



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Business, Licensing and Planning
Date:	23 June 2021
Classification:	General Release
Title:	Making of Westminster's Article 4 Direction for changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses).
Wards Affected:	Bayswater, Bryanston and Dorset Square, Churchill, Church Street, Hyde Park, Knightsbridge and Belgravia, Little Venice, Marylebone High Street, Regent's Park, St. James's, Tachbrook, Vincent Square, Warwick, Westbourne, West End.
City for All:	The making of the Article 4 Direction will support delivery of a thriving economy and vibrant communities by enabling the Central Activities Zone (CAZ) to remain a focus for commercial activity, providing job opportunities and a range of attractions, shops and services for residents, workers and visitors. It will also help secure a cleaner and greener city, by ensuring new developments are required to meet to climate change targets.
Key Decision:	Yes
Financial Summary:	The costs of preparing and advertising the making of the Article 4 Direction will be met within existing budgets.
Report of:	Executive Director of Innovation and Change

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks approval to make a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove permitted development rights for changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses) in the commercial and mixed use areas of the Westminster Central Activities Zone (CAZ) as shown in the map attached as Appendix 2 to this report.
- 1.2 The Direction is required because of a government decision to introduce new permitted development rights allowing the change of use of a wide range of commercial floorspace (including offices, retail, restaurants, cafes, health centres, creches and gyms) to residential use, without the need for planning permission. These rights come into force on 1 August 2021, but under transitional arrangements, office floorspace in the CAZ will remain protected until 1 August 2022 under the City Council's existing Article 4 Direction. The proposed Article 4 Direction covers all uses within Class E in recognition of the positive contribution of all such uses to the role and function of the CAZ. While Class E uses other than office floorspace will be vulnerable to the new permitted development right from 1 August 2021 until 1 August 2022, the introduction of an immediate Article 4 Direction has been ruled out due to the risks of financial compensation referred to in paragraph 4.9 of this report.
- 1.3 The proposed Direction covers a smaller geographic area than the City Council's existing Article 4 Direction by removing the Royal Parks, in response to the stronger emphasis the government is now placing on the need for Article 4 Directions to only cover areas where they are genuinely needed. It focusses on the CAZ as an area where continued commercial agglomeration and the economic benefits this brings are of national importance. While smaller local centres outside of the CAZ provide an important role in providing shops and services to surrounding local communities, as recognised both in adopted City Plan policies and in our formal response to the government's proposals before the legislation was introduced, they do not provide the same nationally important economic benefits as the CAZ.
- 1.4 This is the first step in putting the Direction in place, a process that is set out in national legislation. Once made, the Direction will be subject to consultation and, subject to consideration of any representations made, it can be confirmed after a twelve-month period. From the date the Direction is formally confirmed, applications for planning permission will be required for these changes of use – meaning they will be subject to full consideration of all relevant policies in the Westminster City Plan, the London Plan, and relevant made neighbourhood plans.

2.0 RECOMMENDATION

- 2.1 That the Cabinet Member approves the making of a non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to remove permitted development rights granted for the changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses) within the area of the Central Activities Zone (CAZ) shown in Appendix 2, to come into effect on 1 August 2022.

3.0 REASONS FOR DECISION

- 3.1 The making of the proposed Article 4 Direction will help enable the City Council to use its planning powers to secure an appropriate balance of uses in the CAZ and facilitate economic recovery. In particular it will help ensure the availability of a range of commercial space to support the delivery of good growth in Westminster – which brings the maximum benefits for residents, workers, visitors and businesses in accordance with the objectives of City for All, and the policies in the Westminster City Plan. It will also help ensure new developments meet a wide range of policy objectives including responding to the climate emergency, contributing towards the delivery of affordable housing, and supporting enhanced infrastructure provision.

4.0 BACKGROUND, INCLUDING POLICY CONTEXT

Permitted Development Rights

- 4.1 Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), some changes of use are deemed permitted development. This means that planning permission is only required if the Local Planning Authority has introduced an Article 4 Direction to remove these permitted development rights.
- 4.2 Successive reforms to the planning system have substantially increased the scope of permitted development rights. In 2013 the General Permitted Development Order was amended to enable the change of use from offices to dwelling houses without planning permission – with a temporary exemption for offices in the CAZ. When this exemption was lifted, the City Council, and all other London boroughs within the CAZ, successfully introduced Article 4 Directions to maintain the protection of office floorspace in the CAZ.
- 4.3 In September 2020, the Government amended the Use Classes Order with the aim of providing greater flexibility for the diversification of high streets and town centres. This introduced a new Class E (commercial, business and service uses) which captured a number of uses previously considered separately – including offices, retail, restaurants and cafes, gyms and health

centres. As a result of this, uses within the new Class E are now considered interchangeable without the need for planning permission – as the change no longer constitutes development.

4.4 On 31st March 2021, the government introduced The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021. Therefore, as of 1st August 2021, a new permitted development right from Class E to dwellinghouses will exist, on the basis that this can help increase housing supply. A number of caveats have been included within this legislation, including:

- a size limit whereby the right only applies to sites that would result in the loss of no more than 1500sqm of class E floorspace;
- that existing Article 4 Directions (including our Article 4 protecting office floorspace in the CAZ), will continue to have effect until 31st July 2022;
- a vacancy test, meaning that the right only applies to premises that have been vacant for 3 months before the application;
- that the right does not apply to listed buildings; and
- that the building must have been in Class E use for at least 2 years before benefitting from the right.

4.5 Where the new right does apply, proposals will be subject to a prior approval application, where a very limited number of matters can be considered, namely:

- transport impacts of the proposal;
- contamination risks to the building;
- flooding risks to the building;
- impacts of noise from commercial premises on intended occupiers of the development;
- provision of adequate natural light to all habitable rooms;
- in conservation areas only – consideration of the impact of the loss of the ground floor Commercial, Business and Service use on the area's character and sustainability
- impact on intended occupiers of introducing residential use to an area important for industrial and waste uses; and
- impact of the loss of health centres and registered nurseries on the provision of such local services.

Article 4 Directions

4.6 As referred to in paragraph 4.1 above, Article 4 Directions can be used to withdraw specified permitted development rights across a defined area. This power is set out in Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The legal

requirement for setting such a Direction is that the local planning authority is *“satisfied that it is expedient that development should not be carried out unless permission is granted for it on an application.”*

- 4.7 The National Planning Policy Framework (NPPF) provides some guidance on the use of Article 4 Directions, which is supplemented by the government’s Planning Practice Guidance. Paragraph 53 of the NPPF states 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.”* Paragraph 38 of the Planning Practice Guidance (Reference ID: 13-038-20190722) adds that: *“The potential harm that the direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to...a wide area... and...cases where prior approval powers are available to control permitted development...”*
- 4.8 The government have also recently consulted on some proposed wording changes to the NPPF, including paragraph 53. This includes potential references to the use of Article 4 Direction either in limited situations where it is essential to avoid *“wholly unacceptable adverse impacts”* or *“in order to protect an interest of national significance”*. It also suggests that they *“apply to the smallest geographical area possible”*. All of this indicates that government will seek to limit the future use of Article 4 Directions, which is important to consider, as the Secretary of State has powers to cancel or modify any Article 4 Direction before it is made.
- 4.9 It is possible to make Article 4 Directions that have immediate effect, or which take effect after a period of a year (known as non-immediate directions). Immediate directions can render councils liable to pay developers compensation. This compensation can include the costs incurred in abortive works or expenses such as the planning application fee, professional fees (for architects etc) and, in cases where planning permission is refused *“any loss or damage directly attributable to the removal of the permitted development rights”*, including any loss of value to the property. The breadth of uses now captured under new Class E (commercial, business and service uses), and the highly commercialised nature of much of Westminster, means that an immediate Article 4 could make the City Council vulnerable to a high number of costly compensation claims – hence a non-immediate Direction is proposed.

Justification for proposed Article 4 Direction

a) The role and function of Westminster’s CAZ

- 4.10 The CAZ represents an area of commercial agglomeration in a range of economic growth sectors, providing jobs for Londoners and commuters across the south east and beyond, and drawing in visitor spend from domestic and international tourism that is vital to the success of the UK economy. Westminster’s portion of the CAZ includes over 75 million sqm of commercial floorspace (GOAD 2020), which provides a diverse mix of office floorspace,

cultural attractions, retail and leisure. While interspersed with residential neighbourhoods, which add to the area's vibrancy, the primary strategic functions of the CAZ are commercial in nature.

- 4.11 The scale and mix of mutually supportive commercial uses in Westminster's portion of the CAZ are unlike anywhere else in the country and include global symbols of London and the UK's success. Areas such as the West End and Knightsbridge play a significant role in attracting visitors to the UK. In 2019, London tourism brought £15.7 billion to the UK economy– 63% of all international tourist spending in England (The economic futures of the CAZ, GLA, 2021). Much of this spend is focussed on attractions in central London and associated spend on the retail and leisure on offer.
- 4.12 If harmed by uncontrolled and unmanaged conversion to residential through permitted development rights the unique mix of uses in Westminster's CAZ will never return. Without an Article 4 Direction, any Class E uses providing less than 1500 sqm of floorspace will be vulnerable to unmitigated loss to residential use without proper consideration of the full impacts of such a change. Such erosion of commercial areas to residential could also compromise cultural uses not directly affected by the new rights including theatres and pubs; given their high reliance on trade from workers and visitors in addition to local residents. The importance of visitors and workers to the CAZ is emphasised by footfall data – CACI data from January – February 2020 indicates the majority of people in the CAZ are visitors (82%) and workers (13%) rather than residents (5%).
- 4.13 Central London has been harder hit than most places by Covid-19 as numbers working and visiting such areas have drastically reduced. However, it is too early to predict the long-term impacts of any shift in working, shopping, and travel habits. Pre-pandemic, the nature of commercial activity in the CAZ in Westminster was of vital importance to the wider UK economy, and there is now a need to fully utilise the City Council's planning powers to support its economic recovery.
- 4.14 In 2018, economic activity in Westminster generated over £66.2 billion GVA to the national economy (ONS), of which over £63.9 billion can be attributed to the wards within the CAZ. In terms of the role of Westminster as a centre of employment, ONS data identifies 51,795 registered businesses (2020 UK business count), and a total of 737,465 jobs (2019 Business Register and Employment Survey) across all of Westminster. Extrapolating this to the area covered by Westminster's CAZ, where most commercial properties are located, indicates approximately 45,000 businesses and 645,000 jobs.
- 4.15 Highlighting the important employment role of Westminster to a wide catchment area, jobs density is much higher than the rest of London and the UK. Analysis by Arup (West End Good Growth, 2018), identified a jobs density in Westminster of 350 jobs per hectare – 9.5 times the London average. Densities then increase within the area designated as CAZ – to approximately 440 jobs per hectare.

- 4.16 Many of the jobs in Westminster's CAZ are in sectors vital to London's future economic growth and recovery. The ONS inter-departmental business register (2018) identified more registered business in Westminster than any other local authority in: information and communication, finance and insurance, property, and professional, scientific and technical fields. It also identified that only the City of London provides more jobs than Westminster in business administration and support services. Together these sectors provide jobs in key growth sectors including software development, film production, advertising, accounting, legal services, medical research, real estate, creative industries, and investment funds and insurance.
- 4.17 Pre-pandemic, there was therefore a strong projected demand for commercial floorspace in Westminster, with demand expected to be highest in the CAZ as businesses seek to agglomerate in this area. Based on the findings of the London Office Policy Review (GLA, 2017), the Westminster City Plan anticipates a potential need for over 445,000sq m of new office space in Westminster from the period 2019 - 2040. Retail projections from the GLA (Consumer Expenditure and Comparison Floorspace Need in London 2017) also suggested growth of between 229,944 sqm – 399,021 sqm of comparison retail floorspace in Westminster over this period. While the long-term impacts of Covid-19 on working and shopping patterns remain unclear, there is still a need to plan for commercial growth and agglomeration in Westminster's CAZ – something that the new permitted development rights will compromise.
- 4.18 Economic activity in Westminster provides vital contributions to HM Treasury in the form of business rates. VOA data (NDR Stock of Properties Tables, July 2020) indicates there are 39,310 rateable properties in Westminster, with a rateable value of over £5.1 billion. Analysis of this indicates 34,664 rateable properties in Westminster are within the CAZ, with a rateable value of over £4.8 billion. Non-domestic properties in Westminster's portion of the CAZ therefore represent over 23% of London's rateable value and 7% of all of England's.
- 4.19 Given the strategic importance of Westminster's CAZ, it is vital that new permitted development rights aimed at addressing centres that have suffered long term systemic decline do not compromise its economic recovery. A new Article 4 Direction will help the City Council continue to balance the economic functions of the CAZ with its role as home to vibrant residential neighbourhoods, and help ensure that high quality new housing that makes efficient use of land can be secured through the planning process. Doing so is entirely consistent with the adopted policy framework for the area (see below).

b) Policy context

- 4.20 Policies in the recently adopted Westminster City Plan (adopted April 2021) seek to strengthen the economic functions of the CAZ within Westminster, supporting developments that positively contribute to its rich mix of uses.
- 4.21 Policy 1 (Westminster's spatial strategy) sets out the City Council's intentions of *"balancing the competing functions of the Central Activities Zone (CAZ) as*

a retail and leisure destination, visitor attraction, global office centre, and home to residential neighbourhoods.” It also emphasises the role of the CAZ as a key focus for commercial-led growth, setting out that “the intensification of the CAZ, the West End, and our town centre hierarchy with commercial-led and mixed-use development to provide significant growth in office, retail, and leisure floorspace, alongside new homes.”

- 4.22 Policy 13 (Supporting economic growth) identifies the *“parts of the Central Activities Zone (CAZ) with a commercial or mixed-use character, including the West End Retail and Leisure Special Policy Area (WERLSPA) and Opportunity Areas”* as an area where *“additional floorspace that meets the needs of modern working practices, including through the provision of co-working space and a range of Class E (commercial, business and service) uses”* should be directed. This recognises the economic benefits of the clustering of high value economic uses within these areas – something that the new permitted development rights would compromise. Policy also sets out that *“the net loss of office floorspace from the CAZ to residential development will only be permitted in those parts of the CAZ that are predominantly residential in character and where the proposal would reinstate an original residential use”*. This new policy approach responds to evidence of high levels of historic loss of office floorspace to residential in the CAZ, the negative impacts this is having on its function as a global office centre, and the strategic steer provided in the new London Plan.
- 4.23 Policy 14 (town centres, high streets and the CAZ) states *“the intensification of town centres, high streets and the CAZ to provide additional floorspace for main town centre uses is supported in principle, subject to impact on townscape and heritage.”* It provides clear direction that town centres and high streets should *“enhance and diversify their offer as places to shop, work and spend leisure time”* – functions that are all reliant on the provision of Class E floorspace rather than residential. Within the town centre hierarchy, it requires *“uses that provide active frontages and serve visiting members of the public”* at ground floor – residential development would not satisfy this criterion.
- 4.24 Westminster’s town centre hierarchy includes areas of varying scales and functions, including many different town centres and high streets within the CAZ. Policy 14 highlights key policy objectives for the growth of different parts of Westminster’s town centre hierarchy – with a clear focus on their commercial, rather than residential role. It states:
- *“the International Centres of the West End and Knightsbridge will provide a focal point for large format comparison retail, supported by complementary town centre uses that increase customer dwell time, and new office floorspace;*

- *the WERLSPA will provide a wide mix of commercial uses that support the West End's role as a retail, employment and cultural hub, and as a centre for the visitor, evening and night-time economy;*
 - *CAZ Retail Clusters will provide further large format retail and complementary town centre uses to meet the needs of residents, workers, and visitors; and*
 - *Major, District and Local Centres will provide a mix of commercial and community uses to meet residents' day to day shopping needs, provide local employment opportunities, and support opportunities for community interaction."*
- 4.25 Beyond the town centre hierarchy, Policy 14 also resists the loss of town centre uses from the ground floor of other parts of the CAZ with a commercial or mixed-use character – recognising the rich mix of uses across the CAZ in Westminster means that such areas are not always captured by the town centre hierarchy.
- 4.26 The New London Plan (adopted March 2021) provides the strategic priorities for the CAZ, and also seeks to protect and enhance its vital economic function. Policy SD4 (The Central Activities Zone) provides support for the enhancement of its *"nationally and internationally significant office functions"*, its *"unique concentration and diversity of cultural, arts, entertainment, night-time economy and tourism functions"*, its *"international shopping and leisure destinations"* (including the West End, Knightsbridge and CAZ retail clusters), and its *"specialist clusters including functions of state, health, law, education, creative and cultural activities"*. Paragraph 2.4.4 lists its numerous strategic functions, which includes a variety of activities that take place in Class E floorspace and does not include residential use. Policy SD5 (Offices, other strategic functions and residential development in the CAZ) goes further, specifying that *"new residential development should not compromise the strategic functions of the CAZ"*, that *"offices and other CAZ strategic functions are to be given greater weight relative to new residential development"* and that *"residential or mixed-use development proposals should not lead to a net loss of office floorspace in any part of the CAZ."*
- 4.27 At both a local and regional level, the recently adopted policy framework is therefore clear that commercial growth should be prioritised over residential growth in the CAZ, other than in those parts of the CAZ that are wholly residential in character.

Proposed Article 4 Direction

- 4.28 As can be seen from the data and policy analysis in paragraphs 4.10 - 4.27 above, there is clear justification for the introduction of a new Article 4

Direction in Westminster's portion of the CAZ. Doing so would help address the harm the proposed right would cause to the strategic functions of the CAZ, which cannot be properly considered through the determination of a prior approval application. This is due to the very limited number of matters that a prior approval application can consider – which excludes any consideration of economic impact. They also do not offer any scope for any consideration of the opportunity to respond to the climate emergency, secure new affordable housing, or secure the delivery of supporting infrastructure.

- 4.29 The provision of a new Article 4 Direction is necessary to prevent economic harm to this vitally important area of central London; by helping ensure the continued availability of a range of interdependent commercial spaces necessary to support an economic recovery. This will help avoid “*wholly unacceptable adverse impacts*” and “*protect an interest of national significance*” (i.e. the central London economy) – both of the alternative proposed tests the Government have recently suggested for inclusion in the NPPF.
- 4.30 Introducing the proposed Article 4 Direction will not rule out future residential growth in the CAZ in Westminster, but instead ensure that where it does come forward, it does not compromise other strategic goals. Westminster has a strong track record of high levels of housing delivery and the housing growth targets in the recently adopted City Plan and London Plan can be met without relying on additional supply through the prior approval process. The City Council has a 5-year housing land supply, a high level of planning permissions in the development pipeline (including on sites within the CAZ), and the future Site Allocations Plan will also provide further clarity of where high levels of housing growth can be achieved in a planned manner.
- 4.31 It should be noted that the Government has previously accepted that there was a compelling case for exclusion of offices in the CAZ to make the original exemption for B1 (offices) to C3 (dwellinghouses). The interdependent nature of commercial uses within the CAZ, combined with recent changes to the Use Classes Order, means that it is now necessary to ensure any future Article 4 Direction covers all forms of Class E floorspace, rather than only office floorspace.
- 4.32 The proposed Article 4 Direction is provided as Appendix 1 to this report. Appendix 2 provides the boundary of the area where it would apply.
- 4.33 As set out in paragraph 4.8 above, consultation on revisions to the NPPF have indicated a requirement that where Article 4 Directions are proposed, they are applied to the smallest geographical area possible. As the CAZ boundary includes some areas that do not provide concentrations of Class E floorspace (i.e. the Royal Parks and the River Thames), some parts of the CAZ can be excluded from the proposed Direction. This is because an Article 4 Direction is not needed in areas where Class E floorspace does not exist.

Revocation of existing Article 4 Directions

- 4.34 Once the new Article 4 Direction comes into force, it will supersede the existing Direction regarding Class B1a (offices) to Class C3 (dwellinghouses) – which will then be revoked.
- 4.35 In addition, the introduction of Class E has already made the City Council's existing Article 4 regarding the change of use of Class A1 (shops) to Class A2 (financial and professional services) obsolete. As both of these uses now fall within Class E a change of use between them no longer constitutes development. This Article 4 will therefore now be revoked with immediate effect – independent of the outcome of the proposed new Article 4 recommended in this report.

5.0 CITY FOR ALL

- 5.1 The making of the Article 4 Direction will support the delivery of a thriving economy and vibrant communities. Retaining planning controls over the change of use of commercial premises within the CAZ will help ensure the area remains a focus for commercial activity, providing a critical mass of job opportunities and a range of attractions, shops and services for residents, workers and visitors. It will also help secure a cleaner and greener city, by ensuring that climate change targets in the City Plan can be applied to a greater number of development proposals, through the determination of a planning application.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The costs of making, advertising, consultation and confirmation of the proposed Article 4 Direction will be met from existing budgets. Public consultation will as far as possible be carried out electronically, minimising print and other costs.
- 6.2 As a non-immediate Article 4 Direction is proposed, landowners looking to take advantage of the new permitted development right will have 12 months' notice of the City Council's intentions. This absolves the City Council of any risk of claims for financial compensation from landowners, under the terms of the Town and Country Planning Act 1990.
- 6.3 The introduction of an Article 4 Direction will ensure change of use proposals within the CAZ remain subject to a planning application. The City Council will therefore be able to continue to collect planning application fees from such proposals (as opposed to lower charges associated with prior approvals), and secure planning obligations such as section 106 contributions where necessary.

7.0 LEGAL IMPLICATIONS

- 7.1 The rules for making and confirming of an Article 4 Direction are set out in the Town and Country Planning (General Permitted Development) (England) Order, 2015, and updates set out in The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021. Taken together this legislation defines the classes of permitted development, exceptions to permitted development, and outlines the process for making an Article 4 Direction. The compensation arrangements are set out in sections 107-109 of the Town and Country Planning Act 1990.

8.0 STAFFING IMPLICATIONS

- 8.1 None. The introduction of an Article 4 direction will simply ensure proposals that currently need determining through a planning application continue to do so.

9.0 CONSULTATION

- 9.1 If this report is approved notice will be given in accordance with the requirements of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015. Rather than the minimum 21 days set out in legislation, a six-week period will be allowed for comments in recognition that consultation will coincide with the summer holiday period. A copy of the formal notice required to meet government guidance and legislation is attached as Appendix 3 to this report.
- 9.2 It is proposed to publicise the Article 4 Direction through:
- Local Advertisement in the local Gazette newspaper;
 - Notices displayed within each of Westminster's libraries within the CAZ;
 - Email notification to all Members;
 - Email notification to all consultees registered on the City Plan database (which currently includes 500 consultees including statutory bodies such as the Mayor of London and neighbouring boroughs, members of the public, businesses (including landowners, developers, BIDs and the Westminster Property Association), neighbourhood forums and amenity societies;
 - Email notification to the Secretary of State; and
 - The City Council's website.

10.0 EQUALITIES IMPLICATIONS

- 10.1 Under the Equalities Act 2010 the Council has a "*public sector equality duty*". This means that in taking decisions and carrying out its functions it must have

due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act:

- to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to;
- foster good relations between persons who share a relevant protected characteristic and those who do not share it.

10.2 The City Council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "*having due regard*" to the need to promote equality of opportunity involves in particular having regard to:

- the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic;
- take steps to meet the needs of persons sharing a protected characteristic that are connected with it;
- take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and
- encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

10.3 The courts have held that "*due regard*" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.

10.4 Officers have considered the need for a formal equalities impact assessment of the proposed confirmation of the proposed Article 4. Their conclusion is that as the Direction will enable the council to ensure a wide range of workspaces, shops and services for Westminster's diverse enterprises, it will help make it easier for residents, including those with protected characteristics, to access a range of jobs and other opportunities. This may in turn help reduce the need to travel, and can promote walking and cycling, which is positive for health and wellbeing. No negative impacts have been identified, and it has therefore been concluded that a full EIA is not necessary.

11.0 BUSINESS PLAN IMPLICATIONS

- 11.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure development secures good growth – that which works for all residents and businesses, now and into the future – delivering opportunities and an improving quality of life for Westminster's people while minimising any negative impacts.

12.0 IMPACT ON THE ENVIRONMENT

- 12.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure that new developments fully consider their impact on the environment in accordance with City Plan policies, including ensuring high standards of energy efficiency.

13.0 HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

- 13.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure the commercial heart of the city continues to offer a range of opportunities for work and social interaction in accessible locations, to the benefit of residents' health and wellbeing.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Sean Walsh
swalsh2@westminster.gov.uk

APPENDICES

Appendix 1 – Draft Article 4 Direction

Appendix 2 – Map A (Map of area covered by Article 4 Direction)

Appendix 3 – Article 4 Notice

BACKGROUND PAPERS

None

Cabinet Member for Business, Licensing and Planning: Councillor Matthew Green

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

Cabinet Member for Business, Licensing and Planning

State nature of interest if any

.....

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Making of Westminster's Article 4 Direction for changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses)** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Business, Licensing and Planning

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....

.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Director of Legal Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix 1 – Article 4 Notice

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015

(AS AMENDED) (the “Order”)

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH SCHEDULE 3 APPLIES

WHEREAS the Council of the City of Westminster, being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land described in the Second Schedule and shown edged red (for identification purposes only) on the Plan annexed hereto unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power conferred on it by Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) hereby directs that the permission granted by Article 3 of the said Order shall not apply to the development specified in the First Schedule hereof in respect of the land described in the Second Schedule and shown edged red (for identification purposes only on the Plan annexed hereto).

FIRST SCHEDULE

In respect of land described in the Second Schedule

Being development comprised in Class MA in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021, namely:

Development consisting of a change of use to a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

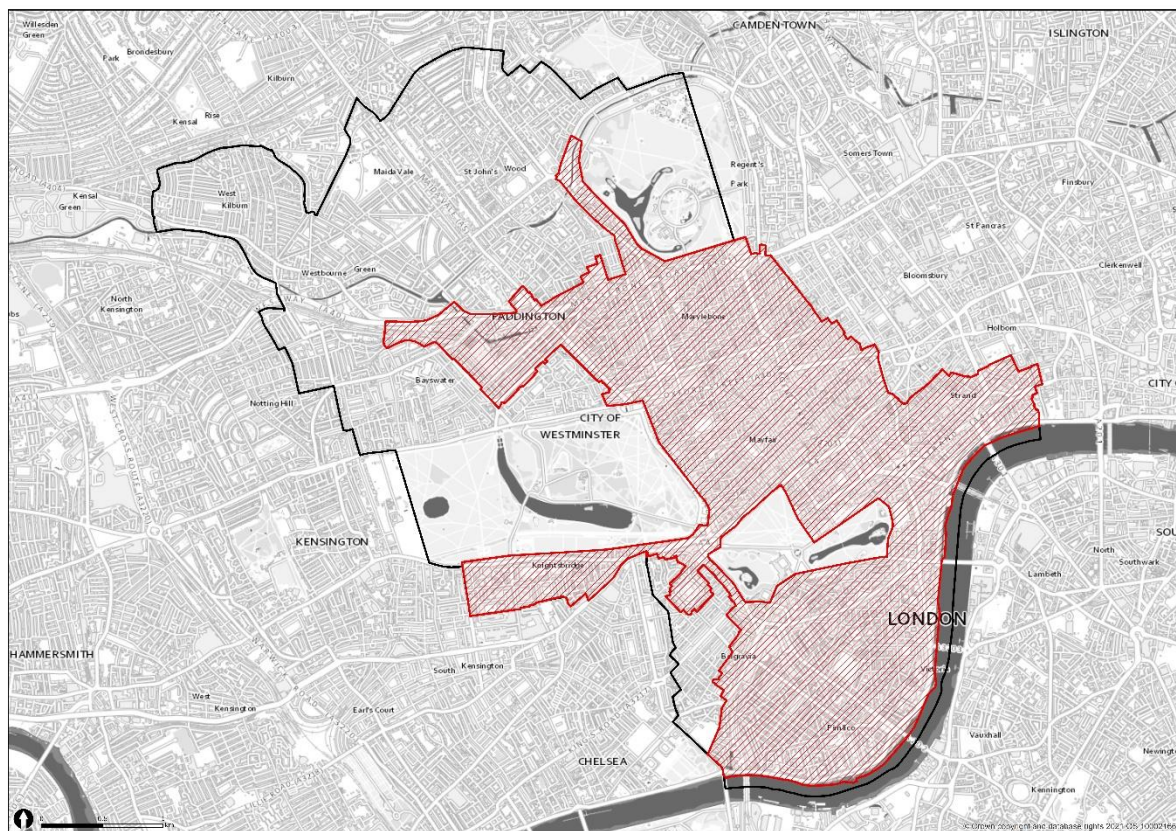
And not being development comprised within any other Class.

SECOND SCHEDULE

Land comprising Westminster’s Central Activities Zone as shown shaded red on Map A.

THE COMMON SEAL)
Of THE LORD MAYOR AND)
CITIZENS OF THE CITY OF)
WESTMINSTER was)
hereunto affixed by order)

Appendix 2 - Map of area covered by Article 4 Direction



Appendix 3 – Article 4 Notice

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015

(AS AMENDED)

CITY OF WESTMINSTER

NOTICE OF MAKING OF A DIRECTION UNDER ARTICLE 4(1) RELATING TO THE CENTRAL ACTIVITIES

ZONE

NOTICE IS GIVEN by the City of Westminster, being the appropriate local planning authority, that it has made a Direction under Article 4 (1) of the Town and Country Planning (General Permitted Development) (England) order 2015 (as amended) (“GPDO”).

The Direction was made on XX June 2021 and applies to the majority of Westminster’s Central Activities Zone (“the CAZ”), as shown on the Plan attached to the Direction.

The Direction applies to the development described in the following class of the GPDO:

Class MA in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 as it relates to development consisting of a change of use to a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

The effect of this Direction is that the permission granted by Article 3 of the GPDO will not apply to this kind of development within the majority of the Westminster Central Activities Zone. This kind of development cannot then be carried out in that area unless Westminster City Council (“the Council”) grants planning permission.

A copy of the Direction and of the Plan defining the parts of the Westminster CAZ to which it relates may be seen at the offices of the Council at 64 Victoria Street, London SW1E 6QP during normal office hours. It can also be seen on the Council’s website at www.westminster.gov.uk

Representations on the Direction can be made to the Council between xx June 2021 and xx July 2021. If you want to make representations the Council would prefer these to be made by email, sent to planningpolicy@westminster.gov.uk. If you would like to send representations by post the address is Planning Policy, 17th Floor, 64 Victoria Street, London SW1E 6QP. All representations should be marked with the subject line **Article 4 Direction: Class E to residential development.**

Representations must be received by 5pm on xx August 2021 and should include your name, postal and email address.

It is proposed that the Direction will come into force on 1 August 2022 subject to consideration of any representations received during the consultation period and the Direction being confirmed by the Council.

Signed

Date

DRAFT