



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Consideration of potential Houses in Multiple Occupation Planning Restrictions (Article 4) direction	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team 15 th of February 2022	X
	Leader and Deputy Leaders 21 st of February 2022	X
	LAG 2 nd of March 2022 LOAG/IAAG 3 rd of March 2022	
	Council 21st of March 2022	



<p>Is this an Executive Decision:</p>	<p>No</p>	<p>Is this a Key Decision:</p>	<p>Yes</p>
<p>Is this in the Forward Plan:</p>	<p>Yes</p>	<p>Is the Report Confidential: If so, please state relevant paragraph from Schedule 12A LGA 1972:</p>	<p>No</p>

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **Chris Ebberley/John Teasdale**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Council

Date: 21st March 2022

REPORT TITLE: Consideration of potential Houses in Multiple Occupation Planning Restrictions (Article 4) direction

PORTFOLIO: Planning

HEAD OF SERVICE: Sal Khan

CONTACT OFFICER: Phil Stephenson Ext. No. 1613

WARD(S) AFFECTED: All / Burton on Trent Wards

1. Purpose of the Report and Executive Summary

1.1. Cabinet on the 13th of September 2021 resolved:

12.1. That authority is given to the Planning Manager to make a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") as amended (Article 4(1), GPDO 2015) so that development consisting of a change of use of a building within Class C4 (small houses of multiple occupation also known as HMOs) from a use falling within Class C3, in Burton on Trent, should not be carried out unless permission is granted for it on application under Part 3 of the Town and Country Planning Act 1990.

12.2. That the Planning Manager is authorised to carry out the statutory procedure for making the Article 4(1) direction including the necessary consultation procedure, informing Cabinet of the consultation responses.

12.3. That the notice, when making the Direction, shall specify that the Direction is not intended to come into force until 12 months after it has been confirmed by the Council.

12.4. That a Supplementary Planning Document which sets out how Planning will approach applications from Class C3 to C4 is developed,

consulted on in accordance with the Statement of Community Involvement, and adopted before the Article 4 direction comes into force.

- 1.2 From the 8th December 2021 to the 17th January 2022 statutory consultation on the proposed Article 4 direction was undertaken, and the responses to this are included, along with officer responses, in Appendix 1. The Secretary of State was also informed as required. The consultation documents are included in Appendix 2.
- 1.3 The purpose of this report is to inform Council of the responses received during the consultation and, taking these into account, to recommend that the Article 4 direction should be confirmed by Council.
- 1.4 The majority of responses to the consultation agreed that the change should take place, citing advantages in gaining planning control over issues such as parking and avoiding overconcentration of HMOs in the same streets to retain a mix of houses suitable for family accommodation. Some respondents argued that removing the ability to convert under permitted development rights could limit the availability of housing for single individuals.
- 1.5 In drafting the forthcoming Supplementary Planning Document (SPD 2022 on Houses of Multiple Occupation) the Council will need to be mindful to avoid impacts such as limiting the availability of housing for single people and others who would like to access HMO accommodation, by ensuring that the SPD is clear on when such conversions are likely to be acceptable.
- 1.6 If the article 4 direction is confirmed by Council, this will mean that the direction will come into force in April 2023, removing Permitted Development rights from class C3 housing (ordinary domestic housing) to C4 (small houses of multiple occupation) within the settlement boundary of Burton on Trent.

2. Background

- 2.1 In 2010 national planning regulations changed to allow the conversion of use class C3 housing (ordinary domestic housing) to C4 (small houses of multiple occupation). **This change currently doesn't require planning permission.** Use class C4 properties are defined in planning terms as 'shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.' **In the years since the change, especially in Burton on Trent, there has been a significant growth in the number of small houses of multiple occupation.**
- 2.2 Environmental Health have received over 200 complaints in the last five years relating to unlicensed HMOs; concerning poor or unsafe living conditions, noise, overcrowding or antisocial behaviour in Burton on Trent.
- 2.3 Cabinet has previously directed officers to investigate the feasibility of an article 4 direction restricting these permitted development rights in part or all of the Borough (10th May 2021). In September 2021 Cabinet authorised

statutory consultation on this measure, limited to Burton on Trent, where there is most evidence of the need for intervention.

- 2.4 **If the Council issues an article 4 direction, the conversion of domestic dwellings into small HMOs in Burton on Trent would require planning permission.** The creation of larger HMOs anywhere in the Borough already requires planning permission.
- 2.5 The advantage of gaining planning control over this form of development would be that it could help to improve the quality of new small HMOs, and also mean that conversions which are likely to cause harm to the character of neighbourhoods, or amount to overdevelopment of this housing type in a particular location, could be refused.
- 2.6 This report sets out the evidence for the issues this PD right has led to, the work that has been done to investigate how such a restriction could be achieved, the likely benefits and drawbacks, and the processes which would need to be undertaken.
- 2.7 It concludes that while there is likely to be a small advantage in planning terms in gaining further control of this form of development, **only limited evidence of planning harm from existing small HMO developments** in the Borough has been found and **the concentration of such developments is not particularly high when compared with similar urban development in other authorities.**
- 2.8 **There is however evidence of localised complaints in Burton.** Some of these issues could potentially be mitigated at the design stage through requiring planning permission to be sought. This would allow refusal of small HMOs where their impact would be unacceptable and allow the imposition of conditions limiting noise, requiring adequate parking and bin storage and seeking to ensure future HMOs conversions are suitable for that purpose, for example.
- 2.9 **This doesn't mean that new small HMOs won't be permitted** – it will simply mean that the Borough will have planning control over these changes of use. Only development which is not in accordance with the Development Plan, once appropriate conditions are considered, will be refused.
- 2.10 It may be that the quality of small HMOs will improve if planning permission is required, since developers will then know they are 'on the radar' of the planning authority, and will seek to comply with other regulations for this form of development.

3 **Contribution to Corporate Priorities**

3.1 Environment, and Health and Wellbeing priorities are engaged by this report.

4 **Main Body of Report**

Definitions of a dwelling house a house of multiple occupation

4.1 Existing national permitted development rights allow for the change of use of dwellinghouses (use class C3) to small HMOs (use class C4) (HMO occupied by 3-6 residents)

4.2 These are defined in national planning policy as:

C3 Dwellinghouses - This class is formed of three parts

C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child

C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems

C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger

C4 Houses in multiple occupation - Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

Why East Staffordshire would need to introduce an article 4 direction to restrict this

4.3 **In 2010 the government gave national permitted development rights to move between C3 and C4**, which means that planning departments do not necessarily know which houses are in which class. The proposed article 4 direction would therefore **only affect new applicants** who seek to move from class C3 (residential dwelling) to C4 (small house of multiple occupation).

- 4.4 The government report 'Evidence Gathering – Housing in Multiple Occupation and Possible Planning Responses' (CLG 2008) looks at the problems caused by high concentrations of houses in multiple occupation and considers the current and potential mechanisms to address these problems.
- 4.5 Within this report, the following issues are associated with high concentrations of HMOs: • 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 the private rented sector at the expense 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.
- 4.6 Although in this report no definition is given of what concentration of HMOs would trigger these issues, local authorities across the country through their own research have concluded that a common density at which action should be taken is around 10% in any 100m radius, and have put in place article 4s which restrict further HMOs after this level.
- 4.7 Planning officers from East Staffordshire looked at the concentration of HMOs in wards across the Borough. The highest concentrations were in wards in Burton on Trent, but these never approached more than 2% in any ward. The collection of this data also required a lot of dedicated resources and was quite prone to error due to the limitations of the dataset. It is therefore possible that 2% is a slight over-estimate.
- 4.8 Therefore, an alternative criteria-based approach to controlling harms from small HMOs is suggested, which fits better with the existing adopted Local Plan:

Proposed approach if an article 4 direction is to be progressed

- 4.9 A criteria based approach could be workable, under which development management officers could determine applications for changes of use between C3 and C4 on the following basis: (which is derived from different policies in the adopted Local Plan):

"In Burton on Trent to support mixed and balanced communities, planning permission will be granted for proposals for use class C4 small Houses in Multiple Occupation or sui-generis large Houses in Multiple Occupation, provided that:

a. The granting of planning permission will not result in the creation of more than two adjacent properties in HMO use;

AND

b. The proposal does not have an adverse impact on the amenity of nearby properties by ensuring: adequate provision for off street parking; highway safety and ease of access for emergency vehicles; regard is given to Secured by Design guidance, particularly relating to occupier security;

sufficient provision for waste and recycling; the proposal is in keeping with the character of the area; and, the proposal is not likely to lead to an increase in antisocial behaviour”

- 4.10 This would allow flexibility depending on the circumstances of the proposed change, and take into account the harms which the government have identified in a significant concentration of HMOs.

Legal Process

- 4.11 **An article 4 direction** is a direction under article 4 of the General Permitted Development Order which enables the local planning authority to withdraw specified permitted development rights across a defined area.

- 4.12 Paragraphs 53 and 54 of the 2021 National Planning Policy Framework state:

The use of Article 4 directions to remove national permitted development rights should:

...be limited to situations where an article 4 direction is necessary to protect local amenity or the well-being of the area ... in all cases, be based on robust evidence, and apply to the smallest geographical area possible. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

- 4.13 Restricting the article 4 to Burton on Trent would be appropriate, since it is the part of the Borough with the highest proportion of small HMOs and the wards most likely to be affected by planning harms arising from them. Applying the article 4 to the settlement boundary of Burton is a proportionate geography because it would ensure that inappropriate development doesn't simply jump ward boundaries if only some wards were covered.
- 4.14 Despite an article 4 direction being in place, applicants will still need to pay planning application fees.
- 4.15 **An article 4 direction does not mean that planning permission will be refused**, it just means that application can be considered in more detail. Specific planning policy advice related to how to mitigate the harms identified in order to achieve planning permission will need to be prepared and used in such applications.
- 4.16 Because the Local Plan has already been adopted in East Staffordshire (the East Staffordshire Local Plan 2012 to 2031 adopted in 2015) new planning policy can't now be introduced until the plan is re-examined. Therefore alongside an article 4 direction, Supplementary Planning Guidance SPD will need to be consulted on during mid-2022, which draws on and explains existing policy in regard to these applications.

4.17 **The process for making an article 4 direction (*and degree of progress*) is as follows:**

A Council can, in exceptional circumstances, make an Article 4 direction that will restrict permitted development rights within a limited area (Article 4(1), *GPDO 2015*). The direction can cover a single building, street or a neighbourhood. Permitted development rights should only be withdrawn if there is reliable evidence to suggest that such rights could damage “an interest of acknowledged importance”. *Please see Appendix 2 of this report for information on how this process was conducted.*

When drafting an Article 4 direction, the Council needs to consider carefully:

Which classes or parts of classes of permitted development authorised under *Schedule 2* to the *GPDO 2015* to be restricted.

The proposed wording of the restriction.

Owners and occupiers of the affected property and land may not have any knowledge of planning and it is essential that the restrictions are set out clearly and precisely to enable them to understand what they cannot do.

Properties or land subject to the restriction

The properties and land should be clearly identified on an Ordnance Survey plan and individually listed in a schedule. *Done December '21/ Jan '22*

Following the making of an Article 4 direction, the Council must comply with the requirements under *Schedule 3(1) GPDO 2015* :

Publish a notice of the direction in a local newspaper (*paragraph 1(1)(a), Schedule 3, GPDO 2015*). – *Done December '21/ Jan '22*

Display at least two site notices for a period of not less than six weeks (*paragraph 1(1)(b), Schedule 3, GPDO 2015*). – *Done December '21/ Jan '22*

Notify the owners and occupiers of the affected properties and land, unless this is impractical (*paragraph 1(1)(c), Schedule 3, GPDO 2015*). Individual notification may be considered impractical due to the number of owners or occupiers or because of problems associated with identifying one or more of them (*paragraph 1(2), Schedule 3, GPDO 2015*). However, where the owner is a statutory undertaker or the Crown, they must be individually notified (*paragraph 1(3), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22**

Although not a statutory obligation, it is considered good practice to publish a notice of the Article 4 direction on the Council's website. *Done December '21/ Jan '22*

The notice of the Article 4 direction must:

Include a description of the development, the area to which the direction relates and a statement of the effect of the direction (*paragraph 1(4)(a), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22*

Specify that the direction is made under Article 4 of the GPDO 2015 (*paragraph 1(4)(b), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22*

Name the place where the direction and a map of the affected area can be inspected (*paragraph 1(4)(c), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22 Done December '21/ Jan '22*

Specify a minimum period of 21 days for representations to be made to the Council (*paragraph 1(4)(d), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22 Done December '21/ Jan '22*

The date the representation period begins must be stated in the notice. Any representation received by the Council during this period must be taken into account by the Council in deciding whether to confirm the Article 4 direction. *Done December '21/ Jan '22*

Specify the date that the Article 4 direction comes into force (*paragraph 1(4)(e), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22*

This date must be between 28 days and two years following the date on which the representation period began. An Article 4 direction must be confirmed by the Council before it can come into force. ***This report seeks that confirmation***

On the date the notice is first published or displayed, the Council must send a copy of the Article 4 direction and the notice of the direction to the Secretary of State (*paragraph 1(6), Schedule 3, GPDO 2015*). *Done December '21/ Jan '22*

An Article 4 direction cannot come into force on the date specified in the notice unless it has been confirmed by the Council (*paragraph 1(7), Schedule 3, GPDO 2015*). ***This report seeks that confirmation***

When deciding whether to confirm the Article 4 Direction, the Council must take into account any representations it receives during the representation period (*paragraph 1(9), Schedule 3, GPDO 2015*). ***This report includes those representations and Council should take them into account when deciding if the Article 4 direction should be confirmed.***

The approval of the Secretary of State is not required. However, although he / she is not required to confirm the direction, he / she has the power to modify or cancel the direction at any point. This could happen, for example, if he / she takes the view that it is unreasonable or not based on sufficient evidence.

The Article 4 direction cannot be confirmed until 28 days following the latest

date the notice was served or published, or such longer period as specified by the Secretary of State (*paragraph 1(10), Schedule 3, GPDO 2015*). *This 28 day period has been complied with and the Article 4 Direction can now be confirmed.*


When the Article 4 direction has been confirmed, the Council must:

Give notice of the confirmation and the 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

Send a copy of the Article 4 direction to the Secretary of State (*Paragraph 1(11), Schedule 3, GPDO 2015.*)

- 4.18 Local authorities normally give a ‘notice period’ of 12 months once the Article 4 direction has been made, and announced, but has not yet come into force. **This is because otherwise compensation may be claimed against the Authority for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.**
- 4.19 During the 12 month notice period it is possible that those who wish to convert a C3 dwelling into a HMO may do so before the requirement to apply for planning permission comes into force.
- 4.20 Alongside it, an SPD on small homes in multiple occupation will need to be drawn up and consulted on. The process for this is set out in the 2020 East Staffordshire Statement of Community Involvement:

Table 2: Key Stages in the Preparation of a Supplementary Planning Document (SPD)

Evidence gathering	Early engagement with interested parties through scheduled meetings and information gathering.
 Draft SPD Regulations 12 and 13	Public consultation on a draft version of the SPD. Minimum 4-week period . Representations received during the consultation are considered and used to inform the final version of the plan.
Adoption Regulation 14	A final version of the SPD is prepared and adopted by the Council.

5 **Financial Considerations**

This section has been approved by the following member of the Financial Management Unit: Anya Murray

- 5.1 There are limited direct implications from this report. There may however be indirect implications resulting from potential cost pressures on public services associated with increasing numbers of HMO's.

6 **Risk Assessment and Management**

- 6.1 The main risks to this Report and the Council achieving its objectives are as follows:

6.2 **Positive** (Opportunities/Benefits):

- The introduction of an article 4 direction may reduce planning harms from uncontrolled further change from C3 to C4 in Burton on Trent
- The requirement to engage with the planning system may help to ensure that small HMOs are recognised by the local authority and maintain other regulatory requirements.

6.3 **Negative** (Threats):

- The Article 4 may increase the number of planning applications, but the number of small HMOs may continue to rise if they can meet planning requirements
- There may be a rush of conversions to HMO use when the article 4 is announced before the end of 1 year notice period.
- The lack of evidence of significant and ongoing planning harm from small HMOs in Burton on Trent may lead to the Article 4 being rejected by the Secretary of State.
- There is a potential risk of a judicial review of the decision to confirm the proposed Article 4 Direction if the tests in the NPPF are not met and there is inadequate evidence for its introduction

- 6.4 These risks do not need to be entered in the Risk Register.

7 Legal Considerations

*This section has been approved by the following member of the Legal Team:
Sherrie Grant*

7.1 The Council must take into consideration the recently updated Government guidance on implementing Article 4 Directions contained in the National Planning Policy Framework, which is a relevant consideration for these purposes.

7.2 Paragraph 53 of the National Planning Policy Framework sets out as follows in relation to the Article 4 proposed in this report.

“be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities) in all cases, be based on robust evidence and apply to the smallest geographical area possible.”

7.3 The Council should consider the following questions when deciding whether to confirm the proposed Article 4 Direction:

Is the proposed Article 4 Direction necessary to protect the local amenity and well-being of Burton Upon Trent?

Is the proposed Article 4 Direction based on robust evidence?

Does the proposed Article 4 Direction apply to the smallest possible geographical area?

7.4 The Council should have regard to these tests because a lack of evidence and a disregard of planning policy could be grounds for a judicial review on the decision to confirm the proposed Article 4.

8 Equalities and Health

8.1 **Equality impacts:** The subject of this report is a council function which is under consideration. An equality and health impact assessment is not required as the proposal will not necessarily limit the number of new HMOs, merely require that planning permission is required to develop them. Some representations argue that some smaller HMOs in some areas are occupied by younger people or migrants, but the planning authority doesn't hold any data on the occupancy of these private dwellings. There is also no evidence that these groups would be disadvantaged by the requirement for future small HMO conversions to require planning permission. **The measure would not affect existing HMO dwellings which have already benefited from conversion under current permitted development rights.**

8.2 **Health impacts:** A Health Impact Assessment does not need to be completed. This is because if the measure has any health effects, they are likely to be to improve the standards and living conditions within small HMOs. This indirect benefit could be the result of HMO landlords engaging with regulatory requirements more carefully once the Council is aware of the use. However the degree to which this will be the case is unknown.

9 **Human Rights**

9.1 There are no Human Rights issues arising from this Report.

10 **Sustainability** (including climate change and change adaptation measures)

10.1 Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures)? Yes

10.2 Please detail any positive/negative aspects:

Positive (Opportunities/Benefits)

- Gaining more planning control of small HMOs will mean that the environmental objectives of the Local Plan and National Policy can be better monitored and development shaped to meet these requirements.

Negative (threats)

- A rush of poor-quality HMO conversions could occur during the 1-year notice period, once the measure to require planning permission is announced.

11 **Recommendation(s)**

11.1 That Council confirms the article 4 direction as consulted on during December 2021 – January 2022, having taken into account the responses made during that consultation.

11.2 That the Planning Manager is authorised to carry out the statutory procedure for confirming the direction

11.3 That the Direction is not intended to come into force until 12 months after it has been confirmed by the Council.

11.4 That a Supplementary Planning Document which sets out how Planning will approach applications from Class C3 to C4 is developed, consulted on in accordance with the Statement of Community Involvement, and adopted before the Article 4 direction comes into force

12 **Background Papers**

- 12.1 Report of the 10th of May 2021 to Cabinet 'Feasibility assessment for the use of an article 4 Directive to control the growth in Houses of Multiple Occupation (HMO). <https://tinyurl.com/9tzmh7s>
- 12.2 House of Commons Briefing Paper Houses in multiple occupation & planning restrictions, available at: [Houses in multiple occupation & planning restrictions \(parliament.uk\)](https://www.parliament.uk/resources/briefing-papers/houses-in-multiple-occupation-and-planning-restrictions)
- 12.3 Cabinet Report of the 13th of September 2021 'Item 10 - Consideration of Potential Houses in Multiple Occupation Planning Restrictions (Article 4) Direction' <https://tinyurl.com/27bnp5x>

13 **Appendices**

Appendix 1 Responses to Consultation on the proposed Burton on Trent Article 4 HMO restrictions December 2021/ January 2022, with officer comments

Appendix 2 Consultation Document Library (any documents related to the consultation not included here can be viewed on request)