**Delegated Powers Report**

**Subject:** Confirmation of Article 4 Direction

**Date:** 18th March 2019

**Introduction**

In the United Kingdom, planning permission is required for development, including building and engineering operations or changes of use. However, certain categories of development are allowed by statute without planning permission, described as “permitted development”.

Councils can use Article 4 Directions to remove permitted development rights where they are satisfied that it is expedient that such development should not be carried out unless permission is granted for it on an application.

On 18th April 2018 Manchester City Council made eight Article 4 Directions. Four of these will remove permitted development rights for change of use from office use (use class B1(a)) to residential use and four will remove permitted development rights for change of use from light industrial use (use class B1(c)) to residential use, in various parts of the city. The Council consulted on the Directions from 26th April – 7th June 2018.

This report sets out the steps taken to comply with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), considers the representations made during the consultation period on the Directions and the Council’s response to these, and recommends that the Head of Planning, Licensing and Building Control confirms the Directions. If confirmed, the Directions would come into force on 1st May 2019. This is over a year after notice of the Directions was first given which means that the Council will not be liable for compensation claims in respect of the loss of permitted development rights.

**Background**

The [delegated powers report](https://www.manchester.gov.uk/downloads/download/6884/article_4_directions_offices) dated 22nd March 2018 provided the policy context for making the Directions, summarised the case for making the Directions in Manchester and approved the making of the Directions. The full evidence base justifying the Directions is set out in an annex to the delegated powers report, March 2018.

In February 2019 the government issued a new National Planning Policy Framework (NPPF) which replaced the 2012 and 2018 versions. The paragraph in the new NPPF that relates to the use of Article 4 Directions to remove national permitted development rights is paragraph 53 rather than paragraph 200 in the 2012 version but the text remains the same. The Planning Practice Guidance referred to in that March 2018 report is unchanged.

The Article 4 Directions which would remove permitted development rights for change of use from offices to residential from 1st May 2019 cover the following areas:

* Manchester City Centre and Strangeways.
* Parts of North Manchester: Cheetham Hill District Centre, Central Park North and Hexagon Tower in Crumpsall.
* Parts of South Manchester: Parkway, Whalley Range; Chorlton District Centre; Mauldeth House and 550 Mauldeth Road West, Chorlton Park; Towers Business Park, Didsbury East; Christie Fields and Siemens, Chorlton Park (following ward boundary changes in May 2018 Siemens is now in Didsbury West ward); Jobcentre Plus, Palatine Rd, Didsbury West.
* Parts of Wythenshawe: Roundthorn and Oaks Business Parks; Sharston Industrial Estate; Wythenshawe Town Centre; Airport City North; Atlas and Concorde Business Parks and Styal Road commercial area.

The directions which would remove permitted development rights for change of use from light industry to residential from 1st May 2019 cover the following areas:

* North East City Centre and Strangeways.
* Parts of North Manchester: Hendham Vale Industrial Park; Central Park (North and South); Tulketh Street Industrial Estate, Harpurhey (following ward boundary changes in May 2018 this is now in Moston ward); Ardwick, Bradford and Gorton North Industrial Areas.
* Siemens, Chorlton Park (now in Didsbury West ward).
* Parts of Wythenshawe: Roundthorn and Oaks Business Parks; Sharston Industrial Estate.

**Consultation**

The Council consulted on the Article 4 Directions from 26th April – 7th June 2018. The consultation procedure and the publicity in relation to this was carried out in line with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended): documentation was published on the Council’s website and made available for inspection in Central Library, site notices were displayed in all of the areas covered by the Directions for a minimum of 6 weeks and a notice was published in the Manchester Evening News on Monday 23rd April. The Council served notice on owners and occupiers of buildings within the areas covered by the Directions, with the exception of the city centre. The city centre’s exclusion is permitted, due to the number of owners and occupiers within the area making direct notification impracticable, by paragraph 1(2)(b) of Schedule 3 of the above Order. In addition the Council notified the Secretary of State, and consultees on its planning policy database.

During this time representations were received from five organisations/individuals, three of the organisations/individuals were supportive and two raised objections. In addition a further three organisations stated that they had no comment to make. The Secretary of State did not suggest any modifications to any of the Directions.

A schedule of the representations received and the Council’s responses is included in Appendix A to this report. In summary the main points raised were:

* The Directions would give protection to employment premises.
* The process for obtaining full planning permission allows consideration of additional factors beyond those that the prior approval process can consider.
* The prior approval process provides developers with greater flexibility.
* Manchester has a high housing requirement and maintaining the existing permitted development rights would assist in the delivery of the new housing needed to meet this requirement.
* The Council’s concerns regarding the potential design and amenity of residential conversions arising through permitted development has not been an issue highlighted as a concern by the government when it produced its original impact assessment of the permitted development rights; and in any case there is little incentive for developers to implement changes of use which would result in poor quality accommodation.
* It was stated that a number of specific areas should be excluded from the Article 4 Directions for various reasons.

The council has considered all of the representations received and responded to the issues raised - see Appendix A.

**Equality and Human Rights**

The Council carried out an Equality Impact Assessment relevance assessment of the proposal to introduce the Article 4 Directions and this found that the Directions would not impact disproportionately on any of the characteristics protected by the Equality Act 2010 therefore a full Equality Impact Assessment is not required.

The decision whether or not to confirm the Article 4 Directions also needs to be considered in the context of section 6 of the Human Rights Act 1998, which prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Confirmation of these Article 4 Directions may engage a number of convention rights, including those under Article 1 of the First Protocol – Protection of property; and Article 8 – Respect for a private and family life. The European Court has recognised that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”. Both public and private interests are to be taken into account in the exercise of the Council’s powers and duties as a local planning authority. Any interference with a convention right must be necessary and proportionate.

Having considered the balance to be struck between individual rights and the wider public interest, it has been determined that to confirm the Article 4 Directions would not be incompatible with the ECHR.

**Next Steps**

If the recommendation of this report is approved and the Article 4 Directions are confirmed, the Council will give notification in the same way that it did when the Directions were made and as described under ‘Consultation’ above. The Directions will then come into force on 1st May 2019 from which date full planning permission will be needed for change of use from light industrial or office use to residential use from this date in the areas covered by the Directions. Existing prior approval obtained for this type of development before 1st May will still be able to go ahead, but if the prior approval expires before the development has begun then full planning permission would be needed to replace it for the development to go ahead. It should be noted that the Secretary of State has the power to modify or amend an Article 4 Direction both before and after confirmation.

**Conclusion**

The evidence set out in the delegated powers report dated 22nd March 2018 justifies the introduction of the Article 4 Directions. The Council has considered the representations received and does not believe that the objections raised suggest that any of the Article 4 Directions should not be confirmed. It is therefore recommended that all eight Directions are confirmed.

**Recommendation**

It is recommended that the Head of Planning, Licensing and Building Control approves the confirmation of all of the Article 4 Directions and authorises the publication of the requisite notifications.

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I, Julie Roscoe, the Head of Planning, Licensing and Building Control, hereby approve the confirmation of eight Article 4 Directions attached and authorise the publication of the requisite notifications.

Signed - - - - - - - - - -  - - - - - - - - - - - Date - - - - - -  18th March 2019 - - - - - - - -

**Appendix A**

**Schedule of issues raised in representations and Manchester City Council’s responses to them**

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| **Summary of issues raised** | **MCC response** |
| Supports all eight directions | Support welcomed |
| Supports all eight directions due to concerns about the potentially negative impact that this form of permitted development may have on theatres / cultural venues during performance times whilst the conversion works are taking place and also in terms of noise from the new residents once occupied. | Support welcomed |
| Supports the four Directions relating to change of use from light industrial to residential because having a supply of industrial floorspace helps support the arts and creative industries. | Support welcomed |
| Supports all eight directions as the existing prior approval process only considers highway impacts relating to the net trip generation and highway safety issues relating to the individual proposal, whereas use of Article 4 Directions will allow a policy approach which allows strategic consideration of the accumulative and wider transport impacts of a development, such as changes to trip patterns, distribution of trips and peak time flows as well as net changes to demand for parking and servicing requirements. | Support welcomed |
| The City Centre office to residential direction is supported as protecting employment premises in the city centre is important for the success of both the Manchester and GM economy. Employment opportunities in the city centre allow many residents to access employment by walking or cycling and this location enables further employment growth without associated congestion. The city centre Article 4 Direction would allow applications to be considered on a case by case basis to allow for both residential and employment growth objectives to be balanced and accommodated together. | Support welcomed |
| The out of centre Article 4 Directions are supported as protecting employment in these locations will ensure that residents can continue to access jobs locally, in locations accessible by sustainable travel options. In many cases public investment has been directed towards making these locations more accessible by sustainable travel options. Planning the future scale and distribution of public infrastructure investment in transport systems requires a level of assurance that can only be delivered by a planning policy approach that maintains control over development. | Support welcomed |
| Objects to the Directions as the Prior Approval process provides developers with flexibility using a positive and proactive decision-making process. Prior approval allows developers and landlords to adapt to changing market conditions and has positively assisted in the government’s objective to boost housing supply. | Proposals for change of use from offices / light industrial use to residential under permitted development rights do not contribute significantly to the housing supply in Manchester. There were 18,843 units in the planning pipeline on 31st March 2017, only 788 of these were for units which had received permission through the Prior Approval process. This represents just 4% of the planning pipeline, therefore the potential contribution of this type of development to the housing supply is very limited. It is also evidence of the effectiveness of the conventional planning process in Manchester as a means of bringing forward development consent. This route also is able to effectively manage potential negative outcomes from development. Providing development proposals constitute sustainable development, there is no reason to assume the conventional planning application process would not have incorporated the consents secured through the prior approval process. |
| The prior approval procedure is thorough and detailed, no parties are prejudiced and the Council has the authority to refuse a prior approval application or request that prior approval is sought and that a full planning application is required, thus there is no justification why the proposed and extended Direction should be implemented in Manchester. | The Council does not have the power to request applicants to apply for full planning permission rather than for prior approval. When determining a Prior Approval application the local planning authority does not have the option to have regard to all planning policies and therefore economic considerations, for example, cannot be considered, whereas these issues can be considered as part of a full planning application.  The Council does not have any existing Article 4 Directions relating to change of use from offices or light industrial use to residential. Parts of the city centre are exempt from the permitted development rights for change of use from offices to residential, but this exemption is due to end on 31st May 2019, therefore the Article 4 Direction in the city centre is required to continue to allow control over changes of use in this area, and to allow control over a wider area, as justified in the evidence report. |
| Manchester’s Core Strategy and the draft GMSF set extremely high housing requirements for the City and the Prior Approval process would assist the Council to deliver these and maintain its five-year housing land supply. | As set out earlier, the contribution of residential development approved through prior approvals to the total supply is limited. In terms of the five year housing supply the contribution is even smaller – just 3% of the five year housing supply from 1st April 2017 is units in schemes which received permission through the prior approval process. If these schemes were excluded from the supply, the Council would still be able to demonstrate a five year housing supply far greater than the requirement (using the government’s current methodology for calculating housing need). |
| The inclusion of King Street and St Ann Street in a vast city centre direction is too extensive and disproportionate and would limit opportunities for housing to be delivered in the city centre. The area covered should be reduced and should focus around strategic employment locations rather than a blanket restriction for the whole of the city centre. | The importance of the city centre for a range of uses is recognised in the Core Strategy, both as a strategic economic location with B1a office development a particular focus for growth, as well as an area which will see the most intensive residential development in Manchester. Planning controls such as the introduction of the Article 4 Direction in this location will enable the right mix of development to come forward, and the Direction will not prevent schemes for the change of use from office to residential acquiring planning consent, in the same way that applications for change of use from offices to residential within the permitted development exemption area (which covers a smaller area than the city centre article 4) have come forward and been approved recently. Examples include the Manhattan development on George Street (42 units) and Waldorf House (14 units), both approved in 2017. There is no evidence that the Article 4 Direction would limit opportunities for the delivery of housing in the city centre: of a pipeline of 10,691 units in the City Centre on 31st March 2017 just 605 of these units had been approved through the prior approval process (6%). |
| Conversion of the representor’s office buildings in the areas covered by Article 4 Directions at Whalley Range (Parkway), Sharston and Airport City North would represent sustainable development and there is insufficient evidence to justify the Article 4 Directions in these areas. | Introduction of Article 4 Directions covering these areas does not mean that the Council would not permit change of use from office to residential in these areas. However, Sharston has been identified for employment in a saved Unitary Development Plan policy. Airport City North is identified as an employment location in the Core Strategy and the draft GMSF and has an Enterprise Zone designation. The Article 4 Direction covering these areas will ensure that changes of use from office to residential can take place in a planned manner which allows for the employment focus of these areas to be retained. |
| The Council’s case for the office to residential Article 4 Direction covering Wythenshawe Town Centre does not demonstrate “the loss of a nationally significant area of economic activity or substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring” which was one of the tests for exempting areas from the permitted development rights when these were brought in. The direction does not comply with advice in paragraph 200 of the NPPF. Restricting permitted development rights for change of use from offices to residential in employment allocations (business parks) is more necessary than restricting them for Wythenshawe town centre. Application of the Article 4 Direction would run contrary to national policy to boost housing supply and local planning policy for the development and ongoing regeneration of Wythenshawe town centre which is as much a centre for living, as a centre for business and commerce, and is not an exclusive area for offices. | The requirement for making an exemption is not applied to the making an Article 4 Direction. The NPPF guidance on the use of Article 4 Directions for removing national permitted development rights is now in paragraph 53 of the 2019 NPPF, but remains the same as in the 2012 NPPF. The NPPF allows Directions to be brought in to remove national permitted development rights when they are needed in order to protect local amenity or the well-being of the area. The regeneration of Wythenshawe town centre will enable a mix of uses in the centre, and the Article 4 Direction does not mean that the centre will only be used for office development, nor that that change of use from office to residential would no longer be permitted in this location. Instead, having these controls in place will enable to the Council to make sure that the right balance of uses is maintained, which is in line with the NPPF’s requirements. |
| Attracting more residents into Wythenshawe town centre by converting vacant offices to apartments will increase footfall and economic activity in the town centre which is an extremely sustainable location for residential use, including affordable housing. A number of services are available locally and there has been significant transport investment. There are a number of employment opportunities there which are not B1 offices. | Please see response to previous comment. The Article 4 Direction will allow for Wythenshawe town centre to develop as an area which is attractive to residents but at the same time bolstering its commercial role. |
| The requirement for retention of existing office floorspace in the Town Centre is not assessed in the report. It does not balance the potential impacts of losing office to residential against the potential positive benefits of the permitted development and there is no justification for why office accommodation in Wythenshawe town centre needs to be safeguarded as strategically important for employment use. | Wythenshawe district centre is already recognised as a focus for employment provision in Manchester’s Core Strategy (Policy EC10), and also by its designation as an Enterprise Zone. The district centre’s fit with policy priorities is set out in the Article 4 Direction Evidence Report. In addition the strategic role of Wythenshawe town centre is referenced in the draft Greater Manchester Spatial Framework (policy SL4). |
| The report mentions concerns regarding the potential design and amenity of the character of residential accommodation which may arise through the permitted development. This issue is not unique to Manchester or Wythenshawe and is not a matter which was highlighted as a concern when the government produced its original impact assessment of the new permitted development rights in 2013. Notwithstanding this matter, there is little incentive for developers to implement changes of use which result in poor quality accommodation which would fail to meet occupiers’ requirements. The council has not provided any evidence that this issue has occurred in Wythenshawe since the permitted development rights were brought in in 2013 | To date there have been no office to residential schemes completed in Wythenshawe town centre since this type of development was made permitted development in 2013. However there are examples of previously vacant office blocks in the city centre, which have been converted to residential use under the permitted development rights, where space and design standards have been compromised. This evidence suggests that the Prior Approval route provides a means for some developers to circumnavigate Manchester’s Residential Quality Guidance, with certain schemes in the City Centre providing units up to 50% smaller than the required size as set out in the guidance. By removing the permitted development rights in the areas identified, the Council will be able to ensure that new development in the city achieves its ambitions for high quality design, also reflecting a priority in the National Planning Policy Framework. |
| Wythenshawe town centre should be removed from the Article 4 Direction before the direction is confirmed with the Secretary of State, as its inclusion compromises future development opportunities by affecting viability and flexibility for converting vacant offices to apartments. | As set out in the responses to previous comments, the introduction of the Article 4 Directions will not mean that there will be a moratorium on change of use from office to residential development. Instead, the Directions will allow for greater control over the design and quality of the schemes that do come forward, as well as ensuring that the right mix of uses is maintained in areas such as Wythenshawe town centre. |