

## **BARNSELY METROPOLITAN BOROUGH COUNCIL**

**This matter is a Key Decision within the council's definition and has been included in the relevant Forward Plan.**

### **Report of the Executive Director for PLACE**

#### **Houses in Multiple Occupation – Article 4 Direction**

##### **1. Purpose of report**

- 1.1 The purpose of this report is to introduce an Article 4 Direction to remove permitted development rights for conversion of residential dwelling houses into Houses of Multiple Occupation (HMOs).

##### **2. Recommendations**

**It is recommended that:**

- 2.1 **Cabinet approves the making of the Article 4 Direction appended to this report.**

##### **3. Introduction**

- 3.1 At present, a change of use of C3 dwelling houses to C4 small HMOs (consisting of 6 persons or less) does not require planning permission and is considered Permitted Development. This means that any such proposals do not require a planning application to be submitted to the Council. Larger HMOs accommodating more than 6 people are considered a Sui-Generis use and continue to require planning permission. Applications are also required to convert non-residential buildings to HMOs.
- 3.2 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows local planning authorities to make Article 4 Directions which withdraw rights which would otherwise be considered 'Permitted Development'. This can be done where the authority considers it expedient that development should not be carried out unless express planning permission has been obtained for the development covered by the direction.
- 3.3 Government Guidance contained in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG) advises that 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).
- 3.4 Given planning permission is already required for conversion of dwellings to larger HMOs, the proposed Borough-wide Article 4 Direction will apply specifically to the creation of smaller HMOs to ensure the Council can retain

control over numbers and concentrations thereby ensuring a sustainable housing mix can be provided.

- 3.5 By introducing controls Borough wide, it will allow a consistent approach to be applied for all HMO developments throughout the Borough. The conversion of C4 HMOs back to C3 residential dwelling houses will be unaffected by these proposals and will remain permitted development.

#### **4. Process for Making Article 4 Directions**

- 4.1 This report recommends that the Article 4 Direction attached in Appendix 1 is formally made. To do this the Council will give notice of the Direction through a variety of publications and representations will be sought in accordance with the Town and Country Planning (General Permitted Development) Order 2015, as amended. Publicity will include notices in the press and on the Council's website to advise people of the changes and give them the opportunity to make representations.
- 4.2 Following considerations of any representations, if it chooses to do so, the Council will be able to confirm the Direction through a second report, which will be advertised. To ensure that the Council is not liable for any compensation claims relating to loss of permitted development rights the Article 4 Direction would come into force a year after notice of making the Direction is given. The Direction would then come into force following confirmation unless the Secretary of State cancels or modifies it.

#### **5. Consideration of alternative approaches**

- 5.1 A number of alternative options were considered including:

- Do nothing
- Introduce and confirm a borough-wide Article 4 Direction immediately
- Introduce area specific Article 4 Directions (rather than borough wide)

##### Do nothing

- 5.2 No controls are currently in place for the conversion of residential dwelling houses to small HMOs as the change is currently considered 'Permitted Development'. Local Plan policy H9 is not therefore being as effective as it was intended to be in ensuring an adequate supply of larger family dwellings to satisfy identified demand. In addition, there is no active way of regulating or managing the number, location or concentrations of HMOs within the Borough. This approach could lead to an unsustainable housing mix and the risk of increased proliferation in certain areas of the borough. This option is not therefore recommended.

##### Introduce and confirm a borough-wide Article 4 Direction immediately

- 5.3 A borough-wide article 4 direction will maximise the effectiveness of Local Plan policy H9 and provide a consistent approach throughout the borough to

the management of HMO distribution in the future. This will enable a more sustainable housing mix to be delivered through the planning system, in accordance with the aims of the adopted local plan and prevent high saturation levels within certain areas. However, immediately introducing and confirming an Article 4 Direction would leave the authority liable to pay compensation and it could increase the risk of legal challenge. This option is not therefore recommended.

#### Introduce area specific Article 4 Directions

- 5.4 This option would mean the introduction of a number of area-based Article 4 directions focussing on the areas where the shortage of larger family dwellings is most acute and/or where concentrations of HMO's is highest. The advantage of this approach would potentially mean less resources are required from the planning service to administer the restrictions and a lower number of planning applications would be submitted for consideration compared to a borough wide approach. However, whilst there are sub market areas where the demand for larger family dwelling is lower, the sub markets do not function as independent entities and so it is likely that those whose needs cannot be met within the sub market they currently reside would instead look for similar properties in nearby sub markets. On this basis, given that the case for an Article 4 direction is primarily a strategic one, it is considered that this can only be effectively addressed with a borough-wide Article 4 Direction. This would mean each area is treated consistently and ensure that areas not covered by an Article 4 direction do not receive an excessive increase in HMOs. This option is not therefore recommended.

## **6. Proposal and justification**

### The Strategic Case

- 6.1 There has been significant growth in the Private Rented Sector within Barnsley and more specifically the amount of accommodation turned into multiple occupancy or high density shared accommodation over the last 10 years. The sector has approximately tripled in size in a decade and if the rate of growth continues the Private Rented Sector will overtake social housing as the second largest tenure in the borough within the next 5 years. The growth in the sector particularly affects more urban wards and this is even more apparent for the growth of HMOs. The Electoral Wards around the town centre (Central, Old Town and Kingstone and other more urban wards such as Wombwell) have been particularly affected by this change.
- 6.2 Market conditions have largely driven this shift; this includes a deregulation of "housing" related controls since 2010, the availability of property in the most affected locations and the inexpensive cost of housing in more urban parts of Barnsley in comparison to other towns and cities. Financial yields on multiple occupancy lets are on average around 12% per annum which is twice the average yield on a single household let and clearly a more attractive financial proposition for prospective investors.

- 6.3 In 2014 the Council produced a Strategic Housing Market Assessment which considered a range of housing matters, including the demand and supply of different house types, sizes and tenures across identified housing sub-markets. It found that there was greater demand for most house types and sizes, including larger (4+ bedroom) dwellings.
- 6.4 The Strategic Housing Market Assessment was a key piece of evidence that was tested at the Local Plan examination, which culminated in the Local Plan being formally Adopted in January 2019. Policy H6, which relates to housing mix and efficient use of land, expects a density of 40 dwellings per hectare net in Urban Barnsley and the Principal Towns and 30 dwellings per hectare net in the villages. Whilst the policy does allow some flexibility for lower densities, because almost all the site allocations within the plan are in Urban Barnsley and the Principal Towns, in the main 40 dwellings per hectare net will be the norm for new developments within the borough.
- 6.5 Achieving 40 dwellings per hectare will enable demand for one, two and three bedroom dwellings/units to be satisfied. Inevitably, these allocations and in particular the larger ones will also provide a proportion of four and five bedroom dwellings/units but the extent of these will likely be curtailed by the density requirement. Accordingly, to help ensure an adequate supply of larger dwellings will persist throughout the plan period, the plan also includes a policy (H9), which seeks to protect existing larger dwellings (4 bedrooms +):

*Policy H9 Protection of Existing Larger Dwellings*

*Development within the curtilage of existing larger dwellings will be resisted where it will have an adverse impact on the setting of the original dwelling, and the size of the remaining garden area. The loss of existing larger dwellings will be resisted. Support will be given to the re-establishment of Houses in Multiple Occupation into single family sized houses.*

- 6.6 This policy is currently being used to refuse planning applications for the conversion of dwellings to large HMOs (i.e. those housing more than 6 people). However, because the conversion of dwellings to small HMOs (housing up to 6 people) is permitted development, the policy is not being effective as it was intended to be.
- 6.7 In recognition of the fact the Strategic Housing Market Assessment is now over 5 years old an update has been commissioned. This has included a new household survey, which forms a key piece of evidence. The findings of the survey have been examined and in relation to general market supply and demand, the same conclusions are reached (i.e. there remains a shortfall of larger dwellings)
- 6.8 The findings from the latest household survey also show that demand for HMOs is low from newly forming households wishing to move within the next 5 years. It does show some demand in the form of in-migrants to the borough but in recent years these numbers have declined. Accordingly, although it is recognised that HMOs will continue to play a role within the housing market,

the harm created by losing larger family dwellings is deemed to outweigh any benefits arising from an uncontrolled increase in the quantum of HMOs.

### The Area Specific Case

- 6.9 Many authorities have introduced Article 4 Directions specifically to tackle concerns regarding the concentration of HMOs within specific areas. As indicated in paragraph 6.1, within Barnsley the highest concentrations are in the wards around the town centre as well as some of our Principal Towns, most notably Wombwell and Goldthorpe. Around the town centre the concern is such that a pressure group named Save S70 has been formed. They describe themselves as “a group of concerned local residents who are worried about the growing number of HMOs in our local area of Barnsley”.
- 6.10 Over the past 2 years or so the Council has therefore been closely monitoring the areas around the town centre and it is apparent that there has been a growth in the quantum of HMOs. However, this has been from a relatively low base compared with their prevalence in cities and towns with large student populations. In 2019 staff from the Communities Directorate carried out an exercise in part of the Kingstone Ward where residents had been most vocal about a proliferation of HMOs. This included site visits, a resident survey and interrogation of a range of data sources. This exercise found that even across a relatively modest area comprising just over a handful of streets, concentrations were under 5%.
- 6.11 This 5% figure compares with a 10% threshold that a national HMO lobby group cites as being the tipping point beyond which concentrations of HMOs start to demonstrably alter that character and appearance of an area. On this basis, it is not considered that there is a particularly strong case to justify a HMO as a result of current concentrations within the borough. Nevertheless, as there is a compelling strategic case to justify an Article 4 Direction, it will be possible to manage concentrations by preventing conversion of larger family homes to HMOs and ensuring that the 10% threshold is not breached where conversion of smaller homes to HMOs are proposed. For the conversion of small dwellings to HMOs this would be done by applying the criteria in the Designing Housing Development Supplementary Planning Document, which states:

*Conversion of buildings to houses in multiple occupation (HMOs) will be allowed where the following criteria are satisfied:*

- *On the street in question, HMOs and bedsits account for less than 10% of the residential properties.*
- *HMOs and bedsits account for less than 10% of the residential properties within a 50m radius of the site.*
- *That the proposal would not result in 3 or more HMOs being located immediately adjacent to each other or the sandwiching of a dwelling house between two HMOs.*
- *The building and curtilage are of sufficient size to provide suitable facilities for residents.*

- 6.12 The SPD also requires each HMOs to have a shared lounge and shared dining room and for garden sizes, external separation distances and internal spacing standards to conform with general requirements. Noise nuisance, parking and visual amenity are also addressed in the SPD.

## **7 Implications for local people / service users**

- 7.1 The Article 4 Direction is intended to benefit local people by helping to provide an adequate supply of larger family dwellings to satisfy identified demand. At the same time, it will allow clustering of HMOs to be controlled so as to ensure mixed and balanced communities. It does introduce a requirement for those seeking to create HMOs to apply for planning permission but this will enable there to be proper scrutiny of proposals informed by any comments received as a result of statutory publicity. The benefits of this are deemed to outweigh the increased burden that the requirement to seek planning permission would introduce for applicants.

## **8. Financial implications**

- 8.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer). There are no direct financial implications associated with this report other than the modest costs of publicising the Article 4 Direction.

## **9. Employee implications**

- 9.1 There are no issues arising directly from this report. Indirectly, It is recognised that the introduction of an Article 4 Direction will increase demand on the planning service due to the need to number of planning applications for HMO's if the Article 4 direction is confirmed. However, a more limited and controlled increase in the number of HMOs would enable the shared accommodation team within the Communities Directorate to focus on tackling issues arising from the existing private rented sector stock.

## **10. Communications implications**

- 10.1 As part of the consultation process for introducing the direction the views of all elected ward members, businesses and residents will be sought as they will have the opportunity to make representations as part of the Article 4 introduction process. Any views or representations made will be considered as part of a further report and if the decision is taken by the Council to confirm the Article 4 direction.

## **11. Consultations**

- 11.1 Informal have already been undertaken with the Portfolio Holder for PLACE, some affected local members and the Save S70 group. By allowing 12 months before confirming the Article 4 direction there will be an opportunity for further dialogue, including with organisations and individuals not yet engaged.

## **12. The Corporate Plan and the Council's Performance Management Framework**

- 12.1 The Article 4 Direction will support the Council in facilitating a sustainable housing mix to meet identified demand whilst restricting the clustering of HMOs in a way that could adversely affect the character and appearance of specific streets and areas. This is entirely consistent with the Council's three main corporate priorities.

### **13. Tackling Health Inequalities**

- 13.1 The relationship between housing and health has long been established with increasing recognition in recent years of the relationship between housing and mental health. The Article 4 Direction will be particularly effective in tackling overcrowding by protecting the supply of larger family dwellings that could otherwise be converted to large HMOs. This will provide more choice for families otherwise confined to smaller dwellings. The needs of those either seeking to live in HMOs through choice or because of a lack of alternatives can still be catered for but importantly, new HMOs would typically have fewer bedrooms meaning they would not have to share with as many people.
- 13.2 Controlling the clustering of HMOs will also sustain the quality of our urban environment and reduce the likelihood of the type of blight that the Shared Accommodation Team has been tackling. It is therefore anticipated that an Article 4 Direction will be effective in tackling health inequalities.

### **14. Climate Change & Sustainable Energy Act 2006**

- 14.1 There are no considered to be direct climate change and energy implications arising from this report but, as explained in paragraphs 6.4 and 6.5, Local Plan policies H6 and H9 are inter-related in that to justify higher densities on new developments, we need to protect existing family dwellings. This is because an inadequate supply of family dwellings could result in developers seeking lower densities to cater for this demand. Over time this could increase sprawl and result in unbalanced communities where the needs of families could only be satisfied on the periphery of settlements.

### **15. Risk Management Issues**

- 15.1 There is a risk that the Article 4 Direction could be challenged, particularly if the justification has relied on the evidence within the 2014 Strategic Housing Market Assessment. This risk would also be demonstrably higher had the purpose of the direction been to introduce a moratorium on new HMOs within the borough. By continuing to allow smaller HMOs in accordance with the criteria in our Supplementary Planning Document (including the 10% threshold) and by commissioning a new household survey and Strategic Housing Market Assessment (which will be published in advance of any decision being made to confirm the Article 4 Direction), the risk of a successful challenge is considered to be demonstrably reduced.
- 15.2 Had the recommendation been for the Article 4 Direction to take effect immediately, the authority could have been liable to pay substantial compensation to those that had acquired properties with the intention to convert them to HMOs within the next 12 months under current permitted

development rules. Allowing the 12 months before potentially confirming the order means the authority would not be liable and accordingly, this is the approach taken by almost all authorities that have already introduced such Article 4 Directions.

**16. Promoting Equality & Diversity and Social Inclusion**

- 16.1 The purposes of the Article 4 Direction is to sustain mixed and balanced communities consistent with promoting equality, diversity and social inclusion. An Equalities Impact Assessment would be carried out prior to any decision to confirm the Article 4 Direction.

**17. List of Appendices**

**Appendices:**

- Appendix A: Article 4 Direction

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