

## PLANNING COMMITTEE

15 NOVEMBER 2011

### REPORT OF THE TEMPORARY HEAD OF PLANNING SERVICES

#### A.2 PROPOSED DIRECTION UNDER ARTICLE 4 OF THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995 – HOUSES IN MULTIPLE OCCUPATION.

##### 1. PURPOSE OF THE REPORT

- 1.1 To seek the Planning Committee's approval to progress the introduction of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 across the whole of the Tendring District which will require planning permission to be obtained for all proposals for the change of use from a class C3 dwellinghouse to a class C4 House in Multiple Occupation ("HMO"). The Order and the Direction are referred to below as the "Order" and "Article 4 Direction" respectively.

##### Key Facts

- Permitted development rights enable certain types of development to occur without the need to obtain planning permission first.
- In exceptional circumstances an Article 4 Direction can be used by Local Planning Authorities to remove permitted development rights in order to secure local amenity or the proper planning of the area.
- This Article 4 Direction will remove permitted development rights for a change of use from Use Class C3 (dwellinghouse) to Use Class C4 (house in multiple occupation). This means that planning permission will be required to change the use of a property from the C3 use class to the C4 use class.
- This Article 4 Direction would only remove permitted development rights to control the change of use from C3 Dwellinghouse to a C4 HMO and would not constitute the removal of the entire permitted development classifications.
- This Article 4 Direction can only be applied to control future changes of use and not as a mechanism to require owners of existing HMOs to retrospectively apply for planning permission.

##### 2. EXECUTIVE SUMMARY

- 2.2 In October 2010, the national planning regulations on use classes and changes of use were altered so that proposals to change a normal dwelling or dwellings into small Houses in Multiple Occupation (HMOs) would not require planning permission.
- 2.3 There is a concern that this rule change could lead to an increase in small HMOs in the Tendring District, particularly in town centre locations like the centre of Clacton where they might detract from the tourism function of the area and lead to social and health problems if not properly controlled.

- 2.4 The report considers the options for introducing an 'Article 4 Direction' in the Tendring District as a means of controlling this kind of change of use (from C3 dwellinghouse to C4 HMO) and requiring planning permission to be obtained from the Council.

The potential benefits of introducing an Article 4 Direction include:

- The opportunity to coherently support and manage the delivery of mixed and balanced communities in neighbourhoods throughout the town or district;
- The ability to drive up standards of HMO accommodation in terms of appearance and function and to manage the effects of additional HMOs by the use of planning conditions;
- The ability to minimise the negative effects that could arise from high concentrations of HMOs;
- The opportunity to consider proposals for HMOs on their merits having full regard to local issues; and
- The ability to improve conditions in neighbourhoods for existing residents and enhancing the attractiveness of the area to visitors, investors and potential new residents.

### 3. **RECOMMENDATIONS**

- (a) **That the Council will make a district-wide non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 which, when finally confirmed, will require planning permission to be obtained for all changes of use from a use class C3 dwellinghouse to a use class C4 House in Multiple Occupation.**
- (b) **That the Temporary Head of Planning Services (or other equivalent/appropriate officer) is authorised to take all steps and procedures which she considers necessary and appropriate in order to give effect to (a) above**
- (c) **That the timescale for the making of the Article 4 Direction (and all related procedures) shall broadly accord with that set out in the above report but with authority for the Temporary Head of Planning Services to vary it if and insofar as she considers appropriate**

### 4. **BACKGROUND**

#### Changes to planning rules in relation to Houses in Multiple Occupation

- 4.1 In April 2010, the last Government made changes to planning rules involving the introduction of the 'C4' HMO Use Class (applicable to residential properties occupied by between three and six unrelated people who share facilities). Prior to this, there had been no distinction in planning terms between such properties and those occupied as a family home. The April 2010 changes also introduced a requirement for planning permission to be obtained for a material change of use from a C3 Dwellinghouse (family dwelling) to a C4 HMO (three to six unrelated people sharing). The result of this was that, for the first time, it became possible to assess the merits of individual proposals within the context of the planning policy framework and planning permission either refused, or granted subject to conditions both to mitigate any harmful impact and to secure high standards of accommodation.

- 4.2 The changes were welcomed by many local authorities and other organisations that had campaigned for the amendments to provide councils with the ability to manage the number, distribution and effects of small shared properties through the planning process.
- 4.3 However, in June 2010, the new Government announced its intention to introduce further amendments to the planning rules for HMOs that would introduce a permitted development right to change the use of a C3 family dwelling to a C4 HMO thereby removing the newly introduced requirement to obtain planning permission for this change of use. Councils wishing to reinstate this requirement would be required to issue Article 4 Directions to remove the permitted development right within specified areas if this was deemed to be appropriate or necessary.

#### Government guidance on the use of Article 4 Directions

- 4.4 Following the introduction of the rule changes in October 2010, consideration has been given to the most appropriate response, including the use of Article 4 Direction powers to reinstate the requirement for planning permission to be obtained for changes of use from a C3 dwelling to a C4 HMO within all or part of a town centre.
- 4.5 The Department for Communities and Local Government (CLG) has acknowledged in Circular 08/2010 Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation (November 2010) that high concentrations of shared homes can cause problems. The same point was made in a letter from the Housing Minister dated 17 November 2010. However, the view expressed by CLG is that problems associated with HMOs are only experienced in a small proportion of local authority wards and that the appropriate approach is not, therefore, to impose a blanket planning regulation, but instead for councils to use Article 4 Direction powers where a local problem is identified.
- 4.6 Since April 2010, the approval of the Secretary of State has not been required in order to issue an Article 4 Direction, although it is still necessary to notify him when a direction is made and also if it is subsequently confirmed.
- 4.7 Updated guidance on the use of Article 4 Directions was issued by CLG in November 2010 in the form of a replacement Appendix D to Circular 09/95. This includes the general statement 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. It also states that in deciding whether an Article 4 Direction might be appropriate local planning authorities should identify clearly the potential harm that the direction is intended to address.
- 4.8 Further guidance in the new Appendix D on the use of Article 4 Directions states that local planning authorities, in deciding whether an Article 4 Direction might be appropriate may want to consider whether the exercise of permitted development rights would undermine local objectives to create or maintain mixed communities. This factor, amongst other additions mentioned, expressly expands the range of issues that may be judged to be relevant beyond those of harm to local amenity or damage to the historic environment that had previously been the main focus of consideration. In contrast to the earlier guidance, the new guidance now makes it clear that it is possible to make a local authority wide Article 4 Direction, but also emphasises that there should be a particularly strong justification for doing so.

- 4.9 CLG has confirmed to officers that the level of evidence needed to justify an Article 4 Direction is a matter for this Local Planning Authority to determine.

#### Reasons for making an Article 4 Direction

- 4.10 As mentioned above, there is current Government recognition of impacts that can occur as a result of high concentrations of HMOs. A report published by the Government in 2008, Evidence Gathering: Housing in Multiple Occupation and possible planning responses – Final Report summarised the main impacts as:
- Anti-social behaviour, noise and nuisance.
  - Imbalanced and unsustainable communities.
  - Negative effects on the physical environment and streetscape.
  - Pressure upon parking provision.
  - Increased crime.
  - Growth in the private rented sector at the expense of owner-occupation.
  - Pressure upon local facilities.
  - Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.
- 4.11 There are several areas in Clacton that are characterised by high concentrations of HMOs. The impacts of these concentrations, including the undermining effect they can have on the creation of mixed and balanced communities and wider Council objectives have been acknowledged for some time.
- 4.12 The need to address these issues is reflected in existing planning policy within the Tendring Local Plan 2007, particularly policy HG3a: Mixed Communities that seeks to ensure that new development contributes to a balanced mix of housing size, type and affordability in the area.
- 4.13 This approach is carried forward in Core Policy 18 of the emerging Core Strategy that seeks to ensure that all new residential development maintains, provides and contributes to a mix of housing tenures, types and sizes in order to create mixed and balanced communities, with a particular emphasis on providing family housing to meet Sustainable Community Strategy and Housing Strategy objectives.
- 4.14 The introduction of an Article 4 Direction would not preclude additional C4 HMOs, but it would allow individual applications to be considered on their merits. At present, the Council has the ability to manage additional large HMOs (with seven more unrelated people sharing) through the planning process. Extending this to cover C4 HMOs would enable a more comprehensive approach to be taken, that recognises the contribution made by HMOs to meeting the districts housing needs and has due regard to wider housing strategy considerations along with application specific factors such as location, scale and quality of the scheme. This approach could also assist in driving up standards of HMO accommodation in terms of appearance and function, and improving conditions in neighbourhoods, thereby meeting the demands of a more diverse range of occupiers including young professionals.

#### Immediate and non-immediate Article 4 Directions

- 4.15 Two types of Article 4 Direction can remove permitted rights to change from a C3 Dwellinghouse to a C4 HMO. Firstly, an Article 4 Direction may 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 (12 months).

#### Article 4 Directions and compensation issues

- 4.16 A direction coming into effect immediately would have the clear advantage of straight away reinstating the Council's ability to manage new C4 HMOs. 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 being based, in part, on the difference in property values arising from the Council's decision.

Compensation may be payable if:

- a) Planning permission is refused for development that would have previously been permitted under the GPDO;
- b) Planning permission is permitted but with conditions that were not imposed by the GPDO.

Compensation is assessed on two grounds:

1. The first part of any compensation claim would be for any abortive expenditure that has been paid for abortive work including the preparation of plans and other preparatory matter.
  2. The second part would include any other loss or damage directly attributable to the revocation of the permission. That includes any depreciation in the claimant's land value as well as any anticipated future business profits that might have arisen under a specific letting or contract to let.
- 4.17 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 Tendring District Council (Planning Committee) deciding to confirm the direction and remove permitted development rights. However, there would be a delay in the Council's ability to manage additional C4 HMOs and a clear risk of acceleration in changes of use to C4 HMOs during the notice period, possibly resulting in exacerbation of existing problems.

#### The proposed Article 4 Direction area – options for consideration

##### The district-wide approach

- 4.18 This district wide approach would avoid the likely distortion that would be caused by a direction only covering a selected geographical area, and in particular, the unmanaged shift and expansion of HMOs into those parts of the town that immediately adjoined any such selected area. The fluid nature of HMOs uses and their impacts would also present difficulties when seeking to precisely define the extent of a selected area for the purposes of an Article 4 Direction, and in addition there would be pressure to delineate an extent of coverage well beyond the limit of existing HMO concentrations in an effort to avoid the likely spread of HMOs to adjoining areas as previously described. Such an approach could lead to somewhat arbitrary judgements being made about the boundary selection that would still not address the issue of the spread of HMOs, but would simply result in displacement to other areas.

### The focused town centre approach

- 4.19 For the district's town centres, Clacton-on-Sea, Dovercourt, Frinton-on-Sea, Walton-on-the-Naze, Brightlingsea and Manningtree, introduce separate (either an immediate or non-immediate) Article 4 Directions to remove the permitted development rights for a change of use from a C3 dwelling to a C4 HMO. The potential drawback of adopting this approach could be the displacement of problems to other settlements within the district not covered by the direction because of the fluid nature of HMOs.

### The focused area (ward) approach

- 4.20 Introduce either an immediate or non-immediate Article 4 Direction to remove the permitted development rights for a change of use from a C3 dwelling to a C4 HMO in a selected area of the town such as Pier Ward where there is an existing over-concentration or significant presence of HMOs. This could lead to the displacement of problems to areas not covered by the direction and because of the fluid nature of HMOs and the issues associated with them, defining a precise boundary for a selected area would be problematic with pressure to define an extent of coverage well beyond the limit of existing HMO concentrations in an effort to avoid the likely spread of HMOs to adjoining areas. Compensation liability from an immediate direction would be proportionately less for a selected area, but still substantial.

### Take no action approach

- 4.21 Issue no Article 4 Direction and accept the inability to manage new C4 HMO uses and the consequential undermining effect of this on delivering the Council's objectives.

### Other Local Authority approaches

- 4.22 Officers have been monitoring other Local Authorities approaches to HMOs. A summary of emerging approaches to implementing Article 4 Directions for managing HMOs is set out below:
- Manchester City Council, Bournemouth Borough Council and Portsmouth City Council have implemented a Local Authority wide Article 4 Direction.
  - Canterbury City Council has implemented an Article 4 Direction that covers the main urban area.
  - Newcastle City Council and Exeter City Council have implemented Article 4 Directions at a more local level, covering partial wards and groups of streets.
  - There are differences in the level of detail of Local Authority's evidence base to support the making of Directions.
  - All Local Authorities have highlighted residents concerns in their justification for implementing an Article 4 Direction.
  - In all cases 12 months notice of the Direction has been given to ensure no liability for compensation claims. Portsmouth City Council and Bournemouth Borough Council have proposed that there will be no charge for submitting a planning application for change of use from C3 to C4 once the Direction has come into effect.

### The procedure for issuing an Article 4 Direction

- 4.23 The following paragraphs outline the procedure the council need to follow to make the direction.
- 4.24 The first stage in the process would be for Planning Committee to resolve which Article 4 Direction to serve either an immediate or non-immediate direction. (An immediate article 4 direction removes permitted development rights with immediate effect. If a Local Planning Authority serves an immediate Article 4 Direction they are liable to pay potential compensation costs to affected parties).
- 4.25 If the Planning Committee resolves to introduce a non-immediate Article 4 Direction, this will come into effect after a 12 month notice period has been observed.
- 4.26 Members of the public must be invited to comment on the principle of issuing an Article 4 Direction and the boundary chosen within the 6 week consultation period.
- 4.27 A report could then be presented to Planning Committee following the consultation period with details of the representations made. The Planning Committee will then have 3 options:
1. Resolve to confirm the Article 4 Direction to take effect (12 months from the date the notice was served).
  2. Resolve to amend the Article 4 Direction boundary.
  3. Resolve not to proceed with confirmation of the Article 4 Direction and as such the direction will not come into effect.

### Indicative timetable for issuing this Article 4 Direction

- November 2011 - Planning Committee resolve to serve a non-immediate Article 4 Direction for Tendring District to remove permitted development rights for a change of use from Use Class C3 (dwellinghouse) to Use Class C4 (house in multiple occupation).
- Give 12 months notice of the Article 4 Direction
- December 2012 - Planning Committee resolve to confirm the Article 4 Direction (12 months from the date the notice was served).

### What will happen if the Article 4 Direction is confirmed?

- 4.28 If the Article 4 Direction is confirmed, planning permission will be required for a change of use from C3 dwellinghouse to C4 house of multiple occupation within the Article 4 Direction area. Currently there is no planning fee required for such applications. If the Article 4 Direction is confirmed then planning applications will be judged against the relevant national and local planning policy.

### Technical requirements

The public notice must:

- Include a description of the development and the areas to which the direction relates;
- Include a statement explaining what effect the direction will have;

- State that the direction is made under 4(1) of the GPDO;
- Explain where a copy of the direction and a copy of a map defining the area to which it relates can be inspected;
- Specify a consultation period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority;
- Specify a date on which it is proposed that the direction will come into force (which must be at least 28 days but no longer than two years after the date upon which the consultation period begins).

Notice of the Article 4 Direction needs to be given:

- By advertisement in a local newspaper;
- By advertisement at no fewer than two locations within the area to which the direction relates for a period of not less than six weeks;
- Between County planning authorities and district local authorities, within whose district or county the area / site to which the direction relates is situated (where both exist).

## **Other issues**

### Legal Issues

4.29 The actions proposed are within the Council's discretionary powers. The powers specifically relating to the Article 4 Direction are contained in the Town and Country Planning (General Permitted Development) Order 1995 as amended and, in particular, in Article 4 of that Order. These powers are delegated to the Planning Committee under the Council's Constitution. Paragraph 5 on page Part 3.81 of Delegated Powers expressly states "*Making any Direction, Order or issuing or serving any Notice under any legislation relating to town and country planning.*" There is also a legitimate expectation that, in making the Direction the Council will follow the correct procedures and have due regard to the relevant national guidance.

### Area or Ward affected

All wards.

### Resources

4.30 An Article 4 Direction would need to be supported by robust monitoring and enforcement which would potentially have resource implications for the Council's Planning Enforcement team.

### Planning fees

4.31 Under current arrangements, planning applications that would otherwise not be required if not for an Article 4 Direction, the Council would not be allowed to charge a planning fee. However, a consultation on proposals for changes to planning application fees in England has been undertaken with a view of giving Local Authorities the power to set their own fees. It also offers the opportunity to extend the range of fees charged, including for applications required under Article 4 Directions.

## Risk

- 4.32 The Article 4 Direction would be prepared in full accordance with legislative requirements and updated national guidance issued in November 2010. Any decision to subsequently confirm the direction would be made having regard to the outcome of the consultation process and evidence, thereby minimising the risk of legal challenge.
- 4.33 An Article 4 Direction enabling the District Council to manage C4 HMOs would be consistent with Section 17 of the Crime and Disorder Act and support the objectives of securing crime reduction and improved community safety.
- 4.34 The risk of potential compensation liability associated with an Article 4 Direction would be avoided because of the 12 months' notice period that is proposed.

## Consultation / Public Engagement

Notice of the Article 4 Direction needs to be given:

- By advertisement in a local newspaper;
- By advertisement at no fewer than two locations within the area to which the direction relates for a period of not less than six weeks;
- Between County planning authorities and district local authorities, within whose district or county the area / site to which the direction relates is situated (where both exist).

## Equality Impact Assessment (EIA)

- 4.35 This report does not include proposals for new policies. Policies within the emerging Core Strategy and Development Plan Documents, that would provide the policy context for determining planning applications for HMOs, will be subject to a full Equalities Impact Assessment process.

## **5. CONCLUSION**

- 5.1 Two types of Article 4 Direction can remove permitted rights to change from a C3 Dwellinghouse to a C4 HMO. Firstly, an Article 4 Direction may 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 (12 months).
- 5.2 A direction coming into effect immediately would have the clear advantage of straight away reinstating the Council's ability to manage new C4 HMOs. However, it would also expose the Council to potentially very high levels of compensation.
- 5.3 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 Tendring District Council (Planning Committee) deciding to confirm the direction and remove permitted development rights. However, there would be a delay in the Council's ability to manage additional C4 HMOs and a clear risk of acceleration in changes of use to C4 HMOs during the notice period, possibly resulting in exacerbation of existing problems.