

DECISION-MAKER:	CABINET
SUBJECT:	PLANNING PERMISSION REQUIRED FOR HOUSES IN MULTIPLE OCCUPATION
DATE OF DECISION:	14 MARCH 2011
REPORT OF:	CABINET MEMBER FOR ENVIRONMENT AND TRANSPORT
STATEMENT OF CONFIDENTIALITY	
Not applicable.	

BRIEF SUMMARY

Southampton has over 7,000 Houses in Multiple Occupation. They provide affordable accommodation but also evoke negative aspects of living such as higher levels of transience, increased density of population and contractions of balance and sustainable communities. On 1st October 2010 two changes affecting the planning system's control of Housing in Multiple Occupation (HMO) became effective as a result of government policy. The first change was to make changes of use from C3 dwellings to small C4 HMO's permitted development and the second change related to the removal of compensation rights if an authority chose to pass a direction removing the new PD right. This change means that planning permission is no longer required in order to convert a dwelling into a small House in Multiple Occupation (HMO Class C4) as planning permission has already been granted by amending the Permitted Development Order so that changes from C3 dwellings to C4 HMO's have planning permission. A small HMO is housing where between 3 and 6 unrelated people reside and share amenities.

In order to manage the growth and distribution of HMOs, it is proposed that the City Council regain its planning control of this permitted change. In order to regain control of HMOs (for the reasons set out in this report) the City Council needs to remove these permitted development rights. It can do this by taking a formal decision to make a city-wide Article 4(1) Direction. If approved, planning permission would again be required to convert a dwelling (C3) to a small HMO (C4) and the City will be able to manage the growth of this sector for the benefit of its residents.

The proposed Article 4(1) direction could, subject to the outcome of the consultation and subsequent confirmation, be effective by the Spring of 2012. These timescales are necessary so as to avoid the need for the Council to pay compensation to affected landlords and property owners.

RECOMMENDATIONS:

- (i) To resolve that the making of a direction pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 on a City wide basis to withdraw the permitted development rights to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) is appropriate, and justified, in order to prevent harm to the local amenity and for the proper planning of the Southampton area.
- (ii) To approve the making of the Article 4(1) Direction for the City Boundary attached at Appendix 1.

- (iii) To delegate authority to the Solicitor to the Council, following consultation with the Head of Planning and Sustainability and the Cabinet Member for Environment and Transport to make the article 4 (1) direction for the city boundary and to carry out all necessary consultation following the making of the Direction, to notify the Secretary of State in accordance with statutory requirements and to take all other action considered necessary or expedient to give effect to the matters set out in this report.
- (iv) To confirm that, in accordance with the Town and Country Planning (Compensation) (No.3) (England) Regulations 2010, the city-wide Article 4(1) Direction will be effective no earlier than 15th March 2012.
- (v) To note that, following public consultation, a further report will be presented to Cabinet reporting on the outcome of the consultation and recommending whether or not to confirm the Direction.

REASONS FOR REPORT RECOMMENDATIONS

- 1 The permitted change from C3 to C4 (as explained above), and the subsequent loss of planning control, will harm the amenity of neighbourhoods within Southampton for the reasons set out in this report. While HMOs are often associated with problems, particularly in the media, they also provide a valuable source of housing for students, young professionals and other groups. Such accommodation can be particularly important for new arrivals to the city, those requiring short term accommodation or those who simply cannot afford independent accommodation.
- 2 Circular 08/2010 (Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation) states that:

“a high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (i.e. houses in multiple occupation)”.
- 3 It is recommended that Southampton’s Article 4(1) should be applied on a City-wide basis. HMOs are distributed throughout the city and arise in response to a range of housing need in the city. They can cause localised amenity issues wherever they arise. Were the direction to be confined only to some wards then there is a high risk that landlords wishing to develop further HMOs would look to properties on the outer edge of any defined boundary as such would not necessitate a planning application, thereby increasing concentrations of HMO’s in areas of the city not covered by the direction to the likely detriment of those living within such areas. Were this to happen then the issues associated with concentrations of HMOs would not be resolved as the council would have no power to decide whether or not planning permission should be granted for small HMO’s in areas that are not covered by the direction.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4 Option 1 – Do nothing

This option is not recommended as the City Council would be unable to manage and monitor the growth and distribution of the HMO sector at the expense of its existing family housing stock.

5 Option 2 – Article 4(1) Pockets

To draw a tighter boundary based on an evidence base of existing HMO supply and demand in connection with the universities and hospitals. This is not regarded as a solution as evidence demonstrates this is a City-wide issue in Southampton and may simply move concentrations into different areas of the City. It could also be difficult to provide reasonable justification to property owners in the city for the inclusion of some streets and the exclusion of others.

DETAIL (Including consultation carried out)

Introduction

6 Southampton has over 7,000 Houses in Multiple Occupation. This represents 9.3% of its housing stock (compared with a national average of 2%). They provide affordable and accessible accommodation. (Proposed changes to the Housing Benefit system will extend the Housing Benefit (HB) Shared Room Rate (SRR) from age 25 to 35 from April 2012 which could place increased demand on HMO accommodation . However there are also negatives issues around HMOs such as higher levels of transience, increased density of population and contractions of balance and sustainable communities. This can impact negatively on neighbourhoods.

7 As a requirement of the 2004 Housing Act, mandatory licensing for Houses in Multiple Occupation is required for larger HMOs which have three or more storeys and five or more occupants forming two or more households. There are about 470 HMOs which require licenses in the city (out of a total of 7,000 HMOs.)

8 Under the Town & Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010, a change of use from a C3 (dwellinghouse) to a C4 (HMO) is now 'permitted development' (pd) not requiring planning permission.

9 A C4 (HMO) is defined as housing where between 3 and 6 unrelated people reside and share amenities.

10 To manage the growth and distribution of HMOs the council proposes to regain its planning control of this permitted change. This will not help existing areas with high concentrations of HMOs but will help preserve other areas from the negative aspects of high concentrations of HMOs The Government suggests that the simplest way to achieve this is to make an Article 4(1) Direction that removes this permitted change. Once effective, planning permission would be required to convert a dwelling to a C4 HMO and the City will be able to manage the growth of this sector. The Council's other statutory powers, included the use of s.215 Notices under the Town and Country Planning Act to tackle the physical appearance of a property,

will be used in conjunction with these additional planning controls.

- 11 The Government expects Councils to make Article 4(1) 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.
- 12 In deciding whether an Article 4(1) Direction might be appropriate local planning authorities are advised to consider whether the exercise of permitted development rights would affect certain key considerations. Those most applicable in relation to Southampton are:
- Undermining the visual amenity of the area or damage the historic environment.
 - Undermining local objectives to create or maintain mixed communities.

Justification for Making an Article 4(1) Direction

- 13 The Council commissioned Capital Project Consultancy (CPC) to undertake an HMO Survey in 2008 and its findings are summarised at Appendix 2 to this report.
- 14 The problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the Government. They are also borne out of the CPC findings.
- 15 A further study by Ecotec that was commissioned by the Government entitled "Evidence Gathering - Housing in Multiple Occupation and Possible Planning Responses" summarised the impacts as including:-
- Noise and anti social behaviour;
 - Imbalanced and unsustainable communities;
 - Negative impacts on the physical environment;
 - Pressures upon parking provision;
 - Growth in private rented sector at the expense of owner-occupation;
 - Increased crime;
 - Pressure upon local community facilities; and
 - Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.
- 16 Appendix 2 provides evidence in support of the Ecotec study and identifies that without controls in place to manage concentrations of HMOs on a City-wide basis the impacts will, over time, be realised across the whole City thus providing particularly strong justification for the city wide direction.
- 17 A blanket approach has also been adopted by the Council's of Manchester and Portsmouth where a similar evidence base was collated and as cities, experience similar levels of difficulty in relation to HMO's as within our city. It is considered to be a sensible approach to limit the number of large concentrations of HMOs across the city, thus reducing their impact by dispersing HMOs across a wider area. The city-wide approach is also simpler to implement and manage, because difficult and ongoing decisions on the number of areas and precise boundaries are not required.

- 18 In summary (taking the CPC 2008 Survey work into account):
- There are around 7,000 HMOs in the city (9.3% of residential stock);
 - HMOs are distributed across the city, with the main concentrations in the Central and North sub-areas;
 - HMOs are occupied by a range of socio-economic groups and age groups, though students comprise 45% of all HMOs in the city and around half HMO residents are under 25; and
 - Less than 5% of HMO residents have lived at their current address for more than 5 years.

Conclusion

- 19 To conclude, as required by the Circular, the City Council has evidence to suggest that HMOs exist across the City, and that excessive concentrations have led to problems of noise, disturbance and litter management and a loss of physical and visual amenity, whilst failing to properly contribute towards a wider mixed and balanced community. It is therefore recommended that the City Council makes a city-wide Article 4(1) Direction.

Procedure

- 20 The procedure for making an article 4(1) direction is as follows:
- Cabinet resolves to make a non immediate Direction to be effective a minimum of 12 months later from the date of notice of the making of the direction .
 - the Solicitor to the Council makes the Direction and publishes notice in the Echo, the website and erects (at least two) notices in the areas affected. Contemporaneously the Secretary of State is sent a copy of the Direction and the notice so that he can decide whether or not to intervene in the making of the Direction.
 - The specified consultation period is for a minimum of 6 weeks.
 - Following the close of the objection period a further report will be brought to Cabinet to decide whether or not to confirm the Direction having had regard to the objections. If it is decided to modify the Direction rather than confirm it further consultation must be undertaken.
 - The Direction comes into force once confirmed by the Council upon the effective date (at least 12 months from the date the notice of the making of the direction is made)
 - Notice of confirmation of the Direction is published locally and the Secretary of State is notified of confirmation.

Future Planning Policy Requirements

- 21 As explained, the making of an Article 4(1) Direction means that a planning application will be required to change the use from a dwelling to an HMO. Such planning applications will be determined in accordance with Council policy. The current policies (LPR H4 & CS16) accept the important contribution that such accommodation makes to meeting housing need in the city. Indeed, it is likely that the demand for such accommodation will

increase. However, the policies also accept that this must be balanced against potential harm that HMOs might make to the established character of the area, neighbouring amenity or highway safety.

- 22 The current planning policy has no empirical method of establishing the tipping point when the concentration of HMOs begin to cause significant problems to the neighbourhood and local settled communities. Further work is required for Southampton to develop such a threshold approach and consequently this is not included in the current recommendations.

RESOURCE IMPLICATIONS

Capital/Revenue

- 23 The resources required to introduce the Article 4(1) direction will be borne by existing budgets and staffing.
- 24 One criticism of imposing an Article 4(1) Direction on an area is that the removal of permitted development rights can lead to compensation claims by affected property owners. The recent amendments to legislation [the Town & Country Planning (Compensation) (No.3) (England) Regulations 2010] set out the procedures for avoiding such claims and require that a minimum of 12 months (and no more than 24 months) is given between the date when the notice of making the Direction is published and its “effective” date. By setting an effective date of no earlier than 15th March 2012, the Council will not need to pay compensation to affected property owners.
- 25 There is a potential loss of income for property owners within the boundary of the Article 4(1) Direction, if they are not able to gain planning permission to rent out properties as Houses in Multiple Occupation.
- 26 The Council’s normal practice is that applications for planning permission, which would have been permitted development had an Article 4(1) not been imposed, are exempt from a planning fee. A fee of £335 will not, therefore, apply to such change of use applications.

Property/Other

- 27 There are no implications that arise for the Asset Management Plan as confirmed by the Property Asset Manager.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

- 28 The Town & Country Planning (General Permitted Development) Order 1995 as amended by the Town & Country Planning (General Permitted Development) (Amendment)(England) Order 2010 and the Town & Country Planning (Compensation) (England) Orders 2010 (No2 and No 3) apply.
- 29 Regard must also be had to the Department for Communities and Local Government Replacement Appendix D to the Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (978 0117531024) issued in November 2010.
- 30 An Article 4 direction may only be made in exceptional circumstances where the Council is satisfied that clear evidence suggests that the exercise of the permitted development rights it is proposing to withdraw would harm local

amenity or the proper planning of the area. The potential harm that the direction is intended to address must be clear identified and, where such a withdrawal is proposed to cover a wide area(such as the whole of the City) there must be particularly strong justification for the withdrawal at the time of making the Direction as set out in this report.

Other Legal Implications:

- 31 The Council’s existing Article 4(1) Directions that affect the rights to extend and alter existing dwelling houses within some of the City’s designated conservation areas (namely Oakmount Triangle, Portswood Gardens, Uplands Estate and Ethelbert Avenue) will be unaffected by these proposals.
- 32 In making the proposals set out in this report the Council MUST have regard to the provisions of the Equality Act 2010 (including carrying out integrated impact assessments as appropriate), the duty under s.17 of the Crime & Disorder Act 1998 to carry out its functions having regard to the need to reduce or eliminate crime & disorder and the provisions of the Human Rights Act 1998 , in particular Article 8 (right to respect for private & family life) and Article 1 of the First Protocol (the protection of property). Any interference with the rights protected under the Act must be necessary and proportionate in the interests of a democratic society.

POLICY FRAMEWORK IMPLICATIONS

- 33 The proposed recommendations support the policies of the Council’s current Development Framework.

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KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	All
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Plan of the City Boundary
2.	Evidence Base

Documents In Members' Rooms

1.	None.
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Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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Other Background Documents –

available at <http://www.communities.gov.uk/corporate/>

Integrated Impact Assessment and Other Background documents available for inspection at: N/A

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	The Town & Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010	
2.	The Town & Country Planning (Compensation) (No.3) (England) Regulations 2010	
3.	The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008	
4.	Circular 09/95 (General Development Order Consolidation).	
5.	Dclg – Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (November 2010)	
6.	Circular 08/10 (Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation)	
7.	DCLG/EcoTec “Evidence Gathering – Housing in Multiple Occupation and possible planning responses” (September 2008)	
8.	PPS3 (Housing) (2010)	
9.	CPC’s Houses in Multiple Occupation (HMO) Survey (December 2008)	