



Cabinet

13 May 2015

Subject Heading:

Adoption of Article 4 Direction on HMOs (Houses in Multiple Occupation)

Cabinet Member:

Councillor Osman Dervish, Cabinet Member for Regulatory Services and Community Safety

CMT Lead:

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Policy context:

Havering Local Development Framework

Financial summary:

Introduction of Article 4 Directions may result in an increase in workload, for which no income will be generated. The proposal for Non-Immediate Article 4s would minimise the risk of compensation claims against the Council.

Is this a Key Decision?

Yes - Significant effect on two or more Wards

When should this matter be reviewed?

One year

Reviewing OSC:

Towns and Communities OSC

The subject matter of this report deals with the following Council Objectives

- Havering will be clean and its environment will be cared for ✓
- People will be safe, in their homes and in the community ✓
- Residents will be proud to live in Havering ✓

SUMMARY

This report follows a 25 March Council Motion about the introduction of an Article 4 Direction on HMOs (Houses in Multiple Occupation). Introducing an Article 4 Direction would mean that those new HMOs falling within a category of change of

use which currently do not need planning permission would need approval through a planning application once an Article 4 is in effect. An exercise of collating and mapping data about known and suspected HMOs is underway. When complete this will create an evidence base from which to make informed decisions about the extent of HMOs and their impacts, both to progress detailed Article 4 work and also to support other initiatives for improving the monitoring, control and enforcement of HMOs through areas such as licensing.

This report explains that two Article 4s are anticipated, one geographically specific and the other to address possible displacement of HMOs into other parts of the Borough. The aim is to strike an appropriate balance recognising the continuing contribution that HMOs make as part of the borough's housing mix but sufficiently controlled so that their day to day operation has no materially harmful impact on the community including the living conditions of neighbouring occupiers.

Delegated powers exist for the Head of Regulatory Services to make Article 4 Directions. The Head of Service will consult with the Leader and Lead Member for Regulatory Services and Community Safety when deciding to which wards the two respective Article 4 Directions should apply on the basis of evidence produced from a data profiling exercise currently taking place.

RECOMMENDATIONS

That Cabinet Note that:

1. The Head of Regulatory Services will make a non-immediate Article 4 Direction to restrict permitted development rights to change the use, within geographically specific Havering wards, of any detached, semi-detached or terraced dwellings to HMOs under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 .That the Head of Regulatory services will decide the geographical basis for this Article 4 based on a data gathering exercise and in consultation with Leader of the Council and the Cabinet Member for Regulatory Services and Community Safety

That the Article 4 Direction would come into effect 12 months after the notice of direction.

That any representations made in regard to the Direction will be considered in deciding whether to proceed with Direction coming into effect.

2. The Head of Regulatory Services will make a non-immediate Article 4 Direction to restrict permitted development rights to change the use within Havering wards, except for the geographically specific wards identified in accordance with recommendation 1 above, of any semi-detached or terraced dwellings to HMOs under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order

2015. That the Head of Regulatory Services will decide the geographical basis for this Article 4 based on a data gathering exercise and in consultation with Leader of the Council and the Cabinet Member for Regulatory Services and Community Safety

That the Article 4 Direction would come into effect 12 months after notice of direction.

That any representations made in regard to the Direction will be considered in deciding whether to proceed with Direction coming into effect.

3. A further report will be brought to Cabinet setting out proposed measures for improving the monitoring, control licensing and enforcement of HMOs, including the resources necessary to support this.

REPORT DETAIL

1. **Background**

- 1.1 ***What is an HMO (House in Multiple Occupation)?***

An HMO is defined by Section 254 of the Housing Act 2004, except that it does not include self-contained flats. A building is defined as an HMO if:

- (a) It consists of one or more units of living accommodation not consisting of a self-contained flat or flats (i.e. the units of living accommodation do not have all basic amenities (toilet, personal washing facilities, cooking facilities) for exclusive use of the occupants);
- (b) The living accommodation is occupied by persons who do not form a single household;
- (c) The living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
- (d) Their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

The Town and Country Planning (Use Classes) Order 1987 identifies different categories of use (called Use Classes) within which it defines as *Class C4*, an HMO as above where there are not more than six residents. Where there are more than six residents, the use would not fall within any defined Use Class and so would need planning permission. Any HMO with in excess of 6 residents falls outside Use Class C4 and constitutes a sui generis use for which planning permission is required in any event if seeking to change use from a dwelling house under Class C3 of the Town and

Country (Use Classes) Order 1987 (as amended) to an HMO with 7 or more occupants.

An HMO is different in planning terms from a shared house because the latter involves formal interaction and sharing of facilities between the occupiers living as a single household even though they are not necessarily related to each other. A shared house falls within the same use class as a single family house (Class C3).

1.2 *What are the types and numbers of HMOs in Havering?*

An exercise is underway to collate information from across Council services to create a mapped and profiled evidence base of known and suspected HMOs. Members were invited to supply information based on local ward knowledge.

When complete this will create a platform from which to make informed decisions about the extent of HMOs and their impacts, both to progress detailed Article 4 work and also to support other initiatives for improving the monitoring, control and enforcement of HMOs through areas such as licensing.

1.3 *What controls exist presently over the formation and operation of HMOs?*

Planning

Under the Town and Country Planning (General Permitted Development) (England) Order 2015 - known as the GPDO -, the change of use from a dwelling house (Class C3) to an HMO (Class C4) is permitted development and does not need planning permission (GPDO Schedule 2, Part 3, Class L).

“Permitted development” means that planning law automatically allows the change to happen without the need for the person to obtain planning permission through a planning application. So the Local Authority has no planning decision making power to dictate whether that development should or shouldn’t happen. Permitted development underpins the practical operation of the planning system. It is the same provision that, for example, allows certain extensions to houses and changes between different types of commercial uses. Permitted development for HMOs was a change introduced in October 2010. Previously planning permission was required to change from Class C3 to C4.

Building Regulations

Building Regulations consent is also required for certain physical works involved in converting houses to HMOs for example extensions, or internal works like new sanitary ware installations such as bathrooms. Building Regulations consent can be obtained either from this Havering’s Building Control service or through private sector Approved Inspectors. The choice is

up to the person doing the works. Typically recent HMO conversions in Havering have involved Building Regulations submissions made through an Approved Inspector, not through the Council's Building Control service. The Approved Inspector would ensure that the works meet the Building Regulations. The Council cannot get involved in any aspect of the Building Regulations where an Approved Inspector has been appointed unless the works are specifically identified as dangerous. Matters such as drainage works would be overseen by the Approved Inspector with any connection to a common drain being the responsibility of Thames Water.

Licensing

Havering undertakes mandatory licensing of large HMOs which have three storeys and are occupied by 5 or more people.

1.4 *What issues do HMOs present?*

In 2008 the DCLG report "Evidence Gathering – Houses in Multiple Occupation and possible planning responses" identified a number of problems associated with HMOs including:

- 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

Although the report is a little dated, it is considered that these problems can still exist and in particular can be more severe if HMOs are formed in smaller dwellings as appears to be the recent trend in Havering.

2. Why is a different approach to HMOs required?

It is recognised that HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, this needs to be balanced with the potential harm identified above. The best way of balancing the need against possible harm would be through the Council's being able to determine a planning application. In this case, planning control can only be exercised through what is commonly titled an *Article 4 direction*. This is explained further below.

At Council on 25th March 2015, a motion was carried to consider an Article 4 Direction under the Town & Country Planning Act dealing with the change of use of a building from a dwelling house to a house of multiple occupation in respect of all or defined parts of the borough.

The motion was proposed due to concerns being expressed about recent HMOs being created in parts of the Borough. Recently there has been an increase in the number of reports received by Planning Enforcement regarding HMOs. In the main, upon investigation, most recent reports of HMO involve smaller semi-detached or terraced houses. A number of these appear to involve change of use of a dwelling into an HMO of the category that does not need planning permission. There is a concern that such properties, being in such close proximity to existing single household dwellings and given their likely intensity of occupation would cause significant noise and other disturbance to adjoin and nearby residents. There is further concern that, uncontrolled, there could be a concentration of HMOs in certain areas resulting in social issues.

3. **Proposed measures**

3.1 ***Planning***

A direction under Article 4 of the General Permitted Development Order enables the local planning authority to withdraw specified permitted development rights across a defined area. An Article 4 Direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail. Article 4 Directions do not have retrospective effect, so cannot prevent development which has been commenced, or which has already been carried out. Nor do they mean that proposals should automatically be refused. As with any planning applications an HMO proposal would need to be considered on its individual merits having regard to the development plan and any other material planning considerations.

There are two types of Article 4 Direction – Immediate and Non-Immediate Directions. An immediate direction comes into effect immediately on service, but must be confirmed by the local planning authority within 6 months of service. A non-immediate notice comes into effect between 28 days and 2 years of the direction being made, and should be advertised, inviting representations. Where directions are made with immediate effect or less than 12 months' notice, compensation will be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions. Where 12 months notice is given in advance of a direction taking effect there should be greatly reduced likelihood of paying compensation.

3.1.1 **National Planning Policy on HMOs and Article 4 Directions**

The National Policy Practice Framework (NPPF) states that the use of 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. National Planning Practice Guidance (NPPG) states that there should be a particularly strong justification for the

withdrawal of permitted development rights relating to the entire area of a local planning authority.

A local planning authority must, as soon as practicable after confirming an Article 4 Direction, inform the Secretary of State. The Secretary of State has the power to modify or cancel Article 4 Directions at any time before or after they are made.

The Communities and Local Government Committee conducted an inquiry into the private rented housing sector in 2013. Its report was published on 18 July 2013. In respect of HMOs, the committee acknowledged that concentrations of HMOs could lead to concerns about their social and environmental impact. The Committee considered that local authorities should be able to respond to these concerns by using Article 4 Directions to remove permitted development rights and so limit the concentration of HMOs.

The Committee recommended that where there are community concerns about high concentrations of houses in multiple occupation, councils should have the ability to control the spread of HMOs. Such issues should be a matter for local determination.

The Committee considered it appropriate that councils continue to have the option to use Article 4 Directions to remove permitted development rights allowing change of use to HMO. The Government's response to the select committee, in October 2013, was:

"The Government agrees with the Committee's recommendation. Councils will continue to have the option to use Article 4 directions where there are concerns from the local community about high concentrations of houses of multiple occupation. An Article 4 Direction is made by a Local Planning Authority, and confirmed by the Government. It serves to restrict permitted development rights in certain areas."

3.1.2 London Plan and Havering Planning Policy on HMOs

Policy 3.8 of the London Plan 2015 (Housing Choice) seeks to ensure that new developments offer a range of housing choices. In the justification for the Policy, the Plan states that HMOs are a strategically important part of London's housing offer meeting distinct needs and reducing pressure on other elements of the housing stock, though its quality can give rise to concern. The Plan states that in considering proposals which might constrain this provision, including Article 4 Directions affecting changes between Use Classes C3 and C4, boroughs should take into account the strategic as well as local importance of houses in multiple occupation.

Policy DC4 of the Havering Local Development Framework (2008) states that planning permission would be granted for residential conversions provided the following criteria are satisfied:

- Residents/visitors are able to park without detriment to highway safety taking into account the availability of on and off street parking with regard

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to the standards set out in DC33 (for HMOs, one space per 2 habitable rooms)

- There is no conflict with surrounding uses
- The proposal should not result in an unacceptable loss of privacy enjoyed by the occupants of adjoining properties by reason of overlooking and, should by its layout, provide a suitable degree of privacy and private sitting out/amenity space
- The living rooms of new units do not abut the bedrooms of adjoining dwellings.

Specifically in relation to HMOs, Policy DC4 states that planning permission would be granted provided that:

- The original property is detached and well separated from neighbouring dwellings
- The nature of the new use does not have an adverse impact on the surrounding area and will not be likely to give rise to significantly greater levels of noise and disturbance to occupiers of nearby residential properties than would an ordinary single family dwelling

The justification for the policy states that it is considered necessary to ensure that buildings are suitable for the intensity of use proposed and that adequate parking and amenity space are provided.

3.1.3 Justification for Article 4

Since 2010, there has been no need to apply for planning permission to change from a dwelling to a HMO for up to six residents. Before 2010, planning permission would have been required and Local Development Framework policy would have enabled the impact, particularly on neighbours, to be assessed in deciding whether to grant planning permission or not.

It is recognised that HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, this needs to be balanced with the potential harm identified above. The best way of balancing the need against possible harm would be through determining a planning application. In this case, control can only be exercised through an Article 4 Direction.

Consideration has been given as to the scope of any Article 4 Direction, in terms of scope and areas covered. Current LDF policy is generally supportive of HMOs in detached dwellings, where direct impacts on neighbours are generally better contained. There is now evidence, based on initial data, of a trend towards conversion of smaller dwellings to form HMOs including semi-detached and terraced houses within certain parts of the Borough. The detailed patterns and impacts are being mapped so the evidence base is not yet complete. It is recommended that for those wards where a significant, geographically specific issue can be evidenced either by reason of the formation of HMOs in unsuitable properties or where the

accumulation of HMOs is causing or risks causing significant impacts within the community, an Article 4 Direction be introduced to require planning permission for the formation of an HMO from any existing residential property type encompassing detached, semi-detached and terrace houses anywhere within those wards.

However the recent reports received by Planning Enforcement regarding HMOs cover several different areas in the Borough where there are also smaller terraced and semi-detached properties. There is wide distribution of these types of property across the Borough, except for the more rural areas. A further consideration would be that to restrict any particular area or areas of the Borough geographically may result in issues arising in areas not covered by that Article 4 Direction. It is therefore recommended that a second Article 4 Direction be introduced to cover the remaining extent of the Borough beyond the wards of primary geographic attention.

The second Article 4 Direction should introduce the requirement for planning permission to be obtained for the formation of an HMO from any existing semi-detached or terraced house anywhere within those other parts of the Borough.

Consideration has been given as to whether these should be immediate or non-immediate Article 4 Directions. Immediate directions would have the effect that all proposed HMOs would require planning permission from the date the Direction comes into effect. However, under Section 108 of the Town and Country Planning Act 1990 and the Town and Country Planning (Compensation) (England) Regulations 2015 an immediate direction would leave the Council open to compensation claims payable in relation to planning applications which are submitted within 12 months the date the Direction takes effect and which are subsequently refused or where permission is granted subject to conditions. Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property to a HMO where this is due to the Article 4 Direction. This could leave the Council with a very significant liability. For this reason officers recommend that non-immediate directions are the most appropriate course of action, accepting that this may lead to a number of HMOs being formed in the 12 month period.

3.1.4 Procedure for Article 4 Direction

The procedure for making a non-immediate direction is as follows:

- Delegated powers exist for Head of Regulatory Services to make Article 4 Directions.
- Prepare Direction Notice
- Give 12 months' notice of direction and send copy to Secretary of State
- Seek representations

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- Obtain Cabinet approval to confirm Article 4 Direction, outlining any representations received
- After 12 months, advertise Direction coming into effect and notify Secretary of State

Any representations made in regard to these Directions would be taken into account in deciding whether to proceed with the Directions coming into effect.

It is anticipated that the data exercise should complete within the next four weeks sufficient for informed decisions to be made about the best geographic extent of the two respective Article 4 Directions. In deciding the extent of the Directions the data outcomes will be taken into account and the Head of Regulatory Services will consult with the Leader and the Cabinet Member for Regulatory Services and Community Safety.

3.2 *Licensing*

3.2.1 Towns and Communities Overview and Scrutiny Committee

The Towns & Communities Overview and Scrutiny Sub Committee have established a Private Rented Sector Landlords Licensing Topic Group which has considered options for introducing methods to monitor and control the activity of private rented sector landlords in the borough

The Topic Group aims were to understand any Landlord Licensing process in Havering, identify what scheme(s) were running in other boroughs and consider which of these could potentially be implemented in Havering.

The T&C O&S Sub Committee considered the work of the Topic group at its meeting on 22 April and Cabinet will be updated on the outcomes.

REASONS AND OPTIONS

Reasons for the decision:

The decision responds to a Council's Motion and seeks to introduce measures to bring the formation of HMOs within the Council's planning controls so that the suitability of premises and their impacts may be fully considered in the interest of amenity.

Other options considered:

Failure to make an Article 4 Direction(s) would leave the Council unable to exercise planning control over the impact of HMOs. Given the trend identified of converting smaller dwellings and the likely problems identified, this option is not recommended in the interests of the amenity and wellbeing of the Borough.

IMPLICATIONS AND RISKS

Financial implications and risks:

Resource implications

The data exercise and building of an evidence base is yet to complete; therefore, it is too soon to specify the type and extent of resources necessary to support measures for improved monitoring, control and enforcement of HMOs. Introduction of Article 4 Directions may result in increased planning applications for HMOs for which no fee is required (because these changes would otherwise be achievable under permitted development); therefore, a modest increase in the workload of the service is likely. The proposal for Non-Immediate Article 4s would minimise the risk of compensation claims against the Council. The extent of any further measures required, beyond the Article 4 Directions, plus the full resource considerations will be reported to a future Cabinet.

Legal implications and risks:

The proposal for Non-Immediate Article 4 Directions would significantly reduce the risk of compensation claims against the Council.

Human Resources implications and risks:

Resource implications including any additional staffing needs will depend on the outcome of continuing data analysis and mapping and will be subject of a further report to Cabinet.

Equalities implications and risks:

The introduction of Article 4 Directions will enable the Council's to consider planning applications for HMOs. This will allow the Council to have a greater understanding and more strategic control over HMOs and could lead to a number of benefits for local communities, such as a reduction in anti-social behaviour and crime.

While there may be some negative implications for younger adults, as they are more likely to live in HMOs, better information relating to the sector will lead to improvements in planning for future housing provision in the borough.

BACKGROUND PAPERS