

Bath & North East Somerset Council		
DECISION MAKER:	Cllr Bob Goodman, Cabinet Member for Development and Neighbourhoods	
DECISION DATE:	On or after 16th March 2019	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3125
TITLE:	Confirmation of the Article 4 Direction on conversion offices to residential in Bath City Centre	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <ul style="list-style-type: none"> Appendix 1 – Central Bath Article 4 Direction – as made on 28th February 2018 Appendix 2 – Consultation Comments and Council Responses Appendix 3 – National Policy on Article 4 Direction Appendix 4 – Equalities Impact Assessment 		

1 THE ISSUE

- 1.1 This report recommends confirming a previously made non-immediate Article 4 Direction to restrict Permitted Development Rights (PDR) on the Change of Use from Office to Residential uses in parts of central Bath. If confirmed, the Article 4 Direction will be effective from May 24th 2019.

2 RECOMMENDATION

- 2.1 The Cabinet Member agrees that:

Bath & North East Somerset Council confirms and brings into force the non-immediate Article 4 Direction dated 28th February 2018, the effect of which is to withdraw Permitted Development Rights for the change of use from office (Class B1) to residential uses (Class C3) in those parts of central Bath shown in the Direction.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The National Planning Practice Guidance summarises the position regarding Article 4 Directions and compensation as follows:

“If a local planning authority makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- *refuses planning permission for development which would otherwise have been permitted development; or*
- *grants planning permission subject to more limiting conditions than the General Permitted Development Order*

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.”

- 3.1 The Council pursued a non-immediate Article 4 Direction to significantly reduce the risk of claims of financial compensation from those who could have made a case that they were financially prejudiced by the introduction of an immediate Article 4 Direction. Owners and tenants, and parties with a contractual right to use the land have had over a year to take an action in light of the decision in 2018 to make the Article 4 Direction.
- 3.2 Until 2018, the Council could not charge a fee to determine planning applications on proposals formally covered by PDRs. This would have resulted in a decreased income and corresponding increase in resource requirement, assessing a change of use as a full application. However from January 2018, the normal planning application fee will be chargeable.
- 3.3 There will also be a one off additional cost of around £1,500 to cover the costs of giving notice when confirming the order. This can be absorbed by the LDF budget.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 A change of use of land or buildings requires planning permission if it constitutes a material change of use as set out in the Town and Country Planning (Use Classes) Order 1987. The Government has made provision for permitted development because it considers that these types of development are acceptable and do not cause harm. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. On 31 May 2013, the Government introduced new Permitted Development Rights (PDR) to allow change from Use Class B1(a) (offices) to Use Class C3 (residential). As a result developers now only need to seek a Prior Approval.
- 4.2 The Prior Approval process requires that developers notify the Council that they propose such a change through submitting a Prior Notification Order (PNO) form. Following receipt of a PNO application the Council has 56 days to determine the application, including at least 21 days for consultation. The criteria/tests against which PNO applications are assessed are limited to:
 - flooding;
 - contamination risks;
 - parking or highways; and
 - noise impacts.

- 4.3 This is a more limited range of criteria than that which the Council was applying prior to the introduction of the new PDR.
- 4.3 A Local Planning Authority (LPA) has the option to withdraw PDRs through a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 if it is satisfied that it is expedient to do so. National Planning Practice Guidance states that an Article 4 Direction should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area, there must be justification for both its purpose and extent and the potential harm that the direction is intended to address should be clearly identified.
- 4.4 The NPPG goes on to state that there should be a particularly strong justification for the withdrawal of permitted development rights relating to cases where prior approval powers are available to control permitted development. It should be noted that Article 4 Directions do not affect the carrying out of permitted development which, as in this case, requires prior approval when the prior approval date occurs before the date the direction comes into force and the development is completed within three years of the prior approval date. Therefore, it may be that there are certain developments which would fall outside the scope of this Article 4 Direction.
- 4.5 Article 4 Directions can be made by LPAs or the Secretary of State. Local authorities opting to use such powers are required to inform the MHCLG of their intention to do so. The Secretary of State has the power to modify or cancel an Article 4 Direction at any stage in the process.
- 4.6 With regard to the Human Rights Act 1998, the article 4 process is a legal process which is overseen by the Secretary of State and includes the opportunity for affected parties to make representations. As such it is considered that the confirmation of this Article 4 Direction would not give rise to any adverse implications under the Human Rights Act.

5 THE REPORT

- 5.1 The Council's adopted B&NES Local Plan (comprising Core Strategy and Placemaking Plan) implements a range of Council objectives. The B&NES Economic Strategy sets the economic ambition for the District. This seeks to rebalance the local economy, address the overreliance on jobs in the lower paid public sector, retail and tourism facilitating an increase in average earnings. Low wages are a particular problem in the area in light of the relatively high house prices in the district.
- 5.2 For this reason Core Strategy Objective 3 states that: "*The Council's Economic Development Strategy seeks to stimulate a more productive, competitive and diversified economy across the District and promotes a higher value added economy (smart growth) where indigenous companies are retained and able to grow, other knowledge based sectors are attracted to the area and the industrial sector continues to contribute to the local economy...increasing the availability of modern office and unit space in Bath thereby enabling indigenous companies to expand and the city to better respond to external demand*".

- 5.3 In order to realise this strategy, the adopted B&NES Local Plan seeks a net increase of 7,000 jobs in the city. These are focussed on a net increase of 40,000sqm of modern office and creative workspace in the Bath Central Area. The Local Plan recognises the dynamics of the office space market, including the potential impact of PDRs by allowing for the managed release of up to 20,000sqm of existing space. The policy objective is that the managed release of floorspace should be limited to that which is “qualitatively the least suitable for continued occupation”. This means that the overall office space would need to grow by 60,000sqm over the plan period in order to allow for losses and delivery of the Council’s policy targets.
- 5.4 The Council’s monitoring data shows that by 2017, already around 18,000sqm of office space had been subject to proposals for a change of use, the majority of this in the central area of Bath. The Single Member Decision (SMD) Report E2992 set out the evidence and rationale for making a non-immediate Article 4 Direction to remove permitted development rights.
- 5.5 The evidence justifying the making of an Article 4 Direction is set out within the SMD E2992 and the Ortus Report entitled “*The Impact of the Loss of Office Space in Central Bath 2017 – Ortus Economic Research*”. The area studied is termed Bath Central Area Plus (BCAP). BCAP covers a considerable amount of office supply at around 80% of B&NES office stock.
- 5.6 It concluded that, with 85,000sqm of office floorspace (including higher grade floorspace), accommodating 700 firms, 6,500 jobs and generating £381m in output being within property zones at medium or high risk from the conversion of office premises to residential, a non-immediate Article 4 Direction for certain parts of BCAP was appropriate.

Making of and Consultation on Article 4 Direction

- 5.7 A non-immediate Article 4 Direction was made on February 28th 2018. A statutory notice period followed as set out below.
- 5.8 The Direction withdraws the permitted development rights granted by Class J Part 3 Schedule 2 of the Order for development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling house) of the Schedule to the Use Class Order from a use falling within B1 (a) (offices) of that Schedule.
- 5.8 The effect of the Direction is that, once it comes into force, permitted development rights for this type of development are withdrawn and express planning permission will therefore be required for change of use from offices to residential uses. Officers consider that this Article 4 Direction is essential in order to protect local amenity and ensure proper planning in the area, in particular the Council’s ability to prevent loss of uses which contribute to the wider strategic objectives for the area.
- 5.9 In accordance with the GPDO 2015 and MHCLG guidance¹, B&NES Council gave notice of the order and offered interested parties an opportunity to make representations. A first consultation was undertaken for 6 weeks between 5th

¹ DCLG Guidance: Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 Dated 2012

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5679/2160020.pdf

March and 16th April 2018, with a further consultation period offered between 26th April and 17th May 2018.

5.10 The Direction relates to the area shown in Appendix 1, forming part of the Direction.

5.11 The direction comes into force only once confirmed by the local planning authority. In deciding whether to confirm a direction made under article 4(1), the local planning authority must take into account any representations received during the period. The GPDO 2015 and MHCLG guidance set out the steps required to be undertaken by the local authority from making an Article 4 Direction to confirming it and bringing it into force. It sets out the minimum requirements that are required to be undertaken by a local authority during this consultation. The consultation was widely publicised to ensure the council reached as many occupants and occupiers of the affected areas as possible. In accordance with the guidance, this included letters being sent to the addresses of circa 800 owners/ occupants of business rate paying properties within the BCAP area.

5.12 The regulations require the service of notice on the owner and occupier of every part of the land within the area or site to which the direction relates. However, the local planning authority need not serve notice on an owner or occupier if they consider that individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person, or that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.

5.11 In this case the cost of undertaking a land registry search to confirm ownership details in each case was considered prohibitive given the number of properties within the area to which the Direction relates. It is considered that the number of owners and occupiers within the area to which the Article 4 Direction relates makes individual service impracticable. As stated clearly in these letters, under the section 'Further Information,' B&NES sent letters to all owners/ occupiers of premises in the Article 4 locations (where practicable) except the owners/ occupiers of houses of flats or houses. The reason for excluding residential properties is that owners or occupiers of houses or flats in these areas will not be affected by this proposed change as these buildings are already in residential use.

5.12 The public consultation included

- Publishing a notice in the Bath Chronicle about this Article 4 Direction. Appendix 1 sets out this local advertisement that was placed in the newspaper. Adverts were placed on 8th and 15th March, and again on Thursday 3rd May 2018 during the 4 week consultation.
- Putting a minimum of two site notices in the boundary of areas that would be affected by this Article 4 Direction. Notices were put up and monitored to ensure that they remained visible and in place for 6 weeks initially, and 4 weeks subsequently. The Notice is replicated at Appendix 1.
- Notification was sent to the Secretary of State on the same day that notice of the Article 4 Direction was published stating that an Article 4 Direction was recently made. The Council included in the notification email, a copy of the direction (including a map defining the area/ site to which the Article 4 relates) as well as a copy of the local consultation notices (including letters sent to

owners/ occupiers and the notice advertised in the local newspaper and within the area).

5.13 In addition to meeting these minimum consultation requirements, the Council:

- Provided a dedicated webpage for the consultation on the Council's website with publicly accessible links to the Article 4 Direction and Maps, notices, SMD E2992 stating the reasons for considering an Article 4 Direction to prevent offices from converting to residential uses, and the evidence base (the web page is shown at Appendix 1).
- Ensured that Council officers were available throughout standard office hours to answer queries both in person and via phone and email.
- Held a workshop with the Property Agents involved in the affected area.

Summary of Main Issues Raised

5.14 Though only 6 representations were received from 6 respondents (including the Property Agent Forum), they represented a broad spectrum of interests in the Article 4 Direction area. Representations were submitted by residents, businesses (including owners and managers), business groups (such as the Bath Property Agents' Forum) and other community representatives.

5.15 Appendix 3 sets out the full response to the consultation comments received. In summary, all 6 representations received supported introducing the Article 4 Direction. One respondent considered that the Article 4 Direction should also apply to a wider area covering the whole of the District. This is not justified by the evidence.

5.16 Respondents felt that the Article 4 Direction offers opportunities to balance the social vs economic pressures/opportunities through decisions taken by people who work on the ground and care for Bath.

5.17 The Bath Property Agents' Forum, which represents a large proportion of businesses premises in Bath also supported the introduction of this Article 4 Direction. This, in addition to evidence contained in B&NES SMD E2992 Report which set out the rationale for making the Article 4 Direction, and on-going evidence means that officers recommend that it is expedient to confirm the Article 4 Direction for Bath Central Area.

6 RATIONALE

6.1 The evidence in the Single Member Decision (E2992) to make the Direction in 2018, and the accompanying evidence (Ortus Report) highlights the importance of the Bath office supply to the economic health and prosperity of the area and the wellbeing of its residents. Its health is integral to the Council's objectives in the Economic Strategy as planned for in the Local Plan. The risk of potential loss of offices through PDR is significant. The implications are that this is likely to cause significant harm to the Council's Economic Strategy as supported in the B&NES Local Plan and will inhibit the realisation of the benefits for residents.

- 6.2 Therefore, it is concluded that the evidence supports the introduction of an Article 4 Direction over the high and medium risk parts of the BCAP. A number of authorities have prepared such measures. The BCAP area is similar to other areas for which Article 4 Directions have removed the PDRs on office to residential changes of use.
- 6.3 The evidence combined with the support for the Article 4 Direction among those consultees who responded, and the significant support among Property Agents operating within Bath weighs in favour of confirming the Article 4 Direction.

7 OTHER OPTIONS CONSIDERED

7.1 The options open to the Council are:

- a) Confirm the Article 4 Direction;
- b) Do not confirm the Article 4 Direction, meaning that it will not come into force (in that scenario the Council might also decide to then make a further direction to cancel the original direction)

7.2 Option (a): confirming the non-immediate Article 4 Direction would address the longer-term loss of office space and thereby avoid the problems. Experience elsewhere indicates that “blanket” proposals are unlikely to be successful and that the Council needs to make a convincing case based on specific geographic areas. The evidence supports focussing the controls over the high and medium risk parts of the BCAP. Having considered the comment received and monitored the events since the Direction was made, this is the recommended course of action.

7.3 The loss of office space is undermining the Council's objectives as expressed in the current planning policy framework. Not confirming the Direction (option b) would demonstrably harm the wellbeing of the district

7.4 In conclusion, it is recommended that it is expedient that permitted development rights to convert office space to residential in parts of central Bath should be removed by an Article 4 Direction to protect the wellbeing of the area. It is therefore recommended that the non-immediate Article 4 Direction made on 28 February 2018 is confirmed and brought into force and that notice of the confirmation is given in accordance with the relevant legislation.

8 CONSULTATION

8.1 The consultation process has been described above. The Article 4 Direction was formally published for a period of more than 28 days for public consultation but has effectively been subject to a 12 month notice period including opportunity for consultation (see details in Section 5 above).

8.2 The consultation process has complied with, and gone beyond, the minimum requirements for consultation as set out in the legislation and in MHCLG guidance. The results of the consultation process have been summarised in this report.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management

guidance. The risks of financial compensation from affected parties has been mitigated because the Council has undertaken a non-immediate Article 4 Direction.

<p>Contact person</p>	<p><i>Simon de Beer, Head of Planning (01225 477616) or Richard Daone, Deputy Head of Planning (Policy)</i></p>
<p>Background papers</p>	<p><i>B&NES Report E 2992 - Article 4 Direction over permitted development rights on the Change of Use from Office to Residential in central Bath - Cllr Tim Warren, Leader of the Council</i></p> <p><i>The Impact of the Loss of Office Space in Central Bath 2017 – Ortus Economic Research</i></p> <p><i>The Town and Country Planning (Use Classes) Order 1987</i></p> <p><i>B&NES Core Strategy 2014</i></p> <p><i>B&NES Placemaking Plan 2017</i></p> <p><i>B&NES Economic Strategy 2014</i></p> <p><i>B&NES Authority Monitoring Report 2018</i></p> <p>DCLG Guidance: Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 - 2012 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5679/2160020.pdf</p>
<p>Please contact the report author if you need to access this report in an alternative format</p>	

**APPENDIX 1 CENTRAL BATH ARTICLE 4 DIRECTION – AS MADE ON 28TH
FEBRUARY 2018**

**THE CENTRAL BATH ARTICLE 4 DIRECTION 2018 MADE BY BATH AND NORTH
EAST SOMERSET COUNCIL
THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
(ENGLAND) ORDER 2015 DIRECTION MADE UNDER ARTICLE 4(1)**

WHEREAS Bath and North East Somerset Council (“the Council”) being the Council for the district of Bath and North East Somerset and the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015, is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land described in the Second Schedule and shown edged red on the attached Plan, unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power conferred on them by Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 hereby directs that the permission granted by Article 3 of the said Order shall not apply to the development specified in the First Schedule hereof in respect of the land of the description set out in the Second Schedule and shown edged red on the Plan annexed hereto.

THIS DIRECTION will come into force on the 9th March 2019

FIRST SCHEDULE

In respect of land described in the second Schedule

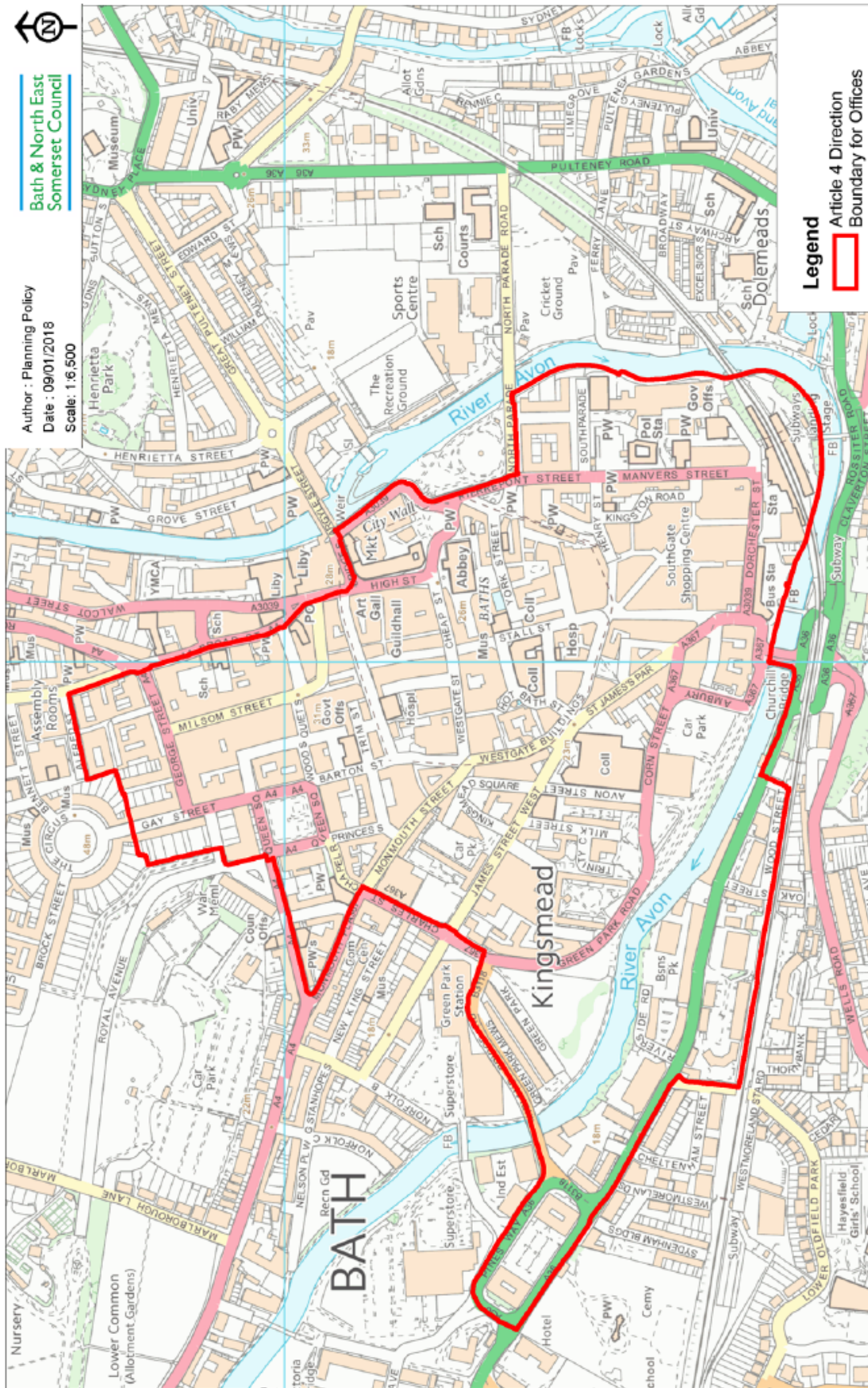
The development referred to in Class O, Part 3 of Schedule 2 to the said Order not being development comprised within any other class that is to say:-

“Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1 (a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwelling houses) of that Schedule”

SECOND SCHEDULE

This Direction shall apply to those parts of the City of Bath as contained within the defined boundary of the City of Bath and within Widcombe, Abbey and Kingsmead wards and shown edged in red on the attached Plan (“the Bath Central Area”).

Plan showing the boundaries of the Bath Central Article 4 Direction



MADE under the COMMON SEAL of the
Bath and North East Somerset Council
this 28th day of February 2018.

The COMMON SEAL of the Council was
affixed to this Direction in the presence of

.....
Authorised Signatory

Confirmed under the COMMON SEAL of
the Bath and North East Somerset
Council this day of 2019

The COMMON SEAL of the Council was
affixed to this Direction in the presence of

.....
Authorised Signatory

APPENDIX 2 – CONSULTATION COMMENTS AND COUNCIL RESPONSES

Responses: Borough-wide Non-immediate Article 4 Direction – Basement Development, Consultation 24 April 2015 to 8 June 2015 Question:
1. Do you have any comments on the Article 4 Direction?

Respondent Name	Response to consultation	Council Response
Bath Property Agents' Forum	The forum welcomed the proposals. It was considered that some of the main sites at risk to loss of office space had already been lost, and perhaps the Direction is too late. However, it is supported and better late than not at all.	Noted.
Callidus Transport & Engineering Ltd - Robert Spriggs	As a business tenant at 3 Chapel Row, we support the Council's Article 4 Direction for this building and the surrounding business district.	Noted.
Richard Colston	I am very happy to see our Council taking the future of Bath into the hands of the people who live in Bath through their elected representatives. This action will boost the application of 'local solutions to local problems'. It also offers opportunities to balance the social vs economic pressures/opportunities through decisions taken by people who work on the ground and care for Bath.	Support Noted.
Richard Colston	As far as I am concerned this Direction should be general for the whole of BATHNES, no exceptions. Local government as an elected body responds to the needs of local interests (of all persuasions) and benefits or loses through the ballot box. Central government cares little for us, they care more for their property developer friends (read exploiters/speculators/rentiers).	Noted. The evidence compiled suggests that the focus should be BCAP, which represents a significant amount of office stock in B&NES. Experience elsewhere suggests that blanket removal of PDRs are difficult to justify.
Health and Beauty Centre	Thank you for the opportunity to express our opinion on the matter of Central Government's imposition of relaxation of planning laws regarding the conversion of places of work to residential.	Noted.

	<p>Established in 1993, we are a small business providing health and beauty services to the local and visiting population of Bath. We currently trade from, on a leased basis, a small town house just off Queen Square of approximately 1 000 square feet, and provide employment for 9 people (who, by and large, either walk to work or use the park and ride).</p> <p>In 2016, our landlord applied for permission to change our premises to residential use. We urged clients and people we know to object to the application, but to no avail, permission was granted. The permission has not been implemented since our lease runs until November 2019.</p> <p>We have been searching for new premises for a year now, and the only suitable alternatives (both in Princes Street off the bottom of Queen Square) have both been blighted by the same policy i.e. changing to residential.</p> <p>Whilst we recognise and accept that we must all move with the demands of ever changing times, we would welcome any serious initiatives taken by B&NES that seeks to protect and enhance the vital thriving small business community in and around Bath.</p>	
<p>Handsome I.P. Ltd - Lewis Hands</p>	<p>I am writing in response to your letter concerning this matter. As a small business owner I am acutely aware of the lack of office space in Bath city centre and the constant applications for conversion of office space into residential space. We were in serviced offices for 6 years but then wanted to get our own lease. We had trouble finding anything suitable and often places which might have been suitable were being converted into residential.</p> <p>I would welcome the ability for the Council to be able to apply some form of control over these applications with a view to reducing the loss of office space in the city centre.</p> <p>However, I would prefer if it was not used to prevent the conversion of empty floors above shops in the city centre from being converted as</p>	<p>Support noted.</p>

	otherwise these are a wasted resource.	
TBT - Paul Targett	<p>Dear Sirs, I received today your letter about the change in planning to allow office to residential conversion under permitted use. I object to this change on the following grounds:</p> <ol style="list-style-type: none"> 1. Bath has poor quality, limited commercial office space and it's hard to find good office property currently. This change in planning would remove office space in an area where affordable, good quality offices are hard to come by. This would further reduce the non-retail businesses in Bath and move them out of area. 2. Our office is built on the end of a residential block. The builder had to provide some commercial use under planning. This change would allow the now landlord to convert the block into all residential. 3. On James Street West we have in the last few years lost office space to student accommodation. Further loss of office space in the street would restrict businesses able to offer employment in the area. <p>Bath has a growing problem of becoming over dependent on students and retail businesses. It's hard to get good offices within walking distance of the train station. Many thanks, Paul Targett. Director. TBT - intelligent information for better lives.</p>	It appears that the objector has misunderstood the consultation. This objection is therefore supportive of the approach set out in the 'made' Article 4 Direction.

APPENDIX 3 – NATIONAL POLICY ON ARTICLE 4 DIRECTION:

NPPF para 53

The use of Article 4 directions to remove national permitted development rights should be limited to situations where this 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 the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

NPPG

What is an article 4 direction?

An article 4 direction is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area.

Paragraph: 036 Reference ID: 13-036-20140306

Revision date: 06 03 2014

What can an article 4 direction do?

Provided that there is justification for both its purpose and extent, an article 4 direction can:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

Paragraph: 037 Reference ID: 13-037-20140306

Revision date: 06 03 2014

When is it appropriate to use article 4 directions?

The use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- a wide area (eg those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty
- cases where prior approval powers are available to control permitted development
- leisure plots and uses
- the installation of microgeneration equipment

Paragraph: 038 Reference ID: 13-038-20140306

Revision date: 06 03 2014

Can all permitted development rights be withdrawn by an article 4 direction?

Some permitted development rights cannot be removed via article 4 directions. These are set out in article 4(1) to (3) of the General Permitted Development Order. These exemptions are to ensure permitted development rights related to national concerns, safety, or maintenance work for existing facilities cannot be withdrawn.

Paragraph: 039 Reference ID: 13-039-20140306

Revision date: 06 03 2014

Does an article 4 direction mean that development is not allowed?

An article 4 direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail.

Paragraph: 040 Reference ID: 13-040-20140306

Revision date: 06 03 2014

Is a planning application fee payable where development that would otherwise have been permitted development requires a planning application?

Yes, a planning application fee may be payable. Details of planning fees are set out in the [2012 Fees Regulations](#), as amended.

Paragraph: 041 Reference ID: 13-041-20180222

Revision date: 22 02 2018 See [previous version](#)

Is compensation payable where permitted development rights have been withdrawn?

If a local planning authority makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- refuses planning permission for development which would otherwise have been permitted development; or
- grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

Paragraph: 042 Reference ID: 13-042-20140306

Revision date: 06 03 2014

Where is there more information on compensation?

Compensation provisions are set out in [sections 107 and 108 of the Town and Country Planning Act 1990](#) and the [Town and Country Planning \(Compensation\) \(England\) Regulations 2015](#) set out when time limits apply.

Paragraph: 043 Reference ID: 13-043-20140306

Revision date: 06 03 2014

Can an article 4 direction provide immediate protection?

Yes. There are 2 types of directions under the General Permitted Development Order: non-immediate directions and directions with immediate effect. An immediate direction can withdraw permitted development rights straight away; however they must be confirmed by the local planning authority within 6 months of coming into effect to remain in force. Confirmation occurs after the local planning authority has carried out a local consultation.

Paragraph: 044 Reference ID: 13-044-20140306

Revision date: 06 03 2014

When can an immediate direction be used?

The circumstances in which an immediate direction can restrict development are limited. Immediate directions can be made in relation to development permitted by [Parts 1 to 4 and 11 of Schedule 2 to the General Permitted Development Order](#), where the development presents an immediate threat to local amenity or prejudices the proper planning of an area. Immediate directions can also be made in relation to certain types of development in conservation areas. In all cases the local planning authorities must have already begun the consultation processes towards the making a non-immediate article 4 direction.

Paragraph: 045 Reference ID: 13-045-20140306

Revision date: 06 03 2014

Can development continue if an article 4 direction is made where work has already started?

Article 4 directions cannot prevent development which has been commenced, or which has already been carried out.

Paragraph: 046 Reference ID: 13-046-20140306

Revision date: 06 03 2014

What are the procedures for making an article 4 direction?

The procedures for making an article 4 direction are set out in [schedule 3 of the General Permitted Development Order](#).

Paragraph: 047 Reference ID: 13-047-20140306

Revision date: 06 03 2014

Can an article 4 direction be modified or cancelled?

A local planning authority can cancel an article 4 direction by making a subsequent direction. A direction can be modified by cancelling the existing direction and replacing it with a new one. In both cases the normal procedures for making an article 4 direction apply.

Paragraph: 048 Reference ID: 13-048-20140306

Revision date: 06 03 2014

Can an article 4 direction remain in place permanently once it has been confirmed?

An article 4 direction can remain in place permanently once it has been confirmed. However, local planning authorities should regularly monitor any article 4 directions to make certain that the original reasons the direction was made remain valid. Where an article 4 direction is no longer necessary it should be cancelled.

Paragraph: 049 Reference ID: 13-049-20140306

Revision date: 06 03 2014

Does an article 4 direction have to be submitted to the Secretary of State?

A local planning authority must, as soon as practicable after confirming an article 4 direction, inform the Secretary of State via the [Planning Casework Unit](#). The Secretary of State does not have to approve article 4 directions, and will only intervene when there are clear reasons for doing so.

Paragraph: 050 Reference ID: 13-050-20140306

Revision date: 06 03 2014

What powers does the Secretary of State have?

The Secretary of State has the power to modify or cancel article 4 directions at any time before or after they are made, with the following exceptions:

- directions with immediate effect removing permitted development rights under [Parts 1, 2, 3, 4 and 11 of Schedule 2 to the General Permitted Development Order](#) may not be modified;
- directions relating to listed buildings may not be modified;
- directions relating to buildings notified as of architectural or historic interest may not be modified; and
- directions relating to certain development in conservation areas may not be cancelled or modified

The Secretary of State will not use their powers unless there are clear reasons why intervention at this level is necessary.

Paragraph: 051 Reference ID: 13-051-20140306

Revision date: 06 03 2014

Can an article 4 direction be used to withdraw permitted development rights for statutory undertakers?

In exceptional circumstances when an authority considers that normal planning controls should apply, article 4 directions can be used to withdraw permitted development rights for statutory undertakers, except if it is development which falls into article 4(2) or 4(3) of the General Permitted Development Order.

Paragraph: 052 Reference ID: 13-052-20140306

Revision date: 06 03 2014

Can an article 4 direction be used to withdraw permitted development rights for Crown development?

In exceptional circumstances when an authority considers that normal planning controls should apply, article 4 directions can be used to withdraw permitted development rights for Crown development, with the [exception of the Crown development specified in article 4\(2\) of the General Permitted Development Order](#).

Paragraph: 053 Reference ID: 13-053-20140306

Revision date: 06 03 2014

Appendix 4 - Equality Impact Assessment / Equality Analysis

Title of service or policy	Confirmation of the Article 4 Direction over proposed change of use from office to residential uses
Name of service area	Development and Public Protection
Name and role of officers completing the EIA	Simon de Beer (Head of Planning)
Date of assessment	20 th February 2019

Equality Impact Assessment (or ‘Equality Analysis’) is a process of systematically analysing a new or existing policy or service to identify what impact or likely impact it will have on different groups within the community. The primary concern is to identify any discriminatory or negative consequences for a particular group or sector of the community. Equality impact Assessments (EIAs) can be carried out in relation to service delivery as well as employment policies and strategies.

This toolkit has been developed to use as a framework when carrying out an Equality Impact Assessment (EIA) or Equality Analysis on a policy, service or function. It is intended that this is used as a working document throughout the process, with a final version including the action plan section being published on the Council’s and NHS Bath and North East Somerset’s websites.

1. Identify the aims of the policy or service and how it is implemented.		
	Key questions	Answers / Notes
1.1	Briefly describe purpose of the service/policy including <ul style="list-style-type: none"> ● How the service/policy is delivered and by whom ● If responsibility for its implementation is shared with other departments or organisations ● Intended outcomes 	<p>How delivered</p> <p>Through the DM/Appeal process</p> <p>responsibility for its implementation.</p> <p>DM service with advice from Planning Policy & Economic Development</p> <p>The intended outcomes include:</p> <p>Better management of the supply of office stock in Bath in accordance with Council strategy</p>
1.2	Provide brief details of the scope of the policy or service being reviewed, for example: <ul style="list-style-type: none"> ● Is it a new service/policy or review of an existing one? ● Is it a national requirement?. ● How much room for review is 	<p>This entails a new control over permitted development rights.</p> <p>It has to be justified locally as being expedient</p> <p>It is introduced at the council’s discretion but must be used sparingly to meet national policy requirements</p>

	there?	
1.3	Do the aims of this policy link to or conflict with any other policies of the Council?	<ul style="list-style-type: none"> The A4D is needed to realise Council policy which is being undermined by the unintended consequences of national policy
2. Consideration of available data, research and information		
<p>Monitoring data and other information should be used to help you analyse whether you are delivering a fair and equal service. Please consider the availability of the following as potential sources:</p> <ul style="list-style-type: none"> Demographic data and other statistics, including census findings Recent research findings (local and national) Results from consultation or engagement you have undertaken Service user monitoring data (including ethnicity, gender, disability, religion/belief, sexual orientation and age) Information from relevant groups or agencies, for example trade unions and voluntary/community organisations Analysis of records of enquiries about your service, or complaints or compliments about them Recommendations of external inspections or audit reports 		
	Key questions	Data, research and information that you can refer to
2.1	What is the equalities profile of the team delivering the service/policy?	Team is mixed in gender & ethnicity
2.2	What equalities training have staff received?	Team has received corporate equalities training and EQIA training. A number of the service deliverers within the Council will have received corporate equalities training.
2.3	What is the equalities profile of service users?	Little is known, mainly businesses owning properties and business tenants. It is hard to gather data and some of this would be contrary to Data protection legislation

2.4	What other data do you have in terms of service users or staff? (e.g results of customer satisfaction surveys, consultation findings). Are there any gaps?	none	
2.5	What engagement or consultation has been undertaken as part of this EIA and with whom? What were the results?	There is a statutory requirement to consult on the introduction of A4Ds. This must be undertaken once after the A4D is made. However the outcome being sought is contained in a statutory plan which was subject to extensive public consultation and public examination	
2.6	If you are planning to undertake any consultation in the future regarding this service or policy, how will you include equalities considerations within this?	See above. The conformation of the A4D will entail publicity	
3. Assessment of impact: 'Equality analysis'			
<p>Based upon any data you have considered, or the results of consultation or research, use the spaces below to demonstrate you have analysed how the service or policy:</p> <ul style="list-style-type: none"> ● Meets any particular needs of equalities groups or helps promote equality in some way. ● Could have a negative or adverse impact for any of the equalities groups 			
		Examples of what the service has done to promote equality	Examples of actual or potential negative or adverse impact and what steps have been or could be taken to address this
3.1	Gender – identify the impact/potential impact of the policy on women and men. (Are there any issues regarding pregnancy and maternity?) No	Na	na

3.2	Transgender – – identify the impact/potential impact of the policy on transgender people	The proposals are very unlikely to create an impact on individuals because of their sexual orientation. However, should someone consider that this is in fact the case we will consider the points made.	
3.3	Disability - identify the impact/potential impact of the policy on disabled people (ensure consideration of a range of impairments including both physical and mental impairments)	As in 3.1 above; and	
3.4	Age – identify the impact/potential impact of the policy on different age groups	As in 3.1 above and na	na
3.5	Race – identify the impact/potential impact on different black and minority ethnic groups	As in 3.1 above	na
3.6	Sexual orientation - identify the impact/potential impact of the policy on lesbians, gay, bisexual & heterosexual people	na	
3.7	Religion/belief – identify the impact/potential impact of the policy on people of different religious/faith groups and also upon those with no religion.	na	None identified

3.8	Socio-economically disadvantaged – identify the impact on people who are disadvantaged due to factors like family background, educational attainment, neighbourhood, employment status can influence life chances	na	na.
3.9	Rural communities – identify the impact / potential impact on people living in rural communities	Na	na

4. Bath and North East Somerset Council & NHS B&NES Equality Impact Assessment Improvement Plan

Please list actions that you plan to take as a result of this assessment. These actions should be based upon the analysis of data and engagement, any gaps in the data you have identified, and any steps you will be taking to address any negative impacts or remove barriers. The actions need to be built into your service planning framework. Actions/targets should be measurable, achievable, realistic and time framed.

Issues identified	Actions required	Progress milestones	Officer responsible	By when
NA for this decision	na o	Preparation of appropriate guidance in time for the consultation.	Planning Policy Team	In time for consultation

5. Sign off and publishing

Once you have completed this form, it needs to be 'approved' by your Divisional Director or their nominated officer. Following this sign off, send a copy to the Equalities Team (equality@bathnes.gov.uk), who will publish it on the Council's and/or NHS B&NES' website. Keep a copy for your own records.

Signed off by: Lisa Bartlett (Director or :Development and Public Protection)
Date: 20th February 2019