

<p><b>Report of:</b> Director of Planning and Strategic Transport</p> <p><b>Author:</b> Julia Dawe</p>	<p><b>Title:</b></p> <p>Confirmation of Article 4 Direction (Houses in Multiple Occupation) – Removal of Permitted Development Rights to Change Use From a Dwelling House (C3) to a Small House in Multiple Occupation – HMO (C4)</p>
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**1 RECOMMENDATION**

**After taking into account representations received and officers’ response to such considerations, it is recommended that the “non-immediate” Article 4 Direction dated 24<sup>th</sup> January 2019 be confirmed, to come into force on 28<sup>th</sup> January 2020.**

**2 BACKGROUND**

- 2.1. On 11<sup>th</sup> January 2019, a formal resolution was made by the Director of Planning and Strategic Transport (under delegated powers) to approve the making of a “non- immediate” Article 4 Direction, to remove permitted development rights for the change of use from a dwelling house (C3) to a small house in multiple occupation (HMO) (C4). A copy of this delegated report (which outlines the reasons for making the “non-immediate” Article 4 Direction and the associated circumstances) is attached at Appendix 1.
- 2.2. The non-immediate Article 4 Direction was formally made (under the common seal of the London Borough of Croydon) on the 18<sup>th</sup> January 2019 and came into effect on the 24<sup>th</sup> January 2019.
- 2.3. As part of the confirmation process, the local planning authority is required to publicise the making of the Article 4 Direction and consult those who might be affected by the removal of permitted development rights specified by the Direction. There is a requirement to consider any representations received and take them into account when determining whether the Direction can be confirmed. This report presents the responses to the consultation and any other responses (including any made by the Secretary of State) and seeks a decision on whether to confirm the “non-immediate” Article 4 Direction.
- 2.4 The consultation consisted of a six week period which commenced on 24<sup>th</sup> January until 8<sup>th</sup> March 2019 which adopted the following format:
  - Notice displayed and associated document provided at the Town Hall and Access Croydon

- Press Release and social media posts
- Notice in Croydon Guardian newspaper
- All Council HMO webpages updated and provided with a link to the consultation “Get Involved page”
- Letter emailed to Secretary of State, statutory consultees and duty to corporate bodies
- Letter emailed to GDPR approved contacts on Local Development Framework database
- Letter mailed to landlords on the Council’s mandatory HMO register and the Selective Licensing register (which incorporates non mandatory HMOs).
- Information provided to HMO/tenancy team to include in their landlord forums and newsletters

2.4 There were no issues raised regarding the consultation process or further issues identified throughout the consultation period that suggested that a further process was required. This report therefore presents the extent to which the representations may influence a final decision on whether to confirm the “non-immediate” Article 4 Direction. During the consultation period, numerous phone calls were taken by the Spatial Planning and HMO teams, seeking clarification as regards to the implications of the Article 4 Direction.

2.5 The Secretary of State (as required by the Regulations) has been consulted as part of this process as he/she needs to consider whether the Council’s approach satisfies National Policy on the use of Article 4 Directions. If the Secretary of State is not satisfied, he/she may intervene to order that the Article 4 Direction should not be confirmed. No intervention has been received from the Secretary of State to date.

### **3. REVIEW OF COMMENTS RECEIVED AND ASSOCIATED OFFICER COMMENTS**

3.1. In total, 50 representations were received, with the majority of representations (72%) indicating that they were supportive of the Article 4 Direction. Many representations also took the time to highlight issues with current HMOs in their local area as a main reason for supporting the use of an Article 4 Direction. Other supportive representations cited the loss of family homes and the impact of conversions on the surrounding neighbourhood and infrastructure. Representations in some cases named specific areas where current HMOs were problematic (South Norwood, Bingham Road, Oval Road, West Thornton, Chatsworth Conservation Area, Norbury Crescent, Stanford Road and Blacksmith’s Hill). However, no area was identified multiple times.

3.2. Of the supportive representations, seven agreed with the recommendation but raised concerns regarding the non-immediate nature of the Direction and questioned why it could not be implemented immediately.

3.3. Ten representations (20%) did not support the Article 4 Direction, focussing on issues such as additional cost, the impact of planning application processes on renters and the need for this type of accommodation in the Borough.

- 3.4. Four representations made observations, but did not clearly support or object to the Direction.

### **RECOMMENDED RESPONSE TO COMMENTS RECEIVED**

- 4.1 Taking the comments in turn by summarising the issues, these are the recommended responses to comments received.

#### **Need for making the Article 4 Direction for Small HMOs**

- 4.2 There was clear support for the making of an Article 4 Direction; to bring such development under planning control, linked to the proliferation of small HMOs. Evidence was cited by those who responded of environmental and social issues that would be addressed through a planning application process, such as the location of bin storage and the loss of 3 bedroom homes. Officers are satisfied that there is a need to confirm the Article 4 Direction.

#### **Introduce the Article 4 Immediately**

- 4.3 There were calls to introduce the Article 4 immediately. Whilst there was some evidence to support an immediate Article 4, in accordance with best practice, legal precedents and compensation considerations, a non-immediate Article 4 confirmation process (allowing a one year period to implement proposed changes without compensation claim) was followed. This approach also followed the previous method adopted by the Council in respect of the Croydon Opportunity Area Office to Residential non-immediate Article 4 Direction. This should also avoid claims for compensation and a financial obligation on the Council. For this reason it is recommended that confirmation of the Article 4 Direction should come into force on 28<sup>th</sup> January 2020.

#### **Borough Wide or Specific Area**

- 4.4 The consultation was borough-wide and responses received indicated problems with HMOs in a wide range of locations across the borough, with no particular area receiving a larger number of comments. Officers are satisfied that there was no one particular area where there was an issue, which aligns with the broad conclusions of the supporting evidence. Additionally, some comments favoured a borough wide approach. Consequently and to limit problems being moved from one area to another, it is recommended that the Article 4 Direction should apply borough-wide.

#### **Other Matters**

- 4.5 The introduction of the Article 4 Direction was supported by evidence that highlighted the wider environmental and social effects of such development, such as the impact on the amenity of existing residents and the loss of family homes. Since the January 2019 resolution, the Strategic Housing Market Assessment (2019) has been updated to support the emerging Local Plan Review. Whilst this updated report still recognises the need for this type of accommodation, the reason for proposing the Article 4 Direction was to ensure that family homes are

protected; in view of the clear need to retain such accommodation remains identified in the evidence. Moreover, whilst concern was expressed about the additional regulation and associated cost, plans and supporting information is currently required when seeking to secure an HMO Licence and similar information would be required when applying for planning permission. The cost of applying for planning permission in such circumstances would be £96 (based on the current fee schedules - set nationally). Officers are therefore satisfied that there is a strong case to remove permitted development and bring such development under planning control and would represent a proportionate response to the issues raised.

### **Other Responses Considered**

- 4.6 It should be noted that the Secretary of State has not responded to request further information or intervene in the making of the Article 4 Direction to date.

### **5. Next Steps**

- 5.1. The Council has previous experience of managing the implementation of an Article 4 Direction removing permitted development rights; the Croydon Opportunity Area office to residential PD rights were removed in 2014. This has informed the process for implementation, in addition to the formal process as required by the regulations. There have been ongoing discussions between Spatial Planning, Development Management/Planning Enforcement and the HMO Licencing Team through the making of the Article 4 Direction and this will continue up to and beyond this confirmation, to ensure smooth and efficient implementation, continued joint working and a sound and robust information sharing process.
- 5.2. Officers are satisfied that sufficient information has been available (over the last 12 months) to enable proposed HMO developers to undertake work that was already being commenced or carried out in exercising their rights under permitted development.
- 5.3. Future development to create a small HMO will need planning permission as well as a licence from the Council. These two legal requirements are separate; one cannot prevent the other from being granted. However, officers believe that through updated procedures and effective communication, the processes will be aligned for implementation.
- 5.4. How many planning applications are received following the removal of the permitted development right will be monitored. The effects of the introduction of the Article 4 Direction on current and future planning policy will also be monitored by way of the Authority's Annual Monitoring Report.

### **6. RELEVANT POLICIES AND GUIDANCE**

- 6.1. An Article 4 Direction is made under article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in accordance with Schedule 3 of that Order. The making of an

Order has to be in accord with the National Planning Policy Framework (NPPF) and Departmental guidance.

The relevant section of the NPPF is paragraph 53 which states;

*“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 (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities).....”*

The relevant Departmental guidance is Paragraph: 038 Reference ID: 13-038-20190722 which explains;

### ***When is it appropriate to use Article 4 Directions?***

*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 wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. 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, National Park or Area of Outstanding National Beauty)*
- *agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted*
- *development rights pose a serious threat to areas or landscapes of exceptional beauty*
- *cases where prior approval powers are available to control permitted development*
- *leisure plots and uses*
- *the installation of microgeneration equipment*

6.2 The conversion of C3 housing to a small house in multiple occupation can be carried out under permitted development rights and unlike some permitted development rights, this change of use does not even require prior approval. Therefore, there is currently no consideration of the environment, neighbour amenity or the loss of family homes that would otherwise be required as part of a planning application process, determined in accordance with the development plan. Therefore and in accordance with paragraph 53 of the NPPF and the supporting guidance, it is considered that the most appropriate way to address these issues is to apply a borough-wide Article 4 Direction removing permitted development rights.

## **7 SUMMARY**

7. An Article 4 direction is made under article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in accordance with Schedule 3 of that order. The making of an order has to be in accord with the National Planning Policy Framework (NPPF) and Departmental

Guidance. It has been demonstrated that it is necessary to protect local amenity, family housing, take account of environmental considerations and the wellbeing of the area to make and now confirm the Article 4 Direction for the removal of permitted development rights to change a home into a small HMO.

## **Background Documents**

Web page <https://www.croydon.gov.uk/planningandregeneration/make-application/article-4-directions/small-house-in-multiple-occupation-hmo>

Borough-wide Non-Immediate Article 4 Direction House in multiple occupation (HMO) Evidence Report -

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Borough-Wide%20Non-Immediate%20Article%204%20Direction%20-%20House%20in%20multiple%20occup....pdf>

SHMA 2019 -

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Croydon%20SHMA%20Update%20-%20V6.pdf>