



**Delegated Decision
Strategic Director Regeneration
and Environment in consultation
with Cabinet Member for
Regeneration, Property and
Planning
21 January 2022**

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

**ARTICLE 4 DIRECTION - CHANGE OF USE FROM
RESIDENTIAL TO HOUSES IN MULTIPLE OCCUPATION -
CONFIRMATION**

Wards Affected:	All in part or in whole where the Council remains 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:	Appendix 1 – Consultation Response Summary Appendix 2 – A4 C3 to C4 Order
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Claire Bradley Principal Planner Claire.Bradley@brent.gov.uk

1.0 Purpose of the Report

- 1.1 The purpose of the report is to consider the representations received in relation to the making of an Article 4 direction to remove permitted development rights for changes of use from residential to houses in multiple occupation. This direction will apply to parts of the borough where the council is Local Planning Authority. It does however, exclude the draft Local Plan's site allocations within the Church End Growth Area and all parts of the other seven Growth Areas. The report seeks confirmation of the direction.

2.0 Recommendations

- 2.1 That the Strategic Director of Regeneration and Environment and Cabinet Member for Regeneration, Property and Planning consider the representations received and responses as set out in Appendix A.
- 2.2 That the Strategic Director of Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning approve the confirmation of the Article 4 direction to remove permitted development rights for changes of use from residential (i.e dwellinghouse) to houses in multiple occupation as set out in Appendix B.

3.0 Detail

Background

- 3.1 Cabinet on 11th October 2021 considered a paper [‘Article 4 Directions To Remove Permitted Development Rights For Changes Of Use From Residential To Houses in Multiple Occupation’](#). This included:
 - a) *The Case for an Article 4 for HMOs*. This set out the reasons why an Article 4 might be appropriate.
 - b) *Consultation process and representations received*. This set out a previous consultation process and responses that had occurred on an Article 4 for a spatially more extensive area.
 - c) *Recommended way forward*. Set out a number of potential options reflecting on the consultation responses received.
 - d) *Conclusion*. This recommended making a new non-immediate Article 4 to require planning permission for change of use from residential to houses in multiple occupation.
- 3.2 Cabinet approved 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 excluded the draft Local Plan’s site allocations within Church End Growth Area and all parts of the other seven Growth Areas.
- 3.3 In addition, 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 direction.

Consultation Process

- 3.4 The Council consulted for 6 weeks from 21 October 2021 to 1 December 2021. This was longer than the statutory minimum of 21 days. It placed a public notice in the Brent and Kilburn Times and at sites across the borough, with the directions being available in the Council’s libraries. It advertised the

consultation on its website and sent notifications to statutory consultees, those on the Local Plan consultation list and respondents to a previous consultation on an Article 4 for HMOs held in 2019. It was also publicised in the Brent landlord newsletter.

Representations

- 3.5 Fifteen representations were received, three no comments, essentially from statutory consultees (National Highways, Natural England and the Coal Authority) and eleven in support. One of these was from Councillor Robert Johnson and the other ten from residents. One respondent questioned why Church End Growth Area was excluded. A fuller summary of the representations, together with officer responses is set out in Appendix A.
- 3.6 The representations essentially mirrored many of the matters discussed in the original Cabinet paper. This included issues associated with over-crowding, poor management, loss of family dwellings, anti-social behaviour, impact on infrastructure and poor quality of accommodation.

Conclusions

- 3.7 The Council has up to 2 years after making an Article 4 direction to confirm it. Prior to a decision to confirm, it must consider the representations received. On the basis of the representations received the options available to the Council are to:
- a) Not proceed with the confirmation.
 - b) Proceed with the confirmation.
- 3.8 Not proceeding with the confirmation is not recommended. The Council considered that it was appropriate to make the Article 4 direction as the existing permitted development rights are leading to the range of issues set out in the Cabinet report and identified in the consultation responses. This was identified as prejudicing the proper planning of the borough with regards to provision of sufficient number of family homes and the adverse effects of over-concentration of HMOs or inappropriate HMO design/layout.
- 3.9 The representations received have not identified any fundamental issues which challenge the merit of the Article 4, either in the permitted development rights it removes, or the geographical extent of its coverage. On this basis, it is recommended to proceed with the confirmation with the Article 4 direction as shown in Appendix B, coming into effect on 1st November 2022.
- 3.10 On confirmation of the direction, the Council will as soon as is practicable have to give notice of the date of confirmation and the date on which it comes into force. It will have to publicise this in the same manner as occurred in the making of the direction. The Council must also send a copy of the confirmed direction to the Secretary of State. The Secretary of State has the power to modify the direction at any time. Although possible, this is considered unlikely. The Secretary of State did not respond indicating any concerns with

either made direction in relation to HMOs and the Council has considered the representations made, which raise no significant concerns.

4.0 Financial Implications

- 4.1 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 from 17th January 2018 allowed for the charging of fees for planning application resulting from permitted development rights being removed through an Article 4 direction. It is anticipated that whilst revenue from applications might not cover the time spent by the Council in administering and determining applications received, there will also be likely savings related to reducing time spent on following up enforcement cases.
- 4.2 The cost of the implementation of the Article 4 directions will be met from existing planning budgets. Costs will be relatively low, limited to notices in the local press and production of site notices which will have to be displayed in the area affected, plus some minor printing for materials to be placed in libraries.

5.0 Legal Implications

- 5.1 The process for Article 4 directions is set out in Schedule 3 of the General Permitted Development Order 2015. The process for taking forward the Article 4 will be consistent with the regulations.
- 5.2 The Council may be liable to pay compensation to those whose permitted development rights have been withdrawn if the Council refuses planning permission for development that would have been permitted development if it were not for an article 4 direction, or grant planning permission subject to more limiting conditions than the England or Wales GPDO would normally allow, as a result of an article 4 direction being in place.
- 5.3 Compensation can be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 5.4 Claims must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the England or Wales GPDO). Compensation is only payable in respect of planning applications made within 12 months of the date an article 4 direction takes effect.
- 5.5 The Council will avoid compensation liability on withdrawal of the permitted development rights through it having publicised the 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.
- 5.6 The [Town and Country Planning Act 1990 \(TCPA 1990\)](#), s 108 provides that no compensation arises where adequate notice has been given of the removal of planning permission granted under a development order, local development

order or neighbourhood development order. Where planning permission granted by a development order, a local development order or a neighbourhood development order is withdrawn, land owners may have a right to compensation under [TCPA 1990, s 108](#).

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 The removal of permitted development rights for C3 to C4 will allow the Council to properly assess whether any proposed C4 use is acceptable. Managing the housing stock in this way will allow a better match to the needs of a diverse the population. Specific advantages are for groups with extended families and groups which may otherwise face disadvantage occupying poor quality HMO accommodation.

6.3 There may be a marginal reduction in the amount of accommodation that comes forward from this source but overall the impacts are considered on balance to be beneficial for the reasons set out in 6.2.

7.0 Consultation with Ward Members and Stakeholders

7.1 The Cabinet member has made members aware of the proposed Article 4 directions. The consultation was publicised in the members’ bulletin, this will also occur when the order is confirmed.

7.2 In terms of awareness raising 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, those on the Council’s local plan consultation database, respondents to a previous consultation on an Article 4 for HMOs held in 2019. The documents were made available in libraries and on the council’s website. There were some public notices placed across the borough. It was also publicised in the Brent landlord newsletter. These methods will be replicated in the confirmation of the direction.

Report sign off:

Alice Lester

Operational Director of Regeneration and Growth