Report to	Sustainable Development Panel 1 October 2020	**Item**
Report of	Director of place	4
Subject	Article 4 Direction to Remove Permitted Development Rights for the Conversion of Offices to Residential	

Purpose

To update members on the introduction of an Article 4 direction to remove permitted development rights for the conversion of offices to residential within Norwich city centre and to update members on recent changes to the General Permitted Development Order and Use Class Order.

Recommendation

To note the delay to the introduction of the Article 4 direction.

Corporate and service priorities

The report helps to meet the corporate priority for great neighbourhoods, housing and environment and the service plan priority to implement the local plan for the city.

Financial implications

There will be a financial cost associated with the required publicity for introducing an Article 4 direction but the costs should not be affected by the proposed delay. It is expected that this will be met from existing budgets.

Ward/s: Mancroft, Lakenham, Town Close, Nelson, Mile Cross, Sewell, Crome, Thorpe Hamlet

Cabinet member: Councillor Stonard - Sustainable and inclusive growth

Contact officers

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Background documents

None

Report

Context

1. In July, a report was presented to the sustainable development panel to seek views on the need and possible introduction of an Article 4 direction to remove permitted development rights for the conversion of offices to residential within Norwich City Council. Members unanimously voted in favour of recommending to cabinet that the council proceeds with the introduction of a non-immediate Article 4 Direction. The report is available on the council's website with the agenda and papers for the meeting of the sustainable development panel on 22 July 2020: https://cmis.norwich.gov.uk/live/Meetingscalendar/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/803/Committee/9/SelectedTab/Documents/Default.aspx

2. Whilst officers proceeded with drafting the direction, producing maps and writing the Cabinet report, the government have recently made amendments to both the General Permitted Development Order and the Use Class Order which have significantly implications on the proposed Article 4 Direction. A summary of the recent amendments to legislation is attached as Appendix 1 to this report. The changes which will affect Norwich's office economy and the introduction of an Article 4 direction are summarised in the section below.

Changes to legislation

3. On 31August 2020, new permitted development rights (Class ZA) were introduced which allow for the demolition of single detached office or residential buildings (they cannot share a party wall with a neighbouring building) and the construction of new flats or dwellinghouses in their place. However there are a number of exemptions with the most relevant ones for Norwich being that it does not apply within conservation areas. Therefore the majority of the city centre and the proposed area for office protection under an Article 4 direction area will be excluded. There are a handful of buildings such as Marsh, Norvic House, Dragonfly House and Yare House that do not fall within the conservation area; however these are also exempt on other grounds such as being larger than 1,000 square metres and not being detached. It is therefore not considered necessary to introduce an Article 4 direction to prevent development under Class ZA of the General Permitted Development Order.

4. The second amendment which is of particular relevance is that on 1 September 2020 new legislation took affect which brings in 3 new use classes which will replace a number of existing use classes. One of the new use classes is Class E (commercial, business and service). Class E will include shops, financial and professional services, restaurants and cafes, B1(a) offices, gyms, healthcare, day nurseries/childcare. As planning permission is not required to change to other uses within the same class, consent is no longer required to change between uses that previously fell under separate class including A1, A2, A3, B1, D1 and D2. The government has set out that the purpose of this change is to allow greater flexibility and whilst it is likely to have an impact upon Norwich's high street and district and

local centres due to a loss of control, in terms of Norwich's office economy, it's likely impact is not yet known. However where any change of use does result in a loss of office accommodation, the new use is likely to still have some form of contribution to Norwich's economy in a way that a change of use to residential cannot.

5. The more immediate concern for Norwich in relation to the amendments to the Use Classes Order is what this means it terms of the introduction of the Article 4 direction to control the loss of offices to residential and having sought clarification and advice from both NPlaw and the Ministry of Housing, Communities and Local Government (MHCLG), it is not considered that we can continue with making the direction at this point in time unless if the Council is willing to pay compensation. The reason for this is as follows:

6. Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 is currently the relevant legislation which allow offices to change use to residential without the need for full planning permission. Class O currently references "*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*". The amendments to the Use Class Order which are to be introduced on 1 September 2020 effectively revoke class B1(a) which means that the Class O right becomes meaningless or "falls away". There is a transitional period until the 31 July 2021 (referred to in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 as the 'material period') however this transitional period expires before our proposed Article 4 direction was due to come into force due to the need to give 12 months' notice to avoid what could be substantial compensation claims.

7. As far as we are aware the intention of MHCLG is that the General Permitted Development Order is likely to be amended in due course but until these amendments are published we do not know what will replace Class O and until there is legislation which provides for that, there is nothing we can refer to in an Article 4 direction.

8. Therefore the advice from NPlaw is that unless the council is willing to pay compensation (which could potentially be huge), the earliest we can withdraw office to residential conversion Permitted Development rights with an Article 4 direction is 12 months after the Class O replacement/amendment comes into effect.

9. The delay in introducing an Article 4 direction is extremely regrettable; however given the legal advice which we have received it is considered necessary to await the changes to the General Permitted Development Order and once we know what these are we can consider our options and report back to this panel.

Appendix 1 - Summary of recent changes to the General Permitted Development Order and Use Class Order

Changes to permitted development

The government has recently brought in a raft of changes to planning legislation. Some have been introduced as 'emergency' measures due to coronavirus and without any consultation. A summary of the main changes are outlined below.

Five different statutory instruments amending permitted development rights have been introduced since lockdown. These changes provide for (this is a summary only and the original legislation should be referred too for detailed wording and details of all exemptions and requirements):

- Restaurants, cafes and drinking establishments can operate as hot food takeaways for up to a year starting 24 March 2020.
- PD rights for local authorities to undertake any development for purposes of preventing, reducing, controlling, mitigating or taking other action in connection with an emergency. These are wide ranging but temporary with any use needing to cease by the end of the year and any building erected removed up to 12 months later.
- A temporary widening of the ability to use land temporarily for a use up to 28 days between 1 July – 31 December 2020.
- Introduction of an ability to consider the provision of adequate natural light in all habitable rooms when considering prior approval applications for conversion to dwellings (i.e. such as office to residential). Floor plans and elevations are also now required.
- A range of new permitted development rights to allow for the construction of new dwellings above existing properties. This provides for:
    - Up to two additional storeys of flats (including associated works) above the following existing types of properties:
        - Purpose-built, detached blocks of flats;
        - Detached commercial or mixed use buildings;
        - Terrace properties in residential, commercial or mixed use;
        - Detached dwellings.
    - A wide range of restrictions apply including:
        - Does not apply in Conservation Areas and to Listed Buildings;
        - Does not apply to buildings constructed prior to 01 July 1948 or after 05 March 2018;
        - Limits on storey and overall height.
    - This is subject to a prior approval process which can consider the following:

        - highways;
        - air traffic;
        - contamination;
        - flooding;
        - neighbour amenity, light to new dwellings;
        - design and external appearance;
        - heritage and archaeology;
        - landscaping;
        - where the building is commercial additional considerations of impact on business and noise from commercial premises.
    - There is a 3 year time limit and a construction management plan must be submitted.
    - Unlike other prior approval processes automatic approval is not given if a decision is not made within a time limit and unusually no time limit is given for determination however there will be a right of appeal.
- Upward extensions to dwellings allowing up to two additional storey's above an existing house.
    - Does not apply to a listed building or in a conservation area;
    - Applies to properties constructed between 1948 and 2018;
    - Includes height restrictions;
    - Is subject to a prior approval process allowing consideration of neighbour amenity, external appearance and air traffic.
- Demolition of buildings and construction of new houses.
    - Allows for the demolition of a purpose built detached block of flats, a detached building in B1 use and construction of a detached block of flats or a detached house along with associated works.
    - Some key restrictions are that this does not apply to:
        - a conservation area or listed building;
        - to buildings constructed prior to 1989;
        - if the footprint exceeds 1,000sqm;
        - if the building has not been vacant for at least 6 months;
        - the footprint of the demolished building cannot exceed the footprint of the old building;
        - upto two additional storey's can be added.
    - A prior approval process is required which considers the some of the matters as upward extensions (but not all) with the addition of design and landscaping.

Implications

- Inability to deliver any affordable housing via prior approval process;
- Potential for poor quality housing – although natural light can be considered, there is no ability to consider matter such as internal space, external amenity space, refuse storage and cycle storage.

- Trees and landscape are not considerations for some prior approval application types. Neither is ecology however other legislation may avoid the most significant harm.
- Lack of direct reference to matters which we have a legislative duty to consider such as ecology, impact on listed buildings, conservation areas and equality leads to a fragmented system and likely confusion for the development industry.
- Potential increase in pressure on public services, particularly recreational facilities and open space.
- Changes to fee regulations have not yet been made so currently we can't charge a fee for these applications. Draft fee regulations propose a fee of £334 per dwelling (below the £462 per dwelling for a full application).
- The draft fee regulations do not provide for any fee for upward residential extension prior approval applications (note HCLG committee have recommended local fee setting last month although this has been muted since 2010).
- Resources to enforce when temporary arrangements cease;
- Likely to increase resource burden on local planning authorities rather than decrease particularly in urban areas;
- Likely to increase uncertainty and makes the planning system even more complex;
- Has the potential to lead to homes in inappropriate areas;
- The legislation has had fairly heavy criticism from across the board, including RIBA, RTPI, Shelter and somewhat flies in the face of a July 2020 report by Liverpool University and UCL commissioned by MHCLG which although carefully worded, has heavily criticised homes delivered via permitted development rights.

Changes to the Use Classes Order

The use classes order was overhauled on 01 September with some transitional arrangements.

Ultimately existing use classes A1-5, B1 and D1-2 have been removed and replaced with new class E (Commercial, Business and Service) and F1 (Local Community and Service) and F2 (Local Community).

A summary of these is contained in the table on the following page.

Implications

- Changes of uses between the same use class do not require planning consent, this allows for significant flexibility between use classes now in class E in particular.
- It reduces our control and will have particular implications for some policies which seek to protect retail and office space and locate retail and leisure in sustainable locations.

- Changes to permitted development rights have not yet been drafted to reflect these changes.
- Transitional arrangements are set out meaning that permitted development rights will continue to apply until August 2021. However after this date we don't know what will happen with permitted development rights for office to residential (i.e. will all class E properties be permitted to change or will they do a partial replacement).
- This will have significant implications for our ability to progress the officer to residential article 4 direction.
- It could result in an increase in leisure and retail uses in industrial estates. This has caused conflict with users in the past.

Use	Current Use Class	Use Class from 01 Sep
Shop no more than 280sqm mostly selling essential goods and with no other provision within 1km	A1	F2
All other Shops	A1	E
Financial and Professional Services	A2	E
Café or Restaurant	A3	E
Pub or drinking establishment	A4	Sui Generis
Hot food take away	A5	Sui Generis
Office	B1a	E
Research and development	B1b	E
Light industrial	B1c	E
Industrial	B2	B2
Storage and Distribution	B8	B8
Hotels and guest houses	C1	C1
Residential institutions	C2	C2

Secure residential institutions	C2a	C2a
Dwelling houses	C3	C3
Small HMO (up to 6 residents)	C4	C4
Clinics health centres, crèches, day nurseries, day centre	D1	E
Education, museums, libraries, exhibition/public halls, places of worship, law courts	D1	F1
Cinemas, concert halls, bingo halls, dance halls	D2	Sui Generis
Gymnasiums, indoor recreation	D2	E
Hall or meeting place for the community	D2	F2
Swimming pools, skating rinks, sports and recreation.	D2	F2