

CABINET MEETING – 5th September 2012

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Non-immediate Article 4 Direction to withdraw permitted development rights for the change of use of a dwellinghouse to a House in Multiple Occupation within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's.

Author(s):

Deputy Chief Executive

Purpose of Report:

To seek Cabinet's approval to make a non-immediate Article 4 direction to withdraw permitted development rights to change the use of a Dwellinghouse (use class C3) to a House in Multiple Occupation (use class C4) within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's with a prior notification period of a minimum of 12 months before the direction comes into force (if confirmed).

Description of Decision:

Cabinet is recommended to:

- a) Approve the making of a non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the 1995 Order") to withdraw permitted development rights to change the use of a C3 Dwellinghouse to a C4 House in Multiple Occupation within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's with a prior notification period of a minimum of 12 months before the direction comes into force and subject to the consideration of any representations received during the public consultation process for the direction;
- b) Approve the undertaking of a six week public consultation process on the direction pursuant to Article 5 of the 1995 Order;
- c) To agree to receive a further report in due course in order to consider confirmation of the direction in the event that objections are received during the public consultation process;
- d) To authorise the Deputy Chief Executive to confirm the direction in the event that no objections are received during the public consultation process.

Is the decision consistent with the Budget/Policy Framework? *Yes

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

The Council is satisfied that it is expedient that the conversion of dwelling houses (within Use Class C3) to houses in multiple occupation (HMOs) (within Use Class C4) should not be carried out within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's unless planning permission is granted on an application. This would allow planning control over proposed future changes of use from C3 to C4 within these five wards where there is a higher concentration of HMOs. This would assist in the promotion and retention of sustainable mixed and balanced communities within these five wards and enable additional HMOs and their effects to be coherently and comprehensively managed through the planning framework.

In addition, the withdrawal of this permitted development right within these five wards would allow the Council to:

- Drive up standards of HMO accommodation in terms of appearance and function and to manage the effects of additional HMOs by the imposition of planning conditions;
- Control and prevent the potential negative effects in terms of impact on residential amenity and traffic arising from high concentrations of HMOs;
- Improve conditions in neighbourhoods benefiting existing citizens and enhancing the attractiveness of those areas of the city to visitors, investors and potential new residents.

The making of a non-immediate direction under Article 4 will be subject to a public consultation process and the provision of a minimum of 12 months prior notice before taking effect. This will enable the Council to consider any representations received to the direction before deciding whether or not to confirm the direction and avoids the Council incurring potential liability to pay compensation to affected parties in the relevant wards for any losses arising from the withdrawal of the permitted development right in the event that planning permission for a conversion of a C3 dwelling house to a C4 HMO is subsequently refused or granted subject to conditions more limiting than the existing permitted development right.

Alternative options to be considered and recommended to be rejected:

- a) Determine not to introduce an 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 in the wards referred to in this report where there is a higher concentration of HMOs. This approach would not appear to be justified given the issues/problems arising from higher concentrations of HMOs in the relevant areas of the city as identified by residents and Councillors.
- b) An immediate Article 4 Direction could be made without consultation and advance publication which would have the advantage of withdrawing the permitted development right with immediate effect in the relevant areas and therefore giving the Council the immediate ability to manage future HMOs through the planning process. However, the Council would then have the potential liability to pay compensation to those affected parties who are subsequently refused planning permission for a conversion to a C4 HMO or granted permission subject to conditions more limiting than the existing permitted development right (if the planning application is submitted within 12 months of the date the direction comes into force). It is not possible to quantify this potential level of

compensation liability.

- c) The Introduction of a city wide Article 4 Direction to remove the permitted development right for a change of use from a C3 dwelling to a C4 HMO with non-immediate effect has been considered. This would avoid any problems of the concentration of HMO's shifting to different areas of the city but given the low levels of HMOs in the other parts of the City it is not considered expedient to make such a direction under Article 4.

Impacts analysed:

Equality Privacy Sustainability Crime and Disorder

Is this a "Key Decision" as defined in the Constitution?

Yes

Is it included in the Forward Plan?

Yes

Scrutiny Committee

Non-immediate Article 4 Direction to remove permitted development rights for a change of use of a C3 dwellinghouse to a C4 House in Multiple Occupation within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's

REPORT OF THE DEPUTY CHIEF EXECUTIVE

1.0 Purpose of Report

- 1.1 To seek Cabinet's approval to make a non-immediate direction to withdraw the permitted development rights to change the use of a Dwellinghouse (use class C3) to a House in Multiple Occupation (use class C4) within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's with a prior notification period of 12 months before the direction comes into force.

2.0 Description of Decision

- 2.1 Cabinet is recommended to:

- a) Approve the making of a non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the 1995 Order") to withdraw permitted development rights to change the use of a C3 Dwellinghouse to a C4 House in Multiple Occupation within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's with a prior notification period of a minimum of 12 months before the direction comes into force and subject to the consideration of any representations received during the public consultation process for the direction.
- b) Approve the undertaking of a six week public consultation process on the direction pursuant to Article 5 of the 1995 Order;
- c) To agree to receive a further report in due course in order to consider confirmation of the direction in the event that objections are received during the public consultation process;
- d) To authorise the Deputy Chief Executive to confirm the direction in the event that no objections are received during the public consultation process.

3.0 Background

- 3.1 In common with many English cities and towns, particularly those with higher educational establishments, Sunderland experiences pressures in certain areas of the city for the conversion of single family dwellings

to houses in multiple occupation (HMOs). Such development on a larger scale has the potential to damage the fabric, sustainability and cohesion of existing communities. There is evidence to suggest that this is already occurring in some areas to the west of the city centre and north of the River Wear. The council has been unable to prevent this as many HMO developments (i.e. those HMOs with no more than six residents) do not require planning permission and consequently are not covered by planning controls. However, in appropriate cases, local planning authorities can utilise a statutory tool, known as an Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (“the 1995 Order”) to withdraw this permitted development right to convert a dwelling house to a HMO (with no more than six residents) and require a planning application for such development to provide a greater element of control over HMO developments. The recent changes in the rules and regulations relating to HMOs and Article 4 directions and the case for and against the use of such controls in Sunderland are set out below.

4.0 The Current Position

Changes to Planning Rules in Relation to Houses in Multiple Occupation

- 4.1 In April 2010, the Government made changes to the Town and Country Planning (Use Classes) Order 1987 by splitting the former Use Class C3 (Dwelling Houses) into two separate classes by the introduction of the new C4 (HMO) Use Class (residential properties occupied by between 3 and 6 unrelated people who share facilities). Prior to this, there had been no formal 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 Use C3 Dwellinghouse (a dwelling occupied by people forming a single household) to a Use C4 HMO (3-6 unrelated people sharing basic amenities). 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 grant or refuse planning permission accordingly.
- 4.2 The changes were strongly welcomed by many local authorities and other organisations that had campaigned for the amendments to provide councils with the ability to start to manage the number, distribution and effects of small shared properties through the planning process.
- 4.3 However, in October 2010, the 1995 Order was subsequently changed so that a change of use from a Class C3 (family home) to a Class C4 (HMO for up to 6 people) became permitted development and no longer required an application for planning permission. It should be noted that larger HMO with more than 6 people sharing are not covered by Use Class C4 and therefore a planning application is still required to convert a dwellinghouse to a larger HMO.

5.0 The Impact of HMOs

- 5.1 Under the 1995 Order, an Article 4 Direction can only be made if the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless planning permission is first granted on an application through the formal planning process. Consequently, an Article 4 Direction should only be made in exceptional circumstances where evidence suggests that the exercise of the permitted development rights would cause some harm to local amenity or the proper planning of the area.
- 5.2 Concentrations of HMOs and the geographical concentrations of certain groups living in them can lead to substantial changes and problems in the nature of the particular locations as the social infrastructure of the neighbourhood changes. This is particularly the case in areas where there are high concentrations of students.
- 5.3 There is current Government recognition of the impacts which 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.
- 5.4 The appendix to this report sets out the scale and location of HMOs in Sunderland.

6.0 Rules and Guidance on the Use of Article 4 Directions

- 6.1 Following the introduction of the changes to permitted development rights under the 1995 Order in October 2010, consideration has been given to the most appropriate response, including the potential use of Article 4 Direction powers to withdraw this permitted development right and 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 the City. Article 4 Directions can only operate prospectively and apply to future developments only.

- 6.2 The Department for Communities and Local Government (DCLG) 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. However, the view expressed by DCLG 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 Article 4 direction, but instead for councils to use Article 4 Direction powers selectively where a local problem is identified.
- 6.3 Since April 2010, the approval of the Secretary of State has not been required in order to confirm an Article 4 Direction once made by a council, although it is still necessary to notify him when a Direction is made and also if it is subsequently confirmed.
- 6.4 Updated guidance on the use of Article 4 Directions was issued by DCLG 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*”.
- 6.5 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.*”
- 6.6 Further guidance in the new Appendix D on the use of Article 4 Directions states that local planning authorities, in deciding whether such a 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. The new guidance 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.
- 6.7 Two types of Article 4 Direction can remove future 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 permitted development rights being withdrawn only upon confirmation of the direction following local consultation.

- 6.8 The statutory test for a non-immediate direction is that the local planning authority considers it is expedient that the development should not be carried out unless permission is granted for it through an application. For an immediate direction the local planning authority must also demonstrate that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Local authorities are entitled to make a non-immediate direction in instances where it would be legally possible to make an immediate direction. The immediacy of the threat and potential liability for compensation to affected parties (which arises under both an immediate direction and a non-immediate direction with less than 12 months prior notification) are both material considerations in determining which route to use.
- 6.9 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 could expose the Council to the potential risk of compensation liability to affected third parties for losses arising from the removal of this permitted development right in the event that a planning application is submitted for a change of use to a HMO within one year of the date the direction came into force and permission is refused or granted subject to conditions which are more limiting than under the permitted development rights. It is not possible to quantify this potential level of compensation liability
- 6.10 A non-immediate direction with a prior notice period of at least 12 months would avoid the Council incurring any potential compensation liability to third parties for the loss of the permitted development right and also allows the results of local consultation to be taken into consideration in advance of the Council deciding whether or not to confirm the direction and remove permitted development rights. However, there would be a delay in the Council's ability to manage C4 HMOs through the planning process and a clear risk of acceleration in Changes of Use to C4 HMOs in the relevant areas during this one year notice period, which could result in the exacerbation of existing problems.
- 6.11 The introduction of an Article 4 Direction would not preclude additional C4 HMOs from being approved in appropriate cases, but it would allow individual applications to be considered on their planning merits. At present, the Council has the ability to manage additional large HMOs (with 7 or more unrelated people sharing) through the planning process. Extending this to cover C4 HMOs too would enable a more comprehensive approach to be taken, which recognises the contribution made by HMOs in meeting the City's housing needs and has due regard to wider housing strategy considerations along with the application of 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.

7.0 Current and Emerging HMO Policy

- 7.1 Paragraph 50 of the The National Planning Policy Framework (NPPF) considers the need to deliver a wide choice of high quality homes. It advises that to create sustainable, inclusive and mixed communities Local planning authorities should identify the range of housing required in particular locations, reflecting local demand.
- 7.2 Policy H18 of the Unitary Development Plan sets out that proposals for the provision or conversion of dwellings into bed-sitting rooms, self-contained flats, or multiple shared accommodation will normally be approved where: the intensity of use will not adversely affect the character and amenity of the locality, and, appropriate arrangements are made to secure the maintenance of gardens and external spaces.
- 7.3 In April 2012 the Draft Revised Preferred Option Core Strategy of the Local Development Framework was presented to Cabinet. Policy CS3.2ii in respect of sustainable communities stated that “the City Council will seek to ensure that Sunderland will become a more sustainable city, with a strong sense of place by preventing over concentrations of Houses in Multiple Occupation and the loss of family housing, either through conversion, sub division, change of use or redevelopment. The council will declare Article 4 Directions where necessary”.
- 7.4 As a result of internal consultation, there are proposed changes to the policy and the revised draft policy will read as “...preventing over concentrations of Houses in Multiple Occupation and the loss of family housing. The council will declare Article 4 Directions where necessary”. The revised Core Strategy is due to be reported to Cabinet in November seeking approval to undertake further statutory public consultation.

8.0 PROPOSED ARTICLE 4 DIRECTION

- 8.1 In view of the above, and the evidence set out in Appendix 1, it is considered that the continued exercise of permitted development rights for the Changes of Use from C3 dwellings to C4 HMOs could be harmful to local amenity and proper planning within the Barnes, Hendon, Millfield, St Michael’s and St Peter’s wards where there is already a higher concentration of HMOs and would undermine local objectives to create or maintain cohesive mixed communities. The harm identified in terms of noise and litter complaints and the over concentrations in specific areas of the wards is judged to be sufficient justification to instigate the necessary stages leading to the introduction of a non-immediate Article 4 Direction covering the identified five wards within Sunderland to remove this permitted development right, thereby enabling further C4 HMOs and their effects to be coherently and comprehensively managed in future within the context of a robust policy framework. Having regard to the potential and unquantifiable compensation liability arising from the

removal of permitted development rights, a prior notice period of 12 months would be given before the Direction takes effect, notwithstanding the threat presented by the continued exercising of permitted development rights during this notice period. The Article 4 Direction (if subsequently confirmed) would withdraw the permitted development right and require that an application for planning permission be submitted for a change of use from C3 to C4 for future developments. Planning applications will be judged against national and local planning policy and all other material considerations.

8.2 In proposing the Direction it is considered that this report has shown that it is expedient to make the Article 4 Direction covering the five wards as it has:

- Determined that exceptional circumstances prevail within these areas that necessitate the making of an Article 4 Direction;
- Shown that there is evidence indicating that the exercise of permitted development rights in these areas would harm local amenity and the proper planning of these areas;
- Identified the potential harm that the direction is intended to address;
- Has determined that the exercise of permitted development rights would undermine both the visual amenity of the areas and local objectives to create and maintain mixed communities and would also undermine the general amenity of the areas and the quality of life of permanent residents of those areas; and
- Has determined that the removal of permitted development rights should relate to only a relatively small area of the city.

8.3 The approach is considered to be unlikely to lead to a significant unmanaged shift and expansion of HMOs into those parts of the city that immediately adjoin the selected wards. Students, who appear to be the largest users of HMOs, generally, wish to locate near to their place of study. The two main campuses of Sunderland University are located on Chester Road and at the St Peter's riverside site; the former is a contributing factor to the concentration of HMO's in the Barnes, Hendon, Millfield and St Michael's wards, while the latter accounts for the growth of HMOs in St Peter's ward.

8.4 The stages involved in introducing a non-immediate Direction are the making of the Direction followed by a local consultation process and notification to the Secretary of State. The start of the consultation also triggers the commencement of the 12 months notice period. The subsequent decision as to whether or not to confirm the Direction and to go ahead with the removal of permitted development rights from the effective date 12 months after initial notification, would not take place until after consideration of all representations received during the consultation period and a thorough review of all available evidence at that time.

9.0 Next steps

- 9.1 A notice will be served locally stating that the Council has made the Article 4 Direction in the terms as proposed in this report. The Secretary of State will be notified as soon as practicable after the direction has been made.
- 9.2 A six week consultation will be undertaken with residents and landlords within the relevant wards to ensure that stakeholder opinion on the Article 4 Direction are considered.
- 9.3 Any objections received during the six week consultation will be reported back to Cabinet to determine whether or not to confirm the Article 4 Direction. In the event that Direction was to be confirmed, it would not come into effect until the expiry of the one year prior notice period starting when the first notice referred to in Paragraph 9.1 of this report is published.

10.0 Reasons for decision

- 10.1 The Council is satisfied that it is expedient that the conversion of dwelling houses (within Use Class C3) to houses in multiple occupation (HMOs) (within Use Class C4) should not be carried out within the wards of Barnes, Hendon, Millfield, St Michael's and St Peter's unless planning permission is granted on an application. This would allow future planning control over proposed changes of use from C3 to C4 within these five wards where there is a higher concentration of HMOs. This would assist in the promotion and retention of sustainable mixed and balanced communities within these five wards and enable additional HMOs and their effects to be coherently and comprehensively managed through the planning framework.
- 10.2 In addition, the withdrawal of this permitted development right within these five wards would allow the Council to:
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 - Drive up standards of HMO accommodation in terms of appearance and function and to manage the effects of additional HMOs by the imposition of planning conditions;
 - Control and prevent the negative effects in terms of impact on residential amenity and traffic arising from high concentrations of HMOs;
 - Improve conditions in neighbourhoods benefiting existing citizens and enhancing the attractiveness of those areas of the city to visitors, investors and potential new residents.
- 10.3 The making of a non-immediate direction under Article 4 will be subject to a public consultation process and the provision of a minimum of 12 months prior notice before taking effect. This will enable the Council to consider any representations received to the direction before deciding

whether or not to confirm the direction and avoids the Council incurring potential liability to pay compensation to affected parties in the relevant wards for any losses arising from the withdrawal of the permitted development right in the event that planning permission for a conversion of a C3 dwelling house to a C4 HMO is subsequently refused or granted subject to conditions more limiting than the existing permitted development right.

11.0 Alternative options

- 11.1 Determine not to introduce an 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 in the wards referred to in this report where there is a higher concentration of HMOs. This approach would not appear to be justified given the issues/problems arising from higher concentrations of HMOs in the relevant areas of the city as identified by residents and Councillors.
- 11.2 An immediate Article 4 Direction could be made without consultation and advance publication which would have the advantage of withdrawing the permitted development right with immediate effect in the relevant areas and therefore giving the Council the immediate ability to manage future HMOs through the planning process. However, the Council would then have the potential liability to pay compensation to those affected parties who are subsequently refused planning permission for a conversion to a C4 HMO (if the planning application is submitted within 12 months of the date the direction comes into force). It is not possible to quantify this potential level of compensation liability.
- 11.3 The Introduction of a city wide Article 4 Direction to remove the permitted development right for a change of use from a C3 dwelling to a C4 HMO with non-immediate effect has been considered. This would avoid any problems of the concentration of HMO's shifting to different areas of the city but given the low levels of HMOs in the other parts of the City it is not considered expedient to make such a direction under Article

12.0 Relevant considerations

12.1 a) Financial Implications -

There is currently no fee payable for the need to submit a planning application arising from the removal of 'Permitted Development' by an Article 4 Direction. The Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 was issued in late July 2012 and there is no proposed provision to allow charges to be made in these situations.

12.2 An Article 4 Direction would need to be supported by robust monitoring and enforcement. No additional expenditure is proposed in order to expand the capacity of the Planning Enforcement Team, and any increase in work demands will therefore need to be met by existing resources.

b) Policy Implications –

As set out above the making of an Article 4 Direction is in accordance with a number of relevant policies. In addition the Sunderland Strategy 2008 – 2025 sets out the council’s strategic aims including those for healthy cities and housing. The Partnership will deliver improved accommodation options for all as an integrated part of the city’s approach to developing housing in the city. This will include the implementation of area based approaches, based upon devolving actions to area based strategies, enabling localised issues to be tackled more proactively and responding more to the needs of individual localities. In section 5.3 it states that the overriding aim is that everyone in the city and those wishing to come to Sunderland should have “the opportunity of a decent home at a price they can afford in a place in which they want to live and work and to be part of safe strong diverse healthy and sustainable communities. Housing is the cornerstone of any sustainable community”.

c) Legal Implications –

In order for the Council to make an Article 4 direction, it must be satisfied that it is expedient that the development that would otherwise benefit from permitted development rights should not be carried out unless planning permission is granted on an application. For the reasons stated in this report, the Council is satisfied that this test of expediency is met in relation to the withdrawal of permitted development rights for the change of use of a property from Class C3 to Class C4 in those wards in Sunderland referred to in this report.

The Direction will be made and published in accordance with the provisions of the 1995 Order.

d) Equality Implications –

A full Equality Analysis will be completed in parallel with the proposed consultation on the Article 4 Direction. At this stage, it is not considered that there will be any significant implications regarding equality. However it is acknowledged that issues may come to light during the proposed consultation period. These will be considered as part of the final decision making process in respect of whether or not to confirm the Direction.

13.0 Background papers

- Circular 08/2010: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation (CLG 2010)
- Department for Communities and Local Government Replacement Appendix D to Department of the Environment *Circular 9/95: General Development Consolidation Order 1995*
- Evidence Gathering: Housing in Multiple Occupation and Possible Planning Responses – Final Report (CLG/ECOTEC September 2008)
- Sunderland Strategy 2008-2025
- National Planning Policy Framework.

