

# Policy Committee

13 December 2023



**Reading**  
Borough Council  
Working better with you

<b>Title</b>	Modification of Article 4 direction relating to new dwellings
<b>Purpose of the report</b>	To note the report for information
<b>Report status</b>	Public report
<b>Report author</b>	Mark Worringham, Planning Policy Manager
<b>Lead Councillor</b>	Councillor Micky Leng, Lead Councillor for Planning and Assets
<b>Corporate priority</b>	Healthy Environment
<b>Recommendations</b>	1. That the modification of the Article 4 direction relating to various permitted development rights that would result in new dwellings be noted.

## 1. Executive Summary

- 1.1. Permitted development rights are rights that have been granted in legislation to undertake certain developments without the need to apply for planning permission. The Local Planning Authority has the powers to make a direction removing specified permitted development rights within a defined area, known as an Article 4 direction.
- 1.2. The Council made an Article 4 direction on 10 November 2021, as agreed by Policy Committee on 23 September 2021 (Minute 35 refers), that would remove certain permitted development rights that would result in new residential dwellings across the town centre, district and local centres, core employment areas and a number of other commercial areas. Policy Committee confirmed the direction on 31 October 2022, (Minute 33 refers) and the direction came into force on 15 November 2022.
- 1.3. The Secretary of State has powers to modify or cancel an Article 4 direction at any point before or after it comes into force. The Secretary of State used these powers to modify the direction on 10 October 2023, and the modified direction is expected to come into force on 3 November. This report recommends that the modification is noted.
- 1.4 Appendices:
  - Appendix 1: Equality Impact Assessment
  - Appendix 2: Map summarising modification
  - Appendix 3: Modification letter and notice

## 2. Policy Context

### ***Permitted development rights***

- 2.1. There are a number of forms of development which benefit from 'permitted development rights' (PDR) under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (known as the GPDO) and therefore do not require planning permission. These are set out in Schedule 2 of the GPDO. The range of types of PDR are wide, but include minor alterations to houses, some telecommunications development and some development by statutory undertakers and the Crown.

- 2.2. The use of PDR has been expanded significantly in recent years to include a number of routes to deliver new homes, such as conversions from various commercial uses to residential, as well as rights allowing upward extension or demolition and rebuild of residential and commercial buildings to provide new dwellings.
- 2.3. The following PDR currently exist that would allow the creation of new dwellings, subject to a light-touch prior approval process. References are to Schedule 2 of the GPDO:
- Change of use of commercial, business and service use (use class E) to residential (Part 3, class MA);
  - Change of use of hot food takeaway, betting office, payday loan shop or launderette to residential (Part 3, class M);
  - Change of use of casino or amusement arcade to residential (Part 3, class N);
  - Demolition of single, purpose built, detached block of flats or a single, detached office, light industrial or research and development building and its replacement with a detached block of flats or detached house (Part 20, class ZA);
  - Up to two additional residential storeys on a detached, purpose built block of flats (Part 20, class A);
  - Up to two additional residential storeys on a detached commercial or mixed-use building (in use for retail, financial and professional, restaurant and café, office, research and development, light industrial, betting shop, payday loan shop, launderette) (Part 20, class AA);
  - Up to two additional residential storeys on a two or more storey terraced commercial or mixed-use building (see class AA for uses) or one additional storey on a one storey building (Part 20, class AB);
  - Construction of new residential above a terraced house, two storeys in the case of houses of two or more storeys or one additional storey in the case of a one storey house (Part 20, class AC);
  - Construction of new residential above a detached house, two storeys in the case of houses of two or more storeys or one additional storey in the case of a one storey house (Part 20, class AD).
- 2.4. Each of the above rights has its own set of restrictions which limit the ability to take up the right, and specified matters that can be considered through the prior approval process. However, these are far from comprehensive. For instance, there is no ability to specify the type of accommodation (in terms of number of bedrooms), and, for changes of use from use class E, no safeguard against loss of essential services and facilities (other than medical facilities and nurseries). Conditions around vacancy are weak, and there are no mechanisms to seek contributions towards affordable housing. Whilst these conditions and caveats may therefore be of some use, they will by no means address all the potential impacts that would have been part of determining a planning application.

#### ***Article 4 directions***

- 2.5. Under Article 4 of the GPDO, a planning authority can remove specified PDR, and require that a planning application be made. There are a number of existing Article 4 directions in operation in Reading. For instance, for many years, small clusters of houses with patterned brickwork or other features have been subject to Article 4 to remove rights around development in the curtilage of a dwellinghouse. In addition, more recently, Article 4 directions have been put in place in much of Park, Redlands and Katesgrove wards, as well as Jesse Terrace, to control the conversion of dwellinghouses to small houses in multiple occupation.
- 2.6. There are two types of Article 4 direction: immediate and non-immediate. An immediate Article 4 direction, once served on an area, removes the specified PDR with immediate effect. However, under Sections 107 and 108 of the Town and Country Planning Act

1990, the Council would be liable to pay compensation to landowners if permitted development rights were removed less than 12 months before initial notification. For this reason, a non-immediate Article 4 direction, where the direction comes into force at least 12 months after it was initially made, would almost always be the preferred route.

2.7. The process for making a non-immediate Article 4 direction is broadly as follows:

- Article 4 is made (after agreement by the relevant committee) and notice given by advertisement, site notices and by serving notice on every owner and occupier (unless the number of owners and occupiers makes service impracticable). The date the notice comes into force must be specified, and must be at least 12 months after last notice of making the direction to avoid compensation issues.
- There would be a period of at least 21 days for consultation responses.
- At least 28 days after the last notice was served, the Article 4 would be confirmed by the relevant committee, and notice of confirmation served in the same way as the initial notice.
- The Article 4 direction would come into effect on the specified date.

2.8. The Secretary of State must be notified about any Article 4 direction, and has powers to modify and cancel directions. An Article 4 direction can be made only where it is 'expedient', and it therefore requires justification. Planning Practice Guidance 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 wellbeing of the area. 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:*

...

- *cases where prior approval powers are available to control permitted development*
- ...”

2.9. Therefore, any proposal to put an Article 4 direction in place needs to be accompanied by clear evidence to show the harm that results from the PDR.

2.10. National policy also has a particularly high bar for Article 4 directions that control changes of use to residential. There was a Written Ministerial Statement (WMS) (1 July 2021) followed by corresponding changes to the National Planning Policy Framework (NPPF) (20 July 2021) that confirmed this. The NPPF states that the use of Article 4 directions should

*“where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)”*

2.11. The WMS clarified this matter further as follows:

*“Article 4 directions should be very carefully targeted, applying only to those locations where they are necessary to avoid wholly unacceptable adverse impacts. For that reason, I want to make clear that the geographical coverage of all Article 4 directions should be the smallest area possible to achieve the aim of the Article 4 direction. In respect of historic high streets and town centres, this is likely to be the irreducible core of a primary shopping area. It is very unlikely to be applicable to a broad area, and is not expected to be applied to an entire local authority area. Local authorities will need to have robust evidence to justify the Article 4 direction and the area it covers.”*

2.12. Finally, the WMS makes clear that the Secretary of State will make use of his powers regarding Article 4 directions where necessary.

*“I will instruct my officials to look closely at all new Article 4 directions to check that they comply with the new policy, and I will consider exercising my power to intervene if they do not.”*

### **3. The Proposal**

#### ***Current position***

3.1 The Council has long had a number of very significant concerns with the impacts of PDR in Reading, which it has expressed frequently, and include the following:

- The poor quality and lack of outdoor space of dwellings;
- The small size of dwellings, which are dominated by studio or one-bedroom homes;
- The inappropriate location of homes due to matter such as noise and disturbance;
- The loss of valuable employment floorspace;
- The impacts on existing businesses by introducing new residents on adjacent sites;
- The loss of important shops and services;
- Failure to make provision for affordable housing; and
- Failure to make provision for vital infrastructure.

3.2 Policy Committee on 23 September 2021 agreed, in the light of these concerns as expressed in more detail in an evidence document provided to Committee, to make an Article 4 direction to remove the PDR of greatest concern within a number of areas of Reading (Minute 35 refers). The forms of PDR to be removed were:

- Change of use of commercial, business and service use (use class E) to residential (Part 3, class MA);
- Change of use of hot food takeaway, betting office, payday loan shop or launderette to residential (Part 3, class M);
- Change of use of casino or amusement arcade to residential (Part 3, class N);
- Demolition of single, purpose built, detached block of flats or a single, detached office, light industrial or research and development building and its replacement with a detached block of flats or detached house (Part 20, class ZA);
- Up to two additional residential storeys on a detached commercial or mixed use building (in use for retail, financial and professional, restaurant and café, office, research and development, light industrial, betting shop, payday loan shop, launderette) (Part 20, class AA); and
- Up to two additional residential storeys on a two or more storey terraced commercial or mixed use building (see class AA for uses) or one additional storey on a one storey building (Part 20, class AB).

3.3 The areas covered were:

- The entire town centre, as defined in the Local Plan;
- District and local centres, as defined in the Local Plan;
- Core employment areas, as defined in the Local Plan;
- Other primarily commercial or retail locations; and
- Areas with the poorest levels of air quality.

- 3.4 This direction was made on 10 November 2021, specifying that it would come into force on 15 November 2022, after a 12-month lead-in required to avoid the need for compensation. There were a number of notification requirements, including notifying the Secretary of State, and a period of consultation.
- 3.5 It is necessary for the Council to confirm a non-immediate Article 4 direction before it can come into force. After consideration of consultation responses, Policy Committee on 31 October 2022 decided to confirm the direction (Minute 33 refers). The direction as originally made came into force on 15 November 2022.
- 3.6 As set out in paragraphs 2.8 to 2.12, national policy sets a high bar for Article 4 directions that impact on changes of use to residential, and, as reported to Policy Committee on 31 October 2022, there was a very real possibility of the Secretary of State using his powers of modification or cancellation. Following notification to the Secretary of State in November 2021, officials from the Department for Levelling Up, Housing and Communities (DLUHC) first contacted Council officers on 19 May 2022 to highlight government concerns about the direction, in particular that the evidence provided was not sufficient to demonstrate wholly unacceptable adverse impacts or that the smallest possible geographical area had been chosen. A particular concern was that the evidence was not sufficiently geographically specific and relied too much on existing planning designations. It was clear at this point that the direction would need to be reduced in order to avoid cancellation.
- 3.7 In August 2022, officers provided a Supplementary Evidence document to DLUHC officials. This went into significant detail on the justification for each building or cluster of buildings being within the direction, and resulted in a suggested significant reduction to the geographical coverage of the direction from 482 ha to 111 ha, a 77% reduction. A large proportion of this reduction was achieved by excluding areas where the permitted development right would not be able to be used in any case, in particular because the areas were not in a land use to which the permitted development right applies. However, it did also result in the removal of around 82,000 sq m of commercial floorspace from the direction that would potentially be available to convert to residential, where it was not possible to demonstrate wholly unacceptable adverse impacts to a sufficiently specific degree.
- 3.8 DLUHC officials responded to this evidence on 30 September 2022, and requested further evidence, in particular relating to air quality and noise. Officers provided a Further Supplementary Evidence to DLUHC on 7 December 2022, which sought to further justify the inclusion of air quality and noise as justification for the extent of the direction.
- 3.9 On 3 July 2023, the Minister of State for Housing and Planning, Rachel Maclean, wrote to the Chief Executive of RBC setting out the Minister's view on the proposed amended Article 4 direction (i.e. the proposed reduction from the direction that is already in force as suggested in August 2022). The conclusion was that the Minister was minded to modify or cancel the direction unless further sites were excluded, namely where they were justified only by noise and/or air quality issues. Removal of these areas would further reduce the Article 4 direction area by 11 ha, a 10% reduction on the already reduced proposed area of 111 ha. In terms of total commercial floorspace to be covered, the reduction is somewhat larger, so there would be a 22% reduction on floorspace covered by the already reduced direction. The areas that would be removed would be primarily office locations on the edge of the town centre, in particular those around the Inner Distribution Road, although there are some other smaller noise or air quality hotspots that would be affected.
- 3.10 On 10 October, the Chief Planner at DLUHC wrote to the Chief Executive of the Council to notify that the Secretary of State has formally modified the Article 4 direction. This letter included the formal modification notice and accompanying maps. The letter and notice is included as Appendix 3.
- 3.11 The modification is in line with the Minister's expressed intentions of 3rd July 2023. This incorporated those reductions that had been suggested by officers in the Supplementary

Evidence of August 2022, as well as further reductions to exclude areas justified only by poor air quality and/or noise disturbance.

- 3.12 In total, therefore, the modified direction is much reduced from the direction as originally made and which was in force until 10 October, having reduced from 482 ha to 100 ha. A map showing the resulting coverage compared to previous proposed extents is included in Appendix 2.
- 3.13 The modified direction came into effect when notifications have been made in line with regulations, on 3 November 2023. The recommendation is to note the modification.

#### ***Other options considered***

- 3.14 The only option other than noting the modification would be to cancel the Article 4 direction in its entirety, which can be done by making a subsequent direction. However, this would result in no areas within Reading being protected from damaging PDR and result in the forms of harm set out in paragraph 3.1 being much more widespread. There are no defined routes within the legislation for the Council to challenge or appeal the modification.

## **4. Contribution to Strategic Aims**

- 4.1. The Council's vision is as follows:

*“To help Reading realise its potential – and to ensure that everyone who lives and works here can share the benefits of its success.”*

- 4.2. The direction helps to achieve the vision by ensuring that residents of new dwellings in Reading are not detrimentally affected by the poor quality or inappropriate mix of homes, and that development helps to realise Reading's potential through contributing to affordable housing, mitigating the impacts on infrastructure and securing economic growth.
- 4.3. The direction also contributes to the following Corporate Plan themes:

#### ***Healthy environment***

- Ensuring that new development is subject to the Council's planning policies that seek to address the climate emergency through improved standards of new housing;
- Ensuring that new development is subject to policies that ensure adequate provision of outdoor amenity space and protection from high levels of noise and disturbance and poor air quality, thus helping to prevent impacts on physical and mental health.

#### ***Thriving Communities***

- Ensuring that new developments contribute towards the provision of much-needed affordable housing;
- Ensuring that new development is subject to policies that secure high standards of accessibility and adaptability of new dwellings.

#### ***Inclusive economy***

- Prevents developments that could negatively affect economic growth by eroding employment space or resulting in inappropriately located new homes that restrict the operations of existing businesses;
- Protects the health of Reading's high streets that provide a range of services and facilities for the whole community.

## **5. Environmental and Climate Implications**

- 5.1 The Article 4 direction will not necessarily prevent development being undertaken, but will instead ensure that it is considered through the planning application process which will

mean consideration against the full range of Local Plan policies and associated documents. As it stands, major new-build residential development that benefits from PDR does not need to comply with policy H5 which requires zero carbon homes (defined as being, at a minimum, a 35% improvement over the emissions rate in the building regulations with a contribution towards carbon offset to cover the remainder). Currently, other matters such as landscaping, tree planting, climate change adaptation and the impacts of poor air quality on residents of the development are unable to be considered for PDR proposals. The direction therefore ensures that the adopted policies in the Local Plan apply, and as such the environmental and climate implications would be positive.

## **6. Community Engagement**

- 6.1. There are notification requirements set out in Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) after an Article 4 direction is made. The Council complied with these requirements, as reported to Policy Committee on 31 October 2022, and consultation responses were considered as part of the decision to confirm the direction.
- 6.2. There are further requirements to carry out notifications of the Secretary of State's modification, in the same way as the original direction had been notified. These were complied with before 3 November 2023.

## **7. Equality Implications**

- 7.1. The Scoping Assessment, included at Appendix 1 identifies that an Equality Impact Assessment (EqIA) is relevant to this decision. The EqIA (also at Appendix 1) identifies that, where there are identified impacts upon specific groups, these are expected to be positive. Compliance with the duties under S149 of the Equality Act 2010 can involve treating some persons more favourably than others, but it is not considered that there will be a negative impact on other groups with relevant protected characteristics.

## **8. Other Relevant Considerations**

- 8.1 There are none

## **9. Legal Implications**

- 9.1. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (known as the GPDO) grants planning permission to a number of specified forms of development. The forms of development for which permission is granted are set out in Schedule 2 of the GPDO.
- 9.2. Article 4 of the GPDO allows the local planning authority to make a direction that removes specified permitted development rights within a defined area if those rights would be prejudicial to proper planning of their area or constitute a threat to the amenities of the area. Schedule 3 of the GPDO describes the process by which these Article 4 directions are made. Paragraph 1 of Schedule 3 deals with non-immediate directions. Paragraph 1(13) states that the Secretary of State may cancel or modify any direction under article 4(1) made by a local planning authority at any time before or after its confirmation

## **10. Financial Implications**

- 10.1 The costs of carrying out notifications relating to the modification will be met from the existing Planning service budget. These costs relate primarily to officer time and the cost of serving notices and local advertisements.
- 10.2 The financial implications of the direction itself were reported to Policy Committee on 31 October 2023 (Minute 33 refers). The effect of the modification itself will be to limit the degree to which this direction will result in additional application fee income to the Council due to the fact that the cost of an application for prior approval under PDR is considerably lower than the relevant application fee.

## **11. Timetable for Implementation**

11.1. The modified direction came into force on 3 November 2023.

## **12. Background Papers**

12.1. There are none.

### **Appendices**

1. Equality Impact Assessment
2. Map summarising modification
3. Modification letter and notice



## Appendix 1: Equality Impact Assessment

### Provide basic details

**Name of proposal/activity/policy to be assessed:**

Article 4 direction to remove permitted development rights that would result in residential development

**Directorate:** DEGNS – Directorate of Economic Growth and Neighbourhood Services

**Service:** Planning, Transport and Public Protection

**Name:** Mark Worringham

**Job Title:** Planning Policy Manager

**Date of assessment:** 25/10/2023

### Scope your proposal

**What is the aim of your policy or new service?**

To put in place a legal direction to remove certain permitted development rights in parts of Reading to include the town centre, district and local centres and employment and commercial areas.

**Who will benefit from this proposal and how?**

This proposal will benefit the whole community (including potential occupants of development) by ensuring that developments that would result in new dwellings are subject to a planning application process that ensures that impacts on the amenity of the area are considered.

**What outcomes will the change achieve and for whom?**

The main outcome will be that developments that would result in residential development are subject to a planning permission process. This will consider all of the many impacts on the amenity of the area and on the potential residents.

**Who are the main stakeholders and what do they want?**

Potential residents – a residential dwelling which does not detrimentally impact quality of life and physical and mental health.

Neighbouring residents – developments that do not detrimentally affect the residential amenity of the area

Neighbouring businesses – developments that do not detrimentally impact their operation.

Developers and landowners – planning processes that offer flexibility and/or provide certainty.

Whole community – developments that contribute towards meeting affordable housing needs and mitigating infrastructure impacts.

### Assess whether an EIA is Relevant

How does your proposal relate to eliminating discrimination; promoting equality of opportunity; promoting good community relations?

Do you have evidence or reason to believe that some (racial, disability, gender, sexuality, age and religious belief) groups may be affected differently than others? (Think about your monitoring information, research, national data/reports etc)

Yes  No

Is there already public concern about potentially discriminatory practices/impact or could there be? Think about your complaints, consultation, feedback.

Yes  No

If the answer is **Yes** to any of the above you need to do an Equality Impact Assessment.

If No you **MUST** complete this statement

N/A

### Assess the Impact of the Proposal

Your assessment must include:

- **Consultation**
- **Collection and Assessment of Data**
- **Judgement about whether the impact is negative or positive**

### Consultation

Relevant groups/experts	How were/will the views of these groups be obtained	Date when contacted
Landowners	Local advertisement, site notice	October 2021

### Collect and Assess your Data

#### **Describe how could this proposal impact on Racial groups**

No specific impacts are identified.

**Is there a negative impact?** Yes  No  Not sure

#### **Describe how could this proposal impact on Gender/transgender (cover pregnancy and maternity, marriage)**

No specific impacts are identified.

**Is there a negative impact?** Yes  No  Not sure

#### **Describe how could this proposal impact on Disability**

New dwellings provided as a result of permitted development rights do not need to comply with the housing standards set out in policy H5 of the Local Plan. This policy ensures that all new-build homes are to be accessible and adaptable (to ensure that adaptations can be made to a home as residents' life circumstances change), and that 5% of homes on developments of 20 or more dwellings are wheelchair accessible and adaptable. This means that developments through permitted development are unlikely to provide dwellings that meet these standards.

The result of the recommended action will be to ensure that compliance with these standards is a condition of receiving permission, and will therefore represent a positive impact in disability.

**Is there a negative impact?** Yes  No  Not sure

#### **Describe how could this proposal impact on Sexual orientation (cover civil partnership)**

No specific impacts are identified.

**Is there a negative impact?** Yes  No  Not sure

**Describe how could this proposal impact on Age**

No specific impacts are identified.

**Is there a negative impact?**

Yes

No

Not sure

**Describe how could this proposal impact on Religious belief?**

No specific impacts are identified.

**Is there a negative impact?**

Yes

No

Not sure

Make a Decision

Tick which applies

1. **No negative impact identified** Go to sign off
2. **Negative impact identified but there is a justifiable reason**   
You must give due regard or weight but this does not necessarily mean that the equality duty overrides other clearly conflicting statutory duties that you must comply with.  
**Reason**
3. **Negative impact identified or uncertain**   
**What action will you take to eliminate or reduce the impact? Set out your actions and timescale?**

**How will you monitor for adverse impact in the future?**

Compliance with accessibility requirements will be a condition of receiving planning permission, and this will be capable of being monitored on an annual basis.

Signed (completing officer) Mark Worringham Date: 25<sup>th</sup> October 2023

Signed (Lead Officer) Mark Worringham Date: 25<sup>th</sup> October 2023

## Appendix 2: Evolution of area covered by Article 4 direction

