

## AGENDA ITEM No. 6

CABINET

HEAD OF PLANNING

2 MAY 2017

REPORT NO. PLN1708

KEY DECISION? YES

### ARTICLE 4 DIRECTION FOR EMPLOYMENT LAND

#### SUMMARY AND RECOMMENDATIONS:

Cabinet previously approved the making of a non-immediate Article 4 direction to withdraw permitted development rights related to the change of use of offices, light-industrial units, and storage or distribution units to residential use within Strategic Employment Sites and Locally Important Employment Sites identified within the draft submission *Rushmoor Local Plan*. This report seeks Cabinet's approval to 'confirm' the Article 4 Direction.

It is recommended that Cabinet approves the confirming of the Article 4 Direction under the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended). Once confirmed, the Direction can come into force and will enable the Council to protect Rushmoor's key employment sites by requiring developers to make a planning application for the conversion of offices, light-industrial units, and storage or distribution units to residential use. Permitted development rights remove the requirement to obtain such consent from local planning authorities.

#### 1. INTRODUCTION

1.1 Cabinet approved the making of a non-immediate Article 4 direction in November 2016 to withdraw permitted development rights related to the change of use of offices, light-industrial units, and storage or distribution units to residential use within Strategic Employment Sites and Locally Important Employment Sites identified within the draft submission *Rushmoor Local Plan*. This report seeks Cabinet's approval to 'confirm' the Article 4 Direction.

#### 2. BACKGROUND

2.1 In 2013, the Government introduced new 'permitted development rights' which allow an office building to change its use to a dwelling house without the need for planning permission. In 2016, it also introduced temporary permitted development rights which will allow light-industrial buildings less than 500 square metres to change use to housing without the need for

planning permission; these rights will come into effect from October 2017 and last for a period of three years. These followed the introduction of similar rights in April 2015 which allow storage or distribution buildings less than 500 square metres to be converted to residential use without planning permission until April 2018.

- 2.2 Local planning authorities can remove permitted development rights by drafting and implementing an Article 4 direction. An Article 4 direction 'does not prevent the development to which it applies but instead requires that planning permission is first obtained from the local planning authority for that development'.
- 2.3 Cabinet approved the making of a non-immediate Article 4 direction to protect Rushmoor's key employment sites in November 2016. The arguments for introducing an Article 4 direction are summarised within the accompanying Cabinet Report (No. PLN 1637), which is available at <http://www.rushmoor.gov.uk/article/9014/Cabinet-meeting---15-November-2016>. This report also contains further background detail on the permitted development rights and Article 4 directions.
- 2.4 Following Cabinet approval, the Solicitor to the Council, in consultation with the Head of Planning, made a non-immediate Article 4 direction on 10<sup>th</sup> February 2017 to withdraw the permitted development rights within the Strategic Employment Sites and the Locally Important Employment Sites identified within the draft *Rushmoor Local Plan*, with the exception of Cody Technology Park and the Royal Pavilion. Residential development would not be permitted at these two sites because they are located within 400 metres of the Thames Basin Heaths Special Protection Area. It should also be noted that since Cabinet approval, Hawley Lane South has been designated as a Locally Important Employment Site within the draft *Local Plan*. This site has not been included within the Direction, as it is exempt from permitted development under the current regulations.

### **3. PROPOSAL: TO CONFIRM THE ARTICLE 4 DIRECTION**

- 3.1 Non-immediate Article 4 directions remove permitted development rights only after a period of public consultation. The Council held a consultation and invited views on its Article 4 Direction between 10<sup>th</sup> February and 24<sup>th</sup> March 2017. As prescribed within the Article 4 regulations, notice of the Direction was made by site display at each of the affected employment sites and by local advertisement (within Issue 233 of the Hampshire Independent, published on 10<sup>th</sup> February 2017), and the Secretary of State for Communities and Local Government and Hampshire County Council were informed. Because it was deemed impracticable to inform individual owners and occupiers at each of the sites, the Council also issued a press release.
- 3.2 One representation was received within the consultation period, and, as of writing, no others have been received since the consultation closed. The

representation supports the implementation of the Direction and is quoted in full below:

*We agree that it is important that Aldershot and Farnborough retain a strong portfolio of employment sites to support and encourage economic growth and that the Article 4 direction will help retain and attract businesses, jobs and investment into the area.*

*The proposed sites include a diverse mix of industries and scale from single traders, through SME's to large multinationals. Removing "permitted development" on these sites does not preclude the possibility of changing use from light industrial to residential in the future, but it does provide an additional layer of protection to ensure that residential developments do not substantially outweigh the employment opportunities in the local area (which appears to be the current trend in developments in and around Ash & Tongham villages).*

- 3.3 The Secretary of State was notified about the Direction in advance of its making on 7<sup>th</sup> February 2017. The Department for Communities and Local Government subsequently requested further evidence from the Council to support and justify the Direction on 16<sup>th</sup> February 2017; officers provided this information on 23<sup>rd</sup> February 2017. No further comments from the Secretary of State or the Department for Communities and Local Government have been received as of writing.
- 3.4 An Article 4 direction cannot come into force unless it is 'confirmed' by a local planning authority. Officers have reviewed the representation and do not consider that there have been any changes in planning policy at a national or local level since the making of the Direction which would have an impact on the decision of whether to confirm it. Cabinet is therefore asked to approve the confirming of the Direction. If confirmed, it will come into force on 19<sup>th</sup> February 2018.

### **Alternative Options**

- 3.5 The alternative option is to not confirm the Article 4 Direction and to allow the permitted development rights to be exercised without restraint across Rushmoor. As summarised within Cabinet Report PLN 1637, such an approach risks undermining the strategic objectives of the new *Local Plan* and could compromise the Council's ability to retain the Borough's key employment sites in an employment designation in the long term.

## **4. IMPLICATIONS**

### **Compensation Claims**

- 4.1 The most significant risk associated with preparing an Article 4 direction is the potential for developers to make claims for compensation from a local

authority. As noted within Cabinet Report PLN 1637, non-immediate Article 4 directions (such as the one made by the Council) are the most risk averse and significantly reduce the threat of compensation claims. Indeed, compensation regulations state that local authorities are not liable to pay compensation if they withdraw permitted development rights in the manner prescribed within the Article 4 regulations and if notice of the withdrawal is published at least twelve months before it takes effect. It is for this reason that the Direction, if confirmed, will come into force on 19<sup>th</sup> February 2018.

### **Permitted Development Applications during the Notification Period**

- 4.2 As developers will be able to exercise the permitted development rights during the period between the confirming of the Direction and its taking effect, there could be a rush of change-of-use applications before the rights are withdrawn, thereby reducing the supply of offices, light-industrial units, and storage or distribution units. It is not possible to safeguard against this risk. Whilst such a rush has not occurred since notice of the Direction was made, it should be noted that the Council has received a pre-application enquiry from a developer who wishes to convert a building to residential use on one of the affected sites.

### **Intervention by the Secretary of State**

- 4.3 The Secretary of State has the power to make a direction which modifies or cancels an Article 4 direction made by a local planning authority at any time before or after it is confirmed. Officers have produced a case paper (attached as an appendix to Cabinet Report PLN 1637) which outlines the Council's arguments for introducing an Article 4 direction within the Borough; an updated version of this paper was forwarded to the Department for Communities and Local Government when it requested further evidence and information in support of making the Direction. The case for introducing an Article 4 direction must be evidence based and not geographically targeted, and officers consider the justification for an Article 4 direction within the Borough to be strong. Given that the Direction would be specifically targeted and apply only to the Borough's Strategic and Locally Important Employment Sites, the risk of intervention by the Secretary of State is considered to be low.

### **Legal Implications**

- 4.4 There is no statutory appeal against the making or confirming of an Article 4 direction. The Council's Direction would therefore be open to challenge by way of a judicial review. However, if the Council follows the prescribed process for confirming the Direction (as it did when it made the Direction), and given that it would consider any change-of-use applications on a case-by-case basis, a successful judicial review is considered unlikely.
- 4.5 As noted, change-of-use applications may come forward during the period between the confirming of the Direction and its coming into force. Such applications would need to be determined in accordance with the prior

approval requirements. Government policy states that Article 4 directions 'cannot prevent development which has commenced or which has already been carried out'. In addition, a direction does not apply if prior approval is granted before it comes into force or where a development is completed within three years of the date of prior approval.

### **Financial and Resource Implications**

- 4.6 The principal costs of confirming an Article 4 direction include officers' time, printing notices for site display and advertising a notice within a local newspaper. The costs of confirming the Direction can be absorbed by existing budgets.
- 4.7 It should be noted that no planning application fee is payable where a planning application is required for a change of use which would otherwise have fallen under permitted development.

### **Equalities Impact Implications**

- 4.8 There are no equalities impact implications associated with the proposal.

## **5. CONCLUSIONS**

- 5.1 Whilst the Council acknowledges the potential benefits of the permitted development rights in terms of increasing housing provision, the potential loss of employment sites is a key concern with regard to its ability to deliver the employment and economic policies within the draft *Local Plan*. In removing the obligation to acquire formal planning consent from local planning authorities, permitted development rights remove control over development from councils and undermine objectives and policies with regard to future development.
- 5.2 It is vital that Rushmoor has a strong portfolio of employment sites to attract investment into the area and to maintain an edge over competing locations. The implementing of the Article 4 Direction is considered crucial to ensuring that the Borough is able to retain and attract businesses and jobs. Once in force, the Direction will require developers who wish to convert offices, light-industrial units, and storage or distribution units to residential use on the Borough's Strategic and Locally Important Employment Sites which are covered by the Direction to submit a planning application, which would be considered on its merits. A direction cannot come into force, however, unless it is confirmed by a local planning authority.
- 5.3 It is recommended that Cabinet delegates authority to the Solicitor to the Council, in consultation with the Head of Planning, to take all necessary steps in confirming, serving and publicising the previously made Article 4 Direction to remove the Class O (office to residential), Class P (storage or distribution centre to residential) and Class PA (light industrial to residential) permitted development rights granted by Part 3 of Schedule 2

of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) within Rushmoor's Strategic Employment Sites and Locally Important Employment Sites, excluding Cody Technology Park, Hawley Lane South and the Royal Pavilion.

#### **BACKGROUND DOCUMENTS:**

Cabinet Report, 'Article 4 Direction for Employment Land' (Report No. PLN 1637, 15<sup>th</sup> November 2016, Item 7).

Rushmoor Borough Council (2017) *Rushmoor Local Plan* (Draft Submission).  
*Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016*.

*Town and Country Planning (Compensation) (England) Regulations 2015*.

*Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016*.

*Town and Country Planning (General Permitted Development) (England) Order 2015*.

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