

### Justification for Article 4 Direction – Additional storeys

19 January 2021

#### Introduction

1. This paper sets out the reasoning for the proposed removal of the permitted development right for additional storeys on certain buildings within the London Borough of Barking and Dagenham. It considers the wider national, regional and local planning policy context and how the permitted development would impact on the Borough's growth ambitions.
2. We have already seen several high-density schemes come forward through the permitted development right. The Council will not be able to secure any 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.
3. It is therefore deemed appropriate to introduce an article 4 direction to remove the permitted development right for additional storeys on certain buildings within designated non-industrial areas of the Borough in order to mitigate the significant impacts of these schemes on top of the significant growth already planned for the area.

#### Policy Context

4. The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 came into force on 1 August 2020 and introduced:
  - A new Class A– 'New dwelling houses on detached blocks of flats' – which grants the right to extend purpose-built blocks of flats upwards by two additional storeys. The blocks of flats must consist of three storeys or more before the extension and cannot have a total height of 30 metres or more with the additional two storeys.
5. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 amended the GPDO and granted additional permitted development rights which came into force 31 August 2020 and introduced:
  - Classes AA and AB which permit new flats on detached buildings (AA) and terraced buildings (AB) which are in commercial or mixed use as shops, for financial and professional services, restaurants and cafes, offices, betting offices, pay day loan shops, or launderettes or in a mixed use combining one of those commercial uses with use as a dwellinghouse. For Class AA only, the building must already be three storeys in height, above ground level, to rely on the permitted development right.
  - Classes AC and AD which permit new flats on terraces (AC) or detached buildings (AD) which are in use as single dwellinghouses. In both cases the right is not permitted if the house has already been enlarged by the addition of one or more storeys above the original structure.

6. The new rights are subject to prior approval from the local planning authority and so an application must be made in each case. Matters which the local authority will consider include:
  - potential highways impacts
  - impact on neighbour and occupier amenity, including the extent to which the development would overlook others, invade privacy or curb natural light on other property
  - the external appearance of the building
  - the provision of adequate natural light in all habitable rooms of the new homes
  - the impact of noise from existing commercial premises on the intended occupiers of the new homes
  - impacts a taller building may have on air traffic and defence assets
  - the impact on protected vistas in London.
7. Each new permitted development right is subject to very specific conditions and limitations which must be carefully considered in each case. There are some common conditions which apply to all five classes:
  - the new dwellinghouses that are constructed must be flats;
  - the new rights only apply to buildings constructed between 1 July 1948 and 5 March 2018;
  - the rights will not apply to buildings in conservation areas or listed buildings;
  - engineering operations within the existing curtilage of the building to strengthen existing walls and foundations and to install services are permitted, along with replacement or installation of additional plant, construction of safe access and egress and construction of ancillary facilities if needed;
  - before development begins the developer must provide the local planning authority with a report for the management of the construction which sets out proposed construction hours and how adverse impacts of noise, dust, vibration and traffic on occupiers and adjoining owners will be mitigated;
  - the development must be completed within a period of three years starting with the date 'prior approval' is granted, and;
  - every dwellinghouse in the building must remain in use as a dwellinghouse and for no other purpose, although uses which are ancillary to the primary use as a dwellinghouse will be permitted.
8. The Council is required to make a decision on an application for prior approval within eight weeks. If a decision has not been made within eight weeks there is a right of appeal to the Secretary of State for non-determination of the prior approval application.
9. Local planning authorities are required to consult certain persons or bodies where specific impacts are identified. For example, should the local authority consider that there will be increased traffic as a result of the development, it must consult the relevant highway authority. Local authorities cannot take into account issues outside the scope of the prior approval process, such as the provision of local infrastructure or affordable housing. Should a prior approval application be submitted to the Council and meet all of the above requirements, planning permission will be granted and development can be started.

## **Impact**

10. The Council has significant growth ambitions, with the draft Local Plan seeking to deliver 42,737 additional new homes by the year 2037. The Infrastructure Delivery Plan (2020) has identified the infrastructure needs of the borough and will assist the Council in securing the necessary financial contributions from Section 106 planning obligation agreements to ensure that any new development coming forward provides the necessary schools, hospitals and transport to support the increase in new homes. All developments will also

need to ensure that they reflect the housing needs of the local communities through the correct range of housing types and tenures, including the provision of affordable housing.

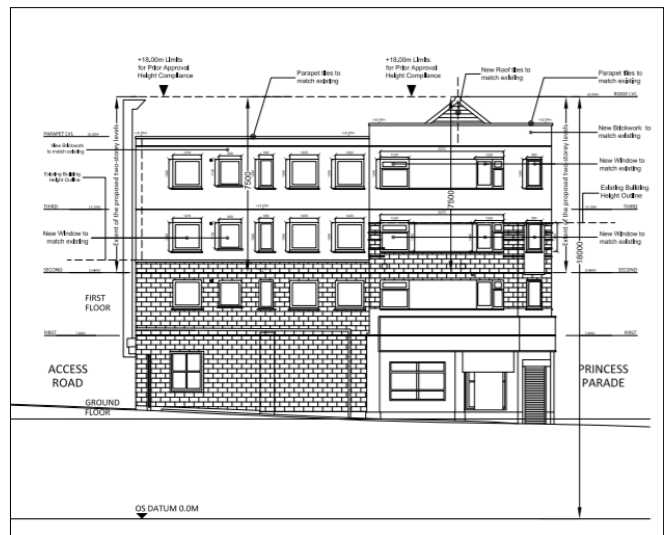
11. As the prior approval application process only considers a limited range of issues, the Council will be limited in its ability to secure contributions to mitigate the impact of the development on local infrastructure or ensure the provision of affordable housing through a S106 planning obligation. 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. It will also lead to poor quality development as the Council will not be able to apply its local design standards.

12. We are already seeing the types of development which will be coming forward through the new permitted development right through new prior approval applications with 9 applications already submitted, 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.

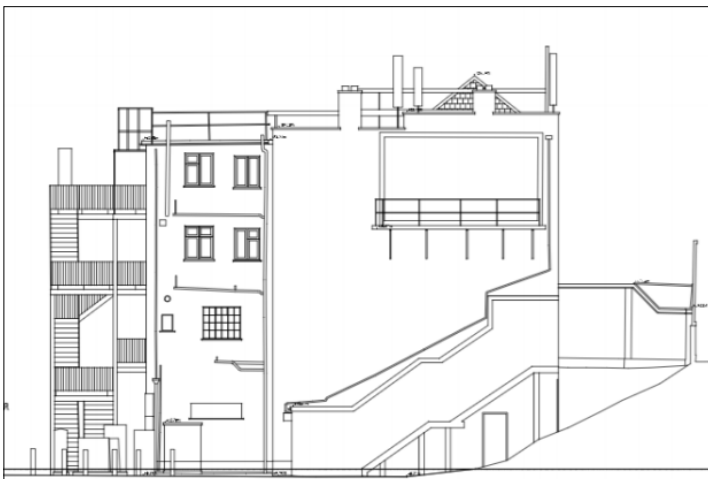


Existing side elevation



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

13. As more of these developments come forward, there will be further impacts on local infrastructure and a loss of affordable housing. It would also significantly undermine the Council's strategy for delivering high-quality designed buildings and places. The Council has an opportunity to remove these permitted development rights within designated non-industrial areas of the borough through an Article 4 Direction. This would mean that applications for additional storeys for certain buildings would be considered under a full planning permission to consider issues relating to the development rather than a set criteria. It would also mean that the Council could seek financial contributions to mitigate the impact of the development on local infrastructure and can seek the provision of affordable housing through a Section 106 agreement.

### **Article 4 Direction**

14. An article 4 direction is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. 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.

15. 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

16. An article 4 direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail.

17. Article 4 directions may be made and implemented immediately (following a period of statutory consultation of no less than twenty-one days), in which case for a one year period local authorities are liable to compensate landowners affected by the Article 4.

18. 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 are intending to introduce a non-immediate Article 4 direction in this case.

### **Policy background**

#### National

19. The National Planning Policy Framework states that the planning system has a key purpose of delivering sustainable development. Achieving sustainable development means the planning system has three objectives: economic, social and environmental. This means the identification and coordination of infrastructure, ensuring there are a sufficient number and range of homes to meet the needs of present and future generations, and making effective use of land.

- Paragraph 59 sets out that the Government's objective is to significantly increase the supply of new homes and that the needs of groups with specific housing requirements are addressed.

- Paragraph 61 also sets out that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. Paragraph 62 makes clear that affordable housing should be met on-site unless a financial contribution has been agreed or that the agreed approach contributes to mixed and balanced communities.
- Paragraph 92 sets out the need for providing social, recreational and cultural facilities in new developments and ensure that there is an integrated approach in considering the location of housing economic uses and community facilities and services.
- Paragraph 124 states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Paragraph 130 also states that permission should be refused for development of poor design that fails to take into account any local design standards or style guides in plans or supplementary planning documents.

## Regional

20. The Mayor of London has sought a significant increase in the number of homes across London in the current London Plan and the Intend to Publish London Plan. However, the Mayor has also made clear that this must be with the appropriate range of types and tenures of housing, including affordable housing, and the necessary supporting social infrastructure. The Mayor is also seeking a programme of Good Growth, which means new development should benefit everyone who lives in London and should be environmentally sustainable and physically accessible.

## London Plan 2016

- Policy 3.5 Quality and design of housing developments states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment.
- Policy 3.8 Housing Choice sets out that Londoners should have a genuine choice of homes that they can afford and meet their requirements for different sizes and types of dwellings in the highest quality environments.
- Policy 3.11 Affordable Housing Targets sets out that boroughs, agencies and partners should seek to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of the Plan.
- Policy 3.16 Protection and Enhancement of Social Infrastructure seeks additional and enhanced social infrastructure provision to meet the needs of its growing and diverse population.

## Publication London Plan (2020)

- Policy D6 Housing quality and standards states that housing development should be of high-quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures.
- Policy H4 Delivering affordable housing seeks a strategic target of 50% of all new homes to be genuinely affordable or provide affordable housing off-site or a cash in-lieu contribution.
- Policy H10 Housing size and mix seeks a range of unit sizes from new developments to delivery mixed and inclusive neighbourhoods.
- Policy S1 Developing London's social infrastructure sets out that development proposals which provide high quality, inclusive social infrastructure that addresses local or strategic need and supports service delivery strategies should be supported.

## Local

21. The existing and emerging Local Plan has aligned with the London Plan in meeting the increase in new homes whilst delivering the supporting social infrastructure, ensuring the housing mix meets local needs and also addressing specific local issues such as the protection of family sized housing.

### Barking and Dagenham Local Plan (2010)

- Policy CP3 High quality built environment seeks that all development proposals will be expected to achieve high quality standards in relation to the design and layout of new buildings and spaces.
- Policy CC1: Family Housing seeks a range of accommodation types and sizes on new developments with 40% of developments above 10 units to provide larger family sized units (3 to 4 bedrooms or larger).
- Policy CC2: Social Infrastructure to Meet Community Needs aims to maintain and improve community wellbeing by protecting, retaining and enhancing existing community facilities. It seeks major developments to contribute towards any additional need for community facilities arising from them.
- Policy CC3: Achieving Community Benefits Through Developer Contributions seeks to achieve sustainable growth and to maximise the quality and contribution of new developments by securing contributions towards community benefits such as affordable housing, education facilities and health care facilities.

### Draft Barking and Dagenham Local Plan (2020)

- Policy SP2: Delivering a well-designed, high quality and resilient built environment seeks to promote high-quality design, providing a safe, convenient, accessible and inclusive built environment and interesting public spaces and social infrastructure for all.
- Policy SP3: Delivering the homes that meet people's needs seeks the maximum reasonable amount of affordable housing to be secured from new developments and ensures development does not undermine the supply of self-contained housing, in particular family housing.
- Policy DMH1: Affordable Housing seeks all developments with capacity to provide 10 or more units to meet an overarching 50% of on-site affordable housing target, by applying the threshold and viability approach set out in the Mayor of London's policy guidance. Policy DMH2: Housing Mix seeks a range of unit sizes from new developments, including larger family homes.
- Policy SP4: Delivering social and cultural infrastructure facilities in the right locations seeks a range of high quality social and cultural infrastructure facilities for existing and new residents in appropriate locations by securing planning obligations.

### **Justification for Article 4 Direction**

22. The London Borough of Barking and Dagenham has significant growth ambitions. In order to achieve this, it has created a pioneering urban development company, Be First, which has been provided an overall target of delivering 50,000 new homes and 20,000 new jobs. This will create 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.
23. The majority of this will be funded through financial contributions from new development, although due to the existing weak land values not all of the necessary infrastructure can be funded through 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 homes.

24. The Prime Minister's Foreword to the Planning White Paper (2020) stated that they are seeking a planning system that "makes it harder for developers to dodge their obligations to improve infrastructure". However, the introduction of the new permitted development for additional storeys on certain buildings will create significant additional impacts over and above the existing pressures for infrastructure as no financial contributions or affordable housing can be secured to mitigate its impact.
25. The Government's own impact assessment on the new permitted development right concluded that there may be greater costs for the local authority arising from extra pressure on local infrastructure and public services if there is a greater number of residents. It also concluded that a lack of developer contributions may leave funding gaps for the local authority to fill.
26. A Royal Institution of Chartered Surveyors (RICS) study in May 2015 on the extension of permitted development rights for office to residential conversions found that in just five local authorities they may have lost £10.8m in planning obligations and 1,667 affordable housing units from approved conversions, as opposed to the more conventional planning permission route. It also criticised the small homes that were delivered which were below nationally described space standards.
27. This was also the finding of the Government's Building Better, Building Beautiful Commission whose final report, "Living with Beauty" published 30 January 2020, concluded that 'there are no contributions towards local social or physical infrastructure via negotiable Section 106 agreements' and that 'Community Infrastructure Levy is not increased to compensate for this and developments may well create costs for local authorities'.
28. 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.
29. Barking and Dagenham is a combination of distinct places comprising of various building typologies and character areas relating to the historic growth of the borough. These include the Becontree Estate which has both historical and architectural significance (nationally and locally), as such it is particularly important that new development is subject to full planning design scrutiny in order to protect and preserve their unique character.
30. Strategic Policy SP2 of the Draft Barking and Dagenham Local Plan (2020) emphasises the importance of high-quality design and the need to recognise local character, adopting a design-led approach to development and site potential by responding positively to local distinctiveness and site context.
31. It is expected that all new development should make a positive contribution to the character of the surrounding area. Development proposals which fail to deliver high-quality design, and/or respond poorly to local context are typically refused planning permission. Unlike applications which are subject to full planning scrutiny the newly extended Permitted Development rights for additional storeys allow only for limited design scrutiny.

32. Given the visibility and prominence of upward extensions which to date have been proposed for the existing highest buildings within local Neighbourhood Centres, it is important that full planning scrutiny is given to their design, external appearance and impact on the wider streetscene and character of the area.
33. Much of Barking and Dagenham comprises of traditional suburban 2 storey terraced and semi-detached housing, the design and uniformity of which is a characteristic feature synonymous with the character and identity of the borough. The upward extension of random individual properties within a typical streetscene extending beyond the established roofline would negatively impact on local character and appearance, i.e. appearing as alien interventions at odds with and unrelated to neighbouring dwellings. Similarly, the upward extension of larger blocks within local Neighbourhood and District Centres would in most cases adversely compromise the character and feel of these places.
34. As referred to in the Government's own report into the quality of houses delivered through change of use permitted development rights, this could create the worse quality residential living environments within the borough, which would fall below the amenity standards safeguarded by full planning assessment. This would thereby negatively impact on the health and well-being of residents. These aspects are often related to the internal configuration and conflicting uses of neighbouring schemes alongside external design and access issues.
35. In accordance with the aims and objectives of the National Design Guide (2019) our ambition is for well-designed new development that is influenced by and responds positively to local context in order to retain a strong sense of local identity and sense of place.
36. 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.
37. 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.
38. This will ensure that applications for additional storeys are considered through a full planning application where officials can consider the local impact of high density schemes on social infrastructure and secure the necessary financial contributions for new and upgraded infrastructure to mitigate any negative impacts. Officials will also be able to negotiate the appropriate affordable housing, tenure and type of housing to reflect the needs of local communities and ensure the highest quality of design.

## **Conclusion**

39. National, regional and local planning policies are clear that the purpose of the planning system is not only to significantly increase the delivery of new homes but also to ensure that homes are supported by the necessary social infrastructure and the types and tenures of housing to create sustainable communities.



40. The new permitted development right for additional storeys on certain buildings has the potential to bring forward high density schemes, as seen by the developments already coming forward in the borough. This would create additional pressures for infrastructure and services on top of the growth ambitions that the Council is seeking to bring forward. It would also significantly undermine the Council's strategy for delivering high-quality designed buildings and places.
  
41. The Council would be unable to mitigate these pressures through a S106 planning obligation and would not be able to finance the necessary infrastructure or affordable housing required to make the scheme acceptable. Removing these permitted development rights within existing residential areas would therefore be appropriate within the local context of Barking and Dagenham to ensure that these schemes can be properly supported by the planning system and benefit the wider community. It would also provide the Council with more control over the type and tenure of housing that is delivered as well as ensuring that they have high-quality design.

**Be First Planning Policy Team**