
Meeting of Planning Committee – 12th September, 2022

Report of the Director of Regeneration and Enterprise

Recommendations for Article 4 Direction for Houses in Multiple Occupation (HMOs)

Purpose

1. To update Planning Committee on a decision agreed by Cabinet in June 2022 that a borough wide Article 4 direction and the necessary consultation is authorised.

Recommendations

2. It is recommended: -
 - That Planning Committee notes the Cabinet Report taken on 27th June 2022 and the resulting recommendation for the Cabinet Member and Director for Regeneration and Enterprise to prepare a non-immediate Article 4 direction which will be applied to the Council's administrative area (borough wide) to remove Permitted Development Rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use).
 - That Planning Committee also agree to the making of a non-immediate Article 4 direction as above.
 - That notice of the Article 4 direction is publicised for a period of at least six weeks, to allow members of the public to submit comments on the proposals.
 - That Planning Committee receive a further report following the end of the representation period.

- That the Article 4 not be confirmed until 12 months after first notice has been made.

Background

3. On the 11th October 2021, Councillors voted on a motion that “*Given the negative impact that the uncontrolled proliferation of HMOs can have on a geographical area..... 1. The Director for Regeneration and Enterprise be requested to gather the evidence base required for a decision to be made on the introduction of an Article 4 Direction*”. As such Officers were tasked with gathering necessary evidence to enable Councillors to determine whether additional controls are required in respect of smaller HMO’s.
4. A report was considered by Cabinet on 27th June 2022 which set out the approach and options to progress and authorise the work on an Article 4 for small HMO’s. Cabinet approved the recommendation that the Director of Regeneration and Enterprise be authorised to prepare a non-immediate Article 4 direction which will be applied to the Council’s administrative area (borough wide) to remove Permitted Development Rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use).

Legislative Background

5. Under planning legislation HMO’s are divided into two use classes, these are most commonly known as ‘Smaller’ and ‘Larger’ HMO’s. A ‘Smaller’ HMO is defined under Class C4 of the Town and Country Planning (Use Classes) Order 1987, which sets out that this is “*Use of a dwellinghouse by not more than six residents*”. Currently the Town and Country Planning (General Permitted Development) Order (2015) allows the change of use of a single-family dwelling house (C3) to a small HMO (C4) without requiring planning permission. In essence this means that a house is able to be converted, or used, as a smaller HMO without requiring any consent if it is to be used by no more than six unrelated individuals.
6. Larger HMO’s that are able to accommodate more than 6 people are regarded as ‘Sui Generis’ this means that they are classified as falling within a use class of their own and planning permission would be required for any use to, or from this. This means that larger HMO’s already require

planning approval, and any Article 4 direction considered by the Council would apply solely to the creation of smaller HMO's.

Consultation Requirements

7. Within the Town and Country Planning (General Permitted Development) Order 2015 (as amended), there are requirements as to the process that must be followed when making an Article 4 direction, the Council's Statement of Community Involvement consider these requirements. In view of these requirements for a non-immediate Article 4 direction, officers make the following recommendations, as follows:
- As soon as possible after the direction has been made, notice shall be given by the Local Planning Authority:
 - a) By local advertisement (in the local paper)
 - b) By site display at no fewer than 2 locations within the area to which the direction relates for a period of not less than 6 weeks. Officers consider that a site notice shall be erected in the following locations:
 - The Town Centres of Dudley, Stourbridge and Halesowen.
 - The District Centres of Kingswinford, Lye, Sedgley and Brierley Hill.
 - c) Consult agents who have submitted planning applications for HMOs within the past 2 years.

It is anticipated that consultation would take place from 15th September, until 31st October 2022.

Options Considered

8. As part of the supporting report for Cabinet, evidence was presented to enable councillors to determine three options;
- Option 1:** A Borough-wide Article 4.
 - Option 2:** Individual Article 4 Directions for areas identified as in greatest need, or where there are existing concentrations of HMO's.
 - Option 3:** No article 4 directions introduced across the Borough.
9. Out of the three options put forward and considered by officers, it was considered that if Councillors are minded to introduce an Article 4 direction, Option 1 – a borough-wide Article 4 would be considered the most appropriate route and this recommendation was approved by Cabinet.



10. The effect of the Article 4 direction would be that planning permission would be required to carry out such changes of use across the borough. This would mean that any conversion from a dwelling to a HMO would need to first be submitted as a planning application to be considered by the Local Planning Authority.

This report has already been consulted on internally for the Cabinet process.

Finance

11. There are two types of Article 4 direction: immediate and non-immediate. A non-immediate direction would allow all consultation views to be taken into account before the direction was confirmed. It would also reduce or eliminate the likelihood of compensation being payable to affected landowners under sections 107 and 108 of the Town and Country Planning Act 1990. The use of an immediate direction could have considerable compensation implications.
12. Within the Town and Country Planning Act 1990, Section 107 and Section 108 there is a mechanism for compensation to be sought by landowners who have been affected by such Order revoking planning permission for something which was previously permitted development, in so much as they have had planning permission refused for a development that otherwise would have been carried out under Permitted Development. Compensation claims can only be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights. As such there will be a risk of claims for compensation for costs associated with the change of use. However, there are also mechanisms within Section 108 of the Town and Country Planning Act 1990 that reduce this risk, such as where notice is given of the Order not less than 12 months before the Direction takes effect.
13. The recommendation is therefore that an Article 4 direction on a non-immediate basis be enacted.

Law

14. The recommendations made have been informed by the requirements of the Town and Country Planning Act 1990, and the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
15. Furthermore, in considering the appropriateness of a borough-wide Article 4 direction regard has been had to the Council's Equality Duty under S149 of the Equality Act 2010. The use of the Article 4 will not eliminate a much-needed housing tenure from the borough but will ensure the appropriate provision in areas of need.

Risk Management

16. As previously noted, there will be a reduced risk of claims for compensation for costs associated with the change of use if a non-immediate order is pursued. However, there are also mechanisms within Section 108 of the Town and Country Planning Act 1990 that reduce this risk, such as where notice is given of the Order not less than 12 months before the Direction takes effect.
17. In view of the above, and in order to significantly reduce the potential costs associated with compensation claims, Officers recommend a Non-Immediate Article 4 Direction and that notice of the direction is made 12 months before the Direction is confirmed.
18. As such it is recommended that following the 6-week consultation, the details of the outcome of the consultation, and any recommendations are reported to Cabinet for decision before the expiry of 12 months from the date that the Notice of the Article 4 Direction was first made (commencement of consultation). During this period of time the Council should encourage Landowners to declare their existing Small HMO's to ensure that any changes of use being undertaken within the 12 months prior to any formal confirmation of the Article 4 are confirmed. The most appropriate route for this will need to be considered as it may be resource intensive, however, it is likely that a formal mechanism, such as a Lawful Development Certificate would be the most appropriate.

Equality Impact

19. Housing need across the borough is an important factor in determining the appropriateness of an article 4 direction. The Council Plan 2022-2025



sets out that Residents live in safe communities where safeguarding of vulnerable people of all ages protects them from harm and supports the prevention of crime and exploitation.

20. Houses of Multiple Occupations are recognized as meeting a specific housing need in terms of type and tenure. HMO's can often present an affordable option to those who need it. Notably, under Universal Credit & Housing Benefit rules, the rate of "housing costs" for someone, single, and under the age of 35, is, for a number of individuals restricted to the Shared Accommodation Rate (SAR) when they are in the private rented sector accommodation. The Shared Accommodation Rate only provides for a single room in a shared house in someone's area, even if they do not live in shared housing. As such it is expected that based on current needs, and with increasing costs of living, this need will remain within the borough.
21. As such the introduction of an Article 4 may serve to reduce the availability of housing within the borough for certain persons under the age of 35 and in receipt of SAR.
22. However, the introduction of an Article 4 direction would not stop the supply of HMO's, and would serve instead to manage the location and proliferation. Arguably, in seeking to limit the potential issues associated with concentrations of HMO's in an area, this will also improve the residential amenity of occupiers of HMO's. The Council will continue to seek to provide mixed and diverse communities, ensuring that the supply of housing meets the needs of all.

Human Resources/Organisational Development

23. The proposals contained in this report will not directly impact on either the Council's current Human Resources or required future resources. Any work arising from this decision will be from existing internal resources which provide the necessary flexibility in the effective delivery of the Council's Services under changing external circumstances, or through the use of external consultants should this be required.

Commercial/Procurement

24. Any procurement required will comply with DMBC's Contract Standing Orders (which are fully compliant with Public Sector and OJEU




procurement rules and guidelines) and all funders' requirements. There are no direct commercial implications associated with this report.

Council Priorities and Projects

25. The making of this borough wide Article 4 direction is considered to accord with the following Council priorities:

- Residents live in safe communities where safeguarding of vulnerable people of all ages protects them from harm and supports the prevention of crime and exploitation
- People have access to a range of housing offers that are affordable, accessible and attractive, meeting the needs of our diverse communities
- Home of warm welcomes and close-knit communities



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Appendices

Evidence base for HMO Article 4