



Cabinet
11th October 2021

**Report from the Strategic Director
of Regeneration and Environment**

**ARTICLE 4 DIRECTION TO REMOVE PERMITTED
DEVELOPMENT RIGHTS FOR CHANGE OF USE FROM
RESIDENTIAL TO HOUSES IN MULTIPLE OCCUPATION**

Wards Affected:	All, excluding parts of Harlesden, Kensal Green, Stonebridge and Tokyngton where Old Oak and Park Royal Development Corporation is the Local Planning Authority
Key Decision:	Yes
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Three Appendix A Article 4 Direction C3 to C4 Consultation Response Summary Appendix B Article 4 Direction C3 to C4 Area Appendix C Photographs of HMOs in Brent
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Paul Lewin, Team Leader, Planning Policy. Tel: 020 8937 6710 paul.lewin@brent.gov.uk

1.0 Purpose of the Report

- 1.1 The purpose of this report is for Cabinet to consider representations received to a borough wide Article 4 direction made in October 2019. The direction required planning permission for change of use from residential dwellings to houses in multiple occupation. It presents the representations received to the consultation undertaken in October 2019 and officer responses. It recommends the making of a new Article 4 that excludes the draft Local Plan's site allocations within the Church End Growth Area and all parts of the other seven Growth Areas.

2.0 Recommendations

- 2.1 Cabinet considers the representations received on a non-immediate Article 4 Direction made in October 2019 removing permitted development rights for change of use from Residential (C3) to Houses in Multiple Occupation (C4) and the officers' responses.
- 2.2 Cabinet agrees that the non-immediate Article 4 Direction made in October 2019 removing permitted development rights for change of use from Residential (C3) to Houses in Multiple Occupation (C4) does not proceed to confirmation and the Direction is formally revoked.
- 2.3 Cabinet approves the making of a new borough wide non-immediate Article 4 direction for change of use from Residential (C3) to Houses in Multiple Occupation (C4) that excludes the draft Local Plan's site allocations within Church End Growth Area and all parts of the other seven Growth Areas as shown in Appendix B.
- 2.4 Cabinet delegate authority to the Strategic Director for Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning to consider consultation responses and the decision on whether to confirm the Article 4 Direction.

3.0 Detail

Background

- 3.1 Cabinet on 14th October 2019, considered a paper titled '*Article 4 Directions To Remove Permitted Development Rights For Changes Of Use From Office And Light Industrial To Residential And Also From Residential To Houses In Multiple Occupation*'. This included:
 - a) *Background*. It set out recent government changes reducing the need for planning permission. This included information on the permitted development rights for residential dwellings to houses in multiple occupation (shared dwellings occupied by between three and six unrelated individuals as their main residence whilst sharing basic amenities such as bathrooms and kitchens) development.
 - b) *Article 4 Directions*. It identified a local planning authority's ability to remove permitted development rights where justified and the process for doing so including consultation and matters such as potential compensation payments to property owners.
 - c) *Consideration of an Article 4 direction to remove change of use of residential (C3) to houses in multiple occupation permitted development rights across the borough*. This identified that there are approximately 17,000 houses in multiple occupation (HMOs) within the borough. It identified their role in meeting housing need. It identified some of the negatives that houses in multiple occupation can bring as summarised in paragraph 3.6 of this report. It set out a range of powers available to the Council in terms of statutory

controls around housing and planning functions, including licensing and enforcement. The section also set out the advantages and disadvantages of undertaking the Article 4 direction.

d) *Conclusion.* This recommended a non-immediate Article 4 to require planning permission for change of use from residential to houses in multiple occupation across the borough. This was consistent with Cabinet's decision on the same agenda to apply additional licensing requirements to all houses in multiple occupation across the borough.

3.2 Cabinet approved the issuing of a borough wide non-immediate Article 4 direction removing permitted development rights for change of use from residential (C3) to houses in multiple occupation (C4).

3.3 Cabinet delegated authority to the Strategic Director for Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning to consider consultation responses and the decision on whether to confirm the Article 4 directions.

3.4 Having reviewed the representations received, it is however considered appropriate for Cabinet to make the decision on how to proceed.

The case for an Article 4 for HMOs

3.5 The National Planning Policy Framework (2021) (NPPF) requires that Article 4 Directions are based on robust evidence and apply to the smallest geographical area possible. The case as set out in the Cabinet report of October 2019 is summarised here.

3.6 Well maintained and managed HMOs undeniably can provide an important component of meeting housing need, and Brent's planning policies support the provision of good quality, well managed, HMOs. This is predominantly for single people or couples. Notwithstanding their importance in meeting housing needs, the quality of some of the conversions, whether lawful or not, is extremely low. As illustrated by photographs in Appendix C of HMOs in Brent subject to enforcement action the quality of some accommodation is shocking. Poor quality HMOs impact the lives of their sometimes more vulnerable occupants and their surrounding neighbourhoods. Negative impacts can include: inadequate quality of accommodation, transient populations; anti-social behaviour; noise and nuisance; and unmaintained properties and gardens from poor management leading to unsightly premises. They also undermine the ability of larger family households to meet their needs.

3.7 Many enforcement complaints, and the team's workload relate to HMOs. As planning permission is not required for a small HMO the team's main focus is whether a change of use has taken place from a dwelling house to a HMO (planning permission not required) or to multiple self-contained flats (permission required). The latter are mainly carried out in the landlord's view, under permitted development rights thinking they are HMOs. In reality these function as poor quality self-contained dwellings, needed planning permission and

should comply with planning policies including space standards. An Article 4 Direction which would require planning permission would remove any uncertainty that permission is required and ensure that planning space standards are met and as a result ensure good quality dwellings are delivered.

- 3.8 Nationally, stronger licensing powers were introduced in 2018. Within the borough HMOs are now required to be licensed. Powers under the Housing Act are different to those in the Town and Country Planning Act. For example, licensing powers would not be able to address potential over-concentration of HMOs, loss of family housing, external amenity standards, control of parking, provision of sufficient space for waste etc. whilst planning policy can. Planning would not deal with ensuring the proper management, use and occupation of the house concerned, and its condition and contents, whilst licensing can. Planning can also deal with what facilities are allowed in a room to address as to whether a room could be classified as a self-contained dwelling and eventually could become a flat. The HMO Licensing and HMO Article 4 Direction proposals will assist in a complementary and co-ordinated approach between the Housing and Planning functions. The approach will allow us to welcome good quality HMOs that provide a suitable standard of accommodation, whilst preventing low quality accommodation. An Article 4 would not impact on existing HMOs, but only new HMOs when it comes into effect in a year's time. Management issues would continue to be principally addressed through licensing powers. Applications for new HMOs would be assessed against our planning policies. A planning fee of £462 for each change of use would apply. For policy compliant schemes that don't need any amendments, subject to consultation, they should be dealt with under delegated authority 6-8 weeks after submission.

Consultation Process

- 3.9 The Council consulted for 6 weeks in Autumn 2019, with notices in the Brent and Kilburn Times and at sites across the borough, with the notices and directions available in libraries. It advertised the consultation on its website and sent notifications to statutory consultees and those on the Local Plan consultation list. All private sector landlords registered who received a monthly landlord news bulletin from the Council were notified of the consultation.

Representations

- 3.10 Thirteen representations were received, one neither for nor against (Highways England) and seven in support of the Article 4 including Brent Parks' Forum, with the remainder being residents. The five not in favour were those who own dwellings for private rent including Quintain/Tipi. A fuller summary of the representations, together with officer responses is set out in Appendix A.

Residents

- 3.11 Residents supported the Article 4 as it would allow for the better control of the quality of dwellings, that it would reduce the potential for concentrations of HMOs and associated anti-social behaviour, environmental quality and

pressure on infrastructure. In addition, the impacts on availability of family housing were identified. These reasons are broadly consistent with those set out by the Council in justifying the making of the Article 4.

- 3.12 Brent Parks' Forum support for the Article 4 was on the basis of its potential to reduce the adverse impacts on water quality. They consider higher occupancy of dwellings was causing greater occurrence of anti-social waste disposal through the sewerage system (wet wipes in particular) which was resulting in poor water quality from blockages/lack of capacity resulting in greater volumes of sewage diversion to watercourses.
- 3.13 Whilst no evidence was produced of the particular impact of HMOs in this regard, the dwellings are likely to be more intensively occupied than owner-occupier homes, which can cause pressure on sewerage infrastructure. Thames Water is responsible for ensuring sufficient capacity exists to reduce potential for pollution of watercourses from sewerage outfall and measures are required to comply with EU Water Directive requirements on meeting water quality in the Thames Basin Catchment.

Landlords

- 3.14 Landlords generally considered that the Article 4 was unnecessary. They regarded it as disproportionately affecting good landlords, bureaucracy, an abuse of power and money making procedure. They said it would result in residents being less able to meet their needs through more affordable rented accommodation being available.
- 3.15 Quintain, owners and developers of Wembley Park, submitted a detailed representation. The main thrust was that the report had not properly considered the impact on the 'build to rent' sector. Much of this accommodation is let out to sharers currently intended to be pre-formed groups either of professionals or students, or alternatively individuals matched by the landlords.
- 3.16 Quintain considered that the original report concentrated on adverse impacts of poor management, low quality standards and anti-social behaviour from concentration of HMOs. They identified that none of these adverse impacts were prevalent at Wembley Park, which has high quality accommodation, management regimes and no higher incidences of anti-social behaviour observed. Occupation of HMOs at Wembley Park would divert occupants away from elsewhere in Brent, thus better helping reduce the pressure on traditional larger family homes, which can meet larger households needs.
- 3.17 Quintain identified that continued investment in new dwelling stock of the scale anticipated in Wembley Park needed the confidence of institutional investors to be maintained through retaining the current flexibility. The reduction of the current flexibilities of letting to single households or sharers, which could occur through requiring planning permission, could limit the potential to reduce durations of property voids. This would affect returns on investment and increase risk. They also identified that the report had significantly under-

estimated the number of planning applications that would be submitted to the Council as a result of the Article 4.

- 3.18 In relation to the points raised in the representations made by landlords, it is considered that the Cabinet report of the 14th October 2019 identified and addressed the majority of the matters. The report was clear that HMOs provide lower cost accommodation that is important in meeting a need, which cannot be met through the lack of availability of low cost self-contained dwellings. The report did have a focus on the adverse impacts of poorer quality HMOs. It did however, also identify the role of licensing in principally being able to address these standards. It also identified the adverse impacts of HMO concentration and also on availability of the very limited supply of larger family sized accommodation (3+ bedroom homes) which means these larger households are unable to meet their needs. These are both factors which licensing, or the quality of landlords cannot fully address.
- 3.19 The Cabinet report identified that the proposed draft Local Plan policy allowed sufficient flexibility to allow for continued provision of additional HMOs. This would help in continuing to meet needs outside areas where levels of acceptable concentration had been reached. Given that the draft Local Plan policy at that time allowed for up to 36% of homes to be HMOs in any one area, (now modified to 26% through the examination process) whilst currently across the borough these comprise 15% of homes, there is clearly scope for potential increases of supply if planning permission is required.

Build to Rent – additional considerations

- 3.20 Based on Quintain's representation, it is acknowledged that the Cabinet report did not fully consider the potential impact on aspects of the institutional 'build to rent' sector and its provision of accommodation in large blocks/ areas. National planning policy, London Plan policy and the Council's policy supports increased provision of this form of development. This is for the potential role it plays in increasing development capacity to deliver much-needed homes and the professionalism/ quality of the product provided for tenants.
- 3.21 Build to rent development at Wembley Park provides for about 20% of the homes that will be delivered in Brent to 2041. It is therefore a key component of assisting in meeting Brent's housing needs, but also ensuring compliance with national planning policies related to the Housing Delivery Test.
- 3.22 In addition, the impact on the planning service, in terms of the time and cost of determining applications was also potentially under-estimated. This is related to the ability of the landlord to be able to 'flip' between dwellings and HMOs on a continuous basis (e.g. Flat X let to sharers on one tenancy, then to a family and then returning to sharers). On an estate of the size of Wembley Park (circa 5,000 build to rent dwellings) this could result in a large volume of applications.
- 3.23 Nevertheless, the Council has to balance up the build to rent sector's commercial desire to retain current flexibilities with other factors identified originally such as national planning requirements to create sustainable,

balanced and mixed communities and meet housing needs, in particular the needs for family accommodation.

Recommended way forward

- 3.24 The Article 4 direction was made with the intention that it would come into effect on 1st November 2020. To come into effect, it requires confirmation from the Council within two years after making the direction, having considered representations received. After it has made an Article 4, regulations do not allow the Council to easily amend its boundaries prior to proceeding to confirmation. To do this Schedule 3 of the GPDO 2015 identifies it has to make another separate Article 4 with the associated process of publicising and seeking and considering representations.
- 3.25 Taking account of the representations, and considering alternative options it is recommended that the Council proceeds with making a new Article 4 that requires planning permission for any change of use from dwelling to HMO, excluding site allocations within Church End Growth Area and all part of the other Growth Areas identified in the draft Local Plan. It is proposed not to include Church End Growth Area in its entirety as this would include areas of terraced family housing, which could be subject to conversion to HMO. The focus is instead on excluding areas of the borough where the majority of new homes will be developed. The reasons for this are set out below.
- 3.26 To provide additional clarity on the status of the existing made Article 4, it is recommended that Cabinet agrees that the Council does not wish to proceed with its confirmation and formally revokes the direction that was made. This will clarify its status and remove it from local searches associated with property transactions.

Alternative options considered

- 3.27 The following alternative options have been considered:
- a) proceed with confirmation of the Article 4 Direction as made (consistent with the original Cabinet decision) to require planning permission for any change of use from dwelling to house in multiple occupation;
 - b) proceed with confirmation of the Article 4 Direction as made to require planning permission for any change of use from dwelling to house in multiple occupation, but introduce deemed planning permission through Local Development Orders in relation to certain types of development in certain areas;
 - c) proceed with making a new Article 4 that requires planning permission for any change of use from dwelling to house in multiple occupation, but excluding selected parts of the borough;
 - d) not proceed with any Article 4 that requires planning permission for any change of use from dwelling to house in multiple occupation.

a) Proceed with the Article 4 as made

Pros	Cons
<p>The Article 4 direction will commence on confirmation, without the need for additional consultation and delay.</p> <p>Will remove uncertainty around when permission for conversion to an HMO is required, and help to reduce the amount of time the planning enforcement team spends on investigating and remedying non-compliant HMOs.</p> <p>Would allow the Council to consider introduction of a supplementary planning document. This can assist in improving the standards of HMOs.</p>	<p>Requiring a planning application for new build developments could result in essentially an administrative function for the Council and applicant with little or no additional beneficial planning outcomes. This is because standards are sufficiently high and over-concentration is unlikely. To gain planning permission new build developments must demonstrate high standards of amenity and high quality management regimes. New builds predominantly have an open plan layout for the kitchen/living room, so unlike other HMOs, living rooms will not be used as an additional bedroom. This provides good levels of internal communal space.</p>

(Continued...)

Pros	Cons
<p>Would address potential adverse impacts of over-concentration on neighbourhoods that cannot be addressed by licensing alone, for example balanced and mixed communities, volume of anti-social behaviour, impacts of transient populations and pressure on infrastructure including parking.</p> <p>Would prevent competition from HMOs impacting on the ability of larger households meeting their needs, particularly as a result of competition for three or more bedroom homes.</p>	<p>In terms of impact on family accommodation, new builds are predominantly one and two beds, and three bedroom dwellings or larger can be subject to condition, which states that they must remain single household dwellings. As such, the Council already has control over how they are occupied.</p> <p>Build to rent landlords desire to flip between dwelling and HMO could well result in a significant uplift in planning applications if change of use were applied for each dwelling individually. This will potentially substantially increase the 250 planning applications per annum identified in the 14th October 2019 Cabinet report. This would effectively result in a disproportionate unnecessary burden on the Council's development management function.</p> <p>The updated NPPF (2021) states Article 4 Directions should apply to the smallest geographical area possible. Taking into account the above, a borough wide Article 4 would not reflect the smallest possible area required to protect local amenity or the well-being of the area.</p>

b) Confirm Article 4 Direction in association with a Local Development Order that grants planning permission for two bedroom dwellings to be houses in multiple occupation in Growth Areas or more identified parts of the borough

3.28 An Article 4 direction removes permitted development rights and thus requires planning permission. Nevertheless, the Town and Country Planning Act 1990 also allows the Council to implement Local Development Orders (LDO). These provide permitted development rights for specified types of development in defined locations. It could grant planning permission for existing dwellings to become houses in multiple occupation. It can do this unconditionally, or attach conditions for example requiring notification to the Council of the change of use.

Pros	Cons
<p>Removes the majority of what can be regarded as potentially unnecessary planning applications, whilst focussing on a key matter for the Council: the potential loss of three and four bedroom homes.</p> <p>Would allow the made Article 4 to commence borough wide on confirmation, without the need for a new Article 4.</p>	<p>Potentially a significantly more administratively intensive process than would be associated with taking forward a new Article 4, particularly if applied to all Growth Areas.</p> <p>Could create confusion as the Council is removing a permitted development right, only to reinstate it in certain locations.</p> <p>There would be a lead in times due to the need to consult for a minimum period and consider responses. This will mean there will be a short period when planning permission will be required resulting from the Article 4 being confirmed in advance of the LDO. Alternatively, confirmation of the Article 4 would need to be delayed.</p>

c) Make a new Article 4 for change of use from dwelling to house in multiple occupation, removing site allocations within Church End Growth Area and all parts of the other seven Growth Areas

Pros	Cons
<p>Within Growth Areas new homes will be built to high standards, therefore this removes the risk of conversion to low quality HMOs.</p> <p>As many of the homes in these areas have yet to be built, the issue of renting to sharers in new development proposals can also be dealt with, as has been the case in many developments in these areas already, at the planning application stage. Conditions could set out the extent to which the flexibility to use such properties as HMOs without the need for planning permission is permitted.</p>	<p>A new Article 4 direction will be required. A non-immediate Article 4 direction would remove the risk of compensation claims from disaffected property owners/developers.</p> <p>The General Permitted Development Order specifically identifies that compensation cannot be claimed for loss if the Article 4 comes into effect at least 12 months after it is made. This means that it will not be until 2022 at the earliest that the Article 4 will come into effect.</p>

(continued...)

Pros	Cons
<p>It will not undermine the draft Local Plan policy approach of seeking to avoid concentrations of HMOs, as most homes in new developments in Growth Areas contain limited numbers of new larger family sized homes (three plus bedrooms).</p> <p>Requiring planning permission for all HMOs outside the Growth Areas will also allow the Council to consider introduction of a supplementary planning document. This can assist in improving the standards of HMOs.</p> <p>Removes the risk of more planning applications being submitted than originally considered, diverting resources away from proactively delivering high quality major regeneration and place making.</p> <p>This approach is consistent with the NPPF (2021) which states Article 4 Directions should apply to the smallest geographical area.</p>	

d) Proceed with no Article 4

Pros	Cons
<p>Would give dwelling owners flexibility to change use to HMO and maintain the current supply of additional HMOs, which do meet a housing need.</p> <p>Removes the risk of a significant additional number of planning applications and certificates of lawfulness. This risk has the potential to divert resource away from proactively delivering high quality major regeneration and place making.</p>	<p>Would not address the disproportionate amount of time the planning enforcement team spends on investigating and remedying non-compliant HMOs.</p> <p>Continued potential adverse impacts of over-concentration on neighbourhoods that cannot be addressed by licensing alone, for example balanced and mixed communities, volume of anti-social behaviour, impacts of transient populations and pressure on infrastructure including parking.</p>

(continued...)

Pros	Cons
	<p>Continued competition from HMOs impacting on the ability of larger households meeting their needs, particularly as a result of competition for three or more bedroom homes.</p> <p>The Council will not be able to use its planning powers to ensure HMOs provide a suitable level of amenity, which could result in low quality accommodation.</p>

Conclusion

- 3.29 The representations received indicate both support and objection to the Article 4. Fundamental issues raised in addition to those outlined in the report to Cabinet in 2019, when originally considering the making of the Article 4, are the impact on build to rent. The first relates to impacts on their business model, which is reliant on current flexibility allowed by permitted development rights and the impact on their confidence to continue their substantial development programme. The second is the potential increase in planning applications likely to be submitted to the Council being well above that which was identified. The risk to the Council is that this could divert planning resource away from the growth and regeneration agenda.
- 3.30 The Council has reconsidered its approach to the type of Article 4 Direction it should implement. A number of options have been considered, as outlined above. It is recommended that option c) is progressed which requires the making of a new Article 4 Direction that will exclude the draft Local Plan's site allocations in Church End Growth Area and all parts of other draft Local Plan Growth Areas where the majority of new homes will be built. New homes will be built to high standards, therefore this removes the risk of conversion to low quality HMOs. It is considered this option will balance the ability of the Council to control HMOs coming forward, without a disproportionate unnecessary burden on the Council's development management function. This would also represent the smallest geographical area possible for the Article 4 to be necessary to protect local amenity and well-being, consistent with the NPPF.
- 3.31 Alternative option a) will allow the earliest implementation of controls on HMOs. Requiring a planning application for new build developments to HMOs could result in essentially an administrative function for the Council and applicant with little or no additional beneficial planning outcomes. This is because standards are sufficiently high and over-concentration is unlikely. New builds are predominantly one and two beds, and three bedroom dwellings or larger can be subject to condition, which states that they must remain single household dwellings, meaning family housing can be protected. For this reason this option is not recommended.
- 3.32 Option b) is more complex in that it responds to taking away permitted development rights by reinstating them for certain areas, e.g. the Growth Areas

identified. This will allow the current Article 4 to proceed to confirmation (assuming the decision to do so is made before 21st October 2021), meaning no delay in start date of when it will take effect. The downside is that it is confusing and potentially cumbersome in its implementation, with if it is applied to all Growth Areas, the significant additional administration associated with granting a Local Development Order. For these reasons this option is not recommended.

- 3.33 Option d) retains permitted development rights with the associated adverse impacts. These were considered at length in the Cabinet decision of 14th October 2019 and the reasons for applying an Article 4 direction to the majority of the borough still stand. For these reasons this option is not recommended.

4.0 Financial Implications

- 4.1 The Fees Regulations 2017 allowed for the charging of fees for planning application resulting from permitted development rights being removed through an Article 4 direction. For changes of use of C3 to C4 the fee is currently unlikely to cover the cost of determining the planning application. The impact of this however needs to be weighed up against the cost of planning enforcement investigating complaints raised in relation to changes of use from residential to HMOs. The impact on the planning service as a whole could be cost-neutral.
- 4.2 The cost of the implementation of the Article 4 directions Order will be met from existing planning budgets. Costs will be low, limited to notices in the local press and site notices to be displayed in the area affected, plus some minor printing for consultation materials to be placed in libraries.

5.0 Legal Implications

- 5.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) enables a local planning authority may make an "Article 4 Direction" to remove permitted development rights.
- 5.2 These orders do not prevent a development (which would otherwise be permissible without planning permissions) to which it applies, but instead requires that planning permission is obtained from the local planning authority for that development.
- 5.3 Before making such an order, the law requires that the local planning authority must be satisfied 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.
- 5.4 In addition, the local planning authority must also have regard to other considerations including governmental guidance and policies. And in particular, paragraph 53 of the *National Planning Policy Framework*, which was revised in July 2021 following a consultation conducted by the government earlier this

year (reviewing the impact of these orders). The wording to paragraph 53 has been revised to include the following.

“The use of Article 4 directions to remove national permitted development rights should... be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities) In all cases, be based on robust evidence, and apply to the smallest geographical area possible”.

- 5.5 The effect of these revisions, is to make it harder for local planning authorities to remove permitted development rights (and not only in respect of *non-residential uses to residential uses*, which appears to be the government’s principal motivation to these reforms.
- 5.6 As any Article 4 Direction introduced must now be limited geographically to the “*smallest area possible*” suggests that borough wide orders will be at a greater risk for challenge not least by the secretary of state (who has the power to modify or cancel a direction even after they are made). Government has pointed out (in their response following the consultation) that this “*shouldn’t result in local authorities having to secure multiple Article 4 directions rather than one larger one where this is more appropriate*”. In any event, the government is keen to emphasis that the supporting evidence must be ‘robust’. Quite likely this means it envisages a higher standard of evidence, especially read together with the requirement for it to apply to the smallest area possible.
- 5.7 Nevertheless, the procedure for making and confirming these orders which the Council will follow is contained in Schedule 3 of The Town and Country Planning GPDO.
- 5.8 The GDPO also contains provisions to allow local planning authorities to cancel an order by making a subsequent order. An order can also be modified by cancelling the existing direction and replacing it with a new one.
- 5.9 Where a planning authority makes an Article 4 Direction, this can in certain circumstances trigger a requirement to pay compensation to those who lose permitted development rights. Compensation can be claimed for example for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 5.10 The Council can avoid compensation liability by publicising their intention to make an article 4 direction at least one year, and not more than two years, ahead of the article 4 direction taking effect (a non-immediate order).

6.0 Equality Implications

- 6.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and

maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have “due regard” to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
3. Foster good relations between people who share a protected characteristic and those who do not.

6.2 For the removal of permitted development rights to C4 HMOs, the results are mixed. Due to their lower cost HMOs are more likely to be occupied by the economically disadvantaged which proportionately are more likely to comprise the young and black and minority ethnic groups. As such, a reduction in the number of HMOs coming forward might adversely impact on these groups in meeting some of their housing needs. In some cases, this will mean that they remain in temporary accommodation. Realistically however it is considered that supply numbers are unlikely to be significantly adversely affected in the medium term as landlords will seek to provide HMOs in a policy compliant manner in locations which avoid an over-concentration.

6.3 In the longer term, supply could be restricted by policy if the 27% threshold is met across the borough. This could adversely affect the protected characteristics identified. On the other hand, the need for planning permission will provide extra scrutiny of HMO accommodation and will raise its quality, which should improve the standard of accommodation provided for the protected characteristics identified.

6.4 The threshold together with the application of the Local Plan policy that restricts loss of housing will in time limit the loss of family accommodation. This will be a positive for black and minority ethnic groups in meeting their needs as these groups comprise the majority of Brent households and have larger average household sizes for which larger accommodation is required.

7.0 Consultation with Ward Members and Stakeholders

7.1 The Lead Member has been kept informed. The initial consultation was publicised in the members’ bulletin. There has been considerable dialogue with council services addressing housing needs, private sector housing and planning enforcement.

7.2 For the consultation a public notice was placed in the local press. There was a press release and awareness raising through the council’s website, plus letters sent to statutory consultees and those on the Council’s local plan consultation database. Registered private sector residential landlords were made aware. The documents were available in libraries and on the council’s website. Public notices were placed across the borough. The consultation was publicised in association with and at the same time as publication of the Local Plan with a 6 week consultation period.

7.3 These processes will be repeated for the new Article 4, although the consultation period will be the statutory minimum of 21 days, as consultation will not occur in association with the Local Plan.

Related Documents

[London Borough of Brent Cabinet Paper 14th October 2019: Article 4 Directions to Remove Permitted Development Rights for Changes of Use from Office and Light Industrial to Residential and also from Residential to Houses In Multiple Occupation](#)

Report sign off:

Alan Lunt

Strategic Director of Regeneration
and Environment.