



Planning Policy Technical Paper

**Options Analysis for Applying New Article 4 Directions to Remove Permitted
Development Rights for the Change of Use of C3 housing to C4 HMOs**

May 2019

Executive Summary

This technical paper explores the evidence and options for Birmingham City Council to apply further Article 4 directions to manage the future creation of new Houses in Multiple Occupation (HMOs) that can accommodate between 3 and 6 unrelated people. Larger HMOs that can accommodate more than 6 people already require planning approval and so any Article 4 direction would only apply to the creation of smaller HMOs.

The paper includes an exploration of different options that have been identified for how Article 4 directions could be applied in the city. The options that have been identified are as follows;

- Option 1: a city-wide direction which would provide a blanket approach to the creation of all new HMOs;
- Option 2: a number of different Article 4 directions that cover specific areas of the city, where there are existing concentrations of HMOs or where there is a high potential for future concentrations, or;
- Option 3: a 'do nothing' approach to apply no further Article 4 directions in the city.

These options are explored in more detail at the end of this paper.

Summary of Main Points

- The City Council has previously applied an Article 4 direction to remove permitted development rights for the change of use from dwellings to HMOs in parts of Selly Oak, Edgbaston and Harborne.
- Further data gathering of HMO licencing, council tax and planning application records has shown that, whilst there are particular concentrations of HMOs in areas such as Selly Oak, Ladywood/North Edgbaston, Handsworth, Perry Barr, Erdington and Acocks Green, there is otherwise a reasonably even distribution of HMOs across the city. The exception is in the north of the city in and around Sutton Coldfield where the distribution of HMOs is relatively sparse.
- This suggests that the option to apply different Article 4 directions in specific areas could be applied, but there may be a risk that such an approach will push the creation of new HMOs to other nearby areas.
- A city-wide Article 4 direction would enable a consistent approach to be applied to manage the overall distribution of HMOs in the city, but this would also cover areas that do not have significant concentrations.
- The process of applying an Article 4 direction is prescribed by the Use Classes Order (2015). This requires a 28 day public consultation period whereby the proposed direction is publicised via advertisements, site notices and (where practical) notifying all owners and occupiers in the area affected.
- The consultation process would have to be followed each time an area-based Article 4 direction is proposed, but only once if a city-wide direction is applied.
- An increased number of planning applications will need to be submitted to, and processed by, the City Council as a result of new Article 4 directions. A city-wide direction will result in more planning applications than area-based directions.

- A non-immediate direction would allow for a specified period of time (e.g. 12 months) to allow future applicants to be made aware of the intention to remove permitted development rights.
- The Development Management in Birmingham Preferred Options Consultation Document contains a detailed preferred planning policy that could be applied whichever option is applied. This seeks to ensure that no more than 10% of residential properties in an area are HMOs, that there would not be continuous frontages of such properties, and that family houses do not become sandwiched between non family housing. Non family housing is defined as including HMOs, student accommodation, hotels, hostels, nursing homes and self-contained flats.
- Through the existing Selly Oak Article 4 direction, the City Council has developed effective mapping tools and officer experience which will aid decision making if further Article 4 directions are to be applied.

1. Introduction

Background

- 1.1 In 2009, the Government consulted on how best to address the impact of high concentrations of HMOs in certain areas. In 2010, the Government amended the Use Classes Order to create a new use class for HMOs, meaning that changes of use from a dwelling (Class C3) to a HMO (Class C4) would require a planning application.
- 1.2 This was followed by a further change to reduce bureaucracy in areas where HMOs were not a problem by removing the requirement for a planning application for changes of use from a dwelling to a small HMO accommodating six people or less. The Government allowed planning authorities to serve an Article 4 Direction removing permitted development rights for changes of use from C3 to C4 where this was an issue. This allows local authorities, for example, to prevent existing concentrations of HMOs from worsening and prevent new concentrations forming in other areas.

National Planning Policy and Legislation:

- 1.3 There are two national statutory instruments that are relevant to the use of buildings as HMOs; the Town and Country Planning (Use Classes) Order 1987 (as amended) – commonly referred to as the ‘Use Classes Order’ – and the General Permitted Development Order (GPDO, 2015).
- 1.4 The Use Classes Order defines two different categories of HMO as follows:
 - Smaller HMOs that contain between 3 and 6 people who are unrelated to each other. These are identified under use class C4.
 - Larger HMOs containing more than 6 unrelated people, which are identified as a ‘sui generis’ use.
- 1.5 The GPDO provides permitted development rights to convert ordinary family housing (C3 use class) to small C4 HMO use without the need for planning approval. Larger sui generis HMOs on the other hand will always require planning approval to be created from either C3 housing or any other land use.
- 1.6 The GPDO also includes measures for local planning authorities to remove such permitted rights from certain types of development and within certain defined locations. These measures are provided for within Article 4 of the GPDO and are therefore known as ‘Article 4 directions’.
- 1.7 Paragraph 53 of the revised 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 this is necessary to protect local amenity or the well-being of the area”.
- 1.8 Planning Practice Guidance supplements this and states that “The potential harm that the direction is intended to address should be clearly identified” and that “There should be a particularly strong

justification for the withdrawal of permitted development rights relating to a wide area (e.g. those covering the entire area of a local planning authority”¹

- 1.9 It must be noted that introducing such a direction does not mean that future proposals for change of use from C3 to C4 housing would be refused but it would allow the City Council to have greater scrutiny of such proposals coming forward within the area affected by the direction. The City Council’s own local planning policies, such as that proposed within the Development Management in Birmingham DPD, can however set out criteria for when new HMOs would or would not be considered to be acceptable.

Local Planning Policy:

- 1.10 Policies TP27 and TP30 of the adopted Birmingham Development Plan (BDP) seek to create mixed, balanced and sustainable neighbourhoods by requiring all new residential development to deliver a wide choice of housing sizes, types and tenures. As HMOs are meeting a specific need for housing they do have a role to play in meeting these policy requirements for mixed and balanced communities but a proliferation of HMOs in an area can have the opposite effect.
- 1.11 To add further detail to the BDP policies, the Development Management in Birmingham Development Plan Document (DMB) Preferred Options Consultation Document includes a preferred policy (Policy DM10) which would manage the creation of new HMOs. The policy would apply to all applications for HMOs (large Sui Generis HMOs and small C4 HMOs where an Article 4 Direction exists). The criteria that it prescribes for considering whether or not a HMO would be appropriate are as follows;
- where it would not result in more than 10% of residential properties within a 100 metres radius of the application site being HMOs;
 - where it would not result in a C3 dwelling house being sandwiched between two HMOs or other non-family residential uses (e.g. hotels, care homes or student accommodation);
 - where it would not result in a continuous frontage of three or more non-family houses, and;
 - where it complies with relevant standards for HMOs and the DMB DPD policy relating to standards for residential development (Policy DM11).
- 1.12 The policy is worded in such a way that it can support either city-wide or area-based Article 4 Directions. Its implementation would be supported by mapped data showing the location of all residential properties and HMOs in the area affected by the direction. The City Council’s GIS team has been preparing this mapped data at a city-wide scale to help to inform the future approach. This is described in further detail below.
- 1.13 Once adopted, Policy DM10 will replace the existing policy on HMOs contained in the saved policies of the Unitary Development Plan (2005) and the planning policy for the Article 4 Direction Area of Selly Oak, Harborne and Edgbaston (2014).

¹ [Paragraph: 038 Reference ID: 13-038-20140306](#)

The impacts of concentrations of HMOs

- 1.14 The BDP recognises that different types of residential accommodation are important to meeting the wide ranging housing needs of people in the city. The housing market both nationally and locally has seen trends of rising house prices, falling ownership and an expanding – but increasingly unfit – private rented sector. The growth of the private rented sector is likely to correlate with a growth of HMOs. A balance must be struck between meeting the wide range of housing need, including people on low incomes and providing for larger family housing and managing the potential negative impacts of harmful concentrations of HMOs.
- 1.15 High concentrations of HMOs can cause a number of negative impacts on local communities. This is largely due to:
- harm to residential character and amenity, particularly through increased noise nuisance and disturbance, increased pressure on parking, additional refuse, and adverse impacts on the physical environment; and
 - imbalance to communities, due to higher levels of population transience and loss of housing suitable for families undermining objectives to create mixed communities;
 - a high proportion of privately rented accommodation with short-term lets where the standards of upkeep of the property are generally lower.
- 1.16 Larger HMOs are likely to have a proportionately greater impacts on surrounding occupants and neighbourhoods as each additional resident will increase the level of activity, for example through more frequent comings and goings, different patterns of behaviour and consequential noise and disturbance. A property occupied by a group of unconnected adults is likely to have a greater impact than a typical family home with a similar number of occupants as lifestyles and movement patterns will be less connected.
- 1.17 Equally, the cumulative effect of incremental intensification in an area caused by numerous changes of use from small HMO to large HMOs can be significant, affecting both immediate neighbours and the wider area. In connection with this, the Community Cohesion Strategy identifies that insecure housing and high levels of transience are an area of concern in the city.
- 1.18 Local councillors and residents in a number of wards across the city have expressed concern about the high concentration of HMOs in their area.. Some of these comments have suggested that it may be appropriate to apply further Article 4 directions, to enable the creation of new HMOs to be managed in these areas.
- 1.19 In response to these concerns, the City Council has undertaken an exercise to identify and map the existing distribution of HMOs across the city and explore how Article 4 Directions can be applied in the city.

2. Data and Evidence on HMOs in Birmingham

- 2.1 To provide evidence to determine whether or not Article 4 directions would be appropriate to apply at either an area-based or city-wide scale, the City Council's Planning Policy and GIS teams have

been undertaking an exercise to map existing HMO properties across the city. This has been informed by combining data from the following sources;

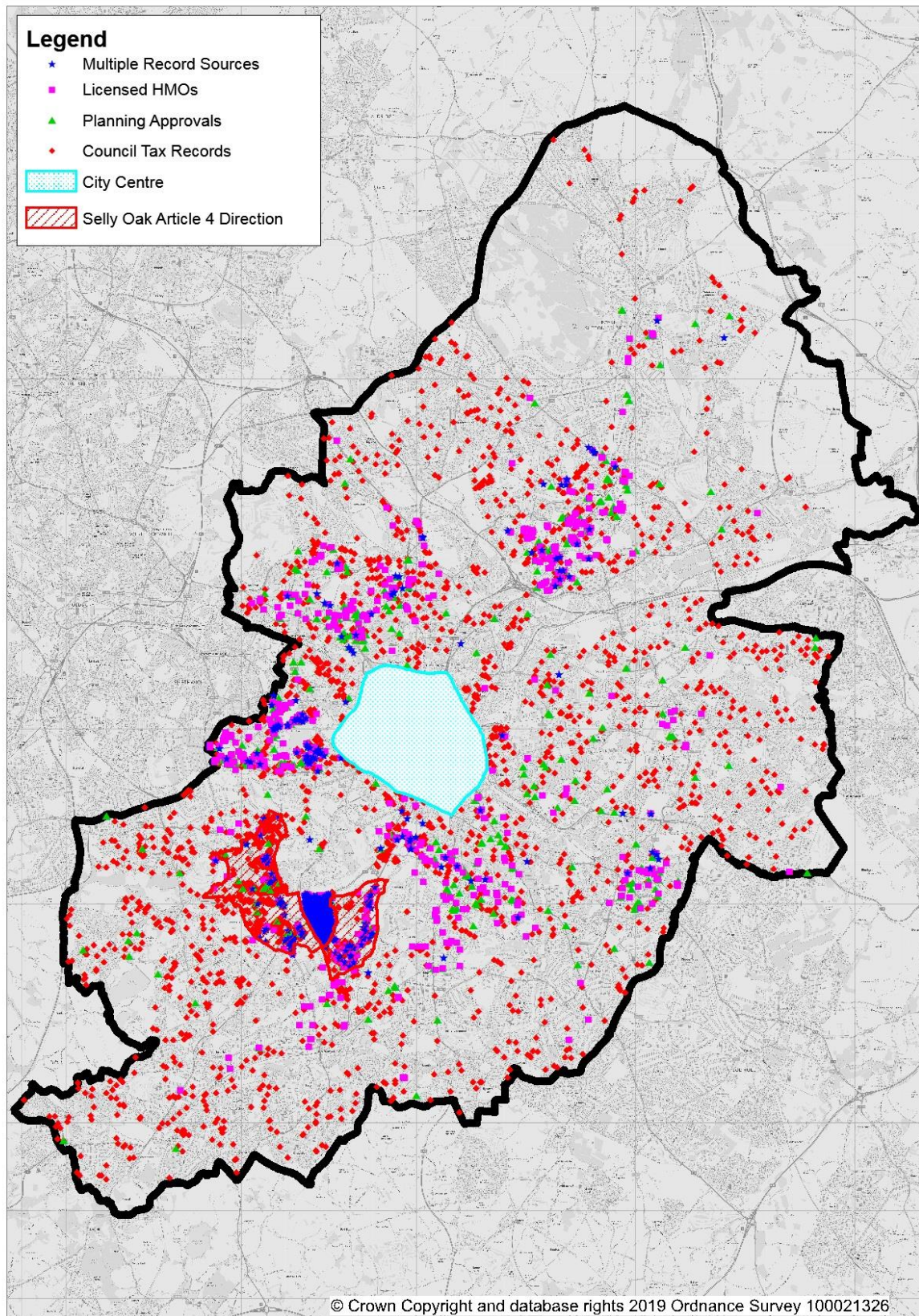
- licensed HMO properties;
- planning approvals for the creation of new HMOs;
- council tax records that show the property to be in a shared use.

- 2.2 In total, 6,128 individual HMOs have been identified across the city. Of these, 1,082 have been identified from the HMO licensing data, 443 from previous planning approvals for the creation of new HMOs and 3,594 have been identified from council tax records. This leaves 1,009 properties which have been identified from more than one of the above sources.
- 2.3 It must be noted that each of these data sources have been collated to meet the specific requirements of the service area that they originate from and so they each include or exclude different types of HMO accommodation. Further explanation on these differences is described below.
- 2.4 In regard to licensing of HMO properties, the City Council operates a mandatory only licensing scheme, as defined under Subsection 254(5) and Schedule 14 to the Housing Act 2004. This means that the following types of property are not considered to be HMOs for the purposes of licensing:
- properties managed by a local authority or registered social landlord;
 - student halls of residence;
 - buildings occupied by religious communities;
 - predominantly owned by owner-occupiers;
 - occupied by persons who form two households; or
 - occupied by a resident landlord and a maximum of two other households who are not part of the landlord's household
- 2.5 Where properties do not fall within any of the above categories but can accommodate 5 or more people and include shared facilities such as kitchens and bathrooms, they will be categorised as an individual HMO licensable unit. In a converted or purpose built block of flats this can mean that there are multiple HMOs which are counted separately from owner occupied units within the same building.
- 2.6 The planning approval data will identify larger HMOs accommodating more than 6 people that have been created since 2010, when the national planning regulations were changed. The exception to this is in Selly Oak, Edgbaston and Harborne where the creation of smaller HMOs accommodating between 3 and 6 people have been identified since 2014, when the Article 4 direction covering this area was brought in to force.
- 2.7 The council tax data includes only 'Class N' exempted properties, where the property is occupied solely by full-time students. This data has been filtered down further to exclude student halls of residence and any properties that are likely to be self-contained flats rather than HMOs.

- 2.8 The combined effect of all of these data sources means that the mapping exercise to identify existing HMOs across the city is as comprehensive as possible. There can be a high degree of confidence in the robustness of the data where a property has been identified as a HMO from all three sources.
- 2.9 As set out in the Annex to this paper, other local planning authorities have also included data from other sources such as the electoral register, 2011 Census and the 2015 Indices of Multiple Deprivation. Whilst these other sources can help to supplement the data that has already been collected by the City Council, they are unlikely to identify further HMO properties as they can only provide broader evidence to indicate areas where HMO properties may be concentrated.
- 2.10 While best efforts have been made to identify as many HMOs as possible using the above data, a complete picture of all HMOs in the city will always be difficult to achieve. The most significant reason for this is because smaller HMOs do not require mandatory licensing or planning approval. There may also be cases of unauthorised development of HMOs which have not yet been brought to the attention of planning enforcement, and due to the existing rules on permitted development many residential properties can fall in and out of HMO use quickly and easily without the City Council having a record of the change of use.
- 2.11 The data collected can therefore offer a detailed indication, but not a comprehensive picture of the prevalence and distribution of HMOs in the city.

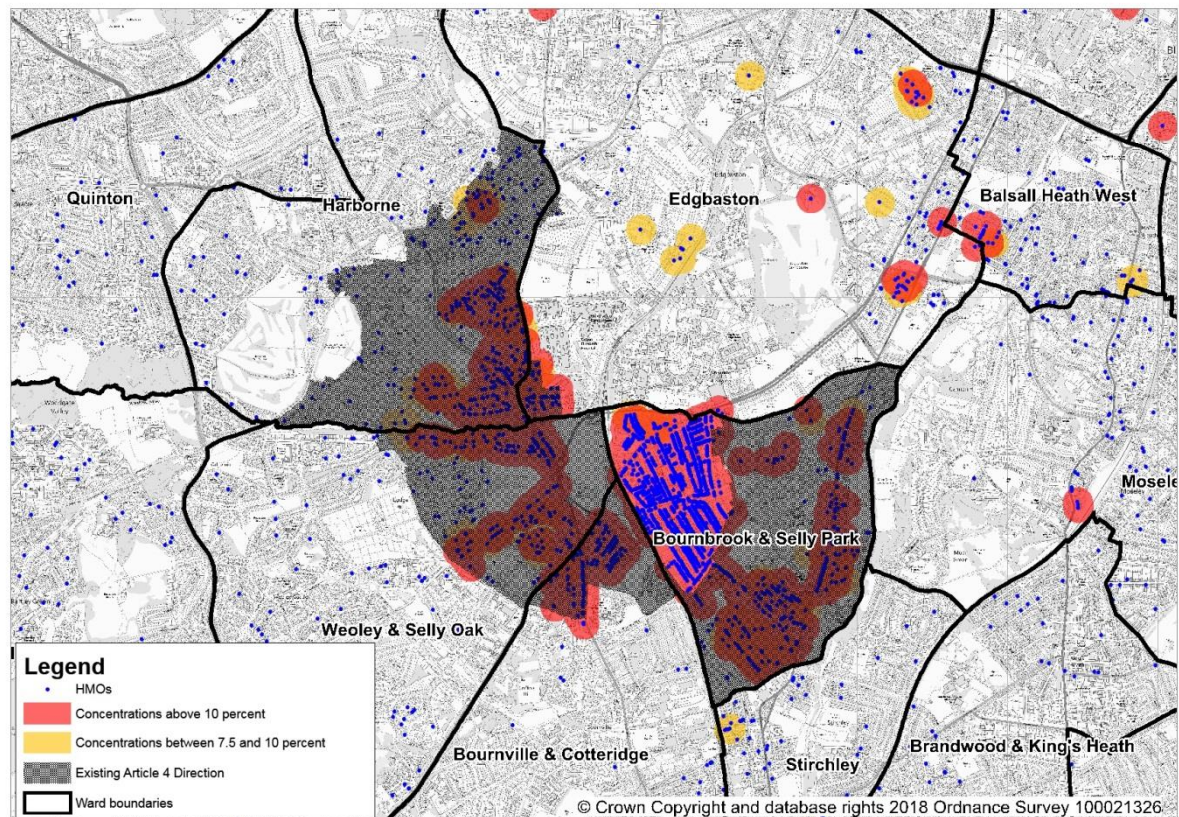
3. Spatial analysis of HMOs in Birmingham

- 3.1 The map on the next page shows the distribution of HMO properties across the city that have been identified through the City Council's mapping exercise, categorised by the data sources described above. It is intended that this mapped data will become a 'live' dataset which is kept continually up to date. The map shows a snapshot of the HMOs identified as of 21st February 2019.
- 3.2 Please note that the City Centre has been excluded from the mapping exercise. This is due to the high density pattern of development in the area which in recent years has predominantly comprised of 1 and 2 bedroomed apartments. Such properties are not capable or appropriate to be converted to HMOs.
- 3.3 The map shows that overall there is a reasonably even distribution of HMOs across the city, with particular concentrations in and around certain areas such as Bournbrook & Selly Park, North Edgbaston, Handsworth, Lozells, Erdington and Stockland Green. The existing Article 4 direction is also shown on the map and the high concentration of HMOs within that area is clearly evident. Only the north of the city has a relatively sparse distribution of HMOs.

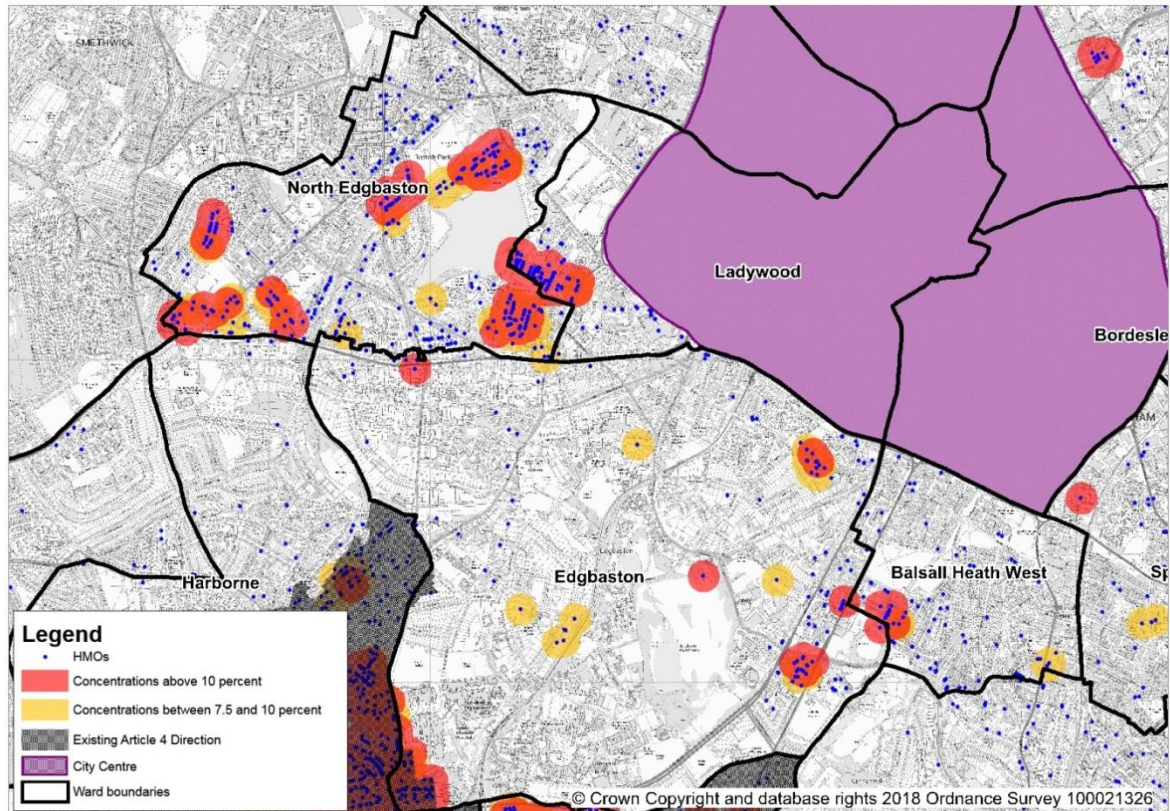


3.4 The following maps focus in on the areas of the city where greater concentrations of HMOs have been identified. The buffers shown have been drawn by applying the criteria proposed in preferred policy DM10 of the Development Management in Birmingham DPD, i.e. by applying a 100 metre

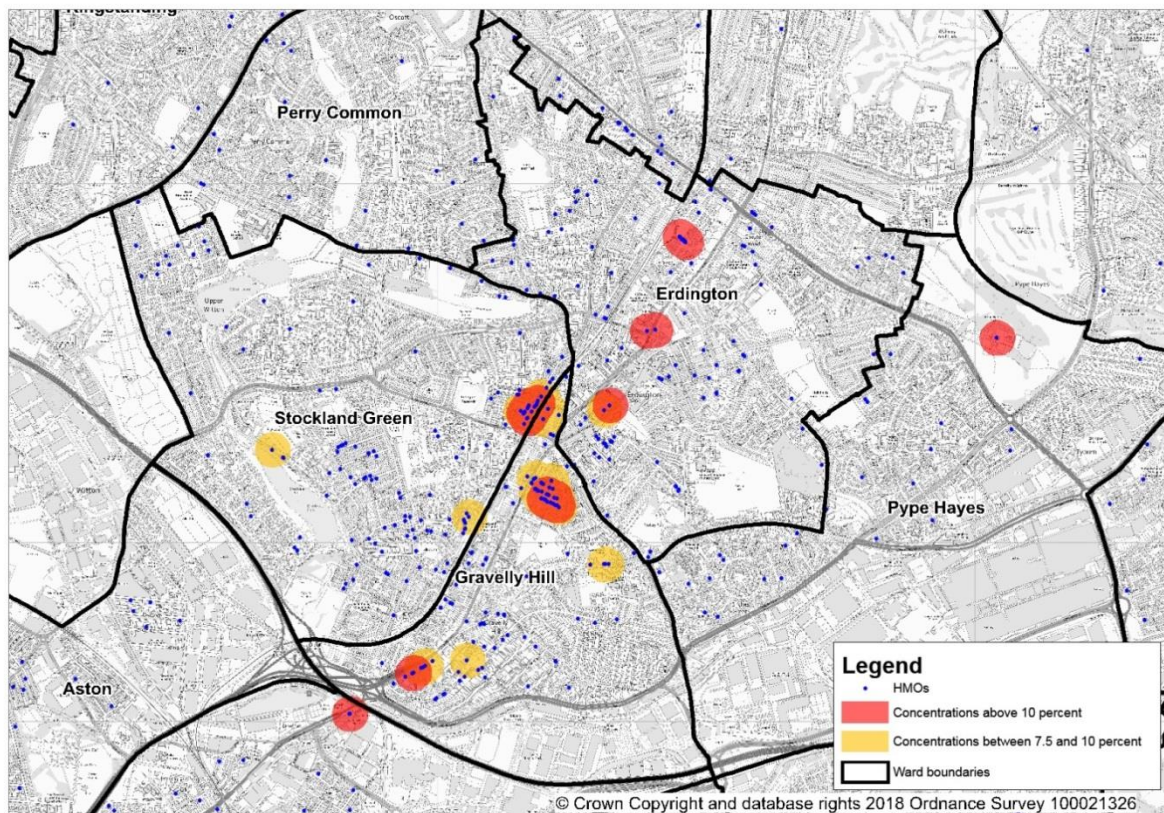
buffer around each individual HMO and then calculating the percentage of the housing stock that are HMOs within that buffered area. Areas shown in red already exceed the 10% threshold proposed in policy DM10 while areas shown in yellow are below, but close to exceeding the 10% threshold.



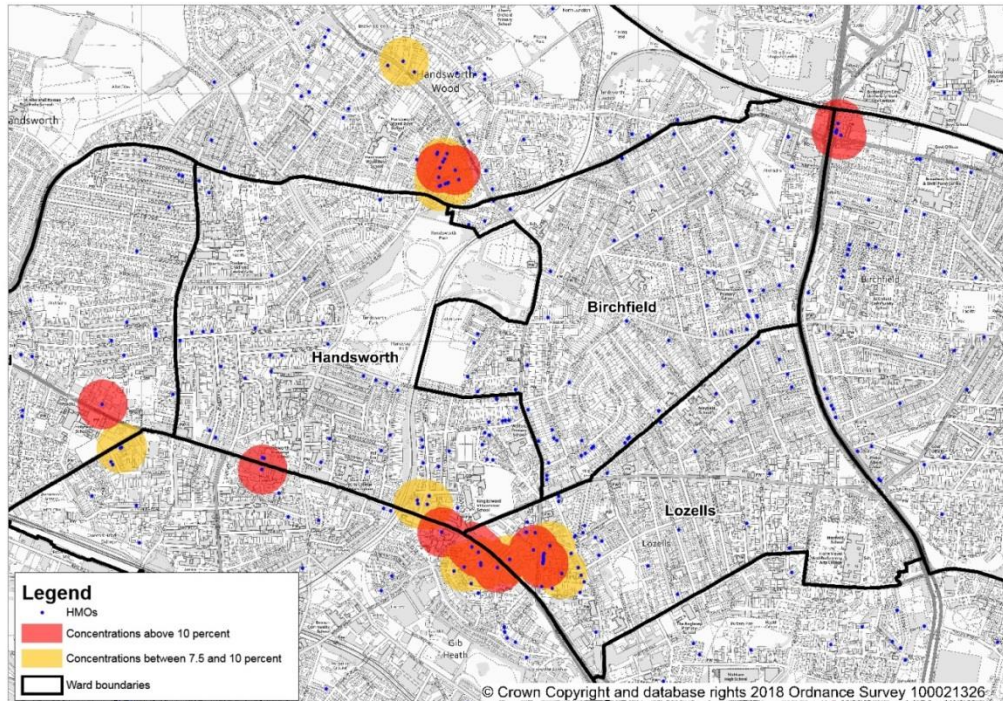
- 3.5 The above map clearly shows the scale of HMOs that are within and around the existing Article 4 direction area covering Selly Oak, Harborne and Edgbaston. After undertaking recent a site visit to this area, officers are of the view that the existing Article 4 direction continues to be appropriate.
- 3.6 The next map shows particular concentrations of HMOs around the Edgbaston Reservoir and the City Road and Sandon Road areas. It also shows that there are further concentrations spread around the wider surrounding area, particularly around the Bristol Road and Pershore Road areas.



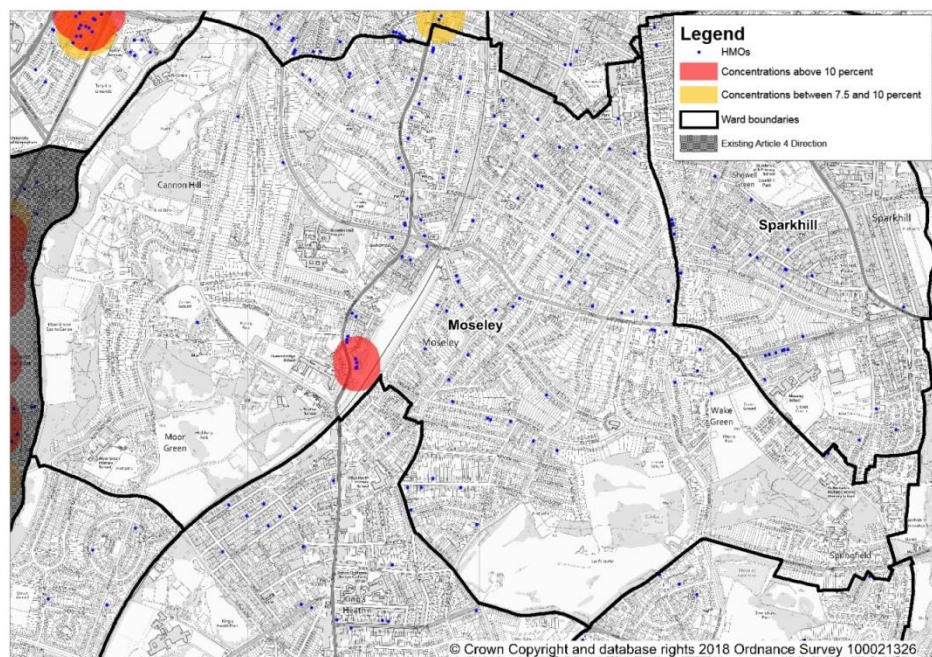
3.7 The next map below shows the concentrations of HMOs that have been identified around Gravelly Hill, Erdington, and Stockland Green. These are largely focused along a corridor following the A5127 and also around Erdington District Centre.



- 3.8 As the next map shows, the concentrations of HMOs in and around Handsworth, Birchfield and Lozells are very localised. The most significant concentrations are focused around Soho Road District Centre, in particular at the eastern end near the junctions with Hamstead Road and Villa Road. There are also smaller concentrations of HMOs at Perry Barr and the area around Selborne Road and Endwood Court Road in Handsworth Wood.



- 3.9 The above maps illustrate that HMOs are often focused on specific locations such as town and district centres and transport hubs, but beyond such locations their distribution is reasonably dispersed. A further example of this is shown on the map of Moseley below, where there is a single concentration at Alcester Road, Close to Kings Heath District Centre, but overall the area has a dispersed pattern of HMOs.



3.10 The implication of these localised concentrations is that if smaller area based Article 4 directions are applied to them, then this may not help to manage and address the impacts arising from a high proportion of HMOs that may be distributed across a wider area. In particular, a high wider distribution may have a cumulative impact on an area's transport, community and other infrastructure, due to the higher population numbers being accommodated within the HMOs.

3.11 As part of the research for this paper, officers undertook field visits to the many areas of the city illustrated above where higher proportions of HMOs are evident. This has helped to identify the following impacts, which appear to be linked to a prevalence of HMOs in an area;

- More vehicles parked in front of properties and on streets
- Some HMOs were poorly maintained, resulting in a degradation of the quality of the local environment and raising questions about the quality of the living environment for the inhabitants
- Higher numbers of wheelie bins cluttering streets and pavements
- Property frontages cluttered with 'rooms to let' signs, multiple satellite dishes, electricity and gas meters, doorbells and occasionally multiple front doors.

3.12 The photographs below demonstrate examples of locations where such impacts were observed.



3.13 Such impacts appeared to be magnified where an area also contained large concentrations of self-contained flats and other types of communal accommodation. These other types of residential accommodation will also be managed through the application of preferred DMB policy DM10.

3.14 In addition to these more immediate impacts, a high concentration of HMOs can also have wider impacts on the surrounding area which may be less obvious, such as;

- Increased traffic and demand for public transport
- More pressure on community facilities and infrastructure
- Less families, resulting in reduced demand for school places and undermining the viability of local schools

3.15 It must be noted that not all of the impacts of HMOs will be negative, and maintaining an appropriate proportion of HMOs in an area will provide more mixed and diverse communities, increase custom for local businesses, provide a greater local workforce and provide a greater choice of accommodation for local residents.

3.16 The impacts and benefits of HMOs will however become more manageable through the application of one or more Article 4 directions and the policy approach proposed within preferred policy DM10 of the Development Management in Birmingham DPD.

3.17 The evidence and data gathering that has been undertaken to identify the distribution of HMOs in the city will continue to be kept up to date and it will therefore be possible to monitor how the prevalence of HMOs across the city will change in the future. This monitoring will include reviewing the status of locations that currently exceed or come close to the 10% threshold, and identifying locations where new concentrations of HMOs have occurred.

4. Options for Applying Article 4 directions in Birmingham

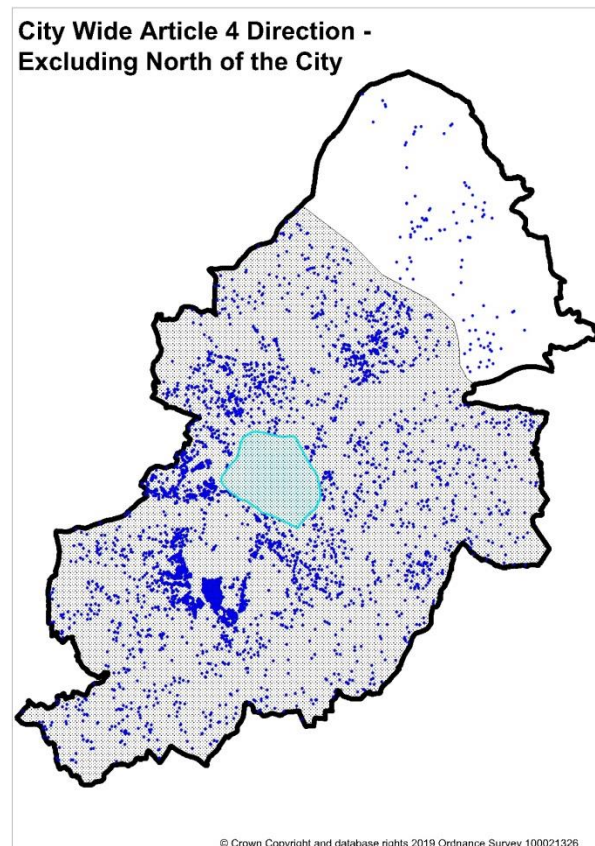
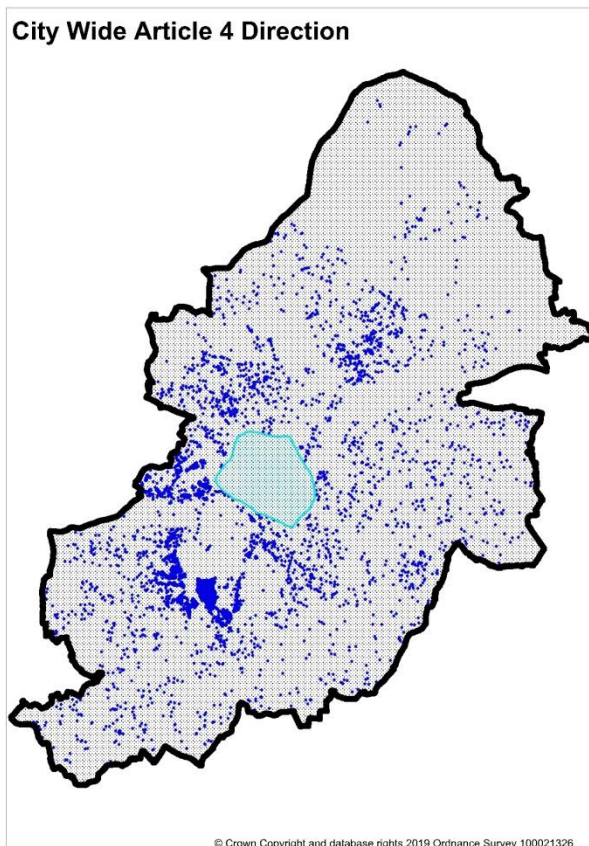
4.1 This section explores the positive and negative implications of different options that have been identified by officers for how Article 4 directions could be applied in the city. These options have been identified from the analysis of the HMO distribution data, findings from officer site visits, examples from elsewhere as outlined in the Annex to this paper, and the requirements of national and local planning policy.

Option 1: City-Wide Article 4 Direction

4.2 This option would see a blanket approach applied across the city, with an Article 4 direction put in place to remove permitted development rights for all future conversions of family housing to Houses in Multiple Occupation.

4.3 Another potential approach to exclude the northern part of the city from the Article 4 direction is also explored under this option, due to very small numbers of HMOs that have been identified in this part of the city.

4.4 Either of these alternatives would require the cancellation of the existing Article 4 direction covering Selly Oak, Harborne and Edgbaston as the new direction would apply the same approach across the city. The maps below illustrate the approaches that could be applied under this option.



Advantages	Disadvantages
<ul style="list-style-type: none"> • This option would enable a consistent approach to be applied across the city, leading to greater clarity for landlords, applicants and decision-makers. • It would ensure that the concentrations of new HMOs are not simply moved around the city, i.e. applying an Article 4 direction in one area of the city may move the problem to an adjoining area. • Only one round of consultation would be required before applying the direction, rather than multiple consultations for different areas. • Excluding the northern part of the city from the Article 4 direction would provide flexibility for the creation of new HMOs in this area and support the objective to maintain an overall balance of communities across the city. 	<ul style="list-style-type: none"> • Consultation on the Article 4 direction would be a bigger exercise • A city-wide direction would lead to a greater number of planning applications being submitted for conversions that would normally take place under permitted development rights.

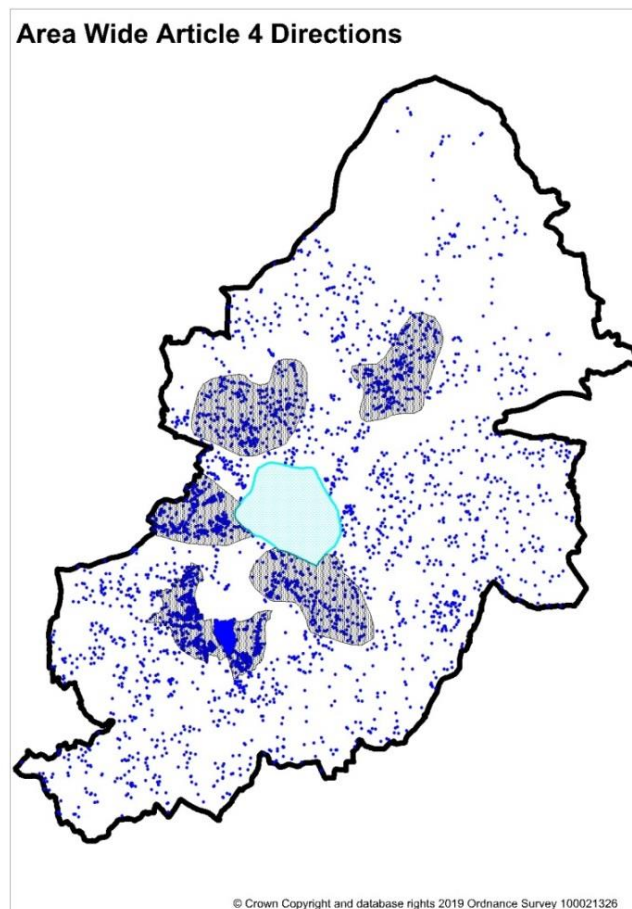
Option 1 Summary:

- 4.5 A city-wide Article 4 direction would ensure that a comprehensive and consistent approach could be applied throughout the city, making it easier and clearer for applicants and planning officers to understand when planning approval would be required for the creation of new small HMOs. It would

however lead to an increased workload for the City Council to process such planning applications. In regard to the designation process, this option would require a single and more simplified publicity period to be undertaken, but one which on the other hand could make it more difficult for residents, businesses and property owners to be aware of and engage in the process. A further alternative under this option would be to apply a slightly smaller Article 4 direction which would exclude Sutton Coldfield, as the identified distribution of HMOs in the north of the city is very sparse and indicates that there may be less of an issue to manage in this area. Excluding this area from the direction may however lead to local feeling that HMO creation is being pushed towards this area from the rest of the city.

Option 2: Area Specific Article 4 Directions

- 4.6 This option would involve applying a number of smaller Article 4 directions to cover locations where high numbers and concentrations of HMOs appears to be an issue and where the impacts of them are being felt. Whilst the actual areas where such directions would be applied would require further discussion and agreement, the analysis earlier in this paper has suggested that areas such as North Edgbaston, Ladywood, Balsall Heath, Gravelly Hill, Erdington, Handsworth and Lozells may benefit from applying Article 4 directions to some or all of their areas. Such locations are illustrated on the map below. Any such area based directions would be made in addition to the existing Article 4 direction covering Selly Oak, Harborne and Edgbaston which would continue to apply.



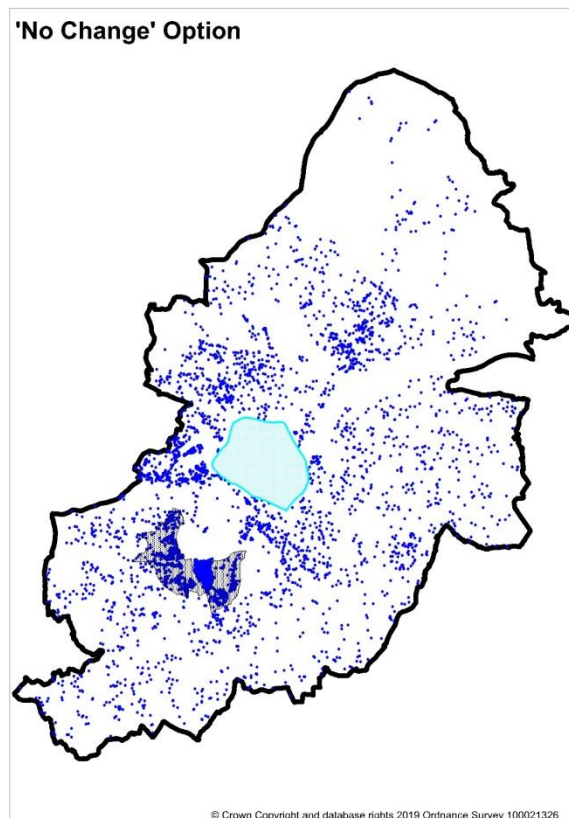
Advantages	Disadvantages
<ul style="list-style-type: none"> Article 4 directions could be applied in a more targeted and focused way to tackle specific concentrations where they occur. Applying smaller Article 4 directions would make it easier to notify all owners and occupiers within the affected area as part of the consultation exercise. This option would result in a lower number of planning applications being received by the City Council for conversion from C3 to C4 housing. 	<ul style="list-style-type: none"> There is a risk that applying an Article 4 direction to a specific area may push the creation of new HMOs to nearby areas not covered by the direction. This may lead to an inconsistent approach to the rules concerning the conversion of C3 dwellings to C4 HMOs in different areas of the city. Applying many different Article 4 directions would lead to individual consultation exercises having to be applied across the city.

Option 2 Summary:

- 4.7 This option would allow for a more focused approach to manage the creation of new small HMOs in areas where the evidence has identified that there are existing concentrations or potential future concentrations of such properties. Such areas would be applied in a similar way to the existing Article 4 direction in Selly Oak, Edgbaston and Harborne, the boundaries for which appear to continue to be appropriate when assessed against the current evidence.
- 4.8 This option would provide more potential for local communities to get involved in the process as there is a greater likelihood that the City Council will have to notify every property in the affected area. As a result, the process for designating each area could be more resource intensive and would have to be undertaken multiple times if different Article 4 directions are to be applied. It will also lead to different planning approaches being applied in different areas of the city, with properties outside the affected areas not requiring planning approval for new small HMOs but other similar proposals for properties nearby requiring approval.

Option 3: Do Nothing

- 4.9 This option would see a continuation of the existing approach, with the existing Article 4 direction covering Selly Oak, Harborne and Edgbaston remaining in place and no further Article 4 directions being applied. It must be noted that under this option, most of the requirements of preferred policy DM10 in the DMB consultation document would only be applicable to the existing Selly Oak, Harborne and Edgbaston Article 4 direction area. This existing situation is illustrated on the map below.



Advantages	Disadvantages
<ul style="list-style-type: none"> • This option would require the least resources, as no further publicising would be required and there will be no resulting increase in planning applications for the City Council to process. • It would provide clarity for developers of HMOs, as the same national permitted development rules as elsewhere will apply. • The existing Article 4 direction in Selly Oak, Edgbaston and Harborne will continue to apply, with no amendment of boundaries necessary. 	<ul style="list-style-type: none"> • This option will minimise the potential to manage the creation of small HMOs throughout most of the city. • As a result, areas with existing and increasing concentrations of HMOs may continue to proliferate. • It would be more difficult to identify and monitor the effects that new HMOs can have on local infrastructure and balanced communities. • Preferred Policy DM10 in the Development Management in Birmingham DPD would have a more limited scope and implementation.

Option 3 Summary:

- 4.10 This option would follow a business as usual approach. There would be no new Article 4 directions and no amendment of the existing Article 4 direction covering Selly Oak, Edgbaston and Harborne. No publicity or further decision making would be required, and the resource implications for the City Council would be minimised. It would however limit the ability of the City Council to manage the effects resulting from the creation of new small HMOs on local communities and infrastructure.

5. The Process for Applying Article 4 Directions

5.1 Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 prescribes the process that Local Planning Authorities have to follow in applying an Article 4 direction. This involves publicising the direction via the following means;

- Local advertisements of the direction
- Display of a minimum of two notices in different locations within the area affected, for a minimum period of six weeks
- Notifying owners and occupiers within the affected area (although the regulations are relaxed where this would be impractical, for example if the Article 4 direction is proposed to be applied across a very large area such as the entire city)
- Sending the above documentation to the Secretary of State for review

5.2 Once the direction has been publicised the City Council must allow a period of 21 days within which public comments can be made on it and then at least a further 28 days, or up to a maximum of 2 years, to confirm the direction. Where there is an urgent need to apply an Article 4 direction 'Immediate' directions can be brought in to force straight away and for a temporary period of six months. In such cases the above publicising arrangements must be carried out within that six month period or the direction will expire.

5.3 It is important to note that there is potential for applicants to claim compensation from local planning authorities if they have had planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. Any such compensation claims can only be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights². A way of reducing the likelihood of compensation claims being made against the City Council following the introduction of an Article 4 direction is to delay its introduction. This would allow a lead-in time for when the direction would be brought in to force. The maximum period of time that an Article 4 direction can be applied after being approved is two years.

6. Conclusions and Justification for Preferred Approach

6.1 HMOs are recognised as meeting important and specific housing needs within the city. Policies TP27 and TP30 of the adopted Birmingham Development Plan (BDP) seek to create mixed, balanced and sustainable neighbourhoods by requiring all new residential development to deliver a wide choice of housing sizes, types and tenures. High concentrations of HMOs can present challenges to the future sustainability of neighbourhoods and impact on their character and residential amenity. In connection with this, the Community Cohesion Strategy identifies that insecure housing and high levels of transience are an area of concern in the city.

6.2 The evidential work undertaken confirms the wide distribution of HMOs in the city and the identification of significant concentrations in particular areas of the city (with the exception of Sutton Coldfield where the distribution is more sparse) particularly in Bournbrook/ & Selly Oak/

² Provision made under [Section 108 of the Town and Country Planning Act 1990](#)

Harborne/ Edgbaston, Park, North Edgbaston/ Ladywood, Handsworth/, Lozells/ Soho, Erdington/ Gravelly Hill and Balsall Heath West/ Moseley and Stockland Green.

- 6.3 Taking in to account this pattern of distribution, officers have identified a number of different options for how Article 4 directions could be applied. These are explained in more detail below but in summary they include a single city-wide direction, multiple area-based directions which are focused on the locations where concentrations have been identified, or not applying any further Article 4 directions.
- 6.4 Having considered the advantages and disadvantages of each option, officers recommend to Cabinet that a city-wide Article 4 direction should be applied, as this will enable the most consistent and comprehensive approach for the distribution of HMOs across the city. On balance, whilst designating a city-wide Article 4 direction would be a large exercise and increase the demands on the planning service, particularly in the short term, it would reduce the risk of concentrations of HMOs being 'moved' around the city and provide a more consistent and comprehensive approach to the management of new HMOs.
- 6.5 The City Council will be in a good position to support future decision making under any approach. A criteria-based policy approach to manage the creation of new HMOs in Article 4 areas has been proposed within the Development Management in Birmingham Development Plan Document (DMB) preferred options consultation document and there is already an internal GIS tool that will enable quick decisions on such developments to be made whichever approach is applied.

Annex: Examples from Elsewhere

Data Sources used by other Local Planning Authorities to identify HMOs:

The tables below summarise the data sources that other local planning authorities have used to identify where existing HMOs exist, and thus provide an indication of whether an area wide or authority wide approach may be more appropriate in Birmingham.

Authority-wide directions:

LPA:	HMO Licences	Planning Applications	Council Tax Records	Electoral Register	Census 2011	IMD 2015	Environmental Health
Croydon Borough Council	✓	✓					
Manchester City Council	✓		✓				
Southampton City Council	✓	✓	✓	✓	✓	✓	
Wolverhampton City Council	✓	✓					

Area-based directions:

LPA:	HMO Licences	Planning Applications	Council Tax Records	Electoral Register	Census 2011	IMD 2015	Environmental Health
Leeds City Council			✓				✓
Liverpool City Council	✓						

The analysis suggests that the local authorities that have applied authority-wide Article 4 directions have drawn from the widest range of data available. All of them have used HMO licensing records and most have used planning application data. Manchester also used council tax records, as did Southampton who also went further and used data from the electoral register, Census 2011 and the Indices of Multiple Deprivation 2015.

Authorities that applied area-based Article 4 directions tended to use data from one or two sources. Leeds drew from council tax sources and environmental health case data, whereas Liverpool used HMO licensing data. This may suggest that the need to apply Article 4 directions could have originally been identified from these individual data sources, which may have identified specific patterns or concentrations of records being created in certain geographical areas.

Further explanation of the approach applied in each local authority area is provided below.

Southampton

Southampton City Council has been applying a city-wide Article 4 direction since 2012 and has recently reviewed its approach through a newly adopted SPD:

<http://www.southampton.gov.uk/planning/planning-policy/supplementary-planning/planning-hmo.aspx>

The approach followed in determining whether or not a new HMO might be appropriate is similar to that being explored in Birmingham's DMB preferred options document. The proportion that they have applied is also 10% but the distance that they have applied is 40 metres (100 metres in DMB). They have also included criteria for circumstances where less than 10 residential dwellings fall within the buffer and so it might not be possible to apply the 10% proportion (this may not be applicable in Birmingham as the distance of 100 metres suggests that this situation is unlikely to arise). Interestingly, after 18 months of applying two different thresholds (10% and 20%) in different areas of the city, the council opted to simply apply a single 10% threshold across the city as a whole. A report to the City Council's Overview and Scrutiny Panel meeting on 12th June 2014 states the reasons for this as being that the National HMO Lobby and the National Organisation of Residents Associations identifying a 10% threshold as a tipping point for balanced communities, and that the neighbouring areas of Bournemouth and Portsmouth had also applied 10% thresholds.

As well as the three data sources that have been applied in Birmingham (see list above), Southampton also included data from the Electoral Register, i.e. identifying properties where there are more than two people registered to vote who are unrelated to each other.

Wolverhampton

Wolverhampton City Council has also applied a city-wide Article 4 direction to manage the creation of HMOs and has adopted an SPD to guide decision making on such proposals:

<http://www.wolverhampton.gov.uk/article/2424/Supplementary-Planning-Documents-and-Development-Briefs>. Unlike the Southampton example, this SPD and the strategic policy in the Black Country Core Strategy that it supports provide more general guidance on the matters to be considered in determining proposals for new HMOs. These include character and appearance, residential amenity, living space, parking and highway safety.

Sheffield

Sheffield City Council has applied an Article 4 direction to the city centre and adjoining areas to the south west. This area was identified as more than 10% of the residential properties falling within it are shared houses. There is a policy in the adopted local plan which restricts shared housing to 20% of all residential properties, so the area covered by the direction is intended to prevent areas with existing concentrations of shared housing from exceeding this limit. Information on the direction is available via the following link: <https://www.sheffield.gov.uk/content/sheffield/home/planning-development/planning-permission-hmo.html>

Liverpool

Liverpool City Council adopted a HMO Strategy in April 2017 to provide better coordination of council services and more joined up working in relation to the provision of HMOs in the city. This includes the City Council's HMO licensing, housing, environmental health and planning services, and registered providers operating in the city. It sets a framework to define the specific roles and

responsibilities of each service area, the circumstances under which each of the teams will take action and what information and data they will use when undertaking their work. For example it states that Planning Enforcement will focus on properties with 7 or more residents (i.e. larger sui generis HMOs) and that these will be identified from licensing records. It also states that any planning enforcement decisions related to HMOs will be guided by the adopted UDP, SPGs, Interim Planning Guidance and Article 4 directions where they have been applied.

Manchester

Manchester City Council applied an Article 4 direction to the entire local authority area. The main driver for this was to better manage the creation of new student HMOs. As this was the main reason, the data used to inform the direction were council tax records to identify student exemptions and HMO licensing records. Policy H11 of the adopted Core Strategy sets some very broad parameters for managing the creation of new HMOs; “Change of use from a C3 dwelling house to a C4 HMO will not be permitted where there is a high concentration of residential properties within a short distance of the application site”. Supporting justification states that a more detailed development management policy will be adopted to apply specific criteria to define what is meant by ‘high concentration’ and ‘short distance’. The submitted version of the policy was more specific but the Inspectors Report ruled that the figures applied in that version were not justified by the evidence. https://www.manchester.gov.uk/info/500207/planning_and_regeneration/4847/article_4_direction_changing_the_use_of_your_property

Leeds

Leeds City Council has applied an Article 4 direction which covers most of the built up area of the city, but not the entirety of the local authority area. The administrative area also covers some significant areas of countryside which wouldn’t be appropriate to apply an Article 4 direction to. Most of the urban areas excluded from the Article 4 direction have little or no presence of HMOs identified within them.

There are no detailed criteria for managing the distribution of HMOs but the adopted Core Strategy contains a policy (H6) which sets out broad criteria for considering proposals that involve the creation of new HMOs within the Article 4 direction area. This includes ensuring that the needs for HMOs can be met whilst ensuring that they don’t become concentrated in certain areas and have good access to employment and education opportunities.

<https://www.leeds.gov.uk/planning/planning-policy/supplementary-planning-documents-and-guidance/houses-in-multiple-occupation-article-4-direction>

Bristol

Bristol City Council has applied three Article 4 directions that cover most of the western part of the city, including the city centre and surrounding areas: <https://www.bristol.gov.uk/planning-and-building-regulations/additional-planning-restrictions-article-4>

The adopted Site Allocations and Development Management Policies document contains a policy to manage the creation of new HMOs. A Local Plan Review Consultation document has been published

which contains a proposed policy (ULH 7) that would apply a 10% threshold to HMOs within an as yet unspecified area, avoids sandwiching of residential properties and which will take account of student properties in the area. The last consultation on the Local Plan Review was under regulation 18 and so it is likely that these criteria will become more specific at the next consultation stage.

Croydon

Croydon Borough Council have recently been publicising a proposed Article 4 direction that would remove permitted development rights for the creation of small HMOs across the whole administrative area:

https://getinvolved.croydon.gov.uk/KMS/DMart.aspx?strTab=Activities&PageContext=PublicDMart&PageType=item&DMartId=536&breadcrumb_pc=PublicDMart&breadcrumb_pg=search&breadcrumb_pn=DMart.aspx&filter_Status=1. The evidence sources that were used to identify HMOs were the mandatory licensing records and planning approvals for the change of use and conversion of residential properties to large HMOs. These two data sources identified particular concentrations of HMOs in the northern part of the borough, but also a reasonably widespread distribution across the rest of the area. There is an overarching policy in the adopted local plan (DM1.2) which seeks to restrict the loss of 3 bedroom family housing or housing of less than 130m², which are the types of housing that had typically been converted to small HMOs. The proposed borough-wide Article 4 direction is intended to support the implementation of this policy.