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Dear Member

**POLICY DEVELOPMENT AND DECISION GROUP (JOINT OPERATIONS TEAM) -
MONDAY, 24 JULY 2017**

I am now able to enclose, for consideration at the Monday, 24 July 2017 meeting of the Policy Development and Decision Group (Joint Operations Team), the following report which was unavailable when the agenda was printed.

Agenda No	Item	Page
5.	Article 4 Direction for Houses in Multiple Occupation	(Pages 18 - 25)

Yours sincerely

Amanda Coote
Clerk



Meeting: Policy Development and Decision Group **Date:** 24 July 2017

Wards Affected: All

Report Title: Article 4 Direction for Houses in Multiple Occupation

Is the decision a key decision? No

When does the decision need to be implemented? After call-in

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Supporting Officer Contact Details: Andrew Gunther, Senior Planning and Public Health Officer, 01803 208815, andrew.gunther@torbay.gov.uk

1. Proposal and Introduction

- 1.1 This report is being put to the Policy Development and Decision Group for discussion and to agree the next steps on the issue of potentially taking forward an Article 4 Direction which would remove permitted development rights from properties which allow change of use from Use Class C3 Dwelling to C4 House in Multiple Occupation (HMO) (for between 3-6 persons) across Torbay.
- 1.2 A HMO is a building or part of a building that is being occupied as a main residence by more than one household, i.e. unrelated people who do not live together as a family and share some facilities such as a bathroom or kitchen. This report is specifically concerned with the Use Class C4 HMO which includes properties where 3-6 unrelated residents reside as their main residence.

2. Reason for Proposal

- 2.1 Members have raised concerns regarding the proliferation and management of HMOs in Torbay and are keen to investigate further ways that problems associated with HMOs can be better managed. This report specifically provides further information on the potential opportunities, limitations and implications relating to an Article 4 Direction in order to inform discussion on this issue. Please see the Supporting Information and Impact Assessment (Appendix 1) for further detail.

3. Recommendation(s) / Proposed Decision

- 3.1 That Spatial Planning and Community Services undertake to investigate any further potential to align Housing Licensing and Development Management processes to ensure that full opportunity for early intervention regarding breaches of existing planning and/or licensing requirements with regards to HMOs is undertaken.

Option 1

- 3.2. That Spatial Planning prepares a report and further develops a case for Council to make a decision on whether to prepare an Article 4 Direction which would have the effect of removing permitted development rights to change dwellings to small houses in multiple occupation (Class C3 Dwellings to C4 Small Houses of Multiple Occupation), without the need for express planning permission. That 12 months notice is given prior to the Article 4 Direction taking effect, and that the Direction only be confirmed by the Council if sufficient additional resources are provided to Spatial Planning to cover the further work required of the Spatial Planning function, including preparing an Article 4 Direction, dealing with additional planning applications, monitoring and enforcement.

Option 2

- 3.2. That Spatial Planning do not proceed with option 1 (3.2 above) set out in this report.

Appendices

Appendix 1: Supporting Information and Impact Assessment

Supporting Information and Impact Assessment

Service / Policy:	Article 4 Direction for Houses in Multiple Occupation
Executive Lead:	Cllr Mark King
Director / Assistant Director:	Kevin Mowat

Version:	2	Date:	14/07/17	Author:	Andrew Gunther
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Section 1: Background Information	
1.	<p>What is the proposal / issue?</p> <p>The issue is with regards to the Council’s approach to managing HMOs through the planning system in Torbay, specifically concerning whether it would be appropriate to introduce an Article 4 Direction which would have the effect of removing permitted development rights from properties which allow change of use from Use Class C3 Dwelling to C4 House in Multiple Occupation (HMO) (for between 3-6 persons).</p> <p>A HMO is a building or part of a building that is being occupied as a main residence by more than one household, i.e. unrelated people who do not live together as a family and share some facilities such as a bathroom or kitchen. This report is specifically concerned with the Use Class C4 HMO which includes properties where 3-6 unrelated residents reside as their main residence.</p> <p>An over-concentration of HMOs can impede the creation of mixed and balanced communities, create concentrations of deprivation, and lead to amenity problems from noise, bins, parking, etc. HMOs themselves do constitute an important element of the private rented sector in Torbay, providing a source of cheap market housing in an area where there is a shortage of affordable housing, a depressed economic profile and lower than average wages.</p> <p>Should the Council choose to issue an Article 4 Direction, it is recommended that the scope of the Direction is Bay-wide rather than targeted to specific areas as this would lead to less complexity and be simpler to administer. Moreover a targeted approach could create anomalies or push a proliferation of small HMOs into non-affected areas in the Bay.</p> <p>Note that previously in 2012, the Council approved the preparation and 12 months notification of an Article 4 Direction with the implementation contingent on sufficient resources being available to provide effective enforcement. The Article 4 Direction was not implemented.</p>
2.	<p>What is the current situation?</p> <p>Currently there is not an Article 4 Direction in place regarding small HMOs. This means that dwellings are able to convert to a small HMO (for between 3-6 persons) without requiring planning permission.</p>

	<p>Larger HMOs (above 6 people) do require planning permission. The Council's decides planning applications related to HMOs in line with guidance in the National Planning Policy Framework and the Torbay Local Plan. Policy H4 of the Local Plan allows HMOs to be approved planning permission where they meet a number of criteria including providing an acceptable standard of accommodation, not harming neighbourhood amenity, not contributing to an over-concentration of HMOs within an area, not exacerbating social and economic deprivation, etc.</p> <p>The Council through its Community Services function manages the housing licensing regime. Certain HMOs require a license from the Council in order to legally operate. This runs separately to the planning process regime. The Housing Act 2004 defines licensable HMOs as 5+ occupants living in more than 1 household in buildings of three storeys or more. An HMO license runs for 5 years (and then must be renewed) and the authority is able to add conditions upon the license to ensure that a suitable standard of management and amenity is in place.</p> <p>The Government has consulted on a range of measures which would add significantly to the scope of housing licensing with regards to managing HMOs. Those changes include removing the storey rule so all houses with 5 or more people from 2 or more households are in scope, extending licensing to flats above and below commercial premises and a new national minimum room size. Those changes are due to come into effect in Autumn 2017 subject to confirmation from Government. Analysis by Community Services, indicates that potentially anywhere between 110 and 7,228 HMOs could become licensable. Under current regulation there are between 80-90 licensable HMOs at any one time.</p>
<p>3.</p>	<p>What options have been considered?</p> <p>The options available to the Policy Development and Decision Group to consider are whether to carry out further work to prepare an Article 4 Direction (which would require a decision by Council) or choose not to do so at this present time.</p>
<p>4.</p>	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan 2015-19?</p> <p>This initial proposal have been developed for further discussion at Policy Development and Decision Group before the proposal is potentially developed further for Full Council. The potential benefits of managing small HMOs may lead to better realising the achievement of mixed and balanced communities and better amenity for residents in Torbay (helping to achieve a Prosperous and Healthy Torbay). However, the extent and magnitude of this impact is uncertain and requires some further analysis. In addition, the issue of 'using reducing resources to best effect' will need further consideration (in light of the potential benefits achieved by the Direction) to inform a decision by Full Council to pursue an Article 4 Direction.</p>
<p>5.</p>	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>The proposal would apply to the whole of Torbay and therefore anyone who lives, works or carries out business in the area must have an opportunity to respond when consulted.</p>

6.	How will you propose to consult? Consultation methods will be carried out in line with the Council's adopted Statement of Community Involvement which relates to Spatial Planning functions.

Section 2: Implications and Impact Assessment

7. What are the financial and legal implications?

Resources

Implementing an Article 4 Direction carries significant resource implications for the Spatial Planning department. Those resource implications are broken down as follows:

1. *Preparing and implementing an Article 4 Direction*

The upfront cost of issuing an Article 4 Direction is estimated at £10,000. This includes printing, issuing notices and officer time (officer time being the biggest factor) in order to meet the consultation and regulatory requirements.

2. *Managing planning applications*

For development which requires planning permission because an Article 4 Direction requires it to do so although ordinarily it would have benefited from permitted development rights (and therefore not have needed to gain planning permission), no planning fee is able to be charged by the local planning authority. However, all of the usual work associated with managing a planning application must still be carried out and this has implications for time spent by officers doing this job. This includes processing planning applications upon receipt, validation, site notices and visits, making the decision and enquiries with third parties, etc. In addition, a proportion of planning applications can go to appeal or to Committee which adds additional officer time implications. It is estimated that the cost to the Development Management team of managing an additional planning application for which no fee is gained would be approximately £400 per application. It is difficult to estimate exactly how many small HMO planning applications covered by an Article 4 Direction might be forthcoming per year to the authority but based on data from other authorities this could be estimated to be around 50 extra planning applications (a mid-range estimate) which would lead to direct costs of £20,000 per annum.

3. *Enforcement and monitoring*

In 2012, the Council estimated that enforcement and monitoring costs related to issuing an Article 4 Direction would amount to between 1 and 1.5 FTE new posts (£40-60k including on-costs) in order to deliver a proactive and reactive enforcement ability. This was corroborated in discussions with other Councils.

Issuing an Article 4 Direction with necessary enforcement resources is essential in order for the controls to be effective. It achieves nothing to introduce new controls on HMOs if there is not an ongoing resource and political will to enforce them.

The total estimated resource implications come to a total cost of between £60-80k per annum plus an initial set-up cost of £10k. Although further analysis of the expected costs should be undertaken, it is felt these figures do help to inform decision-making at this stage. There is currently no budget or additional resources

	<p>available to meet the costs outlined above. For that reason, it is suggested that an Article 4 Direction is only implemented if those resources can be properly made available to the Spatial Planning department.</p> <p><u>Legal implications</u></p> <p>Compensation is payable to people who are financially disadvantaged by an Article 4 Direction, unless 12 months notice is given. In practice, this would mean compensating landlords for loss of rents if an application were refused, There could also be possible compensation/need to find alternative accommodation for people made homeless. It is estimated (based on lost rent) that the cost of compensation would be about £11,000 per small HMO, i.e. 10 successful claims would cost about £100,000. It is therefore recommended that the Direction should take effect after 12 months public notice is provided in order to avoid compensation claims.</p> <p>It should be noted that the Article 4 Direction notice which was issued in 2012 by the Council was never implemented. The Council is unable to issue an Article 4 Direction based on the notice provided in 2012. A new period of 12 months notice would need to be provided.</p>
<p>8.</p>	<p>What are the risks?</p> <p>There is a risk that preparing an Article 4 Direction could lead to a rush of properties being converted to small HMOs, in order to avoid being caught by the Direction. However experience from other areas that have introduced Article 4 Directions suggests this has not been a particular problem in itself.</p> <p>There is risk that focusing resources on tackling small HMOs does not deal with the main source of the problems which are associated with certain HMOs. Local evidence suggests that the majority of complaints received by the Council regarding amenity, legal compliance and other aspects of problem activity arising from HMOs tend to relate to large HMOs which are already subject to the need to gain planning permission and in many cases a housing license. The Council may also want to consider the relative benefit of issuing an Article 4 Direction in the light of substantial additional powers (with revenue raising ability) coming to the Housing Licensing function to license HMOs.</p>
<p>9.</p>	<p>Public Services Value (Social Value) Act 2012</p> <p>Not specifically applicable to this proposal.</p>
<p>10.</p>	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>The proposal has been discussed by officers in Spatial Planning and Community Services. Data has been extracted from Council records. Research and experience from a number of other local authorities which have considered the implementation of Article 4 Directions for small HMOs has been collected to inform this report. Further evidence and research is required in order to support the case and better fully understand the resource implications of an Article 4 Direction</p>

	should the decision of Policy Development and Decision Group require the issue to go to Full Council for a decision.
11.	<p>What are key findings from the consultation you have carried out?</p> <p>There has been no specific consultation carried out on this issue to date other than discussion with Members and officers. If the Council chooses to prepare an Article 4 Direction, full consultation will need to be undertaken with the general public. This could be undertaken concurrently with issuing a 12 month notice period for the implementation of an Article 4 Direction.</p>
12.	Amendments to Proposal / Mitigating Actions