

**LONDON BOROUGH OF NEWHAM****CABINET**

<b>Is it a key decision?</b>	No
<b>Is it in the Forward Plan?</b>	Yes
<b>Date report published</b>	13/03/13
<b>Date of meeting</b>	21/03/13

Subject: Confirmation of an HMO Article 4 Direction

Source: Strategic Commissioning and Community

Wards affected: All

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**Exempt Information**

Paragraphs 6.4 and 6.5 are to be exempt as they contain legally privileged information which could affect the Council's position in respect of future proceedings or actions against owners of properties within the Borough. Information provided within paragraphs 2.10 and 2.11 provides relevant information to members of the public which is available in public documents therefore the public interest is met. This exemption is by virtue of paragraph 5, information in respect of which a claim to legal professional privilege could be maintained in legal proceedings of the Access to Information Procedure Rules set out in the Constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

**Purpose of Report**

This report updates on earlier Cabinet Report (July 2012) which authorised the making of an Article 4 Direction to restrict HMOs and for consultation on that. It complements the Boroughwide Landlord Licensing scheme. Subject to confirmation by Cabinet this Direction will come into force on 31<sup>st</sup> July 2013.

**Recommendations**

The Mayor in consultation with Cabinet is asked to:

1. approve the confirmation of an Article 4 Direction to remove permitted development rights borough-wide for the change of use of Use Class C3 dwelling house to Use Class C4 small HMO;
2. delegate powers to the Divisional Director Strategic Regeneration Planning and Olympic Legacy to prepare and issue the Article 4 Direction confirmation notice;
3. agree to the Divisional Director Strategic Regeneration Planning and Olympic

Legacy to continue pursuing with the LLDC the inclusion of the Article 4 Direction within the Newham part of its boundary;

4. to bring into effect the process of updating Policy H4 of the Core Strategy in conjunction with related work on the Detailed Sites and Policies DPD; and

**Note:** The effect of the Article 4 direction will be that planning permission will be required for a change of use from C3 dwelling house to C4 Houses in Multiple Occupation (3-6 occupants) across the borough. The Article 4 direction boundary is proposed to cover the entire Borough, but would exclude the area where the LLDC is the Planning Authority. The Council will try to encourage the LLDC to adopt the same measure as outlined in Recommendation 3.

### **Reasons for the Recommendations**

The reasons for the recommendations are to exert greater control over a sector that has significant elements of poor living conditions, negative impacts on ASB and reduced quality external environments, to address issues associated with population churn and seeking to encourage people (particularly families) to remain in the borough. This is elaborated on in the main report.

### **Options considered**

*Not doing an Article 4* – This option was not followed as it was felt that the above problems need to be addressed and would continue to worsen without such action.

*Applying the Article 4 to part of the borough only* – This option was not followed as it was considered that the issue of the loss of single dwelling houses to HMO's is a borough wide problem requiring a borough wide approach to tackling it. In addition, a sub area or neighbourhood approach would lead to displacement problems outside the identified zone.

**Note:** Barking and Dagenham have recently brought into effect (May 2012) a borough-wide Article 4 Direction. Feedback reveals that they have experienced no negative issues since the implementation of this control. It is understood that a number of other London Boroughs are considering measures on a boroughwide basis.

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**POSITION:** Divisional Director of Strategy, Regeneration, Planning and Olympic Legacy

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### **Local Government (Access to Information) Act 1985**

#### **Background papers used in preparing this report:**

- Newham Core Strategy 2012

- Newham Housing Market Assessment ORS 2010
- Proposed Planning Changes For Small Houses In Multiple Occupation And Article Direction: Independent Report Of Consultations (ORS, 2012)
- Department for Communities and Local Government Replacement Appendix D Department of Environment Circular 9/95: General Development Consolidation Order 1995
- Anti Social Behaviour and the Private Rented Sector in Newham
- Newham HMOs Report ORS 2012

**Background papers can be obtained by contacting:**

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**List of enclosures / Appendices:**

Initial Equalities Impact Assessment

## Report - Part A

### 1. Introduction and Background

- 1.1 At the Cabinet meeting on 5<sup>th</sup> July 2012, the making of an Article 4 Direction to enable the Local Planning Authority to control the number of small HMOs in the borough was approved. The method approved involves a 12 month notification period. This report provides an update on that consultation and refers to additional research, the London Legacy Development Corporation and ongoing policy work.

### 2. Key Considerations and Sustainability

- 2.1 Current legislation allows as “permitted development” a change of use between a dwelling house (Use Class C3) and a Small HMO (Use Class C4) without the need to apply for planning permission. An Article 4 direction enables the Local Planning Authority to remove certain “permitted development” rights. This report recommends confirmation of an Article 4 Direction with the effect that express planning permission would be required to change from a family dwelling (C3) to a HMO (3- 6 occupants) (C4). An Article 4 direction provides greater control but does not provide justification for refusing planning permission for HMOs. All planning applications are judged on their merits against current planning policy. Further updates of the policy will be necessary as part of this process.

#### 2.2 Consultation

The main consultation was undertaken as part of the making of the Direction stage which was approved by Cabinet on 5<sup>th</sup> July 2012. This was a 12 week consultation in line with Government guidelines and was carried out on behalf of Newham by an independent research consultancy. It showed clear support for the Direction.

For the current stage a six week consultation period ran from 21 September 2012 to 2 November 2012 and is relevant to the confirmation of the Direction. The following table sets out the responses received.

Respondent	Comment
Charles Living and Son	We are a local Letting and Management Agent. It will impose on law-abiding landlords and agents, but be evaded by others. This will create a lot of extra work for everyone and raise a considerable amount of money. Now there is licensing why is there a need for this further restriction. It will discourage new landlords from purchasing rental properties in the locality. This will mean that there are less properties available to rent and will push rents up. This in turn will discourage people from wanting to live in the borough.
Clare Ensing	I think it is an extremely good idea to bring in more controls relating to changing homes to

	multiple dwellings. This will hopefully make it less likely that landlords can rent out sub-standard accommodation, and will mean that overcrowding in Newham does not become worse.
Newham CYPS and Adult Services	Indicate that there is a need for shared and lodging accommodation for young people which may need to be catered for through a policy exemption
Streets Ahead	Landlords will sell up eventually because of all the red tape, extra expense and uncertainty. I totally agree with need to get rid if the rogue landlords but I think you are going about this the wrong way, I do not think you will have enough staff to cope with all the extra work
Mike Webb	I welcome the direction as a resident of Manor Park, which as you know has a large number of poorly-maintained HMOs. Hopefully this combined with the landlord licencing scheme will make a difference to the state of private rented housing in the borough.
Craig O'Brien Manor Park Village	I think Newham should be greatly praised for bringing this measure in as far as our Conservation Area is concerned. Community councillors should promote it more as an example of what they are doing to support the community. Impressive progress.
Resident Landlords Association	Have put in a detailed objection. They consider the proposal to be a retrograde step at a time when there is increasing demand for this type of accommodation. Measures of this kind discriminate against younger people including younger sharers, who are dependent on this kind of accommodation and finding properties they can afford to rent. Likewise it discriminates against black and ethnic minority groups.

- 2.3 Despite a press notice and individual notification of several hundred stakeholders the above represents a very limited response. It includes support as well as opposition This is not surprising as past experience of engagement with this sector has also yielded very low response rates. This may also be partly due to the earlier comprehensive survey of stakeholders and the fact that Cabinet has agreed the principle of the Direction already. In any case, as stated above the survey reported to Cabinet in July 2012 showed clear support for the Direction.
- 2.4 That stage of course, led to the Cabinet decision to approve the making of the order in July 2012. This current stage is to confirm that the order can be brought into being as planned on 31<sup>st</sup> July 2013. There does not seem to be any good reason to deviate from that position and hence the recommendation is to proceed with that confirmation.

- 2.5 In relation to representations made we do not agree that this will drive landlords out or push rents up. It is an extra step which alongside the licensing regime should ensure better standards and assist in enforcing against some of the serious problems that have developed in this sector. We also feel for this same reason it would not disadvantage ethnic minorities or younger people.
- 2.6 Whilst we do expect there to be additional work involved and it will demand greater resource this would be handled within budgeting arrangements discussed below. We also consider that from the landlord/developer point of view of the additional administrative process for developers and cost of producing information does not act as a deterrent to the landlord. The planning application will be free to make (i.e. no cost to the developer) and will introduce good practice leading to better quality homes and greater levels of satisfaction for tenants. The advantage to landlords will be longer term tenancies with less uncertainty and risk.
- 2.7 Newham has made formal representations to the London Legacy Development Corporation that they fall in line with Newham in producing an Article 4 Direction for HMOs within their area. Whilst they have not revealed their intentions on this we understand their officers are looking into the matter.

### **Planning Policy Context**

- 2.8 National Guidance<sup>1</sup> indicates:

A high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (i.e. houses in multiple occupation). This will enable high concentrations of houses in multiple occupation to be controlled where local authorities decide there is a problem, but will prevent landlords across the country being driven from the rental market by high costs and red tape.

- 2.9 The London Plan 2011 takes a generally positive line towards HMOs as follows:

Shared accommodation or houses in multiple occupation are a strategically important part of London's housing offer, meeting distinct needs and reducing pressure on other elements of the housing stock, though their quality can give rise to concern. Where they are of reasonable standard they should generally be protected and the net effects of any loss should be reflected in Annual Monitoring Reports. In considering proposals which might constrain this provision, including Article 4 Directions affecting changes between Use Classes C3 and C4, boroughs should take into account the strategic as well as local importance of houses in multiple occupation.

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<sup>1</sup> Circular 08/10: Changes to Planning Regulations for Dwelling houses and Houses in Multiple Occupation

## 2.10 Newham's Core Strategy 2012 restricts HMOs under Policy H4:

“The Council will specifically seek to protect family housing and will resist the loss of all family dwelling houses through subdivision or conversions to flats or HMOs unless exceptional circumstances prevail.”

- 2.11 A review of the policy would be required as Small HMOs (C4) are defined in the Glossary as providing family sized accommodation and not specifically restricted. This was to help prevent the loss of family sized houses to flats, recognising the freedom to change between dwelling house (C3) and to Small HMO (C4) as “permitted development”. The Article 4 will allow us for the first time to consider through a planning application the impacts of a change of use from C3 to C4 and means that this policy needs to be updated.
- 2.12 Some recent additional research<sup>2</sup> based on the 2010 survey shows that Class C4 HMOs comprise a significant share (90%) of the existing HMO sector with levels of churn exceeding 50% within a 12 month period. It also reveals that approx 15% of the households contain children and that inadequate space is the top reason for unsuitability.
- 2.13 The Core Strategy Policy H4 will be amended alongside the Detailed Sites and Policies DPD which will be the subject of public consultation options shortly. This will of course also be brought to Cabinet for a decision.

## 3. Service Delivery and Performance Issues

- 3.1 The introduction of an Article 4 Direction would have a positive effect on Service Delivery meeting key aspirations of the Council as set out in the Core Strategy and Housing Strategy. Providing better regulation for HMOs would help stabilise the population, improve the quality of accommodation and minimise many of the negative effects this sector currently exhibits. In terms of delivery of the strategic objectives of the Council this measure is overwhelmingly positive.
- 3.2 The current Fee Regulations provide that no fee is payable for a planning application resulting from an Article 4 Direction. It is estimated that this proposed Article 4 Direction could result in an additional 50 planning applications a year. The loss of fee income would therefore be £7,500 and the cost of dealing with the applications, appeals, monitoring and enforcement is estimated to be approximately £60,000 per annum. Within the current year the development management service has an extremely challenging income target of £1.46 M, delivery of which is severely compromised by an underperforming property market. In this context the burden of additional workload without fee income is a risk. Government proposals for charging local fees for planning applications could address this in the future, but there

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<sup>2</sup> Newham HMOs Report Dec 2012

is no current indication that this will happen before the possible cost implications take effect (July 2013 ) or at all.

- 3.3 It is anticipated that additional resources are required to deliver the benefits of the Article 4 Direction if it takes effect in the 2013/14 financial year as proposed.
- 3.4 The London Plan indicates that Article 4's for HMOs must be justified having regard to strategic as well as local needs. We consider that Newham has met and exceeded its share of London wide needs and is committed through the Core Strategy to rebalancing the stock.

#### **4. Financial Implications**

- 4.1 There is currently no fee payable for a planning application resulting from an Article 4 direction. Based on a nil fee and a possibly conservative estimate of 50 applications a year, the cost to the Council of these applications in terms of forfeited income is estimated at £7,500 pa. Processing, monitoring and enforcement costs are expected to be in the region of £60K pa
- 4.2 The 12 month notification period before the direction would come into force ends on 30<sup>th</sup> July 2013 with the Order taking effect on 31<sup>st</sup> July 2013. This is in order to avoid the risk of the Council being liable for compensation payments as detailed in paragraph 6 below. It will have enabled the costs of additional work arising from the proposal to be taken into account in service and budget planning for 2013/14 to ensure that they are contained within the resources available. It will be an ongoing element for future budget planning given the absence of additional resources.
- 4.3 In relation to the Overview and Scrutiny Committee comments it is considered that these additional controls will result in long term savings in enforcement. There is a particular advantage that will close an existing loophole where larger HMOs can scale down to small HMO and claim immunity from action. This would not be possible once the Direction comes into force as small HMOs would be brought into planning control.

#### **5. Comment of the Finance Director**

- 5.1 The proposal contained in this report will require resourcing from April 2013. The forfeited income and estimated additional annual revenue costs of around £70K has been built into the Council's budget setting process for 2013/14. The Strategic Regeneration, Planning & Olympic Legacy Directorate will seek to resource the additional demands by increasing efficiency in other service areas. The impact on the Council's General Fund will be minimised.

#### **6. Comments of the Legal Officer**

- 6.1 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.

- 6.2 The start of the London Legacy Development Corporation (LLDC) on 1 October 2012 will remove part area of Newham to be under the jurisdiction of the LLDC and it is correct that Council officers shall need to liaise with the LLDC to assess whether they will also bring such areas under a similar Article 4 Direction to be brought in by the LLDC. Following on from the consultation on this Article 4 Direction and as those consultations have been considered, it is appropriate for the Council to now confirm the Article 4 Direction.
- 6.3 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.

## **7. Risk Management**

- 7.1 The costs to councils of using Article 4 Directions to control HMO conversions is that planning applications are free under an Article 4. This financial risk has to be managed in terms of the extra work and available resources.
- 7.2 As indicated in the July 2012 Cabinet Report following a Non Immediate route for introducing the Direction avoids compensation claims in the order of £4m.

## **8 Consultation**

- 8.1 The feedback from the consultation in the notification phase is detailed above. The six week consultation period ran from 21 September 2012 to 2 November 2012.
- 8.2 A preliminary public and stakeholder consultation was carried out for 12 weeks between 26<sup>th</sup> September 2011 to 19<sup>th</sup> December 2011. The consultation was managed independently by Opinion Research Services, a market research agency, on behalf of Newham Council. The consultation was carried out in conjunction with consultation on a related proposal by Newham to licence private sector landlords in the borough.
- 8.3 8000 questionnaires were sent to a stratified sample of addresses including both randomly selected residential addresses (5379 addresses) and randomly selected stakeholder groups (2621 addresses). The result was a greater proportion of respondents in favour of the proposals. This was reported in more detail the Cabinet on 5<sup>th</sup> July 2012.

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