

Birmingham City Council

Report to Cabinet

17th December 2019



Subject: Houses in Multiple Occupation Article 4 Direction
Report of: Interim Director, Inclusive Growth
Relevant Cabinet Members: Councillor Ian Ward, Leader of the Council
Councillor Sharon Thompson, Cabinet Member for Homes and Neighbourhoods
Councillor John Cotton, Cabinet Member for Social Inclusion, Community Safety and Equalities
Relevant O &S Chair(s): Councillor Penny Holbrook, Housing & Neighbourhoods
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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All Wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006884/2019		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 On 14 May 2019, Cabinet approved the making of a city wide direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the removal of permitted development rights for the change of use of dwelling houses (C3 Use Class) to small houses in multiple occupation (C4 Use Class).
- 1.2 Following a six week period to publicise this direction, approval is now sought to confirm that the city wide direction will be brought into force from Monday 8 June 2020, and that the existing Selly Oak, Harborne and Edgbaston Article 4 Direction will be cancelled on the same date. The key issues raised during the

publicity period are summarised and addressed in this report. A statement providing further detail on the responses received is appended to this report.

2 Recommendations

- 2.1 That Cabinet confirms that from Monday 8 June 2020, the City Wide Article 4 Direction 2019 will be applied to the whole of the City Council's administrative area to remove permitted development rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use).
- 2.2 That from the same date, Cabinet confirms that the existing Article 4 Direction covering Selly Oak, Harborne and Edgbaston will be cancelled.
- 2.3 That Cabinet consider the public comments received during the six week publicity period in making their decision on the above recommendations, and that a decision is also made to discharge petition number 2143 which was submitted in support of the City Wide Article 4 Direction 2019 and write to the Councillor and first-named petitioner.
- 2.4 That Cabinet authorises the Interim Director, Inclusive Growth to issue public notices of this decision and send a copy of the new and cancelled directions to the Secretary of State, in accordance with Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

3 Background

- 3.1 On 14 May 2019 Cabinet made a decision under the provisions of Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to make a direction to remove permitted development rights for the change of use of dwelling houses (C3 Use Class) to small houses in multiple occupation (C4 Use Class) that can accommodate up to 6 people.
- 3.2 To avoid duplication in coverage, Cabinet also approved the cancellation of the existing direction covering the Selly Oak, Harborne and Edgbaston Wards, which came in to force on 30 November 2014. The existing direction also removes permitted development rights for the change of use of C3 dwelling houses to C4 houses in multiple occupation (HMOs).
- 3.3 A six week period to publicise these directions took place between Thursday 6 June and Thursday 18 July 2019. A summary of the issues raised during this publicity period is provided below and within the Publicity Statement that is appended to this report (Appendix 1).
- 3.4 To avoid duplication and to ensure that there is no gap in the period of time from when the current direction is cancelled and the new direction is made, the new city wide direction and the cancellation of the existing Selly Oak, Harborne and Edgbaston direction will need come in to effect on the same day.
- 3.5 Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 requires directions to come in to force no less than 28

days and no more than 2 years after being first publicised. The previous Cabinet Report suggested that a 12 month period should apply before bringing the City Wide Article 4 Direction in to force. This is to allow sufficient time for landlords and developers of new HMOs to become aware of the removal of permitted development rights so that they do not suffer financial losses as a result of the direction. Without this 12 month period there would be a risk that developers of HMOs affected by the Article 4 Direction might seek to make compensation claims to the City Council for their financial loss. The Planning Act 2008 and the Town and Country Planning (Compensation)(England) Regulations 2015 ensure that compensation claims cannot be made against local authorities after 12 months' notice has been given that permitted development rights will be removed through an Article 4 Direction.

3.6 As notification was given of the decision to make the City Wide Article 4 Direction on Thursday 6 June 2019, this suggests that Monday 8 June 2020 (first working day after the 12 month period has elapsed) would be the most appropriate day to bring the new direction in to force and to cancel the existing direction covering Selly Oak, Harborne and Edgbaston.

3.7 Methods of Engagement Undertaken to Publicise the Direction

3.7.1 As a minimum, Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 requires local authorities to publicise an Article 4 Direction through local advertisement, displaying a minimum of two notices in different locations in the area affected, notifying owners and occupiers within the affected area (the local planning authority need not serve individual notice on owners or occupiers where individual service is impracticable) and sending notification to the Secretary of State.

3.7.2 Although it was not practical to individually serve notice on every property owner and occupier within the city, the City Council has provided all of the other required notices as set out in paragraph 3.7.1 above as well as providing the following additional notices:

- Displaying at least one public notice per ward, with a notice also displayed in each district or local centre. Wards that have more than one centre also had more than one public notice displayed within it;
- A leaflet, frequently asked questions, and response form were made available in City Council Customer Service Centres.
- A dedicated page on the City Council's website with all of the above documents available to download, and a link to an online response form via BeHeard was set up, accessible via the following shortcut: www.birmingham.gov.uk/hmoarticle4;
- Posts on the City Council's Facebook and Twitter accounts throughout the publicity period;

- All contacts on the Planning Policy consultation database were sent an email or letter to provide notification of the publicising period;
- Officers attended councillor ward meetings, neighbourhood forum meetings and a meeting of the regional branch of the National Landlords Association to present information about the direction and to answer questions raised by attendees.

3.8 Matters Raised During the Publicity Period

3.8.1 251 individual comments were received in response to the publicity period for the new City Wide Article 4 Direction 2019. 151 (60%) of these comments expressed support for the direction, 89 (36%) were opposed to it and 10 (4%) did not express a view. A petition (number 2143) was also received in support of the City Wide Article 4 Direction 2019 which was signed by 452 individuals. A recommendation of this report is for Cabinet to make a decision to discharge this petition. No comments were received regarding the cancellation of the Article 4 Direction at Selly Oak, Harborne and Edgbaston.

3.8.2 The main issues raised by those who support the city wide direction are summarised as follows:

- Low levels of maintenance of HMO properties, resulting in poor quality living environments for occupants and neighbours;
- High amounts of litter and rubbish generated due to people occupying HMO properties;
- Noise generated from HMO properties;
- Incidences of crime and anti-social behaviour associated with some occupants of HMOs;
- Problems caused by parking and subsequent impacts on highway safety;
- Transient population and less community cohesion.

3.8.3 The main issues raised by those who object to the city wide direction are summarised as follows:

- The effect it will have on limiting the availability of different types of housing in the city;
- Knock-on effects that it will have on the affordability of housing and potential increases in homelessness as a result;
- That it will discriminate against students and younger age groups, who typically occupy such properties;
- That the case put forward to justify the Article 4 Direction was based on anecdotal and not factual evidence;

- That other mechanisms should be used instead to control the negative impacts associated with HMOs (e.g. Anti-Social Behaviour Orders and enforcing HMO Management Regulations)

3.8.4 Comments both in support of and against the City Wide Article 4 Direction 2019 also raised concerns regarding the resources required from the City Council to effectively enforce the direction and the need to apply selective licensing of HMOs across the city.

3.8.5 Many comments also raised concerns about types of accommodation that fall outside the scope of the Article 4 Direction, particularly properties managed by Registered Providers which are not classed as HMOs under national legislation.

3.9 Responses to the Matters Raised

3.9.1 As the purpose of the City Wide Article 4 Direction 2019 is to remove permitted development rights for the conversion of C3 dwelling houses to C4 HMOs, it cannot in itself address some of the more specific matters raised such as those concerning crime, noise, anti-social behaviour, litter, parking and highways. Addressing such matters will require close working between council officers, elected members and external organisations, such as West Midlands Police.

3.9.2 Whilst the Article 4 Direction will require further work from landlords to prepare and submit planning applications for the creation of small HMOs from dwelling houses, it is not considered that this will reduce the availability and affordability of housing in the city, or increase homelessness. The direction will provide a means for the City Council to properly consider the implications of new HMOs that are created, avoid excessive concentrations and to continue to monitor their distribution and the effects they have on the wider area.

3.9.3 The Article 4 Direction will be supported by planning policies in the 'Birmingham Unitary Development Plan Saved Policies 2016' and the 'Planning Policy Document Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne wards' until such time as the Development Management in Birmingham DPD is adopted. The DPD proposes a new policy for HMOs which will replace the policies in the above documents. The publication version of the DPD is currently subject to a final round of public consultation before it will be submitted to the Secretary of State for examination.

3.9.4 In regard to the evidence which informed Cabinet's decision to apply a City Wide Article 4 Direction, this was set out in the technical paper which supported the 14 May 2019 Cabinet report. A comprehensive mapping exercise had been undertaken which showed the extent of HMO distribution across the city and where high concentrations of them exist. As referred to in the previous Cabinet report, this data will be

updated using HMOs declared by landlords prior to the new Article 4 Direction coming in to force, and new planning approvals for HMOs once the Article 4 Direction is in place.

3.9.5 In regard to selective licensing, the City Council is already assessing the potential for this within the city. This will be subject to a separate Cabinet report.

3.9.6 Officers are also liaising with the City Council's legal officers to identify how the comments concerning properties managed by Registered Providers can be addressed.

3.10 Next Steps

3.10.1 Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 sets out the process that local authorities are required to follow in making and confirming Article 4 Directions.

3.10.2 The City Council must issue public notices of the decision to confirm the new City Wide Article 4 Direction 2019 and cancel the existing Article 4 Direction covering Selly Oak, Harborne and Edgbaston. This is to raise awareness of Cabinet's decision to confirm the directions, but there is no requirement for the City Council to consider any further public comments made in response to these notices at this stage of the process. Further details are provided in paragraph 5.1 below.

3.10.3 The public notices and directions are appended to this report. In line with the above regulations, the notices will be issued to the press and displayed in at least two locations across the city.

4 Options Considered and Recommended Proposal

4.1 Option 1 – confirm the previous Cabinet decision from 14 May 2019 to apply a City Wide Article 4 Direction, which will remove permitted development rights for the change of use of C3 dwelling houses to C4 HMOs, and confirm the cancellation of the existing Article 4 Direction covering parts of Selly Oak, Harborne and Edgbaston. **This is the recommended option.**

4.2 Option 2 – do not confirm the decision to apply a City Wide Article 4 Direction and to cancel the existing Article 4 Direction. This option will mean that the status quo will continue where the change of use from C3 dwelling house to a C4 HMO will not require planning permission. This will not help to better manage the growth of HMOs in the city.

5 Consultation

5.1 Paragraph 1(11) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that, as soon as practicable after the decision to confirm the new direction and the cancellation

direction, the City Council must give notice of the confirmation, including the date that the direction will come in to force as well as sending notice to the Secretary of State. Notice must be provided in accordance with paragraph 3.7.1 above however there is no opportunity for members of the public to make representations and no requirement for the City Council to consider any representations before the directions take effect on Monday 8 June 2020.

- 5.2 Officers from the Neighbourhoods and Inclusive Growth directorates are continuing to work together to progress the implementation and subsequent monitoring of the Article 4 Direction. Officers will also continue to liaise and engage with elected ward members, residents and landlords groups, and other key external partners including Registered Providers and West Midlands Police.

6 Risk Management

- 6.1 Section 108 of the Town and Country Planning Act 1990 makes provision for compensation claims to be made against local authorities where applicants have experienced abortive costs, losses or damages for developments that would otherwise have been undertaken under permitted development rights. No compensation is payable however if a local authority gives notice of the withdrawal of the permitted development rights between 12 months and 24 months in advance. The Article 4 Direction is proposed to come in to force on Monday 8 June 2020 and as this is more than 12 months after the publicity period commenced on Thursday 6 June 2019 there should be no risk of compensation claims being made against the City Council under this legislation.
- 6.2 Under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the Secretary of State retains the right to cancel or modify any Article 4 Direction made by a local authority at any time before or after its confirmation. As this is set out in national legislation the management of this risk is outside of the City Council's control.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The City Wide Article 4 Direction will contribute towards the vision contained in the City Council's Plan 2018-2022 (2019 Update), in particular Outcome 4 'Birmingham is a great city to live in'. It will also have a role to play in the City Council's management and control of 'insecure housing and high levels of transience' which is identified as a concern within the Community Cohesion Strategy (2018).
- 7.1.2 Implementation and enforcement of the direction will be supported by policy DM11 in the Development Management in Birmingham document. As reported at Cabinet on 29 October 2019, the Development Management in Birmingham document will be subject to

further public consultation before being submitted for an independent examination in 2020. Birmingham Development Plan policies PG3 (Place making), TP27 (Sustainable neighbourhoods), TP30 (The type, size and density of new housing), TP31 (Affordable housing), TP32 (Housing regeneration) and TP35 (The existing housing stock) also offer support for the Article 4 Direction.

7.2 Legal Implications

- 7.2.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (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 the National Planning Policy Framework and the Planning Practice Guidance advises that Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area (e.g. those covering the entire area of a local planning authority).
- 7.2.2 Once a non-immediate Direction comes into force, a planning application will be required for any change of use from C3 (dwellinghouse) to C4 (small HMO) city wide. Permitted development rights will remain to change from C4 use to C3.
- 7.2.3 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) also allows local planning authorities to cancel existing Article 4 direction's so that permitted development rights which were previously removed are restored. Once the non-immediate Cancellation Direction comes into force, the new City Wide Article 4 Direction will also take effect which means that a planning application will be required for any change of use from C3 (dwellinghouse) to C4 (small HMO) city wide. Permitted development rights will remain to change from C4 use to C3.

7.3 Financial Implications

- 7.3.1 The actions to date in preparing the Direction have been undertaken using existing Inclusive Growth Directorate (Planning and Development) staff resources. Any additional work that is required to implement the Direction will be covered by existing staff resources within the Inclusive Growth directorate.

7.3.2 Costs in relation to undertaking the publicity period and any future consultation are being met from approved revenue budgets within the Inclusive Growth Directorate (Planning and Development).

7.3.3 Whilst there may be resource implications related to increased planning applications as a result of these changes these cannot be easily identified as there is currently no requirement to collect data in respect of change in use from dwellings to small HMOs. Any new applications resulting from these changes will generate increased planning applications income which will support additional resource requirements if needed.

7.4 Procurement Implications (if required)

7.4.1 No implications

7.5 Human Resources Implications (if required)

7.5.1 No implications

7.6 Public Sector Equality Duty

7.6.1 The main issue arising from the initial equality assessment is the potential impact on younger age groups and migrants, as it was suggested in many of the comments that opposed the direction that these social groups tend to be accommodated within HMOs. However officers are not aware of any specific evidence that has been identified or provided to support this assertion. The implementation of the Article 4 Direction and requirement for planning permission will encourage and maintain balanced and mixed communities and will therefore have a positive impact on the needs of all groups in society. The initial equalities impact assessment discloses that the report recommendations will not have a negative impact on protected groups and characteristics defined under the Equalities Act 2010, and therefore a full equalities impact assessment is not required.

8 Appendices

8.1 Statement of Publicity Responses for the City Wide Article 4 Direction

8.2 City Wide Article 4 Direction 2019

8.3 Notice for Proposed City Wide Article 4 Direction 2019

8.4 Selly Oak, Harborne and Edgbaston Article 4 Cancellation Direction 2019

8.5 Notice for Cancellation of Selly Oak, Harborne and Edgbaston Article 4 Direction 2019

8.6 Equality Impact Assessment

9 Background Documents

9.1 Cabinet Report 14th May 2019; Houses in Multiple Occupation Article 4 Direction

- 9.2 Cabinet Member Report 9th September 2014; Policy for managing houses in multiple occupation in the proposed Article 4 Direction area
- 9.3 Cabinet Report 15th September 2014; Confirmation of Article 4 direction relating to houses in multiple occupation in parts of Selly Oak, Harborne and Edgbaston
- 9.4 Article 4 Direction and supporting Planning Policy Document for Selly Oak, Harborne and Edgbaston (2014)