

Appendices

5



Item No.

6

CABINET REPORT

Report Title	Confirmation of Article 4 Directions re Houses in Multiple Occupation
---------------------	--

AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	27 July 2011
Key Decision:	NO
Listed on Forward Plan:	NO
Within Policy:	YES
Policy Document:	NO
Directorate:	Planning & Regeneration
Accountable Cabinet Member:	Cllr John Yates
Ward(s)	Delapre and Briar Hill, Castle, St James, Semilong, Kingsthorpe, Spring Park, Obelisk, Sunnyside, St Davids, Kingsley, Phippsville, Abington and Trinity Ward.

1. Purpose

- 1.1 To enable Cabinet to discuss and determine whether the Council should confirm the 'Immediate' and 'Non-Immediate' Article 4 Directions which Cabinet resolved to make removing permitted development rights for change of use from Use Class C3 Dwellinghouse to C4 Houses in Multiple Occupation at its meeting on 19 January 2011.

2. Recommendations

- 2.1 Cabinet is recommended to:
- 2.1.1 Confirm the 'Immediate' Article 4 Direction removing permitted development rights for change of use from C3 to C4 for an area bound by Holly Lodge Road to the north of the area, the Borough boundary to the east, Boughton Green Road to the south (including properties fronting the Road on the southern

side) and Harborough Road to the west (including properties fronting the Road on the western side) as shown on the attached plan (Appendix 1); and

- 2.1.2 Confirm the ‘Non-immediate’ Article 4 Direction removing permitted development rights for change of use from C3 to C4 for the rest of the area comprising the remaining part of the central and northern parts of the Borough as shown on the attached plan (Appendix 2).

3. Issues and Choices

3.1 Background

- 3.1.1 A change to the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) which came into force in April 2010 introduced a new Use Class C4 (HMO) which in essence covers small shared dwelling houses occupied by up to 6 unrelated individuals who share basic amenities. A subsequent change to the General Permitted Development Order (GPDO) in October 2010 has resulted in change of use from C3 (a dwelling house) to C4 (a HMO of no more than 6 occupants), not requiring planning permission. In summary therefore, notwithstanding the April change to the UCO, planning permission is not required to change the use of a family house (C3) to a small HMO (C4). Details of these changes were set out in a Members’ Briefing Note (September 2010), a copy of which is appended (Appendix 3).
- 3.1.2 Where there is an evidenced local need to control the spread of houses in multiple occupation local planning authorities are able to use powers to make an Article 4 Direction to remove these permitted development rights and thereby require planning applications for such changes of use. Article 4 of the GPDO provides that the Secretary of State or a local planning authority by direction may, in a specified area, take away all or some of the permitted development rights. An Article 4 Direction removing these permitted development rights may be introduced if the Council considers that the change of use from C3 to C4 would be prejudicial to the proper planning of an area or constitute a threat to the amenities of their area.
- 3.1.3 Circular 9/95 gives advice on the application of Article 4 Directions. Some of its contents are summarised at 3.4 of the attached Note (Appendix 3). It should be noted that since the Note was prepared CLG has published a replacement, Appendix D to Circular 9/95 (November 2010), which includes amendments to reflect the potential use of Article 4 Directions in respect of changes of use to Class C4 houses in multiple occupation.
- 3.1.4 At its meeting on 19 January 2011 Cabinet resolved:
- 3.1.4.1 That an ‘immediate’ Article 4 Direction removing permitted development rights or change of use from C3 to C4 for an area bound by Holly Lodge Road to the north of the area, the Borough boundary to the east, Boughton Green Road to the south (including properties fronting the Road on the southern side) and Harborough Road to the west (including properties fronting the Road on the western side) be introduced.

3.1.4.2 That the making of a ‘non-immediate’ Article 4 Direction removing permitted development rights for change of use from C3 to C4 for the rest of the area comprising the remaining part of the central and northern parts of the Borough with a view to confirming the Direction following consultation and 12 months notice period be approved.

3.1.5 The requisite notifications and consultations have now been completed.

3.2 Powers to make an Article 4 Direction

3.2.1 In procedural terms there are two main types of Article 4 Direction:

- **Non-immediate directions** (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and
- **Immediate directions** (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).

3.2.2 The general process for making an Article 4 Direction is set out in Annex A of Appendix D of Circular 9/95 and summarised below.

3.3 Consultation / Notification

3.3.1 When intending to make an Article 4 Direction, a Council as local planning authority (LPA) must give notice locally and nationally.

3.3.2 Local notification requires the following measures:

- Local advertisement (e.g. in a local newspaper). In this case both Directions have been advertised in the Chronicle and Echo newspaper in the prescribed manner;
- Site notice at no fewer than 2 locations within the area to which the Direction relates for not less than 6 weeks. In the case of the Immediate Direction, site notices were posted in five different locations within the area affected. For the Non-immediate Direction at least three site notices were used per affected Ward;
- Individually on every owner and occupier of every part of the land within the area to which the Direction relates. Annex A of Appendix D of Circular 9/95 does however advise that this requirement would not apply if it is impracticable because it is difficult to identify/locate them or the number of owners or occupiers would make individual service impracticable. Given the size of areas under consideration and the quantity of individual owners /occupiers affected the Council did not notify individual parties in this way. Local consultation was therefore based on the measures set out in the two preceding bullet points, in the following bullet point and in paragraph 3.3.3; and
- Between LPA’s within whose area the Direction relates. In this case Northamptonshire County Council and West Northamptonshire Development Corporation were consulted.

- 3.3.3 In addition to these statutory requirements the Council also consult locally with other interested groups including the University, the National Association of Landlords, Northampton Landlords Association as well as Daventry District Council as it has a residential area adjacent to the two Article 4 Direction areas.
- 3.3.4 National notification was also carried out as prescribed to the Secretary of State (SoS) on the same day the notice of the Article 4 Directions was first published / displayed locally.

3.4 Procedure for Confirming a Direction

- 3.4.1 All representations received during consultation must be taken into account before the direction is confirmed.
- 3.4.2 Any material changes to the Direction resulting from the consultation require re-consultation before the Direction can be confirmed.
- 3.4.3 **Immediate Directions** (see paragraph 3.2.1 above) expire 6 months after coming into force unless confirmed. The 6 month period in this case would lapse on 13 August 2011. If the Council does not confirm the Immediate Direction as recommended it will lapse.
- 3.4.4 A Direction cannot be confirmed until after 28 days following the last date of consultation unless the SoS specifies a longer period.
- 3.4.5 A **Non-immediate Direction** comes into force on the date specified in the original notice by the LPA. Taking into account the representations received during the consultation may require that the Direction comes into force later than originally specified.
- 3.4.6 Once confirmed, Directions are permanent unless cancelled by the LPA or SoS.

3.5 Compensation

- 3.5.1 Section 6 of the revised Appendix D to Circular 9/95 sets out the circumstances in which the LPA's may be liable to pay compensation having made an Article 4 Direction. In summary:
 - Where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
 - 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. In this case the immediate direction came into effect on 14 February 2011; hence the 12 month period would lapse on 13 February 2012. No planning applications have been submitted as a result of the making of the direction on 14 February.

3.6 Justification for Making the Directions

- 3.6.1 In general terms the problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the Government.
- 3.6.2 The study “Evidence Gathering – Housing in Multiple Occupation and Possible Planning Responses” carried out by Ecotec for the Government in 2008 summarised the impacts as including:
- Noise and anti social behaviour
 - Imbalanced and unsuitable communities
 - Negative impacts on the physical environment
 - Pressures upon parking provision
 - Growth in private rented sector at the expense of owner-occupation
 - Increased crime
 - Pressure upon local community facilities, and
 - Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population
- 3.6.3 In the case of C4 uses, the main justifications for an Article 4 Direction are associated with the extent of uses in an area and the local impact associated with an individual use/concentrations of the use.
- 3.6.4 Currently areas around the University campus, such as Sunnyside, have progressively become particularly prone to concentrations of shared student houses (C4) with the growth of the University. This trend has given rise to the kinds of issues identified in paragraph 3.6.2 and this is reflected in the feedback from the local community through submissions to Full Council meetings and representations made in response to consultation on planning applications.
- 3.6.5 There are also other parts of the Borough that have for many years been the subject of high concentrations of this type of use and have experienced the associated problems. These tend to be the older Victorian parts of the town, such as Semilong and Abington, and are reflected in Policy H31 of the Local Plan and the associated appendix 10, which seeks to control/prevent over-concentrations of intensive residential uses.
- 3.6.6 Circular 9/95 indicates that the boundaries of an Article 4 Direction should be drawn as tightly as possible. Officers generally agree with this approach and recognise that Class C4 uses tend to be concentrated in certain parts of the Borough as described above. Making use of Council Tax records regarding the location of student accommodation and Council’s Private Sector Housing Section’s recorded HMOs and registered HMOs officers have plotted where the HMOs are currently located. These are concentrated within the central and northern part of the Borough. These circumstances led to the recommendation to Cabinet on 19 January 2011 to make a non-immediate Article 4 Direction with the recommended boundary having been drawn with regard to this information yet wide enough to militate against Class C4 uses being pushed nearby beyond the boundary.

- 3.6.7 Having considered the officer's report, heard representations from public speakers and debated the matter Cabinet resolved to make an Immediate Direction for part of the recommended area and a Non-immediate Direction for the remaining recommended area as set out in paragraph 3.1.4.
- 3.6.8 It must be stressed that the introduction of an Article 4 Direction does not mean that there will be no more C4 uses within the Direction areas. All existing lawful uses continue to be lawful and any change of use to create a new C4 use would require planning permission. Any planning application would have to be determined on its individual merits with the starting point being Development Plan Policy. Clearly there remains a need for good quality student and shared living accommodation. Through the introduction of the proposed Direction the Council seeks to ensure that new HMOs are of a high standard and would not lead to any unacceptable impact on neighbour amenity or other interest of acknowledged importance.

3.7 Assessment of Representations Received During Consultation

- 3.7.1 Any representations received during consultation must be taken into account before a direction is confirmed.
- 3.7.2 The Government Office for the West Midlands on behalf of the Secretary of State has confirmed that it has no comments to make on the substantive contents of either Direction.
- 3.7.3 As a result of the consultation process two letters of support and sixty-eight letters of objection have been received. The letters in favour are from 64 Rookery Lane and 114 Lutterworth Road (both properties are within the Non-immediate Direction area). The sixty-eight letters against were from the National Landlords Association, the Residential Landlords Association, Bright Property Management (Collingwood Road, Northampton), sixty-one letters of the same letter type from Northampton landlords/property owners, and four letters of the same letter type from Northampton tenants. A copy the two letters of support and the five different letter types in objection are reproduced at Appendices 4 and 5 respectively (NB only the letter, Executive Summary and '20 Questions' submissions from the Residential Landlords Association have been reproduced in the Appendix; the further 'Detailed Case Against' 13 page document also accompanied their letter, which due to space this has not been reproduced but is available to view on request to the Council's Planning Section).
- 3.7.4 The main objections are summarised below:
- There is insufficient justification put forward by NBC for an Article 4 Direction.
 - There will be greater need for shared housing with future growth of Higher Education and due to the current state of housing finance. HMOs provide critical affordability/flexibility for those who cannot afford or don't want the liability of home ownership.
 - Research shows that small HMOs provide valuable accommodation for young professionals waiting to get on the property ladder.

- Student and migrant groups are necessarily transient, they don't stay in the same home for a generation/'grow roots', hence HMOs provide a fluid housing option for a mobile workforce.
- Changes to the Local Housing Allowance (LHA) will only allow LHA to be paid at a room rate for single people under 35 (it was previously 25) thereby creating an even greater need for shared accommodation (some 80,000 extra rooms nationwide).
- The Article 4 Direction would reduce availability of good quality private accommodation for vulnerable/low-income people "languishing" in temporary B&B accommodation on the Council's waiting list.
- Other statutory powers already exist and informal routes such as landlord accreditation exist and should be explored and exhausted before an Article 4 Direction is made. These offer a targeted approach to specific issues in contrast to an Article 4 Direction.
- Small HMO uses do not represent a substantial change of use in terms of burden on local infrastructure.
- Article 4 Direction would erode the ability of landlords in Northampton to react to changing circumstances and needs of the community by removing the general permissions currently available for development distorting the Borough's housing market and diminishing stability of property values. Property values have significantly reduced in some cities where Article 4 Directions have been made.
- If an Article 4 Direction is made it should be accompanied by a local plan setting out the circumstances in which planning permission would be permitted.
- HMOs can help to make intensive use of existing stock in places where it might be otherwise be under utilised and poorly maintained thereby positively contributing to regeneration. Areas with concentrations of HMOs are renowned for their vibrant nature (e.g. independent shops and café culture).
- The reduction in supply of HMOs resulting from the Article 4 Direction would cause rent levels to increase.
- Article 4 Direction takes away the freedom of people to choose where they want to live.
- Research shows that problems associated with HMOs are limited to less than 1% of council wards.
- It would take considerable time and resource to process resultant planning applications; this is not the best use of resources and the cost to the Council would be disproportionate to the benefits of the Article 4 Direction.
- It may remove small HMOs into other areas not covered by the Article 4 Direction.
- Placing a requirement for planning permission on all HMOs is far too restrictive, is unfair to people on low/average incomes who are unable to afford the cost of a one bedroom property. Emphasis should be good professional management.
- No University has enough accommodation to house their entire student population. Article 4 Direction will push students to rogue landlords who operate below the radar and/or force them to find properties further away from the University reducing availability of housing for people on low incomes.

- The changes would also have an impact on the businesses that cater to student needs/rely on trade emanating from the university.
- 3.7.5 The representations received raise a range of issues and some important points. However, many imply that the proposals would put a stop to the supply of small HMO uses. This is not the case. When considering the representations it is important to bear in mind that the making and confirmation of an Article 4 Direction does not lead to an embargo on change of use from Class C3 to C4. It does mean that landowners will have to apply for planning permission to change the use from a dwelling to a small HMO which will be considered on its merits.
- 3.7.6 There remains a need for good quality student and shared living accommodation in the Borough. There is no reason to believe that the Article 4 Directions and the associated need to apply for planning permission would be a significant disincentive/barrier to prospective applicants. To illustrate the point the Council receives planning applications for all forms of commercial investment based development on a weekly basis; the requirement to make a planning application does not 'put off' these applicants/developers/investors.
- 3.7.7 Any planning application would have to be determined on its individual merits with the starting point being Development Plan Policy. Clearly there remains a need for good quality shared living accommodation. Rather than preventing investment these Article 4 Directions provide the Council with a means of ensuring that new HMOs are of a high standard in the interests of occupants and would not lead to any unacceptable impact on neighbour amenity.
- 3.7.8 The representations also comment that the Council has not justified the need for the Directions, however with reference to section 3.6 above there is considered to be sufficient justification for the Directions. It is also acknowledged that other powers and arrangements exist to help address issues that arise from small HMOs, however, these are complementary to the Article 4 Direction.
- 3.7.9 Concerns are also expressed that any flexibility, regeneration, cultural and economic development benefits offered by small HMOs may be lost as a result of the Directions. As described above, the Directions do not place an embargo on small HMOs. It simply means that change of use from Class C3 to C4 now requires planning permission thereby allowing the Council as local planning authority control through the application process to help ensure high standards and to protect amenity.
- 3.7.10 It is acknowledged that the Article 4 Directions have and will continue to place a call on resources as set out in 4.2. These implications were considered and accepted by Cabinet when it resolved to make the Directions in January.
- 3.7.11 The representations also indicate that the Directions may push small HMOs to other areas outside the area of the Directions. As set out in paragraph 3.6.6 the boundary has been drawn wide enough to militate against Class C4 uses being pushed nearby beyond the boundary.

3.7.12 For the foregoing reasons it is not considered that any of the representations received raise matters of overriding significance so as to dissuade the Council from confirming the Directions or to amend the Directions in any way.

3.8 Choices (Options)

3.7.1 The preferred option is as set out in the recommendations (paragraph 2).

3.7.2 The main alternative options are:

- *Not to confirm the Immediate Direction and allow it to lapse; and / or*
- *Not to confirm the Non-immediate Direction.*

As both of these options would be at odds with the Cabinet resolution on 19 January 2011 and as no representations have been made raising overriding concerns, neither of these options is recommended.

4. Implications (including financial implications)

4.1 Policy

4.1.1 The introduction of an Article 4 Direction does not remove the issue completely for the Council as local planning authority. It simply results in a requirement to apply for planning permission for a change of use from C3 to C4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The current Development Plan comprises of the East Midlands Regional Plan and the saved policies of the Northamptonshire County Structure Plan and Northampton Local Plan.

4.2 Resources and Risk

4.2.1 Confirming the Directions would have limited resourcing implications for the Council's Planning and Legal services. The Development Control service would deal with planning applications that would not have otherwise required planning permission. Planning application fees are waived for those applications which would have been unnecessary, but for the Article 4 Directions.

4.2.2 Of greater significance would be the implications for the Council's Planning Enforcement service in respect of monitoring/evidence gathering and enforcement action. Where operationally possible, this will be contained within existing resources by prioritising actions, but increases in workflow will need to be kept under review and any additional funding requirements reported back to cabinet.

4.2.3 In respect of the Immediate Direction compensation would be payable, in the first 12 months, to C4 landlords to compensate for abortive expenditure or other loss/damage directly attributable to the withdrawal of permitted development rights, such as conversion building works and lost rent. No such planning applications have been received to date. The 12 month period commenced on 14 February 2011 and would expire on 15 February 2012.

4.3 Legal

- 4.3.1 The proposals would require the confirming of the two Article 4 Directions following due legal process as prescribed by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) as discussed above. The legal implications set out in this report will be carefully noted and the appropriate advice and action will be taken.

4.4 Equality

- 4.4.1 The introduction of an Article 4 Direction will affect the permitted development rights, and therefore occupiers/owners, of all dwellinghouses in the area affected. Decisions on whether to grant planning permission are assessed on an individual basis and are not determined by the Article 4 Direction itself. It must be stressed that the introduction of an Article 4 Direction does not mean that there will be no more C4 uses within the Direction areas. All existing lawful uses continue to be lawful and any change of use to create a new C4 use would require planning permission.
- 4.4.2 Prior to being reported to Cabinet in January an Equality Impact Assessment was carried out which identified no specific impacts (positive or negative) for any equality group. Nonetheless, it is recognised that introducing greater control via the Directions could potentially reduce supply and that this could have a disproportionate negative impact for certain groups such as young people, people on low incomes and minority national groups. However, through the introduction of the proposed Direction, the Council would be seeking to ensure that new HMOs are of a high standard and would not lead to any unacceptable impact on neighbour amenity or other interest of acknowledged importance in the interests for all members of the community. Overall it is considered that any potential negative impact would be outbalanced by the potential improvements to the quality/standard of new shared accommodation.

4.5 Consultees (Internal and External)

- 4.5.1 Both Directions were the subject of the notifications/consultations process set out in section 3.3 above. Consultation responses are summarised and assessed in section 3.7 above. Full copies of submissions received as a result of this process are reproduced at Appendices 4 and 5. Consultation has taken place throughout the process with the Chief Executive, Director of Planning and Regeneration, Legal Services and Director of Housing.

4.6 How the Proposals deliver Priority Outcomes

- 4.6.1 The introduction of an Article 4 Direction as recommended would introduce controls which would be exercised through the planning application process and associated planning enforcement process to help deliver *safer, greener and cleaner communities and improved homes, health and wellbeing.*

4.7 Other Implications

4.7.1 None identified.

5. Background Papers

- 5.1 Cabinet Report Agenda Item 6, 19 January 2011 meeting: Article 4 Direction in relation to Houses in Multiple Occupation.
NBC Member Briefing Note – September 2010 (see Appendix 2)
Circular 9/95: General Development Order Consolidation - 1995
Replacement Appendix D to Department of the Environment Circular 9/95 - November 2010
Circular 08/2010: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation - November 2010.
Evidence Gathering: Housing in Multiple Occupation and Possible Planning Responses (Ecotec) – 2008
Town and Country Planning (General Permitted Development) Order 1995 (as amended)
Town and Country Planning (Use Classes) Order 1987 (as amended)
The Town and Country Planning (Compensation) (No.3) (England) Regulations 2010
The representations received as a result of the consultation process (two letters of support and sixty-eight letters of objection).

Susan Bridge
Head of Planning
Ext 8909