



**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**REPORT COVER SHEET**

<b>Title of Report:</b>	<b>Merits of an Article 4 (Retail/Residential) in the town centre</b>	To be marked with an 'X' by Democratic Services after report has been presented
<b>Meeting of:</b>	Corporate Management Team 22 <sup>nd</sup> June 2022	
	Leader and Deputy Leaders 27 <sup>th</sup> June 2022	
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group	
	Cabinet 19 <sup>th</sup> July	
	Audit Committee [DATE] / Scrutiny Community Regeneration Committee [DATE] / Scrutiny Environment and Health and Well Being Committee [DATE] / Scrutiny Value for Money Council Services Committee [DATE]	



<b>Is this an Executive Decision:</b>	YES	<b>Is this a Key Decision:</b>	NO
<b>Is this in the Forward Plan:</b>	YES	<b>Is the Report Confidential:</b>  <b>If so, please state relevant paragraph from Schedule 12A LGA 1972:</b>	NO

**Essential Signatories:**

**ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE**

Monitoring Officer: **John Teasdale**

Date ..... Signature .....

Chief Finance Officer: **Sal Khan**

Date ..... Signature .....

**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**Report to CMT**

**Date: 22<sup>nd</sup> June 2022**

<b>REPORT TITLE:</b>	<b>Merits of an Article 4 (Retail/Residential) in the town centre</b>
<b>PORTFOLIO:</b>	<b>Planning</b>
<b>HEAD OF SERVICE:</b>	<b>Sal Khan</b>
<b>CONTACT OFFICER:</b>	<b>Naomi Perry Ext. No. x1611</b>
<b>WARD(S) AFFECTED:</b>	<b>Burton</b>

**1. Purpose of the Report**

1.1. The purpose of this report is to set out the merits of introducing an Article 4 in town centres to remove permitted development rights and recommend whether such an introduction should be considered. Since 30 May 2013, new government planning rules has meant that the conversion of offices to houses or flats does not require planning permission. This rule has recently been expanded to include other uses typically found in town centres.

**2. Background**

2.1. The Government's recent changes to the Use Classes system and the introduction of additional Permitted Development (PD) rights are a continuation of the policy of successive governments since 2013 of using PD rights to speed up housing delivery. Whilst the intention behind residential PD rights is to increase housing delivery, the recent extensions to PD rights appear to contradict the focus on plan-led development and local democratic involvement, limiting the role of local authorities in place-making.

2.2. Since the introduction of Use 'Class E' it is possible to change the use of town centre uses without obtaining usual planning permission. Concern has been raised by local businesses and residents that this has the potential to erode the role of town centres and there have been requests to consider the

introduction of an Article 4 direction which would remove certain permitted development rights.

- 2.3. New Article 4 directions are subject to approval by the Secretary of State and the Government has recently amended the NPPF to make it more difficult for LPAs to introduce Article 4 directions, by ensuring they are justified by evidence and apply to as small an area as possible.

### **3. Contribution to Corporate Priorities**

- 3.1.1. Corporate Plan Target EHW42 requires a report considering the merits of an ARTICLE 4 (Retail/Residential) in the town centre.

### **4. Main Body of Report**

- 4.1. In September 2020, the Government amended the Use Classes Order with the aim of providing greater flexibility for the diversification of high streets and town centres. This introduced a new Class E (commercial, business and service uses) which captured a number of uses previously considered separately<sup>1</sup>.
- 4.2. Uses within the new Class E are interchangeable without the need for planning permission as the change no longer constitutes 'development' because they fall within the same use class. This means for example a shop could be turned into a gym without the need for planning permission.
- 4.3. The Government introduced legislation in August 2021 bringing a new Permitted Development Right ('PDR'). The new PDR applies to premises in Use Class E.
- 4.4. The new PDR allows the change of use of Class E premises, or parts, to residential use, subject to prior approval in relation to a small number of specific considerations. Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), some changes of use between different use classes are deemed permitted development. This means that planning permission is not normally required, and the change of use can occur if relevant 'prior approval' criteria are met.

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<sup>1</sup> E(a) Display or retail sale of goods, other than hot food  
E(b) Sale of food and drink for consumption (mostly) on the premises  
E(c) Provision of:  
E(c)(i) Financial services,  
E(c)(ii) Professional services (other than health or medical services), or  
E(c)(iii) Other appropriate services in a commercial, business or service locality  
E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)  
E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)  
E(f) Creche, day nursery or day centre (not including a residential use)  
E(g) Uses which can be carried out in a residential area without detriment to its amenity:  
E(g)(i) Offices to carry out any operational or administrative functions,  
E(g)(ii) Research and development of products or processes  
E(g)(iii) Industrial processes

- 4.5. The operation of the new PDR, known as “Class MA” is similar to the previous PDR first introduced for office use only to residential change of use in 2013 (“Class O”).
- 4.6. In relation to the new Class “MA” PDR, prior approval will be required in relation to flooding; the impact of noise from commercial premises and the provision of adequate natural light to habitable rooms
- 4.7. In Conservation Areas, the impact of the loss of ground floor Class E use on the character and sustainability of the Conservation Area and the impact of the loss of health centres and registered nurseries on the provision of such local services can be additionally considered. It should be noted that not all of Burton Town Centre is covered by a Conservation Area. The majority of Uttoxeter Town Centre is covered by a Conservation Area.
- 4.8. During the Governments consultation on the proposed changes significant objections were made from a range of built environment organisations and as a result the government set out certain restrictions which must be observed with such rights. These are:
- a. A maximum size limit of 1,500 sq m (a significant change from Class O which didn't set a size limit);
  - b. In Class E use for at least 2 years; and
  - c. Vacant for at least 3 months before the date of the prior approval application.
- 4.9. The new PDR does not apply to listed buildings or their curtilage.
- 4.10. The key differences between prior approval applications and applications for planning permission are:
- Timescales – prior approval applications are generally short timescale applications and if not determined in time, automatic approval is given
  - The planning fee is reduced
  - Limited scope of considerations as set out above, not a full assessment against all policies in a development plan
  - A proposal for prior approval cannot consider a planning obligation in the same way a planning application can, therefore it is not possible to address the impacts of development such as impact on highways, education or healthcare provision
- 4.11. Concerns raised by residents, businesses and other authorities including the following potential harms:
- Undermine attempts to revitalise high streets and town centres
  - Loss of obligations for infrastructure
  - Potential impact on car parking
  - The requirement that properties need only have been vacant from three months could put viable businesses at risk of being evicted by landlords seeking a profit from residential conversions.

- Loss of footfall in town centres as it is likely that a viable business will attract more footfall than a residential conversion.
- Loss of income by planning fee

#### **4.12. What are the effects of Article 4 Directions?**

4.13. Local planning authorities have powers to make an Article 4 Direction to remove permitted development rights in part or all of their area, thereby requiring planning permission for a change of use that would otherwise be permitted development. The introduction of an article 4 direction does not mean that all planning applications for the relevant change of use will be refused. It requires the submission of a planning application for the change of use for consideration by the Local Planning Authority, with applications determined on their merits having regard to the policies in the development plan and any other material considerations.

4.14. With regard to directions, the National Planning Policy Framework (NPPF) 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 a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)”*, as well as being *“based on robust evidence, and apply[ing] to the smallest geographical area possible”*.

4.15. Paragraph 38 of the Planning Practice Guidance (Reference ID: 13-038-20190722) adds that: *“The potential harm that the direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to...a wide area... and...cases where prior approval powers are available to control permitted development...”*.

4.16. Two types of Article 4 Direction can remove permitted development rights. Firstly, an immediate Article 4 direction which must be confirmed by the local planning authority following consultation within six months or it will lapse.

4.17. Secondly, a non-immediate Article 4 Direction with a prior notice period of 12 months may be made which results in development rights being withdrawn only upon confirmation of the Direction following local consultation.

4.18. In this instance, the breadth of uses now captured under new Class E mean that could make the Borough Council vulnerable to a high number of costly compensation claims.

4.19. Since the introduction of permitted development rights to allow change of use for certain uses there have been 30 applications<sup>2</sup> for prior approval for

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<sup>2</sup> 2013 - 2022

the change of use. Of these, 24 have been approved, 8<sup>3</sup> of which have been within town centre boundaries. None of which have involved the loss of active retail frontages. Of the three involving ground floor conversions, two of which have involved long term vacant buildings not in retail use and one involves the retention of the retail unit at the street front with residential use at the rear of the building. A full list of the relevant applications is provided at Appendix 1. Based on these figures alone it is not considered this currently represents sufficient evidence, or evidence of harm, to support the introduction of an article 4 Direction.

4.20. Whilst the potential harms are identified above there is currently no quantifiable data or information to confirm these for East Staffordshire.

4.21. Other authorities who are implementing, or have implemented an Article 4 direction for town centres have gathered additional evidence to demonstrate harm which includes:

4.22. Economic Characteristics including role of town centres, e.g the number of businesses and start-ups in town centres and type of business by sector

4.23. Number of units within the town centre

4.24. Vacancy rate of town centre units

4.25. Demand for office space and constraints on commercial space

4.26. Scale of the impact of Covid on Town centre uses

4.27. Land value

4.28. Given the legal process involved in introducing a new Article 4 Direction it is not considered that introducing an article 4 direction is justified at this time.

## 5. **Financial Considerations**

*This section has been approved by the following member of the Financial Management Unit: Anya Murray*

5.1. There are no financial issues arising from this Report.

Revenue	2022/23	2023/24	2024/25
	0	0	0

Capital	2022/23	2023/24	2024/25
	0	0	0

## 6. **Risk Assessment and Management**

6.1. The main risks to this Report and the Council achieving its objectives are as follows:

<sup>3</sup> Two applications relate to the same site and one should be considered a duplicate

6.2. **Positive** (Opportunities/Benefits):

6.2.1. Permitted Development Rights provides alternative use for non viable units

6.3. **Negative** (Threats):

6.3.1. Potential for future loss of planning income/car park income in Town Centre

6.3.2. Loss of footfall/viable business units weakening regeneration efforts

6.3.3. Potential for increase in residents in town centres conflicting with late night operations (complaints regarding noise etc)

6.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

7. **Legal Considerations**

*This section has been approved by the following member of the Legal Team:  
Sherrie Grant*

7.1.1. There are no significant legal issues arising from this Report.

8. **Equalities and Health**

8.1. **Equality impacts:** The subject of this Report is not a policy, strategy, function or service that is new or being revised. An equality and health impact assessment is not required

8.2. **Health impacts:** The outcome of the health screening question does not require a full Health Impact Assessment to be completed. An equality and health impact assessment is not required.

9. **Data Protection Implications – Data Protection Impact Assessment (DPIA)**

10.1. A DPIA must be completed where there are plans to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale
- use new technologies;
- use profiling or special category data to decide on access to services;
- profile individuals on a large scale;
- process biometric data;
- process genetic data;
- match data or combine datasets from different sources;
- collect personal data from a source other than the individual without providing them with a privacy notice ('invisible processing');



- track individuals' location or behaviour;
- profile children or target marketing or online services at them; or
- process data that might endanger the individual's physical health or safety in the event of a security breach

10.2 Following consideration of the above, there are no Data Protection implications arising from this report which would require a DPIA.

## 10. **Human Rights**

10.1. There are no Human Rights issues arising from this Report.

## 11. **Sustainability** (including climate change and change adaptation measures)

11.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) Yes

11.2. Please detail any positive/negative aspects:

11.2.1. Positive (Opportunities/Benefits -

The permitted development right applies to vacant buildings allowing sufficient re-use

11.2.2. Negative (threats)

## 12. **Recommendation(s)**

12.1. Note the report and do not introduce an article 4 at this stage. Continue to monitor town centre applications as part of the annual monitoring report and gather appropriate evidence as part of reviewing the Local Plan.

## 13. **Background Papers**

13.1. NPPF

13.2. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

## 14. **Appendices**

14.1 Appendix 1 Table of prior approval applications