

## CABINET

15 MARCH 2011

### REPORT OF THE CABINET MEMBER FOR REGENERATION

<b>Title:</b> Withdrawal of Permitted Development Rights for Houses in Multiple Occupation	For Decision
<p><b>Summary:</b></p> <p>On October 1 2010 the Government introduced permitted development rights for changes of use from use class C3 (dwelling house) to 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). However the Council can withdraw permitted development rights through an Article 4 Direction where they would undermine local objectives to create or maintain mixed communities. This has been a concern of the Council for many years. The Council's Unitary Development Plan which was adopted in 1995 included policies to control HMOs for this reason. To exacerbate matters the Government's recently announced reforms to housing benefit are likely to increase demand for HMOs in Barking and Dagenham; in particular the extension of the single room restriction to people aged 35.</p> <p>Therefore this report recommends that an Article 4 Direction is introduced to withdraw permitted development rights for small HMOs across the borough. Any proposals for small HMOs would then be assessed 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:</p> <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 the total number of houses in the road.</li><li>• No two adjacent properties apart from dwellings that are separated by a road should be converted;</li></ul> <p>To avoid the need to pay compensation a non-immediate direction is recommended which would require 12 months notice to be given. The Direction would come into affect 12 months after the notice had been placed.</p> <p><b>Wards Affected:</b> All Wards</p>	
<p><b>Recommendation(s)</b></p> <p>The Cabinet is asked to recommend to the Assembly the making of 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).</p>	
<p><b>Reason(s)</b></p> <p>To a greater or lesser extent this proposal will help deliver each of the aims of the Barking and Dagenham Local Strategic Partnership's Community Plan.</p>	

### **Comments of the Chief Financial Officer**

This reports asks Members to agree to the introduction of an Article 4 Direction covering the whole Borough, in order to withdraw the development rights introduced by the Government in 2010 permitting a change in property class from that of 'dwelling house' to 'house in multiple occupation' (HMO's). Therefore any future proposals for HMO's would need to be assessed against the Council's current Local Development Framework, and satisfy certain criteria. However the Council would not be entitled to receive a fee for such planning applications that are only necessary because of an Article 4 Direction. In order to avoid any possible claims for compensation, the Council is to provide 12 months advance notice of the Article 4 taking effect (a non-immediate direction).

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.

### **Comments of the Legal Partner**

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.

Article 4 of the Order provides that a local planning authority may resolve to withdraw a specific "permitted development" and instead require that development will still need to seek planning permission from the authority.

Article 4 directions are one of the tools available to local planning authorities in responding to the particular needs of their areas. An article 4 direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development.

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.

In deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.

The Guidance also provides that in deciding whether an article 4 direction might be appropriate, local planning authorities may want to consider whether the exercise of permitted development rights would for example, undermine local objectives to create or maintain mixed communities, or undermine the visual amenity of the area or damage the historic environment.

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.

It should be noted that 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.

Officers propose that the Council as Planning Authority should make 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). In making the direction Members should be satisfied that the legal provisions set out in this report and in the Government's Guidance are met in this case.

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## 1. The need for an Article 4 Direction

- 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. The

new 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.
- 1.4 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 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 recent changes 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.
- 1.5 To exacerbate matters the Government's recently announced reforms to housing benefit are likely to increase demand for Homes in Multiple Occupation in Barking and Dagenham; 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 bed roomed flat. This applies from April 2012 and existing claimants are affected when their claim is reviewed.
- 1.6 Therefore officers recommend that an Article 4 Direction is introduced to withdraw permitted development rights for small HMOs across the borough. This would mean that proposals to change a dwelling house into a HMO would require planning permission. Any such planning application would then be determined against Policy BC4 of the Council's Local Development Framework. This policy resists proposals which involve 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.

This policy is scheduled to go to Assembly for adoption in March 2011.

## **2 Process for making an Article 4 Direction**

2.1 The Government has recently published the Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135). This reduces local authorities' liability to pay compensation where they make article 4 directions as follows:

- Where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
- Where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.

2.2 Therefore to avoid potential compensation claims the Council needs to provide 12 months notice in advance of an Article 4 Direction taking effect. This is called a non-immediate direction.

2.3 The procedure for making a "non-immediate" Article 4 Direction is as follows:

- Give 12 months notice of direction
- Seek representations
- Assembly approval
- Advertise direction and notify Secretary of State

2.4 The Direction would come into effect 12 months after the notice had been placed.

## **3. Financial Issues**

3.1 The Council does not receive a fee for planning applications which are only necessary because of an Article 4 Direction.

3.2 To avoid potential compensation claims officers recommend that a non-immediate Article 4 direction is made.

3.3 The minor costs of publicising and publishing the Article 4 Direction will be met from the Regeneration and Economic Development budget.

## **4. Legal Issues**

4.1 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.

4.2 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.

4.3 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.

## 5. Other Implications

- **Risk Management:** Officers consider that there is a legally sound basis for making 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. Please see the options appraisal section for the risks associated with making immediate and non-immediate directions.
- **Contractual Issues:** No specific implications.
- **Staffing Issues:** No specific implications.
- **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 earlier from the CLG Evidence Gathering report. This will be to the benefit of all residents.
- **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.
- **Health Issues:** No specific implications
- **Crime and Disorder Issues:** The CLG report cited earlier in this report identified that increased crime was a problem associated with HMOs. Therefore withdrawing permitted development rights will help address this impact.

- **Property/Asset Issues:** No specific implications

## **6. Options appraisal**

- 6.1 Failure to make this direction would leave the Council without the controls it has deployed for the last 15 years to manage the impact of small HMOs.
- 6.2 For the reasons set out in the report officers consider that doing nothing is not an option.
- 6.3 Making a non-immediate direction does mean that there is an intervening 12 month period when people can take advantage of the new permitted development rights. There may be a rush of HMOs in this period as people avoid the impending removal of permitted development rights. However as covered in the report an immediate direction would leave the Council open to compensation claims payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.
- 6.4 Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property to a HMO where this is due to the Article 4 Direction. However an immediate direction may incentivise property owners to claim for compensation for HMO conversions they would not otherwise have carried out. This could leave the Council with a very significant liability. For this reason officers recommend that the non-immediate direction is the most appropriate course of action.

## **7. Background Papers Used in the Preparation of the Report**

- 7.1 The following papers / reports were used in the preparation of this report:
1. Evidence Gathering – Housing in Multiple Occupation and possible planning responses, CLG, 2008
  2. Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010
  3. 1995 (General Permitted Development) Order (as amended)
  4. Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135).
  5. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (2000 No. 2853)
  6. Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995
  7. Barking and Dagenham Unitary Development Plan, LBBD, 1995
  8. Barking and Dagenham Local Development Framework, post submission Borough Wide Development Policies, LBBD, 2010

## **8. List of appendices**

None