

***PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: MAKING OF AN ARTICLE 4 DIRECTION FOR THE DISTRICT'S
PRIMARY AND SECONDARY SHOPPING FRONTAGES**

REPORT OF: IAN FULLSTONE, SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER: CLLR. RUTH BROWN, EXECUTIVE MEMBER FOR PLANNING AND
TRANSPORT

COUNCIL PRIORITY: SUSTAINABILITY

1. EXECUTIVE SUMMARY

New permitted development rights allow for a range of employment premises¹ to be converted into residential use without requiring planning permission by the District Council. This report seeks Cabinet approval to introduce immediate Article 4 Directions to remove this permitted development right in the District's town centres.

This will help strengthen the vitality and viability of our town centres after the COVID-19 Pandemic and protect them from unrestrained residential redevelopment.

2. RECOMMENDATIONS

- 2.1. That Cabinet endorse the overall approach to Article 4 Directions set out in the report.
- 2.2. That Cabinet approve the making of immediate Article 4 Directions for non-listed buildings located within each of the District's town centre's defined primary and secondary shopping frontages (as detailed in Appendix A).
- 2.3. That each of the immediate Article 4 Directions shall come into force immediately on the day they are served (October 3 2022) and consultation shall take place for a period of 6 weeks beginning on October 10 2022.

¹

- E(a) Display or retail sale of goods, other than hot food
- E(b) Sale of food and drink for consumption (mostly) on the premises
- E(c) Provision of:
 - E(c)(i) Financial services,
 - E(c)(ii) Professional services (other than health or medical services), or
 - E(c)(iii) Other appropriate services in a commercial, business or service locality
- E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)
- E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
- E(f) Creche, day nursery or day centre (not including a residential use)
- E(g) Uses which can be carried out in a residential area without detriment to its amenity:
 - E(g)(i) Offices to carry out any operational or administrative functions,
 - E(g)(ii) Research and development of products or processes
 - E(g)(iii) Industrial processes

- 2.4. That delegated powers should be granted to the Service Director – Regulatory in consultation with the Portfolio Holder for Planning, Enterprise and Transport to confirm the immediate Article 4 Directions following consultation subject to no, or only minor, amendments being necessary.

3. REASONS FOR RECOMMENDATIONS

- 3.1. The new Article 4 Directions relate to change of use from Use Class E (commercial, business and services) to Use Class C3 (dwellinghouses).
- 3.2. Commercial, business and services in town centres are important as they provide residents with access to important goods and services whilst minimising the need to travel. To safeguard main town centre use² floorspace, the Council has designated primary and secondary shopping frontages within the District's four town centres and established policies to encourage growth and prevent loss of these uses.
- 3.3. The making of the Article 4 Directions will support an overarching principle of the emerging Local Plan which seeks to ensure that there is a suitable balance between increased housing development and economic facilities to ensure sustainable development is achieved. The Article 4 Directions will prevent small-scale losses of main town centre use floorspace through change of use schemes to residential under permitted development.
- 3.4. The Council would apply the Directions to the non-listed buildings located within the primary and secondary shopping frontages as defined by Policy ETC4 and ETC5 in the new Local Plan (as proposed to be modified). By withdrawing this permitted development right (PDR) it means any Use Class E to residential conversions in areas where the Directions are made will require planning permission. This will allow Planning Officers to assess applications against national policy (NPPF) and our emerging Local Plan policies to ensure there is a suitable provision of shops, services and facilities within the town centres.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. A 'do nothing' approach which does not restrict existing permitted development.
- a. This is not recommended due to the potential implications for the loss of commercial, business and service units in the town centres, the overall strategy and status of the emerging new Local Plan.
- 4.2. Making non-immediate Article 4 Directions with a different timescale.
- a. This would achieve the same outcomes as above, but on a longer timescale.
 - b. A consultation is required before the making of the Directions and would also require a notice period before the Article 4 Directions come into force.
 - c. There is a risk that by following the non-immediate Article 4 Direction process, it would raise the profile of the new permitted development right and, within the

² Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities)

timescales of making the Direction, we could see an increase in the number of Use Class E to C3 conversions.

- 4.3. An (immediate or non-immediate) Article 4 Direction with a different scope.
 - a. This approach is not recommended for the reasons set out in this report.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member for Planning, Enterprise and Transport has been kept informed on the matters set out in this report.
- 5.2. Council officers have spoken with Royston First Bid, Hitchin Bid and the Letchworth Garden City Heritage Foundation (as freeholder of many commercial areas in Letchworth), with both offering initial support to the concept of Article 4 Directions as outlined above.
- 5.3. Subject to Cabinet approval, the Article 4 Directions would be subject to advertisement and consultation as set out in Section 8 of this report.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on the 5 August 2022.

7. BACKGROUND

Permitted Development

- 7.1 The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (known as the GDPO) grants planning permission to a number of different types of development, known as permitted development rights (PDR). This means that instead of acquiring planning permission through local planning authorities, permission in effect is granted by the Secretary of State by Order.
- 7.2 Historically, most permitted development related to (for example) small-scale alterations that householders could make to their homes and gardens or operational development by statutory undertakers. In recent years, the Government has expanded PDR to cover a wider range of uses, including redevelopment that would result in new homes being developed.
- 7.3 Whilst planning permission is not required for development that falls within the scope of GDPO, some development is required to seek prior approval from the District Council. This is a more simplistic approach because instead of assessing applications against national and local policies, developments are assessed against a streamlined set of issues such as design and appearance, transport impacts and flood risk.

Current Article 4 Directions

- 7.4 There are two existing Article 4 Directions in place for Hitchin and Knebworth. These still exist and are not affected or being changed by this report. Guidance on these Article 4 Directions can be found at: [Article 4 Directions | North Herts Council \(north-herts.gov.uk\)](https://www.north-herts.gov.uk/article-4-directions)

Expired Article 4 Direction

- 7.5 In response to previous PDR, Cabinet approved the making of one non-immediate Article 4 Direction to cover all the key employment sites identified in the Local Plan in January 2019. This Direction removed the PDR for changes of use from office (previous Use Class B1a) and light industrial (previously Use Class B1c) to Use Class C3 (residential).
- 7.6 The Article 4 Direction was confirmed on 28 February 2020 and formally made on 20 June 2020. This blanket Article 4 Direction covered the following areas:
- Bondor Business Centre, Baldock (BE1)
 - Royston Road, Baldock (BA10 and BE2)
 - Wilbury Way, Hitchin (HE1)
 - Burymead Road, Hitchin (HE2)
 - Station Approach, Hitchin (HE3)
 - Land adjacent to Priory Park, Hitchin (HE4)
 - Works Road, Letchworth Garden City (LE1)
 - Blackhorse Road, Letchworth Garden City (LE2)
 - Icknield Way, Letchworth Garden City (LE3)
 - Spirella, Letchworth Garden City (LE4)
 - Orchard Road, Royston (RE1)
 - Land north of York Way, Royston (RY9)
- 7.7 As a result of the new permitted development reforms, this Article 4 Direction expired in July 2022.

Changes to the Use Class Order

- 7.9 In September 2020, the government made changes to the Use Class Order which amalgamated the following uses into a new Use Class E:

Former Use Class	Type of Use	New Use
A1	Display or retail sale of goods, other than hot food	E(a)
A3	Sale of food and drink for consumption (mostly) on the premises	E(b)

A2	Financial services, Professional services (other than health or medical services), Other appropriate services in a commercial, business or service locality	E(c)(i) E(c)(ii) E(c)(iii)
D2	Indoor sport, recreation or fitness (not involving motorised vehicles or firearms)	E(d)
D1	Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)	E(e)
D1	Creche, day nursery or day centre (not including a residential use)	E(f)
B1a	Uses which can be carried out in a residential area without detriment to its amenity: Offices to carry out any operational or administrative functions, Research and development of products or processes industrial processes.	E(g)
B1b		E(g)(i) E(g)(ii)
B1c		E(g)(iii)

7.10 Changes within the same use class are not considered to be development. This means that any type of use that falls within the new Use Class E can change into another service that falls within category E without needing planning permission. The purpose of the change was to create more flexibility after the COVID-19 pandemic so that businesses can adjust and recover.

More recent reforms

7.11 In August 2021, further changes were made to the General Permitted Development Order 2015 (GPDO) which allowed the following changes to fall under PDR:

- Extensions of existing buildings by increasing their height by one to two storeys;
- The demolition and reconstruction of unused or derelict office/industrial buildings; and
- Change of Use Class E, the new Commercial, Business and Service Use Class (previously Class A and B) to Use Class C3, dwellinghouses.

7.12 The Government has introduced the Use Class E to C3 conversions PDR as a response to the COVID-19 pandemic, to increase flexibility and allow for the market demand to steer the types of different use classes in high streets and employment areas. The new PDR supersedes the previous PDR which allowed office and light industrial units to be

demolished and reconstructed into housing. This means that any existing Article 4 Directions that have been formally 'made' expired in July 2022.

- 7.13 Along with the new PDR, the Government has introduced a more rigorous prior approval regime which includes: transport impacts, access, contamination risks, flood risks, noise impacts, conservation areas, natural light and the impact of the surrounding area on the intended occupiers. Provided these conditions are met, prior approval will be granted. Under this regime, the Council cannot consider the broader principle of whether or not it is desirable to lose the affected building(s) from the wider employment stock. It is not possible to require the provision of affordable housing on such schemes.

Article 4 Directions

- 7.14 Councils have discretionary powers to implement Article 4 Directions to remove a PDR should they deem it appropriate. Article 4 Directions are the tool available to local planning authorities to respond to the particular needs of their areas. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development. This allows for consideration of the broader issues outlined in this report, along with any other relevant factors.
- 7.15 The Council has the power to modify or cancel an Article 4 Direction it has made at a future date. This allows for the Council to monitor the relevance and effectiveness of any Directions in its area. Therefore, it is considered suitable to adopt four separate Article 4 Directions to allow for future modifications. If future planning requirements were to change it would be possible to remove or change any planning restrictions imposed as a result of this report.

8. RELEVANT CONSIDERATIONS

- 8.1 Paragraph 53 of the National Planning Policy Framework (NPPF) 2021 states that the use of Article 4 Directions to remove PDR must be "necessary to avoid wholly unacceptable adverse impacts" to "protect local amenity or the wellbeing of the area" and must "be based on robust evidence and apply to the smallest geographical area possible."
- 8.2 Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 itself states the Council when making a Direction must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.

Overall justification for use of an Article 4 Direction

- 8.3 The emerging Local Plan identifies sufficient sites to ensure the District's housing needs are met in full. Therefore, there is no specific need to rely upon any additional housing from Use Class E conversions which would result in the loss of Use Class E floorspace.
- 8.4 The Local Plan recognises the importance of providing sufficient provision of employment floorspace to accommodate the projected levels of housing proposed in the

District and wider market areas. This includes making provision for employment needs associated with Stevenage.

- 8.5 The four town centres provide most of the District's retail, commercial and leisure floorspace. Evidence for the emerging Local Plan identifies that there is a need for additional 4,500 sq.m of retail, commercial and leisure floorspace in the District over the period to 2031³. Therefore, it is important that existing main town centre uses are safeguarded to ensure a suitable balance between housing and employment.
- 8.6 Emerging Policy ETC4 and ETC5 of the Local Plan seek to safeguard main town centre uses within the designated primary and secondary shopping frontages by generally only permitting shops at ground floor level within the primary shopping frontages and other main town centre uses within the secondary shopping frontages. Emerging Policy ETC7 will only grant planning permission for loss or change of use of any shops, services or facilities outside of the defined retail hierarchy.
- 8.7 Under the new PDR there is a risk that valuable Use E Class properties could convert into housing causing a loss of main town centre floorspace. The wider consequences of this is that there will be employment loss, reduction of shops and services, people would have to travel further for work or to use facilities and there will be unplanned dispersion of main town centre uses mixed with residential dwellings along the primary and secondary shopping frontages.
- 8.8 To protect the vitality and the viability of the District's town centres, an Article 4 Direction is proposed for each town centre. The Article 4 Directions will apply to the non-listed buildings located within the primary and secondary shopping frontages (see appendix A). Listed Buildings are not included within the scope of the Article 4 Directions because the PDR (PDR) which allows Use Class E to Use Class C3 conversions does not apply to Listed Buildings.
- 8.9 It is considered that this approach satisfies the requirements of Government (NPPF 2021) of applying the Article 4 Direction to the smallest geographical area, instead of applying a "blanket" Direction across the whole of the town centre.
- 8.10 Each of our town centres are designated Conservation Areas to a greater or lesser extent; and the prior approval regime does give consideration to the impact on Conservation Areas. However, it is felt that if there are minor adjustments to the external appearance of the unit, it would be difficult to refuse the application on this merit alone. Therefore, there is little mechanics to prevent loss of non-listed commercial and business and service units in town centres.
- 8.11 The making of the Article 4 Directions will support Part 8 of paragraph 151 of the proposed Levelling-up and Regeneration Bill (as introduced) which seeks to rejuvenate town centres and enable high streets to thrive. The Article 4 Directions would seek to strengthen the role of the high street in town centres in North Hertfordshire by increasing the viability and vitality of it as an economic hub. By making the Article 4 Directions it does not ban Use Class E conversions into housing, but instead requires planning permission from the District Council. This allows Planning Officers to assess planning applications against national policy (NPPF) and our emerging Local Plan policies to

³ Town Centre and Retail Study (NLP, 2016)

ensure there is a suitable provision of shops, services and facilities within the town centres.

- 8.12 When comparing the risk of loss of Use Class E floorspace in our designated Employment Areas and town centres, it is felt that town centres are at a greater risk. The more rigorous prior approval process now provides greater scope to prevent Use Class E conversions in our Employment Areas based upon impacts on living conditions and other considerations. For this reason, officers' view is there is no need to replace the expired Article 4 direction for employment areas with a new equivalent. However, for town centre locations there is a risk that Planning Officers will not be able to refuse applications as town centres are considered more suitable/sustainable location for housing.
- 8.13 For Hitchin, Baldock and Royston the majority of the buildings are listed and therefore only a select few would need the Article 4 Direction. It is officer's view that although the majority of the buildings are listed within the primary and secondary shopping frontages of Hitchin, Baldock and Royston, the non-listed buildings should be included within the making of the Article 4 Directions to prevent dispersion of commercial buildings along the main town centre frontages. This approach would comply with the national requirements of Article 4 Directions applying to the smallest geographical area.
- 8.14 Occupiers in Letchworth Garden City would require consent from the Letchworth Heritage Foundations (as the freeholder for all units in the town centre). This could provide protection against residential conversions of shop units. However, this is a separate regime to the planning system and, for consistency and continuity an Article 4 Direction should still be made for the non-listed buildings within the town's primary and secondary shopping frontage.
- 8.15 By making an Article 4 Direction to withdraw the PDR for each town it will ensure that we maintain a degree of planning control by assessing proposed development against our Local Plan.
- 8.16 North Hertfordshire's Town Centre Strategies are due to be updated as well as the (proposed) early review of the new Local Plan. To assess the District's town centres we want to be able to apply a holistic approach and not be undermined by uncontrolled 'picking off' of individual units. The proposed Article 4 Directions would ensure that the new PDR would not undermine any future town centre policies or strategies.

Scope of the Article 4 Directions

- 8.17 It is recommended that the Article 4 Directions seek to revoke permitted development rights which allow Class E facilities to change to residential use.
- 8.18 It is further recommended that the Article 4 Directions are confined to the non-listed buildings located within the primary and secondary shopping frontages as identified in the emerging Local Plan and shown in Appendix A. The PDR does not apply to listed buildings. This approach has regard to:
- The fact that these are recognised in the emerging Plan as the key locations for existing and future employment in the District;
 - The requirements of Article 4 Directions listed under paragraph 53 of the NPPF (2021):
 - Where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the

essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre);

- In other cases, be limited to situations where an Article 4 Direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 Directions to require planning permission for the demolition of local facilities); and
 - In all cases, be based on robust evidence, and apply to the smallest geographical area possible
- The potential costs and difficulties in appropriately notifying all business premises across the District in the event of an Article 4 Direction that would apply more widely; and
 - The potential for the Secretary of State to intervene if he considers the Article 4 Direction is not appropriate.
- 8.19 It is recommended that an immediate Article 4 Direction is made for each town. This means that PDR are removed with immediate effect and then consulted on. The Article 4(1) Directions will lapse after 6 months from when they are made unless they are confirmed beforehand. Any objections taken into account by the Council before it considers whether to confirm the Direction, or not. An immediate Article 4(1) Direction is used where there is an urgent, justified requirement for protection. Once confirmed, an immediate Article 4(1) Direction becomes permanent. The Article 4 Directions can be altered or cancelled at any time.
- 8.20 The risk of providing compensation cost is considered to be relatively low as the Article 4 Directions would only apply to a non-listed designated building within the primary and secondary shopping facilities while properties in Letchworth must also comply with Heritage Foundation regulations which would be unlikely to support inappropriate conversions.

9. LEGAL IMPLICATIONS

- 9.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 allows a local planning authority to make Article 4 Directions to remove PDR. This is an Executive Decision and not one reserved to Full Council.
- 9.2 Under the Terms of Reference for Cabinet Paragraph 5.6.18 of the Constitution states that the Cabinet should exercise the Council's functions as Local Planning Authority except where functions are reserved by law to the responsibility of the Council or delegated to the Service Director: Regulatory.
- 9.3 An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the Council for that development.
- 9.4 The procedure which must be followed in making, modifying or cancelling any direction made under article 4(1) are set out in Schedule 3 of the GDPO.
- 9.5 Prior to making Article 4 Directions, the Local Planning Authority must notify the owner/occupier who will be affected by the proposal. Following adequate response time by those affected, the Local Planning Authority should take into account the representations received and consider them when making their decision to confirm the Article 4 Directions. Consultation responses are not binding on decision makers but

need to be considered. Material changes to the Directions resulting from consultation will require re-consultation.

- 9.6 The Secretary of State must be notified of the making and confirmation of any Article 4 Direction and has the power to modify or cancel such a Direction at any point.
- 9.7 Regulation 5 of The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England)(Amendment) Regulations 2017 removed the exemption from planning fees that previously applied for applications required as the result of an Article 4 Direction.

10. FINANCIAL IMPLICATIONS

- 10.1. The making and consultation on the Article 4 Directions will be covered by the Council's existing budgets and resources. The consideration of Prior Approval applications under the current regime and the consideration of any planning applications arising following confirmation of any Article 4 Directions are covered by fee income and service budgets.

11. RISK IMPLICATIONS

- 11.1 The use of the immediate Article 4 Directions means there is a risk that the Council may have to pay compensation costs. This is because compensation, for certain withdrawn permitted development rights, may be claimed if an application for planning permission is submitted within 12 months following the effective date of the Direction.
- 11.2 However, this risk is considered to be low as there are a small amount of non-listed buildings within the primary and secondary shopping frontages which the Article 4 Directions would apply to. For Letchworth, any development to the town centres must also be approved by the Letchworth Heritage Foundation which would also lower the risk. These specified permitted development rights are currently set out in the Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016 and include Class MA of Part 3 of Schedule 2 of the GPDO 2015.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are not considered to be any direct equality issues arising from this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. As per 8.4 and 8.5, there is a need to provide sufficient provision of employment floorspace to accommodate the projected levels of housing proposed by the Local Plan. It has already been identified that an additional 4,500 sq.m of retail, commercial and leisure floor space will be needed across the district over the period to 2031 to facilitate this. Introducing immediate Article 4 Directions will enable us to safeguard current provisions and prevent the need for even further development of such sites.
- 14.2 Furthermore, retaining a higher concentration of employment opportunities and retail in our town centres may also help reduce the need for residents to travel further afield by car or to multiple locations to access what they need.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no human resource implications arising from the contents of this report.

16. APPENDICES

- 16.1 Appendix A – Maps indicating the properties which the Article 4 Directions are proposed to apply to.

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18. BACKGROUND PAPERS

18.1 [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)

18.2 [North Hertfordshire Local Plan 2011-2031 \(as proposed to be modified\)](#)

18.3 [2019 Cabinet Report for Article 4 Directions.](#)