

	<h2>Planning Committee</h2> <h3>18th May 2015</h3>
<p style="text-align: center;">Title</p>	<h3>Non Immediate Article 4 Direction – Houses in Multiple Occupation</h3>
<p style="text-align: center;">Report of</p>	Cath Shaw – Commissioning Director Growth and Development
<p style="text-align: center;">Wards</p>	All Wards
<p style="text-align: center;">Status</p>	Public
<p style="text-align: center;">Enclosures</p>	Appendix 1: Supporting case for Boroughwide Article 4 Direction Appendix 2: Article 4 Direction
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<h2>Summary</h2>
<p>In order to manage the supply of Houses in Multiple Occupation (HMO) across the Borough the Council intends to introduce an Article 4 Direction which withdraws permitted development rights for conversions from planning use class C3 (dwelling house) to use class C4 (small HMO). Use Class C4 permits occupation of a property by 3 to 6 unrelated individuals who share basic amenities such as kitchen or bathroom facilities. Larger HMOs classified as ‘sui generis’ (a use like no other) will continue to require planning permission. The proposal is for a non-immediate Article 4 Direction which requires a 12 month stay before it comes into force in order to avoid the payment of any compensation. Subject to responses received during the consultation process it is envisaged that the Council will be able to confirm the Direction mid 2016. Any proposal to convert a dwelling to a HMO in Barnet will then require planning permission.</p> <p>The National Planning Policy Framework (NPPF) requirements for removing national permitted development rights requires the planning authority to demonstrate that the removal is necessary to protect local amenity or the wellbeing of a particular geographic area (NPPF, Para 200). The supporting case uses a range of data sources to estimate the total number of HMOs in Barnet, to analyse the various impacts of those HMOs and to consider potential new HMOs. This report also sets out the formal consultation process for introducing a non-immediate (with 12 months’ notice) Article 4 Direction.</p>

Recommendations

- 1. That the Committee approve the making of a non-immediate boroughwide Article 4 Direction to withdraw permitted development rights for changes of use from dwellinghouses (Use Class C3) to small HMOs (Use Class C4)**

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 Use Class C4 (HMO) was introduced in 2010 in response to a need to exert greater control over HMO accommodation. The Council is also considering enhancing its licensing controls to help drive up standards in this sector (see “Review of Regulation of Houses in Multiple Occupation” report to Housing Committee 2nd February 2015).
- 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 sector¹. 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 House of Commons, Communities and Local Government Committee. The Private Rented Sector. First Report of Session 2013-14 HC50

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50.pdf>

1.6 HMOs and the Planning System

- 1.6.1 Within the planning system a HMO can be either a house split into separate bedsits, a shared house or shared flat. A property does not need to be converted or adapted in any way to be classified as a HMO.
- 1.6.2 Small HMOs are classified as Use Class C4 when occupied by between 3 and 6 unrelated individuals who share basic amenities such as a kitchen or bathroom facilities. Dwelling houses are classified as Use Class C3. Permitted development ('PD') rights exist to change use between C3 and C4 and back again without planning permission.
- 1.6.3 Use Class C4 creates small HMOs. Larger HMOs are properties occupied by more than 6 unrelated individuals who share basic amenities such as a kitchen or bathroom facilities. 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 2015 suspends particular PD rights that otherwise would be available under that Order. Article 4 Directions do not mean that planning consent would not be granted; it merely means that an application has to be submitted so that the Council can examine the proposal in detail.
- 1.7.2 Article 4 Directions are intended for use in exceptional circumstances where it is necessary to protect local amenity or the wellbeing of an area (Para 200, NPPF). A robust evidence base is essential in order to justify its purpose and extent.
- 1.7.3 There are two types of Article 4 directions under the 2015 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 the change of use of a dwelling house to a small HMO) a local planning authority is not liable to pay compensation provided that the bringing into force of the Article 4 Direction is stayed for 12 months.
- 1.7.4 With the removal of Permitted Development rights through a confirmed Article 4 Direction a planning application for any change in use from a dwelling house

to a small HMO is required. An application is exempt from the usual planning application fee. The application will be considered against policies in Barnet's Local Plan 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 an Article 4 Direction has been made, 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 after it is made and before it is confirmed.

1.8 Supporting case for Boroughwide Article 4 Direction

1.8.1 The supporting case for the boroughwide Article 4 Direction draws on evidence from the following sources:

- The 2001 and 2011 Census
- The Barnet Characterisation Study 2010
- Barnet Electoral Register
- Barnet Council tax database
- Middlesex University Accommodation Register
- Call credit marketing data
- Council complaints database
- Environmental Health Street Survey 2014
- Licensed HMO database
- Planning enforcement complaints database
- Planning applications database
- Residential parking permit database
- Metropolitan Police crime statistics

1.8.2 The assessment of these data sources draws the following conclusions:

- The Census analysis identifies that there are 8,811 units in the private rented sector in shared or converted houses which could potentially include HMO. The electoral register and data sources analysis evidences

that 3,981 units could reasonably be considered shared accommodation or bed-sit style HMO.

- The Census analysis also identifies that there has been a reduction of 3.4% of the total stock of family housing since the 2001 census.
- The Environmental Health Street Survey identified concerns about standards of management of HMO. The Survey involved a sample of properties across the borough and areas were chosen according to the greatest incidence of licensed HMOs under the mandatory scheme and through local knowledge of concentrations of existing potential HMO.
- The Street Survey sample was cross-referenced against the Council's own housing and nuisance complaints records to Environmental Health which demonstrated high levels of complaints received where HMOs and potential HMOs were identified.
- The analysis of Middlesex University student accommodation shows the concentration as would be expected is in and around the University Campus in Hendon.
- Planning enforcement complaints data was analysed for HMO and flat conversions. The data shows that both NW11 (Golders Green) and NW4 (Hendon) are the most predominant postcode areas for complaints although there is coverage across the borough. Levels of complaints regarding HMO, flat conversions and 'beds in sheds' have been steadily rising.
- The analysis of Controlled Parking Zones where known concentrations of HMO exist did not demonstrate clear parking stress across a CPZ. However streets with high levels of permits per property can be identified.
- The layers of evidence have helped present a picture of increasing prevalence of HMO in London Borough of Barnet with increasing amenity issues evidenced by complaints data. The potential for new HMO is clear from both the demand and supply side with affordability the biggest driver and ample suitable housing stock across the whole borough available for conversion.

2. REASONS FOR RECOMMENDATIONS

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

3. 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 family homes.

- 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 Permitted Development 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 The final option is to apply 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 as there is potential for conversion from existing dwelling houses to HMOs throughout the Borough. Therefore a borough-wide approach is proposed.

4. POST DECISION IMPLEMENTATION

- 4.1 The work around making and confirming the non-immediate Article 4 Direction (which requires 12 months' notice) involves the following stages :
- The making of the non-immediate Article 4 Direction - May 2015
 - Advising the Secretary of State of the non-immediate Article 4 Direction - May 2015;
 - Consultation on Article 4 Direction - May/July 2015;
 - Confirming Article 4 Direction - May 2016; and
 - Implementation and monitoring – post May 2016.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

The policy meets the Council's Corporate Plan strategic objectives detailed in the Barnet Corporate Plan 2015-2020 which will strive to ensure that Barnet is a place:-

- Of opportunity, where people can further their quality of life - 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 as well as their surrounding neighbourhood.
- Where people are helped to help themselves, recognising that prevention is better than cure - An Article 4 Direction will help better manage the loss of existing family homes to HMO and therefore improve the availability of family housing.
- Where services are delivered efficiently to get value for money for the taxpayer - Effective implementation of an Article 4 Direction combined

with Additional Licensing of HMOs will have a positive impact on the management of HMOs.

5.1.2 Barnet's draft Housing Strategy 2015 to 2020 includes the following key objectives: increasing housing supply, including family homes, delivering homes that people can afford and sustaining quality in the private rented sector. The strategy will be formally adopted at the Housing Committee on 29 June 2015.

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

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

5.3 **Legal and Constitutional References**

5.3.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) empowers the planning authority to withdraw specified PD rights which 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 to withdraw PD 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 The NPPF states that local planning authorities should only consider making Article 4 Directions where there is a clear justification for removing national permitted development rights. The use of Article 4 directions should be limited to situations where this is necessary to protect local amenity or the wellbeing of an area (para 200). The planning authority should not make a Direction unless it 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 (Article 4(1)).

5.3.3 In deciding whether an Article 4 Direction is appropriate, local planning authorities are advised by the Guidance² 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 (Para 3.1 of the Guidance).

5.3.4 The Council's Constitution, Responsibility for Functions, Annex A – details the

² Replacement Appendix D to Department of Environment Circular 9/95: General Development Consolidation Order 1995. DCLG June 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5679/2160020.pdf

terms of reference of the Planning Committee which includes responsibility for matters of significance to the entire Borough.

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 will not be popular with landowners and potential landlords. Following the making of the Article 4 Direction the Council will publicise it in local newspapers, on the Council's website and ensure consultation with the Landlords' Forum.

5.4.2 The Secretary of State has the power to modify or cancel an Article 4 Direction. The Secretary of State will only exercise their powers in relation to Article 4 Directions if there are very clear reasons why intervention at this level is necessary. Ensuring the Council is satisfied with the supporting case for designating an Article 4 Direction will mitigate this risk.

5.4.3 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 housing choice.

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. The consultation will take place over 10 weeks following publication of the notice and include publication of the notice on the Council's website, in the local newspaper and consultation with the Landlords Forum.

5.6.2 Consultation will be concurrent with the proposal for Additional Licensing. Additional events and joint publicity will be identified where possible.

6. BACKGROUND PAPERS

6.1 Housing Committee, 27 October 2014, Item 7, Proposed Introduction of an Article 4 Direction to manage new Houses in Multiple Occupation
<http://barnet.moderngov.co.uk/documents/s18772/Article%204%20Direction%20for%20HMOs%20-%20Final%20Report.pdf>

6.2 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>

