



Mayor and Cabinet

Article 4 Direction - Use Class E (commercial, business and services) to Use Class C3 (residential)

Date: 6th Dec 2023

Key decision: Yes

Class: 1

Ward(s) affected: All

Contributors: David Syme, Head of Strategic Planning

Outline and recommendations

The purpose of this report is to summarise the need, evidence base and process for the introduction of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3), as allowed under Class MA, of Part 3, of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO 2015).

A detailed evidence base underpinning this report is set out in **Appendix 1 and Appendix 2**

The areas covered by the proposed Article 4 Direction designations for town centres, employment and industrial locations are set out in **Appendix 3** of this report.

It is recommended that Mayor and Cabinet:

- Approve the making of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3).
- Authorise officers to carry out consultation in accordance with Section 6 of this report.
- Note the financial and legal implications of making the Article 4 Direction set in Sections 7 and 8

Timeline of engagement and decision-making

6 July 2022

Making of a non-immediate Article 4 Direction Use Class E (commercial, business and services) to Use Class C3 (residential) was presented to and approved by Mayor and Cabinet, with such direction to come into force 12 months after notice of the direction is published.

30 September 2022 to
5 December 2022

Representation period on notice of making the Article 4 Direction

13 December 2022

The Department for Levelling Up Communities and Housing intervened and considered that the proposed Article 4 Direction did not comply with national policy.

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1. Summary

- 1.1. In September 2020, changes to the Use Class Order came into effect which merged many uses which were formally contained in Class A1-A3 (retail), Class B1 (offices, research and development and light industrial) and Class D (leisure and community) into a new Class E and new Class F.
- 1.2. In August 2021, changes to legislation introduced new permitted development rights allowing for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission.
- 1.3. These changes include a Prior Approval process whereby the Council can consider a limited range of matters including, the size and quality of the new housing. However, the principle of the change of use cannot be assessed.
- 1.4. Local planning authorities cannot secure planning obligations in respect of matters that are not the subject of the prior approval process. Crucially, and which has proved controversial with authorities in the past, class MA residential development does not attract any affordable housing requirements. However, s106 agreements can be used to provide mitigation of the prior approval matters set out above i.e., highways, environmental, flooding, noise etc.
- 1.5. The evidence paper (**Appendix 1**) accompanying this report outlines the potential adverse economic and social impacts that the permitted development rights could have in Lewisham's designated town centres, employment, and industrial areas.
- 1.6. Article 4 Directions can be used by Local Authorities to withdraw permitted development rights where there is a local need and/or justification for doing so. Article 4 Directions can be implemented with immediate effect or with non-immediate effect. In the case of an immediate Article 4 Direction the Local Authority may be liable for compensation to any landowner or other stakeholder who has a planning application refused for a development that would have been allowed under Permitted Development Rights. A non-immediate Article 4 Direction takes effect 12 months after the Direction is made and negates compensation claims. Given the potential cost of compensation, a non-immediate Article 4 Direction is recommended.
- 1.7. The Mayor of London has encouraged the use of Article 4 Directions covering Use Class E to Use Class C3 to protect the vitality and economic viability of town centres, employment and industrial areas and many other London Boroughs are working towards this.
- 1.8. At its meeting on 6th July 2022, Mayor and Cabinet approved the making of a non-immediate Article 4 and authorized officers to carry out consultation.
- 1.9. A representation period on the previously proposed Class E Article 4 Direction ran from Friday 30 September 2022 until Monday 5 December 2022. However, following formal notification to the Secretary of State, The Department for Levelling Up, Housing and Communities (DLUHC) intervened and considered that the proposed Article 4 Direction did not comply with national policy. Specifically, they cited paragraph 53 of the NPPF. Which states, "in all cases, (Article 4 directions should) be based on robust evidence and apply to the smallest geographical area possible." They questioned whether the Article 4 Directions did indeed cover the smallest geographical

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area and they requested the Council reconsider the coverage of the Article 4 Direction and prepare additional evidence base work. This intervention by DLUHC was replicated across all London Authorities who were/are seeking to introduce Article 4 Directions on the same topic.

- 1.10. In response to DLUHC, the Council did not confirm the Article 4 Direction. As the date of coming into force has now passed without the direction having been confirmed it now is of no effect. The Council has prepared an additional evidence paper (**Appendix 2**) which accompanies this report. The paper includes more detailed granular assessments focused on individual streets and buildings where wholly unacceptable adverse impacts would occur due to the permitted development right.

2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet:

- Approve the making of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3).
- Authorise officers to carry out consultation in accordance with Section 6 of this report.
- Note the financial and legal implications of making the Article 4 Direction set in Sections 7 and 8.

3. Policy Context

Corporate Strategy 2022-26

- 3.1. The introduction of an Article 4 Direction will contribute to the implementation of the Corporate Strategy 2022-26 and in particular support the delivery of the Corporate priority - **A strong local economy** - by protecting the vitality and economic viability of Lewisham's designated town centres, employment and industrial areas.

Permitted Development Rights

- 3.2. Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), some changes of use are granted planning permission without the need to make a planning application.
- 3.3. On 30st March 2021, the government amended the 2015 order to introduce a new permitted development right Class MA allowing for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3). Development is not permitted by Class MA in certain circumstances, including:
- A size limit whereby the right only applies to sites that would result in the loss of no more than 1,500sqm of Class E floorspace.
 - Article 4 directions restricting changes of use from Office uses to

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residential will cease effect on 1st August 2022A vacancy test, meaning that the right only applies to premises that have been vacant for 3 months before the Prior Approval application.

- That the right does not apply to listed buildings
- That the building must have been in Class E use (includes former classes now incorporated within Class E) for at least 2 years before benefiting from the right.

3.4. Where the Permitted Development Right does apply, proposals will be subject to a prior approval application, where a very limited number of matters can be considered, namely:

- Transport impacts
- Contamination risk of the building
- Flood risk
- Impact of noise from commercial premises on intended occupiers
- Provision of adequate natural light to all habitable rooms
- In conservation areas where the development involves a change of use of the whole or part of the ground floor– consideration of the impact of that change of use on the character or sustainability of the conservation area.
- the provision of adequate natural light in all habitable rooms of the dwellinghouses
- Impact of intended occupiers of introducing residential use to an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.
- Where the development involves the loss of services provided by a health centre or a registered nursery the impact on the local provision of such type of services lost
- where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

Article 4 Directions

3.5. Article 4 Directions can be used to withdraw permitted development rights across a defined area. This power is set out in the Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

3.6. The NPPF (2023) paragraph 53 states that:

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 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 other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for*

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the demolition of local facilities).

- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*
- 3.7. The government's online planning practice guidance (PPG entitled "When is permission required?") gives further detail on the use of Article 4 Directions.
- 3.8. f Article 4 directions can be made under General Permitted Development Order 2015 (as amended) can be made with to have
- **immediate effect This** applies when the development to which the ~~data~~ relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. The direction withdraws permitted development rights with immediate effect once notice of the direction is published. However, a local planning authority may be liable to pay compensation to a landowner when permitted development rights are removed by an immediate Article 4 Direction. All claims for compensation must be made within 12 months of the date on which the planning application for development ~~first~~ permitted is refused or approved subject to conditions that go beyond those in the GPDO, or
 - **non-immediate effect This can** require a 12-month interval after notice of the direction is published before the Direction comes into force. A non-immediate Article 4 Direction is therefore used to reduce the likelihood of any compensation claims against the Council.
- 3.9. The PPG explains when an immediate Article 4 Direction can be used. It states that an immediate Direction can be made in relation to certain PD rights where permitted development presents an immediate threat to local amenity or prejudices the proper planning of an area. It also states the consultation processes towards the making a non-immediate Article 4 Direction must have already begun (PPG paragraph 038).
- 3.10. Given the potential cost of compensation, a non-immediate Article 4 Direction is recommended.
- 3.11. The process for making a non-immediate Article 4 Direction is as follows:
- **Stage 1** (the current stage) - the council decides whether to go ahead and make a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after the first date of the period for making representations in response to statutory consultation undertaken.
 - **Stage 2** - Publication / Consultation stage.
 - **Stage 3** - On the same day that notice is first published or displayed in accordance with the provisions of Schedule 3 of the Order, the council has to send a copy of the Direction and the notice including any map defining the area to which it relates or the site to which it relates to the Secretary of State who has wide powers to modify or cancel a Direction.
 - **Stage 4** - Confirmation Stage - the Council considers any representations received after a period of at least 21 days from publication/service of the Notice and decides whether to confirm the Direction. A Direction cannot be confirmed until the expiration of a period of at least 28 days following the latest date on which any notice relating

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to the direction was served or published or such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.

Once a Direction has been confirmed, the Council must give notice of the confirmation as soon as practicable after it has been confirmed in the same way as it gave notice of the initial direction, and must specify the date that the direction comes into force and must send a copy of the confirmed direction to the Secretary of State.

National Planning Policy (NPPF) (2023)

3.12. The NPPF (2023) paragraph 8 sets out three key objectives for the planning system to achieve sustainable development. The first of which is as follows:

an economic objective – *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 right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

3.13. **Section 3, Plan-making** part of paragraph 20 states that:

- *Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for:*
 - *Housing (including affordable housing), employment, retail, leisure and other commercial development.*

3.14. **Section 6: Building a strong, competitive economy** part of paragraph 81 states:

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.

3.15. **Section 7: Ensuring the vitality of town centres**, paragraph 86 states:

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. Planning policies should:

- 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;*
- c) *retain and enhance existing markets and, where appropriate, re-introduce or create new ones;*
- d) *allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site*

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availability, so town centre boundaries should be kept under review where ~~ready~~

- e) *where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and*
- f) *recognize that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.*

London Plan (2021)

- 3.16. **Policy E1 Offices** supports improvements to the quality, flexibility and adaptability of office space of different sizes (for micro, small, medium-sized and larger enterprises) through new office provision, refurbishment and mixed-use development.
- 3.17. It also supports the retention of existing viable office floorspace in locations outside the nationally-significant office locations, supporting borough Article 4 directions to remove permitted development rights where appropriate, facilitating the redevelopment, renewal and re-provision of office space where viable and releasing surplus office capacity to other uses.
- 3.18. **Policy E2 Providing suitable business space** expects boroughs to include policies in local Development Plan Documents that support the provision, and where appropriate, protection of a range of B Use Class business space, in terms of type, use and size, at an appropriate range of rents, to meet the needs of micro, small and medium-sized enterprises and to support firms wishing to start-up or expand.
- 3.19. **Policy E4 Land for industry, logistics and services to support London's economic function** requires a sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions to be provided and maintained, taking into account strategic and local employment land reviews, industrial land audits and the potential for intensification, co-location and substitution. The policy also seeks the retention, enhancement and provision of additional industrial capacity across designated and undesignated industrial sites to be planned, monitored and managed.
- 3.20. **Policy E5 Strategic Industrial Locations (SIL)** requires that Strategic Industrial Locations should be managed proactively through a plan-led process to sustain them as London's largest concentrations of industrial, logistics and related capacity for uses that support the functioning of London's economy. The policy requires the Borough's Development Plans to develop local policies to protect and intensify the function of SILs and enhance their attractiveness and competitiveness (including improvements to access, public transport, digital connectivity and other related infrastructure).
- 3.21. **Policy SD6 Town centres and high streets** states that:
The vitality and viability of London's varied town centres should be promoted and enhanced by:
 - 1) *encouraging strong, resilient, accessible and inclusive hubs with a diverse*

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range of uses that meet the needs of Londoners, including main town centre uses, night-time economy, civic, community, social and residential uses

2) identifying locations for mixed-use or housing-led intensification to optimise residential growth potential, securing a high-quality environment and complementing local character and heritage assets

3) delivering sustainable access to a competitive range of services and activities by walking, cycling and public transport

4) strengthening the role of town centres as the main focus for Londoners' sense of place and local identity in the capital

5) ensuring town centres are the primary locations for commercial activity beyond the CAZ and important contributors to the local as well as London-wide economy

6) supporting the role of town centres in building sustainable, healthy and walkable neighbourhoods with the Healthy Streets Approach embedded in their development and management

Lewisham's adopted Local Plan

3.22. Lewisham adopted Local Plan is made up of the following:

- Lewisham Core Strategy (2011)
- Site Allocations Local Plan (2013)
- Lewisham Town Centre Local Plan (2014)
- Development Management Local Plan (2014)

Core Strategy (2011)

3.23. The Core Strategy sets out the current adopted vision, objectives and spatial strategy for growth and regeneration in the borough. The spatial strategy directs growth and regeneration including residential, employment and town centre uses within appropriate areas for development. This includes Regeneration and Growth Areas, Major Centres, District Hubs and Local Hubs.

3.24. The spatial strategy also identified the release of surplus Strategic Industrial Land in the form of Strategic Sites identified as Mixed-Use Employment Locations (MEL).

3.25. Aside from the planned release of surplus industrial land the Core Strategy emphasis the need to protect and enhance remaining employment uses within the borough's Strategic Industrial Locations and Local Employment Locations.

3.26. **Spatial Policy 2 Regeneration and Growth Areas** states that these areas:

Will provide key regeneration and development opportunities focused on the localities of Lewisham, Catford, Deptford, Deptford Creekside and New Cross/New Cross Gate. In given effect to the London Thames Gateway and the London Plan Opportunity Area designations, this strategy area will capitalise on public transport accessibility and the availability of deliverable and developable land, particularly through intensification of land uses in town centres and within mixed use employment locations.

The Regeneration and Growth Areas will support the creation of a more sustainable borough by being the prime location for new development

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comprising of at least 14,975 new homes, 100,000 square meters of new and reconfigured employment floorspace (light industry, workshops, offices), and 62,000 square meters of new retail floorspace by 2026.

3.27. **Spatial Policy 3 District Hubs** states that:

District Hubs will be reinforced as places which will sustain a diversity of uses and activities appropriate to each hub's function and location. District Hubs are key places which support the development of a sustainable borough, capitalising on the availability of services, facilities and public transport. Comprising a District town centre and its surrounding residential neighbourhoods, the focus will be to build and maximise the uniqueness and potential of each place. The District Hubs will be managed so as to facilitate change that contributes to the economic vitality and viability of each District town centre.

3.28. **Spatial Policy 4 Local Hubs** states that:

Individual Local Hubs will be managed to enhance their identity and distinctiveness in order to achieve an overall upgrade in urban quality and amenity. Local Hubs are places where the availability of development sites will be capitalised to secure physical and environmental improvement and integration with the surrounding neighbourhoods including local shopping parades.

3.29. **Core Strategy Policy 3 Strategic Industrial Locations and Local Employment Locations**

The Council will protect the Strategic Industrial Locations (SILs) for uses within the B Use Class (B1c, B8 and where appropriate B2 industry), and also appropriate sui generis uses, to provide land for activities that support the continued functioning of London as a whole such as waste management, transport and utilities, and uses that require 24-hour functioning.

The Council will protect the Local Employment Locations (LELs) for a range of uses within the B Use Class (B1, B8 and where appropriate B2 industry) and also appropriate sui generis uses, to support the functioning of the local economy.

3.30. **Core Strategy Policy 4** requires the Council to provide a comprehensive redevelopment of the Mixed Use Employment Locations to provide:

- *employment uses within the B Use Class amounting to at least 20% of the built floorspace of any development as appropriate to the site and its wider context*

Lewisham's emerging Local Plan (2020-2040)

3.31. The Council is currently preparing a new integrated Local Plan which will set out the long-term strategy for the borough making provision for new housing (prioritising genuinely affordable housing), employment and other development needs including the necessary infrastructure to support Good Growth (defined in the new London Plan as "growth that is socially and economically inclusive and environmentally sustainable").

3.32. Following approval by Council on 21 September 2022, public consultation was held on the Lewisham Local Plan - Proposed Submission document

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(Regulation 19 Stage), which ran from 1 March 2023 to 25 April 2023. The Council submitted its plan for examination 8 November 2023.

- 3.33. In accordance with the NPPF and London Plan the new Local Plan demonstrates how it can meet Lewisham's housing target of 16,670 net housing completions over a 10 year period, 8,400 gross square meters of retail floorspace up to 2035 and 21,800 net additional square meters of employment floorspace up to 2038.
- 3.34. **OL1 Delivering an Open Lewisham (Spatial Strategy)** focuses growth and regeneration in the following areas:
- Opportunity Areas, specifically at New Cross, Lewisham and Catford OA and Deptford Creekside and Greenwich OA
 - Areas of regeneration
 - Town centres
 - Key corridors such as the A21
- 3.35. For a more comprehensive Policy Review please refer to **Appendix 1**.

4. Rationale for proposed Article 4 Direction

- 4.1. For a summary on the rationale for the proposed Article Direction please refer section 4 on the previous Mayor Cabinet report dated 6th July 2022.

5. Further analysis on the areas covered by the Article 4 Direction

Department for Levelling Up, Housing and Communities Intervention

- 5.1. A representation period on the previously proposed Article 4 Direction ran from Friday 30 September 2022 until Monday 5 December 2022. However, following formal notification to the Secretary of State, The Department for Levelling Up Communities and Housing (DLUHC) intervened and considered that the proposed Article 4 Direction did not comply with national policy. Specifically, they cited paragraph 53 of the NPPF. Which states, "in all cases, (Article 4 directions should) be based on robust evidence and apply to the smallest geographical area possible." They requested the Council reconsider the coverage of the Article 4 Direction and prepare additional evidence base work in order to demonstrate that the boundaries are limited to situations where it is necessary to avoid wholly unacceptable adverse impacts and applies to the smallest geographical area possible.
- 5.2. In response to DLUHC, the Council did not confirm the Article 4 Direction. As the date of coming into force has now passed without the direction having been confirm it now is of no effect. The Council has prepared an additional evidence paper (**Appendix 2**) which accompanies this report. The paper includes more detailed granular assessments focused on individual streets and buildings where wholly unacceptable adverse impacts would occur due to the permitted development right.

Methodology

Town Centres

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- 5.3. The proposed extent of the revised Article 4 Direction coverage has been based on desk-based analysis at a street and building level. A qualitative and quantitative judgement has been made separately for each Major, District or Local Centre to determine which buildings should be covered by an Article 4 Direction, with several factors taken into consideration. This process is outlined below.

Step 1: Identifying broad locations to be considered for coverage by an Article 4 Direction:

- The starting point for identifying locations to be considered for coverage by an Article 4 Direction was the Borough's designated town centres (major, district and local) as shown in the Regulation 19 Policies Map.

Step 2: Identifying larger areas to be excluded from the Article 4 Direction area:

- The exclusion of open spaces, residential areas and roads.
- The exclusion of buildings in Class E use which are over 1500sqm; these do not currently have permitted development rights under Class MA.

Step 3: Identifying buildings to be included within the Article 4 Direction

- Assessing whether there is a clear and obvious 'core area', particularly within the primary shopping area, with higher concentrations of shops and services which should be protected.
- Ensuring that essential services, such as pharmacies etc. are protected.
- Considering whether there are clusters of shops, particularly outside the primary shopping area, that meet the needs of Lewisham's diverse community such as international food shops etc. that need to be protected.
- Considering whether there are clusters of shops outside the primary shopping area that contribute to placemaking, such as those located opposite a train station or river corridor that need to be protected.

Step 4: Identifying buildings to be excluded from the Article 4 Direction area.

- The exclusion of non-Class E uses, particularly located outside the Primary Shopping Area, towards the edge of the Primary Shopping Area or within clusters.
- Assessing the proportion and location of vacant units and considering whether stretches of vacant units should be excluded.
- Assessing whether clusters of uses that do not positively contribute to the centre's retail function, such as takeaways, betting shops and estate agents should be excluded.
- Assessing whether there are peripheral locations outside the primary shopping area in decline with a poor-quality physical environment with vacancies, or non-continuous active frontages that should be excluded.
- Assessing whether Class E buildings separated from the town centre by clear physical and visual boundaries, such as road junctions, should be excluded.
- The exclusion of typologies, such as retail warehouse units and railway arches, which do not lend themselves to residential conversion.

- 5.4. An assessment table for each town centre has been included in **Appendix 2**, which sets out the justification at a granular level for including and excluding frontages from the Article 4 Direction with the above factors taken into consideration. This is then

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supported by a broader higher-level assessment for each town centre on the wholly unacceptable adverse impact without an Article 4 Direction.

- 5.5. For non-designated neighbourhood parades, only those which were 400 meters (5 minutes walking distance) from a Major, District or Local Centre and did not mainly consist of takeaways, betting shops or vacant units were included.

Mixed Use Employment Locations (MEL)

- 5.6. The Council extracted ground floor use masterplans from the relevant planning applications to demonstrate the provision for Class E use has been maximised within the MEL. Furthermore, these plans have also been used to inform a boundary of the revised Article 4 Direction. For instance, any apparent areas of open space or clusters of solely residential buildings have been excluded from the revised Article 4 Direction boundary.

Locally Significant Industrial Sites (LSIS) and Strategic Industrial Locations (SIL)

- 5.7. For LSIS and SIL the assessment has included a desktop review to identify Class E uses to be retained within the revised boundaries in office, light industrial or other Class E uses. They have also been assessed as to whether they contain elements necessary for habitation, including windows to allow natural daylight inside.

Outcome of revisions

Borough wide

- 5.8. The areas proposed to be covered by the Article 4 Direction in 2022 across Lewisham cover approximately 173 hectares, which equates to about 5% of the total Borough area. The areas that would result following the proposed revisions to these boundaries would cover approximately 69 hectares, which equates to only 2% of the total Borough area. The proposed revisions to the boundaries would therefore result in a significant reduction of 60% in the size of the areas covered by the previous proposed Article 4 Direction 2022.
- 5.9. The table below details the proposed revised Article Direction areas in relation to designated town centre areas.

Town centre	Town centre area (ha)	Proposed Article 4 Direction area (ha)	Percentage of the town centre covered by the Article 4 Direction (%)
Major Centres			
Catford	21.8	3	14
Lewisham	43.3	5.5	13
District Centres			
New Cross	15.5	0.9	6
Deptford	26.3	3	11
Blackheath	5	0.9	18
Lee Green	4.8	1.1	23
Forest Hill	14.2	1.3	9

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Sydenham	11.2	2	18
Downham	2.9	0.9	31
Local Centres			
Evelyn Street	3.1	0.8	25
Lewisham Way	2.9	0.4	14
Brockley Cross	2.2	0.5	23
Ladywell	0.9	0.3	33
Crofton Park	2.6	0.8	31
Honor Oak/ Brockley Rise	1.43	0.6	43
Bellingham	0.5	1.5	33
Downham Way	1.2	0.2	17
Grove Park	0.4	1.6	25
Lee Station	2	0.4	20
Staplehurst Road	1	0.3	30
Hither Green Lane	0.7	0.2	29

5.10. The table below details the proposed revised Article 4 area in relation to designated industrial and employment locations.

Industrial or employment location	Industrial or employment location area (ha)	Proposed Article 4 Direction area	Percentage of the employment or industrial location covered by the Article 4 Direction (%)
Strategic Industrial Locations			
Surrey Canal Road	28.3	1.9	7
Bromley Road	8	0.8	10
Locally Significant Industrial Sites identified for co-location			
Apollo Business Centre	0.4	0.4	100
Blackheath Hill	0.3	0.3	100
Clyde Vale	0.4	0.4	100
Evelyn Court	0.3	0.3	100
Lower Creekside	2.4	2	83
Perry Vale	0.5	0.5	100
Stanton Square	1	1	100
Trundleys Road	0.5	0.5	100
Willow Way	1.2	1.2	100
Worsley Bridge Road	1.2	1.2	100
Locally Significant Industrial Sites not identified for co-location			
Childers Street West	0.3	0.2	63
Bermondsey Dive Under	0.6	0	0
Evelyn Street	1.19	0	0
Manor Lane	2.75	0	0

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Molesworth Street Car Park	1.36	0	0
Malham Road	3.96	1	25
Lewisham Way LSIS	0.5	0	0
Endwell Road	1.38	1	72
Mixed Use Employment Locations			
Sun and Kent Wharf	1.4	1.4	100
Oxestalls Road	4.62	4.62	100
Thanet Wharf	0.61	0.61	100
Convoys Wharf	16.1	13.7	85
Plough Way	8.3	1.9	23
Arklow Road	2.2	0.94	43
Neptunes Wharf	0.8	0.5	63
Surrey Canal Triangle	10.9	6.6	61
Childers Street East	0.3	0.21	70

6. Consultation

- 6.1. Consultation on the making of the Article 4 Directions will comply with the provisions set out in the GPDO. Notice of the Direction will be made by:
- Local advertisement in the press.
 - Site notices placed in visible locations for a period of at least 6 weeks.
 - The requirement for written notifications can be waived as it is considered impracticable due to the number of owner or occupiers within the area.
 - A copy of the Article 4 direction will be made available on the Council's website as well as in a number of convenient locations including Planning reception and local libraries.
- 6.2. Following consultation and within 6 months, a report recommending whether the Direction should be confirmed will be reported back to Mayor and Cabinet.

7. Financial implications

- 7.1. The cost of making an Article 4 Direction will be met through existing budgets. A maximum expenditure of £1,000 is estimated.
- 7.2. There may be financial implications arising from the need to deal with future planning applications for change of use from Class E-C3 which would have otherwise be covered under permitted development. This will be managed within the existing planning budget. From the 17th January 2018, Lewisham has charged fees for applications covered by Article 4 Directions.
- 7.3. Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation can be sought where (i) the LPA makes an Article 4 Direction, (ii) an application is made for planning permission to carry out development that would formerly have been permitted by the GPDO and (iii) the

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LPA refuses that application or grants permission subject to conditions differing from those in the GPDO.

- 7.4. However, where 12 months' notice is given in advance of a direction taking effect (non-immediate Article 4 Direction) there will be no liability to pay compensation (provided that the development authorised by the new changes had not started before the notice was published).
- 7.5. Given the potential cost of compensation, this report recommends a non-immediate Article 4 Direction.

8. Legal implications

- 8.1. Section 9D of the Local Government Act 2000 states that any function of the local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements. The Local Authorities (Functions and Responsibilities (England) Regulations 2000 does not specify that the certain functions proposed here are by law the responsibility of the Council, and therefore they are an executive function.
- 8.2. The report at Section 3 sets out the provisions relating to the permitted development right contained in Class MA of Part 3 of the Town and Country Planning (General Permitted Development (England) Order 2015.
- 8.3. 'Class MA' permitted development right allows changes of use from a use falling within Class E to Class C3 (residential). This means that provided the limited requirements and conditions of Class MA are satisfied, it will be possible to make a change of use from a Class E use to a Class C3 use without the need to apply to the local planning authority for planning permission. This permitted development right has become available from 1 August 2021.
 - The report sets out at Section 3 the limitations on the application of the Class MA permitted development right
- 8.4. When considering applications for prior approval, the local planning authority can only assess those matters set out in the Order as listed in Section 3.4 of this report. The only mechanism available to local authorities to remove permitted development rights where they otherwise apply is through a direction under Article 4 of the GPDO as is the case in the present matter.
- 8.5. An Article 4 direction removes a specified permitted development right in a defined area. Proposed development that would otherwise be automatically permitted then requires planning permission to proceed. This enables the local authority to determine the merits of the proposed development via a planning application, having regard to its development plan policies and any other material considerations.
- 8.6. The detailed procedure for the making of a non-immediate Article 4 direction which is the type proposed by this report is contained in paragraphs 1(1) to 1(18) of Schedule 3 of the GPDO. This includes the power available both to the LPA and the Secretary of State to cancel any existing direction by the making of a subsequent direction. The main stages are set out in the report at section 3.11.

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- 8.7. In deciding whether to confirm a direction, the local planning authority must take into account any representations received during the consultation period. Section 108 of the Town and Country Planning Act makes provision for compensation to be payable where an application for planning permission (that would formally have been permitted development) is refused or is granted subject to conditions different from those in the GDPO. However, so long as 12 months' notice is given before the Article 4 direction takes effect as is the case in the present matter, no compensation will be payable.
- 8.8. . When considering the recommendations in this report, regard must be given to the public sector equalities duty to eliminate unlawful conduct under the Equality Act 2010. The duty is set out at Section 149 of the 2010 Act. It requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimization and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic.
- 8.9. Implications in relation to the Human Rights Act 1998 Schedule 1, Part Article 1 of the First Protocol of the Convention. have been identified. If the Direction is made this will affect the owners and occupiers' Article 1 property rights
- 8.10. Under Article 1 every natural or legal person is entitled to peaceful enjoyment of their possessions interference in these rights by a public authority is only justified if it is in the public interest and subject to the conditions provided by law.
- 8.11. The Council cannot act in a way which is incompatible with these rights. However, these are qualified rights and therefore can be interfered with if it is in the public interest and proportionate to do so.

9. Equalities implications

- 9.1. The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which covers the following nine protected characteristics: age; disability; gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.2. The Council must in the exercise of its functions, ***have regard to*** the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 9.3. The Council's Single Equality Framework 2020-2024 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 9.4. The Equalities Analysis Assessment (Appendix 6) has concluded that the Article Direction will have a positive impact on equalities. The Direction will enable the council to ensure a wide range of workspaces, shops and services

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for Lewisham's diverse enterprises, it will help make it easier for residents, including those with protected characteristics, to access a range of jobs and other opportunities. This may in turn help reduce the need to travel, and can promote walking and cycling, which is positive for health and wellbeing.

- 9.5. The Direction will also assist the council in implementing its development plan policies – Those policies were subject to Equality Impact Assessments during their adoption. The emerging draft Local Plan is being prepared in parallel with an Integrated Impact Assessment. As such we do not envisage any equality issues arising from this decision.
- 9.6. The Public Sector Equality Duty is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

10. Climate change and environmental implications

- 10.1. A Strategic Environmental Assessment (SEA) Screening Assessment has been carried out and concludes that the proposed use of the Article 4 Direction is unlikely to have any significant effects. (see Appendix 4)

11. Crime and disorder implications

- 11.1. There are no direct implications relating to crime and disorder issues.

12. Health and wellbeing implications

- 12.1. There are no direct implications relating to health and wellbeing. However, the indiscriminate and unplanned loss of valued local facilities, services and unemployment through the use of this permitted development right could affect the health and wellbeing of Lewisham's residents. The Article 4 Direction will allow the Council to properly assess, through the planning application process any impact and refuse permission where necessary.

13. Background papers

- 13.1. Strategic evidence base to support London borough Article 4 Directions (commercial to residential)
https://www.london.gov.uk/sites/default/files/strategic_evidence_to_support_commercial_to_residential_article_4s_in_london_july_2021_final_report.pdf
- 13.2. Lewisham Retail Capacity Study Update 2019
<https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://lewisham.gov.uk/-/media/files/imported/10retailcapacitystudyupdate2019.ashx&ved=2ahUKewjPwfez3a4AhV9g3IEHaVfAulQFXoECAAQAq&usq=AOvVaw1ZL6-RSRP6PU89i9YL0nNg>
- 13.3. Lewisham Employment Land Study 2019
<https://lewisham.gov.uk/myservices/planning/policy/adopted-local-plan/evidence-base/ldf-evidence-base--employment-and-retail>
- 13.4. Lewisham's existing adopted Local Development Framework.

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<https://lewisham.gov.uk/myservices/planning/policy/adopted-local-plan> Which includes:

- Core Strategy 2011
- Development Management Local Plan 2014
- Site Allocations Local Plan 2013
- Lewisham Town Centre Local Plan 2014

13.5. National Planning Policy Framework (NPPF) 2023:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182577/NPPF_Sept_23.pdf

13.6. Lewisham Local Plan Regulation 18 Stage “main issues and preferred approaches” document.

<https://lewisham.gov.uk/myservices/planning/policy/planning/about-the-lewisham-local-plan>

13.7. Lewisham Local Plan – Proposed Submission document (Regulation 19 Stage)

<https://lewisham.gov.uk/myservices/planning/policy/planning/about-the-lewisham-local-plan>

13.8. Lewisham Class E Article 4 Direction Mayor and Cabinet Paper, 6th of July 2022

<https://lewisham.gov.uk/myservices/planning/policy/article-4-direction-for-class-e>

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14. Glossary

Term	Definition
Article 4 Direction	Article 4 Directions can be used to withdraw permitted development rights across a defined area. This power is set out in the Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
GPDO	General Permitted Development Order
NPPF	National Planning Policy Framework
SEA	Strategic Environmental Assessment

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17. Comments for and on behalf of the Director of Law, Governance and Elections

17.1. Paula Young, Senior Planning Lawyer paula.young@lewisham.gov.uk

18. Appendices

Appendix 1: Class E Evidence Paper June 2022

Appendix 2: Class E Additional Evidence Paper September 2023

Appendix 3: Plans indicating extent of Article 4 Direction

Appendix 4: Draft Strategic Environmental Assessment (SEA) Scoping

Appendix 5: Draft making of the Article 4 Direction

Appendix 6: Equalities Analysis Assessment

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