

**CABINET**

**HEAD OF PLANNING**

**15 NOVEMBER 2016**

**REPORT NO. PLN1637**

**KEY DECISION? YES**

**ARTICLE 4 DIRECTION FOR EMPLOYMENT LAND**

**SUMMARY AND RECOMMENDATIONS:**

This report seeks Cabinet's approval to make a non-immediate Article 4 direction to withdraw permitted development rights related to the change of use of offices, light-industrial units, and storage or distribution units to residential use within the Strategic Employment Sites and the Locally Important Employment Sites identified within the draft *Rushmoor Local Plan*.

It is recommended that Cabinet approves the making of a non-immediate Article 4 direction under the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended). The proposed direction will enable the Council to protect its key employment sites by requiring developers to make a planning application for the conversion of offices, light-industrial units, and storage or distribution units to residential use. Permitted development rights remove the requirement to obtain such consent from local planning authorities.

**1. INTRODUCTION**

1.1 In 2013, the Government introduced new 'permitted development rights' which allow an office building to change its use to a dwelling house without the need for planning permission. Initially intended to be temporary and due to expire at the end of May 2016, the rights were made permanent in April 2016; some have speculated that the Government will amend further the rights to allow for the demolition and rebuilding of office buildings for residential use. In April 2016, the Government also introduced temporary permitted development rights, which will allow for light-industrial buildings less than 500 square metres to change use to housing without the need for planning permission; these rights will come into effect from October 2017 and last for a period of three years. These followed the introduction of similar rights in April 2015 which, until April 2018, allow for storage or distribution buildings less than 500 square metres to be converted to residential use without planning permission.

- 1.2 The Government argues that the permitted development rights will increase housing provision by unlocking underused land and brownfield sites for residential development. However, there is concern within local government circles about the loss of employment land and the potential impact of the rights on business and economic growth. Since the office-to-residential rights were introduced in May 2013, several local authorities have sought to protect their key employment sites by drafting and implementing Article 4 directions to remove these rights.

## **2. BACKGROUND: PERMITTED DEVELOPMENT RIGHTS**

- 2.1 Whilst planning permission is normally required to change the use of a building or land, some changes of use do not require planning permission. Set out in national legislation, permitted development rights are 'a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application'. Permitted development rights establish the principle of a development but are still subject to a range of 'conditions and limitations to control their impact and to protect local amenity'. In some cases, for example, it is necessary to apply for prior approval from a local planning authority before undertaking permitted development. Prior approval requires a developer 'to seek approval from a local planning authority that specified elements of the development are acceptable before work can proceed.'
- 2.2 The Government has set out a number of conditions where the residential development of offices, light-industrial buildings, and storage or distribution buildings is not permitted. In all cases, for example, development is restricted if buildings are listed or located in safety hazard areas. Developers must also seek prior approval from a local planning authority to determine the transport or highway impacts of a development, site contamination risks and whether the land is at risk of flooding, amongst other concerns. However, because a local planning authority can only consider pre-defined matters when determining a prior approval application, there are limited opportunities to refuse a prior approval: prior approval must be granted if all conditions are met.
- 2.3 In Rushmoor, any development which will lead to the creation of any net new residential development and which is likely to have a significant impact upon the Thames Basin Heaths Special Protection Area cannot take place without the developer making satisfactory arrangements to lessen the impact. Rushmoor requires developers of residential schemes involving the creation of new dwellings to make a financial contribution towards the provision of suitable alternative natural green space (SANG) and strategic access management and monitoring measures (SAMM) to negate the potential increase of visitors on the Special Protection Area. If developers make such a contribution, the permitted development rights stand.

- 2.4 Local authorities must plan for a range of needs in their local plans, including, amongst other things, the homes and jobs needed within an area. Government planning policy states that local planning authorities are not only responsible for 'providing the supply of housing required to meet the needs of present and future generations' but that they must also contribute 'to building a strong, responsive and competitive economy by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation'. The *National Planning Policy Framework* emphasises that 'planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure', and that authorities should 'set out a clear economic vision and strategy for their area', 'set criteria, or identify strategic sites, for local and inward investment', and support current and emerging business sectors.

### **3. PROPOSAL: ARTICLE 4 DIRECTION**

- 3.1 Local planning authorities can remove permitted development rights by drafting and implementing an Article 4 direction. An Article 4 direction 'does not prevent the development to which it applies but instead requires that planning permission is first obtained from the local planning authority for that development'. A direction can remove permitted development rights on a temporary or permanent basis and can cover an area of any size, from a single site to an entire local authority.
- 3.2 The draft *Rushmoor Local Plan* has identified a number of 'Strategic Employment Sites' within Rushmoor which are critical to the economy of the Borough, the wider Functional Economic Area (FEA) and the Enterprise M3 Local Enterprise Partnership Area. The *Plan* has also identified a number of 'Locally Important Employment Sites' which are considered vital to the economic success of Rushmoor and the FEA. Given their economic significance at a local level and beyond, it is proposed that Rushmoor introduces an Article 4 direction which includes all the Strategic Employment Sites and Locally Important Employment Sites with the exception of Cody Technology Park and the Royal Pavilion; residential development would not be permitted at these two sites because they are located within 400 metres of the Thames Basin Heaths Special Protection Area. A full list of sites to be included within the direction can be found at Paragraph 4.8.3 within the attached case paper.
- 3.3 It is proposed that the Council implements a single Article 4 direction to remove the office, light-industrial, and storage-or-distribution permitted development rights in combination. Whilst some local authorities have implemented separate directions for different permitted development rights, it is believed that an approach that amalgamates the three permitted development rights into a single direction is in the spirit of the regulations. *National Planning Practice Guidance*, for example, states that an Article 4 direction can 'remove *specified permitted development rights* related to operational development or change of use'.

- 3.4 The stated aim of the direction would not be to prevent changes of use, however. The direction would enable the Council to regain control over the consideration of relevant planning issues and to protect office, light-industrial, and storage or distribution sites which are of the greatest economic importance. It would allow other planning matters to be considered which are not otherwise possible with change-of-use applications under permitted development, for example, affordable housing and amenity space provision. Such planning matters are of key importance in a constrained urban environment such as Rushmoor.

### **Alternative Options**

- 3.5 The alternative option is to allow the permitted development rights to be exercised without restraint across Rushmoor and to not introduce an Article 4 direction.
- 3.6 Although the 'do-nothing' option would include a requirement to monitor the uptake and impact of the permitted development rights on the Strategic and Locally Important Employment Sites, it risks undermining the strategic objectives of the new *Local Plan*, which includes 'protecting the land required to fulfil strong economic performance' as well as 'addressing local housing need'.
- 3.7 An Article 4 direction would provide additional protection to Rushmoor's most important employment sites. Residential development at these sites could damage their standing as centres for doing business and impact negatively upon their ability to attract investment. It could also result in reverse sensitivities and pressure by the new tenants of these homes to reallocate surrounding employment land and buildings to residential or mixed uses, thereby compromising the Council's ability to retain its main employment sites in an employment designation in the long term.

### **Consultation**

- 3.8 The Government states that there should be a strong case for the removal of permitted development rights. Therefore, the harm that a direction is intended to address or avoid should be clearly identified, and justification as to its purpose and extent must be given. Officers have produced a case paper, which is attached to this report as an appendix, which outlines the arguments for introducing an Article 4 direction in Rushmoor in more detail. It considers the potential impact of the loss of employment land in the Borough, analyses the local office and industrial market, and lists the employment sites that should be protected by an Article 4 direction. This paper is based upon the latest information and evidence available but will be updated following the publication of the update to the *Employment Land Review* (expected later in 2016).
- 3.9 Officers consulted the Local Plan Member Steering Group at an early stage in the preparation of the proposal and received unanimous support to progress work on implementing an Article 4 direction in Rushmoor.

## **4. IMPLICATIONS**

### **Compensation Claims**

- 4.1 The most significant risk associated with preparing an Article 4 direction is the potential for developers to make claims for compensation from a local authority. To mitigate the risk of compensation claims, local authorities have generally favoured implementing 'non-immediate' Article 4 directions. Non-immediate directions remove permitted development rights only after a period of public consultation. Many local authorities argue that non-immediate directions are the most risk averse and significantly reduce the threat of compensation claims because they allow all consultation views to be taken into account before they are implemented. A number of councils also recommend that directions are implemented, or 'confirmed', twelve months from the start date of the consultation period. It should be noted that compensation regulations state that local authorities are not liable to pay compensation if they withdraw permitted development rights in the manner as prescribed within the Article 4 regulations and if they publish notice of the withdrawal at least twelve months before it takes effect. The process for making and confirming a non-immediate Article 4 direction is summarised within Section 5.4 of the attached case paper.

### **Permitted Development Applications during the Notification Period**

- 4.2 There is a twelve-month notification period between the making of a non-immediate Article 4 direction and its coming into effect. As developers will be able to exercise the permitted development rights during this period, there could be a rush of change-of-use applications before the rights are withdrawn, thereby reducing the supply of offices, light industrial units, and storage or distribution units. It is not possible to safeguard against this risk, however. Whilst an immediate Article 4 direction withdraws permitted development rights with immediate effect, making such a direction would leave the Council vulnerable to compensation claims if it were to refuse planning permission or grant permission subject to conditions for planning applications submitted within twelve months of the effective date of the direction.

### **Intervention by the Secretary of State**

- 4.3 The Secretary of State has the power to make a direction which modifies or cancels an Article 4 direction made by a local planning authority at any time before or after its confirmation. Indeed, the case for introducing an Article 4 direction must be evidence based and not geographically targeted. However, given that the justification for introducing an Article 4 direction in Rushmoor is strong (see attached case paper), and the direction would be specifically targeted and apply only to the Borough's Strategic and Locally Important Employment Sites, the risk of intervention by the Secretary of State is considered to be low.

## **Legal Implications**

- 4.4 There is no statutory appeal against the making of an Article 4 direction. The proposed direction would therefore be open to challenge by way of a judicial review. However, if Rushmoor follows the prescribed process for making and confirming a direction, which includes considering objections to the proposed direction, and given that the Council would consider change-of-use applications on a case-by-case basis, a successful judicial review is unlikely.
- 4.5 As noted, developers may make change-of-use applications during the twelve-month notification period before the Council confirms the Article 4 direction. Such applications would need to be determined in accordance with the prior approval requirements. Government policy states that Article 4 directions 'cannot prevent development which has commenced or which has already been carried out'; directions do not apply if prior approval is granted before the direction comes into force or where the development is completed within three years of the date of prior approval.

## **Financial and Resource Implications**

- 4.6 The principal costs of making and confirming an Article 4 direction include officers' time, printing notices for site display and advertising notices within a local newspaper. The costs of making and confirming a direction can be absorbed by the planning budget.
- 4.7 It should be noted that no planning application fee is payable where a planning application is required for a change of use which would otherwise have fallen under permitted development.

## **Equalities Impact Implications**

- 4.8 There are no equalities impact implications associated with the proposal.

## **5. CONCLUSIONS**

- 5.1 Whilst the Council acknowledges the potential benefits of the permitted development rights in terms of increasing housing provision, the potential loss of employment sites is a key concern with regard to its ability to deliver the employment and economic policies within the draft *Local Plan*. In removing the obligation to acquire formal planning consent from local planning authorities, permitted development rights remove control over development from councils and undermine objectives and policies with regard to future development.
- 5.2 It is vital that Rushmoor has a strong portfolio of employment sites to attract investment into the area and to maintain an edge over competing locations. The implementing of an Article 4 direction is considered crucial to ensuring that the Borough is able to retain and attract businesses and jobs. The direction would require developers who wish to convert offices,

light-industrial units, and storage or distribution units to residential use to submit a planning application, which would be considered on its merits.

## **6. NEXT STEPS**

- 6.1 If Cabinet approves the making of a non-immediate Article 4 direction, the next step would be to serve notice of the Council's intention to withdraw the permitted development rights on a non-immediate basis as required by the Article 4 regulations. Whilst the regulations specify a period of at least 21 days within which representations to the Council can be made, the consultation period will be extended to at least six weeks to allow for a more meaningful engagement with stakeholders.
- 6.2 The direction cannot come into force unless it is 'confirmed' by the local planning authority. After the consultation has closed, officers will review all the comments received during the consultation period. Officers will then prepare a report for Cabinet summarising the comments received, the suggested response to any objections, and any recommended changes to the direction; it should be noted that the direction will require re-consultation if any changes are made to it because of the consultation. If officers believe that the direction should be confirmed, Cabinet will be asked to formally confirm it. If the direction is confirmed, the date on which it will come into force will be twelve months from the start date of the original consultation period.

## **7. RECOMMENDATIONS**

- 7.1 It is recommended that Cabinet delegates authority to the Solicitor to the Council in consultation with the Head of Planning to take all necessary steps in making, serving and publicising an Article 4 direction to remove the Class O (office to residential), Class P (storage or distribution centre to residential) and Class PA (light industrial to residential) permitted development rights granted by Part 3 of Schedule 2 of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) within Rushmoor's Strategic Employment Sites and Locally Important Employment Sites.

### **BACKGROUND DOCUMENTS:**

*National Planning Policy Framework.*

*National Planning Practice Guidance.*

Rushmoor Borough Council (2015) *Rushmoor Local Plan* (Draft Local Plan: Preferred Approach).

*Town and Country Planning (Compensation) (England) Regulations 2016.*

*Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.*

*Town and Country Planning (General Permitted Development) (England) Order 2015.*

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### Change of Use from Offices (B1a), Light Industrial (B1c), and Storage or Distribution (B8) to Residential (C3)

#### The Case for Introducing an Article 4 Direction in Rushmoor

## 1. Introduction

- 1.1 The *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013* introduced new 'permitted development rights' which allow an office building (Class B1a) to change its use to a dwelling house (Class C3) without requiring planning permission.<sup>1</sup> Initially intended to be temporary and due to expire at the end of May 2016, the rights were made permanent in April 2016.<sup>2</sup> Though there is no mention of it within the revised regulations, it is understood that the Government will further amend the rights to allow for the demolition and subsequent rebuilding of office buildings for residential use (see Paragraph 2.2.3 below).<sup>3</sup> Moreover, the regulations include temporary rights which will allow for the change of use of light-industrial buildings (Class B1c) to housing without the need for planning permission from October 2017. In April 2015, the Government also introduced temporary rights which, until April 2018, allow for storage or distribution buildings (Class B8) to be converted to residential use without planning permission. Whilst the Government argues that the rights will increase housing provision by unlocking underused land and brownfield sites, there is concern within local government circles about the loss of employment land and the potential impact of the rights on business and economic growth. Indeed, since the rights were introduced in May 2013, several local authorities have sought to protect key employment sites by drafting and implementing Article 4 directions.
- 1.2 Divided into four principal sections, this paper explores the potential impact of the permitted development rights in Rushmoor and how they can be removed by means of an Article 4 direction. First, it introduces the rights in more detail, outlines the purpose of Article 4 directions and provides additional context in terms of national planning policy and the importance of balancing planning needs. The second section explores local evidence in support of introducing an Article 4 direction in Rushmoor; it describes the economic and employment policies and objectives of the draft *Local Plan* and, with reference to current levels of employment floor space and land and assessed future demand, explores the office and industrial markets within the Borough. The paper then presents its

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<sup>1</sup> *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013*, Part 3: Class J, 6.

<sup>2</sup> *Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016*.

<sup>3</sup> Dewar, D. (2016) 'What Amended Office-to-Residential Permitted Development Rights Mean for Applicants and Local Planning Authorities', [http://www.planningresource.co.uk/article/1387910/amended-office-to-residential-permitted-development-rights-mean-applicants-local-planning-authorities#disqus\\_thread](http://www.planningresource.co.uk/article/1387910/amended-office-to-residential-permitted-development-rights-mean-applicants-local-planning-authorities#disqus_thread).

analysis and justification for introducing an Article 4 direction and identifies the strategic and locally important employment sites that Rushmoor should protect. It finally explores the process of preparing an Article 4 direction; it outlines a preference for a non-immediate direction and sets out the procedure for implementing, cancelling and modifying such a direction.

## 2. Background

### 2.1 Permitted Development Rights

- 2.1.1 The *Town and Country Planning (Use Classes) Order 1987* groups the use of buildings and land into ‘use classes’.<sup>4</sup> There are four main classes, which are divided into a number of sub-classes; some uses do not fall within a use class, however, and are described as ‘sui generis’, meaning ‘of its own kind’. Whilst planning permission is normally required to change the use of a building or land from one use class to another, some changes of use do not require planning permission. Set out in national legislation, ‘permitted development rights’ are ‘a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application’. Though permitted development rights establish the principle of a development, they are nevertheless subject to a range of ‘conditions and limitations to control their impact and to protect local amenity’; these may include restrictions on the height, size and location of a development.<sup>5</sup> In some cases, it is necessary to apply for prior approval from a local planning authority before undertaking permitted development. Prior approval requires a developer ‘to seek approval from a local planning authority that specified elements of the development are acceptable before work can proceed’.<sup>6</sup>
- 2.1.2 Rushmoor lies within five kilometres of the Thames Basin Heaths Special Protection Area. *National Planning Practice Guidance (NPPG)* states that ‘special rules’ apply where permitted development is likely to have a significant impact upon a protected area. In Rushmoor, any development that will lead to the creation of any net new residential development and which is likely to have a significant impact upon the Special Protection Area cannot take place without the Council granting planning consent or without the developer making satisfactory arrangements to address the requirements of the *Conservation of Habitats and Species Regulations 2010*. As part of its *Thames Basin Heaths Special Protection Area Avoidance and Mitigation Strategy*, Rushmoor requires developers of residential schemes involving the creation of new dwellings to make a financial contribution towards the provision of suitable alternative natural green space (SANG) and strategic access management and monitoring measures (SAMM) to negate the potential increase of visitors on the Special Protection Area.<sup>7</sup>

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<sup>4</sup> *Town and Country Planning (Use Classes) Order 1987*.

<sup>5</sup> *National Planning Practice Guidance*, Paragraph: 016, Reference ID: 13-016-20140306.

<sup>6</sup> *Ibid.*, Paragraph: 026, Reference ID: 13-026-20140306.

<sup>7</sup> *Ibid.*, Paragraph: 019, Reference ID: 13-019-20140306; *Town and Country Planning (General Permitted Development) (England) Order 2015*, 7; *Conservation of Habitats and Species Regulations 2010* (Regs 73-

## 2.2 Office (B1a) to Residential (C3)

2.2.1 Though changing a building's use from office to residential no longer requires formal planning permission from a local authority, the regulations set out a number of conditions where development is not permitted. Indeed, development is not permitted if the building is a listed building or 'within the curtilage of a listed building', or if the site is or forms part of a safety hazard area, a military explosives area or a scheduled monument. Moreover, the site must have last been in use as an office prior to 30th May 2013. In addition, it is important to note that the definition of building used by the *Town and Country Planning (General Permitted Development) (England) Order 2015* includes 'any part of a building'.<sup>8</sup>

2.2.2 Prior approval for change of use from office to residential must be granted if an applicant can demonstrate that a development has no transport or highway impact and that there is no land contamination or flood risk on the site. In Rushmoor Borough, appropriate SPA mitigation will also be required in respect of proposals involving a net increase in residential units. From April 2016, an applicant must also prove that there is no noise impact from commercial premises on the intended occupiers of the development. There are therefore limited opportunities to refuse a prior approval. Furthermore, this permitted change of use requires developments to be completed within three years of the date of obtaining prior approval.<sup>9</sup>

2.2.3 In May 2016, several provisions of the *Housing and Planning Act 2016* commenced, most notably Section 152(1).<sup>10</sup> Section 152(1) amends Section 60 of the *Town and Country Planning Act 1990* and allows the Secretary of State 'to make further provision for operational development under the General Permitted Development Order'. It enables ministers 'to set out in secondary legislation a broader range of specific conditions where permitted development rights allow for building operations', and will likely facilitate the Government's proposed office-to-residential rebuild permitted development right.<sup>11</sup> However, as some have observed, the provision need not be restricted to office-to-residential conversions and may allow for other kinds of operational development.

## 2.3 Light Industrial (B1c) to Residential (C3)

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75), 54-55; Rushmoor Borough Council (2014) *Thames Basin Heaths Special Protection Area Avoidance and Mitigation Strategy 2014*.

<sup>8</sup> *Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016*, 2-3; *Town and Country Planning (General Permitted Development) (England) Order 2015*, 38-39, 3.

<sup>9</sup> *Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016*, 3.

<sup>10</sup> *Housing and Planning Act 2016*, s. 152(1): Approval Condition where Development Order Grants Permission for Building, 80.

<sup>11</sup> Planning Resource (2016) 'Permitted Development and Prior Approval: Update: 16 June 2016', <http://www.planningresource.co.uk/article/1386746/permitted-development-prior-approval-update-16-june-2016>.

2.3.1 The temporary rights relating to the change of use of light-industrial buildings and land to residential without requiring planning permission will come into effect from 1st October 2017; they will last for three years and expire on 30th September 2020. For development to be permitted, a building, the definition of which includes ‘any part of a building’, must have last been in use ‘solely’ in a light-industrial capacity on or before 19th March 2014, and its gross floor space must not exceed 500 square metres. Unless the developer obtains the consent of both the landlord and the tenant, the site must not be occupied under ‘an agricultural tenancy’, and such a tenancy should not have been terminated within one year of the date of the development starting if the reason for the termination was the development. Like the office-to-residential rights, development will not be permitted if the building is listed or ‘within the curtilage of a listed building’, or if the site is or forms part of a safety hazard area, a military explosives area, or if it is or contains a scheduled monument. Moreover, development will not be permitted if the site is or forms part of a site of special scientific interest.

2.3.2 Like the office-to-residential rights, developers must seek prior approval from local authorities to ensure that there are no highway or transport impacts associated with the development and that there is no contamination and flood risk on the site. In Rushmoor Borough, SPA mitigation will also be required in respect of proposals involving a net increase in residential units. Furthermore, if authorities consider a development to be in ‘an area which is important for providing industrial services, storage or distribution services or a mix of those services’, they must assess ‘whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services’. Developers must also submit evidence that the last use of the building was ‘solely’ light industrial on or before 19th March 2014, and developments must be completed within three years of the date of obtaining prior approval.<sup>12</sup>

#### 2.4 Storage and Distribution (B8) to Residential (C3)

2.4.1 The temporary rights allowing for the change of use of storage and distribution buildings and land to residential use without requiring formal planning permission came into effect on 15th April 2015 and are due to expire on 15th April 2018. Like the industrial-to residential rights, a building, including ‘any part of a building’, must have last been in use ‘solely’ as a storage or distribution centre on or before 19th March 2014 and it must not have a gross floor space of over 500 square metres. In addition, the building must have been in use ‘solely for a storage or distribution centre use for a period of at least four years before the date of development’. The rights also contain the same agricultural criteria of the industrial-to-residential rights and similarly restrict development according to a building’s listed status and whether the site is or forms part of a site of special scientific interest, a safety hazard area, a military explosives storage area, or a scheduled monument. Moreover, development is not permitted within

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<sup>12</sup> *Town and Country Planning (General Permitted Development) (England) Order 2015, 3; Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016, 3-4.*

areas of outstanding natural beauty or within areas 'specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(a)'.

2.4.2 As per the rights summarised above, developers must apply to the local planning authority to determine whether prior approval is required as to 'transport and highway impacts', contamination and flood risks, and the 'noise impacts of the development'. In Rushmoor Borough, SPA mitigation will also be required in respect of proposals involving a net increase in residential units. Like the industrial-to-residential rights, if authorities consider a development to be 'in an area that is important for providing storage or distribution services or industrial services or a mix of those services', they must assess 'whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services'. Developers must also submit evidence that the last use of the building was 'solely' as a storage or distribution centre on or before 19th March 2014 and that the building was used in this capacity for a period of at least four years. However, there is no requirement for developments to be completed within three years of receiving prior approval.<sup>13</sup>

## 2.5 Article 4 Directions

2.5.1 Local planning authorities can remove permitted development rights related to change of use by means of an Article 4 direction. An Article 4 direction 'does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development'.<sup>14</sup> A direction can remove permitted development rights on a temporary or permanent basis and can cover an area of any size, from a single site to an entire local authority. Local authorities have been able to confirm Article 4 directions since April 2010; after confirming a direction, however, they must notify the Secretary of State who has the power to modify or cancel it.

2.5.2 The harm that a direction is intended to address or avoid should be clearly identified, and justification as to its purpose and extent must be given. The *NPPF*, for example, states that Article 4 directions should only be used in exceptional circumstances where it 'is necessary to protect local amenity or the well-being of the area'.<sup>15</sup> The Department for Communities and Local Government further recommends that councils should consider whether permitted development rights would:

- Undermine the visual amenity of the area or damage the historic environment;
- Undermine local objectives to create or maintain mixed communities;

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<sup>13</sup> *Town and Country Planning (General Permitted Development) (England) Order 2015*, 3, 39-40.

<sup>14</sup> Department for Communities and Local Government (2012) *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, 2.

<sup>15</sup> *National Planning Policy Framework*, Paragraph: 200, 46.

- Lead to the subdivision of agricultural land other than for purposes reasonably necessary for agriculture, or to the loss of agricultural land;
- Lead to an intensification of development in close proximity to a military or aviation safeguarding zone;
- Have a direct and significant adverse effect on a flood risk area, flood defences and their access, the permeability of ground, and management of surface water or flood risk;
- Lead to an intensification of development or use in areas affected by coastal erosion.<sup>16</sup>

2.5.3 There should be a strong case for the removal of permitted development rights relating to ‘a wide area’, amongst other things, and, notably, ‘cases where prior approval powers are available to control permitted development’.<sup>17</sup> Local authorities are required to monitor on a regular basis whether their directions are still needed and whether the justifications for them remain sound.

## 2.6 Balancing Needs: National Policy

2.6.1 As reflected within national planning policy, planning is about achieving equilibrium, or the right balance, between certain needs. Required to define and set out the ‘strategic priorities’ and policies for their area, local authorities must plan for a range of needs in their local plans, including, amongst other things, the homes and jobs needed in an area.<sup>18</sup>

2.6.2 Sustainability is a central tenet of the *NPPF*; it argues that there are ‘three dimensions to sustainable development [which] give rise to the need for the planning system to perform a number of roles’.<sup>19</sup> Observing that these roles are ‘mutually dependent’ and ‘should not be undertaken in isolation’,<sup>20</sup> it states that planning has:

- An economic role – contributing to building a strong, responsive and competitive economy, *by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation*; and by identifying and coordinating development requirements, including the provision of infrastructure;
- A social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and *by creating a high quality built environment, with accessible local*

<sup>16</sup> Department for Communities and Local Government (2012) *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, 2-3.

<sup>17</sup> *Ibid.*, 3.

<sup>18</sup> *National Planning Policy Framework*, Paragraph: 156, 37.

<sup>19</sup> *Ibid.*, Paragraph: 7, 2.

<sup>20</sup> *Ibid.*, Paragraph: 8, 3.

*services that reflect the community's needs and support its health, social and cultural well-being; and*

- An environmental role – contributing to protecting and enhancing our natural, built and historic environment.<sup>21</sup>

2.6.3 According to the *NPPF*, twelve core land-use planning principles 'should underpin both plan-making and decision-taking.' Of particular interest to this paper, the third principle states that planning should:

- Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, *taking account of the needs of the residential and business communities.*<sup>22</sup>

2.6.4 The *NPPF* emphasises that 'significant weight should be placed on the need to support economic growth through the planning system' and that authorities 'should plan proactively to meet the development needs of business' in their local plans.<sup>23</sup> It states that 'planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure', and that authorities should 'set out a clear economic vision and strategy for their area', 'set criteria, or identify strategic sites, for local and inward investment', and support current and emerging business sectors.<sup>24</sup>

### **3 Local Evidence**

3.1 The *Rushmoor Local Plan* 'will guide the location, scale and type of future development in Rushmoor Borough up to 2032'.<sup>25</sup> A key objective of the *Plan* is 'to maintain and enhance the Borough's position as a prosperous economic centre'. To this end, it sets out a number of economic policies, which aim to:

- Enhance existing, and enable the provision of new, high quality employment space;
- Direct new employment provision to the most appropriate locations, and;
- Support key employment sectors.<sup>26</sup>

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<sup>21</sup> Ibid., Paragraph: 7, 2 (emphases added).

<sup>22</sup> Ibid., Paragraph: 17, 5 (emphasis added).

<sup>23</sup> Ibid., Paragraph: 19, Paragraph: 20, 6.

<sup>24</sup> Ibid., Paragraph: 21, 6-7.

<sup>25</sup> Rushmoor Borough Council (2015) *Rushmoor Local Plan* (Draft Local Plan: Preferred Approach), 5.

<sup>26</sup> Ibid., 187.

- 3.2 Rushmoor has a strong and vibrant economy and accommodates a diverse range of businesses in knowledge-based sectors, including defence and aerospace, financial and business services, logistics and distribution, and environmental technologies. Rushmoor also forms part of the Enterprise M3 (EM3) Local Enterprise Partnership (LEP) area. Extending along the M3 motorway from the outer edge of London to the New Forest and incorporating mid- and north Hampshire and south-west Surrey, the EM3 area contains a range of national and international businesses in information and communication technology, digital media, pharmaceuticals and professional business services. These businesses are supported by a number of knowledge-based companies and by traditional and high-value manufacturing and services firms. Notably, the LEP labels the EM3 area ‘the primary Sci:Tech Corridor in the UK, an economic asset of national importance and a global leader in a range of sectors and activities’.<sup>27</sup>
- 3.3 The *Rushmoor Local Plan* aims is ‘to maintain, and where possible, enhance’ the economic diversity of the Borough.<sup>28</sup> The Council aims to attract new investment into Rushmoor, both in terms of new businesses and the development of physical (for instance, fibre-optic broadband) and social (education and training) infrastructure; it will also support current businesses to innovate and grow, and will encourage the creation of new businesses.
- 3.4 Rushmoor’s economic strategy is aligned with the objectives of the EM3 *Strategic Economic Plan*. The LEP’s ‘vision’ is for the EM3 area to be ‘the premier location in the country for enterprise and economic growth, balanced with an excellent environment and quality of life’.<sup>29</sup> With Basingstoke, Guildford and Woking, it has identified Farnborough as a ‘Growth Town’. It claims that the four Growth Towns provide one-third of the jobs and the gross value added (GVA) figure of the EM3 area; it estimates that their combined GVA will increase by approximately 14% between 2014 and 2019, whilst that of the United Kingdom and the EM3 area as a whole are forecast to rise by 11% and 13% respectively. With Andover, Camberley, Staines-upon-Thames and Whitehill and Bordon, Aldershot is designated a ‘Step-Up Town’. According to EM3, Step-Up Towns ‘are areas of latent economic potential, which currently experience barriers to growth that impact upon the overall performance of the Enterprise M3 area’. With a focus on housing, town centre regeneration, and improvements to transport and general infrastructure, it has proposed growth packages for each Growth Town and Step-Up Town. It argues that the ‘continued success’ of the Growth Towns ‘is fundamental to the success of the area and the UK economy as a whole’.<sup>30</sup>
- 3.5 An adequate supply of employment land and premises is vital to retaining existing businesses and attracting business investment into Rushmoor and the

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<sup>27</sup> Enterprise M3 Local Enterprise Partnership (2014) *Working for a Smarter Future: The Enterprise M3 Strategic Economic Plan, 2014-2020*, iii.

<sup>28</sup> Rushmoor Borough Council (2015) *Rushmoor Local Plan* (Draft Local Plan: Preferred Approach), 188.

<sup>29</sup> Enterprise M3 Local Enterprise Partnership (2014) *Working for a Smarter Future: The Enterprise M3 Strategic Economic Plan, 2014-2020*, iii.

<sup>30</sup> *Ibid.*, v.



wider EM3 area. An *Employment Land Review (ELR)*, undertaken with Hart District Council and Surrey Heath Borough Council, and the EM3 LEP's *Commercial Property Market Study (CPMS)* have informed Rushmoor's economic development strategy. Both studies provide a detailed evaluation of current levels of employment floor space and land and assess future demand, the former within the Hart, Rushmoor and Surrey Heath Functional Economic Area (FEA), and the latter within the EM3 LEP area.

### 3.6 Office Market

- 3.6.1 According to the *ELR*, there are 'two distinct tiers to the office market within the FEA'.<sup>31</sup> There is strong demand for modern Grade A stock located in prominent and accessible business-park environments but limited demand and a large supply of lower grade stock. Observing that Rushmoor forms the largest office market in the FEA, it argues that Farnborough is 'seen as the most attractive office centre' in the area and dominates office provision. It notes that this is due, in part, to its 'direct mainline rail connection to London, the prestige of Farnborough Airport and a number of high-quality office developments with established business clusters'. It predicts that the continued development of Farnborough Business Park will cement the town's position as a significant office centre and that it will likely contribute to the bulk of newly developed business-park floor space in the FEA for the short to medium term.<sup>32</sup>
- 3.6.2 In Farnborough, business activity takes place at two distinct scales; small local businesses co-exist alongside larger-scale multinational businesses that serve regional, national and international markets. The latter are of particular strategic importance to Rushmoor; they tend to be involved in high-value sectors and activities which demand high-quality B1a and B1b floor space and include corporate occupiers, like BMW and Fluor, as well as research and development companies, such as BAE Systems and QinetiQ.
- 3.6.3 Aldershot is not a significant office centre; low demand for floor space has restricted new office development within the town and contributed to the old and generally poor quality of the current supply. Rent levels are also relatively low which, as the *ELR* observes, may 'benefit businesses seeking low-cost accommodation in a town centre environment'.<sup>33</sup> However, despite access to a highly skilled workforce and good transport connections to London, the poor quality of its office stock places Aldershot at a competitive disadvantage to office markets on the M4 Corridor.<sup>34</sup>
- 3.6.4 The *ELR* predicts that the FEA will experience strong growth in research-and-development activities and in office-based sectors across the period covered by

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<sup>31</sup> Hart District Council, Rushmoor Borough Council, Surrey Heath Borough Council (2016) *Hart, Rushmoor and Surrey Heath Joint Employment Land Review Update* (Draft Report, January 2016), 4.

<sup>32</sup> *Ibid.*, 61.

<sup>33</sup> *Ibid.*, 62.

<sup>34</sup> Enterprise M3 Local Enterprise Partnership (2016) *Enterprise M3 Commercial Property Market Study* (Final Report), 45.

the *Rushmoor Local Plan*. As of 2015, it argues that the FEA has sufficient vacant office floor space and land to meet the identified needs (44ha) and that there will be a small surplus of land available (5.8ha). However, it is important to note that this view is based on the assumption that vacant office supply in the FEA will be retained and brought back into use.<sup>35</sup>

3.6.5 The *ELR's* forecast for strong office-based growth is borne out by recent employment data and the current demand for office space, both within the FEA and across the EM3 area. Driven by growth in high-skill, office-based industries, more than 22,000 jobs were created within the EM3 area between 2010 and 2014, with a 6% increase in the number of jobs in the Blackwater Valley.<sup>36</sup> This is reflected within the take-up of office space, or the sum of transacted floor space within the EM3 area, which has increased in each of the last four years; total take-up in 2015 was at its highest level since the economic downturn at more than 120,000 square metres.<sup>37</sup> A doubling in the number of large office deals (that is, offices of over 1,000 square metres) is behind 90% of this growth, with the majority (83% since Q1 2013) having been agreed in the north east of the LEP area. Farnborough Airport has been identified as a key location for such transactions, and a number of deals have taken place at Farnborough Business Park and Cody Technology Park; for example, Time Inc. has recently relocated some of its London operations to the Business Park.

3.6.6 More than 5,500 new businesses were created in the EM3 area between 2010 and 2014, 65% of which were in two of the LEP's priority sectors, ICT and digital, and professional and financial services. Driven by an increase in the number of micro-businesses with fewer than five employees, such high rates of new business development suggest that there will likely be 'a growing demand for specialised types of workspace, including incubators and co-working facilities'. These 'offer more flexible leases than mainstream commercial property but also provide an environment for businesses to network and collaborate'.<sup>38</sup>

### 3.7 Industrial Market

3.7.1 The industrial market includes both warehousing and distribution (B8) and light-industrial and manufacturing space (B1c and B2). According to the *ELR*, the FEA 'has a strong industrial market, with concentrations of industrial land in and around the A331 Blackwater Valley Road'.<sup>39</sup> In Aldershot, for example, there are a number of small industrial estates located close to the town centre. These cater for the needs of small and medium-sized businesses and include the Redan Road Industrial Estate, Rotunda Estate and Wyndham Street. Designated a 'Strategic Employment Site' within the *Rushmoor Local Plan*, the East Aldershot

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<sup>35</sup> Hart District Council, Rushmoor Borough Council, Surrey Heath Borough Council (2016) *Hart, Rushmoor and Surrey Heath Joint Employment Land Review Update* (Draft Report, January 2016), 5.

<sup>36</sup> Enterprise M3 Local Enterprise Partnership (2016) *Enterprise M3 Commercial Property Market Study* (Final Report), 16, 17.

<sup>37</sup> *Ibid.*, 37.

<sup>38</sup> *Ibid.*, 16.

<sup>39</sup> Hart District Council, Rushmoor Borough Council, Surrey Heath Borough Council (2016) *Hart, Rushmoor and Surrey Heath Joint Employment Land Review Update* (Draft Report, January 2016), 4.

Industrial Cluster, with excellent access to the A331 and M3 road networks and low vacancy levels, is the largest industrial employment site in Rushmoor. In Farnborough, there are a mix of unit types and sizes, with industrial floor space located in five principal locations; these include Eelmoor Road, Hawley Lane and the Invincible Road Industrial Estate.<sup>40</sup>

3.7.2 Occupancy levels across the FEA remained high throughout the economic downturn, and a large number of transactions have taken place since 2011. However, the supply of industrial floor space to meet the needs of the FEA is tight; for example, only 39,000 square metres of vacant floor space was marketed for immediate occupation in January 2016. There is also a shortage of warehouse accommodation in the FEA of between 2,000 and 7,500 square metres and a lack of 'small starter units' of between 150 and 250 square metres located close to strategic highway links.<sup>41</sup> Across the EM3 area, there is also a shortage of both large warehousing (which could attract new investment to the area) and light-industrial units (which are suitable for small and medium-sized enterprises). Whilst demand for space has remained relatively constant since 2011, the *CPMS* reports that take-up has been constrained by an undersupply of good-quality industrial space and that demand is likely to be greater than the figures suggest. It also notes that demand for sites of between 50,000 and 100,000 square metres is particularly high within the Blackwater Valley.

3.7.3 The future pipeline of industrial space within the EM3 area is extremely limited. Within the Blackwater Valley, for example, only 75 hectares of land currently has planning consent for industrial development. The vast majority of this land is located at Hartland Park within Hart District, a 47.5-hectare brownfield site. In 2009, the Secretary of State granted outline planning consent for a 125,500-square-metre distribution facility to be located at the site; this permission was extended by three years in December 2012. However, Hart District Council has recently re-designated the site for residential development, which will have a significant impact upon the pipeline of employment space within the FEA and the Blackwater Valley more generally. Indeed, the *CPMS* highlights that without Hartland Park, future available supply of industrial land within the Blackwater Valley is 'close to zero'.<sup>42</sup>

## 4 Analysis

4.1 The potential loss of employment sites is a key concern with regard to Rushmoor's ability to deliver the employment and economic policies within the draft *Local Plan*. In removing the obligation to acquire formal planning consent from local authorities, permitted development rights remove control over development from councils and can undermine objectives and policies with regard to future development. A particular concern relates to the Borough's

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<sup>40</sup> Rushmoor Borough Council (2015) *Rushmoor Local Plan (Draft Local Plan: Preferred Approach)*, 189.

<sup>41</sup> Hart District Council, Rushmoor Borough Council, Surrey Heath Borough Council (2016) *Hart, Rushmoor and Surrey Heath Joint Employment Land Review Update (Draft Report, January 2016)*, 4.

<sup>42</sup> Enterprise M3 Local Enterprise Partnership (2016) *Enterprise M3 Commercial Property Market Study (Final Report)*, 46-50.

ability to retain and attract businesses and jobs and to provide local services to residents, workers and visitors. As the *Enterprise M3 Commercial Property Market Study (CPMS)* highlights, all local authorities 'need to aim for the optimal balance of residential and commercial development that best suits the needs of the local economy'. Moreover, and as noted above, the *National Planning Policy Framework* states that the economic role of planning involves 'ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation' and 'identifying and coordinating development requirements'.<sup>43</sup>

- 4.2 According to the *CPMS*, the total supply of office space has fallen across most of the Enterprise M3 (EM3) Local Enterprise Partnership area. For example, it claims that Rushmoor had the fourth largest net reduction in office space in the area between 2012 and 2015 and that it lost approximately 10,000 square metres of space in total. It argues that a 'substantial portion' of this loss can be attributed to the permitted development rights. Although local authority data on the amount of office space lost to permitted development is limited, the *CPMS* calculates that 3,300 square metres have been lost within the Blackwater Valley to date and that 12,800 square metres have outstanding permission for conversion to residential usage. It maintains that all of the lost space was dated and unoccupied, however, and that its removal has helped to reduce the oversupply of poor quality office space. The removal of poor quality and unoccupied space which no longer meets the needs of businesses not only unlocks land and space for much-needed housing but also re-balances supply and demand. For example, the *CPMS* argues that this can help to 'increase office rental values and encourage the development of new higher-quality space', potentially improving an area's image as a business location.
- 4.3 Beyond the conversion of poor-quality and dated office space, however, the *CPMS* observes that high-quality space has been lost in some locations within the EM3 area owing to permitted development and that there is considerable pressure to redevelop offices in areas which command high residential values. It warns that the unrestrained and unrestricted redevelopment of offices poses 'a risk to long-term economic growth' in that it 'could permanently remove a large proportion of office stock which could otherwise be refurbished in the future'.<sup>44</sup>
- 4.4 It is vital that Rushmoor has a strong portfolio of employment sites to attract investment into the Borough and to maintain an edge over competing locations. Owing to the urban nature of Rushmoor and to the difficulty of identifying sites for new office development, there is a need to hold on to existing sites and to rely upon their regeneration. This is particularly significant given that the *Employment Land Review* states that Grade A office space is highly sought after but limited in supply within the Hart, Rushmoor and Surrey Heath Functional Economic Area (FEA). Moreover, it concludes that there will likely be a small surplus of land to meet the office-based needs of the FEA up to 2032, but only if

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<sup>43</sup> *Ibid.*, 46; *National Planning Policy Framework*, Paragraph: 7, 2.

<sup>44</sup> Enterprise M3 Local Enterprise Partnership (2016) *Enterprise M3 Commercial Property Market Study* (Final Report), 43-44.

a proportion of the current office supply is retained and brought back into use. It argues that future policy should aim to address ‘a range of qualitative issues, such as increasing the delivery of Grade A office stock at prominent and accessible office locations, but also to support town centre regeneration proposals’, including in Farnborough. Whilst it recommends that local authorities take ‘a flexible approach’ to the redevelopment of lower-grade floor space for non-employment uses, it suggests that this ‘should be resisted on sites that emerging development plans identify as being of importance’.<sup>45</sup>

- 4.5 The shortage of development land for industrial use (including both B1c and B8) and the lack of vacant industrial floor space within the FEA mean that industrial sites should be protected from redevelopment for non-employment uses. Given that future availability of industrial land within the Blackwater Valley is negligible following the allocation of Hartland Park for residential use, it is of critical importance that core industrial sites within the FEA are retained. In addition, the *ELR* recommends that existing industrial land within the FEA should be refurbished or redeveloped to provide additional high-quality industrial floor space and that undeveloped and partially developed land at existing employment sites could be developed to meet industrial need.

#### 4.6 Good Design

- 4.6.1 Whilst the Council acknowledges the potential benefits of the permitted development rights in terms of increasing housing provision, it is concerned about the possibility of haphazard residential development in business locations and about the standard of the potential residential units created. The *CPMS*, for example, observes that permitted development can result in the “pepper-potting” of residential development in business districts’. It warns that this could damage an area’s standing as a centre for doing business and impact negatively upon its ability to attract investment. A number of local authorities have also expressed concern that residential units created through permitted development offer poor living environments for residents and do not meet internal space and amenity standards. Some have highlighted that residential units offer no outside amenity space or balconies and that residents could suffer from high levels of air and noise pollution in some locations, for example, where developments are located on busy roads and in industrial areas. In addition, some have suggested that permitted development can lead to sub-optimal planning outcomes by fossilising aged and unattractive buildings and by promoting an unbalanced mix of high-density developments predominantly formed of small one or two-bed units and studio apartments.<sup>46</sup>

- 4.6.2 From a design perspective, the Council is concerned that permitted development is, in some cases, incompatible with Government policy to deliver sustainable development through ‘good design’. For example, the *National Planning Policy*

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<sup>45</sup> Hart District Council, Rushmoor Borough Council, Surrey Heath Borough Council (2016) *Hart, Rushmoor and Surrey Heath Joint Employment Land Review Update* (Draft Report, January 2016), 98, 102.

<sup>46</sup> For example, see Oxford City Council (2014) ‘Proposed Article 4 Direction for Changes of Use from Offices to Residential’; Mayor of London (2016) *Housing: Supplementary Planning Guidance*.

*Framework* ‘attaches great importance to the design of the built environment’; it states that good design ‘is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people’. It also stresses the importance of planning ‘positively for the achievement of high quality and inclusive design for all development’, emphasising that developments should:

- Function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- Establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; and
- Be visually attractive as a result of good architecture and appropriate landscaping.<sup>47</sup>

#### 4.7 Key Employment Sites

4.7.1 The case for introducing a direction should be evidence based and not geographically targeted. The *NPPF*, for example, emphasises that ‘planning policies should avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose’. The Department for Communities and Local Government further notes that there ‘should be a particularly strong justification for the withdrawal of permitted development rights’ in cases where these relate to a wide area. In 2014, the then Planning Minister, Nick Boles, stated that ‘ministers are minded to cancel Article 4 directions which seek to re-impose unjustified or blanket regulation, given the clearly stated public policy goal of liberalising the planning rules and helping to provide more homes’.<sup>48</sup> Any Article 4 direction in Rushmoor should therefore be robustly justified, specifically targeted and apply only to key employment sites.

4.7.2 The draft *Rushmoor Local Plan* identifies a number of ‘Strategic Employment Sites’ within the Borough. Their protection and retention is critical to the economy of Rushmoor, the wider Functional Economic Area (FEA) and the Enterprise M3 Local Enterprise Partnership Area. As the *Plan* explains, the Council will support the regeneration and intensification of these sites ‘to allow businesses to expand and enable the provision of modern employment stock to replace properties that have reached, or are reaching, the end of their functional economic life’.<sup>49</sup>

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<sup>47</sup> *National Planning Policy Framework*, Paragraphs: 56-58, 14-15.

<sup>48</sup> *Ibid.*, Paragraph: 22, 7; Department for Communities and Local Government (2012) *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, 3; Boles, N. (2014) *Change of Use: New Homes* (Written Ministerial Statement to Parliament), <https://www.gov.uk/government/speeches/change-of-use-new-homes>.

<sup>49</sup> Rushmoor Borough Council (2015) *Rushmoor Local Plan* (Draft Local Plan: Preferred Approach), 191-192.

4.7.3 The *Plan* also identifies a number of ‘Locally Important Employment Sites’, the protection and retention of which are vital to the economic success of Rushmoor and the FEA. Like the strategic sites, the Council will support their regeneration and intensification to enable businesses to grow and expand and to facilitate the provision of modern employment premises. Policy PC3 outlines that the Council will take into account market signals ‘when determining applications for the change of use of a Locally Important Employment Site to a non-employment use’. Applicants will be required ‘to demonstrate that there would be no strong economic reason why the premises or site should not be lost to alternate uses’.<sup>50</sup>

4.7.4 It should be noted that whilst Meudon House and Queensgate are designated as Key Employment Sites within the *Rushmoor Core Strategy 2011*, the draft *Rushmoor Local Plan* suggests that both sites be de-allocated for employment use. Moreover, it proposes that the vacant office buildings at The Crescent at Southwood Business Park are re-allocated for residential development.

#### 4.8 Recommendations

4.8.1 Given their economic significance at a local level and beyond, it is recommended that Rushmoor introduces an Article 4 direction which includes the Strategic Employment Sites identified within the draft *Local Plan*. Moreover, it is suggested that the Locally Important Employment Sites are covered by a direction.

4.8.2 It is suggested that Rushmoor implements a single Article 4 direction which removes the office (B1a), light-industrial (B1c), and storage-or-distribution (B8) permitted development rights in combination. Whilst some local authorities have implemented separate directions for different permitted development rights, it is believed that an approach which amalgamates the three permitted development rights into a single direction is in the spirit of the regulations. *National Planning Practice Guidance*, for example, states that an Article 4 direction can ‘remove *specified permitted development rights* related to operational development or change of use’.<sup>51</sup> In addition, it is important to note that the use of a building or site is relevant rather than the permission granted, and such a direction would cover a range of land uses that may co-exist within an area. Indeed, several sites to be included within the Article 4 direction have a number of core uses, as identified by the *Employment Land Review*.

4.8.3 The following table outlines the Strategic and Locally Important Employment Sites to be included within the Article 4 direction.

<u>Site</u>	<u>Core Use</u>	<u>Local Plan Designation</u>
Blackwater Trading Estate	Light Industrial	Locally Important
Civil Enclave	Office / Light Industrial	Strategic

<sup>50</sup> Ibid., 193-196.

<sup>51</sup> *National Planning Practice Guidance*, Paragraph: 037, Reference ID: 13-037-20140306 (emphasis added).

<b>Site</b>	<b>Core Use</b>	<b>Local Plan Designation</b>
East Aldershot Industrial Cluster	Light Industrial, Industrial and Warehousing	Strategic
Eelmoor Road	Light Industrial / Warehousing	Locally Important
Farnborough Aerospace Park	Office Park / R&D	Strategic
Farnborough Business Park	Office Park	Strategic
Frimley Business Park	Office Park / R&D	Strategic
Hawley Lane East	Light Industrial	Locally Important
Hawley Lane West	Warehousing	Locally Important
Hollybush Lane	Industrial / Waste Processing	Locally Important
Invincible Road Industrial Estate	Retail, Light Industrial, Industrial and Warehousing	Strategic
Lynchford Lane	Light Industrial	Locally Important
Redan Road Industrial Estate	Light Industrial	Locally Important
Rotunda Estate	Light Industrial	Locally Important
Southwood Business Park	Office Park / R&D, Industrial and Warehousing	Strategic
Spectrum Point	Office	Locally Important
Springlakes	Light Industrial and Warehousing	Locally Important
Wyndham Street	Light Industrial / Offices / Sui Generis	Locally Important

4.8.4 The following employment sites will not be included within the direction. Because they are located within 400 metres of the Thames Basin Heaths Special Protection Area, residential development would not be permitted at these sites.

<b>Site</b>	<b>Core Use</b>	<b>Local Plan Designation</b>
Cody Technology Park	Office, R&D, Light Industrial	Strategic
Royal Pavilion	Office / R&D Campus	Strategic

4.8.5 The aim of the direction would not be to prevent changes of use. The direction will enable the Council to regain control over the consideration of the relevant planning issues relating to change of use applications and to protect office, industrial and warehousing sites which are of the greatest economic importance. It will also allow other planning matters to be considered, for example, affordable housing and amenity space provision, which would otherwise not be possible with change of use applications falling as permitted development. These other planning matters are of paramount importance in a constrained urban environment like Rushmoor.

## **5 Article 4 Directions**

### **5.1 Types of Direction and Compensation Risks**



5.1.1 *National Planning Practice Guidance* states that there are two types of Article 4 direction: non-immediate directions and directions with immediate effect.

1. Non-immediate directions: permitted development rights are withdrawn following confirmation of the direction by a local planning authority. Confirmation occurs after a local planning authority has carried out a local consultation.
2. Immediate directions: permitted development rights are withdrawn with immediate effect but must be confirmed by a local planning authority following local consultation within six months otherwise the direction will lapse.

5.1.2 The most significant risk associated with preparing an Article 4 direction for local authorities is the potential for developers to make claims for compensation. For example, Kingston Borough Council highlights that compensation claims related to the introduction of an Article 4 direction could be substantial. The *NPPG* notes that 'a local planning authority can be liable to pay compensation to those whose permitted development rights have been withdrawn', but only if it:

- Refuses planning permission for development which would otherwise have been permitted development; or
- Grants planning permission subject to more limiting conditions than the General Permitted Development Order.

However, the grounds for compensation claims 'are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights'.<sup>52</sup>

5.1.3 Owing to the potential for compensation liability, local planning authorities have generally favoured using non-immediate directions to remove permitted development rights, with directions confirmed after twelve months following consultation. Oxford City Council argues that such an approach is the most risk averse and significantly reduces the threat of compensation claims. Brighton and Hove City Council claim that immediate directions can result in substantial compensation claims and that non-immediate directions allow all consultation views to be taken into account before directions are confirmed.<sup>53</sup>

5.1.4 It is significant to note that Section 108(3C) of the *Town and Country Planning Act 1990* states that no compensation is payable for the loss of permitted

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<sup>52</sup> *Ibid.*, Paragraph: 042, Reference ID: 13-042-20140306; Kingston Borough Council (2015) 'Article 4 Direction – The Case for the Introduction of an Article 4 Direction to Withdraw Permitted Development Rights for Change of Use from Office to Residential in a Number of Specified Areas within the Borough' (Report for Infrastructure, Planning and Contracts Committee), 3.

<sup>53</sup> Oxford City Council (2014) 'Proposed Article 4 Direction for Changes of Use from Offices to Residential', 10-11; Brighton and Hove City Council (2013) 'Article 4 Direction – Removal of Permitted Development Rights Office to Residential' (Policy and Resources Committee Paper, 11 July 2013, Agenda Item 19), 96.

development rights in certain circumstances. For example, the Act states that ‘compensation for refusal or conditional grant of planning permission formerly granted by [a] development order’ does not apply if:

- (a) The planning permission is granted for development in England of a prescribed description,
- (b) The planning permission is withdrawn in the prescribed manner,
- (c) Notice of the withdrawal was published in the prescribed manner not less than twelve months or more than the prescribed period before the withdrawal took effect, and
- (d) Either-
  - (i) The development authorised by the development order had not started before the notice was published, or
  - (ii) The development order includes provision in pursuance of Section 61D permitting the development to be completed after the permission is withdrawn.<sup>54</sup>

5.1.5 The office-, light-industrial-, and storage-or-distribution-to-residential permitted development rights constitute ‘prescribed development’. Moreover, the ‘prescribed manner’ for withdrawing planning permission includes ‘by direction in accordance with Article 4 of the [*Town and Country Planning (General Permitted Development (England) Order 2015*]’. The ‘prescribed manner of publication’ includes ‘the manner described in Paragraphs 1(1) to (5) of Schedule 3 to the Permitted Development Order’ (see below), whilst the ‘prescribed period is two years’.<sup>55</sup>

5.1.6 Provided that the Council follows the conditions specified in Section 108(3C) of the *Town and Country Planning Act 1990*, Rushmoor should not be liable to pay compensation to developers. It is therefore recommended that Rushmoor prepares a non-immediate direction and confirms it after a period of between twelve months and two years.

## 5.2 Planning Application Fees

5.2.1 No planning application fee is payable where a planning application is required owing to the removal of permitted development rights.<sup>56</sup>

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<sup>54</sup> *Town and Country Planning Act 1990*, s. 108(3C): Compensation for Refusal or Conditional Grant of Planning Permission Formerly Granted by Development Order, <http://www.legislation.gov.uk/ukpga/1990/8/section/108>.

<sup>55</sup> *Town and Country Planning (Compensation) (England) Regulations 2015*, *Town and Country Planning (Compensation) (England) (Amendment) Regulations 2016*.

<sup>56</sup> *National Planning Practice Guidance*, Paragraph: 041, Reference ID: 13-041-20140306.

### 5.3 Exclusions

5.3.1 Article 4 directions ‘cannot prevent development which has commenced or which has already been carried out’. Where permitted development requires prior approval, Article 4 directions do not apply if the prior approval date occurs before the date that the direction comes into force and the development is completed within three years of the prior approval date.<sup>57</sup>

### 5.4 Non-Immediate Direction Procedure<sup>58</sup>

#### 5.4.1 Notice

1. Notice must be given as soon as possible after a direction has been made:

- i) By local advertisement (for example, within a local newspaper);
- ii) By site display for at least six weeks;
  - a. If the direction relates to an area, the notice must be displayed at no fewer than two locations within that area; or
  - b. If the direction relates to a particular site, the notice must be displayed at that site.
- iii) By serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates.
  - A local planning authority need not serve notice on owners and occupiers should they consider it impracticable owing to difficulties identifying and locating owners and occupiers or because of the number of owners and occupiers within the area. This sub-paragraph does not apply, however, if the owner or occupier is a statutory undertaker or the Crown.

2. The notice must:

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<sup>57</sup> Ibid., Paragraph: 046, Reference ID: 13-046-20140306; *Town and Country Planning (General Permitted Development) (England) Order 2015* (SI 2015/596), 3B-1005.7.

<sup>58</sup> Department for Communities and Local Government (2012) *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, 5-8; *Town and Country Planning (General Permitted Development) (England) Order 2015*, Schedule 3: Procedures for Article 4 Directions, 152-153.

- i) Include a description of the development, area or site to which the direction relates and a statement of the effect of the direction;
  - ii) Specify that the direction is made under Article 4(1) of *The Town and Country Planning (General Permitted Development) (England) Order 2015*;
  - iii) Name a place where a copy of the direction and a copy of the map defining the area or site to which the direction relates may be seen at all reasonable hours;
  - iv) Specify a period of at least 21 days, stating the date on which the period begins, within which any representations concerning the direction may be made to the local planning authority;
  - v) Specify the date on which it is proposed that the direction will come into force, which must be at least 28 days and no longer than two years after the start date from which representations to a local authority can be made.
3. A local planning authority must send a copy of the direction and the notice, including a copy of the map defining the area or site to which it relates, to the Secretary of State on the same day that notice of the direction is first published or displayed. This should be sent to the National Planning Casework Unit:

[npcu@communities.gsi.gov.uk](mailto:npcu@communities.gsi.gov.uk)

5 St Philip's Place  
Colmore Row  
Birmingham  
B3 2PW

Because it may not be possible to send a copy of the publicity notices on the same day as those affected by the direction are notified, it is acceptable to send a copy of the notices as will be published. It should be noted, however, that 'the Secretary of State does not have to approve Article 4 directions and will only intervene when there are clear reasons for doing so'.

4. On making a direction, a district planning authority must also give notice of it to the county planning authority, where this applies.
5. Local planning authorities must take 'reasonable steps' to protect notices on display.

Where a notice given by site display is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period [specified in 2(iv) above] has elapsed, the authority is treated as having complied with the requirements of [2(iv)] if it has taken reasonable steps to protect the notice, including, if required, its replacement.

6. The direction comes into force on the date specified in 2(v), but only if it is confirmed by the local planning authority in accordance to below.

#### 5.4.2 Confirmation

7. To confirm a direction, a local authority must take into account any representations received during the period specified in 2(iv).
8. A local authority must not confirm a direction until after the expiration of:
  - a. A period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or
  - b. Such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.
9. After confirming a direction, a local authority must, as soon as possible:
  1. Give notice of the confirmation and the date on which the direction will come into force; and
  2. Send a copy of the confirmed direction to the Secretary of State.
10. Notice of the confirmation must be given in the same way as described in 1(i-iii) and 2(i-iii) above.

#### 5.5 Cancelling a Direction

- 5.5.1 *National Planning Practice Guidance* states that an Article 4 direction ‘can remain in place permanently once it has been confirmed’. However, as noted above, it stresses that planning authorities should regularly monitor directions to ensure that the reasons for their implementation remain valid and that directions should be cancelled if they are no longer necessary.<sup>59</sup>

#### 5.6 Modifying a Direction

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<sup>59</sup> *National Planning Practice Guidance*, Paragraph: 049, Reference ID: 13-049-20140306.

5.6.1 To modify an Article 4 direction, a local authority must cancel the current direction and prepare a replacement. A local planning authority cannot modify or cancel a direction made by the Secretary of State.<sup>60</sup>

## 5.7 Role of the Secretary of State

5.7.1 Subject to certain exceptions, the Secretary of State has the power to make a direction modifying or cancelling a direction made by a local planning authority at any time before or after its confirmation. The Secretary of State is also able to make an Article 4 direction. The Secretary of State must notify a local planning authority as soon as is practicable after making a direction, and the local authority is responsible for notifying those affected by the direction.<sup>61</sup>

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<sup>60</sup> Department for Communities and Local Government (2012) *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995*, 5.

<sup>61</sup> *Ibid.*