

Non-Immediate Article 4 Direction made 23 October 2024 to control the change of use from Class E to residential in town centres

Appendix B: Background Evidence Paper

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Introduction

This document provides a summary of the research prepared to inform the Council's decision regarding whether to make an Article 4 Direction to remove Permitted Development Rights (PDR) under Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the borough's designated town centres.

The making of an Article 4 Direction requires an assessment of the nature, scale, and impact of the unrestricted change of use of units (falling within Use Class E) within the borough's town centres to that of Use Class C3. In accordance with the NPPF (National Planning Policy Framework), 'wholly unacceptable impacts' must be justified. The evidence in this regard is set out below.

Context: permitted development position

On 1 August 2021 PDR was brought in to change the use of a building from Class E (Commercial, Business and Service) to Class C3 (dwellinghouses) under Class MA of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

The new designated Class E is an extremely broad use class, which has been created to cover Commercial, Business and Service uses. As such, Use Class E groups together a myriad of different uses which were previously considered under a wide range of different use classes e.g., Class A, Class B etc. In many cases, there were either no, or limited options to change use class under PDR within the previous Use Class arrangements. In terms of the changes and the impact upon the borough's town centres, a considerable proportion of units within these designated locations fall within uses which are captured under the umbrella of Class E.

There are few exceptions to the current PDR arrangements, and the previous floor space cap has been removed (meaning that an application can be submitted on a building of any size). The required period of vacancy has also been removed (previously a building must have been vacant for a period of three months prior to the application for prior approval). Therefore, as soon a building or unit becomes vacant, a Prior Approval application can be submitted under Class MA at that time.

Under Class MA, development is permitted subject to the developer applying to the local planning authority for a determination as to whether prior approval will be required with regards to:

- (a) transport impacts of the development, particularly to ensure safe access
- (b) contamination risks in relation to the building
- (c) flooding risks in relation to the building
- (d) impacts of noise from commercial premises on the intended occupiers of the development
- (e) conservation areas
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such use
- (h) loss of services provided by a registered nursery, or a health centre maintained under section 2 or 3 of the National Health Service Act 2006
- (i) where development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

There are a few other clauses which can be viewed from the link to the legislation at the end of this document.

It is important to note and emphasise that the prior approval process covers the change of use of a building/unit only, and that any external changes (for example the installation of windows and doors, or the installation of a new frontage) where these would affect the external appearance of a building, would require planning permission for such changes to take place. As such, a developer could change the use of a building under Class MA, but the requirement for planning permission may remain for other changes to a building which are not covered by the provisions outlined under Class MA.

Policy position

National Planning Policy Framework

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how they should be applied. The NPPF provides the overarching framework within which all locally prepared plans for housing and other development can be produced (paragraph 1). The NPPF thereby underpins the planning system and its function. The NPPF must be considered when preparing a development plan and is a material consideration in all planning decisions (where planning permission is required).

As per the NPPF, the core purpose of the planning system is to contribute to the achievement of sustainable development. There are three main overarching objectives to achieving sustainable development: environmental, social, and economic. The economic objective is outlined on page 5, paragraph 8, specifically:

“to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the tight time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.”

Chapter 6 of the NPPF outlines the principles for building a strong, competitive economy. Paragraph 85 confirms that:

“planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.”

Chapter 7 of the NPPF covers the need to ensure the vitality of town centres and recognises that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. As a requirement, paragraph 90 states that planning policies (inter alia) should both

“(a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.”

Chapter 11 of the framework covers making effective use of land. Making effective use of land should be underpinned by planning policies and decisions that promote this objective in meeting the need for homes and other uses. In this context the NPPF states that local planning authorities should support proposals to

“use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres.”

Chapter 12 sets out that ‘the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.’ Paragraph 135 states that

Planning policies and decisions should ensure that developments:

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)
- (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- (e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”

Thus, the NPPF seeks sustainable development at its core, whilst making effective use of land amongst the aforementioned aims. It is also clear that both ensuring the vitality of town centres and assisting with a strong and competitive economy are fundamental aims of the framework.

Proposed reforms to the NPPF were announced on 30 July 2024 and remain at consultation stage/have yet to be implemented (delete as appropriate at report publication stage). No text amendments to the position outlined above are proposed, but paragraph numbering may change. No changes are proposed regarding the wording surrounding the use of Article 4 Directions.

London Plan 2021

The London Plan highlights that London’s town centres are central to the lives of Londoners and that these centres provide a focus for the local communities, both geographically and in relation to the sense of identity and broad mix of uses that they provide (paragraph 2.6.1). Paragraph 2.6.2 states that:

“The spaces within and around town centres have an important public function, with high street, public squares, markets, parks, gardens and other open spaces providing opportunities for people to gather, meet, socialise and be entertained. Town centres are usually transport hubs, served by rail, tram and bus networks, and are accessible for people walking and cycling. Town centres and high streets have social value, providing access to a range of shops and services, employment opportunities, social contact, and information and support. The agglomeration of town centres gives rise to formal and informal networks of businesses, supply chains, customers, employees, institutions, and volunteers that can provide mutual support, advice and economic benefit. Many town centres in London are of historic interest and contain high concentrations of heritage assets.”

The London Plan identifies London's town centre network and sets out how the network should be successfully managed, promoted and enhanced, giving strategic direction for the range of uses that should be accommodated in town centres, and setting out specific requirements for London Plan policies.

Policy SD6 outlines the various requirements for promoting and enhancing London's varied town centres, including the strengthening of town centres as a main focus for Londoner's sense of place and local identity in the capital (part 1, b).

Of high streets particularly, the London Plan notes that these are one of London's most characteristic urban features which play a vital role in terms of local economic and social infrastructure, whilst providing employment opportunities and promoting community and cultural exchange. The character and function of high streets within town centres should be promoted and enhanced (paragraph 2.6.3).

Policy SD8 sets out London's Town Centre Network. This network reads as a hierarchy with International, Metropolitan and Major Town Centres being of greatest importance. These are then followed by District Centres, with Local and Neighbourhood Centres at the lower tier.

The supporting text for policy SD9 follows on to state that in many London town centres, there is particular pressure on commercial floorspace to be converted into residential use. To ensure the vitality and vibrancy of town centres, it is important that they contain an appropriate mix of and quantity of offices and other commercial floorspace. The supporting text continues that this aim can be supported through the use of Article 4 Directions. Article 4 Directions ensure that development is undertaken in accordance with the Development Plan and that in putting in place Article 4 Directions, boroughs should have regard to local evidence such as employment land and premises studies, and the indicative categorisations for individual town centres that are set out in Annex 1.

Considering the above, there is support from the GLA for local planning authorities to make Directions where it is considered that without such mechanisms in place, the vitality and vibrancy of London's town centres could be compromised (as a direct result of the PDR changes).

Bexley Local Plan 2023

The Bexley Local Plan was adopted on 26 April 2023 and outlines the Council's vision for development across the borough, through the plan period to April 2038. Together with the London Plan, the Bexley Local Plan makes up the statutory development plan for the borough.

Within the Bexley Local Plan, policy SP1 (Achieving sustainable development – the spatial strategy) emphasises that the Council, through its policies and decisions, will aim to work towards sustainable growth in homes, jobs and services. This will enable the creation of a network of healthy, well-connected, high-quality, desirable places where people want to live, play, learn and work in line with the visions and objectives of the Council's key strategies and the Bexley Local Plan, thus implementing the principles of sustainable development (part 1, a.). One of the key aims of planning policies is to achieve sustainable development by strengthening and diversifying the local economy, and to reinforce the network of vibrant and successful town centres (policy SP1, part 2, a, i.).

The principal focus of Bexley's spatial approach to economic growth will be generating 10,800 net new jobs across many sectors, including retail (discussed further below). In line with the plan's vision and objectives, good growth will be secured by focussing new development (inter alia) in and around the borough's main town centres (Bexley Local Plan, paragraph 1.16). As the Bexley Local Plan, at paragraph 1.12, identifies:

“The strategic and non-strategic (development management) policies and the spatial land use designations are designed to support the objectives of sustainable development. By abiding by the core objectives, growth can be positively shaped to the advantage of the people who live

and work in the borough, ensuring that it unlocks a range of benefits whilst planning out any potential negative impacts.”

In accordance with the NPPF, the Bexley Local Plan sets out the amount of employment growth, in terms of net new jobs, anticipated in the borough to 2038, and makes provision for businesses to accommodate this growth.

The plan sets out, in part 1 of policy SP3 (Employment growth, innovation and enterprise), that the Council will support the economic growth of at least 10,800 (net) new jobs over the plan period, and that outside of Bexley’s designated industrial locations, 8,100 to 8,900 jobs (net) new jobs are to be accommodated. The Council’s ambitions for sustained economic development are discussed under policy SP3 (part 2), emphasising that proposals for economic development should, where possible, improve the quality of employment areas and town centres, including the public realm, to make them more suitable and attractive locations for modern businesses.

Bexley benefits from a wide variety of town centres, which all have different characters and fulfil roles which are of immense importance to the vitality of the borough serving those who live, work and visit it. The Bexley Local Plan identifies that creating and supporting a thriving local economy supports positive benefits for the borough’s residents. These range from health outcomes, opportunities for employment, community cohesion and crime reduction (paragraph 3.34).

The Bexley Local Plan policies recognise the need for a suitable mix of uses within the defined boundaries of town centres, whilst seeking to promote the diversification of the uses in town centres (policy DP9 - Development within town centres, part 1, page 44). The preamble to policy SP4: Supporting successful town centres opens (paragraph 3.33):

“Evidence shows that town centres now function as much more than a retail destination, providing a large range of services, facilities, employment and experiences for residents in an accessible location. The Council wishes to ensure that this expanding role is encouraged, allowing a greater diversity of town centres uses and therefore reducing the need to travel.”

The Council is supportive of residential development in town centres where it is located above ground floor level and does not harm the viability and vitality of a town centres (paragraph 3.39).

As part of the evidence base for the Bexley Local Plan, a review of the borough’s town centres was carried out and an updated hierarchy of town centres and their boundaries shown on the adopted policies map (paragraph 3.46). The update took account of the current definition of town centre uses in national guidance, the recent reforms to the Use Classes Order and the new permitted development rights (discussed throughout this report). New development and changes in the use of land since the adoption of the Unitary Development Plan (UDP) proposals map (which was produced in 2004) were also considered.

The review concluded that the old boundaries for town centres had been eroded over time, with losses of units to uses which were no longer considered to meet town centre needs. As a result of the review the existing town centre boundaries were modified, with some new town centres also being identified. For example, Lower Belvedere is designated as a new District Centre to reflect the Council’s aspirations for growth within this area, which is further supported by site allocations BEL01, BEL02 and BEL03 that are located within the new town centre. Abbey Wood Village, Bexleyheath Station and Sidcup Station are also now designated as new Local Centres (Bexley Local Plan paragraph 3.47).

Evidence supporting the employment growth set out in the Bexley Local Plan

The Bexley Local Plan identifies that Bexley’s contribution to London’s economic growth will be achieved by the intensification of both the borough’s town centres and designated industrial areas. These locations

are where most employment sectors will be located, although a substantial number of new jobs in the borough will occur in residential areas, such as in schools, health and other community facilities, and in residential care (paragraph 1.24).

As part of the evidence base for the Bexley Local Plan, an Employment Land Technical Paper (updated following publication of the (Reg 19) Draft Local Plan) was produced. This document set out the methodology for creating a baseline position of designated employment land in Bexley, which was the subsequently reviewed and agreed with the Greater London Authority (GLA). The employment land baseline informed assessments that determine the amount of jobs growth over the plan period including the amount of employment land required. The assessments are provided in Bexley's Industrial Land Intensification Study and the Employment Land Review and accompanying technical Briefing Paper (paragraphs 1.1 and 1.2).

The findings of both papers helped to shape Bexley Local Plan policies that seek opportunities to optimise industrial land and other employment sites, including the borough's town centres (paragraph 1.3).

The last time that Bexley's designated employment land was fully reviewed prior to this was in 2002 for the preparation of the superseded Unitary Development Plan (UDP). With regards to town centres, the UDP contained a hierarchy of designated employment land. Preferred Office Locations (POLs) were previously identified, which covered the five main town centres (paragraph 1.8). The inclusion of town centres as POLs highlighted the appropriateness of these areas for such uses, uses which now fall within Class E of the updated Use Classes Order.

The borough's Employment Land Technical Paper (updated following the publication of the (Reg 19) Draft Local Plan version) highlighted the issue of using PDR to convert unused offices (which fall under Use Class E and are commonplace within the borough's town centres) to residential housing. The paper at paragraph 1.24 recognised that:

“More recent changes to PDR are likely to cause further losses of business premises, although at this time it is difficult to predict if changes to residential uses will come from non-designated industrial sites rather than from sites within designated industrial areas.”

The Bexley Retail & Leisure Study (BRLS) provided the Council with robust recommendations which informed plan-making over the lifetime of the plan period to 2038. The key findings of the BRLS (as stated on page 5 of the Retail and Town Centres Technical Paper) were as follows:

“The Study states that in the absence of identified retail need it follows that there is no requirement to identify and allocate sites for new retail floorspace in the Borough's main centres.

Furthermore, the capacity forecasts do not take account of current (or future) vacant retail floorspace in the main centres and shopping locations. Some of this vacant space (particularly in prime shopping streets) will be available and suitable for re-occupation, re-purposing and/or redevelopment both now and in the future. The Study advised that the limited forecast capacity for 1,075 sqm net of new convenience goods floorspace over the lifetime of the plan (by 2038) could either be taken up by vacant floorspace, or by the mixed-use development of vacant sites/buildings (i.e. ground floor commercial uses, with residential above).

The Study also advised that any potential need for new cafés, restaurants, bars, gyms, cinemas and hotels over the plan period should be directed to the Borough's main town centres and should also be accommodated in vacant/repurposed/redeveloped space and buildings.

In summary the Study identified that there is no requirement for the local planning authority to identify and allocate sites to specifically accommodate new leisure uses or retail floorspace. The potential to redevelop and repurpose vacant premises and sites will meet any potential need or market demand.”

As a result, the Retail and Town Centres Technical Paper noted that the BRLS confirmed no requirement for Bexley to identify and allocate sites to specifically accommodate new leisure uses or retail floorspace as the potential to redevelop and repurpose vacant premises and sites would meet any future need or market demand (paragraph 5.11).

Greater London Authority strategic evidence

Due to the threat that the changes relating to PDR may pose to the use of land across the London, the Greater London Authority (GLA) prepared a paper in July 2021. The paper, entitled **Strategic evidence to support Article 4 Directions** offers broad support for local authorities in the making of A4Ds to safeguard high streets and town centres, and importantly, to support their vital role within the London economy.

With regards to town centres and high streets, the basis of the Mayor’s report is underpinned by the considerations that:

“Town centres and high streets are at the heart of local communities, providing access to a range of shops and services, employment opportunities, culture and social contact, and information and support. Some town centres have specialist functions and play international, national and regional roles, whilst others perform local roles, meeting the day to day needs of Londoners. Over the years, town centres have absorbed change and new technologies. To continue to thrive they will need to evolve and diversify their commercial, cultural and community functions in response to current and future economic trends, technological advances, consumer behaviours, and the development of the 24-hour city.” (paragraph 5.1.1)

Paragraph 2.2.1 highlights that protecting and creating jobs are objectives which are shared by the government, the Mayor, and the London Recovery Board to build a strong and competitive economy and drive the recovery from the economic impacts of the Covid-19 pandemic.

Of the use of Article 4 Directions specifically, paragraph 2.2.5 of the evidence paper states that:

“From a spatial planning perspective, the protection of jobs and the realisation of future jobs growth is contingent on the careful management of development capacity and the balance of commercial uses with alternative land uses including housing. Targeted commercial to residential Article 4 Directions will be an important component in achieving this objective, protecting existing jobs and realising future jobs growth potential.”

The basis of the Mayor’s report is underpinned by the fact that London (as a whole) is dependent on a wide range of industrial, logistics and related uses, all of which are vital to the economy. These wide range of commercial uses are essential both for the functioning of London’s economy and servicing the needs of the growing population, as well as contributing towards employment opportunities for Londoners (paragraph 6.1.1).

The PDR changes can have both the direct and indirect impacts as indicated above. The main direct impact being that an increase in unchecked residential capacity within town centres (through Class MA PDR) will have a negative impact upon commercial capacity, and therefore the protection of both existing jobs and that of the future job growth potential (specified in Part 1 of Bexley Local Plan policy SP3).

This provides further justification for making an Article 4 Direction to bring the currently permitted change of use under Class MA into Council control to ensure that all material planning considerations are fully, and accurately assessed in accordance with the development plan. Thereby, the Council can ensure the vitality, and ongoing viability of the borough's high streets and town centres.

Loss of existing commercial, business and service units

Assessment of permitted prior approvals

An assessment has been undertaken of the units which have been submitted under PDR changes from commercial, business or service units (Class E), to that of residential use (Class C3) within the borough's town centres. These applications are outlined below:

24/01119/PRIOR

Notification for Prior Approval for a change of use of first floor from Commercial, Business and Service (Use Class E) to provide three self-contained residential Units (Class C3). This site is located within the **Sidcup District Centre**. The application has been determined and prior approval was granted. Decision date 14.06.2024. To date, the change of use has not been implemented.

24/00566/PRIOR

Notification for prior approval for the Change of use of the rear Commercial, Business and Service (Use Class E) to provide one self-contained residential unit (Class C3). This site is within **Welling District Centre**. The application has been determined and prior approval was granted. Decision date 15.04.2024. To date, the change of use has not been implemented.

24/02043/PRIOR

Notification for Prior Approval for the conversion of the first floor commercial Space (Class E) to provide 1 residential unit (Class C3). This site is located within **Welling District Centre**. This application has been determined and prior approval was granted. Decision date 17.09.24. To date, the change of use has not been implemented.

24/00256/PRIOR

Notification for Prior Approval for a proposed change of use of the ground and first floor from Commercial, Business and Service (Use Class E) to provide two self-contained residential units (Class C3) - 237 Bexley Road, Erith. This site is located within the **Northumberland Heath Local Centre**. The application has been determined and prior approval was not required. Decision date 18.03.24. To date, this change of use has not been implemented.

23/03210/PRIOR

Notification for Prior Approval for the change of use of Commercial (Class E) to 5 x 1 bed residential units (Class C3) – 83 High Street, Sidcup. The site is located within the **Sidcup District Centre**. The application has been determined and Prior Approval was not required. Decision date 23.01.23. To date, this change of use has not been implemented.

23/02853/PRIOR

Notification for prior approval for the change of use of the rear ground floor shop (Use Class E) to provide 4 self-contained dwellings (Use Class C3) - 254-256 Blackfen Road, Sidcup. The former Katie's Playpen site occupying a prominent corner plot. The site is in the **Blackfen Local Centre**. The application has been determined and Prior Approval was not required. Decision date 11.12.23. To date, this application has not been implemented.

23/02445/PRIORM

Notification of Prior Approval for a proposed change of use from Commercial, Business and Service (Use Class E(a)) to provide 2 residential units (Class C3) – 254-256 Blackfen Road, Sidcup. As above, the site is located within the **Blackfen Local Centre**. The application has been determined and Prior Approval was not required. Decision date 20.11.23. To date, this application has not been implemented.

23/02444/PRIOR

Notification of Prior Approval for the change of use from Use Class E (Workshop) to Use Class C3 (residential) to create a 1x1 bedroom apartment – 254-256 Blackfen Road, Sidcup. As above, the site is located within the **Blackfen Local Centre**.

The application has been determined and Prior Approval was refused on the grounds that as the proposed one bedroom one person unit was arranged over two floors, this is not a permitted layout according to the Nationally Described Space Standard. The proposal therefore failed to comply with Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Decision date 20.11.23.

23/02630/PRIORM

Notification for Prior Approval for the change of use of the first floor ancillary office space (Class E) (c)(ii) to provide a residential flat (Class C3) - 9A Welling High Street. The site is located within **Welling District Centre**.

The application has been determined and Prior Approval was refused as the proposed two-bedroom unit failed to meet the minimum requirements of a property of the size proposed as set out in the Nationally Described Space Standard. As such, the proposal failed to comply with Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Decision date 27.11.23.

23/00218/PRIOR

Notification for Prior Approval for a proposed change of use of the building from Commercial, Business and Service (Use Class E) to provide 1 x 1 bed residential unit (Class C3) 21 Pickford Lane, Bexleyheath. This site is located within the **Bexleyheath Station Local Centre**. Decision date 01.03.23.

The application has been determined, and Prior Approval refused on the basis that the unit was still occupied by a commercial business. It is important to note that this reason for refusal (the unit not being vacant for a minimum of three continuous months) can no longer be used, as this criterion has been removed from Class MA of the GPDO.

Analysis of assessments

The prior approval applications listed above demonstrate that the current changes to the PDR legislation are resulting in a loss of commercial units across the borough's town centres. These locations are evidenced within the Bexley Local Plan as being appropriate for Class E uses in the borough and reflect the neighbourhoods that they serve. The Bexley Local Plan notes, in setting out the policy approach to SP4 Supporting successful town centres, that town centres now function much more than simply for retail shopping. They provide, in addition: services, facilities, employment and experiences for residents, workers and visitors.

The borough's town centres create a network of accessible destinations that reduce the need to travel. The creation and support of a thriving and local economy has positive benefits for residents that range from health outcomes and employment opportunities to community cohesion and crime reduction. These centres ensure that goods and services are available locally, without residents having to head further afield

(or travel out of borough) to have their needs met. Therefore, the protection of the viability and vitality of the borough's town centres is paramount to their success and longevity.

As can be deduced from the applications listed, some of the business units that have received applications for conversion can be quite sizeable e.g. 83 Sidcup High Street where 5 residential units have been approved, or that of 254-256 Blackfen Road where a number of applications have been received on the same site which if all achieve prior approval, will result in the creation of 7 residential units.

From assessing the applications above, it is evident that there is an increased issue, with a greater number of Prior Approval applications being submitted in more recent times. The use of a Non-Immediate Article 4 Direction would thereby protect against the potential loss of further business units within Bexley's town centres in the future. Any proposals (once the Direction is confirmed) would be assessed against the policies in the Development Plan that seeks to protect main town centre uses, and this would be a material planning consideration in the assessment of applications.

The potential service and employment floor areas which has already been lost (and that which has the potential to be lost from yet to be implemented approvals) is unlikely to revert from residential use back to that of Class E uses in the future, given the property values that are associated with residential development generally exceeding those of other uses. Considering the potential further increase in value given the highly sustainable locations in which many of the borough's town centres (and those covered within the hierarchy) are located. Furthermore, if it were decided to convert a unit back to Class E from Class C3, planning permission would also be required for any such change (e.g., to reverse the change of use that has occurred) further undermining viability.

Residential units within the borough's town centres (and associated hierarchy)

As emphasised throughout the plan-led approach, residential development is supported within town centres above ground floor level, where such development would not harm the viability and vitality of the borough's town centres (paragraph 3.39 of the Bexley Local Plan).

The Bexley Local Plan recognises, additionally, that residents who live in town centres should anticipate that there will be a different level of amenity to be enjoyed when compared to those that reside within primarily residential areas. Examples highlighted include that separation distances may be closer, or that noise levels may be higher (paragraph 43). The Agent of Change Principle which is outlined within the London Plan supports this approach.

A high proportion of town centre uses will fall within Use Class E and therefore are directly affected by the new PDR. As stated previously, London's high streets are a focal point for culture, communities, and everyday economies (paragraph E13, GLA Evidence Paper). Paragraph E14 highlights further that:

“Despite changes in consumer behaviour, technology and competition from out-of-centre development, [high streets and town centres] have shown their resilience by adapting and re-inventing themselves. They have diversified over time towards leisure uses and experiential, service retail uses. Vacancy rates in London' town centres and high streets are typically well below those experienced in other parts of the country. In 2019 the London average shop vacancy rate was 9 per cent compared to an average of 12 per cent from Britain as a whole.”

Town centre uses include a range of activities which are important to servicing the local economies, and of paramount importance, the day-to-day needs of other businesses and residents. As highlighted by the GLA, it is essential that there is space available within the region's town centres and high streets for businesses to innovate, to start up and to create new jobs, in order to support London's economic and social recovery from the impacts of the Covid-19 pandemic (paragraph E15, GLA Evidence Paper). Policy DP9 of

the Bexley Local Plan provides for this through part 3 where there is the presumption against the net loss of ground floor main town centre uses within the designated town centre boundaries. Where there would be a net loss of ground floor Class E uses, Part 4 requires that:

- (a) the proposed use is a main town centre use
- (b) the use contributes to the vitality and viability of the town centre
- (c) a significant percentage of the units within the town centre boundary will remain in Class e Use;
- (d) the proposed use has an active frontage immediately accessible from the street; and,
- (e) the proposed use would not result in two or more adjoining units of takeaways, betting offices/shops, pay day loan shops, and pawn brokers, with a maximum of 10% of units with these uses collectively, and in any event, no one use above 5% of units, across the town centre.

The making of a Non-Immediate Article 4 Direction will aim to assist with this, due to the requirement for the submission of formal applications and Council officers being able to assess these proposed developments against the development plan. The result being that where residential development is considered to place obstacles for business and commercial uses flourishing within designated locations (those being the boroughs town centres), that these applications would not be met with support.

Other impacts resulting from permitted prior approvals

Affordable housing

Applications which are approved under Prior Approval and are of a size which would otherwise trigger the provision of affordable housing, are not subject to affordable housing requirements, as these applications are not assessed against the Development Plan. The Council therefore has no facility by which to ensure that there may be an affordable element as part of these conversions, and they appear on the open market where market forces determine their value.

Affordable housing is a significant component of local housing need and inadequate provision results in major social costs and financial burdens for the Council through the provision of emergency accommodation. This situation also has repercussions for the economics of development and the ability to optimise the capacity of sites. As the Mayor's strategic evidence states at paragraph 8.4.3:

“It is also important to recognise that because PDR development does not include affordable housing, this creates a 'cliff edge' for investment decisions. It is likely to be the case that for some developments the financial hurdle of the affordable housing requirement from full planning permission cannot be overcome by the additional value generated by comprehensively redeveloping the site. This results in permitted development schemes that fail to deliver the amount of development a site is capable of accommodating because it is not cost effective to go down the planning application route. Overall, PDR inflates land values which is a disincentive to requiring and redeveloping land comprehensively.”

Community Infrastructure Levy (CIL) and S106 contributions

CIL was introduced in 2014 and represents a charge which can be levied by local authorities on new development in their areas. CIL is a valuable tool for local authorities to use to enable them to deliver the infrastructure, which is required to support development within their areas, whether it be for schools or transport improvements, for example.

CIL is payable for most forms of new development which creates net floor space of 100 metres or more, or where new dwellings are created (a net increase of one or more), with few exceptions.

CIL only applies where a local authority has consulted on, and approved, a charging schedule which sets out the levy rates and has published the schedule on its website (Government Guidance, paragraph 001). Bexley's Community Infrastructure Levy Charging Schedule was approved on 2 March 2015, with the Charging Schedule coming into effect on 30 April 2015. The rate of CIL which is payable is both mandatory and non-negotiable.

Local authorities are required to publish infrastructure funding statements and infrastructure delivery plans. These documents identify infrastructure needs, the total cost of infrastructure, the anticipated funding from developer contributions, and the choices that a local authority has made about how these contributions will be used.

Within Bexley, the Infrastructure Funding Statement 2021/2022 identified in paragraph 1.9 the infrastructure priorities to include the following:

- (a) Transport improvements such as bus priority schemes and enhancements to walking and cycling facilities
- (b) Education, cultural, health and community facilities such as new library provision and the expansion of primary, secondary and SEN school places
- (c) Environmental and green infrastructure and public realm improvements such as park enhancements and tree planting programmes
- (d) Sport and recreational facilities such as new and improve play equipment and sports pitches.

The Infrastructure Funding Statement identifies that the current estimate that over the plan period, the total borough CIL receipts would amount to £13m (paragraph 1.10). As above, there are several key infrastructure projects identified which would be enabled by the receipt of CIL funding.

Given that the Prior Approval process discourages intensification it reduces the potential for CIL to be generated. An increase in residential properties within any borough will lead to increased pressures on Council resources, particular regarding elements outlined within paragraph b above e.g., education, health, and community facilities and especially in industrial areas which often lie remote from and do not traditionally benefit from access to existing social and community infrastructure.

The RICS report, which assessed the impacts of extending PDR from office to residential change of use in England, concluded from the case studies undertaken that:

“[t]he quantum of conversions seen in the case studies is such that there will be an impact on local infrastructure. Whilst private utilities may meet their own costs from new residents, it will be harder for publicly provided physical, social and green infrastructure to do so. The pace of development is likely to outstrip the supporting infrastructure in some authorities... It is complex to quantify these costs, but taking a very low figure of costs per additional unit developed from the several studies examined it is calculated, the additional burden on these five LPAs alone to be £27.5m.”

Similarly, planning obligations in the form of S106 contributions can only be entered, and limited only to matters requiring prior approval. They should not seek contributions for affordable housing. This is because, by its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would not ordinarily be necessary (paragraph 009, Planning Obligations PPG).

Conclusions

The evidence demonstrates that the Council is losing units within the borough's retail centres through the submission, and approval of applications for Prior Approval under Class MA. The premises which housed the commercial uses previously falling within Use Class E, are being able to be converted to residential due to the change in approach by the Government to PDR.

As discussed, there are a number of premises which have been lost to residential use under Class MA PDR. The individual town centre assessments illustrate the existing character of the borough's town centres and highlight their vulnerabilities. In particular, the assessments draw attention to the considerable number of smaller commercial units that occupy the centres and how many of these exhibit residential character. These factors are emphasised by the fact that most centres are currently situated either amongst, or very close to existing residential areas (as described). These factors represent significant risks to the centres as the conversion of units threatens the vitality, viability and offer of the borough's town centres both now and in the future.

As Prior Approval requires no vacancy period, any vacant commercial premises that falls within Use Class E has the potential to be converted to residential under Class MA. Market forces may not recognise such vacancies within an immediate time period. This means that interested parties may potentially miss the opportunity to occupy those premises which fall under Class E within the borough's town centres, if/where they are not actively seeking units within an extremely specific period (where they are advertised). Conversely, planning applications which are made and determined under the development plan require evidence of no reasonable take-up of units to justify the loss of appropriately located units.

Town centres are land use designations which are identified and protected under planning policy. The changes which have occurred to the PDR have resulted in applications being submitted through the Prior Approval process, thereby circumventing the need to assess these developments against the policies contained within the Development Plan. The result is that the Council is now in a position where the evidence indicates that there is an increasing number of residential units which are located within the borough's town centre hierarchy at ground floor level.

The changes to PDR mean that the Council now faces the challenge of ensuring that there is sufficient floor space available within the borough's designated town centres to meet the needs of businesses, services and other commercial uses. Any loss of commercial units could affect the level of commercial activity within the borough's town centres as economic offer declines and businesses lose the critical mass needed to survive.

These locations contribute to the planned approach to economic growth across the borough, and the retention of units is necessary to achieve this objective and to contribute to jobs growth over the plan period to 2038.

It is considered that the changes outlined are having 'wholly unacceptable adverse impacts' upon the capacity of available commercial floor space within the borough's town centres, and that providing for residential accommodation within these designated areas (which are not identified within the Bexley Local Plan as appropriate for that use) could impact upon the required capacity. Bexley's town centres are required both to ensure that the Council can meet the future needs and requirements of businesses, and to protect both the vitality and viability of the borough's designated retail locations.

Bexley's town centres are identified to meet the economic objectives that are outlined within the NPPF and to ensure that businesses can invest, expand, and adapt. As recognised within the NPPF, significant weight should be placed on the need to support economic growth and productivity.

As such, it is considered that to prevent the loss of further existing units which are located within the borough's town centres such development should be brought under the Council's planning control by making an Article 4 Direction. By utilising the use of an Article 4 Direction, the Council can fully assess applications against the policies within the Development Plan to ensure that there is no discord between the Government's ambition for the creation of homes (residential units) and the requirement to ensure that businesses and the economy can continue to grow within locations which are identified as appropriate.

The Council can then fully assess the acceptability of any submitted schemes, and the impact of said developments upon the viability and viability of the borough's town centres.

The making of a Non-immediate Article 4 Direction would complement the Council's strategic approach to the town centre hierarchy which is outlined within the relevant policies of the Bexley Local Plan 2023. One of the key policy aims being to ensure that the viability and vitality of the Bexley's town centres.

Supporting documents

[The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) Order 2021 Assessing the impacts of extending permitted development rights to office-to-residential change of use in England](#). Report for Royal Institution of Chartered Surveyors, RICS Research team, May 2018

[National Planning Policy Framework](#). Department for Levelling Up, Housing and Communities, December 2023

[London Plan 2021](#). Greater London Authority, March 2021

[Strategic evidence to support London borough Article 4 Directions \(commercial to residential\)](#). Greater London Authority, July 2021

[Bexley Local Plan 2023](#). London Borough of Bexley, April 2023

[Bexley Retail & Leisure Study](#). Lambert Smith Hampton. May 2021

[Employment Land Technical Paper \(Updated\)](#). London Borough of Bexley, January 2022

[Employment Land Review](#). Lichfields, June 2021

[Article 4 Directions Technical Paper](#). London Borough of Bexley, May 2021

[Retail and Town Centres Technical Paper](#). London Borough of Bexley, 2021

[Community Infrastructure Levy Charging Schedule](#). London Borough of Bexley, April 2015

[Bexley Infrastructure Funding Statement 2021/2022](#). London Borough of Bexley, December 2022