

**Report to** Sustainable Development Panel

**Item**

22 July 2020

**Report of** Director of place

**Subject** Article 4 direction to remove permitted development rights for the conversion of offices to residential

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### **Purpose**

To seek members 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 centre.

### **Recommendation**

To recommend to cabinet that the council proceeds with the introduction of a non-immediate Article 4 direction.

### **Corporate and service priorities**

The report helps to meet the corporate priority “A prosperous and vibrant city” 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. It is expected that this will be met from existing budgets.

**Wards:** Mancroft, Lakenham, Town Close, Nelson, Mile Cross, Sewell, Crome, Thorpe Hamlet

**Cabinet member:** Councillor Stonard – Sustainable and inclusive growth

### **Contact officer(s)**

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### **Background documents**

A review of Office Accommodation in Norwich, Ramidus (July 2020)

## Report

### Background

1. Permitted development rights to allow the change of use from office to residential were introduced in May 2013 and although introduced on a temporary basis initially, the government confirmed in March 2016 that the change of use from office to residential would be made permanent from April 2016. A change of use from office to residential currently requires an application for prior approval and the only matters which the Local Planning Authority (LPA) can consider are the impact that the development will have upon transport, contamination, flooding and the impact of noise from neighbouring uses on the proposed residential use. As of 1 August 2020, changes to the legislation will also allow consideration of adequate natural light in all habitable rooms (TCP Permitted Development and Miscellaneous Amendments England Coronavirus Regulations 2020) but the LPA cannot consider other issues around amenity or issues relating to the protection of employment land. Furthermore, the LPA cannot secure any provision of affordable housing.
2. An Article 4 direction removes a specified permitted development right in a defined area which allows the LPA to determine whether the proposed development is acceptable under its Local Plan policies. National Planning Practice Guidance<sup>1</sup> provides guidance on Article 4 directions and states that Article 4 directions should be limited to situations where it is considered necessary to remove permitted development rights in order to protect local amenity or the wellbeing of an area and the potential harm that the direction is intended to address must be clearly identified.
3. Initial research undertaken by officers in late 2019/early 2020 noted that there had been a significant loss in office floorspace since the introduction of permitted development to change from office to residential. The Greater Norwich Annual Monitoring Report 17/18<sup>2</sup> reported that whilst the permitted amount of employment space had increased overall over the last 5 years within the three districts (+118,105 sqm), there has been a sustained loss of office floor space in the city centre itself (-106,622sqm) which is resulting in the hollowing out of the city centre. In 2017/18 alone there was a net loss of 40,205 sqm of office floorspace. The net overall reduction in office floorspace since the start of the plan period (2008/09) to 2017/18 amounts to over 90,000 sq m or around 25.8% of the total stock in 2008. Most of the spaces lost are being developed into residential properties and schools and due to the prior approval process, there is no planning control over the loss of office space when converted to these uses.
4. The loss of office space continued during the 2018/19 monitoring period with the loss within the city centre being -11,695sqm. Although this may suggest a slowing of the trend in terms of applications; this additional loss now means that a total of 105,353 sqm of office space or 29.0% of the total office stock in 2008 has

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<sup>1</sup> <https://www.gov.uk/guidance/when-is-permission-required#article4>

<sup>2</sup> <http://www.greaternorwichgrowth.org.uk/planning/monitoring/>

now been lost<sup>3</sup>. Furthermore as it often takes a few years to complete these developments, the number of residential units delivered through the prior approval process was at its highest in the last financial monitoring year (2018/19) with 437 out of 1,084 dwellings (40%) being delivered through the prior approval process.

5. Therefore the initial findings from this research suggested that the change of use from office to residential had impacted upon the supply of available office space in the city centre and although during the most recent monitoring period there has been a slow-down in loss, it is unknown whether this is a trend that will continue. Whilst the creation of housing to meet need is supported, officers are of the view that there is sufficient land to do this effectively without the uncontrolled loss of essential office floor space through permitted development rights. Furthermore, there is concern about the quality of housing delivered to date through use of the permitted development rights.
6. The possible introduction of an Article 4 direction has been discussed previously and the emerging Greater Norwich Local Plan <sup>4</sup>sets out that a key part of retaining and growing employment in the city centre will be to reverse the loss of office accommodation in the city centre, which has experienced a 25% reduction since the start of the Joint Core Strategy plan period in 2008. Paragraph 284 of the draft plan in particular states that *“A key part of retaining employment in the city centre will be to reverse the significant loss of office employment. To this end the city centre policy provides the basis for the subsequent introduction of an Article 4 direction or directions to manage the loss of B1(a) office floorspace and ensure a supply of suitable sites and premises for the key city centre employment growth sectors, most particularly digital and creative industries.”*
7. Notwithstanding the above, in order to introduce of an Article 4 direction the potential harm that the direction is intended to address needs to be clearly identified, and there needs to be a particularly strong justification for the withdrawal of permitted development rights. Therefore although it was considered that there is a certain amount of evidence, it was felt that we needed to have a stronger evidence base, in order to make the case for the introduction of an Article 4 direction. In particular it was identified that the following evidence was required:
  - (a) An assessment of the likely future demand in the local office market in terms of office job number and floorspace. This should also include specification requirement i.e. are those looking for larger spaces looking for grade A or lower budget spaces, is there a minimum standard that business require (cabling/broadband/fit and finish), is location within the city centre a factor, do those looking for Grade A want a high profile location or will a less prominent site be acceptable?;
  - (b) A summary of current supply of office space (including vacancies and pipeline development) ;

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<sup>3</sup> <https://www.greaternorwichgrowth.org.uk/planning/monitoring/>

<sup>4</sup> <https://www.gnlp.org.uk/assets/Uploads/Reg-18-Final-Strategy-Document-20-02.pdf>

- (c) Identify the drivers influencing decisions to convert offices to residential compared to retention or refurbishment ;
  - (d) Identify the key office sites at risk from office to residential conversion based on residential capital values, office capital values, potential uplift and conversion cost;
  - (e) An assessment of the likely effect that further office to residential conversions might have on meeting demand in the city centre; and
  - (f) If an Article 4 direction is proposed to be introduced, the geographical area for a targeted article 4 direction should be identified.
8. Therefore, in April 2020 Norwich City Council commissioned Ramidus Consulting to undertake this research in the form of a review of office accommodation in Norwich. The scope of the study was quite broad with for example the study being used to inform the Norwich's Town Investment Plan but it also had a focus on planning policy and a specific part of the study was to review the existing evidence and collate new evidence in order for the council to be able to provide a case for or against the introduction of an Article 4 direction to restrict the uncontrolled loss of offices to residential.

### **A review of Office Accommodation in Norwich, Ramidus (July 2020)**

9. A summary of the relevant findings from the Ramidus report are as follows:
10. Norwich's office market is in a fragile and vulnerable condition which is especially true in the city centre. It has under-performed comparator cities in recent years and the office market is shrinking when the trend should be one of expansion. The office market is half the size of Cambridge and has been reduced by 30% in recent years due to implemented or consented conversions of residential use through Permitted Development Rights. The Prior Approvals process has exacerbated this to the extent that the very survival of the city centre office market is at risk.
11. The city centre is the most sustainable location for employment space; which means that the finite amounts of employment land there needs to be protected. Offices are critical to Norwich's future. Office-based activities lie at the centre of most forecasts for growth in the economy and it is vital that progressive, competitive cities cater for such growth – or risk losing vitality and competitiveness.
12. An Article 4 Direction is required, urgently. Virtually any site that is not secured on a long lease should be considered under pressure for redevelopment as residential. The primary weapon in safeguarding offices is obviously an Article 4 Direction. This should be considered as an urgent requirement, both because of the low office values inherent in the Norwich market and because the COVID-19 pandemic may radically alter property owners' risk analysis. If they think the case for building business space is weakened, then they are likely to consider switching to residential, precipitating a fresh glut of office-to-residential conversions.
13. The study proposes the A147 (the Norwich Inner Ring Road) as the approximate boundary to an Article 4 Direction, with an extension to encompass the business space around Carrow Road and on Thorpe Road, and including other specified

offices on the other side of the ring road including Marsh for example. This boundary would give Norwich sufficient control over office development, on the one hand allowing stock that is truly redundant to change use while, on the other hand, being able to protect space of strategic value.

### **Process of introducing an article 4 direction**

14. Officers consider that the above demonstrates that there is a compelling case for the introduction of an Article 4 direction and the study highlights the need for this to be introduced as soon as is possible. This section summarises the process for the introduction of an Article 4 direction. The detailed procedures for the making of an Article 4 direction are contained within Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015<sup>5</sup>.
15. There are two types of directions: non-immediate directions and directions with immediate effect. An immediate direction withdraws permitted development rights with immediate effect but affected property owners whose land suffers a loss in value as a result of the direction may be entitled to compensation. Where a non-immediate direction is used, however, provided that permitted development rights are withdrawn in the prescribed manner, there will be no entitlement to seek compensation. This includes where at least 12 month's notice has been given of the date when it is proposed that the direction will come into force. For this reasons most councils who have introduced an Article 4 direction to control the loss of accommodation have opted for a non-immediate option, with a twelve month notice period to avoid exposure to substantial future compensation claims and this is what is being recommended for Norwich City Council. During these twelve months: however, there is a risk that there will be an increase in prior approval applications.
16. The process for implementing a non-immediate Article 4 direction is as follows:
  - (a) An initial decision is made by cabinet to make the direction.
  - (b) Notice is served (by letter to the land owners/occupiers within the affected areas/site (if practicable), plus site notice and advertisement) giving at least 21 days to make representation to the LPA. This notice must include the date that it is intended that the direction would come into force.
  - (c) A copy of the direction and notice should be sent to the Secretary of State simultaneously.
  - (d) The LPA must consider any representations received
  - (e) The LPA decides whether or not to confirm the direction, (taking into account any representations received).

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<sup>5</sup> [www.legislation.gov.uk/uksi/2015/596/schedule/3/made](http://www.legislation.gov.uk/uksi/2015/596/schedule/3/made)

(f) If the decision to confirm the direction is made, serve notice (by letter to land owners/occupiers if practicable, plus site notice and advertisement) of the confirmation of the direction.

(g) Simultaneously send a copy of the direction as confirmed to the Secretary of State.

17. When introducing an Article 4 direction 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. The direction must state which specific permitted development rights it seeks to remove and state whether this is with permanent effect. Furthermore the direction must clearly define the geographical area to which it applies.

18. The Secretary of State does not need to approve article 4 directions but they do have the power to intervene in an Article 4 direction made by an LPA by modifying or cancelling it.

19. It has been identified that there would be a need for an equality impact assessment to be undertaken prior to the decision made by cabinet to make the direction.

## **Timescales**

20. The timescales for introducing a non-immediate direction are quite lengthy due to the need to give 12 months notice of its introduction. The precise likely timescales are particularly difficult to set out due to staff resourcing being affected by COVID-19. However, the following is an indication of a possible timetable for the introduction of the article 4 direction. Please note that sustainable development panel dates are not yet fixed which may have implications for timings.

SD panel report	July 2020
Drafting of Article 4 direction	August 2020
Decision made by cabinet to make the direction	September 2020
Notice served to land owners/occupiers affected (if practicable)/ site notice/ press advertisement giving at least 21 days to make representation	October 2020
Copy of direction and notice to Secretary of State	October 2020
End of consultation period	November 2020
Consideration of representations	November 2020

SD panel report	December 2020
Cabinet report	January 2021
Direction confirmed	January 2021
Notice served to land owners/occupiers affected/ site notice/ press advertisement confirming the direction	January 2021
Copy of direction and notice to Secretary of State	January 2021
Intended date of coming into force	October 2021

### **Demolition of office buildings**

21. It is the government's intention to introduce new permitted development rights to allow vacant office accommodation to be demolished and replaced with residential. The government has yet to consult on the new permitted development rights. If this new permitted development right is introduced then given the evidence base that we have, it is considered that a justified case could be made to also include this within an Article 4 direction. However given that the permitted development right has not yet been introduced and there is a pressing need to progress with the Article 4 direction to restrict changes of use, it is considered that a separate Article 4 may have to be introduced at a later date.

### **Risks**

22. The following risks of introducing an article 4 direction have been identified:

- (a) If a local planning authorities makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn. The introduction of a non-immediate direction with at least a 12 month notice period should avoid exposure to substantial future compensation claims.
- (b) A non-immediate article 4 direction may however increase the amount of prior approval applications received in the 12 months notice period.
- (c) The Secretary of State does not have to approve article 4 directions, but they can intervene in an Article 4 direction made by a LPA by modifying or cancelling it if there are clear reasons for doing so. On the basis of a strong evidence base it is not considered likely that this will happen.

### **Resource implications**

23. The following resource implications have been identified:

- (a) The cost of making the Article 4 direction relates primarily to staff resources and consultation costs. Further work is required to identify likely costs which it is anticipated will be met from existing planning budgets.
- (b) As the scope of the Ramidus study was broad and is to primarily be used for the Towns Deal, none of the planning budget was used to produce the study.
- (c) A planning application fee may be payable where development that would otherwise have been permitted development requires a planning application. This would result in additional planning fees for the council; however, the determination of a full planning application takes considerably more time than a prior approval application.