

**Response to Inspector's Matter 10, Issue 3:
Retention of Existing Employment Sites and Buildings**

Questions 1, 2 and 3

- Q1. What sites does Policy ED2 relate to? Do the requirements apply to all sites and buildings used for employment purposes, or only allocated sites?**
- Q2. If the requirements are intended to apply to all sites, are they justified, appropriate and proportionate?**
- Q3. What is the justification for requiring 18-months of marketing? Is this necessary for all applications for changes of use?**

Summary of Comments

- 1.1 It is Logistics UK's ('LUK') position in respect of the retention of existing employment sites and buildings (draft Policy ED2) that:
- a. A clear definition of the sites/ buildings that the policy will apply to is required. This ought not include all sites and buildings in existing employment use.
 - b. The justification for the policy/ supporting text identifies a need to protect '*well located*', '*good quality*' sites and buildings. Sites and buildings that are not well located and/ or poor quality should either be excluded from the definition or exempt from further consideration through an initial 'sifting' element to the policy.
 - c. The policy should seek to protect sites and buildings that are well located (e.g. in the town centre and designated employment areas) and/ or have been assessed as good quality (e.g. those deemed worthy of protection from permitted development change of use through Article 4 direction).
 - d. Given that the emerging Plan seeks to allocate around 26.5ha of new employment land, in excess of the identified need for 14ha, which the LPA has presumably assessed as appropriately located, blanket protection of all existing employment sites and buildings, regardless of their location, is not justified, appropriate or proportionate.
 - e. The Council acknowledges in its response to Matter 2, Issue 3, Question 7 that it has a high proportion of older employment stock that is '*no longer fit for purpose*' and relies upon this (in part) to justify the over-provision of new employment land. Protecting employment stock (through Policy ED2) that is no longer fit for purpose undermines the Council's case for the quantum and scale of new employment allocations.
 - f. The requirement for '*at least 18 months*' of active marketing before a site/ building can be considered for change in use is neither flexible nor responsive as required by NPPF paragraph 82(d). The time period is arbitrary and the requirement fails to recognise other, equally robust, evidence that would demonstrate the unsuitability of a site/ building for continued employment use.

- g. If a site/ building has been demonstrated as unviable for its current use or alternative employment-generating use pursuant to points a. to c. of the draft policy, part d. requires a sequential approach to alternative use. This starts with business use then other non-residential employment generating uses. This clearly conflicts with parts a. to c. which require unsuccessful marketing for alternative employment-generating uses. Moreover, if an existing employment building/ site is located in a residential area, residential should automatically be deemed an appropriate future use.

Response to Questions

Q1: Scope of Policy ED2

- 2.1 There is no clear definition of which existing sites and buildings fall within the remit of draft Policy ED2. As currently drafted, the Policy could be considered to apply to all existing employment sites and buildings regardless of whether they are appropriate for continued employment use. Such blanket protection is not justified, nor is it consistent with the NPPF, justification for Policy ED2 or the rationale for the scale/ quantum of new employment allocations within the TWLP.
- 2.2 The supporting text to Policy ED2 outlines a need to protect *'well located'* existing employment sites and buildings (paragraph 6.450). It continues that it is important *'that good quality existing sites and buildings are not permanently lost to alternative uses as a result of short term trends and changes in demand'* (paragraph 6.451). The need for a policy against which to assess change of use for offices that have had their permitted development rights removed by virtue of Article 4 directions is also set out (paragraph 6.454).
- 2.3 In line with the justification/ supporting text to Policy ED2, only those sites/ buildings that are well located and good quality should be retained. Sites/ buildings in designated employment areas and on allocated sites will have been assessed by the LPA as appropriately located for employment use. Moreover, buildings covered by Article 4 directions have been assessed as of sufficient quality and in a suitable location to warrant removal of permitted development rights to change to residential. Further, in line with the spatial strategy, employment uses should be directed to the highly accessible town centre. It is correct that such sites/ buildings are required to demonstrate why they are no longer suitable for employment use. However, poorly located and/ or poor-quality employment stock ought not be automatically 'caught' by Policy ED2 to ensure sufficient flexibility and to enable a rapid response to changing economic circumstances in line with NPPF paragraph 82(d).
- 2.4 A Town Centre Office Market Review (2018) was produced by Durlings on behalf of the Council to inform Article 4 directions. This Review focused on Tunbridge Wells town centre, being the most appropriate location for office in line with the Core Strategy. Policy ED1 of the TWLP identifies in-principle support for retention of, and new, employment development in key employment areas including the town centre. These are the most accessible and sustainable locations for employment and it is considered a sound approach for policy to focus employment uses here. Employment sites/ buildings outside of the town centre and designated employment areas are less suitably located and in line with the spatial strategy and Policy ED1 ought not fall to be considered against Policy ED2.
- 2.5 Hermes House is one such example of an existing employment site and building that is located outside of the town centre and designated employment areas and is not appropriate for protection through Policy ED2.

- 2.6 Hermes House was not considered for an Article 4 direction through the Office Market Review (2018) as it falls outside of Tunbridge Wells Town Centre and in an almost exclusively residential area. As such it is not considered to be 'well located' and planning permission for a headquarters building of this type and scale in this location would be highly unlikely to secure planning permission if assessed against current planning policies and guidance.
- 2.7 The LPA does not have a qualitative assessment of Hermes House as it was not included in the Office Market Review. However, our Regulation 19 representations (4 June 2021) set out in detail the issues with the current building in terms of layout, configuration, inefficiency and the significant works required to bring it up to an appropriate standard. Added to this, we have established that the property achieves an EPC rating of 'D' which – under the Energy Efficiency Regulations 2015 (and the associated trajectory consultation thereon) – will render the property incapable of being lawfully let as of 2027.
- 2.8 It is clear that Hermes House does not provide 'good quality' employment accommodation nor is it 'well located'. Sites/ buildings such as this should be identified as falling outside of the remit of Policy ED2 through a clear definition or through an initial 'sifting' element to the Policy. Amended wording could include:

Policy ED 2
Retention of Existing Employment Sites and Buildings

Existing employment sites and buildings will be retained in their existing use, or an alternative employment-generating use, to support the vibrant and balanced economy of the borough, ~~taking into account whether provided that~~ they:

1. Are well located to a main road and public transport networks;
2. Provide, or are physically and viably capable of providing, through redevelopment, good quality modern accommodation attractive to the market; ~~and~~
3. Are capable of meeting a range of employment uses to support the local economy;~~;~~
- ~~4. Have been identified as being suitable for alternative uses in the Local Plan or another adopted development document.~~

~~Where existing employment sites and buildings do not meet points 1-3 above they will be considered for alternative use appropriate to their location and context.~~

Applicants seeking to redevelop/convert existing employment buildings and sites ~~that meet points 1-3 above~~ to non-employment uses must demonstrate the following....

- 2.9 Alternatively, the supporting text to Policy ED2 could include a definition of the employment sites and buildings that fall to be assessed against the Policy. For example (after paragraph 6.454):

Existing employment sites and buildings that fall to be assessed through Policy ED2 are those that are in active employment use or are vacant but have been in employment use in the three years prior to an application to change the use being made and are located in Tunbridge Wells Town Centre, a local centre or a designated employment area as per Policy ED1 or are subject to an Article 4 direction preventing permitted development change of use away from employment use (regardless of location).

- 2.10 This would ensure a mechanism for assessing the suitability of retention of an existing employment site/ building where it provides well located and good quality employment accommodation without being unduly restrictive where a site/ building is clearly not suitable for continued employment use.
- 2.11 Hermes House is currently an underutilised brownfield site within the urban area (and Limits of Built Development). NPPF section 11, and paragraph 120(d) in particular, aims for effective use of land, particularly previously developed/ brownfield land, and supports development of under-utilised land especially where it would help meet housing need in areas of constrained supply. Tunbridge Wells is constrained by the AONB and Green Belt and relies upon allocated development in both to meet its housing needs. Emphasis is placed in TWLP Policy STR1 on the *'effective use of urban and previously developed (brownfield) land'* with development focused in the Limits of Built Development. Policy STR3 continues that effective use of, inter alia, underutilised brownfield land will be supported in-principle. The TWLP should not, therefore, proceed to impose overly onerous policy tests through Policy ED2 on underutilised, previously developed employment sites, such as Hermes House, that are not appropriate for continued employment use and can make a meaningful contribution to the supply of new homes in a constrained borough such as Tunbridge Wells.

Q2: Is Policy ED2 justified, appropriate and proportionate?

- 2.12 As set out above, it is Logistic UK's position that Policy ED2 is not justified in its current form, being neither appropriate nor proportionate and failing to achieve its stated aims of protecting existing employment sites/ buildings that are well located and good quality.
- 2.13 The Inspector highlighted in Matter 2, Issue 3, Question 7 that the LPA is proposing to allocate around 26.5ha of new employment land whereas the identified need is for circa 14ha. The allocation of additional employment land will provide choice and competition in the market in appropriate locations that are well served by public transport and create 'hubs' of employment activity. The LPA's response to Matter 2, issue 3, Question 7 (11 May 2022) sets out the justification for the allocation of employment land above the identified level of need. The approach is partly justified on the basis that there is a *'high proportion of older employment stock, particularly office stock which is no longer fit for purpose'* (paragraph 70, 7th bullet point).
- 2.14 The blanket protection of existing employment stock through Policy ED2, much of which the LPA acknowledges through its Matter 2 Hearing Statement is no longer fit for purpose, undermines the LPA's case for the quantum and scale of new employment allocations. The employment allocations above the identified level of need provide the responsive and flexible approach sought by NPPF paragraph 82(d) and will allow the LPA to consider alternative uses for underutilised, poor quality and poorly located existing employment sites without risking an overall undersupply of employment land. Policy ED2 ought not prevent the LPA from approving change of use of existing employment sites/ buildings. It should, instead, achieve its stated aim of retaining good quality, appropriately located employment accommodation. As currently drafted, Policy ED2 places an unnecessary policy burden on existing employment sites/ buildings that are no longer fit for purpose and is not justified, appropriate or proportionate.

Q3: 18-months marketing

- 2.15 It is unclear from Policy ED2 or its supporting text/ justification as to the basis for requiring 18-months of marketing. Moreover, why the Policy relies heavily on marketing evidence when other evidence may be equally robust/ reliable in demonstrating the unsuitability of a site/ building for continued employment use. The length of the marketing period appears arbitrary and will risk businesses stagnating and unable to move forward/ evolve whilst a site/ building is marketed. It also risks employment accommodation being vacant/ underutilised for an unnecessarily long period of time whilst the 18 months' worth of marketing evidence is collated. This approach is not flexible, nor does it allow businesses to evolve and rapidly respond to changing economic circumstances as required by NPPF paragraph 82(d).
- 2.16 Hermes House and Logistics UK ('LUK') is one example where requiring 18 months of marketing would not be appropriate or justified. LUK's workforce has decreased in recent years and working practises have changed (through hybrid/ home working) which has meant that large parts of Hermes House are unused and the remainder only sparsely occupied. This site/ building has been underutilised for some time, exacerbated by the Covid-19 pandemic. Added to this are the problems with the current buildings in terms of the, inter alia, inefficiency of space, heating and cooling issues, DDA and poor energy efficiency.
- 2.17 LUK is looking to relocate to modern, purpose-built office accommodation in a town centre location with ready access to the train station and better public transport accessibility. To facilitate this move, LUK needs to dispose of Hermes House. LUK has evidence from a local agent that concludes that there are very few in the market that would purchase the site/ building for continued office/ headquarters use and, whilst this is an option, it could take a significant number of years to find a purchaser. Owing to the poor EPC rating the building could not be let from 2027 pursuant to the Energy Efficiency Regulations 2015.
- 2.18 For a poorly located, poor quality building such as Hermes House where market analysis concludes that there are very limited prospects of selling it for continued office/ headquarters use within a reasonable timeframe and there is no prospect of letting it without significant upgrades that would not be financially justified given the likely scale of costs compared to letting revenue, requiring 18 months of marketing would be neither reasonable, justified nor appropriate. It would stifle the ability of LUK to evolve as a business, such evolution involving relocation to a town centre location that aligns with the spatial strategy of the TWLP in any event.
- 2.19 As set out above, the change of use/ redevelopment of the Hermes House site should not fall to be assessed against Policy ED2 being poorly located and poor-quality employment accommodation. If it were to be 'caught' by the Policy, alternative evidence to marketing should be permitted to allow this underutilised building/ site to be brought forward more rapidly to assist LUK's business evolution and the potential of the site to deliver new homes (residential being the most compatible use given the site context and surrounding uses).
- 2.20 Part d. of Policy ED2 sets out a hierarchy of alternative uses if it has been demonstrated that the site/ building is not viable for its current employment use or an alternative employment-generating use. Sub-points i. and ii. require firstly that other business use and employment-generating uses are considered. However, to reach this point in the Policy it is necessary to demonstrate that the site/ building is not suitable for alternative employment-generating use. It should therefore already have been demonstrated that other business and employment-generating uses are not viable.

- 2.21 Employment-generating residential uses and mixed use/ live-work units are then to be considered. However, not all sites/ locations will be appropriate for these types of uses/ developments. The Policy should make clear that the alternative use should be appropriate based on, inter alia, the site circumstances and context. For example, residential should automatically be considered an appropriate use in residential areas.
- 2.22 Hermes House is located in an almost exclusively residential area with residential properties immediately adjoining its boundaries. This has resulted in issues of neighbourliness with the current employment use that includes 24-hour generators etc. Residential is a significantly more compatible use in this instance which Policy ED2 should recognise. Consideration for alternative employment-generating uses should apply only to existing employment sites/ buildings located in town/ local centres and designated employment areas.

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