

## **ADOPTION OF ARTICLE 4 DIRECTION TO PROTECT STRATEGIC EMPLOYMENT LAND IN THE BOROUGH**

*Reporting Officer: Head of Democratic Services*

### **Summary**

In November 2016 Council agreed that officers should prepare an Article 4 direction withdrawing permitted development rights for office and light industrial floor-space within identified strategic locations. A formal notice giving the Council's intention to create an Article 4 Direction was sent to the Secretary of State for Communities and Local Government on 24 November 2016 incorporating the statutory 12 month notice period. The notice advised the Secretary of State of the Council's intention to adopt an Article 4 Direction on 22 November 2017. Furthermore from 23 November 2016 a 1 month consultation period occurred with interested parties across the locations subject to the proposed Article 4 Direction. There were only two responses received. A question was raised concerning whether existing prior approvals not yet implemented will be protected; a legal view on this issue is given in the report. Such a change is not proposed and it is considered that this issue should be left to the Secretary of State to take a view on (which he has done so on other similar Article 4 directions).

**RECOMMENDATION: That the results of the consultation be noted and the commencement of the Article 4 Direction from 22 November 2017, be approved.**

### **Reasons for recommendation**

To protect key employment land in the Borough from changes to planning regulations which would enable strategic office and light industrial floor-space to be converted to residential use through a simplified planning process.

### **Information**

#### **Supporting Information**

1. Council considered a report on 3 November 2016 concerning the proposed Article 4 Direction. Council agreed to protect key employment land in the Borough from changes to planning regulations. It was noted that there were a number of sites in the Borough that were important economically and provided significant local employment.
2. To prevent a right to compensation the Article 4 Direction must be advertised at least 12 months in advance of it becoming operational. It should be noted that on 2 October 2017 a landowner will not be able to start immediately converting a light industrial building to residential use as they would first need a prior approval consent which could take up to 56 days. Therefore to ensure an Article 4 Direction is effective prior to the Legislation becoming enacted, the Council advertised the Article 4 Direction from 23 November to 23 December 2016.
3. The proposed Article 4 Direction includes all employment locations of strategic regional importance as identified through the Council's Local Plan and the Mayor's London Plan. The proposed Article 4 direction includes the following sites (identified on the two plans attached as appendices) should be protected from prior approval conversions to

residential use as identified in the Hillingdon Local Plan: Part 1- Strategic Policies (Adopted 2012):

**Strategic Industrial Locations - Preferred Industrial Locations**

Uxbridge Industrial Area

Hayes Industrial Area - designated areas of PIL outside the Housing Zone

**Strategic Industrial Locations: Industrial Business Parks**

North Uxbridge Industrial Estate

**Proposed Locally Significant Employment Locations**

Stockley Park

Bath Road Sites

**Proposed Locally Significant Industrial Sites**

Packet Boat Lane LSIS

**Areas for prevention of office to residential conversions**

Uxbridge Town Centre

Heathrow Perimeter

Stockley Park

4. There would be a limited financial cost of publicising an Article 4 Direction (less than £5k). There would also be loss of fee income, but at £80 a prior approval application this would also be limited given the likely relatively small scale of such applications.
5. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by full Council or another appropriate Council Committee.

**Results of Public Consultation Undertaken**

6. Site notices were erected at all of the locations identified under paragraph 3 above. A newspaper advert placed in the Uxbridge Gazette and information placed on the Council's website. A bespoke letter was sent to the Hillingdon Chamber of Commerce. The public consultation is considered to have met the relevant statutory requirements. One local resident commented as follows:

*"Numerous lamp-posts and road signs in Uxbridge town centre and Uxbridge Moor currently carry printed notices bearing your name, about no doubt important but to me at least obscure changes to planning policy. I have no view on the changes themselves..."*

What this response demonstrates if nothing else is that the use of site notices was an effective means of consultation. No response was received from the Hillingdon Chamber of Commerce.

7. One response was received from a planning consultancy known to represent various property developers with an interest in developing land in the Borough. The comments received are copied in full below:

*"As you may be aware, Progress Planning act for a variety of landowners and developers that operate within the London Borough of Hillingdon and as such have a profound interest in the above. Having dealt with such matters across a range of different Local Planning Authorities, it is considered that the draft Article 4 should include a clause that expressly removes buildings or land that already benefit from a consent under Class O. Should the Council not include such a clause, intervention from the Secretary of State for*

*Communities and Local Government is likely to be forthcoming. This was experienced by the London Borough of Richmond and other Local Authorities who took a similar approach. To avoid such an intervention, it is strongly recommended to include the following text: **other than in respect of any building or land in relation to which prior approval under Class J.2 of Part 3 of Schedule 2 to the General Permitted Development Order 1995 or Class O of Part 3 of Schedule 2 to the GPDO has been granted, or under the terms of those Parts is treated as granted before the date on which the Direction takes effect**"*

The Council's legal team were requested to consider further the above comments. They have advised that in the first instance the representations referred to in the above paragraph have been made outside the published statutory representation period (23 November 2016 - 23 December 2016) for the Article 4 Direction specified in the GPDO. Whilst the representations have been taken into account by the Council, the Direction is now with the Secretary of State for consideration who has the power to modify or cancel any direction under Article 4 at any time before or after its confirmation. Full legal comments on this matter are given under the legal officer's response to this report.

### **Feedback from the Secretary of State**

- 8 No response has been received from the Secretary of State to date. In response to a chasing e-mail in July 2017 from the Council's legal team the following response was given: *"This case is currently in DCLG's Development Management division for consideration"*.

### **Financial Implications**

9. Direct costs associated with implementation of an Article 4 direction to protect key strategic office and light industrial floor-space would be limited to advertising the new arrangements, which is estimated to cost no more than £5k. This would be managed within existing Residents Services operating budgets. There would be a de minimus loss of fee income (less than £5k over the previous two years) from implementation of this Article 4; however this can be managed within existing budgets where planning income streams continue to outperform MTF assumptions.

## **Implications**

### **Corporate Finance**

Corporate Finance has reviewed this report and confirms the financial implications outlined above, noting that the proposed Article 4 direction is intended to maintain employment floor space within the borough. The impact of the proposed Article 4 direction on the Council's broader Medium Term Financial Forecast will be de minimus.

### **Legal**

In accordance with The General Permitted Development Order 2015 (as amended) ('GPDO'), an Article 4 direction shall not come into force unless confirmed by the Council. In deciding whether or not to confirm the Article 4 Direction, paragraph 1(9) of Schedule 3 of the GPDO states that the Council must take into account any representations received during the period in which the direction was advertised. The Council has considered the representations and note that one of the representations received was outside the published statutory period. Whilst it has been taken into account, the Council

notes that the Direction is with the Secretary of State for consideration who has the power to modify the Direction should it take the view that this is required.

If the Article 4 Direction subject to this report is confirmed, the Council 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 by the methods required by paragraphs 1 (11) and (12) of Schedule 3 of the GPDO (i.e. by way of a press advert, site notices in at least two locations to which the direction applies and unless considered impracticable, by serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates). Additionally a copy of the direction as confirmed must be sent to the Secretary of State.

If Council resolves to confirm the Article 4 Direction it shall come into force on 22 November 2017. The Council should note that the Secretary of State, notwithstanding any resolution of confirmation by the Council, is empowered by paragraph 1 (13) of Schedule 3 of the GPDO to modify or cancel the Article 4 Direction at any time before or after it is confirmed.

The Council can, by making a subsequent direction, cancel the Article 4 Direction (if confirmed) at any time. To modify the Article 4 Direction, it would need to be cancelled and a replacement Direction prepared incorporating the required modifications. In both cases, the normal procedures for making an Article 4 direction apply.

### **Corporate Landlord**

There are no property and construction implications from the recommendations in this report. Should full Council decide that an Article 4 direction should be created then there may be some implications for Council owned office and industrial premises in the proposed areas. The Council's ownership of industrial property is limited to just one small property on Uxbridge Industrial Estate. The Council also owns a limited number of office properties in the proposed areas, the most notable of which is the Civic Centre.

Background Papers: Consultation responses