<table>
<thead>
<tr>
<th><strong>Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken</strong></th>
<th>Cllr Ahern, Cabinet Member for Planning Policy and Transport</th>
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<td><strong>Date of decision (i.e. not before):</strong></td>
<td>Not before Public Realm Scrutiny Committee meeting on Monday 3 July 2017</td>
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<td><strong>Forward Plan reference:</strong></td>
<td>05067/17/P/A</td>
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<td><strong>Report title (decision subject)</strong></td>
<td>MAKING OF A NON-IMMEDIATE BOROUGH-WIDE ARTICLE 4 DIRECTION TO REMOVE PROPOSED PERMITTED DEVELOPMENT RIGHTS FOR CHANGES OF USE FROM OFFICES TO RESIDENTIAL</td>
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<tr>
<td><strong>Reporting officer</strong></td>
<td>Graham Stallwood, Executive Director, Planning and Borough Development</td>
</tr>
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<td><strong>Key decision</strong></td>
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<td><strong>Access to information classification</strong></td>
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1. **EXECUTIVE SUMMARY**

1.1 In May 2013, Class O, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") was amended so that national permitted development rights were extended to allow the change of use from office (Class B1(a) use) to residential (Class C3 use) through a ‘prior approval’ process rather than through the normal planning permission process. The Council was successful in securing a Borough-wide exemption for this permitted development right meaning that planning permission is still required for such a change of use. As such, the Borough is currently designated as article 2(5) land under the GPDO as land included in Part 3 of Schedule 1 to the GPDO as exempt from the planning rules that allow offices to change into residential property without permission from the Council.

1.2 On 6 April 2016 the Government enacted a statutory instrument\(^1\) amending the GPDO which removes the Borough’s exemption (as being article 2(5) land) from the 2013 office to residential liberalisation under ‘Class O’ of the GPDO. This provision will come into effect on 31 May 2019.

1.3 This will mean that the need for planning permission for changes of use of office to residential will be replaced by a system of prior approval subject to specific considerations provided in Class O.2 (1), Schedule 2 Part 3 of the GPDO (elaborated further in paragraph 3.2 of this report).

1.4 Given the importance of the Borough’s office stock to the local and to the wider regional and national economy, and the loss that would occur were planning controls removed, it is essential that the Council retains control over changes of use from offices to residential. This control will allow the Council to use its adopted planning policies (the Local Plan) to assess whether there may be any circumstances where such changes of use would be appropriate.

1.5 The Council has commissioned consultants to consider the likely impact of the forthcoming liberalisations, and therefore the value of making (and ultimately confirming) an Article 4 direction. This is estimated to include:

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\(^1\) The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016
• 3,500 firms are at significant risk of having their current premises converted from their current commercial use into residential dwellings;
• 44,000 jobs being at risk; and
• an economic impact of up to £3.25 billion (Gross Value Added).

1.6 In addition to the economic impact the liberalisation will see a homogenisation of the uses within the Borough, to the detriment of its diversity and to its character.

1.7 The current evidence builds upon the 2013 case for an exemption. This was considered so compelling as to persuade the Government to grant Kensington and Chelsea a Borough-wide exemption to the B1/C3 liberalisation. The Government shared the Council’s view that the proposed liberalisation would result in the “loss of a nationally significant area of economic activity” and “substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring.”

1.8 The Cabinet Member is recommended to make a non-immediate Article 4 direction to exclude the Borough from the provisions of the amended GPDO, provisions which replace the need for planning permission with a system of prior approval. The issues that can be considered with prior approval are narrow in nature and will not allow the Council to maintain its stock of offices. An Article 4 direction is, therefore essential to allow the proper planning of the area.

1.9 Given the geographical spread of the Borough’s office uses, and the nature of the existing clusters, the Council is seeking an Article 4 direction which covers the whole Borough.

1.10 The non-immediate Article 4 direction should be confirmed, subject to the results of the public consultation, a year after the initial making. This will ensure that the Council is not liable for compensation. Confirmation will be before May 2019, the date when the new provisions of Class O come into effect.

2. **RECOMMENDATION**

2.1 The Cabinet Member is recommended to make a non-immediate Borough-wide Article 4 direction to remove the forthcoming permitted development rights granted by Class O, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from offices (Use Class B1(a)) to dwellinghouses (Use Class C3).
3. REASONS FOR DECISION

3.1 On 6 April 2016 the Government enacted a statutory instrument\(^2\) amending Class O of Part 3 of Schedule 2 of the GPDO. This will remove the Borough’s exemption (as article 2(5) land) to the 2013 office to residential liberalisation. The exemption will be removed on 31 May 2019.

3.2 The requirement for planning permission will be replaced with a system of prior approval and such change of use will be deemed to have permitted development rights. As such when determining such a change of use the Council will only be able to consider:

- transport and highways impact of the development;
- contamination risks on the site;
- flooding risks on the site; and
- impact of noise from commercial premises on the intended occupiers of the development\(^3\).

3.3 Given the narrow scope of what the Council will be able to consider the Council is concerned that, unfettered, the new system of prior approval will result in the wholesale loss of the Borough’s stock of office floorspace. This will have a detrimental impact on the diversity of uses in the Borough, so essential to its special character. It will also have a significant impact upon employment opportunities within the Borough, and upon the local and the wider economy.

3.4 The Council has commissioned consultants\(^4\) to consider the magnitude of this impact. This was published in 2016 and the report is included in Appendix A. This is estimated to include:

- 3,500 firms being at significant risk of having their current premises converted from their current commercial use into residential dwellings;
- 44,000 jobs being at risk; and
- an economic impact of up to £3.25 billion (GVA).

3.5 The likely impact is discussed in some detail in section 4 below.

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\(^2\) The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016
\(^3\) Part 3 of Schedule 2, Class O.2(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015
\(^4\) Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential, TBR, (Feb 2016)
3.6 A non-immediate Article 4 direction is recommended as this will allow the restriction of the liberalisation offered under Class O of the GPDO without the payment of compensation. The Article 4 direction can be confirmed in a year’s time before the provisions of the GPDO come into full effect in May 2019. Only by the use of the Article 4 direction, and through the requirement to seek planning permission, can the Council have regard to the relevant policies within its own Local Plan and within the London Plan. As such the Article 4 direction meets the legal test in that the Council is “satisfied that it is expedient that development... should not be carried out unless permission is granted...”

3.7 The Council has considered the geographic extent of the Article 4 direction. Given the geographical spread of the Borough’s office uses, and the nature of the existing clusters, the Council is seeking an Article 4 direction which covers the whole Borough. This reflects the full Borough exemption, sought, and granted, to the original office to residential liberalisation in 2013.

4. ISSUES AND DISCUSSION

Planning policy support to protect office uses

4.1 The planning policies/ guidance of particular relevance include:

- Local Plan Policy CF5: This policy recognises the role that a range of business premises play in supporting the Borough’s economy and in maintaining its diversity and its character. The policy sets out the presumption against the loss of office premises across the Borough, including those circumstances when office floorspace will not be protected. “The Council will ensure that there is a range of business premises within the borough to allow businesses to grow and thrive.” To deliver this the Council will, “protect very small and small offices (when either stand alone or as part of a larger business premises) throughout the borough; medium sized offices within the Employment Zones higher order town centres and other accessible areas.”

- Local Plan Policy CF6: This policy is concerned with the promotion and protection of the work-spaces needed to support the creative and cultural industries.

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5 Subsection (1) of Article 4 of the GPDO 2015 (as amended)
• London Plan Policy 4.1 (Developing London’s economy): This policy seeks to ensure the development of a diverse economy across London. It seeks to ensure the availability of suitable workspaces for larger employers and for small and medium sized enterprises.

• London Plan Policy 4.2 (Offices): This policy supports the renewal and modernisation of the existing office stock, and where appropriate to seek increases in the current stock.

• The National Planning Policy Framework (NPPF) is informed by twelve core planning principles. One of these is that planning should, “proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the county needs” (bullet 3, paragraph 17.) The paragraph goes on to note that, “every effort should be made objectively to identify the housing, business and other development needs of an area…”

• The building of a strong, competitive economy is an essential element of “delivering sustainable development.” NPPF paragraph 18 states that, “the Government is committed to securing economic growth to create jobs and prosperity” with paragraph 19 noting that “significant weight should be placed on the need to support economic growth through the planning system.”

• NPPF paragraph 20 states, “that to help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.”

• NPPF paragraph 21 (fourth bullet) notes that Councils should “plan positively for the location, promotion and expansion of clusters of knowledge driven, creative or high technology industries”; with paragraph 22 supporting the protection of land for office uses where there is a reasonable prospect of a site being used for the employment use.

4.2 The Council is in the process of reviewing the policies within the Fostering Vitality chapter of the Local Plan as part of the Local Plan Partial Review. Whilst these policies are currently being given only minimal weight, they are useful as they do indicate the Council’s intended future direction of travel. These policies have been submitted to the Planning Inspectorate, with the hearings for the examination scheduled for September 2017 and adoption in early 2018. Submission
policy CF5 maintains a similar approach to that taken at present, in requiring the protection of B1 uses across the Borough. It goes further than the existing policy in that offices with a floor area of 1,000 sq m or more will now be protected when lying outside of accessible areas.

**May 2019 and Class O of the GPDO**

4.3 On 6 April 2016 the Government enacted a statutory instrument amending Class O of Part 3 of Schedule 2 of the GPDO. This will remove the exemption that some boroughs, Kensington and Chelsea included, were granted (as article 2(5) land) to the 2013 office to residential liberalisation. The exemption will be removed on 31st May 2019.

4.4 The requirement for planning permission will be replaced with a system of prior approval and such change of use will be deemed to have permitted development rights. As such when determining such a change of use the Council will only be able to consider:

- Transport and highways impact of the development;
- Contamination risks on the site;
- Flooding risks on the site; and
- Impact of noise from commercial premises on the intended occupiers of the development.

4.5 Given the narrow scope of what will be able to be considered the Council is concerned that, unfettered, the new system of prior approval will result in the wholesale loss of the Borough’s stock of office floorspace. This will have a detrimental impact on the diversity of uses in the Borough, so essential to its special character. It will also have a significant impact upon employment opportunities within the Borough, and upon the local and the wider regional and national economy.

**Value of the Borough’s office uses and the need for an Article 4 direction**

*Nature and distribution of office uses*

4.6 The office market in Kensington and Chelsea falls between the central London and west London markets. Kensington and Chelsea provides a mix of stock from small mews style office stock scattered across the Borough to larger purpose built developments in the core commercial clusters.

4.7 The office stock in Kensington and Chelsea is occupied by a full cross section of business types, and the Borough is particularly known for its music, fashion and creative businesses. Some of these are of national and international significance.

4.8 These clusters of creative industries influence much of the Royal Borough’s office market. Outside the town centres, such occupiers have been attracted by the availability of interesting industrial style buildings as well as flexible hybrid space where the primary use is as offices, but with elements of ancillary storage or even production uses. Roger Tym and Partners (2013)\(^7\) recognise that this is a “distinct commercial product, which may not be commonly found elsewhere in the Borough or in other employment zones around London.”

4.9 Therefore, whilst large floorplate buildings are centred in the commercial cores such as Kensington High Street, an important part of the office sector occupies a much wider area of the Borough.

4.10 There are several business clusters of national and international importance within the Borough. These include:

- The music publishing industry, an industry which is centred in Kensington and Chelsea, providing 28% of all employment in the sector, is home to all four major record labels; Universal, Warner Music, Sony Music, and EMI, as well as over 400 associated independent studios and production facilities. Any loss of these businesses would represent a blow to the cluster and could undermine the strength of the industry to the UK as a whole.

- Kensington and Chelsea is also a major centre for Fashion and Design. The Borough is home to many international names: Stella McCartney; Monsoon Accessorize; Louise Blouin Foundation; Donna Ida Jeans; Cath Kidston; Col Art Group; Charlotte Olympia Shoes; Mario Testino Photography; Virgin Games; Tommy Hilfiger; Moncler; Manolo Blahnik; Joseph; The White Company and The Designers Guild.

- In 2009 the UK film industry contributed over £4.5bn to GDP and £1.2bn to the Exchequer as well as supporting 100,000 jobs. The film sector is concentrated especially within a narrow wedge fanning out from Soho, through the Royal Borough, Hammersmith and Fulham, Ealing to Shepperton and Pinewood studios in the west.

\(^7\) RBKC, Commercial Property Study, PBA (March 2013)
• In 2011, the value of publishing’s sales to the UK was £3.2bn, with an increasing contribution coming from the digital sales (8%). Publishing, particularly of newspapers, is strong within the Royal Borough. As of 2011, there were over 2,100 jobs associated with newspaper publishing, 560 with book publishing and a further 260 in publishing periodicals and journals.

Special characteristics of the Royal Borough

4.11 The Royal Borough has a number of special characteristics which make it particularly vulnerable to the forthcoming reforms and which reinforces the need for a Borough-wide Article 4 direction.

4.12 The office sector: The Borough’s office sector is viable and vibrant. In the first quarter of 2017 this was demonstrated by an exceptionally low office vacancy rate of 1.2%\(^8\), which is less than a sixth of the 8% level considered by the GLA to be healthy and to allow for natural churn. This indicated a tight market, with little available space, driving up rental values. In 2013 the Borough was projected to be the sixth fastest-growing Borough in London in terms of office employment, assuming the necessary premises are available. It is home to some nationally important clusters of businesses.

4.13 To meet this demand an additional 86,000 sq m of office floorspace will be required between 2016 and 2028\(^9\). This figure is derived from the GLA’s London Office Floorspace Projections (2014)\(^10\), alongside actual net floorspace change, and net change in office development within the development pipeline since 2014. This confirms that a significant demand for additional office floorspace remains, at 93,694 sq m 2016-41.\(^11\)

4.14 The Borough does not have a reservoir of vacant office floorspace.

4.15 The housing market. Kensington and Chelsea contains much of London’s prime housing market. There is a strong and seemingly insatiable demand for housing in the Borough. This is driven in part by overseas investment in what is perceived as a safe haven. It is impossible to meet this demand in full. Other than the two strategic sites of Earl’s Court and Kensal, the Borough is fully and densely developed. However, in terms of permissions, the Council was (and is

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\(8\) QI Market Update, Frost Meadowcroft (April 2017)
\(10\) London Office Floorspace Projections, GLA, Peter Brett Associates (July 2014)
still) meeting both its London Plan housing targets and the NPPF 20% buffer. The Council is also being proactive in bringing forward a Local Plan Partial Review, including new housing policies, to further plan for objectively-assessed housing need and ensure London Plan housing targets are met. This has been submitted to the Planning Inspectorate, with the examination hearing expected in September 2017 and adoption in early 2018.

4.16 **The relative value of housing and office floorspace.** Despite the vibrancy of the office market, residential values far exceed office values. The strong desire for residential property in Kensington and Chelsea is reflected in 2015 with values across the Borough of between £1,000 and £2,400 per sq ft. In contrast, typical office rental values range from a peak of £1,250 in Knightsbridge, to more typical values of £850 in Chelsea and Kensington, down to £425 in parts of the north of the Borough. Of critical importance is the differential in value, with much of the Borough seeing more than a 50% uplift in value were the change of use to residential allowed.

4.17 This uplift in value will form the basis for whether or not conversion is likely. The Council’s consultants conclude that an uplift of more than 40% is likely to be sufficient to prove a compelling financial case for conversion. A 30% uplift in value may be all that is required. In the Borough, the residual value of buildings in residential use is considerably more than double that of buildings occupied by offices and in the highest value areas much more. There has been a recent levelling out of residential values following the uncertainty of the EU referendum. This has not changed the fundamental differential in value between residential and office uses.

4.18 The risk ratings of the Borough’s submarkets are illustrated in figure 4.1 below. This has been reproduced from a report by TBR consultants in 2016.

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12 Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential, TBR, (Feb 2016)
13 Frost Meadowcroft, February 2017, per comms.
4.19 The risk category of offices within each of the Borough’s office sub markets has been mapped in figure 4.2 below.

4.20 So in Kensington and Chelsea changes of use were, and remain, driven by the differential value between competing uses, not by a lack of demand, and without planning control there would be a strong financial incentive across most of the Borough to convert office floorspace to residential use.
Figure 4.2: map of risk ratings of Borough’s office sub markets.
Impact of the proposals on the economic base

4.21 TBR has assessed the likely impact that the removal of the need for planning permission will have upon the local and the wider economy. The TBR report is included as Appendix A\textsuperscript{14}.

4.22 In order to make this assessment, TBR designed a methodology which linked firms and the economic value that they contribute with the premises they occupy and the risk associated with the conversion of these premises (where planning controls are removed). The analysis was constructed by identifying firms and their contribution to the economy based upon their location within each of the submarkets using Trends Central Resource data and supplemented by information from the Valuation Office and by data on Non-Domestic rates. TBR assigned each business premises in the Borough a “risk” of conversion to residential. This was based upon the potential uplift in value from conversion that their current premises represent. Any premises that could see an uplift in value of 40\% or more is considered to be at a high or very high risk of conversion. Further details are included within the TBR report.

4.23 Without planning control, the enormous difference in value between the office and residential sectors would exert a compelling force which would, in a short space of time, lead to the loss of a substantial part of the Borough’s office base. This would cause serious damage to the important business clusters in Kensington and Chelsea and the value to the national economy that is derived from them. TBR has calculated the likely impact to be as follows:

- 3,500 firms, or more than three-quarters of the Borough’s Class B1 firms, being at significant risk of having their current premises converted from their current commercial use into residential dwellings;

- 30,000 jobs would be directly at risk, increasing to over 44,000 jobs once the indirect and induced economic impacts are modelled. There would be a very high risk of 12,500 jobs being lost, and a high risk of a further 25,000 jobs being lost;

- The impact upon economic output (measured in Gross Value Added) would be to place over \£2.5 billion of direct economic activity at significant risk; a figure which rises to \£3.25 billion.

\textsuperscript{14} Evidence to inform Article 4 Direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential (Feb 2016)
once indirect and inducted economic impacts have been applied to the local authority area.

**The effect on the character of the Borough**

4.24 In addition, the Council notes that Kensington and Chelsea’s businesses are a core part of the character of the Borough, bringing vibrancy and economic diversity.

4.25 The comprehensive loss of office premises that would arise from this proposal would turn the Borough into a residential dormitory. It would harm the town centres, because loss of offices will reduce their viability; and would destroy the special character of the environment through the loss of streets of special character like commercial mews.

**Harm to existing clusters due to ingress of incompatible uses**

4.26 Many of the occupiers of the Borough’s office premises have chosen to locate where they have in order to take advantage of relationships with others in the area. By locating close to one another businesses benefit from agglomeration economies – the external benefits that arise when economic activity takes place in a concentrated space. If offices are allowed to convert to residential, the very reason for the Borough’s competitive advantage will be threatened.

4.27 The harm is likely to take two forms. First, there is the immediate physical effect of the building no longer being able to be used for an office use, which diminishes the opportunities for increased agglomeration. Secondly, there is the impact that the initial office to residential conversion has on the potential for future office development. Regardless of the merits of any case, residential uses often perceive office and light industrial uses as un-neighbourly, associated with traffic deliveries and unsocial operating hours. Complaints to environmental health teams and objections to new planning applications can drive out existing uses. The negative domino effect can be further exacerbated by the increasing hope values for remaining commercial uses associated with new residential properties.

**The 2013 exemption**

4.28 The Government introduced permitted development for changes of use from offices to residential uses in 2013. Councils were given the opportunity to be exempted from these reforms where they could demonstrate that these permitted development rights will lead to, “the loss of a nationally significant area of economic activity”, or
“substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring.”

4.29 This Council took the opportunity given to make the case against the reforms. The Government accepted that the Council’s case was very strong. It “scored” the evidence submitted, the evidence which demonstrated that both the local and the wider strategic impact would be very high, at 39 out of 40. This was the highest score given to any local authority in the country. Furthermore, the Government concurred with the Council’s view that the exemption should be Borough-wide in nature. This was the case for only two Boroughs in the country.

4.30 The scores awarded are reproduced below, with a copy of the original Government letter included in Appendix B.

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<th>Likelihood of predicted impact</th>
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<td>Robustness of evidence base</td>
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<td>5</td>
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<td>5</td>
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*Figure 4.3: Department for Communities and Local Government (DCLG) Scoring matrix, 2013 exemption*

4.31 This data collected in 2013 is similar in nature to that which is now relevant to help justify the current Article 4 direction. Using a similar methodology it showed that some 2,300 firms employing 12,000 people, generating more than £900 million a year would have been at immediate risk were the need for planning permission to be removed. This would have included great harm to several business clusters including the music, fashion, media and publishing industries. This loss would be considerably higher in the longer term when the indirect impact was calculated, or £1.7 billion (GVA) by 2015.

4.32 The Council is concerned that the impact of the liberalisation is even stronger now than it was in 2013. Vacancy rates are still lower (1.3% rather than 3.6%), and there is a greater differential in value between office and residential uses.

*Housing supply*
In March 2017, the Government made a statement to link the ability of Councils to seek such an Article 4 direction with their ability to meet a new 'Housing Delivery Test' which was consulted on as part of the Government’s Housing White Paper: Fixing our broken housing market (February 2017). The Letter from Lord Bourne to Lord True of 18 March 2017, the then Parliamentary Under Secretary of State, states that:

“In future, those areas that are meeting their housing requirement will be afforded greater flexibility in respect of the area to be covered by an Article 4 direction removing the permitted development right to change from office to residential use. Where a local planning authority;

- achieves 100% of its housing delivery requirement; and
- can demonstrate that it can continue to do so after removal of the right, and;
- can demonstrate that the direction withdrawing the office to residential permitted development right is necessary to protect the amenity and wellbeing of the area to be covered by the direction;

the Secretary of State will look more generously at the area across which the direction would apply and not seek to limit a direction applying to that area.

... 

The flexibility in respect of the area covered by Article 4 directions will apply to those authorities that are meeting 100% of their housing requirement as measured by the housing delivery test. The approach would apply to directions notified following the introduction of the housing delivery test...

As noted above, in order for the Secretary of State to apply this approach, evidence will be required to show that the requirements of this approach are met. Specifically:

- robust evidence as to how the authority will continue to meet their housing requirement without the contribution to housing delivery from the office to residential permitted development right...
- as is the case now, any new Article 4 directions after this date will continue to require evidence that the direction is necessary to protect the amenity or wellbeing of the area to be covered by the direction. This could include for example evidence of the impact of loss of office space on the amenity of the area”.

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4.34 Whilst the Housing Delivery Test is not yet in effect, and its detailed workings have not yet been consulted on, it is clear that the Government intends to consider Article 4 directions in light of housing delivery.

4.35 The Council recognises that meeting its housing targets is a policy imperative, and has been so for some time. The housing supply requirement to March 2021 is 4,398 dwellings. This is made up of the London Plan requirement of 733 new homes pa, plus the 20% buffer required in the NPPF where there has been a record of persistent under-delivery against the Borough’s target. The current supply of deliverable sites during this period is expected to be 4,416 based on those sites assessed as deliverable in the housing trajectory. As such the Council is satisfied that it can demonstrate a five year housing supply to 2020/21, and that this is not dependent on the loss of office uses to residential.

4.36 Similarly, the Council is satisfied that it can meet its housing target over the lifetime of the Local Plan. The Borough’s housing trajectory is included as figure 4.4 (below). Again this is not dependent on the loss of Use Class B floorspace.

4.37 The Borough’s housing target and 5-year supply is being assessed as part of the Local Plan Partial Review. The examination hearing for this is scheduled for September 2017 with adoption in early 2018. The Council is confident that the Local Plan Partial Review’s housing target and 5-year supply will be found sound by the Inspector and therefore represent an up-to-date, robust and credible strategy for meeting the Council’s targets, without the need for office-residential permitted development rights.
5. **ANALYSIS**

5.1 Having examined the issues and the impact that the proposed liberalisation is likely to have upon the Borough’s stock of office uses, the Council should ensure that changes of use from office uses to residential should continue to require planning permission. The Council can do so through an Article 4 direction. Further details are provided in the sections below.

**What is an Article 4 direction and what can it do?**

5.2 National Planning Practice Guidance ("NPPG") states "an Article 4 direction is a direction under Article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area"15. In this instance the right to be removed

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15 National Planning Practice Guidance (NPPG): When is permission required? (NPPG ID 13: paragraph 036)
would be that offered by Class O, Part 2 of Schedule 3 of the GPDO, or the change the use from an office (Class B1(a)) to a residential ‘dwellinghouse’ (Class C3). The defined area would be the entire Borough.

Justification for an Article 4 direction

5.3 For an Article 4 direction to be made the legal requirement is that the Council be “satisfied that it is expedient that development... should not be carried out unless permission is granted...”\(^\text{16}\).

5.4 By the same measure, the Council should also be satisfied that the making of the Article 4 direction is in accordance with the guidance within the NPPG in being “necessary to protect local amenity or the wellbeing of the area.”\(^\text{17}\)

5.5 The Council is satisfied that the use of an Article 4 direction for changes of use of offices to residential, throughout the entire Borough, meets these tests.

5.6 The Council recognises that the making of the Article 4 direction would not preclude the loss of each office use, where a proposal is in accordance with the policies in the Local Plan. However, it would mean that planning permission would be required if the owners wanted to use their premises for residential uses. This would allow the subsequent application to be assessed using all the policies within the Council’s Development Plan and consider any other factors that are material, rather than the narrow suite of issues allowed through prior approval as provided in Paragraph O.2, Part 3, Schedule 2 of the GPDO.

5.7 Making an Article 4 direction would allow the Council to take account of the harm that the loss of office uses will have upon the Borough, or in the parlance of the NPPG, allow the “proper planning of the area”.

Extent of the Article 4 direction

5.8 Whilst the Government has previously made clear in a Written Ministerial Statement\(^\text{18}\) (by the Planning Minister at the time) that it may not always support Borough-wide Article 4 directions to stop permitted development rights it is possible to do so if there are compelling reasons.

\(^{16}\) Subsection (1) of Article 4 of the GPDO 2015 (as amended)
\(^{17}\) Paragraph: 038 Reference ID: 13-038-20140306
\(^{18}\) Written Ministerial Statement: Change of Use: New Homes (6 February 2014)
5.9 The NPPG (ID: 13 – 036) states that Councils can use an Article 4 direction to withdraw specified permitted development rights across a defined area. Paragraph 037 notes that “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.”

5.10 The NPPG goes on to state (ID: 13-038): “The potential harm that the direction is intended to address should be clearly identified" and that, “there should be a particularly strong justification for the withdrawal of permitted development rights relating to: a wide area (e.g. those covering the entire area of a local planning authority.)”

5.11 It should be noted that the Written Ministerial Statement\(^{19}\) acknowledged that, at the time, the “new national right could affect areas differently” and that “all requests for exemption underwent a robust and thorough assessment”.

5.12 It was only two Boroughs - Kensington and Chelsea and the City of London - which were granted an exemption for the entire Borough. It was the broad distribution of office premises and interlinked business clusters across Kensington and Chelsea which supported the case for the exemption for the whole Borough.

5.13 In granting the Borough-wide exemption in 2013 the Government accepted the argument that given the Borough is small in area and densely developed, and that it represents a vibrant, closely related set of interconnected business clusters. There are areas where offices are more concentrated, such as within the larger town centres and within the three Employment Zones. However, business premises are also widely spread through the residential areas, for example within the commercial mews and in and near smaller local centres. The distribution of offices is shown in figure 5.3, below. Whilst this map is based on 2014 data, it has not changed to any significant degree in the interim. Many of these units have functional links to the nationally important clusters. Given the very high occupancy of the Borough’s office premises there would be potential for harm to these clusters if the area for exemption were more narrowly defined.

\(^{19}\) Written Ministerial Statement: Change of Use: New Homes (6 February 2014)
Figure 5.3: Location of firms in B1 premises, 2014.
The nature of the Article 4 direction

5.14 Article 4 directions can take immediate effect (an ‘immediate Article 4 direction’), or can take effect after a period of one year (a non-immediate Article 4 direction’). An immediate Article 4 direction can render the Council liable to paying compensation. Compensation can be claimed on “abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.” (NPPG paragraph 042). Those expenses that are compensable costs incurred in abortive works or abortive expenses could include the planning application fee, any professional fees (architect fees, drawing fees, etc.) and, in the event of a refusal, “other loss or damage directly attributable to the withdrawal of permitted development rights” could include the difference in the value of the land if the development had been carried out and its value in its current state. Taken together these costs would be significant.

5.15 A claim for compensation can be made to the Council if planning permission is refused or granted subject to conditions other than those conditions imposed by the GPDO\(^\text{20}\).

5.16 The regulations do set out the circumstances where compensation may not be payable if the Council makes a “non-immediate” Article 4. These include certain types of “prescribed development”, as set out in Regulation 2 of The Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). The permitted development ordinarily allowed under Class O of Part 3 (B1 to C3) is classified as “prescribed development”.

5.17 Section 108(2A) of the Town and Country Planning Act 1990 (as amended) provides that compensation is only payable if an application for planning permission for certain development formerly permitted by the GPDO is made within 12 months of the Article 4 direction taking effect. However, if compensation is to be avoided, a year must elapse between the making of the direction and it coming into effect. This timeframe would not be problematical, given that the relevant amendment to the GPDO only comes into being in May 2019.

Conclusion

5.18 A relaxation of planning regulations would result in the whole scale loss of business premises, with a catastrophic effect on the Borough’s and the wider economy. This would run counter to the Government’s objectives as set out within the NPPF, the regional policies as set out

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\(^{20}\) Section 108of the Town and Country Planning Act 1990 (as amended)
within the London Plan and the Council’s Local Plan. As such the Council considers that the making of the Article 4 direction satisfies the legal requirement in “being expedient that development should not be carried out unless permission is granted.”

5.19 It is recommended that a non-immediate Borough-wide Article 4 direction is made in relation to changes of use from offices uses to residential uses. This must come into effect (or be confirmed) at least one year from making to ensure that the Council is not liable for compensation. This will be a date which lies sometime before the amendments to Class O come into effect on 31 May 2019.

6. PROCEDURE AND CONSULTATION

6.1 Once the non-immediate direction has been made by the Council, it shall give notice of the Direction:

- by local advertisement in at least one newspaper in the local area (article 1(1)(a) Schedule 3 of the GPDO);
- display at least two site notices within the area to which the direction relates for a period not less than six weeks (article 1(1)(b) Schedule 3 of the GPDO);
- notify the owners and occupiers of the affected properties and land unless this is impractical (article 1(1)(C) Schedule 3 of the GPDO);
- The Council must allow at least 21 days for any representations to be made to the Council (paragraph 1(4) (d), Schedule 3 of the GPDO); and
- on the same day that the notice of an Article 4 direction is first published or displayed locally, the local planning authority shall notify the Secretary of State (article 1(6) Schedule 3 of the GPDO).  

6.2 Whilst article 1 (2) of Schedule 3 of the GPDO requires notice to be served on every owner/occupier within the land it also states that the Council need not serve individual notices if “the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.” For a Borough-wide Article 4 direction this would be the case.

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21 The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended)
6.3 The NPPG (ID: 13-050) states that "a local planning authority must, as soon as practicable after confirming an article 4 direction, inform the Secretary of State." (ID: 13-051) The Secretary of State has the power to modify or cancel the article 4 direction at any time before or after they are made. The guidance is, however, clear that, "the Secretary of State will not use their powers unless there are clear reasons why intervention at this level is necessary." The Written Ministerial Statement\(^\text{22}\) confirms that this is “a reserve power”.

6.4 Any representations received during the consultation period will be taken into account by the Council in determining whether to confirm the Article 4 direction.

6.5 As set out above the Council would need to wait a year from the date of local notification to avoid payment of compensation before confirming the non-immediate Article 4 direction.

6.6 Once the Council has considered all the representations received during consultation, the Article 4 direction could be confirmed. This would be done through a key decision. Regulations require that the direction must be confirmed between twenty eight days and two years following the date on which the representation period began.

6.7 When the Council confirms the Article 4 direction it must give notice of the confirmation and the date the direction comes into force to the affected owner and occupiers of the aldn in the same way as listed in paragraph 6.1 above and send a copy of the direction to the Secretary of State.

\(^{22}\) Written Ministerial Statement: Change of Use: New Homes (6 February 2014)
**Consultation to date**

6.8 The Council published an Issues and Options paper as part of an emerging “Enterprise Review” in November 2014 before it was merged with the wider Local Plan Partial Review. At this time the Council was aware that there was a possibility that the Borough’s exemption could be at threat at some time in the future in light of the Government’s Technical Consultation on Planning (July 2014). As such the Council considered it appropriate to ask the following question:

6.9 “Subject to changes to national legislation proposed by the government, should the Council seek to require planning permission for changes of use from business uses to residential uses? If so, are there any particular areas or business sectors this should consider?”

6.10 Of the nineteen people/organisations who responded to this question, eleven supported the use of an Article 4 direction, and eight did not.

6.11 Those who support the use of an Article 4 direction included the Kensington Society, The Earl’s Court Society, the Kensington and Chelsea Chamber of Commerce, the Cadogan Estate, as well as a number of private individuals and property owners. These illustrated a concern that liberalisation would see the loss of many businesses and the loss of the Borough’s vibrancy. In addition, whilst the Cadogan Estate supported the retention of the controls, this would need to be backed up by suitable policies which would allow planning permission to be granted where appropriate. This would include, for example, where the existing uses is no longer commercially viable, or where the replacement use would have such benefits as to outweigh the loss.

6.12 The characteristics of those who did not support the use of such a mechanism differed, relating more to individual owners of commercial properties, many of whom occupied properties within the Freston Road Employment Zone. Again, when given, the reasons for liberalisation were varied. These included the view that the Council should not thwart national policy on housing, especially when London faces such an urgent need for more homes. It was also expressed that there is a danger such an approach lacks the necessary flexibility regarding the retention of business premises which have no longer term future. A number of these representations relate to those with a particular interest in the Latimer Road area and the St Quintin and Woodlands Neighbourhood Plan. This Neighbourhood Plan has been approved at referendum, but still awaits being formally made as is subject to a legal challenge.

**Forthcoming consultation**
6.13 As well as notifying the public of the making of the Direction, the Public Realm Scrutiny Committee will be consulted on this key decision at its meeting of 3 July 2017 during the consultation period. Any comments made will be reported to the Cabinet Member, so may be fully taken into account before the decision to make, or to amend, the Article 4 direction is confirmed.

7. **EQUALITY, LEGAL, FINANCIAL, RESOURCE AND SUSTAINABILITY IMPLICATIONS**

*Equality*

7.1 An Equalities Impact Assessment (EqIA) was undertaken for the original Core Strategy (now known as the Local Plan) in 2010. Whilst the Article 4 direction will allow the Council to implement its adopted policies for the majority of relevant premises across the Borough, it is unlikely to have a significant impact upon any “protected characteristic group.”

7.2 A further EqIA has been updated as part of the Integrated Impact Assessment (IIA) for the emerging Local Plan Partial Review which generally retains the existing Local Plan’s protection of office uses. For the office policies, it concludes that the protection of office uses will have a positive contribution to equality as it will “help to preserve local jobs or to increase the employment opportunities available close to where local people live.”

7.3 The Council has carried out a further EqIA for this Article 4 direction key decision. This document is included within Appendix D. Given that the result of the Article 4 direction will be a continuation of existing powers (i.e. that planning permission will continue to be required for a change of use of an office use to residential), no specified groups will be disadvantaged. The Article 4 direction is likely to have a positive impact upon the Borough’s employment opportunities, but this impact will not be skewed for (or against) any specific protected group.

*Legal*

7.4 The legal implications are explained in the body of this report, as are the processes to be followed to make, advertise and confirm the Article 4 direction.

*Financial and resource*  

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7.5 Making the non-immediate Article 4 direction could have an additional cost to the Council in that applicants will be exempt from paying the planning application fees for such changes of use that would have otherwise been permitted development. This impact is not likely to be significant given the strong policy presumption against such changes of use, a policy presumption which is likely to discourage speculative applications.

7.6 Nevertheless, in Lord Bourne’s Letter to Lord True of 18 March 2017, the then Parliamentary Under Secretary of State, it states: “we will enable the local planning authority to charge the statutory planning application fee that is in force in the area at that time. The White Paper set out our plans to bring forward changes to secondary legislation in respect of planning application fees in July. We are therefore looking to make the change in respect of Article 4 directions at the same time”. This letter is included within Appendix C.

7.7 The Council will not be liable for compensation where the Article 4 direction comes into force 12 months after being made.

7.8 Group Finance has been consulted and understand that whilst it is difficult for the Service to be precise about the costs arising from the proposal at this stage, these are not expected to be significant and likely to be part of the current business as usual processes (in terms of officer’s time).

7.9 Moreover, assurance has been given that control over potentially escalating costs is expected to be exercised through the continuation of existing robust policies which discourage speculative applications. A possible change in the current Rules, if it happens, that could allow Authorities to charge planning application fees would also negate the issue of additional cost, providing added confidence that there are unlikely to be significant budgetary implications from the proposal within this report.

**Sustainability**

7.10 A ”Part B Sustainability Appraisal” (“SA”) was carried out by the Council alongside the Enterprise Issues and Options consultation of November 2014. Not making an Article 4 direction would equate to the removal of policies which would allow the Council to protect business uses.
7.11 This would have a negative relationship with the SA Objective 3, “to support a diverse and vibrant local economy to foster sustainable economic growth.” However, there will be an opportunity cost as the Article 4 direction is likely to stop proposals which would have included the provision of additional housing. This would run counter to SA Objective 13, “to aim that the housing needs of the Borough’s residents are met”.

7.12 A further SA has been updated as part of the Integrated Impact Assessment (IIA) for the emerging Local Plan Partial Review which generally retains the existing Local Plan’s protection of office uses. For the office policies, it concludes a positive impact upon “economy and skills”, which “in the long term, improve opportunities for business growth and in turn would also serve to provide job opportunities for people living within the Borough.”

7.13 The Council does, however, note that its current housing targets are being met without the loss of its business stock. Therefore, the Council is of the view that the making of an Article 4 direction would have a positive impact upon the Borough’s wider sustainability.

8. **OPTIONS**

a. **Recommended:** Make a non-immediate Borough-wide Article 4 direction to remove the forthcoming permitted development rights granted by Class O, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for changes of use from offices (Use Class B1(a)) to dwellinghouses (Use Class C3).

b. **Rejected:** Make an immediate Borough-wide Article 4 direction – rejected due to compensation issues as set out in the report.

c. **Rejected:** Make a non-immediate Article 4 Direction for specific defined areas of the Borough – rejected due to the interspersed nature of the office stock across the Borough.

d. **Rejected:** Decide not to make the Article 4 direction.

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24 Section 9.3 of IIA Report – Submission Version
Graham Stallwood

Executive Director for Planning and Borough Development
Appendix A: Evidence to inform Article 4 direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential, TBR, February 2016

Appendix B: Letter from Department for Communities and Local Government, Exemption for permitted development rights for change of use from office to residential, 10 May 2013

Appendix C: Letter from Lord Bourne to Lord True (18 March 2017)

Appendix D: Equality Impact Assessment

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report

Contact officer(s): Chris Turner, Senior Planning Officer, Royal Borough of Kensington and Chelsea. Tel: 020 7361 3236. Email: chris.turner@rbkc.gov.uk

<table>
<thead>
<tr>
<th>Cleared by Finance (officer’s initials)</th>
<th>McJ</th>
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</thead>
<tbody>
<tr>
<td>Cleared by Legal (officer’s initials)</td>
<td>WH</td>
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</table>
Appendix A:

Evidence to inform Article 4 direction to restrict the future relaxation of planning regulations to allow changes of use from offices to residential, TBR, February 2016
Appendix B: Letter from Department for Communities and Local Government, Exemption for permitted development rights for change of use from office to residential, 10 May 2013
Appendix C: Letter from Lord Bourne to Lord True (18 March 2017)
Appendix D: Equality Impact Assessment

Equality Impact Analysis Tool

<table>
<thead>
<tr>
<th>Overall Information</th>
<th>Details of Full Equality Impact Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Year and Quarter</td>
<td>2017/18 Q2</td>
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</tbody>
</table>
| Name and details of policy, strategy, function, project, activity, or programme | Article 4 direction for office to residential uses throughout the Borough.  

The Council is making a non-immediate Article 4 direction across the Borough in order to allow the Council to continue to require planning permission for changes of use of to residential. Following consultation the Council expects this Article 4 direction to be confirmed in a year’s time, by 1 July 2018 and come into effect at the same time that regulations allowing the permitted development right come into effect. |

<table>
<thead>
<tr>
<th>Lead Officers</th>
<th>RBKC</th>
</tr>
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</table>
| Name: Chris Turner  
Position: Senior Planning Policy Officer  
Email: chris.turner@rbkc.gov.uk  
Telephone No: 020 7361 3236 |

<table>
<thead>
<tr>
<th>Lead Borough</th>
<th>Chris Turner</th>
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<tbody>
<tr>
<td>Date of completion of final EIA</td>
<td>23 May 2017</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 02</th>
<th>Scoping of Full EIA</th>
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</thead>
</table>
| Plan for completion | Timing: The EqIA will be finalised following consultation and for the confirmation of the Article 4 direction in July 2018  
Resources: Planning Policy Team |
Analyse the impact of the policy, strategy, function, project, activity, or programme on the protected characteristics (including where people / groups may appear in more than one protected characteristic). You should use this to determine whether the policy will have a positive, neutral or negative impact on equality, giving due regard to relevance and proportionality.

<table>
<thead>
<tr>
<th>Protected characteristic</th>
<th>Impact: Positive, Negative, Neutral</th>
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<tbody>
<tr>
<td>Age</td>
<td>Neutral</td>
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<td>Disability</td>
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<td>Gender reassignment</td>
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<tr>
<td>Marriage and Civil Partnership</td>
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<td>Pregnancy and maternity</td>
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<tr>
<td>Race</td>
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<tr>
<td>Religion/belief (including non-belief)</td>
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<tr>
<td>Sex</td>
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<tr>
<td>Sexual Orientation</td>
<td>Neutral</td>
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</tbody>
</table>

Section 03
Analysis of relevant data
Examples of data can range from census data to customer satisfaction surveys. Data should involve specialist data and information and where possible, be disaggregated by different equality strands.

Documents and data reviewed
IIA Report – Submission (May 2017)
New research | No new research required
---|---

<table>
<thead>
<tr>
<th>Section 04</th>
<th>Consultation</th>
</tr>
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<tbody>
<tr>
<td>Complete this section if you have decided to supplement existing data by carrying out additional consultation.</td>
<td></td>
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</table>

| Consultation in each borough | Public Realm Scrutiny Committee consulted on 3 July 2017. 6 weeks public consultation will take place in Summer 2017. |
| Analysis of consultation outcomes for each borough | To be included in the final decision to ‘make’ the Article 4 direction. |

<table>
<thead>
<tr>
<th>Section 05</th>
<th>Analysis of impact and outcomes</th>
</tr>
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<tbody>
<tr>
<td>Analysis</td>
<td>What has your consultation (if undertaken) and analysis of data shown? You will need to make an informed assessment about the actual or likely impact that the policy, proposal or service will have on each of the protected characteristic groups by using the information you have gathered. The weight given to each protected characteristic should be proportionate to the relevant policy (see guidance).</td>
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The making of the Article 4 direction will allow the Council to continue to require planning permission for changes of uses of offices to residential uses. The Article 4 direction will cover the entire Borough. This reflects the wide spread distribution of offices premises across the Borough and the role that these premises have upon wider clusters of business uses.

Whilst this proposal is likely to result in the protection of a particular sector of the local economy it is unlikely to have any specific impact upon wider equality issues, other than to help maintain employment opportunities for a wide range of people and ensure that the local and the wider economy is supported. |
Similarly, the proposed Article 4 direction may have an effect on the provision of new housing, as office uses will be protected from changes of use to residential. The council is satisfied that it has a five year housing supply, and can demonstrate that it will meet its housing targets over the lifetime of the Local Plan, without resorting to the loss of existing premises. No particular sector of society will be more, or less, affected than any other.

The spatial element of the Article 4 direction will also have no particular impact, as the intention is to protect the office premises across the Borough. Again no specific protected characteristic group will be impacted more than any other or more than the general population.

### Section 06
**Reducing any adverse impacts and recommendations**

**Outcome of Analysis**

Include any specific actions you have identified that will remove or mitigate the risk of adverse impacts and / or unlawful discrimination. This should provide the outcome for each Borough, and the overall outcome.


### Section 07
**Action Plan**

Note: You will only need to use this section if you have identified actions as a result of your analysis

<table>
<thead>
<tr>
<th>Issue identified</th>
<th>Action (s) to be taken</th>
<th>When</th>
<th>Lead officer and borough</th>
<th>Expected outcome</th>
<th>Date added to business plan</th>
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</tbody>
</table>
| **Chief Officers’ sign-off** | Name: Jonathan Wade  
Position: Head of Forward Planning  
Email: jonathan.wade@rbkc.gov.uk  
Telephone No: 020 7361 2027 |
| **Key Decision Report (if relevant)** | Date of report to Cabinet/Cabinet Member: xxxx  
Key equalities issues have been included: Yes |
| **Lead Equality Manager (where involved)** | N/A |