

Article 4 Direction to manage the growth of Houses in Multiple Occupation (HMOs) in Selly, Oak, Harborne and Edgbaston

FREQUENTLY ASKED QUESTIONS

Article 4 Direction and Planning Permission

1. What is an Article 4 Direction?

- Local planning authorities have the option to make an 'Article 4 Direction' to remove permitted development rights for certain types of development within their area, so that planning permission must be obtained. To do this they must demonstrate why this is necessary and follow a process set out by the Government, which includes a consultation period.

2. Why is the Council introducing an Article 4 Direction in Selly Oak?

- A number of residents and local organisations in and around Bournbrook, Selly Oak and parts of Edgbaston have raised concerns about the growth in the number of former family homes now being occupied by groups of single people (referred to as Houses in Multiple Occupation (HMOs)). If too many of these cluster together, that can put pressure on local services and the environment, thus affecting the lives of the permanent residents.
- Research by the Guild of Students shows that up to 85 % of the terraced properties in the Bournbrook area appear to be operating as HMOs. Over-concentrations of HMOs and halls of residence also place additional pressures and costs on local services. Ward members and the local community have continued to express concerns that the spread of HMOs is widening into a greater area with the potential to cause further imbalance.
- It is our objective to disperse the locations of HMOs and avoid over-concentrations occurring in future, thus being able to maintain balanced communities. The neighbourhoods included in the proposed Article 4 area have capacity to accommodate further HMOs in the right locations, but clustering will be avoided.

3. What is the background to the Council introducing planning control over Houses in Multiple Occupation?

- National planning guidance has encouraged the promotion of sustainable, mixed and balanced communities. The City Council endorses this and aims to ensure that existing communities throughout the city remain mixed and balanced. Many local authorities have, in recent years, argued that areas close to universities cannot easily be maintained as balanced communities given the growth and popularity of both halls of residence and shared housing. Prior to 2010 there were no planning measures to control the latter, provided dwellings were occupied by no more than 6 single people.

4. What is meant by “Sustainable Balanced Communities”

- A balanced community is defined as one that is not dominated by one particular household type, size or tenure. There is no possibility of a sustainable community without an appropriate balance between settled residents and a transient population. The key problem is demographic imbalance in neighbourhoods, which leads to rising problems and declining community, in short, to unsustainability. The imbalance arises from concentrations of HMOs, whose distinctive demographic (typically, young, high-density, transient, and unstructured) destabilises the local community.

5. What will the Article 4 Direction do?

- Once designated, within the area covered by the Article 4, planning permission is required to convert a family dwelling into a small HMO (i.e. the permitted development right has been removed).
- In this way the planning authority can make a judgement as to whether any further HMOs should be permitted and the basis for their decision will be the Government’s guidance as to whether such a use would harm local amenity, the proper planning of the area, and/or lead to creating an unbalanced mixed neighbourhood.

6. Where does the Article 4 Direction apply?

- The City Council is proposing to issue an Article 4 Direction in the Selly Oak area which will cover most of Selly Oak ward and parts of Edgbaston and Harborne wards.

7. Why is the Bournbrook area not included?

- In the Bournbrook area of Selly Oak, the existing concentration of shared, largely student HMOs is already so great that the community here can no longer be regarded as mixed, balanced and sustainable. The imperative for the City Council here is to prevent the replication of these same high levels in streets adjacent to Bournbrook. The City Council will work with its partner organisations to ensure the best possible management and maintenance of the Bournbrook area.

8. What is the fee for an application for change of use?

- With the changes to the planning fees in January 2018 a standard fee for change of use of a dwellinghouse will now apply. A fee for change of use to a sui generis HMO has always been required. (see The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017’.)

9. How long will it take for my planning application to be dealt with?

- As a guideline there is a national target for local authorities to decide 80% of planning applications within 8 weeks of the application being validated by the Council.

10. How has the Council been dealing with unlawful uses?

- Alleged breaches of planning control are usually brought to the Councils attention by members of the public. If, after an initial investigation it is established that a breach of planning control has occurred, our Planning Enforcement team will attempt to negotiate an informal resolution by inviting a retrospective planning application or requesting that the unauthorised use is ceased. If informal negotiations fail to reach a positive conclusion, the Council may decide to take formal action to cease the unauthorised use.

11. What policy approach will the Council take to determining planning applications for change of use from Class C3 to C4?

- In the Article 4 area, once the Direction is confirmed, conversion of family housing to HMOs will not normally be permitted where there is already an over concentration of HMOs (we are considering the threshold of 10% of properties within a 100m radius in multiple occupation) or where it would result in an over concentration if the application were to be approved.
- It does not mean that all applications for the conversion to HMOs within the area covered by the direction will be refused; rather, it means that all applications, irrespective of the number of people to be accommodated, would be considered on their merits and according to the threshold policy set out above.

12. Does the Article 4 Direction apply retrospectively?

- No, the Article 4 Direction does not apply retrospectively. Therefore if a property within the Article 4 Direction area was in a lawful planning use as a C4 small HMO, planning permission is not required to continue this use. You are requested however to advise the council of a property that has changed its use from a C3 (single family house) to a C4 (house occupied by no more than six unrelated people sharing) so we can register the correct use class for that property. You need to write or email the Planning and Regeneration service and provide details, if this is the case.

13. Does the Article 4 Direction concentrate on student properties?

- No. The Article 4 Direction doesn't take into account the status of the occupiers. It covers properties occupied by between 3-6 unrelated people irrespective of whether they are students or not.

14. What happens if I am in the process of converting my house to a HMO?

- Until the Article 4 Direction is confirmed by the Council, you do not need planning permission to change use from a C3 (single family house) to a C4 (house occupied by no more than six unrelated people sharing) although we would like you to inform us (see note 12).
- However if you are converting your property now to an HMO, planning permission is likely to be required for the building works and this will not alter with the introduction of the Article 4 Direction. You may also need Building Regulations approval and an HMO licence.

15. What types of houses fall within Class C4?

- A dwelling lived in by 3 or more but fewer than 7 people as a House in Multiple Occupation (HMO) using the definition of a HMO set out in s254 of the Housing Act 2004 i.e. people who do not form a single household but who share one or more basic amenities.

16. What is a 'single household' as defined in the Housing Act 2004?

- The definition of a single household in broad terms equates to people living together not being considered a single household unless they are members of the same family.

17. Do I need planning permission to change a Class C4 (HMO) into a C3 (single family dwelling) house?

- No.

18. I own a property which I let to more than 6 unrelated tenants – which use class does this fall within?

- A dwelling house lived in by more than six people is classed as 'Sui Generis' i.e. it is in a class of its own. Planning permission is required for a material change of use from any Use Class to a use which is Sui Generis.

19. I own a house which I live in with my family but we want to take in two lodgers. They would each have their own bedroom but would share the kitchen with us. Would I need planning permission to do this? I am not intending to do any building work.

- You would not need planning permission for a change of use as Schedule 14 of the Housing Act 2004 permits a freeholder/long leaseholder and their household to live with up to two other people who are not part of their household.

20. Is a block of flats a House in Multiple Occupation?

- A block of flats is not a HMO. However, an individual flat within a block of flats might be a HMO falling into the C4 or Sui Generis use class depending on the number of occupants.

21. What if an existing HMO is left vacant for a period?

- If a property that is in HMO use is left empty it would continue to be classed as a HMO unless when, it is re-occupied it is used by a family or less than 3 unrelated individuals or as a different use entirely such as an office.

22. What if an existing HMO is let to a family for a period?

- If an existing HMO is let to a family, the property would no longer be classed as a HMO. If the owner of the property wanted it to be used as a HMO again, planning permission would be required first.

23. What if a 3-bed HMO is reduced to 2-bed because a tenant leaves the property unexpectedly e.g. a student leaves a course early?

- Where periodic reductions in HMO numbers and the number of tenants within particular properties raise questions of their planning status, a degree of flexibility may be required. Each case will need to be considered on its merits having regard to the intent of the landlord and the principle of discontinuance. A temporary reduction in numbers of unrelated people would not necessarily constitute a material change of use provided that there was clearly an active intention to re-let the vacant rooms in the future, for example where advertising was taking place.

24. Will I require a licence?

- Any property that changes from a family home to a HMO will have to apply for planning permission. Mandatory HMO licensing is separate to the Article 4 Direction and applies to building of three or more storeys and occupied by five or more tenants in two or more households. This will not change when the Article 4 Direction comes into effect.

25. What will the Council do if the problems persist in other areas?

- The City Council will continue to monitor the conversion of family dwellings to shared student accommodation and will consider issuing further Article 4 Directions should the evidence indicate that this is necessary.

You can download this document from:

**www.birmingham.gov.uk/hmoarticle4
www.birminghambeheard.org.uk/development/article4direction**

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