



CABINET REPORT

Report Title	BOROUGH WIDE ARTICLE 4 DIRECTION
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AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	16 October 2019
Key Decision:	YES
Within Policy:	YES
Policy Document:	YES
Service Area:	PLANNING
Accountable Cabinet Member:	Councillor James Hill
Ward(s)	All wards

1. Purpose

- 1.1 The purpose of this report is to ask Cabinet to approve, for public consultation, the proposal to introduce a Borough wide Article 4 Direction for the remaining areas of Northampton.

2. Recommendations

- 2.1 It is recommended that Cabinet approves, for public consultation, the Council's proposal to introduce a Borough wide Article 4 Direction for houses in multiple occupation (HMO). This Direction, if it were to come into effect, would withdraw permitted development rights for the change of use from Class C3 Dwellinghouses to Class C4 Houses in Multiple Occupation for areas of the Borough not currently covered by an Article 4 Direction.
- 2.2 That the Head of Planning be given delegated authority in consultation with the Cabinet Member for Planning to make minor non-material spelling, formatting and other amendments to the consultation notices and documents where they do not alter the intent of the Direction.

3. Issues and Choices

3.1 Report Background and Legal Overview

- 3.1.1 In 2010, the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order) was amended which created a new use class for small Houses in Multiple Occupation, Use Class C4 (HMO) and amended Use Class C3 (Dwellinghouses). Class C4 covers shared dwellinghouses or flats occupied by between 3 and 6 unrelated people who share basic amenities.
- 3.1.2 The change of use of a property from Class C3 (Dwellinghouses) to Class C4 (HMO) is likely to be a material change of use requiring planning permission. However, deemed planning permission is granted for such a use by Class L(b) of Part 3 (Change of Use) of Schedule 2 to the General Permitted Development Order 2015 (GPDO). This permitted development right may, in exceptional circumstances, be removed by an Article 4 Direction, in which case, express planning permission will be required from the Local Planning Authority (LPA).
- 3.1.3 An Article 4 Direction is a direction under Article 4 of the GPDO which enables the Secretary of State or the LPA to withdraw specified permitted development rights across a defined area.
- 3.1.4 Provided there is justification for both its purpose and extent, an Article 4 Direction can:
- Cover an area of any geographic size, from a specific site to a local authority wide area
 - Remove specified permitted development rights related to operational development or change of use
 - Remove permitted development rights with temporary or permanent effect
- 3.1.5 The use of an Article 4 Direction to remove permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The particular harm that a Direction is intended to address should be clearly identified. There should be particularly strong justification for the withdrawal of permitted development rights relating to a wide area for instance covering the entire area of a Local Planning Authority.
- 3.1.6 An Article 4 Direction does not prohibit development but enables the LPA to have some control over the proposed development.
- 3.1.7 Where an Article 4 Direction is effective, a planning application will be made to the Local Planning Authority in the usual way. The planning application will be considered on its merits, the LPA will assess the proposed development in the light of policies in the development plan and consider any other factors that are material.

- 3.1.8 The normal right of appeal to the Secretary of State is available if permission is refused, granted subject to unacceptable conditions, or is not determined within the statutory eight week period.
- 3.1.9 If a LPA makes an Article 4 Direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it subsequently:
- Refuses planning permission for development which would otherwise have been permitted development
 - Grants planning permission subject to more limiting conditions than the GDPO
- 3.1.10 The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 3.1.11 Section 108(2A) of the Town and Country Planning Act 1990 provides that compensation is only payable if an application for planning permission for the development formerly permitted by the GPDO is made within 12 months of the Article 4 Direction taking effect. However, no compensation is payable if an LPA gives notice of the intended withdrawal between 12 months and 24 months in advance.
- 3.1.12 An Article 4 Direction cannot prevent development which has commenced, or which has already been carried out.
- 3.1.13 An Article 4 Direction needs to be drafted, made (which means sealed, publicised and subject to due consideration of any representations by Cabinet) and confirmed.
- 3.1.14 The Council is proposing to introduce a non-immediate Article 4 Direction on the rest of the Borough not currently covered by an Article 4. A non-immediate Article 4 Direction must specify the date that the Direction comes into force. This date must be within 28 days and two years following the date on which the public consultation period began. An Article 4 Direction must be confirmed by the LPA before it comes into force. The LPA must take into account any representations it receives during the consultation period when deciding whether or not to confirm the Article 4 Direction.
- 3.1.15 A LPA must, as soon as practicable after confirming an Article 4 Direction, inform the Secretary of State. The Secretary of State does not have to approve Article 4 Directions, and will only intervene where there are clear reasons for doing so.
- 3.1.16 As the Council is proposing a Borough wide Non Immediate Article 4 Direction, it is important to outline a strong case as to why this is considered necessary.

3.2 Issues

a. Current Position on Article 4 Directions in Northampton

- 3.2.1 Houses in multiple occupation play an important role in providing affordable accommodation for a range of people including students, key workers, young professionals, migrant workers and transient workers. However, several issues have been identified in areas of high concentrations of HMOs. One of the ways in which high concentrations are being managed is through the introduction of Article 4 Directions for houses in multiple occupation.
- 3.2.2 Northampton currently has 4 Article 4 Direction Areas associated with houses in multiple occupation (HMOs), covering the following areas: Sunnyside Ward, St David's Ward, Obelisk Ward, Northampton North and Central, parts of Far Cotton and Delapre and parts of Cliftonville (see Map 1). This means that within these areas, planning permission is required for the change of use from a dwellinghouse to an HMO for 3 – 6 unrelated persons sharing basic amenities. Map 2 shows the extent of planning approvals granted in areas with Article 4 Directions. Further information on the Article 4 Directions can be found by accessing the following link:
<https://www.northampton.gov.uk/info/200206/planning-applications/986/permitted-development-rights---article-4-directions>

b. Justification for a Borough wide Article 4 Direction on the remaining parts of Northampton

- 3.2.3 Since the introduction of the existing Article 4 Directions, further evidence has come forward which suggests that the remaining parts of the Borough should have an Article 4 Direction. In preparing the submission draft to the Northampton Local Plan Part 2, the Council appointed Loughborough University (2018)¹ to undertake a technical study as evidence to inform policy formulation on HMOs. This study also provided information and recommendations which were used to update the principles contained in the Interim Planning Policy Statement (IPPS) 2014² on houses in multiple occupation. To manage the concentration of HMOs within areas covered by Article 4 Directions, the IPPS stipulates that planning permission for new HMOs should only be granted, subject to other considerations, where they do not cause the concentration of HMOs within a 50m radius of the application site to exceed 15%.
- 3.2.4 The Loughborough Study outlined the issues associated with over concentrations of HMOs within Northampton. The Study concluded there were incidences of general poor upkeep and maintenance of private rented housing as well as dilapidation of some housing stock and housing facades. In addition, there was evidence of unkempt gardens, fly tipping, overspill from refuse bags and streets crammed with parked cars. Noise and anti-social behaviour were also reported to be an issue in areas of high concentration of HMOs. It was noted that concentrations of HMOs can result in seasonal depopulation, which points to relatively high levels of population transience and turnover. This means that at times, properties will be left empty when the students return to their own homes. All of these issues can potentially have a

¹ <https://www.northampton.gov.uk/downloads/file/11015/02-houses-in-multiple-occupation>

² <https://www.northampton.gov.uk/info/200205/planning-for-the-future/2011/himo-draft-interim-planning-policy-statement>

detrimental impact on the physical, environmental, the built environment, and social and wellbeing aspects of the community.

- 3.2.5 In progressing the study, the Loughborough team also undertook a series of workshops with Councillors, landlords, Council Officers and other relevant stakeholders. They concluded that the existing over concentrations of HMOs are intensifying, and new concentrations are forming within other parts of the Borough. This was attributed in part to the dynamics of the HMO market in Northampton, which are clearly being influenced by the relocation of the University of Northampton, and a more general trend of other social groups seeking private rental accommodation in the Borough.
- 3.2.6 The University came up with several recommendations, which would enable the Council to more fully regulate and effectively plan for the distribution of HMOs across the wider Borough, as well as ensure that high quality and well managed HMOs are available to a range of groups including students, key workers and people who do not wish to purchase their own homes. The recommendations included the implementation of a blanket Article 4 Direction across Northampton. Over time, the Study concluded, a town wide Article 4 Direction may enable a reduction in the concentration on HMO within existing pockets of over concentration, resulting in a more acceptable spread across the town.
- 3.2.7 The study also recommended that the threshold for the consideration of planning applications be amended to 10% within 50 metres, which is a change from the existing IPPS2014. This was considered to be more impactful in terms of identifying when a possible new over concentration of HMOs may be forming. This recommendation is included as a policy in the submission draft Northampton Local Plan Part 2, which was released for consultation in May 2019. In addition, the Council also prepared a Supplementary Planning Document (which would update the IPPS2014), which provides details of updated principles to assist in the determination of planning applications. The SPD includes the recommendation to use the threshold of 10% within 50 metres. The SPD was the subject of a public consultation exercise in the summer of 2019.
- 3.2.8 In May 2019³, the Private Sector Housing section of the Council consulted on the proposed implementation of an enhanced designation for additional HMO licensing in Northampton. The evidence provided to justify this extension includes complaints about noise, complaints about rubbish sacks and the accumulation of refuse in gardens, and complaints of fly tipping in and around HMOs (see Map 3). This reinforced the evidence provided by the Loughborough Study, confirming that HMOs can result in a range of issues to the extent that extending the requirements for additional licensing to wider areas outside an Article 4 Direction was considered to be justifiable.

c. Non Immediate Article 4 Direction

- 3.2.9 It is recommended that a Non Immediate Article 4 Direction is introduced across the remaining parts of the borough which are not currently covered by

³ <https://www.northampton.gov.uk/info/200024/consultations/1939/additional-licensing-for-houses-in-multiple-occupation-hmos-consultation>

an Article 4 (see Map 4). As mentioned earlier, the use of an Article 4 Direction should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It is evident that there is justification for the introduction of a borough wide Direction.

- 3.2.10 The reason why a Non Immediate Article 4 Direction is the preferred option (compared to an Immediate Direction) is that Section 108(2A) of the Town & Country Planning Act 1990 provides that compensation is only payable if an application for planning permission formerly permitted by the GDPO is made within 12 months of the Article 4 Direction taking effect. This is applicable when an Immediate Article 4 Direction is introduced. However, no compensation is payable if the Council gives notice of the intended withdrawal between 12 months and 24 months in advance, which is what this proposed Non Immediate Article 4 Direction will do. In addition, an Immediate Article 4 Direction can be introduced if the development presents an immediate threat to local amenity or prejudice the proper planning of an area. The evidence identified to date does not conclusively demonstrate that an Immediate Article 4 Direction is justified.
- 3.2.11 This Non Immediate Article 4 Direction, as mentioned in section 2, will remove the permitted development right that allows a change of use from a dwellinghouse (Use Class C3) to a house in multiple occupation for three to six unrelated persons (Use Class C4). Without the Article 4 Direction, people are able to undertake these conversions without the need for planning approval. However, it should be noted that the introduction of the Article 4 Direction does not mean that planning permission will be refused. It means that if an application comes in, the Council will consider the planning application against a variety of planning considerations including the threshold.
- 3.2.12 If agreed, the Council will consult on the Article 4 Directions for a minimum of 21 days. The outcome of the consultation exercise will be reported back to Cabinet in Spring 2020. Statutory consultees and the Secretary of State will be automatically consulted. Other consultees will be at the discretion of the Council.
- 3.2.13 The Council is required to take into account any representations received during the consultation period and determine whether or not to proceed towards confirming the Non Immediate Direction. In the event that there are no issues to resolve, the Council can seek to approve the confirmation of the Article 4 Direction at Cabinet. This means that the Direction can come into force within 12 months from the date of the public consultation. This is the minimum period required to avoid any compensation claims.
- 3.2.14 It should be noted that the Secretary of State does not have to approve the Article 4 Direction, but they can intervene if there are clear reasons for doing so.

3.3 Choices (Options)

Option 1: Agree to the recommendation

- 3.3.1 Currently, planning approval is not required for the change of use from dwellinghouses to HMOs in areas on Northampton outside the Article 4 Direction areas. If Cabinet approves the Non Immediate Article 4 Direction for consultation, the Council will be able to go out to consultation to statutory consultees, non-statutory consultees and residents for a minimum of 21 days, seeking views on whether this should be extended to the rest of the borough.
- 3.3.2 If agreed, and when the Non Immediate Article 4 Direction comes into effect, all potential landlords and property owners who own properties in Northampton will need to apply for planning permission prior to their property being converted and used for HMOs for between 3 and 6 unrelated persons who share basic amenities.

Option 2: Do not agree to the recommendation

- 3.3.3 Cabinet could decide not to approve the proposed Non Immediate Borough wide Article 4 Direction for consultation. This means that within the areas not currently covered by Article 4 Directions, people can continue to change the use of their properties from dwellinghouses to HMOs without the need for planning permission. This would make it difficult for the Council to manage the concentration of HMOs, the character of the area and the wellbeing of occupants and adjoining residents.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 The Non Immediate Article 4 Direction will not introduce any new planning policies. Rather, it is a legal procedure which seeks to remove an existing permitted development right. If approved, planning permission will be required for the change of use from a dwellinghouse to a house in multiple occupation for 3 – 6 unrelated persons sharing basic amenities. Consideration of a planning application will take into account the planning policies contained in the development plans.

4.2 Resources and Risk

- 4.2.1 Sufficient resources have been incorporated into the budget for 2019/20 to fund the next stage of the Article 4 Direction. There will be implications on staff resource, particularly Enforcement, as the likelihood of complaints about HMOs without planning approval is likely to increase and in Planning Policy, where additional mapping services will be required. However, there will be an increase in the planning application fees which could be used to contribute towards a more effective planning service delivery.

4.3 Legal

- 4.3.1 The proposals would require the making of a Non Immediate Article 4 Direction following due legal process as prescribed by the Town and Country

Planning (General permitted Development Order) 1995 (as amended) as summarised above.

- 4.3.2 Legal support and advice will be required until the Article 4 Direction comes into effect.

4.4 Equality and Health

- 4.4.1 An Equalities Impact Assessment has recently been carried for the submission draft Northampton Local Plan Part 2 (LPP2). As this Article 4 Direction is being introduced across the remaining parts of the Borough, and planning applications will be determined using existing policy directions, including those contained in the emerging LPP2, the Equalities Impact Assessment undertaken for the draft LPP2 is relevant for this project. The Equalities Impact Assessment is available at:
https://www.northampton.gov.uk/info/200205/planning_for_the_future/1746/

4.5 Consultees (Internal and External)

- 4.5.1 The proposal to manage the concentration of HMOs borough wide, including during the duration of the Loughborough Study, was subject to internal consultation (Development Management/ Enforcement/ Private Sector Housing). External consultees were also consulted (Councillors/ Landlords Forum/ property agents).

4.6 How the Proposals deliver Priority Outcomes

- 4.6.1 The introduction of the Non Immediate Article 4 Direction across the remaining areas of the Borough means that planning approval will be required for the change of use from a dwellinghouse to an HMO for 3 to 6 unrelated people who share basic amenities. This will contribute towards the delivery of Northampton's Corporate Plan 2018-20 including "more homes, better homes" and "a clean, green and tidy town". It will also contribute towards place shaping and driving growth by keeping the town and people safe. It is considered that the introduction of a Borough Wide Article 4 Direction across the remaining parts of Northampton will result in the effective management of HMOs which will result in balancing the demand for HMO units against the needs to protect the physical character, the environment and the residents affected by the HMO.

4.7 Other Implications

- 4.7.1 There are no other implications arising directly from the proposals in this report.

5. Background Papers

- 5.1 National Planning Policy Framework, February 2019, Ministry of Housing, Communities and Local Government

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

West Northamptonshire Joint Core Strategy, December 2014, West Northamptonshire Joint Planning Unit -

<http://www.westnorthamptonshirejpu.org/connect.ti/website/view?objectId=2737424>

Northampton Local Plan Part 2 Submission Draft, May 2019, Northampton Borough Council

<https://www.northampton.gov.uk/info/200205/planning-for-the-future/2426/northampton-local-plan-part-2-proposed-submission>

A study of Northampton Houses in Multiple Occupation (HMO) policy, November 2018, Loughborough University

<https://www.northampton.gov.uk/downloads/file/11015/02-houses-in-multiple-occupation>

Consultation Report: proposed implementation of and enhanced designation for Additional HMO Licensing in Northampton, May 2019, Northampton Borough Council

<https://www.northampton.gov.uk/downloads/file/11035/additional-hmo-licensing-scheme-2019---2024-consultation-report>

Section 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015

The Town and Country Planning (Compensation) (England) Regulations 2015

Town and Country Planning (General Permitted Development) Order 1995 (as amended)

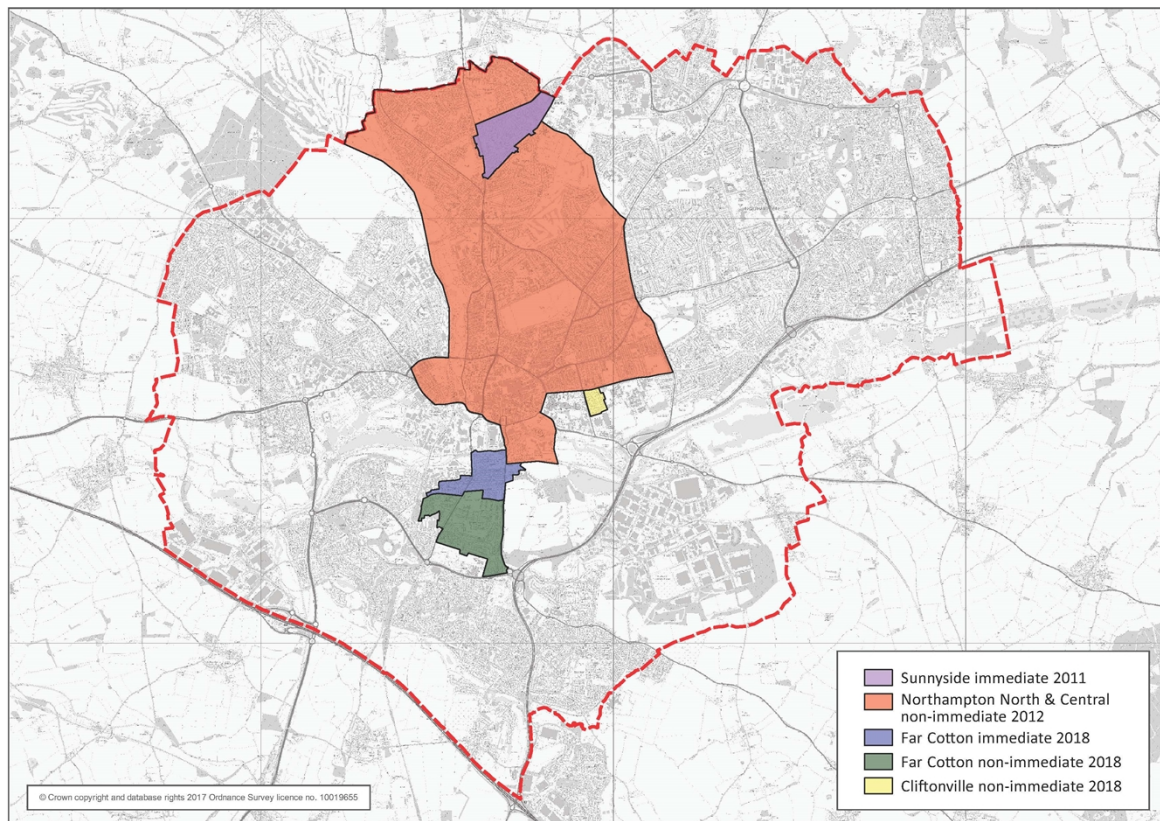
Town and Country Planning (Use Classes) Order 1987 (as amended)

6. Next Steps

- 6.1 The results of the Non Immediate Article 4 Direction will be reported in Cabinet in early 2020. If there are no issues to resolve, the Council will be seeking Cabinet approval for the confirmation of the Non Immediate Article 4 Direction, allowing it to come into effect within 12 months from the date of the consultation.

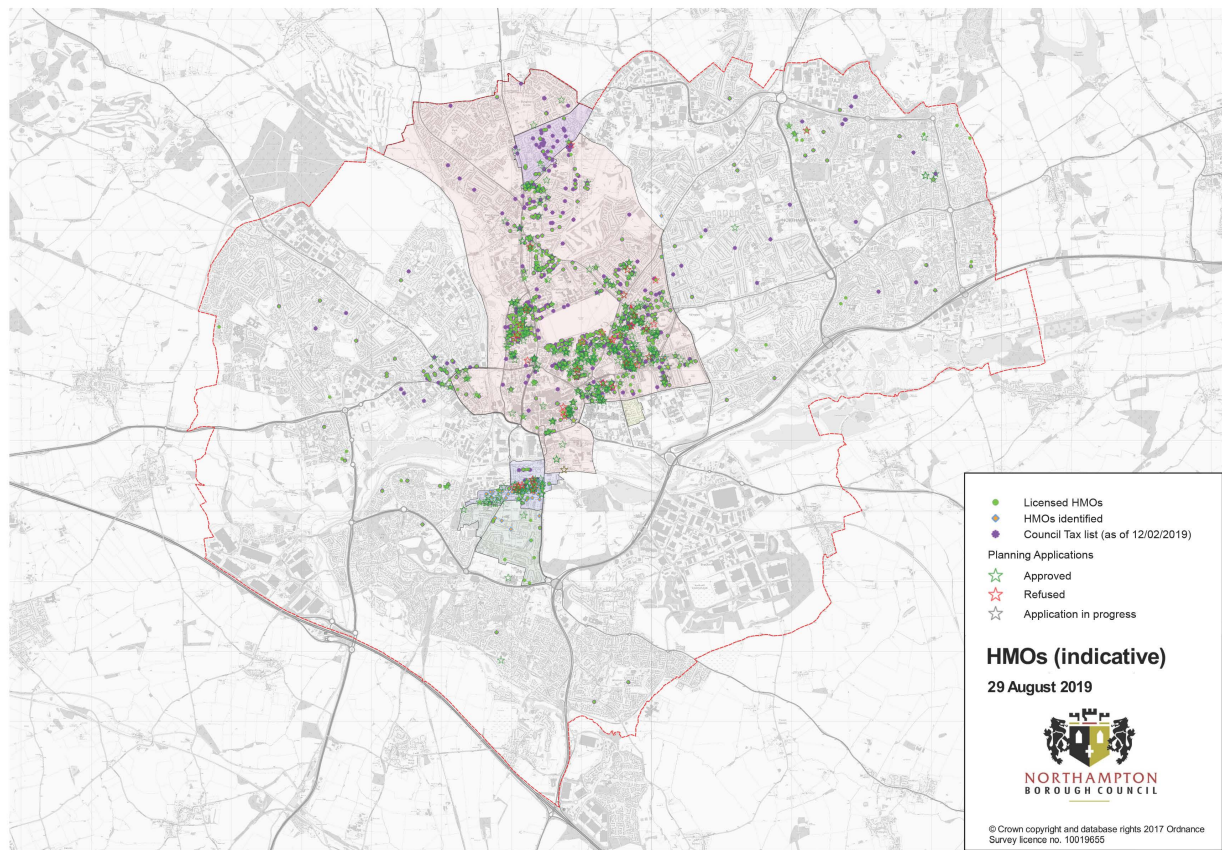
Peter Baguley
Head of Planning
Tel. 01604 838921

MAP 1:
Existing Article 4 Directions in Northampton



MAP 2

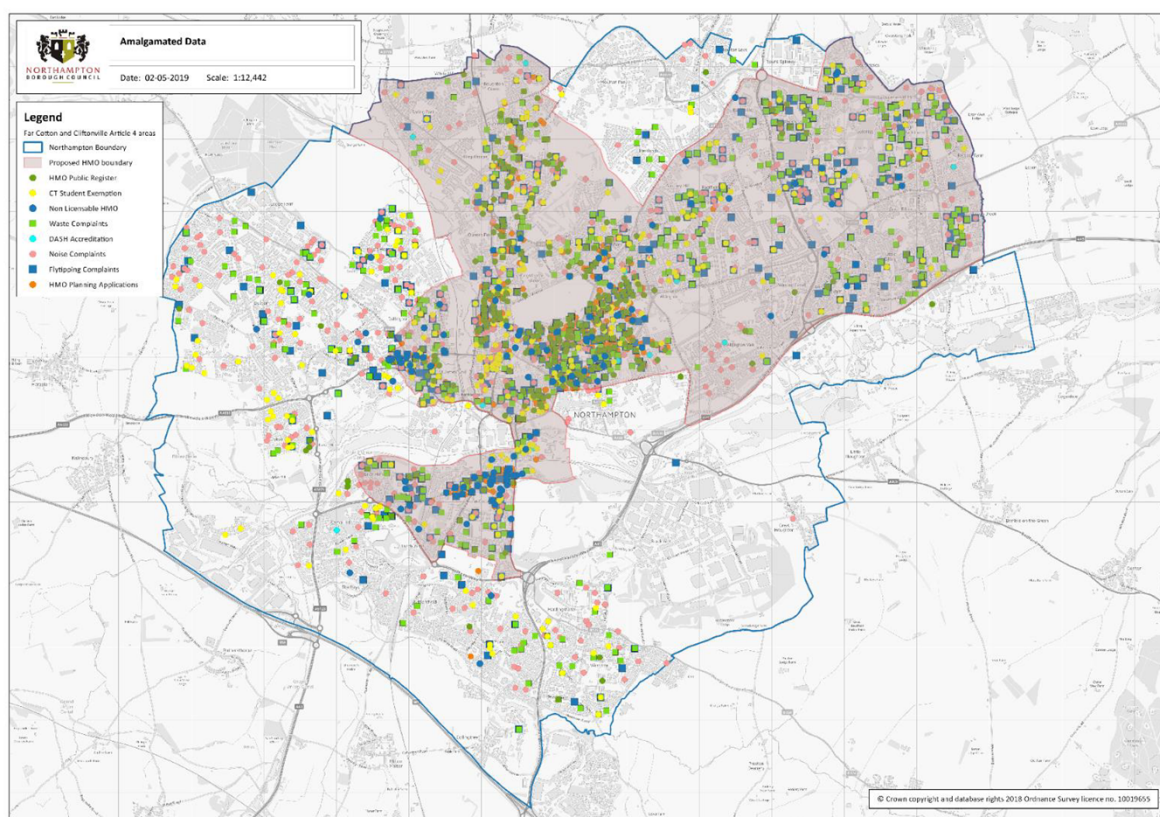
Planning Activity in Northampton as of August 2019



MAP 3:

Amalgamation of data on:

- ✚ Location of licensed HMOs in Northampton
- ✚ Location of HMOs in which the occupant is exempt from Council Tax because they are a student
- ✚ Location of properties for which an HMO planning application has been received
- ✚ Location of properties that have been the subject of complaints about noise
- ✚ Location of properties that have been the subject of complaints about rubbish sacks and the accumulation of refuse in gardens
- ✚ Location of fly tipping



Source:

Private Sector Housing Consultation report – proposed implementation of an enhanced designation for additional HMO licensing in Northampton

MAP 4:
Remaining area for the introduction of an Article 4 Direction

