

Article 4 Direction covering the primary shopping area of Maidstone and the renewal of certain existing Article 4 Directions

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	Rob Jarman
Lead Officer and Report Author	Rob Jarman
Classification	Public
Wards affected	High Street for the specific article 4 direction and renewals but they will impact on all wards as it concerns Maidstone's primary shopping area and town centre

Executive Summary

A new use class (E) has been introduced which encompasses a wide range of uses, amalgamating all forms of retail, offices, leisure etc and, moreover, has recently introduced a new permitted development right (MA) which allows for these uses to change to residential without the need for planning permission (albeit subject to a prior approval process). There is thus the potential for a significant impact on the mix of uses in the primary shopping centre and the quality of the conversions. Whilst the town centre strategy is imminent, the loss of control through the planning application process means that there is a significant current risk and so it is proposed to serve a non-immediate article 4 direction on the designated primary shopping centre to enable control to be regained in the form of planning applications needing to be permitted. Secondly, existing article 4 directions on 14 office buildings will cease to have effect from 1 August 2022 and so it is recommended that the 6 'at risk' office buildings are the subject of renewed article 4 directions.

Purpose of Report

Decision

This report makes the following recommendations:

1. A non-immediate article 4 direction is served on the 'primary shopping area' as defined by the adopted Local Plan.
2. That 6 existing article 4 directions are renewed by the serving of new non-immediate article 4 directions that restrict Class MA permitted development

Timetable

Meeting	Date
Strategic Planning & Infrastructure Committee	7 December 2021

Article 4 Direction covering the primary shopping area of Maidstone and the renewal of certain existing Article 4 Directions

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

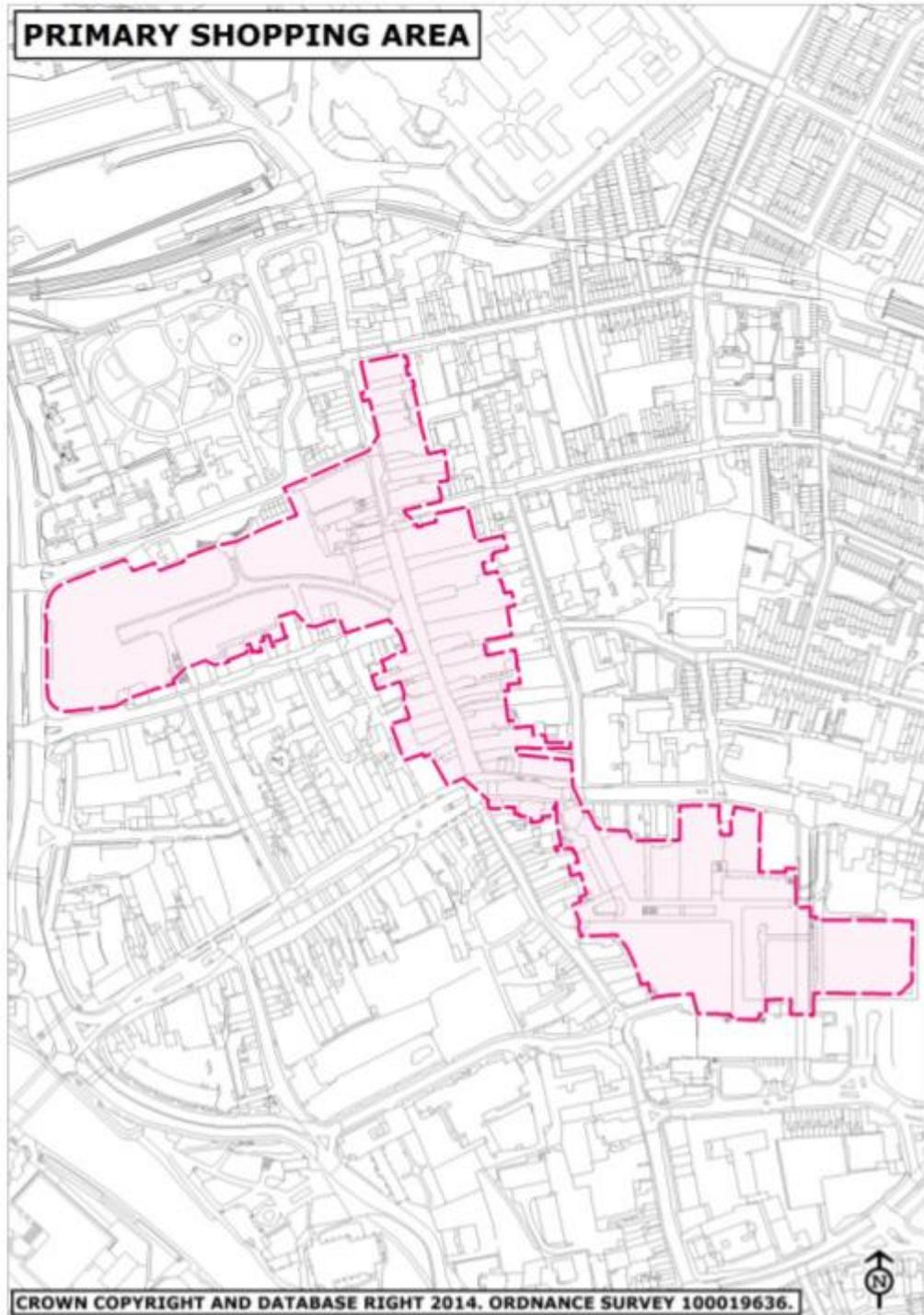
Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve 'A thriving place'.</p>	Rob Jarman
Risk Management	Integral to the discussion section of this report.	Rob Jarman
Financial	<p>The Article 4 directions that are recommended in this report can be implemented within the framework of already approved budgetary headings and so need no new funding for implementation.</p> <p>The report addresses the risk of compensation and concludes that this risk can be managed.</p>	Section 151 Officer & Finance Team
Staffing	We will continue to deliver the recommendations with current staff.	Rob Jarman
Legal	<ul style="list-style-type: none"> • Acting on the recommendations is within the Council's powers as set out at Articles 4 and 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [SI 596/2015] 	Cheryl Parks Mid Kent Legal Services (Planning)
Privacy and Data Protection	<ul style="list-style-type: none"> • Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with [policy]. • We recognise the recommendations 	[Legal Team]

	will impact what information the Council holds on [its residents] and so have completed a separate privacy impact assessment [at reference].	
Equalities	An EqIA screening has been completed. This identified that whilst the removal of permitted development rights under an article 4 direction would not directly impact a particular group, there would be potential for positive impacts in terms of ensuring higher design and space standards for accessibility for groups with disabilities and/or an aging workforce.	Equalities & Communities Officer
Public Health	<ul style="list-style-type: none"> • We recognise that the recommendations will have a positive impact on population health or that of individuals. • We recognise that the recommendations will not negatively impact on population health or that of individuals. • We recognise the recommendations may have varying impacts on the health of the population or individuals within Maidstone. Therefore, we have completed a separate health impact assessment. • In accepting the recommendations, the Council would be fulfilling the requirements of the Health Inequalities Plan. 	[Public Health Officer]
Crime and Disorder	Neutral impact	Rob Jarman
Procurement	n/a	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected 	Rob Jarman

Biodiversity and Climate Change	<p>The implications of this report on biodiversity and climate change have been considered and are;</p> <ul style="list-style-type: none"> • There are no particular implications on biodiversity and climate change. 	[Biodiversity and Climate Change Officer]
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2. DISCUSSION

- 2.1 The Government, last year, introduced a new use class (E) which was an amalgamation of use classes including all forms of retail and also employment uses such as offices plus other uses. In the summer of this year, a new permitted development right (MA) was introduced which allowed for the permitted change of use from Class E to residential subject to a prior approval process (the detailed context is set out in Appendix 1).
- 2.2 Permitted development rights for changes of use from offices to residential already existed so the Council had served 14 article 4 directions (non-immediate) on the 'best' quality office buildings because of concerns with regard to the potential for imbalance of uses in the town centre. These existing article 4 directions will cease to have effect on 1 August 2022.
- 2.3 Article 4 directions restrict the landowner's ability to enjoy permitted development rights and so 'force' planning applications to be made for any permitted development removed by the article 4 direction. There are two types of article 4, an immediate and a non-immediate. The latter have been previously favoured as they mean a much reduced risk of compensation. However, to avoid any compensation risk altogether, a minimum of 12 months prior notice of the removal of permitted development rights is required (to take effect from the time of serving). An article 4 direction gives a planning authority control through the planning application process. The non-immediate article 4 directions will take 12 months to be confirmed from the dates of serving. The recommendations seek the serving of non-immediate article 4 directions.
- 2.4 The primary shopping area is identified in the adopted Local Plan (page 36) for the purposes of the sequential retail test (policy DM16).



- 2.5 The primary shopping area encompasses the core retail part of the town centre only. Recent evidence from both the Economic Development Strategy and Local Plan Review indicates that this area still performs relatively well (post Covid 19) in terms of footfall. It still hosts a number of major retailers, has relatively low vacancy rates when compared to other Kent centres. The mix of general retail with restaurants and cafes together with leisure and personal retail uses (e.g., hairdressers) encourage people to visit the area for different but complimentary purposes and so extend the length of their stay.

- 2.6 Why an article 4 direction encompassing this area? The NPPF (para 53) advises that all article 4 directions should be applied in a measured and targeted way based on robust evidence and apply to the smallest geographical area. The NPPG goes on to state that:
- 2.7 “The **potential harm** that the article 4 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 pd rights relating to:
- An area extending beyond the essential core of a primary shopping area”.
- 2.8 So, the “core” of a primary shopping area is likely to be considered to be an acceptable area for an article 4 direction. However, what is proposed is the whole of the primary shopping area. This is still considered to be a “targeted” area with an associated “robust” evidence base in that it is the area identified in the adopted Local Plan (October 2017) and is replicated in the Regulation 19 Local Plan Review. Therefore, the area and, moreover, its evidence base have recently passed independent examination and the work for the Local Plan Review has confirmed this position to be unchanged in terms of the evidence.
- 2.9 Government planning guidance clearly does not allow for landowner’s permitted development rights to be removed lightly. Harm must be identified and the area tightly defined. The objective of this article 4 direction, however, would not be prevent changes to residential use per se in that this is not the identified harm rather the balance of uses and the quality of conversion to residential are important considerations.
- 2.10 There are many examples in urban centres whereby apartment schemes have complimented the retail offer and certain office uses (such as small rented concierge types). Indeed, for many years, local authorities have advocated policies encouraging ‘living above the shop’ partly for security reasons. There is a general need to keep a balance of uses for the viability and vitality of the town centre, and there is a need for controlling changes of use to residential to ensure a quality standard for such conversions. Key to quality is the overall design in terms of architecture, amenity space (both private and communal particularly outdoor), generous public realm creation (including tree planting), mitigation of noise and air pollution, considered car parking arrangements, a genuine mix of apartments etc.
- 2.11 However, there is an argument that the new permitted development rights (class MA) have adequate conditions attached to the prior approval process (see **Appendix 1**). These certainly give more control than hitherto. However, a fundamental concern around quality and, in particular, the ability under permitted development to provide all one bedroom apartments above that meet the minimum room size criteria and with no amenity space etc still remains. A new control introduced through the qualifying criteria for permitted development in class MA is the maximum of 1500 sq. m threshold but (following legal advice) there is the risk that this is not a ‘once and for all’ threshold and might be applicable in an incremental approach through successive applications for prior approval. This is yet to be fully tested through appeals or in the courts to

provide any authority on how this should be properly interpreted, although in practice there is an argument that this is unlikely to happen. Where new additional floorspace is created then the Community Infrastructure Levy (CIL) applies but most conversions do not involve extensions in the initial phase.

- 2.12 Comprehensive external legal advice on this matter has been given including the new conditions imposed on the class MA prior approval process. However, the risk with relying on national conditions is that, by their very nature, they are general. For example, one of the conditions of prior approval is “transport impacts of the development, particularly to ensure safe site access” so the local planning authority has the power to assess this issue and it could be a potential reason for refusal. However, “transport impacts...” are not locally defined in this context in that there are no specific references to permitted development right class MA within local policies and, moreover, vehicle parking standards are expressed as a maximum with no parking being deemed acceptable in policy. Legal advice indicates that where article 4 directions are at their most effective is where they are backed up by specific and effective local policies. However, this will take time and will not be part of the Local Plan Review itself.
- 2.13 It is acknowledged that this article 4 direction would be before the nascent Town Centre Strategy (which will provide a strategic framework and ‘vision’ for local policies (not just planning)), the permitted development right (Class MA) has been in place for since 1 August this year, and the existing office to residential article 4 directions (14) cease to have effect on 1 August 2022. Therefore, there is a clear risk of properties within the primary shopping centre (particularly those vacant) becoming residential through the permitted development with little control available through the prior approval process to the planning authority with regard to quality. It is accepted that the primary shopping centre does not represent the smallest geographical area and not the “core” but it has been clearly defined in the adopted local plan and this and the associated evidence base has passed independent examination.
- 2.14 Article 4 directions have traditionally been applied to conservation areas and the interplay with these has been considered. However, this recommendation is solely for an article 4 direction in relation to the change of use buildings from class E to residential rather than extending or creating new conservation areas. This is because the two evidence bases are distinctly different as is the potential harm. With conservation areas, the objective is to maintain and enhance the character and appearance so permitted development rights for modern additions such as upvc windows are taken away.

Impact of new permitted development rights on existing Article 4 Directions

- 2.15 The existing article 4 directions on 14 office buildings in the town centre will cease to have effect as of 1 August 2022. Having reviewed the evidence for continued article 4 protection on these 14 buildings, and in considering issues such as their geographical location, floor space and other matters it is recommended that these, in addition to an article 4

direction on the primary shopping area, as discussed above that a further 6 individual article 4 directions be made to (in effect) renew the existing directions. These would be the 6 shaded green in the table below. Those shown in red are either within the primary shopping area (and therefore would be covered by the newly proposed direction) or over 1500 sq m (or both).

Building	m2	Inside core
County Gate	2544	Above 1500m2
County House	900	Outside core shopping area below 1500m2
Medway Bridge House	2871	Above 1500m2
23-29 Albion Place	3632	Above 1500m2
Sterling House	536	Outside core shopping area below 1500m2
Maidstone House	9464	Above 1500m2
Romney House	527	Outside core shopping area below 1500m2
Gail House	2457	Above 1500m2
Kestrel House	2128	Above 1500m2
Knightrider Chambers	675	Outside core shopping area below 1500m2
62 Earl Street	1032	Within proposed geographic area of new A4D
66 Earl Street	266	Within proposed geographic area of new A4D
72 King Street	232	Outside core shopping area below 1500m2
Clarendon Place	1635	Looks capable of subdivision, so pursue building A4D
Sub total 28,899	28899	
Red = Pursue a new building specific A4D	6	
Green = Do NOT persue a new building specific A4D	8	
	14	

2.17 The evidence base for these is still relatively up to date and as individual buildings, they represent the smallest geographical area. The previous Committee report on this matter forms **Appendix 2**. Therefore, the second recommendation is to renew the protection on the 6 identified buildings by serving new article 4 directions.

3. AVAILABLE OPTIONS

- 3.1 Do nothing in terms of a non-immediate article 4 directions and rely on the conditions of permitted development as per the prior approval process.
- 3.2 Do something: a different geographical area to that of the primary shopping area. For example, individual buildings. Conversely, for the 6 office buildings, to have a wider geographical area.
- 3.3 Do Something: the primary shopping area as defined in the adopted local plan together with renewing the existing 6 article 4 directions on the office buildings referred to in the table above.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Do something: given the commitment to the Town Centre Strategy and the current risk of losing a significant amount of 'control' over place shaping, it seems logical that something tangible and timely is needed and

an article 4 direction represents such an opportunity.

- 4.2 A smaller geographical area could be defined but the 'control' would be reduced with the greatest risk of permitted changes of use being to properties outside the core of the primary shopping area.
 - 4.3 The primary shopping area is defined and has an allied evidence base. In order to reduce risk, it is recommended that this is the subject of a non-immediate article 4 direction.
 - 4.4 There is an existing evidence base for renewing the 6 existing article 4 directions.
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5. RISK

- 5.1 The recommendation for a non-immediate article 4 directions are based on reducing the risk of compensation. As with any article 4 direction there is the risk of call in by the secretary of state but it is considered that the evidence base is robust. The main risk is that local policies are not developed so the article 4 direction becomes phyric in its effectiveness.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The SPI Committee have fairly recently supported article 4 directions in relation to the 14 office buildings and ,at its last meeting, resolved to examine the possibility of article 4 directions in the Fant area to prevent permitted development rights being used in relation to Houses in Multiple Occupation (HMOs). This would indicate support for more article 4 directions in order to become more effective at 'place shaping'.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 The legal team would execute this potential resolution with support from Development Management in terms of serving the article 4 directions on landowners and other persons with a controlling interest and in carrying out all the required notifications.
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8. REPORT APPENDICES

- Appendix 1: Use class E and permitted development right MA
 - Appendix 2: Town Centre Article 4 Directions – Report to Strategic Planning and Infrastructure Committee – 10 September 2019
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9. BACKGROUND PAPERS

None