



## Mayor and Cabinet

### **Article 4 Direction - Use Class E (commercial, business and services) to Use Class C3 (residential)**

**Date:** 6<sup>th</sup> July 2022

**Key decision:** Yes

**Class:** 1

**Ward(s) affected:** All

**Contributors:** David Syme, Head of Strategic Planning

## Outline and recommendations

The purpose of this report is to summarise the evidence base and rationale for the introduction of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3), as allowed under Class MA, of Part 3, of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO 2015).

A detailed evidence base underpinning this report is set out in **Appendix 1**.

The areas covered by the proposed Article 4 Direction designations for town centres, employment and industrial locations are set out in **Appendix 2** of this report.

It is recommended that Mayor and Cabinet:

- Approve the making of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3).
- Authorise officers to carry out consultation in accordance with Section 6 of this report.
- Note the financial and legal implications of making the Article 4 Direction set in Sections 7 and 8

## Timeline of engagement and decision-making

N/A

### 1. Summary

- 1.1. In September 2020, changes to the Use Class Order came into effect which merged many uses which were formally contained in Class A1-A3 (retail), Class B1 (offices, research and development and light industrial) and Class D (leisure and community) into a new Class E and new Class F.
- 1.2. In August 2021, changes to legislation introduced new permitted development rights allowing for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission.
- 1.3. These changes include a Prior Approval process whereby the Council can consider a limited range of matters including, the size and quality of the new housing. However, the principle of the change of use cannot be assessed.
- 1.4. Local planning authorities cannot secure planning obligations in respect of

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matters that are not the subject of the prior approval process. Crucially, and which has proved controversial with authorities in the past, class MA residential development does not attract any affordable housing requirements. However, s106 agreements can be used to provide mitigation of the prior approval matters set out above i.e. highways, environmental, flooding, noise etc

- 1.5. The evidence paper (**Appendix 1**) accompanying this report outlines the potential adverse economic and social impacts that the permitted development rights could have in Lewisham's designated town centres, employment and industrial areas.
- 1.6. Article 4 Directions can be used by Local Authorities to withdraw permitted development rights where there is a local need and/or justification for doing so. Article 4 Directions can be implemented with immediate effect or with non-immediate effect. In the case of an immediate Article 4 Direction the Local Authority may be liable for compensation to any landowner or other stakeholder who has a planning application refused for a development that would have been allowed under Permitted Development Rights. A non-immediate Article 4 Direction takes effect 12 months after the Direction is made and negates compensation claims. Given the potential cost of compensation, a non-immediate Article 4 Direction is recommended
- 1.7. The Mayor of London has encouraged the use of Article 4 Directions covering Use Class E to Use Class C3 to protect the vitality and economic viability of town centres, employment and industrial areas and many other London Boroughs are working towards this.

## 2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet:
  - Approve the making of a non-immediate Article 4 Direction that removes permitted development rights for the change of use from commercial, business and service use (Use Class E) to residential use (Use Class C3).
  - Authorise officers to carry out consultation in accordance with Section 6 of this report.
  - Note the financial and legal implications of making the Article 4 Direction set in Sections 7 and 8

## 3. Policy Context

Corporate Strategy 2018-2022

- 3.1. The introduction of an Article 4 Direction will contribute to the implementation of the Corporate Strategy 2018-2022 and in particular support the delivery of the Corporate priority, **Building a Strong and Inclusive Economy** by protecting the vitality and economic viability of Lewisham's designated town centres, employment and industrial areas.

Permitted Development Rights

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- 3.2. Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), some changes of use are deemed permitted development. This allows certain uses to change to other uses without the need for planning permission
- 3.3. On 31<sup>st</sup> March 2021, the government introduced the Town and Country (General Permitted Development)(England)(Amendment) Order 2021 which as of 1<sup>st</sup> August 2021 introduced new permitted development rights allowing for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission. A number of conditions are included within this legislation, including:
- A size limit whereby the right only applies to sites that would result in the loss of no more than 1,500sqm of Class E floorspace
  - Article 4 directions restricting changes of use from Office uses to residential will cease effect on 1st August 2022A vacancy test, meaning that the right only applies to premises that have been vacant for 3 months before the Prior Approval application
  - That the right does not apply to listed buildings
  - That the building must have been in Class E use (includes former classes now incorporated within Class E) for at least 2 years before benefiting from the right
- 3.4. Where the Permitted Development Right does apply, proposals will be subject to a prior approval application, where a very limited number of matters can be considered, including:
- Transport impacts
  - Contamination risk of the building
  - Flood risk
  - Impact of noise from commercial premises on intended occupiers
  - Provision of adequate natural light to all habitable rooms
  - In conservation areas – consideration of the impact of the loss of the ground floor commercial, business and Services use on the area’s character and sustainability
  - Impact of intended occupiers of introducing residential use to an area important for industrial and waste uses
  - Impact of the loss of health centres and registered nurseries on the provision of such local services

#### Article 4 Directions

- 3.5. Article 4 Directions can be used to withdraw permitted development rights across a defined area. This power is set out in the Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 3.6. The NPPF (2021) paragraph 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*

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*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.*

3.7. The government's online planning practice guidance (PPG entitled "When is permission required?") gives further detail on the use of Article 4 Directions.

3.8. There are two types of Article 4 directions under General Permitted Development Order 2015 (as amended):

- **An immediate Article 4 Direction** applies when the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. The direction withdraws permitted development rights with immediate effect once notice of the direction is published. However, a local planning authority may be liable to pay compensation to a landowner when permitted development rights are removed by an immediate Article 4 Direction. All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is refused or approved subject to conditions that go beyond those in the GPDO.

- **A non-immediate Article 4 Direction can** require a 12 month interval after notice of the direction is published before the Direction comes into force. A non-immediate Article 4 Direction is therefore used to reduce the likelihood of any compensation claims against the Council.

3.9. The PPG explains when an immediate Article 4 Direction can be used. It states that an immediate Direction can be made in relation to certain PD rights where permitted development presents an immediate threat to local amenity or prejudices the proper planning of an area. It also states the consultation processes towards the making a non-immediate Article 4 Direction must have already begun (PPG paragraph 038).

3.10. Given the potential cost of compensation, a non-immediate Article 4 Direction is recommended

3.11. The process for making a non-immediate Article 4 Direction is as follows:

- **Stage 1** (the current stage) - the council decides whether to go ahead and make a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after the first date of the period for making representations in response to statutory consultation undertaken
- **Stage 2** - Publication / Consultation stage.
- **Stage 3** - On the same day that notice is given under Stage 2 above, the council sends a copy of the Direction to the Secretary of State who has wide powers to modify or cancel a Direction.

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- **Stage 4 - Confirmation Stage** - the Council considers any representations received after a period of at least 28 days from publication/service of the Notice and decides whether to confirm the Direction. Once a Direction has been confirmed, the council must give notice of the confirmation in the same way as it gave notice of the initial direction, and must specify the date that the direction comes into force. A copy of the direction as confirmed must also be sent to the Secretary of State.

#### National Planning Policy (NPPF) (2021)

3.12. The NPPF (2021) paragraph 8 sets out three key objectives for the planning system to achieve sustainable development. The first of which is as follows:

***an economic objective*** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

3.13. **Section 3, Plan-making** paragraph 20 states that:

- Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for:
  - Housing (including affordable housing), employment, retail, leisure and other commercial development

3.14. **Section 6: Building a strong, competitive economy** paragraph 81 states:

*Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.*

3.15. **Section 7: Ensuring the vitality of town centres**, paragraph 86 states:

*Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:*

- define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;*
- define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;*
- retain and enhance existing markets and, where appropriate, re-introduce or create new ones;*
- allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site*

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*availability, so town centre boundaries should be kept under review where necessary;*

- e) *where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and*
- f) *recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.*

#### London Plan (2021)

- 3.16. **Policy E1 Offices** supports improvements to the quality, flexibility and adaptability of office space of different sizes (for micro, small, medium-sized and larger enterprises) through new office provision, refurbishment and mixed-use development.
- 3.17. It also supports the retention of existing viable office floorspace in locations outside the nationally-significant office locations, supporting borough Article 4 directions to remove permitted development rights where appropriate, facilitating the redevelopment, renewal and re-provision of office space where viable and releasing surplus office capacity to other uses.
- 3.18. **Policy E2 Providing suitable business space** expects boroughs to include policies in local Development Plan Documents that support the provision, and where appropriate, protection of a range of B Use Class business space, in terms of type, use and size, at an appropriate range of rents, to meet the needs of micro, small and medium-sized enterprises and to support firms wishing to start-up or expand.
- 3.19. **Policy E4 Land for industry, logistics and services to support London's economic function** requires a sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions to be provided and maintained, taking into account strategic and local employment land reviews, industrial land audits and the potential for intensification, co-location and substitution. The policy also seeks the retention, enhancement and provision of additional industrial capacity across designated and undesignated industrial sites to be planned, monitored and managed.
- 3.20. **Policy E5 Strategic Industrial Locations (SIL)** requires that Strategic Industrial Locations should be managed proactively through a plan-led process to sustain them as London's largest concentrations of industrial, logistics and related capacity for uses that support the functioning of London's economy. The policy requires the Borough's Development Plans to develop local policies to protect and intensify the function of SILs and enhance their attractiveness and competitiveness (including improvements to access, public transport, digital connectivity and other related infrastructure).
- 3.21. **Policy SD6 Town centres and high streets** states that:  
*The vitality and viability of London's varied town centres should be promoted and enhanced by:*

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- 1) *encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses that meet the needs of Londoners, including main town centre uses, night-time economy, civic, community, social and residential uses*
- 2) *identifying locations for mixed-use or housing-led intensification to optimise residential growth potential, securing a high-quality environment and complementing local character and heritage assets*
- 3) *delivering sustainable access to a competitive range of services and activities by walking, cycling and public transport*
- 4) *strengthening the role of town centres as the main focus for Londoners' sense of place and local identity in the capital*
- 5) *ensuring town centres are the primary locations for commercial activity beyond the CAZ and important contributors to the local as well as London-wide economy*
- 6) *supporting the role of town centres in building sustainable, healthy and walkable neighbourhoods with the Healthy Streets Approach embedded in their development and management*

#### Lewisham's adopted Local Plan

3.22. Lewisham adopted Local Plan is made up of the following:

- Lewisham Core Strategy (2011)
- Site Allocations Local Plan (2013)
- Lewisham Town Centre Local Plan (2014)
- Development Management Local Plan (2014)

#### Core Strategy (2011)

3.23. The Core Strategy sets out the current adopted vision, objectives and spatial strategy for growth and regeneration in the borough. The spatial strategy directs growth and regeneration including residential, employment and town centre uses within appropriate areas for development. This includes Regeneration and Growth Areas, Major Centres, District Hubs and Local Hubs.

3.24. The spatial strategy also identified the release of surplus Strategic Industrial Land in the form of Strategic Sites identified as Mixed-Use Employment Locations (MEL)

3.25. Aside from the planned release of surplus industrial land the Core Strategy emphasis the need to protect and enhance remaining employment uses within the borough's Strategic Industrial Locations and Local Employment Locations.

3.26. **Spatial Policy 2 Regeneration and Growth Areas** states that these areas:

*Will provide key regeneration and development opportunities focused on the localities of Lewisham, Catford, Deptford, Deptford Creekside and New Cross/New Cross Gate. In given effect to the London Thames Gateway and the London Plan Opportunity Area designations, this strategy area will capitalise on public transport accessibility and the availability of deliverable and developable land, particularly through intensification of land uses in town centres and within mixed use employment locations.*

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*The Regeneration and Growth Areas will support the creation of a more sustainable borough by being the prime location for new development comprising of at least 14,975 new homes, 100,000 square meters of new and reconfigured employment floorspace (light industry, workshops, offices), and 62,000 square meters of new retail floorspace by 2026.*

**3.27. Spatial Policy 3 District Hubs** states that:

*District Hubs will be reinforced as places which will sustain a diversity of uses and activities appropriate to each hub's function and location. District Hubs are key places which support the development of a sustainable borough, capitalising on the availability of services, facilities and public transport. Comprising a District town centre and its surrounding residential neighbourhoods, the focus will be to build and maximise the uniqueness and potential of each place. The District Hubs will be managed so as to facilitate change that contributes to the economic vitality and viability of each District town centre.*

**3.28. Spatial Policy 4 Local Hubs** states that:

*Individual Local Hubs will be managed to enhance their identity and distinctiveness in order to achieve an overall upgrade in urban quality and amenity. Local Hubs are places where the availability of development sites will be capitalised to secure physical and environmental improvement and integration with the surrounding neighbourhoods including local shopping parades.*

**3.29. Core Strategy Policy 3 Strategic Industrial Locations and Local Employment Locations**

*The Council will protect the Strategic Industrial Locations (SILs) for uses within the B Use Class (B1c, B8 and where appropriate B2 industry), and also appropriate sui generis uses, to provide land for activities that support the continued functioning of London as a whole such as waste management, transport and utilities, and uses that require 24-hour functioning.*

*The Council will protect the Local Employment Locations (LELs) for a range of uses within the B Use Class (B1, B8 and where appropriate B2 industry) and also appropriate sui generis uses, to support the functioning of the local economy.*

**3.30. Core Strategy Policy 4** requires the Council to provide a comprehensive redevelopment of the Mixed Use Employment Locations to provide:

- *employment uses within the B Use Class amounting to at least 20% of the built floorspace of any development as appropriate to the site and its wider context*

Lewisham's emerging Local Plan (2020-2040)

**3.31.** The Council is currently preparing a new integrated Local Plan which will set out the long-term strategy for the borough making provision for new housing (prioritising genuinely affordable housing), employment and other development needs including the necessary infrastructure to support Good Growth (defined in the new London Plan as "growth that is socially and economically inclusive

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and environmentally sustainable”).

- 3.32. Following approval by Council on the 25th November 2020, public consultation was held on Lewisham’s draft Local Plan - Regulation 18 stage “main issues and preferred approaches” which ran from 11th January to the 15th April 2021.
- 3.33. In accordance with the NPPF and London Plan the new Local Plan demonstrates how it can meet Lewisham’s housing target of 16,670 net housing completions over a 10 year period, 5,300 net additional square meters of retail floorspace up to 2030 and 21,800 net additional square meters of employment floorspace up to 2038.
- 3.34. **OL1 Delivering an Open Lewisham (Spatial Strategy)** focuses growth and regeneration in the following areas:
  - Opportunity Areas, specifically at New Cross, Lewisham and Catford OA and Deptford Creekside and Greenwich OA
  - Areas of regeneration
  - Town centres
  - Key corridors such as the A21
- 3.35. For a more comprehensive Policy Review please refer to the Evidence paper

#### **4. Rationale for proposed Article 4 Direction**

- 4.1. The Council acknowledges and supports the intention behind the introduction of Use Class E to support town centres and high streets, allowing them to adapt to changing circumstances, reflect changing retail and business models, and provide a wider range of facilities and services to attract more people. The change will also allow businesses greater flexibility to adapt and diversify to meet changing customer demand in their communities. This support is reflected in the Council’s approach to Class E in the emerging revised Local Plan.
- 4.2. Furthermore the Council also supports the intensification of our town centres with appropriately located, high quality residential development. Residential development is a key component of successful town centres, creating a critical mass of people to support local services and facilities. Again this is reflected in the Council’s existing and proposed spatial strategy and policies within the adopted and emerging Local Plan.
- 4.3. The introduction of permitted development rights for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) however is of significant concern. In many locations within London, including Lewisham where there is significant demand for commercial, business and service use but residential values are extremely high, there is a substantial risk that these permitted development rights will harm the local economy and social well-being by enabling indiscriminate, piecemeal loss of business premises and introducing residential uses in inappropriate locations.
- 4.4. The Evidence Paper (**Appendix 1**) accompanying this report outlines in detail the rationale for the proposed Article 4 Direction. It demonstrates that the proposed Article 4 Direction meets the legislative requirements as well as national, regional and local policy requirements.

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## Policy rationale

### NPPF (2021)

- 4.5. It is difficult to see how the introduction of permitted development rights for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission is consistent with the aspirations of the NPPF.
- 4.6. Demonstrating that future need for retail and employment floorspace is appropriately planned within the Local Plan process as set out in Section 3 of the NPPF would be undermined by continued indiscriminate losses from Class E to Class C3.
- 4.7. Furthermore it is difficult to see how local authorities can continue to protect and grow the local economy without the power to assess the appropriateness and refuse where necessary change of uses from commercial, business and service use (Use Class E) to residential use (Use Class C3)
- 4.8. Whilst the NPPF recognises that residential development often plays an important role in town centres it is clear that commercial growth should be prioritised, in certain circumstances over residential. Without the ability to assess these circumstances there is a real concern that indiscriminate losses from Class E to Class C3 will undermine the vitality and economic viability of our town centres.

### London Plan (2021)

- 4.9. It is difficult to see how the introduction of permitted development rights for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission is consistent with the London Plan which seeks the protection and enhancement of town centres, employment and industrial uses.
- 4.10. The Mayor of London has encouraged the use of Article 4 Directions covering Use Class E to Use Class C3 to protect the vitality and economic viability of town centres, employment and industrial areas and many other London Boroughs are working towards this.

### Lewisham Local Plan

- 4.11. Both the adopted and emerging Local Plan have spatial strategies that plan positively for future growth and investment within the borough. The emerging Local Plan seeks to demonstrate how in accordance with the NPPF it can meet its residential, employment and retail needs over the long term. Growth is focused within appropriate areas such as Opportunity areas, town centres and along key infrastructure routes.
- 4.12. The new Local Plan also recognises the need to protect and enhance Lewisham employment floorspace to grow its local economy, retain jobs and create new ones.
- 4.13. Again, It is difficult to see how the introduction of permitted development rights for changes of use from commercial, business and service use (Use Class E) to residential use (Use Class C3) without the need for planning permission is consistent with the policies within our adopted or emerging Local Plan.
- 4.14. Unplanned losses of Class E floorspace is likely to undermine the vitality and

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economic viability of the borough's town centres and employment locations.

#### Housing delivery in Lewisham

- 4.15. Lewisham has a good record of housing delivery over many years, with over 11,713 net additional homes completed between 2011/12 and 2019/20. This is almost 216 more than the 11,497 homes required through the London Plan targets for the borough over this period. Despite a significant reduction in housing delivery over the Covid 19 pandemic period due to construction on major sites stopping, housing delivery is expected to return to normal with a number of large sites under construction and a good pipeline of approved applications.
- 4.16. Lewisham also has an up to date housing trajectory and five year housing land supply in its emerging revised Local Plan.
- 4.17. Lewisham therefore does not need to relinquish essential land for industry, jobs, businesses and town centre uses in an uncontrolled way in order to meet its housing requirement. To do so would cause unacceptable impacts on sustainable development within the borough and compromise the viability of our employment areas and town centres.

#### Implications of existing permitted development rights

- 4.18. Lewisham has already seen unplanned and piecemeal loss of office and retail space throughout the borough from previous permitted development rights introduced in 2013.
- 4.19. Over a period of 7 years from 2013/14 to 2019/20 the Council has had to approve the loss of 25,808m<sup>2</sup> of employment floorspace and 1,468m<sup>2</sup> of retail floorspace through permitted development rights.
- 4.20. New permitted development rights from commercial, business and service use (Use Class E) to residential use (Use Class C3) is likely to result in increased losses and further exacerbate the imbalance between the supply and demand of employment floorspace.
- 4.21. Aside from the quantity of non-residential floorspace being lost within the borough the Council is also concerned by the quality of residential accommodation created through permitted development rights.
- 4.22. A comprehensive study by the Royal Institution of Chartered Surveyors (RICS) in 2018 highlighted a lack of regulation of permitted development rights was resulting in the construction of poor quality housing. It looked at five Local Authorities with high rates of permitted development schemes from office to residential and of the 568 buildings visited only 30% of the homes delivered met minimum national space standards, many had no amenity space, were poorly designed, badly constructed and were in poor locations for residential amenities.
- 4.23. Local planning authorities cannot secure planning obligations in respect of matters that are not the subject of the prior approval process. Crucially, and which has proved controversial with authorities in the past, class MA residential development does not attract any affordable housing requirements. However, s106 agreements can be used

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to provide mitigation of the prior approval matters set out above i.e. highways, environmental, flooding, noise etc.

- 4.24. While PD provides no exemption from CIL and the usual rules apply to Class MA development, in most cases the development will qualify for the in-use buildings exemption. There will be tension between this relief and the requirement for the building to be vacant which will put a premium on a "sweet spot" of recently vacated buildings.

### Lewisham's strategy for economic growth and recovery

- 4.25. Lewisham's Mayor and Cabinet endorsed the Council's Economic Recovery Priority Areas on September 2021. This high level strategy sets out an action plan for meeting the Council's corporate priority of Building a Strong and Inclusive Economy, responding to the challenges presented by the Covid 19 pandemic and creating an inclusive and resilient recovery over the short, medium and long term. The priorities for economic growth, recovery and renewal are as follows:

1. More local jobs
  - Growth from existing employers
  - Attract new employers
  - Start-up and scale-ups
2. Increased local spending
  - Increase footfall and spend in town centres
  - Increase visitor economy
  - Increase local supply chains
3. Strong partnerships and infrastructure
  - Transport and digital connectivity
  - Community involvement
  - Affordable and available workspace
4. Tackle unemployment and inequalities
  - Youth employment and training
  - All age training and job brokerage
  - Living wage and in-work progression

- 4.26. The Strategy has been prepared in the context of high deprivation and inequalities with the borough and an acknowledgement that some of the worst affected sectors of the national economy such as the creative and cultural industries are incredibly important to Lewisham as a borough. It has also been prepared acknowledging that, economically, young people have been disproportionately affected by the pandemic and that the number of young people aged 18-24 claiming Universal Credit or Job Seeker's Allowance is increasing within the borough.

- 4.27. A detailed study of unemployment in London commissioned by London

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Councils and undertaken by Volterra Partners LLP (March 2021) reinforces this through forecasts for London's unemployment and its disaggregation among subgroups of residents. Unemployment levels are projected to be particularly high for younger (16-24) and older (50+) demographics and amongst Black, Asian and Minority Ethnic (BAME) groups in London. The report also highlighted that young people and BAME groups have been adversely impacted by the pandemic. Lewisham is one of the most ethnically diverse places in the country. Some 46 per cent of residents identify themselves as having Black, Asian and Minority Ethnic (BAME) heritage.

- 4.28. Uncontrolled loss of commercial, business and service use (Use Class E) through permitted development rights will undermine the Council's ability to implement its strategy. The loss of business space will limit the scope for business start-up and expansion, restrict potential job retention and creation in the borough and therefore reduce potential employment opportunities for Lewisham's residents. This is likely to adversely affect key economic sectors within Lewisham such as the creative industries, retail and light industry which in turn is likely to stymie economic growth and recovery within Lewisham. It is also likely to have a disproportionate impact on our younger population and our BAME communities as outlined above.
- 4.29. Harm will not just arise from the loss of individual premises, affecting the overall stock and premises available in the borough but is likely to result in a cumulative loss of multiple premises within key employment locations and town centres. Where several premises are lost within a geographical area in an uncontrolled way this is likely to undermine the core function of employment locations and town centres.

### Planning Applications

- 4.30. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine any proposal in accordance with the development plan unless material considerations indicate otherwise. In Lewisham's case, the development plan includes the London Plan, the Core Strategy, the Development Management Plan, the Site Allocations Plan and the Lewisham town centre Local Plan. This will allow the Council to properly assess the impact of any loss of Class E uses through a robust methodology and where necessary refuse any application which would have an adverse impact.

## **5. Area covered by the Article 4 Direction**

- 5.1. Schedule 3 to the GPDO 2015 states that a local authority may apply a direction where it considers development "would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area".
- 5.2. The NPPF (2021) paragraph 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*

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*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.*

- 5.3. The geographical areas for the proposed Article 4 Direction has been thoroughly assessed to ensure that it meets the NPPF definition and are considered the smallest geographical area whilst ensuring the impact of uncontrolled loss through permitted development rights can be assessed, and refused where appropriate through the development management process.

### Town Centres

- 5.4. The proposed Article 4 Direction will cover Lewisham's two Major Centres, Lewisham and Catford, seven District Centres and 12 Local Centres.

5.5. Major Centre:

- **Lewisham Town Centre** – the centre is the highest-order comparison goods shopping destination in the Borough, and the 2017 Retail Study identified it to be performing well both qualitatively and quantitatively. In addition, the household survey found that 77% of shoppers visit the centre for comparison goods shopping, and non-food floor space in the town centre trades at £12,960 per sq.m, representing a strong trading performance. Major new development within the centre has increased the residential offer in the town centre as well as key regeneration schemes providing additional, retail, leisure and business floor space.
- **Catford Town Centre** – the centre is the civic heart of the borough with key civic institutions such as the Council offices, Civic Suite and Town Hall. On the 14<sup>th</sup> July 2021 Mayor and Cabinet endorsed the Catford Town Centre Development Framework which sets out a 20 year vision for the transformation of the town centre which will include additional residential development, retail, leisure, community and business floorspace.

- 5.6. Officers have reviewed the boundaries of our Major Centres and removed any broad areas which would not be affected by the permitted development rights. This includes areas of predominantly residential development and any designated open spaces.

### District Centres:

- **Blackheath** - is a strong-performing district centre, with a particularly strong focus on food and drink, and upmarket comparison goods retailing. The centre is attractive and well maintained, benefiting from its setting on the edge of Greenwich Park. There is little scope for outward expansion of the centre, and the absence of any convenience goods shopping provision represents a key qualitative gap.

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- **Deptford** - has a close functional and geographical relationship with New Cross/New Cross Gate, but has a more varied offer which is better able to meet local/day-to-day shopping needs. The centre is an important hub for the creative industries in south east London, through the concentration of art galleries and studio spaces around Creekside and facilities such as the Albany Centre and the community-run Deptford Cinema.
- **Downham** - is a small district centre which plays a more limited role and function compared to the other district centres in the Borough, both in terms of its diversity and uses and the extent of its catchment area. Nevertheless, it is able to meet a range of local convenience shopping and retail service needs.
- **Forest Hill** - is a strong-performing district centre, with a strong convenience function anchored by a large Sainsbury's supermarket, as well as a developing independent comparison goods quarter along Dartmouth Road. The Horniman Museum and Gardens to the north of the centre are an important cultural draw.
- **Lee Green** - is waiting for the long-planned redevelopment of the Leegate Centre to come forward, which should in turn act as a catalyst for the wider regeneration of the centre. The in-centre Sainsbury's store nevertheless performs well and is a strong retail anchor.
- **New Cross / New Cross Gate** - is a bustling and diverse centre. There is a need for the physical appearance of the centre to be enhanced, as well as improvements to the movement of pedestrians through the centre. 10% of the units in the centre are occupied by hot food takeaways, double LBL's target identified its Core Strategy. New Cross Gate Retail Park represents a major opportunity for intensification.
- **Sydenham** - is a strong performing centre with a good retail and leisure mix, including two strong-performing food stores. There is potential for the centre to develop closer linkages with nearby Kirkdale, which is home to a more upmarket/specialist retail offer.

5.7. Officers have reviewed the boundaries of our District Centres and removed any broad areas which would not be affected by the permitted development rights. This includes areas of predominantly residential development and any designated open spaces.

### Local Centres

5.8. According to Lewisham Retail Capacity Study Update (2019), local centres found within various areas of Lewisham have decent transport links and serves the surrounding neighbourhood and complement the larger major and district centres. They consist of a small cluster of shops typically offering convenience retail (e.g. small supermarket up to around 500sqm) and services (e.g. Pharmacy and Hairdressers) together with a community anchor (e.g. Public

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House, Church or Cinema) attracting visitors.

- 5.9. The local centres includes: Bellingham, Brockley Cross, Burnt Ash, Crofton Park, Downham Way, Hither Green, Honour Oak / Brockley Rise, Grove Park, Ladywell, Lewisham Way, New Cross Road and Upper Sydenham.
- 5.10. Existing Local Centre boundaries are tightly defined around primary retail, services and community uses.

#### Strategic Industrial Locations (SIL) and Locally Significant Industrial Sites (LSIS)

- 5.11. As highlighted through the Mayor of London's strategic evidence in the Evidence paper (Appendix 1), London's industrial capacity can be impacted by Class E to residential PD rights both directly, through the loss of light industrial and creative production uses that fall within Class E, and indirectly, through the introduction of residential uses in industrial areas which can compromise the integrity or effectiveness of these locations in accommodating industrial-type activities and their ability to operate on a 24-hour basis.
- 5.12. Over the period 2001 to 2015, more than 1,300 hectares of industrial land was released to other uses and this far exceeded previously established London Plan monitoring benchmarks. Research for the GLA indicates that there will be positive net demand for industrial land in London over the period 2016 to 2041, mostly driven by strong demand for logistics to service growth in London's economy and population. In addition, the GLA demand assessment shows that in 2015, 185 hectares of industrial land already had planning permission to change to non-industrial use and a further 653 hectares were earmarked for potential release in Opportunity Area Planning Frameworks, Local Plans and Housing Zones.
- 5.13. In Lewisham planned release of surplus industrial land was adopted through the existing Local Plan. Transforming surplus SIL into Mixed Use Employment sites for comprehensive redevelopment. These include sites such as Surrey Canal Triangle, Cannon Wharf, Marine Wharf and Convoys Wharf.
- 5.14. The situation has now changed with the LB Lewisham Employment Land Review (2019) forecasting a need for 21,800 sqm of net additional employment floorspace in the Borough up to 2038.
- 5.15. The new permitted development rights could result in significant harm to existing industrial and commercial locations through indiscriminate, piecemeal loss of employment floorspace and introduce residential development in inappropriate locations. It is also difficult to see how the Council can effectively plan and demonstrate that it will meet its net demand for 21,800 sqm of net additional employment floorspace in the Borough up to 2038 when permitted development rights are likely to result in significant indiscriminate losses from Class E to Class C3.
- 5.16. Existing SIL and LSIS boundaries are tightly defined around employment uses.

#### Mixed-Use Employment Locations (MELs)

- 5.17. Mixed Use Employment Locations are identified in the Council's adopted Core Strategy (2011) and comprise of sites which through the release of surplus industrial land were allocated for comprehensive redevelopment. These include:

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- Convoys Wharf
- Surrey Canal Triangle
- Oxestalls Road
- Plough Way – comprising of Plough Way and Canon Wharf
- Arklow Road
- Childers Street
- Grinstead Road
- Sun and Kent Wharf
- Thanet Wharf

- 5.18. Many of these sites have come forward for redevelopment and are either constructed, on-site or have planning permissions approved. The redevelopment on these sites has brought forward comprehensive mixed-use development comprising of a range of uses including residential, employment, retail, leisure and community uses. Nevertheless, monitoring information indicates that the 20 per cent requirement of employment floorspace as per Core Strategy Policy 4 has not always been achieved on committed sites.
- 5.19. The Lewisham Employment Land Study (2019) highlighted that MEL locations should continue to be protected for employment generating uses. As a result, Policy EC2 (Protecting employment sites and delivering new workspace) in the emerging Local Plan, provides a policy framework to protect MELs. This policy contributes to the delivery of the council's spatial strategy. In particular, to support the creation and enhancement of inclusive, well-connected, mixed and liveable neighbourhoods in the Deptford, New Cross and Evelyn areas.
- 5.20. The new permitted development rights could have substantial impact on the MEL. Therefore, it is critical that the council protects these sites against future losses through the Article 4 Direction.

### Risks

- 5.21. As outlined in Section 3 paragraph 3.12 of this report the Secretary of State has to be notified of the making and confirming of any Article 4 Directions. After the making of any Article 4 Direction the Secretary of State has wide ranging powers to modify or cancel the Direction.
- 5.22. In recent months we have seen these powers being used to reject a series of Article 4 Directions made by several inner London Authorities to withdraw permitted development rights from Class E to Class C3. The Article 4 Directions cover various town centre, employment sites and the Central Activity Zone (CAZ).
- 5.23. Those London Authorities are now working with the Department of Levelling Up, Housing and Communities (DLUHC) to modify these article 4 Directions.
- 5.24. It is clear from round table discussions on this matter that the government wants to send a message that councils may not be able to apply such directions across a wide area and that councils could need more preparation work to justify the directions.
- 5.25. This is a key risk to this process.

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## **6. Consultation**

- 6.1. Consultation on the making of the Article 4 Directions will comply with the provisions set out in the GPDO. Notice of the Direction will be made by:
- Local advertisement in the press.
  - Site notices placed in visible locations for a period of at least 6 weeks.
  - The requirement for written notifications can be waived as it is considered impracticable due to the number of owner or occupiers within the area.
  - A copy of the Article 4 direction will be made available on the Council's website as well as in a number of convenient locations including Planning reception and local libraries
- 6.2. Following consultation and within 6 months, a report recommending whether the Direction should be confirmed will be reported back to Mayor and Cabinet.

## **7. Financial implications**

- 7.1. The cost of making an Article 4 Direction can be met through existing budgets. A maximum expenditure of £1,000 is estimated.
- 7.2. There may be financial implications arising from the need to deal with future planning applications for change of use from Class E-C3 which would have otherwise be covered under permitted development. This will be managed within the existing planning budget. As of 17th January 2018 Lewisham now charges fees for applications covered by Article 4 Directions
- 7.3. Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation can be sought where (i) the LPA makes an Article 4 Direction, (ii) an application is made for planning permission to carry out development that would formerly have been permitted by the GPDO and (iii) the LPA refuses that application or grants permission subject to conditions differing from those in the GPDO.
- 7.4. However, where 12 months' notice is given in advance of a direction taking effect (non-immediate Article 4 Direction) there will be no liability to pay compensation (provided that the development authorised by the new changes had not started before the notice was published).
- 7.5. Given the potential cost of compensation, a non-immediate Article 4 Direction is recommended

## **8. Legal implications**

- 8.1. Section 9D of the Local Government Act 2000 states that any function of the local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements. The Local Authorities (Functions and Responsibilities (England) Regulations 2000 does not specify that the certain functions proposed here are by law the responsibility of the Council, and therefore they are an executive function
- 8.2. The Town and Country Planning (General Permitted Development etc)(England) (Amendment) (No 2) Order 2021 ('GPDO 2021') came into effect

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on 1st August 2021. The GPDO 2021 amends the Town and Country Planning (General Permitted Development Order) 2015 ('GPDO 2015') bringing it into line with the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which substantially amends the Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order") by introducing new use Classes E (commercial, business and service), which subsumed some existing use classes. Many of the classes of permission in Schedule 2 to the GPDO 2015 are defined by reference to classes of uses specified in the Use Classes Order.

- 8.3. The new 'Class MA' permitted development right in the GPDO 2015 allows changes of use from a use falling within Class E to Class C3 (residential). This means that provided the limited requirements and conditions of Class MA are satisfied, it will be possible to make a change of use from a Class E use to a Class C3 use without the need to apply to the local planning authority for planning permission. This permitted development right has become available from 1 August 2021.
- 8.4. There are some limitations on the application of the new Class MA permitted development right, for example:
  - prior approval needs to be applied for in advance in relation to a range of matters;
  - the building needs to have been vacant for a continuous period of at least 3 months immediately prior to the prior approval application;
  - the building needs to have been in one of various specific types of use (corresponding to certain of the pre 1 September 2020 use classes) for at least 2 years before the prior approval application; and
  - the cumulative floor space of the existing building changing use needs to be 1,500 square metres or less.
- 8.5. When considering applications for prior approval, the local planning authority can only assess specific matters such as impact on residential amenity, transport and the local environment including the conservation area status. The local planning authority cannot apply the full range of development plan policies, such as those relating to protection of employment generating land, quality of new housing or delivery of affordable housing, in the way that it would if considering an application in the usual manner by assessing it on its merits and compliance with adopted planning policies and other material considerations.
- 8.6. The only mechanism available to local authorities to remove permitted development rights where they otherwise apply is through a direction under Article 4 of the GPDO as is the case in the present matter.
- 8.7. An Article 4 direction removes a specified permitted development right in a defined area. Proposed development that would otherwise be automatically permitted then requires planning permission to proceed. This enables the local authority to determine the merits of the proposed development via a planning application, having regard to its development plan policies and any other material considerations.
- 8.8. The detailed procedure for the making of a non-immediate Article 4 direction is

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contained in paragraphs 1(1) to 1(18) of Schedule 3 of the GPDO. This provides that as soon as practicable after the direction is made, the LPA are required to give notice by local advertisement. Site notices must also be erected within the areas to which the direction relates and notice must be served on relevant owners and occupiers (unless an exception applies). A minimum statutory period of 21 days must be given for any representations to be made. In line with current practice the public consultation will run for a 6 week period. Subject to confirmation, the direction can come into force any time after 28 days have elapsed from the date of notice being given, but the direction must come into force within 2 years.

- 8.9. The Council must also send a copy of the direction and the notice to the Secretary of State on the same day as the notice of the direction is first published by local advertisement. It should be noted that the Secretary of State has power to make a direction cancelling or modifying such a direction made under article 4 by a local planning authority at any time before or after its confirmation.
- 8.10. In deciding whether to confirm a direction, the local planning authority must take into account any representations received during the consultation period. Section 108 of the Town and Country Planning Act makes provision for compensation to be payable where an application for planning permission (that would formally have been permitted development) is refused or is granted subject to conditions different from those in the GPDO. However, so long as 12 months' notice is given before the Article 4 direction takes effect as is the case in the present matter, no compensation will be payable.
- 8.11. Attention is drawn to a Written Ministerial Statement (WMS) by Robert Jenrick issued on 1 July 2021 and in particular the observations therein regarding the targeted application of proposed Article 4 directions to the smallest geographical areas possible to achieve its aim and would have the effect of restricting the exercise of Class MA permitted development rights.
- 8.12. The WMS also emphasises the need for robust evidence to support of the making of a direction. When considering the recommendations in this report, regard must be given to the public sector equalities duty to eliminate unlawful conduct under the Equality Act 2010. The duty is set out at Section 149 of the 2010 Act. It requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimization and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic.
- 8.13. Implications in relation to the Human Rights Act 1998 Schedule 1, Part Article 1 of the First Protocol of the Convention. have been identified .If the Direction is made this will affect the owners and occupiers' Article 1 property rights
- 8.14. Under Article 1 every natural or legal person is entitled to peaceful enjoyment of their possessions interference in these rights by a public authority is only justified if it is in the public interest and subject to the conditions provided by law.
- 8.15. The Council cannot act in a way which is incompatible with these rights. However these are qualified rights and therefore can be interfered with if it is in the public interest and proportionate to do so.

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## **9. Equalities implications**

- 9.1. The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which covers the following nine protected characteristics: age; disability; gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.2. The Council must in the exercise of its functions, ***have regard to*** the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
- 9.3. The Council's Single Equality Framework 2020-2024 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 9.4. The Article 4 Direction simply withdraws Permitted Development rights and as such this type of application will be assessed against our adopted development plan policies – Those policies were subject to Equality Impact Assessments during their adoption. The emerging draft Local Plan is being prepared in parallel with an Integrated Impact Assessment. As such we do not envisage any equality issues arising from this decision.
- 9.5. The Public Sector Equality Duty is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

## **10. Climate change and environmental implications**

- 10.1. A Strategic Environmental Assessment (SEA) Screening Assessment has been carried out and concludes that the proposed use of the Article 4 Direction is unlikely to have any significant effects. (see Appendix 3)

## **11. Crime and disorder implications**

- 11.1. There are no direct implications relating to crime and disorder issues.

## **12. Health and wellbeing implications**

- 12.1. There are no direct implications relating to health and wellbeing. However the indiscriminate and unplanned loss of valued local facilities, services and employment through the use of this permitted development right could affect the

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health and wellbeing of Lewisham’s residents. The Article 4 Direction will allow the Council to properly assess, through the planning application process any impact and refuse permission where necessary.

### 13. Background papers

- 13.1. Strategic evidence base to support London borough Article 4 Directions (commercial to residential)

[https://www.london.gov.uk/sites/default/files/strategic\\_evidence\\_to\\_support\\_commercial\\_to\\_residential\\_article\\_4s\\_in\\_london\\_july\\_2021\\_final\\_report.pdf](https://www.london.gov.uk/sites/default/files/strategic_evidence_to_support_commercial_to_residential_article_4s_in_london_july_2021_final_report.pdf)

- 13.2. Lewisham Retail Capacity Study Update 2019

<https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://lewisham.gov.uk/-/media/files/imported/10retailcapacitystudyupdate2019.ashx&ved=2ahUKEwjPwfez3a4AhV9g3lEHavfAulQFXoECAAQAg&usq=AOvVaw1ZL6-RSRP6PU89i9YL0nNg>

- 13.3. Lewisham Employment Land Study 2019

<https://lewisham.gov.uk/myservices/planning/policy/adopted-local-plan/evidence-base/ldf-evidence-base--employment-and-retail>

- 13.4. Lewisham’s existing adopted Local Development Framework.

<https://lewisham.gov.uk/myservices/planning/policy/adopted-local-plan> Which includes:

- Core Strategy 2011
- Development Management Local Plan 2014
- Site Allocations Local Plan 2013
- Lewisham Town Centre Local Plan 2014

- 13.5. National Planning Policy Framework (NPPF) 2021.

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 13.6. National Planning Policy Framework (NPPF) 2018

<https://webarchive.nationalarchives.gov.uk/ukgwa/20210708211349/https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 13.7. Lewisham Local Plan Regulation 18 Stage “main issues and preferred approaches” document.

<https://lewisham.gov.uk/myservices/planning/policy/planning/about-the-lewisham-local-plan>

### 14. Glossary

Term	Definition
Article 4 Direction	Article 4 Directions can be used to withdraw permitted development rights across a defined area. This power is set out in the Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
GPDO	General Permitted Development Order

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Term	Definition
NPPF	National Planning Policy Framework
SEA	Strategic Environmental Assessment

## 15. Report author and contact

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## 16. Comments for and on behalf of the Executive Director for Corporate Resources

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## 17. Comments for and on behalf of the Director of Law, Governance and Elections

17.1. Joy – Joy Ukadike, Senior Planning Lawyer [Joy.Ukadike@lewisham.gov.uk](mailto:Joy.Ukadike@lewisham.gov.uk)

## 18. Appendices

Appendix 1: Class E Evidence Paper June 2022

Appendix 2: Plan indicating extent of Article 4 Direction

Appendix 3: Draft Strategic Environmental Assessment (SEA) Scoping

Appendix 4: Draft making of the Article 4 Direction

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