

TO: EXECUTIVE
18 JULY 2017

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER
1995 AS AMENDED
DIRECTION UNDER ARTICLE 4(1)**

Director of Environment, Culture and Communities

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek the Executive's approval to confirm a non-immediate Article 4 Direction to remove the permitted development right to change offices to residential use within three defined business areas in the Borough without the need for planning permission.

2 RECOMMENDATIONS

2.1 That the Executive:

- (i) notes the results of the consultation on the draft Article 4(1) Direction set out at Para 5.15;**
- (ii) Acknowledges the compensation risks which are set out in the report; and**
- (iii) Agrees to confirm the Article 4 Direction on the 27 February 2018**

3 REASONS FOR RECOMMENDATIONS

- 3.1 Recent evidence gathered for the emerging Local Plan has shown that over the last ten years there has been a net loss of employment floorspace in the Borough. Economic Development Needs Assessment (EDNA) also recommends that Bracknell Forest Council should be planning for an increase of nearly 350,000 sqm of additional employment floorspace to support economic growth.
- 3.2 The Council is also aware of concerns raised by a number of local employers that the change of use of neighbouring office buildings within an established employment area to residential uses would undermine the quality of the environment as an attractive business location.
- 3.3 In order to preserve and control the character of the Borough's key business areas as attractive locations for occupiers of office space and help reduce the loss of needed office floorspace it is proposed to remove the permitted development right for such changes of use.
- 3.4 Appendix B identifies the areas which the Council is seeking to protect. These areas are also those protected in the Council's Development Plan as defined employment areas. These cover the Western Business Area in Bracknell, the Eastern Business Area in Bracknell, and the Southern Business Area in Bracknell.

- 3.5 Between 27 February and 10 April 2017 the Council consulted on the proposed non-immediate Article 4 Direction. This involved writing to all owners and properties in the areas proposed to be covered by the Direction. The information was also provided to the Secretary of State in line with regulation.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The option of not making an Article 4 Direction has been considered. However, in light of the forecast future need for employment floorspace and the need to protect the attractiveness of the Borough's business areas for existing and potential occupiers, it is considered appropriate to take action.

5 SUPPORTING INFORMATION

Background Information

- 5.1 Since 30 May 2013, changes to the General Permitted Development Order (GPDO) have meant that the conversion of offices to houses or flats does not require planning permission. Such changes are required to follow a prior approval process. This process significantly limits the matters that the Council can take into consideration when considering such proposals. In particular, no account can be taken of the impact of the proposal on the quantity and quality of available business floorspace in the Borough, the impact on existing businesses, nor the future living conditions of residents.
- 5.2 Where the use of permitted development rights has the potential to create the impacts set out above, Local Planning Authorities have the ability to consider making Article 4 Directions to remove such rights within identified areas.
- 5.3 Government advice is that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. In deciding whether an Article 4 Direction would be appropriate, local planning authorities should identify clearly the potential harm that the Direction is intended to address.

The harm the Direction is intending to address

- 5.4 Planning to support the local economy is an important objective for the Council as set out in the Council's Core Strategy objective J - To maintain high and stable levels of economic growth. Core Strategy Policy CS20 seeks to protect the function of the Borough's defined and major employment areas by setting restrictive criteria against which proposals for alternative uses will be assessed.
- 5.5 The National Planning Policy Framework states that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. It says that to help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.
- 5.6 As part of the evidence base to inform the preparation of a new Local Plan the Council jointly commissioned a study to establish the Functional Economic Market

Area (FEMA) within which the Borough is located. This established that Bracknell Forest is within a Central Berkshire FEMA along with the Boroughs of Reading, Wokingham and Windsor and Maidenhead. The FEMA study can be found on this link: <http://www.bracknell-forest.gov.uk/evidencebaseforcomprehensivelocalplan>

- 5.7 A further study was jointly commissioned by the Central Berkshire FEMA authorities and the Local Economic Partnership (LEP) to produce an Economic Development Needs Assessment (EDNA). This study made the following findings:
- The commercial centre of Bracknell stands out as supporting a substantial cluster of B Class employment floorspace in the Central Berkshire FEMA.
 - While a significant amount of new B Class floorspace has been completed within the FEMA over the last 10 years in all the Boroughs apart from Wokingham this has been exceeded by the amount of floorspace lost.
 - In Bracknell Forest the gross loss of B Class floorspace was around 167,100 sqm with the net figure being a loss of 90,600 sqm.
 - The losses are predominantly of office floorspace while industrial floorspace has remained relatively stable over this period.
 - Market signals indicate that while demand for office space in Bracknell has struggled in recent years there are now signs of an uplift.
- 5.8 The study recommends that to meet the NPPF requirement to plan positively for growth Bracknell Forest should plan for at least an additional 348,500sqm of floorspace from 2013 to 2036 which equates to 102.8 ha of employment land.
- 5.9 The Council's monitoring shows that prior approvals have already been granted for the conversion of over 13,000 square metres of office floorspace to residential through landowners exercising their permitted development rights under Class O since their introduction.
- 5.10 There have been concerns expressed by neighbouring businesses when prior approval applications have been made about the impact of such changes on the role of key employment areas. It is a significant concern for the Council if the role of these employment areas are diminished and become no longer attractive for existing and new businesses to locate in.
- 5.11 At its meeting of 14 February the Executive agreed that a non immediate Article 4 Direction should be consulted upon. This took place between February and April and the results of this consultation are set out in Paras 5.14- 5.9 of this report.

Making an Article 4 Direction

- 5.12 Once the Council has decided that there is evidence to support the introduction of an Article 4 Direction Area it must undertake consultation on its proposals and make it known to the Secretary of State that it intends to implement the Direction. The Council has already completed consultation on the proposed Article 4 Direction.
- 5.13 The regulations require that following consultation:

In deciding whether to confirm a direction made under article 4(1), the local planning authority must take into account any representations received during the period specified.

The local planning authority must not confirm a Direction until after the expiration of;

- a period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or
- such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.

The local planning authority must, as soon as practicable after a direction has been confirmed—

- give notice of such confirmation and the date on which the direction will come into force; and
- send a copy of the direction as confirmed to the Secretary of State.

Consultation responses

- 5.14 The Council received five responses to the proposed Direction and these are summarised below. The Secretary of State has also written to the Council seeking further information on the Direction. This information was provided on the 25 May. The letter from the SOS sets out;

“The Secretary of State is considering whether there is cause for him to use his powers of intervention under article Schedule J, Paragraph 1(13) of the 2015 Order. The Secretary of State will consider whether the Direction fulfils national policy set out in Paragraph 200 of the National Planning Policy Framework on the use of article 4 directions, and whether it is in accordance with guidance on the use of article 4 directions as set out in National Planning Practice Guidance.”

- 5.15 The five representations to the Article 4 Direction received were from property owners in the areas proposed to be covered by the Direction these covered a number of points which are set out below;

- Two responses did not want an Article 4 Direction in the Eastern Business Area due to its more mixed nature and access to local services;
- One response was seeking a full 12 months before the order is confirmed so that the Council are not liable to compensation (which the respondent believes could be substantial)
- Two were specific to sites in the Western Business Area, and set out that the Council does not have enough evidence to introduce the Article 4 Direction, particularly in regard to the Council’s 5 year land supply position. Both of the sites which are covered by these responses have since received Prior Approval.

Eastern Business Area

- 5.16 With regard to the Eastern Business area, it is considered that this is an area that still functions as an important employment area and as such should be protected, the matters such as its more mixed environment and location closer to services are all matters that would be considered via the planning application process, if a

conversion was being sought. As such it is considered appropriate to retain this area within the Article 4 Direction Area.

Compensation

- 5.17 With regard to the issue of compensation as set out in the report to Executive on the 14 February there is a risk of compensation if the Article 4 Direction is implemented following consultation and before a 12 month period has elapsed after publication of the notice of withdrawal of permitted development rights. Where compensation is payable its scope is limited to;
- where the Council refuses planning permission for development, which would otherwise have been permitted development; or
 - Grants planning permission subject to more limiting conditions than the General Permitted Development Order.
- 5.18 The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. In the case of the withdrawal of the right to change the use of an office building to a residential use the compensation could be substantial. As such the Council could choose to confirm the order from 27 February 2018 to protect itself from any compensation claims.
- 5.19 Officers have sought legal advice on the above point, and this sets out that there are no recorded cases of compensation settlements with regard to this change of use. This is most likely as most Article 4 Directions for this type of permitted development, have been implemented 12 months after the date they were first advertised.
- 5.20 However taking the regulations as stated the advice provided sets out that there are two types of compensation claim and these could only be calculated on the basis of a proposal coming forward. The first concerning abortive costs would be the costs of preparing an application, these would be relatively easy to quantify. However the second ground is much harder to estimate with any certainty as this is about the loss of value experienced when planning permission is refused (which would normally be gained under permitted development). In a simple sense this would be the difference in value of the existing use and the proposed use, in this case the difference between an office use and future residential use could be substantially more valuable leading to a potential substantial claim for compensation.
- 5.21 Having considered the legal advice, on balance it is considered that confirming the order 12 months from its first publication would limit any financial risk to the Council and as such this approach is recommended to Executive, see Appendix A.

Evidence for an Article 4 Direction

- 5.22 With regard to the remaining two responses these relate to the fact that the Council cannot currently demonstrate a 5 year housing land supply and as such should not be inhibiting this form of housing delivery. The Council has already approved a number of prior approval notifications totalling in the region of 850 new homes which, if implemented would count towards the Council's housing supply. It is considered that the evidence provided in support of the Direction makes it clear that the ongoing changes of use to residential properties, is impacting on the Council's ability to plan proactively for employment needs within the borough which has been identified through the Economic Development Needs Assessment (EDNA). As such it is considered that this along with the healthy contribution prior approvals have already

provided to housing provision that the Direction should be confirmed unaltered from that consulted upon earlier this year.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 sets out classes of development for which a grant of planning permission is automatically granted, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.
- 6.2 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) empowers the planning authority to withdraw specified Permitted Development (PD) rights which would otherwise apply under the GPDO. Where an Article 4 Direction is in existence, planning permission will be required for the development covered by the Direction. This gives a local planning authority the opportunity to consider a proposal in accordance with the development plan unless material considerations indicate otherwise.
- 6.3 Currently, Schedule 2, Part 3, Class O of the GPDO only requires prior approval from the local authority for a determination of the transport and highways impacts of the development, and contamination, flooding risks and the impacts of noise from commercial premises on the intended occupiers of the development. As set out in the report the Council seeks to preserve and control the character of the Borough's key business areas and the further loss of employment floorspace. The statutory criteria applicable to the exercise of current PD rights in respect of the change of office to residential uses do not afford the Council any scope to remedy this planning harm.
- 6.4 Article 4 Directions can only be used to withdraw PD rights under the GPDO. They cannot be applied retrospectively to development undertaken before a Direction comes into force, or to development that has commenced at the time that a Direction comes into force. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 Direction, the Council cannot charge a planning application fee.
- 6.5 As set out in the report, national guidance advises that the use of Article 4 Directions to remove national 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. There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area. Paragraphs 5.1-5.11 clearly address the Council's justifications for the recommendations.
- 6.6 The procedures for making an Article 4 Direction are set out in schedule 3 of the General Permitted Development Order as set out at paragraphs of the report 5.12 – 5.19. The recommendation seeks the approval of the Executive Committee to confirm the Article 4 Direction as proposed and consulted upon.
- 6.7 The statutory provisions governing the compensation provisions applicable to Article 4 Directions is set out in sections 107 and 108 of the Town and Country Planning Act 1990 and the Town and Country Planning (Compensation) (England) Regulations 2015.

Restricted

- 6.8 Section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order. A local planning authority can only be liable to pay compensation to individuals affected by the withdraw of permitted development if it subsequently refuses planning permission for development which would otherwise have been permitted development or grants planning permission subject to more limiting conditions than the General Permitted Development Order. The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 6.9 Section 108 has been recently amended to deal with those circumstances where permission granted under a development order has been withdrawn for development of a 'prescribed description' which is defined in section 2 of the Town and Country Planning (Compensation) (England) Regulations 2015. The consequence of this has been the limitation of circumstances where compensation is payable for 'prescribed description' development. In cases where notice of the withdrawal of the permitted development rights was published at least 12 months before the Direction took effect as proposed by the recommendation no compensation will be payable.
- 6.10 The recommendations of the report are reserved to the Executive Committee in accordance with Part 5, sub-paragraph 5.6(2) of the Bracknell Forest Council Constitution, November 2016.

Borough Treasurer

- 6.11 As stated in the report should the Council refuse planning permission for a development that otherwise would have been granted under permitted development the Council's potential liability for compensation is limited to one year from the date the Direction is introduced. A compensation claim may relate to the depreciation in the value of buildings resulting from the failure to gain planning permission or to abortive expenditure incurred. It is not possible at this point to gauge the scale of such claims.
- 6.12 In order to avoid any possible claims for compensation, the Council should provide 12 months advance notice of the Article 4 taking effect (non immediate Article 4 Direction).

Equalities Impact Assessment

- 6.13 Not required

Strategic Risk Management Issues

- 6.14 There is a risk of compensation if the Article 4 Direction is implemented following Consultation and before a 12 month period has elapsed after publication of the notice of withdrawal of permitted development rights. This matter is covered in Paras 5.17-5.20.

Background Papers

- Appendix A Article 4 Direction
Appendix B Maps showing the areas to be covered by the Article 4 Direction

Contact for further information

Restricted

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