



Report to Cabinet

Date: 9th November 2021

Reference number: n/a

Title: Article 4 Direction restricting the Permitted Development Rights to change the use from Commercial to Residential.

Relevant councillor(s): Cllr Gareth Williams

Author and/or contact officer: Darran Eggleton

Ward(s) affected: Penn Wood and Old Amersham, Chesham bois and Amersham, Aylesbury North, Aylesbury West, Aylesbury South East, Aylesbury North West, Aylesbury South West, Beaconsfield, Buckingham East, Buckingham West, Farnham Common and Burnham Beeches, Chalfont st peter, Chess Valley, Clivedon, Gerrards Cross, Iver, Marlow, The Risboroughs, Taplow, Wendover, Halton and Stoke Mandeville, Winslow, Abbey

Recommendations:

- (i) *To note the content of this report and to authorise the Council officers to commence Stage 1 work on a non-immediate Article 4 Direction removing the permitted development right set out in Class MA of the Town and Country Planning (General Permitted Development Order) 2015 on the locations prescribed below.***
- (ii) *To authorise the Council officers to commence Stage 2 of the project , as soon as resources allow, to undertake a public consultation as to where else the Council should consider imposing an Article 4 Direction to remove the permitted development right set out in Class MA of the Town and Country Planning (General Permitted Development Order) 2015.***

Reason for decision:

- *To protect the Council's Core Shopping Areas from the undesirable conversion of retail units to residential without the need to submit a planning application or undertake any public consultation.***

- *To seek the public's opinion as to where in Buckinghamshire, in addition to those locations cited in this report, it feels should have these Permitted development rights removed.*

Executive summary

- 1.1 In March 2020, the Government announced amendments being made to national planning legislation to introduce a new permitted development right, Class MA, to allow the conversion of commercial premises (including retail shops) into residential without the need for a planning application or any public consultation.
- 1.2 Despite requests from Local Planning Authorities (including Buckinghamshire Council) to delay the implementation of this new legislation, Class MA came into effect on 1st August 2021.
- 1.3 This paper has been prepared following consultation with the Cabinet Member for Planning & Regeneration, Gareth Williams, who wishes to obtain Cabinet agreement as soon as possible for Buckinghamshire Council to pursue an Article 4 Direction to prevent the use of Class MA in selected areas across the Buckinghamshire Council Area.
- 1.4 This paper sets out the mechanics of the relevant legislation, the type of development that is automatically granted planning permission by the new permitted development rights, highlights the potential impact on our area and highlights the lack of any public consultation, comment or input in any way to the decisions specifically to the loss of retail premises.
- 1.5 This paper also sets out a proposal for a 2 phase approach in relation how the Council will pursue Article 4 Directions in the immediate term and next phase.

Content of Report

Background

- 1.6 In England and Wales, planning permission is required to undertake 'development'. The definition of development is set out in the Town and Country Planning Act and includes the 'material change of use of land'.
- 1.7 Planning permission is granted in one of two ways. Either by Local Planning Authority approving a planning application, by a planning Inspector on appeal or by virtue of other planning legislation automatically granting such permission.
- 1.8 Of particular relevance to this matter is the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) (England) Order 2015 ("Permitted Development Rights").

- 1.9 The Use Class Order allocates uses of land into a number of classes. Planning permission is only required if the use of land changes between classes. Planning permission is not required to change use within the same class.
- 1.10 On 1st September 2020, the Government made significant amendments to the Use Class Order. This amendment created a new Class E, a single use class for all Commercial, Business and Service uses. This includes offices, restaurants, financial services, crèches as well as retail.
- 1.11 The Permitted Development Rights grants automatic planning permission for development to be undertaken providing that the development complies with certain criteria and conditions.
- 1.12 In August 2021, the Government amended the Permitted Development Rights and introduced a new Class 'MA'. Class MA grants automatic planning permission to change the use of a building (and any land in its curtilage) from Class E to residential provided that the development complies with certain criteria.
- 1.13 One such condition is that in order to implement a change of use granted by Class MA the applicant must submit a Prior Notification application to the Council in advance of undertaking the development. However, there is no formal public consultation process on Prior Notification applications, and the application only gives the Council the opportunity to assess the proposed development against a limited number of criteria.
- 1.14 Of particular importance, the prior notification process does not allow the Council to assess the proposed development against the content of the relevant Local Plan policies. For example, the loss of a retail unit in a primary shopping frontage would normally be a change that the Council would seek to resist. Where an applicant seeks permission for a change of use under Class MA, policies around retaining retail shops would have no weight in the prior notification decision.
- 1.15 Class MA has a number conditions and criteria in order for the development to comply with the legislation. This includes, but is not limited to, that the existing building:
- Has continuously been in its current use for the previous 2 years.
 - Has been vacant for a period in excess of 3 months immediately prior to the application.
 - Is less than 1500m² cumulative floorspace.
 - Is not a listed building.
 - Is not in an area of outstanding natural beauty.

Importantly, Class MA can be used to facilitate a change of use in Conservation Areas.

Article 4 Directions

- 1.16 Article 4 of the Town and County Planning (General Permitted Development) England Order 2015 enables the Secretary of State or Local Planning Authorities to impose a Direction that withdraws specified permitted development rights across a defined area.
- 1.17 In this instance, an Article 4 Direction is proposed to be used to withdraw permitted development rights for Class MA and thus prevent the conversion of Class E premises to residential without having to make a planning application.
- 1.18 The use of an Article 4 Direction to withdraw Class E conversions would mean that any proposed changes of use from Class E to residential within the area covered by the Article 4 Direction would require the applicant to submit a planning application. Such an application would be subject to the usual public consultation and would be assessed against national and local planning policies.
- 1.19 The ability for the Council to assess these changes through the normal planning process will ensure that development maintains high quality environments in line with our Local Plan Policies.
- 1.20 There are 2 types of Article 4 Direction: immediate and non-immediate.
- 1.21 The Planning Practice Guidance indicates that immediate directions should only be introduced 'where the development presents an immediate threat to local amenity or prejudices the proper planning of an area'. As the name suggests, an immediate Article 4 Direction comes into effect immediately and removes the permitted right without notice but has compensatory consequences. A non-immediate A4D allows for a period of public consultation and must not take effect for 1 year after it has been made, but has no compensation implications.

National Planning Policy Framework. (NPPF)

- 1.22 In September 2021, the government amended the NPPF (para 53) to say:
The use of Article 4 directions to remove national permitted development rights 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).”

- 1.23 It is worth noting that the NPPF refers to the “essential core of a primary shopping area” not the primary shopping frontages. This is a key distinction as in some towns, such as Amersham on the Hill, Iver, Winslow and Wendover, there are no primary shopping frontages identified in the Local Plan Policy maps. It is recognised however that use of Class MA in such locations would have the same impact here as it would in areas that do have primary shopping frontages.
- 1.24 Nevertheless, what the NPPF does indicate is that Article 4 Directions on whole Town Centres are unlikely to be successful and it may be that the Secretary of State intervenes using his overarching power to quash Article 4 Directions that do not meet the NPPF requirements.
- 1.25 Furthermore, in July 2021, the former Secretary of State for Housing, Communities and Local Government, Rt Hon Robert Jenrick, set out measures that he was taking (namely the changes to the NPPF) to ensure that Article 4 Directions are used in a “highly targeted way” and “cover the smallest area possible”.
- 1.26 The Prime Minister’s recent cabinet changes will of course have created some degree of doubt as to the direction of travel for Planning, but in the meantime, the viability, vitality and existence of our Core Shopping Areas continues to be at risk from residential conversions.

Process and timings

- 1.27 Below are listed the stages necessary to put in place an Article 4 Directions.

There are significant time and resource implications including, but not limited to, identifying all land owners and occupiers. This involves use of the Land Registry to identify the owners of sites using Council held address data and identifying all occupiers. (Note, the former WDC office to residential Article 4 Direction affected over 500 properties.)

LPA decides to make and serve notice of the direction

As part of this, the LPA must:

- Produce a paper setting out the justification and scope of the direction.
- Make the Article 4 Direction. The direction must:
 - Describe the development, the area to which the Article 4 Direction relates, and effect of the direction;

- Specify the date it comes into force;
- Specify Consultation period (21 days statutory minimum) to allow representations to be made to the LPA.

Publicity Requirements

After making the Article 4 Direction, the LPA must advertise the direction (by local advertisement and site notice) and serve notice on all owners and occupiers of the affected areas/ sites (unless impracticable to do so).

- On the date the notice is first published or displayed, the LPA must send a copy of the direction and the notice (including a copy of the map(s) defining the area) to the Secretary of State.

LPA Confirms Direction

- An Article 4 direction cannot come into force on the date specified in the notice unless it has been confirmed by the LPA.
- An Article 4 direction cannot be confirmed until min. 28 days after the latest date the notice was served / published.
- The LPA must take into account any representations received, and decide whether to confirm the direction. NB. If any changes are made to the direction, further consultation is required.
- When the direction has been confirmed, the LPA must serve notice of the confirmation of the order and the date it comes into force (by letter to landowners/ occupiers, plus site notices and advertisements, in the same way as required when making the direction).
- Send a copy of the Direction, as confirmed, to the Secretary of State.

Buckinghamshire Councils' Performance on Prior Notification applications for Office to Residential

- 1.28 In August 2021, *Planning Resource* reported on the Local Authorities that approved the most Office-to-Residential Permitted Development rights conversions in 2020/21. Buckinghamshire Council approved the most prior notification applications with 40 out of 47 prior approvals allowed in that period. Whilst notably BC received the second highest number of applications (Leeds topped that table with 52), BC's 85% approval rate was the second highest nationally only topped by Wirral Council who approved 21 out of 23 applications (91%).

- 1.29 It is important to note that Prior Notifications are an assessment of fact and their compliance with the wording of the legislation. Therefore, please note that the ‘performance’ cited above is a marker of how compliant the applications being submitted are with the relevant legislation, and not an indicator of leniency by Council in being in determining these applications.
- 1.30 These statistics clearly show a desire to convert commercial premises to residential, presumably due to the high cost of residential property and rentals in the Buckinghamshire area.

Where to impose the Article 4 Direction

- 1.31 Whilst Class E uses exist all over the Council area, it is considered that the locations within Buckinghamshire that could be the most affected by these Permitted Development rights are within Primary Shopping frontages. These currently exist in the following Towns:

Town	Plan and date adopted
High Wycombe	Delivery and Site Allocations, 2013
Marlow	Delivery and Site Allocations, 2013
Princes Risborough	Delivery and Site Allocations, 2013
Aylesbury	Vale of Aylesbury Plan submission version), 2021
Buckingham	Neighbourhood Plan, 2015
Amersham (Old Town)	Core Strategy, 2011 and Local Plan, 1997
Chesham	Core Strategy, 2011 and Local Plan, 1997
Chalfont St Peter	Core Strategy, 2011 and Local Plan, 1997
Beaconsfield	Core Strategy, 2011
Gerrards Cross	Core Strategy, 2011

- 1.32 Whilst an Article 4 Direction could focus on just the primary shopping frontages, consideration has been given to expanding further than just the primary shopping frontages in order to capture the ‘core shopping areas’. Care will need to be taken to ensure that the Article 4 Directions covers enough of the Council area to achieve the desired outcome but remain focussed to ensure the Direction complies with the NPPF.
- 1.33 It is proposed that upon assessing the ‘core shopping areas’ to be included the Article 4 Direction, Officers will ensure that the proposed areas do not stretch across

the entirety of town centres this ensuring that the Article 4 Direction complies with NPPF.

- 1.34 In addition to the above, consideration should also be given to the Direction affording protection from the Class MA in the following towns.

Amersham on the Hill

Iver

Wendover

Winslow

- 1.35 Although these towns have no primary shopping frontages they are considered worthy of consideration due the nature of their areas and the contribution that the retail units in those town makes to their local areas.

- 1.36 In addition to the above, consideration should be given to aligning the selection of town centres to the Council's Regeneration Programme.

- 1.37 The Regeneration Programme is still being developed so it is difficult to outline exactly the areas that it will cover. However, we do know that the Programme will cover mainly Town Centres and Transport Hubs. There are of course, transport hubs in areas not named above, namely Taplow and Burnham (which is where Crossrail will link these Towns with London). The Council has already seen interest from developers in developing in these area and therefore consideration should also be given to include these areas in any Article 4 Direction's.

Other areas and the Article 4 Direction Project Phasing

- 1.38 It is recognised that in order to limit the impact of this permitted development right there is an urgency to impose an Article 4 Direction on the Council's core shopping areas.
- 1.39 However, there may also be other areas within the Buckinghamshire Council area that would benefit from an Article 4 Direction in relation to Class MA.
- 1.40 It is therefore proposed that, subject to Cabinet approval, work starts immediately on imposing an Article 4 Direction on the areas stipulated in this paper.
- 1.41 Meanwhile it is proposed that a second phase of works commences as soon as resources allow to undertake a public consultation on what other areas within Buckinghamshire should be subject to the same controls.

- 1.42 This phased approach will enable the urgent work to commence on the areas mentioned above while also pursuing the public's opinion about where else, if anywhere, the Council should consider imposing a further Article 4 Direction.

Other points to consider

- 1.43 In July 2021, LB of Kensington and Chelsea made a non-immediate Article 4 direction across the whole borough. LBKC are consulting on the Article 4 Direction until 15th September and propose that it will come into effect in 1st August 2022.
- 1.44 Also, in July 2021, LB of Richmond Upon Thames made a non-immediate Article 4 Direction on 67 sites across its borough (Map at appendix 1 below) with a consultation period until 24th September and proposal that their Article 4 Direction will come into effect on 31st July 2022.
- 1.45 Furthermore, Harlow Council in Essex have renewed their existing Article 4 Direction on permitted development rights to change from office to residential in 3 key areas of employment.
- 1.46 Meanwhile, the LB of Islington have reportedly lodged a legal challenge against the Class MA permitted development right.

Corporate implications

- 1.47 Depending on how much Class MA is implemented in our area, there is risk of significant corporate reputational harm if the Council's does not proceed with an Article 4 Direction. Class MA has the potential to cause significant damage to our core shopping areas including in our main town centres. The widespread use of Class MA is an avoidable issue though the implementation of an Article 4 Direction.

Financial and Legal Implications

- 1.48 To remove the Council's financial liability to compensate landowners, it would be recommended that a non-immediate Article 4 Direction be issued with a 12-month notice period, before the Direction comes into effect. During that time, the PD rights would continue to apply.
- 1.49 If the Council were to remove these rights with immediate effect, any subsequent refusal of planning permission may result in compensation liability. Compensation is payable if an application for planning permission for certain development formerly permitted by the GPDO 2015 (including Class MA) is made within 12 months of the Article 4 Direction taking effect. Compensation may be claimed on abortive expenditure or other loss directly attributable to the withdrawal of PD rights, which can include the difference in land value.

- 1.50 No compensation for the withdrawal of certain permitted development rights is payable if the LPA gives notice of the withdrawal between 12 and 24 months in advance.
- 1.51 Although there are no compensation issues that would arise from the proposal in this paper it should be noted that any planning applications that result from land owners being unable to implement these permitted development rights would carry a zero application fee. The planning team would need to determine these full planning applications without an associated application fee.
- 1.52 As the legislation is so new, the Council has little in the way of trend or back office data to inform on how popular this legislation will be.
- 1.53 Once the Article 4 Direction has been imposed, it is anticipated that the rate of applications for commercial to residential is likely to return to the level prior to the legislation being brought in. This is because such applications will be assessed against the normal national and local planning policies. However, at this stage, it is unknown as to what size of area the Article 4 Direction will cover and therefore it is impossible to estimate how many application fees it could affect.
- 1.54 Whilst there is a risk of a legal challenge on either route considered in this paper, there is a greater risk of a legal challenge in terms of the immediate Article 4 Direction. However, due to the 12-month public consultation period, the preferred option as set out in his paper carries a significantly lower risk of a legal challenge.

Resource Implications

- 1.55 Embarking on work to impose an Article 4 Direction on the above named areas will have significant resource implications if this were to be consumed within the existing Council teams. It is therefore proposed that this work be outsourced to enable the project to go ahead without it significantly disrupting Business as Usual.
- 1.56 There will be a resource implication on planning team staff upon dealing with any resultant planning applications. However, an Article 4 Direction will result in developer being required to submit a full planning application should they wish to undertake this change of use. As a full planning application will be assessed against all national and local planning policies it is considered that this is would be a suitable deterrent, and it is not anticipated that there would be a significant up take of such applications.

Consultation and communication

- 1.57 The Cabinet Member Planning & Regeneration has been briefed on this matter and has requested this paper be brought to the next available Cabinet meeting for Cabinet agreement to embark on the project.

1.58 In addition, consultation with the elected members of the wards identified at the top of this report has been undertaken in relation to this project.

1.59 There were 12 responses to that consultation. These responses are as follows:

Cllr	Support/oppose	Comments
Gary Hall	Support	Fully Supportive
Stuart Wilson	Support	Propose that Bourne End be included in phase 1. Response provided that the second phase will consider all other areas and that Bourne End will be considered as part of the second Phase.
Alan Turner	Support	Fully supportive particularly for Princes Risborough.
Wendy Matthews	Support	Sought clarification on which part of Iver and raised that Iver also has a Crossrail station connecting to London. Response provided that no lines have been drawn on maps as yet.
Mary Baldwin	Support	Agree with the action
Warren Whyte	Supportive	Very Supportive of the approach
Graham Harris	Support	Fully Support Proposed that the Article 4 Direction includes Sycamore Road and Hill Avenue in Amersham
Alison Wheelhouse	Support	Shame this has not been done sooner to avoid the 1500m2 criteria. Query why the list of wards is not longer and why all Wards members have not been consulted.

		<p>Query why this relates only to Class MA and does not include Class ZA of the Permitted development rights.</p> <p>Proposes that the Article 4 Direction includes both old and new Beaconsfield towns as well as Dobbies Garden Centre, the Beacon Centre Gym in Holtspur, the Town Hall and nursery schools/crèches.</p> <p>Queried how much compensation would be payable to affected owners if an immediate Article 4 Direction was imposed.</p> <p>Response provided to all points.</p>
David King	Support	Propose that the 3 shops in Bois parade, Chesham Bois be included in Phase 1.
Michael Bracken	Support	<p>Identified that there is significant vacant shops in Gerrards cross and would have no objection to portion being allowed to convert to residential based on market demand.</p> <p>Supportive of the approach to control where conversion can occur.</p>
Liz Walsh	Support	<p>Totally Supportive and pleased to be being treated with urgency.</p> <p>Urges Cabinet to include Amersham on the Hill in stage 1 (set out as a further consideration in paragraph 1.31).</p>
Richard Newcombe	Support	<p>Urges Cabinet to include Wendover in stage 1 (set out as a further consideration in paragraph 1.31).</p> <p>Queried as to the use of Class MA on traditional shop in the ground floor with residential above.</p>

		Also queried how the Class MA deals with conflicting issues such as additional residential in a town centre location. ie noise.
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- 1.60 Both Phase 1 and 2 have communication implications in the form of public consultations, but at this stage there has been no other consultation of communications on this paper.

Next steps and review

- 1.61 If agreed, this report will continue its journey for discussion at CMT, Informal Cabinet and finally to Cabinet.

Conclusion

- 1.62 Widespread use of Class MA of the Permitted Development Rights has the potential to destroy the viability, vitality and success of our core shopping areas. Along with the loss of the retail use comes the loss of the associated business rates. Whilst this is unquantifiable at this stage due to the lack of certainty about the precise scope of the Article Direction, any widespread use of Class MA would have a detrimental effect on Business Rates revenue. The actions proposed in this paper will allow the Council to take back control of the types of uses that the Council consider should be allowed to occur within these key areas.

It is therefore proposed that work commences immediately on Phase 1 to impose, as soon as possible, an Article 4 Direction on the appropriate areas within the wards referred to at the top of this report **and** that Phase 2 commences as soon as resources allows to look at all other areas across Buckinghamshire that may benefit from an Article 4 Direction.

Background papers

- *None*

Your questions and views (for key decisions)

If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone on 01296 382343 or email democracy@buckinghamshire.gov.uk / Darran.eggleton@buckinghamshire.gov.uk