
CONFIRMATION OF ARTICLE 4 DIRECTION

To: **Cabinet Meeting - 23 June 2011**

Portfolio: **Economic Development and Regeneration**

By: **Simon Thomas, Planning Manager**

Classification: **Unrestricted**

Summary: **For Members to decide whether to confirm the Article 4 Direction made on 3 February 2011 which would remove permitted development rights and require a planning application to be made by a person wishing to change the use of a dwelling-house to a House in Multiple Occupation for up to 6 unrelated people**

For Decision

1.0 Introduction and Background

- 1.1 Until 1 October 2010 planning permission was required for the change of use of a building including a dwelling-house to an House in Multiple Occupation (HMO). On 1 October 2010 the Government introduced new legislation. Now planning permission is not required for the change of use of a dwelling house to an HMO for up to 6 unrelated people.
- 1.2 The option exists for Councils to remove this right for parts of its District. This power lies within the existing provisions of Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Under Article 4 a Direction may be made by a Local Planning Authority to remove permitted development rights and require a planning application to be made, in this case, by a person wishing to change the use of a dwelling-house to an HMO
- 1.3 The making of an Article 4 direction would not mean a blanket ban on HMO's, as it would remain open to an owner to apply for permission for HMO and no fee would be required for such application.
- 1.4 The principle of making an Article 4 Direction was agreed by Council in December 2010. However, in accordance with the Constitution for Thanet, responsibility for the decision to make an Article 4 Direction falls to the Cabinet. Under the constitution where a matter is urgent and cannot reasonably await the next meeting the relevant Portfolio holder can make a decision on behalf of the Cabinet, in consultation with the Leader, subject to the decision being reported to Cabinet as soon as practicable. As the Direction (if confirmed) cannot come into force for 12 months from the date of making, it is considered that the decision is urgent and cannot reasonably await the next ordinary meeting of the Cabinet.
- 1.5 In this case the Portfolio Holder made his decision to authorise the making of an Article 4 Direction on 3 February 2011. The Direction will come into force after 12 month of this date. However, in order for this to happen the Direction must be confirmed by the Cabinet within 6 months of it having been made. The Cabinet must

consider any representations made before deciding whether the Direction should be confirmed.

2.0 Justification for making an Article 4 Direction

- 2.1 The justification for making an Article 4 Direction to remove the right of owners to change the use of dwellings to HMO's across the District lies in the harm that would be caused as a result of a further increase in HMO's in Thanet which, because of the transient nature of the potential future occupiers of such accommodation and the inability of services in Thanet to meet their needs would cause demonstrable harm to the character of neighbourhoods affected by a proliferation of HMO's and to residential amenity by reason of noise, disturbance and parking issues.
- 2.2 There is a current policy in the Thanet Local Plan (H11) that regulates the changes of use of buildings to HMOs, and requires consideration to be given to the impacts of HMO's including the effect of the use in terms of noise and disturbance. The Cliftonville Development Plan Document, shows that the large number of small flats and HMO's, which are generally in poor condition and therefore cheap to rent correlates with the attraction of vulnerable people from outside of Thanet into this District
- 2.3 The Strategic Housing Market Assessment (SHMA) that has been carried out for the East Kent sub region, recommends *that the districts in the sub-region develop further policies to balance housing markets through intervening to maximise the potential of existing stock. Whilst the Core Strategy Preferred Options Consultation Document sets out the Council's* aims to achieve a balance in the type of housing stock comparable with the Kent average, as well as to protect the overall supply of family houses. These considerations also provide a justification for making a District wide Article 4 Direction.

3.0 Compensation Liability

- 3.1 The making of a Direction under Article 4 renders the Council liable to pay compensation to people who have applied and been refused permission or been granted permission with conditions. Under the planning system there is a general principle that once permission has been granted, either by a specific grant of planning permission or by means of a Development Order, the right to develop is guaranteed and can only be withdrawn upon payment of compensation.
- 3.2 However, the provisions of The Town and Country Planning (Compensation) (No.3) (England) Regulations 2010 will protect the Council from compensation claims provided the Direction takes effect not earlier than 12 months from the date of making.

4.0 Consultation

- 4.1 As the matter is a key decision and did not appear in the latest published Edition of the Forward Plan, the Chairman of the Scrutiny Committee was notified and that notification was placed on deposit at the Gateway for five clear days prior to the date of decision. The Article 4 Direction, once made, was placed on deposit for 28 days and was the subject of public notification.

5.0 Representation received

- 5.1 The consultation period has now ended and 7 representations have been received. 4

of those support the making of the Direction, and 3 of those including the National Landlords Association (NLA) raise the following issues of concern.

- The NLA states that the establishment of a small HMO does not represent a substantial change of use in terms of the burden imposed on local infrastructure.
- Trends in the UK housing demographics point to a greater need for shared housing HMOs in Margate.
- Changes to the Local Housing allowance which take effect this April will create even greater need for shared accommodation.
- Anti social behaviour can be tackled under other powers.
- The aims of the Council could be better achieved through an accreditation scheme.
- The proposed Article 4 Direction will be likely to erode the ability of landlords in Margate to react to changing circumstances and the needs of the community
- HMOs provide needed accommodation for students
- The Direction would prevent new HMOs from forming but would not result in the loss of the existing ones as frozen communities.
- There is a need for low cost housing in Thanet, including for students.
- If concern is about tenant behaviour there are other ways of dealing with this rather than to change planning laws

5.2 In deciding whether to confirm the Article 4 Direction, the Cabinet will need to take account of the issues raised through the representations. However, in deciding whether to confirm the Direction members should bear in mind that the effect of the Direction will not would not mean a blanket ban on HMO's, as it would remain open to an owner to apply for permission for an HMO.

5.3 Any such planning application received as a result of the Direction coming into force will attract no fee; and will be considered by the Council against its planning policies and having regard to any other material factors that relate to that application. The Council would be able to consider any issues relating to housing need as well as any impacts on the amenity of the neighbourhood and any relevant wider considerations; and to decide any planning application accordingly.

5.4 The representations regarding the existence of other powers to deal with antisocial behaviour and the existence of the voluntary accreditation scheme do not, in my opinion impact upon the justification for the making of the Direction, and therefore the Officer recommendation is that the Direction be confirmed

5.5 This Article 4 Direction if confirmed would come into force one year after it was made, with the consequence being that after that date the change of use of a dwellinghouse to and HMO for between 3-6 people will not be a permitted change and instead planning permission would be required.

6.0 Options

6.1 To confirm the Direction; or, not to confirm the Direction.

7.0 Corporate Implications

7.1 Financial

7.1.1 None.

7.2 Legal

7.2.1 None

7.3 Corporate

7.3.1 The Confirmation of the Article 4 Direction would contribute to the corporate objectives of facilitating the provision of good quality housing for the community

8.0 Recommendation

8.1 To confirm the Direction.

9.0 Decision Making Process

9.1 This decision whether to confirm the Direction is a Cabinet decision.

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