

Development Control Committee – 17th February 2014

Report of the Director of the Urban Environment

Proposal to apply an Article 4(1) Direction to The Waterfront, Brierley Hill, West Midlands to withdraw permitted development rights given under Part 31, Class A (any building operation consisting the demolition of a building) of the Town & Country Planning (General Permitted Development) Order 1995 (as amended) and permitted development rights for change of use from offices (Class B1a) to residential (class C3).

Purpose of Report

1. Following consideration of Cabinet on 12th February 2014 for the creation of a Dudley Business Investment Zone, request that Development Control Committee recommends to the Council's Cabinet Member for Economic Regeneration the approval of the making of a Direction under Article 4(1) of the Town and County Planning (General Permitted Development) Order 1995 so that at The Waterfront Brierley Hill (identified in Figure 1 appended to this report):-
 - a. the change of use of the office accommodation (Class B1a) to residential accommodation (Class C3) in respect of all of area edged black but excluding area edged red on the plan
 - b. the demolition of the office accommodation, in respect of the areas edged red and black on the plan comes under the control of the Local Planning Authority.

Background

2. Following exclusion of the South Black Country elements from the approved Black Country Enterprise Zone (as part of the Government's national Enterprise Zone initiative), Cabinet approved (on 14th March 2012) the principle of a designated zone at the Waterfront in Brierley Hill where a business rate incentive would be used to stimulate investment, growth and jobs. In March 2012 Cabinet also authorised the Directors of the Urban Environment and Corporate Resources, in consultation with the appropriate property owners, to undertake further work in relation to this initiative and to report back to Cabinet with a detailed management and operational plan. This was reported back to Cabinet on 12th February 2014.
3. Whilst Cabinet approved the principle, subject to further feasibility, of approaching the initiative in three phases (Waterfront, Waterfront II and Harts Hill) it was agreed that initial work would focus upon the existing office park at The Waterfront. A plan of the three phases is attached as Figure 2.

4. Brierley Hill is designated as the Black Country's strategic centre in the Black Country Core Strategy (BCCS). The BCCS also provides the planning framework for an additional 1million sq ft of office space within the area, with the scope to create over 6,000 new jobs. At the Waterfront, there is some 650,000 sq ft of high quality office accommodation, of which approximately 200,000 sq ft is currently vacant.
5. The lifetime of the Business Investment Zone scheme would be five years, commencing 1st April 2014 to 31st March 2019. Therefore, to get the full two-year benefit of the scheme, businesses would have to take occupation of premises in the designated area by 31st March 2017.

Permitted development rights

6. On 6th September 2012 the Government announced, as part of a package of measures to support economic growth, that permitted development rights would be introduced to better enable change of use of premises from commercial to residential. The changes came into force on 30th May 2013.
7. The new rights are for a time-limited period of three years, and the Government will consider towards the end of that period whether they should be extended indefinitely. The change has been accompanied by a tightly drawn prior approval process which will cover significant transport and highway impacts, and development in areas of high flood risk, land contamination and safety hazard zones.
8. Alongside the new permitted development rights, the Government announced that local authorities would be given an opportunity to seek an exemption for specific parts of their locality. DMBC applied for an exemption for designated high quality employment areas including the Waterfront area of Brierley Hill; the application (in common with the majority of others from across the country) was unsuccessful.
9. Whilst the Council would not necessarily resist applications for change of use in rational locations, or self contained areas, the permittance of sporadic conversions could prejudice the letting of adjacent office space.
10. Article 4 of the Permitted Development Order (as amended in 2010) allows a Local Planning Authority (LPA) to apply a Direction to withdraw the permitted rights granted by the Order, where it is satisfied it is expedient that development should not be carried out, unless permission is granted through the Development Control process.
11. Government advice on the matter (Circular 9/95) states: "*generally, permitted development rights should only be withdrawn in exceptional circumstances. Such action will rarely be justified unless there is a real and specific threat i.e. there is reliable evidence to suggest that permitted development is likely to take place which could damage an interest of acknowledged importance and which should therefore be brought within full planning control in the public interest.*"
12. There is interest in the wider area for potential demolitions and changes of use. Inappropriate changes of use or the demolition of buildings without the approval of a

suitable replacement building could be prejudicial to the proper planning of the area and constitute a threat to the economic regeneration of the area. It is therefore proposed that to complement the Dudley Investment Zone measures and to ensure that uncontrolled changes do not undermine the strategic approach to regeneration in the area, that exceptional circumstances exist for DMBC to apply an Article 4 Direction to remove permitted development rights for change of use from offices (B1) to residential (C3) and for demolition granted by the Government Order for all of the Waterfront, save Point North which will be subject to controls over demolition only due to the recent planning approval for residential conversion.

13. Ensuring that such forms of development require planning permission does not necessarily prevent such development taking place. Instead it allows the LPA some control to fully consider the wider implications of the works, and ensure that the views of others, with an interest in this matter, are able to be fully taken into account before a decision is taken.

(Note- under the DMBC Constitution this function is undertaken through delegated powers by the Cabinet Member for Economic Regeneration in consultation with the Development Control Committee).

Finance

14. Local authorities have been given new powers to award further discretionary reliefs under the Localism Act.
15. The preparation of the Article 4(1) direction is allowed for within existing work programmes and budgets.
16. It should be noted that, refusal of planning permission following the making of an Article 4 Direction, or conditions of planning permission more restrictive than would have been permitted, may give rise to a claim for compensation. This would only be for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights.
17. However, it should also be noted that in Dudley no such claims for compensation have been pursued and national research carried out for the English Historic Towns Forum (RPS Planning 2008) involving 72 planning authorities equally found no evidence of any incidences of such claims having been made.

Law

18. Pursuant to Section 1 of the Localism Act 2011, the Council has the general power of competence to do anything that individuals generally may do.
19. A Direction is made under Article 4(1) of The Town and Country Planning (General Permitted Development) Order. Before making an Article 4(1) direction, the Council as local planning authority must consider it expedient that development should not be carried out without a planning application first being made and approved. (An article 4(1) direction can relate to specific or general development).
20. The law is clear that permitted development rights should only be withdrawn in exceptional circumstances. However, an Article 4 direction does not constitute an

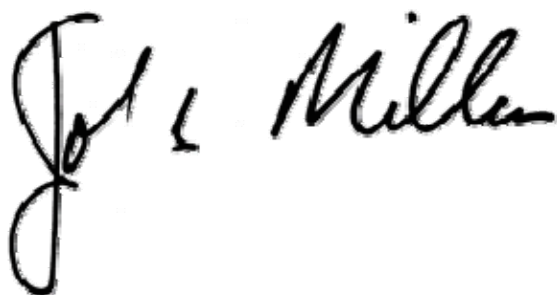
absolute prohibition of development; it simply requires that an express application for planning permission is to be made and then considered on its merits.

Equality Impact

21. This work has been conducted in full accordance with the Council's equality and diversity policies and should in no way have any prejudicial impact on different racial groups, disabled people, both genders and/or other relevant groups.

Recommendation

22. It is recommended that Development Control Committee relay their comments and views to the Cabinet Member for Economic Regeneration for consideration.



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List of Background Papers

- The Town & Country Planning (General Permitted Development) Order 1995 (SI 418/1995);
- The Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (SI 654/2010)
- Government Circular 9/95: General Development Order Consolidation 1995; - Government Circular 10/95: Planning Controls Over Demolition;
- National Planning Policy Framework;
- Black Country Core Strategy 2011;
- Dudley Unitary Development Plan 2005;
- Research into the use of Article 4 Directions on behalf of the English Historic Towns Forum (RPS Planning 2008).