paragraphs 2.1 – 2.5 above, which spell out the potential impact upon the Local Authority's ability to deliver appropriate levels of infrastructure due the increased strain which this will place on the Borough's finances.

3.3 The Council could implement an immediate Article 4 direction, following a statutory consultation of no less than 21 days. However, for a period of one year the Council are liable to compensate landowners affected by the Article 4 direction.

3.4 To avoid compensation payments, non-immediate Article 4 directions can be made which take effect at least one year from the date of issue. We recommend introducing a non-immediate Article 4 direction in this case.

4. Consultation

4.1 Prior to the Article 4 direction coming into effect, the Council must give notice of the proposed direction through local advertisements. It must also have a minimum of 2 site notices within the Borough for no less than 6 weeks. The notices will provide information on when the proposed direction will come into force, where members of the public can view the proposed notice and provide a period of at least 21 days where members of the public can submit any representations.

4.2 We will ensure that we engage with all relevant stakeholders and business groups so that they are aware of our proposals and that they have sufficient notice to submit their representations. We will also need to submit our proposed direction to the Secretary of State.

5. Financial Implications

Implications completed by Katherine Heffernan, Head of Service Finance

5.1 This report seeks authorisation for the withdrawal of a specific set of permitted development rights in the Borough. This could result in additional work and costs from assessing planning applications. However, the costs will be recovered through the charging of a fee for the application and so there should be no net direct impact on the Council or its subsidiaries.

5.2 The expected indirect financial implications for the Council are expected to be broadly beneficial as the new process should ensure that there is a full consideration of the net costs to the Council of developments and financial contributions are levied where required.

6. Legal Implications

Implications completed by Dr Paul Feild, Senior Governance Lawyer

6.1 The decision to make an Article 4 Direction is a Cabinet function as a Local Planning Authority policy decision. The NPPF advises that the use of Article 4 directions to remove national permitted development rights should be limited to

situations where this is necessary to protect local amenity or the well-being of the area.

- 6.2 The Town and Country Planning (General Permitted Development) Order 1995 (1995 Order) and the 22 instruments that have amended the 1995 Order is a general grant of planning permission by the Secretary of State for development in certain specified circumstances. The Town and Country Planning (General Permitted Development) (England) Order 2015 consolidates, for England, however these 'permitted developments' can be removed by a decision of the relevant Local Planning Authority, under Article 4 of the 1995 Order and thus require that such developments will need a formal planning application. The procedure to make the Article 4 Direction is set out in Schedule 3 of the 1995 Order.

7. Other Implications

- 7.1 **Corporate Policy and Equality Impact** – A full equality impact assessment has been conducted and is attached at Appendix 3.

Public Background Papers Used in the Preparation of the Report: None.

List of appendices:

- **Appendix 1:** Article 4 Justification paper
- **Appendix 2:** Draft Article 4 Schedule
- **Appendix 3:** Equality impact assessment