

	<h2>Housing Committee</h2> <h3>27th October 2014</h3>
<p style="text-align: center;">Title</p>	<p>Proposed introduction of an Article 4 Direction to manage new Houses in Multiple Occupation</p>
<p style="text-align: center;">Report of</p>	<p>Cath Shaw Lead Commissioner Enterprise & Regeneration Declan Hoare Lead Commissioner Housing & Environment</p>
<p style="text-align: center;">Wards</p>	<p>All</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">Enclosures</p>	<p>Appendix A - Proposed Article 4 Project Plan</p>
<p style="text-align: center;">Officer Contact Details</p>	<p>Nick Lynch – Planning Policy Manager 0208 359 4211 nick.lynch@barnet.gov.uk Mike Carless - Principal Policy Planner 0208 359 4657 mike.carless@barnet.gov.uk</p>

<h2>Summary</h2>
<p>In order to manage the supply of Houses in Multiple Occupation across the Borough the Council can introduce an Article 4 Direction which withdraws permitted development rights for changes of use from planning use class C3 (dwelling house) to C4 (House in Multiple Occupation). A C4 use covers small Houses in Multiple Occupation which are occupied by 3 to 6 unrelated individuals who share basic amenities such as kitchen or bathroom.</p> <p>Larger HMOs are properties occupied by 7 or more unrelated individuals. Larger HMOs are classified as sui generis (a use like no other) therefore any proposal for a larger HMO requires planning permission.</p> <p>Following the confirmation by the Council of an Article 4 for HMOs any proposal to convert a dwelling to a HMO in Barnet will require planning permission</p> <p>Prior to making an Article 4 an evidence base must be established to justify the exceptional circumstances for withdrawing permitted development rights. This evidence base must demonstrate the harm to local amenity and impact on the proper planning of the area.</p> <p>This report seeks approval for resourcing the development of this evidence base and initiating the formal process for introducing a non-immediate (with 12 months' notice) Article</p>

4 with regard to small HMOs

Recommendations

1. That the Committee :

- Note the proposed costs set out in para 5.2.3 for compiling a comprehensive evidence base and undertaking the process of making and confirming an Article 4 Direction as set out in the Project Plan at Appendix A
- Note that the introduction of an Article 4 Direction could complement Additional Licensing of HMOs as proposed to this Committee.
- Approve a maximum amount of £17,000 from the New Homes Bonus / Infrastructure Reserve to cover costs of compiling the evidence base and making and confirming any necessary Article 4 Direction.

1. WHY THIS REPORT IS NEEDED

- 1.1 Houses in Multiple Occupation (HMOs) are an important source of low cost, private sector housing for those on low incomes, students, and those seeking temporary accommodation. The source of HMOs tends to be large single family dwelling houses.
- 1.2 Residents of HMOs are attracted by access to public transport and local services as well as affordable accommodation. Areas of large single family dwelling houses with good access to transport and services are therefore more likely to accommodate HMOs.
- 1.3 HMOs and their concentration can sometimes be associated with: poor standards of accommodation; loss of local character; reduction in environmental quality; increased noise complaints; increased anti-social behaviour; loss of single family dwelling houses; increased levels of crime; increased pressures on car parking; dominance of private renting; changes to local retail provision and increased pressure upon local services.
- 1.4 Some of the problems with regard to the impact of HMOs across the Borough are set out in the proposal to the Housing Committee for Additional Licensing. Additional licensing is one element of an approach to manage HMOs more effectively. The introduction of an Article 4 Direction to manage new and small HMOs through the planning system is another element. Adopting both elements ensures a more co-ordinated strategy for managing the growth of HMOs in Barnet.
- 1.5 In 2013 the Communities and Local Government Select Committee considered the issue of high concentrations of HMOs as part of its inquiry into The Private Rented Sector. The Committee concluded that controlling the spread of HMOs should be a matter for local determination and supported the use of Article 4 Directions to manage conversions to HMO. The Government agreed with the Committee's recommendation.

1.6 HMOs and the Planning System

- 1.6.1 A HMO can be either: a house split into separate bedsits; a shared house or shared flat; a hostel: a bed-and-breakfast hotel that is not just for holidays or shared accommodation for students.
- 1.6.2 HMOs are classified as Planning Use Class C4 when occupied by between 3 and 6 unrelated individuals who share basic amenities such as a kitchen or bathroom. Dwelling houses are classified as Use Class C3. Permitted development (PD) rights exist to change use between C3 and C4 and back again ie without planning permission.
- 1.6.3 Use Class C4 creates small HMOs. Larger HMOs are properties occupied by 7 or more unrelated individuals who share basic amenities such as a kitchen or bathroom. They are classified as sui generis (a use like no other) and always require planning permission.

1.7 Article 4 Directions

- 1.7.1 An Article 4 Direction made under Town & Country Planning (General Permitted Development) Order 1995 removes PD rights that otherwise would be available under that Order. Article 4 Directions do not prevent the development to which they relate; rather they mean that planning permission is required for that development.
- 1.7.2 Article 4 Directions are intended for use in exceptional circumstances where evidence suggests that the exercise of PD rights (such as the spread of HMOs) harms local amenity or the proper planning of an area. A robust evidence base is essential in order to justify to the Secretary of State that exceptional circumstances exist.
- 1.7.3 There are two types of Article 4 directions under the General Permitted Development Order: non-immediate directions and directions with immediate effect. An immediate direction withdraws permitted development rights with immediate effect; however a local planning authority may be liable to pay compensation to a landowner when PD rights are removed by an immediate Article 4 Direction if planning permission is subsequently refused for the development to which the direction applies. For certain types of PD rights (including conversion of a dwelling house to a HMO) a local planning authority is not liable to pay compensation provided that they give 12 months' prior notice of the making of the Article 4 Direction. The stages for preparation of an Article 4 Direction are set out in the Project Plan at Appendix A.
- 1.7.4 With the removal of PD rights through a confirmed Article 4 Direction a planning application for any conversion from a dwelling house to a small HMO is required. No fee is payable for such an application. The application will be considered against policies in Barnet's Local Plan Policy in particular:
- CS04 : Providing Quality Homes and Housing Choice in Barnet:
 - CS05 : Protecting and enhancing Barnet's character:

- DM01: Protecting Barnet's character and amenity; and
- DM09: Specialist Housing – HMOs, student accommodation and housing choice for older people.

1.7.5 An Article 4 Direction can remain in place permanently once it has been confirmed. However, local planning authorities should regularly monitor any Article 4 directions to make certain that the original reasons the direction was made remain valid. Where an Article 4 direction is no longer necessary it should be cancelled.

1.7.6 A local planning authority must, as soon as practicable after confirming an Article 4 direction, inform the Secretary of State via the National Planning Casework Unit. The Secretary of State has the power to modify or cancel this type of Article 4 Direction at any time before or after they are made.

2.0 REASONS FOR RECOMMENDATIONS

2.1 Introducing an Article 4 Direction to manage HMOs through the planning system can support the implementation of an Additional Licensing scheme as part of an effective borough-wide strategy to better regulate HMOs in Barnet.

3.0 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 One option is clearly to do nothing and accept that the Council has no control over the loss of family sized houses to small HMOs nor can it restrict the number of small HMOs in any street. This option is likely to lead to further unrestricted growth of HMOs and further reductions in supply of affordable housing.

3.2 Another option is to introduce an immediate Article 4 which will make the Council liable to compensation to landowners for the withdrawal of PD rights. This is not recommended as compensation sums could be significant. Several London Boroughs including Barking and Dagenham, Enfield, Newham and Waltham Forest have recently introduced non immediate borough-wide Article 4 Directions for HMOs. Newham have quoted an estimate of at least £4 million over 12 months to compensate landowners for loss of PD rights if an immediate Article 4 Direction is introduced.

3.3 Applying the Article 4 Direction to part of the borough only. This option is not being pursued as the proliferation of HMOs in Barnet has borough-wide implications. There is also concern that identifying existing 'hotspots' could simply move the problem elsewhere. Therefore a borough-wide approach is proposed.

4 POST DECISION IMPLEMENTATION

4.1 If expenditure on further work for introducing an Article 4 Direction is approved by Housing Committee officers will begin to establish an evidence base to justify Barnet's exceptional circumstances with regard to managing HMOs.

This will include:

- Scoping of other London Boroughs' evidence base to support Article 4 Direction with review of approaches to implementation
- Analysis of existing baseline data on HMOs from development management, enforcement, and environmental health private sector housing
- Analysis of relevant economic, environmental and social data in public domain through Barnet Observatory
- Analysis of data on HMOs from development management, enforcement, and environmental health private sector housing
- Mapping of existing distribution of small and large HMOs in Use Class C4 and Sui Generis use
- Interrogation of HMO Additional Licensing Scheme surveys and consultation responses
- Interrogation of databases including Council and partners such as Metropolitan Police. Focus on litter, refuse, fly-tipping, noise and parking stress as well as street crime, burglary and anti-social behaviour. Mapping of reports of instances as identified above
- Consultation with amenity groups and resident associations through Federation of Residents Associations in Barnet (FORAB) and landlords through Landlords Forum

4.2 The work around making and confirming the non-immediate Article 4 Direction (which requires 12 months' notice) will involve 5 key stages :

- Prepare Evidence Base Nov 2014 - Feb 2015;
- Making the non-immediate Article 4 Direction - Mar 2015;
- Consultation on Article 4 Direction - Apr 2015;
- Confirm Article 4 Direction - Mar 2016; and
- Implementation and monitoring – post March 2016.

5 IMPLICATIONS OF DECISION

5.1.1 Corporate Priorities and Performance

The policy meets the Council's key Corporate Priorities detailed in the Barnet Corporate Plan 2013-2016 as follows:-

- Create the right environment to promote responsible growth, development and success across the borough - An Article 4 Direction will help manage the growth of small HMOs therefore mitigating their impact on local amenity and improving the quality of such accommodation.

- Support families and individuals that need it, promoting independence, learning and well-being - An Article 4 Direction will help better manage the loss of existing family accommodation to HMO and therefore improve the availability of family accommodation.
- Improve the satisfaction of residents and businesses with Barnet as a place to live, work and study- Effective implementation of an Article 4 Direction combined with Additional Licensing of HMOs will have a positive impact on the number of complaints in relation to HMOs.

5.1.2 Barnet's Housing Strategy 2010-2025 key objective is to increase the housing supply, including family sized homes, to improve the range of housing choices and opportunities available to residents.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The Council would not be able to recover costs of handling planning applications arising from an Article 4 Direction as it is not entitled to charge any fees following the removal of PD rights.

5.2.2 In order to avoid any possible claims for compensation, the Council should provide 12 months advance notice of the Article 4 taking effect (a non-immediate direction).

5.2.3 It is estimated that gathering the necessary evidence, making and confirming the Article 4 Direction will cost approximately £14k-£17k. The Committee is therefore asked to approve expenditure up to a maximum of £17k. Funding for the Article 4 Direction work will be taken from the New Homes Bonus / Infrastructure reserve.

5.3 Legal and Constitutional References

5.3.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO) gives power to a local planning authority to withdraw specified permitted development rights that would otherwise apply under the GPDO. If an Article 4 Direction is in place, planning permission will be required for the development covered by the direction.

5.3.2 Article 4 Directions can only be used for developments explicitly granted permitted development rights under the GPDO. They cannot be applied retrospectively to development undertaken before a Direction comes into force, or to development that has commenced at the time that a Direction comes into force.

5.3.3 Department for Communities and Local Government Guidance states that local planning authorities should only consider making Article 4 Directions in exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. The legal test under Article 4 of the GDPO for making Article 4 Directions is that the local planning authority is satisfied that it is expedient

that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.

- 5.3.3 In deciding whether an Article 4 direction would be appropriate, local planning authorities are advised by the Guidance to identify clearly the potential harm that the Direction is intended to address. Provided there is justification for both its purpose and extent, it is possible to make an Article 4 Direction covering the whole of a local planning authority's area.
- 5.3.4 Council Constitution, Responsibility for Functions, Annex A – details the terms of reference of the Housing Committee which includes responsibility for: i) All matters relating to Private Sector Housing; ii) Promote better integration of privately rented properties back into Borough's framework; and iii) Housing licensing and housing enforcement.

5.4 Risk Management

- 5.4.1 Whilst an Article 4 Direction is likely to be welcomed by residents it is likely that the withdrawal of PD rights is not popular with landowners and potential landlords. Following the making of the Article 4 Direction the Council will publicise it on the Council's website and ensure consultation with the Landlords Forum.
- 5.4.2 There may be additional burdens for the planning enforcement service following adoption. However, the Article 4 Direction effectively reinstates the position that existed in the borough prior to 1st October 2010.

5.5 Equalities and Diversity

- 5.5.1 HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock.
- 5.5.2 An equalities impact assessment will be carried out prior to the introduction of an Article 4 Direction.

5.6 Consultation and Engagement

- 5.6.1 An extensive consultation exercise will take place following a decision by Planning Committee to make the Article 4 Direction.

6 BACKGROUND PAPERS

- 6.1 Council, 23 September 2014, Item 14.1, Motion from Councillor Shimon Ryde – Proposed Introduction of an Article 4 Direction in Relation to HMOs: <http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MID=7814#AI9260>