

TRAFFORD COUNCIL

Report to: Executive
Date: 27 November 2017
Report for: Noting
Report of: Executive Member Housing and Strategic Planning

Report Title

Article 4 Direction: removing permitted development rights for the change of use of dwellings to Houses in Multiple Occupation (HMOs).

Summary

This report sets out the reasons behind the proposals to introduce a Boroughwide Article 4 Direction to remove permitted development rights for changes of use from dwellings (Use Class C3) to Houses in Multiple Occupation (Use Class C4).

This report seeks to advise the Executive of the proposal and of the steps which will be required to be taken should authority to make the Article 4 Direction be approved by the Planning and Development Management Committee, including undertaking statutory consultation requirements.

Recommendation(s)

To note that the Planning and Development Management Committee is to be asked to consider a Report containing the following recommendations:-

- (i) To resolve that the making of a direction pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 on a Boroughwide basis to withdraw the permitted development rights to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) is appropriate, and justified, in order to prevent harm to local amenity and the wellbeing of the Trafford area.
- (ii) To approve the making of the Article 4(1) Direction for the Borough Boundary.
- (iii) To delegate authority to the Director of Legal Services and the Director of Growth and Regulatory Services to make the Article 4(1) Direction for the Borough boundary and to carry out all necessary consultation following the making of the Direction, to notify the Secretary of State in accordance with statutory requirements and to take all other action considered necessary or expedient to give effect to the matters set out in this report.
- (iv) To confirm that, the Boroughwide Article 4(1) Direction will be effective with immediate effect once made.
- (v) To note that following public consultation a further report will be presented to the Committee reporting on the outcome of the consultation and recommending whether or not to confirm the Direction.

Contact person for access to background papers and further information:

Name: Richard Roe (Director of Growth and Regulatory Services)
Extension: 4265

Background Papers: None

Implications:

Relationship to Policy Framework/Corporate Priorities	The Article 4 Direction would contribute to a number of Corporate Priorities, in particular: Improving health and wellbeing of residents and Fighting crime.
Financial	The preparation of the Article 4 Direction will be funded by the existing Planning and Development and Strategic Growth budgets. There may also be financial implications arising from the need to deal with future planning applications for change of use from C3-C4 as these would attract a reduced application fee under the Regulations. This will be managed within the existing budget. There is potential for compensation claims from purchasers of properties in the 12 months following the Direction. This is limited to directly attributable losses where an application is refused or conditions applied under the Direction, e.g. aborted costs of preparing plans. This risk is expected to be minimal in both number and financial amount over the 12 month period.
Legal Implications:	<p>There is no statutory appeal against the making of an Article 4 Direction. However, such a decision would be open to challenge by way of judicial review.</p> <p>In order to make an Article 4 Direction, the LPA must be satisfied that it is expedient that the permitted change of use should not be carried out unless permission is granted for it (see Article 4(1)).</p> <p>In making any such decision, it is important that the LPA takes into account all relevant guidance.</p> <p>Overall, provided that a LPA takes into account all relevant considerations, and applies the correct test, it is unlikely there would be a successful judicial review of an article 4 direction</p> <p><u>Compensation</u></p> <p>Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation</p>

	<p>can be sought where (i) the LPA makes an Article 4 Direction, (ii) an application is made for planning permission to carry out development that would formerly have been permitted by the GPDO and (iii) the LPA refuses that application or grants permission subject to conditions differing from those in the GPDO.</p> <p>However, where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation (provided that the development authorised by the new changes had not started before the notice was published). Where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.</p> <p>Compensation may only be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.</p>
Equality/Diversity Implications	An EIA has been carried out. There are not considered to be any significant equality/diversity implications.
Sustainability Implications	None
Resource Implications e.g. Staffing / ICT / Assets	Officer time to produce direction, cost associated with consultation. Details will need to be available online.
Risk Management Implications	No risk assessment has been undertaken. This is not considered necessary given the nature of the proposal and lack of significant issues identified. The Head Of Planning/Enforcement Manager would be responsible for ensuring the desired outcomes are achieved.
Health & Wellbeing Implications	None
Health and Safety Implications	None

1.0 Background

- 1.1 A new University campus and associated student accommodation is proposed at a number of locations within Stretford (known as 'University Academy 92') with an anticipated opening date of September 2019. These proposals are likely to be accompanied by a significant number of students moving into the Borough and the Stretford area in particular. The projected number of students attending UA92 is predicted to be 650 at year one (September 2019) increasing to a roll of 6500 by 2028, which will be the maximum number. An application for planning permission for new purpose-built student accommodation on the Lacy Street site in Stretford is expected to be submitted to the Council in early 2018.

- 1.2 There is a need to appropriately manage the delivery of student housing both to ensure the provision of good quality accommodation and to minimise any potential adverse effects on the local market. A new population of students in the area will lead to opportunities for landlords to offer 'student house' type accommodation in Houses of Multiple Occupation (HMOs).
- 1.3 The Town and Country Planning (General Permitted Development) (England) Order 2015 (referred to hereafter as the GPDO) came into force on 15 April 2015. Schedule 2, Part 3 (Class L) of this Order deems a change of use from a use falling within Use Class C3 (dwellinghouses) to Use Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 (as amended) 'permitted development'; i.e. a planning application is not required to make this change. HMOs falling within Use Class C4 are those which accommodate up to 6 persons and are generally known as 'small-scale' HMOs.
- 1.4 Article 4 of the GPDO allows for a local planning authority (LPA) to make a direction that certain classes of development set out in this Order should not be carried out unless permission is granted for it on application to the LPA.
- 1.5 Schedule 3 of the GPDO sets out the procedure for the making of an Article 4 Direction, including the requirement to publicise such a direction.
- 1.6 Large-scale HMOs i.e. those accommodating more than 6 people are considered 'sui generis' uses and do not benefit from any permitted change of use under the GPDO. Planning permission is required in all circumstances for a material change of use to a large-scale HMO. This would be unchanged by any Article 4 Direction.
- 1.7 Properties of three or more floors, with five or more tenants belonging to two or more households are required to be licensed under Part 3 of the Housing Act 2004. Currently there are 41 properties that are licensed within the borough.
- 1.8 The Housing Act 2004 gives the Council the power to designate an area within its boundary the subject of a selective licensing scheme for privately rented properties. This enables authorities to also licence privately rented accommodation other than HMOs if certain conditions are met. A local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. Selective licensing has to be focused on a specific geographical area (e.g. certain wards) and can only be implemented provided one of the following criteria are met:
 - That the area is, or is likely to become an area of 'low housing demand'; and that making a designation will, when combined with other measures taken in the area by the Council, or by other persons together with the Council, contribute to the improvement of the social or economic conditions in the area; or
 - That the area is experiencing a significant and persistent problem caused by Anti-Social Behaviour (ASB) and that some or all of the private sector landlords who have let premises in the area are failing to take action to combat the problem that it would be appropriate for them to take; and that making the designation will, when combined with other measures taken in the area by the council, or by other persons together with the council, lead to a reduction in, or elimination of, the problem.

- 1.9 In proposing any selective licensing scheme the council has to show that this forms part of a co-ordinated neighbourhood approach which combines with existing policies of both the council and our partners such as tackling environmental crime, promoting landlord accreditation, empty property intervention, tackling anti-social behaviour, neighbourhood policing, education and children’s safeguarding and the overall regeneration strategy.
- 1.10 In considering whether to designate an area for selective licensing on property conditions, migration, deprivation and crime, the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. Nationally the private rented sector currently makes up 19% of the total housing stock in England, according to latest data.
- 1.11 Latest available data confirms that there is only one ward where this level is exceeded for private rented property, Priory Ward. Currently there is no evidence base for Priory ward which identifies that the criteria for selective licensing are being exceeded. This in itself means that we cannot consider Selective Private Sector Licensing. The Housing Standards team will continue to enforce standards in private rented properties to ensure that landlords meet their responsibility to tenants and the local area.

2.0 Justification for introducing an Article 4 Direction and evidence of the impact of Houses in Multiple Occupation

- 2.1 Paragraph 200 of the National Planning Policy Framework (NPPF) states that *“the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area”*. National Planning Practice Guidance (NPPG) explains that justification is required for the purpose and extent of an Article 4 Direction, particularly in cases where this covers a wide area.
- 2.2 The Article 4 Direction is intended to mitigate potential impacts arising from the arrival of the University should planning permission be granted and the development go ahead. An Article 4 Direction would enable the Council to better control the location and number of HMOs in the Borough to ensure that an over-concentration did not result. It would not enable every application for planning permission for an HMO to be refused or prevent buildings being used as an HMO in all circumstances.
- 2.3 With regard to matters of amenity, it is unlikely that small scale HMOs, on an individual basis, would lead to detriment to the surrounding area. Indeed, there are existing HMOs in the Borough which have no adverse impact on their surroundings. However, a concentration or concentrations of properties in HMO use by between three and six unrelated individuals has the potential to result in undue disturbance to residents of neighbouring and nearby dwellings. In particular, this could be through increased noise levels, an excessive number of comings and goings and general disturbance caused by patterns of use which are more intensive than could normally be expected at a C3 dwellinghouse.
- 2.4 Whilst it is acknowledged that student accommodation does not necessarily result in conflict with neighbours in all instances, given the anticipated number of students who would be moving to the Borough it is necessary to consider amenity-related issues which have the potential to arise through the conversion of properties to

HMOs for use specifically by students. In particular, impacts in this respect may include a greater degree of disturbance late at night, an increase in anti-social behaviour and change to the character of an area, potentially making it unsuitable for families or other existing residents.

- 2.5 The Council's Pollution & Licensing section has commented that an over-saturation of an area with HMOs can lead to reduced housing prices and low housing demand in an area, which can have an adverse effect. Pollution & Licensing also note that from a noise and anti-social behaviour point of view, change of use from a dwelling to an HMO has clear potential to cause a loss of amenity to the occupants of the single dwelling if a party wall shares habitable room uses. Importantly, Regulatory Services do not have the legislative controls to abate noise episodes of this nature. In addition, increased vehicle use and parking related issues can also not be effectively controlled.
- 2.6 The change of use of a large number of dwellinghouses to HMOs would have a significant impact on the supply of family homes in the Borough. It is likely to be these larger properties, capable of accommodating up to six bedrooms which would be most affected by the influx of students into the Borough. Given that the Council does not, at present, have a five year supply of immediately available housing land, the loss of existing C3 dwellinghouses to alternative uses would contribute further to this issue, detrimental to the wellbeing of the Borough.
- 2.7 The Boroughwide extent of the Article 4 Direction is considered necessary in the interests of protecting against the spread of HMOs beyond an arbitrarily drawn boundary around Stretford, for example. The spread of student HMOs into areas which previously had not contained large numbers of students has been seen within Manchester and an Article 4 Direction has been in place across the whole of Manchester since 2011. Given the potential for a similar spread within Trafford, a Boroughwide direction is deemed necessary.

3.0 Procedure for implementing the Article 4 Direction

- 3.1 Should the Planning and Development Management Committee resolve to do so; the Article 4 Direction will be made. The Council will then give notice of the Direction and will publicise it in accordance with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 3.2 It is considered that because of the number of owners and occupiers within the area to which the Article 4 Direction relates, it is impracticable to serve individual notices on all owners and occupiers and consultation will therefore be carried out through the publication of a press notice and erection of at least two site notices as permitted by Schedule 3, Article 1(2)(b) of the above Order. In practice, consultation will be undertaken more widely including the publication of the proposals on the Council's website and a communications exercise.
- 3.3 The Direction will come into force immediately once it is made. Following consideration of any representations received, the Direction will expire at the end of a period of 6 months beginning with the date on which it comes into force unless confirmed by the local planning authority. A further decision of the Planning and Development Management Committee will be necessary to do this. The Secretary of State is thereafter able to cancel or modify the Direction at any time.

- 3.4 It should be noted that the Council may be liable for compensation claims in respect of the loss of permitted development rights, given that less than 12 months' notice of the Direction taking effect is to be given and the Direction, once made, will take force with immediate effect.
- 3.5 Where Directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the Direction and which are subsequently refused or where permission is granted subject to conditions.
- 3.6 It is also important to note the limitations in the amount of compensation that will be payable. Compensation may only be claimed for abortive expenditure (for example, expenditure incurred in the preparation of plans for the purpose of development) or other loss or damage directly attributable to the withdrawal of permitted development rights. The latter might include the depreciation of land value, provided that this is directly attributable to the removal of the permitted development rights.
- 3.7 The Article 4 Direction will need to be supported by adopted planning policy if it is to be effective. This will be brought forward through a new Supplementary Planning Document.

Other Options

Option 1 – Do nothing (i.e. do not implement Article 4 Direction):

There would be the potential for a significant impact on housing supply, amenity, crime and the environment for the reasons set out in the above sections of the report if permitted development rights for HMO conversions are not removed. For these reasons, this option is not recommended.

Option 2 – Implement Article 4 Direction with a limited spatial scope:

This would require a boundary to be drawn around the areas which are considered to be most affected by the introduction of new HMOs. Such a boundary would be arbitrary and it is not certain how far-reaching the increase in HMO conversions would be. The Council would have the option to reduce the spatial scope of the Article 4 Direction at a later date if this is deemed appropriate. Including the whole of Trafford within the scope of the Direction would ensure that the identified issues associated with HMOs are not dispersed to other parts of the Borough. It should also be noted that applications submitted for the change of use to an HMO subsequent to an Article 4 Direction would be determined on their merits, so this would not necessarily mean all such proposals would be refused. For these reasons, this option is not recommended.

Option 3 – Implement Article 4 Direction at a later date:

The Direction could be made if and when planning permission is granted for the University and student accommodation, or after the University becomes operational. Under this approach, there would be the potential for financial claims to be made from individuals who had purchased dwellinghouses with the intention of converting them to HMOs. As such, there is the potential for significant financial and legal implications for the Council. Such a course of action may also be too late to adequately address the issues associated with

HMOs as many properties may already have been converted. For these reasons, this option is not recommended.

Consultation

Consultation has been carried out with the Council’s Pollution & Licensing section for the purpose of providing evidence for this report.

Consultation is required to be carried out with residents of Trafford and other interested parties in line with the regulations set out in the GPDO.

Reasons for Recommendation

It is considered that the Article 4 Direction is necessary in the interests of addressing the potential impacts from HMOs identified in the preceding sections of this report, in particular the amenity of local residents, the impact on housing supply and environmental impacts arising as a result of the proposed University Academy 92 development.

Key Decision: No
If Key Decision, has 28-day notice been given? N/A

Finance Officer Clearance (type in initials)...PC.....
Legal Officer Clearance (type in initials)...JLF.....

[CORPORATE] DIRECTOR’S SIGNATURE (electronic)
To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.