

**ORIGINATING SECTION:** Strategic Planning

**REPORT TO:** Planning and Highways Committee

**DATE:** 16 June 2022

**TITLE: Proposed Introduction of an Article 4 Direction - Removal of permitted development rights for the change of use from Use Class C3 (dwelling-houses) to C4 (HMOs)**

**WARDS AFFECTED: All**

**COUNCILLORS: All**

## 1. PURPOSE OF REPORT

- 1.1 To brief the Planning and Highways Committee on current issues relating to Houses of Multiple Occupation (HMOs) and set out the justification for making a new Article 4 Direction to control the change of use from a dwellinghouse to a HMO and to set out the new designated area which that Direction will apply to. (The new Article 4 Direction designation is proposed to cover the whole urban area of Blackburn with Darwen and will replace the existing Article 4 Direction.)
- 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 urban areas of the Borough (and so affecting all wards). A map of the proposed Article 4 Direction area is provided as Appendix 1.
- 1.3 To invite Committee to endorse the proposed approach and recommend that Council Forum approve the making of the Direction (at the July Forum) and the commencement of consultation.
- 1.4 To recommend that Council Forum agree the cancellation of the existing Article 4 Direction, but only on the condition that the new direction is confirmed at a later date, at which point it will be cancelled on the date that the new Direction takes legal effect.

## 2. BACKGROUND

- 2.1 In April 2010, the Government introduced a new Use Class C4 (C4) to the Use Classes Order, relating to Houses of Multiple Occupation (HMOs) covering small shared houses or flats; defined as being occupied by 3 to 6 unrelated individuals who share basic amenities. In October 2010, the Government then introduced legislation, under 'permitted development rights' to allow the change of use of a dwellinghouse to a C4 use without the need to apply for planning permission. Whilst introduced through previous legal Orders, these 'permitted development' rights are now legislated through The Town and Country Planning (General Permitted Development) (England)

Order 2015 (as amended)<sup>1</sup>, or GPDO for short, which gives permission to carry out certain 'permitted development' subject to certain conditions.

2.2 The GPDO (2015) (Part 3, Class L (part b)) grants permitted development rights to allow the conversion from a use falling within Use Class C3 (dwelling houses) to a use falling within Class C4 (HMOs), and relate only to dwelling houses of not more than 6 residents. Proposals for HMOs containing 7 or more residents already require planning permission to be sought.

2.3 In usual circumstances, the conversion of a dwelling house to a HMO (for 3 to 6 persons) does not therefore require planning permission to be sought. However, the Government recognises that sometimes local circumstances will mean greater control needs to be given to local powers to manage such types of development. Consequently, Article 4 of the GPDO (2015) allows Local Planning Authorities (LPAs) to remove permitted development rights from specified areas under their management, thereby requiring applicants to apply for planning permission and enabling the LPA the opportunity to consider a proposal in more detail. These are called Article 4 Directions.

2.4 In 2012, Blackburn with Darwen Council agreed to introduce a (non-immediate) Article 4 Direction to remove permitted development rights for the conversion of C3 to C4 uses within the wards then known as Shear Brow, Corporation Park, Wensley Fold, Mill Hill, Ewood, Sudell and Sunnyhurst. The Direction was introduced in response to concerns from elected members, residents, businesses and other stakeholder agencies, at the detrimental impact that high numbers and localised concentrations of HMOs were having on the physical, economic and social fabric of communities and neighbourhoods across the borough.

2.5 Later in 2012, a Supplementary Planning Document (SPD) relating to planning applications for HMOs was consulted upon and adopted, producing clear and detailed local policy guidance to set out how and why HMOs were affecting the sustainability of communities and neighbourhoods in the borough, and the very limited circumstances where they may be supported.

2.6 In February 2013, the Article 4 Direction (agreed in January 2012) came into force requiring all changes to C4 uses within the defined Article 4 areas to seek planning permission. Small HMOs outside of the defined areas, where issues of concentration had not been identified, still retained their permitted development rights.

2.7 In accordance with national planning guidance (para 49)<sup>2</sup>, the Council report accompanying the original Article 4 Direction (2012) set out its intent to monitor the appropriateness of the Direction, including review and consideration of whether the original rationale and/or extend of the Direction continues to be valid.

2.8 Whilst the planning actions taken so far to resist additional HMO approvals in those designated areas are considered to have been successful, there have been increasing concerns, from a variety of Council services, that the number of HMO beds in the borough is growing and, with it, concerns regarding the amenity harm and associated impact on public services and communities. Despite the Article 4 Direction, over recent years the borough has seen a considerable increase in the

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<sup>1</sup> [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [When is permission required? - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

provision of HMO accommodation, and the Council now consider there to be an over-provision of such accommodation, which includes providing for needs imported from outside of the Borough. The consequence of this proliferation of HMOs are multiple and varied, including impacting on amenity and well-being, limiting opportunities for investment and regeneration, reducing the Council's ability to address the housing supply imbalance, and increasing the demand for frontline services.

2.9 The growth in HMOs and the increase in associated issues, alongside the progression of the Council's emerging Local Plan (2021-2037) means this is now an opportune time to review the Article 4 restrictions and their designated geographic areas. Whilst acknowledging that planning is only one part of a number of preventative actions to be implemented by the Council as a whole, Planning continues to be a key tool in the management of HMOs in the Borough.

### **3. RATIONALE**

3.1 The emerging Local Plan (2021-2037) contains a new policy (Policy DM6: HMOs) which states planning permission will not be granted for any new HMOs in any part of the borough during the Plan period. However, this relates only to those HMO developments requiring planning permission and so Article 4 Directions are a necessary tool to 'catch' HMO developments that could otherwise be carried out under permitted development rights.

3.2 Therefore, it is the Council's intent to extend the use of an Article 4 Direction to other appropriate areas of the borough to fulfil the intended policy aims of DM6. Under this approach, planning applications will be required for HMO conversions in the areas the Article 4 Direction will cover, and then the policy will guide the assessment of those planning applications [to refuse them]. Whilst the policy wording does remain subject to Government examination in 2022/23, and may ultimately not be supported or adopted in this form, the principle of evidencing, reviewing and establishing changes to the Article 4 Direction areas remains relevant for the Council to facilitate stronger management of HMO conversions in those areas. The new Article 4 Direction designation is proposed to cover the whole urban area of Blackburn with Darwen. Once in effect, it will replace (modify and supercede) the existing 2012 Direction.

3.3 Through the emerging Local Plan, the Council have an ambition for balanced growth in the Borough, which includes a focus on the provision of jobs and economic growth, regenerating the town centres of Blackburn and Darwen, and addressing inequalities in health and deprivation. Aside this, the Council's corporate priorities include a focus on reducing health inequalities, supporting connected communities, safeguarding the most vulnerable people and supporting town centres and businesses. Based on the available data, it is likely that this work will be significantly undermined unless tighter management of HMO accommodation is introduced, and with it greater protection of the amenity of local neighbourhoods, strengthening communities, improving housing and working to address deprivation and health inequalities.

3.4 The National Planning Policy Framework (NPPF)<sup>3</sup> (Paragraph 53) states that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where a Direction is necessary to protect local amenity or the well-being of the area, and must be based on robust evidence and apply to the smallest geographical area possible. According to the accompanying national planning guidance, this means that the potential harm that the Direction is intended to address must be clearly identified, and a strong justification set out for the withdrawal of permitted development rights set relating to a wide area (e.g. that covering a large proportion of the LPA area).

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<sup>3</sup> [National Planning Policy Framework \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432424/NPPF-2019.pdf)

3.5 Under the legislation, Article 4 Directions can be introduced either with immediate effect, or with non-immediate effect involving 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. In 2012, the Article 4 Direction was introduced as a non-immediate Direction as Members felt the potential financial risk to the Council was unacceptable. As the difficulties in quantifying the potential scale of compensation remain, due to the number of variables involved, it is again proposed to introduce this Article 4 Direction through a non-immediate route.

3.6 The Council have prepared a Justification document (Appendix 2), to summarise the relevant national and local policy context and to set out the evidence to support the introduction of a new Article 4 Direction. An overview is provided in the following section.

## **4. KEY ISSUES**

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

### **Current evidence relating to HMOs**

4.2 There are a number of issues that make it difficult to historically compare the number of HMOs in the Blackburn with Darwen borough, including changes to the ward boundaries following the Governments boundary review in 2018; differences in the definitions of HMOs between planning, housing and licensing; and differences in how data is collected. However, all of the available data shows a significant increase in the number of HMOs since 2011.

- In 2011, there were 129 HMOs/hostels in the borough, representing 0.22% of the total number of properties.
- In 2022, using LLPG data, there were 390 HMOs in the borough, representing 0.61% of the total number of properties and a growth of over 200% since 2011.
- Acknowledging differences in counting and reporting, the Council's housing team recorded 506 HMO bed spaces in 2015, and 1169 in 2021, representing a 131% increase in the number of bed spaces over that period.

The evidence shows that, since 2012, the numbers of HMOs have grown significantly, and spatial analysis of the locations of those HMOs show they have dispersed to parts of the borough that fall outside those areas currently managed under the existing Article 4 planning powers. It is expected that this is as a result of the existing Article 4 Direction restrictions.

4.3 The evidence has also shown that the wide variety of inter-related issues pertaining to HMOs are not confined solely to the boundaries of the few wards contained under the existing Direction, but stretch across the urban areas. As a general summary:

- The borough has high proportions of poor quality housing stock, which can be bought cheaply, and is located in the most deprived and urban areas of the borough.
- This type of cheap and low standard accommodation is generally bought by landlords and converted to HMOs in the anticipation of generating high levels of revenue as HMOs operate within a private market and attract an enhanced rate of housing benefit.
- This type of HMO accommodation generally attracts and houses vulnerable persons with multiple and complex needs, who, once resident in the borough, require intense

support from the Council, including benefit claims, and from across the public sector, including the emergency and support services.

- High proportions of the borough's benefit claims are made in relation to mental and behavioural problems, and claimants commonly originate from outside of the Blackburn with Darwen area meaning the borough involuntarily imports a high percentage of adults with complex needs. Demand for HMOs is not generated from a local need.
- Vulnerable persons are largely those with the most challenging and complex behaviours, resulting in increases of incidences of rough sleeping, street-begging, anti-social behaviour, violence, street-working, street drug and alcohol use and general criminality within the borough. Significant proportions of criminal and anti-social behaviour relate to HMO residents, particularly in Blackburn and Darwen town centres.
- Benefit payments, responding to crime, anti-social behaviour and environmental damage also drains the Council of revenue, and, in turn, opportunities to invest in improving areas of the borough and regenerating the town centres (which are a key focus of the Council). The top priority for town centre businesses is for the Council and its partners to address issues stemming from vulnerable persons associated with HMOs.

4.4 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 clear from the analysis that there is a recurring high occurrence of these problems in those areas where high concentrations of HMOs have become established. And so the dispersed growth of HMOs to wider areas of the borough will likely serve the growth of such associated issues across the borough.

#### **Justification/evidence for making an Article 4 Direction**

4.5 The ability for HMOs to appear without more effective planning management perpetuates the above issues. The resulting effects are to create detrimental impacts on the amenity and wellbeing of local areas, with increased levels of crime, anti-social behaviour and environmental issues. It fosters a vicious cycle of amenity deterioration, depressed house prices and poor quality stock, damaging local character, worsening deprivation rates and creating a perpetuating negative spiral that then encourages further HMOs to continue the cycle. Clusters of unmanaged HMOs have a detrimental impact on the growth, regeneration, image, investment and sustainability of communities and neighbourhoods. The transient nature of tenants in such accommodation, many of whom have no connection to BwD, undermines community cohesion, neighbourhood sustainability and 'civic pride'. It also has the potential to fundamentally change the character of an area, created imbalanced communities, and for an area's housing choice to be skewed away from family accommodation. Any continued increase in the number of HMOs will further add to the detrimental and cumulative impact of this activity on communities and neighbourhoods which will harm local amenity.

4.6 Based on the collated evidence, the Council consider the introduction of a new Article 4 Direction, to cover all urban areas of the borough, will grant the Council more effective control to restrict the otherwise unregulated conversion of dwelling houses to HMOs. It is expected that such interventions can seek to help rebalance communities and address the cumulative and detrimental impacts of HMOs on the borough and local amenity.

#### **Proposed Article 4 Direction**

4.7 The evidence has demonstrated that HMO numbers have grown considerably and been dispersed beyond those areas covered by the original Article 4 Direction, and that i) the

factors contributing to a continuing growth in HMOs and ii) the consequential harm arising from HMOs both extend to a wider urban areas than those original seven wards. Without Council intervention, there is a risk that these factors will see a continued growth in HMOs and the vicious circles described through this report will continue.

4.8 To protect local amenity and the well-being of the area from further harm, the Council therefore propose to introduce a new Article 4 Direction to cover the urban areas of the borough. A map of the proposed Direction area is contained at Appendix 1. The boundary of those urban areas will be set by Policy CP2 of the emerging Local Plan (2021-2037). The new Article 4 Direction, once in effect, will serve to modify (and in doing so replace) the 2012 Direction and its designated areas.

4.9 It is considered that this is the smallest, appropriate geographic level to apply for the reasons evidenced. The remaining non-urban areas of the borough are considered to be self-regulating due to higher house prices and better quality housing stock dissuading their conversion to HMOs by potential landlords. However, as before, the proposed Article 4 Direction, once in effect, will be subject to future monitoring and review. Should issues disperse into those areas to create negative impacts on amenity, then the boundaries can again be re-considered.

### Risk assessment

4.10 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	Mitigation
The current situation will remain in place for a further 12 months whilst the non-immediate direction is introduced. In this time, there could be a 'rush' of conversions to avoid the future requirement for planning application.	Planning is just one part of the regulatory process available to the Council to manage the conversion of properties to HMOs. The only alternative to a non-immediate direction would be to introduce an immediate direction, but this would leave the Council open to the risk of financial compensation for a 12 month period.
Planning applications for the conversion to an HMO in an Article 4 Direction area are exempt from a planning fee.	Under the emerging policy DM6, it is expected that all applications will result in a refusal, which may deter applicants. The cost of processing applications will be met through the existing budget for the Growth department.
The extended Article 4 Direction could result in a reduction in the supply of HMOs.	The Council's Housing and Economic Needs Assessment (2018) and Update (2021) identified no need for any type of this accommodation (HMOs).
Transfer of displacement of problems to other areas not covered by an Article 4 Direction.	The evidence shows a growth of HMOs dispersed into areas not covered by the existing Article 4 Direction, but this is understood to be because of the similar conditions across the wider urban area, including deprivation and low-cost housing. Rural areas are considered to be self-regulating due to higher house prices and better quality housing stock dissuading conversion to HMOs.

4.11 There are no 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.

## **Procedure and powers for making an Article 4 Direction**

4.12 The LPA is able to confirm all Article 4 Directions. The Secretary of State (SoS) must be notified at both the preliminary ('making the notice') and final ('confirming the notice') stages. The SoS does not have to approve article 4 directions and will only intervene where there are clear reasons for doing so.

### **Next steps**

4.13 It is proposed that the Council implements a new, non-immediate Article 4. This option requires a 12 month lead in period before the Direction becomes effective. On this basis, if confirmed, it is expected that the new Direction would become operational by August 2023, subject to Council Forum approvals in that time period.

4.14 The process of making an Article 4 Direction requires local consultation. It is proposed that the consultation will be carried out in August/September 2022 for a 6 week period.

4.15 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.

4.16 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 relevant legislation and national planning guidance from the Department for Levelling-up, Housing and Communities.

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 adopted Blackburn with Darwen Borough Local Plan Part 2 (2015) and the emerging Local Plan 2021-2037.

## **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 the urban areas of the borough (all 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 2015, as amended, in line with the procedure set out in Schedule 3 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 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 dwelling house (Use C3) to an HMO (Use C4) within the defined urban area will be processed by the Council's Development Management Team.

## **9. EQUALITY IMPLICATIONS**

9.1 An equality analysis and assessment will be carried out.

## **10. CONSULTATIONS**

10.1 A wide variety of evidence has been collated to justify the making of the Direction; including both its purpose and extent.

10.2 A draft version of the Justification paper was circulated amongst Council officers, including those from housing, health, supporting people services, environmental crime, benefits, planning, development and economic regeneration.

10.3 National guidance provided by the Department for Levelling-up, Housing and Communities 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 two-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 August/September 2022. 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. Site notices will also be displayed across the borough.

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 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 non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), with a 12-month lead-in period, to remove the permitted development right granted by Schedule 2 Part 3 Class L(b) of that Order, which allows a change of use from a dwelling house (C3) to a house in multiple occupation with between 3 and 6 occupants (C4) and which will apply to all urban areas of the borough as shown on the accompanying plan.
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 August/September 2022.

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DATE PREPARED: 30 May 2022

BACKGROUND PAPER: Article 4 Direction Justification paper

### **Appendices**

Appendix 1: Article 4 Direction plan

Appendix 2: Article 4 Direction Justification Paper