

REPORT TO COUNCILLOR CAFER MUNUR, CABINET MEMBER FOR PLACE SHAPING – 10 DECEMBER 2024

CONFIRMATION OF THE NON-IMMEDIATE ARTICLE 4 DIRECTION TO CONTROL THE CHANGE OF USE UNDER CLASS MA OF THE GPDO OF BUILDINGS FROM CLASS E (COMMERCIAL, BUSINESS AND SERVICE) OF THE USE CLASSES ORDER TO CLASS C3 (RESIDENTIAL) WITHIN THE BOROUGH'S DESIGNATED INDUSTRIAL LOCATIONS

1. BACKGROUND AND PURPOSE OF THIS REPORT

In 2021, the Government made further amendments to the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021. The legislation now permits the change of use from Class E (commercial, business and service) to Class C3 (dwellinghouses) under Class MA without the need for planning permission. Instead, a prior approval application is required and submitted to a Local Planning Authority (LPA) that looks at only a limited number of planning issues, and the development plan is not considered. This approach was undertaken by Government in an effort to help deal with the housing crisis by making it easier for developers to increase the supply of residential units.

In areas where there is evidence of wholly unacceptable harm arising from buildings converted through PDR, local planning authorities can use Article 4 Directions to reestablish planning control - thereby enabling them to resist or manage relevant development proposals by reference to the Development Plan and the use of conditions or legal agreements. Article 4 Directions can relate to a particular area, areas or the whole borough. The potential harm that an Article 4 Direction is intended to address should be based on robust evidence and apply to the smallest geographical area possible. Any proposed Direction will need to be the subject of public consultation and will need to be submitted to the Secretary of State, who has the power to modify or cancel any Direction. An Article 4 Direction will not apply retrospectively to sites which have previously benefitted from the change of use under Class MA.

As there was local evidence of wholly unacceptable harm in the context of designated industrial areas, the Deputy Director for Housing and Strategic Planning made a Non-Immediate Article 4 Direction on 22 November 2023. The Direction, which is proposed to come into force in December 2024, subject to confirmation, withdraws permitted development rights for changes from Use Class E (commercial, business and service) to Use Class C3 (residential) on identified land within the borough's strategic industrial locations (SIL) and locally significant industrial sites (LSIS).

This report summarises consideration of the representation received from the statutory consultation held between 1 December 2023 and 29th February 2024, sets out the outcomes from engagement with DLUHC (now MHCLG), and details the next steps required to bring the Direction into force.

The use of an Article 4 Direction complements the Council's strategic approach to ensuring that the borough's designated industrial land is protected for industrial type activities and related functions, whilst also continuing to play a role in contributing to London's economic growth and prosperity.

2. CONSIDERATIONS OF REPRESENTATIONS RECEIVED DURING THE STATUTORY CONSULTATION

Following the making of the Non-Immediate Article 4 Direction, a statutory public consultation ran for a 13 week period between 1 December 2023 and 29 February 2024. A total of two responses were received.

Summary of the representation received

One response welcomed the Direction. The second representation received related to a specific site (River House, 1 Maidstone Road) that is located within the Foots Cray SIL. It noted that previous prior approvals on this site have since lapsed but that it is still the owner's intention to deliver this attractive development. However, the proposed direction would undermine the ability to do this here, and on other sites, prejudicing the supply of housing to meet need.

Officers' consideration of the representation

Council officers note that as there is no form of extant consent on the relevant site a new application will have to be submitted for any development.

The confirmation of an article 4 direction does not preclude applications being made to the Council (acting as the local planning authority) for the change of use from Use Class E (commercial, business and service) to that of Use Class C3 (residential). As such, the owner of River House is not prevented from applying for the change of use for part or all of River House once the confirmed Article 4 Direction comes into force. The material difference is that an application will be assessed against the Development Plan as a whole, and any material considerations (which would include any previous planning history).

It should be noted that there are several office-based businesses that are currently operating out of River House, 1 Maidstone Road across a number of floor levels. Class MA requires vacancy for an application to be submitted under the prior approval procedure. Therefore, at present, a prior approval submission under Class MA is unlikely to come forward given the level of occupation for the building.

With regards to the points made in the representation relating to the Council's five year housing land supply (5YHLS), it should be noted that the 30 units previously granted prior approval on the site equate to just under 1% of the 5YHLS requirement, which confirms that the loss of these units is not significant and that a comfortable buffer remains.

In terms of the point raised that once the Article 4 Direction comes into force it will reduce the availability of sites to meet the 5YHLS, the Council officers contend that this would not be the case. As indicated above, the Article 4 Direction will not preclude the submission of applications for the change of use.

Additional comments made within the representation address the character and appearance of River House; the fact that River House faces the street scene (Maidstone Road) with vehicle parking provision; the proximity of River House to surrounding residential development; and the distance of other industrial uses within the SIL from the site itself. None of these matters are considered to justify amendments the proposed Direction.

3. RESPONSE FROM THE SECRETARY OF STATE FOLLOWING NOTIFICATION OF THE DIRECTION

Summary of comments

In accordance with the statutory procedures (paragraph 1(6) of Schedule 3 of the GPDO), the Council notified the Secretary of State for Levelling Up, Housing and Communities (DLUHC) - now the Ministry of Housing, Communities and Local Government (MHCLG) - of its decision to make an Article 4 Direction.

DLUHC responded to Council officers in January 2024 advising that, based on the evidence submitted, the Article 4 Direction (as proposed) did not comply with national policy and requested a meeting to discuss with Council officers the methodology in assessing sites to understand the evidence justifying the Direction.

DLUHC noted that whilst the Council's evidence presented a good, strategic case for the need to protect designated industrial sites within the borough, that Ministers want to see that an assessment has been made of each area. It was anticipated that individual area assessments would then set out the risks of conversion, and what the wholly unacceptable adverse impacts of conversion of particular sites would be.

DLUHC also commented that in mapping the extent of the Article 4 Direction, boundaries were around individual buildings only and not their wider curtilage. The Council undertook this approach in good faith as Class MA applies to buildings only, and with the need to comply with the 'smallest geographical area possible' requirement of the NPPF. Nonetheless DLUHC advised that typically boundaries are drawn around buildings and their curtilage.

The Council's consideration of comments and outcome of site reassessments

In discussions with DLUHC it was agreed that the borough's evidence base would be reviewed to ensure compliance with requirements.

The government's recent planning reforms have not changed permitted development rights, and the use of Article 4 Directions will continue to be scrutinised by the Secretary of State to determine that they are justified. Therefore, the comments by DLUHC remain relevant.

As a result of the Council's review, some scope for reasonable adjustment was found so as to minimise the risk of further intervention by the Secretary of State. In particular, the extent of the land covered by the Article 4 Direction that is recommended to be confirmed has been reduced. Within some areas of SIL and LSIS, this reduction is significant, including several designated industrial areas where no land has been identified for inclusion (these locations are noted at the end of Appendix A).

Buildings (with their curtilage) that remain covered by the Article 4 Direction are those that are considered to be particularly vulnerable to change and incorporate those:

- occupied by uses that fall within Use Class E
- highly accessible with frontages typically facing vehicular routes
- those that benefit from unfettered access e.g. not relying on gated/controlled access via a wider industrial site
- typically built of brick, with existing door and window openings which could render conversion to residential accommodation a realistic prospect (buildings that exhibit elements of residential character)

By virtue of the above, the areas shaded in red within designated industrial locations identified on the maps attached in the Second Schedule of the Article 4 Direction remain protected by the Article 4 Direction.

Buildings that fall within Use Class E but that have been removed from the scope of the Article 4 Direction are those that are considered highly unlikely to be converted and include buildings where:

- the size, construction and/or character of buildings makes conversion to residential difficult and expensive
- existing access arrangements would render the separation of a/the building/s from the wider SIL/LSIS as unworkable

Justification for confirming the Article 4 Direction to bring it into force

When deciding whether to confirm an Article 4 Direction, the Council must take account of any representations made during the consultation. Material changes to the Direction resulting from the consultation will require re-consultation.

The difference in approach to the proposed boundaries is not considered to represent a material change as no additional areas or buildings are to be added to the Direction. Curtilages are now included for consistency and simplicity, but the direction would still not apply to the associated land and therefore does not result in any additional restrictions.

Subject to the mapping amendments which have been made in response to correspondence with DLUHC (now MHCLG), Officers do not consider that there is a reason to deviate from the decision to make the Direction and it is therefore recommended that the Direction is confirmed, in order for it to come into force on [INSERT] December 2024.

As a result of the Direction, the Council will be able to assess and determine the appropriateness of proposed changes to residential use from Use Class E (commercial, business and service) within the locations identified.

4. LEGAL IMPLICATIONS

a) Summary of Legal Implications

The procedure for Article 4 Directions is set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Under the Council's Scheme of Specific Delegations to Officers, the Deputy Director Housing and Strategic Planning has Delegated Powers to make Article 4 Directions withdrawing PD rights.

The decision to confirm the Article 4 Direction, once it has been made, is retained by the Executive. Therefore, it is for the Cabinet Member for Place Shaping to approve.

The potential harm (wholly unacceptable impacts) that an Article 4 Direction is intended to address should be clearly identified and permitted development rights withdrawn if there is evidence to demonstrate those wholly unacceptable impacts, thereby supporting a proposed Direction. The previous report (see background documents section) sets out the evidence to support the Article 4 Direction.

If officers consider that there is a sound basis for making a Non-Immediate Article 4 Direction, Schedule 3 of the GPDO sets out the procedure for notice,

advertisement and notification. The Council is required to notify the SoS when the Direction is published.

Once confirmed, the Direction is permanent, unless subsequently cancelled or amended by the either the Council or the Secretary of State.

b) Comments of the Monitoring Officer

All of the relevant legal issues have been addressed above.

5. FINANCIAL IMPLICATIONS

a) Summary of Financial Implications

The 12 month notification period before the Direction would come into force ends on 1 December 2024 with the Direction taking effect from [INSERT]. The notification period was in order to avoid the risk of the Council being liable for compensation payments (as detailed in the previous Leader’s Briefing report). The use of Non-Immediate Article 4 Directions to restrict development proposals under Class MA is relatively common in London; boroughs to have done so include Bromley and Greenwich. It is noted that all utilised the Non-Immediate Direction approach to negate the need to pay potentially significant compensation.

Officer time will be required to confirm the Article 4 Direction and there will be publication and advertisement costs. These costs will be met from existing approved budgets within the Strategic Planning Division.

The confirmation of the Article 4 Direction may lead to an increase in the requirement for enforcement action against properties which change without planning permission. It is anticipated that these costs will be from existing approved budgets within the Strategic Planning Division, but the resource requirements will be kept under review, once the Article 4 Direction takes effect.

b) Comments of the Chief Finance Officer

All of the relevant financial implications have been addressed above.

6. RISKS AND MITIGATION MEASURES

Risk	Mitigation
Compensation claims being made to the Council as a direct result of confirming the Non-Immediate Article 4 Direction.	The risk of compensation claims being made by the Council has been mitigated by serving a Non-Immediate Article 4 Direction, which had a 12 month notification period. Compensation claims are not payable for Non-Immediate Directions.
Confirming, and bringing the Direction into force may increase the requirement for enforcement action (where properties change without planning permission).	Statutory public notices and effective communication will be used to maximise knowledge of new requirements and minimise non-compliance.
The Secretary of State considers that the Council has not justified that	It is considered that the case the Council has outlined is robust and seeks to prevent the

an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts as required by national policy.	wholly unacceptable impacts that the NPPF refers to within the borough's SIL and LSIS.
The Secretary of State can direct the Council to withdraw or modify the confirmed Direction at any time.	The Council considers that it has made a robust assessment of buildings in designated industrial locations and that the geographic area covered by the Direction is the smallest possible.

7. SUMMARY OF OTHER IMPLICATIONS

Equalities and Diversity – in line with the statutory procedure for issuing a Direction, a public consultation has been conducted to allow people to have their say.

Community Safety – the Confirmation of the Article 4 Direction is intended to protect the Borough's designated industrial capacity.

Environmental Impact – the Council will be able to fully assess future applications against Development Plan policies and all material considerations, to ensure that development is located within the identified locations which are evidenced as being appropriate.

Human Rights – in line with the statutory procedure for issuing a Direction, a public consultation has been carried out. Article 1 of Protocol 1 to the European Convention of Human Rights (ECHR) states that every natural or legal person is entitled to the peaceful enjoyment of one's property. This particular Human Right is a qualified right (as opposed to absolute) and can be interfered with as long as the interference is legitimate. The Council considers that private interests of the peaceful enjoyment of one's property is outweighed by the public law interests of protecting Borough's designated industrial locations, regarding all of the economic benefits that they bring.

Health and Wellbeing of the Borough – the Confirmation of a Direction is intended to protect the capacity of the borough's designated industrial locations (as identified on the accompanying maps) from the wholly unacceptable impacts of loss of floorspace.

Asset Management – Council-owned buildings (where identified on the maps that accompany the Article 4 Direction) will be subject to the Direction.

Data Privacy – site notices will be posted in all areas that will be subject to the confirmed Article 4 Direction and any further responses will be collected in accordance with data protection.

LIST OF APPENDICES ATTACHED TO THIS REPORT

Appendix A: Maps illustrating the extent of the article 4 direction on land within the borough's designated industrial areas (SIL and LSIS)

Local Government Act 1972 – section 100d

List of Background Documents

[Decision Report: Making of a Non-Immediate Article 4 Direction to control the change of use of buildings from Class E \(commercial, business and service\) of the Use Classes](#)

[Order to Class C3 \(residential\) within the borough's designated industrial locations.](#)

London Borough of Bexley. 22 November 2023

[Bexley Local Plan.](#) 26 April 2023. London Borough of Bexley

[Bexley Local Plan Policies Map.](#) 26 April 2023. London Borough of Bexley

[Report on the Examination of the Bexley Local Plan.](#) The Planning Inspectorate. 28 February 2023

Contact Officer:	Seb Salom, Head of Strategic Planning, 5779
Reporting to:	Jane Richardson, Deputy Director Housing and Strategic Planning

APPENDIX A: MAPS ILLUSTRATING THE EXTENT OF THE ARTICLE 4 DIRECTION ON LAND WITHIN THE BOROUGH'S DESIGNATED INDUSTRIAL AREAS (SIL AND LSI)

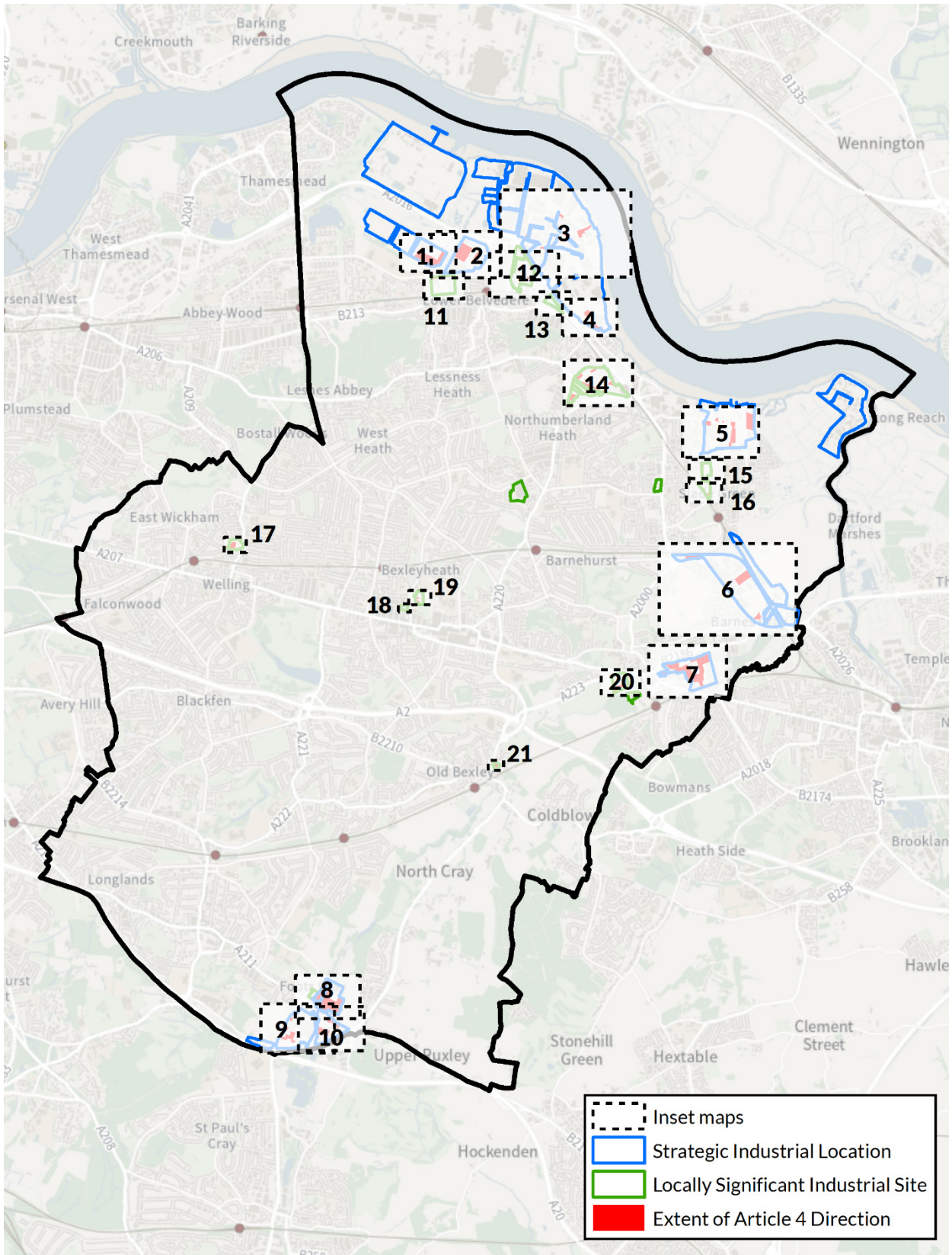
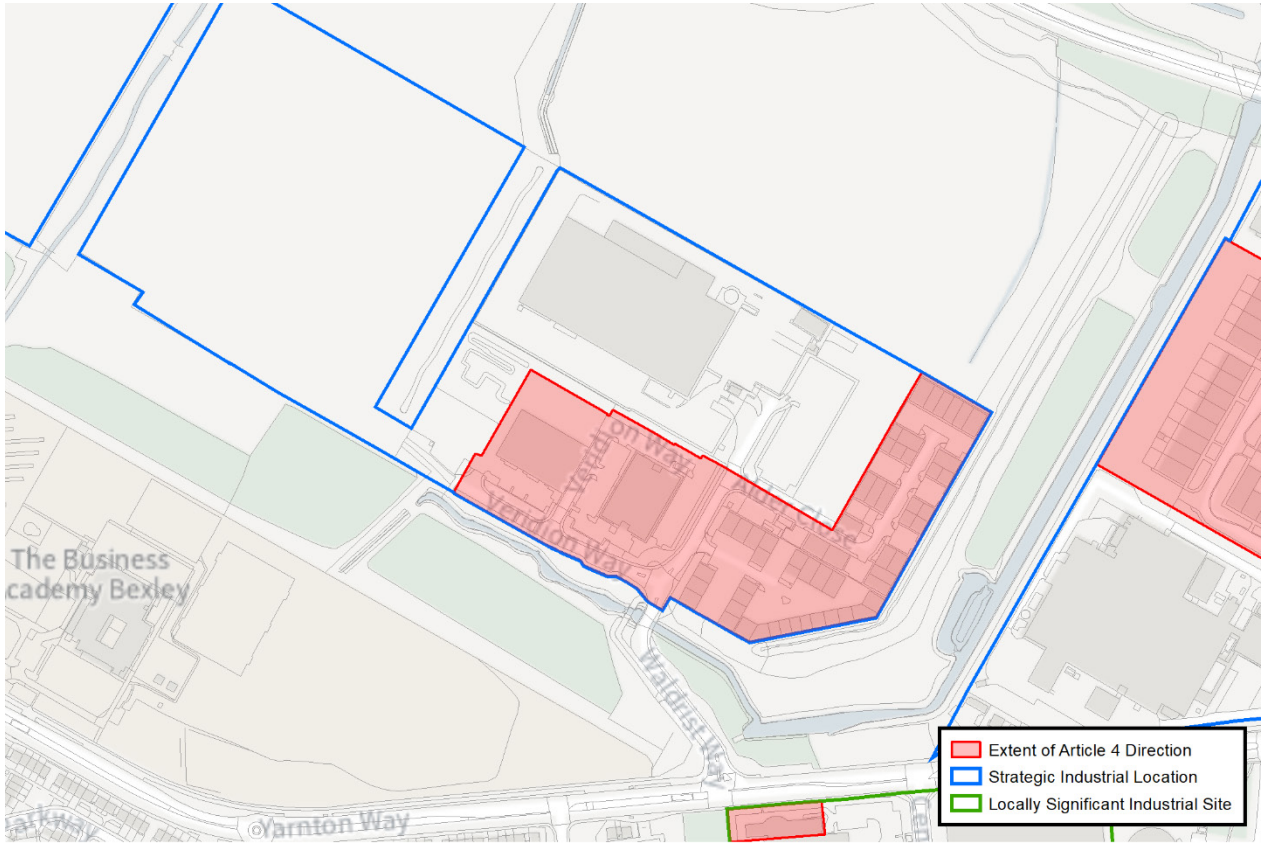
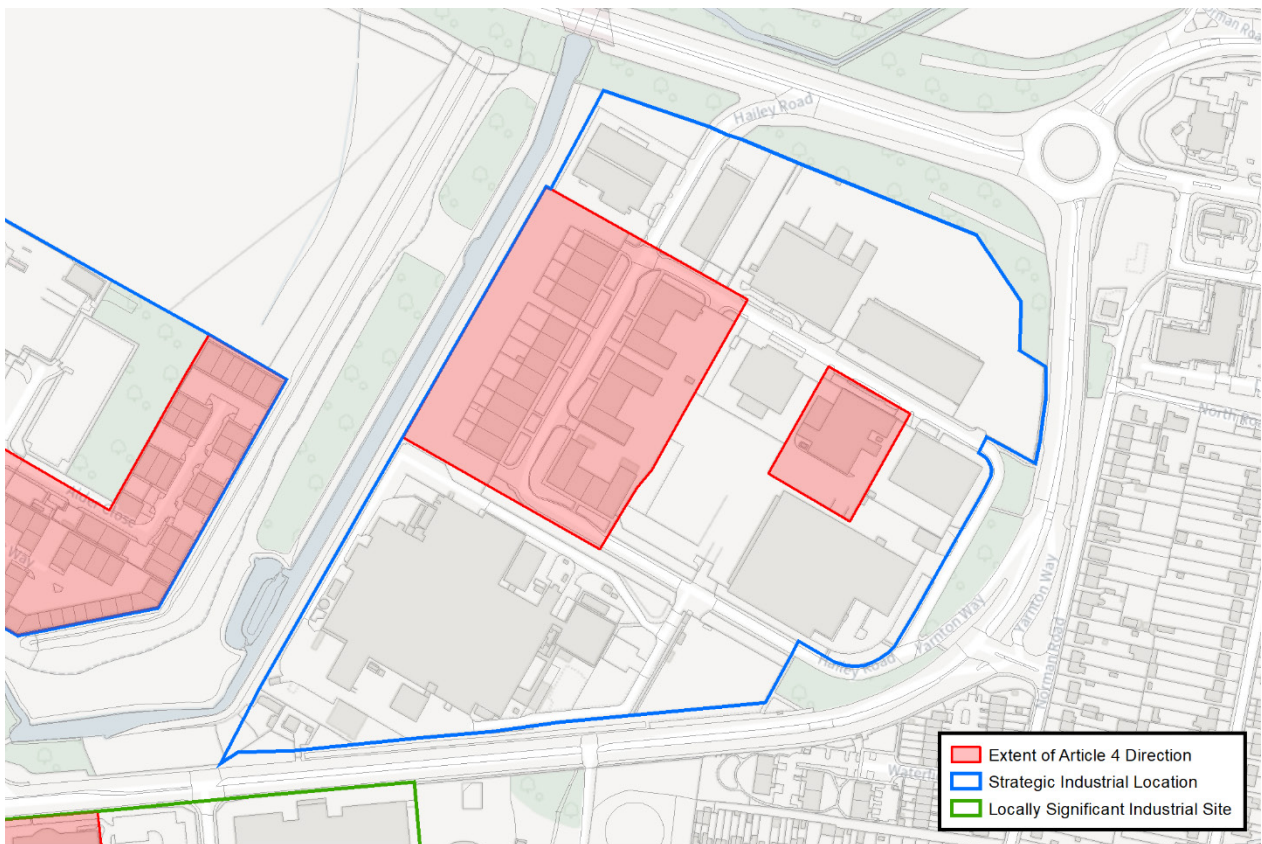


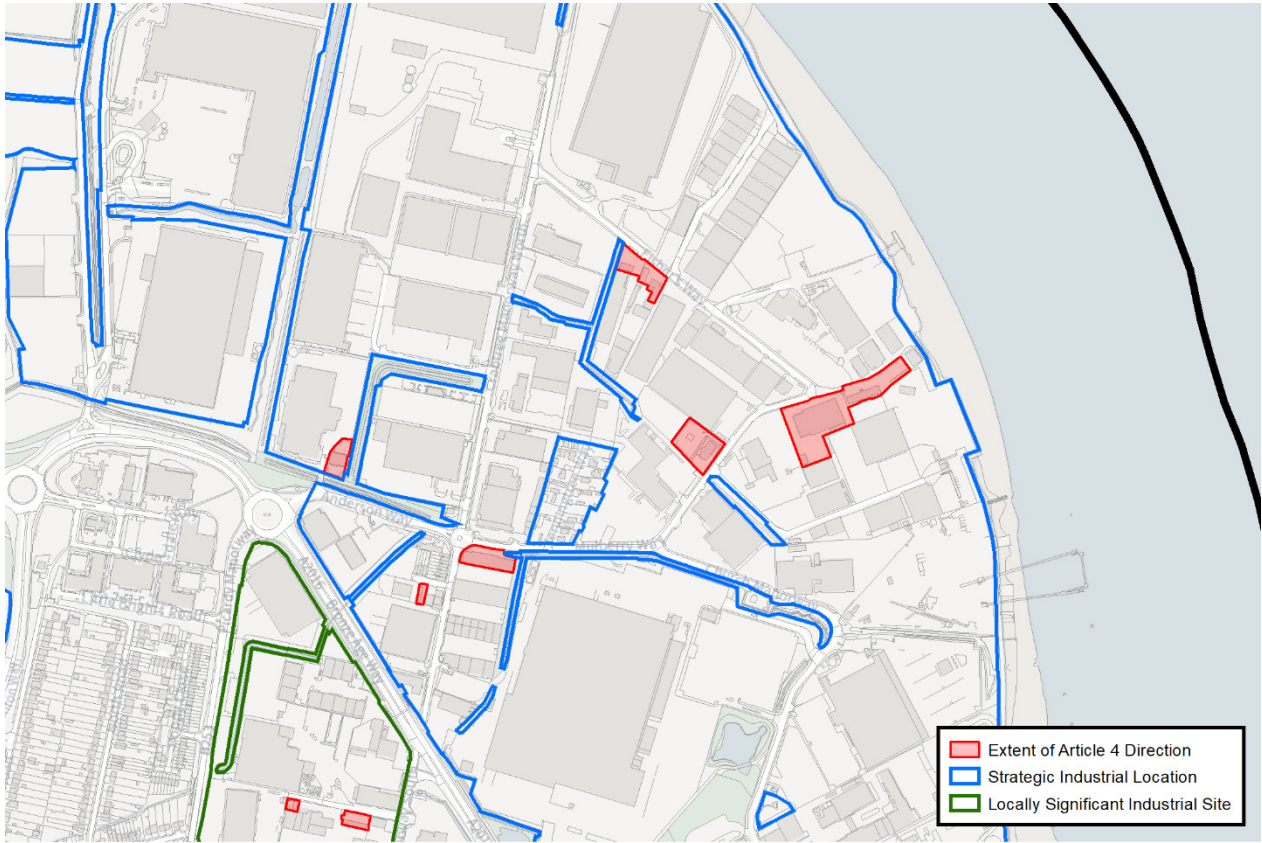
Figure 1: Article 4 Direction Overview Map identifying numbered inset maps
 (Inset maps 1 to 10 are Strategic Industrial Locations and maps 11 to 21 are Locally Significant Industrial Sites)



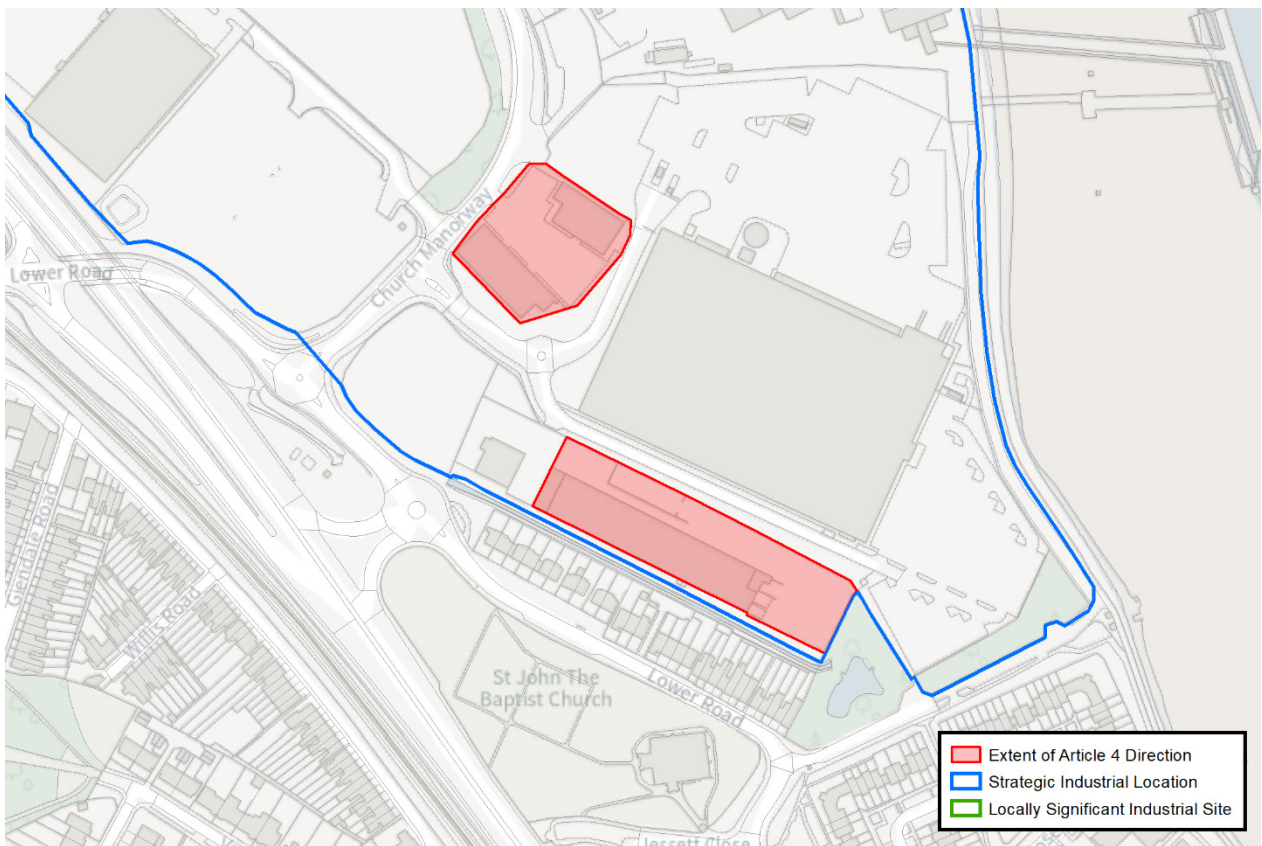
Map: 1 Veridion Park (A4 scale 1:5000)



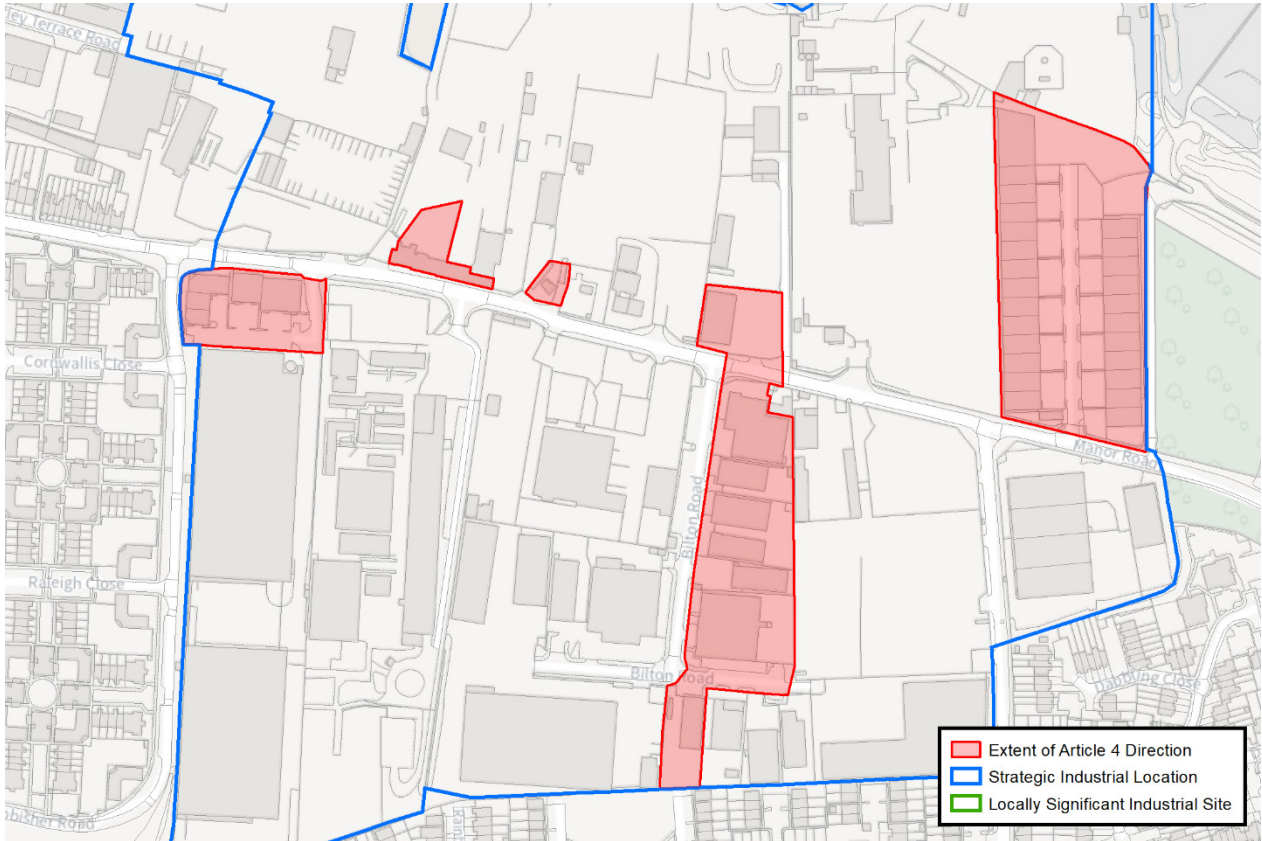
Map 2: Hailey Road Business Park (A4 scale 1:5000)



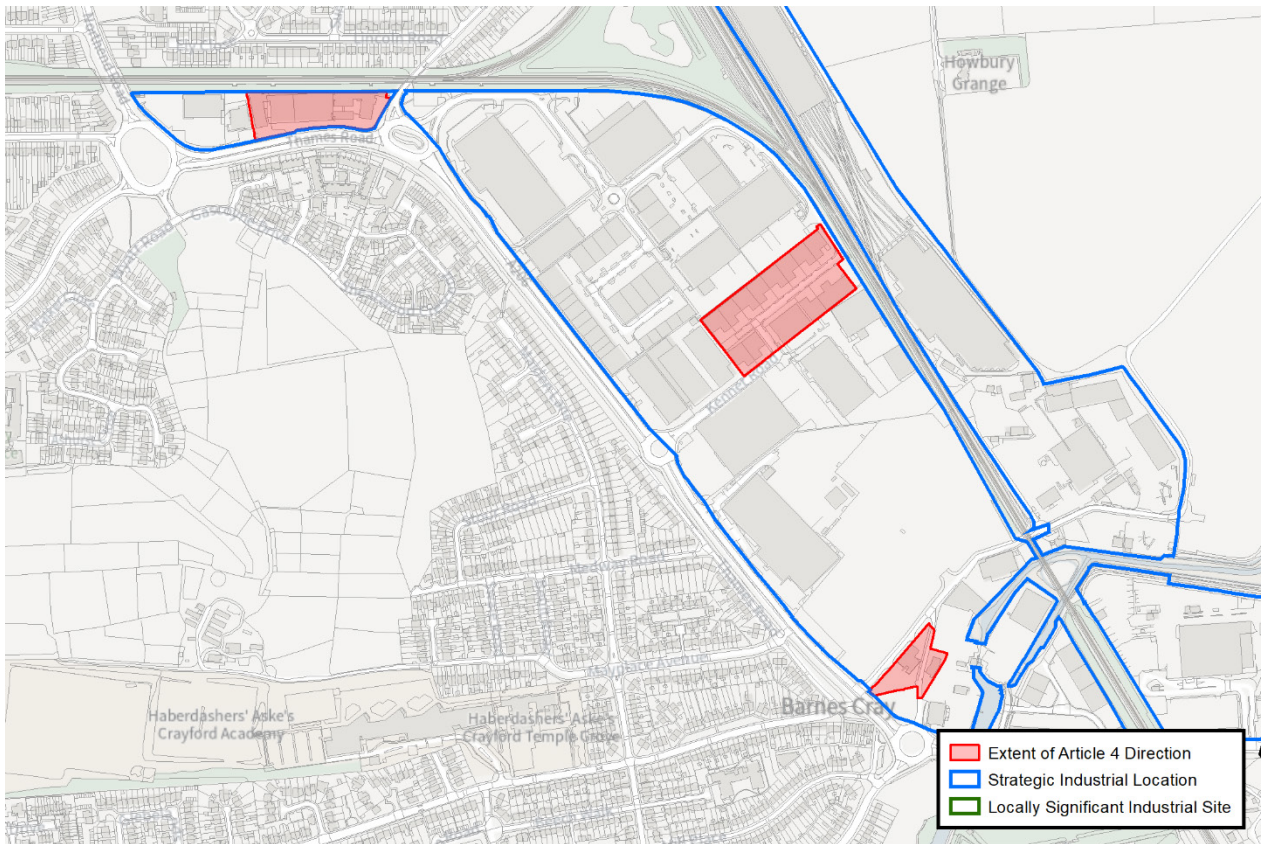
Map 3: Belvedere Industrial Area (A4 scale 1:10250)



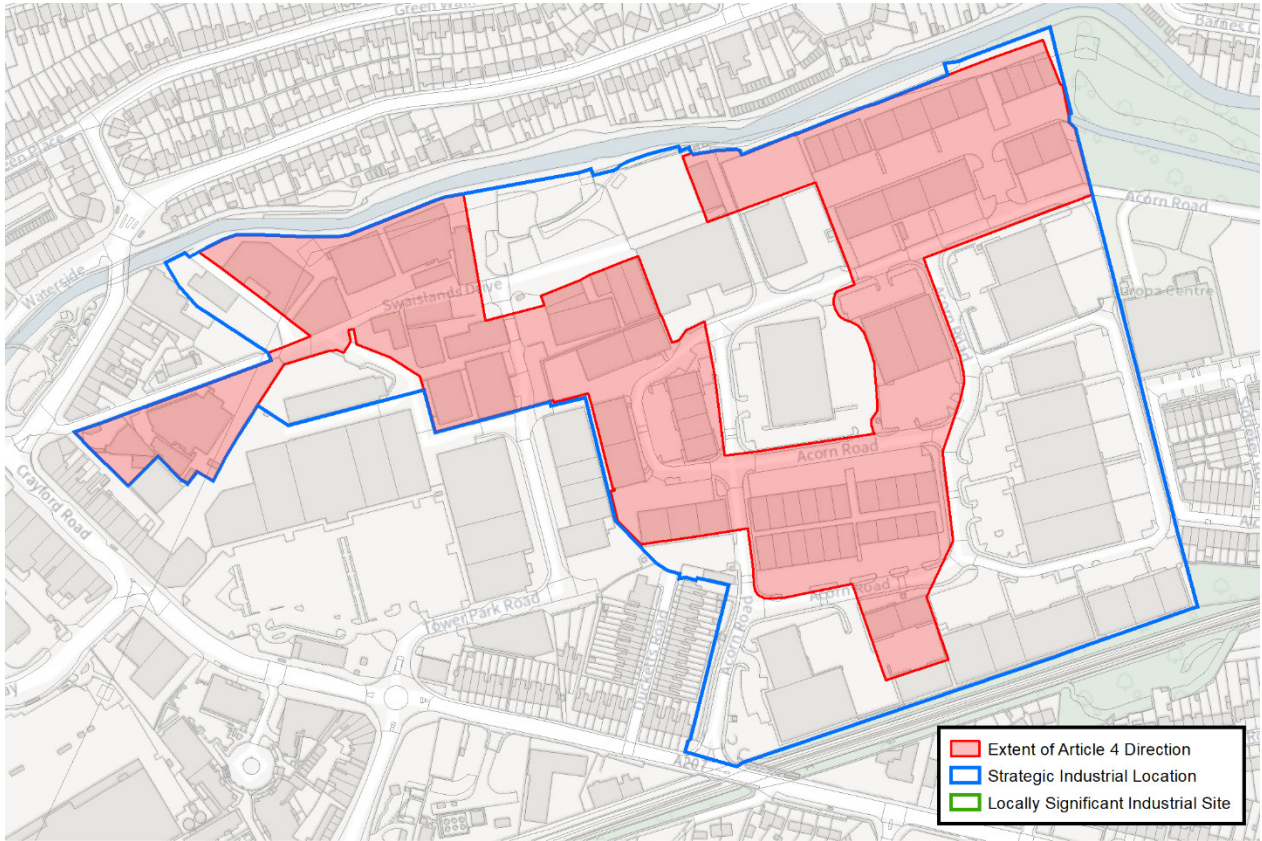
Map 4: Belvedere Industrial Area (A4 scale 1:3500)



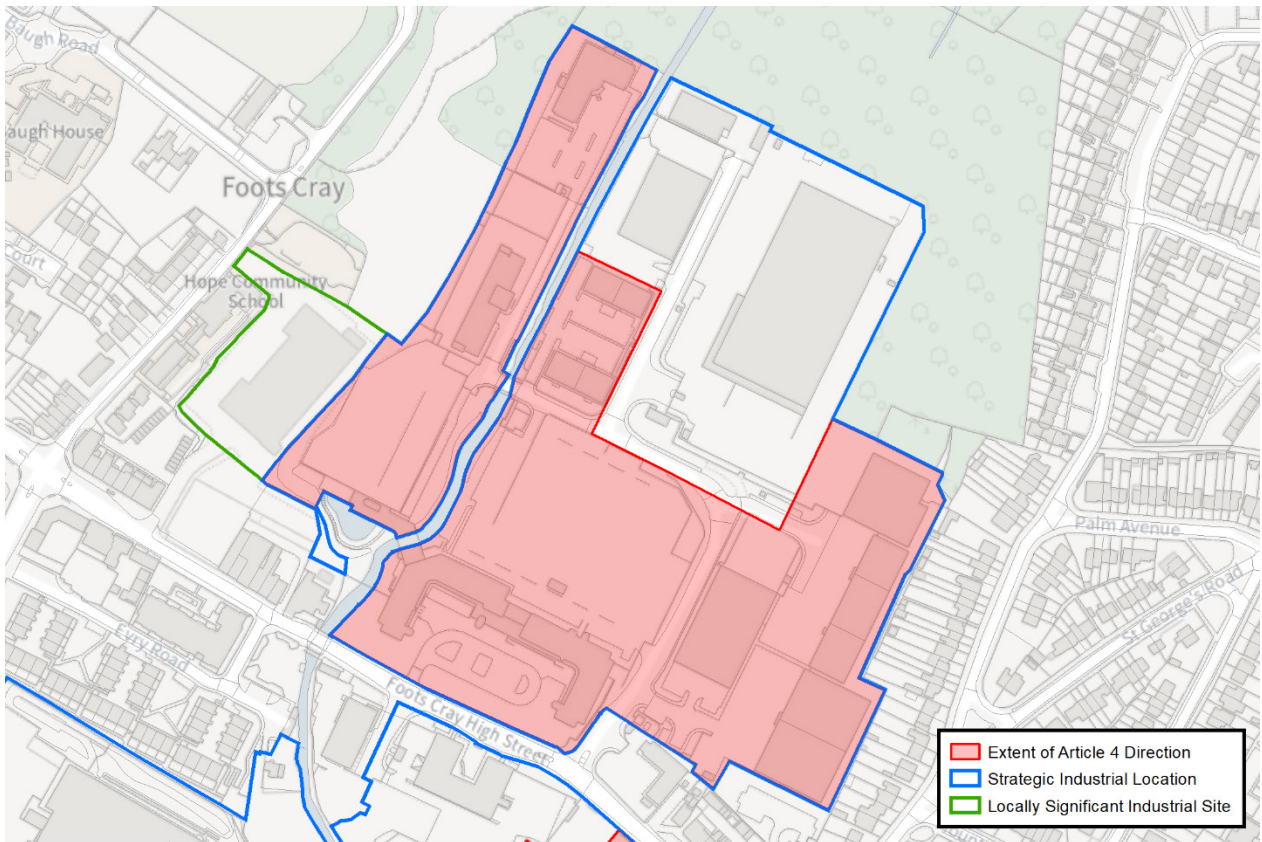
Map 5: Manor Road Industrial Area (A4 scale 1:5000)



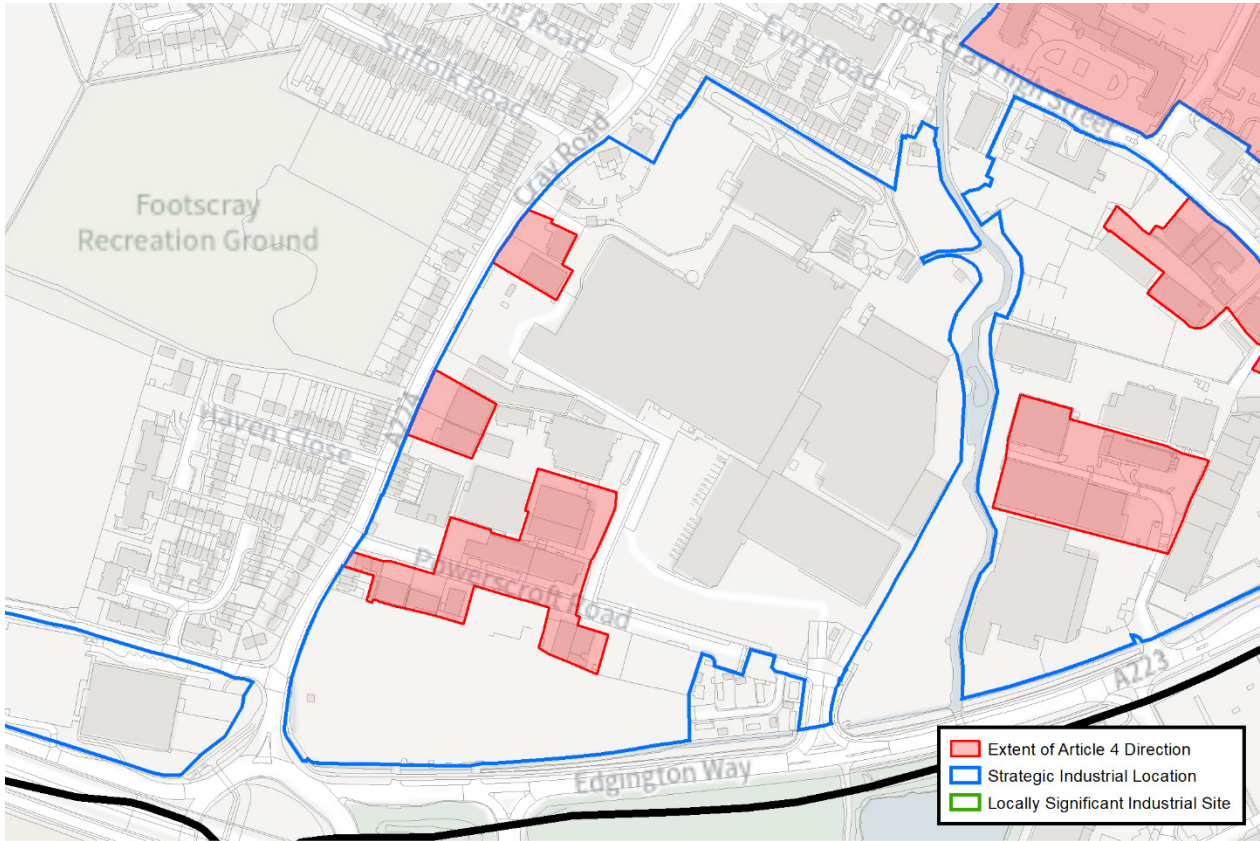
Map 6: Thames Road Industrial Area (A4 scale 1:9750)



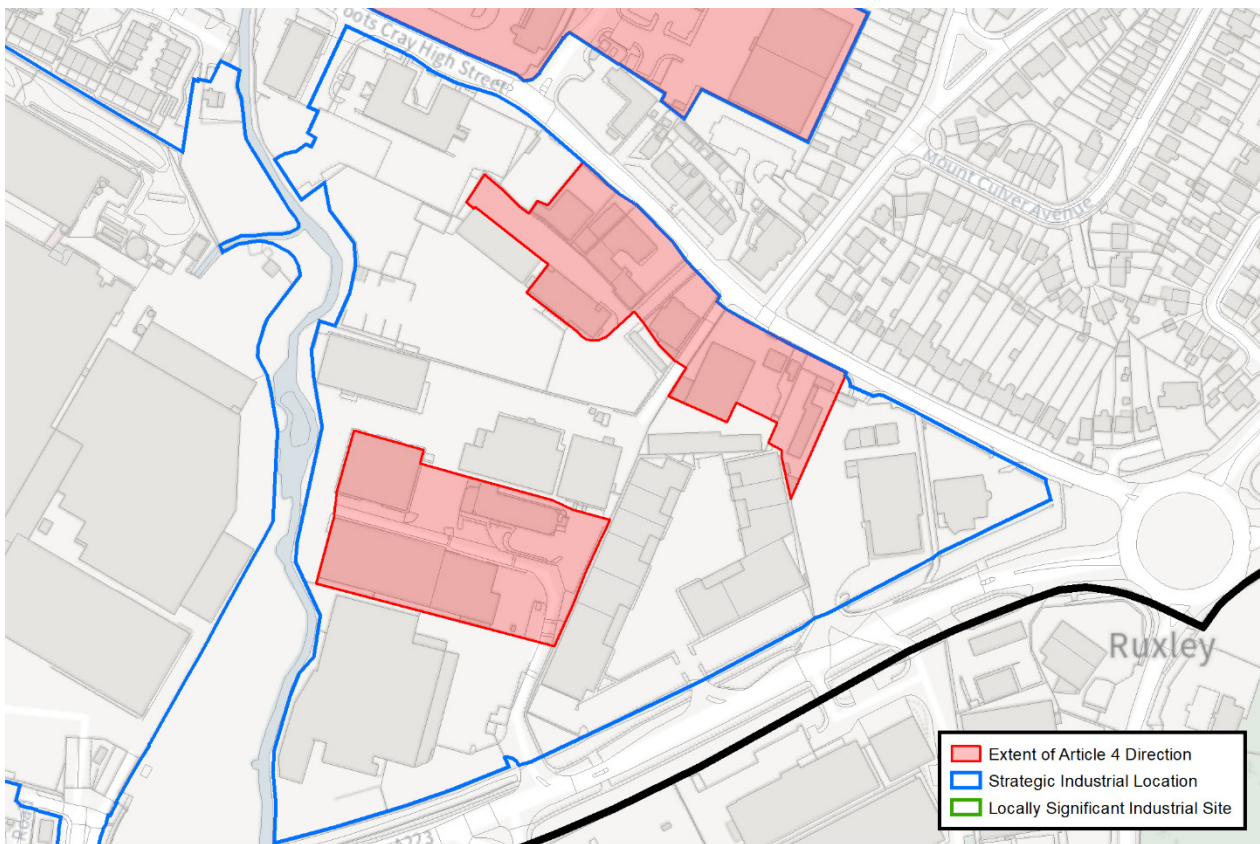
Map 7: Crayford Industrial Area (A4 scale 1:5250)



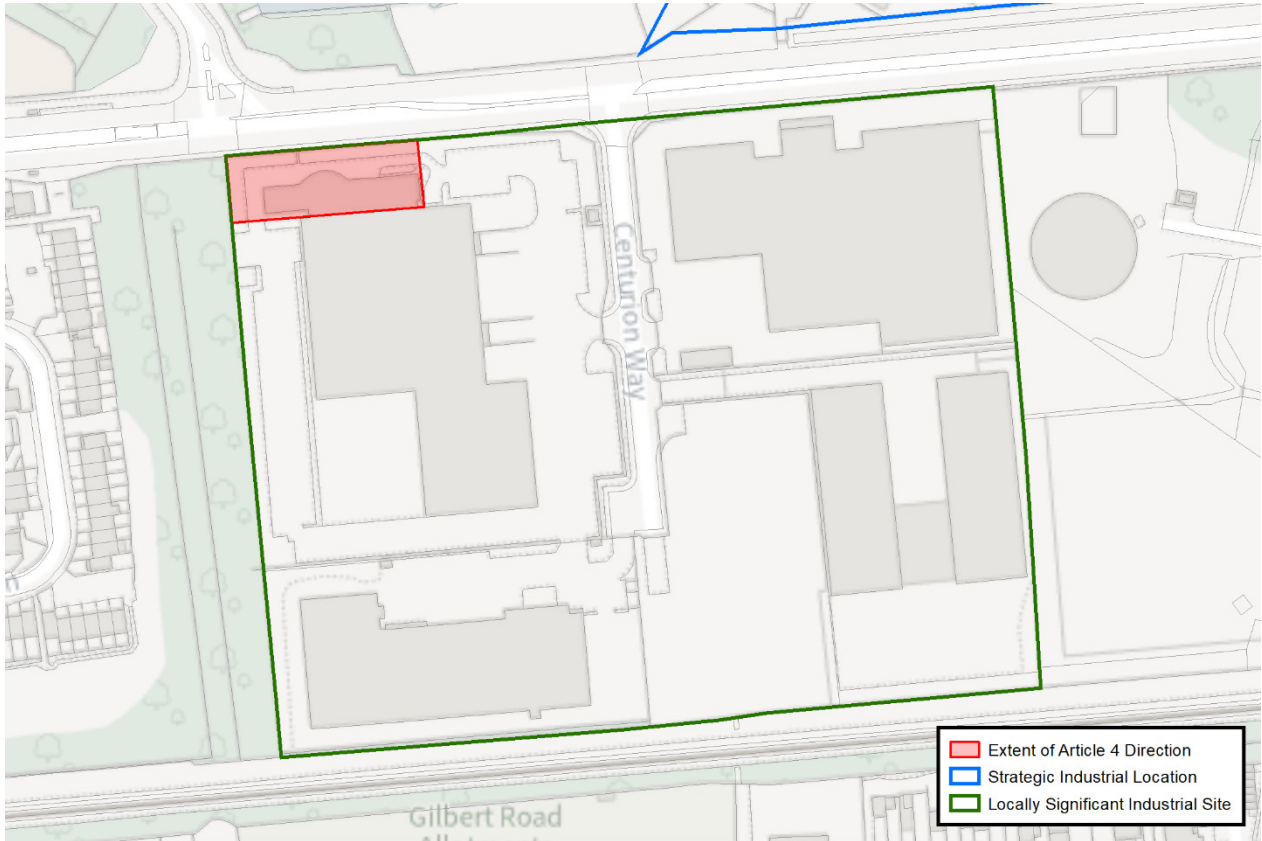
Map 8: Five Arches Business Centre (A4 scale 1:4250)



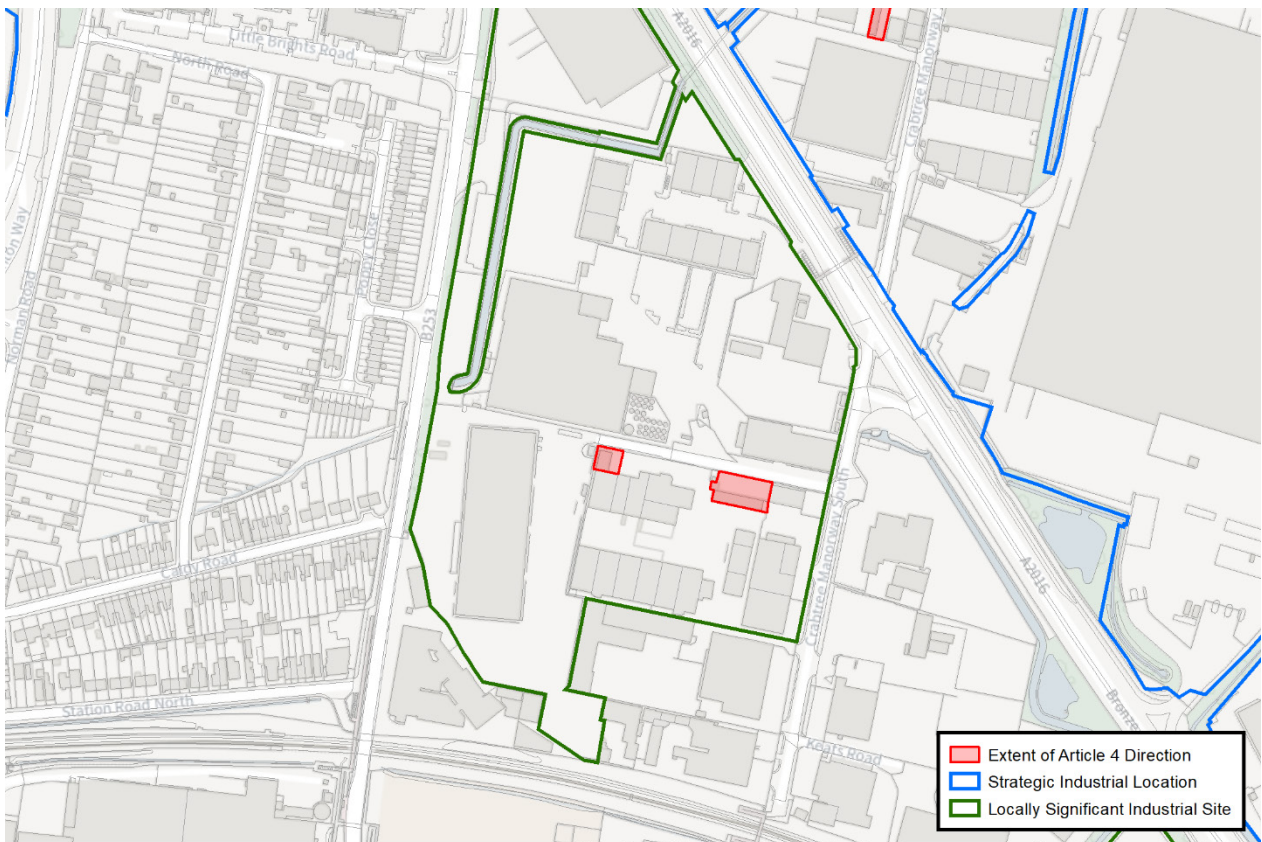
Map 9: Foots Cray Business Area (A4 scale 1:5250)



Map 10: Foots Cray Business Area (A4 scale 1:4250)



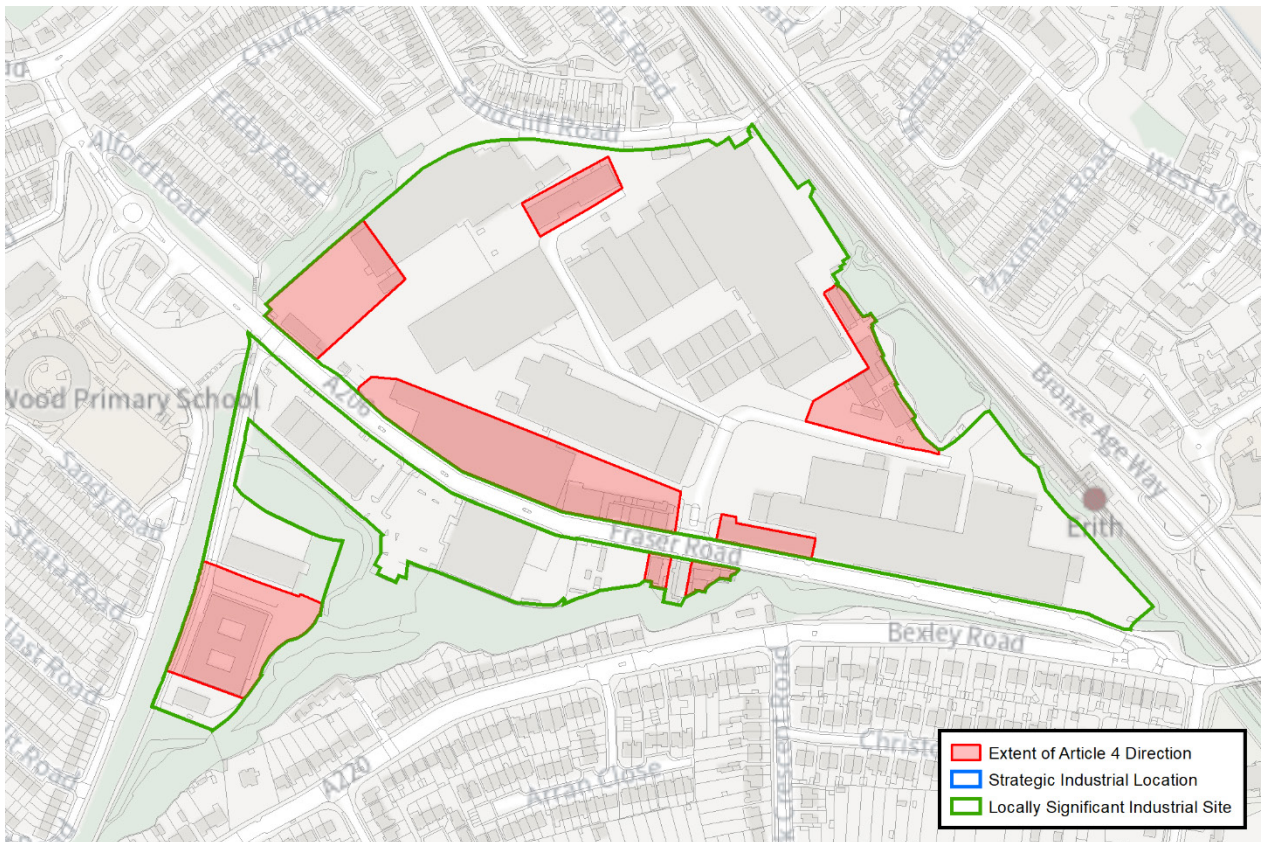
Map 11: Centurian Way (A4 scale 1:2750)



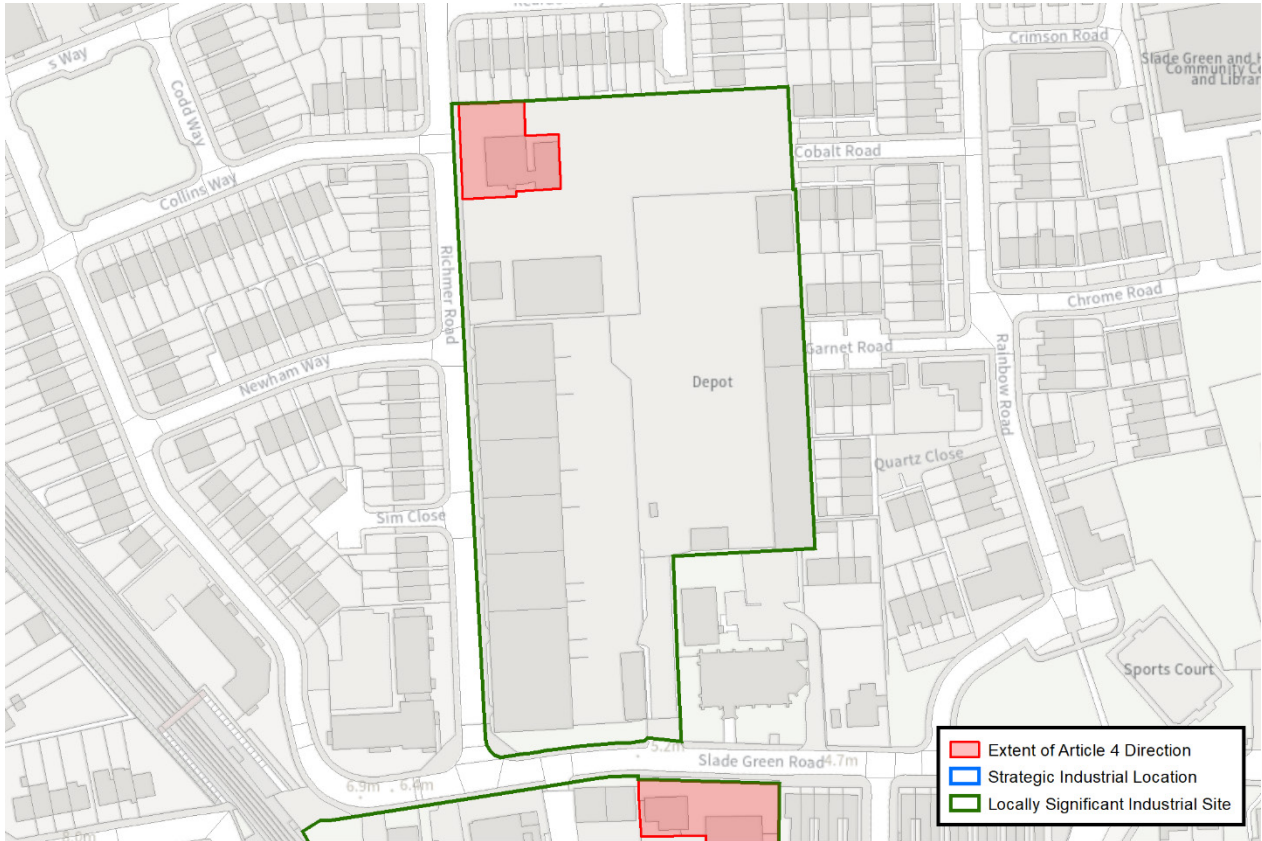
Map 12: Crabtree Manorway South (A4 scale 1:5000)



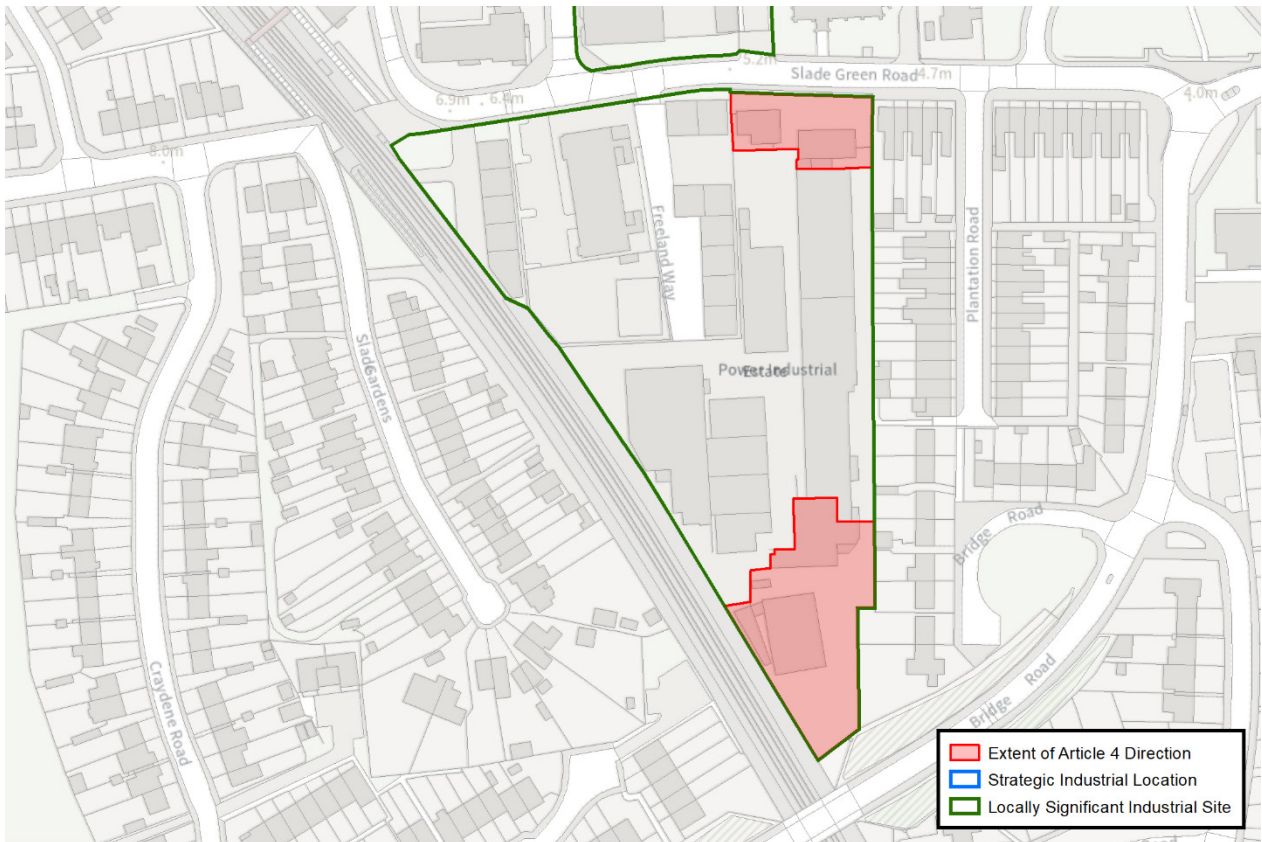
Map 13: Crabtree Manorway South (A4 scale 1:2500)



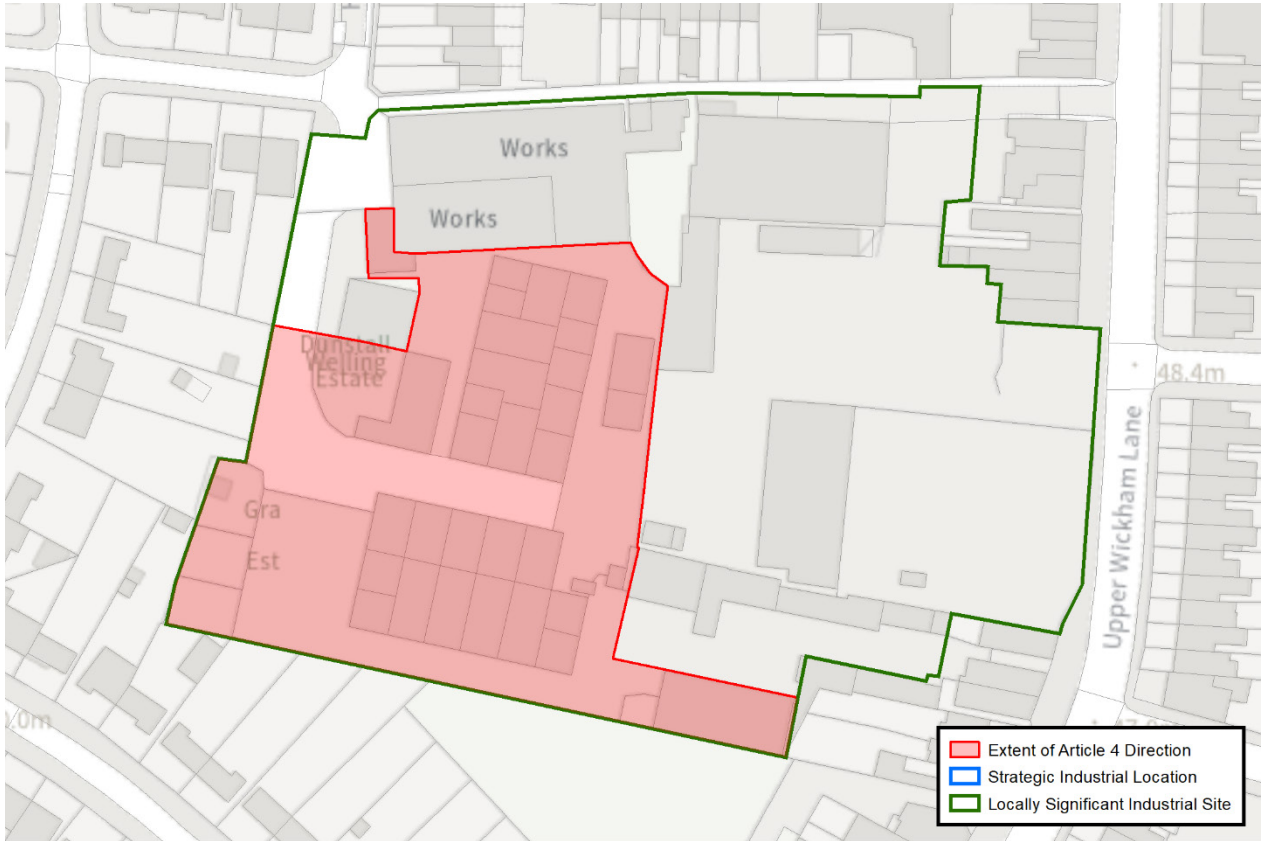
Map 14: Europa Trading Estate, Hamlet Works and Birch Walk (A4 scale 1:5000)



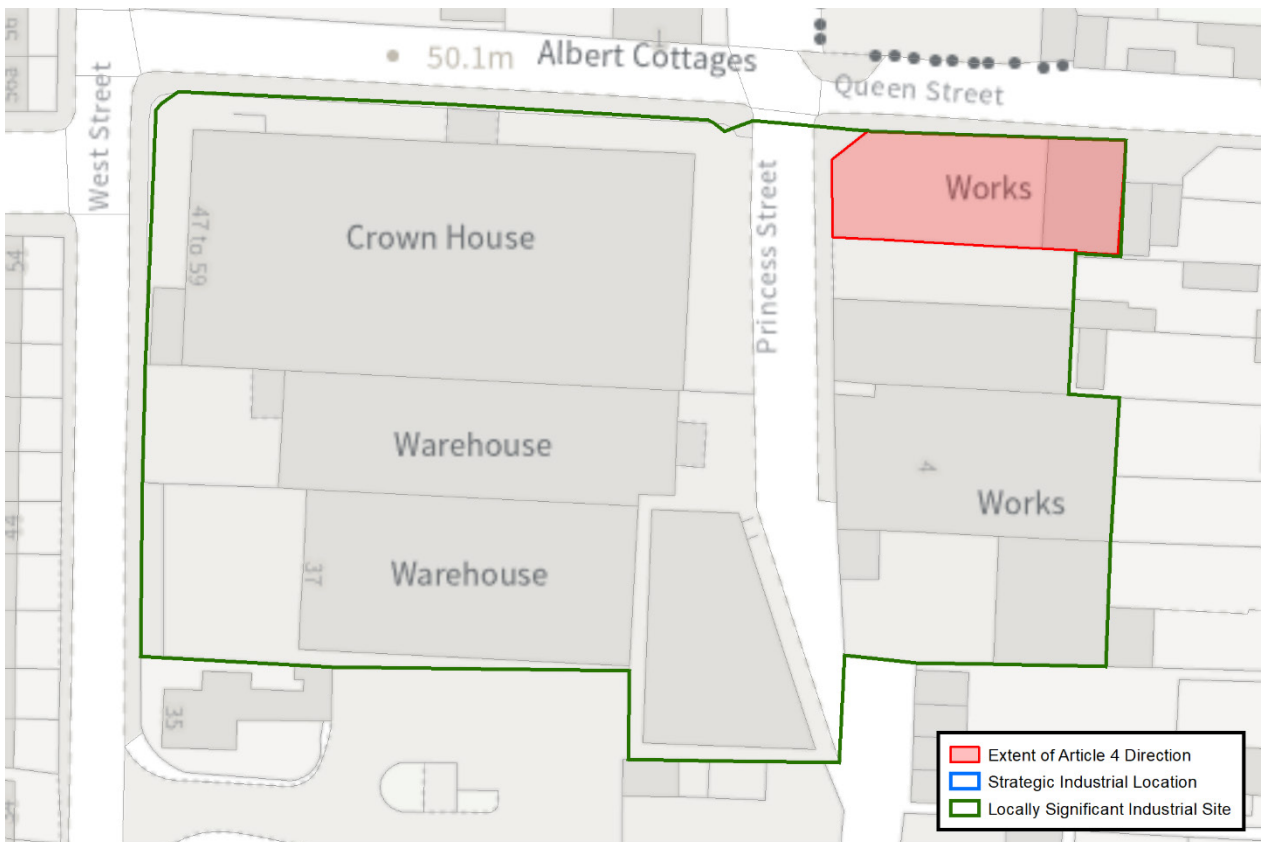
Map 15: Slade Green Industrial Area (A4 scale 1:2500)



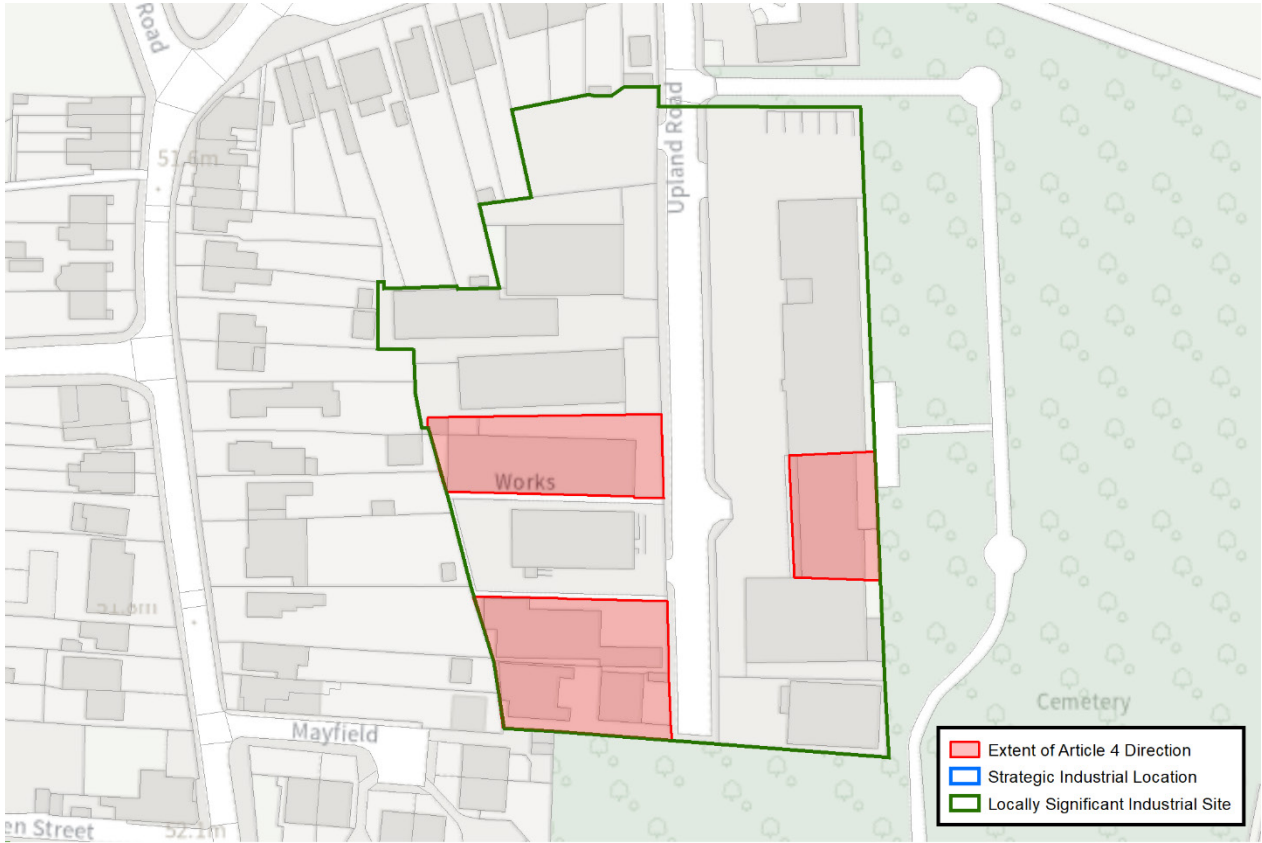
Map 16: Slade Green Industrial Area (A4 scale 1:2500)



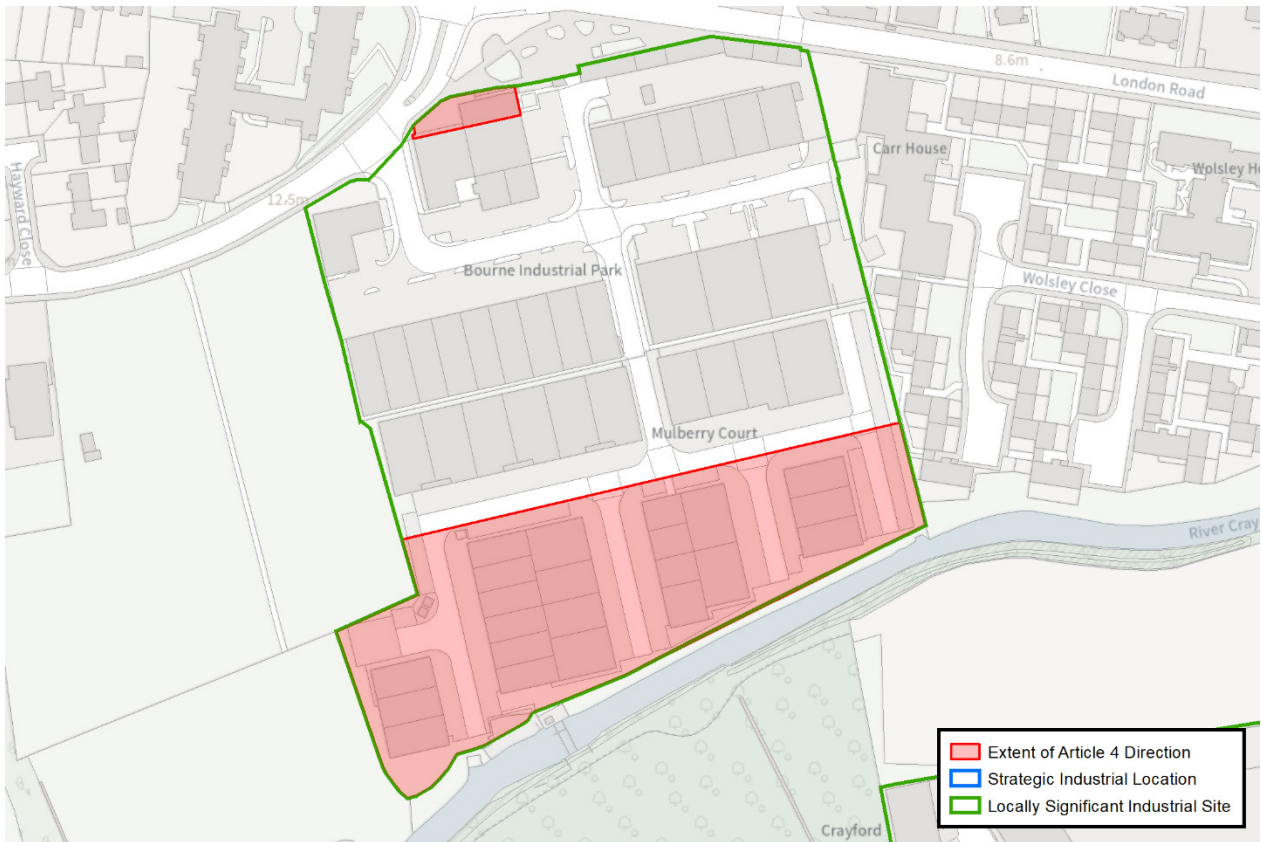
Map 17: Upper Wickham Lane (A4 scale 1:1750)



Map 18: Princes Street Employment Area (A4 scale 1:1000)



Map 19: Upland Road Employment Area (A4 scale 1:1750)



Map 20: Bourne Industrial Park (A4 scale 1:2750)



Map 21: Old Bexley Employment Area (A4 scale 1:1250)

NOTE: The designated strategic industrial location (SIL) of Darent Industrial Park and the designated locally significant industrial sites (LSIS) of British Bakeries, Northend Trading Estate and West Crayford Industrial Park do not have any land identified that will be subject to the Article 4 Direction once it is confirmed. The assessment of these designated industrial locations determined that:

- **Darent Industrial Park SIL** – the types of buildings which occupy the site are not considered vulnerable and location of the SIL is remote with a lack of good transport links
- **British Bakeries LSIS** – the buildings have been operational for a significant period of time, and it is considered that the buildings would be very challenging to convert under Class MA
- **Northend Trading Estate LSIS** – the external features of the existing units do not lend themselves to conversion with any ease (e.g. the buildings exhibit corrugated roofs, minimal window openings and double-height shutter openings)
- **West Crayford Industrial Park LSIS** – the scale, form and character of buildings are not considered vulnerable and there are existing operations that are housed within the site (BT Fleet and Triton Systems)