

## **Committee: Cabinet**

**Date: 16 September 2013**

Agenda item: 5

Wards: all

**Subject: Article 4 (non-immediate) to remove permitted development rights for the conversion of offices to residential in Wimbledon town centre and Merton's industrial estates.**

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge

Forward Plan reference number: 1294

Contact officer: Future Merton Strategic Policy and Research, Tara Butler

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### **Recommendations:**

- A. That Cabinet approves the undertaking of a non-immediate Article 4 Direction to remove permitted development rights for the conversion of offices to residential use for Wimbledon town centre and the industrial estates at Willow Lane, Garth Road, South Wimbledon (Morden Road) Durnsford Road, Dundonald Road, Plough Lane and Prince George's Road (Colliers Wood).
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. On 30 May 2013, Government introduced permitted development rights to allow offices to convert to residential without the need for planning permission for a period of three years via a process known as "prior approval".
- 1.2. Supported by the Mayor of London, the council had applied for Wimbledon town centre and the major industrial estates to be exempt from these new changes in order to encourage jobs and business growth. Government rejected Merton's application, along with all other outer London boroughs.
- 1.3. In the three months since government introduced the new rights, Merton has received applications for 32 offices to be converted into residential use. The volume of enquires officers are receiving implies that this trend will continue.
- 1.4. In order to help retain and encourage jobs and businesses in the borough, it is recommended that the council remove permitted development rights for the conversion of offices into residential use for Wimbledon town centre and most major industrial areas under Article 4 of the Town and Country Planning (General Permitted Development Order) 1995

## **2 DETAILS**

- 2.1. During 2012 government has consulted on the idea of relaxing planning controls nationally and allowing businesses to change to residential without requiring local assessment or a local decision. The changes were introduced quickly.

- 2.2. On **24 January 2013**, Government’s Chief Planner wrote to all councils explaining that:
- the government was planning to introduce permitted development rights for changes of use from office to residential uses;
  - local authorities would have the opportunity to apply for exemptions to this, if they could justify it against government’s criteria.
- 2.3. In **February 2013** Merton Council had sought an exemption to this approach from Government for Wimbledon town centre and the larger industrial estates in order to protect space for jobs and businesses. The Mayor of London supported Merton’s exemption; however government refused the exemption for Merton and all outer London boroughs.
- 2.4. On **7 May 2013**, a statutory instrument was made, laid before Parliament on 9 May and came into force on **30 May 2013**. The statutory instrument introduced permitted development rights for residential conversions from offices for three years, subject to “prior approval” for transport and highway impacts, contamination risks and flooding risks.
- 2.5. Merton’s planning policies such as internal space standards, affordable housing, development density, assessment of the impact on school places, on the loss of employment floorspace and other issues do not apply to these developments as they take place without the need for planning permission.
- 2.6. As of **31 August 2013**, there had been “prior approval” applications for 32 offices to convert to residential (compared to 9 applications in Sutton in the same period). If all proposals are built by 2016, the 32 former offices will provide 175 mainly studio and one-bedroom apartments.
- 2.7. The graphs below set out the location of sites seeking “prior approval” (Figure A) and the size (number of flats) per ward (Figure B).

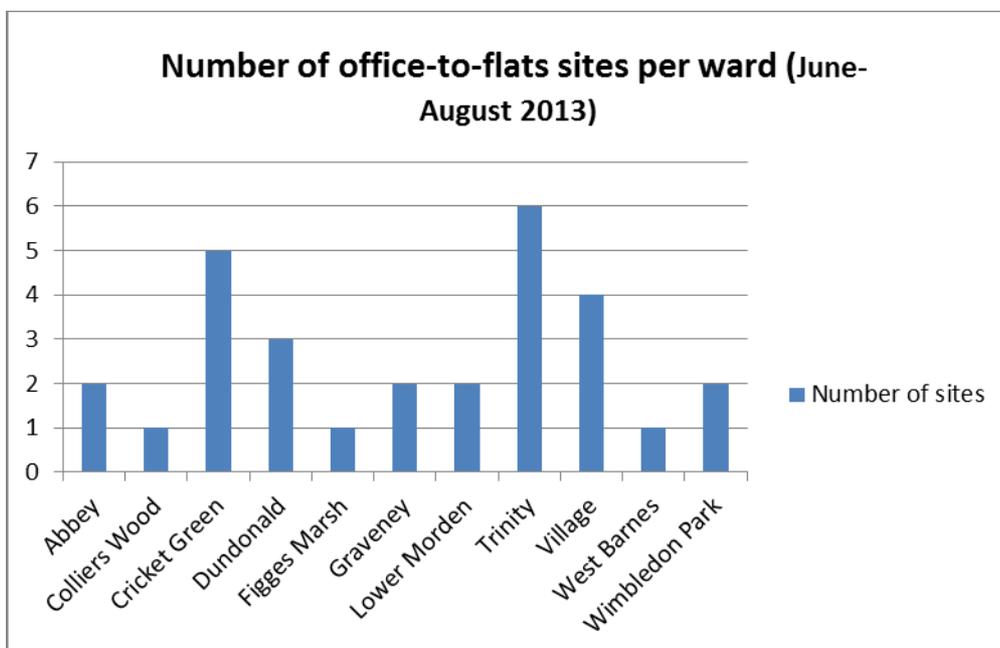


Figure A: the number of sites seeking prior approval to convert offices to flats per ward in Merton (applications between 01 June and 31 August 2013)

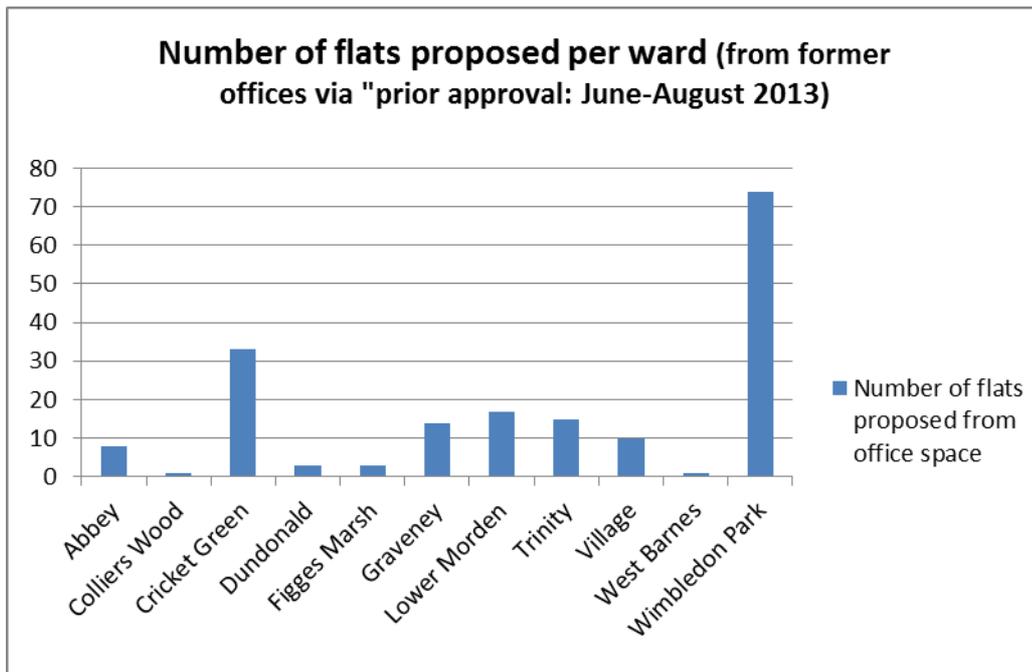


Figure B: the number of flats proposed from the conversion of offices to residential via “prior approval” (if all built, the total is currently 175 flats)

**The impact on current and future businesses and jobs:**

- 2.8. Merton has a relatively limited amount of office floorspace, few suitable development sites and very high residential sales and rental values in comparison to those achievable for offices.
- 2.9. Former offices fragmented into several flats with separate ownerships are unlikely to ever revert to office use. Attracting and retaining businesses and jobs in the borough will become more difficult with the lack of suitable accommodation.
- 2.10. Anecdotal evidence from outside London is that the “prior approval” process is not currently resulting in such significant changes as emerging here. In the future it is likely that there will be greater competition from outer London locations due to the existence of more office floorspace.
- 2.11. There is also emerging evidence that the “prior approval” process is being used to:
  - Terminate office leases or invoking break clauses in order to convert the office into flats, as there is now the certainty that redevelopment can take place.
  - Force the renegotiation of higher office rents.
  - allow former offices that have been granted planning permission for residential use but not yet built to reapply for “prior approval”, thus avoiding planning conditions, Section 106 and other improvements that were required as part of the planning permission.

### **Quality of new residential accommodation.**

- 2.12. Under “prior approval”, Merton’s planning policies do not apply (for example, policies on density of development, internal space standards for new homes and other design considerations). Officers are increasingly concerned about the quality of some of the new residential proposals.
- 2.13. Some “prior approval” sites are offices above shops and were probably originally dwellings; their conversion back to a dwelling is likely to cause minimal impact.
- 2.14. However other proposals are overly dense for the area, providing flats with single aspect, poorly arranged with small rooms.
- 2.15. The new flats have to be built to national Building Control standards, but these standards do not take account of location, development density, overlooking or internal space standards.

### **The impact on local amenity: neighbours and new occupiers**

- 2.16. The “prior approval” process does not fully consider the impact of the development on local amenity of nearby residents and businesses. Planning matters designed to minimise impact on neighbours (such as conditions to manage parking, contributions to local school places where necessary, conditions to require landscaping, restrictions on overlooking, daylight etc.) cannot be referred to as the process takes place outside the development plan.
- 2.17. The “prior approval” applications already received in just two months would deliver 175 new homes, approximately half Merton’s housing target. Under “prior approval”, development has to be fully completed within three years. It is officers’ view that the speed and the volume of these new developments is likely to have a notable cumulative impact on local amenity.
- 2.18. In addition, the council is increasingly concerned about the potential for conflict between the new residential occupiers and existing businesses.
- 2.19. Offices within Merton’s industrial estates below have already applied for conversion to residential:
- Durnsford Road / Weir Road (Vantage House: 52 studio flats);
  - South Wimbledon Business Area (Deer Park Road: 6 x 1-bed flats)
  - Garth Road (Enterprise House: 8 x 1-beds, 4 x 2-beds)
- 2.20. There is potential for conflict between existing industrial-type business activities in these areas (early morning HGV traffic, noise etc.) and the amenity of the new residents, which will have resource implications for the council via environmental health and other public protection services.

### **Recommendation: require planning permission via Article 4**

- 2.21. It is recommended that the council implements a non-immediate Article 4 Direction for parts of Merton to require offices in these locations to seek planning permission for conversion into residential. An Article 4 Direction removes a permitted development right and requires a developer to submit a planning application to a local authority.

- 2.22. Government guidance <sup>1</sup>sets out the circumstances where local authorities may consider an Article 4 Direction is appropriate. One of the circumstances is that “*the exercise of permitted development rights would undermine local objectives to create or maintain mixed communities.*” It is considered that this circumstance applies in the case of this proposed Article 4 Direction as the lack of design considerations, affordable housing, family housing and mix of uses arising from the introduction of permitted development right would undermine Merton’s Core Planning Strategy, in particular Strategic Objective 4 *to make Merton more prosperous with strong and diverse long-term economic growth* and CS12: Economic Development.

### 3 ALTERNATIVE OPTIONS

- 3.1. Rejected option: do nothing. In the short term this would be the cheapest option. However in order to retain space for jobs and businesses, minimise impacts on local amenity, provide well designed accommodation for future residents and minimise potential sources of conflict in the borough, this report recommends pursuing an Article 4 Direction
- 3.2. Rejected option: an immediate Article 4 Direction. An Article 4 Direction can be:
- **an immediate direction.** As the name implies, this removes the permitted development right at once but must be confirmed by the local planning authority following local consultation within six months or the direction will lapse. Compensation is payable for the loss of a permitted development right.
  - **a non-immediate direction,** which removes the permitted development rights after a consultation has taken place. Compensation is not payable.
- 3.3. Given the size of some of the developments and the considerable difference between land values for commercial and residential uses, the compensation could be considerable. Therefore a Non-Immediate Article 4 Direction is recommended.
- 3.4. Rejected option: a temporary Article 4 Direction. Local authorities also have the option to introduce temporary or permanent Article 4 Directions. Currently, the permitted development right is for three years only, however there is no certainty that the permitted development right will be revoked after three years. It is recommended that Merton Council introduce a permanent Article 4 Direction as it will cover a period longer than three years (should government decide to continue to allow offices to change into residential). If the permitted development right is revoked, the Article 4 can remain but will have no effect.
- 3.5. Rejected option: a whole borough Article 4 Direction. The report recommends that the Article 4 Direction be sought for Wimbledon town centre and the industrial estates of South Wimbledon Business Area,

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<sup>1</sup> Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (DCLG, 2012, para 2.3)

Durnsford Road, Garth Road, Dundonald Road, Plough Lane and Willow Lane.

- 3.6. Government is clear that applications to be exempt from allowing offices to be converted to residential should be as focussed on as small an area as the impacts are deemed to effect, and not be sought for large areas where the impacts aren't clearly defined.
- 3.7. Merton's offices are generally concentrated in and around Wimbledon town centre. Merton's Economic Development Strategy 2010 and 2012 refresh recognised the importance of Wimbledon town centre as the borough's centre for office-based businesses and jobs. In addition, the Mayor of London's Plan .
- 3.8. However outside Wimbledon town centre, there is less evidence of demand for offices and many purpose built offices have already been converted into other uses. Seeking an Article 4 Direction for the whole borough would be likely to increase the risk of not being able to justify Merton's case against government guidance and the Secretary of State rejecting it.
- 3.9. Government has also started consulting on extending permitted development rights further, including allowing small shops to change to flats without the need for planning permission. Should this go ahead, these changes would be introduced in April 2014.

#### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. In accordance with the requirements of *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (DCLG, 2012)*, six weeks of public consultation will be required to introduce an Article 4 Direction. All premises affected within the area must be contacted as part of this.
- 4.2. Consultation will also involve the Secretary of State, who has the right to prevent the council from implementing an Article 4 Direction.

#### **5 TIMETABLE**

- 5.1. The timetable for producing an Article 4 Direction is set out in the table below. A non-immediate Article 4 Direction takes a year and 12 weeks to be introduced.

<b>Time</b>	<b>Action</b>
<b>0</b>	<b>Make the Article 4 Direction</b>
0	Notify residents and businesses of consultation regarding introduction of an Article 4 Direction by newspaper advertisement, area notices and letters.
0	Notify Secretary of State of consultation regarding introduction of an Article 4 Direction by email
+6 weeks minimum	Consultation closes
+10 weeks	Council consider consultation responses. Any material changes to the draft Article 4 will require re-consultation
<b>+12 weeks*</b>	<b>Confirm the Article 4 Direction (via full council)</b>

+12 weeks*	Notify residents and businesses of direction coming into force a year hence
+12 weeks*	Notify Secretary of State of direction coming into force a year hence
<b>+1 year and 12 weeks*</b>	<b>Article 4 Direction comes into force</b>
* subject to the committee timetable	

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. Costs of a non-immediate Article 4 will relate to public consultation and officer time and are likely to be in the region of £6,000, which will be met from existing budgets.
- 6.2. Planning applications required under an Article 4 Direction are exempt from planning application fees. However, appropriate planning conditions and planning obligations will apply.
- 6.3. Applying the council's planning policies will ensure issues such as parking demand, transport implications, demand for employment floorspace, internal space standards, noise, sunlight, daylight, overlooking can be properly assessed and the impacts mitigated where necessary. This approach will help to deliver the council's Economic Development Strategy, Core Planning Strategy and minimise demands on the council's public protection and environmental health teams in the long-term.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. *Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (DCLG, 2012, para 2.3)* sets out government's guidance to creating and implementing a Direction made under Article 4 of the Town and Country Planning (General Permitted Development ) Order 1995 as amended.
- 7.2. It will be Merton Council's decision to make and confirm the Article 4 Direction. However the Secretary of State has residual power to intervene and prevent the proposed Article 4 Direction taking effect.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. Applying the council's planning policies via the introduction of Article 4 will help to improve the quality of development and how it relates to the surrounding area. This approach will help to reduce the potential for conflict between existing residents and businesses and future occupiers, thus helping with community cohesion.

## **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. If an Article 4 is sought and the council's planning policies are applied, these policies include designing out crime.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. The risk to this project is that the Secretary of State would not allow Merton to enact an Article 4 Direction.

- 10.2. This risk is being mitigated by proposing to apply the Direction to Wimbledon town centre and the strategic industrial areas, where there is clear evidence that there is demand for office-based business floorspace and therefore the loss of this floorspace (through continuing with permitted development rights) would undermine local objective to create mixed communities.

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

**12 BACKGROUND PAPERS**

- 12.1. Outcome of Consultation on Permitted Development Rights changes  
<https://www.gov.uk/government/consultations/changing-land-use-from-commercial-to-residential>
- 12.2. National Planning Policy Framework  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- 12.3. Letter from DCLG to Chief Planning Officers setting out proposed changes to Permitted Development Rights and ways to seek an exemption (24.01.13)  
<https://www.gov.uk/planning-guidance-letters-to-chief-planning-officers>
- 12.4. Statutory Instrument 2013/1101 bringing in the changes  
<http://www.legislation.gov.uk/uksi/2013/1101/contents/made>
- 12.5. Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995  
<https://www.gov.uk/government/publications/replacement-appendix-d-to-department-of-the-environment-circular-09-95>