

Crawley Borough Council

Report to Cabinet

30 June 2021

Replacement Article 4 Directions for Main Employment Areas (Class MA)

Report of the Head of Economy and Planning, **PES/387**

1. Purpose

- 1.1 The Government has recently amended the Use Class Order for England, consolidating several previously distinct use classes into the new Use Class E. Further, it has introduced a new permitted development right (Class MA) through amendments to the General Permitted Development Order (GPDO) 2015 that will allow buildings within Class E to convert to residential (Class C3) through prior approval.
- 1.2 The changes will have implications for the existing Article 4 Directions made by the council, which prevent office and light industrial uses converting to residential use through prior approval. These are currently in force at the Main Employment Areas (MEAs) of Manor Royal, Maidenbower Business Park, Lowfield Heath, Three Bridges Corridor, and Tilgate Forest Business Centre.
- 1.3 Should the Council wish to retain the protections made by these Directions, it will be necessary to prepare replacement Article 4 Directions related to the new Class MA permitted development right.

2. Recommendations

- 2.1 To the Cabinet

The Cabinet is recommended to:

- a) Approve the making of non-immediate Article 4 Directions under the Town and Country (General Permitted Development Order) 2015 (as amended) to remove the Class MA permitted development right for Commercial, Business & Service (E) to residential (C3) at the Main Employment Areas shown at Appendix A, these being:
 - i. Manor Royal
 - ii. Maidenbower Business Park
 - iii. Lowfield Heath
 - iv. Three Bridges Corridor
 - v. Tilgate Forest Business Centre
- b) Delegate authority to the Head of Economy and Planning in consultation with the Cabinet Member for Planning and Economic Development to formally confirm the 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.

3. Reasons for the Recommendations

- 3.1 Crawley is firmly established as one of the key economic drivers in the South East of England, representing the economic heart of the Gatwick Diamond and the wider Coast to Capital Local Enterprise Partnership (LEP) area. The COVID-19 pandemic has impacted substantially upon Crawley's economy and, whilst it is anticipated that the local economy will respond positively to the current challenges, it is vital that the right conditions are in place to support recovery.
- 3.2 There remains significant need for business land in Crawley, with the adopted 2015 Local Plan identifying an overall need for 57.9ha new employment land in the period up to 2030. However, with an available land supply pipeline of 23ha, there is a deficit of some 35ha business land. The available business land has continued to reduce as sites are built out, and the land supply pipeline is currently 17.56ha, as per the Employment Land Trajectory (Base Date 1 September 2020). To help meet Crawley's employment needs, the Draft Submission (Reg. 19) Local Plan proposes the allocation of an industrial-led Strategic Employment Location at Gatwick Green, though in order to ensure a sufficient supply of employment land it is also critical to ensure that the function of borough's existing Main Employment Areas (MEAs) are protected.
- 3.3 Crawley has already lost around 61,500sqm of commercial space to residential development via permitted development rights, and the presence of amenity-sensitive residential uses in the MEAs can constrain remaining business operations and erode market confidence. Some MEAs, for example Broadfield Business Park, have been undermined to such an extent by the introduction of residential uses that their overall employment function has effectively been lost. Of further concern is that working MEAs are not a suitable location for people to live, resulting in an isolated and poor quality of life that is contrary to the planned nature of Crawley as a New Town.
- 3.4 The Council has been selective in identifying the MEAs within which Article 4 Directions apply, having made these only where they are necessary to protect local amenity, the existing local business function and employment base and the well-being of the area. The existing Article 4 Directions, whilst having helped address the concerns mentioned above, will not be effective against the new right for Use Class E (GPDO Class MA). Should the council wish to retain the current protections made by these Article 4 Directions, it will be necessary to bring into force replacement Directions relating to the new Use Class E (GPDO Class MA) permitted development right. This has been confirmed through legal advice.

4. Background

- 4.1 The council, supported by local business groups, has brought into force a number of non-immediate directions under Article 4(1) of the Town and Country (General Permitted Development) Order 2015. These remove permitted development rights that would otherwise allow B1a offices, B1c light industrial, and B8 storage & distribution uses, to change to C3 residential through the prior approval process. This means that planning permission is required where a change of use is proposed to residential, giving the council greater control to ensure that development is appropriate and properly planned.
- 4.2 The Directions apply to designated MEAs at Manor Royal, Maidenbower Business Park, Lowfield Heath, Three Bridges Corridor, and Tilgate Forest Business Centre. In conjunction with the Local Plan, the Directions enable the council to take a strong position to safeguard the supply of employment land, and ensure that residential development is properly and sustainably planned.

- 4.3 The Government recently amended the Use Class Order in England, with changes having taken effect on 1 September 2020. The revised Use Class Order subsumes the former Use Classes A1 (retail), A2 (financial & professional services), A3 (restaurant), B1a/b/c (business) and parts of D1 (non-residential institution) and D2 (assembly & leisure) into a single new Use Class E (Commercial, Business and Service). This means that changes between these uses can now take place without any planning consent.
- 4.4 Following this revision, the Government has introduced a new permitted development right (referred to as Class MA) that will come into force on 1 August 2021. Subject to specific limitations and conditions, the new right would allow any building or planning unit within Use Class E to convert to residential use through prior approval. The newly introduced Class MA permitted development right seeks not only to consolidate existing permitted development rights that allow conversion of office and light industrial buildings to residential use, but will also expand this right considerably to permit the conversion of any commercial premises within the new Use Class E to residential use.
- 4.5 It should be noted that the permitted development right relating to Use Class B8 storage & distribution (GPDO Class P) was time limited and expired on 19 June 2019. Use Class B8 is unaffected by the recent changes, and does not form part of Class E. There is no current permitted development right which allows property in a Class B8 use to be converted to C3 residential use.
- 4.6 The permitted development right relating to B1c light industrial use (GPDO Class PA) was also time limited, and expired on 1 October 2020. However, Use Class B1c now forms part of the new Use Class E, and is therefore subject to change of use under the new Class MA permitted development right.

5. Description of Issue to be resolved

- 5.1 As the council's existing Article 4 Directions relate to the superseded Use Class B1a and B1c, they will not be effective against the new right for Use Class E (GPDO Class MA). Should the council wish to retain the protections made by Article 4 Directions, it will be necessary to bring into force replacement Directions relating to the new Use Class E (GPDO Class MA) permitted development right.
- 5.2 The Government has introduced transitional arrangements where existing Article 4 Directions relating to offices are in place. This means that although the new right to convert office buildings to residential comes into effect on 1 August 2021, where Article 4 Directions removing the previous iteration of this right were in force before 31 July 2021, these will remain in force until 1 August 2022 unless otherwise cancelled. There would therefore be sufficient time for the Council to prepare new non-immediate Article 4 Directions to come into force before the carry over date of 1 August 2022.
- 5.3 The transitional arrangements do not apply to light industrial units, and these remain subject to the new permitted development right through Class MA.
- 5.4 The council remains committed to developing a clear and transparent planning framework to assist developers, businesses and investors. This approach is even more important as the borough seeks to respond positively to the unprecedented economic impacts of the COVID-19 pandemic. By responding to the new prior approval rights with replacement Article 4 Directions, the council will be responding positively to support economic recovery, protecting the existing employment land supply and removing the uncertainty that would otherwise be experienced by businesses.

6. Information & Analysis Supporting Recommendation

- 6.1 The National Planning Policy Framework states at paragraph 53 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.
- 6.2 Through the Local Plan and the Article 4 Directions that are currently in force, the council has worked closely with the business community to establish a clear planning framework which pro-actively supports the business function of Crawley. There is significant risk that the newly proposed permitted development right will undermine this work, justifying the making of replacement Article 4 Directions.
- 6.3 Introduction of unplanned residential use into the MEAs creates scope for conflict, as environmental legislation requires that the amenity of the new residents is protected. This can create uncertainty for existing and future businesses, as issues such as noise, parking, hours of operation, vibration and industrial processes, which were previously acceptable, may become a statutory nuisance when noise-sensitive residential uses are introduced to an industrial area.
- 6.4 It should be noted that for Class MA, the GPDO will allow prior approval decisions to consider impacts of noise from commercial premises on the intended occupiers of development, and also impacts on the intended occupiers of the development that may arise from introducing residential use in an area which the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses. These conditions represent welcome additions to the GPDO, though given the uncertainty created by Class MA, there remains risk that without up-to-date Article 4 Directions in place, Crawley's business land supply will continue to be undermined.
- 6.5 Replacement Directions are therefore proposed at the location shown in Appendix A to ensure that protections provided by existing Article 4 Directions can be retained. The proposed replacement Article 4 Directions will help to retain the supply of employment land and floorspace in the borough, ensuring that there is a good mix and supply of business premises, helping to support businesses, protect jobs, and promote economic recovery. The approach will ensure that the positive impact made by the Article 4 Directions already in force is not undermined.
- 6.6 In terms of housing supply, the Council is meeting its supply-led Local Plan housing requirement, exceeding the requirements set by the Housing Delivery Test, and having in place greater than the minimum five year housing land supply. This has been achieved through maximising the use of land within Crawley borough and working with neighbouring authorities through Duty to Cooperate to ensure that the remaining unmet housing needs are met. It is considered that new housing should only be provided in areas that are appropriate for residents to live. The Local Plan 2030 and the emerging Local Plan review support this through key policies 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 supply of employment land.
- 6.7 Introduction of replacement Article 4 Directions at the identified MEAs will require applicants to formally submit a planning application (free of charge) for the specified changes of use covered by the direction. This will allow the council to be involved in a formal decision making process, enabling a case-by-case judgement to be made

as to whether or not a proposed change of use to residential would be appropriate having regard to Development Management considerations that prior approval places outside the control of the Local Planning Authority.

- 6.8 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, but there are significant risks attached to the approach, as it exposes the Council to legal and financial risk because substantial compensation rights are afforded to land owners. For this reason the immediate approach is generally not used by Local Authorities other than in emergency situations. As has been the case with previous Article 4 Directions, it is recommended that the non-immediate route is pursued.
- 6.9 The legal process to implement a non-immediate Article 4 Direction requires a 12 month formal notification period that includes a 21 day minimum statutory consultation period. The council propose to extend this to a 3 month consultation period, during which businesses and stakeholders will be invited to comment on whether the proposed Article 4 Directions are supported and provide feedback on the boundaries proposed. In addition to statutory local advertisement and site notices, direct consultation will be undertaken with specific interested parties. These include business groups, owner/occupiers of businesses in the relevant main employment area and key local developers. Consultation details will also be published on the council's website.

7. Implications

- 7.1 The non-immediate Article 4 Direction route mitigates the council's exposure to legal and financial risk of compensation claims and is therefore the recommended approach. The transition arrangements mean that changes of use from office to residential will remain covered for this period where existing Article 4 Directions are in place. Office to residential has formed the vast majority of prior approval applications in Crawley to date, and therefore whilst prior approval applications for light industrial to residential may come forward during the intervening period, based on previous trends this is anticipated to be relatively few in number. The making of new Article 4 Directions will have the effect of cancelling the preceding direction.
- 7.2 Applications for prior approval under Class MA submit a fee of £100 per dwelling house, up to a maximum level of £5,000. This is a significant rise from the £96 total fee that is currently charged for determination of prior approval B1a/B1c/B8 to residential applications. When an Article 4 Direction comes into force, any planning application required solely as a result of the Article 4 Direction would not incur a fee, and therefore an amount of planning application income will be lost.
- 7.3 In progressing the replacement Article 4 Directions, it has been necessary to obtain legal advice, sourced from Horsham District Council and funded by CBC Legal. It is possible that further legal advice may be required to support the bringing into force of the replacement Directions.
- 7.4 Planning regulations require the council to place an individual public notice in the local press for each Article 4 Direction, firstly at the start of the notification period, and again a year later should the Direction(s) come into force. The cost of a single public notice is around £500, so the anticipated cost implication of replacing the existing Directions would total around £5,000. The Finance team will look to allocate a budget for public notice costs from 'new burdens' funding received for the current financial year, as this is a grant that is not ring-fenced.

8. Background Papers

Adopted Crawley Borough Local Plan 2015

<https://crawley.gov.uk/sites/default/files/documents/PUB271853.pdf>

Draft Submission (Reg. 19) Crawley Borough Local Plan January 2021

<https://crawley.gov.uk/sites/default/files/2021-01/Submission%20Draft%20Local%20Plan%20January%202021.pdf>

Employment Land Trajectory (Base Date 1 September 2020) January 2021

<https://crawley.gov.uk/sites/default/files/2021-01/Employment%20Land%20Trajectory%20January%202021.pdf>

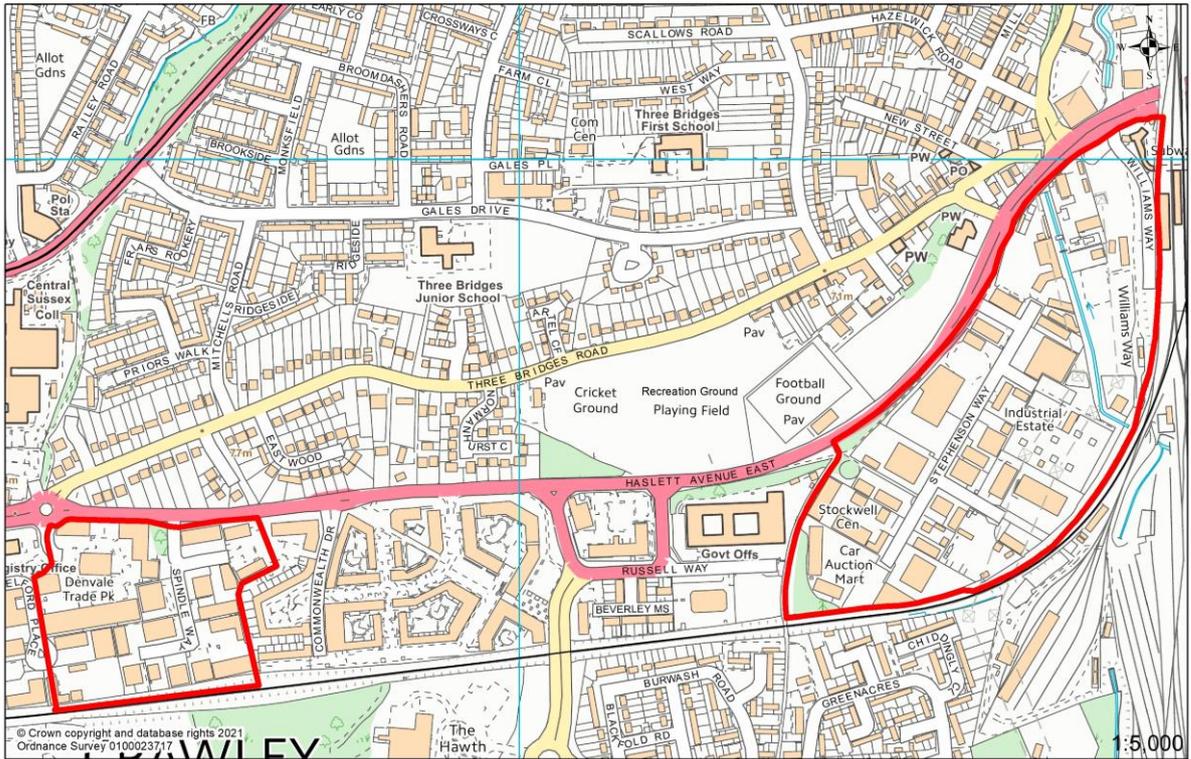
Economic Growth Assessment – focussed update for Crawley September 2020

<https://crawley.gov.uk/sites/default/files/2020-10/Economic%20Growth%20Assessment%20-%20focussed%20update%20for%20Crawley.pdf>

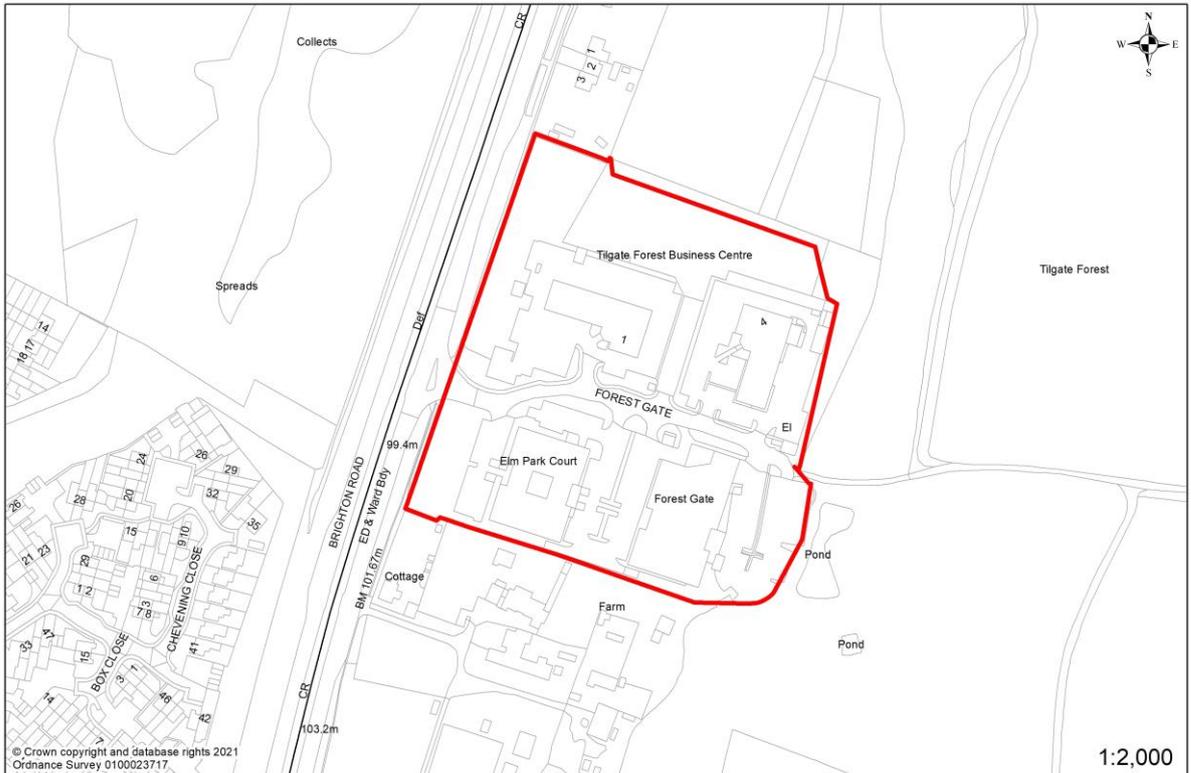
The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 <https://www.legislation.gov.uk/uksi/2021/428/made>

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ARTICLE 4 DIRECTION: THREE BRIDGES CORRIDOR MAIN EMPLOYMENT AREA



ARTICLE 4 DIRECTION: TILGATE FOREST BUSINESS CENTRE MAIN EMPLOYMENT AREA



ARTICLE 4 DIRECTION: MAIDENBOWER BUSINESS PARK MAIN EMPLOYMENT AREA

