

PLANNING COMMITTEE

28 MAY 2013

REPORT OF THE HEAD OF PLANNING SERVICES

A.1 HOUSES IN MULTIPLE OCCUPATION: ARTICLE 4 DIRECTION

(Report prepared by Richard Matthams)

PURPOSE OF THE REPORT AND EXECUTIVE SUMMARY

To consider and decide whether or not to confirm the non-immediate Article 4 Direction made on 8 December 2011.

Previous Committee Decision

On 15 November 2011, the Committee considered the report of the Temporary Head of Planning Services and authorised the making of the above non-immediate Direction (the Direction). A copy of the report is attached as Appendix A. It contains an explanation of the procedures and process which the Committee set in motion when it made its decision.

Effect of Confirming the Direction

If confirmed, this Article 4 Direction will remove permitted development rights for a change of use from Use Class C3 (dwellinghouse) to Use Class C4 (house in multiple occupation "HMO"). This means that planning permission will be required to change the use of a property from the C3 use class to the C4 use class.

Consultation

This report provides feedback on the consultation carried out and the representations received.

The longest objection came from the Residential Landlords Association Limited which submitted a 3-page formal objection to the Direction (together with a 16-page appendix which sets out written representations against Article 4 Directions for small HMOs), which is considered in detail in section 5.

Essex Police (represented by the Tendring District Commander) submitted a written representation in support of the Article 4 Direction.

RECOMMENDATION

(a) That the district-wide non-immediate Direction made on 8 December 2011 under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, which will require planning permission to be obtained for all changes of use from a use class C3 dwellinghouse to a C4 House in Multiple Occupation, be confirmed without modification.

(b) That the Head of Planning Services is authorised to implement the decision set out in (a) above as she sees fit.

INTRODUCTION

In October 2010, the national planning regulations on use classes and changes of use were altered so that proposals to change a normal dwelling or dwellings into small Houses in Multiple Occupation (HMOs) would not require planning permission. Concern was expressed by Members that this rule change could lead to an increase in small HMOs in the Tendring District, particularly in town centre locations like the centre of Clacton where, if not properly controlled, they might detract from the tourism function of the area and lead to social and health problems.

What will happen if the Article 4 Direction is confirmed?

If the Article 4 Direction is confirmed, planning permission will be required for a change of use from C3 dwellinghouse to C4 HMO and planning applications will be determined against the relevant national and local planning policies.

The potential benefits of introducing an Article 4 Direction include:

- The opportunity to coherently support and manage the delivery of mixed and balanced communities in neighbourhoods throughout the district;
- The ability to drive up standards of HMO accommodation in terms of appearance and function and to manage the impacts of additional HMOs by the use of planning conditions;
- The ability to minimise the negative effects that could arise from high concentrations of HMOs;
- The opportunity to consider proposals for HMOs on their planning merits, having full regard to local issues; and
- The ability to improve conditions in neighbourhoods for existing residents and to enhance the attractiveness of the area to visitors, investors and potential new residents.

BACKGROUND

An explanation of the background, procedures and process for the making and confirming of non-immediate Article 4 Directions is set out in the report to the Planning Committee meeting on 15 November 2011 (attached at Appendix A), which sets out a more detailed explanation and appraisal of the issues listed below:

- Changes to planning rules in relation to Houses in Multiple Occupation;
- Government guidance on the use of Article 4 Directions;
- Reasons for making an Article 4 Direction;
- Immediate and non-immediate Article 4 Directions;
- Article 4 Directions and compensation issues;
- The procedure for issuing an Article 4 Direction; and
- Technical requirements.

REPRESENTATIONS RECEIVED DURING THE CONSULTATION PERIOD

A copy of all the substantive written representations received during the consultation period comprises Appendix B to this report.

Essex Police: (represented by the Tendring District Commander) submitted a written representation in support for the Article 4 Direction. Essex Police's representation is summarised below:

The abundance and high concentration of HMOs specifically within the Clacton town centre are having a detrimental impact on the local crime trends within the community. There is evidence to support a growing trend of disproportionately high numbers of people who are involved in criminal activities who live in HMOs in Clacton. There are a large number of people staying within HMOs who conduct themselves in a legitimate and lawful manner and do not cause the Police any concerns. However, a number of recent incidents have involved residents from HMOs and I feel that strong consideration should be given to removing the permitted development rights of a property, or properties and bring this change of use under the control of the Council so that this can be effectively monitored and managed by all stakeholders.

The Residential Landlords Association ("RLA"): submitted a 3-page formal objection to the Direction (and a 16-page appendix which sets out written representations against Article 4 Directions for small HMOs), which is considered in detail in section 6. The RLA's representations are summarised below:

- No evidence has been put forward justifying the Article 4 Direction and the application of the Article 4 Direction to the whole of the district;
- There is no justification whatsoever for the use of planning powers to create so-called "balanced communities"; and
- The RLA states that improving the standards of HMOs is not a justification for the removal of permitted development rights. Existing legislation exists to achieve this objective through housing and environmental health legislation.

The RLA have stated they intend to seek a judicial review if the Direction is confirmed.

Cllr Delia Aldis: submitted a written representation which related to housing benefit.

The National Planning Casework Unit (NPCU): has not provided any comment in relation to the Direction. NPCU is the department within CLG which carries out the Secretary of State's planning functions relating to Article 4 Directions, which used to be carried out by the "Government Office" network.

Before Members decide whether to confirm the Article 4(1) Direction or not, it is important that they carefully consider all the representations made.

OFFICER APPRAISAL OF RESIDENTIAL LANDLORDS ASSOCIATION (RLA) OBJECTIONS

"There is no justification whatsoever for the use of planning powers to create so called "balanced communities".

The Article 4 Direction does not mean that a planning application for a C4 HMO use will automatically be refused planning permission. The confirmation of the Direction would, however, ensure that all such applications will be considered and determined on their individual planning merits in accordance with current and (where applicable) emerging Local Planning

policy.

The Article 4 Direction will assist in the promotion of a more sustainable and balanced housing market across the district by helping to prevent high concentrations of HMOs contrary to proper planning considerations.

The introduction of an Article 4 Direction is consistent with central government policy. The government updated guidance on preparing Article 4 Directions in replacement Circular 9/95 in November 2010. In addition Circular 8/2010, also of November 2010, confirms that the use of an Article 4 Direction to control the change of use of dwelling houses to HMOs is an appropriate tool.

The Council has given more than a year's advance notice of the proposed introduction of the Article 4 Direction to give those concerned ample advance warning, allow representations to be made and thus to seek to ensure that it will have no liability for compensation claims in respect of the loss of permitted developments. This approach is consistent with relevant government advice in the above Circulars.

Particular parts of the District such as Pier Ward in Clacton and parts of Harwich have high concentrations of bedsits and/or licensed HMOs. It is thought important to ensure that any Article 4 Direction does not simply "displace" or create further concentrations of this kind into other parts of the district. For this reason, the making of a district-wide Article 4 Direction is considered advisable in the interests of the securing mixed and balanced communities.

"No evidence has been put forward justifying the Article 4 Direction and application of the Article 4 Direction to the whole of the district."

The proposal for the Article 4 Direction is based on evidence which indicates that areas with higher concentrations of HMOs tend to experience a range of negative impacts on the amenities of residents and on the character of the area.

Confining the Article 4 Direction to "problem areas" will not address the problem from any additional areas of high concentrations of HMOs which emerge. If the Direction is not confirmed high concentrations of HMOs can develop without planning controls in areas where presently numbers of HMOs are low.

Summary

The RLA's representation questions the Council's motive for making the Direction and also alleges that TDC has not put forward sufficient justification for confirming the Direction. However, it is considered that without the Direction, there remains a real threat of potentially harmful development which would be harmful to the character of the district.

OTHER OPTIONS FOR CONSIDERATION

Having made the Direction (on 8 December 2011) and then carried out public consultation, the other options are not to confirm the direction (i.e. abandon the decision which has already been made) or to make a new non-immediate Direction for limited parts of the district. There is no statutory power to amend the existing Direction by altering the area to which it applies. In other words, the existing Direction cannot be modified and, if Members do not decide to confirm it but still wish to proceed with a Direction, they will have to start the process again.

The focused area (ward) approach

The Council has the option not to confirm the district-wide direction and instead focus on introducing either immediate or non-immediate Article 4 Directions in selected areas of the district such as Pier Ward where there is an existing over-concentration of HMOs. However, such an approach may lead to changes of use to HMOs simply occurring in other areas where the direction is not applied.

Do nothing option

Whilst the making of an Article 4 Direction will not of itself automatically resolve all issues, both actual and perceived, associated with the presence of concentrations of HMOs, it will help to address and retain control over some aspects of smaller HMOs that come forward in the future. Doing nothing would mean the continued absence of any planning control over changes of use from use class C3 to C4, which would undermine the Council's ability to contribute to the management and distribution of HMOs. The "do-nothing" option is therefore not recommended.

EVALUATION OF MATERIAL PLANNING CONSIDERATIONS

Current Government official guidance recognises that significant impacts are likely to occur as a result of high concentrations of HMOs. A report published by the Government in 2008, Evidence Gathering: Housing in Multiple Occupation and possible planning responses – Final Report summarised the main impacts as:

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

Areas in Clacton and Harwich are characterised by high concentrations of HMOs, for instance, Pier Ward, Clacton. The existence of these concentrations and their negative impacts, including the undermining effect they can have on the creation of mixed and balanced communities and wider Council objectives, have been noted and acknowledged over a number of years.

Essex Police have stated that the abundance and high concentration of HMOs, specifically within the Clacton town centre, are having a detrimental impact on the local crime within the community. There is evidence to support a growing trend of disproportionately high numbers of people who live in HMOs in Clacton, who are involved in criminal activities. Careful consideration should be given to removing the permitted development rights to change a dwelling or dwellinghouse to a C4 HMO by bringing this change of use under the control of the Council so that it can be monitored and managed more effectively by relevant stakeholders.

The Council has recently consulted on a new Local Plan 2012 (the Submission Draft) which contains "Policy PEO13: HMOs and Bedsits" and the public consultation period for this Draft ended on 7 January 2013. This policy is designed to ensure that any proposal for HMOs or bedsits does not result in an unhealthy concentration of such accommodation in any one particular area and to ensure that any HMOs or bedsits which are permitted will meet minimum standards of room size, facilities, design and layout.

The introduction of an Article 4 Direction would not preclude additional C4 HMOs, but it would

ensure that each individual application for an HMO use is considered on its planning merits. At present, the Council has the ability to manage additional large C4 HMOs (with 3 to 6 unrelated people sharing) through the planning process. Extending this to cover a change of use from C3 dwellinghouse to C4 HMOs would enable a more comprehensive approach to be taken, thus recognising the contribution made by HMOs towards other material considerations. These include meeting the district's housing needs, having due regard to wider housing strategy considerations and "application-specific factors" such as the location, scale and quality of the scheme. This approach could also assist in driving up standards of HMO accommodation in terms of appearance and function, and improving conditions in neighbourhoods, thereby meeting the requirements of a more diverse range of occupiers, including young professionals.

DELIVERING PRIORITIES

The proposed permanent Direction will help promote the delivery of mixed and balanced communities in neighbourhoods throughout the district and should also help to improve conditions in relevant neighbourhoods for existing residents, new residents, visitors and investors. All of these considerations are consistent with Council priorities

RESOURCES AND RISK

Resources

If a decision is made to confirm the Direction, there will be the direct costs to the Council of a newspaper advertisement and of complying with the other procedural formalities, such as issuing formal notices, noting records and making an entry in the local land charges register. The costs of this work and expenditure and of the associated officer time can be met from within existing budgets.

If a claim for Judicial Review were made, seeking to challenge the decision to confirm the Direction, there would be cost implications to the Council, which could be substantial. The outcome and cost of claims of this kind can be unpredictable. Costs could range from several thousand pounds to tens of thousands.

LEGAL

The proposed actions are within the Council's statutory powers. The report at Appendix A and the above sections of this report explain the legal issues. As stated throughout this report, the effect of the proposed permanent Direction is to require planning permission to be sought for any future proposed new C4 HMO use.

There is no statutory right of appeal against the confirmation of the Direction. The only way of challenge would be for an aggrieved party with the necessary legal standing to seek Judicial Review (JR) on the basis that there had been manifest unreasonableness or of some serious procedural flaw. Before seeking JR, an applicant would first have to obtain permission to do so from the Court.

CONCLUSIONS

- If confirmed, the Direction would give the Council control over change of use from Use Class C3 (dwellinghouse) to Use Class C4 (house in multiple occupation);
- The 'Article 4 Direction' would help manage and minimise the negative effects that could arise from high concentrations of HMOs;
- The RLA have objected and have indicated they would make a legal challenge if the

Council decides to confirm the Direction; and

- On balance, it is recommended that the direction be confirmed.

APPENDICES AND BACKGROUND PAPERS

- Appendix A - HMO Planning Committee Report, 15th November 2011; and
- Appendix B - Written representations received during the consultation period.