

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 07 APRIL 2022
REPORT OF THE HEAD OF PLANNING

ARTICLE 4 DIRECTION – OFFICE TO RESIDENTIAL CONVERSIONS

1 Executive Summary

- 1.1 In recent years, a number of new Permitted Development (PD) rights have been introduced, which allow certain development to be undertaken without planning permission. Many of these are intended to be for development which would be uncontroversial but some others may present issues in certain areas.
- 1.2 One PD right, which was introduced on a temporary basis in 2013 and made permanent in 2016 allowed offices to be converted to residential. Extensive use was made of this by landowners across the borough, and whilst it provided a significant amount of new homes, this led to a significant loss of employment space, with just under 32,000sqm having been lost across the borough between 2013 and March 2021.
- 1.3 Article 4 Directions enable local planning authorities to remove specific permitted development rights on identified sites, which means that if any such development is proposed, planning permission must be applied for in the normal way. A number of Article 4 Directions have been enacted by the Council in the last two years. Following consultation and member decision, the Council confirmed an Article 4 Direction to remove the permitted development right enabling offices to be converted to residential uses on the four most significant employment sites in the borough, coming into effect on 12 October 2020. Subsequently, a second Article 4 was approved by members in June 2021 to remove the right to demolish existing employment buildings and replace them with residential on the same employment sites which came into effect in February 2022. Another removed the right for owners of existing blocks of flats to extend by up to two additional floors for additional flats to help protect heritage assets in Hatfield, and following member approval this will come into effect in July 2022.
- 1.4 Recent changes to both Planning Use Classes and Permitted Development regulations mean that the Article 4 Direction which removed the right to convert offices to residential in certain areas will cease to have effect on 31 July 2022. In order to retain this protection for the identified employment areas, a replacement must be put in place, and members agreed in September 2021 to do this.
- 1.5 Following this member approval, a replacement Article 4 Direction which would remove this permitted development right was made on 26 January 2022 with a public consultation starting on the same day. Unlike previous ones made by the Council, this had an immediate start, which means that – if following the consultation, members wish to retain it - it needs to be confirmed within six months otherwise it will lapse. Following analysis of the results of the consultation, it is proposed that the Article 4 should be confirmed, so that it will be made permanent.
- 1.6 Appendix 1 to this report contains a plan of the employment sites in question covered by the Article 4 Direction. Appendix 2 reports on the results of the consultation.

2 Recommendation(s)

- 2.1. That Cabinet Planning and Parking Panel notes the results of the public consultation which took place for six weeks from January to March 2022.
- 2.2. That, after taking the results of the public consultation into consideration, Cabinet Planning and Parking Panel recommends to Cabinet the confirmation of the Article 4 Direction covering the key employment sites across the borough in order for it to continue to have effect.
- 2.3. If unanimously agreed by the Panel, for the decision to be taken by the relevant Executive Member using their delegated powers under paragraph 18.1(b) of the Cabinet Procedure Rules.'

3 Explanation

- 3.1 The Government introduced Permitted Development (PD) Rights to enable offices (at that time Use Class 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. Since then, these PD rights have been extended to enable both light industrial (B1c) and distribution (B8) uses to be converted to residential and other PD rights have been brought forward allowing non-residential floorspace to be converted or otherwise used for residential.
- 3.2 Substantial use has been made by landowners and developers in the borough of the PD rights to convert offices to residential, with 478 units developed (to 31 March 2021), and commitments for a further 241. 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 31,957sqm of office space in the borough has been lost in this way since 2013 and commitments for a further 10,116sqm. 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.
- 3.3 This concern is shared on a county-wide basis by the Hertfordshire Local Enterprise Partnership (LEP) who in February 2019 published 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%.
- 3.4 Particular PD rights can be removed from an area or areas by use of an Article 4 Direction. 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 assess proposals and decide whether or not permission should be granted. Members will be aware that this process has been used a number of times by the Council in recent years.
- 3.5 An Article 4 was put in place to remove the right to convert offices to residential on key sites throughout the borough and this took effect on 12 October 2020. Due to changes to both the Use Classes Order and national Permitted Development

rights, this will cease to have effect in July 2022, and in September 2021 members agreed for a replacement to be put in place.

- 3.6 Consultation on this replacement Article 4 ran from 26 January until 09 March 2022. A notification letter was sent to all occupiers of business premises on the sites in question which included a request for it to be passed onto the landowner if the business was a tenant. In line with the Council's Statement of Community Involvement a number of statutory consultees and local stakeholders including planning agents were also sent consultation letters. In addition, site notices were posted around the sites in question, and public notices were printed in the Welwyn Hatfield Times and in the Hertfordshire Mercury.
- 3.7 The consultation attracted ten responses. A report on the consultation is attached at Appendix 2, but in summary:
- Of the eight expressing an opinion, six were supportive, two opposed. The other two responses were acknowledgements from statutory consultees with no opinion expressed,
 - All six of those who were supportive provided additional comments. These included the importance of retaining employment spaces to have sustainable places to live and work, that the Council should maintain the integrity of adopted employment areas, the impact on local businesses or those wishing to come into the area potentially unable to find suitable space, and support for retaining employment provision in one specific location given its value to the local economy.
 - The two who were opposed also provided additional comments. One referred to people will have made already plans based on the permitted development rights. Another highlighted that businesses will regularly review their office requirements and that they may reasonably conclude that any surplus space could easily be repurposed for other uses including residential.
- 3.8 A full consultation report including a summary of the responses, the points raised and the Council response to these points is attached at Appendix 2. As the original Article 4 Direction was subject to a 12 month notice period and public consultation before it took effect, it is considered that sufficient notice has been provided. The second issue that was raised opposing the proposal was on behalf of a large local employer and said that they regularly review their office requirements, particularly in the light of Covid, and any business such as theirs may decide to reduce their physical office space. In this situation, they may conclude that any surplus space could be repurposed for other uses, including residential and such development can be an important source of new housing. As a result any such proposal to remove PD rights should only be taken with a clear and up to date justification.
- 3.9 It is important to note that an Article 4 Direction such as this would not preclude offices being converted to residential, but it would mean that it would need to go through the planning application route, so that proposals and their impacts can properly be considered. In this instance, there is a policy mechanism in both the adopted District Plan and the emerging Local Plan for applicants to make the case that any floorspace is no longer required for employment uses, but it would need to be demonstrated by having undertaken a marketing campaign. In addition, if they were considering other uses apart from residential for any surplus floorspace, planning permission would be likely to be needed for these, so the Council's approach is consistent.

3.10 The extensive losses of employment floorspace seen in the borough in recent years shows that it is important for the Council to retain a degree of control over any proposed future losses on the most important employment sites in the borough. As a result, it is not considered that the consultation has highlighted any issues which would warrant the Council reconsidering its decision to designate an Article 4 Direction.

3.11 In July 2021, an updated version of the National Planning Policy Framework (NPPF) was issued by Government. In this document, a new paragraph 53 set out clear guidance for local authorities on the use of Article 4 Directions:

The use of Article 4 directions to remove national permitted development rights should:

- *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)*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*

3.12 As can be seen, Government has set out clear tests for the use of Article 4 Directions, in particular those that relate to residential uses, such as this proposal. Officers believe that the significant loss of employment floorspace in the borough in recent years and the potential for this to continue, along with the evidence base which is referred to earlier, mean that what is proposed is appropriate and evidence based so that these tests have been met. In addition, the Secretary of State was consulted and no response has been received. However, members should also satisfy themselves in respect of the tests.

3.13 If Members accept the officer recommendation, no changes would be made to the Article 4 and the Direction would be confirmed in order to continue to have effect past the initial six month period which otherwise would end on 25 July 2022.

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 Under the provisions of the General Permitted Development Order 2015 (as amended) the Council can remove permitted developments rights granted by that Order. Where permitted development rights have been removed 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. Whilst previous Article 4's have deferred the start in order to avoid this, it is not necessary in this case as it is replacing an existing Direction to ensure continued safeguarding of the employment sites. As the existing Direction will lapse in July 2022, the new Direction will ensure continuity but will not remove any further PD rights.

- 4.3 The making of the order was a legal process which involved the Article 4 Direction to be officially signed and sealed. Confirmation is a similar process and will again need the document to be officially signed and sealed.

5 Financial Implication(s)

- 5.1 If an Article 4 Direction is in place, any planning application for development which would be Permitted Development does not previously attract an application fee. However, this exemption has now been removed and an application fee is payable.
- 5.2 There are theoretical future financial implications associated with restricting permitted development rights, positively in the form of protecting business rates income and adversely in the form of reducing opportunities for council tax income growth and new homes bonus. There would also be incremental service costs which would be associated with increases in residential property. The net of this position is not possible to quantify as there could be many different influencing factors and scenarios, including potential impacts on local employment and welfare. The restrictions do not cause a change to the current financial position of the council, and as the restrictions protect employment space and the local economy is supported, so should be viewed positively in protecting the local economy.

6 Risk Management Implications

- 6.1 The risks related to this proposal are:
- 6.2 Financial Risk. It is possible for landowners to claim compensation against a planning authority if the value of their asset has been affected by the introduction of an Article 4 Direction. However, as this Direction replaces one already in place which will otherwise lapse in July 2022, the time period for any claims of compensation has already passed, so it is considered that all landowners are already aware of the Council's intentions.

7 Security and Terrorism Implication(s)

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

8 Procurement Implication(s)

- 8.1 There are no known procurement implications in relation to the proposals set out 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 Human Resources Implication(s)

- 10.1 The Article 4 Direction will result in planning applications which need to be determined by development management staff.

11 Health and Wellbeing Implication(s)

- 11.1. Permitted Development takes place without the need for securing planning permission in the usual way. The Local Plan recognises the importance of good design and placemaking, so the planning application process allows these factors to be taken into account and any resulting development may be more beneficial to wellbeing.

12 Communication and Engagement Implication(s)

- 12.1. A public and business consultation on these proposals was undertaken in January – March 2022 and the results of the consultation have informed this report. A summary of responses is attached at Appendix 2.

13 Link to Corporate Priorities

- 13.1 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.

14 Equality and Diversity

- 14.1. An EqIA was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

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Background papers:

Hertfordshire Local Enterprise Partnership – Loss of Employment Land in Hertfordshire (February 2019): <https://www.hertfordshirelep.com/media/rmpha5mk/loss-of-employment-space-in-hertfordshire-february-2019.pdf>

Appendices:

Appendix 1 Maps of the employment areas showing “red lines” where the Article 4 would apply.

Appendix 2 Consultation report