


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">16 APRIL 2018</p>	
<p>ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR BASEMENT EXCAVATION</p>	
<p>Report of the Cabinet Member for Economic Development and Regeneration: Councillor Andrew Jones</p>	
<p>Open Report</p>	
<p>Classification - For Decision Key Decision: Yes</p>	
<p>Consultation Housing Legal Economic Development</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Jo Rowlands, Strategic Director Growth & Place</p>	
<p>Report Author: Matt Butler, Head of Policy and Spatial Planning</p>	<p>Contact Details: Tel: 020 8753 3493 E-mail: matt.butler@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1 On 6th February 2017 Cabinet agreed to the making of a non-immediate Article 4 Direction to remove permitted development rights in the Borough allowing basement excavation. The permitted development right currently means that local planning authorities have limited control over basement excavation as planning permission is not required. By removing PD rights through an Article 4 Direction such as this, applications can be assessed against planning policies to ensure compliance. The relevant Direction was made on 25 April 2017 and is intended to come into force, subject to confirmation, on 26 April 2018.
- 1.2 Cabinet is now asked to consider the representations received and to decide whether the Article 4 Direction should be confirmed. It is recommended that the Council proceeds to confirm the Article 4 Direction and that necessary

consequential steps are delegated to officers. If the Direction is confirmed the removal of the relevant permitted development right will take effect from 26 April 2018.

2. RECOMMENDATIONS

- 2.1 That after careful consideration of the consultation representations Cabinet proceeds to confirm the Article 4 Direction made on 25 April 2017 (**see appendix 1**) and coming into force on 26 April 2018.
- 2.2 That Cabinet delegates to the Strategic Director Growth & Place, in consultation with the Cabinet Member for Economic Development and Regeneration all necessary tasks to give effect to the confirmed Direction (including notifying affected property owners and the Secretary of State).

3. REASONS FOR DECISION

- 3.1 The Government's permitted development (PD) right for basement excavation allows certain types of basement excavation to be created without planning permission which can have significant impacts on residential amenity.
- 3.2 The purpose of PD rights is to speed up the Development Management process and therefore the delivery of development. As a result, such proposals are not assessed against the policies in the Development Management Framework and may not fully comply with the borough's standards. Therefore, by removing PD rights through an Article 4 Direction such as this, applications can be assessed against planning policies to ensure compliance.
- 3.3 Hammersmith and Fulham Council have prepared a revised planning policy to help protect against basement extensions to single dwelling houses in the borough. The emerging policy contained in the Local Plan 2018 seeks to resist basement construction and extensions unless strict criteria are met. This means that the council have the ability to permit basements but subject to a number of criteria being met, that will safeguard the quality of life. As part of the criteria, the applicant must demonstrate that any impacts of basement development are kept to acceptable levels under the relevant acts and guidance, taking the cumulative impacts of other development proposals into account.
- 3.4 Given the issues relating to basement development, it is important that the Council brings all basement development within planning control. Implementing an Article 4 Direction is the only way in which all basement development would require planning permission, allowing the mitigation measures set out in policy to be applied consistently across all types of basements. It is considered that bringing all basements under planning control and applying planning policies which mitigate their harmful impacts will be beneficial to the Borough's environment.

4. PROPOSAL AND ISSUES

- 4.1 The construction of basements, and the subsequent effect that large scale excavations inevitably have on immediate neighbours and the wider local community, has been a cause of great concern to our residents. Basements within certain limits can be built (in the curtilage of the houses) without the need for planning permission. Basement construction can cause nuisance and disturbance for neighbours and others in the vicinity, through construction traffic, parking suspensions and the noise, dust and vibration of construction itself.
- 4.2 The council regularly receive complaints and objections in association with planning applications for works at basement level (both new and extensions), relating to:
- disruption and noise involved during construction, especially in residential areas;
 - effects on neighbouring properties in regards to dust and dirt during construction;
 - damage to the foundations of adjoining basements and other homes;
 - traffic issues and concerns with contractor's vehicles blocking the road and their driveway for long periods of time; and
 - concerns with over-development of the site and adversely affect the amenity of the immediate neighbours.
- 4.3 On 6th February 2017 Cabinet agreed to the making of a non-immediate Article 4 Direction to remove permitted development rights allowing basement excavation. The Article 4 Direction was duly sealed on 25 April 2017 and notice given to relevant parties of the making of the Direction, as explained in section 2 of this report. The intended coming into force date was specified as 26 April 2018.

5. OPTIONS AND ANALYSIS OF OPTIONS

- 5.1 Officers do not consider that there have been any changes to planning policy (at national, London-wide or borough level) since the making of the Article 4 Direction that would have any bearing on the decision whether to confirm it.
- 5.2 The Council could decide not to introduce this Article 4 Direction. This option is not recommended, as without the ability to effectively assess proposals for basement excavation through the planning system, there will continue to be an impact on residential amenity.
- 5.2 Cabinet is therefore asked to confirm the Article 4 Direction made on 25 April 2017 such that the Direction will come into force on 26 April 2018 and to delegate to officers all necessary tasks to give effect to the confirmed Direction (including notifying affected property owners and the Secretary of State).

6. CONSULTATION

- 6.1 Following the making of the Article 4 Direction, the Council notified affected owners/occupiers in accordance with the requirements of the General Permitted Development Order 2015. Over 2,000 letters were sent to businesses and residents, a public notice was placed in the local newspaper and details were made available on the Council's webpages. A notification letter was sent to the Secretary of State.
- 6.2 Representations about the making of the Article 4 Direction were invited to be made during a consultation period between 25 April and 6 June 2017. 36 representations were received with the majority of respondents supporting the Article 4 Direction. However, there were also comments opposing the removal of permitted development rights. A schedule of all the representations has been included in **appendix 2**.
- 6.3 A selection of the main issues/comments raised during the consultation are detailed below:
- *I wish to register my view that the council should require planning permission be sought concerning the creation of basements below houses, particularly in the conservation areas of the borough.*
 - *I think the council would be correct to exclude basements from permitted development, as I think sometimes they are the only means of stopping a property being overdeveloped against neighbours wishes.*
 - *This is in accordance with the NPPF and GLAAS Charter as well as the Hammersmith and Fulham Local Plan. The Greater London Archaeological Advisory Service (GLAAS) would therefore welcome the application of development management planning controls with such proposals.*
 - *I feel that homeowners should keep their existing permitted development rights which is in line with Government Policy and is fairer to homeowners who want to build space under their property.*
- 6.4 Officers have considered the representations and do not consider that they would amount to a justification not to proceed to confirm the Article 4 Direction. It is important to note that the Article 4 Direction would not amount to an absolute prohibition on basement excavation; its effect is to require an application for a planning permission to be made for the basement development. The determination of an application for planning permission would mean that the proposed basement excavation would be assessed against relevant planning policies and consideration being given to any other material considerations.
- 6.5 The Secretary of State was notified of the making of the Article 4 Direction but no comments were received.

7. EQUALITY IMPLICATIONS

- 7.1. The Council has had due regard to its Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. There are no negative impacts on protected groups with the making of a non-immediate Article 4 Direction to remove permitted development rights in the Borough allowing basement excavation.
- 7.2. *Implications completed by Peter Smith, Head of Policy and Strategy, tel. 020 8753 2206.*

8. LEGAL IMPLICATIONS

- 8.1 The Council must have regard to any representations received before deciding whether or not to confirm the Article 4 Direction. The detailed procedure for confirming an Article 4 Direction is contained in Schedule 3 of the GPDO.
- 8.2 The Secretary of State has the power to cancel or modify an Article 4 Direction at any time before or after it is confirmed.
- 8.3 *Implications verified/completed by: Lindsey Le Masurier, Senior Solicitor, tel. 020 7361 2118.*

9. FINANCIAL IMPLICATIONS

- 9.1 As basement excavations are currently classed as permitted development, no applications for planning permission have been necessary and no fees have been required to be paid to the Council.
- 9.2 Approval to confirm the Article 4 Direction to remove permitted development rights in the borough allowing basement excavation means that applications for planning permission including a planning application fee will be required.
- 9.3 The Article 4 Direction is therefore likely to lead to an increase in the number of planning applications for which planning application fees will be applicable. Any additional income is not expected to be significant and will be used to fund the consequent additional costs associated with the processing of these planning applications. However, the requirement on highways in particular to deal with assessing construction and demolition management plans could, depending on the uptake in basement applications, have a detrimental impact on resources in terms of officer hours. It is important to note that the introduction of the Article 4 Direction could lead to an overspend in respect of processing the resulting applications and the fees generally do not cover the costs of processing.
- 9.2 Other costs associated with confirming the Article 4 Direction include those arising from notifying owner/occupiers, site notices and a public notice. The costs are estimated to be approximately £2,000 and will be funded from existing budgets within the Policy and Spatial Planning budget.

9.3 Implications completed by: Danny Rochford, Head of Finance, RPHS, tel. 020 8753 4023.

10. IMPLICATIONS FOR BUSINESS

10.1 This report recommends that Permitted Development rights are withdrawn for basement excavation. The direct impact on businesses in the borough is considered to be neutral given that this permitted development right is associated with single dwelling houses.

10.2 Given that basement construction can cause nuisance and disturbance for businesses in the vicinity, through construction traffic, parking suspensions, noise, dust, vibration of construction, indirect impact on businesses in the borough might be positive.

10.3 *Implications verified/completed by: Albenia Karameros, Economic Development Team, tel. 020 7938 8583.*

11. COMMERCIAL IMPLICATIONS

11.1 Currently there are no fees being paid to the Council for planning permission as basement excavations are currently considered permitted development.

11.2 This report seeks approval to remove the permitted development rights in the borough. This means planning permission and planning application fees will be charged by the Council.

11.3. However, the fees will not account as significant income for the Council and there is likely to be an overspend in respect of processing the resulting applications as the fees generally do not cover the costs of processing.

Implications completed by: Andra Ulianov, Procurement consultant, verified by Simon Davis, Head of Commercial Management, tel. 0208 753 7181.

12. IT IMPLICATIONS

12.1. There are no IT implications in this proposal.

12.2. From an Information Governance point of view, the proposal does not propose that personal data is managed differently and therefore there are no additional information management implications.

12.3. *Implications verified/completed by: Veronica Barella, interim Chief Information Officer, tel. 020 8753 2927.*

13. RISK MANAGEMENT

13.1. Soaring local property values and a lack of land can lead to an unprecedented level of underground development across the borough. The environmental

risks of noise pollution, dust and impact on traffic (caused by construction vehicles removing soil) may have a significant impact on neighbourhoods, often for an extended period of time. These new restrictions, together with the new planning policy, on residential basements will go some way to addressing their impact on our residents and ensure that those developments that do take place are carried out in a considerate manner.

13.2. *Implications verified by: Michael Sloniowski, Risk Manager, tel. 020 8753 2587.*

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None

LIST OF APPENDICES:

Appendix 1 – Article 4 Direction made in April 2017

Appendix 2 – Schedule of representations