

Lancaster City Council | Report Cover Sheet

Meeting	Cabinet	Date	27 October 2020
Title	Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015		
Report of	Director for Economic Growth and Regeneration		
Purpose of Report			
<p>The purpose of the report is to consider a proposal for the designation of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 to remove the permitted development rights for development consisting of a change of use from a Class C3 (dwellinghouse) to a use falling within Class C4 (houses in multiple occupation), contained in Class L(b) of Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development Order).</p> <p>The proposal would mean that planning permission is required to change the use of a dwellinghouse to a house in multiple occupation (with 3-6 occupants).</p> <p>This report seeks authorisation for the Director of Economic Growth and Regeneration to proceed with the statutory process and 'make' the Article 4.</p>			
Key Decision (Y/N)	N	Date of Notice	28.9.20
		Exempt (Y/N)	N

Report Summary
<p>The concentration of Houses in Multiple Occupation (HMOs) in some parts of the City of Lancaster is at such an extent that the amenity available to residents is adversely affected due to; increased noise, increased demand for limited parking and a population density that fluctuates during the year.</p> <p>Policy DM13 of the Development Management Development Plan Document (DPD) seeks to control the concentration of HMOs to protect the amenity of residents. However, the national planning system allows dwellings to change to 'small' HMOs (defined as accommodating 3-6 occupants) without requiring planning permission. Therefore, whilst the policy is useful in controlling larger HMOs, its' effectiveness is limited. The only way in which this can be addressed is by the local planning authority seeking to remove the permitted development rights. This will then allow the total number of HMOs to be managed effectively.</p> <p>A Direction under Article 4 (Article 4) would remove the permitted development right for the change of use of a dwellinghouse (Class C3) to a house in multiple occupation (Class C4). The effect of the Article 4 would be to require a planning application to be submitted to the Council if owners, landlords, agents wish to change the use of a property used as dwellinghouse, or family home into a house in multiple occupation. Applications would be considered in the context of Policy DM13 of the Development Management DPD. Policy DM13 seeks to limit the number of houses in multiple occupation in any 100m radius to 10% of the residential properties.</p>

In February 2020, Cabinet approved progression of the Direction under Article 4 though an informal consultation process. Informal consultation took place between 21 February and 3 April 2020 and a webinar with Lancaster University accredited landlords took place on the 12 August.

It is recommended that authorisation is given for the Director of Economic Growth and Regeneration to proceed with the statutory process and make the Direction under Article 4.

Recommendations of Councillors

- (1) It is recommended that Cabinet authorise the Director of Economic Growth and Regeneration to make a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 to remove the permitted development rights for development consisting of a change of use from a Class C3 (dwellinghouse) to a use falling within Class C4 (houses in multiple occupation), contained in Class L(b) of Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development Order), in the Lancaster wards of Bulk, Castle, John O’Gaunt, Marsh, Scotforth East, Scotforth West, Skerton East and Skerton West, plus the village of Galgate.

Relationship to Policy Framework

The Corporate Plan includes ambitions to enhance community cohesion.

The Lancaster District Local Plan includes policies which seek to improve the amenity of residents in Lancaster.

Policies in the Strategic Policies and Land Allocations Development Plan Document aim to ensure that development, including uses of buildings, create strong and vibrant communities (SP9).

Policy DM13 of the Development Management DPD aims to control the concentration of HMOs.

The proposals seek to address the detrimental impacts of concentration of HMOs in accordance with the ambitions of the Corporate Plan and the Local Plan.

Conclusion of Impact Assessment(s) where applicable

Climate N/A

Wellbeing & Social Value

The proposals will manage the concentration of HMOs to protect the amenity of residents and minimise the adverse impacts of high numbers of HMOs in Lancaster.

Digital N/A

Health & Safety N/A

Equality

The proposals support community cohesion. Maintaining an appropriate proportion of HMOs in an area will provide mixed communities and provide a greater choice of accommodation for residents. The impacts of HMOs will become more manageable

Community Safety N/A

through the application of an Article 4 and the policy approach within DM13.

Details of Consultation

Informal consultation with stakeholders was carried out between 21 February and 3 April 2020. A virtual presentation and question/answer session to student landlords was hosted by Lancaster University on 12 August. Please see the Background Paper *Consultation Statement* for further details.

Statutory consultation under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 will be carried out once the Article 4 is made. Following this consultation, a report will be presented to Cabinet for Members to consider the representations and decide whether they wish the Article 4 to be brought into force.

Legal Implications

The designation of an Article 4 is required to be implemented through statutory processes within the Town and Country Planning (General Permitted Development) Order 2015. Failure to do so could result in legal challenges.

Financial Implications

The designation of an Article 4 is required to be implemented through statutory processes within the Town and Country Planning (General Permitted Development) Order 2015. Adequate notification also needs to be given to property owners. Failure to do so could result in compensation claims.

The process will involve modest cost implications for the Council in terms of staffing costs as well as advertisement costs arising from the publicity requirements. Any additional staff resources/advertising required will be covered, in the interim, within existing staffing levels. The resources necessary to deal with the potential increase in applications for Certificates of Lawful Development, prior to the Article 4 coming into force and planning applications once it is in force, will be considered as part of the forthcoming Development Management Review. This Review will consider staff resources as well as internal and external processes, legislative changes and the impact that the proposed White Paper will have upon the Team's workloads and fee income.

There is potential for applicants to claim compensation from local planning authorities if they have planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. A lead-in time of 12 months is proposed (in line with good practice) to be provided before the Article 4 direction is brought into force to limit such compensation claims, it is anticipated that any remaining compensation claims arising after this time will be limited and met from within existing budgets or from additional planning income generated as a result of the Direction.

Other Resource or Risk Implications

There will staff implications due to an increase in the number of HMOs which would require planning permission (therefore an increase in applications) and for the enforcement of the policies. The resources necessary to deal with the potential increase in applications for Certificates of Lawful Development, prior to the Article 4

coming into force and planning applications once it is in force, will be considered as part of the forthcoming Development Management Review. This Review will consider staff resources as well as internal and external processes, legislative changes and the impact that the proposed White Paper will have upon the Team's workloads and fee income.

Section 151 Officer's Comments

The s151 Officer has been consulted and has no further comments

Monitoring Officer's Comments

The Monitoring Officer has been consulted and has no further comments

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Links to Background Papers

- Background Paper on the Designation of Article 4 Areas to Control Houses in Multiple Occupation, including a Draft Article 4 Direction
- Consultation Statement

1.0 Introduction

1.1 There are wards and streets in Lancaster where the concentration of HMOs is at such a degree, they create an imbalance in the community and affect the character of the neighbourhood. Issues arise from noise and disturbance, pressure on refuse storage, car parking and services, depopulation over the summer period, as well as the detrimental visual impact caused by the display of a significant volume of To Let boards. Policy DM13 of the Development Management DPD seeks to control the increase in concentration. However, because the conversion of a dwelling house to a small HMO (Use Class C4, 3 to 6 occupants) does not require planning permission, this policy will only control the growth of large HMOs (over 6 occupants).

1.2 An Article 4 Direction would remove the permitted development rights that are contained in Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development Order) which allow the change of use of a dwelling falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation). This would mean that planning permission is required for any such conversions. The concentration of HMOs and other issues such as noise and parking can then be assessed in accordance with policy DM13.

2.0 Proposal Details

2.1 Cabinet approved the progression of an Article 4 in February. An informal consultation was carried out for 6 weeks between the 21 February and 3 April to gain the views of residents, landlords and businesses regarding the principle of

introducing an Article 4 the area which it would cover. The consultation also sought views in respect of a Residential Conversions Supplementary Planning Document which provides guidance on how policy DM13 will be implemented and proposals to prohibit To Let signs. Further progress was delayed while waiting the Local Plan, which contains the relevant policies, to be adopted and due to the Covid19 virus implications.

- 2.2 The informal consultation received a significant level of support from residents and community groups. Residents expressed concerns about the impact of HMOs on community cohesion and spirit, parking, noise, waste and the affordability of housing for families. Lancaster University and Lancaster Student Union object to the proposals stating that students aid and improve a vibrant economy, HMOs provide an affordable option for students, the proposals are likely to result in increased rents and reduced supply, the evidence base is inadequate and incomplete. It is also stated that the effect of DM13 should be reviewed for 12 months before an Article 4 is considered.
- 2.3 Please see the *Consultation Statement* (attached as a Background Paper) for further details.
- 2.4 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows local planning authorities to make Directions withdrawing permitted development rights where the authority considers it expedient that development should not be carried out unless express planning permission has been obtained. Government Guidance contained in the National Planning Policy Framework and the Planning Practice Guidance advises that Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area.
- 2.5 HMOs are recognised as meeting an important specific housing need within Lancaster City and provide a major source of accommodation for students. Policies SP9 and DM1 of the Local Plan seek to create mixed, balanced communities and to support this aim policy DM13 seeks to limit HMOs to 10% of residential properties within any 100m radius. The proposed Article 4 and policy DM13 do not seek to prevent any new HMOs but to ensure their distribution in order to protect the amenity of long term residents and limit the adverse impact that can arise from short term occupation and a high number of people occupying a single property.

2.6 The table below shows the concentration of HMOs within wards in Lancaster.

Ward	Estimated No. of HMOs	Approx total residential units	Approx % of stock in HMO use
Bulk	322	4,456	7.23%
Castle	567	3,049	18.6%
Galgate (Ellel)	23	1,000	2.3%
John O'Gaunt	424	3,188	13.3%
Marsh	79	2,616	3.02%
Scotforth East	50	2,038	2.45%
Scotforth West	290	3,343	8.67%
Skerton East	48	3,312	1.45%
Skerton West	4	3266	0.12%
University & Scotforth Rural	79	2,334	3.38%

Table 1: Combined data sets of HMOs (November 2019) - Background Paper on the Designation of Article 4 Areas to Control Houses in Multiple Occupation

2.7 There are streets and areas within each ward which contain significant numbers of HMOs. For example, there is a high concentration of HMOs on the terraced streets of Albion, Green, Hinde and Ridge Street and Gladstone Terrace. Dallas Road has approximately 22% of residential properties in HMO use and in Blades Street it is around 26%. There are approximately 96 HMOs within the area between Balmoral/Kirkes Roads, Dundee Street, Dumbarton Street and Aberdeen Road. Approximately 46% of the residential properties on Golgotha Road and 31% in Coulston Road are in HMO use. Along Hubert Place 12 within a terrace of 18 houses are HMOs. Slaidburn Drive has approximately 14.5% in HMO use, Vine Street 33%, Avondale Road 22.5% and Lune Street 40%.

2.8 Further detail is provided within the Background Paper *Designation of Article 4 Area to Control Housing in Multiple Occupation*.

2.9 The responses, to the consultation have been reviewed and it is considered that the Article 4 Direction is justified.

3.0 Article 4 Process

3.1 The process for making an Article 4 Direction is set out within Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires local authorities to publicise the proposed direction via the following means;

- Local advertisements of the Article 4;
- Display a minimum of two notices in different locations for a minimum period of six weeks;
- Notifying owners and occupiers within the affected area (these regulations can be relaxed where this would be impractical, for example across a very large area such as the entire city);
- Sending the above documentation to the Secretary of State for review.

3.2 Following this representation period and after considering any comments received, a further report to Cabinet will be required for Members to consider the responses and determine whether to approve the confirmation of the Article 4 and bring it into force.

3.3 It is recommended that the Council proceed with a non-immediate Article 4 Direction. With an immediate Article 4 Direction there is potential for applicants to claim compensation from local planning authorities if they have had planning permission refused for a development that they would normally be able to carry out under permitted development rights. Any such compensation claims can be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights. Such claims could be significant. To avoid the risk of such compensation claims being made against the Council it is recommended that a non-immediate Article 4 direction is applied. This would provide a lead-in time of 12 months between the Article 4 being made (the process described in paragraph 3.1) and the Article 4 coming into force. For example, if the Article 4 is made on the 30 October 2020, it would come into force 30 October 2021. This accords with best practice and is the process followed by Council's when designating Article 4 areas in respect of HMOs.

3.4 Once the Article 4 Direction has been confirmed, the local planning authority must as soon as practicable:

- Give notice of the confirmation and date the Article 4 Direction comes into force to affected owners and occupiers in the same way as required for the notification of the making of the direction (see paragraph 3.1 above);
- Send a copy of the Article 4 direction to the Secretary of State.

3.5 Once a non-immediate Article 4 Direction comes into force, a planning application will be required for any change of use from a C3 (dwellinghouse) to C4 (small HMO) in the wards the Article 4 covers. Permitted development rights will remain to change from C4 use to C3.

4.0 Options and Options Analysis (including risk assessment)

Option 1:
Make a non-immediate Article 4, to include the Lancaster wards of Bulk, Castle, John O'Gaunt, Marsh, Scotforth East, Scotforth West, Skerton East and Skerton West, plus the village of Galgate.
Advantages:
The option will provide a blanket approach to be applied across the city and Galgate.
This option will protect traditional housing stock and residential areas from concentrations of HMOs increasing above the 10% in 100m radius contained within policy DM13, where they do not already do so, and further increases where they exceed this threshold at present. It will ensure consistency and a comprehensive management of HMO distribution in the future.
Disadvantages:

Greater demands on resources to process planning applications and enforce the policy and Article 4.

Risks:

Compensation claims may be made but the use of a non-immediate Article 4 will minimise the risks of compensation claims.

Option 2:

Do not progress an Article 4.

Advantages:

No further resources required to apply the Article 4 or deal with the increase in applications and enforcement issues arising.

Disadvantages:

This option would see a continuation of increases in small HMOs, contrary to the aims of policy DM13 and policies SP9 and DM1 which seek to ensure balanced communities.

Risks:

None

4. Officer Preferred Option

4.1 The officer preferred option is Option 1, make a non-immediate Article 4 Direction. This option will ensure protect traditional housing stock and amenity within residential areas, in accordance with policies SP9 and DM13 of the Local Plan.