

**Meeting: EXECUTIVE**

**Agenda Item:**

**7**

**Portfolio Area:** Environment & Regeneration

**Date:** 13 SEPTEMBER 2016

**CONSULTATION ON AN ARTICLE 4 DIRECTION TO REQUIRE NEW HOUSES OF MULTIPLE OCCUPATION (HMOS) TO GAIN PLANNING PERMISSION**

**KEY DECISION**

Author – Zayd Al-Jawad	Ext. 2257
Lead Officer – Zayd Al-Jawad	Ext. 2257
Contact Officer– Zayd Al-Jawad	Ext. 2257

**1. PURPOSE**

- 1.1 To seek approval to consult upon plans to require new HMOs to apply for planning permission given a rise in the number of new HMOs. This should ensure the planning policy parking standards can be applied to new HMOs to protect residential amenity and parking provision in Stevenage.

**2. RECOMMENDATIONS**

- 2.1 That a 28 day consultation be agreed, starting on the 19<sup>th</sup> of September through to the 18<sup>th</sup> of October 2016, on making of an Article 4 Direction under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights in relation to changes of use from Use Class C3 to Use Class C4 (as defined in the Town and Country Planning [Use Classes] Order 1987, as amended).
- 2.2 That the proposed Direction shall apply to all of the area covered by the Council (SBC) and would have the effect of requiring HMOs to gain planning permission.
- 2.3 That twelve months advance notice of the Direction taking effect shall be given and the Executive receive a further report in 2017, following the consultation period, in order to decide whether or not to confirm the Article 4 Direction.

**3. BACKGROUND, REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS**

**Introduction**

- 3.1 In general HMOs are residential properties that are used by at least 3 individuals forming more than 1 household and sharing at least a toilet, bathroom or kitchen facilities. Certain types of buildings are exempt including

properties controlled or managed by the local authority or a registered social landlord.

- 3.2 There are four legal definitions of HMOs. The Housing Act 2004 defines a HMO as an entire house, flat or converted building which is let to three or more tenants who form two or more households, who share facilities such as a kitchen, bathroom or toilet. Housing legislation also considers poorly converted flats which do not meet Building Regulations as a separate type of HMO.
- 3.3 The planning system does not tightly define an HMO; it considers them to be either: a house split into separate bedsits; a shared house or shared flat; a hostel; or shared accommodation for students. In addition HMOs are defined differently within the 2011 Census and through Council Tax.
- 3.4 In October 2010 the Government made further changes to the Use Classes Order to remove the requirement for planning permission for changes of use from dwellings (C3) to small HMOs (C4).
- 3.5 The Government's preferred approach was for local planning authorities to serve an Article 4 Direction on specific areas where HMOs were an issue. This would in effect remove the permitted development rights for changes of use from C3 to C4 uses. Further changes to the regulations made it easier to serve an Article 4 Direction in respect of HMOs.
- 3.6 An Article 4 direction would only require planning permission to be sought for changing houses to HMOs, it would not automatically allow the Council to refuse all HMO applications, only to consider them against planning policy.

### **3.7 Benefits of HMOs**

- 3.7.1 As a result of the ongoing changes in benefit awards/entitlement and the increasing costs within the private rented sector HMO's are one of the few affordable options open to single persons on low incomes.
- 3.7.2 The increase to the age limit on persons able to claim housing benefit for a self-contained unit (previously 25 now 35) will increase the number of people who choose to access HMOs.
- 3.7.3 There are a number of hostels in the area that are able to accommodate single/young persons who are street homeless, however spaces are limited and availability is subject to people moving on. As a result, a placement in a HMO is a viable and readily accessible option for those who cannot access other forms of housing within our area.

### **3.8 Dis-benefits of HMOs**

- 3.8.1 Certain areas, often university towns, find an over concentration of HMOs can have a detrimental effect on the local area, with issues such as lack of building maintenance, refuse and parking concerns, decreasing the supply of family homes and the like.

3.8.2 HMOs are, at a national level, generally recognised as providing some of the poorest accommodation in the private sector. In Stevenage there has been reports that HMOs are at times badly maintained, with a large number of occupiers, which can result in anti-social behaviour. Also, in Stevenage car parking and refuse use can be of particular concern given the town's design.

### **3.9 Alternative methods of controlling HMOs**

3.9.1 **Licensing** – If the HMO is at least 3 storeys and there are at least 5 occupants forming more than one household, sharing at least a toilet, bathroom or kitchen facilities with the other tenants then a license from the Council is required. There is no requirement to inform the Council about smaller, non-licensable HMOs.

3.9.2 SBC inspects all HMOs coming to their attention. Once brought up to standard, HMOs are subject to a routine inspection programme. There is discretionary power to extend licensing to smaller types of HMO. However, in order to do so, the Council must be able to demonstrate that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively to give rise to problems for occupants or members of the public. The Council's approach to licensing will be kept under review, following a test of the effectiveness of the Article 4 Direction, if adopted.

3.9.3 **Building Regulations** - Some works involved in converting a house to an HMO will require building regulation approval, but the scope to control how they are used and levels of parking is limited.

3.9.4 **Planning** – Conversion of a property to a HMO, providing there are no more than 6 occupants who share basic amenities, would not require planning permission. Conversions for use by 7 or more occupants sharing amenities would require planning permission. Any refusals for such permission would need to be based on the actual impacts of HMOs as opposed to how they are managed.

3.9.5 An Article 4 Direction can be adopted by the Council to remove "Permitted Development" rights for HMOs. This would not cover existing HMOs but would require planning applications for all future HMOs. To set up an Article 4 Direction and to refuse an application made under it the Council would need to demonstrate considerable harm caused by the HMO. This report will demonstrate the justification seeking the Article 4 Direction, primarily on parking impacts. An alternative option would be to not make the Direction. This would result in a worsening of the existing parking situations in Stevenage.

### **3.10 Justification**

3.10.1 Levels of home ownership have fallen while private renting has increased and more people are finding it difficult to buy their own home. Within this context there is greater pressure for more HMO accommodation. The planning system

has an important role to play in managing this pressure while protecting and enhancing the quality of life for Stevenage's residents.

- 3.10.2 Stevenage's New Town design and street layouts were not designed for multiple cars per unit. The Town already suffers from significant parking pressure on streets throughout the town, from those around the major employment sites and town centre, to the Lister Hospital and residential estates. The Council has existing planning policy for new developments (including HMOs) to address these heavily congested areas. Uncontrolled car parking arising from HMOs justifies the designation of an Article 4 across Stevenage Borough Council to ensure that all proposals for new HMOs are passed through the planning system.
- 3.10.3 Within the last 5 years there have been 64 building control applications for HMOs but only 6 planning applications, meaning that on average 10 HMOs are being built / converted each year without being considered through the planning application process.
- 3.10.4 Furthermore over 23 planning enforcement cases have been opened in the last 5 years specifically about HMOs, highlighting the public's concern about the number of new HMOs that are being converted without having the planning policies for parking applied to them.
- 3.10.5 Due to demand the number of HMOs in the Town has increased. The Environmental Health team are currently aware of 226 HMOs, compared with 95 in 2007. Less than 40 of the known HMOs are licensable, and only 6 have been considered against existing planning policy
- 3.10.6 Stevenage currently has parking standard planning policies which have assessed the impact of various types of development on the existing streets of Stevenage. HMOs amongst other types of development have set parking standards which directly relate to the impact of that scale of building and relate to Stevenage's historical evolution as the first New Town. The vast majority of the houses built in Stevenage were not designed for the quantum of car use evident today. HMOs by their nature increase the density of car usage in an area which may not have sufficient infrastructure to cope with it.
- 3.10.7 Stevenage's Parking Provision SPD 2012 (also in the Submitted Stevenage Local Plan Residential Car Parking Standards) details and justifies parking standards for HMOs, based upon the difference in residential occupation of a building against a standard family dwelling.
- 3.10.8 Currently, for new HMOs which do not require planning permission, the Council is unable to apply any parking requirement whatsoever. While a change from a 3 bed family house with an expected need of 2 spaces to a 6 person HMO with a need for at least an additional space would not be able to be considered by the Council and the parking impacts would be un-mitigated.
- 3.10.9 The Council believes the increasing number of HMOs that are not being considered under the current planning policy rules is exacerbating the existing

parking problem residents' face and needs to be address. The Article 4 Direction would allow the existing policies to be applied.

### **3.11 HMO Article 4 Direction**

3.11.1 Article 4 Directions are a means by which a local planning authority can bring within planning control certain types of development, or changes of use, which would normally be permitted development (i.e. not require an application for planning permission).

3.11.2 The Direction proposed would apply to all the whole of the of Stevenage Borough Council area, requiring a planning application for the change of use of a building from Use Class C3 to Use Class C4.

3.11.3 The Direction would not apply to the change of use of a building from Use Class C4 back to Use Class C3.

### **3.12 Planning Use Classes**

3.12.1 Use Class C3 (Dwelling Houses) – These generally include self-contained houses or flats occupied by a single person, a couple or a family.

3.12.2 Use Class C4 (Small HMOs) – These include self-contained houses and flats shared by between 3 and 6 unrelated people.

3.12.3 Bedsits and larger shared houses and flats, those occupied by more than 6 unrelated people, do not fall within a Planning Use Class. Planning permission is always required for changes to these uses.

3.12.4 This report is seeking authority to consult for a period of not less than 28 days from 19th September 2016 to the 18th of October 2016 on the introduction of an Article 4 Direction across all of Stevenage to control the change from a dwelling house (use class C3) C3 to a house in multiple occupation (use class C4) .

### **3.13 Consultation and notification**

3.13.1 Appendix 2 details the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 3, Article 1 which states the process required to introduce an Article 4 Direction.

3.13.2 SBC will over the 28 day consultation period place a local press advert and at least notices in 2 locations in the town, along with notices on SBC's social media accounts. SBC will notify the Secretary of State on the first day of the consultation period along with Hertfordshire County Council.

3.13.3 The proposed direction is for a borough wide application. SBC considers that given the number of owners/ occupiers it would be impractical to serve notice an all owners and occupiers in the borough. However, existing registered HMO landlords will be contacting during the consultation process, to ensure they are aware of the proposals.

3.13.4 Requirements of consultation:

- include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;
- specify that the direction is made under article 4(1) of this Order;
- name a place where a copy of the direction, and a copy of a map defining the area to which it relates, may be seen at all reasonable hours;
- specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority; and
- specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years after the date referred to in the paragraph;
- a copy of the Direction and notice including map must be sent to the Secretary of State and HCC on the same day as the notice of the Directions is first published.

3.13.5 Following any confirmation SBC will place a local press advert and at least notices in 2 locations in the town, along with notices on SBC's social media accounts for 6 weeks.

3.13.6 To confirm any Direction, authority will be sought from Executive and Council, with consideration given to the representations made. Confirmation of any Direction will also be passed to both the Secretary of State and Hertfordshire County Council.

### **3.14 Monitoring of Outcomes**

3.14.1 Planning Annual Monitoring Report (AMR) will reflect all new applications and comparisons can be made between the type and number of applications, including those for HMOs, over the year.

## **4. IMPLICATIONS**

### **4.1 Financial Implications**

4.1.1 Assuming there is 1 year's notification of the Direction, there should be little opportunity for challenge resulting in any financial compensation. Other than staff costs in terms on both consulting upon and reporting the Direction the principle other cost is staff time processing the HMO planning application which will be un-chargeable.

4.1.2 Given the expected number of approximately 10 per year this should be able to be met from within existing resources within Planning.

## **4.2 Legal Implications**

None

## **4.3 Equalities and Diversity Implications**

4.3.1 Equalities and Diversity issues will be considered across the programme as part of the development of the specific projects and deliverables. Furthermore an Equality Impact Assessment (EqIA) will be carried out on the new Corporate Plan to ensure that objectives and activities that support the plan comply with the Equality Act 2010.

4.3.2 An EqIA will be completed to assess the consultation process and the proposal to implement the Article 4 Direction.

## **4.4 Risk Implications**

4.4.1 A risk log will be managed by Planning Officers, but the inherent risk is not doing anything and allowing the pressure on planning to go unmanaged. The Planning Officers will ensure that risks are identified, mitigated and where possible managed appropriately in line with the Council's Risk management processes.

## **4.5 Human Resources Implications**

None.

## **BACKGROUND DOCUMENTS**

None

## **APPENDICES**

Appendix 1: Draft Direction

Appendix 2: The requirements for introducing an Article 4 Direction

**APPENDICES**

Appendix 1: Draft Direction



**Town and Country Planning (General Permitted Development) Order 1995**

**Town and County Planning (General Permitted Development) (Amendment) (England) Order 2015**

**Notice pursuant to Article 5 (I) for the making of an Article 4 Direction**

**Planning controls over Houses in Multiple Occupation**

Stevenage Borough Council (“the Borough Council”) made an Article 4 (I) Direction of the Town and Country Planning (General Permitted Development) Order 2015, as amended, under the power conferred on them Article 3 of the said Order.

The Direction relates to development comprising the change of use of a building to a use falling within Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) order 1987 as amended, from a use falling within Class C3 (dwelling house) of that order and removes permitted developments right for this type of development from the date when the Direction comes into force.

Planning permission will therefore be required for change of use to Class C4 from Class C3 once the Article 4 Direction is in force.

The Article 4 Direction applies to all wards within Stevenage Borough Council. A copy of the Direction, including a map defining the area cover, can be viewed at XXXXXX or on the Council’s website XXXXXXXXXX,

Representations may be made concerning the Article 4 Direction between 19th September 2016 and 5pm on 18 October 2016, by email to XXXXXX or by post to XXXXXXXXXXXXX.

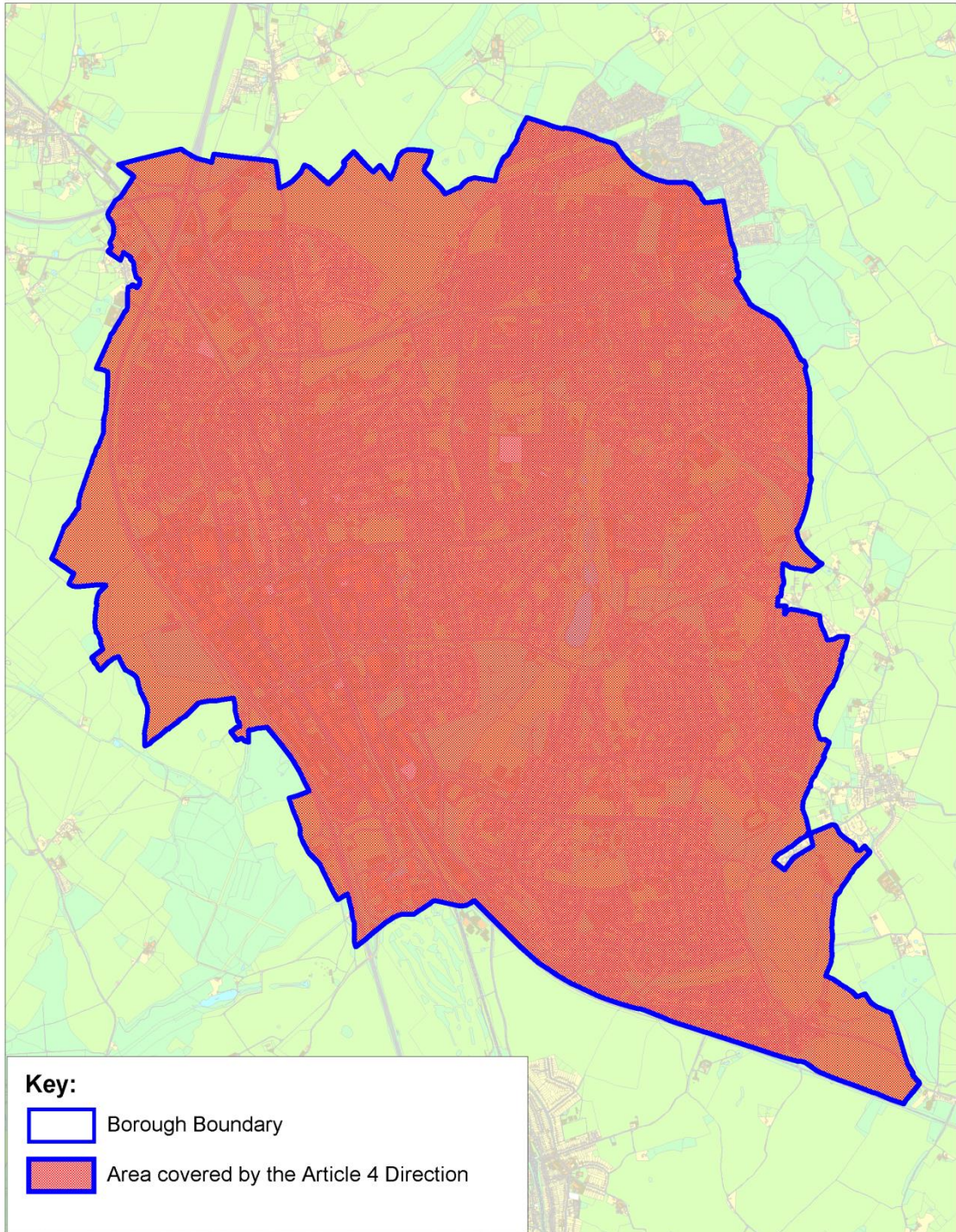
The Article 4 Direction will come into force, subject to confirmation by the Borough Council, on the 20<sup>th</sup> September 2017.

Scott Crudgington  
Chief Executive  
2016

Dated XXX September



**Map 1: The area to be covered by the proposed Article 4 Direction**



Appendix 2: The requirements for introducing an Article 4 Direction

Town and Country Planning (General Permitted Development) (England) Order 2015  
SCHEDULE 3 Article 4

Procedures for Article 4 directions

**Procedure for article 4(1) directions without immediate effect**

1.—(1) Subject to paragraph 2, notice of any direction made under article 4(1) of this Order must, as soon as practicable after the direction has been made, be given by the local planning authority—

(a) by local advertisement;

(b) by site display at no fewer than 2 locations within the area to which the direction relates, or, if the direction is made under article 4(1)(b), on the site of the particular development to which the direction relates, for a period of not less than 6 weeks; and

(c) subject to sub-paragraph (2), by serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates.

(2) In a case where this paragraph applies, the local planning authority need not serve notice on an owner or occupier in accordance with sub-paragraph (1)(c), if they consider that—

(a) individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person or

(b) the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.

(3) Sub-paragraph (2) does not apply where the owner or occupier is a statutory undertaker or the Crown.

(4) The notice referred to in sub-paragraph (1) must—

(a) include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;

(b) specify that the direction is made under article 4(1) of this Order;

(c) name a place where a copy of the direction, and a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, may be seen at all reasonable hours;

(d) specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority; and

(e) specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years after the date referred to in paragraph (d).

(5) Where a notice given by site display is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period referred to in sub-paragraph (4)(d) has elapsed, the authority is treated as having complied with the requirements of that paragraph if they have taken reasonable steps for the protection of the notice, including, if need be, its replacement.

(6) The local planning authority must send a copy of the direction and the notice under subparagraph (1), including a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, to the Secretary of State on the same day that notice of the direction is first published or displayed in accordance with sub-paragraph (1).

(7) The direction comes into force in respect of any part of the land within the area to which it relates on the date specified in accordance with sub-paragraph (4)(e) but does not come into force unless confirmed by the local planning authority in accordance with sub-paragraphs (9) and (10).

(8) On making a direction under article 4(1)—

(a) a county planning authority must give notice of it to any district planning authority in whose district the area or part of the area to which the direction relates is situated; and

(b) except in metropolitan districts, a district planning authority must give notice of it to the county planning authority, if any.

(9) In deciding whether to confirm a direction made under article 4(1), the local planning authority must take into account any representations received during the period specified in accordance with sub-paragraph (4)(d).

(10) The local planning authority must not confirm a direction until after the expiration of—

(a) a period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or

(b) such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.

(11) The local planning authority must, as soon as practicable after a direction has been confirmed—

(a) give notice of such confirmation and the date on which the direction will come into force;

And

(b) send a copy of the direction as confirmed to the Secretary of State.

(12) Notice under sub-paragraph (11)(a) must be given in the manner described in subparagraphs (1) and (4)(a) to (c); and sub-paragraphs (2) and (3) apply for this purpose as they apply for the purpose of sub-paragraph (1)(c).

(13) A local planning authority may, by making a subsequent direction, cancel any direction made by them under article 4(1); and the Secretary of State may, subject to paragraphs 2(3) and (4), make a direction cancelling or modifying any direction under article 4(1) made by a local planning authority at any time before or after its confirmation.

(14) Sub-paragraphs (1) to (12) apply in relation to any direction made under sub-paragraph (13) by a local planning authority unless the direction it is cancelling is a direction to which paragraph 2 applied.

(15) Paragraphs 2(2) to (10) apply in relation to any direction made by a local planning authority under sub-paragraph (13) cancelling a direction to which paragraph 2 applied.

(16) The Secretary of State must notify the local planning authority as soon as practicable after making a direction under sub-paragraph (13).

(17) Sub-paragraphs (1) to (3) and (4)(a) to (c) apply to any direction made under sub-paragraph (13) by the Secretary of State.

(18) A direction made under sub-paragraph (13) by the Secretary of State comes into force in respect of any part of the land within the area to which it relates—

(a) on the date on which the notice is served in accordance with sub-paragraph (1)(c) on the occupier of that part of the land or, if there is no occupier, on the owner; or

(b) if sub-paragraph (2) applies, on the date on which the notice is first published or displayed in accordance with sub-paragraph (1).