

EAST HERTS COUNCIL

EXECUTIVE – 3 DECEMBER 2019

REPORT BY PORTFOLIO HOLDER FOR PLANNING AND GROWTH

ARTICLE 4 DIRECTIONS

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report discusses the case for introducing Article 4 directions on designated employment sites in the district to remove the use of Permitted Development Rights to convert employment land to residential use without the need for planning permission.

| RECOMMENDATION FOR EXECUTIVE: | |
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| (A) | that the making of a non-immediate Article 4 direction to remove Permitted Development Rights to convert buildings or land currently in B1(a), B1(c) or B8 use into C3 use in the Designated Employment Areas in East Herts Council's adopted District Plan, as detailed in Essential Reference Paper 'B', be approved; and |
| (B) | that authority be delegated to the Head of Planning and Building Control, acting in consultation with the Executive Member for Planning and Growth, to commence public consultation on the non-immediate Article 4 direction and confirm the Article 4 direction having considered the outcome of the public consultation unless material amendments to the direction are required following public |

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| | consultation in which case, a report will be brought back to the Executive for consideration. |
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1.1 Background

1.1.1 The East Herts District Plan (adopted in October 2018) outlines the need for 18,000 new dwellings up to 2033 alongside an additional 20 hectares of new employment space. This is based on the assumption that East Herts will remain a net exporter of skilled workers to other areas but also that this level of employment space is necessary to sustain the district and its towns as viable “places” in their own right (i.e. communities that act as economic, cultural and social hubs where people can live and work, rather than sterile dormitory housing estates). However, there has been a steady decrease in available employment land in the district for the last 10 – 15 years. This is primarily driven by market forces (given building houses generates better returns than building commercial units) which has been made easier by Permitted Development Rights (PDR) which essentially allow office blocks and industrial space of up to 500 sqm to be converted into residential without requiring planning permission for change of use. The scale of change is evident by walking around the fringes of any of our town centres where it is easy to observe the volume of flats that have replaced office blocks and workshops.

1.1.2 It should be noted that Permitted Development Rights are a key enabler for housing delivery. In that regard this tool has been effective in bringing additional dwellings to market and addressing national challenges regarding lack of housing. Moreover in some instances conversion of office blocks to residential has been entirely appropriate and use of permitted development has been beneficial to accelerate the right process (eg. Where commercial or industrial units are serving no employment purpose and are not fit for purpose). However there

have also been instances where permitted development has been used to convert land to residential at the expense of viable employment land and businesses. In a district where the Green Belt restrictions apply, new development on new greenfield sites is rarely possible, and increased residential development under PDR often represents an uncontrollable and irrecoverable loss of employment space. There is also concern that, in some instances, landlords are forcing commercial tenants out of spaces which provide important sources of local employment where there is no alternative provision for them locally. We have seen a number of businesses forced out of the district or out of business.

1.2 The Herts LEP commissioned a study into the net loss of employment space in the county with the conclusion that 771,000 sqm of employment space has been lost over the past decade (to put in context this is the total office stock in St Albans, Watford and Welwyn Garden City combined). For East Herts there has been a net reduction in office space of 176,000 sqm to 140,000 sqm. Industrial space has seen a reduction from 658,000 sqm to 567,000 sqm over the same period (losses of 20% in office space and 14% industrial respectively). A proportion of this loss has arisen from application of PDR. So, whilst allocation of 20 ha of new employment space is welcome it is possible there will still be a net reduction overall despite the increase in housing numbers. .
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1.3 Properties converted to residential use under PDR are not only uncontrolled in the normal planning sense, but also not subject to the normal residential development strictures applied under the planning process. Owners and/or developers are under no obligation to provide any community benefit contributions (or Section 106 Contributions) nor do they have to comply with the councils requirements for the provision of affordable homes.

1.4 It was announced in October 2019 that consultation would be opened through a Green Paper in November 2019 into the extension of PDRs to include the right to demolish any

commercial buildings in favour of residential construction and the right to extend buildings upwards by up to two floors to create more residential space. (See ERP C). This consultation has been put on hold since the calling of the general election. However depending on the make-up of the future government, it may proceed in 2020.

2.0 The Current Situation

- 2.1 East Herts has experienced relatively little development under PDR to date when compared with other nearby districts with larger stocks of office space. Harlow, Stevenage and Luton have all lost considerable town centre office space to residential and Harlow has also lost a number of offices on industrial estates. However, East Herts office space is still under pressure from residential demand and we are aware of a number of town centre businesses threatened with losing their premises due to their landlords' plans to convert them all or in part to residential use, (e.g. Mudlarks in Railway Street and The Tooke House in The Bull Plain in Hertford). Other office sites on commercial estates have also been converted to residential, notably Conbar House in Mead Lane Industrial area, Hertford, which was actually converted under Prior Approval using PDR. (See ERP D)
- 2.2 Where East Herts has lost commercial space to residential in the past, it has largely been lost on appeal because of the lack of an adopted District Plan and an agreed five year housing supply (e.g. Crane Mead). We now have a District Plan and so this type of loss should be controllable.
- 2.3 Much of the remaining commercial space (but by no means all) is in the form of workshop and factory units which would be difficult to convert to residential and so is currently relatively safe from PDR. However, should PDR be extended to include the right to demolish following the national consultation, all East Herts

commercial space will become vulnerable to PDR regardless of the Local Plan status.

- 2.4 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 allows a local planning authority to make an “Article 4 Direction” to remove permitted development rights from particular sites. This does not prevent development but instead requires that planning permission is required from the council and therefore that the S106 and affordable homes requirements would apply. This enables full consideration to be given to any applications in terms of local demand and viability so that due process is followed. This has already been applied in some of the district’s conservation areas (mostly around historic high streets) and has been effective. However office blocks in the rest of the district are still open to PDR, and the risk is that, left unchecked, further employment space will be lost and increasingly the district’s economic prosperity and its towns’ sustainability will be undermined.
- 2.5 Importantly in the recently announced consultation the definition of commercial buildings is not confined to typical office blocks (B1) but includes most types of use such as industrial and distribution uses (B2 and B8). In other words, permitted development rights are likely to be applied to all employment sites across the whole district.
- 2.6 Currently, many landlords of designated factory/workshop premises in East Herts would find it very difficult to convert them to residential use due to the nature of the current building stock. There are some would like to demolish the existing stock and implement residential-led schemes, changing previously industrial land to flats and houses. Currently, in order to do this owners are required to go through the full planning process and through pre-application advice we are likely to argue that the area is still viable as employment land and any new scheme needs to be employment led in order to protect the local economy. If the

proposals outlined in section 1.4 above go ahead, the landlord can proceed with their plan under PDR. Virtually all industrial estates across the district (except those in flood areas) would be vulnerable to this sort conversion should PDR be extended.

3.0 Invocation Options

- 3.1 **The do-nothing option** - There is considerable market and political pressure to build residential accommodation. If we do nothing we leave ourselves open to potentially uncontrolled development for the foreseeable future, with none of the reciprocal benefits of affordable homes nor community Benefits contributions. Perhaps even more importantly, uncontrolled development could threaten the viability of our towns and communities as commercial and social hubs and therefore the way of life that we have in East Herts.
- 3.2 **The immediate invocation of Article 4** - to remove PDR on a site renders the Council open to potential claims for financial compensation for costs, expense and loss of land value from the owners (See ERP A). Ideally we would wish to avoid this.
- 3.3 **The Deferred Invocation of Article 4** - Most other planning authorities invoking article 4 (e.g. North Herts, Dacorum, Hertsmere) are giving one years (twelve months) notice of a deferred invocation of Article 4 on their designated employment sites. There is no right of appeal against the invocation of PDR but planning authorities should consider opinions made in the consultation and may quash the invocation. We have yet to find definitive opinion as to whether or how long a deferral will mitigate the right of an owner to compensation, but the considered opinion we have seen to date suggests that a deferral of one year (twelve months) is sufficient to nullify any risk of compensation claims. It is therefore our preferred option. We will of course report back to executive should this change.

4.0 Scope and Timing

4.1 For the purposes of this exercise, commercial land in East Herts can be classified into four categories.

- a. Employment land specifically designated as such in the Local Plan
- b. Designated Town Centres
- c. Designated Conservation Areas
- d. All other sites designated in use for employment purposes

Categories a, b & c are defined and specific. For a planning authority to use an Article 4 Direction to remove PDR, it must be able to define the area concerned, to demonstrate that planning control of development at that site is strategic and that the introduction of article 4 conforms to NPPF guidance.

4.2 It is relatively straightforward to argue the case for controlled development in previously defined areas such as a, b or c. However, any sites falling under d) would have to be argued on a case by case basis.

4.3 Therefore we propose that East Herts initially invokes Article 4 on the employment sites identified in the District Plan (of which there are 32 in total). As these are already designated as employment areas through the adoption of the plan there are fewer grounds for objection. Some councils in Hertfordshire (e.g. North Herts, Welwyn and Hatfield, Hertsmere and Dacorum) have introduced or are in the process of introducing Article 4 directions for their designated all their industrial employment areas. It is recommended that East Herts do the same. Additional employment areas and sites will be considered in due course.

4.4 We would also use the notice to owners to notify them that we reserve the right to invoke an immediate or deferred Article 4 intervention contingent on any extension of PDRs to include the

demolition of commercial premises to enable residential development.

4.5 The proposed process of implementing Article 4 directions is broadly as follows (the precise timing is not clear in legislation, but the process will follow in this order)

- a. Executive agree for non-immediate Article 4 directions on the 32 designated employment areas identified in the corporate plan to be made
- b. Notifications to owners and stakeholders sent, signs erected at sites and consultation opens Site owners are given notice of the invocation in one year's time of Article 4 relating to the current PDR.
- c. Site owners are also given notice that the council retains the option to invoke immediate or deferred Article 4 on any particular site in the case that PDR is extended to include the demolition of premises in favour of residential construction.
- d. Secretary of State also notified of the invocation.
- e. After 21 days consultation closes, the Council take a view on whether to proceed based on feedback received.
- f. Delegated authority provided to the Head of Planning and Building Control to implement the direction.
- g. After 12 months the direction becomes valid

Background Papers: None

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