

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	3 November 2022
<b>Subject:</b>	Making an Article 4 Direction to prevent the conversion of use class E (Commercial, Business and Service) to use class C3 (Housing) without the need for planning permission.		
<b>Report of:</b>	Assistant Director of Place (Economic Growth and Housing)	<b>Wards Affected:</b>	Linacre, Derby, Litherland and Netherton and Orrell.
<b>Portfolio:</b>	Cabinet Member - Planning and Building Control		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	Yes
<b>Exempt / Confidential Report:</b>	No		

### Summary:

In 2021 the Government introduced a change to both the Planning Use Classes Order and to the General Permitted Development Order. Planning Use Classes are a series of classes for different types of building/land uses. The Use Classes Order sets out the type of activity in each class (e.g. shops, homes, schools, business etc) and also outlines where changes of use between classes will not require planning permission.

The Government introduced a new use class E (Commercial, Business and Service). This consists of an amalgamation of a number of use classes. These include most retail and high street uses, including, shops, small financial services (banks building societies), Cafes, most medical services, offices, creches and day centres and certain leisure facilities. This is clearly a broad range of facilities within one use class and any change of use within class E is not considered development and therefore does not require planning permission.

The purpose of the report is to seek approval for the making of a non-immediate Article 4 Direction in relation to changes of Use from E to C3 in relation to shopping parades within the Bootle Area Action Plan Area. The Article 4 Direction will remove the permitted development rights that would allow units within shopping parades to change to residential dwellings without the need for planning permission.

### Recommendation(s):

(1) Approves the making of a non-immediate Article 4 Direction, attached in Appendix A, for the reasons set out in this report, in relation to changes of Use from use class E to C3 in selected areas of the Bootle Area Action Plan.

(2) Authorises the required public consultation.

(3) Authorises the preparation of a report, following notification and consultation, to seek Cabinet approval as to whether or not to confirm this non-immediate Article 4 Direction.

## **Reasons for the Recommendation(s):**

To remove the permitted development rights that exist for units in shopping parades to convert to residential in parts of the Bootle without the need for planning permission. Once the Article 4 is enacted, planning permission will be required and this will ensure the Council has control of these proposals. The Council will therefore be able to consider whether the proposals, either individually, or in combination, will have a detrimental impact on residential amenity and the vitality and viability of existing parades.

## **Alternative Options Considered and Rejected:** (including any Risk Implications)

Option 1 – Do not have an article 4 direction. This is a possibility. It would mean business as usual and that the Council continue to have little control over conversions from units in Use Class E (such as in shopping parades) to Use Class C3 (residential). It may risk further fragmentation of shopping areas with a detrimental impact on the usability and health of those shopping areas. It may also mean that some accommodation provided may not be low quality and provide poor living conditions.

Option 2 – Article 4 direction with an immediate effect. This would mean that the control of use from units in parades to dwellings would be in place as soon as the direction is made. However, the Council would be liable to pay compensation to owners. This could be costly, and it is not clear how that could be financed.

Option 3 – Cover the whole of the Bootle AAP area with an article 4 direction. The National Planning Policy Framework is clear that an article 4 should be kept to the minimum area that is necessary. The Council are aware of article 4 directions being rejected by the Secretary of State due to proposed directions being applied too wide.

## **What will it cost and how will it be financed?**

### **(A) Revenue Costs**

The costs of publishing and advertising the Article 4 Direction will be met from the existing budget for the Planning Service. The Council will be required to process and determine planning applications for change of use from class E (Commercial, Business and Service) to C3 (homes and flats) in the designated areas but will charge a planning application fee for this to cover the associated cost.

### **(B) Capital Costs**

There are no direct capital costs associated with the recommendations in this report.

## **Implications of the Proposals:**

### **Resource Implications (Financial, IT, Staffing and Assets):**

The proposed article 4 will likely result in more planning applications and fewer prior approval applications. Planning applications typically are more intensive in terms of staff time. However it is anticipated that any increase in work could be managed by the existing staff team and by the existing IT.

<b>Legal Implications:</b>	
None (see below).	
<b>Equality Implications:</b>	
There are no equality implications. See section 5 (below).	
<b>Climate Emergency Implications:</b>	
The recommendations within this report will	
Have a positive impact	N
Have a neutral impact	Y
Have a negative impact	N
The Author has undertaken the Climate Emergency training for report authors	Y
There are no significant climate implications. See section 5 (below).	

**Contribution to the Council's Core Purpose:**

<p>Protect the most vulnerable: The article 4 direction will ensure that proposals to convert commercial properties to residential will be fully assessed to provide adequate quality accommodation for residents. This will include minimum internal living space standards, space for refuse collection, private outdoor space and adequate privacy and light.</p> <p>These properties are often occupied by some of Bootle's most vulnerable residents.</p>
<p>Facilitate confident and resilient communities: The article 4 direction will protect Bootle's local shopping parades which are an important local facility for local communities. In some areas, car ownership is low and there are many people with long term health issues and so the facilities and services in these parades are an important lifeline.</p>
<p>Commission, broker and provide core services: Not applicable.</p>
<p>Place – leadership and influencer: The article 4 direction will ensure that the Council and local communities are able to influence the decisions made on these parades.</p>
<p>Drivers of change and reform: Not applicable.</p>
<p>Facilitate sustainable economic prosperity: The article 4 direction will help the Council to properly plan for the town through the Bootle Area Action Plan to help to secure investment and regeneration.</p>
<p>Greater income for social investment: Not applicable.</p>
<p>Cleaner Greener No significant impact but keeping shops and services nearer to where people live can</p>

reduce care usage. Ensuring adequate outdoor space can help with less energy use.

## **What consultations have taken place on the proposals and when?**

### **(A) Internal Consultations**

The Executive Director of Corporate Resources and Customer Services (FD.6975/22) and the Chief Legal and Democratic Officer (LD.5175/22) have been consulted and any comments have been incorporated into the report.

### **(B) External Consultations**

The Article 4 direction is subject to formal external consultation in accordance with the regulations following the decision.

## **Implementation Date for the Decision**

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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## **Appendices:**

The following appendices are attached to this report:

Appendix A – Article 4 direction, including list and maps included within the article 4 direction.

## **Background Papers:**

The following background papers, which are not available elsewhere on the Internet can be accessed on the Council website:

The case for the Article 4 Direction:

[\\smbc-file-11\PLA\\_1\Novell\Files\01\\_22\\_08\\_Bootle\\_AAP\Article 4 Direction Bootle E to C3\casefor\\_art4dir\\_final.pdf](\\smbc-file-11\PLA_1\Novell\Files\01_22_08_Bootle_AAP\Article 4 Direction Bootle E to C3\casefor_art4dir_final.pdf)

## **1. Introduction/Background**

1.1 In 2021 the Government introduced a change to both the Planning Use Classes Order and to the General Permitted Development Order. Planning Use Classes are a series of classes for different types of building/land uses. The Use Classes Order sets out the type of activity in each class (e.g. shops, homes, schools, business etc) and also outlines where changes of use between classes will not require planning permission.

1.2 The Government introduced a new use class E (Commercial, Business and Service). This consists of an amalgamation of a number of use classes. These include most retail and high street uses, including, shops, small financial services (banks building societies), Cafes, most medical services, offices, creches and day centres and certain leisure facilities. This is clearly a broad range of facilities within one use class and any change of use within class E is not considered development and therefore does not require planning permission.

1.3 In parallel with the changes to the Use Classes, the Government have also introduced amendments to the General Permitted Development Order in order to allow more types of development between classes that would otherwise require a full planning application, either being permitted development or requiring a 'light touch' permission, a prior approval application.

1.4 Of interest is the new class MA. This allows a change of use from class E (Commercial, Business and Service) to C3 (Housing). The class MA will require a prior approval application (but not a planning application), and is subject to certain conditions and is limited to 1,500m<sup>2</sup> of floorspace. This means that larger retail, commercial and office premises will not be impacted by use class MA. However smaller units, such as those within shopping parades, will be able to change to residential more easily.

1.5 This will benefit for some business and premises in being able to change use more easily in adapting to changing circumstances on the street and in patterns of shopping, leisure and office working habits as we adapt to a more online society and from changes brought about following Covid lockdowns.

1.6 However, there are some risks to already struggling parades and centres, and also for some local communities, particularly in our most deprived areas, as will be set out below.

## **2. Article 4 directions**

2.1 An article 4 direction is a direction under article 4 of the General Permitted Development Order which enables a Local Planning Authority to withdraw specified permitted development rights across a defined area.

2.2 Provided that there is justification for both its purpose and extent, an article 4 direction can:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use

- remove permitted development rights with temporary or permanent effect

2.3 The use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. In addition, paragraph 53 of the National Planning Policy Framework (NPPF) states:

- *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); and.*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*

2.4 The article 4 direction is required to be sent for consideration by the Secretary of State, who has the power to alter or not allow the article 4 direction. The Secretary of State sometimes does use this power and it is a risk with an article 4 direction. It is one of the reasons why the article 4 direction must be limited to a specific area where it is demonstrably needed.

2.5 An article 4 direction does not mean that development is not allowed. An article 4 direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail and take account of issues such as design, residential amenity, parking, refuse storage etc.

2.6 There are 2 types of directions under the General Permitted Development Order: non-immediate directions and directions with immediate effect. Non-immediate directions are those where permitted development rights are withdrawn following a prior notice period (12 months) which includes a period of consultation. Immediate directions are where permitted development rights are withdrawn with immediate effect. These are then confirmed immediately by the Council following a short period of consultation.

2.7 The removal of permitted development rights through an immediate Article 4 direction may make a Local Authority liable for compensation due to restricting, without notice, the economic options a property owner may have. However, where 12 months' notice is given in advance of a direction taken effect (i.e. through the making of a non-immediate direction) there will be no liability to pay compensation. Immediate directions are generally used where there is an immediate serious risk of harm, such as inappropriate works to a listed building.

2.8 It is therefore considered appropriate to remove the permitted development rights for the conversion from E to C3 through a non-immediate Article 4 direction.

### **3. The Case for the article 4**

3.1 The Bootle article 4 direction is only proposed for within shopping parades within the proposed [Bootle Area Action Plan \(AAP\)](#). This area covers Bootle and parts of Litherland, Seaforth and Orrell. This is because, as discussed above, an article 4

direction can only cover the areas where it is absolutely needed. It is considered that certain issues in the Bootle area create a very specific requirement for action to be taken to control conversions of shops to flats. There is also a Bootle AAP being produced and through this there is an opportunity to set clear standards that the Council will apply for proposals to convert shops to flats. The Article 4 Direction will support this approach.

3.2 The Bootle area has a number of shopping parades which vary in size. These parades have served their localities and at one time, particularly the longer parades, will have had a wide range of shops and services. Over the years, many of these parades have experienced varying degrees of decline, with just a few remaining relatively healthy. Some parades, such as Linacre Road, have experienced significant long-term decline from what were once vibrant local centres to having, in some cases, well over 50% vacancies. This is not a new issue for many of Bootle's parades but one which has become even more challenging following the impact of the Covid lockdowns, the cost of living crisis and the long term changes to consumer habits with many moving away from local stores to shopping online, supermarkets and out of town centres.

3.3 There have been many changes of use over the years on some of the parades from shops to residential. It is very common for some upper floors to have been converted to flats and in some cases ground floors and whole buildings have had a change of use to residential, whether as a single dwelling, flats or a House in Multiple Occupation (HMO) bedsits.

3.4 One of the big issues in the Bootle area is quality of accommodation. Bootle has an issue with poor quality accommodation. This is reflected by a number of initiatives that the Council has taken in recent years to address those issues. In the 2000s the Council carried out the Housing Market Renewal Initiative to address poor quality accommodation and market failure in some areas. More recently, large parts of Bootle have been included as Selective Licensing Areas to reflect the poor quality of some rented accommodation in the area. Research by the Housing Strategy team identified that there were far too many people, often on low incomes, living in poor housing, sometimes in poor quality conversions from commercial premises.

3.5 More recently in 2017, the Council published an article 4 direction to prevent smaller single dwelling houses being converted in HMO bedsits without planning permission. This was because of the concerns around poor quality of accommodation. The HMOs article 4 direction was specific for large areas of the Bootle as well as part of Waterloo, Crosby and central Southport. The Sefton Local Plan policy HC4 also addresses the need for good quality conversions to flats and HMOs.

3.6 The Council are currently consulting on a New Housing Development Supplementary Planning Document (SPD) and a Conversion to HMOs and Flats SPD. These both include standards for minimum room sizes, layout arrangements to avoid unacceptable noise from neighbours, privacy and outlook standards and outdoor amenity space standards. These standards are designed to ensure that residents can expect acceptable living standards.

3.7 One of the issues in many of the parades in the Bootle area, is that units are often small, terraced units that were purpose built for retail or other commercial purposes and were not intended specifically for residential. This can result in poor living standards for occupants, for example, rooms that are too small, living accommodation directly facing a public highway and no outside amenity space. These issues are considered important to

be important because they impact on the health of occupiers of properties. Having adequate private outdoor amenity space is considered important because it, allows residents to do various outdoor activities including exercise, getting natural sunlight and the ability to dry clothes naturally. The latter point is particularly pertinent given the current high energy costs.

3.8 Poor quality residential conversions in shopping parades in the Bootle AAP area are particularly problematic as they tend to be some of the cheaper properties and often end up with poorer or otherwise more vulnerable occupants. These tenants often tend to be more transient, and this can cause social problems in a local neighbourhood.

3.9 Most of the Bootle AAP area is within some of the poorest 10% of areas within the Country in the Indices of multiple deprivation (2019). The Selective licensing evidence showed that much of Bootle were in:

- Being within the top 1-5% of the most deprived areas across the country
- Contains the highest rate of Private Rented Sector (PRS) properties across the Borough at approximately 25%
- Suffers high levels of unemployment, low level educational achievement with low skill and low paid occupations
- Highest rate of lone parents across the Borough
- Average household incomes of £22,600 are the lowest in the borough and compare to an average £29,000 for the whole borough
- Over a third of people aged 16 and over in Bootle have no qualifications, compared to a quarter for the whole borough

3.10 The Sefton ward profiles show a similar picture. For example, Linacre ward has 14.8% of adults 16+ years of age out of work and claiming benefits. This compares to 6.8% for Sefton and 6.3% for England (January 2021). In Derby Ward, Life expectancy at birth for men (2015/2019) was 74.9 years. This compares to the averages for Sefton and England as 78.7 and 79.7 years respectively. Again this demonstrates that there are many vulnerable people in the area and poor quality housing may exacerbate poor health.

3.11 Class MA allows some consideration of protection of some services, for example, a health centre or a children's nursery. However it does not provide the much protection for most types of businesses. This is a real concern because many shops and services can be very important to their local communities. Many areas in the Bootle Area Action Plan Area, have more less wealthy and more vulnerable residents. Much of the Bootle AAP area also has much lower levels of mobility, with car ownership being very low compared to the rest of Sefton, the northwest and nationally. This makes Bootle's local shops very important to local residents and a continued unplanned loss of shops and services will be seriously detrimental to those communities.

3.12 The issues outlined above demonstrate a justification for seeking an Article 4 direction in shopping parades in the area to be covered by the Bootle AAP (which covers Bootle and parts of Seaforth, Litherland and Orrell). The Article 4 Direction is supported by an evidence report, 'The Case for the Article 4 Direction'. The shopping parades are identified in the draft Article 4 direction in Appendix A.

#### **4. Bootle AAP and Conclusions**



4.1 The Bootle AAP is being produced to address local issues in the Bootle Area. The poor state that some of the local parades are in, is something that could be addressed through the AAP. The AAP allows for the Council and local residents to be ambitious in shaping their local communities. Continued unplanned losses of units of the continued fragmentation of parades may make it more challenging for the Council and local communities to provide comprehensive solutions to dealing with their local centres. It is therefore considered that all of the local shopping parades as set out in Appendix A below are included in the article 4.

4.2 It is considered that there is clear evidence that there is a lot of poverty and poor health in the Bootle AAP area. Poor quality conversions of commercial units may not provide suitable quality accommodation, and this may further disadvantage individuals and communities. It is also considered that the continues loss of shops and services in these parades is a likely to further disadvantage local communities. It is recommended that a non-immediate article 4 direction is published in order to protect the communities by ensuring that existing changes of use will need to go through the formal planning application scrutiny. It is also recommended that the article 4 direction is introduced in order to allow for better planning of the area through the Bootle AAP.

4.3 It is recommended that the article 4 direction is reviewed in scope after the adoption of the Bootle AAP.

4.4 It is not considered that the Bootle Strand or large office accommodation within the Bootle office quarter, are included within the article 4 direction. This is because the Bootle Strand as a covered shopping centre is unsuited to this type of development and is in single ownership. The large offices in the office quarter are not considered vulnerable because class MA is only applicable for floor space of less than 1,500m<sup>2</sup>.

## **5. Equality and Climate Change**

5.1 It is not considered that the proposed article 4 direction would make a material difference to any of the protected characteristics as classified by the Equality Act (2010). Removing permitted development rights would mean that planning permission would be required. This would allow for a more thorough assessment of the scheme. The only potential advantages are that the space standards expected with a planning application as set out in Sefton's existing and proposed SPDs, may mean that some schemes are required to provide a little more room. This may be of benefit to some who are of limited mobility through age or disability. It is not considered that these benefits are likely to be significant.

5.2 In relation to climate change. The proposal is to remove permitted development rights and make changes of use from E to C3 require a full planning application. Such small conversions are not the types of schemes that will normally have a big impact. An article 4 direction may still result in most of the conversions still going ahead, with a small number potentially being refused. It is not considered that this will make any material difference to climate change.

## **6. Procedure**

6.1 This report seeks authorisation to make the non-immediate Article 4 Direction

attached in the areas identified as set out in Appendix A. If authorised, the Council would give notice of the Direction and representations would be sought in accordance with the Town and Country Planning (General Permitted Development) Order 1995, as amended.

6.2 The Council will also notify the Secretary of State and consult with relevant stakeholders. The proposal will also be advertised in the local press, site notices, on the Council's website and through social media to advise people of the Article 4 Direction and give them the opportunity to make representations. A 12 week period will be allowed for comments to be made.

6.3 All properties concerned will be directly contacted. Those properties are set out in Appendix A. The Council consider the methods of communication, set out above, will provide a suitable approach to making all relevant parties aware of the intention to implement the article 4 direction.

6.4 Any representations received will be reported back to Cabinet to determine whether or not to confirm the non-immediate Article 4 Direction. Subject to the Cabinet's decision, the non-immediate Article 4 Direction would come into force 12 months after the original notice of making the Direction is given. Any Direction will then automatically come into force unless the Secretary of State cancels or modifies it.

6.5 The following stages are expected to be met in the implementation of the non-immediate article 4 direction:

- Issue non-immediate Article 4 Direction – November 2022
- Period for comment – December 2022 – March 2023
- Cabinet requested to confirm non-immediate Article 4 Direction – Summer 2023
- Article 4 Direction comes into force – November 2023