

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET MEMBER FOR DEVELOPMENT, JOBS AND SKILLS JOINTLY WITH THE STRATEGIC DIRECTOR OF DEVELOPMENT AND CULTURE
Report of: Date of Decision:	Director of Planning and Regeneration 21st November 2013
SUBJECT:	PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION FOR HOUSES IN MULTIPLE OCCUPATION (HMO)
Key Decision: No	Relevant Forward Plan Ref: N/A
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s):	Councillor Tahir Ali
Relevant O&S Chairman:	Councillor Zafar A. Iqbal – Birmingham Economy and Jobs
Wards affected:	Selly Oak, Edgbaston, Harborne

1. Purpose of report:	
1.1	To seek authorisation for making an Article 4 Direction to remove permitted development rights under planning legislation for changes of use from dwellinghouses (Class C3) to Small Houses in Multiple Occupation (Class C4) in parts of Selly Oak, Edgbaston and Harborne wards. This would mean that a planning application would be required to carry out such changes of use. It would provide better management and control over the increasing concentration of Houses in Multiple Occupation (HMOs) in these established residential areas.
1.2	To seek approval to undertake a 6-week period of consultation concerning the Article 4 Direction.

2. Decision(s) recommended:	
	That the Cabinet Member for Development, Jobs and Skills jointly with the Strategic Director of Development and Culture :
2.1	Approves the placing of a non-immediate Article 4 Direction removing permitted development rights for change of use from C3 to C4 for an area within those parts of Selly Oak, Edgbaston and Harborne wards as shown on the attached plan (appendix 1) with a view to confirming the Direction following consultation and a 12 months notice period.
2.2	Notifies the Secretary of State in writing, of this decision.

Lead Contact Officer(s):	Judith Parry-Evans, Regeneration Manager
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3. Consultation

3.1 Internal

- 3.1.1 The relevant Ward Councillors have been consulted and support the report going forward for Executive decision. The Chairman of the Overview and Scrutiny Committee has also been consulted on this report.
- 3.1.2 Officers from the Development Directorate, including Planning Management, Housing Strategy and Transportation Strategy, have been involved in the preparation of this report with input from the Strategic Director for Local Services through the Corporate Selly Oak Project Officers Group.

3.2. External

- 3.2.1 The Council's intention to put in place an Article 4 Direction in Selly Oak has been presented to the University of Birmingham and as an item at the Selly Oak ward conference, organised by the District and coordinated by the Head of Service Integration.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The proposed Article 4 Direction will contribute towards the Birmingham Unitary Development Plan aim of ensuring "that there is a variety of housing to meet the full range of needs throughout the City"; Para 20.18 states that there is a need to deal with the high concentration of privately rented properties and HMOs in Selly Oak. SP3 of the draft Birmingham Development Plan for improving the quality of life of all Birmingham's residents through "Continuing to place an emphasis on quality in all developments/redevelopment proposals" and "creating sustainable neighbourhoods".

4.2 Financial Implications

- Once a non immediate Article 4 Direction is confirmed, resulting in the removal of permitted development rights, any planning applications to change from a C3 use to a C4 within the area must be determined free of charge. An estimate of the additional application work and its resource implications is negligible.
- 4.2.2 By giving 12 months advance notice of the direction taking effect, there will be no liability to pay compensation (Communities and Local Government Circular 08/2010 para 16 i).

4.3 Legal Implications

- 4.3.1 The Strategic Director of Development and Culture has delegated the relevant powers to the Director of Planning and Regeneration.
- 4.3.2 Once a non-immediate Direction comes into force, a planning application will be required for any change of use from C3 to C4 within the identified area. Permitted development rights will remain to change from C4 use to C3.
- 4.3.3 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.

4.4 Public Sector Equality Duty

- 4.4.1 The Council would be seeking to ensure that new HMOs are of a high standard and would not lead to any unacceptable impact on neighbour amenity or other interest of acknowledged importance in the interests for all members of the community. An initial Equality Assessment (EA) - attached as Appendix 4 identified no specific impacts for any equality group (race including different ethnic groups, gender, disability, religion, age and sexual orientation).

5 Background

- 5.1.1 Birmingham is justly proud of its universities, not only for the quality of their education and research, but also for their contributions to the local economy and for the reputation and prestige they bring to the city. They attract students from across the UK and the world and a variety of accommodation is available for them. This ranges from purpose built halls of residence, to rooms in small privately rented properties. Areas like Bournbrook near to the University of Birmingham are particularly popular.
- 5.1.2 National planning guidance has encouraged the promotion of sustainable, mixed and balanced communities. 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.
- 5.1.3 Following a national lobby, the Government in 2010, introduced measures and guidance to help enable better management of such areas. The main change that they introduced was to establish a new use class - class C4, in which properties occupied by between 3 – 6 single people were classed as small houses in multiple occupation. They also gave active encouragement to use Article 4 powers. Although under normal circumstances no planning permission is needed to change the use of a small dwelling house (C3) into a small HMO (C4), an Article 4 direction can remove that permitted development right, thus requiring landlords to seek planning consent for such a use. The Government, however, recommend Article 4 should only be used where the use of the permitted development right would “harm local amenity or the proper planning of the area, and where there is evidence to identify that potential harm”. To date 30 - 40 authorities have successfully introduced Article 4 Directions to help maintain balanced communities in their areas.
- 5.1.4 Ward members and the local community in and around Bournbrook, Selly Oak and parts of Edgbaston have expressed concerns at the loss of private residential properties for family occupation and have argued that their conversion to HMOs has harmed their local amenity and led to an imbalanced community. Research by the University of Birmingham 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. Evidence of this and the harm caused is shown in appendices 2 and 3. 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.
- 5.1.6 Mapping exercises to assess the level and impact of change have been undertaken across the area and these clearly show evidence of pressure (see appendices). The City Council continue to receive planning applications for either the change of use to further large HMOs, studio flats or house extensions, to increase occupancy levels of properties. The evidence suggests that unless checked, areas that are currently balanced may soon be subject to such clustering that harm to residential amenity will be caused. Based on this information it is therefore recommended that a non immediate Article 4 Direction is proposed for the area identified on the map (appendix 1).The

intention would not be to halt all future changes of use to HMOs, but to use the planning process as a means to better control the balance of such uses, avoid clustering and over concentration and allow the use of planning conditions to help protect residential amenity.

5.1.7 If this report is approved, the next steps would be: notifying the Secretary of State, consulting with stakeholders, consideration of any responses and a report to Cabinet to make the order. The Direction comes into force 12 months from the end of the statutory consultation period.

5.1.8 The Bournbrook area itself is excluded from the proposed area on the grounds that it is already clearly an imbalanced community and its inclusion would jeopardise the successful operation of the policy. The Council already co-ordinates a series of task and management measures to help maintain local amenity in Bournbrook and consideration is also being given to utilising additional licensing discretionary powers under the Housing Act 2004 to assist in this.

6. Evaluation of alternative option(s):

6.1 Doing nothing would mean the continued absence of any planning control and inability for the Council to contribute to the management and distribution of C4 HMOs.

6.2 A City-wide Article 4 Direction would ensure that the Council had control over the development of all small HMOs in the city falling under use class C4. Some wards, however, have few or no HMOs and it would therefore be difficult to justify by demonstrating evidence of loss of balanced communities or that it was likely to be the case in the future.

7. Reasons for Decision(s):

7.1 An Article 4 Direction would, if confirmed, provide a tool to help manage the concentration of HMO accommodation within Selly Oak and surrounding areas to help maintain balanced communities.

7.2 The requirement to apply for planning permission for a change of use from C3 to C4 will allow the application to be determined in accordance with planning policy.

Signatures

Date

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Councillor Tahir Ali

Cabinet Member for Development, Jobs and Skills

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Waheed Nazir

Director of Planning and Regeneration

List of Background Documents used to compile this Report:

1. Town and Country Planning (General Permitted Development) Order 1995 (as amended)
2. Birmingham Unitary Development Plan (saved 2008)

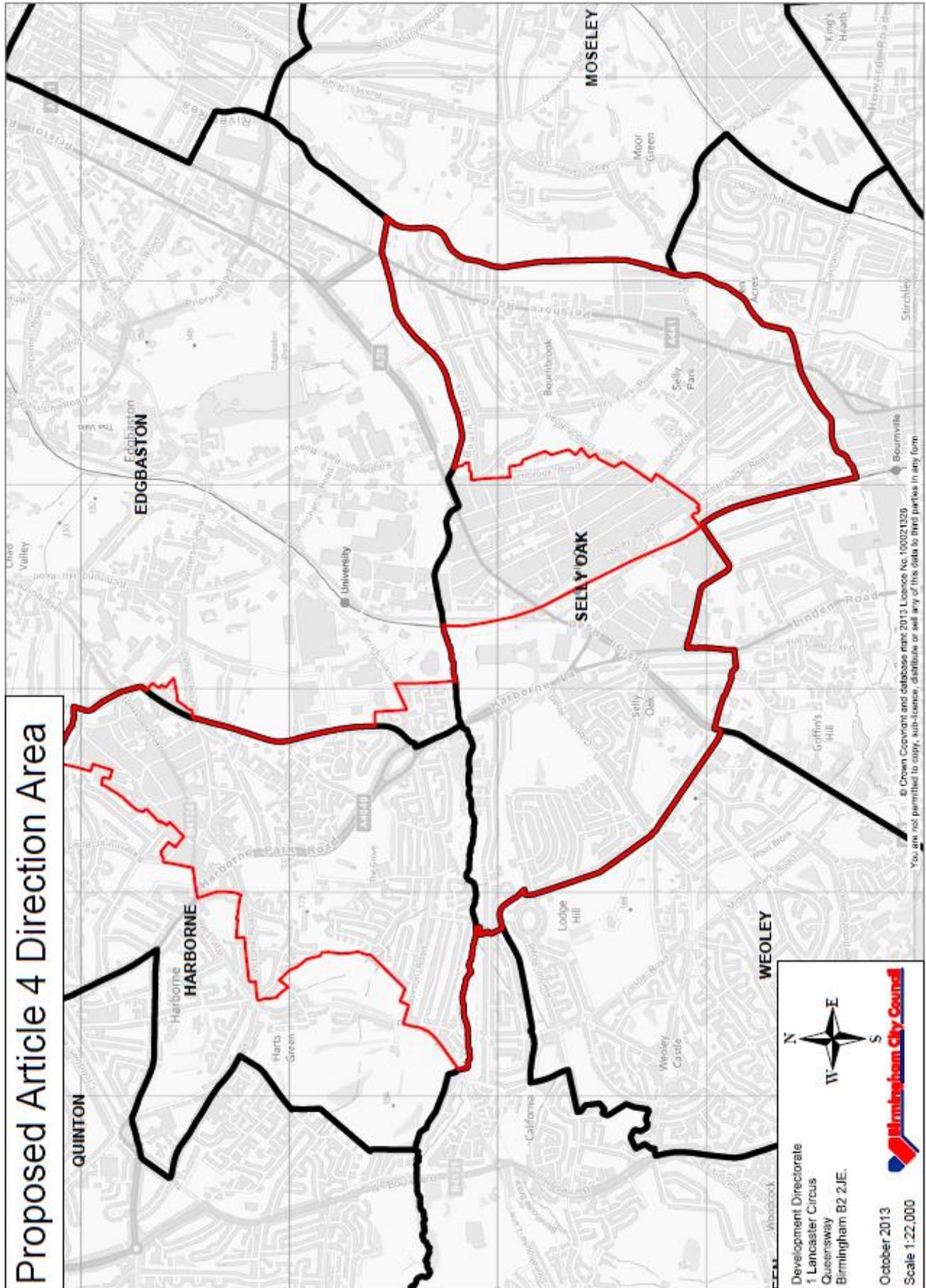
List of Appendices accompanying this Report (if any):

1. Map of the proposed Article 4 area
2. Concentration of HMOs in the city and the proposed Article 4 Direction area
3. Issues of imbalanced communities in the proposed Article 4 Direction area
4. Equalities Assessment

Report Version

Dated

APPENDIX 1 - Proposed Article 4 Direction area



APPENDIX 2 - Concentration of HMOs in the city and the proposed Article 4 Direction area

By Council Tax Exemptions

Analysis of properties by Council tax exemption shows that for Selly Oak ward, application for exemption by students (Class N) is at a significantly higher level than other city wards.

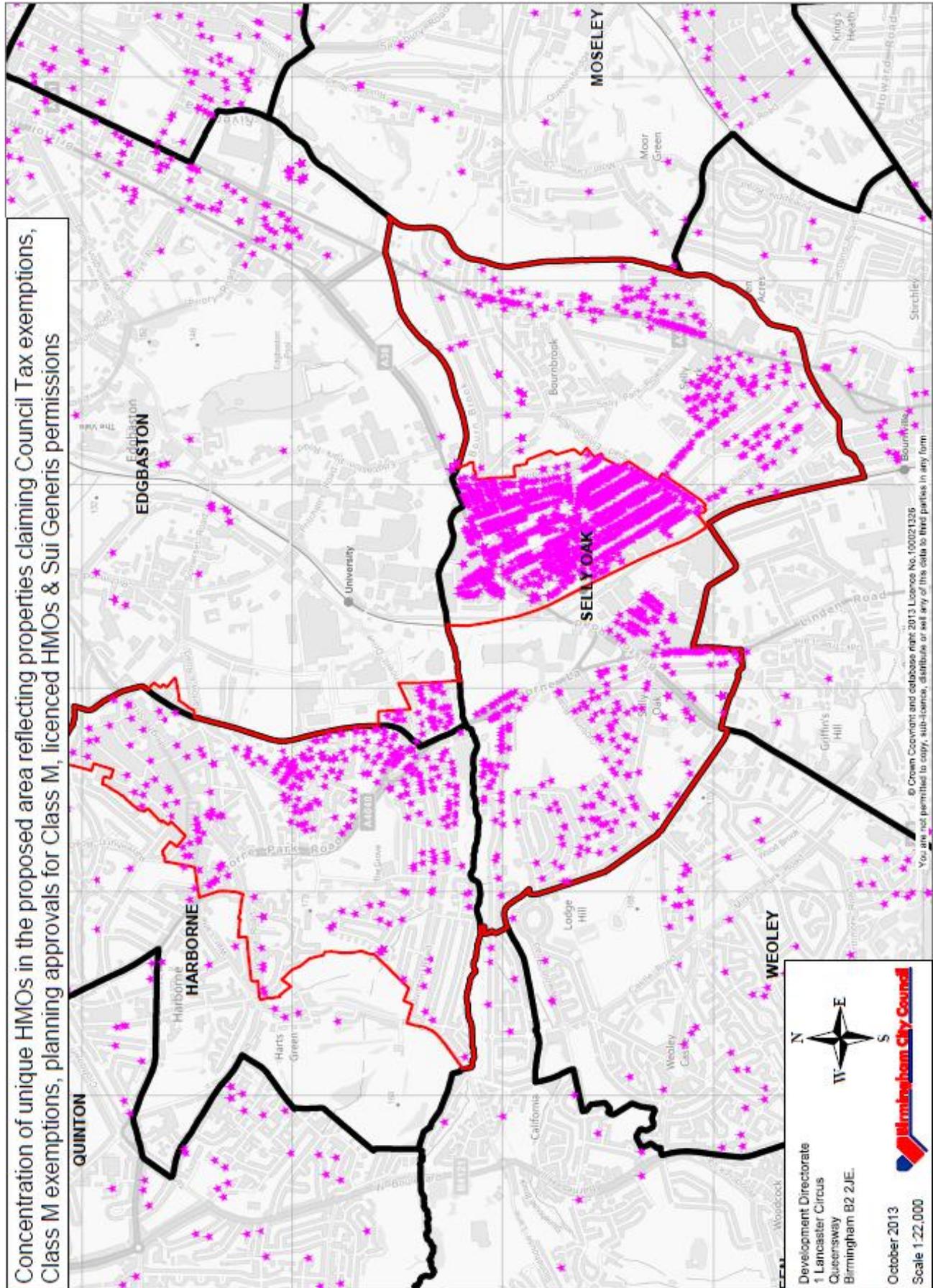
Ward Name	Properties claiming Council Tax Exemption (Class N Exemptions)	
	Number	% of all dwellings
Selly Oak	1,635	18.2
Ladywood	1,389	7.5
Aston	615	5.6
Edgbaston	484	4.0
Harborne	365	3.5
Nechells	413	2.2
Lozells and Handsworth	162	1.5
Soho	151	1.4
Perry Barr	131	1.3
Sparkbrook	113	1.1
Remaining wards less than 1%		
City totals	6,916	1.56

Note: Class N Exemption from Council Tax can be claimed by a full-time student

By HMO Licensing Data

The private rented sector HMOs in the city are required to have an HMO licence if the property is three storey and 5 residents and above. However, of the 1,791 HMO licences issued by BCC Private Rented Services up until 2012, 843 were in the Selly Oak ward. That's just under half of all licences and represents 9.8% of the total number of properties in the Selly Oak ward.

Concentration of unique HMOs in the proposed area reflecting properties claiming Council Tax exemptions, Class M exemptions, planning approvals for Class M, licenced HMOs & Sui Generis permissions



APPENDIX 3 – Issues of imbalance in the proposed Article 4 Direction area

The creation of the C4 use class reflected Government concern that HMOs can bring particular pressures on local residential areas. Evidence from various City Council services, the University Of Birmingham Guild Of Students, residents groups and the police supports this view. Elsewhere across the country similar pressures have led to between 30 – 40 Article 4 Directions being declared or pursued. The following are pressures and changes that impact on the balance and amenity of areas and have been identified in the Selly Oak area:

- **growth in the private rented sector at the expense of owner occupation**
 - In a 12 month period from 2011-12, there has been an 18.5% loss of the private dwelling stock. The private rented sector percentage of total properties is over 85%.
- **residential amenity / numbers of house extensions and intensification of occupancy levels;**
 - There have been over 300 dormers or extensions approved in the last 3 years.
- **pressures upon parking provision;**
 - There are no designated residents parking bays across Bournbrook which means that the on-street parking without time-limited restrictions is particularly problematic during term times.
- **pressure upon local services and facilities;**
 - At the end of the 2011/12 academic term, 87 tonnes of domestic waste was collected. Tonnage from previous years was: 2011 161 tonnes, 2010 171 tonnes, 2009 131 tonnes.
- **impacts on the physical environment and landscape;**
 - Between March and May 2012 over 500 properties out of 1,800 surveyed, displayed “To Let” and/or “For Sale” boards.
- **increased noise and nuisance; increased crime levels;**
 - Burglary rates have been falling in the past 5-10 years due to various projects and initiatives but Selly Oak still features every year in the region’s top five most “at risk” neighbourhoods.

All these pressures can be found in Bournbrook and could migrate into the surrounding areas.

APPENDIX 4

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) tackle prejudice, and(b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation