

**CABINET
29 JANUARY 2019**

PUBLIC DOCUMENT

TITLE OF REPORT: MAKING OF AN ARTICLE 4 DIRECTION FOR THE DISTRICT'S KEY EMPLOYMENT AREAS

REPORT OF THE SERVICE DIRECTOR - REGULATORY
EXECUTIVE MEMBER : COUNCILLOR DAVID LEVETT
COUNCIL PRIORITY : PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 Following changes to permitted development rights over a number of years, a range of employment premises can be converted to residential use without requiring a grant of planning permission by the District Council. This report seeks Cabinet approval to introduce a non-immediate Article 4 Direction that would withdraw these rights across a defined area.

2. RECOMMENDATIONS

- 2.1 That Cabinet approve the making of, and consultation on, a non-immediate Article 4 Direction for the District's defined employment areas.
- 2.2 That delegated powers be conditionally granted to the Service Director – Regulatory in consultation with the Portfolio Holder for Planning, Enterprise & Transport to confirm the Non Immediate Article 4 Direction following consultation subject to no, or only minor, amendments being necessary.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Policy SP3 of the emerging Local Plan states that the Council will proactively encourage sustainable economic growth, support new and existing businesses and seek to build on the District's strengths, location and offer. The Council intends to do this through numerous policies including:

- Allocating an adequate supply of employment land to meet the future needs of the area; and
- Safeguarding Employment Areas within the District's main settlements to enhance and protect their employment potential.

3.2 It would be appropriate to pursue an Article 4 Direction in these areas in order to require planning permission for the change of use from various employment uses to residential use in order to protect designated employment land within the District. The Council would apply the direction in Employment Areas and the Employment Allocations defined by Policy ETC1 in the new Local Plan (as proposed to be modified).

3.3 An Article 4 Direction will prevent small-scale losses of employment land through the implementation of change of use schemes to residential under permitted development. Moreover, withdrawing permitted development rights and requiring a planning application will ensure that a suitable quality of residential development be achieved through the planning application process as well as allowing the Council to enforce its housing strategy as set out in the detailed policies of the new Plan.

3.4 Requiring planning permission for the change of use will also help to guard against the threat to existing neighbouring employment units that could otherwise arise through the creation of residential units within employment areas, potentially requiring the Council to subsequently address statutory nuisances.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 A 'do nothing' approach which does not restrict existing permitted development: This is not recommended due to the potential implications for the supply of employment floor space in the District, the overall strategy and status of the emerging new Local Plan and the quality of new accommodation as set out in this report.

4.2 An immediate Article 4 direction: This would achieve the same outcomes as the proposals in this report but with immediate effect. This would remain subject to consultation and subsequent confirmation. However, this approach would also potentially leave the Council liable to compensate those affected. This is discussed further below.

4.3 A non-immediate direction with different timescale: This would achieve the same outcomes as above, but on a shorter (or longer) timescale. However, on balance, and having regard to the approach taken by other Councils and compensation provisions, the twelve-month period recommended is considered most appropriate.

- 4.4 An (immediate or non-immediate) Article 4 Direction with a different scope: This approach is not recommended for the reasons set out in this report.
- 4.5 To not proceed any Article 4 Direction in advance of any adoption of the new Local Plan: There remains the possibility that the geographical extent of the employment areas in the new Local Plan could still change. This could impact upon the preferred geographical scope of any Article 4 Direction. However, for the reasons set out in this report (and the report to Cabinet of 10 December 2018 concerning the Local Plan), the issuing of the Inspector's Main Modifications is considered to give an appropriate level of surety. Waiting for any adoption of the Plan would lengthen the time for which the Permitted Development rights described in this report would remain in operation.

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 met with both Hertfordshire Local Enterprise Partnership (LEP) and the Letchworth Garden City Heritage Foundation (as freeholder of key employment sites in Letchworth), with both offering initial support to the concept of an Article 4 Direction as outlined above.
- 5.2 Subject to Cabinet approval, the Article 4 Direction 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 Decision that was first notified to the public in the Forward Plan on the 25th April 2018.

7. BACKGROUND

- 7.1 Permitted Development is development which is allowed to take place without the need to apply to the District Council for planning permission. Permitted Development is effectively granted planning permission nationally by the Secretary of State by Order. Historically, much of 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 Permitted Development rights to cover a wider range of uses.

- 7.2 In 2013, new rights were introduced allowing the change of use of office buildings to residential use. This was accompanied by a 'light touch' prior approval regime which required that only key flooding, highway, transport and contamination impacts need be considered. These rights were originally introduced on a temporary basis. In 2015, it was announced that these rights would become permanent.
- 7.3 A second right relates to the conversion of small storage and distribution uses. This was introduced in 2015 for up to 500m² to residential use and is currently due to end in June 2019. This is presently within the 'transitional' period allowed for by the non-immediate Article 4 direction proposed in this report. However, following the 2018 budget, the Government has consulted upon making this right permanent (as with office conversions above). The outcome of this consultation is awaited.
- 7.5 A third right, allowing for the change of light industrial uses to residential use, was introduced in 2016. This right is for schemes of up to 500m² and is due to end in 2020. However, as seen above with the office and storage / distribution rights, it is considered likely that these rights could similarly be (proposed to be) made permanent in due course.
- 7.6 The prior approval regime allows for certain key impacts of any conversion to be considered. These vary slightly for each of the rights outlined above. They can consider matters such as transport impacts, contamination, flood risk and noise. Provided these conditions are met, a prior approval will be granted. Under this regime, the Council cannot consider the broader principle of whether or not it is desirable to lose affected office building(s) from the employment stock, though the other rights do presently allow for consideration of any adverse impact upon the general sustainability of employment uses in the area.
- 7.7 It is not possible to require the provision of affordable housing on such schemes, nor the meeting of space standards for new homes. It is not possible to seek s106 contributions for matters not considered under the prior approval regime such as education or open space provision.
- 7.8 The Council's new Local Plan is progressing through its examination. In December 2018, Cabinet considered and agreed to consult upon the Inspector's Main Modifications. This marks a key step within the examination process. It provides a degree of surety regarding the Inspector's current view of the Plan and the likely scale and locations of future growth and development. The emerging Plan (as proposed to be modified) makes provision to meet the District's housing needs in full whilst maintaining a sufficient stock of employment land to meet local needs and provide an appropriate balance of uses across the District.

- 7.9 Councils have discretionary powers to implement an Article 4 Direction to withdraw a Permitted Development right should they deem it appropriate. Article 4 Directions are the tool available to local planning authorities in responding to the particular needs of their areas. An Article 4 Direction does not completely 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 above, along with any other relevant factors.
- 7.10 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. If future employment needs, or planning requirements more generally, 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) states that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. Justification must be provided for the purpose and extent of the Article 4 Direction.
- 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

Protection of employment land

- 8.3 The emerging Local Plan explains that, in planning, employment land use usually refers to 'B-class' uses¹. Approximately 45% of all jobs fall into these use classes, which include:
- B1(a) offices
 - B1(b) research & development
 - B1(c) light industry
 - B2 general industry; and
 - B8 storage and distribution

¹ As defined in the Town and Country Planning (Uses Classes) Order, 1987 (as amended)

- 8.4 As set out above, the new Local Plan for the District has now reached a stage where it is considered expedient to take steps to ensure that its strategy for the growth and development of the District is not undermined by the permitted development rights outlined in Section 7 of this report. The new Local Plan seeks to support employment growth and diversification in the District. Such growth and diversification could be challenging if existing employment land or, once granted permission and built, new employment sites are subsequently lost to residential use² through general permitted development rights and not at the discretion of the Council as Local Planning Authority.
- 8.5 The emerging Plan identifies sufficient sites and allowances to ensure the District's housing needs are met in full. Similarly, the employment strategy has been interrogated to ensure it will make sufficient provision and that it is in balance with the levels of housing being proposed in the District and wider market areas. This includes making provision for employment needs associated with Stevenage.
- 8.6 Over the last five years, the District has lost more than 25,000m² of employment floorspace to residential uses, as shown in Table 1. Most of these losses required planning permission, either because they occurred prior to the relevant rights being introduced or because they exceed the floorspace thresholds. In these instances, it was possible to consider individual applications on their merits and come to an informed view as to whether it was desirable to allow these changes. Almost all of these losses occurred outside designated employment areas. However, they evidence a general pressure for the conversion of floorspace from employment uses for residential purposes.

Table 1 – Loss of employment floorspace to residential.

	2014	2015	2016	2017	2018	Total
B1(a)	2,157	5,691	1,693	4,142	3,837	17,520
B1(c)	715	1,624	238	1,300	61	3,938
B8	130	2,760	817	100	48	3,855
Total	3,002	10,075	2,748	5,542	3,946	25,313

- 8.7 Without the implementation of an Article 4 Direction to prevent this change of use from happening without planning permission, it is possible that these losses could increase and / or begin encroaching into the Council's key employment areas, as developers seek opportunities to provide more housing across North Hertfordshire. Housing generally has a higher value than employment uses.

² The Permitted Development rights generally require the affected buildings to have been in use at a specified date – either May 2013 or March 2014. Any new premises which are yet to be built, either on the proposed sites in the Local Plan or elsewhere, would not satisfy this criterion. However, the General Permitted Development Order is subject to periodic review and change and it is considered reasonable to assume that these specified dates, or other relevant criteria, may be updated or otherwise changed during the lifetime of any Article 4 Direction.

- 8.8 Across the county more broadly, the Hertfordshire LEP have expressed significant concern at the ongoing losses of employment space, and the general lack of suitable and available space for business. They are strongly encouraging local authorities to take steps to address this, including the implementation of Article 4 Directions.

Protection of living standards and infrastructure provision

- 8.9 As well as the potential implications for the Council's employment strategy, it is equally considered expedient to introduce an Article 4 direction to ensure the protection of living standards and the delivery of appropriate housing and infrastructure
- 8.10 Although subject to the prior approval regime, conversions to residential use under Permitted Development are not subject to the same considerations that would apply if planning permission was required. These considerations include, but are not necessarily limited to (as set out in Paragraph 7.7):
- Design considerations, including the application of nationally described space standards for new homes; and
 - Whether s106 developer contributions (including the provision of affordable housing) should be sought for matters not covered by the prior approval regime.
- 8.11 Evidence produced by the Royal Institute of Chartered Surveyors found that permitted development for office to residential use has allowed extremely poor quality housing to be developed with standards significantly worse than schemes which required full planning permission³. The new Local Plan requires that, where planning permission is required, residential schemes must meet the Government's minimum space standards for new homes. It is not necessary to meet these standards under the permitted development / prior approval approach.
- 8.12 As set out above, where schemes are brought forward under permitted development, s106 legal agreements can only be sought for those matters which are required to be addressed under the prior approval regime. It is not possible to apply the Council's affordable housing policies meaning that any schemes of 10 units or more do not / would not contribute towards the District's identified affordable housing needs.

³ [Assessing the impacts of extending permitted development rights to office-to-residential change of use in England \(RICS, May 2018\)](#)

- 8.13 The cumulative impact of non-contributing prior approval schemes on infrastructure provision can additionally be a significant (financial) burden upon Councils. This is particularly the case for high-cost infrastructure items such as education provision which is not a consideration under the prior approval regime. Imposing an Article 4 Direction would allow for any relevant applications to be considered against policies requiring infrastructure contributions. This would include the forthcoming update to the Council's Developer Contributions SPD outlined at the previous Cabinet meeting.

Scope of the Article 4 Direction

- 8.14 It is recommended that the Article 4 Direction seeks to revoke permitted development rights for all three changes of use identified in paragraphs 7.2 to 7.5. One of these rights has already been made permanent while one is proposed to be made permanent. The third is currently due to expire in 2020 but there is a reasonable prospect this will be extended or made permanent in due course.
- 8.15 It is further recommended that the Article 4 Direction is confined to the Council's key existing and proposed employment sites as defined in the new Plan and shown in the maps in Appendix A. 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 expediency test as articulated in the NPPF. Planning Practice Guidance further advises that there should be a particularly strong justification for the withdrawal of permitted development rights across entire District areas or where prior approval regimes exist;
 - 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.
- 8.16 It is recommended that a non-immediate Article 4 Direction is made. This will mean that the Article will come into force 12 months after it is made. The use of a non-immediate Article 4 Direction means the Council can avoid compensation costs. Further information is provided in Section 10 below.

Next steps

- 8.17 Subject to approval of the recommendations in this report, the Article 4 Direction will be formally drawn up, publicised and consulted upon. It is anticipated that publication and consultation could commence in March 2019. Notice of the Article 4 Direction shall be given:
- By local advertisement (a sample draft advert for the Article 4 Direction recommended by this report is attached as Appendix B);
 - By site notices at no fewer than two locations within the area to which the direction relates for a period of not less than six weeks; and
 - Individually on every owner and occupier of every part of land within the area or site to which the direction relates (unless it is impracticable because it is difficult to identify or locate them or the numbers of owners and occupiers would make individual service impracticable).
- 8.18 The publicity will invite representations to be sent to the Council within 21 days. The Secretary of State will also be notified on the same day the Article 4 Direction consultation is first published.
- 8.19 Following consultation, the next stage would be to decide whether to confirm the Article 4 Direction taking into account any representations received during the consultation period. It is recommended that delegated powers are granted to confirm the Article, subject to no significant changes being required. This is for expediency given that Cabinet has the opportunity to consider (and if necessary amend) the general principles and proposed scope of the Article 4 Direction through this report.
- 8.20 If a decision is made to confirm the Article 4 Direction the Council will give notice of the confirmation in accordance with the requirements set out in paragraph 8.17.

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 an Article 4 Direction to withdraw specified permitted development rights across a defined area. This is an Executive Decision and not one reserved to Full Council.
- 9.2 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.

- 9.3 For all Article 4 Directions, the legal requirement is that the Council 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. The NPPF also states that national permitted development rights should only be removed in situations where it is necessary to protect local amenity or the wellbeing of the area.
- 9.4 Government guidance further states that, in deciding whether an article 4 direction would be appropriate, the Council should identify clearly the potential harm that the direction is intended to address and that there should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area or where a prior approval regime exists.
- 9.5 The consultation that is to be undertaken must comply with legal requirements. Consultation responses are not binding on decision makers but need to be taken into account. Material changes to the direction 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 make a direction modifying or cancelling 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 an Article 4 Direction 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 direction are covered by fee income and service budgets.
- 10.2 The use of a non-immediate Article 4 Direction means the Council will avoid compensation costs. This is because compensation for certain withdrawn permitted development rights may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the direction. Therefore, the introduction of a non-immediate Article 4 Direction with a 12-month notice period will give rise to no claims for compensation. These specified permitted development rights are currently set out in the Town and Country Planning (Compensation) (England) (Amendment) Regulations 2015 (as amended).

- 10.3 The Council receives funding from both Council Tax and Business Rates. In relation to Council Tax, the Council receives an amount that is directly related to the number of new properties, but does also have to provide services that directly relate to these properties (e.g. waste collection). The future of Business Rates retention is currently unclear, as it is subject to initial consultation. It is expected that the Council will continue to receive a proportion of any net business rate growth, although the impact of levies and tier splits is unclear. It will also continue to be exposed to the effects of business rate decline, subject to safety-nets. There is less of a direct link between the number of business premises and the level of (and therefore cost of) services that the Council provides. The financial impact of the conversion of business to residential premises will be monitored. At the moment it is not possible to determine what this will be, but it is considered that it is unlikely to be significant. The effects of New Homes Bonus are ignored due to the significant uncertainty over this source of funding.

11. RISK IMPLICATIONS

- 11.1 There are no risks relating directly to Article 4 directions on the Council's registers. However, Sustainable Development of the District is a Cabinet Top Risk.
- 11.2 There is a risk that the publicity associated with the Article 4 Direction may encourage some Prior Approval applications to convert employment premises to residential use in the transitional period before the Direction comes into effect. The risk of this is currently considered to be outweighed by the potential compensation risk of imposing an immediate Article 4 direction. This will be monitored.
- 11.3 There is a risk that any further change to the (geographical scope of) employment designations in the new Local Plan prior to its adoption may incur additional costs if it leads to re-consultation upon and / or modification of any Article 4 direction. However, it is considered that this risk and associated costs are outweighed by the benefits of progressing a draft order and commencing the 12-month implementation period now.

12. PLANNING IMPLICATIONS

- 12.1 Following confirmation of any Article 4 Direction, any subsequent applications for the prescribed changes of use will be subject to planning permission. Applications for such permissions will be dealt with in the normal way, having regard to the Development Plan and other relevant material considerations.

13. EQUALITIES IMPLICATIONS

- 13.1 There are not expected to be any direct equality implications as a result of making an Article 4 Direction.

14. SOCIAL VALUE IMPLICATIONS

- 14.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and are discussed in Section 13 above.

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 detailing existing and proposed employment areas to be covered by Article 4 Direction
- 16.2 Appendix B – Draft Article 4 Advert

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18. BACKGROUND PAPERS

- 18.1 The Town and Country Planning (General Permitted Development) (England) Order 2015
- 18.3 Report to Cabinet of 10 December 2018 regarding the Local Plan Main Modifications
- 18.2 North Hertfordshire Local Plan 2011-2031 (as proposed to be modified)