

PROPOSED AND REVISED ARTICLE 4 DIRECTIONS TO PROTECT EMPLOYMENT LAND IN THE LONDON BOROUGH OF HILLINGDON

Reporting Officer: Head of Democratic Services

Summary

On 2 September 2020 the Leader of the Council and Cabinet Member for Planning and Transportation recommended to Council the proposed and revised Article 4 directions as detailed in the report below. As the making of an Article 4 direction is a Non-Executive function under section 13 of the Local Government Act 2000, it is for the Full Council to decide whether to make any Article 4 directions.

RECOMMENDATIONS: That:

- a) **The Head of Planning, Transportation and Regeneration be instructed to make and modify non-immediate Article 4 directions (with an intended implementation date of September 2021) to remove permitted development rights for new residential development in designated employment and industrial areas as set out in the report.**
- b) **The Head of Planning, Transportation and Regeneration be authorised to prepare the Article 4 direction and instructed to carry out all necessary consequential arrangements to give effect to the terms of Recommendation 1 which shall include publishing the making of the direction, notifying affected property owners/occupiers and the Secretary of State and seeking representations on the making of the direction.**

Reasons for recommendation

To protect key employment land in the Borough from changes to planning regulations which would allow for some offices and light industrial buildings with protected employment areas to be replaced or extended by residential uses without planning permission. This has significant potential to undermine the remaining employment function of these areas by reducing overall floorspace and is highly likely to impact negatively on those operations which are not compatible with residential amenity. 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.

Alternative options considered / risk management

Members could take the view that the Council's ability to refuse inappropriate prior approvals through the identified determination criteria may be sufficient to prevent potentially harmful development proposals (notwithstanding applicant rights of appeal against such decisions). Alternatively, Members could seek to apply the Article 4 Directions to the Borough as a whole, however, officers would strongly caution such an approach given the need to present strong evidence to justify Article 4 Directions. The Article 4 Direction would have to be agreed by the Secretary of State and the Government has previously refused to agree Council wide Article 4 directions seeking to give blanket protection.

What will be the effect of the recommendation?

It will enable the Council to determine whether an Article 4 Direction should be created. With respect to wider local resident impacts the key implication will be to enable the Council to maintain the right amount of employment floor-space to ensure a prosperous Borough. It is not considered that this will be to the detriment of those residents who would favour additional housing, as the Council will meet its strategic housing targets through allocated housing sites.

Consultation Carried Out or Required

If an Article 4 Direction is implemented then there would need to be extensive consultation within the areas identified for inclusion within the Article 4 Direction.

SUPPORTING INFORMATION

The Government is introducing a new suite of permitted development rights from 1 September 2020 which will allow for new homes to be built in place of or on top of existing commercial buildings without the need for full planning permission. To prevent the rights applying within Hillingdon's protected industrial and employment areas it is proposed that the Council should introduce a series of Article 4 Directions to protect employment land designated in the Local Plan. Revisions to existing Article 4 Directions protecting employment land are also proposed to extend the types of development to which they can apply.

Background

1. From 1 September 2020 the Government will enact new statutory instruments which will remove the need for planning permission for up to 2 two additional storeys on existing commercial buildings where these provide new homes, as well as for the demolition of vacant commercial, industrial and residential blocks to be replaced by new residential units. These new permitted development rights are intended to incentivise these types of development by providing greater certainty to developers. A further set of rights which also allow for the upward extension of existing residential buildings will also be enacted at the same time, but these are not currently included within the proposed Article 4 directions.
2. The new permitted development rights which will be subject to the Article 4 directions proposed by this report are as follows:
 - Part 20 - Class ZA - Demolition of Buildings (C3 purpose built blocks of flats and detached buildings falling with use classes B1a, B1b and B1c) and Construction of New Dwellinghouses
 - Part 20 - Class AA - New Dwellinghouses on Detached Buildings in Commercial (A1, A2, A3 and B1(a) or as a betting office, pay day loan shop or launderette) or Mixed use
 - Part 20 - Class AB - New Dwellinghouses on Terraced Buildings in Commercial (A1, A2, A3 and B1(a) or as a betting office, pay day loan shop or launderette) or Mixed use
3. The need for planning permission under these new rights will be replaced by a system of 'prior approval' which only allows the Council to consider a narrow suite of issues when considering whether or not to allow the proposed development. These include:
 - transport and highways impacts;
 - contamination risks;
 - flooding risks;
 - the design/ external appearance of the building;

- provision of adequate daylight;
 - impact on the amenity of neighbouring premises;
 - impacts of noise from any commercial premises on the intended occupiers;
 - impact on business and new residents of the introduction or increase in residential use in the area;
 - impact on heritage and archaeology; and
 - plans for landscaping;
4. Unlike previous permitted development provisions, these are not time limited and will apply to all B1 uses and detached blocks of flats in the Borough.
5. In addition to proposing these new Article 4 directions, it is also recommended that modifications are made to two of the Council's existing Article 4 directions which were also introduced to protect strategic industrial land within the Borough in 2017. At present the Council has a Direction in place that removes Class P rights for changes of use from light industrial (B1c) to residential in designated industrial locations and Class O rights for changes of use from office (B1a) to residential in key office locations. It is proposed to extend these directions so that these rights are removed from all designated employment areas, to ensure they are consistent with the proposed new Article 4 Directions.
6. In terms of process, to prevent a right to compensation, these Article 4 Directions must be advertised at least 12 months in advance of it becoming operational. These new rights are being introduced very quickly, with just over a month from their announcement to their implementation on 1st September 2020. Consequently, whilst we have sought to propose this new Article 4 Direction to full Council at the earliest opportunity, there will be a period when these rights will be available to landowners before the Article 4 Direction comes into force. However, this time period will be slightly less than the full 12 months as a landowner will not be able to start implementing these rights immediately, as they would first need a prior approval consent which could take up to 56 days. Some significant areas of the Borough, such as those with 3km of an aerodrome and conservation areas, will already be excluded from some of these permitted development rights. Furthermore, permitted development rights have been excluded for buildings constructed after 31st December 1989 and which exceed certain size thresholds. However, it is critical that the Council seeks to progress its proposed and revised Article 4 Directions as quickly as possible.

Proposed New Article 4 Directions

Part 20 - Class ZA - Demolition of Buildings and Construction of New Dwellinghouses

Area to be covered (see also Appendix 1):

a. Strategic Industrial Locations

Uxbridge Industrial Area
 Hayes Industrial Area
 Stonefield Way, South Ruislip
 North Uxbridge Industrial Estates

b. Locally Significant Employment Locations

Summerhouse Lane / Salamander Quay, Harefield
 Stockley Park
 Odyssey Business Park, Ruislip

- c. Locally Significant Industrial Sites**
Packet Boat Lane, Cowley
Braintree Road Industrial Area, South Ruislip
Covert Farm, Heathrow
- d. Hotel and Office Growth Locations**
Uxbridge Town Centre
- e. Office Growth Locations**
Stockley Park (Also Locally Significant Employment Location)
- f. Hayes Opportunity Area**

Part 20 Class AA - New Dwellinghouses on Detached Buildings in Commercial (A1, A2, A3 and B1(a)) or Mixed use

Part 20 - Class AB - New Dwellinghouses on Terraced Buildings in Commercial (A1, A2, A3 and B1(a)) or Mixed use

Areas to be covered (See also Appendices 2 and 3):

- a. Strategic Industrial Locations**
Uxbridge Industrial Area
Hayes Industrial Area
Stonefield Way, South Ruislip
North Uxbridge Industrial Estates
- b. Locally Significant Employment Locations**
Salamander Quay, Harefield
Stockley Park
Odyssey Business Park, Ruislip
- c. Locally Significant Industrial Sites**
Packet Boat Lane, Cowley
Braintree Road Industrial Area, South Ruislip
Covert Farm, Heathrow

Justification

7. Hillingdon has approximately 350 hectares of designated employment land which is mainly focused on the industrial and commercial areas of the Hayes-West Drayton corridor, Uxbridge, Heathrow and South Ruislip. This includes a number of regionally important Strategic Industrial Locations (SILs) designated through the London Plan totalling around 220 hectares in size. SILs are London's main reservoir of land for industrial and logistics and are safeguarded to accommodate activities which, by virtue of their scale, noise, odours, dust, emissions, hours of operation and vehicular movements, would otherwise create tensions with other land uses, particularly residential development. In addition to SILs, the Local Plan also identifies smaller industrial areas, referred to as Locally Significant Sites (LSIS). Again these have been created to accommodate industrial and logistical uses that are not compatible with more sensitive land uses, particularly residential development.

8. In terms of existing office provision, Uxbridge has an office stock of around 200,000 sqm; the fourth largest concentration in outer London. It is a key centre for the office market in West London. A number of operators have their headquarters or European headquarters in Uxbridge which has cluster strengths of pharmaceuticals and IT companies, business support services and food sectors. Stockley Park is also an important contributor to the local economic prestige of the Borough through its provision of high quality offices. With 175,000 sq.m of office stock, it is the largest concentration of office space in Outer London. The Park is home to IT, pharmaceutical and communications sector businesses as well as many other blue chip companies. Two other locally significant business parks have also been identified in the Local Plan in South Ruislip (Odyssey Business Park) and Harefield (Summerhouse Lane / Salamander Quay).
9. The Council views these areas as its main reservoirs of employment land and a key objective underpinning the Local Plan is to retain the employment uses in these locations as the best quality employment land in the Borough. Policies E1 and E2 of the Local Plan Part 1 identify that the Council will accommodate new jobs during the Plan period by protecting Strategic Industrial Locations and Locally Significant Employment and Industrial Sites, as well as identifying Office Growth Locations. This is supported by policies in the current and emerging London Plan which seek the consolidation of existing office clusters and the retention of industrial capacity at a Borough wide level.
10. In addition to these established employment areas, the Hayes Opportunity Area is identified in the new London Plan as an area of significant growth potential for at least a 1,000 new jobs. Its boundary is the same as that of the Hayes Housing Zone as identified in the Local Plan Part 2. As a key growth area, the Local Plan has already identified those employment areas suitable for release to residential-led development through a series of site allocations. Consequently, the Council considers the protection of the remaining employment land within the Hayes town centre and the surrounding industrial areas as vital for bringing forward the employment growth anticipated within the Opportunity Area.
11. Evidence prepared in support of the new London Plan provides the most recent detailed analysis of industrial and office capacity in the Borough (London Industrial Land Supply and Economy Study, GLA 2016). It identifies a vacancy rate within the Council's designated industrial areas of 7%, indicating a good balance of supply and demand on par with other Boroughs in the sub-region and below the indicative London-wide frictional rate of 8%. There is also evidence presented that Hillingdon has already lost a significantly higher proportion of industrial land than its strategic benchmark indicating the vulnerability of such land to changes of use within the existing framework of planning policies and permitted development rights. Noting the critical importance of these remaining locations to the effective functioning of London's economy, it is vital that they remain safeguarded areas for specific uses. Failure to do so will result in new residential development being located in inappropriate environments and the displacement of noise-sensitive uses to undesirable locations. It is also considered vital to the ongoing economic prosperity of the Borough that the employment function of its designated employment areas are not further undermined by either the unchecked loss of employment land or the introduction of uses with sensitive amenity requirements under the Part 20, Class ZA, AA and AB permitted development rights. Scope will remain outside of these designated areas to allow for changes of use to residential to occur in more appropriate locations.
12. It is recognised that the prior approval process allows for consideration of the impacts of noise on the intended occupiers and the impact of on business from an increase in residential use.

However, the prior approval process would not allow for wider consideration of the impact of the loss or sterilisation of employment land on the wider economy, which is a key component of the recently adopted Local Plan Part 2 policies. The introduction of an Article 4 Direction to retain the ability to assess the full impact of the loss of employment land in designated employment areas is therefore considered to be critical to ensuring the successful implementation of the Council's Local Plan and the effective function of London's economy

Revised Article 4 Directions

Part 3 - Class O - Conversion of B1(a) Offices to C3 Dwellinghouses

Areas to be covered (see also Appendix 4)

Currently applies to:

a. Office Growth Locations

Uxbridge Town Centre
Stockley Park

b. Heathrow Perimeter

To be modified to include:

c. Strategic Industrial Locations

Uxbridge Industrial Area
Hayes Industrial Area
Stonefield Way, South Ruislip
North Uxbridge Industrial Estates

d. Locally Significant Employment Locations

Summerhouse Lane / Salamander Quay, Harefield
Stockley Park
Odyssey Business Park, Ruislip

e. Locally Significant Industrial Sites

Packet Boat Lane, Cowley
Braintree Road Industrial Area, South Ruislip
Covert Farm, Heathrow

f. Hayes Opportunity Area

Justification

13. In terms of the loss of offices to residential, the Council has approved the loss of just over 107,000sqm of office floorspace through the existing prior approval process since it was introduced in 2014. Of this, 17,000sqm has been approved since the Council introduced its Class O Article 4 Direction in November 2017. Whilst the majority of this loss has been from non-designated sites, the Council has continued to lose office floorspace within industrial areas which were not included within the original Article 4 Direction. This includes 1,800sqm from within the Covert Farm LSIL near Heathrow and 1,600sqm from Cowley Business Park in the Uxbridge Industrial Estate SIL. The Council has concerns both about the further loss of such high quality employment land and the potential reverse sensitivity issues arising the

conversion of offices in these locations to residential. Whilst the co-location of noise generating industrial uses and office floorspace is typically considered acceptable, the introduction of residential floorspace is incompatible with industrial uses and has an adverse effect on their productivity and ability to grow. Consequently, it is now proposed to modify and adopt a new Article 4 Direction for Class O development to include all of the Borough's designated industrial areas.

Part 3 - Class PA – Conversion of B1(c) Light Industrial to C3 Dwellinghouses

Areas to be covered (see also Appendix 5)

Currently applies to:

- a. Strategic Industrial Locations**
 - Uxbridge Industrial Area
 - Part of the Hayes Industrial Area
 - North Uxbridge Industrial Estate
- b. Locally Significant Employment Location**
 - Stockley Park
- c. Heathrow Perimeter**
 - Part of the Bath Road
- d. Locally Significant Industrial Location**
 - Packet Boat Lane, Cowley

To be modified to include:

- e. Strategic Industrial Locations**
 - All of the Hayes Industrial Area
 - Stonefield Way, South Ruislip
- f. Locally Significant Employment Locations**
 - Summerhouse Lane / Salamander Quay, Harefield
 - Odyssey Business Park, Ruislip
- g. Locally Significant Industrial Sites**
 - Braintree Road Industrial Area, South Ruislip
 - Covert Farm, Heathrow

Justification

14. The Council's existing Article 4 Direction for Class PA permitted development rights does not cover all of the Borough's designated industrial land, including the Stonefield Way Strategic Industrial Location. Given the economic importance of these areas as outlined above and to ensure consistency of protection, it is proposed to modify the existing Article 4 Direction to extend it to all areas designated to accommodate industrial uses.

Next Steps

15. The process for making and confirming a non-immediate Article 4 Direction and indicative timetable is as follows:

September 2020

Stage 1 - The Council decides whether to go ahead and introduce a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after representations can first be made. The Article 4 Directions are then duly sealed. The Council must give a minimum of 12 months' notice of its intention to introduce or modify an Article 4 Direction and consequently the Direction cannot be confirmed or implemented until September 2021 (Stage 4) - it will remain in draft form until this point.

September/ October 2020

Stage 2 – Publication/Consultation stage. The Council:-

- 1) publishes the notice of the Direction;
- 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of at least 21 days; and
- 3) places notices up on the relevant sites for 6 weeks;

September 2020

Stage 3 – On the same day that notice is given under Stage 2 above, the Council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction;

September 2021

Stage 4 – Confirmation Stage - The Council cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the Council must give notice of the confirmation in the same way as it gave notice of the initial Direction, and must specify the date that the Direction comes into force. A copy of the Direction as confirmed must also be sent to the Secretary of State.

Financial Implications

16. The report above outlines the suite of new permitted development rights that came into force from the 1 September 2020 and which allow new homes to be built on top of or in place of existing commercial buildings. The report recommends a series of Article 4 Directions to protect employment land.
17. The wider implications of this change and any specific impact on the Council Collection Fund for both Business Rates and Council Tax is impossible to quantify at this stage. Such impacts might arise from a change or a reduction in the number of commercial operations that could be charged Business Rates being replaced by residential units where Council Tax could be applied.
18. There are some limited direct costs associated with the advertising of the new arrangements that have been estimated at £3k and can be managed from existing Residents Services budgets.

Legal Implications

19. Under Article 4 of the General Permitted Development Order 2015 the Council or the Secretary of State may withdraw specified permitted development rights either in relation to specific sites or across the Borough. An Article 4 Direction may only be made where it 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 relating to cases where prior approval powers are available to control permitted development.
20. The report sets out that there are a number of important employment sites in Hillingdon and the Council must be able to show that there is a need to protect these employment sites from permitted development.
21. The right to compensation has been accurately set out in the report.
22. Schedule 3 to the General Permitted Development Order 2015 sets out the process that must be followed prior to making an Article 4 direction, including a minimum consultation period of 21 days and the placing of notices on affected sites for a 6 week period. In addition, the proposed direction must also be sent to the Secretary of State.
23. As the making of an Article 4 direction is a Non-Executive function under section 13 of the Local Government Act 2000, it is for the Full Council to decide whether to make any Article 4 directions.

Background Papers: Hillingdon Local Plan; London Plan 2016 and Intend to Publish London Plan 2019; London Industrial Land Supply and Economy Study 2015 -

https://www.london.gov.uk/sites/default/files/industrial_land_supply_and_economy2015.pdf.

Appendices (attached):

Appendix 1 Plan of Areas to be covered by Class ZA Article 4 Direction

Appendix 2 Plan of Areas to covered by Class AA Article 4 Direction

Appendix 3 Plan of Areas to be covered by Class AB Article 4 Direction

Appendix 4 Plan of Areas to be covered by modified Class O Article 4 Direction

Appendix 5 Plan of Areas to be covered by modified Class PA Article 4 Direction