

**Report to:** Planning Committee

**Date:** Tuesday 23<sup>rd</sup> July 2024

**Title:** Article 4 Direction to withdraw permitted development rights in relation to Houses in Multiple Occupation

**Report of:** Robert Cottrill, Chief Executive

**Cabinet member:** Councillor Colin Swansborough, Cabinet member for enterprise, community spaces and planning

**Ward(s):** Devonshire, Meads, St Anthonys and Upperton

**Purpose of report:** To seek approval to implement an Article 4 Direction to withdraw permitted development rights associated with changes of use from class C3 (Dwellinghouses) to class C4 (Houses in Multiple Occupation)

**Officer recommendation(s):**

- (1) That the Planning Committee authorises the making of a non-immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove the permitted development rights for the change the use from a building and any land within its curtilage from a use falling within Class C3 (Dwellinghouse) of the Town and Country Planning (Use Classes) (Amendment) (England) Order to a use falling within Class C4 (House in Multiple Occupation) of that Schedule being development comprised within class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) within the area identified in Appendix 1
- (2) That the Planning Committee notes that notice given for the Article 4 Direction will be made as soon as practical following approval by Planning Committee and consultation on the Article 4 Direction will take place for an eight-week period between Friday 2<sup>nd</sup> August and Friday 27<sup>th</sup> September 2024.

- Reasons for recommendations:**
- (1) To mitigate the impacts of HMOs by requiring proposals for changes of use from class C3 to class C4 within the designated area to apply to the local planning authority for planning permission, and allowing these applications to be determined in accordance with local plan policies and other material planning considerations.**
  - (2) To meet the requirements of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 in respect of the procedure for article 4(1) directions without immediate effect.**

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## **1 Introduction**

1.1 At the Full Council meeting on 28<sup>th</sup> February 2024, Members passed a motion that:

*“This Council welcomes the issuing of the updated report by Aecom entitled ‘Eastbourne Houses in Multiple Occupation (HMO) Study’, a draft of which was produced in June 2023, subject to Aecom having all required information. With this additional information, it will allow the Council, as a matter of urgency to bring forward and consider through a future committee report the intervention options that might be proposed in the final report.*

*It is important that the Council looks at this particular area of housing, as it supports those with specific needs, with the housing crisis that we are facing and fills in some of the gaps that are being left by the traditional housing supply chain. It is important that the Council addresses these issues to support those most in need, whilst ensuring that the local community has a mixed tenure of housing in its area. The report will guide the Council in delivering options to deal with HMO’s including, but not limited to, Article 4 intervention.”*

1.2 The options for intervention are due to be considered by Cabinet at its meeting on the 17<sup>th</sup> July 2024, which includes a recommendation to introduce an Article 4 Direction to remove the permitted development rights that apply to changes of use between Class C3 (Dwellinghouse) and Class C4 (House in multiple occupation). This would mean that changes of use between dwellinghouses and small HMOs would be required to apply for planning permission from the local

planning authority, which means new planning policies that are to be introduced through the Houses in Multiple Occupation (HMO) Development Plan Document (DPD) can be applied in the determination of these applications.

- 1.3 If the recommendation to proceed with the introduction of an Article 4 Direction is approved, in accordance with the Council's Constitution (Part 3, Section B), it is the responsibility of Planning Committee to consider the making of the Article 4 Direction.
- 1.4 Subject to Cabinet agreeing the recommendation to introduce an Article 4 Direction, this report seeks approval for the making of a non-immediate Article 4 Direction to remove permitted development rights for changes of use from class C3 (Dwellinghouses) to class C4 (Houses in Multiple Occupation).

## **2 Context**

- 2.1 Houses in Multiple Occupation (HMOs) are legally defined in the Housing Act 2004 (under sections 254 to 259). A House in Multiple Occupation is generally considered to be a property that is occupied as a main residence by at least three people who are not part of the same household but share facilities like a kitchen and bathroom, where the building does not entirely consist of self-contained flats (although it may include some self-contained flats), and rents are payable (or some other form of consideration) for at least one person's occupation. However, there are legal exemptions for certain buildings that meet the definition for an HMO under the Housing Act 2004.
- 2.2 Under planning legislation<sup>1</sup>, small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen and bathroom, fall under Use Class C4 (House in Multiple Occupation) of the Town and Country Planning (Use Classes) Order 1987 (as amended). Where there are more than six unrelated individuals sharing amenities, this is termed an HMO in Sui Generis use because it is not within any specific planning use class.
- 2.3 Under national legislation<sup>2</sup>, a change of use from Class C3 (Dwellinghouse) to Class C4 (House in multiple occupation), or vice versa, benefits from permitted development rights and therefore does not require a planning application or approval from the local planning authority. This means that the Council currently does not become aware of changes of use between single private dwellings and small HMOs, and cannot apply local plan policies to such proposals.

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>2</sup> The Town and Country Planning (General Permitted Development) (Amendment) (England) Order

- 2.4 However, any change of use to a large HMO in Sui Generis use or changes of use to class C4 from any other use apart from class C3 does require planning permission. These planning applications should be determined in accordance with local plan policies and other material planning considerations.
- 2.5 HMOs form an important part of the housing mix within an area as they increase the range and mix of accommodation, especially for people whose housing options are limited, such as young professionals, students and people on low incomes who are unable to afford or access their own self-contained accommodation. Demand for this type of smaller and cheaper accommodation is likely to be impacted by current circumstances in relation to rises in the cost of living and pressure on wages and benefits.
- 2.6 However, HMOs have the potential to negatively impact on communities in terms of the standard of living environment for local residents and businesses, particularly where there is a high concentration of HMOs in a specific area. In addition, it is acknowledged that there are contributory factors associated with a high turnover of HMO residents; the concentration of HMO residents facing economic hardship (amongst a wider community that faces hardship also); and the higher proportion of HMO residents living with complex needs. Together, these factors can result in detrimental effects on the character of local communities and neighbourhoods, and perceptions around increased levels of anti-social behaviour, petty crime. Additionally, unkempt properties that are not properly maintained impact on the amenity of an area and can adversely impact community cohesion.
- 2.7 In addition to the Article 4 Direction, it is also recommended to Cabinet that the Council prepare an HMO Development Plan Document (HMO DPD), which will introduce new planning policies relating only to HMOs, which will provide more extensive criteria for applications for HMOs to be assessed against in advance of the new local plan. It is anticipated that consultation on the HMO DPD will take place between August and September 2024.

### **3 Eastbourne HMO Study**

- 3.1 The Eastbourne HMO Study (2024), prepared by consultancy AECOM, analysed the supply of HMOs, examined the physical conditions of HMOs through a series of external inspections on a sample of HMOs, assessed the impacts of HMOs drawing on surveys of local residents, and considered the role that HMOs play in the local housing market in terms of occupant groups, affordability, size and tenure. It then drew on this data, in comparison with approaches from other local authorities, to evaluate the evidence gathered in relation to the potential interventions open to the Council to control the quality and spread of HMOs.

- 3.2 The HMO Study confirmed that, as of August 2022, there were 318 licensed HMOs recorded on the Council's register<sup>3</sup>, with indications that the number of licensed HMOs in Eastbourne is broadly increasing over time. The study also recognises serious limitations with estimating the number of HMOs that fall outside of mandatory licensing thresholds (including those occupied by less than five people).
- 3.3 The study found that there is clear evidence of the valuable role that HMOs provide in the housing market by providing low-cost accommodation that people on lower incomes, key workers, and vulnerable groups rely on, and that there could be significant adverse consequences from overly restricting the current provision or future supply of HMOs. Therefore, the study suggests that interventions should be aimed at mitigating impacts and improving standards for residents, rather than aiming primarily to control HMO numbers.
- 3.4 The Study does identify that there are impacts caused by HMOs. On the whole, it is considered that these impacts arise not from individual HMO properties themselves (with some notable exceptions), but from their concentration.
- 3.5 The most significant impacts identified by the study are the loss of relatively scarce family housing through conversion of existing single-household housing to HMO, and the impact on occupants and communities from anti-social behaviour in areas of high concentration. Secondary impacts with less conclusive evidence relate to condition of properties and standards for occupants, the impact on parking and waste collection amenities, and impacts on the wider economy.
- 3.6 The HMO Study identifies that Article 4 Directions to remove permitted development rights from class C3 to class C4 conversions is a common intervention from local planning authorities that are seeking to deal with impacts relating to HMOs. However, removing permitted development rights would not, on its own, be an effective way of controlling or mitigating the impacts of HMOs. It would be necessary to have up to date and effective planning policies that applications involving HMOs can be assessed against.

## **4 Article 4 Direction**

- 4.1 Local planning authorities have powers to make an Article 4 Direction under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) to remove specific permitted development rights within a designated area.

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<sup>3</sup> The HMO Register in April 2024 shows 331 licensed HMOs

- 4.2 It is important to note that an Article 4 Direction does not prevent the development to which it applies from taking place, nor mean that any subsequent planning application for such development would be automatically refused. It does, however, give the local planning authority an opportunity to consider a proposal in more detail and apply local plan policies to the determination of the application.
- 4.3 The National Planning Policy Framework (2023) [NPPF] identifies that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where an Article 4 Direction is necessary to protect local amenity or the well-being of the area, be based on robust evidence, and apply to the smallest geographical area possible. There would need to be a particularly strong justification for the withdrawal of permitted development rights over the whole local planning authority area.
- 4.4 The local planning authority has to notify the Secretary of State when introducing an Article 4 Direction. Whilst the Secretary of State is not required to approve it, they can revoke or amend it so it is imperative that the evidence supporting the making of an Article 4 Direction is robust and that the reasons for introducing the Article 4 Direction is fully justified and in accordance with national policy.
- 4.5 HMOs form an important part of the housing market by providing accommodation for people with limited options, and therefore it is important that the Article 4 Direction is designed to mitigate the impacts of HMOs rather than putting undue restrictions on them coming forward. The key impacts of HMOs that relate to the local amenity and well-being of the area, and would support the removal of permitted development rights for small C4 HMOs, are the loss of relatively scarce family homes to HMO that could undermine the creation of mixed and balanced community, and the cumulative impacts caused by concentration of HMOs.
- 4.6 These issues do not apply equally across the whole Borough. Therefore, in order to ensure that it applies to the smallest geographical area possible, the Article 4 Direction should apply only to areas where there are existing concentrations of HMOs and where there is a relatively lack of family homes, particularly when compared to 1-bed homes that provide an equivalent type of accommodation to HMOs. In addition, existing planning policy in the Borough Plan, and emerging policy in the HMO DPD, seeks to restrict HMOs within the designated Tourist Accommodation Area, so it is appropriate that the Article 4 Direction applies to this area also.
- 4.7 There is a strong correlation between where HMOs are located and the lowest percentages of households that have 3 or 4+ bedrooms. This applies within Devonshire, Meads and Upperton wards, which indicates that the Article 4

Direction should be focused on these areas. In addition, there is a small area of HMO concentration on the boundary of Devonshire ward and St Anthony's ward.

- 4.8 Therefore, it is proposed that the Article 4 Direction should cover the wards of Devonshire, Meads and Upperton (in the area of these wards outside of the South Downs National Park), plus a small area in the south of St Anthony's ward where it borders Devonshire. Appendix 1 provides a detailed map of the area that it is proposed that the Article 4 Direction will cover.
- 4.9 There are two types of Article 4 Direction: non-immediate directions and directions with immediate effect. It is recommended that a non-immediate Article 4 Direction is introduced within this area whereby permitted development rights are removed upon confirmation of the direction by the local planning authority following local consultation, with 12 months' notice of the direction taking effect.
- 4.10 This would avoid the potential for compensation to be paid to those whose permitted development rights have been withdrawn if an application for development which would otherwise have been permitted development is refused, under Sections 107 and 108 of the Town and Country Planning Act 1990 and The Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).
- 4.11 It would also mean that the Article 4 Direction would come into effect once the HMO DPD has been submitted for examination, at which point the new emerging policies in the HMO DPD would start to gain sufficient weight to influence decisions on planning applications.
- 4.12 It is proposed that the Article 4 Direction applies to changes of use from class C3 to class C4 (GPDO, Part 3, Class L (part b)) only. It is not considered necessary for permitted development rights associated with changes of use from class C4 to class C3 to be removed, which means that a change from a single small C4 HMO to a single private dwelling in class C3 use would still benefit from permitted development rights and would not be required to submit a planning application.
- 4.13 It is important to note that the Article 4 Direction does not apply retrospectively, so any development undertaken before it came into force is not affected. Therefore, if the authorised use of a property as an HMO has commenced before the date the Article 4 direction takes effect, it would not need to apply for planning permission. However, owners of small C4 HMOs created prior to the introduction of the Article 4 Direction may wish to apply for a Certificate of Lawful Development to confirm that the HMO use is lawful and does not require planning permission.

- 4.14 A Background Paper provided as Appendix 2 sets out in more detail the context and supporting evidence to justify the introduction of a new Article 4 Direction. This will be published alongside the consultation on the Article 4 Direction.

## **5 Alternative Options Considered**

- 5.1 Having regard to the evidence, it is not considered that there is a 'strong justification' to apply an Article 4 Direction borough-wide. In several wards, particularly those in the northern parts of the Borough, there are relatively few HMOs with no apparent concentrations, and these areas also have significant proportions of 3- and 4-bed homes. This means that it is unlikely that harm to local amenity or well-being of these areas will arise from the change of use of Use Class C3 dwellinghouses to Use Class C4 small HMOs.
- 5.2 With regards to the areas not covered by the Direction, the situation will be monitored to ensure that issues are not merely displaced to these areas. Should issues disperse into those areas to create negative impacts on local amenity, then the boundaries of the Article 4 Direction can again be considered.
- 5.3 Planning Practice Guidance<sup>4</sup> confirms that the circumstances in which an immediate direction can restrict development should be limited and only used where the development presents an immediate threat to local amenity or prejudices the proper planning of an area. Furthermore, an immediate Article 4 Direction would mean that planning applications for class C3 to class C4 HMOs would be assessed against current planning policy, which does not reflect the current situation in relation to HMOs, and would be limited in addressing the issues of concentration and loss of family housing to HMO through planning applications.
- 5.4 Given the potential for compensation payments arising from an immediate Article 4 Direction, the benefits of consultation before making a direction and the relatively limited number of changes of use likely over the 12 month implementation period, it is considered that a non-immediate Article 4 Direction is the preferred option.

## **6 Timescales**

- 6.1 Article 4 Directions need to be made through a two stage process. The first is for the Council to 'make' the direction and undertake local consultation with the areas the direction is proposed to take effect in. The second is the confirmation of the direction by the Council. Prior to confirming the direction, the Council must consider all comments made during the consultation and consider whether

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<sup>4</sup> [PPG: When is permission required](#), Paragraph: 045 Reference ID: 13-045-20140306



materials changes are necessary to the direction. If significant amendments are needed, further consultation may be required.

- 6.2 If approved by Planning Committee, the notice of the Article 4 Direction will be made and served locally and to the Secretary of State in early August 2024, prior to period of public consultation. Following this, a report will be brought back to Planning Committee to consider the representations and to confirm the Article 4 Direction, anticipated for early 2025. If confirmed, the Article 4 Direction will come into force 12 months after it was originally made, which would be in August 2025.

## **7 Consultation**

- 7.1 Following the making of an Article 4 Direction, a consultation period will take place for a minimum of 21 days, as required by the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 7.2 However, it is considered that it would be appropriate to align public consultation on the Article 4 Direction with consultation on the Regulation 18 version of the HMO DPD, which is required to be subject to an eight-week public consultation in accordance with the Statement of Community Involvement. Therefore, the consultation on the Article 4 Direction and the HMO DPD will take place between Friday 2<sup>nd</sup> August 2024 and Friday 27<sup>th</sup> September 2024.
- 7.3 Schedule 3 of the GPDO 2015<sup>5</sup> sets out the procedures for publicity and consultation of Article 4 Directions and requires local advertisement and site notices at no fewer than 2 locations within the affected area. A notice of the Article 4 Direction will also be published on the Council's website, and representations will be invited through the Council's online consultation portal.

## **8 Corporate plan and council policies**

- 8.1 The Corporate Plan 2024-2028 identifies that the cost of living crisis has taken its toll on communities, and the Council is committed to continuing to play its part to support residents most badly affected and ensure adequate support networks are in place. The Corporate Plan also recognises that many people in the town are finding it hard to find suitable accommodation for their needs, and the Council will continue to help support those who are at risk of homelessness or in housing need, along with looking to enable and develop new housing in the town. It is important that the important role that HMOs play in the housing market is recognised, and that the Article 4 Direction (and HMO DPD) seeks to mitigate

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<sup>5</sup> [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)

the impacts of HMOs rather than putting undue restrictions on them coming forward.

- 8.2 The Housing Strategy 2020-2024 recognises that the challenges for Eastbourne include rising housing costs, a changing demographic, the expansion of the private rented sector, tackling poverty and inequality, and homelessness. It recognises a priority to shape a thriving, high standard, private rented sector by putting in place measures that promote a good quality private rented housing supply, encourage good quality management across the sector and balance the interests of landlords and tenants.
- 8.3 In relation to the priority of promoting homes that sustain health and wellbeing, the strategy recognises that where the basic 'foundations' of a healthy home are not in place and households find themselves living in poor quality homes, experience precarious housing circumstance or have no home at all, then wellbeing, physical and mental health all suffer. The Article 4 Direction will enable policies within the emerging HMO DPD to be applied to small HMOs, to ensure that new HMOs meet minimum standards that would ensure a decent standard of accommodation.

## **9 Financial appraisal**

- 9.1 Where a local planning authority makes an Article 4 Direction, it may be liable to pay compensation if it then refuses planning permission for development which would otherwise have been permitted development. Compensation is only payable if an application for planning permission for certain development formerly permitted by the GPDO is made within 12 months of the Article 4 Direction taking effect.
- 9.2 However, no compensation for the withdrawal of certain permitted development rights is payable if the Council gives notice of the withdrawal between 12 and 24 months in advance. It is proposed that the non-immediate Article 4 Direction comes into force a minimum of 12 months after being made, and therefore this would avoid the potential for compensation claims against the Council.
- 9.3 The costs associated with publishing the notice and undertaking public consultation on the Article 4 Direction can be met from existing budgets.

## **10 Legal implications**

- 10.1 Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 provides for the removal of Permitted Development Rights in exceptional circumstances, where it is necessary to protect local amenity or

the wellbeing of an area. In all cases, the direction should be based on robust evidence and apply to the smallest geographical area possible.

- 10.2 The making of the Article 4 Direction includes consultation, advertising and a period for written representations. The matter will be brought back to committee to report any representations.

Legal ref: 013071-EBC-HM

## **11 Equality analysis**

- 11.1 An Equalities & Fairness Screening has been undertaken on these proposals. This has concluded that there would be no equalities and fairness issues arising from the introduction of an Article 4 Direction, as this would not mean that applications for change of use between dwellinghouses (class C3) and small HMO (class C4) would automatically be refused. However, it does give the opportunity for local consideration of the proposal and the application of relevant local plan policies to the determination of the application.
- 11.2 A full Equalities & Fairness Analysis is being undertaken on the HMO DPD, which will provide new planning policies for proposals for new HMOs (including where permitted development rights have been withdrawn through the Article 4 Direction).

## **12 Environmental sustainability implications**

- 12.1 The HMO Study identifies that the average HMO in Eastbourne tends to have a lower energy performance rating than the average non-HMO. The Article 4 Direction is unlikely to have any environmental sustainability implications itself, however in combination with the HMO DPD, it can require that changes of use from single private dwellings to small HMOs incorporate measures to reduce carbon emissions and improve energy efficiency.

## **13 Appendices**

- Appendix 1 – Map of Proposed Article 4 Direction
- Appendix 2 – HMO Article 4 Direction Background Paper

## **14 Background papers**

The background papers used in compiling this report were as follows:

- [Housing Act 2004 \(as amended\)](#)
- [Planning & Compulsory Purchase Act 2004 \(as amended\)](#)

- [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(as amended\)](#)
- [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#)
- [National Planning Policy Framework \(2023\)](#)
- [Eastbourne Borough Plan 2001-2011 \(Adopted 2003\)](#)
- [Eastbourne Core Strategy 2006-2027 \(Adopted 2013\)](#)
- [Eastbourne Borough Council HMO Register](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Main Report](#)
- [AECOM, Eastbourne HMO Study \(2024\) – Appendices](#)