



Title: **Article 4 Direction Restricting Permitted Development Rights to Change From Use Class C3 Dwelling to C4 Small Houses in Multiple Occupation (HMO)**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Adjourned Annual Council** On: **16 May 2012**

Key Decision: **Yes – Ref. 1008880** How soon does the decision need to be implemented **One year from date of decision to introduce an article 4 Direction**

Change to Budget: **Yes** Change to Policy Framework: **Yes**

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1. What we are trying to achieve and the impact on our customers

- 1.1 This report is being put to Members because of increasing concerns about Houses in Multiple Occupation (HMOs) in Torbay. It considers their definition, extent and role within Torbay's housing market. It looks at concerns about the impact of HMOs on amenity, alleged anti-social behaviour etc and recommends the Council should prepare an Article 4 Direction removing permitted development rights to change from Use Class C3 Dwelling to C4 Small HMO, without the need for express planning permission.
- 1.2 In summary, this Report argues that the Private Rented Sector, including HMOs, is an essential source of cheap market housing in Torbay. There is no demonstrable link between licensable HMOs and anti-social behaviour, but concentrations of HMOs can impact upon the community with regards to general societal issues. Poor quality accommodation can affect ones health, employment and academic attainment.
- 1.3 It is therefore considered essential that there is proper control and management in planning terms available for the Council as Local Planning Authority to consider the change of use from C3 Dwelling House to C4 Small HMO.

2. Recommendation(s) for decision

That the Executive Head of Spatial Planning prepare an Article 4 Direction 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 be given prior to the Article 4 Direction taking effect, and that the Direction only be confirmed by the Council if sufficient resources are available to provide enforcement.

3. Key points and reasons for recommendations

- 3.1 A HMO is a building or part of a building that is being occupied as a main residence by more than one household. In Torbay there are approximately 14,000 private rented properties in Torbay of these 1,450 are HMOs and 83 licensable HMOs.
- 3.2 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.
- 3.3 Planning permission is required to use a property as a HMO for more than 6 unrelated persons. Planning permission is not required to use a dwelling house as a small HMO for between 3-6 persons. However, local authorities are able to issue Article 4 Directions to require small HMOs to obtain planning permission, as recommended by this report.
- 3.4 In view of the amenity concerns arising from a potential proliferation of small HMOs, it is recommended that an Article 4 Direction be prepared to require small HMOs to obtain planning permission. A number of options exist, including a Bay-wide or area based Direction. These are discussed in more depth in the supporting information section to this report. On balance, a Bay-wide Direction is considered to be simpler to administer than an area based one. Compensation is payable to people who are financially disadvantaged by an Article 4 Direction, unless 12 months notice is given. It is therefore recommended that the Direction should take effect after a year to avoid compensation claims.
- 3.5 **Resource Implications.** There are significant resource implications involved with planning enforcement of HMOs. The cost of issuing an Article 4 Direction is estimated at about £10,000, but effective enforcement of a Direction is estimated at 1-1.5 FTE posts. Issuing a Direction without adequate enforcement could be harmful, as it would deter law abiding landlords, whilst doing nothing to discourage the minority on unscrupulous ones.

For more detailed information on this proposal please refer to the supporting information attached.

**Les Crump
Executive Head Spatial Planning**

Supporting information

A1. Introduction and history

A1.1 **Definition of HMOs.** 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 bathroom or kitchen. This report is specifically concern with the Use Class C4 HMO which includes properties where 3-6 un related residents reside as their main residence.

A1.2 Housing and Planning legislation categorise HMOs in different ways and different controls apply.

- Planning permission is required for HMOs of 6+ persons. Small HMOs (3-6 persons) do not need planning permission unless the Council introduces an Article 4 Direction to require them to obtain permission.
- The Housing Act 2004 defines licensable HMOs as 5+ occupants living in more than 1 household in buildings of three stories or more. However additional local licensing of smaller HMOs can be introduced if justified.

A1.3 **Extent of HMOs in Torbay.** There are approximately 14,000 private rented properties in Torbay - of these 1,450 are HMOs and 83 licensable HMOs. HMOs form about 2.3% of Torbay's housing stock, which is above the national rate of about 1.6%.

A1.4 **Role of HMOs in the Housing Market.** The private rented sector forms an important part of Torbay's housing market- forming about 22% of property in Torbay. HMOs are an important element of the rented sector, forming about 10.4% of it. Factors leading to a high level of HMOs in Torbay include:

- Shortage of affordable housing: 8% in Torbay compared to 18% nationally.
- Poor economic profile and wage rates.
- Large stock of larger Victorian properties, including former holiday accommodation that lend themselves to multiple occupation; coupled with a shift in Tourism demand away from small guesthouses.
- Cuts to benefits, particularly Housing Benefit allowances will increase the demand for shared housing.

A1.5 Nevertheless, 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. In addition, HMOs may raise issues such as thermal comfort, fire and carbon monoxide safety management issues, which would primarily be dealt with through Housing Legislation. The shortage of suitable affordable housing means vulnerable people including, those with poor mental health and learning disabilities, are often housed in large, shared, privately rented properties. They are not always easily able to address issues of poor standards in the accommodation, or may be reluctant to do for fear of eviction.

A1.6 What Controls are available?

Control over HMOs falls primarily under planning and housing legislation.

A1.7 **Planning Controls.** Planning permission is required to use a property as a HMO for more than 6 unrelated persons. Planning permission is not required to use a dwelling house as a small HMO for between 3-6 persons. However, local authorities are able to issue Article 4 Directions to require small HMOs to obtain planning permission, This is recommended by this report.

A1.8 Planning permission is always required to convert non-residential uses such as hotels in to HMOs (of any size). However, properties sometimes lapse into HMO use without planning permission and effective enforcement is essential. A HMO is eligible for a Certificate of Lawfulness if it has existed for 10 years without enforcement action being taken.

A1.9 **Housing Controls.** Although not the subject of this report, it is worth noting that significant controls over HMO fall within Housing Legislation. Under the Housing Act 2004 mandatory licensed HMOs are properties of three or more stories providing accommodation for five or more people forming two or more households providing shared accommodation. Such properties require a licence issued by the local authority in order to operate.

A1.10 Local housing authorities are able to carry out additional discretionary licensing where there is a case to do so in terms of concerns about local housing management, concentrations of uses etc. Additional licensing can be used to extend the category of HMOs where a licence is required, whilst Selective licensing allows the local authority to select properties or areas it wishes to extend control over.

A1.11 **Option for action,** in view of the amenity concerns arising from a potential proliferation of small HMOs, it is recommended that an Article 4 Direction be prepared to require small HMOs to obtain planning permission. A number of options exist, including a Bay-wide or area based Direction. Whilst a targeted Direction could focus on the areas of greatest deprivation, it could lead to confusion and complexity. Moreover a targeted approach could create anomalies or push a proliferation of small HMOs into other areas of the Bay, therefore on balance, a Bay-wide Direction is considered to be simpler to administer than an area based one. Compensation is payable to people who are financially disadvantaged by an Article 4 Direction, unless 12 months notice is given. It is therefore recommended that the Direction should take effect after a year to avoid compensation claims.

A1.12 **Resource Implications.** There are significant resource implications involved with planning enforcement of HMOs. The cost of issuing an Article 4 Direction is estimated at about £10,000, but effective enforcement of a Direction is estimated at 1-1.5 FTE posts. Issuing a Direction without adequate enforcement could be harmful, as it would deter law abiding landlords, whilst doing nothing to discourage the minority on unscrupulous ones.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 Providing access to good quality homes is critical for people's quality of life, health and other 'life chances' and the creation of supportive neighbourhoods. A significant element of Torbay's housing need will inevitably be met in the private rented sector, including HMOs. The majority of private landlords provide a useful and essential service. Seeking to restrict this sector unduly could lead to a worsening of conditions for the poorest and most vulnerable people in Torbay.

A2.1.2 A delicate balance needs to be struck between providing lower-end of the market accommodation and the creation of mixed and balanced communities. Torbay has a large private rented sector. Presenting an affluent image, with high quality accommodation is essential to Torbay's role as a tourist resort.

A2.1.3 Preparing and enforcing Article 4 Directions is relatively inexpensive, but could be time consuming. Planning applications for small HMOs are exempt from planning fees, but could present controversial planning issues.

A2.1.4 An Article 4 Direction would not apply retrospectively (i.e. it cannot be applied to existing HMOs). However, where the status of a HMO is in doubt, a Certificate of Lawfulness could be sought, which does attract a planning fee.

A2.1.5 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 that this has not been a particular problem

A2.1.6 If an Article 4 Direction were to be introduced with less than 12 months notice, then compensation would be payable to people who suffer as a result. 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 £110,000. Therefore, it is recommended that a 12 month notice period be given.

A2.2 Remaining risks

A2.2.1 Enforcement of problems relating to HMOs is essential. It achieves nothing to introduce new controls on HMOs if there is not an ongoing resource and political will to enforce them. There is currently no budget available to meet the additional costs arising from an Article 4 Direction and its enforcement. The recommendation is that a Direction be prepared, but not brought into force, if it appears that resources are not available (or prioritised) to enforce it. It is noted that relying on reactive enforcement will pick up problem HMOs through neighbour complaints.

A2.2.2 The regulatory regime must be sufficiently user friendly so that prospective good landlords are not deterred.

A3. Other Options

- A3.1 Taking a hands-off approach to small HMOs would minimise the need for enforcement action on these. This would allow scarce resources to be focussed on enforcing existing powers, e.g. relating to unauthorised larger HMOs..
- A3.2 The Government has granted permitted development rights for small HMOs, and councils should be circumspect about removing these. However, Torbay has a difficult housing situation like many resorts, and an increase in the number of small HMOs could significantly worsen the area's economic profile, and harm the character of tourism areas. Most similar seaside resorts to Torbay have taken the view that controlling small HMOs through Article 4 Directions is justified

A4. Summary of resource implications

- A4.1 It is estimated that preparing an Article 4 Direction would be about £10,000 in terms of printing, notices and officer time. Officer time is likely to be the major resource needed. This figure is corroborated by work carried out by Plymouth City Council. Plymouth City Council also estimate that enforcing an Article 4 Direction would require 1-1.5 additional FTE Posts (£39-59k including on-costs). As noted above, planning enforcement is essential in dealing with HMOs, although relying on reactive enforcement could identify the most problematic properties.
- A4.2 A planning application fee cannot be charged for small HMOs. However, proactive enforcement of HMOs could earn some fees, for example from certificates of lawfulness, or planning applications for larger HMOs. It is possible that s106 contributions could be sought from HMOs, so long as this is directly related to mitigating their impact (e.g. waste or parking management).

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A5.1 HMOs provide an essential form of lower-end -of-the-market accommodation, and Government clearly expects the private rented sector to meet a need for shared housing. They are not normally affordable housing, because the landlord receives the full market rent.
- A5.2 Increasing controls over HMOs is likely to impact most heavily upon young single people under 35, and middle aged men e.g. undergoing family breakdown. However, improving the quality of HMOs will also make them safer for example by improving thermal comfort and reducing fire and carbon monoxide risks.
- A5.3 Whilst an Article 4 Direction would mean that uses such as small care homes or refuges could require planning permission, such proposals could be dealt with discreetly where vulnerable people are involved. There are not thought to be any direct ethnic minority, sexuality or transgender impacts.

A6. Consultation and Customer Focus

A6.1 This report seeks Member to authorise the preparation of an Article 4 Direction, this will require formal consultation. Agreeing to prepare a Direction would not commit the Council to enacting it, should consultation responses indicate this to be undesirable.

A7. Are there any implications for other Business Units?

A7.1 Article 4 Direction will primarily affect Spatial Planning. There are less direct links to Community Safety, Supporting People and Housing Benefits and the Torbay Development Agency.

Appendices

None