

EXECUTIVE BOARD – 22 FEBRUARY 2011

Title of paper:	Article 4 Direction in Relation to Houses in Multiple Occupation	
Director(s)/ Corporate Director(s):	Jennifer Dearing, Interim Corporate Director, Development	Wards affected: All
Portfolio Holder(s):	Alan Clark, Portfolio Holder for Neighbourhood Regeneration	Date of consultation with Portfolio Holder(s): 17 January 2011
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Key Decision: Yes		
Reasons for Key Decision:		
Expenditure of £500,000 or more in a single year		
Revenue income of £500,000 or more in a single year		
Savings of £500,000 or more in a single year		
Capital expenditure of £1,000,000 or more		
Capital income of £1,000,000 or more		
Significant effects on communities living or working in an area comprising two or more wards in the City		√
Relevant Council Plan Strategic Priority:		
World Class Nottingham		√
Work in Nottingham		
Safer Nottingham		√
Neighbourhood Nottingham		√
Family Nottingham		
Healthy Nottingham		
Leading Nottingham		√
Summary of issues (including benefits to customers/service users):		
<p>This report provides details of changes to planning rules for Houses in Multiple Occupation (HMOs) that came into force in October 2010 and sets out a proposed response. The amendments introduced a permitted development right to change the use of a C3 Dwellinghouse to a C4 HMO (3-6 unrelated people sharing) thereby removing the requirement to obtain planning permission for such a change, a requirement that had only recently been introduced by the Government in April 2010.</p> <p>Councils wishing to reinstate the need to obtain planning permission now need to issue an article 4 direction to remove the permitted development right brought in by the rule changes, specifying within the direction the geographical area to which it shall apply. An article 4 direction does not, of itself prevent the development to which it applies, but instead requires that permission is first obtained.</p> <p>The report seeks approval for the making of such an article 4 direction to cover the entire City</p>		

of Nottingham. In order to avoid compensation liability, it is proposed that 12 months' prior notice is given of the direction coming into effect. If confirmed, following consultation and notification to the Secretary of State, the direction would enable the City Council to manage the number, location and effects of new C4 HMOs by considering the merits of individual planning applications within the context of the planning policy framework.

Benefits arising from the introduction of an article 4 direction.

- Opportunity to coherently support and manage the delivery of mixed and balanced communities in neighbourhoods throughout the city
- Ability to drive up standards of HMO accommodation in terms of appearance and function and to manage the effects of additional HMOs by the imposition of planning conditions
- Amelioration of the negative effects arising from high concentrations of HMOs
- Opportunity to consider proposals for additional HMOs on their merits having full regard to all issues and views at a local level
- Improved conditions in neighbourhoods benefiting existing citizens and enhancing the attractiveness of the city to visitors, investors and potential new residents

Recommendation(s):

1.	That Executive Board authorises the making of a non-immediate direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) that withdraws, city wide, the permitted development right to change the use of a C3 Dwellinghouse to a C4 House in Multiple Occupation with a prior notification period of 12 months before the direction comes into force.
2.	That Executive Board gives delegated authority to the Head of Planning, Transport and Intelligence Strategy for (a) the making of this direction and the required notifications and management of the consultation process (b) the preparation of a report, following notification and consultation, to inform the future Executive Board decision as to whether or not to confirm this article 4 direction.

1 BACKGROUND

Changes to Planning Rules in Relation to Houses in Multiple Occupation

1.1 In April 2010, the Labour Government made changes to planning rules involving the introduction of the C4 HMO Use Class (applicable to residential properties occupied by between 3 and 6 unrelated people who share facilities). Prior to this, there had been no distinction in planning terms between such properties and those occupied as a family home. The April 2010 changes also introduced a requirement for planning permission to be obtained for a material change of use from a C3 Dwellinghouse (family dwelling) to a C4 HMO (3-6 unrelated people sharing). The result of this was that, for the first time, it became possible to assess the merits of individual proposals within the context of the planning policy framework and planning permission either refused, or granted subject to conditions both to mitigate any harmful impact and to secure high standards of accommodation.

- 1.2 The changes were strongly welcomed by many local authorities and other organisations that had campaigned for the amendments to provide councils with the ability to start to manage the number, distribution and effects of small shared properties through the planning process. A report was presented to the Executive Board on 18 May 2010, outlining a set of proposals to respond positively to the opportunities presented by the changes, and also developments in other areas including the licensing requirements for HMOs. However, since the formation of the coalition government, there has been considerable uncertainty about wider changes to the planning system and specific legislative amendments have also been made in relation to HMOS.
- 1.3 In June 2010, the coalition government announced its intention to introduce further amendments to the planning rules for HMOs that would introduce a permitted development right to change the use of a C3 family dwelling to a C4 HMO thereby removing the newly introduced requirement to obtain planning permission for this change of use. Councils wishing to reinstate this requirement would then be required to issue article 4 directions to remove the permitted development right within specified areas.
- 1.4 Despite robust objections, the proposed changes were introduced in October 2010. On 20 January 2011, the High Court granted permission to Milton Keynes Council to apply for Judicial Review of the Government's decision to introduce the changes, and a substantive Judicial Review hearing is scheduled to take place by 20 April 2011. The City Council and several other local authorities have submitted witness statements in relation to the case.

Rules and Guidance on the Use of Article 4 Directions

- 1.5 Following the introduction of the rule changes in October 2010, consideration has been given to the most appropriate response, including the use of article 4 direction powers to reinstate the requirement for planning permission to be obtained for changes of use from a C3 dwelling to a C4 HMO within all or part of the City.
- 1.6 The Department for Communities and Local Government (CLG) has acknowledged in Circular 08/2010 Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation (November 2010) that high concentrations of shared homes can cause problems. The same point was made in a letter from the Housing Minister dated 17 November 2010. However, the view expressed by CLG is that problems associated with HMOs are only experienced in a small proportion of local authority wards and that the appropriate approach is not, therefore, to impose a blanket planning regulation, but instead for councils to use article 4 direction powers where a local problem is identified.
- 1.7 Since April 2010, the approval of the Secretary of State has not been required in order to issue an article 4 direction, although it is still necessary to notify him when a direction is made and also if it is subsequently confirmed.
- 1.8 Updated guidance on the use of article 4 directions was issued by CLG in November 2010 in the form of a replacement Appendix D to Circular 09/95. This includes the general statement that local planning authorities should consider making article 4 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**. It also states that in deciding whether an article 4 direction might be appropriate local planning authorities should **identify clearly the**

potential harm that the direction is intended to address.

- 1.9 Further guidance in the new Appendix D on the use of article 4 directions states that local planning authorities, in deciding whether an article 4 direction might be appropriate may want to consider whether the exercise of permitted development rights would **undermine local objectives to create or maintain mixed communities**. This factor, amongst other additions mentioned, expressly expands the range of issues that may be judged to be relevant beyond those of harm to local amenity or damage to the historic environment that had previously been the main focus of consideration. In contrast to the earlier guidance, the new guidance now makes it clear that it is possible to make a **local authority wide** article 4 direction, but also emphasises that there should be a **particularly strong justification** for doing so.
- 1.10 Two types of article 4 direction can remove permitted rights to change from a C3 Dwellinghouse to a C4 HMO. Firstly, an article 4 direction may take effect immediately but this must be confirmed by the local planning authority following consultation within six months or it will lapse. Secondly, a non-immediate article 4 direction may be made which results in development rights being withdrawn only upon confirmation of the direction following local consultation.
- 1.11 The legal requirement for a non-immediate direction is that the local planning authority considers it is **expedient** that the development should not be carried out unless permission is granted for it on an application. For an immediate direction the local planning authority must consider that the development to which the direction relates would be **prejudicial to the proper planning of their area** or **constitute a threat to the amenities of their area**. Local authorities can elect to make a non-immediate direction in instances where it would be legally possible to make an immediate direction. The immediacy of the threat and **compensation liability** may be considerations in determining which to use.
- 1.12 A direction coming into effect immediately would have the clear advantage of straight away reinstating the Council's ability to manage new C4 HMOs. However, it would also expose the Council to potentially very high levels of compensation liability in cases where applications submitted within the first 12 months of the removal of the permitted development rights were refused or granted subject to conditions, such compensation being based, in part, on the difference in property values arising from the Council's decision.
- 1.13 A non-immediate direction with a prior notice period of 12 months would avoid compensation liability and also allow the results of local consultation to be taken into account in advance of the Council deciding to confirm the direction and remove permitted development rights. However, there would be a delay in the Council's ability to manage additional C4 HMOs and a clear risk of acceleration in changes of use to C4 HMOs during the notice period, resulting in exacerbation of existing problems.

High Concentrations of HMOs and Associated Impacts

- 1.14 As referenced above, there is current Government recognition of impacts that can occur as a result of high concentrations of HMOs. A report published by the Government in 2008, Evidence Gathering: Housing in Multiple Occupation and possible planning responses – Final Report summarised the main impacts as:
- Anti-social behaviour, noise and nuisance
 - Imbalanced and unsustainable communities

- Negative effects on the physical environment and streetscape
- Pressure upon parking provision
- Increased crime
- Growth in the private rented sector at the expense of owner-occupation
- Pressure upon local facilities
- Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

- 1.15 There are several areas in Nottingham that are characterised by high concentrations of HMOs, including a significant proportion of housing occupied by students, and in which the above issues are evident. The impacts of these concentrations, including the undermining effect they can have on the creation of mixed and balanced communities and wider Council objectives have been acknowledged for some time.
- 1.16 The need to address these issues is reflected in existing planning policy within the Nottingham Local Plan 2005, particularly strategic policy ST1: Sustainable Communities that seeks to ensure that new development contributes to a balanced mix of housing size, type and affordability in the area and housing policy H6: Student Housing that aims to ensure that that development or maintenance of balanced communities is not prejudiced by housing for students, and that the effects of additional student housing are mitigated by planning conditions. The Supplementary Planning Document : Building Balanced Communities (re-issued in 2007) amplifies the Council's policy approach to student housing provision that in broad terms aims to divert students from the general housing market (in particular areas of over-concentration) into purpose built accommodation in appropriate areas, and to improve the environmental conditions in areas dominated by students.
- 1.17 This approach is carried forward in Policy 8 of the emerging Core Strategy that seeks to ensure that all new residential development maintains, provides and contributes to a mix of housing tenures, types and sizes in order to create mixed and balanced communities, with a particular emphasis on providing family housing to meet Sustainable Community Strategy and Housing Strategy objectives. This general approach will be amplified by more detailed policies within the Land and Planning Policies Development Plan Document that is currently under preparation.
- 1.18 The introduction of an article 4 direction would not preclude additional C4 HMOs, but it would allow individual applications to be considered on their merits. At present, the City Council has the ability to manage additional large HMOs (with 7 more unrelated people sharing) through the planning process. Extending this to cover C4 HMOs would enable a more comprehensive approach to be taken, that recognises the contribution made by HMOs to meeting the City's housing needs and has due regard to wider housing strategy considerations along with application specific factors such as location, scale and quality of the scheme. This approach could also assist in driving up standards of HMO accommodation in terms of appearance and function, and improving conditions in neighbourhoods, thereby meeting the demands of a more diverse range of occupiers including young professionals.
- 1.19 The City Council holds data in relation to the numbers and distribution of HMOs, drawn largely from Environmental Health and Council Tax records. However, these records do not afford a completely comprehensive record of all HMOs and there is a strong likelihood of the actual numbers being significantly greater than the records indicate in some areas. Given the fluid nature of HMO uses, the precise number of properties in HMO use will also tend to fluctuate over time.

- 1.20 Current City Council Environmental Health information provides evidence of at least 6680 HMOs within the City, of which the vast majority are recorded within the Arboretum (20.9%), Berridge (11.7%), Dunkirk & Lenton (16.6%), and Radford & Park (19.5%) wards. The Council's records indicate that parts of other wards also have a significant proportion of the City's HMOs including Bridge, Dales, Mapperley, Sherwood, St Ann's, and Wollaton East & Lenton Abbey. The three wards with the highest proportion of their housing stock recorded as being HMOs are the Arboretum, Dunkirk & Lenton and Radford & Park and, according to Council Tax data, in some localised areas up to 90% of dwellings in some streets are occupied by students. In addition to these three wards, Council Tax data indicates high concentrations of students within parts of Wollaton East & Lenton Abbey and St Ann's wards. A recent comparison of sample areas in Dunkirk, Lenton and the Arboretum also indicated a continuing upward trend in the number of student council tax exemptions relating to the general housing stock.
- 1.21 This data provides evidence of over-concentrations of HMOs in some areas, significant presence of HMOs in others and an indication of a continuing upward trend in student occupation of the general housing stock in some parts of the City, creating on-going pressure on the availability of housing for other types of occupiers including families.
- 1.22 Experience of the effects of over-concentrations of HMOs in Nottingham is consistent with the findings of the Government published report referred to in paragraph 1.14 and concerns about the impact of over-concentrations has led to the policy response outlined above and a range of initiatives involving work with the universities and neighbourhood groups in an effort to tackle the issues raised.
- 1.23 The Council's Environmental Health Department holds data in relation to complaints received in respect of nuisance and anti-social behaviour, including noise and refuse related complaints. Analysis of current data indicates a link between the number of complaints and concentrations of HMOs, with refuse complaints being identified as a particularly significant issue. An analysis of crime levels in areas with concentrations of HMOs indicates a higher than average level of specific types of crime, including burglaries and thefts in a dwelling.
- 1.24 In parts of the City with high concentrations of HMOs there is visible evidence of negative effects on the physical environment including significant proportions of poorly maintained properties and untidy gardens, and a noticeable presence of discarded items and rubbish both on the street and within the curtilage of properties. High levels of on street parking arising from intensive occupation of properties also detract from the overall appearance of these areas. In some areas, the cumulative effect of minor physical alterations to a large proportion of properties to adapt them to HMO uses has also led to the erosion of locally distinctive character and identity. Shifts in the mix of residents, particularly those resulting in a higher percentage of transient occupiers and consequently a loss of residents with a long term stake in the community, have also had negative effects on the overall character and sense of place in some parts of the City.
- 1.25 In some neighbourhoods with high HMO concentrations there has been a noticeable change in the nature of retail, leisure and other commercial facilities to respond to the needs of increasingly dominant groups such as students, rather than those of other residents, for whom the provision of services tends to become increasingly unsustainable. There is also a propensity for service provision to display seasonal variations relating to a significant drop in student presence during the summer.

Proposed Article 4 Direction

- 1.26 In view of the above, it is considered that the continued exercise of permitted development rights for changes of use from C3 dwellings to C4 HMOs would be harmful to local amenity and proper planning within the City and would undermine local objectives to create or maintain mixed communities. The harm identified is judged to be sufficient justification to instigate the necessary stages leading to the introduction of a non-immediate article 4 direction covering the whole City of Nottingham to remove these permitted development rights, thereby enabling additional C4 HMOs and their effects to be coherently and comprehensively managed within the context of a robust policy framework. Having regard to the scale of potential compensation liability, a prior notice period of 12 months would be given of the direction taking effect, in spite of the threat presented by the continued exercising of permitted development rights during this notice period.
- 1.27 This city wide approach would avoid the likely distortion that would be caused by a direction only covering a selected geographical area, and in particular, the unmanaged shift and expansion of HMOs into those parts of the city that immediately adjoined any such selected area. The fluid nature of HMOs uses and their impacts would also present difficulties when seeking to precisely define the extent of a selected area for the purposes of an article 4 direction, and in addition there would be pressure to delineate an extent of coverage well beyond the limit of existing HMO concentrations in an effort to avoid the likely spread of HMOs to adjoining areas as previously described. Such an approach could lead to somewhat arbitrary judgements being made about the boundary selection that would still not address the issue of the spread of HMOs, but would simply result in displacement to other areas.
- 1.28 The early stages involved in introducing a non-immediate direction are the making of the direction followed by local consultation and notification to the Secretary of State. The start of the consultation triggers the commencement of the required 12 months notice period to avoid compensation liability. The decision whether or not to confirm the direction and to go ahead with the removal of permitted development rights from the effective date 12 months after initial notification would not take place until after consideration of all comments received during the consultation period and a thorough review of all available evidence at that time.

2 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The proposals would support the delivery of planning, housing and wider objectives within the Sustainable Community Strategy and the Nottingham Plan 2009-2012.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Introduce a city wide article 4 direction to remove the permitted development right for a change of use from a C3 dwelling to a C4 HMO with immediate effect. This would swiftly reinstate planning control but expose the Council to the risk of potentially substantial compensation liability.
- 3.2 Introduce either an immediate or non-immediate article 4 direction to remove the permitted development right for a change of use from a C3 dwelling to a C4 HMO in a selected area of the City where there is an existing over-concentration or significant presence of HMOs. This could lead to the displacement of problems to areas not covered by the direction and because of the fluid nature of HMOs and the issues

associated with them, defining a precise boundary for a selected area would be problematic. Compensation liability from an immediate direction would be proportionately less for a selected area, but still substantial.

- 3.3 Issue no article 4 direction and accept the inability to manage new C4 HMO uses and the consequential undermining effect of this on delivering the Council's objectives.

4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

- 4.1 There is currently no fee payable for planning applications arising from an article 4 direction. The Council has recently responded to a CLG consultation concerning the fee regime for planning applications, expressing the view that this fee exemption should be lifted. If the regulations are not amended to allow fees to be charged for this type of application, the Council would need to fund the cost of handling the applications. Based on current fee levels and an estimated generation of 50 applications a year as consequence of a city wide direction, the annual fee income deficit resulting from continued exemption status would be £16,750.
- 4.2 An article 4 direction would need to be supported by robust monitoring and enforcement. No additional expenditure is proposed in order to expand the capacity of the Planning Enforcement Team, and any increase in work demands will therefore need to be met by existing resources.

5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

- 5.1 The article 4 direction would be prepared in full accordance with legislative requirements and updated national guidance issued in November 2010. Any decision to subsequently confirm the direction would be made having regard to the outcome of the consultation process and evidence, thereby minimising the risk of legal challenge.
- 5.2 An article 4 direction enabling the City Council to manage C4 HMOs would be consistent with Section 17 of the Crime and Disorder Act and support the objectives of securing crime reduction and improved community safety.
- 5.3 The risk of potential compensation liability associated with an article 4 direction would be avoided because of the 12 months' notice period that is proposed.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 This report does not include proposals for new policies. Policies within the emerging Core Strategy and Development Plan Documents, that would provide the policy context for determining planning applications for HMOs, will be subject to a full Equalities Impact Assessment process.

7 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 7.1 Executive Board Report 18 May 2010 – Action Plan to Respond to Recent changes in legislation in relation to Houses in Multiple Occupation.

8 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 8.1 Nottingham Local Plan (Nottingham City Council 2005)

- 8.2 Greater Nottingham Aligned Core Strategies Option for Consultation (February 2010)
- 8.3 The Nottingham Plan to 2020 (Nottingham City Council 2009)
- 8.4 Building Balanced Communities Supplementary Planning Document (March 2007)
- 8.5 Council Plan 2009-2012
- 8.6 Circular 08/2010: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation (CLG 2010)
- 8.7 Replacement Appendix D to DOE Circular 09/05 (November 2010)
- 8.8 Evidence Gathering: Housing in Multiple Occupation and possible planning responses – Final Report (CLG/ECOTEC September 2008)
- 8.9 Letter from the Housing Minister (17 November 2010)