

CABINET

18 January 2022

Title: Confirmation of Article 4 Direction - Permitted Development Rights Allowing Upwards Extensions to Certain Buildings	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report	For Decision
Wards Affected: All wards	Key Decision: Yes
Report Author: Tim Thomas – Head of Transport, Infrastructure and Policy Planning	Contact Details: Tim.Thomas@befirst.london 07834 014334
Accountable Director: Caroline Harper – Chief Planning Director, Be First	
Accountable Strategic Leadership Director: Abi Gbago, Strategic Director of Inclusive Growth	
Summary	
<p>New permitted development regulations, effective from August 2020, granted the right 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 would 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>On 19 January 2021 Cabinet agreed to make a non-immediate Article 4 direction covering the whole borough except designated industrial land, withdrawing permitted development rights for additional storeys above existing residential and commercial properties.</p>	
<p>In line with the requirements set out in the General Permitted Development Order 2015 as amended:</p>	
<ul style="list-style-type: none">• The notice was placed in the Barking and Dagenham Post on 3 March 2021 advertising that the Direction was due to come into force on 22 February 2022 subject to confirmation by the Council and inviting representations between 10 May 2021 and 21 June 2021.• The notice and associated material were placed on the Council's website• A total of 7 notices were placed across the Borough including:<ul style="list-style-type: none">○ 2 notices were placed at Station Parade, near Barking station○ 1 notice was placed at Upney Lane, near Upney station○ 1 notice was placed at Gale Street, near Becontree Station	

- 1 notice was placed at Dagenham Heathway
- 1 notice was placed at Rainham Road South, near Dagenham East Station
- 1 notice was placed at High Road, Chadwell Heath
- A link to the notice and associated material was posted regularly on social media
- The notice was sent to the Secretary of State. No comments were received except to state that the regulations require further notification to the Secretary of State following the confirmation of the direction.

If confirmed by Cabinet, this non-immediate Article 4 direction will come into force on 22 February 2022. Once confirmed a notice will be served locally and a copy of the confirmation direction sent to the Secretary of State. From 22 February 2022 any proposals for additional storeys above existing residential and commercial properties will be considered through a planning application and relevant Local Plan policies will be applied.

Recommendation(s)

The Cabinet is recommended to confirm the Article 4 direction, covering the whole borough except designated industrial land, withdrawing permitted development rights for additional storeys above existing residential and commercial properties, to come into force on 22 February 2022.

Reason(s)

To safeguard the future regeneration and growth of the borough and contribute to the Council's priority of 'Inclusive Growth'.

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 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 44,051 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 the report 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 Therefore on 19 January 2021 Cabinet agreed to make a non-immediate Article 4 direction to withdraw permitted development rights for additional storeys above existing residential and commercial buildings across the borough except for designated industrial land. If confirmed by Cabinet, this non-immediate Article 4 direction will come into force on 22 February 2022.

2.4 Once confirmed a notice will be served locally and a copy of the confirmation direction will be sent to the Secretary of State. From 22 February 2022 any proposals for additional storeys above existing residential and commercial properties will be considered through a planning application and relevant Local Plan policies will be applied.

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 inviable for reasons outlined in paragraphs 2.1 – 2.2 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 When intending to make an Article 4 direction, a Council as local planning authority (LPA) must give notice locally and nationally.

4.2 Local notification requires the following measures:

- Local advertisement (e.g. local newspapers)
The notice of the making of an Article 4 direction withdrawing permitted development rights for additional storeys above existing residential and commercial properties was placed in the Barking and Dagenham Post on 3 March 2021 advertising that the Direction was due to come into force on 22 February 2022 subject to confirmation by the Council and inviting representations between 10 May 2021 and 21 June 2021.
- Site notice at no fewer than 2 locations within the area to which the Direction relates for not less than 6 weeks.

4.3 A total of 7 notices were placed across the Borough including:

- 2 notices were placed at Station Parade, near Barking station
- 1 notice was placed at Upney Lane, near Upney station
- 1 notice was placed at Gale Street, near Becontree Station
- 1 notice was placed at Dagenham Heathway
- 1 notice was placed at Rainham Road South, near Dagenham East Station
- 1 notice was placed at High Road, Chadwell Heath
- Individually on every owner and occupier of every part of the land within the area to which the Direction relates.
Schedule 3 (2) of the General Permitted Development Order 2015 advises that this requirement would not apply if it is impracticable because it is difficult to identify/locate every owner and occupier or the number of owners or occupiers would make individual service impracticable. Given the size of the area under consideration and the quantity of individual owners /occupiers affected the Council did not notify individual parties in this way.

4.4 A link to the notice and associated material was posted regularly on social media.

4.5 The Council received a total of 5 responses which were all in favour of the Article 4 direction to ensure that development is built to a high quality and provides contributions to local infrastructure. The consultation website received a total of 200 visits and had 88 downloads of the associated materials.

4.6 National notification was also carried out as prescribed to the Secretary of State (SoS) on the same day the notice of the Article 4 direction was first published / displayed locally. The Council received a response from the SoS stating that no action will be taken at this stage and to notify the SoS again following the

confirmation of the Direction. The Secretary of State could still intervene on the proposed direction following confirmation.

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.
- 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.
- 6.3 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 was carried out and accompanied the report to Cabinet on 19 January 2021 (<https://modgov.lbbd.gov.uk/Internet/documents/s142962/Article%204%20Direction%20Appx%203.pdf>)

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

List of appendices:

Appendix 1: Article 4 Justification paper

Appendix 2: Confirmation notice