

## ARTICLE 4 DIRECTION: HOUSES IN MULTIPLE OCCUPATION (HMOs)

### REPORT TO THE EXECUTIVE



<b>DATE</b>	<b>20 September 2023</b>
<b>PORTFOLIO</b>	<b>Economy and Growth</b>
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### PURPOSE

1. The purpose of this report is to consider the case for the making of an Article 4 direction to remove the permitted development rights that allow the change of use of a single dwelling house into a small house in multiple occupation (HMO), subject to consultation as set out in paragraph 31.

### RECOMMENDATION

2. It is recommended that the Executive:
  - i) approve the making of a non-immediate Article 4 direction to remove permitted development rights for changes of use from individual dwellinghouses to smaller houses in multiple occupation, with 12 months' notice, in line with the details set out in the background report; to be consulted on as per paragraph 31.
  - ii) authorise the Director of Economy and Development to prepare the necessary documentation and carry out consultation as required by the Regulations and set out in paragraph 31, prior to the confirmation of an Article 4 direction.

### REASONS FOR RECOMMENDATION

3. The Houses in Multiple Occupation and Small Flats SPD (2022) highlighted that, should the need arise, the Council could consider an Article 4 direction to better manage the creation of small HMOs and their impacts on the amenity of certain areas. The report in Appendix A demonstrates that there is a need to implement an Article 4 direction.
4. In accordance with the statutory requirements, a further report will be brought back to the Executive to consider the outcome of the consultation and to determine whether to confirm the Article 4 direction.

## SUMMARY OF KEY POINTS

### Background

5. The background report at Appendix A outlines the extent of current houses in multiple occupation (HMOs) in the borough; the current legislative and policy position in respect of HMOs; the justification for introducing an Article 4 direction to remove the permitted development rights allowing conversion of a single dwellinghouse into a small house in multiple occupation; and the process for doing so.
6. A house in multiple occupation (HMO) is a property rented out by at least 3 people who are not from one household (such as a family) and share facilities such as a bathroom or kitchen.
7. At present, a change of use from a dwellinghouse (which is in planning use class C3) to a large HMO of more than 6 people (which does not fall into any of the planning use classes and therefore is *sui generis*) requires planning permission. However, a change of use from a dwellinghouse to a small HMO of between 3 and 6 people (which is in planning use class C4), is permitted development and does not require planning permission.
8. An Article 4 direction could remove permitted development rights for the change or use or conversion of a dwellinghouse to a small HMO which would allow proposals to be considered through the planning system in the same manner as large HMOs. This would give the Council a greater opportunity to manage the overall number of HMOs in the areas to which it applies and mitigate some of the issues attributed to their concentration. An Article 4 direction cannot rule out all new HMOs; any refusal of planning permission would need to be justified.
9. It is important to remember that HMOs provide a form of low-cost housing, particularly for younger people and people on low incomes. They also provide flexible accommodation for people with short-term housing requirements. This includes people in-between properties, people employed on short-term contracts and people who are saving to purchase a home. They also provide housing for people that simply prefer to live with large numbers of other people, such as friendship groups. Given the limited number of purpose-built HMOs in the borough, the sector will be reliant on conversion of existing properties.
10. However, there are concerns associated with HMOs, specifically when there is a high concentration of them within an area. The Government undertook an evidence gathering exercise to review the problems caused by high concentrations of houses in multiple occupation in 2008. It summarised the problems associated with a high concentration of HMOs as:
  - 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 expenses of owner-occupation
- pressure upon local community facilities
- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

### **The case for an Article 4 Direction**

11. The National Planning Policy Framework states that, in all cases, Article 4 Directions must “be based on robust evidence and apply to the smallest geographical area possible”. The National Planning Practice Guidance requires there to be a “particularly strong” justification if a direction is to relate to a wide area (for example covering the entire area of a local planning authority).
12. Having regard to the evidence set out in the background report, it is not considered that there is a “particularly strong” justification to apply an Article 4 direction borough-wide and it is unlikely to be supported by the Secretary of State. In several wards there are relatively few HMOs and student dwellings and there are no apparent concentrations or clusters. This means that it is unlikely that harm to local amenity or well-being of these areas will arise from the change of use of Use Class C3 dwellinghouses to Use Class C4 small HMOs.
13. The evidence does however show that it would be appropriate to consider to introduce an Article 4 direction covering the following wards:
  - Trinity ward;
  - Bank Hall ward;
  - Daneshouse with Stoneyholme ward;
  - Rosegrove with Lowerhouse;
  - Gannow ward;
  - Gawthorpe ward;
  - Queensgate ward;
  - Brunshaw ward; and
  - Rosehill with Burnley Wood ward
14. In these wards there is evidence of concentrations of HMOs and student dwellings and this is having a detrimental effect in relation to amenity, character and well-being of the areas. These areas also suffer from relatively high levels of crime and environmental complaints.
15. In addition to this, the draft Modelled Estimates of HMOs undertaken by BRE, Appendix B, shows that there is the potential for a further 500 HMOs. The vast majority of these would be small HMOs.
16. When taken together these amount to a compelling reason for bringing Use Class C4 small HMOs within full planning control and is in the public interest. It will ensure that the Council can respond in a timely way to the emergence of new concentrations of HMOs to prevent harm to areas.
17. It is considered most appropriate to apply the Article 4 direction to whole wards, rather than to smaller areas within wards where there are the existing concentrations of HMOs. This is on the basis that if the direction was to apply to such areas it is likely

that there could be an increase in the number of HMOs created through permitted development rights in the areas directly adjacent to those not within the scope of the direction. With regard to the wards not covered by the direction, the Council will monitor the situation to ensure that issues are not displaced to these wards.

### **The Types of Article 4 Direction**

18. There are two types of Article 4 direction:
  - Non-immediate directions in which permitted development rights are only removed upon confirmation of the direction by the local planning authority following local consultation; and
  - Immediate directions, in which permitted development rights are removed with immediate effect but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse.
19. National Planning Policy Guidance states that the circumstances in which an immediate direction can restrict development are limited. Immediate directions can only be made in relation to development permitted by [Parts 1 to 4 and 11 of Schedule 2 to the General Permitted Development Order](#), which includes the change of use to HMOs, where the development presents “*an immediate threat to local amenity or prejudices the proper planning of an area.*” Immediate directions can also be made in relation to certain types of development in conservation areas.

### **Article 4 Notices and Consultation**

20. Consultation will need to be undertaken in line with legislation. This requires notice of the ‘making’ of the Article 4 direction which will need to specify a period of at least 21 days within which any representations concerning the direction may be made to the Council. Notification should be in the form of local advertisement and by site display at no fewer than 2 locations within the area/s to which the direction relates, for a period of not less than 6 weeks. The Secretary of State must also be notified that the direction has been ‘made’.
21. Representations received must be considered in determining whether to confirm the direction. Any material changes resulting from consultation will require re-consultation. The Council would not be able to confirm the direction until after the expiration of a period of at least 28 days following the latest date on which the made direction is served or published.
22. If confirmed, the direction will come into force on the date specified in the notice. Notice must again be served locally, and again the Secretary of State must also be notified.
23. The Secretary of State does not have to approve an Article 4 direction and will only intervene when there are clear reasons for doing so. If intervention is deemed to be necessary, the Secretary of State may make a direction cancelling or modifying any Article 4 direction made by a local planning authority at any time before or after its confirmation.

## **Compensation**

24. If a local planning authority makes an Article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:
  - refuses planning permission for development which would otherwise have been permitted development; or
  - grants planning permission subject to more limiting conditions than the General Permitted Development Order (GPDO)
25. The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
26. The potential liability is limited in many cases by the time limits that apply. All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).
27. For the permitted development rights under consideration with this Article 4, compensation may only be claimed if an application for planning permission is submitted within 12 months following the date the direction comes into force and if a non-immediate direction giving 12 months prior notice of the withdrawal of permitted development rights is progressed there is no ability to claim compensation.

## **Conclusion**

28. In accordance with paragraph 16 and the background document appended to this report there is a clear case for Article 4 Direction to better manage the creation of small HMOs and their impacts on the amenity of certain areas.
29. In determining which type of Article 4 Direction the Council should pursue, consideration has been given as to whether an immediate Article 4 direction is appropriate bearing in mind the likelihood of compensation claims against the Council. It is not considered that the requirements to bring forward an immediate direction have been met. This consideration included obtaining an external legal opinion on the appropriateness of the proposed type of Article 4 Direction.
30. Whilst a non-immediate Article 4 may lead to a temporary increase in the number of permitted small HMOs as property owners bring them forward before the Article 4 is confirmed, this type of direction (giving 12 months prior notice thus avoiding the potential for compensation claims as a result of abortive works), is considered to be appropriate.

## **Next Steps**

31. Should Executive approve the making of a non-immediate article 4 direction, with 12 months' notice, the broad timeline thereafter would be as follows:
  - October 2023: Serve notice locally and to the Secretary of State, with a consultation period of six weeks as set out in the background document,

- April 2024: Report to the Executive to consider the comments received and determination as to whether to confirm the direction,
- October 2024: If confirmed, the Article 4 direction comes into force.

### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

32. The limited costs associated with making, consulting on, confirming and monitoring, if approved, the Article 4 direction will be met within existing budgets. A non-immediate Article 4 direction as recommended giving 12 months' notice, avoids the potential for compensation claims from owners and developers as a result of abortive works.
33. When an Article 4 Direction comes into force the Council is likely to receive an increased number of Change of Use applications which in turn may lead to appeals, and there may be an increase in enforcement activity. The Council will receive income from planning application fees towards meeting these additional costs.

### **POLICY IMPLICATIONS**

34. When in force, an Article 4 Direction will require planning applications to be submitted which will then be considered with regard to Burnley's Local Plan and the Houses in Multiple Occupation and Small Flats Supplementary Planning Document; and any other material planning considerations.

### **DETAILS OF CONSULTATION**

35. None

### **BACKGROUND PAPERS**

36. None

### **FURTHER INFORMATION**

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