

Subject:	Houses in Multiple Occupation		
Date of Meeting:	21 June 2018		
Report of:	Executive Director Economy, Environment and Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report summarises the current planning policy approach to Houses in Multiple Occupation (HMOs) in the city and makes recommendations for future work relating to extending Article 4 Directions in the city.
- 1.2 The report is, in part, a response to a petition submitted to the Committee in January 2018 entitled "*Petition to restrict number of HMOs on Bennett Road, Bristol St and Princess Terrace and preserve our lovely community spirit which is alive and well*". A response to the petition was given to the Committee at that time. Committee members requested an officer's report to further consider the issue of HMOs in the city.

2. RECOMMENDATIONS:

- 2.1 That the Committee support an evidence gathering exercise to assess the impact of HMOs in areas of the city outside the existing Article 4 Direction area.
- 2.2 That, following the evidence review, a report be brought back to this Committee by the end of the year with a recommendation on whether and where to initiate the process of extending the Article 4 Direction that overrides the permitted development rights relating to changes of use from dwellinghouses to small HMOs.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 A House in Multiple Occupation (HMO) is defined as a property rented to at least three people who are not from one 'household' (e.g. a family) but share facilities such as a bathroom and kitchen. Planning use classes distinguish between 'small' HMOs of up to six people (C4 use class), and 'large' HMOs of seven or more occupants which are *sui generis*.
- 3.2 HMOs provide an affordable type of accommodation for some lower income residents in the city. In Brighton and Hove, privately rented accommodation and HMOs represent a far higher proportion of the housing market than the national average. A significant proportion of existing HMOs in the city are occupied by

students. However, as more purpose built student accommodation is delivered and student numbers at both universities stabilise, it is likely that further demand for changes of use to HMO will be driven by the wider housing pressures in the city rather than students.

- 3.3 Changes of use from family homes (use class C3) to small HMOs (C4) fall under 'permitted development' and therefore do not normally require planning permission. However, in five wards of the city¹, the council has introduced an 'Article 4 Direction' (as of 5 April 2013) which removes permitted development rights. This means that within these five wards planning permission is required to change the use of a single dwelling house (defined as C3) to a property lived in by between three and six people where facilities such as a kitchen or bathroom are shared (C4 use class).
- 3.4 As set out in Policy CP21 of the adopted City Plan Part One, planning applications for new build HMOs, or a change of use to HMO including a change from a C4 HMO to a *sui generis* HMO, are not permitted where more than 10% of dwellings within a radius of 50 metres of the application site are already in HMO use.
- 3.5 This policy effectively restricts the number of new or enlarged HMOs that can be accommodated within the Article 4 area. The Article 4 Direction and Policy CP21 are not intended to provide a cap on the total number of HMOs; rather the intention is to prevent further over-concentrations in areas that already have a proliferation by encouraging a more even spread.
- 3.6 A policy proposed in the Draft City Plan Part Two includes additional criteria that would be used in the determination of planning applications for change of use to HMO and for applications from C4 to *sui generis* HMOs². These criteria are intended to guard against negative impacts of HMO concentrations at a very localised level and a wider neighbourhood level, in addition to the existing 50m radius test in City Plan Part One Policy CP21. Should this policy be retained once City Plan Part Two is adopted, it is likely that opportunities for additional HMO development within the existing Article 4 area would be further restricted.
- 3.7 It is possible that restricting HMO development within the existing Article 4 area is resulting in increased numbers of HMOs in other parts of the city. This could result in some of the negative effects that can be associated with HMOs, becoming apparent in other areas of the city. Anecdotal evidence has been received from some communities to that effect.
- 3.8 In September 2017, the Committee resolved that the process to seek an extension of the Article 4 Direction Area should not be commenced at that time, but that the situation be closely monitored. In order to consider an extension to the existing Direction, considerable evidence gathering would need to be undertaken in order to demonstrate that ongoing use of the existing permitted development rights would result in demonstrable harm to the area proposed for the extension.

¹ Hanover and Elm Grove, Hollingdean and Stanmer, Moulsecoomb and Bevendean, Queen's Park and St Peters and North Laine.

² Policy DM7 in Draft City Plan Part Two.

- 3.9 Following concerns raised by members and local communities, it is now proposed to examine the issue in more detail. If the recommendations are accepted, an evidence gathering process will be undertaken to consider whether there is sufficient justification for commencing the process to extend the Article 4 Direction, and if so, over what geographical extent. A further report will then be brought back to this Committee at the end of the year to report on the evidence with appropriate recommendations.
- 3.10 Policy on the use of Article 4 directions is contained in the National Planning Policy Framework. This 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. The national Planning Practice Guidance further provides that the potential harm that the direction is intended to address needs to be clearly identified and that an Article 4 Direction must be justified for both its purpose and extent
- 3.11 In order to consider an extension to the existing Direction, considerable evidence gathering would need to be undertaken in order to demonstrate that ongoing use of the existing permitted development rights would cause potential harm to the area proposed for the extension. If clear reasons for implementing the Direction are not set out, the Secretary of State has the power to intervene by modifying or cancelling it at any time before or after it is made.
- 3.12 The Planning Authority would also need to take into account the important role of HMOs in providing a form of affordable accommodation for those on lower incomes and the ability to adequately resource the management of an expanded area.
- 3.13 Should a decision be subsequently taken to extend the Article 4, a 'non-immediate direction' would be sought, which comes into force twelve months after it has been made. A non-immediate direction allows consultation views to be taken into account before the direction is confirmed. This would also reduce or eliminate the likelihood of compensation being payable. The use of an immediate direction could result in considerable compensation implications.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The alternative option is not to undertake the evidence gathering process. This would delay consideration of the need to extend the Article 4 Direction and could result in a decision to extend the Direction being taken at a point in the future where any negative impacts of HMOs have been further exacerbated.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The proposed course of action is partly in response to a petition submitted to the Committee in January 2018 entitled "*Petition to restrict number of HMOs on Bennett Road, Bristol St and Princess Terrace and preserve our lovely community spirit which is alive and well*". A response to the petition was given to the Committee at that time. Committee members requested an officer's report to further consider the issue of HMOs in the city.

- 5.2 A letter has been received from Councillors Morgan, Platts and Mitchell in support of East Brighton Ward being evaluated for coverage by an Article 4 Direction in order to better manage the spread of Houses in Multiple Occupation (HMOs) in the area. The letter notes the concern of local residents regarding increasing numbers of HMOs in that area.
- 5.3 Should a decision subsequently be made to make an Article 4 Direction, a statutory public consultation will be required to take place for a minimum period of 21 days before the Direction can be confirmed.

6. CONCLUSION

- 6.1 The report responds to the request from committee members at TDC in January 2018 for a report setting out current issues relating to HMOs in the city.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no direct financial implications resulting from this report. In the event that Article 4 Direction is extended in the future any financial impact directly resulting from additional planning permissions being sought will be reflected in the planning revenue budget. Any economic implications as a result of this will be presented in the future report that will be brought back to this committee.

Finance Officer Consulted: Rob Allen

Date: 21/05/18

Legal Implications:

- 7.2 The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for certain types of development, including, in Schedule 2 Part 3 (Class L), changes of use from a C3 dwellinghouse to a C4 small HMO and vice versa. A planning application would not therefore be required for such development unless the permitted development right had been removed.
- 7.3 As noted in the report, permitted development rights may be removed by way of an Article 4 Direction. This is a reference to Article 4 of the 2015 Order whereby a local planning authority ("LPA") may make a direction if it is satisfied that it is expedient that development that would otherwise be permitted development should not be carried out unless permission is granted on an application. Once made, the direction must be advertised by the LPA and representations invited. Any representations made within the relevant time period must be taken into account by the LPA in considering whether to confirm the direction. A copy of the direction must be sent to the Secretary of State who may cancel or modify it at any time before or after its confirmation.
- 7.4 Where a LPA makes an Article 4 direction the authority may be liable to pay compensation if it then refuses planning permission for development which would otherwise have been permitted development or grants planning permission subject to more limiting conditions than prescribed by the 2015 Order. However, s108 of the Town and Country Planning Act 1990 and the Town and Country

Planning (Compensation) (England) Regulations 2015 provide that where permitted development rights for certain types of development, including C3 to C4 and C4 to C3 changes of use, are withdrawn, no compensation is payable provided at least 12 months' notice of withdrawal is given.

Lawyer Consulted: Hilary Woodward

Date: 21/5/18

Equalities Implications:

- 7.4 None as a direct result of this report. If an extension to the Article 4 Direction was subsequently successfully implemented, the council would have enhanced controls to help deliver balanced communities. These measures may impact upon the availability of affordable housing for younger people.

Sustainability Implications:

- 7.5 The planning policy framework relating to HMOs is intended to ensure that the mix of residential uses within neighbourhoods remains balanced and sustainable.

Any Other Significant Implications:

- 7.6 None identified as a direct result of this report.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents in Members' Rooms

1. None

Background Documents

1. City Plan Part One.
2. Draft City Plan Part Two.

