

# CONSIDERATION OF WHETHER AN ARTICLE 4 DIRECTION TO CONTROL HOUSES IN MULTIPLE OCCUPATION AROUND BRUNEL UNIVERSITY SHOULD BE INTRODUCED

<b>Cabinet Member</b>	Councillor Keith Burrows
<b>Cabinet Portfolio</b>	Planning, Transportation and Recycling
<b>Officer Contact</b>	James Rodger – Planning, Environment, Education and Community Services
<b>Papers with report</b>	Appendix 1 – Plan indicating roads with high concentrations of HMO's as suggested by private sector housing and indication of which wards those roads fall within.

## HEADLINE INFORMATION

<b>Summary</b>	<p>A number of University cities have taken advantage of recent changes in planning regulations so they can withdraw existing planning permitted development rights for student houses. This brings student housing, 3-6 bed Houses in Multiple Occupation(HMO's) under planning control, therefore enabling the number of HMOs in individual streets to be controlled for the benefit of other residents amenity.</p> <p>The report explains why many Councils are considering Article 4 Directions. That Cabinet cannot make a decision on whether an Article 4 Direction should be considered; but it is considered that the issue merits a report to Full Council (who would have authority to decide whether an Article 4 Direction should be created around Brunel University.</p>
<b>Contribution to our plans and strategies</b>	This report primarily relates to the impact of HMO's on Hillingdon being a clean and attractive Borough
<b>Financial Cost</b>	To implement an Article 4 Direction would cost approximately £6,000 in publicity and public notices. On introduction there would be an on-going cost to the Council of approximately £20,000 a year to deal with the no fee planning applications and to monitor and enforce planning breaches.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services Policy Overview Committee
<b>Ward(s) affected</b>	Brunel & Uxbridge South

## **RECOMMENDATION**

**That Cabinet recommends a report be written to Full Council to determine whether Hillingdon should have an Article 4 Direction to address student HMO issues raised by local residents in Uxbridge South and Brunel Wards.**

### **Reasons for recommendation**

Article 4 Directions to control Housing in multiple occupation (HMO's) are not yet active anywhere in the UK and it is unclear what the overall effects of creating an Article 4 Direction will be.

### **Alternative options considered / risk management**

A possible alternative option would be to refer the matter to an Area Planning Committee. Almost universally other Councils who have created Article 4 Directions for student housing have referred the matter to their Full Councils and it is considered that full Council is the most appropriate decision making body in this case.

### **Policy Overview Committee comments**

None at this stage.

## **INFORMATION**

### **Supporting Information**

1. The present situation is that planning permission is not required where there is movement from Class C3 (a dwelling house) to Class C4 (houses in multiple occupation with 3-6 un-related occupants living as a single household also known as HMO's) under the 'Town & Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010'. In plain English if 7 or more people share a building in separate rooms in a situation where the occupants are not related you need planning permission. But if 3-6 people who are not related live together, as a single household (such as a student house), then planning permission will not be required, it is classed as 'permitted development'. In practice the vast majority of student houses around Brunel University have 3-6 un-related students occupying them.
2. In October 2010 the Government, in response to demand to control the effects of 'studentification' in many UK cities changed the legislation that applies to Councils seeking to impose Article 4 directions to withdraw permitted development rights. A new Government Circular was launched with the objective of simplifying how Article 4 Directions could be made to control student HMO's. The intention being to give Councils the option of creating an Article 4 Direction if they felt 'studentification' issues were causing problems such that the Council thought it appropriate to withdraw permitted development rights.

3. Article 4 Directions are a tool whereby for a specific geographic area the Council can override normal permitted development rights and require a planning application for a specific type of development outlined in the Article 4 Direction. The process to create an Article 4 Direction is far from straightforward and involves extensive consultation and has compensation implications on the Council.
4. 'Studentification' is a term used to describe the adverse effects of large concentrations of students living in residential streets. There is various literature on the subject of what studentification is. Studentification is typically described in published literature as a real or perceived increase in; anti-social behaviour, in parking problems from various students in one property owning cars, dereliction and street blight such as rubbish being put out every day of the week, gardens being un-kept; and changes in overall character of an area such as 'student pubs,' off licences and takeaways proliferating. Studentification is' also referred to as affecting the social cohesion of individual streets where an 'us' and 'them', mentality can occur between students and non-students. The degree to which this occurs in individual streets is a subjective matter. Nonetheless there is empirical evidence that some streets such as Bosanquet and Barchester Close to name but two streets (see attached annexe for a map highlighting streets known to have a high concentration of HMO's) now have very large numbers of student HMO's and local residents are organising and attending public meetings to raise their concerns regarding studentification issues in Uxbridge South and Brunel Wards.
5. On the 9<sup>th</sup> May 2011 there was a public meeting in Cowley where approximately 40-50 local residents indicated their desire for action to deal with studentification issues which they felt were blighting their lives. At that meeting the implications of an Article 4 Direction were explained. It was clear at the meeting that a number of local residents felt that their wellbeing was seriously being affected by studentification.
6. The new procedure for introducing an Article 4 direction provides that where a local authority gives 12 month's advance notice of a Direction taking effect there will be no liability to pay compensation. If the Council provides less than 12 months notice it has to pay out compensation to landowners who wish to create HMO's. The landowners can claim for work already undertaken to make a HMO prior to the Article 4 Direction coming into effect. This could include architect fees, application fees, the costs of a depreciation in the value of the property, as well as the cost of abortive work such as structural works to alter the property. In terms of limiting compensation by way of a change to existing policies or creation of new, the Government has made it clear that it does not matter whether a local authority has an existing policy restricting HMO development for the purpose of compensation liability.
7. Local authorities will be liable to pay compensation in all instances where Article 4 directions are made with less than 12 month's notice. The difference in value of a property with or without HMO consent could be thousands/tens of thousands of pounds, as could the cost of compensating for abortive works. A financial risk assessment would therefore identify a risk of hundreds of thousands of pounds (or possibly even millions of pounds if an Article 4 direction covered all of Hillingdon) in compensation claims made against the Council. Other possible claims include anticipated future business profits likely under a specific contract. However, a claim cannot be made for anticipated profits of a business yet to be established. There is no real limitation to what can be claimed under the compensation regime and therefore with such possible financial implications no Council is realistically going to create an Article 4 Direction without giving 12 months

notice.. A number of well known University cities are progressing Article 4 Directions to address studentification, not one of these is bypassing the 12 month notice period.

8. Separate from the planning process there are existing licensing arrangements (Under the Housing Acts., Hillingdon operates both Mandatory and Additional HMO Licensing. Due to the predominantly two-storey housing stock, Mandatory HMO Licensing (which only covers three storey properties) has been of limited use to this Council as an enforcement tool, so in March 2010 the Council received approval from the Government to introduce an 'Additional HMO Licensing Scheme'. This scheme covers two storey HMO's in the south of the Borough.
9. Hillingdon has operated an HMO Registration since September 1997, and with the introduction of the Additional HMO Licensing scheme in March 2010, this has proven to be an excellent tool in enabling the Council to deal with HMOs, and has encouraged landlords to come forward and meet the requirements of the new Housing Act 2004.
10. Hillingdon's experience of licensing is similar to that of neighbouring boroughs. Its effectiveness is in part due to its regulatory requirements. However, its main benefit in an expanding and volatile market is to discourage and remove marginal and non-compliant owners of the worst properties from the market. Although Licensing does not give the Council the ability to prevent properties becoming HMOs, officer experience has shown that the penalties that Licensing brings (£20,000 maximum fines) forces the less professional and least compliant landlords out of the market, having an indirect impact on controlling numbers of HMOs within specific streets. In summary, the Council has been increasingly effective in dealing with the worst landlords through HMO licensing. HMO licensing will not though prevent their being student HMO's around Brunel University. A number of the streets adjacent to the University now have over 50% student HMOs.
11. With Brunel University having undergone massive expansion, with over 17,000 students on campus, despite an increase in onsite halls of residence, the numbers of students living in private rented HMOs around the University has seen a massive increase, in particular in the last 5 years.
12. Council officer's have worked closely with Brunel University to produce a leaflet for students titled 'Living off Campus' to try and educate students in their behaviour and to assist them in integrating with local residents. Four years ago the Council set up a 'Brunel University Liaison Group' to act as a forum for Councillor's and officers to discuss studentification issues with the acting Pro-Vice Chancellor and University representatives. This led to the University Housing Department doing various initiatives to address student landlord/HMO issues. It also led to a part time Community liaison post being created by the University. These points must be stressed as it is very much the case that the Council and University have worked in partnership to try to deal with studentification issues over recent years.
15. Nonetheless despite all these efforts it is the case that until the recent economic downturn landlords were outbidding potential owner-occupiers when housing in some streets close to the University were sold. With several hundred students concentrated, as in Brunel Ward itself, in a few streets, it cannot be denied that studentification effects are extensively felt in some Hillingdon streets. These streets are in the opinion of officers exclusively located in Brunel and Uxbridge South Wards.

16. The latest statistics provided by the private sector housing team are:

**Borough Wide Data**

Total Known HMOs	1800
House Condition Survey Estimate (2008)	2310
Total Licensed	424

**Ward Data**

Uxbridge South	342 Known HMOs - (271 Student) - 83 Licensed
Brunel	220 Known HMOs - (174 Student) - 60 Licensed

17. Details of complaints regarding student HMO's are:

<b>HMO Logged Complaint Data</b>	2010-11	Since 2006
Brunel	35	160
Uxbridge South	46	224

Note: This is Private Sector Housing data only and excludes complaints direct to Brunel University (who do deal with their share of resident's complaints) and the ASB Investigations Team who also deal with a large number of student HMO related complaints.

18. The starting position is if Hillingdon Council imposed an Article 4 Direction there would be a 12 month period where all landlords would know that planning regulations would be changed. There is no clear evidence that those Councils who are currently underway with 12 month consultation periods for Article 4 Directions have experienced changes in the way landlords operate (as no empirical data is yet available), but there is the real risk of a surge in HMO activity if a consultation commenced.
19. There has to be particularly strong justification for the withdrawal of permitted development rights relating to a wide area. It would neither be justifiable with respect to impact on communities or with respect to the financial impact on the Council (where applications have no fee) to cover the whole of Hillingdon with an Article 4 Direction. In some cases HMO's are an appropriate form of housing stock which best suits some sectors of the population. It should also be noted that of the 2000 approximate HMO's in Hillingdon less than 200 are north of the A40.
20. An Article 4 Direction will not allow the Council to refuse subsequent planning applications unless it has strong grounds to do so. Strategic policies at a National level and in the Mayor's London Plan support the growth of the education sector, preventing any form of student housing would run against this. Therefore in streets where there are not clusters of existing HMO's or a concentration of HMO's an Article 4 Direction should not be viewed as a tool that would result in planning applications being refused. Where an Article 4 direction can be effective is if accompanied by an adopted policy document that sets out a percentage figure (other Planning Authorities in University Cities are using 15% or 20% of properties in a street) whereby the Council considers that 'studentification' would arise if further HMO's are granted. If Hillingdon Council creates an Article 4 Direction it will need to follow this up with a new policy document that indicates this percentage figure. That percentage figure when combined with an Article 4 direction will give the Council the power to prevent any further HMO's in the streets worst affected by HMO's.

21. It is likely that landlords if an article 4 Direction is introduced would quickly realise that certain streets will not be worth purchasing properties on. Over time the effect would be to spread HMO's to other streets not currently adversely affected by HMO's. This needs to be considered when deciding whether to create an Article 4 Direction. There are many streets within Brunel and Uxbridge South Wards that have not yet been subject to studentification, so in the short term it is not anticipated that an Article 4 direction would result in other wards being affected, furthermore the students want to live close to the University.
22. The costs of creating an Article 4 Direction would be approximately £6000 (this is based on writing to all properties in Uxbridge South and Brunel Wards, firstly to consult on a proposed scheme and secondly to advise on the decision as well as press notices). As no fee can be requested for determining applications that result from an Article 4 Direction there would be running costs associated with an Article 4 Direction of approximately £20,000 per annum Officers estimate there is unlikely to be more than 50 new HMO's a year. Based on 50 HMO applications, with a number expected to be Committee items, this would equate to 25% of a full time planning officer case-load. The costing's for a planning officer include 'on-costs', the additional cost of enforcement cases (as an Article 4 Direction creates a new planning control to address breaches of), appeals cost and managerial and administrative input. This would all add up to approximately £20,000 per annum. There is no current budget set aside for this expenditure.. A full Council report would clarify as precisely as possible the expenditure implications of an Article 4 Direction.
23. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by full Council or another appropriate Council Committee. This report is therefore primarily to explain to Cabinet why officers consider the matter warrants a report to full Council.

## **Financial Implications**

There are no financial implications from the recommendations in this report. Should full Council decide that an Article 4 direction should be created then there would be financial implications on the Council.

## **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **What will be the effect of the recommendation?**

It will enable Full Council to determine whether an Article 4 Direction should be created.

### **Consultation Carried Out or Required**

If an Article 4 Direction is implemented then there would need to be extensive consultation. This report has been subject to consultation with the Private Sector Housing Team and the benefits or otherwise of an Article 4 Direction were discussed at a Public meeting on the 9<sup>th</sup> May 2011 set up by the Cowley Residents Association attended by the report writer and is the subject of an increasing amount of correspondence to Council officers.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and is satisfied that there are no direct financial implications arising from the recommendations in this report. However it should be noted that if full Council decide that an Article 4 direction should be created then there would be financial implications for the Council.

### **Legal**

On 1 October 2010 the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e. planning permission is no longer needed to do this.

Under Article 4 of the General Development Order (as amended) local planning authorities can make directions withdrawing permitted development rights from development listed in Schedule 2 of the same order. For all article 4 directions the legal requirement set out in paragraph (1) of article 4 of the GDO is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. This report explains why, at present, it is not expedient to withdraw permitted development rights for change of use from C3 to C4.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by Full Council.

### **Corporate Landlord**

The Corporate Landlord is in support of the recommendations of this report.

## **BACKGROUND PAPERS**

Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010