

## **Record of Decision**

### **Confirmation of Article 4 Direction relating to the Employment areas as designated in the EHC District Plan October 2018**

#### **1) Background Summary**

EHC issued its intention to impose an Article 4 Direction on the sites designated as Employment Areas in the 2018 District Plan on the 18<sup>th</sup> December 2019. The consultation period lasted to 26<sup>th</sup> January 2020 and the Direction was scheduled to come into force on the 2<sup>nd</sup> January 2021 subject to confirmation of the Direction.

A number of responses to the consultation were received, some in support of the Direction and others raising issues and questions which are listed in section 2 below alongside our responses.

On the 23<sup>rd</sup> January 2020, Ministry of Housing, Communities and Local Government (MHCLG) sent a letter to EHC requesting further information on the evidence underpinning the direction. EHC responded to the letter on the 19<sup>th</sup> February 2020. We have yet to receive comments from MHCLG regarding any further action they may wish to take, despite repeated requests.

Although we were initially under the impression that we were obliged to wait for explicit MHCLG approval to proceed with the confirmation process, following legal advice and a communication from MHCLG, it is now the case that we can continue with confirmation and implementation of the Direction as originally intended.

## 2) Comments received and our response to them

Comment	Council Response
<p>The Council has not provided the “particularly strong justification” required by the Planning Practice Guidance for imposing an Article 4 Direction where a prior approval process needs to be followed.</p>	<p>Not agreed. The NPPF says that directions should be limited to situations where they are “necessary” to protect local amenity or the well-being of the area. The NPPF doesn’t refer to “particularly strong justification”.</p> <p>The reasons for the Direction are set out in the Executive report of 3 December 2019 and expanded on in the Council’s letter to MHCLG on the 19 February 2020 (attached at Appendix 2 to this report). As set out, the Council considers the Direction is necessary for the protection of local amenity and well-being of the area and is consistent with the NPPF. In short, the Direction protects the district’s employment land and the long term well-being and commercial sustainability of our towns and communities.</p>

Comment	Council Response
<p>The East Herts District Plan (EHDP) 2018 is recently adopted and sets out how the District's employments needs will be met to 2033. It does not mention the intention to impose an Article 4 Direction in relation to office to residential conversions; only sets out policies to protect employment land where General Permitted Rights (GPR) do not apply; and includes allocations to provide replacement B1 sites with better access to the strategic network.</p>	<p>Noted, even if the Council had an intention at the time, not mentioning it does not detract from the necessity of this Direction.</p>
<p>The context of Mill Studio has changed significantly since its inclusion within the Crane Mead Employment Area. This change is a result of granting of planning permission for the large residential led development on the site to the west and south. Mill Studio is, therefore, now surrounded on three sides by residential development (four if you include the residential properties to the north of the River</p>	<p>Not agreed, B1(a) office space can complement residential development, and access to both is an essential characteristic of a sustainable community.</p>

Comment	Council Response
<p>Lea) and is no longer conducive to an employment site and, the lack of clear justification notwithstanding, if the Council decide to confirm the Article 4 Direction, it should be excluded from the Article 4 area.</p>	
<p>We consider that the Council has failed to take into account the individual circumstances of the Dicker Mill Industrial Estate whereby a number of its units do not contain typical employment uses falling within the B Use Classes.</p>	<p>Not Agreed.</p> <p>If this comment is directed at those premises whose designation has changed to non-class B uses, the Direction does not apply to them.</p> <p>The majority of the premises on the Dicker Mill Estate, to whom the Direction does apply, are still designated for class B uses and it does not follow that the entire estate should be allowed to change usage in an uncontrolled manner. Many of the small companies that reside there provide invaluable local employment and services to the residents of the town. Should they be required to move out there are no further available sites in Hertford where they can go. To</p>

Comment	Council Response
	<p>remain an economically sustainable community, the Council needs to retain some control over employment space.</p>
<p>As already outlined above, we also believe that the Dicker Mill Industrial Estate is of an insufficient quality in overall employment terms, to merit the protection of employment provision under an Article 4 Direction given that some of the premises are no longer fit for purpose. There is a complete absence of the level of compelling evidence required in order to justify such a designation. Furthermore, it is clearly evident that Dicker Mill does not contain employment sites that are of most strategic importance to the District.</p>	<p>Not agreed, the estate makes a contribution to providing a range of different premises, in particular at different rental levels. There is no requirement for “compelling evidence” nor for the Direction to only apply to sites of most strategic importance. The Council remains of the view that it is necessary to include this land.</p> <p>Investment in commercial premises has been negligible in East Herts for the last decade. Employment land in East Herts is, however, a finite resource. In order to protect the well-being of the area, the Council wishes to ensure that any change to residential or other use is justified; that the land is not suited or required for commercial use and/or can be replaced within the district and, that any changes of use are conducted in a controlled manner via the Planning Process.</p>

Comment	Council Response
<p>We also wish to highlight the fact that the Dicker Mill Industrial Estate is not referred to as a designated Employment Area within the written text of Policy HERT6 (Employment in Hertford) of the Adopted East Herts District Plan 2018. Consequently, there appears to be a discrepancy between the wording of this policy and the designated Employment Areas shown on the Policies Map.</p>	<p>This is not relevant to the Direction, however Dicker Mill Industrial Estate is included as a designated employment area.</p> <p>Paragraph 3.2.11 of the District Plan clearly states 'all Employment Areas that were previously identified through the East Herts Local Plan 2007 have retained their designation through the District Plan'. Dicker Mill is also defined on the Policies Map where Policy ED1 Employment applies.</p>
<p>Residential accommodation meets a need in the market for low cost housing; additional 'red tape' of requiring planning permission may put off investment in new stock thereby reducing the rate of increase in supply to meet needs.</p>	<p>The Council supports the provision of good quality low cost housing, however there is no certainty that without the Direction any housing created would be low cost. In addition, East Herts has over 6-years' future supply of housing including affordable housing, under its Local Plan.</p>
<p>An Article 4 Direction will generate planning applications which will</p>	<p>Noted, however, this is outweighed by the benefit of protecting the <a href="#">local</a></p>

Comment	Council Response
<p>require resources to determine. Administration will in most cases cost more than the fee received.</p>	<p>amenity and the well-being of the area</p>
<p>The Article 4 Direction would not apply retrospectively to existing properties at Dicker Mill which have already been converted to residential and other non-employment uses.</p>	<p>Agreed. It is noted that some premises have already been converted to residential under PDR. It is therefore even more important that premises for small business are retained so as to maintain the viability of the town as a commercial centre.</p>
<p>A non-immediate Article 4 Direction could have the unintended consequence of encouraging a rush of prior approval applications in the 1-year grace period before it takes effect in January 2021.</p>	<p>Noted.</p>

### 3) Changes considered

Having the considered the representations received and noting there has been no material change in circumstances, no changes or amendments are considered necessary to the Direction prior to confirmation.

### 4) Consultation with Executive Member

The Executive Member for Planning has reviewed the Direction and submissions from the public and the replies to them. The Executive Member considers that the Direction should be confirmed without amendment

## **5) When the direction comes into force**

Due to the delay in awaiting a response from MHCLG, the Council did not confirm the Direction before 2 January 2021. Although the Town and Country Planning (General Permitted Development) (England) Order 2015 envisages that directions are confirmed before coming into force, it expressly states that directions come into force on the date specified once confirmed. The order does not allow the Council to choose a different date. If confirmed, this Direction must therefore come into force retrospectively as of 2<sup>nd</sup> January 2021.

It is recognised that the retrospective effect is unusual. However, even if the Council was able to choose when the Direction came into force, it is considered that using the previously advertised date results in certainty. It is also noted that any prior approval given before confirmation would remain extant. On the other hand, assuming they were not aware of the Direction harm would be caused to any applicant whose prior approval notification is currently pending. While the Council could decide not to confirm this Direction and make a new direction with a different date for coming into force, that would result in additional cost. It would also result in delay in protecting the well-being of the area. While delay could be reduced by a new direction coming into force with immediate effect, it is not considered the threshold for doing so would be met in this instance.



It is therefore concluded that in light of the protection for earlier notifications, the harm of the Direction coming into force on 2 January 2021 is outweighed by the benefit of certainty and the cost and delay that would be involved in not confirming this direction and making a new direction with a different date for coming into force.

**6) Decision**

Pursuant to the delegation given to me by the Executive on 3 December 2019, after having consulted the Executive Member and considered the representations received, I decide to confirm the Direction in Appendix 1 so that it came into force on 2 January 2021 for the reasons set out above, in the report of 3 December 2019 and in the letter of 19 February 2020.

**7) Date of the decision**

**This decision is made on the 1 April 2021**



**Sara Saunders**

***Head of Planning and Building Control***

**East Herts Council**

## Appendix 1

**TOWN AND COUNTRY PLANNING ACT 1990**  
**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)**  
**(ENGLAND) ORDER 2015 AS AMENDED**  
**DIRECTION MADE UNDER ARTICLE 4(1) WITHOUT IMMEDIATE EFFECT TO**  
**WHICH ARTICLE 6 APPLIES**

WHEREAS East Herts District Council (“the Council”) being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the “Order”) as amended, are satisfied that it is expedient that development of the description(s) set out in Schedule 1 below should not be carried out on the land listed in Schedule 2 below, unless planning permission is granted on an application made under Part II of the Town and Country Planning Act 1990, as amended.

AND WHEREAS the Council consider that the development of the said descriptions would be prejudicial to the proper planning of the area, would constitute a threat to the amenities of their area.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Order as amended, hereby direct that the permission granted by Article 3 of the said Order shall not apply to development of the said land of the description(s) set out in Schedule 1 below, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended.

### **SCHEDULE 1**

#### **In respect of the Land described in Schedule 2**

The development referred to in Schedule 2 Part 3 Class O and PA to the said Order not being development comprised within any other class that is to say:

Class O – Development consisting of a change of use of a building and any land within its curtilage from Class B1(a) (offices excluding those in A2 use) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (“the Use Classes

Order”), to a use falling within Class C3 (dwellinghouses) of that Schedule, being comprised within Class O of part 3 of Schedule 2 of the Order.

Class PA - Development consisting of a change of use of a building and any land within its curtilage from Class B1(c) (light industry) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule, being comprised within Class PA of part 3 of Schedule 2 of the Order.

This does not affect development permitted by Schedule 2 Part 3 Class O or Class PA which is expressed to be subject to prior approval where, in relation to that development, the prior approval date occurs before the date on which the direction comes into effect and the development is completed within a period of three years starting with the prior approval date.

## **SCHEDULE 2**

The Direction applies to the designated Employment Areas identified in the East Herts District Plan (October 2018) and detailed below:

### Bishop’s Stortford (Policy BISH11)

- Raynham Road / Dunmow Road Industrial Estate (incorporating Stortford Hall Industrial Estate, The Links Business Centre, Raynham Road / Myson Way, Raynham Road West, and Raynham Road East between The Links Business Centre and Raynham Close);
- Southmill Trading Centre;
- Haslemere Industrial Estate;
- Twyford Road;
- Stansted Road (incorporating Goodliffe Park, Stort Valley Industrial Estate, and Birchanger Industrial Estate);
- Woodside;
- Millside Industrial Estate.

### Buntingford (Policy BUNT3)

- Park Farm;
- Buntingford Business Park;
- Watermill Industrial Estate.

### Hertford (Policy HERT6)

- Caxton Hill;

- Foxholes Business Park;
- Hartham Lane (incorporating Hertford Brewery);
- Mead Lane – East of Marshgate Drive (incorporating the Dicker Mill Estate);
- Mimram Road;
- Warehams Lane;
- Windsor Industrial Estate, Ware Road;
- Pegs Lane.

#### Ware (Policy WARE3)

- Broadmeads;
- Crane Mead;
- Ermine Point / Gentlemen’s Field;
- Marsh Lane;
- Park Road / Harris’s Lane;
- Star Street.

#### Villages (Policy VILL4)

- Silkmead Industrial Estate, Hare Street;
- Oakley Horseboxes, High Cross;
- Langley House, Station Road, Standon;
- Standon Business Park, Standon;
- Leaside Works, Stanstead Abbots;
- Riverside Works, Amwell End, Stanstead Abbots;
- The Maltings, Stanstead Abbots;
- Warrenwood Industrial Estate, Stapleford;
- Thundridge Business Park, Thundridge.

THIS DIRECTION is made under Article 4(1) of the said Order and shall come into effect on 2<sup>nd</sup> January 2021 if confirmed.

A copy of this Direction and copies of maps defining the areas and sites to which they relate may be seen in hard copy at East Herts District Council, Pegs Lane, Hertford, SG13 8EQ and can also be found on the Council’s website at [www.eastherts.gov.uk/article4](http://www.eastherts.gov.uk/article4).

Representations to the consultation can be submitted until 31st January 2020 via the website or by post to East Herts District Council, Pegs Lane, Hertford, SG13 8EQ.

Sara Saunders

*Head of Planning and Building Control*

East Herts Council

18<sup>th</sup> December 2019

## **Appendix 2**

Ms Amy Price, Planning Casework Unit  
Ministry of Housing, Communities & Local Government  
6 St Phillips Place  
Colmore Row  
Birmingham  
B3 2PW

Our Reference:

Please ask for: Andrew Figgis

Extension: 1598

Wednesday 19<sup>th</sup> February 2020

Dear Ms Price,

**Re: The Town and Country Planning (GPD) (England) Order 2015  
District employment areas as defined by certain policies in the East Herts  
District Plan (as approved 23rd October 2018)**

With reference to your letter dated 23rd January 2020 regarding the Article 4 Direction, East Herts District Council is pleased to submit further information as requested, to support and evidence the making of the Direction, and how it accords with both the NPPF and NPPG.

East Herts Council is committed to the development of our towns and villages as sustainable communities. This involves maintaining a balance between the allocation of land for residential use with land designated for employment and other uses.

Due to our proximity to London, our major towns are surrounded by Green Belt and there is considerable pressure from developers to house the London 'Overflow'. The Green Belt necessarily restricts the size of our towns. Land lost from one use to another is not readily replaceable from within those community areas and compensatory development elsewhere in the district does not conform to our policies of sustainable development and community cohesion.



## **Developing Sustainable Communities**

The District Plan seeks to support employment growth and community sustainability in the District. To this end, the Plan has identified and designated 20 hectares of new employment land to maintain the balance of our local economy with the residential development of c18500 new homes projected to 2033. This allocation is intended to supplement the existing employment stock, the core of which is represented by the employment areas designated in the plan.

To remain sustainable, communities need local economic activity and growth both to service the needs of the residents and to provide employment close to where people live. We look to proactively encourage sustainable economic growth, support new and existing businesses and seek to build on the district's commercial strengths, location and offer. The Council intends to do this through the policies in its District Plan including:

- Allocating an adequate supply of employment land to meet the future needs of the area;
- Safeguarding designated Employment Areas within the district to enhance and protect their employment potential;
- Supporting employment uses in appropriate locations outside of designated Employment Areas, including offices in town centres and in villages.

Managing such residential growth sustainably will be very challenging if employment land designated in the Plan is lost to residential land use through general permitted development rights (PDR) rather than at the discretion of the local planning authority. The employment land designated in the Plan is irreplaceable due to the location of East Herts in the Green Belt. As such it is considered expedient to take steps to ensure that the strategy for growth and development in the district is not undermined by PDR.



## London Overflow and the loss of employment land

The proximity of East Herts to London and the excellent access to the capital make the District a very attractive place for developers to target their activities to house the London residential overflow demand. Whilst we see positive benefits to the district from this development, it is only while the development is handled in a controlled and planned manner under the direction of the Local Authority that our towns can remain sustainable communities. Uncontrolled development is a threat to the sustainability and viability of our towns and villages, as residential land use replaces land previously used for other purposes - most notably employment - which we are unable to replace due to our location in the Green Belt. Indeed, we have seen some of the more adverse and less desirable effects of uncontrolled development under PDR in some of our neighbouring boroughs.

Over the last five years, the district has lost in excess of 95,000m<sup>2</sup> of employment floorspace to residential uses, as shown in the table below. Some of these losses occurred under permitted development. Other schemes will have required planning permission, either because they occurred prior to the relevant rights being introduced or because they exceed the floorspace thresholds. In these instances, it was possible to consider individual applications on their merits and come to an informed view as to whether it was desirable to allow these changes. Almost all of these losses occurred outside current designated employment areas. However, they indicate a general pressure for the conversion of floorspace from these uses for residential purposes.

	<b>2014- 15</b>	<b>2015- 16</b>	<b>2016- 17</b>	<b>2017- 18</b>	<b>2018- 19</b>	<b>Total</b>
B1(a) offices	1,625	9,097	3,766	6,782	223	21,493
B1(b) research & development	0	0	0	0	0	0
B1(c) light industry	481	0	1,201	56	1,053	2,791
B2 general industry	711	0	75	3,423	0	4,209

	<b>2014- 15</b>	<b>2015- 16</b>	<b>2016- 17</b>	<b>2017- 18</b>	<b>2018- 19</b>	<b>Total</b>
B8 storage and distribution	58,823	581	2,068	1,445	4,096	67,013
Total	61,640	9,678	7,110	11,706	5,372	<b>95,506</b>

In m2

In 2018, 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 this in context, this is the total office stock in St Albans, Watford and Welwyn Garden City combined).

In East Herts, there has been a reduction in office space from 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.

Across the county more broadly, the Hertfordshire LEP has expressed significant concern at the ongoing losses of employment space, and the general lack of suitable and available space for business. They are strongly encouraging local authorities to take steps to address this, including the implementation of Article 4 Directions, and have produced a study which has established a strong evidence base covering the change in employment floorspace in Hertfordshire over the last 10 years. The Study is available to view here: <https://www.hertfordshirelep.com/media/7128/loss-of-employment-space-in-hertfordshire-february-2019.pdf>.

### **Lack of Investment and land banking**

The stock of employment space in East Herts has seen virtually no investment in new or refurbished stock in the past 30-years and this situation is likely to perpetuate if the Council does not take action to restrict PDR on these employment sites. Evidence of the old age and poor quality of the employment stock is demonstrated in a range of settlement specific studies undertaken by

Wessex Economics for Bishop's Stortford, Buntingford and Hertford and Ware, which are all available to view online: <https://www.eastherts.gov.uk/planning-building/east-herts-district-plan/evidence-base>.

The Council is also aware that developers are land-banking employment sites, allowing them to deteriorate and refusing to renew leases, in some cases driving tenants out of business, with the aim of either redevelopment or conversion under PDR to residential. East Herts Council is determined to retain and grow the local economy and businesses that we have. (See appendix 1 - List of East Herts B use premises vacant as at end 2019)

Whilst the prospect of potential residential use exists, there is huge incentive for owners to retain property but perversely a positive disincentive for those same owners to invest in new employment stock. The existence of PDR on these sites undermines the very fabric of the local commercial base, deters investment and discourages business development.

East Herts' location - close to London and within the Green Belt, restricting the development of greenfield sites - has led to the loss of employment land, the lack of investment in commercial stock and land banking by developers in East Herts. These, therefore, comprise the exceptional circumstances that justify the implementation of an Article 4 Direction on our designated employment areas, it being necessary to protect that employment land and, thereby, the long term wellbeing and commercial sustainability of our towns and communities.

We trust this clarifies the evidence and justifies the reasoning behind the Council's decision to invoke Article 4 and the justification under paragraph 53 of the NPPF.

Yours sincerely,



Sara Saunders  
Head of Planning

Appendix 1 - List of East Herts B use premises vacant as at end 2019