

MAYOR AND CABINET			
Report Title	Article 4 Direction for Lewisham's southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling house (Use Class C3) to small HMO's (Use Class C4)		
Key Decision	Yes		Item No.
Ward	Bellingham, Downham, Whitefoot and Grove Park		
Contributors	Executive Director for Customer Services		
Class	Part 1	Date: 16 January 2019	

1. Purpose

- 1.1. The purpose of this report is to provide a summary of the Lewisham HMO Review and Evidence Paper Update (November 2018), to recommend the making of an Article 4 Direction covering Lewisham's southern wards of Bellingham, Downham, Whitefoot and Grove Park to better manage the impact of small HMO's within the boroughs southern wards and to set out the process, legal and financial implications of doing so.

2. Summary

- 2.1 A small scale House in Multiple Occupation (HMO) is a property where between 3 and 6 unrelated individuals live and share basic amenities such as bathroom or kitchen. These small scale HMO falls within Use Class C4 of the Use Classes Order 1987 (as amended).
- 2.2 Current legislation allows a family dwelling (Use Class C3) to change to a small HMO (Use Class C4) without planning permission, by utilising 'permitted development' rights.
- 2.3 It is accepted that HMO's can be an important source of low cost, private sector housing for those on low incomes, students and those seeking temporary accommodation as part of a balanced mix of housing.
- 2.4 However, negative impacts can arise from a high concentration of HMOs within particular areas. Guidance produced by DCLG, Housing in Multiple Occupation and possible planning response (2008) noted the following negative impacts that can be experienced in such circumstances:
- 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 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.
- 2.5 In response to increasing concern from Council Enforcement Officers, Councillors and local residents regarding the creation and concentration of poor quality HMO particularly within Lewisham's southern wards the Council carried out a review of the quality and spatial distribution of small scale Houses in Multiple Occupation (HMO) in the borough. (See Appendix 1)
- 2.6 In establishing an evidence base, the accurate identification of the quantity and spatial distribution of HMOs in the borough is problematic due to several factors. These include:
- The expansion of permitted development rights to allow conversion of a C3 dwelling house to Class C4
 - Unauthorised development
 - Underreporting of conversion
 - The different definitions of HMOs used by different Council/government departments
- 2.7 However, an indicative picture of the range of HMOs was built up by assessing data from the following sources:
- Planning application completions data
 - 2001 and 2011 census (Office for National Statistics)
 - Licensed HMO Council Tax records
 - Planning Enforcement cases
 - Benefits Data
- 2.8 The review concluded that whilst the data sets above did not suggest a significant increase of HMOs within the borough it did demonstrate a change in the spatial distribution of HMOs with a significant increase and clustering of HMOs within the boroughs southern wards.
- 2.9 This was further verified by street surveys carried out by the council from October 2017 focused on three Lewisham wards Bellingham, Downham and Whitefoot. Further details can be found in Appendix 1.
- 2.10 These southern wards which have traditionally had the lowest proportion of HMO's in the borough are unsuitable locations for high concentrations of HMO's due to their:
- High levels of deprivation
 - Poor public transport accessibility
 - Suburban character with a high concentration of family homes
- 2.11 Within these wards numerous properties within recent years have been extended and then converted to a small HMO using permitted development rights.

2.12 An Article 4 Direction made under the Town and Country Planning (General Permitted Development) Order 2015 (referred to hereafter as GDPO) removes these permitted development rights that would otherwise have been available to the property. It is important to note that an Article 4 Direction merely removes the permitted development right, it does not remove the right of a person to make an application for planning permission to carry out the development. Any such application would be determined in accordance with the development plan unless material considerations indicate otherwise.

2.13 The National Planning Policy Framework (NPPF) 2018 paragraph 53 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 well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities).

2.14 This report recommends the use of an Article 4 Direction for Lewisham's Southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling house (Use Class C3) to small HMO's (Use Class C4). The making of an Article 4 Direction is considered to be in compliance with the NPPF and would enable the Council to better manage the impact of small HMO's within the boroughs southern wards. See Appendix 2 and 3

3. Recommendations

The Mayor and Cabinet is recommended to;

3.1 Approve the making of a non-immediate Article 4 Direction for Lewisham's southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling house (Use Class C3) to small HMO's (Use Class C4) such direction to come into force 12 months after notice of the direction is published.

3.2 Authorise officers to carry out consultation in accordance with Section 6 of this report.

3.3 Note the financial and legal implications of making the Article 4 Direction set out in Section 7 and 8.

4. Policy Context

Article 4 Directions

4.1 The government's on-line national planning practice guidance (NPPG entitled

“When is permission required?”) sets out guidance on the use of Article 4 Directions.

- 4.2 An Article 4 Direction can be used to remove specific permitted development rights in all or parts of the local authority’s area. It does not restrict development altogether, but instead ensure that development requires planning permission. A planning application for the proposal would need to be submitted that would then be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.3 Article 4 Directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.
- 4.4 The NPPG states that an Article 4 Direction 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. It also states that in deciding whether an Article 4 Direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (NPPG paragraph 038).
- 4.5 Article 4 Directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 045).
- 4.6 The process for making a non-immediate Article 4 Direction is as follows:
 - **Stage 1** (the current stage) - the council decides whether to go ahead and make a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after representations can first be made, which is usually after the last publication/service date.
 - **Stage 2** – Publication / Consultation stage.
 - **Stage 3** – On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction.
 - **Stage 4** – Confirmation Stage - the council cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the council must give notice of the confirmation in the same way as it gave notice of the initial direction, and must specify the date that the direction comes into force. A copy of the direction as confirmed must also be sent to the Secretary of State.

Lewisham’s Sustainable Community Strategy (2008 – 2020)

- 4.7 The proposed Article 4 Direction will play a role in the implementation of the Sustainable Community Strategy (2008-2020) vision and a number of the six strategic priorities, which are:

- **Ambitious and achieving** – where people are inspired and supported to fulfil their potential
- **Safer** – where people feel safe and live free from crime, antisocial behaviour and abuse
- **Empowered and responsible** – where people are actively involved in their local area and contribute to supportive communities
- **Clean, green and liveable** – where people live in high quality housing and can care for their environment
- **Healthy, active and enjoyable** – where people can actively participate in maintaining and improving their health and well-being
- **Dynamic and prosperous** – where people are part of vibrant communities and town centres, well connected to London and beyond.

Lewisham Council's Corporate Priorities

- 4.8 The proposed Article 4 Direction will help the Council to better manage the impact of small HMO's within the boroughs southern wards and in turn help deliver on the following corporate priorities:
- **clean, green and liveable** – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment
 - **safety, security and a visible presence** – partnership working with the police and others and using the Council's powers to combat anti-social behaviour
 - **decent homes for all** – investment in social and affordable housing to achieve the decent homes standard, tackle homelessness and supply key worker housing

5. Planning applications

- 5.1 If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine any proposal in accordance with the development plan unless material considerations indicate otherwise. In Lewisham's case, the development plan includes the London Plan, the Core Strategy, the Development Management Plan, the Site Allocations Plan and the Lewisham town centre Local Plan.

- 5.2 The relevant policy relating to Homes in Multiple Occupation (HMOs) in the Lewisham Development Management Plan is **DM Policy 6 Houses in multiple occupation (HMO)**

1. The Council will only consider the provision of new Houses in Multiple Occupation where they:

- a. are located in an area with a public transport accessibility level (PTAL) of 3 or higher*
- b. do not give rise to any significant amenity impact(s) on the surrounding neighbourhood*
- c. do not result in the loss of existing larger housing suitable for*

- family occupation, and*
- d. satisfy the housing space standards outlined in DM Policy 32.*
- 2. The Council will resist the loss of good quality Houses in Multiple Occupation.*
- 3. The self containment of Houses in Multiple Occupation, considered to provide a satisfactory standard of accommodation for those who need shorter term relatively low cost accommodation will not be permitted, unless the existing floorspace is satisfactorily re-provided to an equivalent or better standard.*

6. Consultation

- 6.1 Consultation on the Article 4 Direction will comply with the provisions set out in the GPDO. Notice of the Direction will be made by:
- Local advertisement in the press.
 - Site notices placed in visible locations for a period of at least 6 weeks.
 - The requirement for written notifications can be waived as it is considered impracticable due to the number of owner or occupiers within the area.
 - The document will be made available on the Council's website as well as in a number of convenient locations including Planning reception and local libraries.
- 6.2 Following consultation and within 6 months, a report recommending whether the Direction should be confirmed will be reported back to Mayor and Cabinet.

7. Financial Implications

- 7.1 The cost of making an Article 4 Direction can be met through existing budgets. A maximum expenditure of £1,000 is estimated.
- 7.2 There may be financial implications arising from the need to deal with future planning applications for change of use from C3-C4 which would have otherwise be covered under permitted development. This will be managed within the existing planning budget. As of 17th January 2018 Lewisham now charges fees for applications covered by Article 4 Directions.
- 7.3 Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation can be sought where (i) the LPA makes an Article 4 Direction, (ii) an application is made for planning permission to carry out development that would formerly have been permitted by the GPDO and (iii) the LPA refuses that application or grants permission subject to conditions differing from those in the GPDO.
- 7.4 However, where 12 months' notice is given in advance of a direction taking effect (non-immediate Article 4 Direction) there will be no liability to pay compensation (provided that the development authorised by the new changes had not started before the notice was published).

8. Legal Implications

8.1 The council's Constitution (November 2018) provides that the terms of reference for the Housing Select Committee is to:

- (a) review and scrutinise decisions made or other action taken in connection with the discharge of the Council of its housing function
- (b) make reports or recommendations to the authority and/or Mayor and Cabinet with respect to the discharge of these functions
- (c) make recommendations to the authority and/or Mayor and Cabinet proposals for housing policy
- (d) to review initiatives put in place by the Council with a view to improving, increasing and enhancing housing in the borough, making recommendations and/or report thereon to the Council and/or Mayor and Cabinet
- (e) To establish links with housing providers in the borough which are concerned with the provision of social housing

Therefore, Mayor and Cabinet is fulfilling its terms of reference by reporting and making its recommendations to Mayor and Cabinet on this Article 4 which seeks to improve, increase and enhance housing in the borough.

8.2 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various convention rights may be engaged in the process of making, considering and confirming Article 4 directions such as Article 1 of the First Protocol of the Convention.

8.3 The European Court has recognised that 'regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole'. Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a convention right must be necessary and proportionate.

8.4. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of all of the owners have been considered under the Human Rights Act 1998, in particular those contained within Article 1 of the First Protocol the Convention which relates to the protection of property, Article 6 (Right to a fair trial) and Article 8 (Right to private and family life).

9. Crime and Disorder Implications

9.1 There are no direct implications relating to crime and disorder issues.

10. Equalities Implications

- 10.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which covers the following nine protected characteristics: age; disability; gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.2 The Council must in the exercise of its functions, have regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 10.3 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 10.4 HMOs are most frequently occupied by low income, vulnerable, transient people. The proposal for an Article 4 Direction, if confirmed, will assist in delivering better quality housing and regulate their concentration improving the living conditions for occupants and those nearby.

11. Environmental Implications

- 11.1 A Strategic Environmental Assessment (SEA) Screening Assessment has been carried out and concludes that the proposed use of the Article 4 Direction is unlikely to have any significant effects. See Appendix 4

12. Conclusion

- 12.1 This report recommends the use of an Article 4 Direction for Lewisham's Southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling house (Use Class C3) to small HMO's (Use Class C4). The making of an Article 4 Direction is considered to be in compliance with the NPPF and would enable the Council to better manage the impact of small HMO's within the boroughs southern wards.

The Mayor and Cabinet is recommended to;

- 12.2 Approve the making of a non-immediate Article 4 Direction for Lewisham's southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling

house (Use Class C3) to small HMO's (Use Class C4) such direction to come into force 12 months after notice of the direction is published.

- 12.3 Authorise officers to carry out consultation in accordance with Section 6 of this report.
- 12.4 Note the financial and legal implications of making the Article 4 Direction set out in Section 7 and 8.

Contact details for the report author

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Supporting documents

Appendix 1: HMO Review and evidence paper November 2018

Appendix 2: Article 4 Direction

Appendix 3: Plan indicating extent of Article 4 Direction

Appendix 4: Draft SEA screening report