

TRAFFORD COUNCIL

Report to: Planning and Development Management Committee
Date: 08 March 2018
Report for: Decision
Report of: Head of Planning and Development

Report Title

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

Summary

This report sets out the reasons behind the proposals to confirm 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). This Direction was made on 21st December 2017 with immediate effect but only remains in force for a period of 6 months unless confirmed within this period, after confirmation the Direction will become permanent until modified or superseded.

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

Recommendation

That the Planning and Development Management Committee:

- (i) Resolve that the confirmation 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 confirmation 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 confirm 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 publicity following the confirmation 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.

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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.
- 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. An immediate Article 4 Direction to restrict the change of use of properties from C3-C4 came into force in Trafford on 21st December 2017. This remains in force for a period of 6 months unless confirmed by the Council within this period.
- 1.5 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 is unchanged by the Article 4 Direction.
- 1.6 A Supplementary Planning Document (SPD) has also been produced 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. This SPD is a material consideration in the determination of these applications.

2.0 Justification for confirming the 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. The Article 4 Direction enables the Council to better control the location and number of HMOs in the Borough to ensure that an over-concentration does not result. It does 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, the confirmation of the Borough-wide direction is deemed necessary.

3.0 Procedure for confirming the Article 4 Direction

- 3.1 In deciding whether to confirm an Article 4 Direction, the Council is required to take into account any representations received during the consultation period. The 'Consultation' section below considers the representations which have been received.
- 3.2 Should the recommendations of this report be agreed, the Article 4 Direction will be confirmed. The Council will then give notice of the Direction to the Secretary of State and will publicise it in accordance with the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 3.3 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 notification 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.
- 3.4 The Direction will remain in force once it is confirmed, although the Secretary of State is able to cancel or modify the Direction at any time.
- 3.5 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 was given and the Direction took force with immediate effect.
- 3.6 Where Directions are made with immediate effect or with 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 (21st December 2017) and which are subsequently refused or where permission is granted subject to conditions.
- 3.7 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.
- 3.8 As noted above, the Article 4 Direction will 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 has consulted on this new SPD and is expected to be adopted later in March 2018. 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 confirm the Article 4 Direction):

The immediate Article 4 Direction which has been made will expire on 21st June 2018 unless confirmed. This would result in 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 on a permanent basis. For these reasons, this option is not recommended.

5.0 Consultation and consideration of comments

5.1 Consultation has been carried out with residents of Trafford in accordance with the requirements of the GPDO. A total of eight representations have been received, seven of which support the Article 4 Direction. These make the following key comments:

- Support the principle of an Article 4
- The Direction should be kept permanently
- Support the idea of a landlord licensing scheme
- Detail should be developed with local residents
- Current community and residents have concerns about anti-social behaviour, increased pressure on services, refuse management, maintenance of properties and gardens, impact on house prices and rise in rents due to increase in number of landlords renting to a student market.
- Too many HMOs in a small residential area would have severe effects and streets would look unkempt and shoddy

5.2 A letter of objection to the Article 4 Direction has been received from the National Landlords Association and this makes the following key comments:

- The impact of the introduction of an Article 4 Direction can be seen in other areas of the UK. Its introduction has seen a fall in house prices and many homeowners being unable to sell their property. This has prevented new entries into the market and has increased costs for renters.
- The NLA would not support an Article 4 Direction being implemented in Trafford as it is a planning policy that is being used to socially engineer communities.
- The need to house people due to a lack of housebuilding has driven the need for shared housing. The introduction of the Article 4 Direction will prevent homeowners getting the best value for their property and increase the cost to rent.

5.3 The above concerns raised by the National Landlords Association are acknowledged, however Officers consider that confirmation of the Article 4 Direction is necessary and justified. This is not considered to represent 'social engineering' of communities, but rather a means by which to ensure potential issues associated with HMOs (which have been identified above) are able to be adequately mitigated.

5.4 The need for a mix of housing is recognised, however as noted earlier in this report, the Article 4 Direction does not necessarily mean that all applications for C4 use will be refused. In many locations, small HMOs will not be unacceptable and applications for this use are only likely to be refused where they result in an overconcentration of properties of this type within a particular area. The NLA response states that the Article 4 should be considered in areas where there is no predominance of shared housing. This is exactly the situation in Trafford at present.

5.5 It is not clear how confirmation of the Article 4 Direction would detrimentally affect house prices or restrict the ability of homeowners to sell their properties. There should be no reduction in property values but instead the Article 4 Direction will limit price inflation as a result of property speculation from landlords seeking a commercial opportunity. There is a shortage of family homes in the Borough and the Article 4 Direction will help to protect against property speculation and rises in property values pricing out the existing community. This is considered to be a benefit

of the Article 4 Direction to the Borough and in the public interest, not a disadvantage.

- 5.6 The Council has not received a direction from the Secretary of State specifying a longer consultation period and as such, a decision to confirm the Article 4 Direction can be lawfully taken.
- 5.7 Following confirmation of the Article 4 Direction, notification of this is required to be carried out in line with the regulations set out in the GPDO. This will comprise a press notice and site notices.

6.0 Legal implications

- 6.1 There is no statutory appeal against the making/confirmation of an Article 4 Direction. However, such a decision would be open to challenge by way of judicial review. In order to confirm the Article 4 Direction, the LPA must be satisfied that it is expedient that the otherwise 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 has been 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. It is noted that since the Article 4 Direction was made, one planning application has been submitted for a change from C3-C4 use though this has yet to be determined.
- 7.2 There is potential for compensation claims from purchasers of properties in the 12 months following the making of the Direction (on 21st December 2017). 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 confirmation 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.
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Background Papers

None

APPENDIX 1

Draft Article 4 Direction

**was affixed to this Direction
in the presence of**

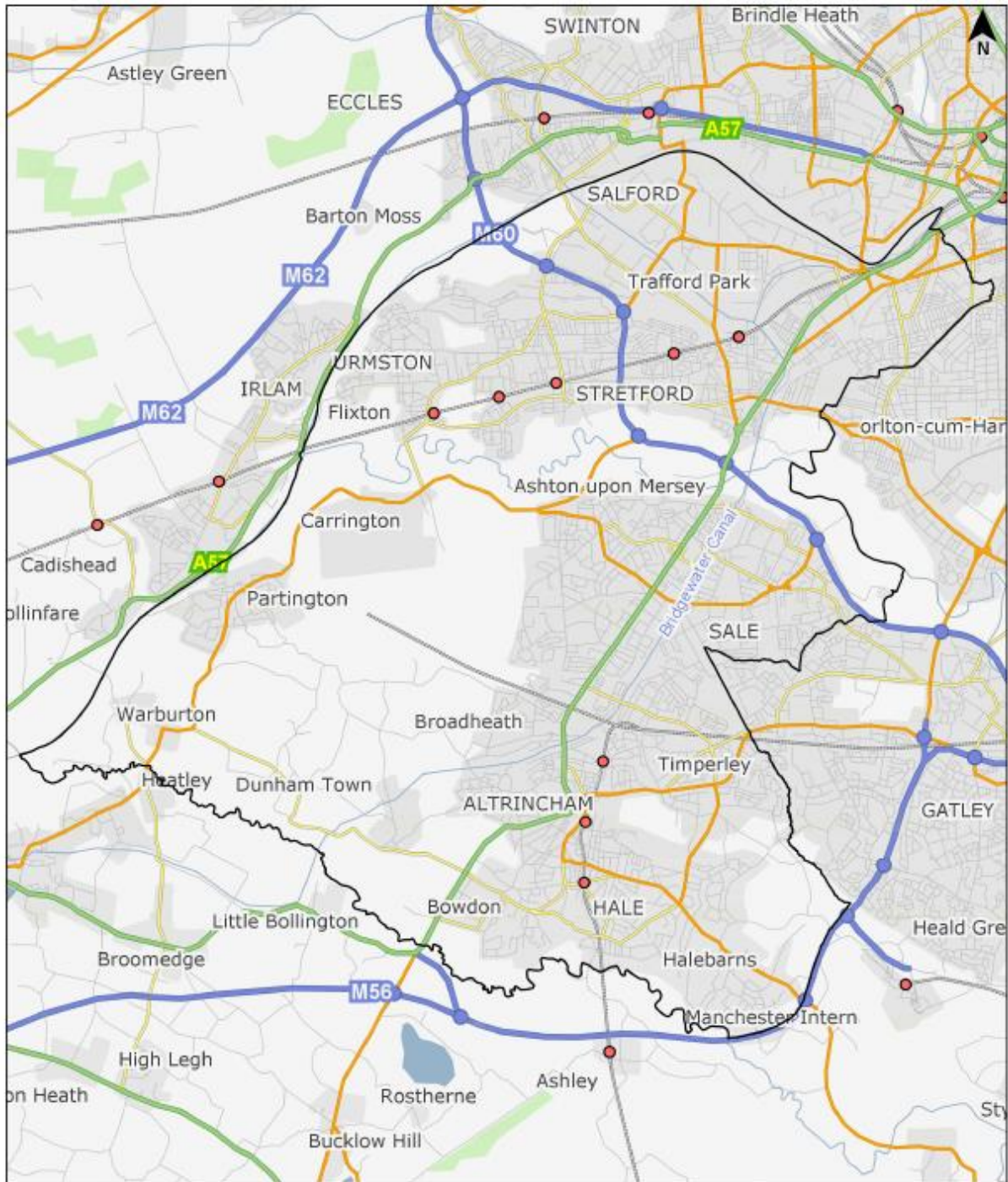
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Authorised Signatory

APPENDIX 2

**Article 4 Direction Plan
Borough Boundary**

Trafford



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Ordnance Survey 1000023172

0 1 2 3 Miles

