

**Report to** Cabinet  
14 September 2016  
**Report of** Head of Planning Services  
**Subject** Smaller houses in multiple occupation : Article 4 Directions

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**Item**

12

### **Purpose**

To consider a recommendation made by the sustainable development panel regarding the introduction of Article 4 Directions to bring the change of use of homes (class C3) into small houses in multiple occupation (class C4) under planning control.

The Directions should apply to two specific areas of the city where the proportion of the housing stock in use as HMOs currently exceeds 30%.

### **Recommendations**

To :

1. commence consultation on the designation of non-immediate Article 4 Directions in the two areas illustrated on map 2 of the appendices, removing permitted development rights without first obtaining planning permission;
2. report the results of the consultation back to cabinet; and,
3. if Cabinet is minded to confirm the Directions at this stage, commence procedures to confirm the Directions.

### **Corporate and service priorities**

The report helps to meet the corporate priority “A Healthy City with Good Housing”.

### **Financial implications**

See paragraph 39 of the report.

**Wards:** Town Close, Nelson and Wensum

**Cabinet member:** Councillor Bremner – Environment and sustainable development

### **Contact officers**

Lara Emerson, Planner (Policy) 01603 212500

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### **Background documents**

None.



# Report

## Introduction

1. This report has been prepared following Sustainable Development Panel's consideration of the implications of the growth of houses in multiple occupation (HMOs) on the City and how this may best be regulated.
2. HMOs play an important role in meeting people's housing needs by providing shared accommodation that is affordable. HMOs generally provide accommodation for a range of people such as young professionals, students and temporary workers, amongst others. Without HMOs, many people would not be able to afford to live in Norwich.
3. The number of HMOs in Norwich has been growing steadily over a number of decades. This is partly due to an increase in house prices and rents making other accommodation options less affordable, and partly due to a growth in student numbers at the city's further and higher education establishments.
4. In planning terms a House in Multiple Occupation (HMO) is a residential dwelling occupied by 3 or more unrelated residents who typically share kitchens, bathrooms and living spaces. HMOs fall into two use classes:
  - An HMO with 3 to 6 residents is classed as a small HMO (use class C4)
  - An HMO with more than 6 residents is a large HMO (sui generis)
5. Government legislation states that planning permission is not required to change a residential dwelling (use class C3) to a small HMO with 3 to 6 residents (use class C4) and vice versa. However, planning permission is required to change a dwelling (C3) or a small HMO (C4) to a large HMO with more than 6 residents (sui generis).
6. Locally, through the use of Article 4 Directions, it is possible to restrict these permitted development rights so that planning permission can be required to change the use of a dwelling into a small HMO.

## Summary of Sustainable Development Panel's consideration of the issue

7. At its meeting of 24<sup>th</sup> September 2014 Sustainable Development Panel considered a paper which presented the evidence relating to the growth of HMOs in Norwich and indicated which planning policy measures could be taken to address the issues around HMOs.
8. Subsequently, in November to December 2014 a consultation was held in which a range of options were presented:
  - Blanket restriction on additional HMOs in the city as a whole
  - Restrict additional HMOs in areas of over- concentration through percentage threshold e.g. maximum 20% HMOs in any street (potentially combined with option c below)
  - Drive up standards and management of new HMOs and ensure HMOs are only created in appropriate types of housing
  - Limit the concentration of HMOs through a blanket ban on additional HMOs in one particular area, with no threshold

- Promote development of accommodation types to slow HMO conversion rate through planning and assess licensing options (this was described as option 4 in the consultation document).
9. At its meeting of 25<sup>th</sup> March 2015, Sustainable Development Panel considered the 39 responses to the consultation and resolved to:
    - (1) note that:
      - (a) consultation option 4, promoting the development of accommodation types to reduce demand for conversion of existing housing to HMOs will be taken forward, allowing time to assess housing accreditation and licensing options;
      - (b) progress will be monitored and assessed in 2017, when the need for policy restrictions on new HMOs in wards and areas with high HMO concentrations through an Article 4 Direction and a threshold will be considered;
    - (2) ask the head of planning services to provide an interim report on the progress of 1 (a) and (b) above to the panel in March 2016.
  10. The interim update report which was presented to Sustainable Development Panel at its meeting of 23<sup>rd</sup> March 2016 discussed the progress which had been made since March 2015, with a recommendation to continue with the existing approach and reconsider the matter in March 2017. However, the paper prompted members to consider it worth reexamining the options available. Sustainable Development Panel resolved:
 

“to ask the head of planning services to provide a detailed report to the panel’s meeting on 25 May 2016, setting out the different options available to the council to regulate houses in multiple occupation and the full implications of issuing Article 4 Directions, and recommend a course of action to cabinet for consideration at the first meeting of the civic year.”
  11. At its meeting of the 29<sup>th</sup> June 2016, Sustainable Development Panel considered various options for the implementation of an Article 4 Direction.
  12. Firstly, members considered on what basis to introduce Article 4 Directions:
    - A) To restrict the number of new HMOs established within the area covered by the Article 4 Directions to protect the amenity or character of a particular part of Norwich that is adversely affected by the number of HMOs in it; or
    - B) To enable the operation of a policy designed to direct new HMO provision into properties and/or areas that are considered to be suitable for the use but not to restrict overall supply. Such a policy could incorporate elements of option A insofar as it may seek to restrict numbers of new HMOs established in particular areas but it may also include criteria than any HMO would need to comply with.
  13. Secondly, members considered over which areas to introduce Article 4 Directions. Three maps were put to members showing areas of the city where the percentage of HMOs exceeded 20%, 30% or 40%. A wider area was also discussed (i.e. 10% or city-wide).
  14. Further details about each of the options above, and their advantages and disadvantages, can be found in the report presented to Sustainable Development Panel on 29<sup>th</sup> June 2016.

15. Members considered all of the options put before them and resolved to recommend to Cabinet the introduction of Article 4 Directions on the basis of Option A, above, to remove permitted development rights for properties in the area indicated on the 30% map (see Map 1 in the appendices) to change from C3 (dwellinghouses) to C4 (small HMOs). This proposal is discussed in further detail below.

### **Work done subsequently to the Panel recommendation**

16. The members of Sustainable Development Panel considered information that was based on work done for the Council by BRE in 2014. This presented information based on census output areas which are statistical constructs and owe little to meaningful boundaries on the ground.

17. In order to serve Article 4 Directions, the council will need to be clear on which properties the Directions apply to. Therefore, officers have sought to best fit the area agreed by Sustainable Development Panel to logical boundaries on the ground to enable the appropriate notices to be served effectively. These revised boundaries are shown on Map 2 of the appendices. The specified areas contain 4,540 properties, approximately 3,617 of which are residential. This accounts for 6% of the city's total housing stock of 64,479.

18. Map 2 illustrates the two areas over which the Article 4 Directions are proposed to apply. The two areas are:

- An area either side of Unthank Road between Clarendon Road and Glebe Road; and
- An area around Dereham Road near its junction with Bowthorpe Road.

19. Combined, the areas contain approximately 3,617 residential properties, 30% of which are already in use as houses in multiple occupation. Thus, the permitted development rights would be withdrawn from approximately 2,531 properties which are currently in use as C3 dwellinghouses

20. Both the areas contain a number of buildings currently in use for other purposes. It should be noted that the Directions apply to a particular area and not just buildings in a particular use. As such, a shop within the area may benefit from permitted developments rights that enable it to be converted to C3 dwelling without the need for planning permission. At present should this be done the converted property would also benefit from rights allowing it to change to C4 use, however this right would be withdrawn by the Directions. In this manner the Article 4 Directions may also effectively restrict the range of permitted development rights available to buildings that are not currently in residential use.

21. In addition to refining the area to which the potential Directions would apply, officers also researched the procedure that would need to be followed in order to introduce the Directions.

22. In order to avoid exposing the council to potentially very high levels of compensation liability, officers strongly recommend implementing non-immediate Article 4 Directions. Under section 108 of the Town and Country Planning Act a claim for compensation can be made to the local planning authority if planning permission is

refused or granted subject to conditions other than those conditions imposed by the General Permitted Development Order 2015. This can include the difference in the value of the land if its use had been changed to an HMO compared to its value in its current state, as well as the cost of preparing the plans for the works (s107 TCPA 1990).

23. Such claims can be avoided provided at least 12 months' notice is given of the intention to introduce the order. As such, there will be some considerable delay before the Directions can take effect. The estimated timetable for the implementation of the Directions would be as set out within the table below. It is important to note that these dates are approximate and may need to be adjusted throughout the process.

Stage	Procedure	Estimated date
1	<p><b>The council advertises notices of Directions</b></p> <ul style="list-style-type: none"> <li>• The notice must specify a date on which it is intended for the Directions to come into force (s108 of the TCPA specifies that this must be at least 12 months from the date notice is first served to avoid the council being liable to pay compensation - see paragraphs 22 and 23 for more detail).</li> <li>• Site notices erected around the two specified areas for 6 weeks.</li> <li>• Notice advertised on the council's website.</li> <li>• Publication of the notices of Directions in a local newspaper.</li> <li>• Formal consultation for six weeks (note the statutory requirement is for only 21 days but following discussion with the portfolio holder 6 weeks is proposed to allow for more full consultation) with general members of the public and the owners and occupiers of every part of the land within the area to which the Direction relates. The intention would be to complete the consultation prior to 16<sup>th</sup> December 2016. The council would write to all properties within the specified areas with: <ul style="list-style-type: none"> <li>○ Notice of the Direction;</li> <li>○ An information sheet;</li> <li>○ A map of the specified areas; and</li> <li>○ A letter asking tenants of rented properties to inform their landlord of the Notice of the Direction (the regulations state that the council need not serve notice in accordance with para 1(c) of GPDO 2015 where service of notice is impracticable due to identity or number of owners - this is considered to be the case due to the large number of properties affected).</li> </ul> </li> </ul>	November 2016

Stage	Procedure	Estimated date
	<b>Notice of making of Article 4 Directions entered onto land charges register</b> Prospective buyers will see the notice of Direction on their local search.	<b>November 2016</b>
	<b>Notify Secretary of State of the Direction</b> The Secretary of State (SoS) must be notified on the same day that notice is served, above. The SoS has wide powers to modify or cancel a Direction as it sees fit.	<b>November 2016</b>
2	<b>Consultation responses collated</b> Officers collate consultation responses and prepare a report for Cabinet.	<b>December 2016 - January 2017</b>
	<b>Cabinet consider responses to consultation</b> Cabinet consider the report presented to them about consultation responses and decide whether to proceed to confirming the Directions.	<b>January 2017</b>
3	<b>The council confirms the Direction</b> If Cabinet decide to proceed, notice of confirmation must be served in the same way the notices of Directions were served at stage 1, above.	<b>February 2017</b>
	<b>Confirmed Direction entered onto land charges register</b> Prospective buyers will see the Article 4 Directions on their local search.	<b>February 2017</b>
4	<b>The Directions come into force</b> On the date specified on the original notice and subsequent confirmation, the Directions will come into force. Any property within the specified areas which has a lawful use as a dwellinghouse (use class C3) on the day before the Directions come into force would need the benefit of planning consent in order to become a small HMO (use class C4). Applications would be decided on a case-by-case basis and would rely on the existing Development Management Policies (2014).	<b>November 2017</b>
	<b>Notify Secretary of State again</b>	<b>November 2017</b>

24. The Notice of Direction would state that permitted development rights would be removed to change the use of a property from a dwellinghouse (use class C3) to a small house in multiple occupation (use class C4). It is worth noting that the permitted development right to change a property from a small HMO to a dwellinghouse would be unaffected by the Directions.

## **The impacts of the Article 4 Directions**

25. The direct impact of the introduction the Article 4 Directions in the areas proposed would be that permitted development rights allowing the change of use of class C3 dwellings to class C4 small HMOs would be withdrawn. The permitted development rights of HMOs currently within the areas would be unaffected by the Directions.
26. It should be noted that the Directions would have the effect of requiring planning consent to first be sought and obtained before a property could be converted to a C4 small house in multiple occupation. At present no change in the policy framework is proposed so that any planning application that was submitted would still need to be considered on a case by case basis on its merits and if applicants were not content with the outcome they would have the right of appeal to the Planning Inspectorate.
27. Therefore, the introduction of Article 4 Directions may not result in a blanket ban on the creation of further small HMOs within the areas that they cover. Although the level of concentration of HMOs in the area and the desire to see the maintenance of mixed and socially balanced communities are material planning considerations and could both be taken into account in reaching a planning decision, it is possible that if planning applications are submitted they may be approved.
28. However, the introduction of the Directions would create a considerable uncertainty for prospective landlords. The acceptability of the creation of a small HMO in the area would be uncertain and the process may also add to costs (if an agent is used to prepare the application) and delays as the planning application is prepared and considered. As the Directions are only proposed to apply to relatively limited areas of the city it is anticipated that the main effect will be to act as a significant deterrent for HMO landlords to invest in the area compared to other parts of the city.
29. Therefore it is anticipated that the consequences of introducing the Directions would be:
  - To restrict investment in properties in the areas currently in used as C3 housing from HMO landlords thus tending to restrict the growth of HMOs in the area seeking to affected thus limiting the growth of HMOs in the areas and maintaining a relatively mixed and balanced communities in areas;
  - Overtime this may prevent further exacerbation of other problems associated with concentrations of HMOs. Residents have reported that HMOs have negative impacts such as noise disturbance, untidiness and parking problems. However, it should be noted that the Article 4 Directions will give no additional powers to control existing HMOs in the area; and
  - It will give residents a chance to have their say on any proposals to convert housing to HMOs in the area and give scope for elected members on the Planning Applications Committee to take decisions on these applications.
30. Employing Article 4 Directions to restrict the conversion of C3 Dwellinghouses to C4 Houses in Multiple Occupation could also have various other consequences which are discussed in turn below. Given that the specified areas are relatively limited in size (affecting 6% of the city's housing stock), the impacts discussed below may be minimal.



31. Houses in multiple occupation offer the most affordable housing option to students. The University of East Anglia (UEA) has ambitious plans to grow student numbers and Norwich University of the Arts also has modest expansion plans. While some of these students may be able to be accommodated in the existing and emerging purpose-built student accommodation blocks, there will inevitably be some additional pressure on the city's housing stock. As prospective landlords seek out properties which are easiest to convert to HMOs, the areas of the city outside the two specified Article 4 areas may experience a higher number of conversions to HMOs. This may be especially noticeable in the streets which are immediately adjacent to the two specified areas: Edinburgh Road; Connaught Road; Winter Road; and Wellington Road.
32. In principle, Article 4 Directions can increase landlords' costs and limit the supply of HMOs while demand continues to rise. This can lead to an increase in rents and a reduction in the quality of accommodation.
33. Article 4 Directions can also distort the housing offer by decreasing the total number of HMOs available to tenants. HMOs form a valuable part of Norwich's housing market and many students and young professionals rely on them as their only accommodation option. HMOs are especially important in this time of welfare reform and changes to affordable housing requirements.
34. If the Article 4 Directions were introduced, properties which are currently let as HMOs in these areas would be able to continue to be let as such. The permitted development right to change the use of a property from small HMO (use class C4) to dwellinghouse (use class C3) would still exist so a landlord of an HMO could choose to let the house as a dwellinghouse without the need for planning consent. By doing this, though, the property's lawful use class would have been changed from C4 to C3 and therefore planning permission would be required to change the property back to an HMO. This situation would discourage landlords from switching between the two use classes, and there is therefore a risk that in an attempt to retain a property's C4 use class a landlord may opt to keep a property vacant for a period of time rather than let it as a C3 dwellinghouse. In practice a landlord is unlikely to struggle to let a C4 HMO given the pressures on the housing stock in Norwich, but nevertheless this is a point worth considering.
35. It is worth considering why there is such a clear concentration of HMOs in this area of Norwich. It is evident that students and young professionals on modest incomes which do not allow them to live in more expensive forms of accommodation choose to live in the areas off Unthank Road and Dereham Road. The area is located on key transport routes between the Norfolk & Norwich University Hospital (NNUH), the UEA, and the city. Many of the properties in the area are relatively small in size and offer little in the way of outside space, thereby not necessarily meeting the needs of families.
36. Implementing Article 4 Directions could also have an impact on house prices in the specified areas. While this is not a material planning consideration, it is certainly worth the council considering the full impacts at this stage since we are not considering whether planning permission should or should not be granted only whether such proposals should be brought under planning control. There are two potential impacts on house prices:

- Landlords are discouraged from investing in the affected areas due to the restrictions on conversions to HMOs. When a house is put on the market, the number of potential buyers is lower and so house prices rise at a slower rate than they would have done if no Article 4 Directions were introduced.
- The character of the area is better protected and so owner-occupiers are attracted to the specified areas. When a house is put on the market, owner-occupiers are willing to pay a higher price than they would have done without the introduction of Article 4 Directions.

37. While it is difficult to predict which, if either, of these outcomes is more likely, officers are more confident that there will be a reduction in house prices as compared to that which would exist without the Direction because landlords will be deterred from investing in the area.

38. It is also important to note that the proposed Article 4 Directions would simply control the concentration of HMOs and would have no impact on the ongoing management or condition of existing or new HMOs.

39. A decision to implement the Article 4 Directions would also have some resource implications:

- There would be implications due to the administration, consultation and reporting work needed to serve the Directions. This would divert staff from other tasks and may involve the reprioritisation of work within the planning service. It would also create additional costs in terms of advertising in the press, printing and erecting site notices, printing and sending letters to 3,617 properties etc. However, these costs are expected to be able to be met from within existing budgets.
- Once in place, any planning applications which are received as a result of the Directions would create additional work as these applications would need to be determined. Because the council has actively taken away permitted development rights, these applications cannot attract a fee as set out in Section 5 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 so there would be no income to offset these costs. The level of additional cost incurred is hard to predict as it will depend on the number of applications received and whether they are reported to Planning Applications Committee. However, it is not anticipated that there will be a substantial number of these applications because of the ability of landlords to invest in other parts of the city. More significant costs may be incurred however, in defending the council's decisions at planning appeal or through investigating allegations of unauthorised conversion and pursuing enforcement action that may follow. The scale of the additional burden that could be created through the new regulatory measure is hard to predict at this stage although is expected to be small in relation to existing budgets.

## **Recommendation**

40. To consider the recommendation of Sustainable Development Panel and, if minded to accept it, resolve:

- a) to commence the required consultation on the designation of non-immediate Article 4 Directions in the two areas illustrated on Map 2 of the appendices,

removing permitted development rights which would otherwise allow dwellinghouses to be used as small houses in multiple occupation without first obtaining planning permission; and

- b) that the results of the consultation be reported to a future meeting of Cabinet; and, if Cabinet is minded to confirm the Directions at this stage,
- c) to commence subsequent procedures to confirm the Directions.



## Integrated Impact Assessment



**NORWICH**  
City Council

### Report author to complete

<b>Committee:</b>	Cabinet
<b>Committee date:</b>	13 <sup>th</sup> July 2016
<b>Head of service:</b>	Head of Planning Services
<b>Report subject:</b>	Possible introduction of Article 4 Directions to seek to bring the change of use of homes into small houses in multiple occupation under planning control
<b>Date assessed:</b>	4 <sup>th</sup> July 2016
<b>Description:</b>	Integrated Impact Assessment for a possible introduction of Article 4 Directions to seek to bring the change of use of homes into small houses in multiple occupation under planning control

	Impact			
<b>Economic</b> (please add an 'x' as appropriate)	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Finance (value for money)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There will be some resource implications for the council's Planning department. See paragraph 39 of the report for more detail.
<b>Other departments and services</b> e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b>ICT services</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b>Economic development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b>Financial inclusion</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There could be some negative effects on rents within the specified areas. See paragraph 32 of the report for more detail.
<b>Social</b> (please add an 'x' as appropriate)	<b>Neutral</b>	<b>Positive</b>	<b>Negative</b>	<b>Comments</b>
<b>Safeguarding children and adults</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b><u>S17 crime and disorder act 1998</u></b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b>Human Rights Act 1998</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
<b>Health and well being</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	An Article 4 Direction could protect the character of the specified areas and protect the health & well-being of residents from the negative impacts associated with a high concentration of HMOs. See paragraph 29 of the report for more detail.

	Impact			
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>There may be both positive and negative impacts.</p> <p>Community cohesion could be enhanced within the specified areas as the negative impacts associated with a high concentration of HMOs are alleviated and the existing social balance of the areas are maintained..</p> <p>However, community cohesion could be damaged by the distrust that the Article 4 Directions signify. There is the potential for a Article 4 Directions to create animosity between dwellinghouse residents and HMO residents. There is also a potential for some resentment being created in areas immediately outside the Article 4 Directions if there is particular increase in HMO investment in these areas.</p>
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
Advancing equality of opportunity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	There could be a negative impact on the supply and quality of HMOs within the city and a rise in rents. See paragraph 32 of the report for more detail.
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact

	Impact			
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impact

Recommendations from impact assessment

Positive

The benefits of the proposal are discussed in detail in paragraph 29 of the report.

Negative

The negative impacts of the proposal are discussed in detail in paragraphs 30 to 39 of the report.

Neutral

Issues









