

# Cabinet Meeting

## 19 July 2017

<b>Report title</b>	Confirmation of Small Houses in Multiple Occupation (HMO) Article 4 Direction	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor John Reynolds Cabinet Member for City Economy	
<b>Key decision</b>	No	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Keren Jones, Director City Economy	
<b>Originating service</b>	Planning	
<b>Accountable employee(s)</b>	Michele Ross	Lead Planning Manager (Sub-Regional Strategy)
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<b>Report to be/has been considered by</b>	Place Leadership Team	3 July 2017

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### Recommendations for action or decision:

The Cabinet is recommended to:

Confirm the making of a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove permitted development rights for changes of use from Use Class C3 to Use Class C4 (as defined in the Town and Country Planning [Use Classes] Order 1987, as amended) within the City of Wolverhampton which will commence on 14 September 2017.

## **1.0 Summary**

- 1.1 To consider consultation representations and confirm the making of an Article 4 (1) Direction covering the whole of the City of Wolverhampton which will mean that a planning application is required to convert a dwelling to a small house in multiple occupation (HMO) accommodating three to six people.

## **2.0 Background**

- 2.1 On 24 August 2016 an Individual Executive Decision Notice was signed by the Cabinet Member for City Economy and the Service Director City Economy. This authorised the making of an Article 4 (1) Direction covering the whole of the City of Wolverhampton which will mean that a planning application is required to convert a dwelling to a small house in multiple occupation (HMO) accommodating three to six people.
- 2.2 The Article 4 (1) Direction, which is attached as Appendix 1 to this report, was subsequently made on 13 September 2016. The Article 4 Direction will come into effect twelve months after the date it was made subject to a consideration of responses made to public consultation for a minimum of 28 days and confirmation by the Council.
- 2.3 Public consultation took place on the proposed Article 4 Direction between 13 September and 7 November 2016 through a published local press notice, the erection of two site notices within the City and notification of the Secretary of State. Landlord associations and local landlords were also consulted, in particular through the Wolverhampton Landlords Blog (<https://wolverhamptonlandlordsblog.wordpress.com/page/2/>), which is accessed by around 130 local private landlords and upon which no comments were made. This report summarises the representations made during the consultation period in order for these to be considered and a decision made whether to confirm the Article 4 Direction.

## **3.0 Consultation Representations**

- 3.1 Two responses were made to the consultation during the consultation period, from the National Landlords Association (NLA) and the Residential Landlords Association (RLA). Although these responses raise concerns about the potential impact of the Article 4 (1) Direction on the private rented sector, they do not directly challenge the validity of the Direction. Therefore they do not give rise to the need to make any changes to the Direction or to halt the confirmation process. A number of local companies and agents involved with HMO developments made contact during the consultation period but did not submit a formal response.
- 3.2 A separate consultation response was made by a resident of South Staffordshire in early 2017, which it was decided to accept although made outside the public consultation period. In response to concerns raised in this response it was decided to confirm the Article 4 Direction through a Cabinet report rather than through an Individual Executive Decision Notice. It is notable that the resident made a representation to the Secretary of State asking him to intervene in the Article 4 Direction. The response from the Secretary of State is attached to this report, and clearly states that the Department for Communities

and Local Government “does not consider that the clear reasons for intervention at Government level are presented by this case.”

3.3 The concerns raised by the NLA, and the Council response, are as follows:

<b>Concerns</b>	<b>Response</b>
<p>An Article 4 (1) Direction is a powerful tool of last resort and should not apply across a whole local authority area because the housing market will be distorted and existing dwellings will decrease in value relative to HMOs.</p>	<p>The Article 4 (1) Direction is only one small tool amongst a number used in Wolverhampton to provide good quality housing across the City. As such it is unlikely to affect the housing market or property values. Applying the Direction in small areas would not be appropriate as this would risk displacement of any issues to other areas.</p>
<p>The creation of a small HMO from a dwelling does not represent a material change of use as the amenity impacts are similar.</p>	<p>As set out in planning legislation, where it is considered that there will be no material change in use, planning permission will not be required. This will be decided on a case by case basis.</p>
<p>There is a growing need for shared and private rent housing in Wolverhampton, due to changes in demography, affordability and the welfare system.</p>	<p>Agree. The purpose of the Article 4 (1) Direction is not to reduce the amount of shared or private rent housing provided in the City but to ensure the provision of good quality housing in the right locations to meet a variety of needs, including better quality private rented stock.</p>
<p>Where anti-social behaviour issues arise related to a concentration of shared housing, local authorities should make maximum use of their extensive powers to deal with these before deciding that an Article 4 (1) Direction is required. Landlords have restricted powers to deal with such issues.</p>	<p>Agree. City of Wolverhampton Council does make extensive use of the variety of powers available in areas with concentrations of HMOs. However, anti-social behaviour issues still arise due to the density of development in some parts of the City, and inappropriate conversions and infrastructure.</p>
<p>There will be reduced investment in Wolverhampton because prospective landlords will be uncertain if they will be able to convert their property.</p>	<p>The quick and free pre-application advice service provided by City of Wolverhampton Council gives significant certainty to any prospective applicant. The new approach will bring consistency and clarity, as all sizes of HMO will require an application.</p>
<p>The Council has not clarified how many HMOs can be developed in which parts of the City.</p>	<p>No limits will be placed on the numbers of HMOs which can be developed in different parts of the City. Each application will be dealt with on a case by case basis in accordance with adopted local and national planning policy.</p>

3.4 The concerns raised by the RLA, and the Council response, are as follows:

<b>Concerns</b>	<b>Response</b>
Using planning to tackle social problems is ineffective - these are caused by the behaviour of tenants and should be tackled through better enforcement of existing legislation.	City of Wolverhampton Council does make extensive use of the variety of powers available in areas with concentrations of HMOs. However, anti-social behaviour issues still arise due to the density of development in some parts of the City, and inappropriate conversions and infrastructure.
The Article 4 (1) Direction should be trialled in areas with a concentration of HMOs before introducing City-wide.	Applying the Direction in small areas would not be appropriate as this would risk displacement of any issues to other areas.
HMOs will not necessarily require more parking than a family, therefore this should be assessed where there are existing problems rather than City-wide.	As set out in planning legislation, where it is considered that there will be no material change in use, planning permission will not be required. This will be decided on a case by case basis, including a consideration of local issues.
Monitoring should take place and clear outcomes, targets and objectives should be set.	Agree. In addition to monitoring of applications, the quality of HMOs will be monitored through the rent with confidence scheme.
Upgrading of properties can be dealt with by a programme of inspections and use of Housing Health and Safety Rating System (HHSRS) powers.	Agree. The Council will continue to use HHSRS and any new initiatives which may emerge in future, such as civil penalty notices for overcrowding. However, the Council also wishes to prevent problems from emerging through proactive intervention.
One argument for restricting HMOs is the assumption that HMOs cause loss of community due to the transient nature of some residents, however this is a dated and inaccurate view. In many areas where there is a concentration of HMOs landlords are making use of stock which might otherwise be underused. Poorly maintained and HMO accommodation provides a vital service key to the mobility of the workforce, especially young / professional workers.	Agree. This is not an argument being made in the case of Wolverhampton.
Wolverhampton is a University City with a large and increasing number of students. Purpose-built student halls and halls of residence alone cannot meet demand for student accommodation. Demand for	There have been significant purpose-built student halls constructed and with planning permission in recent years in the City which provide good quality accommodation, suggesting that the

HMO student properties is likely to increase.	market is able to respond to demand. The Council has not made a case to restrict HMO properties for students.
Those under 35 particularly need access to shared housing, for reasons that are prominent in Wolverhampton, including the benefit cap.	Agree.
No reference is made to the costs of implementing the Article 4 Direction, which could be better spent on other measures including enforcement.	The report did state that it is estimated the Article 4 Direction will cost a minimal amount to implement. This small cost is considered a worthwhile investment to proactively improve the quality of the private rented stock in the City.
The Article 4 will necessitate Local Plan policies to ban or restrict HMOs in certain areas, which would also require encouraging HMOs in other areas if housing needs are to be met.	It is not considered necessary to introduce such Local Plan policies as the Article 4 is not intended to restrict HMOs in certain areas but rather to improve quality, and each case will be considered individually on its merits.
Speed of dealing with planning applications will be limited by resources and could lead to a backlog and so a lack of supply of shared housing.	Wolverhampton deals with planning applications particularly quickly and the small numbers of extra applications expected is unlikely to change this.
Instead of an Article 4 Direction, resources would be better allocated to: use data to identify areas with problems and apply HHSRS powers to address these; make use of landlord accreditation to ensure HMO management is of a high standard.	Other powers are and will continue to be used as far as possible alongside an Article 4 Direction. Unfortunately, regardless of whether an Article 4 Direction is progressed or not, resources would not be available to inspect properties street by street across the City and use HHSRS powers. Landlord accreditation is fully supported and “rent with confidence” has been set up to target resources to the worst landlords / properties.
Local authorities should be allowed to use “flipping”, which would allow change of use from a house to an HMO and back again without permission, to deal with changing demand.	This power can only be conferred by central government.

3.5 The concerns raised by the resident of South Staffordshire, and the Council response, are as follows:

Concerns	Response
There is a lack of evidence base to support the Article 4 Direction and to respond to issues raised in the 10 April 2013 Cabinet report on HMOs. The 2016	The 2013 Cabinet Report decided not to make an Article 4 Direction at that time, but to keep the situation under review and receive further reports on the potential to

<p>Cabinet Report statements regarding impacts of HMOs are not supported by evidence.</p>	<p>use powers to mitigate adverse impacts of HMOs. The Small HMO Article 4 Direction is one of a number of powers the Council has subsequently decided to explore.</p>
<p>The decision to make the Article 4 Direction was taken through an Individual Executive Decision Notice (IEDN), by delegation to the Cabinet Member for City Economy, rather than through Cabinet. The Council's constitution and standing orders do not permit the delegation of a decision such as this.</p>	<p>The Council believes that the decision to make the Small HMO Article 4 Direction through an IEDN was in accordance with the Council's constitution. However, to provide transparency, the decision to confirm the Direction will be taken to Cabinet.</p>
<p>Under the Town and Country Planning (GPDO) Order 2015 as amended, the Council must serve notice to owners or occupiers and take into account representations made during consultation. There is no evidence this has been done. The submission of only two representations indicates an absence of proper consultation and also that HMOs are not causing a problem in the City.</p>	<p>All of the statutory consultation requirements for the making of an Article 4 Direction (1) have been met and representations made both during and after the extended consultation period have been fully considered, as demonstrated in this Cabinet report. Additional consultation was carried out through the Wolverhampton Landlords Blog. The Planning Section have since taken around 20 phone calls from landlords and prospective landlords who were aware of the Direction and wished to find out more. The fact that so few objections have been received to the Article 4 Direction indicates that it is generally supported.</p>
<p>The 2016 Cabinet Report raises a number of issues and then fails to address them. It is not specified where the issues which must be identified to justify serving an Article 4 Direction are located, nor their scale or impact. The need for a strong justification based on planning grounds is raised in the legal implications section, but not provided. Human resources and financial impacts are not sufficiently identified.</p>	<p>See above regarding evidence to support the Article 4 Direction. The Cabinet Report highlights that, as very few large HMO applications have been submitted in recent years, it is unlikely that the Article 4 Direction would result in significant financial or human impacts for the Council.</p>

3.6 In summary, the Council response to these representations is that the Article 4 Direction is one of a suite of measures that are in place and currently being pursued to support and improve the private rented market across Wolverhampton, which it is recognised plays a valuable role in the Wolverhampton housing market. A City-wide Direction is appropriate because this will raise standards consistently across the City, with no displacement effects. The main aim of the Direction is to increase the quality of HMO accommodation provided across the City, at no cost to applicants, rather than to deal

with localised issues. The Council believes that the correct legal procedures have been followed in order to confirm the Article 4 Direction and that it is sufficiently evidenced and will be sufficiently resourced. This position has not resulted in an intervention by the Department for Communities and Local Government for the Secretary of State.

#### **4.0 Way Forward**

- 4.1 It is recommended that no material changes are made to the Article 4 (1) Direction resulting from consultation, and that the Direction should be confirmed on 13 September 2017 and come into force on 14 September 2017.

#### **5.0 Financial implications**

- 5.1 There is a potential financial implication if the Article 4 Direction is implemented within twelve months of approval as compensation claims could be made against the Council by any applicant refused permission that would lose potential revenue. Therefore it is has been decided to wait for twelve months before implementing the Direction.
- 5.2 Because Article 4 Directions remove existing permitted development rights a planning fee cannot be charged for planning applications which arise as a consequence of the Direction. It is anticipated that the Direction will result in a very small increase in the number of planning applications from mid 2017 onwards and it is considered that these can be dealt with within the existing Planning budget. [ES/06072017/O]

#### **6.0 Legal implications**

- 6.1 There is an established procedure for the preparation, consultation, approval, notification and implementation of an Article 4 Direction . There must be a strong justification based on sound planning grounds to make the Direction. Failure to act in accordance with proper procedure and without sound basis may lead to Judicial Review and/or compensation. [LD/27062017/B]

#### **7.0 Equalities implications**

- 7.1 A screening has been carried out for equalities implications and this concluded that a full Equality Analysis was not required for the recommendations of this report, as they do not involve a change to Council services, functions, policies or procedures. The policy is specifically aimed at addressing the amenity and planning issues arising from small HMOs in the City. The policy may result in a negative impact on the availability of such accommodation, but this should be balanced by positive impacts in terms of the quality of accommodation in general and the residential environment across the City.

#### **8.0 Environmental implications**

- 8.1 This report has no environmental implications.

**9.0 Human resources implications**

9.1 This report has no human resources implications.

**10.0 Corporate landlord implications**

10.1 This report has no Corporate Landlord implications.

**11.0 Schedule of background papers**

11.1 Small Houses in Multiple Occupation (HMO) Article 4 Direction - Individual Executive Decision Notice 24.08.16

Houses in Multiple Occupation and Planning Controls – Cabinet Report 10.04.13

Letter from Department of Communities and Local Government regarding Article 4

Direction – Houses in Multiple Occupation 19.04.17

## Appendix 1

CITY OF WOLVERHAMPTON COUNCIL  
HOUSE IN MULTIPLE OCCUPATION (HMO) ARTICLE 4 DIRECTION

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND)  
ORDER 2015 AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1)

WHEREAS the City of Wolverhampton Council being the appropriate local planning authority within the meaning of article 4(5) of the General Permitted Development Order, are satisfied that it is expedient that development of the description set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description set out in the Schedule below:

This Direction is made under Article 4(1) of the said Order and in accordance with the Order shall come into force on the 7th day of September 2017

### SCHEDULE

Development consisting of a change of use of a building to a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, to accommodate between three and six people, from a use falling within Class C3 (dwelling houses), being development comprised within Class L) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and not being development comprised in any other Class.

(Plan of City of Wolverhampton boundary)

1. *To be completed when making the article 4 direction.*

Made under the Common Seal of the City of Wolverhampton Council  
this 6th day of September 2016

The Common Seal of the Council was affixed to this Direction in the presence of

.....  
Authorised Officer

2. *To be completed when confirming the article 4 direction.*

Confirmed under the Common Seal of the City of Wolverhampton Council  
this 6th day of September 2016

The Common Seal of the Council was affixed to this Direction in the presence of

.....  
Authorised Officer