

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	Thursday 27 July 2023
<b>Subject:</b>	Confirmation of an Article 4 Direction to prevent the conversion of use class E (Commercial, Business and Service) to use class C3 (Housing) without the need for planning permission.		
<b>Report of:</b>	Assistant Director of Place (Economic Growth and Housing)	<b>Wards Affected:</b>	Linacre, Derby, Litherland and Netherton and Orrell.
<b>Portfolio:</b>	Cabinet Member - Planning and Building Control		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	Yes
<b>Exempt / Confidential Report:</b>	No		

### Summary:

The purpose of this report is to confirm the making of a non-immediate Article 4 Direction in relation to changes of use from E (Commercial, Business and Services) to C3 in shopping parades in the Bootle Area Action Plan area. The proposed Article 4 Direction was made in February 2023 and seeks to restrict permitted development rights in these areas from commercial, business and service uses to dwelling houses.

### Recommendation(s):

That Cabinet:

Confirms the making of a non-immediate Article 4 Direction, attached in Appendix A, in relation to changes of use from E to C3 on commercial parades within the Bootle Area Action Plan area. The Article 4 Direction will come into force on 7<sup>th</sup> February 2024, one year after it was made.

### Reasons for the Recommendation(s):

People can, using permitted development rights under the General Development Permitted Order 2015 (as amended), convert their commercial units on local shopping parades to residential properties. Whilst in many instances, residential will be appropriate, in some instances this can result in sub-standard accommodation. Changes of use can also result in negative impacts upon the vitality and viability of shopping parades.

Once the Article 4 Direction comes into effect, planning permission will be required before such changes of use can take place, and this will ensure the Council has control

of these proposals. The Council will therefore be able to consider whether the proposals, either individually, or in combination, will have a detrimental impact on residential amenity.

**Alternative Options Considered and Rejected:** (including any Risk Implications)

Option 1 – Do not have an article 4 direction. It would mean business as usual and that the Council continue to have little control over conversions from units in Use Class E (such as in shopping parades) to Use Class C3 (residential). It may risk further fragmentation of shopping areas with a detrimental impact on the usability and health of those shopping areas. It may also mean that some accommodation provided may not be low quality and provide poor living conditions.

Option 2 – Issue an Article 4 direction with an immediate effect. This would mean that the control of use from units in parades to dwellings would be in place as soon as the direction is made. However, the Council would be liable to pay compensation to owners. This could be costly, and it is not clear how that could be financed.

Option 3 – Cover the whole of Sefton or the Bootle AAP area with an article 4 direction. The National Planning Policy Framework is clear that an article 4 should be kept to the minimum area that is necessary. The Council are aware of article 4 directions being rejected by the Secretary of State due to proposed directions being applied too wide.

**What will it cost and how will it be financed?**

**(A) Revenue Costs**

The costs of publishing and advertising the Article 4 Direction will be met from the existing budget for the Planning Service. The Council will be required to process and determine planning applications for change of use from class E (Commercial, Business and Service) to C3 (homes and flats) in the designated areas but will charge a planning application fee for this to cover the associated cost.

**(B) Capital Costs**

There are no direct capital costs associated with the recommendations in this report.

**Implications of the Proposals:**

<p><b>Resource Implications (Financial, IT, Staffing and Assets):</b></p> <p>The proposed article 4 will likely result in more planning applications and fewer prior approval applications. Planning applications typically are more intensive in terms of staff time. However it is anticipated that any increase in work could be managed by the existing staff team and by the existing IT.</p>
<p><b>Legal Implications:</b></p> <p>None (see below).</p>

<b>Equality Implications:</b> There are no equality implications.	
<b>Impact on Children and Young People:</b> None identified.	
<b>Climate Emergency Implications:</b>  The recommendations within this report will	
Have a positive impact	No
Have a neutral impact	Yes
Have a negative impact	No
The Author has undertaken the Climate Emergency training for report authors	Yes
There are no significant climate implications. See section 5 (below).	

**Contribution to the Council’s Core Purpose:**

<p>Protect the most vulnerable:</p> <p>The article 4 direction will ensure that proposals to covert commercial properties to residential will be fully assessed to provide adequate quality accommodation for residents. This will include minimum internal living space standards, space for refuse collection, private outdoor space and adequate privacy and light. These properties are often occupied by some of Bootle’s most vulnerable residents.</p>
<p>Facilitate confident and resilient communities:</p> <p>The article 4 direction will protect Bootle’s local shopping parades which are an important local facility for local communities. In some areas, car ownership is low and there are many people with long term health issues and so the facilities and services in these parades are an important lifeline.</p>
<p>Commission, broker and provide core services:</p> <p>Not applicable.</p>
<p>Place – leadership and influencer:</p> <p>The article 4 direction will ensure that the Council and local communities are able to influence the decisions made on these parades.</p>
<p>Drivers of change and reform:</p> <p>Not applicable.</p>
<p>Facilitate sustainable economic prosperity:</p> <p>The article 4 direction will help the Council to properly plan for the town through the Bootle Area Action Plan to help to secure investment and regeneration.</p>

Greater income for social investment:
Not applicable.
Cleaner Greener
No significant impact but keeping shops and services nearer to where people live can reduce car usage. Ensuring adequate outdoor space can help with less energy use.

## What consultations have taken place on the proposals and when?

### (A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD.7290/23) and the Chief Legal and Democratic Officer (LD.5490/23) have been consulted and any comments have been incorporated into the report.

### (B) External Consultations

A consultation has taken place as outlined in the report below.

## Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting. The article 4 direction will come into force on 7<sup>th</sup> February 2024.

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## Appendices:

Appendix A – Copy of the Article 4 Direction

## Background Papers:

There are no background papers.

### 1. Introduction/Background

1.1 In 2021 the Government introduced a change to both the Planning Use Classes Order and to the General Permitted Development Order. Planning Use Classes are a series of classes for different types of building/land uses. The Use Classes Order sets out the type of activity in each class (e.g. shops, homes, schools, business etc) and also outlines where changes of use between classes will not require planning permission.

1.2 The Government introduced a new use class E (Commercial, Business and Service). This consists of an amalgamation of a number of use classes. These include most retail and high street uses, including, shops, small financial services (banks building societies), Cafes, most medical services, offices, creches and day centres and certain leisure facilities. This is clearly a broad range of facilities within one use class and any

change of use within class E is not considered development and therefore does not require planning permission.

1.3 In parallel with the changes to the Use Classes, the Government have also introduced amendments to the General Permitted Development Order in order to allow more types of development between classes that would otherwise require a full planning application, either being permitted development or requiring a 'light touch' permission, a prior approval application.

1.4 Of interest is the new class MA. This allows a change of use from class E (Commercial, Business and Service) to C3 (Housing). The class MA will require a prior approval application (but not a planning application), and is subject to certain conditions and is limited to 1,500m<sup>2</sup> of floorspace. This means that larger retail, commercial and office premises will not be impacted by use class MA. However smaller units, such as those within shopping parades, will be able to change to residential more easily.

1.5 This will benefit for some business and premises in being able to change use more easily in adapting to changing circumstances on the street and in patterns of shopping, leisure and office working habits as we adapt to a more online society and from changes brought about following Covid lockdowns.

1.6 However, there are some risks to already struggling parades and centres, and also for some local communities, particularly in our most deprived areas, as will be set out below.

1.7 Therefore, in order to manage changes of use to residential, the Council has resolved, (minute 82, Cabinet 3<sup>rd</sup> November 2022), to remove the permitted development rights for this change of use. The process for removing permitted development rights is done through an Article 4 Direction.

## **2. Article 4 Directions**

2.1 An Article 4 direction is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the Local Planning Authority to withdraw specified permitted development rights across a defined area.

2.2 Provided that there is justification for both its purpose and extent, an Article 4 direction can:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

2.3 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 should be clearly identified.

2.4 An Article 4 direction does not mean that development is not allowed. An Article 4 direction means that a particular development cannot be carried out as permitted development and therefore needs planning permission. This gives a local planning authority the opportunity to consider a proposal in more detail.

2.5 There are 2 types of directions under the General Permitted Development Order: non-immediate directions and directions with immediate effect.

**Non-immediate directions** are those where permitted development rights are withdrawn following a prior notice period which includes a period of consultation.

**Immediate directions** are where permitted development rights are withdrawn with immediate effect. These are then confirmed by the Council following consultation.

2.6 The removal of permitted development rights through the introduction of an Article 4 direction may make a Local Authority liable for compensation. However, where 12 months' notice is given in advance of a direction taken effect (i.e. through the making of a non-immediate direction) there will be no liability to pay compensation.

2.7 The advantages of a non-immediate article 4 direction are that they give an opportunity for stakeholders to get involved in the process before the direction comes into force. The second main advantage is that it also allows both the Council and other interested parties to prepare for the changes the direction will bring. The main disadvantage of a non-immediate article 4 direction is that there may be a spike on changes of use before the direction comes into force. This may weaken the effect of the direction, whereas an immediate article 4 direction would prevent this from happening. Immediate directions are generally used where there is an immediate serious risk of harm, such as inappropriate works to a listed building.

### **3. Making of an Article 4 Direction in Commercial shopping parades**

3.1 The Council considered it appropriate to remove the permitted development rights for the conversion of commercial units on local shopping parades to residential in the area covered by the Bootle Area Action Plan, i.e. parts of Bootle, Seaforth and Litherland through a non-immediate Article 4 direction. The non-immediate Article 4 Direction (attached as appendix A) was made on 7<sup>th</sup> February 2023, having been agreed by Cabinet on November 3<sup>rd</sup> 2022 (Minute 82).

3.2 The Council sought to address the above guidance and legal requirements through its evidence to support the designation of a non-immediate Article 4 Direction. The evidence is provided as a background document to this report. The Council considers that the evidence justified the application of the Article 4 Direction in the areas of Sefton identified in the attached appendix B

### **4. Consultation on the Article 4 Direction**

4.1 Following the making of the Article 4 Direction on 7<sup>th</sup> February in 2023, a notice was placed in the local press that cover the area, including the Liverpool Echo and the Metro. Two site notices were also put on each parade.

4.2 In addition, all occupants and owners, whether freeholders or lease holders, were

also written to advising of the Article 4 Direction, how to view further information and the time periods in which to comment. The consultation period ran for 8 weeks from February 2023.

4.3 Despite the wide publicity the Article 4 Direction received, no comments were received.

## **5. Equality and Climate Change**

5.1 It is not considered that the proposed article 4 direction would make a material difference to any of the protected characteristics as classified by the Equality Act (2010). Removing permitted development rights would mean that planning permission would be required. This would allow for a more thorough assessment of the scheme. The only potential advantages are that the space standards expected with a planning application, as set out in Sefton's existing and proposed SPDs, may mean that some schemes are required to provide a little more room. This may be of benefit to some who are of limited mobility through age or disability. It is not considered that these benefits are likely to be significant.

5.2 In relation to climate change. The proposal is to remove permitted development rights and make changes of use from E to C3 require a full planning application. Such small conversions are not the types of schemes that will normally have a big impact. An article 4 direction may still result in most of the conversions still going ahead, with a small number potentially being refused. It is not considered that this will make any material difference to climate change.

## **6. Confirmation of the Article 4 Direction**

6.1 Once the Article 4 Direction has been confirmed by Cabinet, the Council must, as soon as reasonably practicable, give notice of its confirmation by way of local advertisement, sites notices, letters to occupants and owners and display on its website. A copy of the Direction must also be sent to the Secretary of State.

6.2 The Council must specify the date on which the Article 4 direction will come into force (i.e. 7<sup>th</sup> February 2024) which will ensure the required 12 month notice period will be met. The notice of confirmation is just that – it is not a further period of consultation.