

Subject:	Article 4 direction – Removal of Permitted Development Rights Office to Residential		
Date of Meeting:	11 July 2013		
Report of:	Executive Director Environment, Development & Housing		
Contact Officer:	Name:	Helen Gregory	Tel: 29-2293
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Ward(s) affected:	St. Peters & North Laine, Regency, Preston Park, Queens Park and Hove Park		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The report seeks authorisation for making an article 4 direction to remove the government's recently introduced temporary permitted development rights under planning legislation for changes of use from offices (B1a) to residential uses (C3) in certain parts of the local authority area. This means that a planning application would be required to carry out such changes of use. It would provide control over the loss of office accommodation in the city's primary office area in line with the approach set out in the Submission City Plan Part 1. The areas proposed for inclusion within the article 4 area are the Central Brighton and New England Quarter and London Road Area and two key office sites; Edward Street Quarter and City Park. The proposed article 4 direction is in Appendix 1 and proposed areas in Appendix 2.

2. RECOMMENDATIONS:

- 2.1 That Policy & Resources Committee authorises the making of a non-immediate direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove the permitted development right to change the use from offices (B1a) to a dwelling house (Class C3) in the areas identified in Appendix 2 for the reasons outlined in this report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Town and Country Planning (Use Classes) Order 1987 (as amended) classifies the use of land and buildings for planning purposes. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) grants permitted development rights to allow certain changes of uses between classes without the need for planning permission. In February 2013 the government announced its intention to revise the permitted development rights and in May 2013, the General Permitted Development Order was amended to introduce a temporary permitted development right allowing the change of use of

a building from offices (B1a) to residential (C3 use) without the need to submit a planning application. Prior approval of the local planning authority is required in relation to transport and highways, contamination and flooding. Where a development requires any additional work to an existing building, or the building is a listed building, applications for planning permission/listed building consent for that work will be required. The new permitted development right is temporary and will expire on 30th May 2016 although the government has indicated this may be extended.

- 3.2 The government gave local authorities a one off opportunity to seek an exemption from these permitted development rights. It is understood that 164 other local authorities submitted exemption requests. A well evidenced and robust exemption request was prepared by consultants Nathaniel Lichfield & Partners on behalf of the council following the guidance sent to Chief Planning Officers. The exemption request was supported by Brighton & Hove Economic Partnership, the Coast to Capital LEP and Wired Sussex. This was submitted to Department of Communities and Local Government (DCLG) to meet the 22nd February deadline and was endorsed by members of the Economic Development & Regeneration Committee at their 7 March Meeting.
- 3.3 The council was informed on the 10 May that it was unsuccessful in its request to exempt certain areas of the city from the proposed permitted development rights. Indeed of the 165 local authorities that submitted exemption requests only 17 local authorities were successful. The response from the DCLG indicated that all the council's exemption requests failed to reach the score set by Ministers for a successful bid. The rationale for that scoring was not explained. A request for further information on how the assessment was undertaken has been sent to the DCLG.
- 3.4 Local planning authorities have powers to make an article 4 direction to remove permitted development rights. Guidance on the use of article 4 directions was published by the Department for Communities and Local Government in November 2010.¹ It states that local planning authorities should only consider article 4 directions where the use of the permitted development rights would *"harm local amenity or the proper planning of the area"* and where there is evidence to identify that potential harm. Article 4 directions must be made in accordance with the National Planning Policy Framework which states at paragraph 200 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 wellbeing of the area.
- 3.5 It is considered that a blanket city-wide introduction of permitted development rights would have a disproportionately significant impact on the highest growth, highest value sectors of the City economy that are key drivers of private sector job creation as evidenced in the council's exemption request.
- 3.6 Brighton & Hove is one of the fastest growing economies in South East England, with an internationally renowned cluster of digital, media and creative businesses. Over the past 15 years the rate of job growth has exceeded the

¹ Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995.

regional and national average, and the City is consistently identified as a focus for private sector job growth, and the Centre for Cities² recently identified it as having the second highest per capita stock of business outside London, and a 5.3% growth in private sector jobs, the fourth highest in the country.

- 3.7 Forecasts indicate that the City has potential to generate 20,000 jobs over the next two decades, of which about 7,900 (some 40%) will require office premises. Much of this growth will be focused within small but high-growth businesses that now characterise the City's economy and leading sectors. It is estimated that the City will require an additional 112,000 m² of commercial office space by 2030, an increase of 26% on current levels.
- 3.8 The options to accommodate this requirement are limited, and recent evidence³ indicates that the City already has insufficient supply of office space to meet future needs, exacerbated by the lack of delivery of new Grade A space in the past. This has significant long-term implications because a lack of office space may ultimately constrain the City's ability to retain its businesses as they grow and expand. Rental levels for prime space have been on an upward trajectory since the early 1990s and are now uncompetitive for many small and growing businesses, while the office vacancy rate stands at just 8%.
- 3.9 Against this backdrop, Brighton & Hove also has some of the highest housing affordability pressures of any local authority in the South East, and on average has lost 3,000 m² office space per annum to residential and other uses over recent years. Land value differentials continue to provide strong incentive to landlords to seek to transfer even occupied office space to residential use. Planning policy in the city is therefore finely calibrated, aiming to balance the need for homes and jobs and managing the competing requirements for a limited supply of space.
- 3.10 The Central Brighton, New England Quarter and London Road area together constitute the primary office area for Brighton & Hove. It is a location where high quality premises are demanded from a variety of occupiers such as media, creative, financial, business and professional services, and is the focal point for the City's internationally-renowned digital and media economy. The area has recently been awarded a £5 million funding allocation under the Government's Super Connected Cities programme to provide ultrafast broadband services to serve Central Brighton's cluster of digital and media companies. The Submission City Plan therefore safeguards existing office accommodation in this area and encourages improvements in quality to meet future business needs.
- 3.11 Through its Submission City Plan (February 2013) the City Council is proposing a strategy to help remedy the City's lack of office supply through a policy of safeguarding the most valuable office sites and providing a small number of new sites within the limitations of available development land. Together these are only expected to meet 85% of the identified office requirements, therefore protecting and upgrading existing office space will be essential to help meet future needs.

² Cities Outlook 2013, Centre for Cities, January 2013

³ Brighton & Hove Employment Land Study Review 2012

- 3.12 The evidence submitted to the DCLG demonstrated that the Central Brighton area accounts for 32% of the city's stock of office space and the economic costs of losing even 10% of it could equate to a loss or displacement of up to 700 office-based jobs, with an impact of £25.6 million Gross Value Added (GVA) per annum. If 10% of this stock were converted to housing, it could support around 190 residential units and 114 jobs over the three year period during the construction phase, worth £2.4 million of GVA. A blanket city wide permission to turn offices into housing could see office-based businesses priced out of the city, growing businesses moving elsewhere and limited inward investment.
- 3.13 Along with the Central Brighton and New England Quarter and London Road Area two key office sites are also recommended for inclusion in the Article 4 direction; Edward Street Quarter and City Park. These offer large scale modern, high quality office accommodation serving major corporate occupiers and significant employers. After reviewing the wording of the government's amendment to the General Permitted Development Order, in particular that permitted development rights apply to any building in office B1a use on 30th May 2013 or was last in use as B1a office it is considered that the other 13 employment sites submitted for exemption do not need to be covered by an article 4 direction because they are allocations for new office floorspace or they are industrial estates with mixed B1 consent where permission for a change of use would be required.
- 3.14 It is recommended that a non-immediate direction is used, which comes into force twelve months after it has been made. A non-immediate direction would allow all consultation views to be taken into account before the direction was confirmed. This would also reduce or eliminate the likelihood of compensation being payable as explained in section 5.3 of this report. The use of an immediate direction could result in considerable compensation implications. It is difficult to predict the impact the use of permitted development rights over the twelve months of the consultation is likely to have but this will be monitored.
- 3.15 The intention of the article 4 direction would not be to halt future changes of use of offices to residential use. Rather, the direction and the current Local Plan and emerging City Plan policies would give the city council control of change of use applications within the selected areas of the city through the planning process to help protect the existing office supply that is of the greatest importance to the functioning of the city's economy both now and in the future. It would also allow the consideration of other planning matters such as affordable housing or amenity space provision to be considered with change of use applications which would not be possible with the permitted development rights. The permitted development rights would apply to any buildings in B1 (a) office use on 30th May 2013 or last in use as a B1 (a) office in all other parts of the local authority area.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 The proposed article 4 consultation should accord with the aim of the Community Engagement Framework and Standards to ensure the effective representation of communities in local and citywide strategic planning and decision-making.
- 4.2 It should be noted that consultation on the need to safeguard offices within the central Brighton area has already taken place through the City Plan Employment

Issues and Options Paper in October 2011. The responses to the Employment Options Paper both at events and through the formal responses were generally positive regarding the preferred option with support in particular from the City Employment and Skills Steering Group and the Brighton & Hove Economic Partnership. Policy SA2 Central Brighton was also generally supported at the draft City Plan consultation in May 2012. Local commercial agents and some planning agents approached about the council's exemption case, whilst in agreement about the need for quality new office accommodation in central Brighton and the need to protect purpose built modern offices were less supportive about seeking an exemption and were broadly supportive of some greater freedom of change of use of poor quality, poorly located offices.

- 4.3 Following the making of an article 4 direction, a statutory consultation period will commence for a minimum of 21 days. In accordance with the Community Engagement Framework the consultation should be for three months. After assessment of the responses, the council will decide whether to confirm the direction. In addition to the statutory local advertisement and site notices, direct consultation will be undertaken with specific interested parties. These include commercial agents, local planning consultants and key local developers. Consultation details will also be published on the council's website.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 At this stage it is very difficult to estimate the potential implications arising from the recommendations in this report. The costs of making the article 4 direction will be met from the existing Planning Strategy and Projects and Development Control revenue budgets. If the article 4 direction is confirmed there is likely to be a financial impact on the planning service. This is because no fee would be payable for planning applications for a change of use arising as a result of the removal of permitted development rights. A nationally set fee would be payable for the prior approval process which the DCLG estimate would cover the cost of work involved but it is not known if this would actually be the case.

Finance Officer Consulted: Jeff Coates

Date: 05/06/13

Legal Implications:

- 5.2 Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) allows local planning authorities to make Directions withdrawing permitted development rights where the authority considers it expedient that development should not be carried out unless express planning permission has been obtained for the same. Once made the Article 4 Direction will need to be advertised and, in considering whether to confirm the Direction, the planning authority must take into account any representations made during the consultation period.
- 5.3 The new office to residential permitted development rights were introduced by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 which came into force on 30 May last. The Town and Country Planning (Compensation) (England) Regulations 2013 which came into

force on the same day added office to residential permitted development rights to the list of prescribed development where compensation would not be payable following withdrawal of permitted development rights provided certain conditions apply. Those conditions include that at least 12 months notice of withdrawal is given and that development has not started prior to the notice being published.

- 5.4 It is not considered that any adverse human rights implications arise from the Report.

Lawyer Consulted:

Hilary Woodward

Date: 7 June 2013

Equalities Implications:

- 5.5 The proposed article 4 direction will help to address the need to retain affordable office space within the identified areas, it will help businesses and protect jobs; and where loss of offices is considered acceptable will allow for an element of affordable housing to be secured.

Sustainability Implications:

- 5.6 Making an article 4 direction would help the local planning authority to manage the conversion of offices to residential in the city's primary office area and thereby help deliver the City Plan strategy for balancing housing and employment needs, sustainable economic development and by protecting businesses and jobs in the city in accessible locations reduce the need to travel by car. The article 4 direction will allow issues of sustainability to be addressed through planning applications.

Crime & Disorder Implications:

- 5.7 None identified.

Risk and Opportunity Management Implications:

- 5.8 None identified.

Public Health Implications:

- 5.9 None identified.

Corporate / Citywide Implications:

- 5.10 An unmanaged loss of office could have a substantial adverse economic consequence at the city and the wider city economy in terms of business competitiveness, jobs growth, undermining investment in business space and in particular harmful impact on the burgeoning growth sectors which are not considered to be offset by the positive benefits the new rights would bring in terms of delivering new housing.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The alternative option is not to make an article 4 direction. This would retain the temporary permitted development right that a planning application is not required

to change from office to residential use. The local planning authority would have no control over loss of office accommodation.

- 6.2 City wide coverage would not be justifiable and likely to be raise objection from the Government.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 An article 4 direction would, if confirmed, provide a tool to enable the protection of important and accessible office space, supporting the delivery of the City Plan strategy for balancing housing and employment needs, sustainable economic development and protect businesses and jobs in the city.

SUPPORTING DOCUMENTATION

Appendices:

1. Proposed article 4 direction
2. Proposed area of Article 4 direction

Documents in Members' Rooms

None

Background Documents

1. 7 March Economic Development & Regeneration Committee Report – Application for Exemption from Office to Residential Permitted Development Rights ([http://present.brighton-hove.gov.uk/Published/C00000705/M00004042/AI00032529/\\$20130221102002003545_0013975_ReportTemplateCommittee.docA.ps.pdf](http://present.brighton-hove.gov.uk/Published/C00000705/M00004042/AI00032529/$20130221102002003545_0013975_ReportTemplateCommittee.docA.ps.pdf))
2. Request for Office to Residential Permitted Development Rights Exemption – Supporting Evidence Report for Brighton & Hove February 2013 ([http://present.brighton-hove.gov.uk/Published/C00000705/M00004042/AI00032529/\\$Enc.%20%20for%20Exemption%20Application%20from%20Office%20to%20Residential%20Permitted%20Development%20Rights_v1.pdfA.ps.pdf](http://present.brighton-hove.gov.uk/Published/C00000705/M00004042/AI00032529/$Enc.%20%20for%20Exemption%20Application%20from%20Office%20to%20Residential%20Permitted%20Development%20Rights_v1.pdfA.ps.pdf))
3. Employment Land Study Review 2012 (http://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/downloads/ldf/BH_Employment_Land_Study_Review_Final_Report.pdf)

