

**Article 4 Direction for Houses in Multiple Occupation (HMOs)**

**Portfolio:** Councillor Andrew  
Associate Leader, Economic Growth & Regeneration

**Related portfolios:** Councillor Flint – Health and Well-being  
Councillor Garcha – Resident Access & Housing Support

**Service:** Planning and Building Control Services

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

**1. Aim**

1.1. The aim is to provide the council the means to have greater consideration and control over the increasing number of Houses in Multiple Occupation (HMOs) within the borough, by enabling all HMO proposals to be assessed through the planning decision making process.

**2. Summary**

2.1. Consultants, Lambert Smith Hampton were commissioned to produce a report to evidence whether there was justification to enable the council to prepare an article 4 direction on HMOs, and which area it should cover - the whole borough or specified locations within the borough.

2.2. The study concluded that there was sufficiently robust and demonstrable evidence for the council to proceed with the making of a non-immediate article 4 direction on HMOs covering the whole borough.

2.3. Should the recommendations of this report now be agreed by this Cabinet, the next steps for progressing the article 4 direction would be for the council to give notice by publicising and consulting on the direction, thereby enabling the community and other stakeholders to comment.

2.4. The results of this consultation would then be reported back to a future Cabinet meeting. Informed by the responses received, the council will then consider whether to proceed with confirming an article 4 direction. That confirmation, if agreed, would not take place until after the expiration of 12 months from the date of the council giving notice to proceed with the article 4 direction.

2.5. The article 4 direction on HMOs would align with the Council Plan (2022/25) by

supporting a resilient economy where everyone has the right housing in the right place and enabling communities to be more resilient and supportive of each other.

### **3. Recommendations**

- 3.1. That Cabinet authorises the Executive Director for Economy, Environment and Communities in consultation with the Associate Leader, Economic Growth and Regeneration to make a non-immediate article 4 direction which will be applied to the council's administrative area (borough-wide) to remove permitted development rights for the change of use of dwellinghouses (C3 use) to smaller Houses in Multiple Occupation (HMOs) (C4 use).
- 3.2. That notice of the article 4 direction is publicised for a period of at least six weeks to allow members of the public and other interested stakeholders to submit comments on the proposal.
- 3.3. That Cabinet notes that a further report will be submitted to a meeting following the end of the consultation period to consider any comments made, and informed by these comments, determine whether the article 4 direction should be confirmed.
- 3.4. That should the article 4 direction be confirmed that that confirmation not take place until 12 months after first notice has been made.

### **4. Report detail – know**

#### ***Context***

##### The planning system and planning policy

- 4.1. Under planning legislation and regulations, HMOs are divided into 2 use classes: smaller and larger HMOs: -
  - smaller HMOs are defined under class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) as houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities;
  - larger HMOs are unclassified by the use classes order and therefore defined as sui-generis, and comprise houses or flats occupied by more than 6 unrelated individuals who share basic amenities.
- 4.2. Currently the Town and Country Planning (General Permitted Development Order) 2015 (as amended) allows the change of use of a single family dwellinghouse (C3) to a smaller HMO (C4) without the need for planning permission as permitted development. Whereas a change of use from a C3, C4, or any other use, to a larger HMO requires express planning permission following the making of an application.
- 4.3. Paragraph 53 of the National Planning Policy Framework (NPPF) states that

the use of article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the well-being of the area, be based on robust evidence, and apply to the smallest geographical area possible.

- 4.4. There are two types of article 4 direction: an immediate article 4 direction and a non-immediate one.
- 4.5. A non-immediate article 4 direction can only be introduced following a period of public consultation, and only be confirmed following a period of at least 12 months after it has been made, with a requirement to notify the Secretary of State following confirmation.
- 4.6. An immediate article 4 direction can come into effect in withdrawing permitted development rights as soon as it is made, but the direction must be confirmed by the council within 6 months following local consultation, again with the Secretary of State notified.
- 4.7. However, with an immediate article 4 direction, within a 12 month period of it being made, applicants can claim compensation from a council if they have planning permission refused for a development scheme they would normally have been able to carry out under permitted development rights, with any such compensation claims made against abortive expenditure, or losses and damages directly related to the withdrawal of permitted development rights.
- 4.8. To avoid the risk of compensation claims, councils usually pursue non-immediate article 4 directions in respect of HMOs, with a lead in time of 12 months before the direction is brought into effect. This is as permitted development rights apply upon completion of a development. Applying a 12-month period provides a reasonably sufficient amount of time for existing projects to be completed under the General Permitted Development Order. The LSH report confirmed that a non-immediate article 4 direction was appropriate and the evidence for it was sufficient, with an immediate article 4 direction considered inappropriate.
- 4.9. At present, the primary policy for the assessment of applications for larger HMOs by the council is through saved Unitary Development Plan (UDP) Policy H7 (Hostels and Houses in Multiple Occupation):
- 4.10. UDP Policy H7: proposals for the establishment, enlargement or alteration of hostels or houses in multiple occupation will be encouraged if it can be demonstrated that:
  - i. There would be no harm to the amenity of the occupants of neighbouring buildings or the intended occupiers of the proposed accommodation
  - ii. There would be no harm to the character and appearance of the building or the surrounding area.
  - iii. It would not impair the free flow of traffic or highway safety
- 4.11. UDP Policy H7 will need to be replaced either through a policy within the

emerging Walsall Borough Local Plan (WBLP) or a national development management policy. In the interim, before a replacement policy is adopted, this existing policy will need to be used in the assessment of smaller HMOs (as well as larger HMOs), should the article 4 direction be confirmed.

#### The evidence for making an article 4 direction with respect to HMOs

- 4.12. Consultants Lambert Smith Hampton (LSH) were procured to produce a report to evidence whether there was justification to enable the council to prepare an article 4 direction in respect of HMOs, and what area it should cover: the whole borough or specified locations within the borough. The LSH report is attached at **Appendix A**.
- 4.13. The LSH report considers:
- the approach taken to HMOs by neighbouring authorities, for example:
- 4.14. Birmingham – a city-wide article 4 direction came into force from 8 June 2020 – previously there was a direction just covering Selly Oak, Edgbaston and Harborne.
- 4.15. Dudley – a borough-wide article 4 direction came into force from September 2023.
- 4.16. Wolverhampton – introduced a city-wide article 4 direction in 2017.
- the current stock of HMOs within the borough (table 1, page 12 of the report): -
    - there are an estimated 2,030 HMOs within the borough, equating to 11% of the private rented housing stock
    - St. Matthews ward has the most HMOs – 308/15.2% of the total number of HMOs within the borough, followed by Pleck 247/12.2%, and then Willenhall South 205/10.1%, with the ward with the least number of HMOs being Willenhall North – 22/1.1%
  - existing HMO licensing schemes: -
    - there are both mandatory and additional licensing schemes (ALS) in place for HMOs within the borough - mandatory - HMOs occupied by five or more unrelated people; additional – HMOs occupied by three or four unrelated people;
    - there is currently one ALS scheme in place covering the wards of Paddock, Palfrey, Pleck and St. Matthews (since 1 September 2022).
- 4.17. Both licensing regimes impose conditions relating to residential amenity and safety, which landlords need to meet to lawfully let a property to tenants.
- crime and anti-social behaviour:
    - the LSH report is informed by engagement with the council's Head of Community Building and Cohesion to understand the impact of HMOs on community safety and resilience

- 4.18. The level of reported crime against the estimated number of HMOs within neighbourhoods, comprising amalgamated adjoining wards, is assessed to understand if a correlation exists between the two issues.
- health and wellbeing
- 4.19. The LSH report comments on the complex interactions between living conditions, deprivation and health problems, which HMOs clearly lie at the centre of as a form of low-cost intermediary housing.
- 4.20. Based on the evidence, the LSH report recognises that HMOs can contribute towards meeting the housing needs of an area, particularly for people on low incomes, housing vulnerable individuals, students, and the growing number of one person households.
- 4.21. While not specific to Walsall, it is acknowledged that there have been concerns from the public for a number of years around the perceptions of crime and anti-social behaviour associated with HMOs. However, the report evidences that while there are levels of crime reported within areas which have large concentrations of HMOs, there is no established and credible link between the two.
- 4.22. However, the LSH report states that there is evidence of a significant and increasing numbers of HMOs within the borough. In addition, high concentrations of HMOs in any one area can present a challenge to creating mixed, balanced and sustainable communities, as well as having the potential to adversely impact on residential character and amenity, and also giving rise to a particular fear of crime and anti-social behaviour. In addition, it is recognised that there are often poor management practices relating to HMOs which can impact negatively on the health of the immediate and neighbouring occupants of these properties.
- 4.23. These negative impacts which may be attributed to a growing proliferation of HMOs within the borough are considered to outweigh any positive aspects on meeting a housing need
- 4.24. The reasoning given for a borough-wide direction, which is evident in justifying this approach by all councils who have adopted it, is based upon an assertion that this will give the most consistent and comprehensive means to manage HMOs across an area, providing clarity for the council, residents and potential landlords. To date this approach appears to have been through the respective consultations of local authorities proceeding with non-immediate Directions with no challenges or interventions from Government.
- 4.25. The LSH report concludes by recommending that the council should make a borough-wide article 4 direction to deliver this consistent and comprehensive approach to the control of HMOs and to mirror the approach of neighbouring authorities.

#### Steps needed to confirm a borough-wide article 4 direction

- 4.26. Subject to Cabinet approving the report's recommendations, the next steps would be:
- 4.27. Notification of the making of the article 4 direction in a local newspaper and by physical display and on the council's website setting out the period for public consultation;
- 4.28. Informing the Secretary of State of the making of the article 4 direction and further notification to the Secretary of State following its confirmation should it proceed;
- 4.29. Reporting back to Cabinet following public consultation to consider the representations received during the consultation period, and recommending whether to go ahead or not with the confirming of the article 4 direction;
- 4.30. If it is decided to confirm the direction, that that confirmation not take place until 12 months after the notification of the making of the article 4 direction.
- 4.31. Consultation on the article 4 direction would need to follow the council's Statement of Community Involvement (SCI) (2018), which on this matter aligns with Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015: -
- 4.32. In implementing the procedure laid down in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as soon as practicable after the article 4 direction is made, notice would be given through the following means:
- 4.33. a consultation period of 6 weeks, comprising publication of all relevant documents/data, and the potential to instigate a short feedback survey. Consultation will be publicised widely via a range of online and offline channels.
- 4.34. Given that it is not practical to notify all owners/occupiers within the borough, in order to reach as many residents and interested parties as possible, notices would need to be displayed in prominent locations in Walsall Town Centre, Aldridge, Bloxwich, Brownhills, Darlaston and Willenhall District Centres, as well as Caldmore, Pleck, Palfrey, Birchills, Leamore and Bentley Local Centres where there are higher than average concentrations of existing HMOs.
- 4.35. The publication of all relevant documents on the council's website and potentially on the council's Commonplace engagement platform, and available in hard copy in all libraries and Walsall Connected Centres.
- 4.36. The placing of a notice in the local press; consultation with planning agents, previous applicants for HMOs and letting agents within the borough, as well as other key stakeholders.

### ***Council Plan priorities***

- 4.37. The article 4 direction relating to HMOs would align with the Council Plan (2022/25) by supporting a resilient economy where everyone has the right housing in the right place, enabling communities to be more resilient and supportive of each other, and people of Walsall feel safe in a cleaner, greener borough.

### ***Risk management***

- 4.38. If the council proceeds with an immediate article 4 direction, there is a risk of compensation claims from property owners or developers who have incurred abortive expenditure or losses due to the withdrawal of permitted development rights. To mitigate this risk, the council is recommended to pursue a non-immediate article 4 direction with a lead-in time of 12 months before it comes into effect.

### ***Financial implications***

- 4.39. The cost of procuring the LSH report has been met through existing budgets. It is intended that the making of the article 4 direction will be carried out in-house, with staff calling on existing budgets as necessary, for instance, to publicise the direction.
- 4.40. Based on the figure of 16 licences issued for smaller HMOs in 2023, as an indication, the projected additional planning fee income for this type of development, should an article 4 direction be confirmed and using the current planning application fee schedule, would equate to approximately £10,000 per year. However, that amount would likely be relatively small when set against any monies required to settle compensation claims should the council proceed with an immediate article 4 direction.

### ***Legal implications***

- 4.41. The recommendations made have been informed by the requirements of the Town and Country Planning Act 1990, and the Regulations set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

### ***Procurement Implications/Social Value***

- 4.42. Lambert Smith Hampton (LSH) were procured to provide the evidence referred to in this report in accordance with the council's standard commissioning procedures.

### ***Property implications***

- 4.43. There are no direct property implications for the council as it is largely private landlords that operate HMOs.

### ***Health and wellbeing implications***

- 4.44. The impact of HMOs on the health and well-being of communities is considered within the LSH report, which highlighted the complex interconnections between living conditions, deprivation and health problems, which HMOs can be said to lie at the centre of as a form of low-cost, intermediary housing. Good quality affordable housing, and housing for vulnerable people can have positive health impacts.
- 4.45. However, often poor management practices relating to HMOs can impact negatively on the health of the immediate and neighbouring occupants of these properties, including the potential for an increase in fly-tipping, anti-social behaviour and waste accumulation, which both has an immediate detrimental impact on the local neighbourhood as well as attracting vermin.
- 4.46. It is considered that the additional planning controls which would be brought in through an article 4 direction, coupled with increased licensing coverage and criteria, would contribute significantly towards removing these negative impacts.

### ***Reducing Inequalities***

- 4.47. An Equality Impact Assessment would be undertaken prior to the making of the article 4 direction.
- 4.48. In aiming to manage the location and proliferation of HMOs, this will potentially limit the potential issues associated with HMOs and also improve the residential amenity of occupiers of HMOs. In addition, the council will continue to influence the provision of housing so that it meets the needs of all.

### ***Staffing implications***

- 4.49. There are no significant staffing implications or resourcing arising as a result of the recommendations within this report: the making of the article 4 direction would be led by existing staff within the planning policy team.

### ***Climate Impact***

- 4.50. There is no direct connection between HMOs and climate impact. However, improvements to the standards of HMOs are made possible by additional licensing and planning controls, for instance, in terms of helping to mitigate against climate change, through improved energy efficiency in HMOs.

### ***Consultation***

- 4.51. Should the recommendations on this report be agreed, a consultation exercise on giving notice of the article 4 direction would be undertaken, as required through the regulations in order for the direction to be lodged as a non-immediate direction.



4.52. Relevant officers within the council, including the communications team, have been consulted on this report, and will be engaged with further on into the process of making the article 4 direction.

## **5. Decide**

5.1. The options are: -

- i. *Do nothing* – this option is likely to result in the continued, uncontrolled proliferation of HMOs within the borough, with the potential to further intensify social and amenity problems
- ii. *Carry out an immediate article 4 direction* – this would require all proposals for HMOs to seek planning permission by way of planning applications, but its immediate effect is likely to result in compensation claims being lodged against the council – this is not considered necessary nor appropriate and so is not recommended
- iii. *Carry out on a non-immediate article 4 direction but only in selected areas (wards) within the borough* – this will not provide comprehensive coverage, would need to be demonstrated through robust evidence as to why one area has been included but an adjoining area excluded, and may lead to the displacement of HMOs into excluded areas
- iv. *Carry out a non-immediate article 4 direction which covers the whole borough* – as informed by the evidence and recommended in this report

## **6. Respond**

6.1. Should the recommendations of this report be agreed, a further report would be taken to a meeting of the Cabinet following the consultation period, which will recommend actions as to how the council responds to the representations received, to inform whether the article 4 direction progresses to confirmation.

## **7. Review**

- 7.1. The effectiveness of the article 4 direction, if confirmed, would be kept under review through the monitoring of planning applications and the decisions made, including through the appeal process.
- 7.2. In addition, as part of a review of all extant development plan policies, the effectiveness of UDP policy H7, as the existing primary policy on assessing planning applications for HMOs will be reviewed, especially given its intended replacement with a new policy on this theme within the WBLP or through a national development management policy.

## **Appendices**

**Appendix A** - Lambert Smith Hampton Report - Houses in Multiple Occupation – Review of Article 4 Directions – Walsall Council – May 2024

## Background papers

None.

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