

## Lancaster City Council | Report Cover Sheet

<b>Meeting</b>	Cabinet	<b>Date</b>	2 March 2021
<b>Title</b>	Confirmation of the Houses in Multiple Occupation Article 4 Direction		
<b>Report of</b>	Director for Economic Growth and Regeneration		
<b>Purpose of Report</b>			
The purpose of this report is to seek authority to confirm the Houses in Multiple Occupation Article 4(1) Direction made under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) on 10 <sup>th</sup> November 2020.			
<b>Key Decision (Y/N)</b>	<b>N</b>	<b>Date of Notice</b>	<b>Exempt (Y/N)</b> <b>N</b>

### Report Summary

On the 27<sup>th</sup> October 2020, the Cabinet authorised the Director of Economic Growth and Regeneration to 'make' a non-immediate Article 4(1) Direction under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to remove the permitted development rights for development consisting of a change of use from a Class C3 (dwellinghouse) to a use falling within Class C4 (houses in multiple occupation), contained in Class L(b) of Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

The Article 4 Direction applies to the wards of Bulk, Castle, John O'Gaunt, Marsh, Scotforth East, Scotforth West, Skerton East, Skerton West and the village of Galgate.

The Article 4 was 'made' on the 10<sup>th</sup> November 2020 and the statutory consultation in accordance with Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), was carried out between 11<sup>th</sup> November and 23<sup>rd</sup> December 2020.

The consultation process and responses are outlined in the attached Background paper - *Consultation Statement*. The responses have been outlined and responded to in the *Consultation Statement* and in this report for Members consideration. Authorisation is now sought to confirm the Article 4 and bring the controls into force on 10<sup>th</sup> November 2021. Once the Article 4 comes into force, planning permission will be required for the change of use from Class C3 to Class C4.

### Recommendations of Councillors

- (1) It is recommended that Cabinet confirms the Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to remove the permitted development rights for development consisting of a change of use from a Class C3 (dwellinghouse) of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended), to a use falling within Class C4 (houses in multiple occupation) of that Schedule, contained in Class L(b) of Part 3 Schedule 2 of the Town

and Country Planning (General Permitted Development) Order 2015 (as amended), in the Lancaster wards of Bulk, Castle, John O'Gaunt, Marsh, Scotforth East, Scotforth West, Skerton East and Skerton West, plus the village of Galgate.

- (2) That the Cabinet authorise the Director of Economic Growth and Regeneration to effect the confirmation of the Article 4 to come into force on 10<sup>th</sup> November 2021 and to carry out the necessary steps as required by Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

### **Relationship to Policy Framework**

The Corporate Plan includes ambitions to enhance community cohesion.

The Lancaster District Local Plan includes policies which seek to improve the amenity of residents in Lancaster.

Policies in the Strategic Policies and Land Allocations Development Plan Document (DPD) aim to ensure that development, including uses of buildings, create strong and vibrant communities (SP9).

Policy DM1 of the Development Management DPD seeks to ensure mixed communities. Policy DM13 aims to manage the concentration of HMOs.

The proposals seek to address the detrimental impacts of concentration of HMOs in accordance with the ambitions of the Corporate Plan and the Local Plan.

### **Conclusion of Impact Assessment(s) where applicable**

**Climate** N/A

**Wellbeing & Social Value**

The proposals will manage the concentration of HMOs to protect the amenity of residents and minimise the adverse impacts of high numbers of HMOs in Lancaster.

**Digital** N/A

**Health & Safety** N/A

**Equality**

The proposals support community cohesion. Maintaining an appropriate proportion of HMOs in an area will provide mixed communities and provide a greater choice of accommodation for residents. The impacts of HMOs will become more manageable through the application of an Article 4 and the policy approach within DM13.

**Community Safety** N/A

### **Details of Consultation**

Informal consultation with stakeholders was carried out between 21<sup>st</sup> February and 3<sup>rd</sup> April 2020. A virtual presentation and question/answer session to student landlords was hosted by Lancaster University on 12 August.

Statutory consultation in accordance with Schedule 3 of the under the Town and Country Planning (General Permitted Development Order) 2015 (as amended) took place between 11<sup>th</sup> November and 23<sup>rd</sup> December 2020.

Please see the Background Paper - *Consultation Statement* for further details.

### **Legal Implications**

The designation of an Article 4 is required to be implemented through statutory processes within the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Failure to do so could result in legal challenges.

### **Financial Implications**

The designation of an Article 4 is required to be implemented through statutory processes within the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Adequate notification also needs to be given to property owners. Failure to do so could result in compensation claims.

The process will involve modest cost implications for the Council in terms of staffing costs as well as advertisement costs arising from the publicity requirements. Any additional staff resources/advertising required will be covered, in the interim, within existing staffing levels. The resources necessary to deal with the potential increase in applications for Certificates of Lawful Development, prior to the Article 4 coming into force and planning applications once it is in force, has been considered as part of the Development Management Review process. This Review considered staff resources as well as internal and external processes, legislative changes and the impact that the proposed White Paper (and other regulatory changes) will have upon the Team's workloads, the level of service offered to applicants and agents, and fee income.

There is potential for applicants to claim compensation from local planning authorities if they have planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. A lead-in time of 12 months between the Article 4 being made and it coming into force (in line with good practice) has been included in the Article 4 Notice. This timescale is to limit the prospect of compensation claims. It is anticipated that any remaining compensation claims arising after this time will be limited and met from within existing budgets or from additional planning income generated as a result of the Direction.

### **Other Resource or Risk Implications**

There will be staff implications due to an increase in the number of HMOs which would require planning permission (therefore an increase in applications) and for the enforcement of the policies. The resources necessary to deal with the potential increase in applications for Certificates of Lawful Development, prior to the Article 4 coming into force and planning applications once it is in force, has been considered as part of the Development Management Review process. This Review considered staff resources as well as internal and external processes, legislative changes and the impact that the proposed White Paper (and other regulatory changes) will have upon the Team's workloads, the level of service offered to applicants and agents, and fee income.

### **Section 151 Officer's Comments**

The s151 Officer has been consulted and has no further comments to add.

<b>Monitoring Officer's Comments</b>	
The Monitoring Officer has no further comments to add.	
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<b>Links to Background Papers</b>	
<ul style="list-style-type: none"> <li>• Background Paper on the Designation of Article 4 Areas to Control Houses in Multiple Occupation (updated January 2021)</li> <li>• Consultation Statement (updated January 2021)</li> <li>• The 'made' Article 4 Direction</li> <li>• The Notice of the Making of a Direction Under Article 4 (1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)</li> </ul>	

## 1.0 Introduction

1.1 On the 27<sup>th</sup> October 2020, the Cabinet authorised the Director of Economic Growth and Regeneration to 'make' a non-immediate Article 4(1) Direction under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to remove the permitted development rights for development consisting of a change of use from a Class C3 (dwellinghouse) of the Schedule in the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Schedule, contained in Class L(b) of Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development Order). The Article 4 Direction applies to the wards of Bulk, Castle, John O'Gaunt, Marsh, Scotforth East, Scotforth West, Skerton East, Skerton West and the village of Galgate.

1.2 The Article 4 was 'made' on the 10<sup>th</sup> November 2020 and the statutory consultation in accordance with Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), was carried out between 11<sup>th</sup> November and 23<sup>rd</sup> December 2020. The consultation sought views on whether the Article 4 should be confirmed, and the controls brought into force.

1.3 The next step is for Members to consider the responses before deciding whether to confirm the Article 4 and bring the associated controls into force. If Members decide that the Article 4 should be confirmed, the Article 4 will come into force on 10<sup>th</sup> November 2021 and it is from that point onwards that planning permission will be required for the change of use from Class C3 to Class C4.

## 2.0 Background

2.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows local planning authorities to make Directions withdrawing permitted development rights where the authority considers it

expedient that development should not be carried out unless express planning permission has been obtained. Government Guidance contained in the National Planning Policy Framework and the Planning Practice Guidance advises that 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. There should be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area.

2.2 There are wards and streets in Lancaster where the concentration of HMOs is at such a degree, they create an imbalance in the community and affect the character of the neighbourhood. Issues arise from noise and disturbance, pressure on refuse storage, car parking and services, depopulation over the summer period, as well as the detrimental visual impact caused by the display of a significant number of To Let boards. Policy DM13 of the Development Management DPD seeks to control the increase in concentration. However, because the conversion of a dwellinghouse (Use Class C3) to a small HMO (Use Class C4, 3 to 6 occupants) does not require planning permission, this policy will only control the growth of large HMOs (over 6 occupants). An Article 4 Direction would mean that planning permission is required for any such changes of use. The concentration of HMOs and other issues such as noise and parking can then be assessed in accordance with policy DM13.

2.3 Further detail with regard to the justification for the Article 4 is provided within the Background Paper - *Designation of Article 4 Area to Control Housing in Multiple Occupation*.

### **3.0 Article 4 Process**

3.1 The process for making an Article 4 Direction is set out within Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires local authorities to publicise the proposed direction as soon as practicable after it is 'made' for a period of at least 28 days, via the following means;

- Local advertisements of the Article 4 (a press notice);
- Display a minimum of two notices in different locations for a minimum period of six weeks;
- Notifying owners and occupiers within the affected area (these regulations can be relaxed where this would be impractical, for example across a very large area such as the entire city);
- Sending the above documentation to the Secretary of State for review.

3.2 The Article 4 was made on the 10<sup>th</sup> November 2020. A six-week consultation period was carried out between 11<sup>th</sup> November and 23<sup>rd</sup> December 2020. The consultation included a press notice in the Lancaster Guardian, the display of 38 site notices in the wards covered by the Article 4, notices to the statutory consultees, notification to those registered with the planning policy consultation database and emails to letting agents. Details were also published on the

Council website. Further detail can be found in the Background Paper - *Consultation Statement*.

- 3.3 Schedule 3 requires that the consultation responses must now be considered prior to Members deciding whether to confirm the Article 4 and bring it into force. If Members decide to confirm the Article 4 it will come into force on the 10<sup>th</sup> November 2021. It will be from that point onwards that planning permission will be required for the change of use from Class C3 (dwellinghouse) to Class C4 (small HMO).
- 3.4 The Article 4 made on the 10<sup>th</sup> November 2020 has been made under the procedures for an Article 4(1) without immediate effect. The delay is to avoid and minimise the potential for compensation claims. With an immediate Article 4 there is potential for applicants to claim compensation from local planning authorities if they have had planning permission refused for a development that they would normally be able to carry out under permitted development rights. Any such compensation claims can be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights. Such claims could be significant. To avoid the risk of such compensation claims being made against the Council a non-immediate Article 4 was applied. This provides a lead-in time of 12 months from when the Article 4 was made (the process described in paragraph 3.1) and the Article 4 coming into force. This accords with best practice and is the process followed by other Councils when designating Article 4 areas in respect of HMOs.
- 3.4 Once the Article 4 Direction has been confirmed, the local planning authority must as soon as practicable:
- Give notice of the confirmation and date the Article 4 comes into force to affected owners and occupiers in the same way as required for the notification of the making of the direction (see paragraph 3.1 above)
  - Send a copy of the Article 4 to the Secretary of State.

#### **4.0 Consultation Responses**

- 4.1 Despite the extensive publicity only 11 responses were received to the statutory consultation between 11<sup>th</sup> November and 23<sup>rd</sup> December 2020. The response rate may have been affected by the Covid restrictions in place at the time. The consultation undertaken did however make use of virtual methods of communication using email and the council website. The restrictions allowed residents to exercise close to where they live and the numerous site notices displayed would have been visible to people passing by.
- 4.2 Of the 11 responses received, 9 supported the proposals and 1 objected with the other making a comment. The issues raised by those in support of the Article 4 predominantly relate to the adverse impacts arising from HMO occupation, including car parking congestion, noise, litter, transient nature of occupation and the associated lack of contribution to the long term community and an adverse impact on the affordability and availability of family homes. The objection stated

such issues are the exception and that the University and student accommodation is in the economic interests of the city.

- 4.3 The informal consultation carried out in February 2020 generated a significant response with 72 respondents in support of the proposals. Support came predominantly from residents and from 4 Councillors, the MP for Lancaster and Fleetwood, Lancaster Civic Society, Lancaster City Centre Residents Association, Lancaster Vision and Lancaster Labour Party. 8 respondents objected to the proposals, including 4 residents, 1 agent, Lancaster University, Lancaster Students Union and the Welfare and Community - Lancaster University's Student Union. Support for the Article 4 was also highlighted in response to the consultations in respect of the Residential Conversions Supplementary Planning Document held over the summer.
- 4.4 Further detail, including a summary of all the representations received and officer responses, can be found in the Background Paper – *Consultation Statement*. Before Members decide whether to confirm the Article 4, it is important that the representations made are carefully considered.

## **5.0 Justification for Confirmation of the Article 4**

- 5.1 The justification for the Article 4 is outlined in the *Background Paper on the Designation of Article 4 Areas to control Houses in Multiple Occupation (Updated January 2020)*. The database is currently being updated with the student council tax exemptions December 2020 and the HMO Register from January 2021. The amount and distribution of HMOs across Lancaster and Galgate is however broadly unchanged.
- 5.2 Policy DM13 of the DM DPD seeks to limit HMOs to 10% in any 100m radius. As can be seen from the data in the Background Paper, in some wards and streets the percentage is far higher. In Castle ward approximately 19% of residential properties are in HMO use and in John O'Gaunt it is approximately 13%. On some streets the percentage is higher, for example Blades Street (26%), Dallas Road (22%) and Golgotha Road (46%).
- 5.3 In the wards of Bulk and Scotforth West the density is close to the 10% threshold at approximately 7% and 9% respectively. Whilst the overall percentage may be slightly lower, there are areas such as around Ridge Street and Vine Street (33%) where the percentages are significantly higher. While the percentages within the other wards in Lancaster city and in Galgate may be lower, there are concentrations on particular streets.
- 5.4 The impact of these concentrations has been identified as follows and these issues have been highlighted by respondents to both consultations:
- Divisions between social groups;
  - Lack of interaction;
  - Turnover of occupants;
  - Seasonal depopulation (where areas are occupied predominantly by students);

- Poor upkeep of houses and gardens;
- Adverse impact on the affordability of rents;
- Noise and disturbance;
- Issues with parking provision and traffic congestion;
- Difficulties for the owners of remaining C3 dwellings selling their properties.

5.5 The control of HMOs by an Article 4 and the implementation of policy DM13 has the potential to disperse HMOs to other parts of the city. Respondents to the consultations highlighted increasing numbers of HMOs in new developments at Luneside and in Galgate. These areas are outside those which currently have the highest density of HMOs. It is therefore important to ensure that the Article 4 places controls on surrounding wards, to ensure a balance is retained in these areas and the density does not rise to such an extent that the issues already experienced in some parts of the city occur.

5.7 The case for an Article 4 Direction to remove permitted development rights for the conversion of dwellinghouses to HMOs is considered to be justified for the following reasons:

- Areas identified have significant concentrations of HMOs due to the nature of the housing stock and the proximity to the Universities in Lancaster.
- Where, areas do not presently have significant concentrations, the introduction of an Article 4 is likely to increase pressure for HMOs. These areas are to be included within the Article 4 area, to ensure that concentrations are managed to remain at an appropriate level.
- It is considered necessary to regulate the concentration of HMOs to manage the impacts from further increases in HMO properties in residential areas.
- Policy DM13 of the Development Management Development Plan Document seeks to manage the concentration of HMOs to protect amenity. At present this management will only affect large HMOs (over 6 occupiers). To be effective in protecting the amenity of areas, the concentration of small HMOs (Class C4) also needs to be managed.

#### 4.0 Options and Options Analysis (including risk assessment)

**Option 1: Confirm the non-immediate Houses In Multiple Occupation Direction Under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and carryout the necessary steps as required by Schedule 3 of the Order.**

**Advantages:**

The confirmation of the Article 4 will ensure that the controls come into force on 10<sup>th</sup> November 2021 and from that date the change of use from Class C3 (dwellinghouses) to Class C4 (small HMOs) will require planning permission thereby enabling policy DM13 of the DMPDP to be implemented effectively.

**Disadvantages:**

Greater demands on resources to process planning applications and enforce the policy and Article 4.



<p><b>Risks:</b>  Compensation claims may be made but the use of a non-immediate Article 4 will minimise the risk.</p>
<p><b>Option 2: Do not confirm the non-immediate Houses In Multiple Occupation Direction Under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).</b></p>
<p><b>Advantages:</b>  No further resources will be required to apply the Article 4 or deal with the increase in applications and enforcement issues arising.</p>
<p><b>Disadvantages:</b>  This option would see a continuation of increases in small HMOs, contrary to the aims of policy DM13 and policies SP9 and DM1 which seek to ensure balanced communities.</p>
<p><b>Risks:</b>  None</p>

#### **4. Officer Preferred Option (and comments)**

4.1 The officer preferred option is Option 1: Confirm the non-immediate Houses In Multiple Occupation Direction Under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and carryout the necessary steps as required by Schedule 3 of the Order.