

Birmingham City Council

Report to Cabinet

14th May 2019



Subject: Houses in Multiple Occupation Article 4 Direction
Report of: 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, name(s) of ward(s): All wards		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006417/2019		
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 Cabinet approval is sought to authorise the making of a city-wide direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This will remove permitted development rights for the change of use of dwelling houses (C3 Use Class) to houses in multiple occupation (C4 Use Class) that can accommodate up to 6 people.
- 1.2 Cabinet approval is also sought to authorise the cancellation of the Selly Oak, Harborne and Edgbaston Article 4 Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 1995. This is to avoid duplication as the city-wide Article 4 Direction will cover these areas.

2 Recommendations

- 2.1 That Cabinet authorises the Director, Inclusive Growth to prepare a non-immediate Article 4 direction which will be applied to 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 Cabinet authorise the cancellation of the existing Article 4 direction covering Selly Oak, Harborne and Edgbaston. The cancellation will take effect on the same day that the new city-wide Article 4 direction comes in to force.
- 2.3 That notice of the new Article 4 direction, and cancellation of the existing Article 4 direction, are publicised for a period of at least six weeks, to allow members of the public to submit comments on the proposals.
- 2.4 That Cabinet receive a further report following the end of the representation period to consider any comments received during the representation period and to consider whether in light of these comments, the new direction should be confirmed and the cancellation of the existing direction should be confirmed.

3 Background

- 3.1 The Government re-categorised the change of use of C3 family housing to C4 small HMOs as permitted development in April 2010. This means that any such proposals do not require a planning application to be submitted to the City Council. Larger HMOs accommodating more than 6 people continue to require planning approval. The proposed city-wide Article 4 Direction will therefore only apply to the creation of smaller HMOs but it will allow a consistent approach to be applied for all HMO developments throughout the city.
- 3.2 HMOs are recognised as meeting important and specific housing needs within the city. Policies TP27 and TP30 of the adopted Birmingham Development Plan (BDP) seek to create mixed, balanced and sustainable neighbourhoods by requiring all new residential development to deliver a wide choice of housing sizes, types and tenures. High concentrations of HMOs can present challenges to the future sustainability of neighbourhoods and impact on their character and residential amenity. In connection with this, the Community Cohesion Strategy identifies that insecure housing and high levels of transience are an area of concern in the city.
- 3.3 Local councillors and residents in a number of wards across the city have expressed concern about the high concentration of HMOs in their area. Some of these comments have suggested that it may be appropriate to apply further Article 4 directions, to enable the creation of new HMOs to be managed in these areas.
- 3.4 In response to these concerns, the City Council has undertaken an exercise to identify and map the existing distribution of HMOs across the city. The distribution of these HMOs confirms that there are significant concentrations in particular areas of the city, particularly in Bournbrook / Selly Oak / Harborne /

Edgbaston, North Edgbaston / Ladywood, Handsworth / Lozells / Soho, Erdington / Gravelly Hill and Balsall Heath West / Moseley. It also confirms that while there are concentrations in such areas, there is also a reasonably even spread of HMOs across the rest of the city with the exception of the far north where the distribution is more sparse.

- 3.5 Taking in to account this pattern of distribution, officers have identified a number of different options for how Article 4 directions could be applied. These are explained in more detail below but in summary they include a single city-wide direction, multiple area-based directions which are focused on the locations where concentrations have been identified, or not applying any further Article 4 directions.
- 3.6 Having considered the advantages and disadvantages of each option, officers recommend to Cabinet that a city-wide Article 4 direction should be applied, as this will enable the most consistent and comprehensive approach to be applied to manage the distribution of HMOs across the city.
- 3.7 All of the options are capable of being supported by the new preferred policy approach to manage the distribution of HMOs, which was recently subject to public consultation within the Development Management in Birmingham document. The preferred policy would carry forward the criteria contained within the Planning Policy Document for the existing Article 4 direction covering parts of Selly Oak, Harborne and Edgbaston Wards, i.e. that an over-concentration of HMO properties would be considered in cases where they constitute more than 10% of residential properties within 100 metres of an application site. The proposed new policy also includes criteria to prevent the sandwiching of C3 housing by C4 uses and other non-family housing, and also to prevent a continuous frontage of three or more non-family houses.
- 3.8 The existing Selly Oak, Harborne and Edgbaston Article 4 direction was confirmed by Cabinet in September 2014. It will be necessary to cancel the existing direction as the removal of permitted development rights will be covered by the proposed new city-wide Article 4 direction. It is proposed that the cancellation will take place at the same time as the confirmation of the new city-wide Article 4 direction.
- 3.9 The process for making and cancelling Article 4 directions is set out within Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires local authorities to publicise the proposed direction via the following means;
 - Local advertisements of the direction;
 - Display of a minimum of two notices in different locations for a minimum period of six weeks;
 - Notifying owners and occupiers within the affected area (these regulations can be relaxed where this would be impractical, for example across a very large area such as the entire city)

- Sending the above documentation to the Secretary of State for review.
- 3.10 Although not a statutory obligation, it is considered good practice for notice of the direction to be published on the local authority website.
- 3.11 Following this representation period and after considering any comments received, a further report to Cabinet will be required to consider any comments and seek approval to confirm the direction if appropriate. It is recommended that if Cabinet confirm the direction, the direction should not come into force until a period of 12 months has passed. This is because there is a risk that in the event of an immediate Article 4 direction, compensation claims could be made against the City Council by landowners and developers for abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights. Allowing a 12 month grace period for enforcing the city-wide Article 4 direction would enable developers of new small HMOs to become aware of the removal of these rights before planning and commencing the conversion of such properties. The date that the Article 4 direction is confirmed must be within two years following the date on which the representation period began.
- 3.12 Once the Article 4 direction has been confirmed, the local planning authority must as soon as practicable:
- a) Give notice of the confirmation and date the Article 4 direction comes into force to affected owners and occupiers in the same way as required for the notification of the making of the direction (see paragraph 3.9 above);
 - b) Send a copy of the Article 4 direction to the Secretary of State.
- 3.13 The same process is to be followed in order to cancel the existing Article 4 direction covering the Selly Oak, Harborne and Edgbaston wards and it is proposed that this should take place alongside the process for the new Article 4 direction as set out above.
- 3.14 The evidence underpinning the proposed Article 4 direction can also be used to support the work of the Neighbourhood Directorate in exploring potential ways that selective and additional licencing can be introduced and monitored in the city, including addressing the impacts of increasing numbers of unregulated supported exempt providers.

4 Options considered and Recommended Proposal

Option 1: City-Wide Article 4 Direction

- 4.1 **This is the recommended option.** It will provide a blanket approach to be applied across the city, with an Article 4 direction put in place to remove permitted development rights for all future conversions of family housing to HMOs. The advantages of this option are that it would ensure consistency and more comprehensive management of HMO distribution in the future. The disadvantages include greater demands on the City Council's resources to process planning applications and enforce planning decisions.

Option 2: Area-Based Article 4 Directions

- 4.2 This option would involve applying a number of smaller Article 4 directions to cover locations where high numbers and concentrations of HMOs appears to be an issue and where the impacts of them are being felt. The advantages of this option are that it would be a more targeted approach that would be less resource intensive to administer, although the disadvantages would be that the designation process would be more resource intensive as it would require multiple periods of publicity and overall there would be an inconsistent approach to managing the creation of new small HMOs across the city.

Option 3: Do Nothing

- 4.3 This option would see a continuation of the existing approach, with the existing Article 4 direction covering Selly Oak, Harborne and Edgbaston remaining in place and no further Article 4 directions being applied. The advantages of this option would be that there would be no further resources required to apply further Article 4 directions but the disadvantages would include the lack of management and potentially increased proliferation of new HMOs across the city.

5 Consultation

- 5.1 The work has been led by officers in the Planning Policy and the Service Development teams within the Inclusive Growth Directorate. Officers from the HMO Licensing, Development Management and Council Tax teams have been heavily engaged, particularly in providing the data to identify the locations and extent of existing HMOs across the city. Meetings have been held with individual Elected Members who have raised concerns about the numbers and concentrations of HMOs within their Wards.
- 5.2 The views of all of the City Council's Elected Ward Members, residents, property owners and businesses within the city will be sought as part of the representation period for the direction. These views will then be considered as part of the process for confirming the Article 4 direction, which will be the subject of a further Cabinet Report.

6 Risk Management

- 6.1 With an immediate Article 4 direction there is potential for applicants to claim compensation from local planning authorities if they have had planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. Any such compensation claims can only be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights¹. To avoid the risk of such compensation claims being made against the City Council it is recommended that a non-immediate Article 4 direction is applied, with a lead-in

¹ Provision made under [Section 108 of the Town and Country Planning Act 1990](#)

time of 12 months to be provided before the direction would be brought in to force. The maximum period of time that an Article 4 direction can be applied after being confirmed is two years following the date on which the representation period began.

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, 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 preferred policy DM10 in the Development Management in Birmingham document which has recently been subject to public consultation. It will also support 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) of the adopted Birmingham Development Plan (2017).

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 directions 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 total estimated revenue cost of publicising both the City-wide Article 4 Direction and the Selly Oak, Harborne and Edgbaston Cancellation Direction, principally through notices in the local press, is £5,000, to be funded from existing service budgets.

7.3.2 The resource cost implications arising from processing increased numbers of planning applications and enforcing the city-wide Direction are anticipated to be met from within existing Inclusive Growth planning budgets or from additional planning fee income generated as a result. However, this will be closely monitored to ensure that sufficient resources are available.

7.3.3 As detailed within Section 6 'Risk Management', there is potential for applicants to claim compensation from local planning authorities if they have planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. Whilst a lead-in time of 12 months is proposed to be provided before the city-wide Article 4 direction is brought into force to limit such compensation claims, it is anticipated that any residual compensation claims arising after this time will be limited and met from within existing budgets or from additional planning income generated as a result of the Direction.

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 proposal supports good relations and community cohesion between different communities by encouraging greater mixed housing provision. The initial findings of the equality assessment will be updated following the review of representations received.

7.6.2 The results of the public consultation on the draft document will be used to update the Equalities Analysis and inform the final policy when it is brought forward for adoption by the City Council.

7.6.3 Maintaining an appropriate proportion of HMOs in an area will provide more mixed and diverse communities, increase custom for local businesses, provide a greater local workforce and provide a greater choice of accommodation for local residents. The impacts and benefits of HMOs will become more manageable through the application of one or more Article 4 directions and the policy approach proposed within preferred policy DM10 of the Development Management in Birmingham DPD.

8 Appendices

8.1 Draft City-Wide Article 4 Direction

8.2 Draft Notice for Proposed City-Wide Article 4 Direction

8.3 Draft Selly Oak, Harborne and Edgbaston Article 4 Cancellation Direction

8.4 Draft Notice for Cancellation of Selly Oak, Harborne and Edgbaston Article 4 Direction

8.5 Technical Paper – Options for Applying Article 4 Directions for the Creation of New Small HMOs

9 Background Documents

9.1 Cabinet Member Report 9th September 2014; Policy for managing houses in multiple occupation in the proposed Article 4 Direction area

9.2 Cabinet Report 15th September 2014; Confirmation of Article 4 direction relating to houses in multiple occupation in parts of Selly Oak, Harborne and Edgbaston

9.3 Article 4 Direction and supporting Planning Policy Document for Selly Oak, Harborne and Edgbaston (2014)