

DECISION-MAKER:	CABINET
SUBJECT:	CONFIRMATION OF AN ARTICLE 4(1) DIRECTION
DATE OF DECISION:	24 OCTOBER 2011
REPORT OF:	CABINET MEMBER FOR ENVIRONMENT AND TRANSPORT
STATEMENT OF CONFIDENTIALITY	
N/A	

BRIEF SUMMARY

On 1st October, two changes affecting the planning system's control of Houses in Multiple Occupation (HMO) became effective. The first explains that a change of use from a C3 (dwellinghouse) to a C4 (HMO), where between 3 and 6 unrelated people live together, is now 'permitted development' (pd) not requiring planning permission. The second seeks to reduce the Council's liability to pay compensation where they make an article 4(1) direction to remove this permitted change.

The Council gave notice, with justification, of its intention to adopt an Article 4(1) across the City of Southampton administrative boundary, to remove this permitted change at its Cabinet meeting on 14th March 2011. An extended period for public comment was given from 23rd March 2011 to 31st May 2011.

A copy of the press notice inviting comments on the Council's intentions to adopt an Article 4(1) Direction is attached to this report at Appendix 1.

A summary of the responses received during the extended consultation period is attached to this report at Appendix 2.

This report seeks authority to confirm the Article 4(1) Direction. If confirmed, the Direction shall come into force on 23rd March 2012 and permission will then be required to convert a dwellinghouse into a C4 HMO.

RECOMMENDATIONS:

- (i) To note and consider the consultation responses received during the extended consultation period.
- (ii) To confirm that the introduction of an Article 4(1) on a City wide basis to withdraw the permitted development rights to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) is appropriate from the effective date of 23rd March 2012.
- (iii) To delegate authority to the Head of Legal and Democratic Services 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.

REASONS FOR REPORT RECOMMENDATIONS

1. It is considered that the permitted change from C3 to C4 (as explained above) and the subsequent loss of planning control, will harm the amenity of neighbourhoods within Southampton for the reasons set out in the report to Cabinet on 14th March 2011. While HMOs are often associated with problems, particularly in the media, they also provide a valuable source of

housing for students and young professionals and other groups. Such accommodation can be particularly important for new arrivals to the City, those requiring short term accommodation or those who simply cannot afford independent accommodation.

2. Circular 08/2010 ('Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation') states that
 "a high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (ie. houses in multiple occupation)".
3. It is recommended that Southampton's Article 4(1) should be applied on a City-wide basis. HMOs are distributed throughout the City and arise in response to a range of housing need in the City. They can cause localised amenity issues wherever they arise. There is a risk that landlords wishing to develop further HMOs would look to properties on the outer edge of any defined boundary, and the issues associated with concentrations of HMOs would not be resolved.
4. Following the Council's agreement to make an Article 4(1) Direction in March of this year, it is now necessary to consider the comments received during the consultation period and, if appropriate, confirm the Direction will become effective from 23rd March 2012.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. Option 1 – Do nothing
This option is not recommended as the City Council would be unable to manage and monitor the growth and distribution of the HMO sector at the expense of its existing family housing stock.
6. Option 2 – Article 4(1) Pockets
To draw a tighter boundary based on an evidence base of existing HMO supply and demand in connection with the universities and hospitals. This is not regarded as a solution as evidence demonstrates this is a City-wide issue in Southampton and may simply move concentrations into different areas of the City. It could also be difficult to provide reasonable justification to property owners in the City for the inclusion of some streets and the exclusion of others. Further consultation would be required before confirming this approach.

DETAIL (Including consultation carried out)

7. Introduction
Under the Town & Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010, a change of use from a C3 (dwellinghouse) to a C4 (HMO) is now 'permitted development' (pd) not requiring planning permission.
8. A C4 (HMO) is defined as housing where between 3 and 6 unrelated people reside and share amenities.

9. The Town & Country Planning (Compensation) (No.3) (England) Regulations 2010 seek to reduce the Council's liability to pay compensation where they make an Article 4(1) direction to remove this permitted change.
10. In order to manage the growth and distribution of HMOs it is necessary for the City Council to regain its planning control of this permitted change. The Government suggests that the simplest way to achieve this is to make an Article 4(1) Direction that removes this permitted change. Once effective, planning permission would be required to convert a dwelling to a C4 HMO and the City will be able to manage the growth of this sector.
11. The Government expects Councils to make Article 4(1) directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.
12. In deciding whether an Article 4(1) Direction might be appropriate local planning authorities are advised to consider whether the exercise of permitted development rights would affect certain key considerations. Those most applicable in relation to Southampton are:-
 - Undermining the visual amenity of the area or damage the historic environment.
 - Undermining local objectives to create or maintain mixed communities.
13. At the 14th March 2011 Cabinet meeting, it was agreed that the Council would make an Article 4(1) Direction and delegated authority to officers to undertake the necessary public consultation.
14. Consultation Response

A copy of the notice, as published in the Daily Echo and erected at the City's libraries and 'Gateway', is attached to this briefing paper at Appendix 1. The Council received 21 representations, of which 17 were opposed and raised concerns to the introduction of the Article 4(1) Direction as proposed. A summary of the consultation comments received to the notice, and an officer response, is attached at Appendix 2.
15. The main concerns raised were regarding the introduction of additional bureaucracy during these difficult economic times, and the uncertainty as to how the Council will determine planning applications for a change of use to an HMO. Little objection was made to the Council's evidence base (as presented to the Cabinet on 14th March 2011) on which the introduction of a city-wide Article 4(1) is justified.
16. In response to these main criticisms, officers accept that the timing of the changes are unfortunate but the evidence base suggests the Council needs to implement these changes to enable it to manage the number and distribution of HMOs across the City. Similarly, it is recognised that further clarity is needed with regards to the Council's existing planning policies as they relate to a change of use to a C4 HMO. Work is currently underway on supplementing Local Plan 'saved' Policy H4 and LDF Core Strategy Policy CS16, and it is currently intended to adopt a Supplementary Planning Document to coincide with the effective date of the Article 4(1) Direction (23rd

March 2012). This will require further public consultation and the agreement of Cabinet before doing so and work is currently in progress.

17. Despite the objection to doing so presented at Appendix 2 it is recommended that the Council confirms the Article 4(1) Direction unchanged.

RESOURCE IMPLICATIONS

Capital/Revenue

18. The resources required to introduce the Article 4(1) direction will be borne by existing budgets and staffing.
19. One criticism of imposing an Article 4(1) Direction on an area is that the removal of permitted development rights can lead to compensation claims by affected property owners. The recent amendments to legislation set out the procedures for avoiding such claims and require that a minimum of 12 months (and no more than 24 months) is given between the date when the notice of making the Direction is published and its "effective" date. The Council is following this requirement and the Article 4(1) Direction will not become effective until 23rd March 2012 (ie. more than 12 months from the date that Cabinet agreed to make it).
20. There is a potential loss of income for property owners within the boundary of the Article 4(1) Direction, if they are not able to gain planning permission to rent out properties as Houses in Multiple Occupation.
21. Finally, applicants for works that would have been permitted development had an Article 4(1) not been imposed, are normally exempt from a planning fee. A fee of £335 would not therefore, currently apply to such change of use applications.

Property/Other

22. There are no implications that arise for the Corporate Property Strategy as confirmed by the Property Asset Manager.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

23. The Town & Country Planning (General Permitted Development) Order 1995 as amended by the Town & Country Planning (General Permitted Development) (Amendment)(England) Order 2010 and the Town & Country Planning (Compensation) (England) Orders 2010 (No2 and No 3) apply.
24. Regard must also be had to the Department for Communities and Local Government Replacement Appendix D to the Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (978 0117531024) issued in November 2010.
25. An Article 4 direction may only be made in exceptional circumstances where the Council is satisfied that clear evidence suggests that the exercise of the permitted development rights it is proposing to withdraw, would harm local amenity or the proper planning of the area. The potential harm that the direction is intended to address must be clearly identified and, where such a withdrawal is proposed to cover a wide area (such as the whole of the City) there must be particularly strong justification for the withdrawal at the time of making the Order (as set out in the report to Cabinet in March of this year).

Other Legal Implications:

- 26. The Council’s existing Article 4(1) Directions that affect the rights to extend and alter existing dwelling houses within some of the City’s designated conservation areas (namely Oakmount Triangle, Portswood Gardens, Uplands Estate and Ethelbert Avenue) will be unaffected by these proposals.
- 27. In making the proposals set out in this report the Council MUST have regard to the provisions of the Equality Act 2010 (including carrying out integrated impact assessments as appropriate), the duty under s.17 of the Crime & Disorder Act 1998 to carry out its functions having regard to the need to reduce or eliminate crime and disorder and the provisions of the Human Rights Act 1998 , in particular Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (the protection of property). Any interference with the rights protected under the Act must be necessary and proportionate in the interests of a democratic society.

POLICY FRAMEWORK IMPLICATIONS

- 28. The proposed recommendations support the policies of the Council’s current Development Framework.

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KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	All
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Article 4(1) Direction Press Notice
2.	Article 4(1) Direction Summary of Responses

Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	The Town & Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010
2.	The Town & Country Planning (Compensation) (No.3) (England) Regulations 2010
3.	The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008
4.	Circular 09/95 (General Development Order Consolidation).
5.	DCLG – Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (November 2010)
6.	Circular 08/10 (Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation)
7.	DCLG/EcoTec “Evidence Gathering – Housing in Multiple Occupation and possible planning responses” (September 2008)
8.	PPS3 (Housing) (2011)
9.	CPC’s Houses in Multiple Occupation (HMO) Survey (December 2008)
10.	SCC Cabinet Report (14.03.2011)