

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

JOINT CABINET MEMBER AND CHIEF OFFICER

TUESDAY, 15 NOVEMBER 2016 AT 00:00 HOURS
IN CABINET MEMBERS OFFICE, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

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REVIEW OF ARTICLE 4 DIRECTION FOR SELLY OAK, HARBORNE AND EDGBASTON

Item Description

Report to:	THE DEPUTY LEADER JOINTLY WITH THE STRATEGIC DIRECTOR FOR ECONOMY
Report of:	ASSISTANT DIRECTOR REGENERATION
Date of Decision:	15 November 2016
SUBJECT:	REVIEW OF THE ARTICLE 4 DIRECTION FOR SELLY OAK, HARBORNE AND EDGBASTON
Key Decision: No	Relevant Forward Plan Ref:
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member:	Cllr Peter Griffiths
Relevant O&S Chairman:	Cllr Mohammed Aikhlaq, Corporate Resources and Governance
Wards affected:	Selly Oak, Harborne and Edgbaston

1. Purpose of report:
<p>1.1 To report on the findings of the 12-month review of the Article 4 Direction put in place on 30th November 2014;</p> <p>1.2 To report on current Council and Government consultations on the proposed licensing of all Houses in Multiple Occupation (HMOs)</p>

2. Decision(s) recommended:
<p>That the Deputy Leader jointly with the Strategic Director for Economy:</p> <p>2.1 Notes the findings of the 12 month review of the Article 4 Direction contained in Appendix 1;</p> <p>2.2 Endorses the continued operation of the Article 4 Direction for Selly Oak, Harborne and Edgbaston on the existing boundary and threshold policy.</p> <p>2.3 Endorses working in conjunction with the Housing service in the Place Directorate; to explore the findings of the Government's consultation on the future of Houses in Multiple Occupation licensing.</p>

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3. Consultation

3.1 Internal

Local Ward Members have also been consulted on the findings and recommendations. There was overall support for the policy whilst recognising the limitations of Article 4 Directions. Members are keen for there to be more robust checks and enforcement action against policy breaches. The findings will also be presented to Cabinet Member and Planning Committee for their comment.

3.2 External

The findings have been shared with key partners including landlord forums, University of Birmingham and residents associations. The findings have received widespread support and the view is that the policy is starting to have an effect in the area. However, community groups were still concerned about the exclusion of larger properties which they argue impacts on the character and density of a neighbourhood. There were also questions over the limitations of the data being used and whether it fully captures all existing HMOs.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

These recommended decisions are consistent with the Council Plan and Budget 2016+, Unitary Development Plan, and draft Birmingham Development Plan.

4.2 Financial Implications

Since the non-immediate Article 4 Direction was confirmed on 30 November 2014, resulting in the removal of permitted development rights, all planning applications to change from a Class 3 (dwellings, houses and flats) use to a Class 4 (small HMO) within the area have been determined free of charge. An estimate of the additional application work and its resource implications continues to be negligible and is managed from within existing resources in the Planning and Regeneration service.

4.3 Legal Implications

Since the Direction came into force, planning applications have been required for any change of use from C3 to C4 within the identified area. Permitted development rights have remained for change from C4 use to C3.

Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) allows local planning authorities to make Directions withdrawing permitted development rights where the authority considers it expedient that development should not be carried out unless express planning permission has been obtained for the same.

4.4 Public Sector Equality Duty (see separate guidance note)

A full screening exercise for an Equalities Assessment (EqA) was carried out at the time of the introduction of the Article 4 Direction and the outcome was that the application of planning policy did not have a direct impact on any groups with protected characteristics. Therefore, no further assessments are required as part of this review.

5. Relevant background/chronology of key events:

- 5.1 The Council introduced an Article 4 Direction to remove permitted development rights for the change of use to a HMO (C4) from a dwelling (C3) in Selly Oak, Harborne and Edgbaston wards, making such development subject to the specific grant of a planning permission with effect from 30th November 2014. It did this to help manage the growth of further HMOs in the area in order to avoid an over concentration in such areas leading to unbalanced neighbourhoods.
- 5.2 The Cabinet report of 17 November 2014 committed to a 12-month internal review of the Direction to consider how effective it has been in relation to the aims and what trends may be detected. The aim is not to reduce the overall number of HMO's but to achieve new HMOs of a high standard and not leading to any unacceptable impact on neighbourhood amenity or other interest of acknowledged importance in the interests for all members of the community. In particular, the review was to consider whether the 10% density threshold is still valid and whether the boundary was still relevant in light of additional data and new conversions. The results of the findings are attached as Appendix 1.
- 5.3 Nearly 500 enquiries were received via the dedicated telephone line and email during the 12 months from the introduction of the Direction.
- 5.4 Analysis of the enquiries received showed increasing awareness of the policy and its application. This was substantiated by the 153 enquiries where advice was given that any HMO application would be denied permission to convert from residential dwellings to shared HMOs by exceeding the 10% threshold. Random follow up checks were undertaken to ensure policy was not being ignored.
- 5.5 In addition to the above 153 properties, a further 88 had the potential to apply and seek permission for C4 use but only 12 came forward. Of these, only 6 were granted permission.
- 5.6 Over 200 other enquiries were received ranging from seeking general information to checking property locations and licensing procedures. All of these were serviced through the dedicated telephone and email service. Telephone enquiries were responded to straight away and in the case of emails, within 24 hours at the very latest. The success of this service is reflected in over 40 compliments that have been returned from customers.
- 5.7 The service has been proactive in working with local lettings and estate agents and landlords forums and community groups to share information to raise awareness of the policy so as to ensure that information is being shared and disseminated widely. The community has come forward with information relating to various breaches of policy and to date, 9 enforcement cases have been brought against landlords.
- 5.8 Those who commented on the review paper (Appendix 1), were unanimously in support of the findings, going as far to highlight the positive impact of the policy. However, concerns were still raised about the limitations of the data sets and that the Direction excludes larger properties.
- 5.9 The Article 4 Direction only deals with class C4 (3-6 unrelated people sharing) and whilst approvals of larger properties in the area may have an impact on the density and character, they are determined using policies governing Sui Generis properties.

- 5.10 The concerns over the validity of the data sets used to determine threshold levels have been noted. It is acknowledged that the data does not capture all pre-policy C3 to C4 conversions resulting from permitted development rights and owners are not obliged to supply that information and neither can the City Council enforce the policy retrospectively. Nonetheless, over 70 self-declarations have been volunteered to us.
- 5.11 In line with good practice, the City Council will continue to use official, verifiable data sets to determine threshold levels until such time other official data becomes available.
- 5.12 More recently, the Council's Housing service has undertaken a consultation exercise on options for an Additional Licensing Scheme. This seeks to include smaller (C4) HMOs under licensing. Currently, only larger HMOs require a license. This received overwhelming support from those consulted in the area, and it would also mean all small HMOs would be mapped and future data made available for the Article 4 Direction would reflect the true numbers of HMOs in the area.
- 5.13 The Government, in recognising the scale of the HMO issues nationally and the shortcomings of the mandatory licensing policy, undertook a consultation proposing extending licensing to all HMOs irrespective of size. If this is enacted in law, it would have a significant impact on the Article 4 area. In view of this development, the Council shared its support for the proposals which, if passed will become law in April 2017.
- 5.14 In conclusion, the policy has been well liked based on the findings of the review and extremely successful in restricting the growth of HMO's and until such time as the Government give further policy guidance on requiring small HMOs, the existing policy and boundary will be maintained.

6. Evaluation of alternative option(s):

- 6.1 Any changes to the threshold levels or boundary now would require complete abandonment of the current Article 4 Direction. This would be costly and time consuming.

7. Reasons for Decision(s):

- 7.1 Maintain the current threshold levels and boundary and continue to operate the policy on that basis until further progress on the proposals to extend licensing to small HMOs.

Signatures:	Dates:
Deputy Leader Cllr Ian Ward:	
Strategic Director of Economy Waheed Nazir:	

List of Background Documents used to compile this Report:
1. Confirmation of Planning Policy Document Relating To The Article 4 Direction To Manage Houses In Multiple Occupation In Parts Of Selly Oak, Harborne, and Edgbaston: Cabinet Report – 17 November 2014

List of Appendices accompanying this Report (if any):
1. Appendix 1 – Review Findings

Report Version	Final	Dated	
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PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> (a) tackle prejudice, and (b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"> (a) age (b) disability (c) gender reassignment (d) pregnancy and maternity (e) race (f) religion or belief (g) sex (h) sexual orientation

Appendix 1 -

Analysis of the enquiries received for the Article 4 Direction between 30 November 2014 to 30 November 2015

Purpose of the review of the Article 4 Direction:

- Effectiveness of the Direction in relation to its aims;
- Whether the 10% threshold is still valid;
- Whether the boundary is still relevant in light of additional data;
- Potential impact of an Additional Licencing Scheme

Table 1 – No. of enquiries received within the first 12 months of operation:

Total Number of Enquiries	496
Of these:	
No. of self-declaration of C3-C4 conversions	68
No. of enquiries regarding properties	
a) No that resulted in % above 10%	153
b) No that resulted in % below 10%	88
No. of enquiries that led to a planning application*	(12)
No. of enquiries relating to large/Sui Generis HMOs	24
No. of enquiries for properties outside the Article 4 area	76
No. of general advice enquiries	78
No. of enquiries that led to a referral to Enforcement Team	9

* See Table 2 of breakdown of applications

- a) The 153 searches where the threshold was 10% or higher, meant they were advised that they would not obtain planning consent and as a result remained in C3 use; a positive outcome of the policy. Spot checks were carried out on these throughout the year to ensure compliance of the policy- see (e) below.
- b) The 88 properties that were below the threshold showed that there was still scope for further C3 to C4 change within the area;
- c) The 12 properties that came forward as planning applications were considered against existing HMO policies and only 6 were approved, with conditions. Those refused were on grounds of amenity, potential impact on character of the surrounding properties and occupants.
- d) We have recorded the self-declarations received but these do not form part of the official data sets as yet. We will continue to only consider the verifiable data and take a view on the self-declarations in due course. The proposed **Additional Licensing Scheme** and the **Government's consultation** (see note below) on extending licensing for all HMOs will impact significant on our policy and should either of these be introduced, then this would be the ideal time to reassess the threshold policy.

- e) Follow up visits were made to more than 30 properties which were over the 10% threshold to ensure advice was being followed and properties operating lawfully.
- f) A total of 9 referrals were made to the Enforcement Team for further investigation, ranging from unauthorised works to potential unlawful use.
- g) The telephone and email service for checking threshold levels have worked extremely well with telephone enquiries responded to immediately and most email enquiries supplied within 24 hours or sooner. This fast turnaround of enquiries has been extremely beneficial, saving time and more importantly, money for prospective landlords.

Table 2 – Planning applications received within the Article 4 area, which were below 10% and their outcome:

1	7 Albany Road, B17 9JX	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
2	804 Pershore Road, B29 7LS	Change of use from dwelling house (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
3	51 Winnie Road, B29 6JU	Conversion of existing House in Multiple Occupation (Use Class C4) to provide 4 no student studios, erection of single storey rear extension and dormer windows to front and rear.	Refused due to adverse impact on the character of the area and amenities of local residents; rear dormer, by virtue of its scale and design, is out of keeping with the character of the existing property
4	36 Langleys Road, B29 6HP	Application for a Lawful Development Certificate for the existing use of the property as a large house in multiple occupation (HMO)	Refused. Unauthorised change of use of the premises to a large House in Multiple Occupation (Sui Generis).
5	832 Pershore Road, B29 7LS	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
6	77 Falconhurst Road, B29 6SB	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
7	185 Reservoir Road, B29 6SX	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
8	805 Pershore Road, B29 7LR	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Approved subject to conditions
9	616 Pershore Road, B29 7HG	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Withdrawn
10	41 Kitchener Road, B29 7QE	Change of use from dwellinghouse (Use Class C3) to small house in multiple occupation (Use Class C4)	Withdrawn

11	64 Bantock Way, Harborne B17 0LT	Change of use to two one-bedroom flats	Refused as it would be detrimental to the privacy of the occupiers of the ground floor flat
12	1063 Pershore Road, B30 2YJ	Change of Use of first floor from Hotel Rooms to House in Multiple Occupation	Refused as it would result in an unacceptable residential environment for future occupants

Additional Licensing Scheme and Government consultation on extending licensing:

The City Council consulted on the Additional Licensing Scheme (ALS) over the summer however, this was overtaken by a Government proposal and consultation to extend mandatory licensing to all HMOs. This consultation has now closed.

If the Government does go ahead and introduce this legislation, it will have a significant impact on the Article 4 Direction, the data and boundary we are currently operating. If all of the HMOs are recorded and used in future calculations, the 10% threshold within our current boundary will become unworkable as most; if not all of the current area will exceed 10%.

Although the timescales for the introduction of the national policy is April 2017, it will take longer for our service to map out all of the HMOs and to see how they impact on our Direction. A decision will be taken at that stage to determine the status of the current Direction.