

## PLANNING COMMITTEE

28 MAY 2013

### REPORT OF THE HEAD OF PLANNING SERVICES

#### **A.1 HOUSES IN MULTIPLE OCCUPATION: ARTICLE 4 DIRECTION**

(Report prepared by Richard Matthams)

##### **PURPOSE OF THE REPORT AND EXECUTIVE SUMMARY**

To consider and decide whether or not to confirm the non-immediate Article 4 Direction made on 8 December 2011.

##### Previous Committee Decision

On 15 November 2011, the Committee considered the report of the Temporary Head of Planning Services and authorised the making of the above non-immediate Direction (the Direction). A copy of the report is attached as Appendix A. It contains an explanation of the procedures and process which the Committee set in motion when it made its decision.

##### Effect of Confirming the Direction

If confirmed, 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 "HMO"). 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.

##### Consultation

This report provides feedback on the consultation carried out and the representations received.

The longest objection came from the Residential Landlords Association Limited which submitted a 3-page formal objection to the Direction (together with a 16-page appendix which sets out written representations against Article 4 Directions for small HMOs), which is considered in detail in section 5.

Essex Police (represented by the Tendring District Commander) submitted a written representation in support of the Article 4 Direction.

##### **RECOMMENDATION**

**(a) That the district-wide non-immediate Direction made on 8 December 2011 under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, which will require planning permission to be obtained for all changes of use from a use class C3 dwellinghouse to a C4 House in Multiple Occupation, be confirmed without modification.**

**(b) That the Head of Planning Services is authorised to implement the decision set out in (a) above as she sees fit.**

## **INTRODUCTION**

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. Concern was expressed by Members 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, if not properly controlled, they might detract from the tourism function of the area and lead to social and health problems.

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

If the Article 4 Direction is confirmed, planning permission will be required for a change of use from C3 dwellinghouse to C4 HMO and planning applications will be determined against the relevant national and local planning policies.

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 district;
- The ability to drive up standards of HMO accommodation in terms of appearance and function and to manage the impacts 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 planning merits, having full regard to local issues; and
- The ability to improve conditions in neighbourhoods for existing residents and to enhance the attractiveness of the area to visitors, investors and potential new residents.

## **BACKGROUND**

An explanation of the background, procedures and process for the making and confirming of non-immediate Article 4 Directions is set out in the report to the Planning Committee meeting on 15 November 2011 (attached at Appendix A), which sets out a more detailed explanation and appraisal of the issues listed below:

- Changes to planning rules in relation to Houses in Multiple Occupation;
- Government guidance on the use of Article 4 Directions;
- Reasons for making an Article 4 Direction;
- Immediate and non-immediate Article 4 Directions;
- Article 4 Directions and compensation issues;
- The procedure for issuing an Article 4 Direction; and
- Technical requirements.

## REPRESENTATIONS RECEIVED DURING THE CONSULTATION PERIOD

A copy of all the substantive written representations received during the consultation period comprises Appendix B to this report.

Essex Police: (represented by the Tendring District Commander) submitted a written representation in support for the Article 4 Direction. Essex Police's representation is summarised below:

The abundance and high concentration of HMOs specifically within the Clacton town centre are having a detrimental impact on the local crime trends within the community. There is evidence to support a growing trend of disproportionately high numbers of people who are involved in criminal activities who live in HMOs in Clacton. There are a large number of people staying within HMOs who conduct themselves in a legitimate and lawful manner and do not cause the Police any concerns. However, a number of recent incidents have involved residents from HMOs and I feel that strong consideration should be given to removing the permitted development rights of a property, or properties and bring this change of use under the control of the Council so that this can be effectively monitored and managed by all stakeholders.

The Residential Landlords Association ("RLA"): submitted a 3-page formal objection to the Direction (and a 16-page appendix which sets out written representations against Article 4 Directions for small HMOs), which is considered in detail in section 6. The RLA's representations are summarised below:

- No evidence has been put forward justifying the Article 4 Direction and the application of the Article 4 Direction to the whole of the district;
- There is no justification whatsoever for the use of planning powers to create so-called "balanced communities"; and
- The RLA states that improving the standards of HMOs is not a justification for the removal of permitted development rights. Existing legislation exists to achieve this objective through housing and environmental health legislation.

The RLA have stated they intend to seek a judicial review if the Direction is confirmed.

Cllr Delia Aldis: submitted a written representation which related to housing benefit.

The National Planning Casework Unit (NPCU): has not provided any comment in relation to the Direction. NPCU is the department within CLG which carries out the Secretary of State's planning functions relating to Article 4 Directions, which used to be carried out by the "Government Office" network.

Before Members decide whether to confirm the Article 4(1) Direction or not, it is important that they carefully consider all the representations made.

## OFFICER APPRAISAL OF RESIDENTIAL LANDLORDS ASSOCIATION (RLA) OBJECTIONS

***"There is no justification whatsoever for the use of planning powers to create so called "balanced communities".***

The Article 4 Direction does not mean that a planning application for a C4 HMO use will automatically be refused planning permission. The confirmation of the Direction would, however, ensure that all such applications will be considered and determined on their individual planning merits in accordance with current and (where applicable) emerging Local Planning

policy.

The Article 4 Direction will assist in the promotion of a more sustainable and balanced housing market across the district by helping to prevent high concentrations of HMOs contrary to proper planning considerations.

The introduction of an Article 4 Direction is consistent with central government policy. The government updated guidance on preparing Article 4 Directions in replacement Circular 9/95 in November 2010. In addition Circular 8/2010, also of November 2010, confirms that the use of an Article 4 Direction to control the change of use of dwelling houses to HMOs is an appropriate tool.

The Council has given more than a year's advance notice of the proposed introduction of the Article 4 Direction to give those concerned ample advance warning, allow representations to be made and thus to seek to ensure that it will have no liability for compensation claims in respect of the loss of permitted developments. This approach is consistent with relevant government advice in the above Circulars.

Particular parts of the District such as Pier Ward in Clacton and parts of Harwich have high concentrations of bedsits and/or licensed HMOs. It is thought important to ensure that any Article 4 Direction does not simply "displace" or create further concentrations of this kind into other parts of the district. For this reason, the making of a district-wide Article 4 Direction is considered advisable in the interests of the securing mixed and balanced communities.

***"No evidence has been put forward justifying the Article 4 Direction and application of the Article 4 Direction to the whole of the district."***

The proposal for the Article 4 Direction is based on evidence which indicates that areas with higher concentrations of HMOs tend to experience a range of negative impacts on the amenities of residents and on the character of the area.

Confining the Article 4 Direction to "problem areas" will not address the problem from any additional areas of high concentrations of HMOs which emerge. If the Direction is not confirmed high concentrations of HMOs can develop without planning controls in areas where presently numbers of HMOs are low.

### **Summary**

The RLA's representation questions the Council's motive for making the Direction and also alleges that TDC has not put forward sufficient justification for confirming the Direction. However, it is considered that without the Direction, there remains a real threat of potentially harmful development which would be harmful to the character of the district.

## **OTHER OPTIONS FOR CONSIDERATION**

Having made the Direction (on 8 December 2011) and then carried out public consultation, the other options are not to confirm the direction (i.e. abandon the decision which has already been made) or to make a new non-immediate Direction for limited parts of the district. There is no statutory power to amend the existing Direction by altering the area to which it applies. In other words, the existing Direction cannot be modified and, if Members do not decide to confirm it but still wish to proceed with a Direction, they will have to start the process again.

### **The focused area (ward) approach**

The Council has the option not to confirm the district-wide direction and instead focus on introducing either immediate or non-immediate Article 4 Directions in selected areas of the district such as Pier Ward where there is an existing over-concentration of HMOs. However, such an approach may lead to changes of use to HMOs simply occurring in other areas where the direction is not applied.

#### Do nothing option

Whilst the making of an Article 4 Direction will not of itself automatically resolve all issues, both actual and perceived, associated with the presence of concentrations of HMOs, it will help to address and retain control over some aspects of smaller HMOs that come forward in the future. Doing nothing would mean the continued absence of any planning control over changes of use from use class C3 to C4, which would undermine the Council's ability to contribute to the management and distribution of HMOs. The "do-nothing" option is therefore not recommended.

### **EVALUATION OF MATERIAL PLANNING CONSIDERATIONS**

Current Government official guidance recognises that significant impacts are likely to 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; and
- Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.

Areas in Clacton and Harwich are characterised by high concentrations of HMOs, for instance, Pier Ward, Clacton. The existence of these concentrations and their negative impacts, including the undermining effect they can have on the creation of mixed and balanced communities and wider Council objectives, have been noted and acknowledged over a number of years.

Essex Police have stated that the abundance and high concentration of HMOs, specifically within the Clacton town centre, are having a detrimental impact on the local crime within the community. There is evidence to support a growing trend of disproportionately high numbers of people who live in HMOs in Clacton, who are involved in criminal activities. Careful consideration should be given to removing the permitted development rights to change a dwelling or dwellinghouse to a C4 HMO by bringing this change of use under the control of the Council so that it can be monitored and managed more effectively by relevant stakeholders.

The Council has recently consulted on a new Local Plan 2012 (the Submission Draft) which contains "Policy PEO13: HMOs and Bedsits" and the public consultation period for this Draft ended on 7 January 2013. This policy is designed to ensure that any proposal for HMOs or bedsits does not result in an unhealthy concentration of such accommodation in any one particular area and to ensure that any HMOs or bedsits which are permitted will meet minimum standards of room size, facilities, design and layout.

The introduction of an Article 4 Direction would not preclude additional C4 HMOs, but it would

ensure that each individual application for an HMO use is considered on its planning merits. At present, the Council has the ability to manage additional large C4 HMOs (with 3 to 6 unrelated people sharing) through the planning process. Extending this to cover a change of use from C3 dwellinghouse to C4 HMOs would enable a more comprehensive approach to be taken, thus recognising the contribution made by HMOs towards other material considerations. These include meeting the district's housing needs, having due regard to wider housing strategy considerations and "application-specific factors" such as the 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 requirements of a more diverse range of occupiers, including young professionals.

## **DELIVERING PRIORITIES**

The proposed permanent Direction will help promote the delivery of mixed and balanced communities in neighbourhoods throughout the district and should also help to improve conditions in relevant neighbourhoods for existing residents, new residents, visitors and investors. All of these considerations are consistent with Council priorities

## **RESOURCES AND RISK**

### Resources

If a decision is made to confirm the Direction, there will be the direct costs to the Council of a newspaper advertisement and of complying with the other procedural formalities, such as issuing formal notices, noting records and making an entry in the local land charges register. The costs of this work and expenditure and of the associated officer time can be met from within existing budgets.

If a claim for Judicial Review were made, seeking to challenge the decision to confirm the Direction, there would be cost implications to the Council, which could be substantial. The outcome and cost of claims of this kind can be unpredictable. Costs could range from several thousand pounds to tens of thousands.

## **LEGAL**

The proposed actions are within the Council's statutory powers. The report at Appendix A and the above sections of this report explain the legal issues. As stated throughout this report, the effect of the proposed permanent Direction is to require planning permission to be sought for any future proposed new C4 HMO use.

There is no statutory right of appeal against the confirmation of the Direction. The only way of challenge would be for an aggrieved party with the necessary legal standing to seek Judicial Review (JR) on the basis that there had been manifest unreasonableness or of some serious procedural flaw. Before seeking JR, an applicant would first have to obtain permission to do so from the Court.

## **CONCLUSIONS**

- If confirmed, the Direction would give the Council control over change of use from Use Class C3 (dwellinghouse) to Use Class C4 (house in multiple occupation);
- The 'Article 4 Direction' would help manage and minimise the negative effects that could arise from high concentrations of HMOs;
- The RLA have objected and have indicated they would make a legal challenge if the

Council decides to confirm the Direction; and

- On balance, it is recommended that the direction be confirmed.

#### **APPENDICES AND BACKGROUND PAPERS**

- Appendix A - HMO Planning Committee Report, 15<sup>th</sup> November 2011; and
- Appendix B - Written representations received during the consultation period.

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.



NOT PROTECTIVELY MARKED

Tendring District Council  
Life Opportunities  
Town Hall  
Station Road  
Clacton-on-Sea  
CO15 1SE

Clacton Police Station  
8 Beatrice Road  
Clacton-on-Sea  
ESSEX  
CO15 1ET

24 December 2012

Dear Sir/Madam

**Houses in Multiple Occupation (HMO)**

On 14 December 2012 I attended a meeting at the Town Hall with the newly appointed Police and Crime Commissioner, Nick Allston, along with MP Douglas Carswell, MP Bernard Jenkins, Ian Davidson, Peter Halliday and Paul Honeywood as well as other Councillors to discuss the number of violent incidents that have occurred within Clacton in the last year involving knives/weapons. It was a very productive meeting and my Police Officers will continue to tackle this issue through enforcement, education and engagement tactics in conjunction with other stakeholders.

All parties present discussed a number of issues that have contributed to this particular problem and I stated that the abundance and high concentration of HMO's specifically within the Clacton town centre are having a detrimental impact upon the local crime trends within the community. Each town should be responsible to support and manage a diverse mix within the community but there is evidence to support a growing trend of disproportionately high numbers of people who are involved in criminal activities who live in HMO's in Clacton.

A member of my staff conducted a routine weekly visit to the Frandon Hotel, Beach Road, Clacton this week and 5 out of the 19 residents have links to the Tendring area. The remaining 14 people have come from London, Leeds, Norfolk, Cambridge and Suffolk. I appreciate that the guests only stay at the hotel for a short period of time before moving into a HMO or similar residence within Clacton but this can lead to other longer term issues.

I would like to state that there are a large number of people staying within HMO's who conduct themselves in a legitimate and lawful manner and do not cause the Police any concerns. However, a number of recent incidents have involved residents from HMO's and I feel that strong consideration should be given to removing the permitted development rights of a property, or properties and bring this change of use under the control of the Council so that this can be effectively monitored and managed by all stakeholders.

I would be happy to meet with your department to discuss a way forward for this increasing problem.

Yours Sincerely

**Chief Inspector 17 Cat Barrie  
Tendring District Commander**

NOT PROTECTIVELY MARKED



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Website: www.ria.org.uk

Your Ref: Article 4 Direction  
Our Ref: 10/DB/39492/35(1427)  
Dated: 13 February 2012

Planning Policy  
Tendring District Council  
Weeley  
Clacton on Sea  
CO16 9AJ

**BY EMAIL [planningpolicy@tendringdc.gov.uk](mailto:planningpolicy@tendringdc.gov.uk)**

Dear Sir

Re: Article 4 Direction - HMOs

This Association wishes to object to the confirmation of the Article 4 Direction withdrawing permitted development rights in relation to change of use from Class C3 (dwellings) to Class C4 (houses in multiple occupation). I refer you to the attached document in the case against Article 4 Directions prepared by this Association which should be read as part of this objection.

The main grounds of objection are as follows:-

1. Application of the Article 4 Direction to the whole of the Council's district

This district made up a number of towns and rural areas. The Report to Committee makes no reference to established significant concentrations of HMOs other than in certain parts of Clacton. No where else at all is mentioned in the Report. Rather, the Report suggests that, should an Article 4 Direction be imposed only in relation to the areas of concentration, then HMOs could spread out into all over the district because of the supposed "fluidity" of HMO accommodation. Such a claim has no basis in fact. Indeed, you only find HMO accommodation to any degree at all where there is a demand for it. To suggest that such concentrations pop up in rural villages in North East Essex is unfounded and fanciful. Any issue of spread would readily be dealt with by incorporating immediately adjacent areas to any existing areas of concentration. The relevant Government circular requires that there should be a particularly strong justification rather than wide designation. The Report presented contains no such justification at all. If the authority proceeds with the confirmation then it would be our intention to apply to the Secretary of State to revoke the Article 4 Direction. We already have an application before the Secretary of State which is under consideration applying for the revocation of 19 existing Article 4 Directions which we consider are too wide in their geographical extent. We have not come across any Council of similar make up for its district which has purported to impose such a wide Article 4 designation. The reasons given for doing so are, in

our view, non-existent. The intention of the Town & Country Planning Legislation where permitted development rights are granted is that land owners should be entitled to enjoy such rights unless a proper case can be made to remove them. What you have done is to simply reverse Government legislation otherwise applicable to your area and thereby imposing additional unjustified burdens on land owners in your area.

## 2. No evidence has been put forward justifying the Article 4 Direction

There is a passing reference to the ECOTECH Report in the Committee's Report. There is also mention of the supposed concentrations in certain areas of Clacton. In other words, there is absolutely nothing whatsoever to justify the removal of rights which should be enjoyed by land owners. There is no reference to supposed problems generated by the presence of small HMO accommodation. Paragraph 4.11 states "*The impact of these concentrations (i.e. in several areas of Clacton but nowhere else), including the undermining effect they have on the creation of mixed and balanced communities and wider Council objectives have been acknowledged for some time*". Where is the evidence in support of this statement? What are the impacts?

## 3. Balanced Communities

In support of the decision to impose an Article 4 Direction there is reference to "mixed and balanced communities" in paragraph 4.11. Whilst planning law acknowledges the concept of mixed communities (as referred to in paragraph 4.12) there is, in our view, no justification whatsoever for the use of planning powers to create so-called "balanced communities". For a start nobody knows what they are. This is dealt with further in the accompanying paper. We consider that the decision to impose such a direction is bad in law in so far as it related to balanced communities. Creating so-called balanced communities is a vehicle for social engineering justified by a land use system of Town & Country Planning.

## 4. Improving Standards

The Report makes reference to the driving up of standards. This is not a justification for the removal of permitted development rights. It should be an exceptional action. All that the Council is trying to do is regain powers presumably because it does not like the Government's decision to allow permitted development rights for these changes of use. If there are particular problems associated with individual properties then there are ample powers available. Indeed, the purpose of the Report suggests strongly that if you are seeking to use planning powers for matters that can be addressed using housing and environmental health legislation.

Conclusion, no other authority has sought to impose a district-wide Article 4 Direction on such weak evidence and this measure is wholly without justification. If there are particular problems within Clacton itself then this can be addressed by imposing an Article 4 Direction for that town, assuming that a case can be made out. No such case has even been made out for Clacton to date in the Committee Report. The suggestion that concentrations of small HMOs will pop up in rural districts of Tendring is absurd.

There is no suggestion even in the other towns within the District, e.g. Harwich or Manningtree, that any such concentrations even exist now. This designation nowhere near approaches the thresholds laid down in the relevant Government Circular Guidance and therefore we contend that the designation should not be confirmed.

Yours faithfully

  
R.O. JONES  
POLICY DIRECTOR

[r.o.jones@burywalkers.com](mailto:r.o.jones@burywalkers.com)

**RESIDENTIAL LANDLORDS ASSOCIATION**  
**THE CASE AGAINST ARTICLE 4 DIRECTIONS FOR SMALL HOUSES IN**  
**MULTIPLE OCCUPATION (HMOS)**

**EXECUTIVE SUMMARY**

**Background**

Since 6<sup>th</sup> April 2010, small houses and flats in multiple occupation (HMOs) - i.e. occupied by between 3 and 6 individuals not of the same family now fall within their own "class" for planning purposes, Class C4. This is separate to single dwellings occupied by families of any size which is Class C3. The General Development Order (GDO) gives automatic planning permission to change an HMO to a single dwelling, or vice versa. A local authority may make an Article 4 direction which enables it to override the GDO so that an application for planning permission has to be made where there is a material change of use.

A number of local authorities are considering making Article 4 directions to enable them to prevent C3 class properties being used for C4 purposes without planning permission and so restrict the numbers of HMOs in designated areas. These are in areas where there are populations of students, young professionals or migrant workers. If an Article 4 Direction is made it will have to be accompanied by a local plan setting out where and when planning permission will be granted.

The Residential Landlords Association (RLA) is against using planning laws to restrict the number of small HMOs. Rather any problems should be dealt with using other existing legislation. We would urge local councillors and planning officials to think very carefully before going down this route and to ask themselves the questions which we have posed in the next section.

**The Need for HMOs**

Populations have shifted and demographics have changed, a fact poorly reflected by the current Use Classes. In many areas where there is a concentration of HMOs, landlords are making intensive use of the existing stock in places where it might be otherwise under utilised and poorly maintained. This has contributed to positive regeneration of many inner city areas, for example in Leeds, Nottingham and Manchester.

HMOs provide a vital service to the economies of many of our towns and cities. This kind of accommodation is key to the mobility of the workforce, especially young workers and young professionals. Areas with concentrations of HMOs are renowned for their vibrant nature with local, independent retailers and a café culture, which help promote a diverse and strong local economy. HMOs are not just occupied by students, but with rising rents and difficulties with getting a mortgage, are increasingly required by working people.

### **The Impact on Local Communities**

The high demand for HMOs has led to the creation of wealth through increasing property prices for local residents. Where restrictive planning policies have been applied, a real decrease in property prices has been noted. In Nottingham and Leeds, between 33¼% and 15% has been shaved off the value of properties where the Council has a policy of denying planning permission for new HMOs. The real impact of Article 4 is therefore felt by local residents.

Class C4 is directed solely at the Private Rented Sector (PRS) and imposing an Article 4 Direction to restrict small HMOs will have a direct impact on supply, with consequences for rent levels which will increase. The impact of this will not be mitigated by already oversubscribed social housing providers. As each local authority is under a duty to ensure that sufficient levels of small HMO accommodation is provided in their area, where will alternative provision for HMOs be met? Neighbouring communities with a more mature or more familial make up are not likely to welcome students moving in and there will not be the infrastructure to support their needs. In direct contradiction of the intention of the regulation, this is likely to create greater community disharmony.

Article 4 also takes away the freedom of people to chose where they want to live. It allows local authorities to engage in social engineering, restricting who can live in what part of local authority areas. Further, the impact on the environment and transport, currently concentrated in small areas, will spread across our towns and cities. The loss of flexibility, with landlords unable to rent their properties to families as well as groups of individuals to meet the demands of the market, without planning permission, is unwise.

The Rugg Review into the private rented sector argued strongly against the use of planning powers to limit HMO numbers with research showing problems to be confined to less than 1% of council wards

Local authorities are under a duty to meet demand for housing. Authorities seeking to impose Article 4 directions will require a robust plan to deal with the issues that will arise from this. It will take considerable time and resources to process resultant planning applications for which no fee is payable. At a time when services are having to be cut, this is not the best use of resources.

Instead of local authorities adopting this new form of regulation, it would be better to address problems that may occur where there are high concentrations of HMOs through other existing wide range of powers at their disposal, including those used for tackling anti social behaviour. Landlord accreditation can also be used to ensure that HMO management is of a high standard. These and other measures have an immediate impact and address the current position whereas the Article 4 direction may only prevent new HMOs and even this is questionable.

### **The RLA viewpoint**

The RLA is opposed to the use of Article 4 Directions and implores local planning authorities to consider very carefully the arguments against doing so.

**20 QUESTIONS FOR LOCAL COUNCILLORS AND PLANNING OFFICERS  
TO ASK THEMSELVES BEFORE MAKING AN ARTICLE 4 DIRECTION**

**Please ask yourself the following:-**

1. Isn't this really about restricting the number of students/migrant workers because neighbours do not like having them living beside them?
2. Importantly, do residents realise how much their properties could be devalued if they cannot be used as small shared houses?
3. Should we not look at the broader picture? What will be the wider impact if the whole of the Council's area of these measures e.g. adverse consequences for employment?
4. With a housing crisis due to a shortage of accommodation how are we going to house single people especially the younger end of the population?
5. If there is a demand for small HMO accommodation but we restrict this in one area how are we going to meet our responsibility to cater for it elsewhere?
6. If we move small HMOs into other areas what will be the reaction from the local residents of those areas?
7. Why does anyone think that the planning system will produce a quick solution to any problems that may exist? Instead, would it not be better to work with local residents and landlords using existing powers to deal with any problems rather than put planning restrictions in place?
8. How would we fund the cost of implementing an Article 4 direction when we are facing major cut backs in local authority expenditure?
9. Although local residents complain about loss of amenities due to in small HMOs in the area has this not brought in other amenities and helped promote local businesses?
10. The demand for small HMOs does not come out of thin air and landlords only provide them where there is a need. How else are we going to meet this need? Where will the necessary accommodation come from to support local universities and colleges as well as essential workers e.g. nurses? Can Universities etc operate without small HMOs to provide the necessary accommodation?
11. If we restrict small HMOs in certain areas will it not just push up rents and lead to a loss of cheaper affordable accommodation for those that need it?
12. What justification is there really for saying that just because there happened to be more than 20% of small HMOs in an area this makes the "community" unbalanced? Is the concept of a balanced community not a myth, What about those areas which are middle class and exclusively owner/occupied. Should we not move smaller HMOs into them so that they are "balanced"?

13. Will traditional families really move back into these areas where the number of small HMOs are restricted in the area? Why have the original families moved out in the first place?
14. If the families will not move back in and the property cannot be used for small HMOs what can they be used for? Where are the residents going to come from or will we end up with more empty accommodation and a run down area?
15. Does history not demonstrate that you always have demographic changes? Populations move so why is this any different?
16. Is there not sufficient legislation that already deals with any problems such as fire safety which are not covered by planning laws anyway?
17. If we restrict the numbers will it not just lead to overcrowding in existing small HMOs? Should we not be making better use of the existing housing stock especially where it is suitable for small HMOs?
18. Because there is a need to demonstrate a material change of use anyway before planning permission is required will this restriction on small HMOs be enforceable in reality?
19. Should we really be using planning powers that prevent individuals who have a certain occupation/status from living in specific areas? Should we become involved in social engineering of this kind and is it right for us to decide that students/migrant workers should be barred from living in certain areas?
20. Are we really considering the impact of students/migrant workers or, as we should be doing, are we looking at the impact of small HMOs irrespective of who is living in them?



## **THE DETAILED CASE AGAINST ARTICLE 4 DIRECTIONS FOR SMALL HOUSES IN MULTIPLE OCCUPATION (HMOS)**

### **Introduction**

Small houses and flats in multiple occupation (HMOs) rented out in the Private Rented Sector (PRS) now fall within their own use class for planning purposes. Shared houses and flats together with bedsit accommodation occupied by between 3 and 6 individuals who are not members of the same family are within this use class (C4) as from 6<sup>th</sup> April 2010. Single dwellings occupied by families (with no limit on numbers) are in a different use class (C3). As of 1<sup>st</sup> October 2010 under the General Development Order (GDO), planning permission is automatically granted to change the use of a dwelling from a small HMO to a single dwelling or vice versa. This assumes no Article 4 Direction is in place – see below. Even then planning consent is only required for a change of use where the change is material.

Flats or houses which were already in-use as small HMOs as of 6<sup>th</sup> April 2010 were automatically transferred into the new use classes from that date.

### **About the Residential Landlords Association (RLA)**

The RLA is one of the largest direct member national landlords associations operating in England and Wales. We have over 15,000 members who own or manage at least 150,000 units of accommodation. In the main our members are private landlords, some with large portfolios, but we also include managing and letting agents amongst our membership. Many of our members rent out shared houses and bedsit accommodation to those looking for this kind of accommodation such as students, young working people, young professionals and migrant workers. The RLA has been at the forefront of representing landlord's interests when proposed changes to planning law were under consideration culminating in the introduction of the latest set of regulations as of 1<sup>st</sup> October 2010.

### **Article 4 Directions**

A local authority may make an Article 4 direction where this is "expedient". Where an Article 4 direction is in force the relevant GDO rights are overridden so, if there is a material change of use involved, an application will have to be made for planning permission to enable the intended change of use to take place. The local authority has to give one year's notice of the making of an Article 4 direction; otherwise they have to pay compensation. Where an Article 4 direction is in force no fee can be charged for any application for planning permission.

### **The extent of the problem**

In her report into the Private Rented Sector in 2008, Dr. Julie Rugg came out strongly against the use of planning powers to address HMOs. She also stated that her research showed that any problems were confined to less than 1% of the Council wards in England. There may be requests for restrictions on small HMOs but it is vital that local planning authorities retain a sense of perspective. In particular, if these

requests come outside areas where there are concentrations of HMOs should local planning authorities even consider taking any action in the light of Rugg's findings?

### **Proposals for Article 4 directions**

A number of local planning authorities are considering making Article 4 directions. The purpose of these Article 4 directions would be to prohibit the use of single dwellings within Class C3 as Class C4 small HMOs without obtaining planning permission (or vice versa). The idea would be to restrict the numbers of small HMOs either in designated areas or, in some cases, throughout the whole of the local authority's area. The requirement to give a year's notice to avoid paying compensation, gives owners the opportunity to change their use but, to be effective, there must be an actual change of use before the Article 4 direction comes into force.

Local authorities contemplating Article 4 directions are those where the authority believes that there are concentrations of small HMOs occupied by students or, in some cases, migrant workers and there is strong local opposition from residents to the presence of the small HMOs in their neighbourhoods. Alongside the introduction of an Article 4 direction, to avoid successful challenges on appeal, the local authority will have to develop local plans for the areas in question. These will be required to set out the criteria by reference to which planning applications will be judged. These Article 4 directions will be put into place in areas where local authorities want to stop new small HMOs or at least restrict their numbers. It is, therefore, likely to be difficult, if not impossible, to obtain planning permission in these areas.

Other local authorities, especially in London, may be concerned to stop existing small HMOs being converted back to single dwellings so they may adopt an Article 4 direction for this reason.

### **The RLA's views**

The RLA is aware that in certain areas there has been concern as a result of the presence of small HMO accommodation. There have been vociferous campaigns in favour of the changes to planning laws. The RLA believes that calling for the adoption of planning laws to deal with any problems is not the right approach. It remains the case that problems are caused not by the material existence of HMOs but by the behaviour of tenants inside, and planning laws will not be able to reverse changes in areas. Rather, if there are problems then these should be dealt with by intensive area management and the better enforcement of existing legislation to combat anti-social behaviour and environmental concerns. This has been tried successfully and, importantly, it provides an immediate solution to local problems, where they exist. Before a local planning authority considers adopting an Article 4 direction we would urge that elected members and officers consider the implications very carefully. Potentially, as we highlight, there are also significant disadvantages for local owner occupiers i.e. potential significant reductions in the value of their properties.

We are particularly concerned that some local planning authorities are considering district wide Article 4 directions covering the whole of their areas. This flies in the face of Julie Rugg's assessment of the extent of problem areas. She said only

approximately 1% of the Council wards in England were affected. Having regard to the relevant provisions of the GDO we think the a whole district Article 4 direction is legally highly questionable. Why is an Article 4 direction needed in any areas where there is no immediate problem or possibility of a problem?

### **Who lives in small HMOs?**

Much of the debate which led to the changes in planning law was about students. It is, however important to appreciate that this kind of accommodation is not just occupied by students. Frequently it is lived in by young professionals, young working people, single people (sometimes in receipt of housing benefit), nurses and migrant workers. For example a group of three friends sharing a house or flat, as a result of the changes to planning law, are living in a small HMO. Take three nurses as an example.

There are already large numbers of these properties throughout the country. These are not going to go away as a result of the changes to planning law. They will continue to provide the accommodation which is much needed by these groups.

### **The need for small HMOs**

Certain sections of the community need HMO accommodation in small HMOs. Only the PRS provides this accommodation. Rarely, do social housing providers rent out this kind of accommodation. Tenants needing this kind of accommodation can only find it by renting from a private landlord. As Class C4 is directed solely at the PRS imposing an Article 4 Direction to restrict/ban small HMOs will have a direct impact on supply. If supply is reduced this will have the consequence of driving up rent levels.

The presence of small HMOs has greatly helped local economies and large local employers such as Universities,

Due to its non self contained nature, renting in a shared house or HMO is usually cheaper than obtaining self contained flat or similar property. Frequently, this kind of accommodation provides the first rung on the housing ladder. Small HMOs including bedsits provide homes for students, young workers, young professionals and migrant workers. Without the PRS providing accommodation for students, for example, it would not have been possible to expand higher education in the way which has occurred in the last 30 years. An educated workforce is vital to our economy. Likewise, young professionals are a key element of the work force particularly in larger cities and towns. Often nurses are found in this kind of accommodation and they are essential workers. This kind of accommodation is vital to the mobility of the workforce. It is the way in which people going to a new town often find accommodation for the first time.

In the RLA's view restrictive planning policies coupled with Article 4 directions will prove to be a grave disservice to local economies and communities.

Proposals such as those for Article 4 directions are often motivated by residents in a local community calling for such measures. By acceding to such calls, local

politicians and officers are overlooking the overall economic and housing needs for their City or Town as a whole.

### **What properties are used as small HMOs**

Existing HMOs come in all shapes and sizes. Often they are older larger properties which are now too big and have been sub-divided. The traditional bedsit, however, has been in decline. More often than not concerns centre on shared houses lived in by groups of younger people. Properties within the C4 Use Class include small properties which are very different from the larger properties. Compare a purpose built flat shared by 3 friends on one hand and larger converted Victorian properties on the other.

The Use Classes are based on the concept of family but in many respects particularly with this kind of accommodation, the concept of family communities is out of date. In any case, families have moved away from these properties. They no longer meet their needs. Instead, PRS landlords have invested substantially in these properties and have sustained the areas rather than allowing them to become derelict

### **Local planning authorities duty to cater for the need for small HMOs**

Each local planning authority is under a duty to ensure that sufficient levels of small HMO accommodation is provided in their area. Small HMOs including bedsits are an essential element of overall housing provision. There is considerable demand for this kind of accommodation. Across the country the population is growing and household sizes are becoming smaller meaning that more, smaller units of accommodation are required. This, of course, includes provision for those who want to live in small shared houses and bedsits. The obligations of the local planning authorities were highlighted in the letter sent by the Department for Communities and Local Government (CLG) at the time the original amendments were made to the use classes order effective from 6<sup>th</sup> April 2010.

Recent statistics bring home this need. The number of households in England is projected to rise by 230,000 per annum approximately on average. Net new additions to housing stock are only 128,000 per annum at present. 80% of new units are provided on previously developed land. 3% of dwellings are already overcrowded.

Land had to be used more intensively if we are to avoid the use of green field sites to provide the requisite for new housing which is required. However household size is declining with more and more single households and at the same time the overall population is growing. Many of those who have to be catered for are just the kind of people who will be looking for shared housing or bedsit accommodation. This demonstrates the need for this type of accommodation.

Local planning authorities must therefore address this responsibility. Trying to ban this kind of accommodation or restrict it in particular areas can be counter productive and contrary to a local planning authorities responsibilities towards its area as a whole.

### **Local Plans**

If an Article 4 Direction is made local plans will have to say where smaller HMOs are encouraged, if they are to be banned or restricted in certain areas. To meet need, other areas will have to be designated to encourage small HMOs instead. This is provided for in the South Belfast Local Plan, as Northern Ireland is the only area where this process has already been carried through before the law was altered in England. Local Authorities cannot duck this obligation to say where else in their areas the need for shared accommodation is to be met.

### **Environmental health and housing law**

It needs to be recognised that Article 4 Directions and planning law have nothing to do with the state and condition of smaller HMOs. There is already legislation to deal with this. Larger HMOs (5 occupants on three or more floors) have to be licensed separately under the Housing Act 2004. This Act contains ample powers under which local housing authorities can address problems in HMOs whether they need a licence or not.

### **Rent increases**

As already pointed out, Article 4 Directions will reduce the supply of small HMOs in areas where there is a demand and a need for them. As always with the law of supply and demand this will lead to increases in rents in those areas, particularly if they are close to places of work such as hospitals. The RLA is therefore calling for local planning authorities to carefully consider what the resulting impact will be, mindful particularly that this kind of accommodation provides cheaper affordable accommodation. Pushing up rental levels is will not help those who want this kind of accommodation.

Perhaps those residents in areas who are calling for restrictions and who are parents should pause for thought. One day they may find that their children will need to live in this kind of accommodation. They will discover that either they have to help their children out financially at worst or at best listen to complaints of prohibitive rents.

### **Reductions in value – IMPORTANT because of local residents interests**

In the short period from when the original regulations came into force on the 6<sup>th</sup> April 2010 and the changes made from the 1<sup>st</sup> October 2010 it quickly became obvious that an Article 4 Direction will mean that two properties side by side could have significantly different values. A property which could only be used as a single dwelling because of planning restrictions would be worth UP TO 1/3 LESS than a similar adjoining property which can be used as a single HMO. At least 15% to 20% or as much as 1/3 would be shaved off the value of properties which could not legally be occupied as a small HMO because of planning rules. We have to emphasize that this is not scaremongering. The situation in Nottingham, for example, became so bad that some Estate Agents were refusing to sell single dwellings as the April 2010 changes meant that planning permission could not be obtained for Class C4 use. Agents in the area concerned were down valuing properties by 1/3. Likewise, in Leeds properties were being significantly down valued by local agents around 15%/20%.

This situation will return in any area where an Article 4 direction is made. It is imperative that local owner/occupiers are warned of this by those who are proposing Article 4 directions.

A further risk is that when owner/occupiers realise this there will be an indecent scramble to obtain planning consent for a change of use (particularly as no fee will be payable). Local plans will set limits for numbers. Thus the first 10%, 15% or 20% (or whatever the limit is set at) will not be opposed anyway and their owners will be the winners financially whilst the rest, who will be the losers, will see the values of their properties significantly reduced in comparison.

### **Introduction of small HMOs into new areas**

Where will alternative provision for HMOs be located? Local authorities will have to ensure that demand is met. What will be the attitude of local residents of those areas where HMOs will be deliberately introduced as alternatives as part of any local planning policies?

### **Property Condition**

Small HMO accommodation is frequently located in the older areas of Cities or Towns; often inner city areas. It is frequently located in older housing stock normally built before the First World War. It therefore needs considerable expenditure to renovate it and bring it up to modern standards. Even if this has already happened further investment will be needed to meet the need for energy efficiency. Mainly those who are opposed to small HMO accommodation are anti student; they are concerned about "studentification". However, experience has shown that in areas where students are concentrated, because of property values rising, landlords have been prepared to make considerable improvements and commit a great deal of capital expenditure. Thus, the presence of students in these areas enhances these areas contrasted with to the condition of stock in other inner city areas.

### **Social Engineering**

Surely it is an undesirable feature of these measures that local authorities will be involved in social engineering. Particular individuals will be restricted from certain areas because of their personal status/occupation e.g. because they are students. Is this the function of the planning system? Are we not getting on to a slippery slope. What of local planning authorities who decide they want to ban the aged because of the adverse impact on local social services with too many elderly people concentrated in certain areas e.g. in seaside towns. In the RLA's view, this all sets a dangerous precedent.

If we take the idea of social engineering to its logical conclusion, every owner/occupied estate in the better off suburbs would have to have its quota of small HMOs.

The RLA remains very concerned with suggestions coming from certain local authorities of wholesale changes of population with grandiose ideas of moving

students from one area to another. This smacks of social cleansing and is a very dangerous proposition in a democratic society.

### **The Fallacy of the “Balanced Community”**

Proponents of the controls on small HMOs speak of localities needing “balanced communities”. What they try to do is to first define the locality for a community to suit their argument and then proceed with the argument as if the case is proven on this basis. In other words you pick an area with boundaries that suit your case. However, the argument fails to address what should be the locality for this purpose. Should it not be the whole of the City or town or even a much wider area than the particular locality which is conveniently identified to suit campaigner’s purposes? For example in Leeds, campaigners conveniently choose one part of Headingley because it suits their case.

Campaigners then speak of the “local community” and equate this with the locality that they have already chosen so that it helps their argument. They then go on to argue that each locality or community should be divided up in proportions relative to housing tenures. At the moment this would be roughly 68% owner/occupier; 18% social sector and 14% private rented sector. One can then of course adjust the boundaries of the “locality” to ensure that these proportions are met if one wished!

Would local groups like to impose these proportions in those areas which are the leafy suburbs? The RLA suspect that the residents there would have their own views on such a proposal! Of course the answer is NO! Reality intrudes so when it suits them campaigners often say that they do not feel that all communities have to match these norms. Only the areas which concern them because they live there! At the same time these campaigners fail to recognise changes which have occurred. What happens in areas such as Headingley is that the owner/occupiers (other than those who choose to remain) have decided to move out and cash in.

We have also seen campaigners against small HMOs argue that you should divide up the population according to age ranges. Again, this is a nonsense.

The argument then develops to say that we have to accept that there is a “tipping point” at which point communities change and become “unbalanced”. Various percentage figures are put forward often 10%, 15% or 20% which, again, is convenient to the campaigners’ case. How can you definitely say that a community (whatever that may mean) begins to feel unbalanced when any of the five main age bands exceed a particular percentage of the population or because of different tenure ratios? What evidence is there for this assertion other than it suits someone’s case? In Headingley campaigners suggest that the HMO tipping point would occur when HMOs exceed 10%. In reality this is a self serving argument with no known basis other than campaigners’ personal views because they simply do not like living in student communities.

We would urge local Councillors and officials to be wary of these kind of pseudo social scientific arguments which are put forward to justify restrictions particularly as legally you must not look at the character of the occupant; instead you have to consider small HMOs of all kinds irrespective of who lives in them.

### **This is all about small HMOs and not students etc**

Contrary to popular perception, the changes to the use classes order are meant to be about supposed problems from concentrations of small HMOs; not about restricting students or migrant workers.

Popular demand from residents, however, is to ban students or in some cases migrant workers. It is very important that local planning authorities appreciate the difference between the number of small HMOs on the one hand and trying to impose restrictions on students/migrants workers on the other. Nottingham City Council, for example, have recognised this and it is important that other local planning authorities understand it as well. Proponents of these measures are in reality arguing for measures in order to reduce student numbers in particular and opponents of migrant labour have jumped on this band wagon. To justify an Article 4 direction, which must be brought in for the proper planning of an area, local planning authorities must look at the impact caused by all kinds of small HMOs and not restricted to those occupied by such as student or migrant workers. Famously, one local planning authority thought that young professionals were a good thing but other HMO occupants were not! This is not what the new rules are about. All types of HMOs occupied by all kinds of residents must be looked at by the local planning authority.

### **Enforcement**

Are these rules really enforceable? We believe not. Firstly, supported by case law, in many many cases will there really be a material change of use involved if what was a single dwelling is occupied by a group of unrelated people. Secondly, will local authorities be able to keep track of changes of use of this kind anyway? Thirdly, do Council's have the resources to carry out the necessary enforcement work?

### **The cost**

Already in some councils finance chiefs are sounding warning bells. Hull City Council is an example of this. With the current cut backs facing local authorities is this something which a local planning authority should be embarking on at all? Will it have the resources to implement an Article 4 direction and deal with the consequent planning applications free of charge? Will it have the resources to investigate possible breaches and enforce the new legislation if an Article 4 direction is made? We believe not. It is particularly alarming that some local planning authorities are even proposing Article 4 directions through the whole of their cities and towns with the consequent costs which will be entailed in such a move. Should not local resources be better utilised e.g. as we have already suggested to actually deal with any particular problems as they arise?

### **What will happen to the areas where Article 4 directions are made?**

Those supporting Article 4 directions unfortunately frequently seem to have rose tinted spectacles. They have a dream of a standard house with mum, dad and 2.2 children. Usually however the areas where small HMOs are concentrated are older areas with outdated housing stock. Owner/occupies have long since moved out of these areas to more leafy suburbs and more modern housing. Campaigners for these



measures want to re-gentrify. Older type housing is often more expensive to heat and less energy efficient and has no garden. Will the families return at all? We do not think they will.

### **The under 35s rule**

Up until now when claiming local housing allowance/housing benefit under 25s have only been entitled to a single room rate equivalent to a place in a shared house i.e. a small HMO. The Government are now increasing the age to 35. This will mean that there is much more pressure in many areas for cheaper single room only accommodation. Those between 25 and 35 will now be looking for this accommodation in addition to the existing under 25s. About 88,000 people are currently affected in England claiming housing benefit and being aged between 25 and 35. Again, local planning authorities must consider this so as to ensure that the needs of their localities are met and that there is sufficient small HMOs accommodation available to meet this increased demand.

### **Affordable housing and homelessness**

It is all very well listening to strident claims “we must do something about students” or “we should stop these migrant workers” but the use of Article 4 powers will of necessity dry up the supply of affordable accommodation especially for younger people. This will damage local economies and damage the relationship between the older and the younger generation which is increasingly coming under strain. Bearing in mind that any restrictions have to apply to all small HMOs, irrespective of by whom they are occupied, local planning authorities should think long and hard before they reduce the supply of accommodation for students, working people, young professionals, migrants etc in their local areas. Otherwise, the local economy is adversely affected and a greater price will be paid with all the problems surrounding homelessness and overcrowding, because of the lack of available housing.

### **The need for a local plan**

The local planning authority seeking to use Article 4 powers will have to prepare an acceptable plan to deal with all the issues that arise should they seek to ban or restrict small HMOs. Where and how will provision be met for this kind of accommodation bearing in mind the increasing demand for it e.g. the change in the under 25 rule or the creation of smaller households increasing population and so on? This plan will need to be robust because it will be tested. It will take considerable time and resources to process the necessary plans. Should these resources be devoted to this kind of issue in the current financial climate?

### **Impact on the environment and transport**

One of the problems of spreading small HMOs around the Towns and Cities is the adverse impact on the environment. At the moment they tend to be concentrated e.g. near to local Universities or Hospitals. Where student accommodation is close to a university or college students can walk and the same applies to others. If, instead, small HMOs are located around a City or Town then there will be increasing demand

We quote:

*The majority of rental housing is spread around neighbourhoods of quite old, terraced and semi detached houses and flat conversions within this house type (Ball, 2008; Glascock and Turnbull, 1994). New properties in blocks of flats – through often thought to be typical buy to let territory – are, in fact, comparatively rare within the private rental stock. New rental properties are often derived from renovations and conversions of previously single-family properties into flats. This has the spin off benefit of making intensive use of the existing stock in places where it might be otherwise under utilised and poorly maintained. Such conversions and modest upgrades are often found in neighbourhoods of relatively moderately priced properties. This can assist in regeneration and in avoiding neighbourhoods slipping over into cumulative decline.*

Ball, M (2010), the UK PRS as a source of affordable accommodation, Joseph Rowntree Foundation.

### **Smaller 3 and 4 HMOs**

Even if Article 4 Directions are to be made it is very important that local planning authorities give careful consideration to the size of properties involved. With smaller properties, in any case, there will be no material change of use even if a “family home” is occupied by a group e.g. three nurses sharing a house; planning permission will not be needed. Why, therefore, is it necessary to even contemplate the necessity of needing planning permission in this situation? Surely the answer would be to exclude properties which are only occupied by three or four from the scope of any changes.

### **Existing small HMOs**

Equally, there is the issue of properties which were already shared houses as at 6<sup>th</sup> April 2010. This is a very important issue which needs careful consideration should a local planning authority decide to make an Article 4 Direction. Flexibility in the housing market is very important. One year a landlord may let such a property to a group e.g. a group of nurses but in another year to a family. This is especially so in areas where demand is uncertain e.g. Headingley in Leeds. Landlords will not rent out properties which have been used by groups to families if they do not have the right to relet them subsequently to a group. Thus, in our view, any local planning policies need to make it clear that there are “preserved rights” i.e. if the property was already a shared house as at 6<sup>th</sup> April 2010 it can be used interchangeably between Class C4 small HMOs and Class C3 single dwellings without the need for planning permission, even if there is a material change of use involved. This can be done by indicating that planning permission will be granted for these changes backwards and forwards in such circumstances.

### **Holiday Lets**

For certain areas e.g. seaside towns the impact of any Article 4 Direction need to be carefully considered. Often holiday accommodation is used “out of season” for ordinary lets. The holiday let may be to a family but the out of season let could be to

a group. The holiday trade will help the locality and out of holiday use of the accommodation should also be encouraged. Imposing an Article 4 Direction and restrictive planning policies will stop the most beneficial use of this kind of accommodation, damaging the local economy at the same time.

### **The broader view**

Inevitably there will be vociferous calls from local residents to introduce Article 4 directions to stop the spread of small HMOs. The RLA very much hopes that in this paper we have at least persuaded local politicians and officers to think twice before going along with these calls. It is vital that the broader picture is looked at. The danger is simply to compartmentalise certain local neighbourhoods and ignore the wider picture and the benefits to the wider economy of the City or Town as a whole by ensuring that small HMO accommodation is provided. Undoubtedly small HMO accommodation will help the local economy, the local labour force and job mobility. Communities where there are small HMOs often bring with them services and amenities which would not otherwise be provided to cater for their needs. In turn these benefit local residents. We acknowledge that on occasion, unfortunately, there are problems. We do not believe, however, that the planning system which can take many years to work is the solution. After all local authorities already have an extensive armoury of powers to deal with problems. It is very easy to approach these things in a parochial way and the RLA would urge local authorities to look at the wider picture.

### **Conclusion**

The RLA is opposed to the use of Article 4 Directions. We call on local planning authorities thinking of doing so to think long and hard and consider very carefully the arguments against doing so. Please answer the questions we have posed at the outset in the light of the arguments we have put forward and we would ask that all Councillors and officials think carefully about the motives and reasons put forward by those who are campaigning for Article 4 directions. It is very easy to be swayed by political pressure from residents because of the fear of losing votes in a forthcoming election. We believe that a far more robust view needs to be taken of the arguments which campaigners put forward for imposing an Article 4 Direction. It is vital that elected Councillors and officials consider very carefully the overall impact on their area as a whole rather than worry too much about issues in a relatively small area. In any case there is no guarantee that planning powers will have any impact and certainly they will take a long time. Rather, it would be better to concentrate on any immediate problems and deal with these. In the end it will be this that will satisfy local residents because any problems can then be dealt with sooner rather than later.

January 2011

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Dear Richard Matthams,

I am most interested in the information I have just received. Not being involved with the planning committee I am not offay with article 4 directives, but I am most interested in the practicalities of this change. My overall concern is with what is available in the private rented market, especially for those in receipt of LHA. It is the changes due to come in during the next year, particularly the removal of support for any person aged between 25 and 35 to live in anything other than a shared house, which I beleive may cause particular problems. I understand ther is at least one housing association which is changing some of its accomodation to deal with this problem, though I do not beleive that they are active in this district.

Kind regards

Clr. Delia Aldis