

# MAKING OF A NON-IMMEDIATE ARTICLE 4 DIRECTION TO CONTROL THE CHANGE OF USE UNDER CLASS MA OF THE GPDO OF BUILDINGS FROM CLASS E (COMMERCIAL, BUSINESS AND SERVICE) OF THE USE CLASSES ORDER TO CLASS C3 (RESIDENTIAL) WITHIN THE BOROUGH'S 13 DESIGNATED TOWN CENTRES

REPORT TO JANE RICHARDSON, DEPUTY DIRECTOR HOUSING AND STRATEGIC PLANNING  
22 OCTOBER 2024

## ISSUES

The Government extended permitted development rights (PDR) in 2021 to allow buildings previously used for commercial (e.g., shops and other retail units), businesses (including light industrial units) and services (e.g. offices) to be permanently converted to housing, which means that other than a 'prior approval' process, where the Council can adjudicate on a limited number of issues to consider if they are acceptable before work can commence, planning permission is not required. This measure was brought in to help address the housing crisis by making it easier for developers to bring forward an additional supply of residential units.

Paragraph 53 of the National Planning Policy Framework (NPPF), makes it clear that the use of Article 4 directions to remove PDR, where they relate to a change from non-residential use to residential use as is the case here, should 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 that would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre). Paragraph 53 also states that in all cases such a removal needs to be based on robust evidence and apply to the smallest geographical area possible. Article 4 directions can be either immediate or after a period of time (non-immediate) thereby enabling them to resist or manage relevant development proposals.

Evidence (set out at **Appendix A** and **Appendix B**) suggests that such harm has and will continue to arise in terms of the loss of commercial, business and service floor space within the borough's 13 designated town centres, prejudicing their viability and vitality. This loss is considered to be a wholly unacceptable adverse impact due to the resulting loss of floor space provision within the borough's town centres, which have been identified as locations for commercial growth in the Bexley Local Plan. As a result, it is considered that a Non-Immediate Article 4 Direction is justified in this instance in the areas shown in **Appendix A**.

It should be noted that the recent proposed amendments to the NPPF and associated statements by the Government do not reference any change in the current approach to permitted development rights. However, the emphasis on efforts to increase the supply of new housing suggest that material changes are unlikely in the short to medium term.

## OPTIONS

- (a) That the Deputy Director Housing and Strategic Planning approves the making of a Non-Immediate Article 4 Direction removing the PDR contained within Class MA of Part 3 of Schedule 2 of the GPDO that permits the change of use from Use Class E to Use Class C3, in relation to existing buildings within the borough's 13 designated town centres identified in the maps set out in the town centre assessments attached at **Appendix A**.

- (b) That the Deputy Director Housing and Strategic Planning makes amendments to and approves the making of a Non-Immediate Article 4 Direction removing the PDR contained within Class MA of Part 3 of Schedule 2 of the GPDO that permits the change of use from Use Class E to Use Class C3, in relation to existing buildings within the borough's 13 designated town centres.
- (c) That the Deputy Director Housing and Strategic Planning refuses the making of a Non-Immediate Article 4 Direction removing the PDR contained within Class MA of Part 3 of Schedule 2 of the GPDO that permits the change of use from Use Class E to Use Class C, in relation to existing buildings within the borough's 13 designated town centres.

## **PROPOSED DECISIONS**

The Deputy Director Housing and Strategic Planning resolves to:

- (a) Make a Non-Immediate Article 4 Direction removing the PDR contained within Class MA of Part 3 of Schedule 2 of the GDPO that permits the change of use from Use Class E to Use Class C3, in relation to existing buildings within the borough's 13 designated town centres identified in the maps set out in the town centre assessments attached at **Appendix A**

## **REASONS**

A Non-Immediate Article 4 Direction will exert control over a form of development that, without planning control, will lead to the continued loss of available commercial floor space within the borough's 13 designated town centres, which would thereby result in wholly unacceptable adverse impacts relating to the viability and vitality of the town centres. This will conflict with the aims of the adopted Bexley Local Plan (26 April 2023), which sets out the town centre commercial floor space capacities required over the plan period to allow for the delivery of sustainable growth set out in the plan.

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**Signed:** [REDACTED]  
Deputy Director Housing and Strategic Planning

**Date:** 22 October 2024

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# **MAKING OF A NON-IMMEDIATE ARTICLE 4 DIRECTION TO CONTROL THE CHANGE OF USE UNDER CLASS MA OF THE GPDO OF BUILDINGS FROM CLASS E (COMMERCIAL, BUSINESS AND SERVICE) OF THE USE CLASSES ORDER TO CLASS C3 (RESIDENTIAL) WITHIN THE BOROUGH'S 13 DESIGNATED TOWN CENTRES**

**REPORT TO JANE RICHARDSON, DEPUTY DIRECTOR HOUSING AND STRATEGIC PLANNING  
22 OCTOBER 2024**

## **1. BACKGROUND AND PURPOSE OF REPORT**

The Government extended permitted development rights (PDR) in 2021 to allow buildings previously used for commercial (e.g., shops and other retail units), businesses (including light industrial units) and services (e.g. offices) to be permanently converted to housing, which means that other than a 'prior approval' process, where the Council can adjudicate on a limited number of issues to consider if they are acceptable before work can commence, planning permission is not required. This measure was brought in to help address the housing crisis by making it easier for developers to bring forward an additional supply of residential units.

Given the loss of planning control arising and the vast number of commercial enterprises that can operate under Use Class E, there is considered to be significant potential for unintended harm to arise to planning aims and objectives. As a result, the Council has been monitoring the impacts of the changes with a view to informing the making of Article 4 Directions that would effectively remove the new PDR conferred within specified locations either immediately, or after a period of time, and therefore require the submission of full planning applications once more.

The use of Article 4 directions is a common mechanism used by local planning authorities, including Bexley in the past, to ensure that amenity is protected, although the use of Article 4 directions had come under increasing scrutiny by the previous Government. The recent proposed amendments to the NPPF and associated statements by the new Government do not reference any change in the current approach to permitted development rights and the emphasis on efforts to increase the supply of new housing suggest that material changes are unlikely in the short to medium term.

With regards to the permitted development amendments mentioned above, Officers have considered and are proposing an Article 4 Direction that will control the loss of commercial, business and service units within the borough's town centres (as indicated on the Bexley Local Plan Policies Map) to residential. An Article 4 Direction has already been made by the Council (November 2023) that covers the borough's designated strategic industrial locations and locally significant industrial sites to remove the same permitted development right. The consultation period for the industrial land Article 4 Direction ended in February 2024 with the Direction anticipated to be confirmed before the end of the year.

This report recommends that the Council makes a Non-Immediate Article 4 Direction to require that a planning application be made for any change of use proposed from Use Class E to Use Class C3 for existing buildings within the borough's designated town centres. The following sections set out details of the Article 4 mechanism, the justification of the Direction as it is currently proposed, and next steps. Maps of the borough's designated town centres that identify the extent to which

the Article 4 Direction will apply are set out within the individual town centre assessments at **Appendix A** to this report.

## **2. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

**Take no action** – One option is for Officers to take no action over the potential for further loss of commercial, business, service and employment units which fall within Use Class E in the borough's town centres. It is considered that this option would be likely to lead to the further unrestricted change of use to units, given the existing pattern of loss through applications which are being made through the Prior Approval process. Taking this course of action would compound vitality and viability issues within the borough's town centres and further reduce the supply of commercial space (for businesses which operate under Class E uses). It is considered that this approach would be inappropriate based on the existing evidence of loss and the Bexley Local Plan policy position.

**Continue to monitor** – Officers can continue to monitor and collate evidence relating to the use of the relevant PDR within the borough's town centres. This option remains likely to lead to further unrestricted changes of use, up until the point where a recommendation may be made. For the reasons stated in the paragraph above, it is considered that this approach would be inappropriate based on the existing evidence of loss and the Bexley Local Plan policy position.

**Apply non-immediate direction selectively** – A further alternative is for the Council to apply a Direction to specific town centres within the borough rather than all of them. This option is not considered favourable because the issue is of concern across all designated town centres, as Class E uses are the predominant main town centre uses. In only applying a Direction to specific town centres, there is the potential for the loss of units to continue in those locations which are not covered by the Direction. This will further undermine the objectives of the Bexley Local Plan and harm the vitality and viability of these designated town centres.

**Apply an immediate direction** – The final option available to the Council would be to introduce an Immediate Direction. As discussed below, an Immediate Direction would come into force as soon as it is served. The serving of an Immediate Direction would leave the Council liable to paying financial compensation to landowners for the withdrawal of PDR. This option is not recommended as compensation payments could be significant (discussed in the financial implications section below) and are likely to outweigh the benefits resulting from more expedient implementation.

## **3. THE ROLE OF ARTICLE 4 DIRECTIONS**

Article 4 Directions (referred to as 'Directions' or 'Direction' within this report) enable the Council, as the local planning authority, to remove permitted development rights (PDR). The removal of PDR means that the form/s of development that are covered by a Direction require the benefit of planning permission.

Once a Direction has been confirmed, the Council will have the ability to assess applications for changes of use from Use Class E to Use Class C against the borough's Development Plan as a whole (comprised of the Bexley Local Plan and the London Plan), relevant supplementary planning and guidance documents, and any other material planning considerations.

The assessment by way of a planning application enables the Council to determine (either through Officer delegation or referral to Planning Committee) if any given proposal is acceptable, or can be made acceptable using appropriate conditions, or is unacceptable and should be refused.

The use of Directions relating to change of use from non-residential use to residential use should be limited to situations where a Direction is necessary to avoid wholly unacceptable adverse impacts, as per the NPPF. Whilst there is no definition of 'wholly unacceptable adverse impacts' the NPPF states (para. 53) that these '...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.'

In the case of the use of a Direction, the NPPF is clear that the rationale should be based on robust evidence and apply to the smallest geographical area possible. A Direction is the subject of public consultation and is simultaneously submitted to the Secretary of State, who has the power to modify or cancel a Direction at any time. As seen in other boroughs, areas (geographically) have been reduced or amended at the request of the former Department of Levelling up, Housing and Communities (DLUHC), now the Ministry of Housing, Communities and Local Government (MHCLG).

Article 4 directions do not apply retrospectively to sites where existing changes of use under the GPDO have been previously approved (up until the date that a Direction is confirmed). The Council is permitted to charge planning fees for applications that are subsequently submitted where they are subject to the Direction, as per the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017.

Directions can either come into effect immediately after they are made or following a specified amount of time. Key considerations in this regard are set out below.

**Immediate Direction** – An Immediate Direction withdraws PDR with immediate effect after consideration of consultation responses. Immediate Directions can be used where the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.

Where an Immediate Direction is made, the Council is open to being liable to pay compensation to landowners if a planning application is received, and planning permission is subsequently refused for the development to which the Direction applies. The grounds on which compensation can be claimed are limited to abortive expenditure and other loss or damage directly attributable to the withdrawal of the PDR by means of the Direction.

The period for submitting compensation claims is limited to 12 months after the Direction has taken effect (is confirmed). Despite the time limitations for compensation, it is likely that compensation claims could be significant given the nature and scale of sites that are located within Bexley's town and local centres.

**Non-Immediate Direction** – A Non-Immediate Direction does not withdraw the PDR immediately. No compensation is payable where the Council provides not less than 12 months' notice of the intention to withdraw the PDR. The Non-Immediate Direction approach effectively gives

members of the public a year's notification (or longer should the case be considered necessary) of the intent to remove the PDR.

Schedule 3 of the GPDO sets out the procedure for making a Non-Immediate Direction. This procedure requires that following the making of the Direction, the local planning authority must publish a notice of the Direction in a local newspaper; display at least two site notices per area where the Direction will apply for a period of not less than six weeks and notify the owners and occupiers of the affected properties and land, unless this is impractical. On the date that notice is first published or displayed the local planning authority must send a copy of the Direction and notice to the Secretary of State (SoS). Following consultation, prior to the Direction coming into force, the Council must confirm whether it intends to proceed with the Direction, based on consideration of representations received and/or instructions from the SoS. The Direction cannot be confirmed until 28 days following the latest date the notice was served or published, or such longer period as specified by the SoS.

The use of Non-Immediate Directions is common within London boroughs for the removal of PDR from Class E to Class C3. Examples of Directions for the same scope include:

- Bromley – several Non-Immediate Directions that have been made since the change to PDR covering town centres, Business Improvement Areas, office clusters and several neighbourhood centres in August 2021. The Secretary of State made directions for the modification of these, exercising the powers conferred by paragraph 13 of Schedule 3 of the GPDO. The Modification Directions came into effect 27 September 2023.
- Greenwich – Non-Immediate Direction across parts of several retail centres within the borough (covering major centres, district centres, local centres and neighbourhood parades), confirmed and came into force 8 August 2023.
- Lewisham – Non-Immediate Direction, June 2022. Following formal notification, the Secretary of State considered that the proposed Direction does not comply with national policy. Lewisham has been asked to reconsider the coverage of the Direction and prepare additional evidence base work to demonstrate that the Direction applies to the smallest geographical area possible.
- Tower Hamlets – Non-Immediate Direction, confirmed and came into force August 2022.
- Richmond upon Thames – Non-Immediate Direction covering 62 areas across the borough including five town centres, local and neighbourhood centres and local parades. The Direction was modified by the Secretary of State and came into force July 2022.
- Camden – Non-Immediate Directions that cover the Central Activities Zone (CAZ) and Knowledge Quarter, and other areas outside of this designated area, confirmed July 2022. The Directions were modified by the Secretary of State and came into force February 2023.
- Islington – Non-Immediate Directions for the CAZ and CAZ Fringe Kings Cross, Camden Special Passage Special Policy Area and Fonthill Road Specialist Shopping Area, confirmed and came into force August 2023. The Secretary of State modified the CAZ and CAZ Fringe Kings Cross Direction, with the Modified Direction coming into force October 2023.

As can be seen, the Directions that have been served within London cover a variety of areas, including borough-wide, specific wards, the CAZ, or single streets.

#### **4. ADVICE ON THE APPROACH TO ARTICLE 4 DIRECTIONS FROM THE GOVERNMENT**

Since 2010, the making of Article 4 directions has been devolved to local planning authorities, who are required to notify the Secretary of State (SoS) of their intentions, as opposed to the SoS formally approving any Direction themselves. Since 2016, incidences of intervention by the SoS in relation to the application of Directions that relate to changes of use from commercial to residential PDR have been increasing, due to the importance placed on the initiative by the previous Government in its efforts to boost the supply of housing. Since the further 2021 changes to PDR have come into force, the level of intervention by the SoS has remained high, as outlined above.

There is no prescribed template or format for supporting evidence and pre-submissions for scrutiny prior to receipt of a formal submission are not accepted. The emphasis is on proportionate local decision making, supported by clear reasoning.

In general, local planning authorities have set out a similar approach to that outlined within this report, including setting out relevant planning policy and assessing the PDR position. Assessments are made regarding the impact of the changes upon the delivery of the requirements set out within the area's Development Plan, which for London boroughs is formed of their local plan and the London Plan. Specifically for changes of use within designated retail and service locations (London Plan designations relevant to this Direction in Bexley are Major, District and Local Centres), the requirements under the Development Plan policies are assessed, including any recognised impacts due to PDR development that has already taken place.

Bexley does have the advantage of having a recently adopted local plan. The result is that there is an up-to-date evidence base justifying the borough's town centre boundaries. A thorough review of the borough's town centres was undertaken, and the updated boundaries of these areas are indicated on the local plan policies map. Some local planning authorities will not be in this position, either due to the age of their local plans, or the stage that they may be at with their evidence preparation for local plan reviews.

Other local planning authorities were able to make Directions close to the date when the previous Government's change in PDR occurred (August 2021), usually as they already had Directions in place that controlled the change of use from office to residential under the PDR legislation that was in place prior to 2021 (this being the case for some of the Directions in Bromley).

#### **Methodology that was applied for assessing the town centres**

Three years has now passed since the change in PDR under the new provisions of Class MA, providing Officers with the ability to understand the impacts that the changes have had upon the provision of commercial offer within the borough's town centres. However, it should be highlighted that where Directions seek to control this specific change of use (under Class MA), these have triggered a response from the SoS in several instances (some of which are referenced above). Amendments have therefore been required to the proposed boundaries either before or after a Direction may have come into effect. In these cases, the boundaries typically have been

made smaller geographically by the former DLUHC (now MHCLG) to better align with the targeted approach that the NPPF requires.

In this context, Bexley officers have undertaken a granular assessment of each of the borough's 13 designated town centres. These incorporate the Major Centre of Bexleyheath; the District Centres of Welling, Sidcup, Erith, Crayford and Lower Belvedere; and, the Local Centres of Bexley Village, Blackfen, Northumberland Heath, Upper Belvedere, Sidcup Station, Bexleyheath Station and Abbey Wood Village.

As identified within the Bexley Local Plan (para 3.49), the town centre boundaries are considered to be sufficient enough tools to manage the range of uses across the town centres, and therefore these replace the previously designated core and non-core frontages. This means that the entirety of each town centre is the designated primary shopping area.

Vacancy rates in the primary shopping area for each town centre have been established from the Council's 2024 town centre shopfront surveys (undertaken twice a year). The overall vacancy rates recorded for the town centres during the Spring 2024 survey were as follows (for comparison, the overall vacancy rate in the UK was 14% in Quarter 4 2023):

- Bexleyheath - 8.3%
- Welling - 6%
- Sidcup - 5.7%
- Erith - 19%
- Crayford - 1.1%
- Lower Belvedere - 0.8%
- Bexley Village - 2.9%
- Blackfen - 2%
- Northumberland Heath - 0%
- Upper Belvedere - 9.6%
- Sidcup Station - 3.7%
- Bexleyheath Station - 11.8%
- Abbey Wood Village - 0%

Erith town centre is the only centre with a vacancy rate higher than the national figure, with all other centres performing well. As such, the Council is committed to a holistic regeneration of the town centre and this is reflected in the approach taken when assessing Erith.

Officers have assessed existing buildings and their uses within each of the town centres. This has included the prevailing character and appearance of each area and the likely prospect of conversion of buildings under Class MA. As a result of this granular assessment, there are a number of premises within the borough's town centres that, because of their character or use, have been excluded from the scope of the proposed Direction. These are explained in full within the town centre assessments but broadly include:

- Buildings not within Class E
- Statutory Listed buildings



- Buildings within Class E that for the reasons outlined within the individual town centre assessments are highly unlikely to be converted

The 13 town centre assessments with inset maps identifying the scope of the Direction are attached at **Appendix A**.

## **5. EVIDENCE BASE TO SUPPORT THE MAKING OF A NON-IMMEDIATE ARTICLE 4 DIRECTION**

### **Loss of Class E provision within the borough's town centres**

Since 2021 there have been several applications made under Prior Approval to the Council for the change of use from Class E to Class C3 within the borough's town centres. Examples of loss include 83 High Street in Sidcup where five residential units have been approved, and 254-256 Blackfen Road where conversion will result in the creation of 7 residential units.

In both cases, they are located at prime locations within designated town centres (Sidcup District Centre and Blackfen Local Centre respectively). 83 High Street in Sidcup occupies a prominent corner location within an existing parade, with an access road to the side. At ground floor level, the building clearly exhibits a shopfront in appearance with floor to ceiling height glazed openings.

254-256 Blackfen Road also occupies a very prominent corner plot in Blackfen town centre at the junction of Blackfen Road and Wellington Avenue. The building sits centrally within the town and benefits from a large forecourt to the frontage and side. Again, the ground floor frontage is principally of a shopfront appearance with large, double height glazed windows.

**Analysis** - As illustrated by the examples above, some of the business units that have received applications for conversion under Class MA are quite sizeable and will have a significant impact on the commercial frontage, which is at the detriment of viability and vitality. 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.

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, which seeks to protect main town centre uses, and this would be a material planning consideration in the assessment of applications.

The commercial floor area which is being or has the potential to be lost is unlikely to revert from residential use back to Class E use in the future, given that the property values that are associated

with residential development generally exceed those of other uses, particularly in sustainable locations such as these. 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 further undermining viability.

### **Greater London Authority position**

The Greater London Authority (GLA) has several concerns as a direct result of the PDR change under Class MA. Subsequently, the GLA has made available a London-wide evidence base for boroughs to utilise in their evidence preparation for any potential Directions they may be seeking to make. The GLA's paper, entitled 'Strategic evidence to support London Borough Article 4 Directions (commercial to residential)' was made available in July 2021. Camden, Islington, and Lewisham have cited this paper within their evidence base for the Directions listed above.

Key take aways from the GLA's evidence include the awareness that in the absence of targeted Article 4 directions, there could be an impact upon the vibrancy of London's town centres and high streets and that this may risk undermining the continuing efforts to recover from the Covid-19 pandemic. The evidence highlights that London's high streets and town centres have shaped the fabric of the capital and that they are a focal point for London's culture, communities, and everyday economies. It is also noted that London's town centres and high streets support the most sustainable models of living and working, including active travel and commutes. The GLA's evidence (para. 5.6.5) states that 'given the right spatial planning environment, town centres and high streets in London will be able to adapt to the challenges and opportunities they face, just as they have done in the past.'

As with all data collection exercises, the usual caveats apply regarding there being no 'perfect' data sources, however, the GLA's London-based evidence paper is considered a reasonable and robust data source for the London region.

### **Bexley Local Plan 2023**

The Bexley Local Plan was adopted on 26 April 2023. 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. Part 2 highlights that the Council will promote sustained economic development and employment growth by supporting development proposals that broaden the mix of business uses and diversity the local employment offer. In particular it will seek to bring higher quality and more knowledge-based jobs to the borough within, inter alia, town centres such as Bexleyheath and through the designation of Sidcup town centre as a Creative Enterprise Zone.

Part 4 further states that the Council aims to ensure residents of all abilities are provided with opportunities to access training and a variety of local jobs and enable local businesses to draw upon a wide range of skilled workers and employment premises. The Council seeks to achieve this aim by reducing residents need to travel long distances by supporting the creation of a diverse local economy that offers a wide range of well-connected local job opportunities, particularly in town centres.

The Bexley Local Plan evidence base is considered reasonable, robust, and up to date. It was thoroughly scrutinised and tested by the Planning Inspectorate during the Examination in Public (EiP) in 2022. The Inspectors' Report concluded that the plan was 'positively prepared, justified, and effective, consistent with national policy and in general conformity with the London Plan.'

In compliance with London Plan Policy SD8, a review of the existing town and neighbourhood centres was undertaken as part of the preparation of the Bexley Local Plan, and the updated hierarchy and individual boundaries indicated on the local plan policies map. As a result, Lower Belvedere now features as a new District Centre, and Abbey Wood Village, Bexleyheath Station, and Sidcup Station as new Local Centres.

The overarching approach to the borough's retail locations is outlined within policies SP4 and DP9 of the Bexley Local Plan. Policy SP4 (Supporting successful town centres) makes the commitment to maintaining and enhancing the vitality and viability of the borough's town centres. It also acknowledges at paragraph 3.39 that residential development is supported in town centres above ground floor level where it does not harm viability or vitality.

Policy DP9 (Development within town centres) seeks to both sustain and protect Class E uses within these designated locations. Part 3 of the policy states that the Council will resist changes of use at ground floor level within designated town centre boundaries. Part 4 sets out the limited circumstances where the loss of Class E would be acceptable.

**Town centre boundaries** - As previously discussed, the town centre boundaries were reviewed and modified as part of the preparation of the Bexley Local Plan. The updates to the boundaries took account of:

- the current definition of town centre uses in national guidance
- the most recent reforms to the Use Classes Order
- the relevant permitted development right (Class MA, discussed throughout this report)
- new residential development and changes in the use of existing buildings to residential within the borough's town centres

The review concluded that the previous town centre boundaries had been eroded over time, with losses of units to uses that were no longer considered to meet town and local centre needs. The Bexley Retail and Leisure Study predicted a low current and future demand for new retail space in Bexley's town centres. Therefore, the town centre boundaries have been revised in the Bexley Local Plan, thus encouraging the take up of vacant units within the town centres whilst allowing those units on the periphery to change to alternative uses over time.

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.

An Article 4 direction is the only local approach that the Council can take to seek to control these changes of use and resist them where they are inappropriate. The making of an Article 4 direction will ensure that all applications are assessed against the Development Plan and are only approved where no unacceptable harm arises.

The full background evidence is compiled at **Appendix B**.

## 6. NEXT STEPS

If it is agreed that the Council should make a Non-Immediate Article 4 Direction, then the following actions with related statutory processes will be taken:

- a) Formal decision to make the Direction, taken by the Deputy Director Housing and Strategic Planning, and the making of the Direction itself
  - As soon as practicable, publication of the Direction, including the maps to which it relates, will be made available both digitally on the Council's website and in print form for viewing in the borough's libraries and at the Bexley Civic Centre along with the:
    - signed Decision
    - Decision report
    - Appendix 1 Town centre assessments
    - Appendix 2: Background evidence paper
    - Legal notice of the Direction
  - Formal notification of the Direction (legal Notice produced; publicity of Notice via local advertisement, e.g., newspaper advert; site displays at no fewer than two locations within each town centre to which the Direction relates; notice of the three month consultation period; and notice of the date the Direction is proposed to come into force).
  - Writing to individuals and organisations on the Council's planning consultations database. Given the extent of the Directions it is not practicable to notify all those directly affected due to the difficulty of identifying the owners and occupiers of individual properties and units. This approach has been followed by other London boroughs.
  - Formal notification to the Secretary of State, sent on the same day that the notice of the Direction is first published, of the intention to introduce the Direction (send a copy of the Direction, including the maps to which it relates; a copy of the Notice; and a copy of the local advertisement)
  - Public consultation on the Non-Immediate Direction (for a period of three months), within which any representations concerning the Direction may be duly made to the Council.
- b) From no sooner than 12 months following the date of the public notification of making the Direction (as set out above):

- Formal confirmation of the Direction (set out in a report to the Deputy Director Housing and Strategic Planning seeking approval to confirm the Direction, subject to consideration of any representations received during the public consultation) – November 2025
- Formal notification and publication requirements as in part 6.a) above
- Implementation of the Direction (the Direction comes into effect and planning permission is thereafter required).

It should also be highlighted/noted that the Secretary of State has the power to make a further Direction, either cancelling or modifying the Non-Immediate Article 4 Direction, at any time (either prior to, or after its confirmation).

## **7. LEGAL IMPLICATIONS**

### **a) Summary of Legal Implications**

Article 4 (1) provides that local planning authorities may restrict PDR by use of Article 4 Directions where they are satisfied that it expedient to do so because the development that would be permitted should not be carried out unless permission is granted for it on an application. Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, details the process of making non-immediate Article 4 Directions (as well as immediate Directions). After a non-immediate Direction is confirmed, planning permission will be required for the form of development that is covered by the Direction.

Government guidance states that the use of Directions – where they relate to a change from non-residential to residential use – shall be limited to situations where a Direction is necessary to avoid ‘wholly unacceptable adverse impacts.’ The potential harm that the Direction is intended to address should be clearly identified and be based on robust evidence. Article 4 Direction should apply to the smallest geographical area possible.

The Council will follow the procedures for Article 4 Directions as set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, to ensure compliance with the publishing and consultation requirements.

The Secretary of State must be notified of the making of the Direction, and they have the power to modify or cancel such a Direction at any point.

### **b) Comments of the Monitoring Officer**

All relevant legal points have been addressed in this report.

## **8. FINANCIAL IMPLICATIONS**

### **a) Summary of Financial Implications**

It is widespread practice that most planning authorities have opted for the serving of a Non-Immediate Direction, which is the preferred route recommended in this report. Non-Immediate Directions do not withdraw the PDR immediately and as such compensation is not payable where the Council provides at least 12 months' notice of the intention to withdraw the PDR.

Many of the planning authorities that have similar Directions in place have accepted that there was a need to act but have taken a balanced view in delaying the action for at least 12 months by following the Non-Immediate route. This is often viewed as the only viable option, given the potential compensation liability and the existing pressures on local authority budgets.

A potentially significant financial risk associated with the serving of an Immediate Direction, is the possibility of compensation claims. Where an Immediate Direction is made, the Council is open to being liable to pay compensation to landowners if a planning application is received, and planning permission is subsequently refused for the development to which the Direction applies. The grounds on which compensation can be claimed are limited to abortive expenditure and other loss or damage directly attributable to the withdrawal of the PDR by means of the Direction.

The period for submitting compensation claims is limited to 12 months after the Direction has taken effect (is confirmed). Despite the time limitations for compensation, it is likely that compensation claims could be significant given the nature and scale of sites that are located within Bexley's town and local centres.

It is not possible to provide a precise indication of the potential compensation liability associated with serving an Immediate Direction as there are too many variables at play. However, it is generally accepted across London that the implications of this route have the potential to be substantial, particularly where a new rather than amended Direction is contemplated, and that this would outweigh any benefits accruing from immediate implementation.

Aside from any compensation liability, there are other financial implications as follows (for both the Non-Immediate and Immediate routes):

**Officer time** - The Officer time required to make the Direction over the next 12 months will be met from existing resources within the Strategic Planning division. The Article 4 Direction is a key requirement for the implementation of the Bexley Local Plan following its adoption and will be prioritised over other ongoing work.

Further impacts upon Officer time relate to determining full planning applications for submissions that will directly result from serving an Article 4 Direction. It is anticipated that there will only be a modest increase in workload and any implications would be dealt with within existing officer resources. This is because, whether an application is submitted under the Prior Approval route (in the case of no Direction being in place) or via a formal planning application (in the case where a Direction is in place), Officers will still be required to make an assessment on the applications.

**Other costs** - as well as Officer time, spent in the making of the direction and the associated consultation requirements, other costs will be incurred, such as printing costs, cost of newspaper advert(s) etc. These costs will be met from existing approved budgets within the Strategic Planning division.

**Community Infrastructure Levy (CIL)** – The Prior Approval process for Class MA reduces the potential for CIL to be generated but causes an increase in residential properties that will lead to increased pressures on Council resources, particularly regarding education, health, and community facilities. Where a Direction removes the permitted development right, the Levy applies for any net gain in residential dwelling, which ensures that the Council can better meet the needs of its residents.

**b) Comments of the Chief Finance Officer**

All relevant financial implications have been addressed in this report.

**9. RISKS AND MITIGATION MEASURES**

Risk	Mitigation
Compensation claims being made to the Council as a direct result of making an Article 4 Direction.	The risk of compensation claims being made by the Council will be mitigated by serving a Non-Immediate Article 4 Direction. Compensation claims are not payable for Non-Immediate Directions.
The introduction of a Direction may increase the requirement for enforcement action (where properties change without planning permission).	Consultation and effective communication will be used to maximise knowledge of new requirements and minimise non-compliance.
Whilst an Article 4 Direction may be welcomed by borough residents, it is considered likely that the withdrawal of PDR would not be popular with landowners and developers.	There are statutory consultation procedures for Article 4 Directions that are outlined within Schedule 3, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which are required to be followed to ensure that all representations are taken into consideration. Statutory consultation includes local advertisement and either site notices or serving notice on the owner and occupier of every part of the land within the area or site to which the Direction relates.
The Secretary of State (SoS) considers that the Council has not justified that an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts.	It is considered that the case the Council has outlined is robust and seeks to prevent the wholly unacceptable impacts that the NPPF refers to within the borough's town centres. Should the Secretary of State require further detail, this liaison will take place at a later date if required.
The SoS requires an amendment to the Direction as it is not considered to comply with the guidance.	The Direction has been formulated regarding the guidance including making the affected area as small as possible.

**10. SUMMARY OF OTHER IMPLICATIONS**

**Equalities** – in line with the statutory procedure for issuing a Direction, a public consultation will be conducted that will allow people their say. The public consultation will be carried out in accordance with Bexley’s Statement of Community Involvement (SCI) which sets out the Council’s approach to consultation on planning documents (including Article 4 Directions). The SCI was subject to an Equalities Impact Assessment (EqIA). The EqIA established that the SCI has the potential to have a positive impact on all protected characteristic groups.

**Community Safety** – the issuing of a Direction is intended to protect from harm the amenity of the designated town centres.

**Environmental Impact** – the Council will be able to fully assess future applications against Development Plan policies and all material considerations, to ensure that development is located within the identified locations which are evidenced as being appropriate.

**Human Rights** – in line with the statutory procedure for issuing a Direction, a public consultation will be conducted that will allow people their say, in accordance with the SCI (discussed above). Article 1 of Protocol 1 to the European Convention of Human Rights (ECHR) states that every natural or legal person is entitled to the peaceful enjoyment of one’s property. This particular Human Right is a qualified right (as opposed to absolute) and can be interfered with as long as the interference is legitimate. The Council considers that private interests of the peaceful enjoyment of one’s property is outweighed by the public law interests of protecting the vitality and viability of the borough's thirteen town centres, regarding all of the social and economic benefits that they bring.

**Health and Wellbeing of the Borough** – the issuing of a Direction is intended to protect from harm the amenity of the town centres.

**Asset Management** – Council-owned buildings within town centre locations will be subject to the Direction.

**Data Privacy** – site notices will be posted in all areas that will be subject to the Direction and any responses will be collected in accordance with data protection.

#### **List of appendices attached to this report**

##### **Appendix A. Town Centre Assessments**

##### **Appendix B. Background evidence supporting recommendation for a non-immediate Article 4 Direction to control the change of use from Class E to residential in town centres**

<b>Contact Officer:</b>	Seb Salom, Head of Strategic Planning, 5779
<b>Reporting to:</b>	Jane Richardson, Deputy Director Housing and Strategic Planning

Local Government Act 1972 – section 100d

#### **List of background documents**

[The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)

[National Planning Policy Framework](#)

[London Plan 2021](#)

[Strategic evidence to support London borough Article 4 Directions \(commercial to residential\)](#)

(Greater London Authority, July 2021)

[Bexley Local Plan 2023](#)

[Bexley Local Plan Policies Map](#)

[Report on the Examination of the Bexley Local Plan](#) (February 2023)

[Bexley Retail and Leisure Study](#) (Lambert Smith Hampton, May 2021)

[Retail and Town Centre Technical Paper](#)

UK average town centre vacancy rates from the [Local Data Company](#)