

Local Plan Technical Note: Article 4 Directions

The purpose of this technical paper is to assess the potential for the imposition of four Article 4 Directions across parts of the borough. Each potential Article 4 Direction has been assessed and a recommendation provided.

The purpose of serving Article 4 Directions is to prevent development being undertaken where permitted development rights would normally allow. Serving an Article 4 Direction means that a Local Planning Authority (LPA) is able to consider development proposals against their Local Plan policies. It does not mean that development may be unacceptable, but rather that a planning application is required to be submitted in order for the LPA to make a formal determination.

The use of Article 4 Directions is discussed in paragraph 53 of the National Planning Policy Framework (NPPF). The NPPF states that LPAs can remove permitted development rights by serving Article 4 Directions, provided that it is necessary to protect either local amenity or the wellbeing of an area. Justification is required for both the purpose of an Article 4 Direction and its extent - the potential harm that an Article 4 Direction is intended to address needs to be clearly identified. As stipulated within the National Planning Policy Guidance, *'[t]he potential harm that [a] direction is intended to address should clearly be identified'* (paragraph 8). In practice, this will be in the form of an evidence base outlined by an LPA to support the serving of an Article 4 Direction.

It should be noted that the Ministry of Housing, Communities & Local Government has recently carried out a consultation (the consultation closed on 27th March 2021) relating to proposed changes throughout the NPPF, including that of paragraph 53. In addition to the matters described above, it has been suggested that wording be included to emphasise that any Article 4 Directions must apply to the smallest geographical area/s possible. Confirmation regarding any suggested changes is awaited as of the date of this report.

Having regard of the above, suggested wording has been included to place 'holders' within the Council's Regulation 19 Local Plan document. Suggestions have also been made regarding where this wording could be located within the Regulation 19 document.

Potential Article 4 Direction (1) - Protecting Locally Listed Buildings from demolition

Background

The Council is considering serving an Article 4 Direction following a change in permitted development regulations for demolition. Under permitted development, applications can be made under Schedule 2, Part 11, Class B of the GPDO 2015, as amended, to demolish any building or structure under the prior approval process (where permitted development rights have not been removed e.g. by the imposition of an Article 4 Direction). The only exceptions are:

- Buildings over a certain size, and gates and walls which are located within a conservation area;
- Pubs and other drinking establishments; and
- Listed buildings and Scheduled Ancient Monuments (separate consents are required in these instances).

As such, there is no consideration or weight given to whether a building or structure is locally listed. Locally listed buildings and structures are termed as non-designated heritage assets and as Historic England advise, play ‘an essential role in building and reinforcing a sense of local character and distinctiveness in the historic environment’ (Historic England Advice Note 7: Local Heritage Listing). Their importance is highlighted by virtue of their listing, and development plan policies support their retention.

Case for Article 4 Direction - evidence base

The change in permitted development has resulted in the loss of a locally listed heritage asset within the borough at the site of The Leather Bottle, 131 Heron Hill. Whilst the building was formerly used as a public house, it is noted that the current regulations would have unlikely applied given that the use had long ceased before an application was assessed.

As the custodians of historic sites, there should be a strong sense of duty to protect non-designated heritage assets from loss. Harm that occurs through loss, is of course irreplaceable. Making the best use of previously developed land to achieve sustainable development and the changes and shifts within the boroughs town centres puts added pressure on the development of older buildings on sites

Conclusions

There is the realistic prospect that similar applications will be received in the future, and given the permitted development regulations, the Council will be powerless to oppose the loss of other locally listed buildings and structures in the future.

Recommendations

It is considered that to enhance the level of protection afforded to the Borough’s non-designated heritage assets, that the serving of an Article 4 Direction be pursued.

Suggested wording for the Regulation 19 document

It is suggested that a short paragraph be inserted after paragraph 4.57, which currently mentions locally listed buildings:

The Council will continue to monitor loss of the borough’s non-designated heritage assets through demolition. These assets are important within a local context and their long-term retention a priority. The Council will consider additional measures to provide protection for buildings and structures which appear on the Council’s Local List. This includes the introduction of an ‘Article 4 Direction.’

Potential Article 4 Direction (2) – Protecting Town Centre Uses

Background

From 1 September 2020 the Use Classes Order was amended to create the new Commercial, Business and Service (E), Learning and non-residential institutions (F1), and Local Community (F2) use classes. We are currently in a transition period and the new use classes come fully into effect on 1 August 2021.

Essentially, the Use Classes Order groups together uses into what are termed as Classes. The Order provides that movement within the prescribed ‘Classes’ is not development which requires the benefit of planning permission.

Subsequent to the changes outlined above that will come fully into effect on the 1 August 2021, the Ministry of Housing, Communities, Local Government also announced further proposed changes on 3rd

December 2020. The primary change which is now of concern which is that it is proposed that there will also be permitted movement from Class E (Commercial, Business and Service) to that of Class C3 (residential). This means that the Council will not be able to apply the Development Plan during the consideration of application which will be made under the prior approval process. In this case, it will be difficult for the Council to safeguard town centre uses. If these additional changes are implemented, they too will come into force on 1 August 2021.

Case for Article 4 Direction - evidence base

The changes proposed for the move from Class E to Class C3 have not been accepted or implemented yet. However, under the current permitted development regulations there is a permitted change from some A Use Classes to C3 (subject to the parameters outlined within the regulations).

A number of applications have been made to the Council (assessed until February 2021). Contained below is a brief summary of applications which have so far been received by the Council:

20/03409/PRIOR

39 Upper Wickham Lane (town centre) - Change of use of building from Office Use (Class B1 (a)) to residential use (Class C3) comprising 6 studio flats (to be determined).

20/03100/PRIOR

69A Bexley High Street (town centre) - Change of use from offices (Class B1(a)) to 1x1 bed residential unit (Class C3) (granted).

20/03044/PRIOR

99 Manor Road - Single storey rear extension and alterations for the change of use from A1 shop (New Class E) to Class C3 (residential dwelling) comprising a 1x3 bedroom flat with provision for a bin and bike store (to be determined).

20/02835/PRIOR

146 Crayford Road (town centre) - Prior Approval for a proposed change of use of rear of the ground floor from betting office (Sui Generis) to 1 bed self-contained flat (Class C3) with internal and external elevation alterations (granted).

20/02550/PRIOR

70-72 Bexley High Street (town centre and core shopping frontage) - Change of use from Offices (Class B1(a)) to 6x1 bed flats (Class C3) (granted).

20/02346/PRIOR

Change of use of the first floor from shop (Class A1) to dwelling house (Class C3) to provide a 3 bed first floor flat (refused on a technical point that the first floor has no previous consent to form a separate planning unit from the ground floor use – the ground floor use being a beauty school granted consent under 19/00846/FUL and therefore falling within a D1 Use Class. D1 uses do not fall within Class M, Part 3, Schedule 2 of The Order).

20/02284/PRIOR

Change of use from ground floor shop (Class A1) to dwelling house (Class C3) to provide a studio flat (refused as the site is located within Flood Zone 3 and the applicant had not submitted a site-specific FRA to allow the Council to determine whether the development would provide accommodation that would be safe at ground floor level).

20/01780/PRIOR

Change of use of the first floor from offices to residential comprising 2x1 bed flats (refused on the grounds that there was no evidence to suggest that the ground floor use was (B1 (a)/E (g)) as planning records indicated that the ground floor had a lawful use as retail (Class A1/E (g)).

Conclusions

It can be derived from the applications which the Council are receiving that there are already a number of units which fall within business or commercial use within our town centres which have been lost to residential use. Similarly, there are also a number of applications which are awaiting formal determination.

It is clear that introducing a permitted development right for any Class E use to convert to Class C3 (residential) is beginning to have a significant impact upon business/commercial unit stock within Bexley. This is because the changes to permitted development are not location specific e.g. they do not take into account whether a site is located within a town centre; and if large numbers of Class E units in Bexley's town centres were to be converted to residential, this could see the character of those centres change quite dramatically. Although new residential development in town centres provides more potential customers and footfall, at ground floor level this could lead to a loss of footfall, particularly where clusters of residential conversions take place in key shopping areas.

It is a clear concern that a scale of loss is currently occurring, and the trend has the potential to increase significantly.

Recommendations

It is considered that if the proposed changes outlined to the permitted development regulations on 3rd December 2020 (to allow for the change of use of buildings which fall within Class E use to more to Class C3) come into force, that the Council pursue an Article 4 Direction to cover district and local centres in the Borough (to remove the permitted right for this change from Class E to Class C3 of the Use Classes Order).

In light of the proposed changes to Government guidance regarding Article 4 Directions (outlined in the opening section of this paper) whilst may be more desirable for an Article 4 Direction to cover wider areas geographically, the proposed wording makes it abundantly clear that Article 4 Directions should relate to the smallest geographical areas possible. Given that the Ministry for Housing, Communities & Local Government appear to be to be scrutinising proposed Article 4 Directions in greater detail than before, we need to be very clear which areas within the Borough we consider are most at risk from such changes so it may be that not all district and local centres are recommended for protection.

Further research will be required to ascertain the level of loss (to justify the serving of an Article 4 Direction) should the changes come into force – this can be ascertained in terms of the floor area being recorded of the Prior Approval applications which have been permitted by the Council. This would be further supported by the number of residential units created, to demonstrate more tangibly the scale of loss.

It has been considered that as an alternative to the serving of an Article 4 Direction, that conditions be used on planning applications. The use of planning conditions would be possible, but only for new planning applications which are received for Class E uses (the Council can impose conditions upon planning approvals to protect facilities from any future permitted development changes, where this is justified). This alternative would not impact upon the primary issue of development needing to require formal planning consent in the first place. As the level of loss which is being experienced within the Borough is related to

permitted development, the Council have no locus of control. Thereby, the serving of an Article 4 Direction is the only mechanism by which Officers can safeguard town centre uses within the borough.

Suggested wording for the Regulation 19 document

Hart District Council published their Local Plan in April 2020. Within their Local Plan, they have included a reference to an Article 4 Direction. Paragraph 175 of their Local Plan states that:

A number of premises within defined employment sites have been subject to changes of use from office to residential use under 'permitted development rights'. In order to support the protection of employment sites, the Council will explore additional measures to provide protection for the designated sites. This includes the introduction of an 'Article 4 Direction.'

This wording obviously only reflects office to residential which was permitted development (subject to the regulations and exclusions) at the time that their Local Plan was published. Given the new changes to permitted development, we would need to be clear within our wording that the loss refers to the new Use Classes Order. As a starting point, it is suggested that this could sit after paragraph 3.46:

Due to the importance of the maintenance of a critical mass of commercial uses to the viability and vitality of the borough's town centres and the importance of these units in meeting employment need within the plan period, the Council will be monitoring the level and distribution of business and commercial units in its centres. Should this monitoring indicate, or other emerging policy changes threaten, harm to amenity or wellbeing, the Council will explore additional measures to provide protection for these areas. This will include the introduction of an 'Article 4 Direction.'

The word 'monitoring' is suggested as at the stage where the Local Plan is published, we will have a couple of years of applications as evidence to support the serving of an Article 4 Direction.

Potential Article 4 Direction (3) – Protecting business/industrial uses within designated industrial locations

Background

Similarly, with the town centre discussion, it is considered that due to the current and proposed change in permitted development rights, there may be a net loss of employment land experienced within the Borough's industrial areas.

It would be unlikely that there would be applications for residential conversions within the firmly established designated industrial areas (particularly to the north of the borough), by virtue of their locations and access to required amenities. Industrial sites are also unlikely to have any attraction for prospective buyers in a residential sense. However, there are a number of industrial areas which are occupied by uses which will fall within the Class E of the Use Classes Order, meaning that there is potential for the loss of units to Class C3 without the requirement of planning permission, should that change be confirmed, as well as under existing permitted development arrangements.

Case for Article 4 Direction

Under 20/00815/PRIOR an application was made at 7 Powerscroft Road, Sidcup which is located within the Foots Cray Business Area (primary employment area). The prior approval application sought to move from office use (B1 (a)) to residential (Class C3) to create 18 x 1 bedroom flats. The application granted under permitted development has resulted in a number of small, mostly single-aspect flats which are unlikely to be acceptable if assessed under the Council's Development Plan policies.

This is one of the key issues with the permitted development changes to residential, that being that the Council have no control over the standard of accommodation (in conjunction with other matters for example, location) which would be assessed as part of the formal planning process.

It is envisaged, that more applications on similar sites may be forthcoming in the future. Whilst there has not been the opportunity to fully assess the level of applications which have been made, there may be more existing examples which similarly have been approved under the prior approval process.

Conclusion

As we can see above, we have already lost an office unit within the Foots Cray Business Area under the changes to permitted development. It is therefore proposed that consideration is given to serving an Article 4 Direction to protect these designated areas.

As with the conclusion of the potential A4D for protecting town centre uses, the Council will need to build an evidence base and monitor the level of business and commercial loss in square metres. This could further be justified by ascertaining the number of residential units created by these changes.

An assessment will also be made to ascertain the predominant uses within our industrial areas. We may need to discount some industrial areas within the borough where they do not host Class E uses, as the risk of loss would not apply to these areas. This in turn will limit the geographical cover of a proposed Article 4 Direction to be compliant with the aims of the NPPF.

The matters regarding the use of planning conditions would apply in the same context as discussed within the potential Article 4 Direction for protecting town centre uses.

Recommendations

As with the potential Article 4 Direction for Protecting Town Centre Uses, the wording will follow a similar narrative.

It is considered that the best location within the Reg 19 document would likely be in the post-text of policy DP7: Appropriate uses within designated industrial areas. This is the policy that covers the Foots Cray Business Area, and hence would be policy that a formal planning application would be tested against.

Suggested wording for the Regulation 19 document

The Council will monitor the number of changes of use of business and commercial units which fall under Class E to Class C3 (residential) to understand the loss of such units and the impact on the borough's longer term ability to meet the need for employment floorspace. Should the need rise to safeguard the provision of units within these key industrial sites, the Council will explore additional measures to provide protection for these designated areas. This includes the introduction of an 'Article 4 Direction'.

Potential Article 4 Direction (4) – Protecting mature trees

Background

Typically, it tends to be the case that a site is cleared prior to an application for planning permission being submitted to the Council. This is particularly the case where sites offer an increased level of green coverage, or those which are heavily treed. Consequently, there has been the suggestion that the Council consider imposing an Article 4 Direction on all mature trees which are located within the borough to protect these assets which contribute to the character and appearance of the area.

Article 4 Directions are used to remove the rights for development to be undertaken, which do not require the benefit of planning permission as they are deemed as 'permitted development'.

The Town and Country Planning Act 1990 outlines the mechanism for which LPAs can protect trees. Chapter 1, Section 197 outlines that planning permission should include the appropriate provision for the preservation and planting of trees; but of course, this requirements only 'bites' where planning permission is applied for.

Chapter 1, Section 198 follows that LPAs have the power to make tree preservation orders if it appears to an LPA that it is expedient in the interests of amenity to make the provision for the preservation of trees/woodlands in their area. These orders may be with respect to singular trees (individual TPOs), groups of trees (blanket TPO) or woodlands (woodland TPOs), as may be specified in the order.

Other mechanisms for the protection of trees which are highlighted under the Town and Country Planning Act 1990 relate to those protections which are afforded to trees which are located within conservation areas (under Chapter 1, Section 211).

Conclusions

As such, the removal of trees which are not designated - those covered by a tree preservation order or within a conservation area (a different mechanism applies for works to ancient woodland) - is not development.

As the removal of non-designated trees is not classified as development, we therefore cannot serve an Article 4 Direction to this effect to protect non-designated mature trees within the borough. This has been confirmed with the Head of Development Management.

For the reasons stated above, it is not possible to serve an Article 4 Direction on non-designated mature trees within the borough, as the removal of non-designated trees is not development.

Recommendations

As the serving of an Article 4 Direction is not possible, the Council need to make increased use of the mechanism for protecting trees which is prescribed within the Town and Country Planning Act 1990. The Council will therefore need to be more proactive in serving Tree Preservation Orders on sites (and possibly areas in the case of blanket TPOs) where it is considered expedient to preserve the amenity of an area. This would be the appropriate route for protecting trees which are located on sites which form part of the site allocations, for example.