

Report to: Cabinet, 11th June 2013

Report of: Cabinet Member for Economic Prosperity

Subject: ARTICLE 4 DIRECTION FOR CONVERSION FROM RESIDENTIAL DWELLINGHOUSES TO HOUSES IN MULTIPLE OCCUPTION – KEY DECISION

1. **Decision Required**

1.1 That Cabinet authorise the making of an Article 4 Direction under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights in relation to 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). Twelve months advance notice of the Direction taking effect shall be given. The Direction shall apply to all wards and parishes of the city.

2. **Background**

2.1 On 12 February 2013 Cabinet resolved to proceed with an Article 4 Direction to remove permitted development rights in relation to change of use from Use Class C3 to C4 with twelve months advance notice to apply to all wards and parishes of the city, subject to:

- (i) a consultation period and
- (ii) for the report to return to Cabinet for decision in the light of the consultation.

2.2 The report to 12 February 2013 Cabinet meeting is attached at Appendix 1 and the evidence report that accompanied it is attached at Appendix 2.

3. **Consultation**

3.1 A consultation exercise took place between 11 March 2013 and 19 April 2013. The requirement is for a consultation period of a minimum of 28 days, but it was extended to six weeks due to Easter.

3.2 The consultation consisted of a formal statutory notice, press release and newspaper features, online questionnaire and receipt of individual responses.

3.3 As part of the exercise both the University of Worcester and the National Landlords Association were specifically informed of the consultation. The former made no representation; the latter sought a meeting that was held on 10 April 2013.

4. **Results**

4.1 A total of 176 responses were received to the consultation consisting of 140 online questionnaire responses and 36 individual representations.

4.2 A detailed analysis of the responses is attached at Appendix 3.

4.3 In summary 126 supported the Council's proposal (71.6%) and 50 objected to the proposals (28.4%)

- 4.4 Of the 140 completed questionnaires 100 (71.4%) supported the Council's proposals and 40 objected (28.6%).
- 4.5 The 100 online questionnaire responses in support of an Article 4 Direction were asked if the Direction should be citywide. 95 (95%) supported the Council's view that it should be citywide and 5 (5%) considered that it should be specific wards.
- 4.6 All but four wards were identified in those 5 responses. Those not referred to were Gorse Hill, Warndon, Warndon Parish North and Warndon Parish South.
- 4.7 Of the 100 online questionnaires supportive of an Article 4 Direction, 47 (47%) supported the view that there should be a delay of 12 months for implementation to avoid paying compensation to anybody prevented from undertaking development otherwise permitted development. 53 (53%) supported immediate implementation.
- 4.8 Of the 40 online responses received opposed to Article 4 (28.6% of all online responses):
1. 32 (80%) considered that the city required more HMO's
 2. 32 (80%) believed that the number of HMO's made no difference to the quality of the environment
 3. 9 (22%) felt it not important to protect the quality of the environment and character of residential areas
 4. 8 (20%) responded that there were already too many HMO's and more wont's cause further harm.
- 4.9 The overall conclusion from the exercise is that there has been a degree of opposition to the proposal that is detailed in Appendix 3, there remains compelling argument for the Direction. Nevertheless there is a compelling majority in support for the City Council's proposal for a city wide Article 4 Direction. There have been a number of detailed responses that have identified issues in specific locations that reinforces the evidence that the policy has been based upon.

5. **Policy, Legal, Equalities, Financial and Risk Management Implications**

5.1 Policy:

- (i) Planning: There will need to be a policy in place at the point of implementing the Article 4 Direction. This may be a Development Plan Document, but this can only be prepared after the adoption of a core strategy. There remains uncertainty as to the date of adoption and therefore it is unclear as to when a DPD could be produced. Therefore arrangements should be made to approve an interim policy for Development Management purposes. If necessary this can be prepared before final implementation.
- (ii) Housing: The Strategic Housing Service aims to balance the housing supply by creating or maintaining mixed communities. The level of HMO's is undermining the service's ability to achieve this aim. The Worcestershire Housing Strategy mission seeks to "work with individuals, communities and partners to deliver housing opportunities so that people have the right homes, at the right time and in the right place".
- (iii) The consultation has not raised issues not identified previously and the representations made are addressed in Appendix 3.

- 5.2 Legal: There is an established procedure for the preparation, consultation, approval and implementation of an Article 4 Direction as specified in Appendix D (revised) of Circular 9/95: General Development Consolidation Order. Failure to comply may lead to Judicial Review and/or compensation. The contents of this report are in accordance with the guidance

No issues arise from the consultation affecting this statement.

- 5.3 Equalities: The policy is specifically aimed at addressing the issues of HMOs in the city. The policy relates to all HMOs and there may therefore be implications for a number of groups, such as individuals, in-migrants, those seeking to enter the private housing market and students. Despite the policy affecting a range of interested parties there is nevertheless evidence to demonstrate a correlation between HMOs and the expansion in student population and occupation by students. It is clear that of the groups identified for an Equality Assessment there is a known impact on a specific group by virtue of their age (albeit not all students are of the same age group).

However the policy seeks to safeguard the interests of students as much as control the accommodation within which they are located. The policy would enable the local planning authority to control where HMOs were located and thence, where the Planning system can do so, the environment within which students are housed.

There is therefore a negative impact on availability but a positive in the quality of available accommodation.

There would also be a positive benefit to community relations by enabling there to be more control over the balance of student to non-student residents, the availability of family housing and the wider environmental and social interests.

The online questionnaire included equalities questions that demonstrated a wider range of responding ages and a balanced response from males and females. Nevertheless the age groups 35-74 were proportionately over-represented, which is not surprising for an issue affecting property. The response by ethnicity was broadly representative of the make up of the city.

- 5.4 Financial:

- (i) There is an implication if the Article 4 Direction is implemented immediately after approval. The legislation requires a minimum delay of twelve months for an authority to implement an Article 4 Direction to avoid compensation claims from any applicant refused permission that could result in a loss of potential revenue.
- (ii) The Direction will result in an increase in the number of planning applications from 2014 but there is no evidence that these cannot be dealt with within existing budgets. Article 4 Directions remove existing permitted development rights and, therefore, a planning fee cannot be charged for planning applications which arise as a consequence of the Direction.
- (iii) Whilst the consultation exercise demonstrates a marginal majority for immediate imposition of an Article 4 Direction, there are no resources identified to cover the costs of any abortive works or loss of revenue caused by refusing planning permission on a dwelling that could previously be converted without permission.

The costs are not known and are variable based upon the number of applications submitted and refused, the location, value and size of the properties in question and the potential rent levels for those properties.

- (iv) An immediate Direction may encourage owners to go through the process of submitting an application that would otherwise not be considered as a means of securing compensation from the City Council.

5.5 Risk Management: The decision as to whether to implement immediately or defer for twelve months is an identified risk associated with the approval of the Direction. This is a financial risk and the recommendation is to implement in twelve months to avoid compensation claims.

6. Comments of Development Services Manager

6.1 In making its decision on 12 February 2013 Cabinet accepted that there is evidence to demonstrate that there is harm to the amenity and character of residential areas and a negative impact on the local housing market as a result of permitted change from house to HMO. Consequently it resolved that it is appropriate to use an Article 4 Direction to manage the problem that has been identified in the city.

6.2 The consultation exercise demonstrated significant support for Cabinet's decision. Specific objection was made by the National Landlords Association and a response to that is included in Appendix 3. The group also encouraged its members to respond using a standard response based on its comments.

6.3 The issues raised have already been considered by the Development Management and Housing services. I am also satisfied that the NLA has not provided any evidence to justify a change in the Council's approach to an Article 4 Direction.

6.4 There is no overwhelming support for the Direction to be implemented immediately contrary to the Cabinet decision on 12 February 2013. It is proposed therefore to continue with a non-immediate direction that would take effect once all properties affected are informed. It is expected that this would be via statutory notice and *City Life*. It is anticipated that implemented date would be 1 July 2014.

6.5 In the period between authorisation and implementation of the Direction, it will be necessary to engage with landlords to ensure that existing HMOs are recorded so that they may be exempt from enforcement action and to ensure knowledge of the policy against which future applications will be determined.

6.6 An existing Direction cannot be revised. Therefore if the decision was made to have a Direction specific to certain wards or streets (as proposed by NLA) it would be necessary to go through the whole process again to widen coverage through a new Direction. Consequently a citywide Direction would be appropriate if there is the evidence to justify this. I am satisfied that there is evidence that there is already an increase in HMO numbers across the city affecting amenity and there is legitimate concern that displacement would occur across the city if it was a ward specific proposal. Therefore there is evidence to justify a citywide Direction.

5. THE CABINET MEMBER FOR ECONOMIC PROSPERITY, COUNCILLOR GEOFF WILLIAMS, RECOMMENDS:

- 1. That the making of an Article 4 Direction is authorised under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights in relation to 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). Twelve months advance notice of the Direction taking effect shall be given. The Direction shall apply to all wards and parishes of the city and shall come into effect on 1 July 2014.**

Ward(s):

All

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Appendix 1 – Report to Cabinet 12 February 2013

Appendix 2 – Evidence accompanying report to Cabinet

Appendix 3 – Analysis of Representations