

Meeting of the Cabinet 28th June 2023

Report of the Director of Regeneration & Enterprise

Recommendations for Article 4 Direction for Houses in Multiple Occupation (HMOs)

Purpose of report

1. Consideration of consultation responses and confirmation of Article 4 Direction in relation to small Houses in Multiple Occupation.

Recommendations

2. It is recommended that the Cabinet authorises the Director for Regeneration and Enterprise to confirm an Article 4 direction which will be applied to the Council's administrative area (borough wide) to remove Permitted Development Rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use) to come in to force on 15th September 2023.

Background

3. On the 11th October 2021, Councillors voted on a motion that "*Given the negative impact that the uncontrolled proliferation of HMOs can have on a geographical area..... 1. The Director for Regeneration and Enterprise be requested to gather the evidence base required for a decision to be made on the introduction of an Article 4 Direction*". As such Officers were tasked with gathering necessary evidence to enable Councillors to determine whether additional controls are required in respect of Smaller HMO's.
4. At the meeting of the Cabinet on 29th June 2022 the Director for Regeneration and Enterprise was authorised to prepare a non-immediate Article 4 direction which will be applied to the Council's administrative area

(borough wide) to remove Permitted Development Rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use) as well as publicising and consulting the Article 4 Direction for 6 weeks.

5. A non-immediate Article 4 direction allowed all consultation views to be taken into account before the direction was confirmed. It would also reduce or eliminate the likelihood of compensation being payable to affected landowners under sections 107 and 108 of the Town and Country Planning Act 1990. The use of an immediate direction could have considerable compensation implications. The Article 4 Direction would therefore not come into force if confirmed before 15th September 2023.
6. In order for such a Direction to come into effect, the Council must have first undertaken a consultation exercise and any representations must be considered when the Cabinet decides whether to confirm the Direction or not. This report summarises the representations received to allow Cabinet to make an informed decision on whether the Direction should be confirmed and whether this should be within the timescales set out in the Cabinet report dated the 27th June 2022 and subsequently at Planning Committee on 12th September 2022.

Article 4 Direction Consultation Process

7. Following the making of the Direction on the 14th September 2022 the consultation period was open from the 15th September to 31st October 2022. A copy of the Direction (with map) as made appears at Appendix 1 to this report.
8. The following actions were taken:
 - A Legal notice was placed in the Express and Star newspaper;
 - Site notices were placed in the main town and district centres in the borough;
 - Applicants who had previously applied for HMOs and consultees on the planning consultation database were contacted via email or letter to inform them of the consultation;
 - Tenants and Residents Associations were informed of the consultation
 - The consultation was advertised on the Council's Website.
9. The consultation process was therefore fully compliant with the Town and Country Planning (General Permitted Development) Order 2015.
10. In total four representations were received. One supported and welcomed the Article 4, and three raised concerns about the proposed changes.

11. The main themes arising from the representations were as follows:
- The Article 4 would cause more delays and cost
 - The association between anti-social behaviour and HMOs is an implied causal link
 - The Article 4 would disadvantage single men who are typical users of HMO's
12. It is not considered that any of the issues raised through the representations outweigh the recommendation that the Article 4 direction be Confirmed. The introduction of the Article 4 is not restricting small HMOs but means that, as set out above, the Permitted Development Rights for the change of use of dwelling houses (C3 use) to small houses in multiple occupation (C4 use) will be removed and planning permission will need to be sought for this use. As a result, smaller HMO's would be dealt with in the same regard as larger HMO's currently are by requiring planning consent.
13. The Secretary of State for Levelling Up, Housing and Communities was notified on 15th September 2022 of the intention to introduce the Article 4 direction and the commencement of the consultation process. We have since been informed that officials acting on behalf of the Secretary of State, have reviewed the HMO Article 4 direction and the evidence provided. They do not intend to take any further action. However, it should be noted that this does not preclude the Secretary of State using their powers to intervene in the future. Although an Article 4 direction can remain in place permanently once it has been confirmed, local planning authorities should regularly review their Article 4 directions to ensure that the original reasons for the direction remain valid. Where an Article 4 direction is no longer necessary it can be cancelled by the local planning authority. Any such process would be subject to the relevant approval processes as set out in the constitution at the time.

Finance

14. There are two types of Article 4 direction: immediate and non-immediate. A non-immediate direction as proposed allowed consultation views to be taken into account before the direction is confirmed. It also reduces or eliminates the likelihood of compensation being payable to affected landowners under sections 107 and 108 of the Town and Country Planning Act 1990. The use of an immediate direction would have had considerable compensation implications.

15. Therefore, it was previously recommended and approved by Cabinet and Planning Committee that an Article 4 direction on a non-immediate basis be enacted.

Law

16. The recommendations made have been informed by the requirements of the Town and Country Planning Act 1990, and the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
17. Furthermore, in considering the appropriateness of a borough-wide Article 4 direction regard has been had to the Council's Equality Duty under S149 of the Equality Act 2010. The use of the Article 4 will not eliminate a much-needed housing tenure from the borough but will ensure the appropriate provision in areas of need.

Risk Management

18. As previously set out in the Cabinet report from June 2022 there is a reduced risk of claims for compensation for costs associated with the Article 4 as a non-immediate order that has been pursued. However, there are also mechanisms within Section 108 of the Town and Country Planning Act 1990 that reduce this risk, such as where notice is given of the Order not less than 12 months before the Direction takes effect.
19. This report ensures that following the 6-week consultation, the details of the outcome of the consultation, and any recommendations resulting from that, are reported to Cabinet for decision before the expiry of 12 months from the date that the Notice of the Article 4 Direction was first made (14th September 2022).

Equality Impact

20. There are no Equality Impact Implications arising directly from this report. However, an Equality Impact Assessment was undertaken in the Making of the Article 4 Direction and then at any future stages of any projects being implemented.

Human Resources/Organisational Development

21. The proposals contained in this report will not directly impact on either the Council's current Human Resources or required future resources. Any work arising from this decision will be from existing internal resources which provide the necessary flexibility in the effective delivery of the Council's Services under changing external circumstances.

Commercial/Procurement

22. Any procurement required will comply with DMBC's Contract Standing Orders (which are fully compliant with Public Sector and OJEU procurement rules and guidelines) and all funders' requirements. There are no direct commercial implications associated with this report.

Environment/Climate Change

23. There are no impacts upon environment and climate change from the Article 4.

Council Priorities and Projects

24. The confirmation of this borough wide Article 4 direction is considered to accord with the following Council priorities:

Support the priority to 'Support stronger and safe communities' and in addition the proposed interventions will support the aspirations of the Dudley Borough Vision 2030 by creating healthy, attractive environments



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Appendices

Appendix 1 – Map and Made sealed Article 4 Direction
Appendix 2 – Legal Advert