

# **PROPOSED ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHT FOR COMMERCIAL, BUSINESS AND SERVICE USES TO RESIDENTIAL IN SPECIFIC LOCATIONS.**

*Reporting Officer: Assistant Director of Planning and Regeneration*

## **Summary**

1. On 1 September 2021, the Government brought into effect a new Permitted Development Right (PDR) to allow the change of use from commercial, business and service uses to residential units, without the need for planning permission. The Council has the capacity to introduce an Article 4 direction to remove such a PDR, where there is robust evidence that the PDR would otherwise have a wholly unacceptable adverse impact. The making of an Article 4 direction is a Non-Executive function under section 13 of the Local Government Act 2000 and it is, therefore, for the full Council to decide whether to make this direction.

## **RECOMMENDATIONS: That:**

- a) **The Assistant Director of Planning and Regeneration be instructed to make a non-immediate Article 4 direction (with an indicative implementation date of September 2022) to remove the Part 3 Class MA permitted development right in limited geographical areas, as set out in Paragraph 6 of the report and mapped on Appendix 1.**
- b) **The Assistant Director of Planning 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, seeking representations on the making of the direction and notifying affected property owners/occupiers and the Secretary of State, as well as submitting any further evidence if necessary.**

## **Reasons for recommendation**

2. The primary reasons are to protect key employment floorspace in strategic locations and maintain the viability and vitality of key shopping areas in the London Borough of Hillingdon. This expansion of permitted development rights by the Government has the capacity to cause wholly unacceptable adverse impacts in select parts of the Borough if left unregulated. The use of an Article 4 direction is therefore in conformity with national policy. The full rationale for introducing a new Article 4 direction is contained within the 'Supporting Information' section.

## **Alternative options considered / risk management**

3. Officers considered the possibility of a borough-wide Article 4 direction, on the basis that there will be harmful impacts of the PDR which extend beyond the areas show in Appendix 1. These impacts are identified within the 'Additional Considerations' section and are issues that will affect all local planning authorities. However, the Secretary of State has made it clear through public announcements and recent changes to national policy that Article 4 directions must only be taken forward on the smallest geographical area. Therefore, a borough-wide Article 4 direction would likely lead to an objection from the Secretary of State and abortive costs.

4. The Council could choose not to introduce an Article 4 direction. However, this would not address the wholly unacceptable adverse impacts on local residents and businesses that are outlined within the 'Supporting Information' section. This option has therefore been discounted.

### **What will be the effect of the recommendation?**

5. The introduction of an Article 4 direction will mean that a planning application for relevant changes of use will still be required in specific areas. This means the Council will retain its capacity to insist on mitigation where there would otherwise be adverse impacts from development or refuse the scheme completely. This will continue to ensure that local residents and businesses are put first. The Council will continue to meet its strategic housing targets through approving schemes that accord with its Development Plan, whilst a review of the Local Plan will look to identify further strategic sites.

### **Consultation Carried Out or Required**

6. If the decision to proceed with an Article 4 Direction is made, then there would need to be a consultation exercise within the specific areas identified, in accordance with Schedule 3 to the General Permitted Development Order 2015 (as amended).

### **Financial Implications**

7. This report is seeking approval to make an Article 4 Direction to restrict the scope of permitted development rights in specific strategic areas as outlined in Appendix 1. National policy prevents a blanket approach being applied and instead must focus on specific areas. In doing so, it is possible to retain commercial areas throughout the Borough to drive economic development and strengthen business districts. There are limited direct costs associated with the recommendations to this report, an estimated £500 for public notices will be managed within existing Planning and Regeneration revenue budgets.
8. Wider financial implications to note which cannot be quantified at present:
  - The composition of the current tax base is likely to change in response to an increase of commercial to residential conversions, meaning a reduction in Business Rates and an increase in Council Tax. Although the Article 4 Direction aims to prevent such conversion in specific strategic areas, further analysis will be required to evaluate the impact on the tax base over time across the Borough.
  - An increase in conversions will remove the applicability of the Section 106 Contribution (S106) and Community Infrastructure Levy (CIL) which will have some bearing on the maximisation of the income available to the Local Planning Authority. As there are fewer issues that can be considered with permitted development rights, there is no scope for planning obligations to be used to mitigate their harm. This includes external financial contributions for affordable housing, public open space, air quality, carbon emissions and construction training programmes. S106 and CIL are pivotal funding streams for infrastructure development within the Borough, the cost of which will fall to the local taxpayer if these funding streams are reduced. The Article 4 Direction is therefore instrumental in retaining funding within the identified strategic areas and further analysis will be required to evaluate the impact across the rest of the Borough.

## Legal Implications

9. 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.
10. The right to compensation has been accurately set out in the report.
11. Schedule 3 to the General Permitted Development Order 2015 (as amended) 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.
12. 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.

## SUPPORTING INFORMATION

13. The Government is introducing a new Permitted Development Right (PDR) that comes into effect on 1 September 2021. The PDR removes the requirement for a full planning application to be submitted, instead implementing a prior approval process which restricts the matters that the local planning authority can consider.
14. The permitted development allows for the changes of use from all those covered within Use Class E to residential. Use Class E is a new use class that was introduced on the 1st September 2020, with the aim of amalgamating several use classes into one. It covers the following parts of the previous Use Class Order:
  - Class A1 (shops).
  - Class A2 (financial and professional services).
  - Class A3 (food and drink).
  - Class B1 (business).
  - Class D1(a) (non-residential institutions – medical or health services).
  - Class D1(b) (non-residential institutions – crèche, day nursery or day centre).
  - Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink.
15. The PDR has restrictions attached to it, including:
  - A maximum floor area of 1,500m<sup>2</sup>.
  - A vacancy period of 3 months prior to submission. There is no requirement for marketing.
  - Been in a use within Use Class E for at least 2 years.
  - Does not apply to a listed building.
16. The PDR also includes the following conditions attached to it that are assessed as part of the prior approval process:

- If occurring in a conservation area, the impact of converting the ground floor on the character and sustainability of the conservation area.
  - In an industrial area, the impact on intended occupiers of the residential units on being in this type of area.
  - Where a registered nurse or health centre, the impact on the local provision of the type of services lost.
  - Other matters typical for PDRs (permitted development rights), including transport, contamination, flooding, noise and now, fire safety, minimum size for the new residential units and adequate natural light.
17. The PDR will come into effect from 1 September 2021. In the case of conversions from B1(a) office floorspace only, if an Article 4 direction is already in place at this date, the PDR will be delayed for a year, to allow for transitional arrangements to be made. The Council does already have such an Article 4 direction in place covering Uxbridge Town Centre and Stockley Park. Consequently, this will be extended for a further 12 months. However, it should be noted that this would not apply to any of the other E class uses listed above which will benefit from the new PDR from 1 September 2021.

### **Scope of Article 4 Direction**

18. The proposed areas to be covered by the Article 4 direction have been mapped and included as Appendix 1. All the areas mapped cover strategic areas only that are designated within the adopted Development Plan. These can be described as:
- Office & Hotel Growth Location (Uxbridge)
  - Locally Significant Employment Locations (Incl. Stockley Park)
  - Hayes Opportunity Area
  - Strategic Industrial Locations
  - Locally Significant Industrial Sites
  - Primary and Secondary Shopping Areas in Town Centres
  - Local Centres
  - Local Parades
19. Please note that, whilst the Local Parades are identified within the Development Plan, their exact extent has not previously been mapped. The Local Parades are included within Appendix 1. The Local Parades have also been mapped separately within Appendix 2 to allow readers of the report to understand the full extent of the proposed Article 4 area. The addresses listed outline where the Local Parade can be found, rather than its extent. The extent of the proposed Article 4 direction is the area covered in orange.

### **Rationale for a New Article 4 Direction**

20. The Council submitted a consultation response to the Government in January 2021 which raised concerns with the proposed PDR. Many of these issues are still apparent in the final published version. Officers are therefore proposing the introduction of an Article 4 direction for the new Class MA, which would restrict the operation of the new PDR in parts of the Borough. It should be noted that the Government made amendments to the National Planning Policy Framework in July 2021 to highlight that this type of Article 4 should be limited to where it is necessary to avoid wholly unacceptable adverse impacts. Paragraph 53 was also amended to clarify that Article 4s must apply to the smallest geographical area possible.

21. The Article 4 is therefore not proposed to be borough-wide and has been limited to certain strategic parts of the Borough. The rationale and evidence for the Article 4 changes slightly for different areas and therefore it has been disaggregated below.

### Office Areas

22. There are three types of protected office areas within the London Borough of Hillingdon, which are designated as Office Growth Locations, Locally Significant Employment Locations, and the Hayes Opportunity Area. These include Uxbridge and Stockley Park. These areas all have policies that support the provision and retention of predominantly office floorspace, but also light industrial buildings and research and development facilities where appropriate.
23. The need for this floorspace is generated by the Borough's distinctive role in the sub-regional and London economies, largely because of the presence of Heathrow Airport and a disproportionately high number of head offices, which operate out of Uxbridge and Stockley Park in particular. The Council already approved the loss of just over 107,000sqm of office floorspace through the existing prior approval process between its introduction in 2014 and March 2020. Most of these approvals came prior to the Council introducing its office to residential Article 4 direction in November 2017. The loss predominantly consisted of low-grade stock to begin with, however increasingly prior approvals were being submitted on higher-grade stock and buildings that were occupied.
24. The loss of office floorspace through prior approvals led to the vacancy rate falling to just 2.6% in 2018. This will likely have fallen further in the period between 2018 and the start of the COVID-19 Pandemic, as there were further notable losses of office floorspace through prior approvals in this period. The vacancy rate of 2.6% in 2018 was cited as a potential obstacle to the expansion of businesses and new start-ups in the Borough, in the evidence underpinning the West London Affordable Workspace Study.
25. Much has been written about the impact of the COVID-19 Pandemic on demand for office floorspace, with working from home becoming the norm for many office workers during this period. To date, different companies have announced different views on working from home moving forward. This includes companies indicating that workers are performing productively at home and will continue to be encouraged to do so, to concerns about social isolation, poor collaboration, and training issues for junior staff. However, the consensus appears to be that offices will be re-shaped rather than removed, with most employers shifting to a balance between home and office working. This will have as big an impact on the size, quality, and locational preferences of office workspace as it will on overall demand, with Grade A office floorspace in attractive locations remaining popular.
26. Notwithstanding the impacts of the pandemic, prime office rents in Uxbridge and business parks in the vicinity of Heathrow were both averaging £35 per square foot in Q3 of 2020. Uxbridge has also recently been ranked 13<sup>th</sup> out of 48 south-eastern office locations in terms of digital and physical connectivity, as part of Knight Frank's connectivity analysis (2021). Uxbridge is therefore well placed to play a part in London's role as a global innovation hub in the future.
27. In the absence of an Article 4 direction, the loss of office floorspace could return to the levels seen prior to November 2017. This would see many existing and new businesses displaced to the wider Thames Valley Area, including to less sustainable out of town centre locations. Furthermore, businesses would be drawn to other areas which did implement a direction and

offer policy to support new and retained office floorspace. This would pose a significant threat to the status of the Stockley Park and Uxbridge office market in particular, which could experience further erosion of their critical mass, despite both being identified as areas of strategic importance in the new London Plan (2021). The implementation of an Article 4 direction would allow the Council to apply its policy criteria for determining which offices should be retained or re-purposed, with the more easily lettable space in sustainable locations retained. The protection of these identified areas would also retain space for those businesses displaced from less sustainable locations in the Borough, which will not be covered by the Article 4 direction.

28. In addition to being a sequentially preferable location for new jobs, the Hayes Opportunity Area has been identified as an area for significant growth due to the introduction of Crossrail and the availability of surplus industrial land. However, as a series of existing industrial areas, the success of the Opportunity Area is reliant on a plan-led approach which allows the Council to incorporate transport, public realm, and other infrastructure improvements within a new development. The Council has identified the extent of these interventions in both the Development Infrastructure Funding Study (2017) and the Hayes Movement Study (2021). Crucially this includes delivering and funding these developments through S106 and CIL (Community Infrastructure Levy) payments. Under a prior approval application, the matters that can be considered are restricted and would remove the Council's ability to undertake these essential place-making interventions.

### Industrial Areas

29. There are two types of protected industrial areas within the London Borough of Hillingdon, which are designated as Strategic Industrial Land (SIL) and Locally Significance Industrial Sites (LSIS). They are large, designated brownfield sites located near to key roads that accommodate activities which - by virtue of their scale, noise, odours, dust, emissions, hours of operation and/or vehicular movements – would otherwise raise tensions with more sensitive land uses. These are deliberately kept separate from residential units, so that these essential economic activities can operate and grow as required. Whilst the uses here are predominantly heavy industry, there are light industrial and historic offices amongst them which could be converted under the new PDR.
30. The introduction of residential units in these locations would prevent these industrial uses from operating at their full potential and growing into this space when required. It would also create an unhealthy environment for new residents, noting that many of these industrial uses are permitted to operate without restrictions to mitigate their impacts on residential properties, which would not previously have been allowed in such areas. If these protected areas are undermined, these industrial uses will be less likely to expand in their current location and increase the probability of them being displaced to less developed parts of the Borough (including Green Belt) or create new areas for industrial uses.

### Town Centres

31. There are a range of designated town centres in the London Borough of Hillingdon, from the metropolitan town centre of Uxbridge to local centres like Harefield and Ickenham. These areas contain identifiable shop frontages that make up a high street, with a critical mass of footfall to sustain businesses and services. They are supported by public transport and public realm investment, which seeks to decrease the dependence on cars and make them attractive locations for walking and cycling.

32. The Council's consultation response, as well as many others, raised concerns about the potential for the new PDR to create sporadic and unplanned losses to shop fronts along the high street. As well as reducing space for new businesses and services, this would also create undesirable breaks in the active shop frontages and introduce residential units and associated paraphernalia (e.g. bins) in their place. This would then have a knock-on effect on the sustainability of the remaining businesses, with the loss of each individual shop, office or business reducing footfall for the remaining units and eroding their viability. Once these units have been converted and sold as residential units, there are significant barriers to having them restored to the viable commercial and business uses.
33. There is an obvious need to reshape these high streets as the recovery from the COVID-19 pandemic gets underway. To a significant extent, this will see changes in how businesses operate on the high street and units being occupied more flexibly between different uses within Use Class E. Without the introduction of an Article 4, the expectation is that existing commercial floorspace will be lost to residential in an uncoordinated and piecemeal manner, ahead of any consideration of the future needs of businesses or the role of such centres in the local economic recovery.
34. It is important to note that for the large town centres, the whole centre will not be covered by the Article 4 direction. The large town centres are split up into three components, the the primary and secondary area and the undesignated remaining periphery. Paragraph 53 of the new NPPF (National Planning Policy Framework) indicates that an Article 4 covering the whole of a town centre is unlikely to be supported by the Secretary of State. On this basis, the proposed Article 4 would cover the primary and secondary shopping areas in these larger town centres, omitting the peripheral area. This may facilitate the modest shrinking of the edges of some high streets, with undesignated units at the ends of the town centre targeted, but it will allow the retention of a retail core. However, for the much smaller local centres, the whole area will be designated. This is to reflect the fact that they are already very limited areas and do not have designated primary and shopping areas. They were historically designated without any peripheral area and contain only the area that would be identifiable as 'the high street' to residents.

### Local Parades

35. The Council currently has 51 designated local parades across the Borough, which were reviewed as part of the Local Plan: Part 2 (2020). These are parades of shops that fulfil a convenience shopping function. They are too small to be designated as local town centres but range from 4 to 54 units. These parades are protected to meet the day to day shopping and service needs of local residents, minimise the need to travel by car or public transport and address wider social, inclusion and accessibility objectives. As outlined in the Council's consultation response, the loss of these local shops and facilities would disproportionately impact on those with mobility issues or restricted travel options.
36. In a Borough that is as dispersed as the London Borough of Hillingdon, Local Parades are essential for delivering the concept of a '15-minute neighbourhood'. This is an aspirational model of urban living that has become common in major cities around the world, based on the notion that people should be able to meet most, if not all, of their needs within a 15-minute walk or bike ride from their home. The model promotes health and wellbeing through more active travel and encourages people to engage with their local community. Importantly, it also

reduces the need to travel by private vehicles, which in turn reduces traffic congestion, carbon emissions and air pollution.

37. The rationale for protecting the local parades is therefore similar to that for town centres, as far as they currently provide a sustainable environment for residents to access businesses and services, only at a more localised scale. Officers therefore propose that an Article 4 direction is also prepared for all these local parades.
38. Please note that the Local Parades have been mapped separately within Appendix 2 to allow readers of the report to understand the full extent of the proposed Article 4 area. The addresses listed outline where the Local Parade can be found, rather than its extent. The full extent of the proposed Article 4 direction is the area covered in orange.

### Monitoring Areas

39. The designations referred to above are based on the Local Plan: Part 2 (2020), which was only adopted in January 2020. The Planning Policy Team are undertaking a review of the Local Plan, which may involve changes to these boundaries. Any boundary changes will need to be reflected in the Article 4 direction, either to reduce or expand the area covered accordingly.

### **Additional Considerations**

40. The Council's consultation response to the Government also raised several other concerns that could arise from the new PDR. These are issues that cover the whole Borough, including:
  - No scope to assess the quality of design of such proposals.
  - No requirement for affordable housing provision.
  - Poorer quality residential environments.
  - Dominance of one-bedroom units.
  - No access to amenity space.
  - No improvements to air quality or carbon emissions.
41. The only way to address these concerns would be to opt for a borough wide Article 4 direction. However, national policy is clear that Article 4 directions must apply to the smallest geographical area possible and should cover matters specific to the area. It is therefore highly unlikely that a blanket Article 4 direction across the London Borough of Hillingdon on any or all these grounds would be permitted by the Secretary of State. This approach is therefore not being advocated.

### **Next Steps**

42. Officers are proposing to introduce a non-immediate Article 4 direction, which requires a 12-month notification period from when it is made until it can come into effect. This period is required to avoid the possibility of compensation claims being made against the Council. The procedure for implementing a non-immediate Article 4 direction includes a four-week consultation period. The responses to this consultation will then be presented to the Council, who can then confirm that they wish for Officers to proceed with implementing the Article 4 direction. An indicative timeline of the full process is outlined below:

## September 2021

Stage 1 - The Council decides whether to introduce a Direction setting a date in the Notice for when it 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 2022 (Stage 3).

## September/October 2021

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 (four weeks preferable).
- 3) Places notices up on the relevant sites for 6 weeks.
- 4) The Council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction.

## September/October 2022

Stage 3 – Confirmation Stage - The Council cannot confirm the Direction until after a period of at least 12 months 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. A copy of the Direction as confirmed must also be sent to the Secretary of State.

### **Appendices (available on-line and in Group Offices):**

- Appendix 1 – Whole Borough Map of Areas to be Covered by Class MA Article 4 Direction
- Appendix 2 – Local Parade Maps Only Showing Areas to be Covered by Class MA Article 4 Direction