

MUNICIPAL YEAR 2013/2014 REPORT NO. **109**

MEETING TITLE AND DATE:

**Planning Committee
22nd October 2013**

REPORT OF:

Director of Environment

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Agenda – Part: 1

Item:

**Subject: Confirmation of Article 4
Direction withdrawing permitted
development rights to change the use of
dwellings to Houses in Multiple
Occupation**

**Cabinet Member consulted:
Councillor Chris Bond**

1. EXECUTIVE SUMMARY

- 1.1 In October 2010, the Government amended legislation to allow changes of use from single dwelling houses (Class C3) to Houses in Multiple Occupation (HMOs) (Class C4) to take place without the need for planning permission.
- 1.2 On 28th February 2012, the Planning Committee agreed to make a non-immediate Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from Use Class C3 (dwelling house) to Use Class C4 (house in multiple occupation).
- 1.3 On 19th September 2012, the Council agreed that the necessary steps to make a non-immediate Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from Use Class C3 (dwelling house) to Use Class C4 (house in multiple occupation). The Council also agreed that any representations arising from the process were to be reported to the Planning Committee. Further, the Council agreed that the Planning Committee had delegated authority to confirm the proposed Article 4 Direction and authorise the notification to the Secretary of State.
- 1.3 In line with the requirements set out in the General Permitted Development Order (as amended), a minimum 12 months notice has been given by way of notice.
- 1,4 If confirmed, this non-immediate direction will come into force on 23rd October 2013. Planning permission will therefore be required and proposals will be assessed principally against policies contained in the Local Plan: Core Strategy and emerging Development Management Document

2. RECOMMENDATIONS

- 2.1** That the Article 4 Order withdrawing permitted development rights for changes of use from Use Class C3 (Dwellings) to Use Class C4 (Houses in Multiple Occupation) be confirmed

3. BACKGROUND

- 3.1** Previous to 2010 and the introduction of Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010, changing single dwelling houses into houses in multiple occupation (HMO's) would have required planning permission. However after a short and informal consultation on proposals for amending the planning rules for HMO's during which the Council forwarded a robust statement to the CLG opposing the proposal the Department of Communities and Local Government (CLG) announced the new regulations, largely unchanged from the consultation proposals,. Consequently on October 1st 2010 the Government introduced permitted development rights for changes of use from Use Class C3 (dwelling house) to Use Class C4 (house in multiple occupation). This means that planning permission is no longer required to convert a dwelling house into a small home in multiple occupation (HMO).
- 3.2** The CLG announcement on the 7th September 2010 was accompanied by a letter to Chief Planning Officers clarifying the changes. This stated that where there is a local need to control the spread of HMO's local authorities will be able to use existing powers, in the form of Article 4 Directions, to require planning applications in their area.
- 3.3** The changes to permitted development came into effect on 1 October 2010. In respect of Councils using Article 4 Directions to limit further HMO development in designated areas, the Minister has advised that the consent of the Secretary of State will not be required.

The Need for an Article 4 Direction

- 3.4** HMO's make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, HMO's are not without their problems. The 2008 report by CLG "Evidence Gathering – Housing in Multiple Occupation and possible planning responses" identified a number of problems associated with HMO's including:
- 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 expenses 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
- 3.5 In response to this the previous Government introduced a new C4 Use Class for small houses in multiple occupation and amended the 1995 (General Permitted Development) Order so that planning permission was required to change between the C3 (dwelling house) and C4 (house in multiple occupation) Use Classes. On the 1st October 2010 the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force and effectively reversed this position. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e. planning permission is no longer needed to do this.
- 3.6 The amendment was presented as part of wider reforms under the Localism Bill so that it moves from the current top down approach and creates a system which encourages local people to take responsibility for shaping their communities and gives power to Councils to make this happen
- 3.7 In this case the power is an Article 4 Direction. The Government has advised that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Furthermore, local planning authorities should identify clearly the potential harm that the direction is intended to address. The Government has advised that it might be appropriate to withdraw permitted development rights where they would undermine local objectives to create or maintain mixed communities. This has been a concern of the Council for many years.
- 3.8 The Council commissioned a Strategic Housing Market Assessment (SHMA) that was published in 2010. This formed part of the Council's evidence base for its Core Strategy, which was examined at Public Inquiry, found to be sound by the Secretary of State and subsequently adopted by the Council in November 2010. Therefore, it represents an up-to-date and comprehensive assessment of the Borough's housing needs and supply, its recommendations are expressed in Policy 5 of the Core Strategy.
- 3.9 The Policy seeks to ensure that 'new developments offer a range of housing sizes to meet housing needs' and that implementation of the Policy should support the Council's plan for a Borough-wide mix of

housing that reflects the needs and level of supply identified in the SHMA. The 'Justification' in support of the Policy is instructive. In paragraphs 5.40 and 5.41, it is noted that the supply-to-need shortage is most acute for larger dwelling types and that is unlikely that the required supply can be met through new build completions. The Policy requires that the Council, over the lifetime of the Core Strategy, plans for a mix of housing that is 80% houses and 20% one and two-bed flats. The Policy requirements are supported by the conclusions of Enfield's SHMA, which identifies a critical shortage in the supply to need ratio of family sized dwellings. The Assessment found that nearly three quarters of households in need are households with children, thus requiring family accommodation. It is therefore considered necessary to control the loss of family accommodation by requiring planning permission to be obtained for the creation of new houses in multiple occupation.

- 3.10 To exacerbate matters, recently reforms to housing benefit are likely to increase demand for Homes in Multiple Occupation in Enfield; in particular the extension of the single room restriction to people aged 35. This would mean that single childless adults would only be entitled to the equivalent of a room share rather than a self-contained one bedroomed flat.
- 3.11 On 28th February 2012, the Planning Committee unanimously agreed to make a non-immediate Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from Use Class C3 (dwelling house) to Use Class C4 (house in multiple occupation).
- 3.12 On 19th September 2012, the Council agreed that the necessary steps to make a non-immediate Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from Use Class C3 (dwelling house) to Use Class C4 (house in multiple occupation). The Council also agreed that any representations arising from the process were to be reported to the Planning Committee. Further, the Council agreed that the Planning Committee had delegated authority to confirm the proposed Article 4 Direction and authorise the notification to the Secretary of State.

How the Council met the requirements of the statutory process

- 3.13 Following the decision of Council, the statutory consultation processes were carried out. These required the Council as local planning authority (LPA) to give local notice. How the Council met these requirements is set out in the following table:

Requirement	Method of Local Notification
1. Local advertisement (e.g. in a local newspaper)	The notice of the making of an Article 4 Direction withdrawing permitted development rights for changes of use from use class C3 (dwelling house) to use class C4 (house in multiple occupation) was placed in the Enfield Advertiser and Enfield Independent on 17 th October 2012 advertising that the Direction was due to come into force on 15 th October 2012 subject to confirmation by the Council. The notice invited representations between 22 nd October 2012 and 4 th December 2012.
2. Site notice at no fewer than 2 locations within the area to which the Direction relates for not less than 6 weeks.	Notices were placed in all local libraries and various locations around the Borough.
3. Individually on every owner and occupier of every part of the land within the area to which the Direction relates.	<p>Notice was placed in the Council's publication "Our Enfield" and sent to all households in the Borough in October 2012.</p> <p>The notice and associated material was also placed on the Council's website.</p>

3.14 In response, 21 letters of support were received from the service of the Article 4 Notice with only 1 letter of objection. This objection highlighted the potential for such a measure to affect the young and single people who often need affordable accommodation as well as the ability of large and /or extended families to meet their needs. There was also a concern that the requirement for planning permission would add to bureaucracy contrary to the thrust of current Government intent.

3.15 With reference to the above comments, although HMO can often meet a need for accommodation from within all sections of the Borough's community the Article 4 will not lead to the loss of existing properties in HMO which are lawfully in such use. Furthermore, the requirement to obtain planning permission does not mean that further HMO's in appropriate locations, will not be approved. Each will be assessed on its individual merits having regard to adopted policies of the Council and other material planning considerations. It is also contended that the control arising as a result of the Article 4 is necessary to address the harm identified in this report.

- 3.16 Having regard to the feedback from the consultation processes, it is recommended that an Article 4 Direction is confirmed to withdraw permitted development rights for small HMO's across the borough. This would mean that proposals to change a dwelling house into a HMO would require planning permission.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The only other option considered is to do nothing and allow property owners to change family dwellings into HMO's without requiring planning permission. It is felt however that this would only increase the rate of losing three and four bedroom family housing unit in the Borough which there is an already an acute shortage of.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The reasons for the recommendation are included in the report. Failure to make this direction would leave the Council without the controls it has deployed to manage the impact of small HMO's. For the reasons set out in the report officers consider that doing nothing is not an option.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The Council does not receive a fee for planning applications which are only necessary because of an Article 4 Direction. To avoid potential compensation claims, the approach has been to serve a non-immediate Article 4 direction providing 12 months advance notice of its implementation. The costs of processing any subsequent planning applications together with the minor costs of publicising and publishing the Article 4 Direction will be met from the Development Management's budget.

6.2 Legal Implications

On 1 October 2010 the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e. planning permission is no longer needed to do this. Under Article 4 of the General Development Order (as amended) local planning authorities can make directions withdrawing permitted development rights from development listed in Schedule 2 of the same order.

For all article 4 directions the legal requirement set out in paragraph (1) of article 4 of the GDO is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. This report explains why it is expedient to withdraw permitted development rights for change of use from C3 to C4. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by Assembly.

6.3 Property Implications

No specific implications

7. KEY RISKS

To avoid any potential claims for compensation for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights, the non-immediate direction is the most appropriate course of action has been recommended and followed.

The Council does not have to obtain the consent of the Secretary of State before introducing the Article 4 but does have to notify the Secretary of State when the direction is published. However, it is unlikely he/she would intervene.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

HMO's make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. Whilst black, Asian and other minority ethnic communities are probably disproportionately represented in the HMO stock they are on balance likely to be advantaged by the Article 4 Direction for two reasons. Such ethnic communities are more likely to require the family housing the Article 4 direction is seeking to protect and withdrawing permitted development rights will allow the Council more control over the location of small HMO's and therefore the associated problems cited earlier from the CLG Evidence Gathering report. This will be to the benefit of all residents.

8.2 Growth and Sustainability

One of the main hindrances of sustainable growth in the borough is the lack of family housing units. The communities within the London Borough of Enfield are more likely to require the family housing the Article 4 direction is seeking to protect and withdrawing permitted development rights will allow the Council more control over the location of small HMO's

and therefore the associated problems cited earlier from the CLG Evidence Gathering report. This will be to the benefit of all residents and to growth and sustainability in the Borough

8.3 Strong Communities

Withdrawing permitted development rights will help preserve the borough's stock of family housing. Many of the problems associated with HMO's cited in the CLG Evidence Gathering report will have an impact on the environment children are brought up in. The CLG report cited earlier in this report identified that increased crime was a problem associated with HMO's. Therefore withdrawing permitted development rights will help address this impact.

9. EQUALITIES IMPACT IMPLICATIONS

Although HMO can often meet a need for accommodation from within all sections of the Borough's community including Black, Asian and other ethnic communities, the Article 4 will not result in itself, in the loss of existing properties in HMO which are lawfully in such. The requirement to obtain planning permission does not mean that further HMO's in appropriate locations, will not be approved. Each will be assessed on its individual merits having regard to adopted policies of the Council and other material planning considerations.

With the identified need for family housing across all sections of the community, it is considered there are no equalities impacts.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 All future applications for HMO's following the Article 4 Directive establishment will not command a fee. This will entail that officer capacity is used up yet the costs are not reimbursed by the payment of a planning application fee. In general however the implications on performance can be adequately managed.

11. PUBLIC HEALTH IMPLICATIONS

- 11.1 The requirement to obtain planning permission will ensure that proposed HMO's meet certain planning standards which include layout and access to amenity space, resulting in an overall improvement in the quality of residential accommodation on offer to residents. This together with the use of appropriate conditions has the potential to have a positive implication for public health.