

MUNICIPAL YEAR 2012/13 REPORT NO. 79

MEETING TITLE AND DATE:
COUNCIL
19th SEPTEMBER 2012

REPORT OF:
Director - Environment

Agenda – Part: 1

Item: 12

Subject: Withdrawal of Permitted Development Rights for Houses in Multiple Occupation via a proposed borough wide Article 4 Directive.

Cabinet Member Consulted: Cllr. Bond, Cabinet Member for Environment

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1. EXECUTIVE SUMMARY

- 1.1 In October 2010, the Government amended legislation to allow changes of use from single dwellings (Class C3) to Houses in Multiple Occupation (HMOs) (Class C4) to take place without the need for planning permission. Where further control over such conversions is considered necessary, local authorities can make directions that specify an area or areas in which planning applications will be required. A high concentration of HMOs can lead to issues relating to parking, noise and disturbance and impacts on amenity which can cause concern to local communities.
- 1.2 Recent reforms to housing benefit are likely to increase demand for HMOs in the London Borough of Enfield; in particular the extension of the single room restriction to people aged under 35.
- 1.3 This report sets out the process for giving 12 months notice to make a “non-immediate” article 4 direction and avoid potential compensation claims.
- 1.4 This report recommends that a “non-immediate” Article 4 Direction is introduced to withdraw permitted development rights for small HMOs across the borough.

2. RECOMMENDATIONS:

Council is asked to agree:

- 2.1 That the Director - Environment undertakes the necessary steps to give 12 months notice on the proposal to make a “non-immediate” Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from use class C3 (dwelling house) to use class C4 (house in multiple occupation).
- 2.2 That any representations arising from the process of making the “non-immediate” Article 4 Directions be reported to Planning Committee for consideration.
- 2.3 That Council delegates the authority to the Planning Committee to confirm the proposed Article 4 Direction and authorise the notification to the Secretary of State.

3. BACKGROUND

- 3.1 It was a requirement that changing single dwelling houses into HMOs would have required planning permission. However the Government conducted a short and informal consultation with key interested parties between 17 June and 9 July 2010 on proposals for amending the planning rules for HMOs. The Council submitted a robust statement to the Department for Communities and Local Government opposing the proposals. However, an announcement regarding the new regulations, largely unchanged from the proposals, followed on 7 September 2010. Consequently on October 1 2010 the Government introduced permitted development rights for changes of use from use class C3 (dwelling house) to C4 (house in multiple occupation). This means that planning permission is no longer required to convert a dwelling house into a small home in multiple occupation (HMO).
- 3.2 The ministerial announcement on 7th September 2010 was accompanied by a letter from Steve Quartermain to Chief Planning Officers clarifying that changes however it stated that where there is a local need to control the spread of HMOs local authorities will be able to use existing powers, in the form of article 4 directions, to require planning applications in their area..
- 3.3 The changes came into effect on 1 October 2010. In respect of Councils using Article 4 Directions to limit further HMO development in designated areas, the Minister has advised that the consent of the Secretary of State will not be required.

3.4 The Planning Committee considered the impact of these changes at their meeting on 28th February 2012. There was unanimous support to the making of an Article 4 Direction, covering the whole borough, withdrawing permitted development rights for changes of use from use class C3 (dwelling house) to use class C4 (house in multiple occupation).

3.5 The Need for an Article 4 Direction

3.5.1 HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, HMOs are not without their problems. The 2008 report by CLG “Evidence Gathering – Housing in Multiple Occupation and possible planning responses” identified a number of problems associated with HMOs including:

- anti-social behaviour, noise and nuisance
- imbalanced and unsustainable communities
- negative impacts on the physical environment and streetscape
- pressures upon parking provision
- increased crime
- growth in private rented sector at the expenses of owner-occupation
- pressure upon local community facilities and
- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

3.5.2 In response to this, the previous Government introduced a new C4 use class for small houses in multiple occupation and amended the 1995 (General Permitted Development) Order so that planning permission was required to change between the C3 (dwelling house) and C4 (house in multiple occupation) use classes. The new Government has reversed this decision. On the 1st October 2010 the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) ‘permitted development’ – i.e. planning permission is no longer needed to do this.

3.5.3 The Government has presented this change as part of wider reforms under the Localism Bill so that it moves from the current top down approach and creates a system which encourages local people to take responsibility for shaping their communities and gives power to Councils to make this happen

3.5.4 In this case the power is an Article 4 Direction. Government has advised that local planning authorities should consider making Article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm

local amenity or the proper planning of the area and that local planning authorities should identify clearly the potential harm that the direction is intended to address. Government has advised that it might be appropriate to withdraw permitted development rights where they would undermine local objectives to create or maintain mixed communities. This has been a concern of the Council for many years.

- 3.5.5 The Council commissioned a Strategic Housing Market Assessment (SHMA) that was published in 2010. This formed part of the Council's evidence base for its Core Strategy, which was examined at Public Inquiry, found to be sound by the Secretary of State and subsequently adopted by the Council in November 2010. Therefore, it represents an up-to-date and comprehensive assessment of the Borough's housing needs and supply, its recommendations are expressed in Policy 5 of the Core Strategy.
- 3.5.6 The Policy seeks to ensure that 'new developments offer a range of housing sizes to meet housing needs' and that implementation of the Policy should support the Council's plan for a Borough-wide mix of housing that reflects the needs and level of supply identified in the SHMA. The 'Justification' in support of the Policy is instructive. In paragraphs 5.40 and 5.41 it is noted that the supply-to-need shortage is most acute for larger dwelling types and that is unlikely that the required supply can be met through new build completions. The Policy requires that the Council, over the lifetime of the Core Strategy, plans for a mix of housing that is 80% houses and 20% one and two-bed flats. The Policy requirements are supported by the conclusions of Enfield's SHMA, which identifies a critical shortage in the supply to need ratio of family sized dwellings. The Assessment found that nearly three quarters of households in need are households with children, thus requiring family accommodation.
- 3.5.7 Government recently announced reforms to housing benefit are likely to increase demand for Homes in Multiple Occupation in Enfield; in particular the extension of the single room restriction to people aged under 35. This would mean that single childless adults would only be entitled to the equivalent of a room share rather than a self contained one bedroom flat. This has now applied from April 2012 and existing claimants are affected when their claim is reviewed.
- 3.5.8 It is recommended that an Article 4 Direction is introduced to withdraw permitted development rights for small HMOs across the borough. This would mean that proposals to change a dwelling house into a HMO would require planning permission. In July's "Your Enfield" the Borough's residents were invited to forward their views on whether such an Article 4 Direction would be welcome and whether it should be borough wide. 10 responses were received and there was unanimous support for the introduction of the Article 4 Direction. In addition 90% of the respondents felt that a borough wide Article 4 Direction would be preferred.

3.6 Process for Making an Article 4 Direction

3.6.1 The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135) reduces local authorities' liability to pay compensation where they make article 4 directions as follows:

- (i) Where 12 months' notice is given in advance of a direction taking effect there will be no liability to pay compensation; and
- (ii) Where directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.

3.6.2 Therefore to avoid potential compensation claims the Council needs to provide 12 months notice in advance of an Article 4 Direction taking affect. This is called a non-immediate direction.

3.6.3 The procedure for making a "non-immediate" Article 4 Direction is as follows:

- (i) Give 12 months notice of direction
- (ii) Seek representations
- (iii) Assembly approval
- (iv) Advertise direction and notify Secretary of State

3.6.4 The Direction would come into affect 12 months after the notice had been placed.

4. ALTERNATIVE OPTIONS CONSIDERED

The only other option considered is to do nothing and allow property owners to change family dwellings into HMO's without requiring planning permission. It is felt however that this would only increase the rate of losing three and four bedroom family housing unit in the Borough, of which there is an already an acute shortage.

5. REASONS FOR RECOMMENDATIONS

The reasons for the recommendation are included in the report. Failure to make this direction would leave the Council without the controls it has deployed to manage the impact of small HMOs. For the reasons set out in the report it is considered that doing nothing is not an option.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

The Council does not receive a fee for planning applications which are only necessary because of an Article 4 Direction. To avoid potential compensation claims officers recommend that a non-immediate Article 4 direction is made. The minor costs of publicising and publishing the Article 4 Direction will be met from the Development Management's communications budget.

6.2 Legal Implications

6.2.1 On 1 October 2010 the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 came into force. The Order amends the 1995 (General Permitted Development) Order and makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e. planning permission is no longer needed to do this.

6.2.2 Under Article 4 of the General Development Order (as amended) local planning authorities can make directions withdrawing permitted development rights from development listed in Schedule 2 of the same order. For all article 4 directions the legal requirement set out in paragraph (1) of article 4 of the GDO is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.

6.2.3 This report explains why it is expedient to withdraw permitted development rights for change of use from C3 to C4. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by Assembly.

7. KEY RISKS

7.1 Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property to a HMO where this is due to the Article 4 Direction. However an immediate direction may incentivise property owners to claim for compensation for HMO conversions they would not otherwise have carried out. This could leave the Council with a very significant liability.

7.2 For this reason officers recommend that the non-immediate direction is the most appropriate course of action. Officers consider that there is a

legally sound basis for making this Article 4 direction. Whilst the Council has to notify the Secretary of State when the direction is published it is unlikely he/she would intervene.

- 7.3 An Article 4 Direction would not only help mitigate the risks usually associated with HMOs (such as increased crime), but also help further the Council's plan for a borough-wide mix of housing.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. Whilst black, Asian and other minority ethnic communities are probably disproportionately represented in the HMO stock they are on balance likely to be advantaged by the Article 4 Direction for two reasons. Such ethnic communities are more likely to require the family housing the Article 4 direction is seeking to protect and withdrawing permitted development rights will allow the Council more control over the location of small HMOs and therefore the associated problems cited earlier from the CLG Evidence Gathering report. This will be to the benefit of all residents.

8.2 Growth and Sustainability

One of the main hindrances of sustainable growth in the borough is the lack of family housing units. The communities within the London Borough of Enfield are more likely to require the family housing the Article 4 direction is seeking to protect and withdrawing permitted development rights will allow the Council more control over the location of small HMOs and therefore the associated problems cited earlier from the CLG Evidence Gathering report. This will be to the benefit of all residents and to growth and sustainability in the Borough

8.3 Strong Communities

Withdrawing permitted development rights will help preserve the borough's stock of family housing. Many of the problems associated with HMOs cited in the CLG Evidence Gathering report will have an impact on the environment children are brought up in. The CLG report cited earlier in this report identified that increased crime was a problem associated with HMOs. Therefore withdrawing permitted development rights will help address this impact.

9. PERFORMANCE MANAGEMENT IMPLICATIONS

- 9.1 Making a non-immediate direction does mean that there is an intervening 12 month period when people can take advantage of the new permitted development rights. There may be a rush of HMOs in this period as people avoid the impending removal of permitted development rights. However as covered in the report an immediate direction would leave the Council open to compensation claims payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions.
- 9.2 In addition there is expected to be a steady increase in Lawful development Certificates over the first year where HMO owners will seek written confirmation that their conversion scheme is established and immune from enforcement action. Another performance management issue would be that all future applications for HMO's following the Article 4 Directive establishment will not command a fee. This will entail that officer capacity is used up yet the costs are not reimbursed by the payment of a planning application fee. In general however the implications on performance can be adequately managed.

10. HEALTH AND SAFETY IMPLICATIONS

There are no Health and Safety implications.

11. EQUALITY IMPACT IMPLICATIONS

The proposals within this report will ensure that all future conversions into homes in multiple occupation, are controlled within the planning system. The Borough's residents were invited to give their views on whether such an Article 4 Direction would be welcome and whether it should be borough-wide - there was unanimous support for the introduction of the Article 4 Direction. As a result, it was deemed to be not relevant or proportionate to carry out an equality impact assessment/analysis of the proposals.

Background Papers

The following papers / reports were used in the preparation of this report:

1. Evidence Gathering – Housing in Multiple Occupation and possible planning responses, CLG, 2008

2. Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010
3. 1995 (General Permitted Development) Order (as amended)
4. Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135).
5. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (2000 No. 2853)
6. Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995
7. Report 201, "Withdrawal of Permitted Development Rights for Houses in Multiple Occupation via a proposed borough wide Article 4 Directive. Planning Committee 28th February 2012.