



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Feasibility assessment for the use of an Article 4 Directive to control the growth in Houses of Multiple Occupation (HMO).	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team - 13 March 2021	X
	Leader and Deputy Leaders 19 th April 2021	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group 28 & 29 th April 2021	X
	Cabinet 10 th May 2021	
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Community Regeneration, Environment and Health and Well Being Committee [DATE]	



Is this an Executive Decision:	NO	Is this a Key Decision:	NO
Is this in the Forward Plan:	[YES/NO]	Is the Report Confidential: If so, please state relevant paragraph from Schedule 12A LGA 1972:	NO []

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **Angela Wakefield**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

**OPEN
AGENDA**

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Cabinet

Date: 10th May 2021

REPORT TITLE: **Feasibility assessment for the use of an Article 4 Directive to control the growth in Houses of Multiple Occupation (HMO).**

PORTFOLIO: **Housing and Environment**

HEAD OF SERVICE: **Sal Khan**

CONTACT OFFICER: **Brett Atkinson** **Ext. No. x1123**

WARD(S) AFFECTED: **Multiple**

1. Purpose of the Report

- 1.1. To assess the feasibility of using Article 4 Directive to control the growth of HMOs in the Borough.

2. Executive Summary

- 2.1. There is evidence of significant growth in the amount of family homes being converted into HMOs, this has resulted in relatively high number of complaints and an increase in lost Housing Benefit subsidy.
- 2.2. Other local authorities have successfully used an Article 4 direction requiring property owners to obtain planning permission prior to changing the use to HMO in order to control this growth.
- 2.3. For this reason the recommendation of this report is to create a draft Article 4 direction.

3. Background

- 3.1. A House in Multiple Occupation (HMO) is a single dwelling that is occupied by three or more people living in more than one household and who share one or more basic amenities.¹
 - 3.1.1. A household is defined as occupiers of the same family and includes spouses, co-habitees, same sex couples and any blood relative.
 - 3.1.2. Basic amenities means a toilet, personal washing facilities, or cooking facilities.
 - 3.1.3. This includes bedsits, houses partly converted into self-contained flats, hostels, accommodation above shops and shared houses and flats. Houses converted to self-contained flats before 1991 and not in accordance with the 1991 Building Regulations will also be HMOs.
- 3.2. Only HMOs of a certain size are subject to the statutory licensing regime.² The criteria are as follows:
 - 3.2.1. 5 or more occupants; and
 - 3.2.2. 2 or more households
- 3.3. In addition to the statutory licensing regime, larger HMOs accommodating more than 6 people require planning approval.³ This data has been used to identify properties being used as HMOs in East Staffs, but it is accepted that although these sources provide the most robust approach to identifying the numbers and location of HMOs in an area, it will not identify all such properties or even necessarily the majority of them.
- 3.4. There is an unknown number of HMOs with 5 or fewer occupants as they fall outside the planning and licensing regimes. There is reason to believe that this cohort of HMOs could be larger than those that are licensed as most standard property sizes are unlikely to house 5 people, e.g. a 3 bed house is only likely to house 4 people even when 1 of the downstairs rooms is used as a bedroom.
- 3.5. There have been 5 planning applications pertaining to HMOs in the past year, and 18 over the last 5 years.⁴ There are currently 74 licensed HMOs, and a further 35 that the Environmental Health Dept. believe require a licence. These numbers are outstripped by the 104 properties about which complaints have been received as potentially needing a HMO licence. The figure below displays these complaints by ward, it is noticeable that all the affected wards are in Burton upon Trent, with only 4 wards having 10 or more complaints.

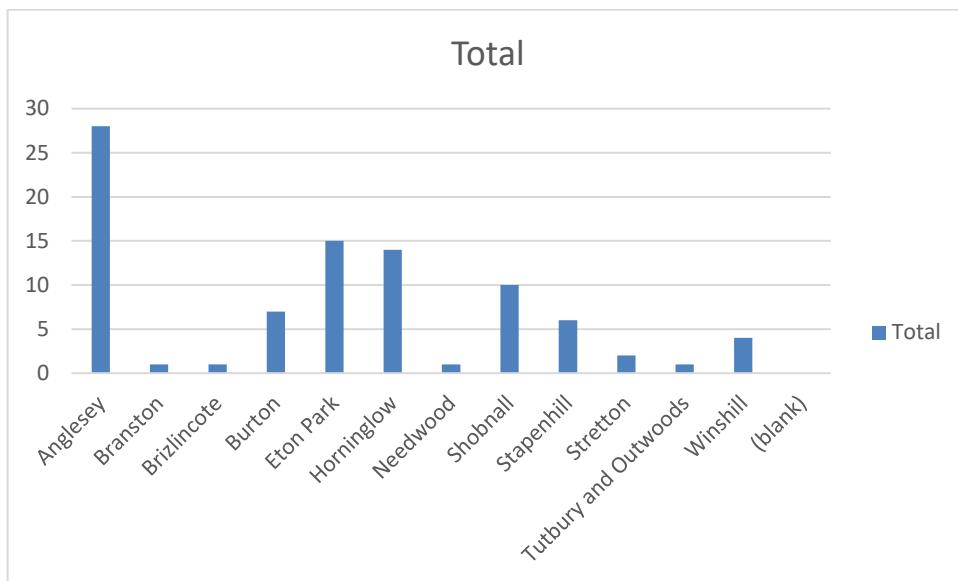
¹ Housing Act 2004 S.254

² The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

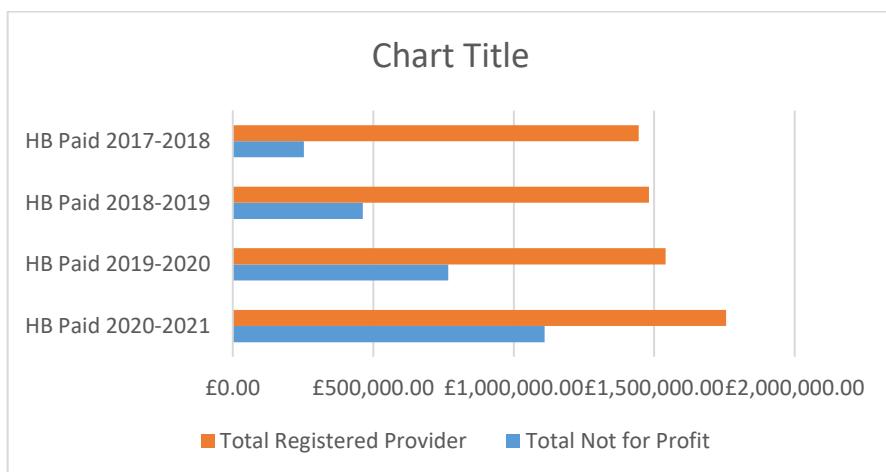
³ A Sui Generis HMO is not in a planning use class and is defined as a large HMO with more than 6 people sharing. This use always requires planning consent.

⁴ <http://www.eaststaffsbc.gov.uk/Northgate/PlanningExplorer/KeywordsSearch.aspx>

3.6. Figure 1: Complaints about HMOs by Ward



- 3.7. Well managed HMOs are an important source of low cost, private sector housing for students and others seeking temporary accommodation. However, a proliferation of HMOs in certain areas can present challenges to the future sustainability of neighbourhoods, and impact on their character and residential amenity.⁵ In particular, insecure housing and high levels of transience can have a detrimental impact on the surrounding area. The government encourages local planning authorities to help maintain balanced communities. A balanced community is defined as one that is not dominated by one particular household type, size or tenure.
- 3.8. Through Housing Benefit claims processed by the Council we are aware of significant growth in HMOs providing support to their residents. Due to the nature of this provision the residents have additional needs, which poses important questions around infrastructure and concentration.
- 3.9. Figure 2: Housing Benefit paid to Supported Accommodation Providers



⁵ <https://commonslibrary.parliament.uk/research-briefings/sn05414/>

- 3.10. It is noticeable that the housing benefit paid to Not for Profit providers has quadrupled over the last 4 years,⁶ and it is known that the vast majority of such provision is based on the conversion of family homes into HMOs.⁷ Conversations with these providers have led to the view that most of these providers have the intention to expand their portfolio, with the beds provided by this cohort of providers increasing from 153 to 168 in the past 12 months. The Council's Housing Strategy states that: "For quality assurance and budgetary reasons the Council intends to increase the percentage of supported beds provided by Housing Associations."
- 3.11. The Council does not obtain full subsidy in respect of Housing Benefit paid to supported accommodation providers who not registered with the Regulator of Social Housing, therefore this cost has grown significantly. This issue, in conjunction with the number of HMO related complaints has given rise to the proposal to evaluate the feasibility of an Article 4 Direction.

4. Contribution to Corporate Priorities

- 4.1. Environment and Health and Wellbeing

5. Overview of Article 4 Powers

- 5.1. Article 4 Directions are the legal means by which a local authority can require property owners to seek permission to convert a single dwelling house into a small HMO. The purpose of an Article 4 direction would be to give the Council more control over housing stock through the ability to control the density of HMOs in a given area. This would allow the Council to consider the impact additional development might have on the character of that area. It's important not to confuse a change of use with physical changes to the building. Article 4 Directions apply to how a property is being used, not to physical changes to the property.
 - 5.2. The reason such a legal means are required for local authorities to do this is that homeowners enjoy permitted development rights under the Town and Country Planning (General Permitted Development) Order of 1995 (GPDO) and are therefore permitted to change the use of their properties. An Article 4 Direction, therefore, withdraws those rights (pending local authority approval) that would otherwise be protected by the GPDO.
- 5.3. The definitions are as follows:

⁶ The figure for 2020/21 is actually significantly lower than might otherwise be the case due to a 6 month suspension of payments in respect of one landlord.

⁷ The Housing Options Dept. and the Burton & East Staffs Homeless Partnership are the sources for this information.

- 5.3.1. Article 4 directions only apply to smaller HMOs or Class C4⁸ properties. Larger HMOs fall under a different house class and require different permissions.
- 5.3.2. A HMO in this context is a house, lived in by more than 3 people who do not form a household but who share amenities. HMOs with more than 6 people fall into a different class and there are additional permissions that are required.
- 5.4. Once a property has been re-designated as an HMO it can be used as a family home without the homeowner seeking permission to do so. However, once it has been a family home the homeowner must re-apply for planning to convert it back into an HMO.

6. Impact of an Article 4 Directive

- 6.1. HMOs are recognised as meeting important and specific housing needs within the borough. Strategic Policy 16 of the Council's Local Plan seeks to help create or maintain sustainable inclusive mixed communities by making requirements of new residential development. An Article 4 Direction will not prevent the conversion to a HMO, it will trigger the need for planning consent within the specified area which has been identified as being more problematic before the development can take place. This will enable the Council to fully consider the implications of each proposal on merit and against policy, and where appropriate include conditions on the decision.
- 6.2. It should be noted that under the relevant legislation⁹ some buildings are not considered to be HMOs, most notably accommodation controlled or managed by a registered social landlords and housing associations. As most of the growth identified in the Housing Benefit data is attributable to other types of provider this exemption is not a barrier.
- 6.3. Article 4 Directions directly impact landlords who wish to rent out their properties to groups of between 3 and 6 unrelated people. There is some evidence¹⁰ that in areas with an Article 4 Direction investors are more cautious about buying C3 single dwelling houses to convert into C4 HMOs, which has skewed the relative value of an otherwise identical house due its capacity to generate different levels of rental income in each case. Thus it has been asserted by the property consultancy Allsop¹¹ that in some areas houses passed for C4 (HMO) use are being bought and sold for significantly more than their C3 (family home) counterparts. The Residential Landlords Association's website¹² stated: "...if you want to rent a house to three unrelated people such as nurses sharing, a

⁸ C4 Houses in multiple occupation are defined in the [Town and Country Planning \(Use Classes\) Order 1987 \(as amended\)](#) as small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

⁹ Town and Country Planning (Use Classes) Order 1987 (as amended); and Schedule 14 of Housing Act 2004.

¹⁰ <https://www.all sop.co.uk/resources/2018/11/Allsop-Autumn-2018.pdf>

¹¹ <https://www.all sop.co.uk/>

¹² RLA, "Planning use class order is bad for landlords and the private rented sector – urgent action is required", 10 June 2010

family with a lodger, students, young professionals, immigrant workers and even the elderly, you will need planning permission.”

- 6.4. The DCLG undertook a consultation exercise prior to bringing in the legislation which gives local planning authorities the ability to introduce an Article 4 direction. A summary of responses to the consultation process published on 27 January 2010¹³ covered the question of whether a change to the Use Classes Order would be likely to reduce the supply of HMO accommodation. Specific points raised by respondents included:
 - 6.4.1. The main factor that would reduce current supply would be if any change would be applied retrospectively – this is not the case, Article 4 cannot apply retrospectively.
 - 6.4.2. There would be uncertainty and a general increase in costs to landlords which might discourage supply.
- 6.5. These concerns were set against the need to enable local authorities to better regulate the supply of HMOs within the overall stock, and to disperse supply where appropriate. The DCLG March 2010 impact assessment¹⁴ set out the monetised and non-monetised costs of the changes contained in the Order:
 - 6.5.1. Costs to applicant and fees for application for planning permission.
 - 6.5.2. Costs to appellants for appeals arising from refused/ not determined applications.
 - 6.5.3. Costs to local planning authorities from increased number of appeals arising from refused/not determined applications.
 - 6.5.4. Possible higher rents paid by occupants of HMOs if there is a reduction in supply.
 - 6.5.5. Additional costs to local planning authorities from an increase in enforcement action however it has not been possible to quantify this.
- 6.6. The DCLG rejected the proposition that increased costs for landlords would lead to a reduction in the supply of HMOs as the additional cost is relatively low when compared to the potential rental yield. Furthermore local authorities will still have a duty to meet the housing needs of the groups that occupy HMOs and therefore are unlikely to seek to curb overall numbers of HMOs. For these reasons the DCLG concluded that any impact on supply is unlikely to be significant.
- 6.7. The Communities and Local Government Select Committee considered the issue of high concentrations of HMOs as part of its inquiry into The Private Rented Sector¹⁵ over 2013-14. The Committee concluded that controlling the spread of HMOs should be a “matter for local determination” and supported the continued use of Article 4 directions by councils to remove permitted development rights allowing a change of use to an HMO. It will be for individual

¹³ DCLG, Houses in multiple occupation and possible planning responses: summary of responses, January 2010.

¹⁴ DCLG, Introducing an definition of HMO into the Use Classes Order: Impact Assessment, March 2010.

¹⁵ HC 50, First Report of 2013-14, The Private Rented Sector, 18 July 2013, para 63.

local planning authorities to consider the balance of costs and benefits in their particular area in deciding whether to have local policies or not.¹⁶

7. Consultation on Changes to Article 4

- 7.1. MHCLG consulted on changes to the National Planning Policy Framework (NPPF) during February and March 2021. The proposed changes are as follows:
 - 7.1.1. The use of Article 4 directions to remove national permitted development rights should:
 - 7.1.1.1. Where they relate to change of use to residential, be limited to situations where this is essential to avoid wholly unacceptable adverse impacts,
 - 7.1.1.2. [or as an alternative to the above – where they relate to change of use to residential, be limited to situations where this is necessary in order to protect an interest of national significance]
 - 7.1.1.3. Where they do not relate to change of use to residential, be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities).
 - 7.1.1.4. In all cases apply to the smallest geographical area possible.
 - 7.2. The Borough Councils response to the consultation opposes these changes as it is considered that they would restrict the ability to make Article 4 directions and take away local decision making. In addition, the proposed geographical area, whilst not defined in the consultation could be considered to be in conflict with the approach set out in this paper.

8. Process for making an Article 4 Directive

- 8.1. The process for making and cancelling Article 4 directions is set out within Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires local authorities to publicise the proposed direction via the following means:
 - 8.1.1. Local advertisements of the direction; display a minimum of two notices in different locations for a minimum period of six weeks.
 - 8.1.2. Notifying owners and occupiers within the affected area (these regulations can be relaxed where this would be impractical, for example across a very large area such as the entire town).
 - 8.1.3. Sending the above documentation to the Secretary of State for review.
- 8.2. Although not a statutory obligation, it is considered good practice for notice of the direction to be published on the local authority website. Following this representation period and after considering any comments received, a further report to Cabinet will be required to consider any comments and seek approval to confirm the direction if appropriate.

¹⁶ DCLG, Introducing an definition of HMO into the Use Classes Order: Impact Assessment, March 2010

- 8.3. It is recommended that if Cabinet confirm the direction, the direction should not come in to force until a period of 12 months has passed. This is because there is a risk that in the event of an immediate Article 4 direction, compensation claims could be made against the Council by landowners and developers for abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights. Allowing a 12 month grace period before enforcing the Article 4 direction would enable developers of new small HMOs to become aware of the removal of these rights before planning and commencing the conversion of such properties.
- 8.4. The date that the Article 4 direction is confirmed must be within two years following the date on which the representation period began. Once the Article 4 direction has been confirmed, the local planning authority must as soon as practicable:
 - 8.4.1. Give notice of the confirmation and date the Article 4 direction comes into force to affected owners and occupiers in the same way as required for the notification of the making of the direction (see paragraph 7.1 above).
 - 8.4.2. Send a copy of the Article 4 direction to the Secretary of State.
- 8.5. The evidence underpinning the proposed Article 4 direction can also be used to support the work of the Environmental Health Dept. in exploring potential ways that selective and additional licencing can be introduced and monitored in the borough, including addressing the impacts of increasing numbers of unregulated supported exempt providers.

9. Financial Considerations

This section has been approved by the following member of the Financial Management Unit: Anya Murray

- 9.1. The feasibility study is expected to be completed within existing resources.

10. Risk Assessment and Management

- 10.1. The main risks to this Report and the Council achieving its objectives are as follows:

10.2. Positive (Opportunities/Benefits):

- 10.2.1. Increases Council control of a change to the tenure of neighbourhoods that is occurring rapidly and unchecked.
- 10.2.2. Opportunity to control growth in Housing Benefit costs.
- 10.2.3. Opportunity to reduce the likelihood of HMO related complaints in the future.

10.2.4. Improved data set for an area where data is currently relatively sparse.

10.3. **Negative** (Threats):

10.3.1. Removes an existing right from property owners, which may make some owners feel aggrieved.

10.3.2. Possible growth in cost of planning enforcement and appeals.

10.3.3. Complications resulting from changes to the Article 4 legislation, as detailed in section 7.

10.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

11. Legal Considerations

This section has been approved by the following member of the Legal Team: []

11.1. There are no significant legal issues arising from this Report.

12. Equalities and Health

12.1. **Equality impacts:** The subject of this Report is not a policy, strategy, function or service that is new or being revised. An equality and health impact assessment is not required.

12.2. **Health impacts:** The outcome of the health screening question does not require a full Health Impact Assessment to be completed. An equality and health impact assessment is not required.

13. Human Rights

13.1. There are no Human Rights issues arising from this Report.

14. Sustainability (including climate change and change adaptation measures)

14.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) N/A

15. Recommendation(s)

15.1. To create a draft Article 4 Direction, reviewing the evidence as to what areas should be included.

16. Background Papers

16.1. The Local Plan 2012 to 2031

16.2. The Housing Strategy 2021 to 2025

17. **Appendices**

17.1. NA