

<b>Subject:</b>	Proposed Article 4 Direction in relation to houses in multiple occupation
<b>Status:</b>	Open
<b>Ward(s):</b>	All
<b>Key Decision:</b>	Yes
<b>Key Decision Ref:</b>	723/PI
<b>Report Of:</b>	Interim Head of Planning and Transport, Giorgio Framallicco
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<b>Papers relied on to produce this report:</b>	Planning and Infrastructure Overview and Scrutiny Committee – Houses in Multiple Occupation - 13 January 2011 Development Control Committee - Proposed Article 4 Direction in relation to houses in multiple occupation -16 March 2011 Housing and Environment Overview and Scrutiny Committee - Houses in Multiple Occupation - 24 February 2011
<b>Appendices:</b>	Appendix 1: Plan showing area of proposed Article 4 Direction.

## SUMMARY

### 1 This Report

- 1.1 The purpose of this report is to introduce an Article 4 Direction to remove permitted development rights for a change of use from Class C3 to Class C4 across the wards in Basingstoke Town, Chineham, Old Basing and Oakley. The Article 4 Direction would be implemented following both Cabinet's approval and subsequent public consultation coming into effect 1 year later (July 2012).

### 2 Recommendation

It is recommended that Cabinet confirms that:

- 1) the authority be delegated to the Head of Planning and Transport in consultation with the Portfolio Holder for Planning and Infrastructure to:
  - make an Article 4 Direction covering the areas shown on the plan attached as Appendix 1, to remove permitted development rights for changes of use from Class C3 dwellings to Class C4 (small Houses in Multiple Occupation (HMO) with 12 months' notice;
  - consider any representations made following publicity of the notice; and,
  - if appropriate, to confirm any direction with 12 months' notice following the conclusion of the consultation period.
- 2) given the number of properties within the proposed area, individual notification of owner / occupiers will not be carried out. Consultation will

take the form of a press advert and release and the display of notices within the affected area both at the consultation stage and after the decision is confirmed (if applicable). Statutory undertakers and the Crown Estates will also be notified in writing. Leaflets explaining the direction will be made available at information points. The Council's website will also be used to publicise the Direction.

## **PRIORITIES, IMPACTS AND RISKS**

### **Contribution To Council Priorities**

This report accords with the Council's Budget and Policy Framework

<a href="#">Council Plan Ref 2011-14:</a>	CO2
<a href="#">3-Year Action Plan:</a>	
Other References:	

### **Contribution To Community Strategy**

<a href="#">Community Strategy 2006-16::</a>	E4
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### **Impacts**

	Type	No significant impacts	Some impacts	Significant impacts
<b>Impacts for BDBC</b>	<a href="#">Financial</a>	✓		
	Personnel	✓		
	Legal		✓	
<b>Impacts on Wellbeing</b>	<a href="#">Equality and Diversity</a>		✓	
	Crime and Disorder	✓		
	Health	✓		
	Environment			✓
<b>Involving Others</b>	<a href="#">Communication/Consultation</a>		✓	
	Partners		✓	

### **Risk Assessment**

<b>Number of <a href="#">risks</a> identified:</b>	0		
<b>Number of risks considered HIGH or Medium:</b>	0		
<b>Strategic:</b>	Already identified on Corporate Risk Register?	No	
		No	✓
<b>Operational:</b>	Already identified in Service Plans?	Yes	
		No	✓

### **GLOSSARY OF TERMS**

Term	Definition
HMO	House in Multiple Occupation
LPA	Local Planning Authority
Article 4 Direction	Powers available to a Local Planning Authority (LPA) to remove permitted development rights and thereby require property owners to obtain planning permission for the development specified in the direction.

### **3 Background:**

3.1 The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010 came into force on 1 October 2010. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation) 'permitted development' – confirming that planning permission is not needed for this change of use.

3.2 Circular 08/2010 (November 2010) produced by the Department for Communities and Local Government provides guidance to Local Planning Authorities who may wish to regain control of HMOs in their areas and states:

*'A high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (ie houses in multiple occupation).'*

3.3 To maintain planning control of HMOs the Council can introduce an Article 4 Direction which, from the effective date, will withdraw the permitted right granted. The introduction of Article 4 Direction is a decision that will need to be made by Cabinet.

3.4 The Planning and Infrastructure Overview and Scrutiny Committee (OSCOM) of the 13 January 2011 considered a paper presented by the Interim Head of Planning and Transport and concluded that:

*'(ii) the Portfolio Holder is requested to implement Article 4 directions at the request of Members; such directions to cover all or part of a ward.'*

3.5 In addition, as an Article 4 Direction has to be made by Cabinet as an executive function, the Portfolio Holder for Planning and Transport sought the view of the Development Control Committee as to the best way of implementing the OSCOM's recommendation. The Development Control Committee at its meeting of the 16 March 2011, supported the introduction of an Article 4 (with 12 months' notice) but wished to see the areas of Old Basing and Oakley included within the defined area and not just Basingstoke Town.

### **Justification:**

3.6 The majority of HMOs in Basingstoke Town are being occupied by young working households. At a time when house prices remain high and access to finance limited, sharing a dwelling with others will continue to be an attractive option. HMOs do fulfil a vital role in providing accommodation for individuals and it is clear that HMOs are an essential part of the housing stock.

3.7 However there are concerns that as well as providing much needed affordable accommodation to residents, HMOs can also have negative impacts.

3.8 Local Planning Authorities (LPA) may make a direction under Article 4 (1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 to remove the permitted development rights, where the LPA is satisfied that it is expedient to do so.

From its effective date, this allows LPAs to maintain additional control over HMOs which can include the refusal of planning permission of unacceptable HMOs and possible enforcement action to cease their use or, the applying of planning conditions to acceptable HMOs to reduce the impacts to the local community and improve the accommodation for the occupants.

### Extent of HMOs and implications

- 3.9 Data held in the Planning and Housing Sections indicates there are approximately 142 known HMOs in Basingstoke. With just over 36,000 dwellings in Basingstoke Town, the estimated number of HMOs equates to 0.4% of all residential properties in the Borough. However, this figure is derived from only limited sources and in reality it is likely that more HMOs are in operation within the town. In addition, there appears to be concentrations of HMOs within certain areas of the town – with a focus on locations near to the town centre.
- 3.10 The problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the Government. The study 'Evidence Gathering – Housing in Multiple Occupation and Possible Planning Responses' carried out by Ecotec for the Government in 2008 summarised the impacts including:-
- Noise and anti social behaviour
  - Imbalanced and unsustainable communities
  - Negative impact on the physical environment
  - Pressures upon parking provision
  - Growth in private rented sector at the expense of owner-occupation
  - Increased crime
  - Pressure upon local community facilities, and;
  - Restructuring of retail commercial services and recreational facilities to suit the lifestyles of the predominant population
- 3.11 Previous to the changes to the law on the 1 October 2010, the vast majority of HMOs in Basingstoke required planning permission. Approximately 37 properties have been granted planning permission over the last 10 years while a further 25 have been refused planning permission. The LPA has therefore had an opportunity to assess the impact of the HMOs; the most commonly identified issues raised in relation to HMOs in Basingstoke being:
- Noise and anti-social behaviour
  - Imbalanced communities
  - Negative impacts on the physical environment and streetscape including waste management
  - Pressures on parking provision
- 3.12 Some of the planning applications which were refused permission were appealed. Many of the appeal inspectors either agreed with the council's reason for refusal or agreed with the requirement for planning conditions which related to – the provision of additional parking, the provision of bin storage and the provision of cycle storage.
- 3.13 Without the Borough wide Article 4 Direction, property owners are free to set up HMOs wherever they wish, without regard to the impacts caused to the

local community and without any requirement to comply with planning conditions.

#### Noise and anti social behaviour

- 3.14 An increase in internal noise can result from the use of a property as a HMO. In general there are likely to be more occupants in a HMO than in a single dwelling. Self closing devices fitted to doors result in increased impact noises, the independent living of tenants means they are likely to spend more time in their rooms with a likely increase in noise levels and there is also a likely increase in the number of journeys up and down stairs to use the kitchen, bathroom and to enter and exit the property.

#### Imbalanced communities

- 3.15 PPS3 is clear in its aim to deliver mixed, sustainable communities. One of the PPS3's strategic housing policy objectives is to 'create sustainable, inclusive mixed use communities in all areas, both urban and rural'. Para 20 goes on to state that 'key characteristics of a mixed community are a variety of housing, particularly in terms of tenure and price and a mix of different households such as families with children, single person households and older people'.
- 3.16 An over concentration of any one particular type of housing or household would not contribute to mixed communities. In relation to HMOs, this is not to say that they will automatically create an imbalance, often they will add diversity and a greater mix to an area. However, there is local concern that too many HMOs can change the character of an area and planning control is considered necessary to prevent over concentrations. As well as concentrations of HMOs, this feeling of changing character can also be attributed to the transient nature of the HMO occupants who may not be resident in a community for a long period.

#### Physical Environment

- 3.17 Physical environmental problems are often associated with areas with high concentrations of HMOs. This includes poorly maintained properties, neglected gardens, poor waste management and parking problems. It is clear that, on average, more people live in a HMO than would generally live in the same size house occupied by a family. An average HMO property will have 5 occupants whilst the average number of occupants in a property in Basingstoke and Deane Borough is 2.38 (source: Hampshire County Council). With no resident having responsibility for the entire house and higher levels of transience it is likely to result in occupiers having less concern in relation to the upkeep and appearance of the property than owner occupiers or longer term single family tenants.
- 3.18 The provision of good waste storage facilities to accommodate the likely increased levels of rubbish can help alleviate issues that have been raised in the past in relation to waste disposal. Current policy requires adequate storage facilities to be provided for all permitted HMOs. Without planning control, problems could worsen as high occupancy means more waste and without adequate storage this would undoubtedly lead to problems.

## Parking

- 3.19 The Council's adopted parking standards document includes a separate standard for HMOs and acknowledges that HMOs can generate additional parking. Many estates in Basingstoke have been developed with limited on-plot or safe on street places to park. An increased number of vehicles in these areas can cause significant problems in relation to highway safety and inconvenience for local residents.
- 3.20 It is therefore essential that HMOs with their higher occupancy are assessed against the parking standards in relation to the likely car usage and through parking surveys, the number of available parking spaces either on plot or near to the site. Without an Article 4 Direction in place, parking levels cannot be assessed and parking issues are likely to arise in areas where there is limited availability of legitimate parking spaces.

## Existing Planning Policy

- 3.21 All of the above issues are currently addressed through saved Local Plan Policies A1, E1 and D4, supplemented by the Design and Sustainability Supplementary Planning Document Appendix 9 'Sub-divisions and houses in multiple occupancy' as well as the Council's Supplementary Planning Document 'Residential Parking Standards'. Without an Article 4 Direction, these policies are not applicable and enforceable.

## Enforcement

- 3.22 The Council can only take action on a breach of planning control when a material change of use has actually occurred, not when a property has been sold but remains unoccupied, or when it is in the process of conversion.
- 3.23 Until an Article 4 Direction is introduced on properties within the town, Chineham and the immediate villages or Old Basing and Oakley, dwellinghouses can lawfully change to a HMO and therefore no planning enforcement can be taken.

## **4 Options**

- 4.1 There are five alternative options set out below for consideration with commentary as to their appropriateness:
- a) That the Council introduces an Article 4 Direction across the entire Town area to include Chineham, Old Basing and Oakley withdrawing the permitted development right to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) coming into effect after 1 year of its introduction.
- Option (a) is the preferred option.
- b) That the Council introduces an Article 4 Direction across the entire Town area and Chineham, Old Basing and Oakley withdrawing the permitted development rights to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) with immediate effect.

There would be a compensation liability if an Article 4 Direction is introduced without 12 months' notice. The right to compensation arises if an application is made for planning permission for development formerly

permitted by the General Permitted Development Order and this application is refused, or granted subject to conditions.

Compensation can be claimed:-

- (i) for abortive expenditure (such as expenditure incurred in the preparation of plans); and,
- (ii) for depreciation of land value where the loss is directly attributable to the removal of permitted development rights – this would include loss of future profit; (Exeter City Council found that there would be a premium added to the value of a HMO property compared to a dwelling and the council could be faced with significant compensation liabilities)

It is understood that some Councils have taken an approach to introduce an Article 4 Direction with immediate effect over specific areas of concern in order to gain planning control (and limiting the exposure to compensation), while at the same time imposing a wider Article 4 Direction with 12 months' notice. This appears to be cases where there are already high concentrations of HMOs (particularly in university towns). As reported to the Planning and Infrastructure Overview and Scrutiny Committee on 13 January 2011 the overall number and density of known HMOs is limited (0.9% of all properties in Norden and Brookvale) albeit with a concentration around the Worting Road area. On this basis, it would not be necessary to impose immediate controls, given the implications of compensation. It is strongly recommended that 12 months' notice is given to avoid this issue.

As set out in the report to the Housing and Environment Overview and Scrutiny Committee 24 February 2011, the council operates a regulatory and inspection regime for all HMOs which goes beyond the minimum statutory requirement (particularly in relation to non licensable HMO's). This seeks to provide a proactive approach given the increased risks to health and safety within this form of accommodation.

- c) That the Council does not introduce an Article 4 Direction;

Not introducing an Article 4 Direction would result in the council having no planning control over HMOs. The Council already has existing powers to control some of the perceived negative effects of HMOs. For example Environmental Health has powers in relation to noise and rubbish. The Police and the Highway authority have powers to control dangerous or illegally parked vehicles and vehicles causing damage to highway verges and Environment Care has powers to serve notices in relation to poor waste management.

- d) That the Council introduces an Article 4 Direction but only over specific areas where there is a larger concentration of HMOs;

An Article 4 Direction could be introduced on a smaller ward basis such as only the areas of Brookvale, Norden, Eastrop etc. However, it is considered that such an approach could lead to possible concentrations of HMOs forming in areas not covered by the Article 4 Direction. It is therefore considered that the most appropriate solution is an Article 4

covering Basingstoke Town and Chineham as well as the most immediate villages of Old Basing and Oakley which are geographically close to the town.

- e) That the Council introduces an Article 4 Direction across the whole Borough;

There is no evidence of any number of HMOs outside of the town area and no evidence of any concentrations of HMOs nor any risk that introducing controls to Basingstoke Town, Chineham, Old Basing and Oakley would lead to a concentration outside of these areas. On this basis, imposing the Article 4 Direction across the whole Borough would be unnecessary.

## **5 Conclusions**

- 5.1 Having regard to the summary of justifications above, it is considered that a loss of control over changes of use from C3 to C4 could have detrimental impacts on the proper planning of the area.
- 5.2 It is considered that evidence available to the Council is sufficient to justify the introduction of an Article 4 Direction which will require planning permission for a change of use from C3 to C4 from the date at which the Article 4 Direction comes into effect.
- 5.3 The views of the Planning and Infrastructure OSCOM and the Development Control Committee have been sought in reaching the recommendation. The Planning and Infrastructure OSCOM concluded that an Article 4 Direction should be introduced. The Development Control Committee confirmed that a Direction should be made (with 12 months' notice) but wished to extend the area of the Article 4 Direction to include the two settlements of Oakley and Old Basing. The recommendation reflects this request.
- 5.4 Prior to confirming an Article 4 Direction the Council must consult stakeholders on the proposals and take into account any representations received. This consultation would include an advert in the local press and information posted on the Council's website. The consultation would take place after the Cabinet decision and would continue for 4 – 5 weeks. Following the consultation period there would then be a 12 month notice period prior to confirming the direction for the reasons set out in paragraph 4.1 above. Delegation to the Head of Planning and Transport to consider any consultation responses with the Portfolio Holder for Planning and Infrastructure before confirming (or otherwise) the Direction is essential to avoid delay in confirming the Direction and commencing the 12 month notice period. Given the timescales set out above, a Direction would be in effect by July 2012.

## **6 Legal and Personnel Implications**

- 6.1 The introduction of an Article 4 Direction could indirectly result in a reduction in the supply of HMOs which in turn might impact on the groups who typically occupy this type of low cost accommodation. Local authorities will still be required to plan to meet the housing needs of those groups.
- 6.2 The guidance given in the statute regarding consultation and notification requirements states that notice be given to individual owners / occupiers who

would be subject to the Direction. However, this is not required when the number of owners or occupiers within the area to which the direction relates makes individual service impracticable (with the exception of statutory undertakers or the Crown land). It is therefore proposed that consultation will take the form of a press advert and release and the display of notices within the affected area both at the consultation stage and after the decision is confirmed (if applicable). Statutory undertakers and the Crown Estates will also be notified in writing. Leaflets explaining the direction will be made available at information points. The Council's website will also be used to publicise the Direction.

- 6.3 The law relating to decision making in relation to Article 4 directions is relatively complex. The Local Government Act 2000 provides that all functions are to be executive functions by default, subject to a specified list of exemptions. This list is contained in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which sets out which council functions are not to be executive functions (or, in certain cases, not solely to be executive functions). Most regulatory functions (including planning) are required to be non-executive functions. However, this requirement does not appear to have been extended to the making of Article 4 Directions, which therefore remain executive functions.

## **7 Financial and Resource Implications**

- 7.1 In removing permitted development rights by an Article 4 Direction, the council will not be able to require a fee for planning applications seeking to change use of a dwellinghouse to a HMO. Planning applications would still need to be processed and determined and the cost of processing such applications would need to be funded through existing resources.