

Agenda Item No:

Report to: Cabinet

Date of Meeting: 31st October 2011

Report Title: Article 4 Direction - Houses in Multiple Occupation

Report By: Tim Cookson
Borough Planning Officer

Purpose of Report

The purpose of this report is to advise of representations received following the making of an Article 4 Direction relating to houses in multiple occupation and to recommend that Cabinet confirm the Direction.

Recommendation(s)

That Cabinet confirm the Article 4 Direction to remove permitted development rights otherwise granted by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 to change the use of a Class C3 dwelling house to a Class C4 house in multiple occupation with 6 or less occupants, the Direction is to cover the whole Borough and to come into effect on the 2nd July 2012.

Reasons for Recommendations

The confirmation of an Article 4 Direction is a matter for Cabinet to decide.

Background

1. At its May meeting Cabinet resolved to make an Article 4 Direction to remove permitted development rights to change the use of a Class 3 dwelling house, that is a house, to a Class C4 house in multiple occupation (HMO) with 6 or less occupants. The Direction covers the whole Borough and will come into effect on the 2nd July 2012. From that date, changes of use from Class C3 to Class C4 will require planning permission. The definition of a Class C4 use (contained in Circular 05/10) is "a use by between three and six unrelated individuals occupying a property as their only or main residence and who share basic amenities (for cooking and/or personal hygiene)."

Public Consultation

2. In accordance with the requirements of Article 5 of the Town and Country Planning (General Permitted Development) (Amendment) Order 2010, public consultation was undertaken between the 1st July 2011 and the 12th August 2011. Details of the consultation and the representations received with comments on them are set out in Appendix A. It can be seen that the response was modest – 7 representations received, 4 in favour and 3 against.
3. The main objections came from the National Landlords Association (NLA) and the Residential Landlords Association (RLA). Both argue that the Direction will be used to prevent the further development of HMOs. That is not the case. The Council recognises the need for good quality HMOs to meet housing need and demand but wishes to exercise some control over the location of new HMOs to ensure that it is policy driven and to prevent the undesirable concentrations of HMOs that have occurred in parts of the Town in the past. This is in line with the Council's desire to create sustainable and cohesive communities.
4. Both consultees were made aware of the Local Development Framework (LDF) Core Strategy consultation taking place at the same time, which included a proposed policy that would effectively allow up to 10% of any Class C3 dwelling houses in any part of the Town to convert to HMOs. The proposed policy would take account of the known existing HMOs within 100 metres radius of the property which is the subject of a planning application when applying the 10% concentration limit.
5. Both the NLA and the RLA also argue that the Council has sufficient powers to control the management of HMOs without the need for an Article 4 Direction. This also misses the point. Licensing and other powers can influence the management of existing HMOs. What they cannot do is to control the location of new ones. Only a Direction made under planning powers can do that.
6. In accordance with the legal requirements, the Secretary of State for Communities and Local Government was also advised of the making of the Direction. He has powers to cancel or amend a Direction but has not intervened.

The Next Steps

7. Cabinet is now required to consider the representations received and to decide whether to confirm the Direction. Planning and Housing Officers do not consider that any issues have been raised in the representations which should preclude Cabinet from confirming the Direction. It would then come into effect on the 2nd July 2012, any earlier and compensation would become payable in the event of planning permission being refused. Once confirmed, the Council is required to notify the Secretary of State and to advertise the Direction.

Financial Implications

8. As the coming into force of the Direction has been delayed for a year, there will be no financial implications, apart from staff time spent processing planning applications made under the Direction.

Conclusions

9. It is recommended that the Direction in the terms set out above.

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St. Helens, Tressell, West St. Leonards, Wishing Tree

Area(s) Affected

Central Hastings, East Hastings, North St. Leonards, South St. Leonards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	No

Background Information

Appendix A - Article 4 Direction – HMO Report on Consultation.

Officer to Contact

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APPENDIX A

ARTICLE 4 DIRECTION – HOUSES IN MULTIPLE OCCUPATION REPORT ON CONSULTATION

Background

At its meeting in May 2011 the Council's Cabinet decided to make an Article 4 Direction taking away permitted development rights to change from a C3 dwelling to a C4 House in Multiple Occupation (HMO). The Direction covers the whole Borough.

The Consultation

In accordance with the requirements of Article 5 of the Town and Country Planning (General Permitted Development) (Amendment) Order 2010, an advertisement was placed in the Observer and on 12 Community Notice Boards around the Borough on the 1st July 2011. The consultation was displayed prominently on the Council's website and copies of the Direction were made available at the Town Hall and Aquila House. In addition over 50 representative organisations were individually consulted, including Landlords Associations, Agents, Housing Associations, relevant charities, Universities, Ward Forums and Amenity Societies. The Secretary of State for Communities and Local Government and East Sussex County Council was advised of the making of the Direction. The consultation began on the 1st July 2011 and ended on the 12th August 2011.

The Response to the Consultation

7 representations were received, 4 in favour and 3 against. Objection letters were received from the National Landlords Association and the Residential Landlords Association. An email was also received objecting to the proposal. Three local residents of the Borough and the Ore Valley Forum supported the Direction. All refer to problems that they have experienced with HMOs in their localities, which include: noise disturbance, increased rubbish laying around, overcrowding and associated social problems.

The main issues raised by objectors are summarised below with comments on them.

National Landlords Association

1. The NLA believes that any additional regulation of the private rented sector should balance the desire to create secure and sustainable communities with the increasing need for good quality housing.

Comments: The Council recognises the need for good quality HMOs to meet housing need. However the Council also wishes to exercise some control over the location of new HMOs to help ensure that demand is policy driven and contributes to the Council's desire to create sustainable and cohesive communities. It is considered that the making of an Article 4 Direction, combined with an LDF Core Strategy policy allowing 10% of properties within a 100 metre radius to convert to HMOs, provides a

reasonable balance between the need for good quality housing and the need to ensure that undesirable concentrations of HMOs do not occur in future.

2. It is the NLAs contention that smaller Class C4 HMOs do not represent a substantial change of use from a dwelling house in terms of the burden imposed on local infrastructure. The usage of local services is unlikely to be greatly different for a property shared by three unrelated renters than a family with teenage dependents. They quote an appeal decision in Lancashire, which supports this view. The NLA does not believe that there is sufficient justification put forward by HBC for introducing further demarcation into existing housing stock for the purpose of controlling the legitimate use of property.

Comments: It is not the experience locally that smaller HMOs do not cause problems, particularly where concentrations occur. The NLA refers to an HMO with 3 unrelated occupants, but Use Class C4 includes HMOs occupied by up to six people, which can be very different in terms of their impact. The Council's justification for making the Direction is explained in response to 1. above.

3. The trends in future housing demography along with the current state of housing finance and supply of affordable housing point to a greater need for HMO type housing in Hastings in future. In addition recent changes to the Local Housing allowance will create an even greater need for shared accommodation. In addition to young professionals and students, migrants make up an important part of the shared housing market across England in general and Hastings in particular. The overwhelming characteristic of these groups is that they are transient and HMOs provide a fluid housing option.

Comments: One of the main reasons for making the Direction, as set out in the report to May Cabinet, was that it is anticipated that the demand for HMOs will rise in future because of increases in the number of students in Hastings and changes to housing benefits. The NLA's comments confirm this view and provide a justification for the making of the Direction. To meet future demand in an unstructured way would inevitably lead to the sort of problems that parts of Hastings face at the present time. There is also a danger that the "affordability" of property in the town could well prove attractive to people from outside the area, further distorting the housing market in Hastings. Also, the very fact that the overwhelming characteristic of the groups that are likely to occupy HMOs is that they are transient, does not help with the creation of sustainable and cohesive communities, particularly where concentrations of such groups occur.

4. The NLA considers that local authorities and landlords have sufficient existing powers to control anti-social behaviour among occupiers of HMOs. They quote a number of powers, including ASBOs, Litter Abatement Notices, Noise Act 1996 and Prevention of Damage by Pests Act 1949. Too often residents fall into the trap of thinking it is the house rather than the occupiers that cause the problem. They build up a general feeling about an area of particularly dense shared housing, without looking to see whether particular problems have been dealt with. This is compounded when residents are not made aware of any work being done to tackle issues important to them.

Comments: The remarks of the NLA are effectively an admission that HMOs do create problems of anti-social behaviour for local residents. It is not however accepted that councils have sufficient existing powers to fully address the problem. The Council has recently put in place a licensing scheme in four central wards, which will make available powers to secure the safety, improvement and facilitate proper management of HMOs. Elsewhere in the town the council is left with its standard enforcement powers but lacks the resources to effectively police the entire town. However, whilst HMO licensing will help address issues with individual existing HMOs, it cannot control the location of HMOs. This can only be done through the planning process and a Direction will have the effect of providing that missing element of control, thus ensuring that undesirable concentrations of HMOs do not occur in future.

5. If this proves unsuccessful the NLA would argue that a problem encompassing a few poorly managed properties would not justify an Article 4 Direction.

Comments: The Direction is not about a few poorly managed properties. Its purpose is to ensure that undesirable concentrations of HMOs do not occur in future.

6. Development based accreditation can change the behaviour of landlords in a way that an Article 4 Direction would not and would better serve the needs of the Borough.

Comments: It must again be stressed that the primary purpose of the Direction is not to address the behaviour of landlords but to provide some measure of control over the location of HMOs, which accreditation would not do.

7. The proposed Article 4 Direction is likely to erode the ability of landlords to react to changing circumstances and the needs of the community, by taking away the permitted development rights to locate C4 HMOs in the town. This will distort the housing market by making properties with existing use as HMOs premium investment assets.

Comments: It is not the purpose of the Direction to impose a blanket ban on the future setting up of HMOs. The proposed Core Strategy policy on the location of HMOs will still allow landlords to meet the needs of the community but in a structured way which creates sustainable and cohesive communities. This is less likely to distort the housing market than an unstructured approach.

8. An Article 4 Direction should not be used as a check-box or census exercise by local authorities to identify landlords operating in their area.

Comments: The primary purpose of the Direction is to influence the location of HMOs in the future. It is not a check-box or a census exercise. However it is accepted that having a Direction in place will mean that HMOs will have to be declared up front. This will assist landlords, as the Council will be able to offer help and advice on the setting up and running of an HMO and whether they will need to be licensed. It will also assist the Council in future policy making.

Residential Landlords Association

1. PPS 3 requires local authorities to carry out a housing market assessment from time to time. If an Article 4 Direction is to be made to restrict Class C4 HMOs, the assessment should include an assessment of the need/demand for smaller HMOs.

Comments: The present housing market assessment does not include a separate assessment of the need for HMOs. The Council does however have a considerable amount of information about the existing situation in Hastings from its housing condition survey and it is considered that additional demand for smaller HMOs can be accommodated within the Core Strategy policy, which aims not to restrict HMOs entirely but to secure a more even mix.

2. If it is intended to restrict such accommodation in certain areas, it is imperative that planning policies address the question of where else any need/demand will be met. Clearly the council cannot simply restrict numbers regardless of need/demand.

Comments: The proposed Core Strategy policy will not restrict HMOs in certain areas but will allow up to 10% of dwellings to convert to HMOs anywhere in Hastings. The proposed policy would take account of the known existing HMOs within 100 metres radius of the property which is the subject of a planning application when applying the 10% concentration limit.

3. Our concern is that up and down the country Directions are being made as a knee jerk reaction as a response to strident demands from local interest groups and local residents. Whilst we appreciate that they may have some legitimate concerns, we believe that these issues (i.e. low level anti-social behaviour) can be addressed by other means.

Comments: This is not a knee jerk reaction but a measured response based on experience with HMOs in Hastings over many years. The question of whether other means are available to control HMOs is addressed above in response to representation 4 from the NLA.

4. PPS 3 points towards balanced communities. The council should ensure that smaller HMOs to be introduced into long established mainly owner occupier areas (i.e. the suburbs). No doubt local residents would be consulted on this in advance.

Comments: The proposed Core Strategy policy will allow the change of use of 10% of properties within a 100metre radius to HMOs anywhere in the Borough. This is more likely to lead to the creation of balanced communities than a free-for-all with HMOs setting up where they like.

5. The Association is also concerned that in formulating policies for these areas, the council does not impose restrictive requirements that would amount to a blanket ban by the back door.

Comments: The proposed Core Strategy policy does include requirements relating to car-parking and bin storage but these by no means amount to a blanket ban.

6. Another concern is that the imposition of restrictive parking policies, which would discriminate against and discourage the provision of shared accommodation.

Comments: The proposed Core Strategy policy does state that, in considering planning applications for HMOs, regard will be had to whether the proposal would lead to a level of parking which would exceed the capacity of the street. This is a legitimate planning consideration and should not discourage the provision of shared accommodation in appropriate locations.

Other objections

This would put more pressure on housing stock for poor people who are already not able to pay the high rents for a whole house or flat in this area.

Comments: The object of the Direction is not to halt the provision of smaller HMOs, as explained above, but to ensure that undesirable concentrations do not occur in future.