

TRAFFORD COUNCIL

Report to: Planning and Development Management Committee
Date: 14 December 2017
Report for: Decision
Report of: Head of Planning and Development

Report Title

Houses in Multiple Occupation (HMOs): Article 4 direction to remove permitted development rights for the change of use of dwellings to small HMOs and noting of associated draft SPD.

Summary

This report sets out the reasons behind the proposals to introduce a Borough-wide 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). It also details the need for and purpose of the adoption of an associated Supplementary Planning Document (SPD) which, if adopted, would be a material consideration when determining planning applications for changes of use to HMOs.

This report seeks approval from the Committee to make the Article 4 Direction, including undertaking statutory consultation requirements.

The draft proposed Supplementary Planning Document is also included as an appendix to this report as background information and for Members to note.

Recommendation

That the Planning and Development Management Committee:

(i) 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 Borough-wide 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) Approve the making of the Article 4(1) Direction for all land within the Borough Boundary the extent of which is shown in Appendix 2.

(iii) Delegate authority to the Director of Legal Services to make the Article 4(1) Direction for all land within the Borough boundary shown on the plan attached at Appendix 2 and delegate to the Director of Growth and Regulatory Services authority 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) Confirm that the Borough-wide Article 4(1) Direction will be effective with

immediate effect once made.

(v) Note that following public consultation a further report will be presented to the Planning and Development Management Committee reporting on the outcome of the consultation and recommending whether or not to confirm the Direction.

(vi) Note the contents of the associated draft proposed Supplementary Planning Document which, if adopted, would be a material consideration in the determination of planning applications.

Contact person for access to background papers and further information:

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1.0 Introduction and 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(b)) 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.
- 1.12 A Supplementary Planning Document (SPD) is also required to ensure that guidance is in place against which planning applications for changes of use to HMOs can be assessed and to provide a policy basis on which applications may be refused. Once approved for consultation, the appended SPD Consultation Draft would be a material consideration in the consideration of these applications and sets out the circumstances when HMOs are likely to be considered acceptable and unacceptable.

The approach taken provides guidance to avoid high concentrations of HMOs within a particular area and avoid C3 residential properties being 'sandwiched' between two HMOs. It is noted that existing Core Strategy Policies (in particular L4 and L7) would also be used to assess these applications in terms of detailed matters such as amenity and highway impacts.

- 1.13 The Council does have extant Supplementary Planning Guidance for HMOs, however this was adopted in 1992 and does not provide appropriate or up to date guidance in terms of avoiding an overconcentration of HMOs. As such, this document would be revoked following adoption of the new SPD.

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 and Licensing section has commented that an over-saturation of an area with HMOs can lead to low housing demand in an area, which can have an adverse effect. Pollution and 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 may not have the legislative controls to abate noise episodes of this nature which may not in themselves constitute statutory noise nuisance. In addition, increased vehicle use and parking related issues may 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 Borough-wide 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 Borough-wide direction is deemed necessary.

3.0 Procedure for implementing the Article 4 Direction and SPD

- 3.1 Should the recommendations of this report be agreed, 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.
- 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 As noted above, the Article 4 Direction will need to be supported by adopted planning policy if it is to be effective and this will be done through a new Supplementary Planning Document (SPD). The Council will be required to consult on this new SPD and any representations received will need to be taken into consideration before this can be adopted. Until this time, the SPD will still be a material consideration in the determination of planning applications for HMOs.

4.0 Other Options

4.1 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.

4.2 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.

4.3 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.

5.0 Consultation

- 5.1 Consultation has been carried out with the Council's Pollution and Licensing section for the purpose of providing evidence for this report.
- 5.2 In relation to the Article 4 Direction, 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.
- 5.3 As noted above, the Council is required to consult on the new Supplementary Planning Document (SPD) in accordance with regulations set out in the Town and Country Planning (Local Planning) (England) Regulations 2012.

6.0 Legal implications

- 6.1 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. 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)). In making any such decision, it is important that the LPA takes into account all relevant guidance. 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
- 6.2 Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation 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.
- 6.3 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.
- 6.4 Compensation may only be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

7.0 Financial implications

- 7.1 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.

7.2 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. abortive costs of preparing plans. This risk is expected to be minimal in both number and financial amount over the 12 month period.

8.0 Recommendations

8.1 That the Planning and Development Management Committee:

- (i) 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 Borough-wide 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) Approve the making of the Article 4(1) Direction for all land within the Borough Boundary the extent of which is shown in Appendix 2.
- (iii) Delegate authority to the Director of Legal Services to make the Article 4(1) Direction for all land within the Borough boundary shown on the plan attached at Appendix 2 and delegate to the Director of Growth and Regulatory Services authority 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) Confirm that the Borough-wide Article 4(1) Direction will be effective with immediate effect once made.
- (v) Note that following public consultation a further report will be presented to the Planning and Development Management Committee reporting on the outcome of the consultation and recommending whether or not to confirm the Direction.
- (vi) Note the contents of the associated draft proposed Supplementary Planning Document which, if adopted, would be a material consideration in the determination of planning applications.

Background Papers

None

APPENDIX 1

Draft Article 4 Direction

TRAFFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH PARAGRAPH 2 OF SCHEDULE 3 APPLIES

THE TRAFFORD BOROUGH COUNCIL (ART4/HMO/01) ARTICLE 4(1) DIRECTION 2017

WHEREAS Trafford Borough Council (“the Council”) being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) Order 2015 (“the GPDO”), is satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged red on the attached plan (“the Land”), unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the Council in pursuance of the power conferred on it by Article 4(1) of the GPDO hereby directs that the permission granted by Article 3 of the GPDO shall not apply to development on the Land of the description(s) set out in the Schedule below.

THIS DIRECTION is made under Article 4(1) of the GPDO and, in accordance with Article 4(4), of the GPDO comes into force on day of 2017 being the date on which Notice of Making of this Direction will be published and displayed in accordance with Paragraph 1(1) of Schedule 3 to the GPDO and shall remain in force for a period of six months beginning on the date that it came into force and shall then expire unless within the said six months period it has been confirmed by the Council in accordance with Paragraphs 1(9) and (10) of Schedule 3 of the GPDO

THIS DIRECTION shall henceforth be known as “The Trafford Borough Council (**ART4/HMO/01**) Article 4(1) Direction 2017”

SCHEDULE

Development consisting of change of use from a use falling within Class C3 (dwellinghouse) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (Houses in Multiple Occupation), being development comprised within Class L(b) of Part 3 of Schedule 2 to the GPDO and not being development comprised within any other Class.

**Made under the common seal of
Trafford Borough Council
this day of 2017**

**The common seal of
Trafford Borough Council
was affixed to this Direction
in the presence of**

.....
Authorised Signatory

**Confirmed under the common seal of
Trafford Borough Council
this day of 20**

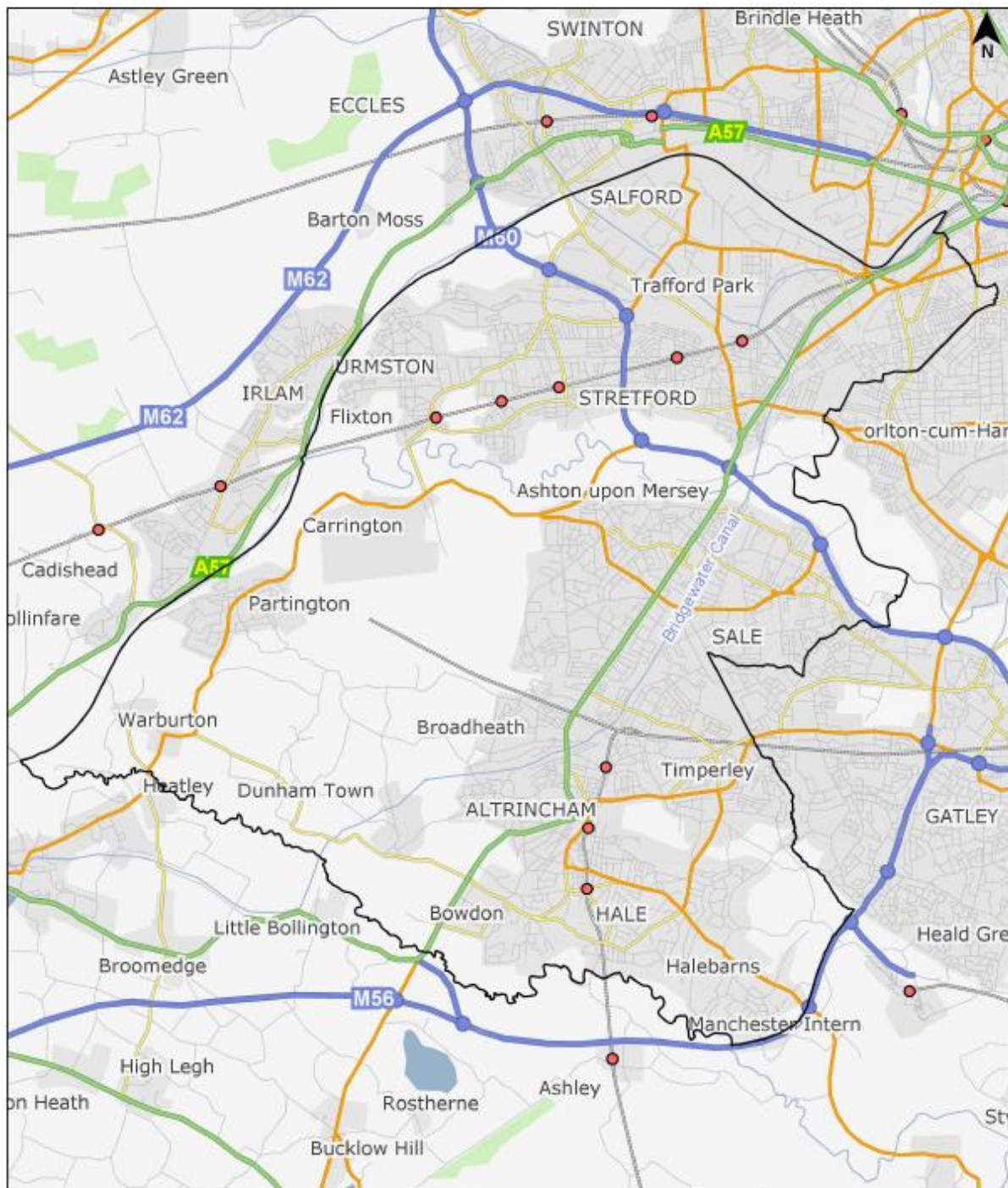
**The common seal of
Trafford Borough Council
was affixed to this Direction
in the presence of**

.....
Authorised Signatory

APPENDIX 2

**Article 4 Direction Plan
Borough Boundary**

Trafford



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Ordnance Survey 1000023172



APPENDIX 3

**Houses in Multiple Occupation
Supplementary Planning Document – Consultation Draft**

Trafford Local Plan

Houses in Multiple Occupation Supplementary Planning Document

Consultation Draft
14 December 2017

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1. Introduction

- 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. As a result of these proposals, an increase in the number of Houses in Multiple Occupation (HMOs) within Trafford is anticipated.
- 1.2 Houses in Multiple Occupation provide much-needed housing accommodation. However, a large number of HMOs in one area can change the physical character of that residential area and this can lead to conflict with the existing community.
- 1.3 The planning system can assist in achieving a mix of households within the Borough's neighbourhoods, meeting different housing needs whilst protecting the interests of other residents, landlords and businesses. This can best be delivered by preventing the development of excessive concentrations of HMOs and thus encouraging a more even distribution across the Borough.
- 1.4 An Article 4(1)¹ direction to remove the permitted development rights of house owners to convert a single dwellinghouse (class C3)² into a HMO will come into effect in Trafford. This will apply to the whole Borough. Planning permission will therefore be required to convert a dwellinghouse to a small/medium HMO as well as to convert a property into a large HMO for 7 or more occupants. This Direction is intended to enable the Council to better manage impacts arising as a result of the anticipated influx of students into the Borough.
- 1.5 The 2008 Planning Act removed the requirement for a sustainability appraisal of supplementary planning documents that do not introduce new policies or proposals or modify planning documents which have already been subject to a sustainability appraisal. This SPD supports Policy L7 and other relevant policies in the Core Strategy³ that have been subject to SA as part of the Core Strategy process. The Inspector appointed to consider the soundness of the Trafford Core Strategy concluded in her report (November 2011) that the Core Strategy was adequate in terms of its appraisal of the environmental, economic and social effects of its policies. For more information see the Core Strategy pages on the Council website. The Council is therefore satisfied that the impacts have been covered in the appraisal of the parent DPD and there is no further requirement for appraisal or screening of this SPD.

¹ The government introduced permitted development rights in October 2010 to change between use class C3 and C4. An Article 4 Direction allows the Council to remove these permitted development rights within the Trafford boundary.

² Single dwellinghouse is classed as C3 use under The Town and Country Planning (Use Classes) Order 1987 (as amended).

³ Trafford Local Plan: Core Strategy – Adopted January 2012.

2. Purpose of the SPD

- 2.1 This SPD is adopted as part of the council's Local Plan. The document provides supplementary guidance for all parties involved in the planning application process for both small/medium and large HMOs, explaining how the Council will assess proposals to convert properties to HMOs.
- 2.2 The SPD is not part of the statutory development plan. However, it is accorded significant weight as a material consideration in the determination of planning applications.
- 2.3 In broad terms, an HMO under planning legislation is defined as a house or flat occupied by a certain number of unrelated individuals who share basic amenities and is classified by the Uses Classes Order:-
- Class C4 – *between 3 and 6 residents*
 - Sui generis (of its own kind) – *more than 6 residents*
- 2.4 Although the planning system can influence the location of new HMOs, the statutory powers under the planning system cannot act alone and address the existing problems in areas where high concentrations of HMOs prevail. The Council can use other statutory powers to control the nuisance caused by HMOs, as explained below.
- 2.5 The Housing Standards Team provides guidance to landlords and is responsible for the mandatory licensing of HMOs with three or more floors and with five or more tenants belonging to two or more households.
- 2.6 The Council's Pollution and Licensing Team provides guidance and assistance in the monitoring and enforcement of local nuisance, including the impact from noise. A statutory nuisance is defined as an act that causes unreasonable disturbance to the use and enjoyment of a neighbour. Where a statutory noise nuisance exists, is likely to happen, or is likely to be repeated, officers can serve a Noise Abatement Notice.

3. National and local policy background

- 3.1 All applications for planning permission for HMOs will be assessed against existing local and national planning policies and supplementary guidance, as well as this SPD.
- 3.2 Paragraph 50 of the National Planning Policy Framework (NPPF) states that local planning authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. This also states that local planning authorities should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand.
- 3.3 One of the core planning principles set out in paragraph 17 of the NPPF is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

- 3.4 Policy L1 of the Trafford Core Strategy seeks to ensure that there is an adequate supply of housing throughout the plan period and that the right kind of homes are provided in the right locations.
- 3.5 Policy L2.1 of the Core Strategy states that all new residential development proposals will be assessed for the contribution that will be made to meeting the housing needs of the Borough and the wider aspirations of the Council's Sustainable Community Strategy. Policy L2.2 goes on to say that all new development will be required to not be harmful to the character of the immediately surrounding area.
- 3.6 Policy L4 of the Core Strategy refers to maximum parking standards which will be used in the assessment of development proposals. The adopted SPD3: Parking Standards and Design⁴ is used for this purposes.
- 3.7 Policy L7 of the Trafford Core Strategy states that *"In relation to matters of amenity protection, development must: Be compatible with the surrounding area; and Not prejudice the amenity of the future occupiers of the development and / or occupants of adjacent properties by reason of overbearing, overshadowing, overlooking, visual intrusion, noise and / or disturbance, odour or in any other way"*.

4. Policy

Planning permission will not normally be granted for changes of use to HMOs:

- i) Where the proportion of HMO dwellings will exceed 10% of all residential properties* within a circle of radius 40 metres** from the application site. This includes all properties where the curtilage of the residential property lies wholly or partly within this radius.***

Where the circle does not include a minimum of 10 residential properties, the threshold will apply to the 10 residential properties nearest to the application site** located on all frontages of the street (with the same street address).

or

- ii) Where it would result in any residential property (C3 use) being 'sandwiched' between two HMOs***

When the threshold has been breached already, planning permission will only be granted in exceptional circumstances.

Notwithstanding the threshold limit and exceptional circumstances, other material considerations (such as intensification of use, highway safety, residential amenity of future and existing occupiers) arising from the impact of the proposal will be assessed in accordance with the Council's relevant development management policies and guidance, in particular Core Strategy Policy L7.

⁴ Trafford Local Plan: Supplementary Planning Document 3 – Parking Standards and Design – Adopted February 2012

* Paragraph 5.2.1. explains how 'residential properties' are identified for the purposes of calculating the percentage concentration of HMOs.

** Measured from the midpoint of the main external doorway entrance to be used by all tenants as shown on the proposed plans submitted with the planning application.

5. Methodology

5.1 Approach to determining a planning application

5.1.1. Based on the information provided and on the Council's own records, the Council will calculate the number of HMOs in the relevant area for each individual planning application. The applicant should undertake their own estimate of the number of HMOs to accompany the planning application and provide all their supporting data. There is a variety of evidence sources on the location of HMOs as listed in section 5.2.2, and the applicant is advised to refer to these sources to build a body of evidence which will be assessed as a matter of fact and degree.

5.1.2. As part of an application for planning permission, applicants will be required to submit the necessary supporting information set out in the paragraph above as well as the Council's current adopted Validation Checklist. This includes a completed application form, location plan, site plan, existing and proposed floor plans and elevations (if required) and application fee.

5.2 How to apply the threshold

5.2.1. The percentage concentration of HMOs surrounding the application site will be calculated through three main stages:

Stage 1 – Identify residential properties

The residential properties identified are those located within the defined area of impact surrounding the application site i.e. the 40 metre radius or 10 nearest properties. The worked examples in Appendix 2 demonstrate this process. It should be noted that these examples are used for illustrative purposes only and do not necessarily relate to existing HMOs or planning applications. To be clear which residential properties are identified, all sub-divided properties including flatted blocks within the same curtilage are counted as one whole property at the first stage. Appendix 1 includes a list of properties from Schedule 14 of the Housing Act which will not be identified as residential properties, for example student halls of residence, care homes and children's homes.

Stage 2 – Count HMOs

Using the HMO sources listed in section 5.2.2, the residential properties identified at stage 1 will be investigated to check whether they are an existing HMO or have HMO consent. All separate units forming part of the sub-divided residential properties (identified at the first stage as a whole property) which are 1 and 2 bed flats will not be investigated.

Stage 3 – Calculate concentration

The concentration of HMOs surrounding the application site is calculated as a percentage of the 'total estimated number of existing HMOs' against the 'total number of residential properties'. The total number of residential properties does not include those properties listed in Appendix 1 and all 1 and 2 bed flats which form part of the sub-divided properties (identified at the first stage). The final figure calculated is rounded up for a percentage of HMOs equal to or greater than decimal point 0.5, and rounded down when less than 0.5.

5.2.2. For the purposes of the threshold, HMOs can be identified from the following sources:

- Trafford Council planning register
- Trafford Council electoral register
- Trafford Council Tax records
- Trafford Council licensing register

5.2.3. The sources listed above are not a conclusive or exhaustive record of all HMOs in the relevant area. There may be existing HMOs which are occupied but unknown to the Council. In particular, on 6th April 2010 the Uses Classes Order introduced a class for HMOs to reclassify C3 dwellings to either the new C3 or C4 classes. The reclassification of existing dwellings to C4 use did not require planning permission at that time and therefore will not be registered on the Council's register of planning applications.

5.2.4. These sources will initially provide a reasonable indication of the numbers and location of HMOs in a particular area. Further investigation of individual properties may be required by the Planning Officer to provide greater confidence in the estimate, but it is emphasised that it will not be possible to guarantee a 100% accurate count in all cases. Where there is significant doubt as to whether a property is a HMO, it will not be counted towards the threshold.

5.3 The approach to sandwiching

5.3.1. Planning permission would not be granted where the introduction of new HMO would result in an existing dwelling being 'sandwiched' by any adjoining HMOs on both sides (see worked example 1 in Appendix 2). This would not apply where the properties are separated by an intersecting road or where properties have a back to back relationship in different streets. Subdivided units will be considered on a case by case basis.

5.4 Large HMOs (more than 6 occupiers)

5.4.1. Planning applications for the change of use of properties into large HMOs will be assessed using the threshold limit.

5.4.2. Planning permission will be required to change the use of a small HMO to a large HMO, or to intensify the use of a lawful large HMO (even without any physical extension or external alteration to the property) by increasing the number of occupiers. In this instance the threshold limit will not be triggered as the HMO has already been established in the street and, therefore, has no

further effect on the concentration of HMOs and balance and mix of households in the local community.

- 5.4.3. These types of planning applications will be assessed on their own individual merits on a case by case basis against the Council's relevant policies and guidance, including Parking Standards set out in the adopted SPD3: Parking Standards and Design. Other impacts will be assessed as set out in the relevant policy text. Large HMOs are generally expected to have a greater impact individually on matters such as residential amenity.

5.5 Extensions to existing HMOs

- 5.5.1. When the Council considers a planning application for an extension to an existing lawful HMO, the threshold limit will not be a material consideration as the HMO has already been established in the street and therefore has no further effect on the concentration of HMOs and balance and mix of households in the local community.
- 5.5.2. The HMO does not materially change use within class C4 when intensifying the occupation up to 6 people and therefore only the physical impact of the extension will be assessed in accordance with the Council's relevant planning policies and guidance.
- 5.5.3. The Council does however recognise that the intensification of persons when existing C4 HMOs increase the number of bedrooms and become large HMOs can have a harmful impact on neighbouring occupiers. This is due to increased comings and goings, especially those associated with the independent lifestyle pattern of occupiers living individually of one another.
- 5.5.4. Where the extension would result in an increase of occupiers to more than 6 persons living in the HMO, planning permission must be sought in its own right for a change of use to a large HMO (see section 5.4). The threshold limit will not apply, though other impacts arising from the proposal will be assessed (see relevant policy text) including Parking Standards set out in the adopted SPD3: Parking Standards and Design.

6. Regularising established HMOs

- 6.1 All landlords that operated a small HMO prior to the Article 4 Direction coming into force are encouraged to submit an application for a 'Certificate of Lawful Use' to demonstrate that this can be operated lawfully and to regularise this use.
- 6.2 Subject to examination through the application process, the use of a property as a small C4 HMO occupied on or before the date when the Article 4 Direction became effective, or any HMO demonstrating ten years of continuous occupancy for this purpose at the time of application will be deemed to be lawful. Satisfactory evidence will be required to demonstrate the lawful occupation of the HMO.
- 6.3 If a landlord does not wish to regularise their HMO, it is strongly recommended that they retain sufficient documentation to demonstrate lawful use as an HMO on the date when the Article 4 Direction became effective or demonstrating ten years of

continuous HMO occupancy. This will reduce the owner's risk of the Council taking enforcement action against them.

7. Monitoring

7.1 The effectiveness of this Supplementary Planning Document will be monitored as part of the Annual Monitoring Report process using information from planning applications and decisions. The 10 year threshold referred to above will be monitored through revisions to Council Tax records and other sources of information highlighted at section 5.2.2.

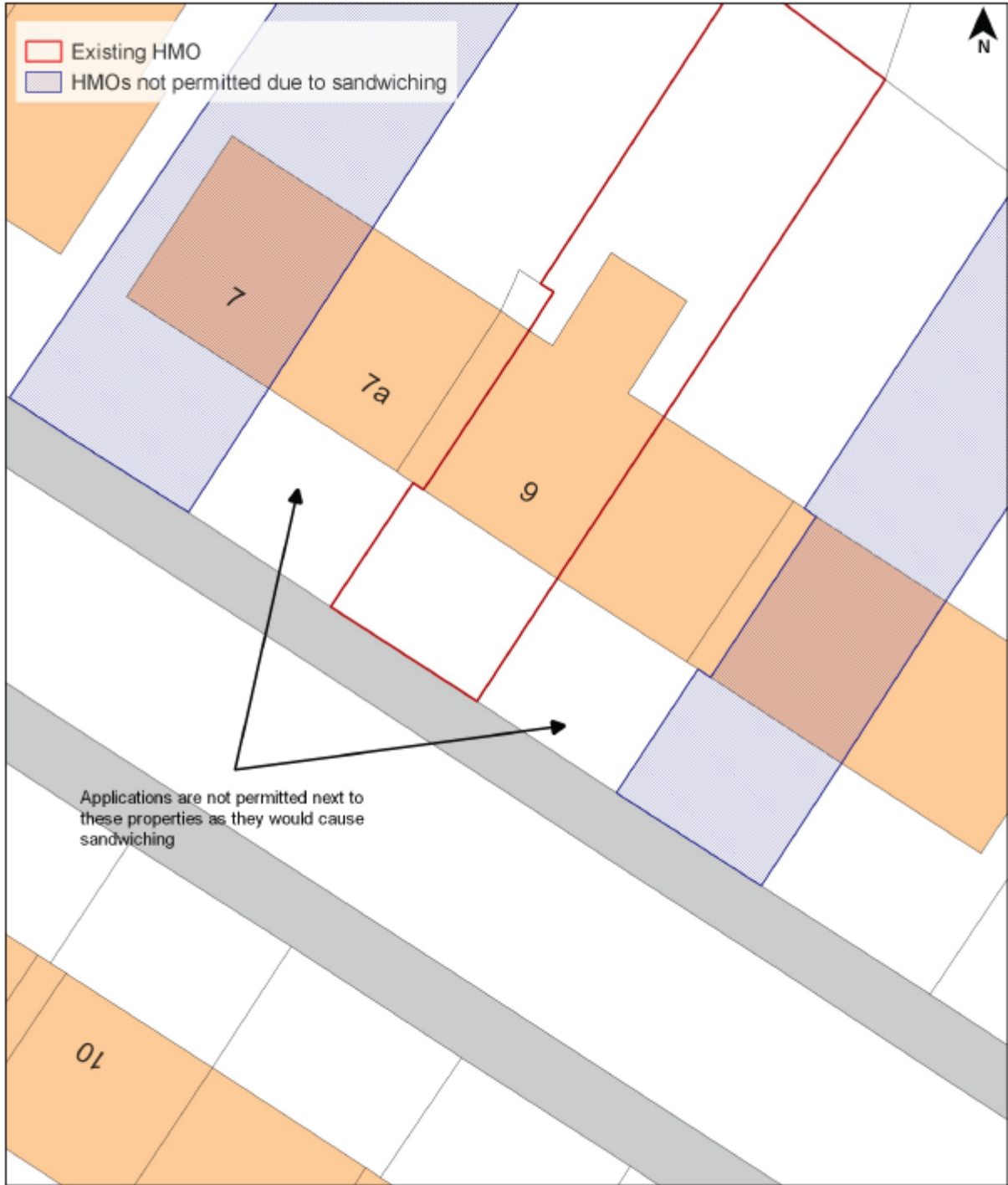
Appendix 1 – HMO Definition

1. In broad terms, an HMO under planning legislation is defined as a house or flat occupied by a certain number of unrelated individuals who share basic amenities and is classified by the Uses Classes Order:-
 - Class C4 – between 3 and 6 residents
 - Sui generis (of its own kind) – more than 6 residents
2. For the purposes of Class C4 the occupation of an HMO dwelling has the same meaning as in section 254 of the Housing Act 2004 with exception of section 257 (relating to converted flats) and those buildings listed in schedule 14 (see paragraphs 3 and 4 below). In summary, an HMO is defined as a building or part of a building (i.e. flat) which:
 - is occupied by at least 3 persons not forming a single household; and
 - the HMO is occupied as the only or main residence; and
 - rents are payable or other consideration is provided in respect of at least 1 of those occupying the HMO; and
 - two or more households share one or more basic amenities (or lack such amenities).
3. The meaning of 'basic amenities' is defined under the Housing Act section 254(8):
 - a toilet;
 - personal washing facilities; or
 - cooking facilities.
4. Schedule 14 of the Housing Act includes a list of 'buildings which are not HMOs'. It includes the following types which will not be identified as residential properties when calculating the proportion of HMOs in accordance with the methodology in the HMO SPD:
 - social landlord registered and local authority housing;
 - care homes;
 - bail hostels;
 - children's homes;
 - occupied by students that are managed by an education establishment i.e. halls of residence;
 - occupied for the purposes of religious community whose main occupation is prayer, contemplation, education and the relief of suffering;
 - managed or controlled by 'fire and rescue authority' or 'health service body'.
5. There will be a number of the HMOs identified by the Housing Standards Team in the category specified under section 257 of the Housing Act which do not fall under the planning definition of HMOs and, therefore, cannot be counted towards the threshold.
6. The Council will not count buildings containing '1 or 2 bedroom self-contained flats', as these buildings are unlikely to accommodate the number of individuals which constitute an HMO.

7. For the purposes of defining the occupation of a 'sui generis' HMO dwelling, there is no meaning defined under planning legislation and therefore the Council will assess each case on an individual basis.

Appendix 2 – Examples for application of policy

Example 1 – Sandwiching



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Example 2 – Separating Road



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Example 3 – Applying the 40m radius

TO BE COMPLETED

Example 4 – Identifying 10 nearest residential properties

TO BE COMPLETED

Appendix 3 – Glossary

The definitions contained in this glossary give general guidance only.

Article 4 Direction	The Council will make a Borough-wide Article 4 Direction and will come into force on the date it is made. This will expire after a period of 6 months unless confirmed by the Council within this period, following public consultation. Permitted development rights for a change of use from a Class C3 (Dwellinghouse) to a Class C4 (small HMO) will be removed from the date the Article 4 Direction comes into force. This means that planning permission will be required for this type of development.
Communal facilities/space	These are spaces or facilities shared by the tenants, for example; basic amenities (toilet, personal washing facilities, cooking facilities), living rooms, dining rooms, kitchens, gardens, cycle stores, parking spaces, etc.
Curtilage	This comprises of the property and area of land surrounding the property i.e. the garden/grounds.
House in Multiple Occupation (HMO)	A house or flat occupied by a certain number of unrelated individuals who share basic amenities. The property must be occupied as the main residence. There are 2 categories of HMOs under the use classes order; Class C4 otherwise known as a small/medium-sized HMO which is occupied between 3 and 6 residents, and large-sized HMO otherwise known as sui generis (of its own kind) which is occupied by more than 6 residents.
Permitted development rights or rules (PD)	The rules concerning certain type of development that can be carried out without the need for planning permission subject to following any conditions set out in the regulations. This can include changing the use of a building between use classes.
Radius	This is the circular area surrounding the application site where the threshold will be applied. The radius is measured from the midpoint of the proposed main doorway entrance to be used by the future tenants.
Sandwiching	This is the circumstance where there are adjoining HMOs directly on both sides of an existing dwelling. Where properties are separated by a road or where there is a back to back relationship in different streets then the approach will not apply.
Threshold	This is the set limit or level of the concentration of HMOs.