

CABINET (LOCAL PLAN) COMMITTEE – 5 OCTOBER 2016

CABINET – 19 OCTOBER 2016

CHANGE OF USE OF OFFICES TO DWELLING HOUSE – ARTICLE 4 DIRECTION
TO REMOVE PERMITTED DEVELOPMENT RIGHTS

REPORT OF ASSISTANT DIRECTOR (ENVIRONMENT)

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RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

In 2013 the Government introduced new permitted development rights (PDRs) to enable office floor space to be converted to residential use without requiring a full grant of planning permission. The intention was to increase the supply of housing by making it easier to change the use of existing office premises to dwellings.

Before the new PDRs were introduced, this Council, along with a number of other local authorities in England, asked the Government to consider making some exemptions i.e. areas where the rights would not apply. The Council asked for exemptions for the Winchester City area and Solent Business Park in Whiteley but the Government did not agree to this request.

More than 3 years on, there is evidence to suggest that exercising of PDRs has resulted in the loss of offices to the detriment of the economy of Winchester where there is strong demand for, but only limited supply of, office floor space.

The further reduction of office premises by change of use to housing would exacerbate this problem and so it is recommended that the Council makes an Article 4 Direction (A4) for the Winchester city area to remove these PDRs. This would mean that a change of use from office to dwelling house would require full planning permission and, as such, would afford the Council the opportunity to properly assess proposals against Local Plan policies which seek to protect employment land and

premises.

It is possible to make A4s which come into effect immediately, but this is not recommended, as doing so opens up the possibility of claims for compensation being made against the Council where applications are refused or approved with conditions. The likely adverse impact of waiting a year for the A4 to come into effect is not so great as to justify introducing it with immediate effect. It is therefore recommended that the A4 come into effect 12 months after it is made.

RECOMMENDATION:

That the Cabinet (Local Plan) Committee recommend to Cabinet:

- 1 That the Head of Legal and Democratic Services be authorised to make an Article 4 Direction under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove permitted development rights under Class O of Schedule 2, Part 3 (Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule). The Direction will apply to Winchester Town as set out in the emerging Winchester District Local Plan Part 2 and will come into effect 12 months after the A4 is made ; and
- 2 That delegated authority be given to the Assistant Director (Environment) and Head of Legal and Democratic Services to consider any objections received after the Direction is publicised and, either to confirm the Direction or return the matter to Cabinet for further consideration.

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CHANGE OF USE OF OFFICES TO DWELLING HOUSE – ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS

DETAIL:

1 Introduction

- 1.1 Both the previous and current Governments have made increasing the supply of new homes a priority in order to help meet housing need. Part of the strategy is to make it easier to convert existing buildings used for a variety of commercial and other purposes to residential use and, to this end, permitted development rights (PDRs) enabling changes of use from offices to dwelling houses were introduced in 2013. The aim was to boost housing supply and bring back into productive use vacant and under-used business premises.
- 1.2 Before the new PDRs came into force, the Council asked the Government to exempt the Winchester City area and Solent Business Park at Whiteley. The basis for submitting this request was that the Winchester District Local Plan Part 1 – Joint Core Strategy was the only Local Plan outside London at that time that was submitted after publication of the National Planning Policy Framework in March 2012 and had been found sound. Officers explained that the Council was keen to retain control and local decision making over changes of use, through the plan-led system, and had therefore devised a positive policy in its Local Plan Part 1 to this effect (Policy CP9) which allows such changes where the requirements of the policy could be met. It was argued that the city centre and Whiteley were hubs of local commercial activity and to allow the loss of valuable office floorspace would be to the detriment to the city itself and the wider district, by removing opportunities for the local economy to diversify and respond to sectoral changes. However, the Government did not agree to the request and PDRs came into effect across the whole district in April 2013. Whilst the Government did grant exemptions in some locations it now plans to introduce PDRs in these areas in 2019.
- 1.3 The PDRs mean that full planning permission is not required to convert offices to dwelling houses. This change of use is permitted development albeit subject to a notification and prior approval procedure which means that applicants still need to submit details of proposed schemes to the Local Planning Authority for consideration. Crucially however the LPA can consider four issues only:
- the transport and highway impacts of the development,
 - contamination risks of the site,

- impact of noise from commercial premises on the intended occupiers of the development
- Flood risk.

1.4 Permission for a change of use from offices to housing cannot be refused where the scheme is acceptable in relation to these four matters. This means that the Council is unable to assess proposals against most of its Local Plan policies including CP9 of Local Plan Part 1 (Joint Core Strategy) which deals specifically with the Retention of Employment Land and Premises. The purpose of this policy is to protect employment sites, including offices, in order to keep a mix of land and premises across the District, whilst allowing conversion to other uses in cases where retaining a business use would not be reasonable. The policy has six criteria and, if it can be shown that a proposal is consistent with these, planning permission can be granted for non-employment uses.

1.5 The PDRs mean that the Council has very little control over the loss of office space because in most instances there is no basis for objection to the schemes that come forward in relation to the four issues above. Therefore, the vast majority of proposals will be approved notwithstanding any concerns about matters such as the loss of employment floor space in the city which is addressed by Policy CP9.

2 The case for removing permitted development rights in the Winchester Town area

2.1 PDRs have been in effect for more than 3 years and the Council has received a number of prior approval applications across the District with the highest concentration in Winchester itself. Virtually all of these proposals have been approved as there was no basis to refuse them. However there is growing concern amongst the business community, including the Winchester Business Improvement District and Chamber of Commerce, that the loss of office floor space in the city is having an adverse impact on the economy of Winchester. Since 2013, around 28 office premises across Winchester have been subject to residential conversion schemes which can proceed as permitted development. Most of the offices affected are in, or close to, the defined city centre but other business premises, in areas such as Winnall, have also been the subject of proposals to convert them to residential use. This report focusses on Winchester where evidence clearly suggests that the loss of office floor space is a significant issue. However, PDRs apply across the whole of the District and there have been a number of cases outside Winchester where commercial premises have been converted to dwellings using these rights, for example in Denmead. Although the issue is having the greatest impact in the city itself, if there are particular problems elsewhere in the District, the Council may consider making further A4s where there is evidence to justify removing PDRs.

2.2 Information provided by Hampshire County Council, based on Valuation Office (VO) data, suggests that between the introduction of PDRs in 2013 and

March 2016, at least 2,166 sq.m of office floor space has been converted to housing and a further 3,136 sq.m could be converted if the remaining approvals are implemented. The actual figure could be higher as it appears that VO data does not always include all the floor space covered by these approvals. Since the start of this financial year a further 3 schemes (to July 2016) in the city have been approved. These could provide approximately 131 new dwellings and indeed some of the units have already been completed. To put these figures into context, it has been estimated that about 5% of Winchester's office space has been converted to housing or has approval to be converted. This is of particular concern as the supply of office floor space in Winchester is limited with high demand (see Regeneris report findings summarised below) and this trend is continuing because of the higher values of housing uses compared to commercial development.

- 2.3 It is acknowledged that this is a positive outcome in terms of boosting the supply of housing in the city particularly as many of the dwellings created are relatively small and will therefore be more affordable. This is consistent with the Government's aim of increasing the number of new homes, and contributes to the housing supply in Winchester. However the downside is that these properties are unlikely to be used again for business purposes. In some parts of the country PDRs were a means to bring back into use vacant or underused business premises, but in the Winchester context where there is strong demand for offices, there are comparatively few such premises.
- 2.4 The Enterprise M3 LEP recently commissioned a property market study which was carried out by Regeneris and published in July 2016. This is a useful document because it provides an insight into the state of the commercial property market including within Winchester Town itself. In summary the report states that Winchester has an attractive centre, where there is strong demand for commercial property, but investment is constrained by a shortage of office space which the Council is trying to address at Station Approach for example. Furthermore the report comments on the loss of control for local authorities resulting from the extension of PDRs:

"However, in all areas there is a concern about the proliferation of residential development in previously commercial areas, which is starkest in Guildford and Winchester town centres. The introduction of PDR means that local authorities no longer have the tools or the power that they need to manage the balance of homes and offices in line with local circumstances. There is therefore a role for the LEP to lobby for reforms to the policy which provide more flexibility and control."(Executive summary ix)

- 2.5 The report goes on to comment on the effects of PDRs:

"There are however a number of areas where there is evidence that higher quality office space has been lost as a result of PDR (e.g. New Forest) and others where there is significant pressure for residential development in established office locations which also attract high residential values(e.g. Winchester and Guildford town centres). Although some of this stock might be

dated, unconstrained residential development in these areas could permanently remove a large proportion of the office stock which could otherwise have been refurbished in the future. Given the increasingly important role of town and city centres in knowledge based industries, the loss of office space in these areas represents a real risk to long-term economic growth.” (para 8.19)

- 2.6 In conclusion, whilst recognising the benefits that PDRs can have in areas where there is a surplus of office accommodation which is not well suited to the requirements of modern business, the LEP is concerned about the loss of offices in areas like Winchester and suggests that in places where this is an issue, local planning authorities should consider removing PDRs by making Article 4 Directions. The LEP has responded itself to this issue by identifying the following action:

“Action 4: Reviewing the impact of PDR and lobbying if necessary. *Although the impact of PDR has been broadly positive to date, there is growing evidence that it is having a damaging impact on the sustainability of a number of local market areas. The LEP needs to be in a well-informed position to comment on the impact of PDR as it is kept under review by the Government. Key to this is good evidence on the nature of the office stock which is being lost and whether it is occupied. This will provide the LEP with an evidence base that it can review and use to lobby Government if necessary.”*

- 2.7 In light of the data referred to above at 2.2 coupled with the information set out in the Regeneris report, it is considered reasonable to seek to address this issue by making an Article 4 Direction.
- .2.8 Government guidance regarding the use of Article 4 Directions (A4s) is set out in the National Planning Policy Framework which states that:

“The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.” (para 200).

- 2.9 The Guidance provides some examples of situations where A4s may be appropriate including where PDRs undermine local objectives to create or maintain mixed communities. It goes on to advise that where PDRs include prior approval procedures, particularly strong justification for their removal will be needed. In the case of Winchester there is real concern amongst the business community that the continued largely uncontrolled loss of office floor space will be detrimental to the economy of the city. Whilst there is a prior approval requirement, this does not provide adequate controls as explained

above because the Council is unable to consider the loss of the business premises in relation to Local Plan policy which seeks, in principle, to protect employment floor space.

3 Recommendation

- 3.1 Government Guidance makes clear that A4s should not be used lightly and should only be considered where there is clear evidence that the exercising of PDRs is causing real problems. In respect of office space in Winchester, there is sufficient evidence to show that PDRs are having a significantly detrimental effect on the city's economy and therefore such intervention is reasonable. Removing PDRs would enable the Council to properly consider the proposed loss of offices in each case including in relation to adopted Local Plan policies. This does not mean that every application should be refused as there would be little benefit in resisting the conversion of offices which are no longer suitable for commercial use. However it would allow the Council to refuse applications which would result in the loss of viable office space.
- 3.2 It is recommended therefore that a non-immediate Article 4 Direction be made to remove PDRs, which allow the change of use of office premises to dwelling houses in Winchester Town area as defined in the Local Plan. Whilst, it is possible to make an A4 which comes into immediate effect, this is not recommended as it opens up the possibility of the Council having to pay compensation if an application is refused or approved with conditions. Any adverse impact of waiting a year for the A4 to come into effect does not justify introducing it with immediate effect. It is recommended therefore that an A4 be made to come into effect after 12 months in order to avoid compensation issues. The impact of the new PDRs has been most pronounced in and around the city centre but there are notable examples elsewhere, for example, in Winnall, where there are a number of premises which could be converted to housing, and it is therefore recommended that the A4 covers all of the built up area of Winchester as defined in Local Plan Part 2 (see Appendix 1).

OTHER CONSIDERATIONS:

4 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 4.1 The Community Strategy strongly supports the protection and improvement of the district's economy and states the following:

“Prosperous Economy

3.11 The District has a dynamic and creative economy, supported by excellent education provision and communications. It has a thriving tourism sector and two strong business improvement districts. This is the time to work in new ways both to encourage new business and entrepreneurship and to tackle worklessness and promote a low carbon economy, ensuring long term prosperity.

3.12 *The objectives for this outcome are:-*

Support the local economy

Promote education and training

Promote tourism and the cultural assets of the District”

- 4.2 There is clear evidence that PDRs are resulting in the largely uncontrolled loss of office floor space in Winchester, and this is undermining the economic well-being of the area, and so an A4 to remove these rights is justified to protect the local economy. Such action is consistent with the aims of the Community Strategy set out above.

5 RESOURCE IMPLICATIONS:

- 5.1 Apart from officer time and the cost of publicising the Article 4 Direction, no resource implications other than an increased number of planning applications in the area covered by the A4 Direction for which no fee can be charged. It is envisaged that the number of such applications would not so great as to have a significantly harmful effect on the Development Management Team and it should be possible to deal with the increased workload using existing resources.

6 RISK MANAGEMENT ISSUES

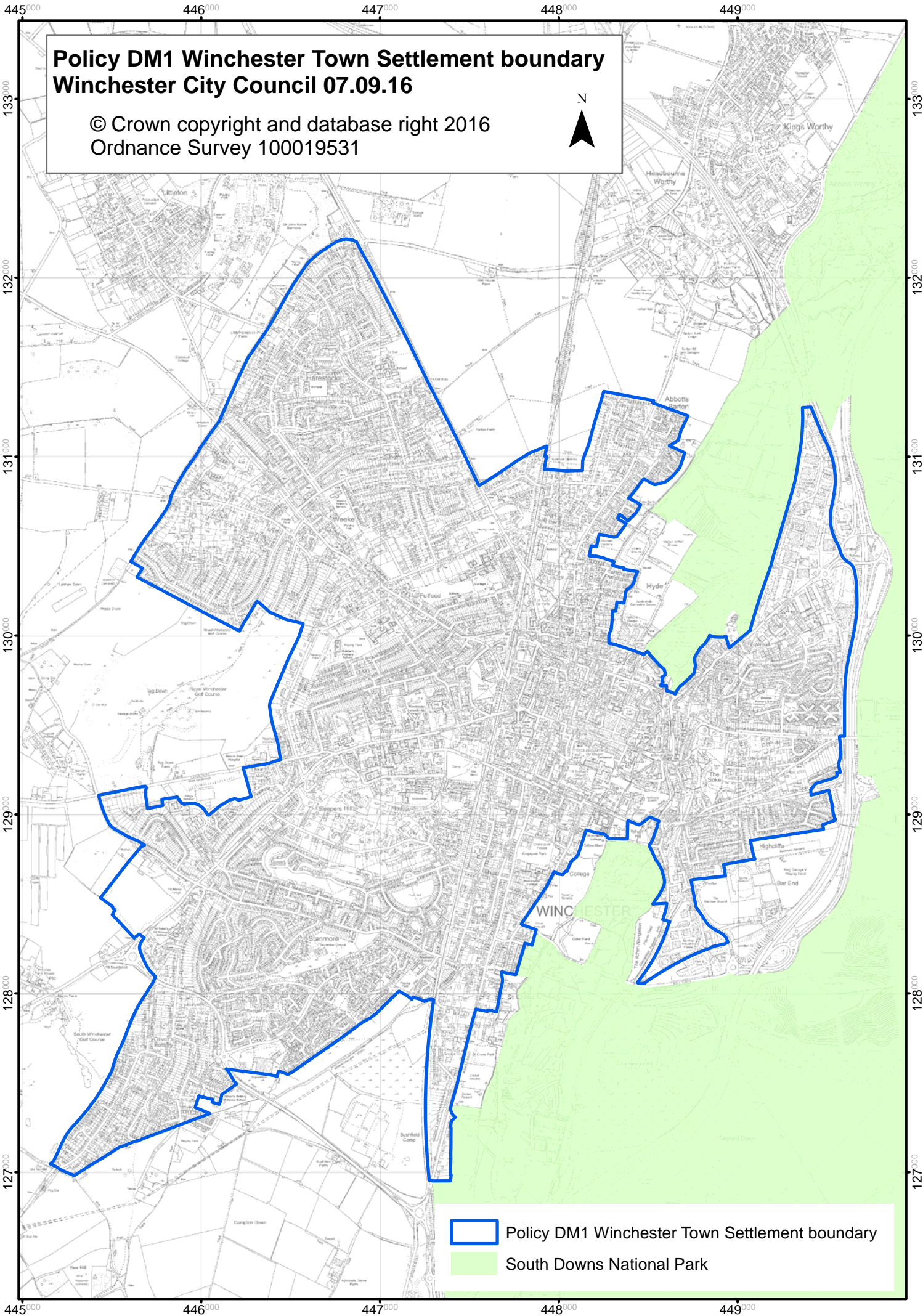
- 6.1 Failure to intervene by making an A4 Direction would mean that the loss of office floor space in Winchester would be likely to continue to the detriment of the local economy.
- 6.2 There are no significant risks attached to making a non-immediate A4 Direction other than the possibility that, in order to safeguard their position, landowners could bring forward proposals to convert offices to housing between the Direction being made and it coming into effect. However when an A4 was made in Stanmore recently removing rights to change dwelling houses to HMOs there is little evidence that there was a rush to use PDRs in the year before the Direction came into effect (May 2016).

BACKGROUND DOCUMENTS:

Link to Regeneris Report commissioned by M3 Enterprise LEP - <https://www.enterprisem3.org.uk/document/commercial-property-market-study-2016-final-report>

APPENDICES:



Appendix 1 – Plan of the area for the proposed Article 4 Direction.



Policy DM1 Winchester Town Settlement boundary Winchester City Council 07.09.16

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Ordnance Survey 100019531



-  Policy DM1 Winchester Town Settlement boundary
-  South Downs National Park