

REPORT OF:	EXECUTIVE MEMBER FOR GROWTH AND DEVELOPMENT
TO:	Council Forum
ON:	20 July 2023

SUBJECT: 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 (Houses in Multiple Occupation))

1. PURPOSE OF THE REPORT

- 1.1 To update Council Forum with the results of the consultation on the proposed Article 4 Direction, undertaken in August/September 2022.
- 1.2 To seek Council Forum approval to confirm the Article 4 Direction which will remove the permitted development rights for the change of use from Use Class C3 (dwelling-houses) to Use Class C4 (Houses of Multiple Occupation (HMO)) in all urban areas of the Borough, as illustrated on the plans accompanying the Direction.
- 1.3 Subject to Council Forum approval to confirm the Article 4 Direction, the Direction will then become effective on 9 August 2023. The existing Article 4 Direction (2013) will be cancelled on the date that the new Direction takes legal effect.

2. RECOMMENDATIONS

- 2.1 The Council Forum approve the confirmation of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order (GPDO) 2015 (as amended), having had 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 HMO 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. BACKGROUND

- 3.1 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), to enable the change of use without the need to apply for planning permission, subject to conditions. These permitted development rights relate only to the conversion of dwelling-houses to HMOs of not more than 6 residents. Proposals for HMOs containing 7 or more residents already require planning permission to be sought.
- 3.2 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 local circumstances may 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.

- 3.3 In 2012, the 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 the Council, residents, businesses and other stakeholder and agencies, at the detrimental impact that high numbers and local concentrations of HMOs were having on the physical, economic and social fabric of communities and neighbourhoods across the Borough.
- 3.4 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.
- 3.5 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 falling outside the defined areas, where issues of concentration had not been identified, still retained their permitted development rights.
- 3.6 In accordance with National Planning Guidance (para 49)¹, the Council report accompanying the original Article 4 Direction (2012) set out the intent to monitor the appropriateness of the Direction, including review and consideration of whether the original rationale and/or extent of the Direction continues to be valid.
- 3.7 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 across the Council, 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 finances and local communities. Despite the Article 4 Direction, over recent years the Borough has seen a considerable increase in the provision of HMO accommodation, and the Council now consider there to be an over-provision of such space, which includes providing for significant and complex needs imported from beyond the Borough. The consequences 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 demands on key frontline services.
- 3.8 Given the growth in HMOs and the increase in associated issues, alongside the progression of the Council's new Local Plan (2021-2037), it is now the right 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 and regulatory actions to be implemented by the Council as a whole, planning continues to be an important tool in the management of HMOs in the Borough.

4 RATIONALE

- 4.1 The Council's emerging new Local Plan (2021-2037) contains Policy DM06: Houses in Multiple Occupation (HMOs) which states that 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 identify HMO developments that could otherwise be carried out under permitted development rights.

¹ [When is permission required? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/when-is-permission-required)

- 4.2 Therefore, it is the Council's intention to extend the use of an Article 4 Direction to other appropriate areas of the Borough to fulfil the intended policy aims of DM06. 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. The new Article 4 Direction designation is proposed to cover the whole urban area of Blackburn with Darwen. Once in effect, it will replace the existing 2012 Direction, and facilitate stronger management of HMO conversions in all urban areas.
- 4.3 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. The Local Plan also supports the Council's new Corporate Plan priorities. Based on the available evidence, it is likely that this work will be significantly undermined unless much 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.
- 4.4 The National Planning Policy Framework (NPPF)² (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).
- 4.5 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.

5 CURRENT POSITION

- 5.1 In 2022, the Council prepared a Justification Paper (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. The evidence was collated from across a number of key Council services, and was internally consulted upon.
- 5.2 The evidence 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 the Justification Paper will continue.

² [National Planning Policy Framework \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/617282/nppf-2021.pdf)

- 5.3 The ability for HMOs to appear without more effective planning management perpetuates the issues identified through Appendix 2. Whilst recognising that planning is only one tool available to manage issues relating to HMOs, the Council propose to introduce a new Article 4 Direction to cover the urban areas of the Borough to protect local amenity and the well-being of the area from further harm. The planning proposals fit in with wider Council strategies and tools seeking to address the Borough's HMO problems. For example, the Council have an adopted '[Homelessness and Rough Sleeper Strategy 2020-2025](#)', which sets out four objectives, including, at (4), the need to address the over-supply of HMOs in the Borough by tightening local planning policy and regulations.
- 5.4 The boundary of those urban areas will be set by Policy CP2 of the emerging Local Plan (2021-2037). It is considered that this is the smallest, appropriate geographic level to apply for the reasons evidenced in the Justification Paper. 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. A map of the proposed Direction area is contained at Appendix 1. The new Article 4 Direction, once in effect, will serve to modify (and in doing so replace) the 2012 Direction and its designated areas.
- 5.5 The introduction of an Article 4 Direction is a two stage process: firstly, to 'make', and consult upon, the direction; and secondly, to review consultation responses and, subject to no material changes being required to warrant further consultation, to confirm the direction.

Making of, and Consultation on, the Article 4 Direction

- 5.6 On 28 July 2022, Council Forum approved the making of the new Article 4 Direction and the accompanying public consultation on the proposed direction. The Direction was 'made' on 8 August 2022, triggering the commencement of the 12-month lead in period required to introduce non-immediate Directions. A 6-week public consultation subsequently took place between Thursday 11 August and Friday 23 September 2022. Consultation and publicity were undertaken in accordance with the requirements of Schedule 3 of the GPDO 2015, and included:
- Notification to the Secretary of State
 - Press notice in the Lancashire Telegraph and Bolton Evening News
 - Approximately 50 Site Notices displayed across all urban areas of the Borough
 - Information on the Council website
 - Information 'on deposit' at Blackburn and Darwen Town Halls and local libraries
 - Press release
 - Email and postal notification to statutory undertakers, consultees and the Local Plan consultation database
- 5.7 Consultation must be meaningful to be effective and not potentially subject to judicial review. Should any comments be received that necessitate material changes to be made to the Article 4 Direction, then this would require a further round of consultation before the direction could be confirmed by the Council.

Results of Consultation

- 5.8 The Council received 8 comments, which are presented through an accompanying Feedback Report at Appendix 3. The Feedback Report details how the Council have

considered each of the comments received, and what action, if any, it recommends as a result.

- 5.9 All 8 comments registered support or made no comment. The Blackburn and Darwen Trade Union Council submitted the most detailed representation, registering support for the Direction, but questioning the availability of data relating to assessing the housing needs of young people. The Council has provided a detailed response to address this concern through the feedback report (Appendix 3), concluding that relevant evidence studies have not identified any specific need for additional HMOs and that the introduction of the Direction is in keeping with wider strategies and recommendations, that consider young people, single persons and couples needs, including that from the 'Homelessness and Rough Sleeper Strategy 2020-2025'.
- 5.10 After full consideration of the comments, it is considered that no changes are required to the Direction and therefore the Direction can proceed to be confirmed as originally proposed without amendment.

Confirmation of the Direction

- 5.11 It is therefore recommended, as at paragraph 2.1, that Council Forum approve the confirmation of a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order (GPDO) 2015 (as amended), with a 12-month lead-in period, to remove the permitted development rights 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.
- 5.12 The full rationale and key issues to support the confirmation of the direction are as those presented and detailed in the Justification Paper and summarised in Council Forum report, dated 28 July 2022 (attached as Appendix 4). 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 planning 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.

Risk Assessment

- 5.13 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 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 DM06, it is expected that all applications will result in a recommendation for refusal, which may deter applicants. The cost of processing applications will be met through the existing budget for

	Growth & Development.
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.

5.14 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

5.15 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.

5.16 The SoS was notified of the making of the Direction on 8 August 2022, with the intent that the non-immediate Direction should then take effect 12 months later (from 9 August 2023). Whilst the SoS has the power to intervene to modify or cancel a direction at any time, they have confirmed that this does not prevent any of the processes associated with introducing an Article 4 Direction from going forward. Since the Council originally notified the SoS, the SoS has not issued the Council with any response that would indicate an intent to intervene. In the absence of any response, and given the passage of time, it is considered appropriate to continue to progress with the confirmation of the direction. Further delays to the confirmation of the Direction could impact on the ability of the Council to start to address the over-supply of HMOs in the Borough's urban areas. However, continuation does carry a minor risk of modification or cancellation of the direction, should the SoS subsequently decide to intervene. Recent interventions by the SoS have resulted in modifications of Directions, rather than cancellations, and so, on balance, officers consider it appropriate to progress to seek confirmation of the Direction.

Next Steps

5.17 It is recommended that the Council approves the confirmation of the new, non-immediate Article 4. This option requires a 12 month lead in period before the Direction becomes effective. Subject to approval to confirm, it is expected that the new Direction would therefore become operational from 9 August 2023 – 12 months from the date that Direction was 'made'. The existing Article 4 Direction will be cancelled on the date the new direction takes legal effect.

6. POLICY IMPLICATIONS

- 6.1 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 (DLUHC).
- 6.2 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 new Local Plan (2021-2037).
- 6.3 The emerging new Local Plan is now in its final stages of production, and underwent public hearings as part of its 'examination in public' in early 2023. In relation to Policy DM06: Houses in Multiple Occupation (HMO), no representations were received through the Regulation 19 consultation, and no significant modifications have been requested by/agreed with the Planning Inspectors through the examination. Whilst the Local Plan is not yet adopted (this is anticipated in early 2024), the advanced stages of its preparation mean that substantial weight can be placed on emerging Policy DM06 in determining current planning applications.
- 6.4 By way of further update, an appeal was made to the Planning Inspectorate against the Council's decision to refuse an application relating to the 'change of use from a single residential dwelling to a HMO for 4 residents in Blackburn (APP/M2372/W/22/3296993) in an area covered by the existing Article 4 Direction. The appeal was allowed by the Planning Inspector, granting planning permission, who concluded that the development would not create harmful effects on local character or highway safety. In making their determination, the Planning Inspector noted that the Council's defence was insufficiently supported by any written justification to evidence problems relating to HMOs.
- 6.5 Without intending criticism of the Inspectorate's decision, officers note that the supporting documents referenced in the Council's defence were not requested by the Inspector and whilst the Inspector's decision is considered to be disappointing, it is not considered that their decision reflects a failure of current or emerging policy. Instead, it has emphasised the importance of submitting relevant extracts in future appeal defence. More specifically, it has demonstrated the importance of having a robust, up-to-date evidence base available to demonstrate the existing issues relating to HMOs and the need for a Borough-wide Article 4 designation. The Article 4 Justification Paper, presented in Appendix 2, can now be used to support the Council's defence of any relevant planning appeals.

7. FINANCIAL IMPLICATIONS

- 7.1 The costs of making the Article 4 Direction include publicity and, once in place, staff time to administrate any planning applications submitted as a consequence of the Direction. These will be met from existing departmental resources.
- 7.2 Adopting the Article 4 Direction without the proposed 12-month lead-in time may require the Council to pay compensation to property owners who apply for planning consent but which is subsequently refused. The 12-month lead-in time will mean that no such compensation is payable.
- 7.3 The costs of not making the Article 4 Direction include the continuation of current disproportionate costs of dealing with HMO related issues in the Borough. Such issues are set out in the Article 4 Direction Justification Paper (Background Paper Appendix 2) and costs will impact on the Council, NHS and other public services.

8. LEGAL IMPLICATIONS

8.1 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.

8.2 The Planning and Highways Committee met on 16 June 2022 to consider the proposal for the introduction of a new Article 4 Direction. Following confirmation of their support, the making of proposed Direction was then approved by Council Forum on 28 July 2022. This report seeks approval by Council Forum to confirm the Direction.

8.3 Subject to approval, the Direction will be confirmed 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.

9. RESOURCE IMPLICATIONS

9.1 Subject to approval, the formal confirmation of the Article 4 Direction will be managed by the Strategic Planning Team in close collaboration with colleagues in Legal Services.

9.2 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 Development Management Team.

9.3 Beyond the remit of the Direction and the control of planning services, the Council will continue to undertake a range of work with commissioned services and partners to address issues relating to homeless and transient persons, including identifying the hidden homeless and moving people from hostels.

10. EQUALITY IMPLICATIONS

10.1 An initial equality impact assessment (EIA) has been carried out in support of the development of the proposed new Article 4 Direction. The EIA concludes that it is not considered to have any impacts on protected characteristics.

11. CONSULTATIONS

11.1 A wide variety of evidence, from across multiple Council service areas, has been collated to justify the making of the Article 4 Direction; including both its purpose and extent.

11.2 A draft version of the Justification Paper (Background Paper Appendix 2) was circulated amongst Council officers, including those from housing, health, supporting people services, environmental crime, benefits, planning, development and economic regeneration.

11.3 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. This provides an opportunity for local residents, property owners, property agents and stakeholder groups to make comments on the proposal. The Council is also required to notify the Secretary of State of the proposed direction at both stages of its preparation.

11.4 Consultation (and publicity) on the making of the Article 4 Direction was carried out in accordance with the requirements of the GPDO. Consultation was undertaken for 6 weeks between 11 August and 23 September 2022, and details of the consultation are provided through this report, and through Appendix 3.

11.5 Subject to approval, the Council will confirm the Direction, and undertake all relevant further publicity, in accordance with the requirements of the GPDO 2015.

Monitoring and Review

11.6 Once the Direction takes effect there remains 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.

Chief Officer/Member

Contact Officer: Martin Kelly

Date: 6th July 2023

Background Papers:

- Appendix 1: Article 4 Direction and Plan (and ward maps)
- Appendix 2: Article 4 Direction Justification paper
- Appendix 3: Consultation Feedback Report
- Appendix 4: Council Forum Report 28 July 2022