

Bath & North East Somerset Council		
MEETING:	Cabinet	
MEETING DATE:	12 June 2013	EXECUTIVE FORWARD PLAN REFERENCE:
		E2529
TITLE:	Houses in Multiple Occupation in Bath: Confirmation of Article 4 Direction and Adoption of Supplementary Planning Document	
WARD:	Bath	
AN OPEN PUBLIC ITEM		
<b>List of attachments to this report:</b>		
Appendix A – Adoption Draft Houses in Multiple Occupation in Bath Supplementary Planning Document		
Appendix B – Schedule of amendments to the Draft Supplementary Planning Document		
Appendix C – Consultation Report: Houses in Multiple Occupation in Bath Supplementary Planning Document		
Appendix D – Consultation Report: Article 4 Direction for HMOs in Bath		

## 1 THE ISSUE

- 1.1 A decision is sought about whether to (i) confirm a city-wide Article 4 Direction, which would restrict permitted development rights and trigger planning permission to be required for change of use between a family house (use class C3) and a small House in Multiple Occupation, with 3-6 people unrelated people sharing facilities (use class C4) and (ii) adopt a Supplementary Planning Document to supplement Local Plan policy HG.12, to inform how these new planning applications will be determined.

## 2 RECOMMENDATION

The Cabinet agrees that:

- 2.1 The Article 4 Direction relating to small HMOs made on 31 May 2012 (as advertised in the Council's Notice of Making an Article 4 Direction ) is confirmed from 1st July 2013.
- 2.2 The *Supplementary Planning Document on Houses in Multiple Occupation in Bath (Appendix A)* is adopted to supplement the Bath & North East Somerset Local Plan, specifically saved Policy HG.12 and is given significant weight in the determination of planning applications.
- 2.3 Responsibility is delegated to the Divisional Director of Planning & Transport to make graphic and minor textual amendments to the SPD (**Appendix A**) prior to adoption.

### 3 FINANCIAL IMPLICATIONS

- 3.1 Detailed work on the costs of implementing all of the options in relation to planning and housing controls was undertaken and was reported previously to Cabinet in March 2012. A full cost breakdown was set out in section 3.3 of the 14<sup>th</sup> March 2012 Cabinet and in Appendix C to that [Report Implementation Cost Assessment Summary \(Feb 2012\)](#) (see background papers).
- 3.2 Joint working arrangements between Planning and Housing are in place to ensure that efficiencies are being made by sharing data on HMOs and communicating on relevant enforcement activities.
- 3.3 The costs associated with confirming the Article 4 Direction and adopting the SPD can be met within the existing LDF budget 2013-14.
- 3.4 There are ongoing costs to Planning Services of implementing the new planning controls estimated to be £31k recurring per annum (non recoupable) from date of implementation (i.e. 1<sup>st</sup> July 2013). This equates to a pro-rata cost to Planning of £23k for the remainder of the financial year after implementation (1<sup>st</sup> July 2013 – 31<sup>st</sup> March 2014).
- 3.5 The £23k costs for year 1 (2013-14) are being covered by a draw down from the revenue budget contingency.
- 3.6 A review will need to be undertaken before the end of year 1 to ascertain the ongoing costs of implementing the new planning controls. Additional budgetary requirements will either need to be put forward as a growth item in the 14/15 budget or resources found from existing planning budgets.

### 4 CORPORATE OBJECTIVES

- 4.1 This item contributes mainly to priority 2 “creating Neighbourhoods where people are proud to live”. There is also a need to consider the economic prosperity in considering this decision and equalities issues in promoting positive lives for everyone.
- *Promoting independence and positive lives for everyone*
  - *Creating neighbourhoods where people are proud to live*
  - *Building a stronger economy*

### 5 THE REPORT

#### ***Introduction***

- 5.1 The definition of a small House in Multiple Occupation (HMO) in planning terms is essentially a dwelling with between three and six unrelated people living together and sharing facilities such as bathroom and/or kitchen.
- 5.2 Evidence gathered since 2011 by Housing and Planning Services, highlights the following issues:
- There are 3,850 HMOs in the district (as defined under planning regulations), the majority of which are located in the City of Bath

- There is a strong geographical clustering of HMO in specific parts of the City. The wards of Widcombe, Westmoreland and Oldfield have the highest numbers of HMO with shared facilities, there are estimated to be up to 1,500 properties of this type in these wards alone
- The Council on average receives 428 general service requests per year which can be directly related to the domestic use of HMO. Almost half of these come from the wards of Oldfield, Widcombe and Westmoreland.
- For the above three wards, in 2011 Council Connect received a total of 237 requests for street sweeping and 95 complaints in relation to domestic waste being put out on the wrong day
- Common issues raised by residents highlight problems including poor property and garden maintenance, rubbish and litter, loss of community balance (particularly where areas become under-occupied over the summer months) and where HMO are seen to dominate the housing mix. Parking problems and low level anti-social behaviour are also reported.
- Tenant's surveys and a recent survey undertaken by the University of Bath Student's Union also highlight that there is also further work that could be done to enhance the experience of HMO occupants in the City.

### ***The process to date***

- 5.3 In response to concerns about the high, and increasing, levels of Houses in Multiple Occupation (HMO) in certain parts of Bath the Council investigated the feasibility of implementing an Article 4 Direction in Bath in relation to HMOs in Summer 2011. This followed a change in national legislation in 2010.
- 5.4 Following the initial feasibility assessment, in March 2012 the Cabinet agreed to (i) issue one year's notice of the Council's intention to implement an Article 4 Direction in relation to HMOs for the entire City of Bath and to undertake the necessary advertisement and consultation processes; (ii) prepare a Supplementary Planning Document to enable the implementation of the Article 4 Direction and (iii) Housing Services asked to gather evidence to consider whether to implement an additional licencing scheme for HMOs in Bath.
- 5.5 In October 2012, the Cabinet agreed a draft Supplementary Planning Document on HMOs for public consultation.
- 5.6 The Cabinet is now asked to consider the consultation responses received and decide whether to proceed to confirm the Article 4 Direction and adopt the Supplementary Planning Document.
- 5.7 A Report on a proposed Additional Licencing Scheme is also being considered by Cabinet on 12<sup>th</sup> June. The Planning and Housing Departments have been working closely together on this project – including evidence sharing and joint consultation/work with stakeholders. If implemented, Additional Licencing has the potential to be applied retrospectively and should also help deal with existing property management issues in relation to HMO and ensure they are safe for the occupants.

### ***Article 4 Direction***

## *Background*

- 5.8 On 31<sup>st</sup> May 2012 a Direction was made under Article 4 of the *General Permitted Development Order* and a notice of the making of an Article 4 Direction for the entire city of Bath in relation to small Houses in Multiple Occupation was published stating the Article 4 Direction was made and would come into effect from 1<sup>st</sup> July 2013 if confirmed). This notice included a regulatory consultation period..
- 5.9 The Article 4 Direction, if confirmed, would mean that express planning permission is required from the Local Planning Authority via a planning application process, for a change of use from a dwelling house (i.e. family house), use class C3 to a small HMO (3-6 unrelated people living together sharing facilities), use class C4. Planning permission is already required for large HMOs.
- 5.10 B&NES will not be able to collect a fee for the processing of these applications. Reasons for refusal of planning permission will still be required on a case by case basis.
- 5.11 It should be emphasised, that an Article 4 Direction cannot be applied retrospectively and it would only control future changes of use from the date it comes into effect (i.e. 1<sup>st</sup> July 2013). It would not therefore necessarily tackle any existing issues in areas that already have a high density of HMOs.

## *Public consultation*

- 5.12 The public consultation comments are summarised in **Appendix D** to this report. A total of 359 written responses were received in response to the consultation, only six of which were objections. The majority of respondents were residents of Oldfield and Westmoreland wards.
- 5.13 The students unions of both Universities oppose the Article 4 Direction, as they believe that there should not be a cap on the numbers of HMOs anywhere in Bath, and that HMOs also provide for housing relied on by young professionals, trainee teachers and nurses as well as those on low incomes and students. This position is reflected in the petition submitted to the Council in February 2013 signed by 698 people (see **Appendix C – Annex D-** for a copy of this petition).
- 5.14 Landlords groups, and the Bath Chamber of Commerce also oppose the Article 4 Direction as they do not support restrictions being applied to the housing market in Bath. While the Bath Chamber of Commerce continue to express concern about potential impacts on graduate retention, the landlords groups cite the restriction of affordable housing options, the inflation of rental prices for tenants, costs of implementation for the Council and displacement effects as their main criticisms.
- 5.15 The exceptional circumstances which justify the Article 4 Direction are seen to be the evidence of the high concentrations of HMOs in parts of the City, which is considered to be the primary cause of harm to amenity, due to its impact on community balance.

## *Conclusion*

- 5.16 The Cabinet is asked to consider the results of the public consultation (**Appendix D**), and consider in the light of these whether or not the Article 4 Direction should be confirmed.

## **Supplementary Planning Document**

### *Background*

- 5.17 The 2011 *Article 4 Feasibility Study* identified that the Council's existing Planning Policy (Local Plan Policy HG.12) would need to be supplemented or amended to make the Article 4 Direction more effective. A Supplementary Planning Document has been produced setting out the framework within which planning applications for a change of use from a dwelling house to a HMO will be determined and includes references to the data sources to be used in that determination.
- 5.18 The Council considered the policy approaches of other authorities in drafting the SPD – in particular Oxford, Exeter, York and Welwyn & Hatfield. Similar threshold approaches and policies are proposed that relate to the local conditions in Bath.
- 5.19 The SPD would introduce a new threshold policy to supplement the saved Local Plan policy HG.12. A two stage assessment process is proposed to make it as clear as possible from Stage 1 if permission is likely to be granted for a change of use to an HMO from a family house.
- 5.20 At Stage 1 if the property is located within a “red” area on the map (see Map 2 on p9 of **Appendix A**) then planning permission is unlikely to be granted for the change of use and a Stage 2 detailed assessment is triggered. This Map will be updated online every 6 months with the latest data.
- 5.21 The SPD also relates to larger HMOs which are classified as Sui Generis, where a HMO has 7 or more occupants and where a material change of use can be demonstrated a separate planning permission is needed.
- 5.22 The result of the policy would be that permissions for change of use from a family home to an HMO could be refused in neighbourhoods with over 25% of the existing housing stock known to be an HMO. This would assist in maintaining community balance and a mix of tenure and household types, and halt the high rate of conversions to HMOs in specific areas of Bath.

### *Conclusion*

- 5.23 The Cabinet is asked to consider the results of the public consultation (**Appendix C**), together with the proposed Schedule of Amendments to the SPD (**Appendix B**) and decide whether to adopt the document (**Appendix A**) alongside the Article 4 Direction.

## **6 RISK MANAGEMENT**

- 6.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.
- 6.2 A 12 month notice period has been given, advertising the Council's intention to implement a non-immediate Article 4 Direction to avoid liability to pay compensation.
- 6.3 The Secretary of State now performs only a supervisory function in relation to Article 4 Direction. The Secretary of State has the power to cancel the Article 4

Direction; however, they will only intervene if there are clear reasons why this is necessary.

6.4 An Article 4 Direction can be legally challenged in relation to whether there is a sound basis for its implementation. Government guidance advocates that local planning authorities should consider making Article 4 Directions only in *“exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm amenity or the proper planning of the area.”* The exceptional circumstances are set out above at para 5.15

6.4 A Supplementary Planning Document can also be open to challenge, for example, by planning appeal, however, every effort has been made to ensure that a robust policy approach has been taken.

6.5 A limited number of authorities have implemented Article 4 Directions or Supplementary Planning Documents in relation to HMOs so there is relatively little precedent. However, we have discussed with and learnt lessons from other authorities with similar issues who have implemented similar policies.

6.6 The Council's affordable housing policies linked to new development also help to address issues of housing affordability in the district.

## **7 EQUALITIES**

7.1 An Equality Impact Assessment (EqIA) has been completed for both the Article 4 Direction and the Draft Supplementary Planning Document, as well as in combination effects with the Additional Licensing (included as background documents). The existing EqIA are considered still fit for purpose as only very minor changes to SPD are proposed.

7.2 The main conclusions of the assessments in relation to planning can be summarised as follows:

- Could lead to a more dispersed distribution of HMOs, which could lead to poorer access to public transport for HMO residents and feelings of isolation from greater dispersion
- Rental prices in the most popular student areas could potentially rise (Oldfield Park, Westmoreland, Widcombe) which will affect people with lower salaries and students (both most likely to be young people)
- Wards with higher level of BME populations also have higher proportion of HMOs so these groups may be affected
- May lead to the perception that HMOs are not welcome in the city and therefore make it harder for employers to attract lower paid workers or graduate employees
- May result in loss of trade in some areas if current tenants are replaced by people with lower disposable income (e.g. young families or non-student HMO residents e.g. migrant workers)

- The in-combination benefits of the planning controls together with the Additional Licencing proposals were also noted in the Equalities Impact Assessments.

7.3 A “do nothing additional” approach was considered in March 2012, adverse equalities impacts of this were also noted including:

- the potential for neighbourhood quality to worsen over time, which would disproportionately affect some equalities groups; and
- House prices in areas with high level of HMOs could continue to be inflated making home ownership more difficult for families and lower income groups.

7.4 Following the most recent EqIA recommendations, additional work was undertaken to make sure that appropriate support was available for equalities groups as part of the recent public consultation on the SPD and Additional Licencing Proposals. This included initiating one to one conversations with representatives of various equalities groups as well as attending Polish Community meeting in Oldfield Park. Further details can be found in **Appendix C**.

## 8 RATIONALE

8.1 A decision is requested to either:

- Proceed to confirm the Article 4 Direction for HMOs in Bath and adopt the Supplementary Planning Document ;or
- Decide not to proceed further with either at this time.

## 9 OTHER OPTIONS CONSIDERED

9.1 A full range of options in relation to the control and regulation of HMOs in Bath was considered by Cabinet (and other committees) in 2011-12 (see background documents). A decision was made to undertake work to proceed with an Article 4 Direction, accompanied by a Supplementary Planning Document and for Housing Services to explore the implementation of Additional Licencing for HMOs.

## 10 CONSULTATION

10.1 *Ward Councillor; Cabinet members; Policy Development and Scrutiny Panel; Other B&NES Services; Local Residents; Community Interest Groups; Stakeholders/Partners; Other Public Sector Bodies; Section 151 Finance Officer; Chief Executive; Monitoring Officer*

10.2 In addition to the debates at various committees where this item has been considered (see background documents). Formal consultation was carried out in four stages, the key stages are summarised below:

<b>Stakeholder workshop – Feasibility Report</b>	<p>Early Stage consultation workshop with key stakeholders to explore options in relation to controls over HMOs (October 2011). The key feedback was:</p> <ul style="list-style-type: none"> <li>• Support for whole city Article 4 Direction and pursuing planning controls</li> <li>• Support for exploring Additional Licencing alongside Planning</li> </ul>
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	<p>controls to address property management issues for existing HMOs</p> <ul style="list-style-type: none"> <li>• Support for maintaining existing management arrangements e.g. student community liaison and community helpline</li> </ul> <p>Full details of the consultation workshop can be found as part of the <a href="#">Article 4 Direction Feasibility Study</a> (Feb 2012)</p>
<b>Public consultation on Article 4 Direction for HMOs</b>	<p>Formal Regulatory Planning Consultation on the Article 4 Direction Notice (May – July 2013). The key feedback was:</p> <ul style="list-style-type: none"> <li>• A total of 359 written responses received</li> <li>• Only 6 objections to Article 4 Direction and 353 in support</li> <li>• Majority of respondents residents of Oldfield Park and Westmoreland</li> <li>• One request for a street to be exempted from the scheme (Lorne Road)</li> <li>• Objections received from the University of Bath &amp; Bath Spa Student Unions, the National Landlord Association, the Residential Landlord Association and three individuals.</li> </ul> <p>This <a href="#">consultation feedback</a> was reported back to Cabinet in October 2012</p>
<b>Stakeholder workshop – policy proposals</b>	<p>A joint Housing &amp; Planning Stakeholder workshop was held in (July 2012) to explore the evidence base and explore potential policy options for inclusion in the Supplementary Planning Document on HMOs in Bath and an Additional Licencing scheme. The key feedback in relation to the planning elements was:</p> <ul style="list-style-type: none"> <li>• Support for two stage approach for applicants</li> <li>• Planning policy needs to be kept as simple as possible so that it is easy to understand – issues such as parking, waste and gardens are best dealt with using the other mechanisms (such as licencing)</li> <li>• 25% threshold considered locally appropriate given local evidence</li> </ul> <p>The findings of this <a href="#">stakeholder workshop</a> were reported back to Cabinet in October 2012</p>
<b>Public consultation on draft Supplementary Planning Document</b>	<p>Public consultation on the Supplementary Planning Document was undertaken in October – November 2012. The consultation activities were combined with the Additional Licencing consultation. The key was:</p> <ul style="list-style-type: none"> <li>• Approx. 300 people attended the seven drop in events held in Bath</li> <li>• In addition, the University of Bath and Bath Spa University Student Unions submitted a joint petition with 651 signatories objecting to the proposed planning controls.</li> <li>• 50 written responses were received to the planning consultation</li> <li>• 21 responses supported the SPD in full</li> <li>• The Bear Flat Association, the Widcombe Association and the Federation of Bath Residents' Associations supported the SPD</li> <li>• 29 responses included some level of objection:</li> <li>• 20 respondents (mainly local residents) generally supported the policy approach proposed but would like to see a lower threshold than 25%. There was no consensus about what a lower threshold should be and suggestions ranged from 9-20%</li> <li>• The Bath Chamber of Commerce continues to object to the greater regulation of housing which provides affordable accommodation for</li> </ul>



	<p>young people</p> <ul style="list-style-type: none"> <li>• The Conservative Group supports the measures but raised some questions of implementation</li> <li>• Bath Spa University made some comments without objecting strongly</li> <li>• The University of Bath objected, stating that it does not consider the Article 4 Direction to be justified and asks that the Council seriously considers the impact on the city's housing market and local economy. If it proceeds the University supports the need for an SPD and proposes a 30% target with streets on key transport corridors exempted.</li> <li>• A resident of Lorne Road objected to the proposals and requests that the road be exempted</li> <li>• The National Landlord Association and the Residential Landlord Associations both objected to the proposals. Their key objections are: (i) Additional Licencing Impact should be considered first before planning controls. (ii) The creation of an HMO does not necessarily constitute a material change of use therefore this policy will not be able to be implemented. (iii) The Article 4 Direction will mean it is not possible for landlords to respond to housing demand.</li> </ul> <p><b>Appendix C</b> to this report includes a summary of the consultation activities undertaken, a more detailed summary of the consultation responses and a copy of the consultation responses in full.</p>
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10.3 The issues raised during the last stage of the consultation on the Supplementary Planning Document were considered and a number of amendments are proposed in **Appendix B**. In some cases while the issues were considered in depth, no changes are proposed as the existing approach was considered to be sound, specifically:

- No change is proposed to the 25% threshold included in the SPD
- No areas/streets are proposed to be exempted from the Article 4 Direction

10.4 The rationale for this approach is included in section 5 of this report and in **Appendix C**.

## 11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 *Social Inclusion; Customer Focus; Other Legal Considerations*

## 12 ADVICE SOUGHT

12.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	David Trigwell, Divisional Director – Planning & Transport 01225 394125
<b>Sponsoring Cabinet Member</b>	<i>Councillor Tim Ball</i>

<b>Background papers</b>	<p>The list below also include hyperlinks:</p> <ul style="list-style-type: none"> <li>• Planning, Transport, Environment Policy Scrutiny Panel Report 6 December 2011 – <a href="#">Planning Control (Article 4 Direction) for Houses in Multiple Occupation (HMOs) in Bath</a></li> <li>- <a href="#">Draft Report “Article 4 Direction for HMOs in Bath”</a></li> <li>- Cabinet Report 14 March 2012 – <a href="#">Control &amp; Regulation of Houses in Multiple Occupation in Bath: Implementation Options</a></li> <li>- <a href="#">Article 4 Direction for Houses in Multiple Occupation: Feasibility Study (February 2012)</a></li> <li>- <a href="#">HMO Study Options – Equality Impact Assessment (December 2011)</a></li> <li>- <a href="#">HMO Study Options: Implementation Cost Assessment Summary (February 2012)</a></li> <li>- <a href="#">HMO Licencing: Private Sector Licencing (February 2012)</a></li> <li>• Development Management Committee Report 14 March 2012 – <a href="#">Control and Regulation of Houses in Multiple Occupation in Bath: Implementation Options</a></li> <li>• Planning, Transport, Environment Policy Scrutiny Panel Report 8 October 2012 – <a href="#">Houses in Multiple Occupation in Bath Supplementary Planning Document Consultation Draft</a></li> <li>• Cabinet Report 10 October 2012 – <a href="#">Houses in Multiple Occupation in Bath Supplementary Planning Document: Consultation Draft</a></li> <li>- <a href="#">Draft Supplementary Planning Document (Sept 2012)</a></li> <li>- <a href="#">Article 4 Direction Consultation Report</a></li> <li>- <a href="#">Stakeholder Workshop Report (August 2012)</a></li> <li>- <a href="#">Equalities Impact Assessment of the SPD</a></li> <li>- <a href="#">Sustainability Appraisal Screening Report</a> (October 2012)</li> <li>• Legal Notice (31 May 2012) - <a href="#">Notice of its intention to implement an Article 4 Direction for the entire city of Bath in relation to Houses of Multiple Occupation</a></li> <li>• <a href="#">SHMAA (March 2013)</a></li> <li>• <a href="http://www.bathnes.gov.uk/hmo">www.bathnes.gov.uk/hmo</a> B&amp;NES HMO webpage</li> </ul>
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