

Report of: Development Control Manager
Date: 26 July 2011
Report Title: Article 4 Direction
Houses in Multiple Occupation (HMOs)



Summary:

Key Decision: NO

Affected Wards: Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards

Decision: The Development Control Manager authorise the making of an Article 4 Direction to remove permitted development rights in Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards, for change of use from class C3 to class C4 of the Town and Country Planning Use Classes Order 1987 as amended.

The Direction to be made in the terms in 12 months from the date of this decision in the terms set out in annex 1 of this report.

The area covered by the Direction to be as shown in the maps in annex 2 of this report.

Financial Implications: By deciding 12 months in advance to make an Article 4 Direction those affected will have no ability to claim compensation. The introduction of the Article 4 Direction may result in a small increase in the number of planning applications submitted which do not require a fee but this will depend upon legislation likely to be introduced into Parliament in the next few months in relation to local fee setting for planning applications.

Risk Assessment No

Equalities Impact Assessment There is no impact on equalities from the making of the direction as it will only require planning applications to be made for a change of use to an HMO. Equalities and Human Rights considerations would have to be made at the determination of any subsequent applications.

Other Material Implications: Small scale increase in planning applications probable but may be offset by reduction in enforcement activity.

Background Papers: None

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Agenda Item No.

Report Title: Article 4 Direction Houses in Multiple Occupation (HMOs) Beaver. South Willesborough, Little Burton Farm and Aylesford Green Wards

Purpose of the Report

1. In recent years local people and councillors have been concerned about the effects on the amenity of certain areas of the town from a concentration of houses in multiple occupation. Whilst some of these houses may not cause harm individually a concentration of them in a particular area can reduce the quality of life for other residents in the area.
2. This report sets out the reasons for introducing an Article 4 Direction to remove permitted development rights in 3 wards for change of use from class C3 to class C4 of the Town and Country Planning Use Classes Order 1987 as amended (UCO). This will mean that any such change would require an explicit planning permission from the council. Currently this permission is given by national legislation.

Issue under consideration

3. Whether to authorise the making of an Article 4 Direction to remove permitted development rights for the change of use from single dwellings (C3) to houses in multiple occupation (C4) which is attached in annex one. The Article 4 Direction to apply to Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards as defined in the plans attached at annex 2.
4. Whether to introduce any limitation to permitted development rights immediately or in 12 months time to limit any liability for compensation

Background

5. Under the planning acts planning permission is required to make a material change of use of a building. Consequently planning permission is required to change the use of a dwelling in single "family" occupation to one where a group of unrelated people live together sharing facilities, for example a student house. To reduce the number of planning applications that would need to be made and to allow flexibility within the planning system separate legislation (the Town and Country Planning General Permitted Development Order 1995 as amended (GPDO)) grants planning permission at a national level for certain changes from one use class to another.
6. The use classes referred to in the GPDO are set out in the Town and Country Planning Use Classes Order 1987 as amended (UCO). The UCO identifies classes for residential dwellings as follows:

Class C3: Dwellinghouses – this class is formed of 3 parts:

- C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a ‘family’);
- C3(b): those living together as a single household and receiving care, and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

Class C4: Houses in multiple occupation (3-6 occupants)

7. In broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.
8. Planning permission is not required to change the use of a dwelling within a use class and, because of the permission in the GPDO, it is not required to change from a C3 use to a C4 use or from C4 to C3.
9. Large houses in multiple occupation (those with more than 6 people sharing) are unclassified by UCO. In planning terms they are described as being *sui generis* (of their own kind). In consequence, a planning application is now required for a change of use from a dwelling house (C3) to a large house in multiple occupation or from a Class C4 house in multiple occupation to a large house in multiple occupation where a material change of use is considered to have taken place.

Justification for introducing an Article 4 Direction

10. A loss of control over changes of use from C3 to C4 will harm the sustainability of neighbourhoods within Ashford over the long term, which constitutes damage to an interest of acknowledged planning importance. An increase in concentrations of HMOs in an area alters the population mix, impacting on the facilities and services that can be supported, as well as affecting residential amenity and social cohesion; and these issues cannot be addressed successfully by neighbourhood management measures alone. Evidence of the impacts caused by high concentrations of HMOs in these wards is set out in the evidence section below.
11. In recent years HMOs have encroached into areas traditionally characterised by family housing. Where possible the Borough Council has sought to ameliorate the harm caused by these concentrations but neither the licensing system under the Housing Acts nor the Community Safety Unit and our partners can control the impact at source.
12. Local Planning Authorities may make a direction under Article 4(1) of the GPDO 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, so that a change of use by permitted development must instead require planning

permission, where the local authority is satisfied that this is expedient. It is considered that the evidence (set out below) in these 3 wards shows that high concentrations of HMOs have a detrimental effect on their local neighbourhood. This amounts to a compelling reason for and justifies HMOs being brought within planning control in the public interest. This amounts to circumstances which are sufficiently exceptional as to warrant the use of a direction in these wards, and it is intended to use the Article 4 Direction attached in annex 1 to do this. From the date when the direction comes into force all changes of use from C3 to C4 will require planning permission.

Evidence of the impact of high concentrations of houses in multiple occupation

13. The problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the government. The study "Evidence Gathering-Housing In Multiple Occupation And Possible Planning Responses" carried out by Ecotec for the government in 2008 summarise the impacts as including:-

- antisocial 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 expense 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.

Evidence in Ashford

14. The principal impacts in Ashford have been from noise and disturbance, impact on the environment from neglected gardens, litter, overflowing bins etc and pressure on parking due to more people living in HMO than would generally live in the same size house. Higher levels of transience also means that people feel less commitment to maintaining the area in which they live. Some landlords also do not maintain their properties to the same level as owner occupiers or longer term tenants.

15. The principal areas of concern are

- South Ashford where there has been a concentration of conversion to HMO of three storey properties in Beaver Ward. Some also have the ground floor garage converted into a separate flat. This has resulted in issues of noise, antisocial behaviour and parking pressures.

- Bushy Royds where there has been increased pressure on parking on street,
- Little Burton Farm which has similar issues around pressure on parking, and
- Drummond Grove, Adams Drive, Billington Grove, Rayworth Court and Stroudley Close where if applications for new HMO licences under the Housing Act are received could lead to some of the issues identified above.

Scope of the Article 4 Direction

16. The Direction is proposed to cover the wards where the greatest concentrations occur, where the evidence or risk of harm is greatest. Once the Article 4 Direction comes into force it does not mean that all applications for change of use to an HMO will be refused: the Council will have to determine such applications in accordance with the Development Plan and taking account of other material planning considerations.

Procedure for introducing the Article 4 Direction

17. This report authorises the making of the Article 4 Direction attached in appendix 1. The Borough Council will give notice of the Direction and representations will be sought in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995, as amended. It is considered that because of the extent of the Article 4 Direction it is impracticable to serve individual notices on all owners and all occupiers, as permitted by Article 5 (2) of the above.
18. Following consideration of any representations, the next stage will be for the Council to confirm the Direction which will be done through a report to the Planning Committee or using delegated powers as appropriate and advertised as necessary.
19. The legislation allows the council to introduce Direction immediately but if this occurred any person making an application that was subsequently refused could claim compensation from the council. Alternatively if the Direction does not come into force until 12 months after notice of making the Direction has been published then no compensation is payable.
20. The risk of compensation claims if the Direction comes into force immediately is high. Owners of properties who have no intention of converting properties could apply for planning permission, which under the current fee regime does not attract a planning fee, and if the application is refused seek compensation. To expose the council to this risk is not in the wider public interest and therefore it is proposed that the Article 4 Direction will come into force one year after notice of making the Direction is given. The Direction will come into force automatically on this date, unless the Council receives a Direction from the Secretary of State cancelling or modifying it.

Equalities Impact Assessment

21. There is no impact on equalities from the making of the direction as it will only require planning applications to be made for a change of use to an HMO. Equalities and Human Rights considerations would have to be made at the determination of any subsequent applications.

Other Options Considered

22. The other option is to do nothing and leave the current GPDO allowances in place. The consequences of this will be to allow concentrations of HMO to build up with no ability from the council to control the concentration in any area.

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Appendix 1

ASHFORD BOROUGH COUNCIL

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 as amended (“ the GPDO”)**

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS Ashford Borough Council being the appropriate local planning authority within the meaning of Article 4(4) of the GPDO, are satisfied that it is expedient that the development of the description set out in the Schedule below should not be carried on land shown edged black on the attached plans unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by Article 4(1) of the GPDO hereby direct that the permission granted by Article 3 of the GPDO shall not apply to development on the said land of the descriptions set out in the Schedule below:

SCHEDULE

The change of use from a use within Class C3 (dwelling houses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation) being development comprised within Class I of Part 3 of Schedule 2 of the GPDO and not being development within any other class.

This Direction shall come into force on November 2012

Dated this day of November 2011

Made under the Common Seal of ASHFORD BOROUGH COUNCIL
affixed this day of November 2011

Mayor

Confirmed under the Common Seal of ASHFORD BOROUGH COUNCIL
affixed this day of 20

Mayor

The Plans

Beaver Ward, South Willesborough Ward, Little Burton Farm Ward and Aylesford Green Ward