

WAVERLEY BOROUGH COUNCIL

JOINT PLANNING COMMITTEE- 16 MAY 2018

TITLE:

ARTICLE 4 DIRECTIONS

**[Portfolio Holder: Cllr Chris Storey]
[Wards Affected: All]**

Summary and purpose:

The purpose of this report is to consider the recent requests from Town and Parish Councils for Article 4 directions on commercial premises in the Borough. Under existing permitted development rights, certain types of commercial use can be changed to residential use without requiring the submission of a planning application. However, Article 4 directions allow councils to remove permitted development rights for specific changes of use/development on specific sites so that a planning application is required. This report considers the benefits and risks for the Council of pursuing Article 4 directions.

How this report relates to the Council's Corporate Priorities:

The making of an Article 4 direction will allow the Council as the Local Planning Authority (LPA) to be able to consider planning applications where currently an application is not required under permitted development rights. This will allow the Council to consider proposals in accordance with local plan policies. These policies reflect the Council's corporate priorities, in particular relating to the community wellbeing and the environment.

Equality and Diversity Implications:

None arising from this report.

Financial Implications:

An Article 4 direction will require planning applications for properties which currently do not require applications under the permitted development rights. Therefore additional planning fee income will be earned when a planning application of this nature is submitted. Current expectations are that there will be a relatively small number of applications, creating only a small increase in planning fee income. Furthermore, additional planning permissions will require staffing resource and other costs will be incurred. Therefore the net financial impact is expected to be very small.

The loss of business use properties to residential use also has impacts on Business Rate and Council tax income, affecting the wider Council finances.

Legal Implications:

Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") provides that if the local planning authority is satisfied that it is expedient that development described in certain parts of Schedule 2 of the Order should not be carried out unless permission is granted for it, it may make a direction to restrict permitted development rights. Members are advised that permitted development rights

should only be withdrawn if there is reliable evidence to justify the direction's purpose and extent.

If the Council decides that it is expedient to restrict permitted development rights through the introduction of Article 4 directions, the Legal Services team will assist officers with the preparation of and the subsequent procedure for formally making them.

1. Background

- 1.1 Waverley Economic Development officers have reported that Town and Parish Councils have recently raised concerns that a number of commercial properties have been lost to housing. Separately, the Head of Planning Services has been informed of this issue where it has been perceived that it has resulted in a detrimental impact on commercial areas, both to town and local centres as well as other employment areas such as business parks. The perceived impacts include:
 - A reduction in the vitality/viability of the business/retail centre they are located in.
 - A reduction in the availability of commercial accommodation in the area.
 - A lack of parking for the occupiers of new residences resulting in greater pressure for already limited parking in the location.
- 1.2 This perceived impact has been exacerbated by the permitted development (PD) rights that allow a change of use from business/shop use to residential without the need for a planning application. The PD rights mean that the Council as the LPA cannot consider the impact of the change of use against planning policies. The lack of available alternative commercial premises is perceived as a particular issue for those businesses who have lost their premises as a result of PD rights in the first place.
- 1.3 There is also concern that other impacts from a change of use cannot be mitigated through permitted development rights, even where prior approval needs to be determined. These impacts include the size of the residential unit, lack of amenity and storage space and access.
- 1.4 Both Cranleigh Parish Council and Haslemere Town Council have therefore requested in writing that the Council considers making Article 4 directions so that a full planning application will be required for a change of use from commercial to residential. This will allow the Council as the LPA to fully consider the implications of any such proposal against adopted planning policies.

2.0 Changes of use from commercial to residential – the prior approval process

- 2.1 A material change of use requires planning permission. However, under PD rights some changes of use do not require the submission of a planning application and achieve a “deemed permission” by government order. These include changes from businesses/storage use to residential (Use Classes B1a/B8 to C3) and from shops/financial and professional services to residential (Use Classes A1/A2 to C3).
- 2.2 However, before the change of use can take place, prior approval is formally required from the Council. Matters for prior approval depend on the type of change of use. For business (B1a) to residential, the matters for prior approval are flooding, highways and contamination. For a change of use from storage (B8) to residential,

matters for prior approval also relate to noise, air quality and whether the residential use would affect the sustainability of an area that provides storage or distribution for industrial use. For a change of use from shops (A1) to residential the matters also relates to the importance of the service the retail use provides, the impact on the shopping area if it is a key shopping area and the design/appearance of the building. These matters are the only ones that can be considered and cannot consider other planning matters such as the provision of parking, amenities and habitable floorspace to meet appropriate standards.

3.0 The Article 4 directions process

3.1 The way Article 4 directions can be used and the procedure for making them is set out in legislation and the National Planning Practice Guidance. In summary, an Article 4 direction can:

- be either for operational development or a change of use;
- cover a specific area or a borough wide area;
- be temporary or permanent; and
- be either non-immediate (permitted development rights are only removed after formal confirmation of the Article 4 direction following local consultation) or immediate (where permitted development rights are removed immediately but must be confirmed within 6 months. This only relates to certain types of development such as development within the curtilage of a dwellinghouse, changes of use or temporary buildings).

3.2 However, if a planning application is required because of an Article 4 direction, it does not mean that planning permission should necessarily be refused. If planning permission is refused for a change of use that requires an application under an Article 4 direction, then the Council may be liable to pay compensation. Furthermore appeals could possibly be allowed if the grounds for refusal are unreasonable.

3.3 The Council can only confirm Article 4 directions following public consultation and after formally notifying the Secretary of State (SoS). The role of the SoS is to intervene only if there are very clear reasons to do so. However, this means that the justification for a direction needs to be robust.

3.4 A number of Councils have made Article 4 directions to manage the loss of commercial premises to residential that can currently be carried out under PD rights. Epsom and Ewell Borough Council have made Article 4 directions on specific office buildings to residential in Epsom Town Centre (they have also made them for three primary retail frontages in the Borough for shops to financial and professional services). Mole Valley District Council have Article 4 directions on specific office sites to residential in Dorking and Leatherhead. Winchester City Council has agreed to make an Article 4 direction to remove PD for a change of use from all offices to residential in the Winchester Town settlement boundary which is awaiting confirmation.

4.0 The case for making Article 4 directions

4.1 The Council's placeshaping agenda seeks to ensure that the vitality and viability of all town and local centres are protected and enhanced. Policies in the Council's

newly adopted local plan seek to protect commercial premises, both offices and retail, to other uses. This is on the grounds that they make an important contribution to the economy of the borough and meet the needs of residents and businesses. The protection of these premises and areas has implications for the wellbeing of individuals and the communities that rely on them. Local Plan Part 1 identifies town and local centres as well as employment sites for protection. It also identifies the need for primary and secondary shopping areas.

- 4.2 The following table shows the loss of business/storage and distribution use (B1/B8) to residential and shops/financial and professional services floorspace to residential as a result of PD rights within the Borough since 1st April 2013 to the 31st March 2018.

Change of use allowed under development	Granted through Prior Approval sq. m	Implemented sq. m (as of 31/03/18)
B1/B8 to residential	33,554	12,612
A1/A2 to residential	1,540	638

- 4.3 The monitoring clearly shows that there could be a significant potential loss of B1 use (business). The Employment Land Review (ELR) 2016 states that the Borough had some 291,400 sq. m of B1 floorspace. Therefore, if all the prior approvals for B1 that were granted in the last four years were implemented, then approximately 12% of that B1 floorspace could potentially be lost. The amount of floorspace that could be lost also needs to be seen in the wider context that the ELR forecasts an overall need for approximately 16,000 sq. m of B1a/b floorspace in the Local Plan period. Therefore, any specific loss of B1a/b floorspace as a result of prior approvals will only increase the requirement for more of this type of commercial floorspace.
- 4.4 The potential loss of shops from PD rights is not such a significant issue in terms of total floorspace but it must be noted that generally these premises are much smaller in size than business units.
- 4.5 The monitoring (attached as Annexe 1) is based on floorspace and there is no particular location that has seen a particular concentration of loss of commercial premises. However, it is claimed that the loss of just one commercial property to housing in an industrial park or a town/local centre, regardless of its size, can have a significant impact on the attractiveness of that location for both new businesses and customers.
- 4.6 Both Cranleigh Parish and Haslemere Town Councils have submitted local evidence to support the making of Article 4 directions in their areas. The evidence from Cranleigh Parish Council has included the loss of Hewitts Industrial Estate, a centrally located employment site and the loss of greenhouses to the south of the village centre as a result of the planning permission for housing on Knowle Park. Following discussions with Cranleigh Chamber of Commerce and in anticipation of further loss of commercial floorspace, they consider that directions should be made on Manfield Park and Littlemead Industrial Estate. There is also a view that a direction should be made on individual commercial properties around the village.

The request from Haslemere comprises both the loss of business and retail premises that are located in the commercial centres of Beacon Hill and Wey Hill.

- 4.7 The requirement for a planning application would allow the Council to consider other planning matters that cannot be considered even through the prior approval process. This would ensure that specific planning standards are considered.

5.0 Factors to relevant to considering making Article 4 directions

- 5.1 The making of an Article 4 direction for specific premises or areas would allow the Council to consider its planning policies through a planning application where currently an application is not required. However, this has to be balanced against whether Article 4 directions will actually meet the objective of resisting the loss of existing commercial premises and maintaining the vitality and viability of an area.
- 5.2 Firstly, it is important that there is robust evidence that justifies making an article 4 direction. Although Cranleigh Parish and Haslemere Town Council have submitted evidence, this relies on information about which premises have been lost rather than what the impact has been on the vitality and viability of the commercial areas the premises lie within.
- 5.3 Although the Local Plan Part 1 names the town and local centres that should be protected, the actual identification of the centres and their primary and secondary frontages have yet to be updated from the 2002 Local Plan. This will be a function of Local Plan Part 2. Neighbourhood centres or shops in the Borough have also not been identified. Without an up to date identification of a town, local or neighbourhood centre there is currently not a robust planning policy framework to support an Article 4 direction which would be required to specify the premises or area it relates to.
- 5.4 As such, there needs to be more empirical evidence regarding the impact of PD rights for changes of use on specific locations to support designations of commercial areas for protection in Local Plan Part 2 or in a neighbourhood plan which would in turn provide the policy framework for justifying an Article 4 direction. For instance, Epsom and Ewell's BC's supporting evidence for their Article 4 directions included that gathered for preparing their local plan and an office demand study. Mole Valley BC commissioned a specific study to assess the impact of office to residential conversions on the commercial markets of Dorking and Leatherhead to support Article 4 directions. Winchester City Council has agreed to make an Article 4 direction to remove PD for a change of use from offices to residential. This relied on the findings of the Property Market Study July 2016 that was commissioned by the Enterprise M3 Local Enterprise Partnership (LEP). This study identified Winchester as having one of the greatest proliferation of residential development in previously commercial areas.
- 5.5 Secondly, a robust planning policy framework is needed because the making of an Article 4 direction still means that a planning application is required. The application still needs to be determined in accordance with planning policy. Although the new Local Plan seeks to protect commercial premises, consistent with local plan and national planning policy an application can still be approved if it can be demonstrated that there is no reasonable prospect that the employment use can continue. This is so even where there is evidence that the change of use of

premises would be detrimental to the vitality and viability of the commercial centre. When Epsom and Ewell made Article 4 directions they justified it on the grounds that the procedure would not affect their flexibility in allowing changes of use in accordance with national planning policy.

- 5.6 Thirdly, the national planning policy context needs to be considered in the light that when the Government first looked to introduce the permitted development rights to allow change of use from office to residential in 2011 the Council's application to be exempt from the PD rights was unsuccessful. The change to PD rights to allow for conversions without planning applications was introduced as part of the Government's push to significantly boost the supply of homes to meet housing needs with the priority of meeting it on brownfield land. Therefore, there is a possibility that the SoS could intervene when notified of an Article 4 direction. This reinforces the need for robust evidence to justify the direction. This could include getting the LEP to support making any Article 4 direction (as Epsom and Ewell has done). However, the Council needs to consider whether controlling the loss of commercial premises will have implications for our attempts to reduce the need to build on greenfield land to accommodate the housing we are required to deliver.
- 5.7 Fourthly, it is not apparent how, in some cases, the making of an article 4 direction for shops and storage will allow the Council as the LPA to consider more fully the impact on a commercial area than the existing prior approval process already allows. The existing prior approval procedure allows councils to consider the loss of an existing retail use and the impact on a key shopping area. For storage premises prior approval includes considering the impact of the loss of that facility.
- 5.8 Furthermore, in some of the examples put forward by Cranleigh Parish and Haslemere Town Council to justify their request, the change of use has been as a result of granting a permission for a planning application. The making of an Article 4 direction therefore would not have affected the procedure. The applications would have been considered against local plan and national planning policy.
- 5.9 Article 4 directions needs to be considered in the light of the time required to make them. Annexe 2 sets out an indicative timeline for making one in accordance with the legal requirements. As shown, it can take around 6 months to make one. Both Cranleigh Parish and Haslemere Town Council appear to request making them for both for individual properties and for specific areas in different locations. To prepare them all will be resource intensive. If an Article 4 direction is made for one property or for location then it will be difficult to resist making other directions in the borough where similar issues are experienced.
- 5.10 Finally, if an Article 4 direction is made and an application is refused then there is a risk that compensation will have to be paid. Furthermore if an application is subsequently appealed then potentially there is a risk that costs could be awarded against the Council for making an unreasonable decision.

6.0 Options

It is considered that there are four options for the Council to decide on:

- 1) Preparing Article 4 directions for all the commercial premises and/or areas that town or parish councils have requested them for.

- 2) Prepare Article 4 direction for a change of use from one specific use class or use classes (e.g. for offices and/or for retail) in areas that have been specifically identified by Waverley (e.g. for the main town centres and/or for neighbourhood centres) following the gathering of evidence.
- 3) Prepare an Article 4 direction for just one commercial area that has been requested by a town/parish council to allow Waverley to assess its success in protecting the vitality and viability of the area.
- 4) Do nothing.

7.0 Conclusion

- 7.1 The Council's objective of placeshaping and the importance of its commercial areas to Waverley's communities' needs to be balanced against the uncertainty that Article 4 directions will protect commercial properties and areas from being lost to housing. Therefore, it is recommended that the Council prepares an Article 4 direction for just one commercial area. The Council would then be able to assess its effectiveness in considering making other directions for the Borough.
- 7.2 It is considered that Haslemere Town Council's request for commercial premises on Beacon Hill Road should be the commercial area considered for a non-immediate Article 4 direction. This is because of its relative vulnerability to changes of use through PD rights and its importance to the wellbeing of the local community who currently rely on its businesses, shops and services. The specific area to be subject to the Article 4 direction will be determined following the gathering of further evidence of the impact of PD rights on commercial properties within the area. Annexe 3 gives a general indication of the area of Beacon Hill that could be considered further for an Article 4 direction.
- 7.3 It is recognised that other retail and businesses premises and centres make a valuable contribution to the economy and the needs of businesses and the communities that they serve. These include Manfield Park and Littlemead Industrial Estate in Cranleigh. However, the threat to the vitality and viability to these areas is not as apparent as the threat to Beacon Hill where there has already been a significant loss of commercial properties to housing. The premises in Manfield Park and Littlemead Industrial Estate are in business/industrial use and therefore some of them do not lend themselves to a straight change of use to housing. Therefore, they would require a planning application for conversion or redevelopment to housing.
- 7.4 The power to make an Article 4 direction under the Council's approved Scheme of Delegation lies with the Head of Planning Services. However, in view of the general local interest and sensitivity surrounding this matter, the steer of the Joint Planning Committee is sought on the way forward.

Recommendation

It is recommended to Council to agree that

- 1) An article 4 direction to withdraw permitted development rights for a change of use from commercial to residential for just one commercial area that has been

requested by a town/parish council to allow Waverley to assess its success in protecting the vitality and viability of the commercial area be prepared;

- 2) The commercial area that the article 4 direction is to be prepared for is an area located around Beacon Hill Road, Beacon Hill, Haslemere - the specific area to be determined by the Head of Planning Services in conjunction with the gathering of specific evidence on the impact of the loss of commercial premises to residential on the vitality and viability of the commercial area; and
- 3) That the preparation is for a non-immediate article 4 direction.

Background Papers

There are no background papers (as defined by Section 100D (5) of the Local Government Act 1972) relating to this report.

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