

Cabinet – 14 February 2018

Houses in Multiple Occupation (HMO's) and Planning Control by Article 4 Direction - Commissioning of Advice

Portfolio: Councillor Jeavons: Portfolio Holder, Regeneration

Related portfolios: Councillor D Coughlan: Portfolio holder, Social Care

Service: Planning, Environment & Transportation

Wards: All

Key decision: No

Forward plan: Yes

1. Summary

1.1 This report explains the planning powers that are available to control Homes in Multiple Occupation (HMOs) and seeks authority to undertake work to examine the potential to control their future development.

2. Recommendations

2.1 That Cabinet agree to the appointment of consultants to undertake a review of the viability of pursuing an Article 4 Direction removing permitted development rights to convert properties to HMOs, thus requiring property owners to make planning applications for the proposed change as is already a requirement for larger HMOs.

3. Report detail

3.1 Concerns have been raised about an apparent proliferation of HMOs in recent years in certain parts of the borough that are alleged to give rise to various issues around matters such as crime and anti-social behaviour (ASB), refuse storage and parking. It has been suggested that a possible solution might be an Article 4 Direction. This is a power under the Town and Country Act to remove Permitted Development Rights, which means that planning permission would be required for development that would otherwise not require a planning application. The council as local planning authority would therefore be able to examine material planning considerations during the determination of the application.

3.2 The Use Classes Order 1987 (as amended) lists various classes of land use and states that where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land. Two of these classes are C3 (dwellinghouses) and C4 (HMOs). Use as a dwellinghouse in Class C3 is defined as:

Use as a dwellinghouse (whether or not as a sole or main residence) by—
(a) a single person or by people to be regarded as forming a single household,
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

3.3 Use as a HMO in Class C4 is defined as use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. This defines HMOs (in broad terms) as properties with one or more shared facilities such as bathrooms and/or kitchens) where the individual occupiers are each responsible for payment of rent to the landlord.

3.4 The General Permitted Development Order (GPDO) 201 has the effect of granting planning permission automatically for certain forms of development, without the need for an application to be made to the local planning authority. One of these ‘permitted development rights’ allows premises in a Class C3 use to change to Class C4 and vice versa.

3.5 An Article 4 Direction cannot control existing HMOs as defined in Class C4, provided the existing use is lawful (to be lawful the HMO must either already have planning permission or have operated for at least 4 years). In addition, it cannot control larger HMOs with 7 or more residents (larger HMOs are not in Class C4 so need planning permission in any case). Some HMOs (where all or most facilities are shared) are in fact hostels: hostels are not in any use class so always need explicit planning permission.

3.6 An Article 4 Direction would therefore only control future changes of use from Class C3 to small HMOs under Class C4.

Use of HMOs

3.7 It is important to note that HMOs are a valuable source of accommodation in Walsall, meeting a need for low-cost housing, especially among young people, those on low incomes and single person households. The Local Housing Allowance limits welfare payments to people aged 35 and under to an amount equivalent to the cost of shared accommodation so has driven the rise in demand for this type of housing.

3.8 HMOs can also be an attractive option for property owners who are unable to sell or let their properties in areas of market decline. The alternative to converting them to HMOs might be that dwellings are left vacant and derelict.

3.9 The requirement for planning applications to be made for new HMOs that would arise if an Article 4 Direction was made does not necessarily mean that such applications would be refused. However, the receipt of a planning application would enable the planning merits to be considered on a case by case basis.

Nature of the External Advice

3.10 Given the specialist nature of an Article 4 Direction, it is requested that approval be given for the appointment of a consultant to consider the following matters:

- Suitability of an Article 4 Direction either across the whole Borough or in certain 'hot-spots' and if the latter, which areas should be covered.
- To explore what evidence exists to support the perception that HMO developments are associated to ASB and associated harm to community cohesion.
- To identify what harm arises from the clustering of HMO developments for example near the University site or within the town and local centres.
- To advise on the risks faced by the Council if an Article 4 Direction is pursued
- The wider social implications on affecting the supply of accommodation at this lower rung of housing market supply ladder
- The matters for consideration in any planning application and if sufficient policies and guidance are in place to defend reasons for refusal of poor applications

HMO Licensing

3.11 It is also noted in relation to HMOs and housing that:

- Cabinet are being asked in February to adopt a set of standards for HMOs which will form an integral part of the Council's adopted Housing Enforcement Policy;
- the government proposes to extend the range of HMOs covered by mandatory licensing during 2018 as a result of a range of concerns raised nationally about the housing standards and management of the same. This proposal was launched by the **Housing and Planning Minister Alok Sharma on 28 December 2017 who also stated** *"Every tenant has a right to a safe, secure and decent home. But some are being exploited by unscrupulous landlords who profit from providing overcrowded, squalid and sometimes dangerous homes."*

4. Council Corporate Plan priorities

4.1 Within the Corporate Plan, three of the priorities touch on the relationship that small HMO properties may have on a local community:

- Make a positive difference to the lives of Walsall people:
- Children are safe from harm, happy and learning well with self-belief, aspiration and support to be their best
- Safe, resilient and prospering communities

4.2 There is some evidence from WM Police to suggest that in parts of the Borough, there is a correlation of higher levels of anti-social behaviour (ASB) associated with HMO properties than other forms of accommodation. This evidence though has been drawn from the larger HMO properties i.e. those accommodating more than six people.

4.3 What is not clear at the present time is whether this association also applies to the smaller HMO properties. As the change of a dwelling to a small HMO does not currently require planning consent due to permitted development allowances, there is limited information available to link ASB behaviour to small HMO's.

4.4 Nevertheless, anecdotal evidence would appear to suggest that in some locations, especially where there is a preponderance of small and large HMO

properties, both forms of accommodation can contribute to the perception of ASB and thus elevate local residents fear of crime in relation to such development.

4.5 Given the absence of definitive evidence to show there is a link between HMO's of any scale and ASB, it is proposed that through the appointment of consultants to look at the current evidence base, a clearer understanding can be obtained to establish whether or not the uncontrolled conversion of dwellings to small HMO properties has a detrimental impact on people's lives in Walsall.

4.6 In respect of fostering safe, resilient and prospering communities, there are concerns that due to the generally transient nature of occupants of HMO populations, this can have a detrimental impact on social cohesion. What is unclear at the present time is to what degree such harm may manifest itself and what level of HMO accommodation can generally be accommodated by a community.

4.8 HMO development can play a valuable role in providing a wide range of housing opportunities. There are numerous requirements for HMO accommodation from colleges, the hospital, the construction sector and those people making their first steps on the property ladder where the outright purchase of a house or a flat may be beyond an individual's personal finances.

5. Risk management

5.1 There are two primary risks associated with the implementation of an Article 4 direction removing property owners rights to convert their properties to small HMO's. Firstly, if no action is taken, then an intensification of HMO properties may result in an increase in harm arising through ASB which in turn would be likely to lead to an erosion in social cohesion and a greater fear of crime by a settled community.

5.2 Counter to this, over regulation precluding the provision of HMO accommodation may hinder a communities ability to attract a sufficient range of people necessary to deliver local services or curtail prospective residents ability to move on to the local housing ladder leading to an outward dispersal of new residents to other parts of the Borough or neighbouring Boroughs.

5.3 The making of an Article 4 Direction in the absence of an adequate evidence base would place the council at risk of an award of costs in the event that a subsequent planning application was refused.

5.4 There is an established procedure for the preparation, consultation, approval, notification and implementation of an Article 4 Direction. There must be a strong justification based on sound planning grounds to make the Direction. Failure to act in accordance with proper procedure and without sound basis may lead to Judicial Review and/or compensation.

6. Financial implications

6.1 The consultants' work would be expected to examine potential financial implications if an Article 4 Direction was made.

6.2 Due to limited staff resources and the need for staff to continue work on existing council priorities, it is recommended that a consultant is appointed to consider the viability of pursuing an Article 4 Direction. If a consultant can be appointed to consider the viability of pursuing an Article 4 Direction, this should enable the work to be undertaken in a more timely and thus cost efficient manner.

6.11 The cost of going to consultants is estimated to be around £10,000 - £15,000.

7. Legal implications

7.1 The appointment of consultants to review this matter should enable full consideration of the legal risks to be undertaken.

7.2 An Article 4 Direction is made under The Town and Country Planning (General Permitted Development) (England) Order 2015, Article 4. The procedure for putting such an order in place is set out in Schedule 3.

7.3 It is vital that a robust evidence base is in place before an Article 4 Direction is made. Failure to do so may lead to claims for Judicial Review.

8. Procurement Implications/Social Value

8.1 The procurement of these services falls below the threshold for consideration by procurement service.

9. Property implications

9.1 For the Council, the creation of an Article 4 Direction should not have any significant property concerns in relation to the council's landholding. For the purposes of the consultation work, this stage of the process should have no impacts either on the Council or private property owners.

10. Health and wellbeing implications

10.1 If a Direction is adopted, this will provide the Local Planning Authority with greater opportunity to prevent unsuitable accommodation e.g. overdeveloped buildings, poor and substandard living accommodation or those in polluted environments from becoming HMOs. In turn, this filtering out of the worst proposals should help improve health and wellbeing levels in the Borough and meet the three corporate priorities set out above. If as a consequence of an Article 4 Direction the supply of accommodation was reduced or led to residents living in unauthorised conversions, the Council would need to use its enforcement powers and may bring a further report to cabinet to consider the continuation of the Article 4 Direction.

10.2 The commissioning of work to assess the viability of undertaking an Article 4 Direction should not result in any health or wellbeing implications at this time.

11. Staffing implications

11.1 The collection of the evidence base including consultation, and the preparation of an Article 4 Direction and/ or an Supplementary Planning Document (SPD) would normally require the input of officers from across the Economy and Environment Directorate, with support from others including; Money Home Job and Legal Services.

11.2 Given existing work programme priorities for the respective teams and capacity issues to collect the evidence, ensure compliance with statutory requirements and the need to consult on the Article 4 proposals, then an external consultancy commission is being recommended. Staff from Planning, Engineering & Transportation and Regeneration & Development will oversee the consultancy commission to ensure its deliverables are met, and appropriate internal reporting is carried out.

11.3 If this work is outsourced to a consultancy, the time scales can be accelerated to between 5 and 8 months- subject to consultation and minimise the impact on other work priorities

12. Reducing inequalities

12.1 The implications for reducing inequalities have been taken into account and assessed as set out below.

12.2 By removing the rights of a property owner to convert a property to a small HMO without planning permission, there is a potential this will impact on the supply of such units as owners seek to avoid going through the process of applying for permission. In turn, this reduction in the supply of lower cost accommodation may prejudice the ability of those less able to afford higher rents or mortgage repayments associated with flats or houses, the ability to enter the property market. It could therefore increase homelessness.

12.3 In addition to leaving some people having to rely of staying at home or living with friends or relatives, the potential reduction in housing stock at this point in the market could result in reduced social mobility and subsequent improvements to peoples job and welfare opportunities.

12.4 To ensure this scenario does not transpire, it is recommended that consideration is given to understanding the need for HMO accommodation as part of appraising the need for a Direction. In the event that the market is currently unable to deliver a sufficient supply of accommodation of a suitable quality, guidance is provided to assist developers to improve the quality of their proposals to ensure compliance with adopted policies and associated regulated controls through the housing market.

12.5 The appointment of consultants to undertake research into the suitability of pursuing an Article 4 Direction is not considered to introduce any inequalities.

13. Consultation

13.1 Consultation has been undertaken with the Portfolio Holder for Regeneration in addition to the Councils Planning Solicitor, Housing Standards & Improvement Manager, Senior Housing Strategy Manager and the Planning Policy Manager.

Background papers

None

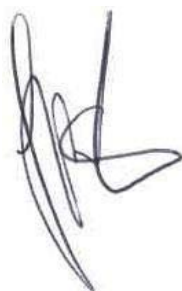
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Simon Neilson
Executive Director

14 February 2018

A handwritten signature in black ink, appearing to be 'MJ', written in a cursive style.

Councillor Jeavons
Portfolio Holder

14 February 2018