

Part I

Main author: Matt Pyecroft

Executive Member: Cllr Stephen Boulton

Various Wards

WELWYN HATFIELD BOROUGH COUNCIL  
CABINET PLANNING AND PARKING PANEL – 3 JULY 2019  
REPORT OF THE CORPORATE DIRECTOR (PLANNING, PUBLIC PROTECTION AND GOVERNANCE)

ARTICLE 4 DIRECTION – EMPLOYMENT SITES

**1 Executive Summary**

- 1.1 In recent years, a significant amount of office space within the borough has been lost through permitted development rights which has enabled this space to be converted to residential uses without the need for planning permission. This has caused a significant reduction in the supply of available space for local business.
- 1.2 Article 4 Directions enable local authorities to remove permitted development rights, which means that if any such development is proposed, planning permission must be applied for in the normal way.
- 1.3 It is proposed that an Article 4 Direction is produced which would remove these permitted development rights for the four most important employment sites in the borough, so that any loss of office space could be controlled by the Council.
- 1.4 The legislative basis for this is Article 4 of the Town and Country Planning (General Permitted Development Order) 1995 as amended. Paragraph 53 of the National Planning Policy Framework (NPPF) says that Article 4 Directions “should be limited to situations where this is necessary to protect local amenity or the well-being of the area”. There is significant concern that in this instance that permitted development rights *will* harm local amenity and the proper planning of the area and that it *is* necessary to extinguish them in order to protect local amenity and wellbeing.
- 1.5 Both Hertfordshire County Council and the Ministry of Homes Communities and Local Government are consultees to any such proposal and would be notified upon any adoption.

**2 Recommendation(s)**

- 2.1 That the Panel recommends to Cabinet that an Article 4 Direction covering the most strategically important office sites in the borough be issued for a six week public consultation. This would remove permitted development rights that currently allow the change of use of B1 office buildings to C3 residential use without the need for planning permission. It would instead protect those sites for on-going employment use. They would only be allowed to be converted to residential use if they secured planning permission from the Council or the Planning Inspectorate via appeal.
- 2.2 That the results of the consultation process be reported back to this Panel, with the aim that the Article 4 Direction be recommended to Cabinet for adoption,

once a period of twelve months has passed to allow any compensation claims to fall away.

### **3 Explanation**

- 3.1 The Government introduced Permitted Development (PD) Rights to enable offices (B1a) to be converted to residential (C3) uses without the need for planning permission in 2013. Initially this was for a period of three years but was subsequently made permanent.
- 3.2 Since then, these PD rights have been extended to enable both light industrial (B1c) and distribution (B8) uses to be converted to residential.
- 3.3 To date, substantial use has been made by landowners and developers in the Borough of the PD rights to convert offices to residential, with 381 units permitted (to 31 March 2018). Whilst this has brought forward much needed housing, the rights have been criticised by some as there has been no need to demonstrate that the office space being lost was not in demand or otherwise important for the local economy. As a result, some 27,000 sqm of office space in the borough has been lost in this way since 2013. In addition, there have been other criticisms as residential accommodation delivered in this way does not need to provide any affordable housing or Section 106 contributions towards education, healthcare, open space etc. which might be expected through the normal planning process.
- 3.4 Particular PD rights can be removed from an area or areas by use of an Article 4 Direction (A4D). This does not mean that particular development or changes cannot take place, but that they must go through a normal planning application process so that the local planning authority can decide whether or not permission should be granted. Members will be aware that such a process has previously been undertaken to ensure that any proposal to convert housing in Hatfield to a House in Multiple Occupation (HMO) requires a planning application.
- 3.5 There has been increasing concern about the implications of employment to residential PD rights and the impact on the amount of commercial floorspace in the borough. Informal conversations with local commercial property agents have revealed that they are finding it increasingly difficult to show a range of premises options to businesses wishing to expand or move into the borough, and one business membership organisation has informed the Council that their members are finding it increasingly difficult to find suitable space for their business.
- 3.6 This concern is shared on a county-wide basis by the Hertfordshire Local Enterprise Partnership (LEP) who have undertaken a study looking at the issue across the county as a whole, the impact and what might be done to address any problems it causes. This study showed that Hertfordshire as a whole had experienced significant losses of employment space over the last ten years. The County had, on average, seen a 21% net loss in office floorspace, of which more than half had been lost to residential, primarily through Permitted Development. Industrial floorspace had also reduced over that period, though by a much smaller proportion, with a net loss of 7%.
- 3.7 The figures for losses for Welwyn Hatfield were in line with the county as a whole. In this period, the total stock of office space in the borough reduced by 28%, of which just over half was lost to residential uses. The total stock of industrial floorspace also fell, albeit only by 3%.

- 3.8 The report also set out the implications for the local economy of losses on this scale. The report set out that these losses were significantly reducing the supply of employment space, which had the impact of constraining growth, forcing companies to relocate and negatively affecting the image of the county as a place to do business. It is important to note that these losses are ongoing and difficult to predict, and that any problems they cause will only be exacerbated by further losses.
- 3.9 The Council signalled the wish to produce an Article 4 Direction to safeguard employment floorspace in paragraph 10.12 of the Submitted Local Plan. It was originally assumed that it would be most appropriate to undertake this work once the Plan had been adopted, but the ongoing examination process, along with the results of the LEP study referred to above, means that this should be brought forward to try to prevent further losses.
- 3.10 Whilst the Council can adopt an A4D to restrict these PD rights, it is important to note that the Secretary of State for Communities and Local Government is a consultee and can block any such proposal as it could be seen to prevent the delivery of housing. As a result, it is important that the Council has a robust justification, and is not seen to be trying to apply blanket coverage to include all employment areas, but to be focussing on the borough's most important employment areas. In addition, the recent call-for-sites exercise, undertaken as part of the ongoing Local Plan process, demonstrates that the Council is undertaking significant work in order to identify new housing sites.
- 3.11 The Council has undertaken informal discussions with several organisations who are in touch with local businesses and all have reported that the shortage of available premises is causing difficulties, and all have expressed in principle support for undertaking such an Article 4 Direction. It is hoped that the majority of those would be willing to put such comments into writing during the consultation period as this would add weight to any discussions with the Secretary of State.
- 3.12 It is proposed that an Article 4 Direction to restrict Permitted Development rights which permit the change of use from B1 to residential (C3) be consulted upon to cover the following sites:
- Welwyn Garden City employment area
  - Hatfield Business Park (including Bishop Square)
  - Beaconsfield Road / Great North Road in Hatfield
  - Sopers Road Industrial Estate in Cuffley
- Maps of the sites in question are appended
- 3.13 Officers feel that a robust case can be made that these sites are the most strategically important employment sites in the borough. These sites have a mixture of B uses within them, so identifying specific B1 uses is difficult, and would make the identification of the area covered complicated and difficult to understand. As a result, it is proposed to draw the "red line" to cover the site(s) as a whole as identified in Policy SADM10 of the Submitted Local Plan (2016).

- 3.14 Adopting such an Article 4 Direction can leave the Council subject to claims for compensation from landowners who believe that their land/property has decreased in value as a result, as set out in Sections 107 and 108 of the Town and Country Planning Act 1990 (as amended). A way of avoiding this is to defer the start of any Direction after adoption, and indeed some authorities have adopted this approach, so any adoption will not take place until twelve months from the date of this meeting.

### **The Process**

- 3.15 The Council is required to consult on proposals for an Article 4 Direction, including consulting landowners and occupiers. In addition, the Secretary of State for Housing, Communities and Local Government has to be a consultee. Following consultation, any resulting amendments must be made to the proposed Article 4 Direction, before it is returned to Cabinet and Council to be adopted.

### **Implications**

#### **4 Legal Implication(s)**

- 4.1 The Council has a legal duty to seek, through the planning system, to deliver sustainable development. Safeguarding the most important employment sites in the borough is a means of seeking this.
- 4.2 Applicants have the right to claim for compensation where a planning application is refused or granted subject to conditions. Compensation may also be sought for abortive expenditure or other loss or damage which can be directly attributed to the extinguishment of permitted development rights. However no compensation is payable if the procedures of the *Town & Country Planning Act (Compensation) Regulations 2013* are adopted; namely that notice of an Article 4 Direction is given not less than twelve months before coming into force.

#### **5 Financial Implication(s)**

- 5.1 There will be a small revenue cost associated with undertaking the consultation, though this will be covered by normal core budgets. In addition, if an Article 4 Direction is adopted, any development which would normally have been permitted development can apply for planning permission without any fees being payable. It is anticipated that there will be a small revenue cost from this, but again this will be covered by core budgets.

#### **6 Risk Management Implications**

- 6.1 The risks related to this proposal are:
- 6.2 Risk of Secretary of State intervention. The Secretary of State is a consultee to this process and there is a risk that s/he could intervene to prevent an Article 4 Direction being adopted, in particular if he believes that this would reduce the delivery of housing. However, the Council believes that it can make a robust case for this course of action based on seeking to apply this to only the most important employment sites.
- 6.3 Compensation Claims. It is considered that there is a risk of claims being made against the Council as the value of a landowner's asset would be likely to be

reduced. This can be mitigated by deferring the start of an adopted Article 4 Direction.

- 6.4 The risk implications can be managed if consultation is carried out in accordance with the *Town & Country Planning Act (Compensation) Regulations 2013*.

## **7 Security & Terrorism Implication(s)**

- 7.1 There are no known security and terrorism implications in relation to the proposals in this report.

## **8 Procurement Implication(s)**

- 8.1 There are no known procurement implications in relation to the proposals in this report.

## **9 Climate Change Implication(s)**

- 9.1 Seeking to safeguard the borough's most employment sites will help deliver sustainable development and provide opportunities for residents to work close to home rather than having to travel outside the borough for work. This reduction in the need to travel will help reduce carbon emissions.

## **10 Policy Implication(s)**

- 10.1 The introduction of an Article 4 Direction would mean that any proposals for the change of use or redevelopment of offices (to which the Direction applies) to residential would be determined in accordance with adopted and emerging planning policies and other material considerations. In this case, the key policies covering employment sites are policies EMP1 and EMP2 of the 2005 District Plan, and Policy SADM10 of the submitted Local Plan.

## **11 Human Resources Implications**

- 11.1 It is not envisaged that there will be any Human Resources implications from this work as it will be undertaken by existing staff.

## **12 Health and Wellbeing Implications**

- 12.1 Ensuring a supply of employment closer to home can help health and wellbeing outcomes, by more easily allowing residents to walk and cycle to work, and by reducing the negative impacts of commuting.

## **13 Communications and Engagement Implications**

- 13.1 There will be a need to consult on proposals and make any amendments as a result of this consultation, before an Article 4 Direction can be adopted.

## **14 Link to Corporate Priorities**

- 14.1 The subject of this report is linked to the Council's Corporate Priority is linked to the Council's Business Plan 2018-2021 and particularly Priority 4 to support sustainable economic growth.

## 15 **Equality and Diversity**

15.1 An Equalities Impact Assessment (EqIA) was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

Name of author	Matt Pyecroft
Title	Senior Projects Officer (Planning)
Date	June 2019

Background papers to be listed (if applicable)

Loss of Employment Space in Hertfordshire (Lambert Smith Hampton / Hertfordshire Local Enterprise Partnership) February 2019

<https://www.hertfordshirelep.com/media/7128/loss-of-employment-space-in-hertfordshire-february-2019.pdf>

Appendices to be listed:

Maps of Welwyn Garden City Employment Area, Hatfield Business Park, Beaconsfield Road and Great North Road, Hatfield, and Sopers Road Cuffley