



REPORT OF: Chair of the Planning and Highways Committee

TO: Council Forum

ON: 26 January 2012

SUBJECT

Proposed Article 4 Direction to control the change of use from a family dwelling to a house in multiple occupation (HMO).

1. PURPOSE OF THE REPORT

To seek Council approval to the:-

- making of an Article 4 Direction to control the change of use of a small family dwelling to a house in multiple occupation (HMO) within the area defined on the attached plan in Appendix 1. This includes 5 wards within Blackburn (Shear Brow, Corporation Park, Wensley Fold, Mill Hill and Ewood) and 2 in Darwen (Sunnyhurst and Sudell);
- commencement of the required local consultation.

2. OPTIONS

The Planning and Highways Committee have endorsed the proposed Article 4 Direction as their preferred option based on the available evidence and their priority that a robust direction is put in place as quickly as possible within the defined area.

If at a later date similar issues relating to HMO development are identified in other parts of the borough which would justify the making of a direction a separate Article 4 Direction will be brought forward for Members' consideration.

3. RECOMMENDATIONS

1. To note the recommendation of the Planning and Highways Committee to approve the making of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 as amended, with a 12 month lead in period, removing the permitted development right granted by Schedule 2 Part 3 Class 1 of that Order, which allows a change of use from a dwelling to a house in multiple occupation with between 3 and 6 occupants.
2. To approve the commencement of local consultation, on the making of the Article 4 Direction, over a 6 week period during January/February 2012.

4. BACKGROUND

Elected members, residents, businesses and other stakeholder agencies including the PCT have increasingly expressed their concerns at the detrimental impact that the high numbers and localised concentrations of houses in multiple occupation (HMO) is having on the physical, economic and social fabric of communities and neighbourhoods across the borough.

A recent change in national planning regulations has meant that the change of use of a dwelling into an HMO with between 3 and 6 unrelated residents is now classed as "permitted development" and hence no longer requires planning permission. This means that the Council/local planning authority has no planning controls over the conversion of small dwellings to an HMO.

An Article 4 Direction would allow the local planning authority to withdraw these permitted development rights within the defined area.

Full detail of the background to this proposed approach to restore Council control over this type of development within a defined area is contained in the appended Planning and Highways Committee report dated 15 December 2011.

Once the consultation is complete the outcome will be reported to Members with a recommendation to confirm the Direction, modify it or not pursue it as appropriate.

5. RATIONALE

The rationale and key issues including information on the evidence base to support the proposed action are detailed in the appended Planning and Highways Committee report.

6. POLICY IMPLICATIONS

Detailed in the appended Planning and Highways Committee report.

7. FINANCIAL IMPLICATIONS

Detailed in the appended Planning and Highways Committee report.

8. LEGAL IMPLICATIONS

Detailed in the appended Planning and Highways Committee report.

9. RESOURCE IMPLICATIONS

Detailed in the appended Planning and Highways Committee report.

10. EQUALITY IMPLICATIONS

The equality analysis and impact assessment will be completed when feedback from the local consultation is available.

11. CONSULTATIONS



Detailed in the appended Planning and Highways Committee report.

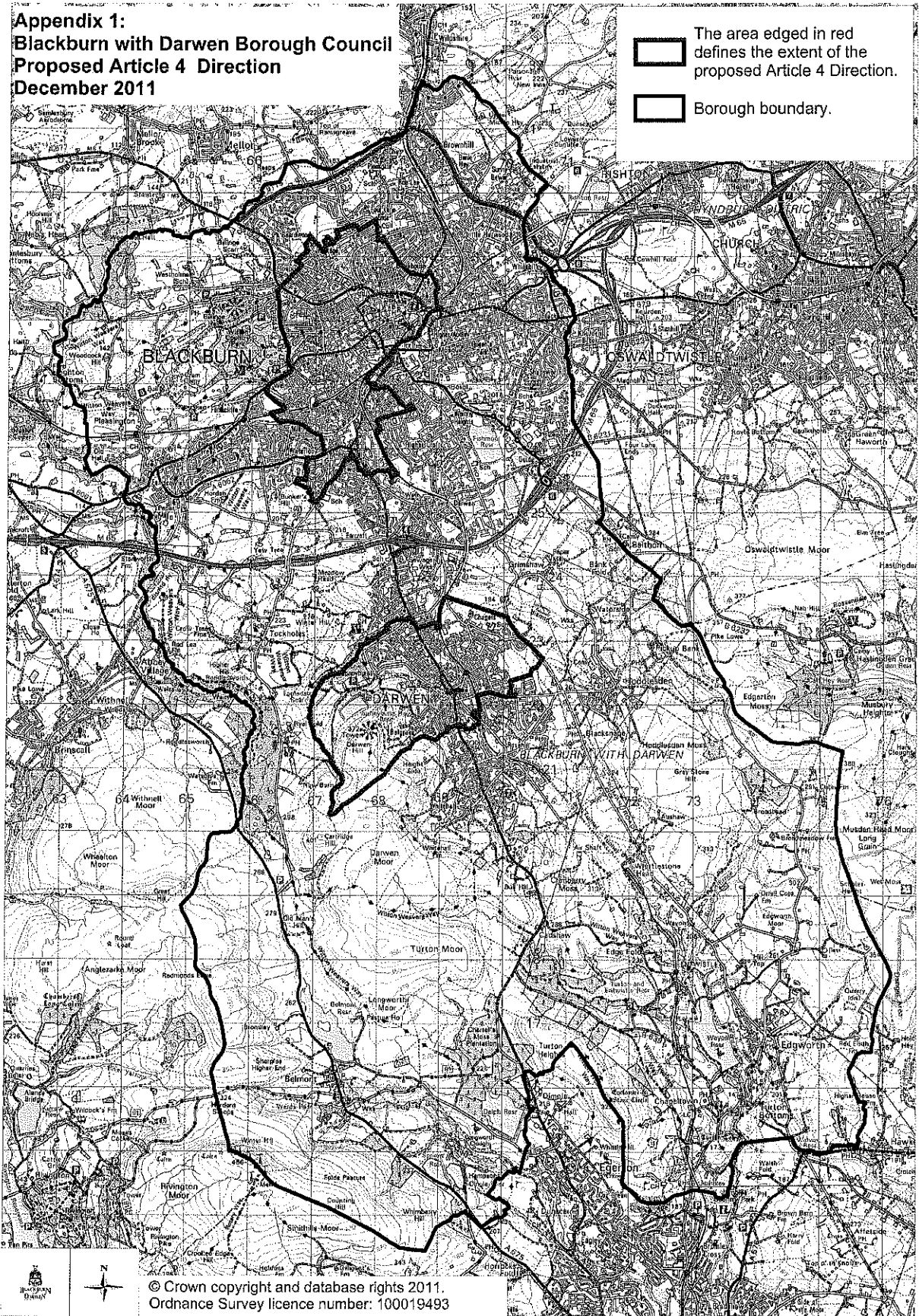
Cllr Jim Smith
Chair of the Planning and Highways Committee

CONTACT OFFICER: Gill Finlay, Principal Planning Officer, Planning Policy
Team, ext. 5418
DATE: 04 January 2012
BACKGROUND PAPERS: Planning and Highways Committee report; 15 December
2011
Discussion paper for Cross Party Members' Planning
Working Group; 13 September 2011

Form Reference: v1.0

**Appendix 1:
Blackburn with Darwen Borough Council
Proposed Article 4 Direction
December 2011**

-  The area edged in red defines the extent of the proposed Article 4 Direction.
-  Borough boundary.



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Departments of Regeneration and Environment, Housing and Neighbourhoods

ORIGINATING SECTION: Planning (Planning Policy Team)

REPORT TO: Planning and Highways Committee

DATE: 15 December 2011

TITLE: Proposed Article 4 Direction to control the change of use from a family dwelling to a house in multiple occupation (HMO).

WARDS AFFECTED:

Shear Brow, Corporation Park, Wensley Fold, Mill Hill, Ewood, Sudell and Sunnyhurst

COUNCILLORS:

Shear Brow – Cllrs Khonat, Khonat and Solkar

Corporation Park – Cllrs Mahmood, Rehman and Wright

Wensley Fold – Cllrs Harling, Hollern and Khan

Mill Hill – Cllrs Doherty, Smith and Talbot

Ewood – Cllrs Bateson, Oldfield and Smith

Sudell – Cllrs Browne, Davies and Entwistle

Sunnyhurst – Cllrs Graham, Smith and Taylor

1. PURPOSE OF REPORT

- 1.1 To brief the Planning and Highways Committee on issues relating to the making on an Article 4 Direction to control changes of use from a small family dwelling to a house in multiple occupation (HMO) within a defined area in the Borough.
- 1.2 To recommend to Committee an approach to making the Direction, namely a non-immediate Direction that will come into effect in 12 months, covering the Wards of Shear Brow, Corporation Park, Wensley Fold, Mill Hill, Ewood, Sunnyhurst and Sudell.
- 1.3 To invite Committee to endorse the proposed approach and recommend that Full Council approve the making of the Direction and the commencement of consultation.

2. BACKGROUND

- 2.1 Elected members, residents, businesses and other stakeholder agencies including the PCT have increasingly expressed their concerns at the detrimental impact that the high numbers and localised concentrations of houses in multiple occupation is having on the physical, economic and social fabric of communities and neighbourhoods across the borough.
- 2.2 The establishment of larger HMOs (6 or more residents) requires planning permission and the Council is able to consider applications against its policies. However a recent change in national regulations has meant that the change of use of a dwelling into an HMO with between 3 and 6 residents now classes as "permitted development" and hence no longer requires planning permission.
- 2.3 An Article 4 Direction is a planning tool available to local planning authorities, which

allows them to withdraw permitted development rights. A discussion paper outlining the Council's options for an Article 4 Direction to withdraw permitted development rights for the change of use from a small family dwelling to a house in multiple occupation (HMO) was presented to the Cross Party Member's Planning Working Group on 13 September 2011. The paper outlined the evidence available to justify the making of the Direction including its extent and an appraisal of alternative delivery options.

- 2.4 Under the national regulations Article 4 Directions can be introduced in one of two ways: either with immediate effect; or with a 12-month lead-in time. If a Direction is made with immediate effect, the Council becomes liable to pay compensation to any property owner who is refused planning permission, or granted permission with restrictive conditions, for development which would not have required consent prior to the Direction being made. This liability applies for a period of 12 months, and can relate to a range of losses potentially suffered by the unsuccessful applicant including loss of property value. If a Direction is introduced with a 12-month lead-in time there is no liability for compensation.
- 2.5 Members were initially keen for an immediate Direction to be introduced in order to gain control over this type of development as early as possible. However an immediate Direction may have involved claims for compensation in cases where a planning application for the conversion to an HMO was refused or approved with conditions. The potential scale of compensation was difficult to quantify due to the number of variables that could be taken into consideration in any one claim and therefore on balance Members felt the potential financial risk to the Council was unacceptable.
- 2.6 On this basis the Cross Party Group confirmed, at its meeting in November, their preference for a non-immediate Direction. This option eliminates any compensation risk to the Council. However it requires 12 months' notice in advance of the date on which the Direction will take effect.
- 2.7 The Planning Policy Team have contacted a significant number of other local authorities including all in Pennine Lancashire and Greater Manchester to gather information on whether authorities have progressed a similar Article 4 Direction in response to similar HMO issues and/or on the format. The majority of those taking action, with the exception of one authority, in Northampton, have all implemented or are working towards implementing a non-immediate Direction.

3. RATIONALE

3.1 The problems associated with high concentrations of HMOs have been recognised nationally by residents and organisations including the National HMO Lobby, the press and the government. In 2008 the government produced a report¹ prepared on behalf of the Department for Communities and Local Government by ECOTEC Research and Consulting. This report identified the most significant impacts to be:-

- Anti-social behaviour, noise and nuisance
- Imbalanced and unsustainable communities
- Negative impacts on the physical environment and streetscape
- Pressures on parking provision
- Increased crime
- Growth in private rented sector at the expense of owner occupation
- Pressure on local community facilities, and
- Restructuring of retail, commercial services and recreational facilities to suit the

¹ 'Evidence Gathering – Housing in Multiple Occupation and possible planning responses'

lifestyles of the predominant population.

- 3.2 It is apparent from the evidence gathered to support this report's recommendations that the issues in Blackburn and Darwen are cumulative and are impacting on the Council's agendas for growth, inward investment and ongoing regeneration, and on service delivery and budgets.
- 3.3 It is feasible that a number of HMOs in Blackburn are being occupied by young, working persons or households. At a time when owner occupation is unaffordable to many current non-owners sharing a dwelling with other similar households represents a rational response to market conditions. However in discussion with housing and health colleagues there is a strong view that the typical Blackburn resident in an HMO, particularly those within the relatively deprived inner area residential neighbourhoods, where the greatest concentrations are located, tends to be a vulnerable person with a chaotic lifestyle.
- 3.4 The range of issues is complex and cut across a wide range of stakeholder activities and responsibilities. Acknowledging that a single intervention and/or agency alone cannot deal with all of the issues a multi agency group has recently been established, chaired by the Head of Housing to share information, and co-ordinate stakeholder investment, intervention and actions relating to the improvement and control of HMOs.
- 3.5 Planning has a key role within this group in relation to the control of new development including conversions via its policy making and interpretation and development management functions. However at the same time the scope of planning influence is limited; it is not able to intervene in any property management issues; it cannot control any established HMOs unless there are planning enforcement issues, and; it is not able to include, if planning consent is granted, a condition restricting the end user group.
- 3.6 In October 2010 the government introduced amended planning legislation which removed the requirement to obtain planning permission for the change of use of a small family dwelling to an HMO; this conversion is now permitted development. This means that planning has no powers to control these conversions.
- 3.7 The potential implications of this position within Blackburn and Darwen are:-
- i. Potential increase in supply of poor quality affordable rented accommodation as property owners and/or landlords are free to set up smaller HMOs wherever they wish within the Borough without regard to the impacts and without any requirement to comply with conditions that would otherwise be attached to planning decisions;
 - ii. There are concerns that the recent changes to housing benefit are likely to impact on both supply and demand. It is expected that the reductions in benefit will encourage landlords to convert their properties to HMOs to increase the number of occupants and rental income;
 - iii. Other controls are available to the Council, in some cases, relating to for e.g. housing standards and environmental health. However planning considerations such as creating mixed communities, safeguarding the character and amenity of a neighbourhood or the provision of adequate car parking provision is not dealt with through other means;
 - iv. It will be difficult for the Council to monitor changes/trends in the number and concentration of HMOs across the borough.
- 3.8 The government's advice is that those local authorities who are experiencing problems with excessive HMO developments can initiate local action in response to local issues and their need to control the spread of HMO conversions via the

introduction of an Article 4 Direction.

- 3.9 An Article 4 Direction will not prevent the conversion to an HMO. The principal benefit of the proposed intervention is that it will trigger the need for planning consent within those areas (7 wards) which have been identified as the more problematic within the Borough, before the development can take place. This will enable the Council to fully consider the implications of each proposal on merit and against policy and where appropriate include conditions on the decision.
- 3.10 The most relevant planning policy for determining a planning application for change of use to an HMO is saved Local Plan policy H9: Conversion of buildings into flats and houses in multiple occupation.
- 3.11 Complementary legislation also in October 2010, confirmed that there will be no liability on the local authority to pay compensation for the removal of permitted development rights when they give 12 months notice in advance of a Direction taking effect.
- 3.12 The need for planning permission for all other types of HMO remains unchanged.

4. KEY ISSUES

Current planning position relating to HMOs

- 4.1 In April and October 2010 a number of amendments to planning rules² relating to houses in multiple occupation (HMOs) came into effect. The changes included:-
- i. The introduction of a new Use Class C4: Houses in multiple occupation to distinguish it from a dwellinghouse;
 - ii. Guidance on the circumstances which would trigger the need for planning consent for the conversion of a house to an HMO, and
 - iii. Guidance on the use of Article 4 Directions to remove the permitted development rights for the conversion of a small dwelling (Use Class C3:dwellinghouses) to an HMO (C4)

- 4.2 The amendments to the Use Classes Order³ mean that for planning purposes an HMO can now be defined in 2 ways:-

1. Use Class C4: Houses in multiple occupation.

This covers small shared houses or flats occupied by 3-6 **unrelated** individuals who share **basic amenities**

unrelated – means the occupants do not have a relationship by blood, marriage or co-habitation;

basic amenities – this includes kitchen, bathrooms and toilets.

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- ² Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010/653) – April 2010
 - Town and Country Planning (General Permitted Development) (Amendment) (England) Order (SI 2010/654) – April 2010
 - Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2010 (SI 2010/2134) – October 2010
 - Town and Country Planning (Compensation) (No 3) (England) Regulations 2010 (SI 2010/2135) – October 2010

³ Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010/653) – April 2010

2. Large houses in multiple occupation – those with more than 6 people sharing.

4.3 The HMOs to be controlled via the proposed Article 4 Direction are those defined by Use Class C4 only.

Procedure and powers for making an Article 4 Direction

4.4 National guidance requires a robust justification to be placed to clarify an Article 4 Direction's purpose and confirm the extent of the geographic areas to be included. The guidance confirms that local planning authorities are able to consider making Article 4 Directions only in exceptional circumstances where the evidence suggests that permitted development would harm local amenity and/or the proper planning of the area.

4.5 Since April 2010 the local planning authority is able to confirm all Article 4 Directions. Previously these needed to be referred to the Secretary of State.

4.6 Once confirmed the Direction is permanent unless cancelled by the local planning authority or the Secretary of State.

Justification/evidence for making an Article 4 Direction

4.7 It is considered that the available evidence provides an acceptable justification for the withdrawal of permitted development rights via an Article 4 Direction.

4.8 A range of colleagues across the Council and representatives from agencies with responsibilities for the key issues outlined earlier have been contacted as part of evidence gathering to support the justification for the making of the proposed Article 4 Direction. Reference to the information which has been collated and analysed is provided in the background documents to this report. A summary of the key findings is attached at Appendix 2.

4.9 The most commonly identified characteristics and issues in Blackburn with Darwen include:-

- Generally located within deprived areas where community and neighbourhood sustainability is already fragile;
- Lifestyle and lack of household structure creates an imbalanced community and a breakdown of social cohesion;
- Negative impact on image on neighbourhood, depresses owner occupied house prices and creates a skewed tenure profile to private rented sector;
- Undermining of neighbourhood character and amenity;
- Increased number of environmental issues including fly tipping and accumulated rubbish;
- Increased crime, perceptions of crime and personal safety, particularly in and immediately adjacent to the town centre;
- Negative impact on user experience and investor confidence in the town centre and residential neighbourhoods, and;
- Anti social behaviour.

4.10 Whilst it is not possible to say categorically that all of the incidents and issues identified above and in Appendix 2 have been generated directly by the presence of HMOs and/or HMO residents it is noticeable from the analysis that there is a recurring high occurrence of these problems in those areas which also tend also to be where high concentrations of HMOs have become established.

4.11 On the basis of all of the gathered evidence the conclusion is that any increase in the number of HMOs in areas of existing high concentrations will add to the detrimental and cumulative impact of this activity on both the community and the neighbourhood, which in turn will harm local amenity. Both members and officers

consider it is essential that the Council is able to take action to prevent this happening.

Risk assessment

4.12 The implications of providing permitted development rights to property owners and landlords have been referred to above in para 3.8 above. By restoring planning powers to control the change of use to an HMO the Article 4 Direction will reduce this fallout. However at the same time there are a number of potential risks associated with both the making and confirmation of a Direction. Risks and actions to reduce the impact include:-

Risk	Mitigating actions
<p>The current situation will remain in place for a further 12 months. Over this time there is a possibility of a 'rush' of conversions to establish the use and avoid the future requirement for planning consent. This could potentially have a damaging impact on already problematic neighbourhoods.</p>	<p>The planning system is only one part of the regulatory process available to the Council to manage the conversion of properties to multiple occupation. The Council's building control services, housing, environmental health and trading standards as well as the Fire Service, all have a part to play in ensuring accommodation is of an acceptable and safe standard.</p> <p>In addition a number of complementary items of work are being progressed to improve the control, quality and management of HMOs. The Planning Policy Team is preparing a Supplementary Planning Document, which will provide added guidance on residential conversions, space standards and a more detailed interpretation of the saved Local Plan policy dealing with the conversion of buildings to an HMO.</p> <p>The Environment, Housing and Neighbourhoods Department are carrying out a review of the scope to introduce more selective landlord licensing areas in both Darwen and Blackburn over future years.</p>
<p>Any planning application that is required for conversion to an HMO in areas covered by an Article 4 Direction is exempt from the usual planning fee.</p>	<p>The costs of processing related planning application will be met through the Department's existing budget</p>
<p>The introduction of an Article 4 Direction could indirectly result in a reduction in the supply of HMOs which in turn may impact on those groups who typically occupy this type of low cost accommodation.</p>	<p>The Council's Strategic Housing Market Assessment (SHMA) does not identify a need for this type of accommodation</p>
<p>Transfer or displacement of problems to other areas not covered by an Article 4</p>	<p>This was considered in the preparation of the evidence base, which included a</p>

Risk	Mitigating actions
Direction	<p>mapping of known HMOs, to justify the making of the Direction. The areas outside the proposal do not have high concentrations of HMOs and it was considered this used would be managed out by the relatively higher value housing market in the surrounding neighbourhoods.</p> <p>The guidance advises that the Council should regularly monitor and review the appropriateness of their Article 4 Directions, considering whether the original rationale for the Direction remains valid. A key part of this process will be to identify trends and consider that the extent of the Direction is fit for purpose; feedback may suggest the area included is reduced or possibly extended.</p>
Article 4 cannot be applied retrospectively to development carried out before the Direction is confirmed or to development that has started before the Direction takes effect.	

4.13 There will not be any operational implications relating to having an Article 4 Direction in place. All planning applications that are required as a consequence of the Direction will be processed in line with established working procedures.

Next Steps

4.14 It is proposed that the Council implements a non-immediate Article 4. This option requires a 12 month lead in period before the Direction becomes effective. The benefit of this option to the Council is that where 12 months notice is given in advance of a Direction taking effect the financial risk of a claim for compensation for the removal of permitted development rights, if a planning application is refused is removed. On this basis, if confirmed, it is expected that the Direction could become operational by January 2013, subject to Council Forum approval on 26 January 2012, unless there is a need for any material changes in response to the representations received during consultation.

4.15 The process of making an Article 4 Direction requires local consultation. It is proposed that the consultation will be carried out in January/February 2012 for a 6 week period.

4.16 The Council is obliged to take account of all comments made during the consultation period and consider whether these are material to the Direction as originally proposed. If significant amendments are needed this may trigger the requirement for further consultation. In this case the date for confirming the Direction will need to be reviewed.

4.17 Once the consultation is complete the outcome will be reported to Members along with recommendations to confirm the Direction, modify it or not pursue it as appropriate.

5. POLICY IMPLICATIONS

- 5.1 The making of the Article 4 Direction will be carried out in accordance with national planning guidance from the Department for Communities and Local Government.
- 5.2 All planning applications received in response to the requirements of the Article 4 Direction will be considered with reference to saved policies in the Blackburn with Darwen Borough Local Plan (April 2002) and the Core Strategy (January 2011).

6. FINANCIAL IMPLICATIONS

- 6.1 The costs for making the Article 4 Direction including local consultation and once in place, staff time to administer any planning application submitted as a consequence of the Direction will be met from existing resources.

7. LEGAL IMPLICATIONS

- 7.1 The Council's constitution states that certain changes shall be by the Planning and Highways Committee making a recommendation to the Executive. In this instance it is considered that removal of permitted development rights in 7 wards is sufficient to warrant the matter being brought to Council Forum in order to reduce the risk of challenge.
- 7.2 The Direction will be made under the provisions of Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, as amended, in line with the procedure set out in Article 5 of that Order.
- 7.3 Consultation is discussed below and must be meaningful and considered in order to be effective and not potentially subject to judicial review.

8. RESOURCE IMPLICATIONS

- 8.1 The making of the Article 4 Direction will be managed by the Strategic Planning Group's Planning Policy Team in close collaboration with colleagues in Legal Services.
- 8.2 Once the Direction has been confirmed and takes effect any planning application received for the conversion of a small family dwelling to an HMO within the defined areas will be processed by the Council's Development Management Team.

11. EQUALITY IMPLICATIONS

- 9.1 An equality analysis and assessment will be carried out.

10. CONSULTATIONS

- 10.1 Council officers across key departments together with Lancashire Police have provided evidence to support the justification for the making of the Direction; they have assisted with the case for both its purpose and extent.
- 10.2 A draft version of the Cross Party Member's Planning Working Group discussion paper was circulated for information and comment via the Blackburn with Darwen Multi-Agency Housing Needs Group. This group's membership draws from a wide range of stakeholder groups with responsibilities for housing, health, supporting people services, community safety, policing, employment, benefit payments, probation services, planning, development and economic regeneration.

- 10.3 National guidance provided by the Department for Communities and Local Government requires that local consultation is carried out before the Direction is confirmed by the local authority.
- 10.4 The making of the Article 4 Direction is a 2 stage process. The first stage involves the Council making the Direction and carrying out local consultation within the areas where it is proposed the Direction will take effect. The guidance confirms the notification procedure which requires the Council to publish and display local advertisements and site notices and other media. This will provide an opportunity for local residents, property owners, property agents and stakeholder groups to make comments on the proposal.
- 10.5 The Council is also required to notify the Secretary of State of the proposal.
- 10.6 It is proposed that the consultation period will extend over 6 weeks during January/February 2012. A notice will be published in the local newspaper and on the Council's website and in addition to the requirements noted above copies of the information will be available in both town halls, the Central Library, Darwen Library and local libraries in the areas where the Direction is proposed.
- 10.7 Any representations received during the consultation period must be taken into account in determining whether to confirm the Direction. If this involves any material change to the Direction there will be a need to re-consult.
- 10.8 The Council will need to take account of all comments. If there are no issues with the original proposal then there is no reason why the Council cannot proceed to confirm the Direction and the date on which it will become effective. However if any of the comments require a material change to the proposed Direction there may be a need to repeat the consultation.

Monitoring and review

- 10.9 Once the Direction takes effect there is a responsibility on the Council to regularly monitor and review the appropriateness of the Direction including consideration of whether the original rationale and/or the extent of the Direction remains valid.

11. RECOMMENDATIONS

1. That Committee note the issues described in the report and the rationale behind the proposed approach;
2. That Committee endorse the making of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 as amended, with a 12-month lead-in period, removing the permitted development right granted by Schedule 2 Part 3 Class I of that Order, which allows a change of use from a dwelling to a house in multiple occupation with between 3 and 6 occupants.
3. That Committee recommend that Council Forum approve the making of such Article 4 Direction, with the required consultation to take place over a 6 week period over January/February 2012

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