

**ITEM NUMBER:**

	<b>Confirmation of 5 x Article 4 Directions</b>
<b>Sites</b>	<b>Maylands, Park Lane, Doolittle Meadows all at Hemel Hempstead; Northbridge Road and River Park at Berkhamsted; and Icknield Way, Tring</b>
<b>Reporting Officers</b>	<b>Alex Robinson Assistant Director for Planning, Ronan Leydon Team Leader – Strategic Planning, Stephen Mendham Strategic Planning Officer</b>
<b>Parish / Wards</b>	<b>Adeyfield East, Hemel Hempstead Town, Apsley, Berkhamsted Castle, Berkhamsted West and Tring West &amp; Rural</b>
<b>Referral to Committee</b>	<b>For confirmation of the 5 x Article 4 Directions made on 15 July 2022</b>

**1. RECOMMENDATION**

1.1 That the Article 4 Directions be confirmed.

**2. Summary**

2.1. Over recent years Government has widened the scope of changes that can be made from commercial uses to residential without the need for planning permission. In March 2021 Government introduced further legislation allowing the change of use from the new Use Class E to residential. Those changes which came into force on 1 August 2021 allow properties such as offices to be converted to residential use subject to certain conditions.

2.2. Government laid regulations (the new regulations) on 31 March 2021 to create a new permitted development right (i.e. Class MA) to enable the change of use from Use Class E to residential use, to help support housing delivery and enable more homes to be created. The legislation is contained at <https://www.legislation.gov.uk/uksi/2021/428/contents/made>. There are a number of conditions that need to be satisfied including:

- The building must have been in Commercial, Business and Service use for two years before benefiting from the right.
- Buildings must have been vacant for three continuous months immediately before the date of application for prior approval.
- No more than 1,500 sqm of floorspace in any building may change use.
- Part of the building may change use under the right, including where the lower floors are in Commercial, Business and Service use and the upper floors residential.
- The right will apply in Conservation Areas, but not in other land listed in Article 2(3) of the GDPO, such as National Parks and Areas of Outstanding Natural Beauty.
- The homes delivered are required to meet, as a minimum, the nationally described space standards.
- The right will be subject to prior approval by the local planning authority in respect of a range of planning matters including transport and access, contamination, flood risk, noise, the impact of that change on the character or sustainability of a conservation area, provision of natural light, the impact of the loss of a registered nursery and health centre.

2.3. In 2019, the Council made and confirmed four Article 4 Directions to protect the main General Employment Areas from conversion from employment uses including offices under the then Class O (Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Town and Country Planning (Use

Classes) Order 1987 (as amended) to a use falling within Class C3 (dwellinghouses) of that Schedule). The areas are shown hatched red on the maps contained in Appendix 1 for the following sites:

- Maylands Business Park
- Park Lane and Doolittle Meadows, Hemel Hempstead
- Whiteleaf Road, Hemel Hempstead
- Bourne End Mills, Bourne End
- Northbridge Road and River Park, Berkhamsted
- Icknield Way, Tring

2.4. In respect of Maylands Business Park approximately 90 units were subject to the Article 4 Direction made and confirmed in 2019.

2.5. Those Article 4 Directions preventing change from the then B1(a) to C3 as per Class O remained in effect only until 31 July 2022. Thereafter new article 4 Directions needed to be in place to prevent offices with Use Class E being converted under Class MA.

2.6. Dacorum is experiencing a significant loss of office floorspace from prior approval schemes involving changes of use from offices to housing:

- Between 2014 and 2020, there was a net loss of 34,600 sq. metres of office floorspace. 82% of this loss (28,300 sq. metres) resulted from prior approval schemes involving changes of use from offices to housing.
- Permitted prior approval schemes at 1 April 2020 involve the loss of a further 21,700 sq. metres of office floorspace.
- In total, completed and permitted prior approval schemes (if implemented) will result in the loss of nearly 50,000 sq. metres of office floorspace.

2.7. Nearly all of the completed and permitted losses of office space from prior approval schemes are in the town centres or General Employment Areas. Half of the losses in the General Employment Areas are on the Maylands Business Park.

2.8. In addition to there being concerns about the loss of offices the Council also considers that the Class MA right could have wholly unacceptable adverse impacts upon the essential core of the retail area at Maylands Plaza which provides a clear justification to include it in a designated Article 4 area (see section 7 of the Justification Statement).

2.9. The retail units at Maylands Plaza perform an important role in providing services locally to the local residents, workers and visitors. The retention of those units plays an important part in maintaining the economic vibrancy and social wellbeing of Maylands Business Park. The inclusion of this geographically limited area of retail units in the Directions is required to control changes of use from Class E to housing.

### **3. Approach**

3.1. Officers carried out a review in early 2022 to determine if it is still appropriate for all sites identified within the existing Article 4 Directions (made in 2019) to be included within the new use class MA (conversion from offices to residential use). However, National Planning Policy

states that new Article 4 Directions should be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts, be based on robust evidence and apply to the smallest geographical area possible.

- 3.2. The review concluded that it would now be difficult to justify the inclusion of a number of the previous sites on grounds set out in the Justification Statement (see Appendix 2). As a result it was proposed that the new Article 4 Directions be focused only on offices and also the ground floor retail and food establishments at Maylands Plaza that are considered to be most at risk of conversion to residential. In the case of Maylands this equates to a reduction from 90 units to 43.
- 3.3. This size of the reduction is explained by the removal of all B2 and B8 units (as these are not included in the permitted changes offered by Class MA). Any change of use to residential would still require planning permission. Furthermore, it is still the case that the overwhelming majority of current offices in Maylands would be protected with only those being ancillary (i.e. those that form part of a wider industrial or storage unit) falling outside of the protections.
- 3.4. The maps attached to the Directions contained in Appendix 3 show the sites that are the subject of the new Article 4 Directions.
- 3.5. Following the review no new Article 4 Directions were proposed for the following sites:
  - Whiteleaf Road, Hemel Hempstead
  - Bourne End Mills, Bourne End
- 3.6. On 15 July 2022 in accordance with the power delegated to the Assistant Director for Planning the Council made 5 x Article 4 Directions with immediate effect (The Directions). The Council's Justification Statement for making the Directions is attached as Appendix 2. The Directions which have been made are attached as Appendix 3.
- 3.7. Legislation requires that an immediate Article 4 Direction is confirmed not earlier than 28 days of publicity of the making of the Direction and within 6 months of that date if it is to continue in effect. The Directions therefore require confirmation by 15 January 2023.
- 3.8. It is recommended that the Council confirm the Directions to ensure that the protection afforded to the Article 4 areas will continue in effect beyond 15 January 2022.

#### **4. Permitted Development Right – Change of Use from Class E to Residential Use**

- 4.1. As noted in paragraph 2.2 above the new regulations created a new permitted development right Class MA to enable the change of use from Use Class E to residential use to help support housing delivery and enable more homes to be created subject to certain provisos (for more detail see paragraph 2.8 of the Justification Statement in Appendix 2 to this document).
- 4.2. Class E covers the following uses and planning permission is not required for changes of use from one type of Class E use to another:

(a) Shop (except for some small shops outside centres that are in Class F.2)
(b) Food and drink (café or restaurant)
(c) Financial, professional and other appropriate services
(d) Indoor sport, recreation or fitness, not involving motorised vehicles or firearms

(e) Medical or health services, principally to visiting members of the public
(f) Crèche, day nursery or day centre
(g) Offices, research and development and light industry

4.3. Class E does not cover various other uses, such as:

- Pub or drinking establishment
- Hot food takeaway
- Museum, public library
- Cinema, concert hall, bingo hall and dance hall

4.4 The legislation introduced in March 2021 creating the new permitted development right (Class MA) is contained at <https://www.legislation.gov.uk/uksi/2021/428/contents/made>. There are a number of conditions that need to be satisfied as noted in paragraph 2.2 above.

4.5. The revised National Planning Policy Framework (July 2021) includes changes to paragraph 53 on Article 4 Directions, as set out below:

*“The use of Article 4 directions to remove national permitted development rights should:*

- *where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre*
- *in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.”*

## 5. **Assessment of Implications for Dacorum and making of the Directions**

5.1. In early 2022 the Council undertook an assessment of the potential impacts of the changes on the employment areas covered by the 2019 Article 4 Directions and concluded that urgent action was necessary to protect selected sites within those existing Article 4 areas. The Justification Statement (see Appendix 2) sets out in detail the matter and evidence taken into account in deciding whether or not further protection for those selected sites by the making of Article 4 Directions would be appropriate and necessary.

5.2. In assessing the geographical extent of any Article 4 Direction it was assessed that only some sites within the 2019 Article 4 Directions should be included in the new Article 4 Directions. The Council adopted an evidence based approach taking full account of the guidance in paragraph 53 of the NPPF in drawing up the boundary for the proposed Article 4 areas. The Council may make Directions with immediate effect where “the development presents an immediate threat to local amenity or prejudices the proper planning of an area.” It was concluded that urgent action was necessary to protect the selected sites.

5.3. On 15 July 2022, in accordance with the power delegated to the Assistant Director for Planning the Council made the Directions with immediate effect. The making of the Directions required a period of consultation and publicity which are detailed in paragraph 6 below.

## 6. Consultation

### 6.1 Notification and Publicity

6.1.1 Immediately following the making of the Directions there was a public consultation for the period 15 July 2022 to 2 September 2022. Notice of the making of the Directions was given by:

- Public notice in the Hemel Gazette;
- Notices posted to known landowners and occupiers and supplemented by hand delivered notices to those premises where the landowner and / or occupier were not known.
- Site Notices.
- Information on the Council's website; and
- In accordance with the statutory requirements notification of the making of the Direction was also given to the Secretary of State and Hertfordshire County Council together with a copy of the Justification Statement (attached as Appendix 2 to this document).

### 6.2 Responses Received

6.2.1 In total 3 responses were received to the consultation and notifications. No response has been received from Hertfordshire County Council. The responses received are outlined below.

#### 6.2.2 Secretary of State

The Secretary of State acknowledged receipt of the notification of the making of the Direction by email dated 2 September 2022 enclosing letters also dated 2 September 2022 in respect of each of the Directions and inviting further information in support of the making of the Directions if felt appropriate. The Justification Statement was sent by Officers on 29 September 2022. Officers consider that the Justification Statement provides the necessary evidence in support of the Direction and have advised the Secretary of State accordingly. No further communication has been received from the Secretary of State.

#### 6.2.3 Integration Architecture

6.2.4 A response dated August 2022 was received from Integration Architecture in respect of 1a River Park objecting to its inclusion in the Article 4 Direction for Northbridge Road and River Park in Berkhamsted and is included as Appendix 4 to this document.

The grounds for objection are included in Section 3.0 of the response and in brief include:

- Permitted Development Rights should not be withdrawn without clear justification.
- The government has issued guidance on when and how to make an Article 4 Direction

- The NPPF should consider making Article 4 directions only in exceptional circumstances where the Direction is considered necessary to protect local amenity or well-being of the area.
- Restrictions on change of use to residential use should be limited to situations where the direction is necessary to prevent wholly unacceptable adverse impacts.
- In all cases the direction should be based on robust evidence and and apply to the smallest geographical area possible.
- Article 4 Directions should be targeted, fully justified, restricted to the smallest geographical area possible and robustly evidenced.
- 1a River Park has no more importance than of its neighbouring buildings.
- 1a's use is similar to all its neighbouring buildings yet it has been chosen from the crowd for the removal of Permitted Development Rights and is blatantly unfair treatment by the Council.

6.2.5 The primary driver for the making of the Article 4 Directions is to control changes of use to housing in Dacorum's most important employment areas and substantive reasons and substantial evidence has been provided by the Council justifying the protection of employment land by creating Article 4 areas, including 1a River Park. There are a number of worrying trends arising from prior approval schemes and further significant losses of floor space to housing within the Council's area from prior approval schemes seem likely if Article 4 Areas are not protected.

6.2.6 Whilst Integration Architecture state in paragraph 4.3 of their response that the Planning Use Classification for the site **should** be Use Class E(g)(iii) (Industrial Purposes) the current planning use is listed as Industrial use with ancillary offices.

6.2.7 The structure and fabric of 1a River Park does set it apart from other units on the site. A uniform and consistent approach has been taken with regard to site selection as set out in the Justification Statement. It is notable that changes of use for other commercial enterprises have taken place in the adjacent Northbridge Road and 1a River Park is considered vulnerable to such changes.

6.2.8 It is considered that the grounds advanced by Integration Architecture for exclusion of 1a River Park from the Article 4 Direction for Northbridge Road and River Park do not constitute sufficient cause to override the justification for confirming the Article 4 Directions as made.

6.2.9 Furthermore, the making of an Article 4 Direction does not place an absolute prohibition on change of use, an application for change of use may still be made which will then receive consideration by the Council in accordance with planning rules and policies.

### 6.3 Other Responses

One other response was received by email as summarised below:

<b>Respondent</b>	<b>Summary</b>	<b>Officer Comment</b>
Lynn Wallis	It seems that someone has made the decision that all of our	The email received contained the subject line "Refurbished

	<p>businesses have to sell either coffee, alcohol or food, or all 3. We need more 'normal' high street businesses, not restaurants, to retain the character of the town. Once the rise in interest rates bites locals will have to examine their spend on items like eating out and expensive coffee, and lots of these businesses will find they are surplus to requirements. Berkhamsted could become a ghost town, which will serve no purpose to anyone Please re-examine your policies in this area</p>	<p>Canal Fields play area opens + free summer activities” but given the timing and address to which the email was sent is taken to be an objection to the making of the Article 4 Directions.</p> <p>It is considered there is clear justification for the Article 4 Directions.</p>
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## 7. Risks

7.1. National Policy states that if a local planning authority makes an Article 4 Direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- a. refuses planning permission for development which would otherwise have been permitted development; or
- b. grants planning permission subject to more limiting conditions than the General Permitted Development Order.

7.2. The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights and the window for making claims is only open for 12 months on making of the Direction. Furthermore, the sites involved were already subject to Article 4 Directions which give persuasion to an argument that no loss is incurred in practice by the making of these Directions.

7.3 The risk of compensation is further limited by the limitations placed on the Permitted Development Order. In particular, the floorspace restrictions and other checks mean that it is not possible for significant swathes of land to be converted.

7.4 The current development Moratorium also provides some short term protection as schemes will not be able to progress until the Moratorium is lifted.

7.5 If Article 4 areas are not introduced, there is a risk that prior approval schemes will be brought forward, resulting in a serious under-provision of office floorspace.

## 8. Recommendation and Confirmation of the Article 4 Direction

8.1. In deciding whether to confirm the Direction the Council must take into account any representations received during the consultation period. The Council must not confirm the Direction until after the expiration of:

- (1) a period of at least 28 days following the latest date on which any notice relating to the Direction was served or published; or
- (2) such longer period as may be specified by the Secretary of State.

The period in (1) above expired by 17 August 2022 and the Secretary of State has not specified any longer period. The Council may therefore now confirm the Direction if it considers it appropriate to do so.

- 8.2. The Secretary of State may cancel or modify an Article 4 Direction at any time before or after it is confirmed. No indication has been given that the Secretary of State intends to cancel or modify the Directions which have been made.
- 8.3. If the Direction is confirmed then as soon as practicable after the confirmation of the Direction the Council must give notice of that confirmation in very similar manner to the notice given upon the making of the Directions, namely:
  - Public notice in the Hemel Gazette
  - Site Notices
  - Direct notices served upon known owners and occupiers
  - Copies of the confirmed Directions sent to the Secretary of State (and although not strictly required, copies will also be sent to Hertfordshire County Council)
  - Information on the Council's website
- 8.4. The responses received have been considered and the position remains the same since the making of the Directions.
- 8.5. It is considered that there is clear justification for designating the Article 4 Areas. The Directions will require planning applications to be made in the Article 4 Areas for change of use from Class E to residential use C3. Following analysis of the responses received to the consultation Members are recommended to confirm the Directions.

## **9. Recommendation**

- 9.1. It is recommended that the Council confirm the Directions to ensure the protection afforded to the Article 4 Areas will continue in effect beyond 15 January 2023.

## **APPENDIX 1**

### **AREAS SUBJECT TO THE ARTICLE 4 DIRECTIONS MADE AND CONFIRMED IN 2019**

## **APPENDIX 2**

### **JUSTIFICATION STATEMENT**

## **APPENDIX 3**

### **ARTICLE 4 DIRECTIONS MADE ON 15 JULY 2022 IN RESPECT OF LAND AND PREMISES AT:**

- **Maylands Business Park, Hemel Hempstead**
- **Doolittle Meadows, Hemel Hempstead**
- **Park Lane, Hemel Hempstead**
- **Northbridge Bridge Road and River Park, Berkhamsted**
- **Icknield Way, Tring**

## **APPENDIX 4**

### **RESPONSE RECEIVED FROM INTEGRATION ARCHITECTURE**