

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 were 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. Three residents and the Ore Valley Forum supported the Direction. All refer to problems that they have experienced with HMOs in their localities. 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 within a 100 metre radius to convert to HMOs anywhere in Hastings.

3. Our concern is that up and down the country Directions are being made as a kneejerk 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 behavior) can be addressed by other means.

Comments : This is not a kneejerk 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.