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Dear Planning Policy Team

Class E to Class C3 Article 4 Direction Consultation

We have been instructed by Target Five Property Consultants to respond to the proposed Class E to Class C3 Article 4 Direction - published by the BHCC on the 19th of January 2022.

Background

The Use Class Order was fundamentally re-written in 2021 as part of Government's simplification of the planning system. A number of commercial uses are now grouped together under 'Class E' which means that changes between the various uses within Class E can occur without requiring an application for planning permission, as such changes do not constitute development. This result of this change is that Local Planning Authorities no longer have control over ground floor high street uses which fall within Class E. This requires a wholesale re-evaluation of the LPA's role in the evolution of the high street, as planning policy can no longer, for example, protect existing retail uses or restrict alternative uses within Class E coming forward where the property already falls within Class E.

Another strand of Government's simplification of the planning system is the introduction of numerous permitted development rights. These are intended to offer a simplified process whereby a full application for planning permission is not required. The enactment of some permitted development rights involve an application for 'Prior Approval' which is a simplified process in comparison to a planning application.

Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E to a use falling within Class C3 (dwellinghouses). This permitted right is subject to a number of limitations set out in Class MA, and a Prior Approval application, under which the LPA can consider a number of issues set out at MA.2 (a) to (i). MA.1(a) sets out that the permitted change of use does not apply unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application.

In addition to these changes, foreseeing that Local Planning Authorities may wish to restrict such permitted changes of use, Government has introduced new policy and guidance on the adoption of

Article 4 Directions. This guidance, set out in the NPPF and NPPG, effectively ‘raises the bar’ for the justification needed to introduce an Article 4 Direction.

NPPF (July 2021) para. 53 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)**
- *in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
- **in all cases, be based on robust evidence, and apply to the smallest geographical area possible.**

The NPPG (Paragraph: 038 Reference ID: 13-038-20210820) (August 2021) states that:

*The National Planning Policy Framework advises that all article 4 directions should be applied in a measured and targeted way. **They should be based on robust evidence, and apply to the smallest geographical area possible.***

Where an article 4 direction relates to a change from non-residential use to residential use, it should be limited to situations where an article 4 direction is necessary to avoid wholly unacceptable adverse impacts. *In other cases, article 4 directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area.*

*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 permitted development rights relating to:***

- **a wide area** (e.g. those covering a large proportion of or the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- **an area extending beyond the essential core of a primary shopping area**
- *agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty*
- **cases where prior approval powers are available to control permitted development**
- *the installation of microgeneration equipment*

In summary, Government has simplified the planning process through the introduction of the consolidated Class E, and has introduced a permitted change of use (subject to limitations and a Prior Approval application process) from Class E to Class C3 (dwellinghouses).

The revised NPPF and NPPG guidance make it clear that:

- An Article 4 Direction restricting a change from non-residential use to residential use should only be introduced 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 but would be very unlikely to extend to the whole of a town centre.

- An Article 4 Direction should apply to the smallest geographical area possible.
- There will need to be particularly strong justification for the withdrawal of permitted development rights relating to a 'wide area'.
- There will need to be particularly strong justification for the withdrawal of permitted development rights extending beyond the essential core of a primary shopping area.
- There will need to be particularly strong justification for the withdrawal of permitted development rights in cases where prior approval powers are available to control permitted development

The proposed BHCC Article 4 Direction

The proposed Article 4 Direction covers the entire city centre area, plus a number of shopping parades outside of the city centre. The result of this Direction would be to block almost all of the potential conversions permitted under Class MA, as the city centre area contains most of the office accommodation in the city, and the city centre plus all of the shopping parades contain the vast majority of high street commercial units in the city. In addition, any space on upper floors above high street commercial units would be blocked from changing use under Class MA.

This triggers all of the above tests relating to the Introduction of Article 4 areas, as-

- The Article 4 restricts a change of use from non-residential use to residential use, therefore it must be demonstrated that the 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 but would be very unlikely to extend to the whole of a town centre.
- It must be demonstrated that the Article 4 Direction would apply to the smallest geographical area possible
- The Article 4 Direction relates to a 'wide area' (the large city centre area proposed)
- The Article 4 Direction would result in the withdrawal of permitted development rights extending beyond the essential core of a primary shopping area
- The Article 4 Direction would result in the withdrawal of permitted development rights in cases where prior approval powers are available to control permitted development (Class MA permitted development requires the submission of an application for Prior Approval).

The test of 'Wholly Acceptable Adverse Impacts'

It is accepted that the council may wish to protect the ground floor units of the key city centre shopping streets from permitted development rights, and Government's guidance suggests that it may be possible to protect the essential core of a primary shopping area - where this is demonstrated as necessary to avoid wholly unacceptable adverse impacts. The core of the city centre in terms of shopping streets comprises the ground floor units of the eastern end of Western Road, Queens Road, North Street, and the main shopping streets of the South Lanes and the North Lane, and the Churchill Square shopping centre.

Beyond these areas, the change of use of a Class E unit to a residential use would not have a wholly unacceptable adverse impact, and in any case under Class E such changes would be subject to the Prior

Approval considerations set out in Class MA - which means that harmful changes of use would be refused without the need for an Article 4 Direction.

Beyond the key city centre shopping streets, there are a variety of Class E uses across the city, e.g. ground floor high street uses, and office uses. Such uses can be found in any area across the country. The justifications set out in the Article 4 document do not demonstrate that the change of use of some of these properties to residential would result in wholly unacceptable adverse impacts. Class MA permitted development rights only apply to vacant / redundant premises, as there is a requirement that the premises must be vacant for 3 months prior to the submission of the application. Therefore occupied / viable units are not eligible for the permitted development rights set out in Class MA.

The blocking of permitted development rights across such a wide city centre area, and across a number of shopping parades outside of the centre, is not necessary to avoid wholly unacceptable adverse impacts.

The test of 'the smallest geographical area possible'

As detailed above, the core of the city centre in terms of shopping streets comprises the ground floor units of the eastern end of Western Road, Queens Road, North Street, and the main shopping streets of the South Lanes and the North Laine, and the Churchill Square shopping centre.

There is no remit within the updated Government guidance to facilitate an area-wide block of changes of use from Class E or from offices specifically. The council has taken their current 'office to residential' (Class O) Article 4 area, and has expanded this eastwards to include the eastern side of the Old Steine.

This is inappropriate, as the current Article 4 area was accepted as the maximum area possible by DCLG under the previous policy and guidance. The bar for adoption of an Article 4 Direction has been raised to a more stringent level, and it is now necessary to demonstrate that the area proposed is the smallest possible to avoid wholly unacceptable adverse impacts.

The smallest possible area to protect the essential core of the primary city centre shopping area would only include the ground floor units of the eastern end of Western Road, Queens Road, North Street, and the main shopping streets of the South Lanes and the North Laine, and the Churchill Square shopping centre. Going beyond this to include a wider area means that some roads where there are no core central shopping premises are included – e.g. secondary streets, and some streets e.g. in the North Laine which are entirely residential. The area proposed is very large and contains numerous properties which are of no importance to the essential core of the primary city centre shopping area.

The NPPF specifically states that an Article 4 could be proposed to avoid 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. Despite this clear policy, an area has been proposed which includes the whole of the centre, including numerous streets which do not form part of the essential core shopping frontages.

In regard to office uses, it is accepted that there is a demand for office accommodation in the city, this would however be the case in any city, and the permitted development rights introduced by Government apply nationally - presumably as Government considers that the Prior Approval process is sufficient to allow the consideration of such changes of use. The Article 4 justification fails to demonstrate that the loss of some office space in the city would cause wholly unacceptable adverse impacts. The large central area proposed is therefore unjustified. Class MA in any case only applies to vacant / redundant premises which have been vacant for 3 months or more, this plus the prior approval process and its considerations offers an adequate protection of any occupied / viable premises.

Extending the Article 4 area to include the eastern side of Old Steine is not necessary as the Prior Approval process includes a consideration of the impacts of noise from commercial premises on the intended occupiers of the development. Therefore, if the council has a genuine concern that introducing further residential uses in this area would result in future occupiers suffering harmful noise nuisance, permission could be refused. It is also noted that there are numerous residential uses already along both sides of Old Steine and these seem to have had no impact on the events which take place along this road. There is no evidence that a number of further units being introduced would limit the operation of such events.

The shopping streets outside of the city centre core which it is proposed would be protected are similar to many shopping streets across the country. Government has introduced permitted development rights to allow flexibility in such areas on a nationwide basis. Government Policy and guidance makes it clear that protection of shopping streets should be restricted to the essential core of the primary city centre shopping area. Protection of shopping streets beyond this core fail the test of an Article 4 Direction applying to the smallest possible area.

Whether the Article 4 applies to a 'wide area'

We contend that the proposed Article area which covers the entire city centre and a number of other shopping streets, constitutes a 'wide area'. To adopt such an area-wide Article 4 Direction requires a particularly strong justification, which the Article 4 document does not provide.

Whether the Article 4 relates to an area extending beyond the essential core of a primary shopping area

As detailed above, the proposed central area, and the proposed non-central shopping areas, clearly go beyond the essential core of the primary shopping area. To adopt such an Article 4 Direction requires a particularly strong justification, which the Article 4 document does not provide.

Whether the Article 4 would result in the withdrawal of permitted development rights in cases where prior approval powers are available to control permitted development

Class MA, which permits changes of use between Class E and Class C3 (dwellinghouses), is subject to a requirement that an application for Prior Approval be submitted. Under Class MA, only premises which are vacant / redundant benefit from the permitted change, and under an application for Prior Approval the LPA must consider:

- a) *transport impacts of the development, particularly to ensure safe site access;*
- b) *contamination risks in relation to the building;*
- c) *flooding risks in relation to the building;*
- d) *impacts of noise from commercial premises on the intended occupiers of the development;*
- e) *where—*
 - (i) *the building is located in a conservation area, and*
 - (ii) *the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;*
- f) *the provision of adequate natural light in all habitable rooms of the dwellinghouses;*
- g) *the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and*
- h) *where the development involves the loss of services provided by—*
 - (i) *a registered nursery, or*

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 200656, the impact on the local provision of the type of services lost; and
(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

This Prior Approval process therefore requires a thorough assessment of the change of use with all practical issues addressed. In this context it is difficult to see how the grant of Prior Approval, subject to a consideration of all of these issues, could result in wholly unacceptable adverse impacts.

To adopt an Article 4 Direction which removes permitted development rights which are subject to a Prior Approval process requires a particularly strong justification, which the Article 4 document does not provide. The Prior Approval matters under Class E are listed at pages 3 and 4, however there is no attempt to analyse these issues or acknowledge that the Prior Approval process would enable the refusal of harmful developments without an Article 4 Direction being needed.

Summary

In summary, we contend that the proposed Article 4 area goes significantly beyond that which would comply with the current Government guidance, which sets out that Article 4 Directions can only be introduced to block wholly unacceptable adverse impacts. In the case of Brighton & Hove, we accept that protection of ground floor frontages on the most central key shopping streets (the eastern end of Western Road, Queens Road, North Street, the main shopping streets of the South Lanes and the North Laine, and Churchill Square shopping centre) could potentially comply with this new guidance, we see no remit in the current guidance to extend an Article 4 Direction beyond these key streets, or to block conversion of the upper floors of any properties.

The proposed area-wide blanket ban of permitted changes of use is unjustified. Shopping streets beyond the essential core of the city centre should not be included in the Article 4 area. Streets which do not have a core shopping frontage should not be included in the Article 4 area.

The proposed Article 4 Direction will have significant implications for local developers such as Target 5 Property Consultants, as the Article 4 Direction will mean that a planning application subject to the full application of local planning policies and guidance will be required where otherwise a simplified application for Prior Approval under Class MA would have been sufficient. Government has introduced a simplified Planning regime through the introduction of the consolidated Class E Use Class, and through the introduction of permitted changes of use such as those facilitated under MA. It is not for the council to undo this fundamental change through the introduction of an excessively large Article 4 area, which would block the change of use of such a large number of Class E properties in the city.

We therefore suggest that the council reconsider the approach of the Article 4 and significantly reduce the proposed area of protection, to the core city centre shopping streets only, with only ground floor changes of use restricted. We consider the proposed area to be in direct conflict to the current Government guidance.

We suggest that the council consult Government on the proposed Article 4 Direction and seek feedback as to whether the proposal does comply with the current guidance or alternatively whether the proposed area goes well beyond that facilitated by the guidance, as we contend.

On behalf of Target 5 Property Consultants, we strongly object to the proposed Article 4 Direction for the reasons set out above.



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