

Strategic Planning and Infrastructure Committee

10 September 2019

Town Centre Article 4 Directions

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	William Cornall
Lead Officer and Report Author	Rob Jarman
Classification	Public
Wards affected	High Street and North Wards

Executive Summary

The report seeks approval for the making of non-immediate article 4 directions on 14 sites in the town centre and thereafter confirmation of the directions following consultation if it is considered expedient to do so after reviewing the consultation responses. Secondly, it seeks approval for further work to be undertaken on further article 4 directions of this nature.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

That:

1. A non-immediate Article 4 Direction is made on the following sites; County Gate, Medway Bridge House, 23 – 29 Albion Place, Sterling House, Maidstone House, Romney House, Gail House, Kestrel House, Knight rider Chambers, County House (Earl Street), 62 Earl Street, 66 Earl Street, 72 King Street and Clarendon Place.
2. The Head of Planning and Development exercise delegated authority to confirm the directions, in consultation with the Head of Legal Services, following statutory consultation on the made directions.
3. Exploratory work is initiated on making further Article 4 Directions on office sites both within and outside of the Town Centre.

Timetable

Meeting	Date
Committee: Strategic Planning and Infrastructure Committee	10 September 2019

Town Centre Article 4 Directions

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve Embracing Growth and Enabling Infrastructure. We set out the reasons other choices will be less effective in section 2 [available alternatives].</p>	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation is Reduced and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation supports the achievement(s) of all 4 of the cross-cutting objectives by bringing control over the change of use of office buildings to residential.</p>	Rob Jarman
Risk Management	No significant risk	Rob Jarman
Financial	This is being undertaken within existing budgets	Section 151 Officer & Finance Team
Staffing	We will need access to extra expertise to deliver the recommendations, as set out in section 3.	Rob Jarman
Legal	An article 4 direction can be made under the provisions of Schedule 3 Town and Country Planning (General Permitted Development) (England) Order 2015/596. Officers from Mid	Cheryl Parks, Mid Kent Legal Services

	Kent Legal Services have been consulted and involved from the outset of this work and will assist in taking forward any directions agreed as a result of this report.	(Planning)
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	An EqIA screening has been completed. This identified that whilst the removal of permitted development rights under an article 4 direction would not directly impact a particular group, benefitting all residents in terms of employment, it would provide an opportunity to ensure higher levels of design and space standards in terms of accessibility for groups with disabilities.	Equalities and Corporate Policy Officer.
Public Health	We recognise the recommendations may have varying impacts on the health of the population or individuals within Maidstone. Due to the often poor design quality of office space converted to residential use the wellbeing of individuals residing in these dwellings is likely to be negatively impacted upon in comparison to those under planning control.	Public Health Officer
Crime and Disorder	No significant implications.	Rob Jarman
Procurement	On accepting the recommendations, the Council will then follow procurement exercises for survey work.	Rob Jarman

2. INTRODUCTION AND BACKGROUND

2.1 A report on this subject was discussed at a Strategic Planning, Sustainability and Transportation Committee on 11 September 2018. Councillors resolved that no Article 4 Direction(s) should be served on any of the 14 office sites put forward and commented that:

- a) "The Maidstone Borough Council Local Plan outlined that the development of housing units was to be achieved using office stock, which contradicted the Article 4 Direction; and
- b) The timing of the Article 4 Direction was not appropriate, and it should instead be included in the review of the Local Plan".

2.2 In terms of the second 'reason', an article 4 direction is, in itself, a regulatory matter not a policy matter. It is a legal direction restricting permitted development rights (i.e the change of use from offices to residential) under paragraph 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015. Therefore, it is secondary

planning legislation that needs to be utilised.

2.3 Allied to this point, the National Planning Policy Framework states:-

- "53. 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..."

2.4 Pleasantness of place is a direct interpretation of 'local amenity'. It is clear to me that any vibrant town centre requires a balance of uses including employment. Offices lend themselves to town centres, whereby the staff can access their workplace by a variety of transport options, and they can also enjoy the amenities of the town centre during lunch breaks and after work. A strong business sector is integral to a successful town centre. In the town centre vision set out in the adopted Local Plan it states that:-

- "Key components in realising this vision are:
 - Establishing the town centre as an attractive hub for business building on the town centre's assets and environment."

2.5 The Local Plan Review, in itself, cannot create Article 4 directions (in the same way that it cannot create new conservation areas); the broad "local amenity" justification already exists under the current Local Plan and also the Council's Strategic Plan. However, there is still a need to examine the first reason for rejection by SPST and to crystallise a detailed narrative and justification.

2.6 With regard to the Committee's first reason, none of the 14 sites identified as good office stock (by the GVA Employment Assessment carried out in 2014 which defined good stock as, location (connectivity, accessibility, prominence), occupancy rates and condition of building) have been included as the basis for the town centre prior notification broad location allowance. And so, there is a zero contribution assumed from these sites towards the 940 town centre total. Only those sites categorised as 'poor' by GVA have been used as the basis for the allowance. Further, with regard to any impact upon windfall allowance from unidentified sources, the use of site specific Article 4 directions, will still allow flexibility for conversion of smaller units under permitted development. This windfall allowance is over a long period (up until 2031) and any concerns about the quantum of delivery from this source will be addressed in the Local Plan Review.

2.7 With regard to the existing Local Plan, policy SP 22 inter alia seeks to retain certain buildings for B1 use and 4 of these are the subject of the proposed Article 4 Direction (Medway Bridge House, 23 – 29 Albion Place, Gail House and Kestrel House). However, the prior notification process, in effect, makes this Policy a nullity.

2.8 I have addressed both reasons for the previous rejection by SPST Committee (there was also consideration by the Policy and Resources Committee whom rejected the recommendation by one vote). However, for the purposes of this new report and recommendations I consider it

Completions	7	26	93	156	112	297	691
Percentage	1%	4%	13%	23%	16%	43%	

Percentage of town centre dwellings from office to residential completed under prior notification

2.11 There exists an argument that office to residential prior notifications provide 'good numbers'. However, housing need is not homogenous and this is made clear in paragraph 61 of the NPPF (Chapter 5 'Delivering a sufficient supply of homes'):-

- "61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities...people who rent their homes...)."

2.12 A new Strategic Housing Market Assessment will be produced as an evidence base for the need for new homes and this will include different types and sizes of housing. Based on the office to residential prior notification completions to date, the homes being provided are predominantly studio or one bedroom rented apartments which clearly cater for a single person or young couple demographic. Whilst there is a need for a quantum of this type of accommodation, there is also a significant need for family homes which tends to be housing of a greater size within a plot and this large sector of the market is not being catered for with these town centre conversions. Therefore, there will still be a significant need for family housing on 'green field' sites and there is also a clear danger of over providing for one sector of the market at the expense of the town centre's employment base. For both 2016/17 and 2017/18, one bedroom market dwellings accounted for 20% of all market dwellings which was far in excess of the SHMA (2014) target of 5 - 10% and so there is clear over provision.

2.13 Fundamentally, it should be remembered that an Article 4 Direction does not mean that there will be a block on office to residential conversions rather that this is controlled through the normal town and country planning regime. Therefore, as local planning authority we would seek (if applicable) improvements to the design of a scheme, for example, securing landscaped areas and private amenity space (e.g balconies). Despite there being a bespoke chapter in the NPPF on "Achieving well-designed places" the prior notification process takes away the ability to have control over design and so office buildings can be converted to residential without having to meet any level of design standard. Similarly, these prior notifications are not the subject of planning obligations (such as a s106 legal agreement) nor the Community Infrastructure Levy. This does not align with the Council's strategic objective of 'Embracing Growth and Enabling Infrastructure'. With regard to infrastructure provision, no s106 nor CIL monies have been generated from permitted development conversions but there is a resultant extra strain on the existing town centre infrastructure from a pronounced demographic. This is accentuated by the rate and numbers involved with these prior notifications.

- 2.14 Given that the conversions thus far (e.g Brenchley House) have all been small apartments, they have not attracted registered providers and so they are not having a benign impact on this Borough's housing need which is particularly acute in and around the town centre.
- 2.15 This would also potentially allow for the securing of contributions toward infrastructure and other mitigation through section 106 agreements or through CIL payments.
- 2.16 If this Committee agrees with my arguments for Article 4 Directions on the 14 office sites then it would be appropriate to investigate whether further Article 4 Directions should be pursued throughout the Borough.
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3. AVAILABLE OPTIONS

- 3.1 **Option 1.** Do nothing: this would mean no Article 4 Directions and so the trends identified in the report may well continue with good quality office stock being lost and the town centre becoming more of a dormitory with a preponderance of residential development of a low quality and increasing pressure on existing physical and social infrastructure.
- 3.2 **Option 2.** Immediate Article 4 Direction: under this option, compensation may be payable in the event of the refusal of planning permission or where more onerous planning conditions are imposed than those likely to be attached through the prior approval process. I consider that the imposition of more onerous conditions albeit within certain parameters presents too much of a risk in terms of compensation.
- 3.3 The majority (12) of the 14 buildings are occupied, at least in part. However, there should be a consistent rationale in approach and, moreover, the prior notification process is a streamlined process whereby landowners choose to exercise their permitted development rights. The consequence being that a landowner can relatively quickly exercise his/her permitted development rights with no engagement with the local planning authority beforehand (unlike with a planning application whereby prospective developers generally engage in pre-application discussion). Therefore, it is difficult to quantify the risk of quick fire prior notifications. However, I am clear on the risks of subsequent compensation.
- 3.4 **Option 3.** Non-immediate Article 4 Direction: this would remove permitted development commencing a minimum of 12 months from the making of the Directions, subject to them being confirmed. There would be no compensation. However, there is the risk that this would trigger more prior notifications in the 12 month period preceding the coming into force of the made direction. This said, SPST were not swayed by any immediate need to serve an Article 4 Direction so a further 12 month period would align itself with this previous decision. The 12 month period would also allow time for further communication and engagement.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 **Option 3.** Non-immediate Article 4 Directions are progressed: this does not have the risk of compensation and is also something of a compromise considering the SPST decision on this matter.
- 4.2 Also, that if it is determined to be expedient to confirm the directions following the statutory period of consultation, that this is exercised under delegation to the Head of Planning.
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5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The previous SPST report forms Appendix 1 to this report.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the Committee is minded to agree with the recommendation, various preparatory tasks need to be completed before the non-immediate Article 4 Direction is made. Once the direction is made there are a number of requirements for notification and publicity that must be followed.
- 7.2 In due course following consultation on the made directions, a further decision is required as to whether it is expedient to confirm the directions, and this must be taken before the date the directions are proposed to come into effect. The Head of Planning has delegated powers under the Council's Constitution to effect Article 4 Directions and this report recommends that this delegation is used to confirm the directions.
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8. REPORT APPENDICES

- 8.1 The following documents are to be published with this report and form part of the report:
- Appendix 1: Town Centre Article 4 Direction – Options committee report to Strategic Planning, Sustainability and Transport Committee 11 September 2018
 - Appendix 2: Location of Each of the 14 Sites