

Crawley Borough Council

Report to Overview & Scrutiny Commission 6 July 2015

Report to Cabinet 8 July 2015

Proposed Article 4 Directions for Manor Royal

Report of the Head of Strategic Housing and Planning Services SHAP/047

1. Purpose

Two Article 4 Directions are proposed for Manor Royal. These would restrict the permitted development rights afforded by the Town and Country (General Permitted Development Order) 2015 that allow office (B1)(a) and warehouse (B8) uses to convert to residential uses (C3) without the need for planning permission. The Article 4's Directions would withdraw these rights within Manor Royal because of the adverse impact these changes are having on the supply of employment floorspace and the commercial operation of the Business District.

2. Recommendations

2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

2.2 The Cabinet is recommended to:

- a) Approve the making of a non-immediate Article 4 Direction under the Town and Country (General Permitted Development Order) 2015 for Manor Royal removing permitted development rights from office (B1a) to residential (C3) for the area outlined in bold on the plan at Appendix 1.
- b) Approve the making of a non-immediate Article 4 Direction under the Town and Country (General Permitted Development Order) 2015 for Manor Royal removing permitted development rights from storage & distribution (B8) to residential (C3) for the area outlined in bold on the plan at Appendix 1.
- c) Delegate authority to the Head of Strategic Housing and Planning Services in consultation with the Portfolio Holder for Planning and Economic Development to formally confirm both non-immediate Article 4 Directions following the 12 month notification period, if having fully considered all representations made during the consultation period, they are of the opinion that the Article 4 Directions should be made.
- d) Authorise officers to assess the potential for the introduction of an Article 4 Direction for the town centre.

3. Reasons for the Recommendations

- 3.1 The Council has a scarcity of employment land available with the most recent Employment Land Trajectory in February 2015 showing a deficit of supply of 35 hectares of land. Central Government widening of permitted development rights means that commercial premises (B1 offices and B8 storage and distribution) can be converted to residential units without the need for planning permission. This means that the amount of commercial floorspace is being reduced and that there is growing commercial uncertainty regarding how the Manor Royal Business District will function, given the incursion of residential properties into the town's main industrial and commercial location. The Town Centre is a sustainable location within which residential uses are encouraged by national and local planning policy. Therefore an Article 4 is not considered appropriate in the Town Centre.

4. Background

- 4.1 Following an unsuccessful application to the Department for Communities and Local Government (DCLG) for Manor Royal to be exempt from the increased permitted development rights, submitted by the Council in February 2013, the Council has been exploring ways to protect commercial floorspace in Manor Royal. The Council has been developing emerging Local Plan policies to protect the role and function of Manor Royal and considering other mechanisms. Local businesses and commercial interest groups such as the Manor Royal Business Improvement District (BID) Company and the wider Gatwick Diamond Initiative (GDi) have encouraged the Council to look into such mechanisms.
- 4.2 Article 4 Directions must be made in accordance with the National Planning Policy Framework which states at paragraph 200 that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The introduction of the Article 4 Direction would require applicants to formally submit a free planning application for these specified changes of use, allowing the Council to be involved in a formal decision process. This will allow a case-by-case judgement to be made as to whether the change of use to residential would undermine the economic function of the Business District, as well enabling the council to form a view on size and design considerations that are currently outside the control of the local planning authority, because the current prior approvals process only allows consideration of issues relating to highways, contamination and flooding.
- 4.3 There is evidence (referred to in 5.3) that commercial floorspace is being lost by owners wanting to utilise the permitted development rights and change their office buildings to residential. It is also the case that this is not just occurring in vacant or underutilised floorspace, and in practice trading businesses are being moved out of premises to facilitate a change of use from offices to residential (B1(a) to C3).
- 4.4 The reduction in land supply is further exacerbated by the supply constraints that already exist in the town as a result of the Gatwick Airport safeguarding, which significantly restricts any further expansion of Manor Royal.
- 4.5 In April 2015, central government extended permitted development rights to also include conversion from B8 storage and distribution to residential without planning permission, but subject to a prior approval process.

5. Description of Issue to be resolved

- 5.1 The Council, as part of its evidence base behind the Crawley Local Plan 2030, appointed Nathaniel Lichfield & Partners to assess demand and supply for economic floorspace. Their Economic Growth Assessment (EGA) Feb 2015 showed a requirement for 57.9 hectares of employment land, 20.9 hectares of office (B1) and 37.0 hectares of industrial (B2/B8). Following the strong resilience of Crawley's economy to the recession, and as result of recent developments and planning consents within the area, including the sale and development of many cleared sites, only 22.7 hectares of available employment land supply remains in Crawley. This is illustrated in the February 2015 Employment Land Trajectory, produced to support the Local Plan 2030, which shows Crawley's land supply as being highly constrained.
- 5.2 The Local Plan 2030 policies EC1-EC3 specify that the town should protect all main employment floorspace, and identifies Manor Royal as a main employment area that should have a presumption in favour of B use development, and where the loss of any additional land to non B use floorspace should be resisted. Local Plan policy EC4 protects the function of Manor Royal as a commercial area, recognising that the introduction of residential uses in an area that it is not suitable may restrict the function and operation of established businesses, especially those with industrial processes, due to environmental health or noise regulations.
- 5.3 Following the introduction of the office to residential permitted development rights (B1 to C3) in April 2013, the Council has been monitoring the loss of employment floorspace within the town. Prior approval notification applications received across the town to date reflect a total loss of 32,442 sqm floorspace, including 6,256 sqm in Manor Royal.
- 5.4 In April 2015 the GPDO 2015 came into force and introduced a provision to allow B8 (storage and distribution) to change to residential (C3) use, again without planning permission, but subject to a prior approval process. To date, no applications have been received. However the extent and impact could be considerable, especially as there is already a substantial deficit of 29 hectares of industrial space within the town and a significant concentration of B8 floorspace within Manor Royal. The changes to permitted development rights have caused concern to local businesses, business groups and investors, particularly given the lack of certainty that is afforded to neighbouring uses.
- 5.5 The Council remains committed to developing a clear and transparent planning framework to assist developers, businesses and investors in Manor Royal. By removing the ambiguity that is being experienced because of the new permitted development rights, it is considered that the Council is building on its commitment to support Manor Royal and preserve the important role it plays in the town and the wider sub region.

6. Information & Analysis Supporting Recommendation

- 6.1 There are two potential types of Article 4 Directions; immediate and non-immediate. The immediate route allows an Article 4 Direction to be put in place immediately by the Local Authority. While on the face of it this seems attractive, there are significant risks attached to the approach. This route exposes the Council to significant legal and financial risk as there are substantial compensation rights afforded to land owners. For this reason this approach is generally not used by Local Authorities other than in emergency situations. It is therefore recommended that a non-immediate Article 4 Direction, which is subject to public consultation and does not have the same level of legal or financial risk, should be progressed.

- 6.2 Both Croydon and Brighton & Hove Councils have recently successfully made non-immediate Article 4 Directions to remove the same permitted development rights in defined areas, and officers are drawing on the expertise of Brighton & Hove's legal team to assist in this process.
- 6.3 In order for an Article 4 Direction to be imposed, DCLG guidance requires local authorities to specify the area protected by an Article 4 Direction carefully and set any boundaries accordingly. Guidance on the use of Article 4 Directions was Published by the Department for Communities and Local Government in November 2010.¹ It states that local planning authorities should only consider Article 4 Directions where the use of the permitted development rights would *"harm local amenity or the proper planning of the area"* and where there is evidence to identify that potential harm. Article 4 Directions must be made in accordance with the National Planning Policy Framework (NPPF) which states at paragraph 200 that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area.
- 6.4 The introduction of residential uses into Manor Royal creates a level of uncertainty to investors, developers and existing businesses. The Council has worked closely with the business community to establish a clear planning framework which pro-actively supports the business function of Manor Royal. However, this approach is being undermined by the introduction of new residential uses and subsequent need to protect their amenity through environmental legislation. Companies are concerned of the "ripple" effect regarding their industrial and commercial activities, and how these may be compromised by restrictions placed on their operations as a result of the new residential properties. These could be by virtue of issues relating to noise, parking, hours of operation, vibration and industrial processes, which whilst previously acceptable, may become a statutory nuisance when noise-sensitive residential uses are introduced to an industrial area. There is therefore demonstrable and evidenced harm to the commercial aspect of the area and the new permitted rights are harming the proper planning of the area. The two Article 4 Directions are therefore considered to be an appropriate mechanism based on NPPF and DCLG guidance.
- 6.5 Whilst there is a significant unmet housing need in the borough, new housing should only be provided in areas that are appropriate for residents to live. The Local Plan 2030 supports this through a number of key polices relating to noise, buffer zones, and general design principles. As the permitted development rights override these considerations, it is considered that, whilst the provision of housing is very important, this need should not be at the expense of ensuring a good standard of living for residents, nor should it override or compromise the importance of maintaining the success of commerce in Manor Royal. The Article 4 mechanism is therefore only proposed for Manor Royal as per the boundary In Appendix One. This mirrors that of the exemption requested to DCLG, whilst relating to evidenced support from local business groups, and where the land supply issues are most intense.
- 6.6 The legal process to implement a non-direct Article 4 requires a 12 month formal notification period that includes a 21 day minimum statutory consultation period. The council proposes to extend to this to a 3 month consultation period, during which businesses and stakeholders will be asked to comment on whether the Article 4 Direction is supported, and to provide feedback on the boundary proposed. In addition to the statutory local advertisement and site notices, direct consultation will be undertaken with specific interested parties. These include commercial agents, owner/occupiers of businesses in the Manor Royal area and key local developers. Consultation details will also be published on the council's website.

- 6.7 When the new permitted development right for office to residential was introduced in 2013, the Council considered whether, alongside the application for exemption for Manor Royal, an application for an exemption should also be made for the Town Centre. This was not taken forward at the time because the Town Centre was recognised as a suitable location for residential accommodation. It is recognised that concerns have been raised in relation to some of the permitted development that has taken place within the town centre. It is therefore proposed that the potential to introduce an Article 4 Direction in the town centre is re-examined and that officers bring forward a further report in the autumn.
- 6.8 The Council has repeated its request for exemptions from permitted development rights to the DCLG through every consultation stage, setting out its concerns regarding land supply and the impact on commercial operations. However the GPDO 2015 cites that the office to residential permitted change is to be continued until 2016, and storage/distribution to residential is permitted up to 2018. The council is concerned that the permitted development rights for office class may be extended during the next 12 months and therefore it is considered that for both B8 & B1, the 12 month notification period including 3 months consultation, should be initiated.
- 6.9 Should the Council decide not to progress an Article 4, then further losses of floorspace and buildings will continue to be experienced. It could be that the B8 (storage and distribution) Article 4 is the only one to be progressed, given that the B1 to residential permitted development right is due to end on 30 May 2016. However, given the significant level of take up already, it is considered that both Article 4s could be twin-tracked and the Council can decide not to progress if the B1 permitted development right isn't extended within the 12 months notification period, or if the representations received indicate that is the right course of action. It is considered that dual tracking both processes will also make the process as simple as possible for those businesses and investors affected.
- 6.10 As with the exemption process and consultation comments to DCLG, business groups have indicated clear support for the Article 4. The Council has initially liaised with Gatwick Diamond Initiative, Gatwick Diamond Business, the Local Economy Action Group, the Coast to Capital LEP and the Manor Royal Business Improvement District Company, all of which support the Council's approach for progressing with non-immediate Article 4's and have requested that the Council progress with expedience. They also re-iterated their support for the Council taking forward both Article 4 directions.

7. Implications

- 7.1 The non-direct route recommended mitigates the Council's exposure to legal and financial risk and is therefore the recommended route.
- 7.2 The required 12 month notification period may lead to applications coming forward during the process of bringing the Article 4s into effect. It is not possible to safeguard against this risk.
- 7.3 There is currently an £80 planning fee for the determination of Prior Approval office to residential applications. When an Article 4 Direction comes into force, any planning application required solely due to the Article 4 Direction would not incur a fee, and therefore planning application income will be lost.
- 7.4 The proposed Article 4 Direction will help to address the need to retain affordable office space within the identified area, it will help businesses and protect jobs. If the loss of office & storage space remains unmanaged this could have a substantial

adverse economic consequence on the town and the wider sub region with regards to a competitive economy, jobs growth, and undermining investment in business space. This is not considered to be offset by the positive benefits the new rights would bring in terms of the potential delivering of any new housing.

- 7.5 The Council will be utilising the services of Brighton and Hove's legal team in order to assist with the process, following their recent success and building on their lessons learnt.

8. Background Papers

Employment Land Trajectory February 2015
<http://www.crawley.gov.uk/pw/web/pub242264>

Employment Growth Assessment 2015
<http://www.crawley.gov.uk/pw/web/pub242262>

General Permitted Development Order 2015
http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf

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Appendix One: Proposed Manor Royal Article 4 Boundary

