

# Cheltenham Borough Council

Cabinet – 11<sup>th</sup> June 2019

## Implementing an Article 4(1) direction for the St. Paul's ward

<b>Accountable member</b>	<b>Councillor Andrew McKinlay</b>
<b>Accountable officer</b>	<b>David Oakhill - Head of Planning</b>
<b>Ward(s) affected</b>	<b>St. Paul's</b>
<b>Key/Significant Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>A 'House in Multiple Occupation' (HMO) is defined as a property rented out by at least 3 people who are not from 1 'household' (for example a family) but share facilities like the bathroom and kitchen.</p> <p>The conversion of existing homes (Class C3 dwelling houses) into HMOs (Class C4 HMOs) is permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended). It is therefore permitted across Cheltenham without the need for planning permission.</p> <p>The emerging Cheltenham Plan makes the case for the need to control the creation of new HMOs in St. Paul's Ward, because they are significant in number (around 12% of all homes in St. Paul's are HMOs) and together create adverse impacts on local amenity including high parking demand, waste and recycling provision, and changes to the overall character of an area.</p> <p>In order to control the creation of new HMOs in St. Paul's Ward, this report recommends that Cheltenham Borough Council makes a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), removing the 'permitted' development right status of HMOs and instead requiring a planning application be made. Further, this report recommends that the direction is non-immediate, instead coming into force 12 months after it is first publicised.</p> <p>The Article 4(1) direction will not be applied retrospectively.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"><li><b>1. Cabinet approves the giving of 12 months' prior notice of removing the C3 to C4 permitted development right through an Article 4(1) Direction.</b></li><li><b>2. Cabinet receives a report within 6 months seeking to 'confirm' the Article 4(1) Direction, subject to public consultation responses.</b></li></ol>

<b>Financial implications</b>	None as a direct consequence  <b>Contact officer: Paul Jones,</b> <b>paul.Jones@cheltenham.gov.uk 01242 264365</b>
<b>Legal implications</b>	The introduction of the Article 4 Direction being proposed will in effect mean that those who convert their properties from C3 use to C4 use without submitting a planning application will be in breach of planning control.  In relation to those who breach the Article 4 Direction, the Council will be able to issue enforcement notices against the relevant properties and pursue prosecutions or direct action if necessary.  <b>Contact officer: Nick Jonathan,</b> <b>nick.jonathan@teWKesbury.gov.uk 01684 272032</b>
<b>HR implications (including learning and organisational development)</b>	Here are no direct HR implications arising as a result of this report.  <b>Contact officer: Julie McCarthy,</b> <b>Jule.mccarthy@publicagroup.uk 01242 264355</b>
<b>Key risks</b>	<ul style="list-style-type: none"> <li>- A sharp increase in the number of conversions of residential dwelling houses to HMOs in St. Paul's prior to the Article 4(1) direction coming into force</li> <li>- Proliferation of HMOs in other wards across the borough</li> </ul>
<b>Corporate and community plan Implications</b>	This will support the aspiration in the Place Vision to build strong, healthy and inclusive communities.
<b>Environmental and climate change implications</b>	Controlling the spread of HMOs would mean that the spread of associated negative impacts such as noise and poorly managed waste facilities could also be controlled.
<b>Property/Asset Implications</b>	No known property implications.

## **1. Background**

- 1.1** St. Paul's Ward has a reasonably high proportion of Houses in Multiple Occupation – HMOs (c. 12% of all housing stock). The conversion of residential homes into HMOs is permitted development under the Town and Country Planning (General Permitted Development) Order 2015 (as amended), and as such does not require planning permission. Concerns have been raised by members that the frequency of HMOs within the St. Paul's ward has increased to an unsustainable level. Officers were asked to investigate ways to control this.
- 1.2** In 2017 a survey of HMOs in St. Paul's Ward was completed, the results of which suggest that 12% of residential properties in the Ward are considered HMOs (see Background information, page 5 of this report). Having a large proportion of HMOs is believed to lead to unbalanced communities, in this particular case a large student population that is often disengaged with the community. This in turn can lead to a deterioration of an area.
- 1.3** Until 1 October 2010 planning permission was required for the change of use of a building including a dwelling-house to a HMO. On 1 October 2010 the Government introduced new legislation. Now planning permission is not required for the change of use of a dwelling house to an HMO for up to 6 unrelated people.
- 1.4** The option exists for Councils to remove this right for parts of its District. This power lies within the existing provisions of Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Under Article 4 a Direction may be made by a Local Planning Authority to remove permitted development rights and require a planning application to be made, in this case, by a person wishing to change the use of a dwelling-house to an HMO.
- 1.5** The making of an Article 4 direction would not mean a blanket ban on HMOs, as it would remain open to an owner to apply for permission for HMO and a standard planning fee would be required for such application.

## **Reasons for recommendations**

- 1.6** Controlling the conversion of Class C3 dwellings to Class C4 HMOs is proposed in order to minimise associated negative impacts on local communities that can arise. High concentrations of HMOs potentially negatively impact on the sustainability of communities, including on the amenities of local residents and on the character of an area, such as character, waste management and parking issues.
- 1.7** The specific recommendation is to 'make' a non-immediate Article 4(1) Direction. The alternatives to this are explored under section 2 below. A summary of the process for a non-immediate Article 4(1) Direction is:
  - Cabinet approves the making of an Article 4(1) Direction, giving 12 months' prior notice of removing the C3 to C4 permitted development right
  - Consultation for 28 days commences
  - Consultation responses are considered and where appropriate, amendments are made
  - Cabinet approve the 'confirmation' of the Article 4(1) Direction within 6 months of the direction being made
  - The Article 4(1) Direction comes into force 12 months after initial notice

**1.8** A non-immediate Article 4(1) Direction comes into being 12 months after being initially ‘made’. This is prescribed in the Town and Country Planning Act 1990 and allows time for land owners within the area affected (in this case St. Paul’s Ward) to make reasonable adjustments. Providing this time significantly reduces the risks to the Council of claims for compensation for loss of future income from land owners who may now wish to convert residential dwelling houses to HMOs (when compared to the implementation of an immediate Article 4(1) Direction).

## **2. Alternative options considered**

**2.1** Two alternative options were considered.

**2.2** One was to do nothing and let Class C3 to Class C4 development remain as permitted development. This would risk letting the balance of the St. Paul’s ward become too heavily influenced by HMOs. There is some evidence to suggest that a tipping point in terms of a balanced community can arise when HMOs exceed 10% of properties. The survey has recorded that there are 350 HMOs in the St Pauls ward which corresponds to 12% of properties.

**2.3** Another option was to enact an immediate Article 4 direction, allowing the direction to come into force immediately. This approach brings with it significant risk as it allows site owners intending to make use of the existing permitted development rights to claim back compensation from the council. This would be to compensate site owners for the loss of value to the property that would otherwise have been gained were they allowed to convert of C3 dwelling house into a C4 HMO, which could potentially be thousands of pounds per site. Without immediate implementation there is a risk (likely perceived) that there will be a ‘flurry’ of HMO conversions in St Pauls Ward over the next 12 months. Correspondence with other authorities that had enacted Article 4 directions showed that this risk did not materialise.

## **3. Consultation and feedback**

**3.1** Internal consultation was sought from various officers from the finance, property and legal departments.

**3.2** The emerging Cheltenham Plan contains proposed policy HM5 which indicates the Council’s desire to control HMOs in St. Paul’s. Through Cheltenham Plan consultation, 4 comments were received which included Alex Chalk MP and the St. Paul’s Road Area Residents Association. 3 responses supported the policy, citing existing loss of community as well as noise and other disruption to neighbours. Mr. Chalk’s response raised concerns regarding the impact on neighbouring wards. Any potential impacts on neighbouring wards will be dealt with through the consultation.

**3.3** By making this Article 4 direction, officers would be permitted to commence a public consultation on the direction specifically. This will give residents and relevant parties the opportunity give their views on the Article 4 direction.

## **4. Performance management – monitoring and review**

**4.1** The planning applications database will be monitored to be able to identify changes to the frequency of HMO conversions in the St. Paul’s Ward.

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<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Draft direction</li><li>3. Draft site notice</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. 2017 HMO survey <a href="https://democracy.cheltenham.gov.uk/documents/s22803/2017_09_11_OS_HMO_survey_Cabinet_briefing.pdf">https://democracy.cheltenham.gov.uk/documents/s22803/2017_09_11_OS_HMO_survey_Cabinet_briefing.pdf</a></li></ol>

## Risk Assessment

## Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	Should an Article 4 direction be enforced immediately, compensation payments could be payable by the council for loss of income.	David Oakhill	15/05/2019	4	5	20	Close	Do not implement Article 4 immediately, implement after 1 year of the direction being made.		Alex Bethell	
	Confirming an Article 4 direction in St. Paul's ward may lead to greater demand for HMOs in neighbouring wards.	David Oakhill	15/05/2019	2	4	8	Monitor	Monitor planning database to identify HMO application frequency.		Alex Bethell	
	Sudden increase in the number of HMO conversions in the 12 months before the direction comes into force.	David Oakhill	15/05/2019	4	3	12	Accept	Officers to process prior notifications and prior approvals.		Alex Bethell	
	Increase in workload of Development Management officers.	David Oakhill	15/05/2019	2	3	6	Accept	Officers to process applications.		Alex Bethell	
	Secretary of State cancels the Article 4 direction.	David Oakhill	20/05/2019	5	1	5	Accept	No action.		Alex Bethell	
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)  
ORDER 2015 AS AMENDED**

**DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES**

**PLANNING CONTROLS OVER HOUSES IN MULTIPLE OCCUPATION**

WHEREAS Cheltenham Borough Council being the appropriate local planning authority within the meaning of article 4(4) of the GPDO, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged red on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description set out in the Schedule below:

**SCHEDULE**

Development consisting of a change of use of a building from a use falling within Class C3 (dwelling houses) of the Schedule of the Town and Country Planning (Use Classes) Order 1987, as amended, to a use falling within Class C4 (houses in multiple occupation) of that Schedule being development comprised within Class L(b) of Part 3 of Schedule 2 to the said Order and not being development comprised within any other Class.

The Article 4 Direction will come into force on 11 June 2020.



Made under the Common Seal of Cheltenham Borough Council this .....day  
of.....20..... The Common Seal of the Council was affixed to this Direction in the presence  
of.....  
Chief Executive Officer

**Town and County Planning (General Permitted Development) (England) Order 2015 as amended**

**Notice pursuant to Article 5(1) of the making of an Article 4 Direction**

Cheltenham Borough Council made a Direction on 11th June 2019, under Article 4(1) Town and Country Planning (General Permitted Development) Order 2015 (as amended). The Direction relates to development comprising change of use from a use falling within Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Order and removes permitted development rights for this type of development from the date when the Direction comes into force. Planning permission will therefore be required for change of use from Class C3 to Class C4 once the Article 4 Direction is in force.

THE ARTICLE 4 DIRECTION APPLIES TO ST. PAUL'S WARD OF CHELTENHAM BOROUGH.

A copy of the Direction, including a map defining the area covered, can be viewed at the Municipal Offices of Cheltenham Borough Council on the Promenade, GL50 9SA. It can also be viewed on the Council's website, [www.cheltenham.gov.uk](http://www.cheltenham.gov.uk)

Representations may be made concerning the Article 4 Direction until 9<sup>th</sup> July 2019.

If you wish to make representations you may do so by sending your representation to [planningpolicy@cheltenham.gov.uk](mailto:planningpolicy@cheltenham.gov.uk) or in writing to Cheltenham Borough Council, Municipal Offices, Promenade, Cheltenham, GL50 9SA.

The Article 4 Direction, will come into force, subject to confirmation by the Council, on 11th June 2020.

Dated: 11<sup>th</sup> June 2019