

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

***PART 1 – PUBLIC DOCUMENT**

SERVICE DIRECTORATE: *Regulatory*

1. DECISION TAKEN

- 1.1. To confirm a non-immediate Article 4 Direction withdrawing permitted development rights that allow for specified employment uses to be converted to residential use in specified areas of the District.

2. DECISION TAKER

- 2.1. Service Director – Regulatory (in consultation with the Portfolio Holder for Planning and Transport)

3. DATE DECISION TAKEN:

- 3.1. 26 February 2020

4. REASON FOR DECISION

- 4.1. On 29 January 2019 Cabinet approved the making of, and consultation on, non-immediate Article 4 Directions for the District's employment areas (as defined in the emerging Local Plan). This would withdraw permitted development rights that presently allow for the change of use between offices/ light industrial units and residential. Delegated powers were granted, conditionally, as part of this decision to allow for the confirmation of such Article 4 Directions provided that no (or only minor) amendments were deemed necessary following the consultation.
- 4.2. Consultation on a draft Article 4 Direction took place in June and July 2019. It is considered appropriate to confirm the Article 4 Direction that was consulted on with no amendments for the reasons set out in this report. An Article 4 Direction does not come into force unless it is confirmed by the local planning authority. This draft direction must be confirmed prior to 20 June 2020.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 All of the alternatives below would fall outside of the delegation granted in January 2019 and would require a further report(s) to Cabinet.
- 5.2 *Do not confirm the Article 4 Direction* – This option is not recommended. It would allow permitted development rights for change of use from office/light industrial to residential to continue on employment sites in North Hertfordshire. This would be contrary to the reasons given for pursuing an Article 4 Direction in the first place, as outlined in the January 2019 Cabinet report.
- 5.3 *Do not confirm the Article 4 Direction insofar as it relates to certain areas* – This option is not recommended. Due to the way in which the draft order was prepared, officers consider any changes relating to individual areas would require a new Direction and re-consultation for all of the employment sites. This is explained further in the report below.
- 5.4 *Do not confirm the Article 4 Direction pending greater certainty / clarity on the Local Plan or the Government's intentions* – This option is not recommended. The draft Order could expire prior to greater certainty being obtained and it would be

necessary to restart the process. Permitted Development rights would remain in the intervening period.

- 5.5 The Council has the powers to cancel and / or replace Article 4 Directions once confirmed. For the reasons below, this is considered the best means of dealing with any changes that may be deemed necessary in the future.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

- 6.1. The consultation period on the draft Article 4 Direction ran for the statutory 21 day period between 20 June 2019 and 11 July 2019. A consultation statement (Appendix A) has been prepared. This sets out the procedure that was followed for the consultation, a summary of issues raised in any representations that were received and the response of the Council to issues that were raised by representors.
- 6.2 The Council must take into account of any representations received before deciding whether it is appropriate to confirm any Article 4 Direction. A review of the consultation responses (and other relevant factors) results in no recommended changes to the Article 4 Direction that was consulted upon.
- 6.3 The Executive Member and Deputy have been briefed on this matter.
- 6.4 Subject to approval of this Decision, the confirmation of the Article 4 will be notified in the same way as the consultation. This will include by way of site notices and press advert and notifying the Secretary of State.

7. FORWARD PLAN

- 7.1. The delegation of powers relied on for this decision is contained in a Key Decision that was first notified to the public in the Forward Plan on the 25 April 2018 with the decision made by Cabinet on 29 January 2019.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

- 8.1 The background to the Article 4 Direction is set out in the January 2019 Cabinet report which should be referred to for further information. By way of update to matters covered in that report:
- The Secretary of State confirmed in March 2019 that the permitted development right relating to the conversion of small storage and distribution uses (Use Class B8) to residential use would end in June 2019 so this was not included in the draft Direction. This right has now expired; while
 - The right allowing for the change of light industrial uses to residential use subject to prior approval remains due to end in October 2020. In the same March 2019 statement, the Secretary of State announced his intention to review permitted development rights for the conversion of buildings to residential use. However, no announcement has yet been made and these rights could still be (proposed to be) extended or made permanent in due course.
- 8.2 Statutory consultation was held between 20 June and 11 July 2019. The consultation was advertised in the local press and by site notices at the affected locations. Letters were sent to individual premises in each employment area and the Secretary of State was notified.
- 8.3 One representation was received by the end of the formal consultation period. This objected to the proposed removal of permitted development rights for the employment area at Old Charlton Road, Hitchin. However, for the reasons set out in the Statement of Consultation it is still considered appropriate to implement the

Article 4 Direction here; the confirming of the Direction does not preclude any premises in any of the areas from applying for planning permission to be converted in the future.

- 8.4 Both Hertfordshire County Council and the Letchworth Garden City Heritage Foundation have reconfirmed their support for the Article 4 Direction since the end of the formal consultation period. This followed a request from the (then) new Executive Member to investigate this matter further prior to confirmation. The Hertfordshire Local Enterprise Partnership continues to support the use of Article 4 Directions to prevent further losses of employment floorspace in the County.
- 8.5 Officers have given consideration to whether it is appropriate to confirm the Article 4 Direction insofar as it covers the proposed new employment areas identified in the new Local Plan at Baldock and Royston given the final outcome of the Local Plan examination remains unknown. Had separate orders been prepared for each area it would have been possible to determine whether to confirm the orders in these locations on a case-by-case basis. However, a single order was prepared covering all of the areas and there is no specific power in the relevant regulations to amend a Direction prior to its confirmation.
- 8.6 Officers are of the opinion that any decision to exclude these (or any other) areas would require a wholly new Direction to be prepared. This would require a new Cabinet approval and a new consultation exercise. It could result in the implementation of an Article 4 Direction being delayed beyond June 2020. This is not considered an effective use of resources or in the best interests of the District.
- 8.7 Confirming the Article 4 Directions in these locations will, in reality, be of no practical effect. The relevant permitted development rights require existing buildings to have been in office or light industrial use as of a cut-off date that has already passed. There are presently no buildings in these locations that satisfy the relevant criteria; there is therefore no specific harm or (adverse) outcome from confirming the Direction in these locations.
- 8.8 The most appropriate approach in this regard would be to review the effectiveness of the Article 4 direction in the future (e.g. following any adoption of the Local Plan and / or outcome of a relevant Government review). The Council could, at this point, determine to use its powers to cancel and / or replace the Article 4 Direction. However, the lessons learnt from this present exercise – in terms of producing separate Directions for different geographical areas – will be applied in the future.
- 8.9 Having had regard to the representations received in response to the initial making of the Article 4 Directions it is therefore recommended that the non-immediate Article 4 Directions be confirmed and come into force on 20 June 2020. Upon confirmation of an Article 4 direction the local planning authority must give notice of such confirmation and the date on which the direction will come into force, and send a copy of the direction to the Secretary of State.

9. LEGAL IMPLICATIONS

- 9.1. Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows a local planning authority to make an Article 4 Direction to withdraw specified permitted development rights across a defined area. Schedule 3 of the same regulations set out the procedures for implementing an Article 4 Direction. This is an Executive Decision and not one reserved to Full Council.
- 9.2. Schedule 3 also states that an authority may, by making a subsequent direction, cancel any existing Article 4 Direction. The Secretary of State may, subject to conditions, cancel or modify any Article 4 Direction at any time before or after its confirmation.

- 9.3 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 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 of the Article 4 Direction has been covered by the Council's existing approved service 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.

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 change to the (geographical scope of) employment designations in the new Local Plan prior to its adoption and / or to the Permitted Development regime by the Government may incur additional costs if it leads to a decision to replace the current Article 4 Direction. However, it is considered that this risk and associated costs are outweighed by the benefits of confirming the Article 4 Direction in its present format now to enable its implementation from June 2020.

12. EQUALITIES IMPLICATIONS

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

13. SOCIAL VALUE IMPLICATIONS

- 13.1. 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.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1. There are no human resource implications arising from the contents of this report.

15. BACKGROUND PAPERS

- 15.1. Cabinet Report – 29 January 2019

16. APPENDICES

- 16.1. Appendix A – Consultation Statement

NOTIFICATION DATE

26 February 2020

Signature of Executive Member Consulted 

Date 27-2-20

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.
Call-in does not apply to NON-EXECUTIVE DECISIONS

