

	<h2 style="margin: 0;">Planning Committee</h2> <p style="margin: 0;">23 May 2016</p>
Title	Article 4 Direction – Houses in Multiple Occupation
Report of	Commissioning Director Growth and Development
Wards	All Wards
Status	Public
Enclosures	Appendix 1: Schedule of Consultation Responses Appendix 2: Article 4 Direction
Officer Contact Details	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

Summary

In order to manage the supply of Houses in Multiple Occupation (HMO) across the Borough the Council proposes to confirm the non-immediate Article 4 Direction made on 28th May 2015 intended to withdraw permitted development rights within Class L(b) of Part 3 (Changes of Use) of Schedule 2 to the GPDO 2015 for the change of use from buildings used as dwelling houses (Use Class C3) to buildings used as small scale houses in multiple occupation (Use Class C4) from 29th May 2016. Use Class C4 permits occupation of a property by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. Larger HMOs classified as 'sui generis' (a use like no other) will continue to require planning permission. Any proposal to convert a dwelling to a small or large HMO in Barnet will then require planning permission following confirmation of the Article 4 Direction.

Recommendations

- 1. That the Committee resolves to confirm the non-immediate borough wide Article 4 Direction made on 28th May 2015 to withdraw permitted development rights for the change of use from buildings used as dwellinghouses (Use Class C3) to buildings used as small scale houses in multiple occupation (Use Class C4) with effect from 29th May 2016.**
- 2. That the Committee authorises LBB officers to carry out all administrative procedures to confirm the bringing into effect of the Direction from 29th May 2016**

1. WHY THIS REPORT IS NEEDED

- 1.1 This report confirms, subject to approval by the Planning Committee, that the Article 4 Direction made on 28th May 2015 will come into effect on 29 May 2016. The report sets out the consultation on the Article 4 Direction, the comments received and Council response to those comments.

1.2 HMOs and the Planning System

- 1.2.1 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.
- 1.2.2 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 under the GPDO 2015 for changes of use between Use Class C3 and C4 and vice versa without planning permission.
- 1.2.3 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.

1.3 Confirmation of the non-immediate Article 4 Direction

- 1.3.1 The Article 4 Direction proposed to be confirmed under Town & Country Planning (General Permitted Development) Order 2015 suspend particular PD rights that allow a change of use between Use Class C3 and C4. Confirmation of the Article 4 Direction does not mean that planning consent would not be granted for such a change of use; it merely means that an application has to be submitted so that the Council can examine the proposal in detail.

1.3.2 Confirmation of the Article 4 Direction is necessary to protect local amenity or the wellbeing of the Borough and is justified in terms of purpose and extent by a robust evidence base.

1.3.3 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 (use Class C3) to a small HMO (Use Class C4) 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.

The Permitted Development right will remain for the change of use from a small HMO (Use Class C4) to a dwelling house (use Class C3).

1.3.4 Although the Article 4 Direction may remain in place permanently once it has been confirmed, it is best practice to monitor the Direction to make certain that the original reasons for making the Direction remain valid. The Direction should be cancelled by the LPA when it is no longer necessary.

1.3.5 The LPA is required, as soon as practicable after the Article 4 Direction has been confirmed to inform the Secretary of State via the National Planning Casework Unit that it has been confirmed.

2 REASON FOR RECOMMENDATIONS

2.1 The confirmation of the non-immediate Article 4 Direction manages HMOs through the planning system and supports the licensing scheme as part of an effective borough-wide strategy to better regulate HMOs in Barnet.

3 ALTERNATIVE OPTION CONSIDERED AND NOT RECOMMENDED

3.1 The alternative option is to do nothing and not confirm the Article 4 Direction. However, officers consider that this option is likely to lead to further unrestricted growth of HMOs and further reductions in supply of affordable family homes in the Borough.

4 POST DECISION IMPLEMENTATION

4.1 The work to confirm and implement Article 4 Direction involves the following stages:

- On 23 May 2016 members resolve to confirm the non-immediate Article 4 Direction from 29th May 2016;
- The Article 4 Direction is resealed on or around 26th May 2016
- Publish notice of confirmation in the local Barnet Press;
- Update the planning pages on the Council's website;
- Register the Article 4 Direction with Local Land Charges;
- Notify the Secretary of State that the Direction has been confirmed;
- Monitor implementation of the Direction – post May 2016.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

Confirmation of the non-immediate Direction 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 Housing Strategy 2015 to 2020 includes the following key objectives: increasing housing supply, delivering homes that people can afford and sustaining quality in the private rented sector. The strategy was formally adopted at the Housing Committee on 19 October 2015.

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

5.2.1 The LPA is not liable to pay compensation as the proposed confirmation of the Direction has been stayed for twelve (12) months

5.3 Legal and Constitutional References

- 5.3.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (GPOD) empowers the local planning authority to confirm the Direction
- 5.3.4 The Council's Constitution, Responsibility for Functions, Annex A – details the 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 confirmation of the Article 4 Direction is likely to be welcomed by residents it is also likely that the withdrawal of PD rights will be unpopular with landowners and potential landlords. Following the making of the Article 4 Direction in May 2015 the Council publicised it in a number of ways and ensured consultation with key stakeholders including the Landlords' Forum.
- 5.4.2 The Secretary of State has the power to modify or cancel a confirmed Article 4 Direction. The Secretary of State will only exercise his powers 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 Although there may be additional burdens for the planning enforcement service following confirmation, it should be noted that the Direction 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 has been carried out and concluded that a confirmed Article 4 Direction would have an overall positive impact for landlords, tenants, residents and businesses, by virtue of the potential improvement to the quality of HMOs and the stronger management of them within the planning system. The assessment of the planning applications for HMOs will provide the opportunity for the assessment of the impacts on amenities, townscape character and issues arising from concentrations of HMOs. In addition there are potential benefits to residents arising from the increased choice of quality housing Boroughwide.

5.6 Consultation and Engagement

- 5.6.1 An extensive consultation exercise took place following the decision by Planning Committee on 18 May 2015 to make the non-immediate Article 4 Direction. The consultation took place over 12 weeks following publication of the notice. The Council's website together with local press were used to

publicise the consultation.

- 5.6.2 Consultation was concurrent with the linked strategic proposed ‘Additional Licensing scheme’ with cross references made on relevant consultation material. Planning officers attended ‘Additional Licensing scheme’ events such as those held with the Landlords’ Forum.

5.7 Publicity of the proposed Article 4 Direction

- 6.2.1 The consultation on the HMO Article 4 Direction ran from 28 May to 30 August 2015. The consultation for the Additional Licensing scheme ran from 25 June to 23 October 2015. The consultations employed a range of methods to target as many stakeholders (such as residents, landlords, letting agencies) as possible. Consultation material for the Additional Licensing scheme and the Article 4 Direction was separate but sign posted to the other consultation webpages.
- 6.2.2 In order to reach relevant stakeholders for both the Additional Licensing Scheme and the Article 4 Direction the following approach was undertaken:
- A mail-out of more than 3,600 flyers addressed to landlords of HMOs/Suspected HMOs in Barnet advertising the Additional Licensing scheme consultation which cross referenced the Article 4 Direction.
 - Informing the Residential Landlords Association, the National Association of Estate Agents, the Association of Residential Letting Agents, the National Landlords Association (including meeting with their local representative) and the London Landlord Accreditation Scheme and UK Landlord Accreditation Partnership bodies, and encouraging them to contact their members via emails and newsletters to encourage their participation in the consultation.
 - Press releases were placed in the Barnet Press at different stages of the consultation period. This has a combined readership of almost 100,000 people. Additionally there were also subsequent mentions on websites associated with landlords and letting agencies.
 - The consultation was advertised on the Planning consultation webpage. There were almost 1,300 people visiting the webpage over the consultation period. The consultation was also advertised with other websites associated with Barnet as well as councils adjacent to Barnet.
 - An advert was placed in Barnet First publicising the Additional Licensing and HMO Article 4 Direction consultation. Barnet First is distributed to over 135,000 households across the borough.
 - The London Property Licencing website publicised the HMO Article 4 Direction consultation.
 - Email campaigns with the official Middlesex University student

accommodation service and the Middlesex University student union.

- Emailing more than 200 estate/letting/managing agents, and following-up with visits to their offices and personal meetings with staff in many cases and where possible.
- Emailing more than 2,500 businesses in Barnet.
- Emailing circa 700 contacts on the planning policy consultation database
- The publicity with regards the Additional Licensing scheme included a link to an online consultation questionnaire and associated information on the consultation, support telephone number and email address through which respondents could ask questions about the consultation and request paper versions of the consultation questionnaire, including in languages other than English.

6.3 Consultation responses

- 6.3.1 The consultation response consisted of a variety of respondents from various backgrounds. Appendix 1: Schedule of Consultation Responses sets out the detailed responses received and Council's response.
- 6.3.2 There were 13 respondents which included private landlords, residents affected by HMOs, resident amenity societies and industry bodies; the Residential Landlords Association and the National Landlords Association.
- 6.3.3 The respondents main issues in relation to planning are summarised in the following paragraphs (the Council's response is in italics):
- 6.3.4 Specific comments made on the Supporting Case for the Boroughwide Article 4 Direction were:
 - Whether there is an impact on environmental quality,
There is a link between poorly managed HMOs and environmental quality with those landlords who do not maintain their properties, leaving tenants at risk and leading to nuisances which affect neighbouring premises.
 - noise complaints are not relevant as they are controlled under different legislation,
Noise is an aspect of environmental quality and can create an impact so is a material consideration in planning decisions.

- Instances of anti-social behaviour are not relevant as they are not controlled by planning legislation,

Crime and anti-social behaviour are a key concern of local residents. The planning system plays an important part in making places safer and reducing the opportunity for crime and disorder. The Council will seek to address anti-social behaviour through the Additional Licensing Scheme by requiring landlords to investigate complaints of anti-social behaviour as a condition of their license and take reasonable steps to resolve the problem. Further guidance is being drafted for landlords and tenants that will explain what such reasonable steps might be.

- the increased car parking stress evidence is not conclusive

HMOs can contribute towards increased parking stress within an area. The evidence was clear in stating that where known concentrations of HMO existed it did not demonstrate clear parking stress across a Controlled Parking Zone although streets with high levels of parking permits could be identified. Both HMOs and housing are capable of housing a number of occupants who may own motor vehicles. This is an issue that should be considered through the planning process.

- there is reduced demand for single family houses and increased demand for smaller housing/ private renting

A key ambition of the Local Plan is to ensure a variety of sizes of new homes to meet housing need. Maintaining and increasing the supply of housing is a priority in Barnet and this commitment was reaffirmed by the Housing Strategy agreed by the Housing Committee on 19 October 2015.

- The impact on local services is not clear

Services such as health and refuse collection in particular will be put under pressure from increases in the population. This pressure may be exacerbated by people living in substandard HMO accommodation.

- The management issues that HMOs can suffer can also be found in private rented flats and housing

Management issues are one of a number of factors that help build a convincing case for supporting the Article 4 Direction, HMO users generally can potentially have a greater cumulative impact on more people than other housing users can in particular where a concentration occurs.

- The planning enforcement statistics on HMO are not convincing

Para 5.7 highlights the steadily rising number of complaints about HMOs and related issues. The types of development, both flat conversions and use of outbuildings are often associated with potential HMO and indicate activity therefore we consider complaints about all three to be related to development of poor quality accommodation.

6.3.5 Other more general comments on the Boroughwide Article 4 Direction raised the following issues:

- The planning system cannot control the behaviour or residents of HMO

The Council will seek to address anti-social behaviour through the Additional Licensing Scheme by requiring landlords to investigate complaints of anti-social behaviour as a condition of their license and take reasonable steps to resolve the problem. Further guidance is being drafted for landlords and tenants that will explain what such reasonable steps might be.

- Will reduce the freedom of choice and access to housing

The Article 4 is not a blanket ban on HMOs and planning decisions will be based on Local Plan policy which considers a range of factors including amenity impacts as well as the need for the HMO. In reviewing the Local Plan the Council will be informed by evidence on the housing market area in particular the Strategic Housing Market Assessment (SHMA). This evidence will inform the direction of the Local Plan with regard to addressing housing needs. The experience of other local planning authorities who have implemented Article 4 Directions on HMOs is that there has been no significant effect upon the supply of shared housing following confirmation.

- The effectiveness of implementation and resourcing the additional burden on the planning department was raised

The Council recognises that there may be additional burdens for the planning enforcement service following confirmation. However, the Article 4 Direction effectively reinstates the position that existed in the borough prior to 1st October 2010. The impact of the change arising from the Article 4 Direction will be monitored and subject to volumes a request for additional resources may be made.

- The borough wide scope of the direction is not necessary and should just focus on areas where HMO are known to be issue

There is potential for new HMO across the Borough. The Article 4 seeks to manage new C4 HMOs so a boroughwide approach is considered most appropriate. The Council considers that a boroughwide Article 4 Direction combined with an Additional Licensing Scheme is the right approach for Barnet.

- Support for the Article 4 with concerns raised over the conversion of family homes into bedsits, intensification of use, impact on neighbours and the character of the area

By ensuring that all new HMOs require planning permission together with the Additional Licensing Scheme the Council will have more powers to manage HMOs in Barnet.

- 6.3.6 In line with the Regulations the Council notified the Secretary of State who raised no objections.

BACKGROUND PAPERS

- 1 Planning Committee, 18 May 2015, Item, Non Immediate Article 4 Direction – Houses in Multiple Occupation
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=7922>
- 2 Housing Committee, 27 October 2014, Item 7, Proposed Introduction of an Article Direction to manage new Houses in Multiple Occupation
<http://barnet.moderngov.co.uk/documents/s18772/Article%204%20Direction%20for%20HMOs%20-%20Final%20Report.pdf>
- 3 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>