

## CABINET

14 FEBRUARY 2012

<b>Title:</b> Confirmation of Article 4 Direction for Houses in Multiple Occupation	
<b>Report of the Cabinet Member for Regeneration</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
<b>Report Author:</b> Daniel Pope, Group Manager, Development Planning	<b>Contact Details:</b> Tel: 020 227 3929 E-mail: daniel.pope@lbbd.gov.uk
<b>Accountable Divisional Director:</b> Jeremy Grint, Divisional Director Regeneration and Economic Development	
<b>Accountable Director:</b> Tracie Evans, Corporate Director Finance and Resources	
<b>Summary:</b>  On 30 March 2011 Assembly 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) (Minute 74 refers).  In line with the requirements set out in the General Permitted Development Order as amended: <ul style="list-style-type: none"><li>• The notice was placed in the News on 12 May 2011 advertising that the Direction was due to come into force on 14 May 2012 subject to confirmation by the Council and inviting representations between 14 May 2011 and 10 June 2011.</li><li>• The notice and associated material was placed on the Council's website.</li><li>• The notice was placed outside 691 Green Lane, 4-5 Tudor Parade in Chadwell Heath, 1 Town Square and outside Dagenham Heathway Station.</li><li>• The notice was sent to the Secretary of State</li></ul> The Council also notified its statutory planning consultees as well as registered HMO Landlords operating in the borough and placed the notice and associated material on the website.  If confirmed by the Assembly, this non-immediate direction will come into force on 14 May 2012. Once confirmed a notice will be served locally and a copy of the confirmed direction will be sent to the Secretary of State. From 14 May 2012 any proposals for small HMOs would then be assessed principally against the Local Development Framework which restricts the loss of housing of three bedrooms or more. It only allows other proposals for HMOs where a number of criteria are met including that: <ul style="list-style-type: none"><li>• The number of houses that have been converted to flats and / or HMOs in any road (including unimplemented but still valid planning permissions) does not exceed 10% of</li></ul>	

the total number of houses in the road.

- No two adjacent properties apart from dwellings that are separated by a road should be converted.

### **Recommendation(s)**

The Cabinet is asked to recommend the Assembly that the Council confirms an 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) which would come into force on 14 May 2012.

### **Reason(s)**

To help deliver the Better Home and Better Together outcomes in the Council's Policy House of :

- A borough with improved estates and homes that people choose to live in, whether owned by the Council, other social landlords, privately rented or owned.
- A clean borough, with low levels of litter and graffiti and where residents look after their own homes and gardens.
- A borough with low levels of antisocial behaviour, and where authorities support residents in getting problems solved.

## **1. Introduction and Background**

1.1 HMOs 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, HMOs 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 HMOs 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

1.2 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. This Government has reversed this decision. On the 1st 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.

- 1.3 The Government has presented this change as part of wider reforms 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. In this case the power is an Article 4 Direction.

## **2. Proposal and Issues**

- 2.1 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 and that 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. LBBB has had planning policies in place to control HMOs for at least 15 years. The previous Unitary Development Plan and the current Local Development Framework (LDF) seek to ensure that the number of houses that have been converted to flats and/or HMOs in any road does not exceed 10%. In addition the LDF now resists any proposals for residential conversions or Homes in Multiple Occupation which involve the loss of family sized houses. These policies were considered necessary to control the adverse effect that HMOs can have on the general character and amenity of an area and also to retain a reasonable stock of small/medium-sized dwellings suitable for families seeking to move out of flatted accommodation. The changes to the Order mean that the Council has no control over the loss of family sized houses to small HMOs nor can it restrict the number of small HMOs in any street.

- 2.2 Therefore on 30 March 2011 Assembly agreed to make a non-immediate Article 4 Direction to withdraw permitted development rights for small HMOs across the borough. If confirmed by the Assembly, this non-immediate direction will come into force on 14 May 2012. Once confirmed a notice will be served locally and a copy of the confirmed direction will be sent to the Secretary of State. From 14 May 2012 any proposals for small HMOs would then be assessed principally against the Local Development Framework which resists the loss of housing of three bedrooms or more. It only allows other proposals for HMOs where a number of criteria are met including that:

- The number of houses that have been converted to flats and / or HMOs in any road (including unimplemented but still valid planning permissions) does not exceed 10% of the total number of houses in the road.
- No two adjacent properties apart from dwellings that are separated by a road should be converted.

## **3. Options Appraisal**

- 3.1 For the reasons set out in the previous Cabinet report officers consider that doing nothing is not an option. For this reason the previous Cabinet report explained that the two options available were to either make a non-immediate direction or an

immediate direction. To avoid the compensation the Council may be liable for under an immediate Direction Cabinet agreed to make a non-immediate direction. No responses were received to the consultation on the making of the Article 4 Direction. Therefore for the reasons set out in the previous Cabinet Report Cabinet is asked to recommend that Assembly confirms the Direction.

#### **4. Consultation**

4.1 When intending to make an Article 4 Direction, a Council as local planning authority (LPA) must give notice locally and nationally.

4.2 Local notification requires the following measures:

- 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 News on 12 May 2011 advertising that the Direction was due to come into force on 14 May 2012 subject to confirmation by the Council. The notice invited representations between 14 May 2011 and 10 June 2011

- Site notice at no fewer than 2 locations within the area to which the Direction relates for not less than 6 weeks.

The notice was placed outside 691 Green Lane, 4-5 Tudor Parade in Chadwell Heath, 1 Town Square and outside Dagenham Heathway Station.

- Individually on every owner and occupier of every part of the land within the area to which the Direction relates.

Annex A of Appendix D of Circular 9/95 advises that this requirement would not apply if it is impracticable because it is difficult to identify/locate every owner and occupier or the number of owners or occupiers would make individual service impracticable. Given the size of the area under consideration and the quantity of individual owners /occupiers affected the Council did not notify individual parties in this way.

4.3 In addition to these statutory requirements the Council also consulted with its statutory planning consultees as well as the registered HMO landlords operating in the borough. The notice and associated material was placed on the Council's website.

4.4 National notification was also carried out as prescribed to the Secretary of State (SoS) on the same day the notice of the Article 4 Directions was first published / displayed locally.

4.5 No representations were received during the consultation period.

## **5. Financial Implications**

Implications completed by: David Abbott, Principal Accountant

- 5.1 The Council would not be entitled to charge a fee for planning applications that are only necessary because of this Article 4 Direction; therefore there would not be any impact on overall planning income. In order to avoid any possible claims for compensation, the Council has provided 12 months advance notice of the Article 4 taking effect (a non-immediate direction, approved by Assembly in March 2011).
- 5.2 The only costs to the Council associated with implementing the Article 4 Direction are the minor ones of publicising and printing (as well as staff time), which will be met from existing Regeneration & Economic Development budgets.

## **6. Legal Implications**

Implications completed by: Doreen Reeves, Group Manager Employment and Litigation

- 6.1 As a general principle developments require planning permission from the Council as the Local Planning Authority. To avoid every single development being referred to planning authorities; the Town and Country Planning (General Permitted Development) Order 1995 (the "Order") gives the Secretary of State the power to issue directions that specified developments may be "permitted development" that is to say that they do not require planning consent.
- 6.2 Article 4 of the Order provides that a local planning authority may resolve to withdraw a specific "permitted development" and instead direct that the development will still need to seek planning permission from the authority. Article 4 directions cannot be used in relation to any type of development other than those explicitly granted permitted development rights through the GPDO, nor can they be applied retrospectively to development undertaken before a direction comes into force, or to development that has been commenced at the time that a direction comes into force.
- 6.3 DCLG Guidance provides 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. For all article 4 directions the legal requirement 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.
- 6.4 In deciding whether an article 4 direction would be appropriate, local planning authorities are advised by the Guidance to identify clearly the potential harm that the direction is intended to address. As an example it could be that the exercise of permitted development rights would undermine local objectives to create or maintain mixed communities, or the visual amenity of the area or damage the historic environment.
- 6.5 Provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering any geographic area from a specific site to a local

authority wide. However, the Guidance also provides that there should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area e.g. those covering the entire area of a local planning authority.

- 6.6 The Assembly in March 2011 considered that the report set out sound reasons why an Article 4 direction should be made to cover 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) and instead require a formal application for a change of use. The mechanism of a non-immediate Direction with a period of a year was chosen as in such cases there is no right to compensation for loss of permitted development rights to a developer who may have been going through the process of a change of use.
- 6.7 In accordance with the statutory procedure a Direction Document was made and notice given that it would be confirmed by the Council subject to any representation to become effective on 14 May 2012. It is understood there have not been any representations so the Direction can proceed to confirmation
- 6.8 The Statutory Guidance requires that following confirmation the same procedure for notice is applied.

## **7. Other Implications**

- 7.1 **Risk Management** As set out in the previous report to Cabinet officers consider that there is a legally sound basis for confirming this Article 4 direction. Whilst the Council has to notify the Secretary of State when the direction is published it is unlikely he/she would intervene. The Government's replacement Appendix D to Circular 9/95 published in November 2010 states that the Secretary of State will only exercise their powers in relation to article 4 directions if there are very clear reasons why intervention at this level is necessary.

There may be additional burdens for the planning enforcement service following adoption. However the Article 4 Direction effectively reinstates the position that existed in the borough prior to 1<sup>st</sup> October 2010.

- 7.2 **Customer Impact** - HMOs 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 (BAME) 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. BAME 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 HMOs and therefore the associated problems cited in the CLG report titled "Evidence Gathering – Housing in Multiple Occupation and possible planning response". This will be to the benefit of all residents.
- 7.3 **Safeguarding Children** - Withdrawing permitted development rights will help preserve the borough's stock of family housing. Many of the problems associated with HMOs cited in the CLG Evidence Gathering report will have an impact on the environment children are brought up in.

7.4 **Crime and Disorder Issues** - The CLG Evidence Gathering report identifies that increased crime was a problem associated with HMOs. Therefore withdrawing permitted development rights will help address this impact.

**Background Papers Used in the Preparation of the Report:**

- Assembly report, 30 March 2011, Withdrawal of Permitted Development Rights for Houses in Multiple Occupation (Minute 74 – 30/03/11)
- Evidence Gathering – Housing in Multiple Occupation and possible planning responses, CLG, 2008
- Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010
- 1995 (General Permitted Development) Order (as amended)
- Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135).
- The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (2000 No. 2853)
- Replacement Appendix D to Department of the Environment Circular 9/95:
- General Development Consolidation Order 1995

**List of appendices:** None