

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 HRE, Director of Planning & Strategic Planning Manager	
Class	Part 1	Date: 18 September 2019

1. Purpose

- 1.1. The purpose of this report is to inform Mayor and Cabinet about the outcome of the representation period to the notice of making a non-immediate Article 4 Direction to withdraw permitted development rights for the change of use from C3 dwelling houses to class C4 houses in multiple occupation (HMO's) in Lewisham southern wards of Bellingham, Downham, Grove Park and Whitefoot.
- 1.2. This report fulfils stage 4 in the process of implementing a non-immediate Article 4 Direction and seeks approval for the Head of Legal to authorise confirmation of the direction.
- 1.3. If authorised for confirmation, the Article 4 Direction will take effect on 7 March 2020 which is 12 months after the direction was published.

2. Background

- 2.1 At its meeting on 16th January 2019, Mayor and Cabinet agreed on the following recommendations:
 - Approve the making of a non-immediate Article 4 Direction for Lewisham southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for the change of use from dwelling houses (Use Class C3) to small HMO's (Use Class C4), with such direction to come into force 12 months after notice of the direction is published.
 - Authorise officers to carry out consultation in accordance with Section 6 of the M&C report.
 - Note the financial and legal implications of making the Article 4 Direction set out in the M&C report.

- 2.2 An updated Lewisham HMO Evidence and Review Paper (November 2018) accompanied the M&C report 16th January 2019.
- 2.3 The review paper concluded that whilst the data did not suggest a significant increase of HMOs within the borough it did however demonstrate a change in the spatial distribution of HMOs with a significant increase and clustering of HMOs within the boroughs southern wards.
- 2.4 This was further verified by street surveys carried out by the council from October 2017 that focused on three Lewisham wards Bellingham, Downham and Whitefoot.
- 2.5 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
- 2.6 Within these wards numerous properties within recent years have been extended and then converted to a small HMO using permitted development rights.
- 2.7 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.
- 2.8 The National Planning Policy Framework (NPPF) 2019 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).*
- 2.9 In response to this evidence the M&C report recommended 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.

2.10 The Article 4 Direction was made on 5 March 2019.

Summary of consultation

2.11 The consultation on the Article 4 Direction complied with guidance set out in the General Permitted Development Order 2015 (GPDO). The Council received a total of 36 representations, 34 of which were residents. 70% of residents who made representations were in favour of implementing an Article 4 Direction within the area. The Council received substantive objections from the Residents Landlord Association (RLA) and National Approved Letting Scheme (NALS) which is discussed in more detail in Section 5.

2.12 The Ministry of Housing, Communities and Local Government (MHGLC) raised no objections or issues with the making Article 4 Direction.

3. Recommendations

The Mayor and Cabinet is recommended to:

3.1 Note the responses to the consultation set out in Section 5.

3.2 Resolve that Director of Law authorise the confirmation of the non-immediate Article 4 Direction, which removes permitted development rights from C3 Dwelling houses to C4 Houses in Multiple Occupation (HMO) for 3 to 6 unrelated people in Lewisham southern wards of Bellingham, Downham, Whitefoot and Grove Park.

3.3 Note the legal and financial implications 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).

Lewisham Council's Corporate Priorities

- 4.6 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 to deliver on the following corporate priorities:
- **Making Lewisham greener** – everyone enjoys our green spaces, and benefits from a healthy environment as we work to protect and improve our local environment
 - **Building safer communities** – every resident feels safe and secure living here as we work together towards a borough free from the fear of crime
 - **Tackling the housing crisis** –everyone has a decent home that is secure and affordable

5. Planning Applications

- 5.1 If confirmed, the Article 4 Direction removes permitted development rights necessitating the submission of a planning application for change of use from a C3 use to a C4 use. The council would be obliged to determine any planning application 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 The consultation on the Article 4 Direction complied with provisions set out in the GPDO. Notice of the Direction was made by:
- Advertisement in the News Shopper
 - 22 Site Notices placed in visible locations for a period of 9 weeks across the Borough's southern wards;
 - The document was made available on the Councils website as well as number of convenient locations including the planning reception, Catford Library, Downham Library, Sydenham Community Library and Grove Park Community Library
- 6.2 The requirement for written notification was waived (in accordance with the guidance set out in the GPDO) due to the number of owners and occupiers within the area.
- 6.3 Letters were sent individually to 333 properties in an area bounded to the west by Verdant Lane, to the North by the A205, to the South by Reigate Road and to the East by the railway line. This followed a specific request by Whitefoot Councillors following knowledge about the growing number of conversions to small HMOs within this specific area.
- 6.4 Key organisations such as the Metropolitan Police, London Fire Brigade, South Lewisham Group Practice, Historic England, Environment Agency, Hexagon Housing, London and Quadrant, South Lewisham Group Practice, Phoenix Community Housing, Hexagon Housing Association, London and Quadrant, Age UK, Greater London Authority and neighbouring Councils.

Responses to Consultation

- 6.5 The Council received 36 representations in total:
- 34 Lewisham residents made an online representation:
 - 1 resident in Downham
 - 1 resident in Lewisham Central
 - 2 residents in Bellingham
 - 3 residents in Catford South
 - 27 residents in Whitefoot
 - Residential Landlord Association (RLA) and Nationally Approved Letting Scheme (APLS) each submitted a representation

- 6.6 70% of Lewisham residents who made representations were in support. Their reasons for support can be summarised as:
- Too many HMOs;
 - Too many HMOs are of poor quality and unsuitable for vulnerable tenants;
 - Too many HMOs having led to increased levels of crime, anti-social behaviour and noise;
 - Inadequate waste disposal of HMOs;
 - The negative impact HMOs have had on community spirit; and
 - HMOs are in conflict with the family oriented feel of Lewisham southern wards.
- 6.7 30% of Lewisham residents who made a representation provided a general comment or concerns. These can be summarised as:
- The need for Article 4 Direction to be borough wide;
 - The need for a blanket ban on HMOs; and
 - The need for the Article 4 Direction to come into force immediately.
- 6.8 The objections from the RALS and APLS scheme can be summarised into following points:
- Many residents can only afford to live in HMOs;
 - It will reduce the supply of HMOs and subsequently increase the rental levels of HMOs;
 - It will have a negative impact on the local economy;
 - HMOs revitalise properties that would have otherwise been derelict;
 - Some of issues associated with HMOs such as ASB and noise are a housing management issue and not a planning consideration; and
 - A high number of HMOs in the North of borough with some areas having a high concentration undermines the argument for an Article 4 Direction restricted to the South of the borough.
- 6.9 Appendix 5 details a full schedule of representations made and responses.

7. Financial Implications

- 7.1 The cost of making Article 4 Direction did not exceed the £1,000 allocated within the existing budget.
- 7.2 There may be financial implications arising from the need to deal with future planning applications for change of use from those C3-C4 which would have otherwise be covered under the permitted development. There may also be financial implications arising from the need to deal with enforcement cases where such a change of use has been carried without planning approval. Both of these will be managed within existing planning budget. Lewisham now charges for fees for planning 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 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 (Peaceful enjoyment of one's property) and Article 8 (Right to respect for private and family life, home and correspondence) of the Convention.
- 8.2 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.
- 8.3 The Council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of all homeowners, occupiers and tenants 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). The effect of confirmation of the Article 4 Direction will be to reduce harm to the amenity of existing residents and to also encourage a balanced and mixed community. The council considers that the advantages of confirming the Article 4 Direction substantially outweigh the disadvantages to those residents who will no longer be able to benefit from the permitted rights granted for any future change of use.
- 8.4 Once the Article 4 Direction has been confirmed the council will need to notify all the statutory consultees in accordance with the requirements of the GPDO which includes the Secretary of State, who under Article 5(13) of the GPDO has the power to cancel or modify any direction under Article 4(1) either before or after its confirmation.

9. Crime and Disorder Implications

- 9.1 There are no direct implications relating to crime and disorder issues.
- 9.2 Although it is worth noting that the MHGLC, the street survey carried out by the Council and responses to this consultation have all highlighted areas which have experienced an increased clustering of HMOs have also experienced a rise in anti-social behaviour.

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 frequently occupied by low income, vulnerable, transient people. A refusal for a change of use from a dwelling house (Use Class C3) to a small HMO (Use Class C4) would not necessarily have a negative effect on these groups. Rather the Article 4 Direction would mean that the quality and location of HMOs could be managed through the planning system. If confirmed, it will assist in delivering better quality housing and regulate their concentration, improving the living conditions for occupants and those nearby.
- 10.5 The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.

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 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 Article 4 Direction would enable the Council to better manage the impact of small HMOs within the boroughs southern wards.

12.2 The Mayor and Cabinet is recommended to;

- Note the responses to the consultation set out in Section 5
- Resolve the Head of Legal to authorise the confirmation of the non-immediate Article 4 Direction, which removes permitted development rights from C3 Dwelling Houses to C4 House in Multiple Occupation (HMO) for 3 to unrelated people in Lewisham southern wards of Bellingham, Downham, Whitefoot and Grove Park.
- Note the legal and financial implications 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

Appendix 5: Schedule of representations and responses

Appendix 6: Making of Article 4 Direction for Lewisham's southern wards of Bellingham, Downham, Whitefoot and Grove Park to withdraw permitted development rights for of use from dwelling house (Use Class C3) to small HMO's (Use Class C4)