

**PLANNING COMMITTEE**

**DATE OF MEETING: 14 FEBRUARY 2018**

**TITLE OF REPORT: ARTICLE 4 DIRECTION FOR EMPLOYMENT LAND**

**Report of: Corporate Strategy and Policy Development Manager**

**Cabinet member: Councillor Graham Cockarill, Planning**

**1. PURPOSE OF REPORT**

1.1 This report seeks Planning Committee approval to make a non-immediate Article 4 direction to withdraw permitted development rights related to the change of use of offices, light-industrial units, and storage or distribution units to residential use within the Strategic Employment Sites and the Locally Important Employment Sites identified within the draft Hart District Council Local Plan Strategy and Sites 2016 – 2032 Proposed Submission Version.

**2. OFFICER RECOMMENDATION**

2.1 That Planning Committee authorises:

1. The Corporate Strategy and Policy Development Manager to take all necessary steps in supporting, serving and publicising a non-immediate Article 4 direction to remove the Class O (office to residential), Class P (storage or distribution centre to residential) and Class PA (light industrial to residential) permitted development rights granted by Part 3 of Schedule 2 of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) within Hart's Strategic Employment Sites and Locally Important Employment Sites listed in Appendix I;

2. The Corporate Strategy and Policy Development Manager in consultation with the Chairman of Planning Committee, to consider the consultation responses arising from Recommendation 1 above and subject to their content, to confirm and implement the Article 4 Direction, such Direction to have effect after 12 months prior notice has been given.

**3. BACKGROUND**

3.1 In 2013, the Government introduced new 'permitted development rights' which allow an office building to change its use to a dwelling house without the need for planning permission. Initially intended to be temporary and due to expire at the end of May 2016, the rights were made permanent in April 2016. More recently, the Government also introduced further permitted development rights, which allow light-industrial buildings of less than 500 sqm to change use to housing without the need for planning permission. These follow the introduction of similar rights in April 2015 which allow for storage or distribution buildings less than 500 sqm to be converted to residential use without planning permission.

- 3.2 The Government argues that the permitted development rights will increase housing provision by unlocking underused land and brownfield sites for residential development. Whilst there are benefits to housing delivery, and the use of brownfield sites, there is concern within local authorities about the loss of employment land and the potential impact of the rights on business and economic growth. Hart has seen a significant erosion of employment floorspace since the office to residential rights were introduced in May 2013. This is particularly noticeable at Bartley Wood and Ancells Farm where it is not necessarily empty or redundant premises that have been lost. The core employment area and function of both areas is being fragmented and eroded.

#### **4. PROPOSAL: ARTICLE 4 DIRECTION**

- 4.1 The draft Hart District Council Local Plan Strategy and Sites 2016 – 2032 Proposed Submission Version has identified a number of ‘Strategic Employment Sites’ within Hart which are critical to the economy of the District, the wider Functional Economic Area (FEA) and the Enterprise M3 Local Enterprise Partnership Area. The Plan has also identified a number of ‘Locally Important Employment Sites’ which are considered vital to the economic success of Hart and the FEA.
- 4.2 The draft Local Plan Policies relating to these sites seek to retain them for employment uses (subject to a number of criteria). However, implementation of these policies is weakened by the use of permitted development rights for conversion to residential use. At present, the Council is able to provide a form of constraint through the availability of the capacity of Suitable Alternative Natural Greenspace (SANG), however, the Council is not the only provider of SANG and over time, SANG capacity may become available from other sources to prospective developers.
- 4.3 Local planning authorities can remove permitted development rights by implementing an Article 4 direction. The purpose of the Article 4 is not necessarily to prevent all changes of use but to require planning applications for such developments enabling the Council to regain control over the consideration of relevant planning issues and to protect those office, light-industrial, and storage or distribution sites which are of the greatest economic importance. This allows other planning matters to be considered which are not otherwise possible with change-of-use applications under permitted development, for example, affordable housing, education provision, and community and open space infrastructure provision.
- 4.4 This is not an issue peculiar to Hart. A number of local authorities have sought to protect their key employment sites by implementing Article 4 directions to remove these rights including Rushmoor, which with Surrey Heath, forms part of the Functional Economic Area within which Hart sits.
- 4.5 An Article 4 direction would provide additional protection to Hart’s most important employment sites. Residential development at these sites could impact negatively upon their ability to attract employment related investment. It could also result in pressure by the new tenants of these homes to reallocate surrounding employment land and buildings to residential or mixed uses, thereby compromising the Council’s ability to retain its main employment sites in an employment designation in the long term.

- 4.6 To support the implementation of Local Plan Policies, and given the economic significance of these sites at a local level and beyond, it is recommended that the Council implements a single Article 4 direction to remove the office, light-industrial, and storage or distribution permitted development rights in combination on the Strategic Employment Sites and Locally Important Employment Sites as listed in Appendix I.

### **Process**

- 4.7 The Government states that there should be a compelling case for the removal of permitted development rights. The use of Article 4 directions to remove permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified and the Council must show strong justification for the withdrawal of permitted development rights. Therefore, the harm that a direction is intended to address or avoid should be clearly identified, and justification as to its purpose and extent must be given.
- 4.8 A detailed supporting paper will be prepared outlining the arguments for introducing an Article 4 direction in Hart in more detail. It will identify the current and potential impact of the loss of employment land in the District on the local and wider economy, analyse the local office and industrial market, and list the employment sites that should be protected by an Article 4 direction. It will draw on evidence from the 2016 update to the Hart, Rushmoor, Surrey Heath Employment Land Review.
- 4.9 The making of an Article 4 Direction involves the following key stages:
- Draft Article 4 Direction and supporting documents;
  - Give notice as soon as possible after a Direction has been made by local advertisement, site notice, owners and occupiers (unless reasons to justify not doing so);
  - Send a copy of the direction and the notice to the Secretary of State;
  - Notify the county planning authority;
  - Following the above, take into account any representations received; and
  - Confirm the Direction by giving notice as above and sending a copy of the confirmed direction to the Secretary of State.

## **5 IMPLICATIONS**

### **Compensation Claims**

- 5.1 The most significant risk associated with preparing an Article 4 direction is the potential for developers to make claims for compensation from a local authority. To mitigate the risk of compensation claims, it is recommended that the Council follows the 'non-immediate' Article 4 directions approach. This approach removes permitted development rights only after a period of public consultation and the Direction is not implemented, or 'confirmed', until twelve months from the start date of the consultation period.

## **Permitted Development Applications during the Notification Period**

- 5.2 During the twelve-month non-immediate implementation period between the making of a non- immediate Article 4 direction and its coming into effect developers will be able to exercise the permitted development right. Whilst this could result in a rush of applications before the rights are withdrawn, it is not possible to mitigate against this risk.

## **Intervention by the Secretary of State**

- 5.3 The Secretary of State has the power to make a direction that modifies or cancels an Article 4 direction made by a local planning authority at any time before or after its confirmation. However, given that the justification for introducing an Article 4 direction in Hart is strong, and the direction would be specifically targeted and apply only to the District's Strategic and Locally Important Employment Sites, it is considered that the risk of intervention by the Secretary of State is low.

## **Legal Implications**

- 5.4 There is no statutory appeal against the making of an Article 4 direction. The proposed Direction would therefore be open to challenge by way of a judicial review. However, if the Council follows the prescribed process for making and confirming a direction, which includes considering objections to the proposed direction, and given that the Council would consider change-of-use applications on a case-by-case basis, a successful judicial review is unlikely.

## **Financial and Resource Implications**

- 5.5 The principal costs of making and confirming an Article 4 direction include officers' time, printing notices for site display and advertising notices within a local newspaper. The costs of making and confirming a direction can be absorbed by the planning policy budget.
- 5.6 It should be noted that no planning application fee is payable where a planning application is required for a change of use which would otherwise have fallen under permitted development.

## **6 ACTION**

- 6.1 The next step in making an Article 4 Direction would be to serve notice of the Council's intention to withdraw the permitted development rights on a non-immediate basis as required by the Article 4 regulations. Whilst the regulations specify a period of at least 21 days within which representations to the Council can be made, the consultation period will be extended to at least six weeks to allow for a more meaningful engagement with stakeholders.
- 6.2 The direction cannot come into force unless it is 'confirmed' by the local planning authority. After the consultation has closed, officers will review all the comments received during the consultation period. Officers will then prepare a report summarising the comments received, the suggested response to any objections, and any recommended changes to the direction for agreement with the Chairman of

Planning Committee. It should be noted that the direction will require re-consultation if any changes are made to it because of the consultation. If the direction is subsequently confirmed, the date on which it will come into force will be twelve months from the start date of the original consultation period.

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## **APPENDICES**

Appendix 1 – Strategic and Locally Important Employment Areas to be subject to an Article 4 Direction

## **BACKGROUND DOCUMENTS:**

*National Planning Policy Framework. National Planning Practice Guidance.  
Hart District Council Local Plan Strategy and Sites 2016 – 2032 Proposed Submission Version  
Town and Country Planning (Compensation) (England) Regulations 2016.  
Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.  
Town and Country Planning (General Permitted Development) (England) Order 2015.*

**Appendix I - Strategic and Locally Important Employment Areas to be subject to an Article 4 Direction**

The following Strategic and Locally Important Employment Areas are defined in the Proposed Submission Version of the Hart Local Plan: Strategy and Sites 2016 – 2032:

**Strategic Employment Areas:**

Bartley Wood, Hook  
Bartley Point, Hook  
Cody Technology Park, Farnborough  
Meadows Business Park, Blackwater  
Osborne Way, Hook  
Waterfront Business Park, Fleet

**Locally Important Employment Areas**

Ancells Business Park, Fleet  
Blackbushe Business Park  
Eversley Haulage Yard  
Eversley Storage  
Finn's Business Park, Crondall  
Fleet Business Park, Church Crookham  
Grove Farm Barn, Crookham Village  
Lodge Farm, North Warnborough  
Murrell Green Business Park  
Potters Industrial Park, Church Crookham  
Redfields Business Park, Church Crookham  
Optrex Business Park, Rotherwick  
Beacon Hill Road, Church Crookham