

Housing and Homes Overview and Scrutiny

30 July 2020

Update on the City-Wide Article 4 Direction and Houses in Multiple Occupation (HMOs)

City wide Article 4 Direction

- The Birmingham city-wide Article 4 Direction came into force on Monday 8 June 2020.
- The direction means that throughout the city a planning application must be submitted for proposals to convert family houses (C3 use class) to small Houses in Multiple Occupation (HMOs) accommodating between 3 and 6 people (C4 use class).
- HMOs larger than this (7 or more people sharing) which are classed as a Sui Generis Use already require planning approval under national legislation.
- A 6-week period to publicise the city-wide direction took place between Thursday 6 June 2019 and Thursday 18 July 2019. Comments received during this period were considered at the council's cabinet meeting on 17 December 2019 and Cabinet resolved at that meeting to confirm the new city-wide Article 4 Direction and the cancellation of the existing Selly Oak, Harborne and Edgbaston Article 4 Direction, which is now covered by the city wide Article 4 Direction.
- Up until 8 June 2020 the City Council has encouraged landlords to declare existing small HMOs or ones that are currently undergoing conversion, so that they can be recorded and mapped. This will a) help to establish which do not require planning permission after 8 June and b) help us identify the distribution and concentrations of HMOs. An online form and information page was set up for this purpose.
- A total of c. 2,500 C4 HMOs have been declared to the Council. Declared HMOs have only been accepted where there is clear evidence that a property is already in HMO use or is currently undergoing conversion to a HMO. A list of declared C4 HMOs is currently being compiled and can be made available.
- After the 8 June 2020, property owners will need to apply for planning permission to create a new HMO or regularise a HMO that has not been declared. This can be done through a retrospective planning application or Lawful Development Certificate.
- This process has helped to reveal HMOs that wouldn't normally be known to us due to them being created under permitted development. This will support both Councillors and Officers in responding to concerns from members of the public, as we will be able to more easily identify the locations where HMOs may be causing particular problems for residents.

- The City Council's ability to apply its existing planning policies (described below) to all HMO developments in the city has been constrained by national permitted development regulations which do not require planning applications to be submitted for the conversion of residential properties to small HMOs. The new city-wide Article 4 Direction changes this situation and will enable the City Council to have more control over the development of HMOs in the city through its decision making on planning applications.
- For any queries regarding the city-wide Article 4 Direction please contact the Planning Policy team via 0121 303 4529 or planningstrategy@birmingham.gov.uk

Planning Policy on HMOs

- Where a planning application is submitted for a HMO (small or large) it will be assessed against the Council existing planning policies which are contained in [saved paragraphs 8.23 to 8.25 of the saved Unitary Development Plan \(2005\)](#). This requires decisions on planning applications for new HMOs to take account of the cumulative effects of HMOs and other non-family residential uses on an area, the effects of the proposal on surrounding amenities and adjoining premises, and ensuring that HMO properties are of an appropriate size and have facilities for car parking. A Planning Policy Document was also adopted in 2014 to guide decisions on planning applications for HMOs in the Selly Oak, Edgbaston and Harborne Article 4 Direction area.
- A new planning policy for HMOs has been prepared and is contained within policy DM11 of the Development Management in Birmingham (DMB) document. This was submitted to the Ministry of Housing, Communities and Local Government for examination by the Planning Inspectorate on 17 July 2020, following Cabinet and full Council approval. The timescale for examination and subsequently adoption is dictated by the Planning Inspectorate. It is anticipated that examination hearings will commence in Autumn this year.
- The new planning policy includes more stringent criteria: no more than 10% of HMOs within 100m of the application should be in HMO use; no sandwiching of a family dwellinghouse between two HMOs and no creation of 3 or more HMOs or non-family dwelling uses in a continuous row.

HMO Licensing

- It should be noted that the licensing and planning legislation for HMOs serve separate purposes and are independent of each other. Licensing exists to keep residents safe and ensure that landlords follow the necessary building requirements. Planning regulations define what is permitted development and policies can be used to address concentrations of HMOs which give rise to adverse impact on residential amenity, character and sustainable neighbourhoods.

- Mandatory HMO licensing is therefore not affected by the Article 4 Direction and will continue apply to buildings occupied by five or more tenants in two or more households.
- Therefore, if someone wanted to convert a house to a HMO for 5 people, they would have to apply for a HMO license *and* submit a planning application.