

Subject:	Houses of Multiple Occupation - Extension to Article 4 Direction Area		
Date of Meeting:	17 January 2019		
Report of:	Executive Director, Economy, Environment and Culture		
Contact Officer:	Name:	Steve Tremlett	Tel: 01273 292108
	Email:	steve.tremlett@brighton-hove.gov.uk	
Ward(s) affected:	All Wards except Hanover and Elm Grove, Moulsecoomb and Bevendean, Hollingdean and Stanmer, Queen's Park and St. Peter's and North Laine;		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks authorisation for making an Article 4 Direction to extend the removal of permitted development rights, which allow changes of use from small houses (Class C3) to small Houses in Multiple Occupation (Class C4) beyond the five wards of the city already covered by an Article 4 Direction made in 2013.
- 1.2 The report responds to the decision made at the June 2018 Tourism Development & Culture Committee to support an evidence gathering exercise to examine whether extending the Article 4 Direction boundary (which removes permitted development rights to changes of use from dwellinghouses to small HMOs) could be justified. The report summarises the evidence reviewed and considers options to take forward such an extension.

2. RECOMMENDATIONS:

- 2.1 That the Committee notes the evidence presented in this report as a response to the decision of the June 2018 TDC Committee to 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 the Committee authorises the making of a citywide non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove the permitted development right for the change the use of a building from a dwelling house (Class C3) to a House in Multiple Occupation (Class C4) for the reasons outlined in this report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 At the June 2018 meeting, the Tourism, Development & Culture Committee supported an evidence gathering exercise to assess the impact of HMOs in areas of the city outside the existing Article 4 Direction area. A recommendation was approved that following the evidence review, a report be brought back to this Committee with a recommendation on whether and where to extend the Article 4 Direction that removes the permitted development rights relating to changes of use from dwellinghouses to small HMOs.
- 3.2 A House in Multiple Occupation, commonly known as a HMO, is a property occupied by at least three people who are not from one 'household' (e.g. a family) but share facilities such as a bathroom and kitchen. Examples include bedsits, shared houses, lodgings, accommodation for workers/ employees and refugees. 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*.
- 3.3 The cost of housing in the city and overall shortage of new planned housing compared to the assessed need means that many young professionals, students and other people on low incomes live in HMOs.
- 3.4 Concentrations of HMOs can cause a number of negative impacts on local communities, for example more frequent noise nuisance, depopulation of neighbourhoods during academic vacations, increased pressure on parking due to higher population densities, and higher levels of population transience leading to a possible longer-term breakdown of community cohesion.
- 3.5 In April 2010, the Town and Country Planning (Use Classes) Order 1987 was amended by the introduction of a new C4 use class covering small Houses in Multiple Occupation, defined as "*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*." On 1 October 2010, the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2010 came into force. This introduced a permitted development right to change the use of a building from a single house (C3) to a House in Multiple Occupation (C4) without the need to make a planning application.
- 3.6 Local planning authorities have powers to make an Article 4 Direction under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove permitted development rights.
- 3.7 In January 2013, an Article 4 Direction was confirmed by Policy & Resources Committee within the wards of Hanover and Elm Grove, Hollingdean and Stanmer, Queen's Park and St. Peter's and North Laine which removed the permitted development right which allowed changes of use from a dwellinghouse (use class C3) to a small HMO (use class C4) without planning permission. No permitted development rights apply to changes of use to large HMOs and these require planning permission citywide.
- 3.8 In determining planning applications for such changes of use, City Plan Part One Policy CP21 is applied. This policy states, in summary, that applications for HMOs will not be permitted where more than 10 per cent of dwellings within a

radius of 50 metres of the application site are already in use as an HMO. This policy has been effective in preventing further proliferation in areas which already have dense concentrations of HMOs. However, it cannot be applied retrospectively, so many areas of the city within the existing Article 4 area have high concentrations which would not now be allowed. Further criteria to help manage concentrations and residential amenity are proposed through an additional policy in the draft City Plan Part Two. This was subject to public consultation in summer 2018.

Evidence

- 3.9 An analysis of existing HMO distribution and density has been undertaken based on known existing HMOs in October 2018 (see Appendix 1). Data used was sourced from Revenues and Benefits showing properties with student Council Tax exemptions, and data from the Private Sector Housing Team showing licensed HMOs. This data has been analysed at Super Output Area (SOA)¹ level in order to more clearly identify areas of particular concentration (see Appendix 2). Using SOAs instead of ward level density allows localised variations in HMO density to be more clearly identified.
- 3.10 The majority of HMOs are within the wards covered by the existing Article 4 Direction, and SOAs in this area have the highest concentrations. However, there are significant numbers of HMOs outside this area, including some pockets with very high concentrations, notably in the area bordered by the London Road railway viaduct, New England Road and Beaconsfield Road. Other SOAs with higher concentrations are found in the East Brighton and Regency wards. However, significant numbers of HMOs are distributed throughout the city, albeit at lower levels, with the majority of SOAs in the city recording between 0% and 2% of properties as known HMOs.
- 3.11 Concerns about the negative amenity impacts of increasing numbers of HMOs have been raised by communities in a number of areas of the city outside of the existing Article 4 area. These include East Brighton, Preston Park and Withdean wards.

Housing Market Analysis

- 3.12 The latest Brighton & Hove Housing Market Report (Q3 2018) highlights the severe housing affordability issue in the city, with the average property price in the city being 48% higher than the overall average for England and Wales. Property prices in the city are also considerably higher than in neighbouring areas. Further detail is set out in Appendix 5.
- 3.13 Affordability pressures are unlikely to be eased to any significant extent through the delivery of additional housing supply. The objectively assessed housing need for the city is estimated to be 30,120, significantly higher than the adopted housing provision target of 13,200 new homes. This target is contained in Policy CP1 of the City Plan Part One was considered by the City Plan Inspector to be a realistic, deliverable quantum of housing over the Plan period to 2030. Demand for new housing is therefore very likely to continue to outstrip supply, and with

¹ Super Output Areas are used in the analysis of census data and are automatically generated to be as consistent in population size as possible. The Minimum population is 1000 and the mean is 1500.

similar pressures in many neighbouring authorities, it is expected that affordability pressures will remain and demand for cheaper HMO accommodation will be sustained.

3.14 Having considered the available evidence, the Committee is recommended to make a new citywide Article 4 Direction (excluding that part of the city in the South Downs National Park). Whilst it is recognised that there are some parts of the city which currently have few HMOs, there are a number of reasons for proposing a citywide approach:

- It provides a proactive strategic approach to HMO management in the city, providing long-term certainty for developers and communities by avoiding the need for further reactive incremental extensions
- Prevents concentrations getting too high before action is taken;
- Proactive approach reduces pressure on officer time in the longer term;
- The affordability pressures which could result in increased demand for HMOs are a citywide issue;
- Avoidance of a 'cliff-edge' scenario where streets immediately adjacent to the boundary of an Article 4 Direction area attract higher levels of HMO development due to planning permission not being required. This situation has transpired in some areas of the city in recent years in part due to the proximity to the boundary of the existing Direction.
- The existing Article 4 Direction was primarily introduced in response to demand from students causing change of use to HMO in the Lewes Road academic corridor. Due to the expected stabilisation of university student numbers and the increase in the supply of Purpose Built Student Accommodation, it is expected that much of the future additional demand for HMO accommodation will stem from non-student groups who are likely to be more flexible over the location of their accommodation.
- Alignment with the citywide area for licensing HMOs. This approach will avoid confusion and ensure that requirements for licensing and planning consent are consistent throughout the city.

3.15 It is important to note that an extension of the Article 4 Direction will not, and is not intended to, halt further HMO development. Rather, the Direction and the current and emerging City Plan policies would give the city council greater ability to manage the outcome of change of use applications across the city through the planning process in order to help maintain balanced and sustainable communities. It would also allow the consideration of other planning matters such as the standard of living for future occupiers which cannot be considered through the planning process where permitted development rights apply. The intended result is a more even spread of HMOs. In those parts of the city where there are low HMO concentrations it is expected that the number of applications will be relatively low, and those that are received are likely to be approved.

Article 4 Directions

3.16 Two types of Article 4 Direction can remove permitted development rights. An article 4 direction can take effect immediately, but this must be confirmed by the local planning authority following consultation within six months or it will lapse. Secondly, a non-immediate Article 4 Direction may be made which results in

development rights being withdrawn only upon confirmation of the Direction following local consultation.

- 3.17 The National Planning Practice Guidance states that there should be “*justification for both [the] purpose and extent*” of a Direction with their use “*limited to situations where this is necessary to protect local amenity or the wellbeing of the area*” and the “*potential harm that the direction is intended to address should be clearly identified*”. The Guidance also states that “*There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area*”.
- 3.18 A Direction coming into effect immediately would have the clear advantage of immediately allowing the Council to manage new C4 HMOs in the proposed extension area. However, it would also expose the Council to potentially very high levels of compensation liability in cases where applications submitted within the first 12 months of the removal of the permitted development rights were refused or granted subject to conditions. Such compensation would be based, in part, on the difference in property values arising from the Council’s decision.
- 3.19 A non-immediate direction, with a prior notice period of 12 months, would avoid compensation liability and also allow the results of local consultation to be taken into account in advance of the Council deciding to confirm the direction and remove permitted development rights. The decision to confirm the Direction would be taken by this Committee in a year’s time. However, there would be a delay in the Council’s ability to manage additional C4 HMOs during the notice period. However, as existing concentrations are relatively low in much of the area proposed for the extension, this is not likely to cause a significant problem.
- 3.20 Given the potentially high compensation payments arising from an immediate Article 4 Direction, the benefits of consultation before making a direction and the relatively limited number of changes of use likely over the 12 month implementation period, it is considered that a non-immediate Article 4 Direction is the preferred option.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Not seeking an extension to the Article 4 Direction would allow the market to respond to demand for HMOs in the city by locating them in areas of greatest demand. However, it is considered that the high concentrations of HMOs in some locations are having a negative effect on the amenity and sustainability of neighbourhoods and that this would be exacerbated and occur over a wider area if no action is taken. An extension to the Article 4 Direction at this time is therefore appropriate.
- 4.2 Two alternative options for the geographic extent of the Article 4 Direction extension have been considered and discounted. These are set out below, with an indication of possible geographic extent for each included as Appendices 3 and 4 to this report:

a) A small extension to areas with clear evidence of significantly higher levels of existing HMOs. This option was discounted as it was considered to be a reactive approach to the current issue and would only control further HMO development

in areas where the negative effects of higher proliferations were already becoming apparent.

b) A broader extension to include additional areas which are either in close proximity to known areas of HMO demand (for example the universities and Royal Sussex County Hospital); existing areas of higher HMO proliferation; or characterised by traditional residential streets of the type which have historically been attractive to HMO developers. This option was discounted for a number of reasons:

- Difficulty in providing reasonable justification for the inclusion of some streets and the exclusion of others;
- The possibility of streets immediately adjacent to the boundary of the Direction, but not within in it, attracting higher levels of HMO development in the future as planning permission would not be required;
- Inconsistency with the citywide licensing requirements for small HMOs;
- The affordability pressures which could result in increased demand for HMOs are a citywide issue.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 The June 2018 report was, 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.

5.2 A letter was 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 Correspondence has also been received from the Argyle and Campbell Roads Residents' Association expressing concern over the impact of HMO proliferation in that area of the city. Further correspondence has been received from members representing communities in Withdean ward and the Robertson Road area in Preston Park ward.

5.4 Following the making of an Article 4 Direction, a consultation period will take place for a minimum of 21 days, as required by the Town and Country Planning (General Permitted Development) (England) Order 2015. After assessment of the responses, the Council will decide whether to confirm the direction. Consultation details will also be published on the council's website.

6. CONCLUSION

6.1 An extended Article 4 Direction would, if confirmed, extend the Council's ability to manage the concentration of HMO accommodation across the city and assist in the maintenance of sustainable and balanced communities.

- 6.2 Three options for the geographical extent of an extended Article 4 Direction have been considered, and the recommendation is that the evidence supports the Committee authorising the making of a citywide Direction (excluding the South Downs National Park). This will require a case to be made as part of a non-immediate Article 4 direction. The Secretary of State must be sent a copy of the Direction and may cancel it if they consider a case has not been made out.

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.

Finance Officer Consulted: Rob Allen

Date: 11/12/18

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 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: 13/12/18

Equalities Implications:

- 7.2 There is the theoretical potential for a reduction availability of lower-cost housing which could impact upon those on lower incomes or socio-economic deprived.

Sustainability Implications:

- 7.3 Making an Article 4 Direction would help the Local Planning Authority to manage the location of HMO uses in order to achieve sustainable, mixed and balanced communities and patterns of urban development.

Any Other Significant Implications:

- 7.4 This measure is aimed at maintaining mixed and balanced communities, reducing the likelihood of anti-social behaviour, noise and nuisance and negative impacts on the physical environment and streetscape, all of which may impact upon the mental and physical welfare of residents.

SUPPORTING DOCUMENTATION

Appendices:

1. Location of known HMOs in Brighton & Hove, October 2018
2. Density of known HMOs in Brighton & Hove by Super Output Area, October 2018
3. Indicative Extent of Alternative Option (a)
4. Indicative Extent of Alternative Option (b)
5. Extract from Brighton & Hove Housing Market Report (Q3 2018) (see below)

In Brighton & Hove the average 1-bed flat costs nearly 9 times the median household annual income and a 3-bed house costs over 16 times the median household annual income. Households on average incomes must have either a sizeable deposit or borrow significantly in excess of prudent mortgage limits in order to buy. A sufficient mortgage for the average 1-bedroom flat would require an income of nearly £58,000 per annum with a £63,000 deposit and a 3-bed home requires an income of nearly £111,000 with a £120,000 deposit.

	Overall	Detached	Semi	Terraced	Flat	% of Sales
Adur	£320,915	£492,847	£358,911	£307,189	£200,936	
Arun	£290,041	£465,500	£300,342	£245,633	£170,340	
Brighton & Hove	£363,106	£666,028	£429,670	£390,492	£298,008	
Chichester	£399,165	£626,930	£376,269	£330,003	£216,027	
Eastbourne	£240,200	£445,546	£305,204	£239,375	£177,192	
Horsham	£384,464	£624,198	£384,830	£310,046	£203,174	
Lewes	£333,897	£500,438	£344,246	£282,140	£188,849	
Mid Sussex	£379,764	£623,790	£396,725	£316,350	£212,040	
Wealden	£347,147	£512,472	£313,935	£267,435	£185,941	
Worthing	£279,820	£502,905	£357,979	£288,156	£189,413	

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■ Det ■ Semi ■ Ter ■ Flat

Table 1: Average Property Prices by Local Authority Area

There are similar pressures in the rented sector. The average rent for a one bedroom flat is £1,001 per month, which is equivalent to the monthly repayment cost of a £171,241 mortgage. Traditionally, a mortgage of this amount would require an income of £52,690 to finance, 81% above the city average.

Renting a room in a shared property is significantly cheaper at £618 per month. However the quarterly average advertised cost of renting rooms and flats has increased since 2017 Q3 with rooms showing the greatest increase at +6.9%. These affordability pressures are likely to sustain the demand for lower-cost accommodation amongst low and medium income residents of the city.

Background Documents

1. Brighton & Hove Housing Market Report 2018 | Q3 | Jul-Sep
2. City Plan Part One
3. Draft City Plan Part Two

