



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Consideration of potential Houses in Multiple Occupation Planning Restrictions (Article 4) direction	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team 17 th August 2021	X
	Leader and Deputy Leaders 23 rd August 2021	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group 1 st & 2 nd Sept 2021	X
	Cabinet 13 th September 2021	
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Community Regeneration, Environment and Health and Well Being Committee [DATE]	



<p>Is this an Executive Decision:</p>	<p>No</p>	<p>Is this a Key Decision:</p>	<p>No</p>
<p>Is this in the Forward Plan:</p>	<p>No</p>	<p>Is the Report Confidential: If so, please state relevant paragraph from Schedule 12A LGA 1972:</p>	<p>No</p>

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

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Cabinet

Date: 13th of September 2021

REPORT TITLE: Consideration of potential Houses in Multiple Occupation Planning Restrictions (Article 4) direction

PORTFOLIO: Planning

HEAD OF SERVICE: Sal Khan

CONTACT OFFICER: Phil Stephenson Ext. No. x1 1613

WARD(S) AFFECTED: All / Burton on Trent Wards

1. Purpose of the Report

- 1.1. The purpose of the report is to present updated information on the efficacy and practicality of the Council moving to restrict permitted development rights in regard to the conversion from domestic properties to small houses of multiple occupation (HMOs), in part or all of the Borough.

2. Executive Summary

- 2.1. In 2010 national planning regulations changed to allow the conversion of use class C3 housing (ordinary domestic housing) to C4 (small houses of multiple occupation). **This change currently doesn't require planning permission.** Use class C4 properties are defined in planning terms as '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.' **In the years since the change, especially in Burton on Trent, there has been a significant growth in the number of small houses of multiple occupation.**
- 2.2. Environmental Health have received over 200 complaints in the last five years relating to unlicensed HMOs, concerning poor or unsafe living conditions, noise, overcrowding or antisocial behaviour.

- 2.3. Cabinet has previously directed officers to investigate the feasibility of an article 4 direction restricting these permitted development rights in part or all of the Borough (10th May 2021), to restrict changes from a dwelling house to a small house of multiple occupation.
- 2.4. This would mean that **if the Council issues an article 4 direction, the conversion of domestic dwellings into small HMOs in that area would require planning permission**. The creation of larger HMOs already requires planning permission.
- 2.5. The advantage of gaining planning control over this form of development would be that it could help to improve the quality of new small HMOs, and also mean that conversions which are likely to cause harm to the character of neighbourhoods, or amount to overdevelopment of this housing type in a particular location, could be refused.
- 2.6. This report sets out the work that has been done to investigate how such a restriction could be achieved, the likely benefits and drawbacks, and the processes which would need to be undertaken.
- 2.7. It concludes that while there is likely to be a small advantage in planning terms in gaining further control of this form of development, **only limited evidence of planning harm from existing small HMO developments** in the Borough has been found and **the concentration of such developments is not particularly high when compared with similar urban development in other authorities**.
- 2.8. **There is however evidence of localised complaints**. Some of these issues could potentially be mitigated at the design stage through requiring planning permission to be sought. This would allow refusal of small HMOs where their impact would be unacceptable and allow the imposition of conditions limiting noise, requiring adequate parking and bin storage and seeking to ensure future HMOs conversions are suitable for that purpose, for example.
- 2.9. **This doesn't mean that new small HMOs won't be permitted** – it will simply gain planning control over these changes of use. Only development which is not in accordance with the Development Plan, once appropriate conditions are considered, will be refused.
- 2.10. It may be that the quality of small HMOs will improve if planning permission is required, since developers will then know they are 'on the radar' of the planning authority, and will seek to comply with other regulations for this form of development.

3. Background

- 3.1. Detailed background on this item is given in the report of the 10th of May 2021 to Cabinet 'Feasibility assessment for the use of an article 4 Directive to control the growth in Houses of Multiple Occupation (HMO).'
- 3.2. Subsequent to that report, Planning and Housing Officers investigated along with Borough Legal officers, the means by which an article 4 direction could be drawn up, the planning implications, and what planning guidance would be needed once the article 4 direction came into effect.
- 3.3. A key question is– how would an application be determined for such a change of use, once one was needed? The result of that work is presented here. It is clear that both an article 4 direction will be needed, and also a Supplementary Planning Document (SPD) alongside it. This should set out-based on the existing Local Plan- how conversions from domestic dwellings to small houses of multiple occupation will be assessed in planning terms.

4. Contribution to Corporate Priorities

- 4.1. Environment and Health and Wellbeing

5. Main Body of Report

Definitions of a dwelling house a house of multiple occupation

- 5.1. Existing national permitted development rights allow for the change of use of dwellinghouses (use class C3) to small HMOs (use class C4) (HMO occupied by 3-6 residents)
- 5.2. These are defined in national planning policy as:

C3 Dwellinghouses - This class is formed of three parts

C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child

C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems

C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO

definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger

C4 Houses in multiple occupation - 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.

Why East Staffordshire would need to introduce an article 4 direction to restrict this

- 5.3. **In 2010 the government gave national permitted development rights to move between C3 and C4**, which means that planning departments do not necessarily know which houses are in which class. The proposed article 4 direction would therefore **only affect new applicants** who seek to move from class C3 (residential dwelling) to C4 (small house of multiple occupation).
- 5.4. The government report 'Evidence Gathering – Housing in Multiple Occupation and Possible Planning Responses '(CLG 2008)' looks at the problems caused by high concentrations of houses in multiple occupation and considers the current and potential mechanisms to address these problems.
- 5.5. Within this report, the following issues are associated with high concentrations of HMOs: • anti-social behaviour, noise and nuisance; • imbalanced and unsustainable communities; • negative impacts on the physical environment and streetscape; • pressures upon parking provision; • increased crime; • growth in private rented sector at the expenses of owner occupation; • pressure upon local community facilities and; • restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.
- 5.6. Although in this report no definition is given of what concentration of HMOs would trigger these issues, local authorities across the country through their own research have concluded that the lowest density at which action can be taken is around 10% in any 100m radius, and have put in place article 4s which restrict further HMOs after this level.
- 5.7. Planning officers from East Staffordshire looked at the concentration of HMOs in wards across the Borough. The highest concentrations were in wards in Burton on Trent, but these never approached more than 2% in any ward. The collection of this data also required a lot of dedicated resources and was quite prone to error due to the limitations of the dataset. It is therefore possible that 2% is a slight over-estimate.
- 5.8. Therefore, an alternative criteria-based approach to controlling harms from small HMOs is suggested, which fits better with the existing adopted Local Plan:

Proposed approach if an article 4 direction is to be progressed

- 5.9. A criteria based approach could be workable, under which development management officers could determine applications for changes of use between C3 and C4 on the following basis: (which is derived from different policies in the adopted Local Plan). *The exact wording of this criteria would depend on the results of consultation:*

“In Burton on Trent to support mixed and balanced communities, planning permission will be granted for proposals for use class C4 small Houses in Multiple Occupation or sui-generis large Houses in Multiple Occupation, provided that:

a. The granting of planning permission will not result in the creation of more than two adjacent properties in HMO use;

AND b. The proposal does not have an adverse impact on the amenity of nearby properties by ensuring: adequate provision for off street parking; highway safety and ease of access for emergency vehicles; regard is given to Secured by Design guidance, particularly relating to occupier security; sufficient provision for waste and recycling; the proposal is in keeping with the character of the area; and, the proposal is not likely to lead to an increase in antisocial behaviour”

- 5.10. This would allow flexibility depending on the circumstances of the proposed change, and take into account the harms which the government have identified in a significant concentration of HMOs.

Process by which this could be achieved

- 5.11. **An article 4 direction** is a direction under article 4 of the General Permitted Development Order which enables the local planning authority to withdraw specified permitted development rights across a defined area.
- 5.12. Paragraphs 53 and 54 of the 2021 National Planning Policy Framework state:

The use of Article 4 directions to remove national permitted development rights should:

...be limited to situations where an article 4 direction is necessary to protect local amenity or the well-being of the area ... in all cases, be based on robust evidence, and apply to the smallest geographical area possible. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

- 5.13. Restricting the article 4 to Burton on Trent would be appropriate, since it is the part of the Borough with the highest proportion of small HMOs and the wards most likely to be affected by planning harms arising from them.

- 5.14. Despite an article 4 direction being in place, applicants will still need to pay planning application fees.
- 5.15. An article 4 direction does not mean that planning permission will be refused, it just means that application can be considered in more detail. Specific planning policy advice related to how to mitigate the harms identified in order to achieve planning permission will need to be prepared and used in such applications.
- 5.16. Because the Local Plan has already been adopted in East Staffordshire (the East Staffordshire Local Plan 2012 to 2031 adopted in 2015) new planning policy can't now be introduced until the plan is re-examined. Therefore alongside an article 4 direction, a Supplementary Planning Document (SPD) will need to be consulted on, which draws on and explains existing policy in regard to these applications. It cannot of itself create new policy.
- 5.17. **The process for making an article 4 direction is as follows:**

A Council can, in exceptional circumstances, make an Article 4 direction that will restrict permitted development rights within a limited area (Article 4(1), *GPDO 2015*). The direction can cover a single building, street or a neighbourhood. Permitted development rights should only be withdrawn if there is reliable evidence to suggest that such rights could damage "an interest of acknowledged importance".

When drafting an Article 4 direction, the Council needs to consider carefully the:

Classes or parts of classes of *Schedule 2* to the *GPDO 2015* to be restricted.

Proposed wording of the restriction.

Owners and occupiers of the affected property and land may not have any knowledge of planning and it is essential that the restrictions are set out clearly and precisely to enable them to understand what they cannot do.

Properties or land subject to the restriction.

The properties and land should be clearly identified on an Ordnance Survey plan and individually listed in a schedule.

Following the making of an Article 4 direction, the Council must:

Publish a notice of the direction in a local newspaper (*paragraph 1(1)(a), Schedule 3, GPDO 2015*).

Display at least two site notices for a period of not less than six weeks (*paragraph 1(1)(b), Schedule 3, GPDO 2015*).

Notify the owners and occupiers of the affected properties and land, unless this is impractical (paragraph 1(1)(c), Schedule 3, GPDO 2015). Individual notification may be considered impracticable due to the number of owners or occupiers or because of problems associated with identifying one or more of them (paragraph 1(2), Schedule 3, GPDO 2015). However, where the owner is a statutory undertaker or the Crown, they must be individually notified (paragraph 1(3), Schedule 3, GPDO 2015).

Although not a statutory obligation, it is considered good practice to publish a notice of the Article 4 direction on the Council's website.

The notice of the Article 4 direction must:

Include a description of the development, the area to which the direction relates and a statement of the effect of the direction (*paragraph 1(4)(a), Schedule 3, GPDO 2015*).

Specify that the direction is made under Article 4 of the GPDO 2015 (*paragraph 1(4)(b), Schedule 3, GPDO 2015*).

Name the place where the direction and a map of the affected area can be inspected (*paragraph 1(4)(c), Schedule 3, GPDO 2015*).

Specify a minimum period of 21 days for representations to be made to the Council (*paragraph 1(4)(d), Schedule 3, GPDO 2015*).

The date the representation period begins must be stated in the notice. Any representation received by the Council during this period must be taken into account by the Council in deciding whether to confirm the Article 4 direction.

Specify the date that the Article 4 direction comes into force (*paragraph 1(4)(e), Schedule 3, GPDO 2015*).

This date must be between 28 days and two years following the date on which the representation period began. An Article 4 direction must be confirmed by the Council before it can come into force.

On the date the notice is first published or displayed, the Council must send a copy of the Article 4 direction and the notice of the direction to the Secretary of State (*paragraph 1(6), Schedule 3, GPDO 2015*).

An Article 4 direction cannot come into force on the date specified in the notice unless it has been confirmed by the Council (*paragraph 1(7), Schedule 3, GPDO 2015*).

The approval of the Secretary of State is not required. However, although he / she is not required to confirm the direction, he / she has the power to modify or cancel the direction at any point. This could happen, for example, if he / she takes the view that it is unreasonable or not based on sufficient evidence.

The Council must take into account any representations it receives during the representation period when deciding whether or not to confirm the Article 4 direction (*paragraph 1(9), Schedule 3, GPDO 2015*).

The Article 4 direction cannot be confirmed until 28 days following the latest date the notice was served or published, or such longer period as specified by the Secretary of State (*paragraph 1(10), Schedule 3, GPDO 2015*).

When the Article 4 direction has been confirmed, the Council must:

Give notice of the confirmation and the 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

Send a copy of the Article 4 direction to the Secretary of State (*Paragraph 1(11), Schedule 3, GPDO 2015.*)

- 5.18. Local authorities normally give a 'notice period' of 12 months once the Article 4 direction has been made, and announced, but has not yet come into force. **This is because otherwise compensation may be claimed against the Authority for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.**
- 5.19. During the 12 month notice period it is possible that those who wish to convert a C3 dwelling into a HMO may do so before the requirement to apply for planning permission comes into force.
- 5.20. Because of the scale of the proposed article 4 direction, covering Burton on Trent as a whole, it is deemed impracticable to serve individual notices on all owners and all occupiers. Therefore, instead of this, **a notice of the direction should be published in a local newspaper, site notices erected in those wards with the highest HMO concentrations, and the Council planning webpages updated to display the information about the forthcoming direction.** Each Parish Council within the affected area will be notified. The accompanying SPD (see below) will also help to inform people about the direction, through the consultation on that document.
- 5.21. Alongside it, a Supplementary Planning Document (SPD) on small homes in multiple occupation will need to be drawn up and consulted on. The process for this is set out in the 2020 East Staffordshire Statement of Community Involvement:

Table 2: Key Stages in the Preparation of a Supplementary Planning Document (SPD)

Evidence gathering	Early engagement with interested parties through scheduled meetings and information gathering.
 Draft SPD Regulations 12 and 13	Public consultation on a draft version of the SPD. Minimum 4-week period . Representations received during the consultation are considered and used to inform the final version of the plan.
Adoption Regulation 14	A final version of the SPD is prepared and adopted by the Council.

- 5.22. Given the timescale for drawing up the article 4, writing and consulting on the SPD, and the year 'notice period' which is normally given to ensure that compensation claims can't arise from introducing the restriction – **the time from decision to the requirement for planning permission coming into force would be likely to be around 18 months.**

6. Financial Considerations

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

- 6.1. There are limited direct implications from this report. There may however be indirect implications resulting from potential cost pressures on public services associated with increasing numbers of HMO's.

7. Risk Assessment and Management

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

7.2. **Positive** (Opportunities/Benefits):

7.2.1. The introduction of an article 4 direction may reduce planning harms from uncontrolled further change from C3 to C4 in Burton on Trent

7.2.2. The requirement to engage with the planning system may help to ensure that small HMOs are recognised by the local authority and maintain other regulatory requirements.

7.3. **Negative** (Threats):

7.3.1. The article 4 may increase the number of planning applications, but the number of small HMOs may continue to rise if they can meet planning requirements, as there are not particularly large concentrations of them (in comparison with other parts of England) in Burton on Trent

7.3.2. The introduction of an article 4 will tie up planning policy and legal resources during its creation, and afterwards will mean further planning applications. The Development Management team is already nearing capacity and so both planning policy and development management may need further financial investment to keep pace over time.

7.3.3. There may be a rush of conversions to HMO use when the article 4 is announced before the end of 1 year notice period.

7.3.4. The lack of evidence of significant and ongoing planning harm from small HMOs in Burton on Trent may lead to the Article 4 being rejected by the Secretary of State.

7.3.5. The cost of preparing the article 4 and SPD may outweigh the practical benefit of the measure, if the primary intention is to restrict further small scale HMO growth.

7.4. These risks do not need to be entered in the Risk Register.

8. **Legal Considerations**

*This section has been approved by the following member of the Legal Team:
Sherrie Grant*

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

9. **Equalities and Health**

9.1. **Equality impacts:** The subject of this report is a council function which is under consideration. An equality and health impact assessment is not required as the proposal will not necessarily limit the number of new HMOs, merely require that planning permission is required to develop them. There is some speculation that some smaller HMOs are occupied by younger people or migrants, but the planning authority doesn't hold any data on the occupancy of these private dwellings. There is also no evidence that these groups would be disadvantaged by the requirement for small HMOs to require planning permission.

9.2. **Health impacts:** A Health Impact Assessment does not need to be completed. This is because if the measure has any health effects, they are likely to be to improve the standards and living conditions within small HMOs. This indirect benefit could be the result of HMO landlords engaging with

regulatory requirements more carefully once the Council is aware of the use. However the degree to which this will be the case is unknown.

10. Human Rights

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

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

11.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures)? Yes

11.2. Please detail any positive/negative aspects:

11.2.1. Positive (Opportunities/Benefits)

Gaining more planning control of small HMOs will mean that the environmental objectives of the Local Plan and National Policy can be better monitored and development shaped to meet these requirements.

11.2.2. Negative (threats)

A rush of poor quality HMO conversions could occur during the 1 year notice period, once the measure to require planning permission is announced.

12. Recommendation(s)

12.1. That authority is given to the Planning Manager to make a direction under article 4 of the General Permitted Development Order as amended (Article 4(1), GPDO 2015) so that development consisting of a change of use of a building within Class C4 from a use falling within Class C3, in Burton on Trent, should not be carried out unless permission is granted for it on application under Part 3 of the Town and Country Planning Act 1990.

12.2. That the Planning Manager is authorised to carry out the statutory procedure for making the Article 4(1) direction including the necessary consultation procedure, informing Cabinet of the consultation responses.

12.3. That the notice, when making the Direction, shall specify that the Direction is not intended to come into force until 12 months after it has been confirmed by the Council.

12.4. That a Supplementary Planning Document which sets out how Planning will approach applications from Class C3 to C4 is developed, consulted on in accordance with the Statement of Community Involvement, and adopted before the Article 4 direction comes into force.

13. **Background Papers**

- 13.1. Report of the 10th of May 2021 to Cabinet 'Feasibility assessment for the use of an article 4 Directive to control the growth in Houses of Multiple Occupation (HMO). <https://tinyurl.com/9tzmh7s>
- 13.2. House of Commons Briefing Paper Houses in multiple occupation & planning restrictions, available at: [Houses in multiple occupation & planning restrictions \(parliament.uk\)](https://www.parliament.uk/briefing-papers/houses-in-multiple-occupation-and-planning-restrictions)

14. **Appendices**

None