



Report for: ACTION	
Contains Confidential or Exempt Information	N
Cabinet Key Decision	Y

Report Title	Non-immediate borough-wide Article 4 Direction to withdraw permitted development rights for changes of use from dwellinghouses (Use Class C3) to small HMOs (Use Class C4).
Member Reporting	Councillor Tom Bruce, Portfolio holder for Regeneration and Development Councillor Sue Sampson, Portfolio holder for Housing Management and Homelessness
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For Consideration By	Cabinet
Date to be Considered	Tuesday 11 July 2023
Implementation Date if Not Called In	Thursday 20 July 2023
Affected Wards	All
Keywords/Index	Article 4, HMOs, planning, permitted development, consultation

1. Details of Recommendations

Cabinet is asked to:

1. Approve the confirmation of the borough-wide Article 4 Direction withdrawing permitted development rights granted by Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for changes of use from dwellinghouse (Use Class C3) to small HMOs (Use Class C4), with an implementation date of 31st July 2023.
2. Subject to 1 above, delegate authority to the Executive Director of Regeneration and Housing, to make the arrangements for confirming the Article 4 Direction including the compliance with Schedule 3 of the Town and Country Planning (General Permitted Development Order).
3. Subject to 1 above, cancel the existing Article 4 Direction withdrawing permitted development rights for changes of use from dwellinghouse (Use Class C3) to small HMOs (Use Class C4) in the area of the former Hanworth ward.

2. Report Summary

1. Cabinet took the decision in October 2021 to approve the making of a non-immediate borough-wide Article 4 Direction to withdraw permitted development rights for changes of use from dwellinghouses (Use Class C3) to small Houses in Multiple Occupation (Use Class C4).
2. Following that decision, the Article 4 Direction was made on 6th July 2022. This direction applied to the whole borough (with the exception of non-residential areas such as green spaces and employment designations). At this point, the required notices were served and a period of consultation took place between 15th July and 9th September 2022.
3. Having taken into account the reason for the making of a non-immediate borough-wide Article 4 Direction and having taken account of the representations made, the Council is satisfied that the permitted development rights granted by Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) prejudice the proper planning in the borough and therefore that the Direction should be confirmed.
4. As a consequence of the borough-wide nature of the Article 4 Direction, it is also necessary to cancel the existing Article 4 Direction, which withdraws the same permitted development rights (from Use Class C3 to Use Class C4) in the area covered by the former Hanworth ward. Cabinet are therefore also asked to authorise the cancellation of this direction, with the notice of this cancellation to be made on a date (to be confirmed) after the borough-wide Article 4 Direction comes into force.

3. Reason for Decision and Options Considered

- 3.1 Houses in Multiple Occupation (HMOs) are an important source of affordable housing for those who may be on a low income and not eligible for housing by the Council. Often occupied by single people with shared facilities, they are a vital source of accommodation for many people and provide low cost, flexible housing.
- 3.2 However, HMOs need to be properly managed and maintained, as they can be a source of unsuitable accommodation and cause harm to amenity, both for the occupiers and the wider community. They can give rise to concerns about the changing nature of a community as family dwellings are converted into HMOs. The impacts from such changes can include issues related to waste management, parking, noise and disturbance, negative impacts on the physical appearance of the neighbourhood and, increasingly, anti-social behaviour (ASB).
- 3.3 Current legislation provides permitted development rights for small family homes to be converted to small HMOs for between 3 and 6 people. This can ease the process for such accommodation to be created, but hampers the Council's ability to manage the impact of such conversions. This situation has

led to several London boroughs introducing Article 4 Directions to withdraw these permitted development rights.

- 3.4 In Hounslow's case, the Council's approach has been evidence-led, and this was reflected by the fact that the Council introduced an Article 4 Direction removing permitted development rights for small HMOs in the area of the former Hanworth ward, in 2016. At the time, it was considered that there was evidence to support the making of such a direction in this ward, but the Council also decided that the evidence was insufficient to support the making of an Article 4 Direction elsewhere.
- 3.5 However, by 2021, it was clear that the situation had moved on, and that the evidence was pointing to a clearer justification for extending the Article 4 Direction approach borough-wide. Specifically, the evidence indicated the following:
- An increased level of HMO conversions, including small HMO conversions
 - An increased and sustained high level of complaints related to HMOs
 - An increased and sustained high level of complaints related to issues commonly associated with HMOs, such as noise and waste management problems (including fly-tipping) and anti-social behaviour
- 3.6 Overall, the evidence indicated that the level of HMO conversions had reached the point where it was causing detrimental impact on local amenity and wellbeing. Cabinet therefore approved the making of an Article 4 Direction to remove permitted development rights for the conversion of small family homes to small HMOs, across the borough, in order to ensure that the impacts of HMOs on amenity and wellbeing can be managed.
- 3.7 The resulting Article 4 Direction was made on 6 July 2022. It applies to all residential areas in the borough, so to all of the borough area with the exception of open land, industrial areas, Chiswick Business Park, Bedfont Lakes Business Park and the Mogden Sewage Works. As it is a non-immediate Article 4 Direction, Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 requires directions to come into force no less than 28 days and no more than 2 years after being first publicised. A notice period of at least one year is recommended which under the legislation (the Planning Act 2008 and the Town and Country Planning (Compensation)(England) Regulations 2015) removes the risk that developers of HMOs affected by the direction might seek to make compensation claims to the council for their financial loss.
- 3.7 Notification was given of the decision to make the borough-wide Article 4 Direction on 7 July 2022, with the statutory consultation on the Article 4 Direction starting on 15 July 2022 and running to 9th September 2022. A report on the consultation is included as Appendix 5. In summary, during the consultation process, 25 representations were received by the Council on the Article 4 Direction. Some 24 of these were from residents writing in support of the direction, with one representation opposed to the direction. In light of these representations received, together with the evidence base already collected, officers are satisfied that the Article 4 Direction should be confirmed. Cabinet is therefore asked to approve the confirmation of the Article 4 Direction, and to delegate to officers the detailed arrangements for

implementation. The current intended implementation date for the Article 4 Direction is Monday 31st July 2023.

Cancellation of Hanworth ward Article 4 Direction

- 3.8 To avoid duplication in coverage, Cabinet are also asked to approve the cancellation of the existing direction covering Hanworth ward, which came into effect on 12 January 2018 and covers the area of the former Hanworth ward (the boundary of which was altered in 2021, with most of the previous Hanworth ward now covered by the new Hanworth village ward, which also includes a small area which was previously within the boundaries of Hanworth Park ward, the latter of which was not, and is not, covered by the Hanworth ward Article 4 Direction). Similarly to the new borough-wide direction, the existing Hanworth Article 4 Direction removes permitted development rights for the change of use of C3 dwellinghouses to C4 houses in multiple occupation (HMOs). To ensure no time gap in coverage of the removal of these permitted development rights, the cancellation of the Hanworth ward direction would come into effect after the implementation of the borough-wide direction, with detailed arrangements for this to be confirmed at a later date.

4. Key Implications

- 4.1 The implementation of the Article 4 Direction means that, as of the implementation date, planning permission will be required for all conversions of dwellinghouses into small HMOs (housing between 3 and 6 separate households). The trigger for the implementation will be occupation, as it is this which gives effect to the change of use. So, as of the implementation date, where any property is being occupied by at least three separate households, planning permission will be required. Before this date, the conversion to a small HMO can still be brought into effect without planning permission.
- 4.2 When planning applications are submitted for conversions of dwellinghouses to small HMOs, they will be assessed against the current policy framework. This consists of Policy SC10 (Housing in Multiple Occupation, hostels and bed & breakfast accommodation) of the Hounslow Local Plan 2015-30, and the Houses in Multiple Occupation Supplementary Planning Document (SPD), which was adopted in November 2017. The local plan policy outlines criteria with which proposals for HMOs should comply (including those relating to location, size, facilities and impact on the character and residential amenity of the area). The SPD provides further detail on how we will assess proposals, and what standards developers should seek to comply with. Together, these documents provide a robust framework against which proposals can be assessed. The SPD was written with the intention of applying to both large HMO proposals (those for more than 6 households), which already require planning permission, and to proposals for small HMOs, given that the Council has had an Article 4 Direction in place removing these permitted development rights since 2017, in Hanworth ward.

- 4.3 The implementation of the Article 4 Direction will work alongside the Council's HMO licensing policy, which has been in place since 2021 and which introduced additional criteria in the determination of licensing applications. These additional criteria include consideration of planning status and wider neighbourhood issues as well as the already-existing considerations such as whether the landlord or manager is a fit and proper person, and the adequacy of management arrangements.
- 4.4 The aim of the Article 4 Direction is to enable the Council to better manage the impacts of HMO conversions, and to ensure a good quality standard of such conversions, working under the criteria referred to above. It should be emphasised that the Article 4 Direction does not mean that it would not be possible to carry out conversions of family houses to small HMOs. However, it will enable the Council to manage the impact of these conversions. The extent to which the direction is achieving its objectives, through both the planning application and the planning enforcement service, will be monitored. The framework will be regularly reviewed to assess the effectiveness of the approach and whether any further update to the policy and SPD framework is required. The outcomes of the direction on any specific groups, including the housing outcomes, will also be monitored through the HMO licensing regime.

5. Financial Details

a) Financial Background

- 5.1. Preparation of and consultation on the Article 4 Direction is being resourced internally in the Spatial Planning team. The implementation of the Article 4 Direction will lead to planning applications which will have to be processed by the Development Management team. The costs of this work would be covered by application and pre-application fees. There may be instances where properties are converted into small HMOs without planning permission, and where the planning enforcement team is required to undertake an investigation in order to ascertain whether there has been a breach of planning control or not. However, this is work which is typically triggered by complaints in any case, irrespective of whether the Article 4 Direction is in place or not.
- 5.2. As stated above, the non-immediate nature of the Article 4 Direction (with implementation being triggered no less than a year after the notice of the making of the Article 4 Direction) would avoid any compensation claims from landlords where planning permission is refused for conversions as a result of the direction.

b) Comments of the Chief Financial Officer

5.3 This report seeks authorisation to:

- confirm the borough-wide Article 4 Direction withdrawing permitted development rights granted by Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for changes of use from dwellinghouse (Use Class C3) to small HMOs (Use Class C4), with an implementation date of 31st July 2023.
- cancel the existing Article 4 Direction withdrawing permitted development rights for changes of use from dwellinghouse (Use Class C3) to small HMOs (Use Class C4) in the area of the former Hanworth ward.

for the reasons outlined in the report.

5.4 The costs of implementing these recommendations must be met from within approved budgets

6. Legal

a) Legal Details

- 6.1. Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (“the GPDO”) empowers a local planning authority to withdraw specific permitted development rights which would otherwise be carried out under the GPDO. If an Article 4 Direction is in place, planning permission will be required for the development covered by the direction.
- 6.2. Paragraph 53 of the National Planning Policy Framework advises that local planning authorities should only consider making Article 4 Directions in situations where it is necessary to protect local amenity or the wellbeing of the area and in all cases, be based on robust evidence, and apply to the smallest geographical area possible. Paragraph 54 goes on to confirm that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. This report includes substantial evidence necessitating the exercise of the Council’s rights to impose the Article 4 direction.
- 6.3. Article 4(1) of the GPDO states that a local planning authority should not make a direction unless it is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out without an application for planning permission being submitted to and approved by the local planning authority. This enables the Council to determine the merits of the proposed change via a planning application, having regard to its development plan policies and any other material considerations.
- 6.4. Permitted development rights will only be withdrawn when the direction is confirmed by the Council following public consultation. This has been undertaken and Cabinet should note the comments within Appendix 5. However, Article 4 Directions cannot be applied retrospectively to development undertaken before a direction comes into force, or to development that has commenced at the time that a direction comes into force.

b) Comments of the Director of Law & Governance, and Monitoring Officer

Cabinet is authorised to make this decision by virtue of: section 9D of the Local Government Act 2000 which states that all functions of an authority are executive functions unless they are specified as not in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

Whilst some planning functions cannot be the responsibility of the Cabinet the making of an Article 4 direction is not such a specified function.

The making of an Article 4 direction falls outside of the Principles of Delegation which are set out within Part 3C paragraph 2.1 of the Constitution and states that:

Officers may exercise delegated powers provided that the matter:

7. is covered by an approved policy; (b) there are no unusual features; (c) there are no significant political or other similar issues, otherwise the matter should be referred to Members to determine.

The confirmation of the Article 4 is outside of the above and falls to Cabinet to approve its implementation.

Cabinet is also invited to approve the proposed recommendation within this report on the grounds that the Article 4 Direction comprises a 'Key Decision' as defined in the Council's Constitution and also within The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 at Part 3 paragraph 8:

8.—(1) In these Regulations a “key decision” means an executive decision, which is likely—

(a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

As stated in this report, this Article 4 Direction if implemented will have a significant effect on the entire borough.

Cabinet should note that an Equality Impact Assessment was conducted last year when Cabinet was invited to approve the making of the direction and as the effects and impacts remain unchanged a further assessment has not been deemed necessary.

Cabinet should also note that a full consultation was conducted and for a period longer than statutorily required to allow for the holiday period. The details of the adverts are set out in Appendix 5.

8. Equalities, Human Rights and Community Cohesion

- 8.1. An Equalities Impact Assessment (EIA) has been completed for the Article 4 Direction. This was produced at the time of the Cabinet decision which approved the making of the direction (October 2021), and is appended to this report (Appendix 4). The assessment found that the introduction of the Article 4 Direction would be likely to:
- Reduce the likelihood of discrimination, harassment and victimisation caused when members of society lack information about changes affecting them or feeling that they are powerless to have any influence or engagement with them;
 - Improve equality of opportunity by allowing for the creation of higher standards of HMO accommodation within the borough;
 - Foster improved relations between those persons who occupy HMOs and those who occupy properties close to them especially as the latter will have opportunity to engage with, and enjoy rights of representation within the statutory planning process.
- 8.2. The assessment stated that the non-immediate timeframe of the Article 4 Direction would allow for monitoring to be introduced to assess the impact on groups with relevant protected characteristics prior to any Article 4 Direction coming into force.
- 8.3. The Council has reviewed the assessment and considers that its findings remain extant and accurate. In terms of any monitoring of impacts on groups with protected characteristics, the Council considers that, as the direction will apply to all groups in society, there is no potential framework for monitoring prior to the direction being introduced. This would be more appropriately introduced as planning applications start to come in, and enforcement activity starts to be carried out on any unauthorised developments.
- 8.4. Council officers are not aware of any evidence indicating that any particular social groups are accommodated within HMOs. The implementation of the Article 4 Direction and requirement for planning permission will encourage and maintain balanced and mixed communities and will therefore be likely to have a positive impact on the needs of all groups in society. The Council will monitor outcomes from the direction including any unintended consequences on protected groups as part of its housing work

9. Climate Emergency Considerations

- 9.1. No impact - the Article 4 Direction would apply to changes of use between different forms of residential accommodation only, and would not apply to operational development.

10. Value For Money

- 10.1. Not applicable

11. Sustainability Impact Appraisal

- 11.1. Positive impact – the Article 4 Direction would not remove the ability to convert properties into HMOs in sustainable and appropriate locations. This is enforced by the fact that Policy SC10 states that the Council will support conversions to HMOs in locations within convenient walking distance of town centre facilities and good public transport links. Overall, therefore, it would have a neutral economic effect. The direction would, however, ensure that a comprehensive assessment can be made of the impacts of proposed conversions on issues such as impact on the character and amenity of the local area, thus having positive social and environmental effects.

12. Risk Management

- 12.1. There is a risk that the Secretary of State cancels or modifies the Article 4 Direction once confirmed. In this case, the Council would not be able to apply this approach other than the existing area where such a direction applies (the area of the former Hanworth ward).
- 12.2. Small HMOs can 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 housing choice. There is therefore a risk that the Article 4 Direction may reduce the number of properties available for such groups. This in turn may put additional pressure on the Council's housing department.

13. Links to Council Priorities

- 13.1. The confirmation of the Article 4 Direction will enable the Council to manage development in the borough and will in particular have the potential to reduce fly tipping, anti-social behaviour and improve community cohesion. It therefore links to all Council priorities, and has a particular relevance for the Healthier, Cleaner, Safer and Liveable priorities.

14. Staffing/Workforce and Accommodation implications.

- 14.1. Not applicable

15. Property and Assets

- 15.1. The Article 4 Direction would equally apply to all Council-owned properties within the area covered.

16. Any Other Implications

- 16.1. Not applicable

17. Consultation

- 17.1. See Appendix 5

18. Timetable for Implementation

- 18.1. If Cabinet approval is received in July 2023, notice will be given in the Hounslow & Chiswick Herald, along with the required site notices being displayed across the borough in a similar manner to the making of the direction in 2022. It will also be published on the Council's website and notification given to the Secretary of State. The current intention is to implement the Article 4 Direction from Monday 31 July 2023. This would mean that any dwelling which converts to a small HMO on or after this date would require planning permission. The change would be based on the use, so that the occupation of the dwelling by three or more separate households would be the trigger for the change of use.
- 18.2. The Council will provide further guidance and publicity regarding the implementation of the Article 4 Direction to landlords and stakeholders. Officers have prepared a 'Frequently Asked Questions' sheet, which outlines the direction, what effect it has and why it is being introduced. It also explains how the Article 4 Direction will be brought into effect in practice. This is being placed on the Council's website, and will be sent to HMO operators and landlords who are known to be operating in the area.
- 18.3. The cancellation of the Hanworth ward area Article 4 Direction would be made at a date following the implementation of the borough-wide Article 4 Direction. The precise timing for this would be confirmed at a later date.

19. Appendices

- 19.1. The appendix documents can be found at the below SharePoint links:
- 1 – Cabinet report October 2021
 - 2 – Evidence Report
 - 3 – Article 4 Direction dated 6th July, which includes a plan showing land to which the Article 4 Direction would apply
 - 4 – Equalities Impact Assessment (2021)
 - 5 – Consultation Report
 - 6 – Article 4 Direction Frequently Asked Questions

20. Background Information

- 20.1. N/a

REPORT ENDS