



Royal Borough of Windsor and Maidenhead

Justification for Introducing an Article 4 Direction

**for removal of permitted development rights to change from Class
E (commercial class) to C3 (residential) on key employment sites**

November 2023

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1. Introduction

The council is proposing a non-immediate Article 4 Direction for the removal of permitted development rights to change of use from Class E (commercial class) to C3 (residential) on protected employment sites. This report sets out the:

- planning policy context
- forms of harm caused by permitted development rights for office to residential conversions
- evidence to justify the introduction of an Article 4 Direction on key employment sites

1.1 Permitted Development Rights

In 2013, the Government introduced Permitted Development Rights (PDR) to enable offices to be converted to residential use and create new dwellings (Class J), initially for a temporary period of three years. Since that time several substantial additions have been made to PDR, both facilitating further sources for the creation of new dwellinghouses, whilst also introducing additional standards and prior approval criteria requiring consideration, such as compliance with national space standards and daylight/sunlight assessment.

The expansion of PDR has been pursued by central Government as a way to cut red tape and fast track the approval process, whilst boosting the delivery of homes and jobs in the construction sector.

Many councils have been less enthusiastic about PDR, citing concerns over the delivery of poor-quality dwellings, lack of outdoor space and failure to provide affordable housing and vital infrastructure.

The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (known as the GPDO) grants planning permission to a number of specified forms of development, known as permitted development rights (PDR). Class J was restated as Class O and in May 2016 it was made permanent. Increasingly, since 2013, PDR have been used to cover a number of other forms of development that would result in new dwellings, such as conversion to residential from retail and related uses and storage and distribution.

On 30 March 2021, the government amended the General Permitted Development Order (GPDO) to introduce a new 'Class MA' (Mercantile to Abode) permitted development right allowing changes of use from a use falling within commercial, business and service (Class E) to residential. Class MA effectively expanded upon, and replaced, Class O. This means that provided the requirements and conditions of Class MA are satisfied, it is possible to make a change of use from a Class E use to a Class C3 (residential) use without the need to apply to the local planning authority for planning permission. This permitted development right became available from 1 August 2021.

Previously, the Class O prior approval allowed a change of use from office (revoked B1(a)) to residential. The class MA PD right now allows the conversion of a range of

high street uses, including offices, restaurants, shops, and professional services, in the class E commercial use class into housing without the need for a planning application.

Sites wishing to benefit from Class MA still need to meet the qualifying criteria and requirements:

- including vacancy of at least three months,
- cumulative floorspace below 1,500 sqm and
- they must not be a listed building.

An application for Prior Approval still requires assessment of a number of technical considerations. In this context, local authorities can still refuse proposals under Class MA PDRs.

1.2 What is an Article 4 Direction?

An article 4 direction is a direction under [article 4 of the General Permitted Development Order](#) which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. An article 4 direction cannot be used to restrict changes between uses in the same use class of the Use Classes Order.

Whilst this does not prevent the change of use or development in that location, it ensures that it requires full planning permission and therefore can be more robustly scrutinised by the local authority in relation to their planning policies.

2. Policy Context

2.1 Employment evidence for BLP

The evidence base to support the identification of economic development needs for the Borough draws on the Central Berkshire and Eastern Berkshire Economic Development Needs Assessments (EDNAs) produced by Nathaniel Lichfield and Partners (NLP) in 2016. The studies were carried out by NLP in accordance with the Planning Practice Guidance to provide an assessment of future business needs and requirements for employment land and floorspace within Functional Economic Market Areas (FEMA), focusing on the group of ‘B Class’ sectors. However, the Council recognises that not all jobs fall within these use classes; growth in the service industry, retail, leisure and tourism is also expected to provide further economic growth.

The evidence from the studies helped to inform the economic policies for the Borough Local Plan (BLP). The outputs of the EDNAs include jobs forecasts and projections, and B Class floorspace requirements for the need arising from the Borough. The analysis used three scenarios for future economic growth to 2036 based on labour demand, past trends of completion of employment space and labour supply.

The [Employment Topic Paper \(2019\)](#) provided further justification of the BLP Economic Development policies.

The document provided confirmation of the employment floorspace and land needed to accommodate 11,200 jobs for the plan period 2013-2033. However, nearly 4,500 jobs have been delivered since the start of the plan period. Therefore, to meet the Royal Borough’s minimum job target, provision for 7,000 net additional jobs is needed, of which 4,000 are expected to be within the E(g) and B use classes¹.

Policy ED1 allocated the following sites to meet the Borough’s office needs:

| Ref | Site | Estimated additional office space (sq. m) |
|-----|-------------------------------|---|
| AL1 | Nicholsons Centre, Maidenhead | 15,000 (net additional) |
| AL7 | Maidenhead Railway Station | 4,000 (net additional) |
| AL8 | St Cloud Gate | 3,500 (net additional) |

Table 1 Sites to be allocated to meet the Borough’s office needs

2.2 Borough Local Plan

The [Borough Local Plan](#) (BLP) (adopted in February 2022) specifies the intention of introducing an Article 4 direction. See text extracts from the BLP below:

“8.2.16 To address this gap a number of new allocations are proposed as set out in Table 14 (in Policy ED1). Whilst there are around enough sites either permitted or allocated in this plan a cautious approach is still justified – especially, to control losses of viable to occupy stock. The scale of future permitted development losses is

¹ E(g) use class: offices, research and development and industrial processes. B use classes: B2 general industrial. B8 storage and distribution

unknown and could rapidly erode any remaining flexibility in the market. *The Council intends to apply selective Article 4 directions in our town centres and major office sites, but these will take time to implement. To provide additional contingency the Council will work to secure a stronger pipeline of new office space within the town centres with any redevelopment site first seeking to maximise net additional office space – in line with market evidence at the time.*

“8.9.6 The Council intends to introduce Article 4 directions, withdrawing permitted development rights to convert offices to homes as soon as possible. In the long term, uncontrolled losses of highly accessible sites, suitable for high trip generating office uses, cannot be sustained.” (Emphasis added).

Town centres are excluded from the proposed Article 4 Direction as these areas are expected to contain mixed use growth through employment and housing. Higher density development takes advantage of employment, sustainable transport links, walking and cycling routes and the wider town centre environment.

The BLP’s spatial strategy (Policy SP1) identifies three sustainable growth areas focussing on the existing urban areas of Maidenhead, Windsor and Ascot which together contain the largest concentration of housing and employment opportunities in the Borough. The growth areas are well serviced by transport links, lie outside of locations subject to severe flooding (functional floodplain) and avoid nationally significant natural and heritage resources.

The BLP strategy is to promote and maintain a range of uses within town centres, and define a hierarchy of centre including a strong, central core of retail and allied uses, to support their vitality and viability and promote customer choice. Therefore, it is not proposed to introduce an Article 4 Direction within Maidenhead town centre and the other town centres at this time.

Under BLP Policy ED2, the Council sought to ensure that employment “space is not unnecessarily lost from its existing portfolio of sites. For many occupiers, new space may not be affordable and so substitutable for the space lost. Where sites are lost the Council may be required to release additional greenfield land as part of the next plan review to ensure the ED1 objectives are met over the whole plan period. There are, therefore, strong grounds to resist the loss of space wherever possible.” The Council “will look to apply at least ‘nil net loss’ principle when managing the portfolio of sites identified in policy ED2, with a preference to increase business use class floorspace”. The Policy ED2 Protected Employment sites are shown in Appendices 1 and 2 (Map).

2.3 Housing Size and Mix

Policy HO2 sets out that an appropriate mix of dwelling types and sizes should be provided, in accordance with the evidence in the [Strategic Housing Market Assessment](#) (SHMA) 2016, or successor documents, unless an alternative mix is more appropriate. Many of the sites delivered in the Borough (and particularly in Maidenhead) since 2013 have been urban sites that are best suited to high density flatted schemes.

The NPPF states that Local Planning Authorities should plan for a mix of housing based on current and future demographic trends and the needs of different groups in the community. It also says that they should identify the size, type, tenure and range of housing that is required in particular locations reflecting local demand.

The Borough seeks to deliver a wide variety of high quality homes that will provide the tenures, types and sizes of housing to meet the needs and demands of different people in the community. This will include housing for older people, people with disabilities, the travelling community and others in the community with specialist housing needs. The provision of new dwellings will take account of local need to allow for a genuine choice of housing options and the creation of sustainable, balanced and mixed communities.

Table 2 (table 12 in paragraph 7.5.4 of the Borough Local Plan) shows the mix of housing recommended across the whole housing market area in the 2016 SHMA. The policy for a mix of homes should be able to react to changing circumstances and ensure that it contributes to the mix of both the wider area as well as the development site itself. Therefore, the policy for a mix of homes does not prescribe the size of homes. Developers will be expected to have regard to the Borough-wide housing mix target set out in the 2016 SHMA (and subsequent successors) as a starting point when bringing forward proposals for individual sites.

| | 1 bed | 2 bed | 3 bed | 4+ bed |
|---------------|--------|--------|--------|--------|
| Market | 5-10% | 25-30% | 40-45% | 20-25% |
| Affordable | 35-40% | 25-30% | 25-30% | 5-10% |
| All dwellings | 15% | 30% | 35% | 20% |

Table 2 Housing Size Mix by tenure set out in 2016 SHMA for Eastern Berks & South Bucks HMA

The housing units completed under prior approval applications do not reflect the recommended housing mix. This is further demonstrated in section 3.3 of this document.

In addition, Policy HO3 in the BLP, contains requirements for affordable housing on qualifying sites. This matter is considered further below in Section 3.4.

2.4 National policy and guidance

Paragraph 53 of the [National Planning Policy Framework \(NPPF\) 2023](#) sets out that the use of Article 4 directions to remove national permitted development rights should - where they relate to change from non-residential use to residential use - be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts. In all cases, be based on robust evidence, and apply to the smallest geographical area possible.

Paragraph 038 of the [Planning Practice Guidance](#) section titled 'When is permission required?' sets out that the NPPF advises that all Article 4 Directions should be applied in a measured and targeted way and that they should be based on robust evidence, and apply to the smallest geographical area possible. It also sets out that where an

Article 4 Direction relates to a change from non-residential use to residential use, it should be limited to situations where an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts. In addition, it sets out that the potential harm that the Article 4 Direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to the protected employment sites.

3. Evidence to support the Article 4 Direction

This chapter explores the forms of harm caused by permitted development rights for office to residential conversions and sets out the evidence for the harm caused or could be caused in the protected employment sites.

3.1 Office Floor Area Lost and Potential Loss

The Council monitors net change in floorspace in different use classes on an annual basis and is published in the Authority Monitoring Report. Table 3 shows the annual net change in floorspace from office to residential PDR through Class O prior approval permissions in the Royal Borough since the start of the BLP plan period.

The data shown in Table 3 reveals that for the early years of the plan period there has been a continuing loss of office floor space across the Borough. This is in part attributable to the recycling of older and less economically attractive employment floorspace that no longer meets the needs of modern office occupiers. It was in order to facilitate this kind of recycling to prevent long term vacancy of such buildings and to bolster the supply of residential units that the Government introduced permitted development rights to change from office to residential under a prior approval process. However, it is now considered that in RBWM, the amount of employment floorspace being converted to residential under the prior approval process is impacting on the capacity to provide sufficient employment land given the pressures on developable land within our constrained Borough. As shown in Table 3, the majority of these losses have occurred in areas outside of the town centres.

| Year | Maidenhead Town Centre | Windsor Town Centre | Other Areas in Maidenhead & Windsor | Rest of Borough | Total |
|--------------|------------------------|---------------------|-------------------------------------|-----------------|----------------|
| 2013/14 | 0 | -565 | 0 | 0 | -565 |
| 2014/15 | -1,083 | -2,309 | -341 | -1,257 | -4,990 |
| 2015/16 | -120 | 0 | -4,073 | -3,691 | -7,884 |
| 2016/17 | 0 | 0 | -510 | -60 | -570 |
| 2017/18 | -3,418 | 0 | -393 | -247 | -4,058 |
| 2018/19 | -588 | 0 | -3,993 | -183 | -4,764 |
| 2019/20 | -257 | -189 | -160 | -313 | -919 |
| 2020/21 | -358 | 0 | -2,743 | 0 | -3,101 |
| 2021/22 | -5,264 | 0 | 0 | -219 | -5,483 |
| Total | -11,088 | -3,063 | -12,213 | -5,970 | -32,335 |

Table 3 Floor space change for office to residential conversions under PDR (completed developments in m² GIA)

Table 4 indicates that there remains significant further potential loss of office floorspace to residential conversions from extant unimplemented prior approvals from 41 sites. The pool of potential conversions is distributed across the Borough. The largest schemes in the pipeline are for Mattel House ²and Thames House, both in Maidenhead, and all of which are for the conversion of whole buildings.

² The prior approval for Mattel House (21/02067/CLASSO has been superseded by a full planning permission (22/01391/FULL) allowed on appeal but is still extant.

| Maidenhead Town Centre | Windsor Town Centre | Other Areas in Maidenhead & Windsor | Rest of Borough | Total |
|-------------------------------|----------------------------|--|------------------------|----------------|
| -8,231 | -3,770 | -10,614 | -8,247 | -30,862 |

Table 4 Potential office floorspace loss through prior approvals not started or under construction as at 31 March 2022 (m2 GIA)

The loss of office floorspace has been more prevalent in the protected BLP Policy ED2 Employment sites (Cordwallis Industrial Area, Vanwall Business Park and Ascot Business Park) and Maidenhead Town Centre.

In addition, the following protected Employment sites have current prior approvals at Grove Business Park White Waltham and Tectonic Place, Maidenhead.

The continued unconstrained loss of employment floorspace through the conversion of offices to residential is considered likely to adversely impact the capacity of the BLP Policy ED2 to meet the requirement to provide sufficient employment floorspace in the future.

It is recognised that bringing residential development into town centres can bring some additional footfall and vitality into these centres, particularly the upper storeys of retail units. These are less likely to threaten the health of high streets.

3.2 Dwelling Completions and Commitments

Between 2013 and 2022, in the Royal Borough of Windsor and Maidenhead, 386 new dwellings have been completed through permitted development rights (PDR).

The following major developments with prior approvals were completed in protected employments sites up to 31 March 2022:

- Globe House Clivemont Road – 74 units
- Maiden House, Vanwall Road – 36 units

There was a total of 428 net dwellings with Class O prior approvals up to 31 March 2022 of which 379 net dwellings had not yet started, and 49 net dwellings were under construction. Table 5 shows the areas of the Royal Borough where the Class O prior approvals have been granted:

| Maidenhead Area | Maidenhead Town Centre | Windsor Area | Windsor Town Centre | Rest of RBWM | Total |
|------------------------|-------------------------------|---------------------|----------------------------|---------------------|--------------|
| 140 | 61 | 11 | 39 | 177 | 428 |

Table 5 Potential net dwellings through prior approvals not started or under construction as at 31 March 2022

Included in the above total, there are 207 net dwellings (almost half of the total prior approvals) in the following developments that have Class O prior approvals in protected employment sites as of 31 March 2022:

- Mattel UK Mattel House Vanwall Road Maidenhead – 28 units
- Marandaz House, Clivemont Road Maidenhead – 40 units
- Grove Business Park White Waltham 15 Class O applications – 93 units
- Ascentia House Lyndhurst Road Ascot – 18 units
- Tectonic Place Holyport Road Maidenhead (Bray) – 28 units

Whilst it is recognised that Class O has delivered 386 new homes up to March 2022 with further homes in the pipeline, the following sections highlight the impacts of these new dwellings including types of homes and their quality.

3.3 Housing Mix

There are a limited number of brownfield sites in existing settlements that can provide a mix of housing that will support a balance of housing types and tenures required, and relying solely on previously developed sites risks housing supply being weighted too heavily towards delivering 1-2 bed properties in higher density flatted schemes.

The delivery of new dwellings from prior approvals has not reflected the mix needed. Table 6 shows the number of dwellings that have been completed through permitted development rights in the last three years.

| Net Dwellings | Houses | Flats | 1 bed | 2 bed | 3 bed | 4 + bed |
|---------------|--------|-------|-------|-------|-------|---------|
| 110 | 4 | 106 | 77 | 28 | 1 | 4 |

Table 6 Housing completions from 2019-2023 dwelling types and number of bedrooms through change of use from Office to Residential

Table 7 shows the housing and bedroom mix of Class O prior approvals that started and not yet started (commitments):

| Net Dwellings | Houses | Flats | 1 bed | 2 bed | 3 bed | 4 + bed |
|---------------|--------|-------|-------|-------|-------|---------|
| 428 | 1 | 427 | 261 | 159 | 4 | 4 |

Table 7 Housing commitments as at 2021/22 dwelling types and number of bedrooms through change of use from Office to Residential

As shown from the above tables, almost all of the dwellings created from prior approvals have been flats, with the vast majority one-bedroom flats. Also, Table 2 in section 2.3, also shows that only 5-10% of the market housing need from the SHMA was for dwellings of this size.

The housing register shows a high need for 2 and 3 bed properties for those in priority need. Consequently, the evidence points towards there needing to be more emphasis on delivering houses rather than flats.

3.4 Affordable Housing

Under permitted development rights, there is no requirement for the provision of affordable housing. Affordable housing contributions or units are secured through a S106 agreement. The prior approval process does not require developers to contribute any affordable housing.

The housing need evidence underlying the Borough Local Plan Policy HO3 is the Berkshire Strategic Housing Market Assessment (SHMA) (2016). It indicates a high level of need for affordable housing in the Borough.

The Borough Local Plan Policy HO3 requires affordable housing on the following sites:

- Developments for 10 dwellings gross or more than 1,000 sqm of residential floorspace
- Within designated rural areas, developments of between 5 and 9 dwellings will also be required to provide affordable housing
- As prior approval sites are brownfield sites, the level of affordable housing that would have been sought would be 30% of the total number of units on the site

Only 12% of the total housing units delivered from the start of the BLP plan period (2013/14) to 2021/22 were for affordable units, and the percentages achieved were particularly low from 2015/16 to 2018/19. This is the same period in which completions from Class O prior approvals began to come on stream.

The extent of the impact of prior approvals on overall affordable housing delivery is not possible to conclusively demonstrate, and it is likely that other factors may well have played a role such as changing viability conditions and national policy on viability assessments. However, as an example, there were 13 sites with an extant Class O prior approval that had not commenced development at 31st March 2023 that were for 10 or more dwellings and would, therefore, normally trigger an affordable housing requirement. The total dwelling capacity of these sites was 274 dwellings. If the 30% policy requirement was applied to these sites this would, subject to viability considerations, have yielded 82 affordable dwellings. It is a fact that Class O prior approvals significantly affected the proportion of residential developments that were able to make an affordable housing contribution. It is therefore clear that the introduction of prior approval rights has at the very least contributed to a decline in affordable housing delivery.

Given the scale of the identified affordable housing needs in RBWM, it is of considerable harm to the planning of the area that so many private developments are not required to contribute towards affordable housing.

3.5 Quality of Dwellings

The housing figures in paragraph 3.3 demonstrate that dwellings granted through prior approvals are mainly 1-bedroom dwellings (over 70%). This does not reflect the identified need for family housing demonstrated in the evidence base prepared for the BLP.

Dwellings delivered through prior approvals are also often very small in terms of floorspace, with many being studio flats, but it is accepted that this issue has been largely addressed by the introduction in April 2021 of minimum [national space standards](#) for prior approval created dwellings. There is also a requirement for adequate natural light for habitable rooms. However, a number of issues regarding the standards applied to new dwellings remain. This includes the lack of outdoor amenity space and no access to private or communal outdoor space. Dwellings without windows remains a concern, with natural light potentially only being provided by a rooflight. In addition, there is a more general locational concern relating to the introduction of new homes within commercial areas, for example the protected employment sites, where there are quality of life issues such as poor air quality and noise. This is considered further in the sections below.

Local Plan standards around accessibility and adaptability and sustainable design, with the latter an essential element of responding to the climate emergency, cannot be required through prior approvals, undermining the aims of policy HO2 of the BLP.

Accessible and adaptable dwellings under part M4(2) of the building regulations, and wheelchair accessible and adaptable dwellings under part M4(3) are also a requirement of policy HO2 (1c.) for proposals of 20 or more dwellings. The mechanism by which they can be applied to a specific development is by planning condition. Without such a planning condition, there is no ability to require compliance with these standards, and a planning condition cannot be applied to a prior approval as accessibility and adaptability are not matters that can be considered in a prior approval.

3.6 Sustainable design and construction

In June 2019, the Royal Borough declared an environment and climate change emergency, and in February 2021, adopted the [Environment and Climate Strategy 2020-2025](#). This strategy cross references the key objectives and policies on the environment and climate change set out in the BLP and provides a wider strategic framework and 'plan of action' to achieve the target of net zero carbon emissions by 2050.

As part of the adopted BLP, the Council introduced new expectations for the sustainability of new developments, and these are considered an essential part of the response to the climate emergency. The design of developments therefore needs to more carefully consider matters such as shading, insulation and ventilation, surface water runoff and storage and the use of appropriate tree and other planting and set out in Policy SP2 Climate Change. If planning permission was required for conversions in the proposed Article 4 Direction areas, then the required standards would be secured by planning condition, but these requirements cannot be secured through a prior approval application.

Therefore, homes delivered under prior approvals within protected employment sites are likely to continue to represent an obstacle to the vital objective of achieving a target of net zero carbon emissions in the borough by 2050.

3.7 Air Quality

Whilst some other environmental impacts, in particular noise and contamination, are matters that can be taken into account in considering prior approval applications, air quality is not among them. Poor air quality can have a serious impact on human health and on the natural environment.

Environmental protection policies are linked with Borough Local Plan (BLP) objectives to minimise impact of development on climate change and the environment and requiring new development to provide environmental improvements. The Borough is committed to protecting existing environmental quality and where possible reducing adverse effects on the local and natural environment as a result of changes in activities or from new development.

Consideration through the planning application process allows for the impacts to be considered, with reference to a submitted Air Quality Assessment where necessary, and, if required, mitigated. Such mitigation can be incorporated into a development's design from the outset, such as through its layout, for instance set backs from the road, or through ensuring windows to habitable rooms are located away from facades that are in close proximity to the source of poor air quality. Planting can also help to mitigate impacts, as can certain types of paving. Mitigation measures could also include mechanical ventilation systems which enables residents to keep their windows closed and which draw air from away from the areas of poorest air quality. None of these mitigation measures can be secured without a planning application being submitted.

3.8 Noise and Disturbance

It is considered that the location of residential prior approvals within the protected employment sites has clear potential for unacceptable noise impacts on residents. The lack of a planning application will mean that measures to provide mitigation, which would normally be secured by condition, will not be possible. Whilst it may be possible to consider noise from commercial premises within the conditions of some prior approval applications, noise from other sources such as outdoor events or road noise, particularly with high levels of HGV traffic, cannot be considered. The high levels of noise to which residents would be exposed would directly impact their quality of life. The importance of securing and improving people's quality of life is directly stated in the BLP vision and objectives, and such impacts would therefore represent wholly unacceptable adverse impacts.

3.9 Infrastructure Contributions

Again, under the prior approval process for permitted development rights, there is no requirement for the completion of a Section 106 agreement to secure infrastructure contributions.

Infrastructure contributions for education, highways and transport, open space and others, may be secured by a S106 agreement. However, since the adoption of the [Community Infrastructure Levy](#) (CIL) in September 2016, most contributions towards

infrastructure projects have been collected this way. S106 agreements are still used for site specific infrastructure such as local highway and junction improvements, and to provide affordable housing.

CIL is charged in pounds per square metre on the net additional increase in floorspace of liable developments. Developments with prior approvals are not in theory excluded from paying CIL, however, if there is no net additional floorspace added then there is no liability. Also, developers can fulfil the requirement to demonstrate that a building has been partly occupied in lawful use for six months within the last three years. An Article 4 direction would not change this situation because the CIL rules would apply in the same way to planning applications. However, for particularly large developments, or developments with specific impacts on infrastructure, the option to address this in a Section 106 agreement is lost through permitted development rights.

The BLP Policy IF1 expects new development proposals to deliver infrastructure to support the overall spatial strategy of the Borough. This includes making contributions to the delivery of all relevant infrastructure projects included in the Infrastructure Delivery Plan (IDP) in the form of financial contributions or on site provision. Infrastructure required as a result of new development is not funded by the developments with prior approvals. The infrastructure required would need to be addressed by public funds. Without an Article 4 direction, developments with prior approvals will continue to take place without making necessary contributions to infrastructure.

4. Process and Approval of the Article 4 Direction

The National Planning Policy Framework (NPPF), as well as Planning Practice Guidance (PPG), sets out expectations for when these directions can be used, and of particular note are recent changes to the NPPF that require that any Article 4 direction that restricts changes of use to residential be limited to situations where an Article 4 direction is necessary to avoid “wholly unacceptable adverse impacts”.

The process of adopting an Article 4 direction is as follows:

- Apply an immediate (confirmed within 6 months of being made) or non-immediate (implemented 12 months following the decision) Article 4 direction by publishing a notice which needs to be publicised.
- Carry out a public consultation for a minimum of 21 days with those most likely to be affected and statutory consultees.
- Take into account responses received during the consultation period and decide whether to confirm or not confirm the article 4 direction.

If a decision is made to confirm the article 4, the Secretary of State must be notified, and he or she can intervene to amend or remove an article 4 direction should he or she see fit. The Secretary of State has in some cases previously intervened to prevent blanket article 4 direction, and therefore the extent of the approach needs to be considered.

Government’s existing planning guidance on Article 4 Directions is clear; the potential harm that the Direction is intended to address must be clearly identified, and in this instance, there will need to be a particularly “strong justification” as there are already prior approval powers available under the [Town and Country Planning \(General Permitted Development etc.\) \(England\) \(Amendment\) Order 2021](#) to control PDR Class MA (Use Class E to residential) applications.

The Secretary of State (SoS) also has the power to modify or cancel an Article 4 Direction, and may indicate to the Council that the SoS is not willing to accept the Article 4 Direction as originally made.

In the case of an immediate Article 4 Direction, The Council can be liable under section 108 of the Town and Country Planning Act 1990 (as amended) to pay compensation to those whose Permitted Development Rights (PDR) have been withdrawn but only if, within 12 months of the effective date of the Article 4 Direction, the Council

- 1) Refuses planning permission for development which would otherwise have been permitted development, or
- 2) Grants planning permission subject to more limiting conditions than the General Permitted Development Order 2015

A non-immediate Article 4 Direction would remove the risk of compensation claims.

5. Conclusion

The Council intends to introduce a non-immediate Article 4 direction covering all protected employment sites (BLP Policy ED2).

Once a non-immediate Article 4 direction has taken effect it will remove the freedoms offered under Class MA of the GPDO and mean that planning permission will be required for changes of use of E class uses to residential within such sites. The 12-month delay before it takes effect avoids the Council being liable for compensation for any loss of value to the relevant property arising from a refusal of planning permission for development that would otherwise have been permitted under Class MA.

The National Planning Policy Framework sets a high bar for councils seeking to secure Article 4 Directions. It requires authorities to provide more robust evidence to justify introducing them and requires them to be applied to the smallest geographical area possible (i.e., avoiding blanket Article 4 Directions). The proposal to restrict the Article 4 Direction to Class MA (Class E to Class C3) conversions within the most important protected employment sites complies with this requirement.

The aim of the Article 4 direction is not to prevent all changes of use. The direction will enable the Council to consider relevant planning issues relating to change of use applications and to protect floorspace in commercial use within the Borough's protected employment sites to ensure that they retain an attractive and viable core.

The direction will allow other planning matters to be considered, for example, affordable housing and amenity space provision, as well as infrastructure requirements, which would otherwise not be possible with prior approval applications considered under permitted development. Taken together, the adverse impacts of prior approvals in the areas proposed for an Article 4 Direction are wholly unacceptable and warrant the introduction of an Article 4 Direction in these areas.

6. Appendices

Appendix 1. Policy ED2 Protected Employment Sites

Policy ED 2

Protected Employment Sites

1. The BLP will retain sites for economic use and employment as defined on the Policies Map:
 - i. Office stock within the town centres of Maidenhead, Windsor and Ascot will be protected and, in line with ED1(5) & (6), where redeveloped the Council will look to secure net additional office space where possible.
 - ii. Outside the above town centres the Employment sites listed below are defined on the Policies Map as Business Areas:
 - a. Vanwall Business Park, Maidenhead
 - b. Norreys Drive, Maidenhead
 - c. Foundation Park, Cox Green
 - d. Windsor Dials, Windsor
 - e. Centrica, Millstream Windsor
 - f. Alma Road, Windsor
 - g. Stafferton Way, Maidenhead, Employment Uses only
 - h. Whitebrook Park, Maidenhead
 - i. Tectonic Place, Maidenhead
 - iii. Employment sites listed below are defined on the Policies Map as Industrial Areas:
 - a. Furze Platt Industrial Area, Maidenhead
 - b. Woodlands Business Park, Maidenhead
 - c. Cordwallis Industrial Area, Maidenhead
 - d. Howarth Road, Off Stafferton Way, Maidenhead
 - e. Prior's Way Industrial Estate, Maidenhead
 - f. Vansittart Road Industrial Area, Windsor
 - g. Fairacres Industrial Area, Windsor
 - h. Ascot Business Park, Ascot
 - i. Queens Road Industrial Estate, Sunninghill
 - j. Manor House Lane Employment Estate, Datchet
 - k. Baltic Wharf, Maidenhead
 - l. Boyn Valley Industrial Estate. Maidenhead
 - m. Reform Road, Maidenhead
 - iv. The sites listed below are defined on the Policies Map as Mixed Use Areas:
 - a. DTC Research, Belmont Road, Maidenhead
 - b. Shirley Avenue (Vale Road Industrial Estate), Windsor
 - v. The sites below are defined on the Policies Map as Established Employment sites in the Green Belt:
 - a. Maidenhead Office Park, For E(g) and industrial Uses
 - b. Ashurst Manor, Sunninghill, For E(g) use
 - c. Lower Mount Farm, Cookham, for Industrial Uses
 - d. Ditton Park, Riding Court Lane, for E(g) uses
 - e. Horizon Building, Honey Lane, Maidenhead, for E(g) Uses
 - f. Grove Park, Business Park, White Waltham, Mixed Uses
 - g. Silwood Park, Sunningdale, Technology Park / Educational Uses

Appendix 2. Map Policy ED2 Protected Employment Sites

