

REPORT TO: Environment and Urban Renewal Policy and Performance Board

DATE: 21 September 2022

REPORTING OFFICER: Operational Director – Planning, Policy and Transport

PORTFOLIO: Environment and Urban Renewal

SUBJECT: Controls on Houses of Multiple Occupation (HMO)

WARDS: Borough wide

1.0 PURPOSE OF THE REPORT

- 1.1 This report invites the Board to consider the controls available to regulate HMOs (houses of multiple occupation). A draft policy has been produced (Appendix 1) to set out the relevant licencing requirements and property standards for HMOs. In addition, it may be appropriate, where sufficient evidence can be presented to the Secretary for State, to use an Article 4 Direction to remove 'permitted development rights' thereby preventing the change of use from Class C3 (dwelling house) to Class C4 (houses in multiple occupation) without planning permission.
- 1.2 Evidence in regard to Article 4 Directions will be presented at the meeting.

2.0 RECOMMENDATION: That the Board

- 1. Considers the options, as set out in the report, for controls on the private rented sector, in particular 'houses of multiple occupation' (HMO).**
- 2. Endorse the draft Halton policy document 'Licencing Requirements and Property Standards' (Appendix 1) for HMO licencing in Halton.**
- 3. Scrutinise the evidence available to support, under the planning Acts, the use of 'Article 4 Directions' to restrict 'permitted development rights' and prevent dwellings changing use to small HMOs without planning consent.**

3.0 SUPPORTING INFORMATION

- 3.1 A house of multiple occupation (HMO) is defined as a single dwelling occupied by a number of separate households/ unrelated individuals. Under the Town & Country Planning (Use Classes) Order 1987 (as amended) a small HMO (Class C4) accommodates between 3 and 6 unrelated individuals and a large HMO (Sui Generis – outside of any use class) accommodates 7 or more unrelated individuals.
- 3.2 The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) provides permitted development rights for the change of use of a dwelling (Class C3) to a small HMO (Class C4) without the need to apply to the council for planning permission. The change of use of a dwelling to a larger HMO (Sui Generis) requires the submission of a planning application.
- 3.3 Article 4 of the GPDO enables local planning authorities to withdraw specified permitted development rights in a defined area. Once an Article 4 Direction comes into force, a planning application is then required for the specific permitted development withdrawn.
- 3.4 The withdrawal of permitted development rights does not imply that planning applications will be automatically refused if they are submitted. The submission of a planning application simply gives the local planning authority opportunity to consider a proposal against the relevant planning policies of the Delivery and Allocations Local Plan (2022), supplementary planning documents (where available) and any other material planning considerations.

Use of Article 4 Directions

- 3.5 The National Planning Policy Framework (NPPF) states that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where they are necessary to protect local amenity or the well-being of the area and apply to the smallest geographical area possible (NPPF para 53). Planning guidance also confirms that blanket Article 4 Directions covering large areas (for example, the whole of a town) are not encouraged unless there is convincing evidence to justify such a direction.
- 3.6 The potential harm that the direction is intended to address should be clearly identified. There should be a particularly **strong justification and robust evidence** for the withdrawal of permitted development rights.
- 3.7 Article 4 Directions can be used as a tool to assist in monitoring and managing the number of new HMOs created within a particular area in order to protect local amenity and wellbeing and to support balanced communities.

- 3.8 Article 4 Directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force.

A Non-immediate Article 4 Direction

- 3.9 The process for making and confirming a non-immediate Article 4 Direction is as follows:

Stage 1 - The council decides whether to go ahead and introduce a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after representations can first be made, which is usually after the last publication/service date;

Stage 2 – Publication/Consultation stage. The council:-

1. publishes the notice of direction in a local newspaper;
2. formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of at least 21 days; (or alternatively in line with the Statement of Community Involvement (SCI)
3. and places notices up on site for 6 weeks;

Stage 3 – On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction;

Stage 4 – Confirmation Stage - The council cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the council must give notice of the confirmation in the same way as it gave notice of the initial direction, and must specify the date that the direction comes into force. A copy of the direction as confirmed must also be sent to the Secretary of State.

An immediate Article 4 Direction

- 3.10 The process for making and confirming an immediate Article 4 Direction is as follows:

Stage 1 - The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect;

Stage 2 – Publication/Consultation stage. The council:-

- 1) publishes the notice of the Direction in a local newspaper;
- 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of 21 days;(or in accordance with the SCI)

3) and place notices up on site for not less than six weeks;

Stage 3 – On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has powers to modify or cancel a Direction.

Stage 4 –Confirmation Stage - The Direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and six months to decide whether to go ahead and confirm the Direction, taking into account any representations which have been received. If confirmation this does not happen within six months, the Direction will lapse.

Compensation

- 3.11 An **immediate Article 4 direction** has potential for applicants to claim compensation from local planning authorities if they have had planning permission refused for a development scheme that they would normally be able to carry out under permitted development rights. Any such compensation claims can only be made against abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights¹
- 3.12 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
- 3.13 Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with it. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 Direction withdraws, if they:
- Refuse planning permission for development which would have been permitted development if were not for an Article 4 Direction; or
 - Grant planning permission subject to more limiting conditions than the GPDO would normally allow.
- 3.14 The permitted development right is compared to its value without the right. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). In cases such as these compensation is not payable if the procedure below is followed, as set out in section 108 of the Town and Country Planning Act:

¹ Provision made under Section 108 of the Town and Country Planning Act 1990

- The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended).
- The permitted development right is withdrawn in the prescribed manner.
- Notice of withdrawal is given in the prescribed manner: Not less than 12 months before it takes effect. Not more than the prescribed period of two years.

Evidence

- 3.15 Robust evidence is needed for the withdrawal of permitted development rights. There is generally no single piece of evidence that can be used to establish whether an Article 4 Direction is necessary to protect local amenity or the wellbeing of the area (see para 3.5 above). The most common evidence cited in an analysis of Authorities with Article 4 Directions not intervened by the Secretary of State are areas where there is a demonstrable over proliferation of existing HMOs. Paragraph 050 of the Planning Practice Guidance provides that the Secretary of State will only intervene in Article 4 Directions where there are clear reasons for doing so.
- 3.16 Information about the number of HMOs in a particular area and other evidence can be used to build up a picture of the area, for example, crime records, environmental complaints and observations about the character and appearance of the area.

4.0 POLICY IMPLICATIONS

- 4.1 It is important to recognise that HMOs and the wider private rented sector play a key role in meeting housing needs in the borough. HMOs provide an important source of low cost, private sector housing for those on lower incomes, students and those seeking temporary accommodation. However, a concentration of HMOs in a particular area can change its character, increase demand on services and infrastructure, leading to conflicts with the existing community.

Registered HMOs in Halton

- 4.2 There are currently 111 registered HMOs in Halton. The greater numbers of HMOs can be found in Central and West Bank Ward (24), Norton South and Preston Brook (16) and Appleton (14).

	Total Dwellings	Social Rent	Private (OwnOcc & PRS)	Owner Occupied	Private Rent	HMO	HMO as % of Private Rent
Appleton	3,279	485	2,794	1,863	931	14	1.5%
Bankfield	3,011	1,047	1,964	1,630	334		
Beechwood & Heath	3,319	51	3,268	3,013	255	1	0.4%

Birchfield	3,193	5	3,188	2,749	439		
Bridgewater	3,862	1,061	2,801	1,914	887	11	1.2%
Central & West Bank	3,331	1,559	1,772	1,072	700	24	3.4%
Daresbury, Moore & Sandymoor	1,777	1	1,776	1,362	414		
Ditton, Hale Village and Halebank	3,186	791	2,395	2,020	375	4	1.1%
Farnworth	3,262	233	3,029	2,586	443	1	0.2%
Grange	3,602	1,266	2,336	1,898	438	7	1.6%
Halton Castle	3,208	1,436	1,772	1,245	527	11	2.1%
Halton Lea	3,140	1,584	1,556	1,186	370	11	3.0%
Halton View	3,324	648	2,676	2,090	586	1	0.2%
Highfield	2,982	150	2,832	2,366	466		
Hough Green	3,347	1,284	2,063	1,699	364	2	0.5%
Mersey & Weston	3,993	593	3,400	2,425	975	6	0.6%
Norton North	3,231	974	2,257	1,959	298	2	0.7%
Norton South & Preston Brook	3,020	1,362	1,658	1,327	331	16	4.8%
	58,067	14,530	43,537	34,404	9,133	111	1.2%
		25.0%	75.0%	59.2%	15.7%	0.2%	

Source: Halton Housing Stock Modelling Report (2021) Building Research Establishment Ltd. (BRE)

- 4.3 Further detailed information will be presented to the Board at the meeting.
- 4.4 **Licencing Requirements and Property Standards (Appendix 1)**
- 4.5 These standards are based on the nationally prescribed legal standards set out in regulations made under the Housing Act 2004.
- 4.6 Benchmarking of these standards against all Cheshire and Merseyside Authorities (and selected other local authorities across the country) has been undertaken. All local authorities have adopted the same approach as Halton.
- 4.7 It may be appropriate for the local authority to impose its own conditions on an individual property on a case by case basis. However such decisions are open to appeal to tribunal. Previous tribunal case decisions suggest that where a local authority has attempted to introduce a blanket condition on all HMO's that would have the effect of imposing a higher standard than required by law then this would not be lawful.

5.0 FINANCIAL IMPLICATIONS

At this stage, where draft policy approaches are being considered and scrutinised, there are no direct financial implications.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

The policy options set out above seek to improve the quality and safety of housing in Halton. There are direct and indirect positive implications for all the Council's priorities.

7.0 RISK ANALYSIS

At this stage, where draft policy approaches are being considered and scrutinised, there are no risks that arise directly.

8.0 EQUALITY AND DIVERSITY ISSUES

There are no direct equality and diversity issues that arise directly from the consideration of policy options.