

Subject:	Article 4 direction – Houses in Multiple Occupation		
Date of Meeting:	24 January 2013		
Report of:	Strategic Director, Place		
Contact Officer:	Name:	Hamish Walke	Tel: 292337
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Ward(s) affected:	Hanover and Elm Grove, Hollingdean and Stanmer, Moulsecoomb and Bevendean, Queens Park and St Peters and North Laine		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The report seeks confirmation of an article 4 direction to remove a permitted development right under planning legislation that allows changes of use from dwellinghouses (Class C3) to small Houses in Multiple Occupation (Class C4). This would mean that a planning application would be required for such changes of use. It would provide the council with control over the location of new small Houses in Multiple Occupation (HMOs) and enable the planning system to address concentrations of HMOs in established residential areas.
- 1.2 The direction reflects the Student Housing Strategy and would work alongside the recently extended HMO licensing scheme introduced by the housing team. Since the resolution to make an article 4 direction in April 2012, officers have carried out public consultations and gathered further evidence of the impact of HMOs within the city. Despite concerns being raised, particularly by students and landlords' organisations, officers consider the proposed direction to be a proportionate and reasonable response to issues relating to HMOs. The five wards within the article 4 area are Hanover and Elm Grove, Hollingdean and Stanmer, Moulsecoomb and Bevendean, Queen's Park and St Peter's and North Laine.

2. RECOMMENDATIONS:

- 2.1 That the Committee confirms the direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove the permitted development right to change the use of a building from a dwelling house (Class C3) to a House in Multiple Occupation (Class C4) within the five electoral wards for the reasons outlined in this report. If confirmed, the direction would come into force on 5 April 2013.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Small Houses in Multiple Occupation (C4) use class

- 3.1 The March 2012 Cabinet report sets out the background. In summary, the Government created a new use class for small HMOs (class C4) in 2010. A related “permitted development right” allowing changes of use from a house (class C3) to a small HMO without a planning application was also subsequently established.
- 3.2 Following the Cabinet meeting, Brighton and Hove City Council made an article 4 direction that, if confirmed, would remove this right and require a planning application for these changes of use. The responses to the public consultations on the direction are attached to this report as Appendix 1. Evidence showing some characteristics of the five electoral wards form Appendix 2.
- 3.3 The creation of the C4 use class reflected Government concern that HMOs can have particular, and sometimes harmful, effects on their surroundings. Government research identified the following issues:
 - anti-social behaviour, noise and nuisance
 - imbalanced and unsustainable communities
 - negative impacts on the physical environment and streetscape
 - pressures upon parking provision
 - increased crime
 - growth in private rented sector at the expenses of owner-occupation
 - pressure upon local community facilities; and
 - restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.

Characteristics of the five electoral wards

- 3.4 There is no doubt that HMOs provide an affordable and valued type of accommodation for many of the city’s residents, including students. In Brighton and Hove, privately rented accommodation forms a far higher proportion of the housing market than the national average.
- 3.5 Planning officers have gathered and mapped information on the locations of existing HMOs within the five wards. This work mapped large (occupied by more than six people) houses in multiple occupation and also properties where Council Tax exemption was claimed by students. This exercise could not map small HMOs occupied by non-students, since the council has no records of them. The concentration maps were included within the Student Housing Options Paper. The exercise revealed considerable variation within the five wards, with 13 streets having concentrations of between 30%–47% of buildings in HMO use. By contrast, 23 streets within these wards showed concentrations of below 1%.

- 3.6 Information was also gathered, by ward, on some of the issues covered by Government research. In terms of noise complaints (see Table 1 of Appendix 2), Environmental Health figures for the year to March 2012 show that the five electoral wards along the Lewes Road were the five wards with the highest rates of noise complaints per household. A similar pattern is shown on complaints about refuse (See Table 2), with the five wards all falling within the six wards with highest numbers of complaints. Whilst there is no direct link to HMOs, this evidence does point to key characteristics of the five wards and is consistent with the Government research.
- 3.7 A new licensing scheme for small HMOs was introduced in the five Lewes Road wards in November 2012. Private Sector Housing gathered information showing a disproportionate number of requests for assistance on issues such as damp, disrepair and lack of heating or hot water being received in the five wards.

Student accommodation

- 3.8 The article 4 direction does not specifically target student housing and would cover all proposed small HMOs within the five wards. However, whilst recognising the many economic, social and cultural benefits that students bring to the city and supporting the role of the private rented sector, the Student Housing Strategy 2009 – 2014 did acknowledge negative effects that can arise in neighbourhoods where over-concentration of student households occurs.
- 3.9 In 2008, the University of Brighton commissioned research to examine the relationship between supply and demand for student housing in the city. This involved a review of current and anticipated student numbers at both universities, mapping where students live throughout the city, focus groups with local residents and councillors and interviews with key local stakeholders. An extract of the relevant findings from the project are attached at Appendix 4. The work highlighted a need to adopt a strategic, area based approach to address issues of 'studentification' and was used to underpin the Student Housing Strategy.
- 3.10 Marked recent growth in students has not been matched by an equivalent increase in purpose built student housing. A priority within the Student Housing Strategy and emerging City Plan is to increase the supply of purpose-built student accommodation. To date though most of the increasing demand for student accommodation has tended to be met by the private rented sector. Estimates suggest that in the region of 10,000 students live in private rented housing and that the vast majority of post-first year undergraduate and postgraduate students live in HMOs. A relatively high proportion of first year students at the University of Brighton are also accommodated in the private sector.
- 3.11 Whilst a key goal of the Student Housing Strategy is to deliver more purpose-built student accommodation, the important role of the private rented sector in contributing to the supply of student housing is acknowledged and will continue to be supported in ways that do not unbalance local communities. To help achieve this the Student Housing Strategy adopted a strategic goal:

To ensure effective management and support housing and populations within HMO dominated studentified neighbourhoods, using an area based approach.

Emerging planning policy

- 3.12 The impact of confirming the direction would be reliant on a supporting policy in the emerging City Plan. With regard to HMOs, the main text to policy CP21 states:

In order to support mixed and balanced communities and to ensure that a range of housing needs continue to be accommodated throughout the city, applications for the change of use to a Class C4 (Houses in multiple occupation) use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where:

More than 10% of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use.

- 3.13 The emerging City Plan takes a comprehensive approach to accommodating the city's growing student population. Five sites are identified in the Plan for purpose built student accommodation and these would provide around 2,200 bedspaces.

Consultation responses

- 3.14 It is clear from the consultation responses that students, in particular, value HMO accommodation and have real concerns about measures that may increase rents or reduce the number of properties available. However, the intention of the article 4 direction is not to provide an overall limit on the number of HMOs within the five wards. Rather, it would allow the council to guide the location of new HMOs towards those areas that do not currently have high concentrations. Whilst this would provide a cap on existing concentrations, the mapping exercise has revealed that many streets within the five wards have proportions of HMOs well below the 10% threshold set out in policy CP21.
- 3.15 The responses in support of the direction raise many of the issues, such as noise, refuse management and parking, highlighted by the central government research. Many of the respondents also stated that they are not anti-student or anti-house sharer. They did though express concerns about concentrations of HMOs in parts of the city and about the resulting impact upon family housing and neighbourhood character. The direction would, as part of the wider Student Housing Strategy and over time, help to address some of these concerns. In addition to avoiding exacerbating concentrations, in cases where permission was granted details of facilities such as refuse and bike storage could be sought and implemented.
- 3.16 Concern was also expressed that the council was seeking to limit the number of HMOs. The article 4 direction would control and disperse the location of new HMOs, rather than providing an overall restriction on numbers. Although permission would be likely to be refused in certain streets with higher concentrations, officers feel that there are other streets, both inside and outside the five wards, with capacity for further changes of use without exceeding the

threshold set out in policy CP21. The concerns of the National Landlords Association about restrictions on the freedoms of landlords to use their properties as they wish are noted. However, the council has a duty to consider the needs of the whole community and the direction is considered to be a balanced response.

- 3.17 Some concerns were raised by consultees about how they would gain planning permission for new HMOs. Policy CP21 sets out clearly how planning applications would be assessed through consistent and clear criteria. Officers will endeavour to provide a good level of information, for instance on the council's website, to enable potential landlords to understand whether they are likely to gain permission for a change of use on a particular property. The pre-application planning advice service would also be available.
- 3.18 It is clear that there are divergent views amongst the local community on whether the article 4 direction should be adopted. This is not surprising given that some of the respondents rely on HMOs for their housing or for income, whilst others live close to them and feel that their lives are affected. Not adopting the direction would leave the concerns of some people living close to HMOs unresolved. The article 4 direction is not, in itself, a resolution to all issues around HMOs. However, it gives the council control over the location of new HMOs. This control can be used flexibly and the policy implementing the direction can be amended over time to suit changing circumstances. It also forms part of a wider strategy to tackle the city's housing needs.

Other issues

- 3.19 Reassurance can be provided on a number of the concerns raised about the direction. There would be no fee payable for a planning application for change of use to a small HMO (C4) required as a result of the direction. The direction will not affect internal issues, such as fire alarms and gas/electric safety certificates.
- 3.20 Some respondents queried whether the article 4 direction would affect permitted development rights for extensions and other physical alterations. For clarification, it would not. The direction will solely remove the permitted development right relating to a change of use.
- 3.21 Some respondents, notably the student population, were concerned that the direction might reduce the amount of currently available accommodation. Article 4 directions are not retrospective and all houses currently in HMO use will be permitted to continue in that use without requiring consent. Landlords will simply need to provide evidence of lawful HMO use prior to the article 4 should this be queried.

Conclusion

- 3.22 Overall, it is considered that, despite the objections received to the proposed article 4 direction, it is a reasonable and proportionate response to issues associated with concentrations of houses in multiple occupation.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 Consultations have been carried out in accordance with the relevant legislative framework and the aims of the Community Engagement Framework and Standards to ensure the effective representation of communities in planning and decision-making.
- 4.2 As well as the statutory local advertisement and site notices, direct consultation was undertaken with interested parties. These included the universities and other educational establishments, students' union, landlords' organisations, estate and letting agents, residents groups and student accommodation providers. Consultation details were also published on the council's website.
- 4.3 Details of the consultation responses have been considered above and a full summary is included as Appendix 1 to this report.
- 4.4 Consultation by the council around this issue has also previously taken place through the Student Housing Strategy and the Student Housing Options Paper. The Student Housing Strategy drew on a survey of 350 households carried out by the University of Brighton in 2008-09. The survey found that most residents had perceived a change in their area due to increasing student populations and that these raised management challenges relating to issues such as refuse collection and noise nuisance. Residents also recognised the positive impact that students can have and supported the production of a student housing strategy. More recently the Planning Strategy team consulted on the Student Housing Options Paper, with one of the proposed options being the implementation of an article 4 direction.
- 4.5 The council's Private Sector Housing team has also consulted on proposals to extend HMO licensing in the same wards as the proposed article 4 direction. The extended licensing was approved and commenced in November 2012. Planning and Housing officers have been working closely on these linked proposals.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs of making the article 4 direction will be met from the existing Planning Strategy and Development Control revenue budgets. If the article 4 direction is confirmed, there would be no direct financial implication, as no fee would be payable for planning applications for a change of use arising as a result of the removal of permitted development rights.

Finance Officer Consulted: Karen Brookshaw

Date: 14/12/12

Legal Implications:

- 5.2 Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) allows local planning authorities to make Directions withdrawing permitted development rights where the authority considers it expedient that development should not be carried out unless express planning

permission has been obtained for the same. Government Guidance contained in Circular 9/95 (as amended) advises that article 4 directions should be made 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. Once made the Article 4 Direction will need to be advertised and, in considering whether to confirm the Direction, the planning authority must take into account any representations made during the consultation period.

- 5.3 No adverse human rights implications are considered to arise from the Report.

Lawyer Consulted: Alison Gatherer *Date:* 07/12/12

Equalities Implications:

- 5.4 The council would have enhanced controls to help deliver balanced communities. These measures may impact upon the availability of affordable housing for younger people. Any adverse impact upon this group would be balanced though by other provisions, such as increased purpose built student accommodation.

Sustainability Implications:

- 5.5 Making an article 4 direction would help the local planning authority to control the location of HMO uses in order to achieve sustainable, mixed and balanced communities and patterns of urban development.

Crime & Disorder Implications:

- 5.6 None identified.

Risk and Opportunity Management Implications:

- 5.7 None identified.

Public Health Implications:

- 5.8 This measure is aimed at maintaining mixed and balanced communities, reducing the likelihood of anti-social behaviour, noise and nuisance and negative impacts on the physical environment and streetscape, all of which may impact upon the mental and physical welfare of residents.

Corporate / Citywide Implications:

- 5.9 A policy on student housing / Houses in Multiple Occupation is proposed within the City Plan. This policy will set out the framework by which any planning applications arising from an article 4 direction would be assessed. Planning officers have worked closely with colleagues in housing in implementing the Student Housing Strategy.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The alternative option is not to confirm the article 4 direction. This would retain the current situation that a planning application is not required to change the use

of a dwelling house (C3) into a House in Multiple Occupation (C4). The local planning authority would have no control over resultant increases in concentration of HMOs.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 An article 4 direction would, if confirmed, provide a planning tool to help manage the concentration of HMO accommodation within certain parts of the city.

SUPPORTING DOCUMENTATION

Appendices:

1. Consultation responses
2. Details of noise complaints and refuse complaints rates by electoral ward
3. Article 4 direction including map
4. Summary of University of Brighton research into student housing (extract from appendices to June 2012 Housing Committee report on extended HMO licensing)

Documents in Members' Rooms

None

Background Documents

1. Student Housing Strategy 2009-2014 ([http://www.brighton-hove.gov.uk/downloads/bhcc/Brighton and Hove Student Housing Strategy Jan 2010.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/Brighton_and_Hove_Student_Housing_Strategy_Jan_2010.pdf))
2. Student Housing Options Paper – October 2011 ([http://www.brighton-hove.gov.uk/downloads/bhcc/planning_strategy/City Plan Student Housing Option Paper.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/planning_strategy/City_Plan_Student_Housing_Option_Paper.pdf))
3. Student Housing and Houses in Multiple Occupation Concentration Assessment – December 2011 ([http://www.brighton-hove.gov.uk/downloads/bhcc/ldf/Student Hsg Study-Draft for CMM with maps 12-01-12.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/ldf/Student_Hsg_Study-Draft_for_CMM_with_maps_12-01-12.pdf))
4. Cabinet report authorising making the article 4 direction ([http://present.brighton-hove.gov.uk/Published/C00000120/M00003230/\\$\\$ADocPackPublic.pdf](http://present.brighton-hove.gov.uk/Published/C00000120/M00003230/$$ADocPackPublic.pdf))
5. Housing Committee report on Proposed Additional Licensing Scheme for Houses in Multiple Occupation (HMO) & Amendment of Standards for Licensed HMOs ([http://www.brighton-hove.gov.uk/downloads/bhcc/housing/Housing Committee meeting held on 20 June 2012.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/housing/Housing_Committee_meeting_held_on_20_June_2012.pdf))
6. Appendix to Housing Committee report on Proposed Additional Licensing Scheme for Houses in Multiple Occupation (HMO) & Amendment of Standards for Licensed HMOs ([http://present.brighton-hove.gov.uk/Published/C00000709/M00004292/\\$\\$Supp12786dDocPackPublic.pdf](http://present.brighton-hove.gov.uk/Published/C00000709/M00004292/$$Supp12786dDocPackPublic.pdf))