

Overview and Scrutiny Committee

20 November 2018



Title	Houses in Multiple Occupation – Article 4 Direction		
Purpose of the report	To note.		
Report Author	Esmé Spinks, Planning Development Manager		
Cabinet Member	Councillor Colin Barnard	Confidential	No
Executive Summary	<p>Under current planning legislation, permission is not required to convert a dwelling to a house in multiple occupation (HMO) providing it is occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.</p> <p>However, it is possible to make an Article 4 Direction under the Town & Country Planning General Permitted Development Order to remove Permitted Development Rights for HMOs (which would mean that permission would be required for any HMO regardless of the number of occupants) in certain areas. Article 4 Directions do not stop development; they simply mean that planning permission is required for the specified development which, without the Article 4 Direction, would be permitted development (i.e. does not require planning permission). Article 4 Directions are intended for use in exceptional circumstances where evidence suggests that development under Permitted Development rights, such as the spread of HMOs, harms local amenity or the proper planning of an area.</p> <p>This report uses Planning and Environmental Health data to undertake a spatial analysis by ward of the numbers and types of HMOs which exist and the extent of the complaints received in Spelthorne. At present there appears to be a higher level of activity in the two wards of Ashford Town and Ashford North & Stanwell South. Both wards have had five complaints received by Planning Enforcement over the past eight years where planning permission was not required and hence there were no planning controls.</p> <p>New licencing legislation came into effect on 1 October 2018. This will be the responsibility of Environmental Health. It is expected that this this will bring about improvements to the management and safety standards</p>		

	<p>in a high proportion of residential properties in the private rental sector within Spelthorne.</p> <p>It is considered that given the available data, evidence is insufficient at this stage to justify the introduction of an Article 4 Direction. Given the major recent changes to the EH legislation, it is recommended that HMOs continue to be monitored by the Planning Enforcement team and an updated report is brought to the Overview and Scrutiny Committee at the end of 2019.</p>
Recommended Decision	<p>It is recommended that the Committee notes:</p> <ul style="list-style-type: none"> • The contents of this report, • That HMOs will be continued to be monitored by the Planning Enforcement team, and • That an updated report will be brought to the Overview and Scrutiny Committee at the end of 2019.

1.0 Background

- 1.1 Under planning legislation, the Town and Country Planning Use Classes Order (UCO) 1987 as amended, sets land use activities into various use classes. Uses are grouped into classes A, B, C and D and *sui generis* (a use class like no other and not within a specified class). Within each group, there are further subdivisions of use classes; some 16 in total. Planning permission is normally required to change from one use class to another although there are exceptions where the legislation does allow some changes between uses (the Town and Country Planning General Permitted Development Order 2015, as amended).
- 1.2 Dwellings fall within use class C3 of the UCO. Houses in multiple occupation (HMOs) are contained within both Use Class C4 or *sui generis*. Class C4 defines an HMO as:

Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
- 1.3 A HMO larger than this (i.e. with 7 or more unrelated people) is classed as a *sui generis* use and planning permission is always required for this.
- 1.4 Use Class C4 was introduced in April 2010. This change was made in response to concerns around the impact of concentrations of HMOs in certain areas in terms of anti-social behaviour, crime, parking and pressure on facilities particularly in university and coastal towns.
- 1.5 However in October 2010, further measures were introduced to allow changes of use between family houses (Class C3) and small shared houses (Class C4) to take place freely without the need for planning permission.

- 1.6 Consequently it is currently permitted to change from a Class C3 dwelling house to Class C4 HMO property without planning permission. It is also permitted to change a Class C4 HMO property back to a Class C3 dwelling house without planning permission.
- 1.7 However, converting dwellings to an HMO, when classed as sui generis (i.e. seven or more occupants) will require planning permission. Likewise a conversion from a large HMO to any other use will also require planning permission.
- 1.8 When the planning restrictions were freed up in October 2010, it was made clear by the government that *“in those areas experiencing problems with uncontrolled HMO development, local authorities will be able to use their existing direction making powers to restrict this freedom of movement by requiring planning applications.”*
- 1.9 In 2013 the Communities and Local Government Select Committee considered the issue of high concentrations of HMOs as part of its inquiry into the private rented sector. The Committee concluded that controlling the spread of HMOs should be a matter for local determination and supported the use of Article 4 Directions to manage conversions to HMO. The Government agreed with the Committee’s recommendation.
- 1.10 Directions are made under the Article 4 Direction of the Town & Country Planning General Permitted Development Order. They remove Permitted Development Rights for certain types of specified development in certain areas. Article 4 Directions do not stop development; they simply mean that planning permission is required for the specified development which, without the Article 4 Direction would be permitted development (i.e. does not require planning permission).
- 1.11 Article 4 Directions are intended for use in exceptional circumstances where evidence suggests that development under Permitted Development rights, such as the spread of HMOs, harms local amenity or the proper planning of an area.
- 1.12 The National Planning Policy Framework (NPPF) requirements for removing permitted development rights requires the planning authority to demonstrate that the removal is necessary to protect local amenity or the wellbeing of a particular geographic area (NPPF, Para 200).
- 1.13 Advice on making an Article 4 Direction is set out by Government in the Planning Practice Guidance (PPG). It states that:

“The use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified”.

The advice further states that there should be a particularly strong justification for the withdrawal of permitted development rights relating a number of

different scenarios including those covering the entire area of a local planning authority.

1.14 In procedural terms there are two types of Article 4 Directions:-

- Non-Immediate Direction – permitted development rights are withdrawn 12 months from service of the direction after a period of consultation.
- Immediate Direction – permitted development rights are withdrawn immediately, but must be confirmed within six months after a period of consultation. The Council becomes liable for abortive expenditure or other loss or damage attributable to withdrawal of the permitted development rights, if a subsequent application is refused. The 'other loss or damage' would include the difference in the value of the site, and would expose the Council to potentially significant financial liability.

1.15 Consequently if the Article 4 takes effect less than one year from issue, compensation is payable to affected landowners. After one year, there is no compensation. For this reason, the use of as immediate Article 4 direction is not advocated.

2.0 **Assessment**

2.1 All planning enforcement complaints received relating to HMOs which did not require planning permission because they contained six residents or less have been recorded. In addition, the records of any Environmental Health (EH) complaints which planning did not receive have also been recorded. The date of April 2010 was taken as a starting point as this was when the new Use Class C4 was introduced. The combined results are shown by ward in the following table. Any ward not listed did not have any HMO complaints recorded.

Table 1 - HMO complaints by ward where Planning Permission was not required Between April 2010 and May 2018

Ward	Numbers of Complaints	Numbers of Households	Number of complaints as a % of households
Ashford Common*	2	3,324	0.06
Ashford East	4	2,959	0.135
Ashford North & Stanwell South	5	3,140	0.16
Ashford Town	5	2,703	0.185
Laleham & Shepperton Green	1	3,326	0.03
Riverside & Laleham	2	2,846	0.07
Staines	1	3,528	0.028
Staines South	2	2,899	0.069
Stanwell North	4	3,250	0.12
Sunbury Common*	3	3,163	0.095
Other Wards	0	8,374	0
Grand Total	29	39,512	0.073

* 2 complaints in Sunbury Common and 1 complaint in Ashford Common were received by Environmental Health and not Planning Enforcement.

- 2.2 In addition, the number of planning applications for HMOs (containing seven or more residents) by ward which have been determined between April 2010 and July 2018 are set out in table 2 below:

Table 2 - Planning applications for HMOs by ward determined Between April 2010 and July 2018

Ward	Numbers of planning applications approved	Numbers of planning applications refused
Ashford Common	2	
Ashford East		1
Ashford North & Stanwell South	3	1
Ashford Town	2*	2*
Staines	1	
Stanwell North		1
Sunbury East	1*	1*
Sunbury Common	1	
Grand Total	10	3

* All three applications, two in Ashford Town and one in Sunbury East were refused permission but allowed on appeal.

A full list of the site details are contained as appendix 1

2.3 The Planning Officers and Planning Enforcement Officers work closely with the Environmental Health Officers who are responsible for issuing a licence for HMOs. A licence is required from Environmental Health under the following circumstances:

- it has three or more storeys (including basements and attics);
- it is occupied by five or more people who form two or more households; and
- all or some of the occupants share bathroom, toilet or kitchen facilities

2.4 It should be noted that as from the 1 October 2018, all HMOs with five or more people must have a licence regardless of the number storeys, and includes certain types of flats.

2.5 The following table shows the number of HMOs licenced by Environmental Health, by ward. It should be noted that there is an overlap with the information in tables 1 and 2 above.

Table 3 - Number of HMOs licenced by Environmental Health, by Ward.

Ward	Numbers of HMO licenced premises (up to 6 residents)	Numbers of HMO licenced premises (7 residents or more (Planning Permission required))	Total
Ashford Common	1		1
Ashford North & Stanwell South	1	1	2
Ashford Town	4	3	7
Riverside and Laleham	1	1	2
Shepperton Town	1		1
Staines	1	5	6
Staines South	2		2
Stanwell North	5		5
Sunbury Common	2		2
Grand Total			28

2.6 Ward Plans depicting the information on the tables above are shown on the pages overleaf. The information shows that the highest level of activity is within the wards of Ashford Town and Ashford North & Stanwell South.

3.0 Issues

- 3.1 At a time when house prices remain high and access to finance limited, sharing a dwelling with others will continue to be an attractive option. HMOs do fulfil a vital role in providing accommodation for individuals and it is clear that HMOs are an essential part of the housing stock.
- 3.2 However there are concerns that as well as providing much needed affordable accommodation to residents, HMOs can also have negative effects. Impacts, either real or perceived from complaints received include the following:
- Noise and anti-social behaviour
 - Imbalanced and unsustainable communities
 - Negative impact on the physical environment
 - Pressures upon parking provision
 - Growth in private rented sector at the expense of owner-occupation
 - Increased crime, and
 - Pressure upon local community facilities.
- 3.3 A total of 10 properties have been granted planning permission for HMOs since 2010 including three allowed on appeal. A further three applications have been refused planning permission where no appeal has been lodged. There are four applications which are currently in the system and have not been determined.
- 3.4 In addition, 29 complaints were received over the same period relating to HMOs which did not require planning permission because the number of residents were six or less.

4.0 Options

- 4.1 There are five alternative options in relation to an Article 4 Direction which are set out below for consideration with commentary as to their appropriateness.

- (i) That the Council introduces an Article 4 Direction across the whole Borough.

Commentary

- 4.2 There is no evidence of any HMOs in some wards and some of the other wards have only one or two HMOs. In addition, two wards have had no complaints at all and a further five wards have only had one or two complaints over the past eight years. On this basis, imposing an Article 4 Direction across the whole Borough would be unnecessary and excessive.

- 4.3 This option is not recommended.

- (ii) That the Council introduces an Article 4 Direction across the wards of Ashford Town and Ashford North & Stanwell South (the wards with the highest number of complaints and applications) withdrawing the permitted development rights

to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) with immediate effect

Commentary

- 4.4 There would be a compensation liability if an Article 4 Direction is introduced without 12 months' notice. The right to compensation arises if an application is made for planning permission for development formerly permitted by the General Permitted Development Order and this application is refused, or granted subject to conditions.

Compensation can be claimed:-

(a) for abortive expenditure (such as expenditure incurred in the preparation of plans); and,

(b) for depreciation of land value where the loss is directly attributable to the removal of permitted development rights – this would include loss of future profit; (Exeter City Council found that there would be a premium added to the value of a HMO property compared to a dwelling and the council could be faced with significant compensation liabilities).

- 4.5 This option is not recommended.

- (iii) That the Council introduces an Article 4 Direction across the wards of Ashford Town and Ashford North & Stanwell South (the wards with the highest number of complaints and applications) withdrawing the permitted development right to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) coming into effect after 1 year of its introduction.

Commentary

- 4.6 Such an approach would need to be justified by evidence. Both wards have had five complaints received by Planning Enforcement over the past eight years where planning permission was not required and hence there were no planning controls. It is considered that evidence available to the Council is insufficient at this stage to justify the introduction of an Article 4 Direction which will require planning permission for a change of use from C3 to C4 from the date at which the Article 4 Direction comes into effect.

- 4.7 It should be noted that the introduction of an Article 4 Direction could indirectly result in a reduction in the supply of HMOs which in turn might impact on the groups who typically occupy this type of low cost accommodation. Local authorities will still be required to plan to meet the housing needs of those groups and this duty has recently increased following the Homelessness Reduction Act 2017 which came into effect in April 2018. Given the very low level of complaints received not requiring planning permission (which would be covered by an Article 4 Direction) as a proportion of the number of households (as shown in Table 1), a total of 0.073 complaints per household across the whole Borough, it is not considered that a non-imminent Article 4 Direction can be justified at present.

- 4.8 Given the available data, this option is not recommended at this stage.

- (iv) That the Council does not introduce an Article 4 Direction

Commentary

- 4.9 Not introducing an Article 4 Direction would result in the Council having no planning control over HMOs of six residents or less as is the case at present. However, the Council already has existing powers to control some of the perceived negative effects of HMOs. For example Environmental Health has powers in relation to noise, rubbish and size of bedrooms and communal areas. The Police and the Highway authority have powers to control dangerous or illegally parked vehicles and vehicles causing damage to highway verges and crime. Neighbourhood Services has powers to serve notices in relation to poor waste management.
- 4.10 Given the changes to the licencing regulations and the unknown effects, this option is not recommended at this stage.
- (v) To review the position within a year (1 October 2019) from the change in EH regulations
- Commentary
- 4.11 From 1 October 2018, all HMOs with five or more people must have a licence from Environmental Health regardless of the number storeys, and this includes certain types of flats. This is a considerable change from the previous licencing regime which only applied to buildings of three storeys or more. Currently there are 28 licensed HMOs by Environmental Health in Spelthorne.
- 4.12 A provisional licensable HMO database has been developed by Environmental Health which holds some 450 property addresses. At this time the actual properties that will be captured by the new 'licensable HMO' definition is unknown, but it is estimated that some 200 or more dwellings may require a HMO licence to operate.
- 4.13 The extended scope of the HMO definition will bring a significant increase in the number of HMOs that will require a licence by EH to operate. Overall it is expected that this this will bring about improvements to the management and safety standards in a high proportion of residential properties in the private rental sector within Spelthorne. The Environmental Health Department is seeking additional resources to cover the additional work associated with the changes.
- 4.14 As it is considered that evidence available to the Council is insufficient at this stage to justify the introduction of an Article 4 Direction and given the major imminent changes to the EH legislation, it is recommended that HMOs are continued to be monitored by the Planning Enforcement team and an updated report is brought to the Overview and Scrutiny Committee at the end of 2019.
- 4.15 This option is recommended.

5.0 Recommendation

- 5.1 It is recommended that HMOs are continued to be monitored by the Planning Enforcement team and an updated report is brought to the Planning Committee at the end of 2019. This will allow for the implications of the changes to the licencing of HMOS to be assessed.

Planning Applications for HMOs by ward determined April 2010 – May 2018

Site	Ward	Nos. of Residents /bedrooms	Nos. of car spaces	Planning App No.	Decision
Inglewood Hall Green Street Sunbury On Thames	Sunbury East	15	6	13/00289 /FUL	Refused 23.04.13 Appeal allowed 29.10.13
13 - 15 High Street Staines-upon-Thames	Staines	10	7	14/00260 /COU	Approved 02.06.14
136A Chesterfield Road Ashford	Ashford Town	8	4	15/00248 /FUL	Refused 07.04.15 Appeal allowed 08.01.16
16 Springfield Road Ashford	Ashford Town	9	2	15/01478 /FUL	Refused 23.12.15 Appeal allowed 17.08.16
93 Stanwell Road Ashford	Ashford North and Stanwell South	13	3	16/00431 /FUL	Refused 06.05.16
1 Haven Road Ashford	Ashford East	14	4	16/01701 /FUL	Refused 06.04.17
11 Edward Way Ashford	Ashford North and Stanwell South	7	1	17/01850 /FUL	Approved 26.02.18
28 Oaks Road Stanwell	Stanwell North	9	6	18/00088 /FUL	Refused 12.03.18
496 London Road Ashford	Ashford North and Stanwell South	7	2	18/00093 /FUL	Approved 14.03.18

Site	Ward	Nos. of Residents /bedrooms	Nos. of car spaces	Planning App No.	Decision
187 Ashridge Way Sunbury on Thames	Sunbury Common	7	3	18/00422 /FUL	Approved 04.06.18
7 Maxwell Road Ashford	Ashford Common	7	3	18/00424 /FUL	Approved 31.05.18
158 Feltham Hill Ashford	Ashford Common	7	4	18/00551 /FUL	Approved 12.06.18
32 Desford Way Ashford	Ashford North and Stanwell South	7	4	18/00599 /FUL	Approved 02.07.18

