

Report of:	Director of Regeneration
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Relevant Executive Member:	Executive Member for Regeneration
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Submitted to:	Executive
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Date:	20 December 2023
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Title:	Houses in Multiple Occupation Article 4 Direction
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Report for:	Decision
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Status:	Public
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Strategic priority:	Physical environment
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Key decision:	Yes
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Why:	Decision(s) will have a significant impact in two or more wards
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Subject to call in?:	Yes
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Why:	Not Urgent
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Proposed decision(s)

That the Executive agrees to the making of a non-immediate Article 4 Direction to remove the permitted development right to change from a C3 dwelling to a C4 HMO in Middlesbrough (except in the area covered by the Middlesbrough Development Corporation).

Executive summary

This report sets out the background to Houses in Multiple Occupation (HMOs) and recommends that a non-immediate Article 4 Direction be put in place to require smaller HMOs, that are currently part of the permitted development regime, to be subject to a
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planning application in Middlesbrough (except in the area covered by the Middlesbrough Development Corporation).

Purpose

1. To seek Executive approval for the introduction of an Article 4 Direction enable the Council to control the location and quality of new HMOs in Middlesbrough (except in the area covered by the Middlesbrough Development Corporation).

Background and relevant information

2. A house in multiple occupation (HMO) is defined as being a property occupied by at least 3 people who are not from one household (such as a family) but share facilities such as a bathroom and kitchen. Such properties are commonly known as house shares or bedsits.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') makes provision for granting planning permission for certain classes of development without the requirement for a planning application to be made.
4. Under the GPDO, a change of use from a house (which is in planning use class C3) to a large HMO of 7 or more people (which does not fall into any of the planning use classes) requires planning permission. However, change of use from a house to a small HMO of between 3 and 6 people (which is in planning use class C4), is classed a permitted development and does not require planning permission. This means that the Council cannot currently exercise any planning control over small HMOs.
5. Since 1 October 2018 all HMOs of five or more people have also been subject to mandatory licensing. Licenses are valid for five years and properties are subject to an inspection during this period. If the Council receives complaints regarding a property this will prompt a further inspection and enforcement action may be taken.

HMOs in Middlesbrough

6. There is a strong HMO market in central Middlesbrough, predominantly focused on the student sector, but also catering for other groups who need single person accommodation at low cost.
7. More recently, Members have raised concerns about the growth in HMOs in other areas, such as Linthorpe, North Ormesby and Ayresome. Given that small HMOs are outside of the planning process, it is not possible to accurately quantify the number of existing units. However, it is likely that the number of small HMOs has been increasing due the increase in concerns raised by Members.
8. In order to address Members' concerns, officers have been asked to look at ways that such developments can be better controlled through statutory processes.

Licensing

9. There is a separate licensing regime for HMOs to that of Planning. Only those HMOs that have 5 occupants or more require licensing and need to be registered, below this they are exempt.

Planning

Article 4 Directions

10. Article 4 of the GPDO allows for local planning authorities to remove most of the permitted development rights. There are two types of Article 4 Direction that can be made:

- **Immediate Article 4 Direction** – in order to introduce an immediate Article 4 Direction, the local planning authority must consider that the development to which the direction relates would be immediately prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. The Council may be liable to pay compensation for abortive work or other losses associated with the removal of permitted development rights; and
- **Non-immediate Article 4 Direction** – this is the more common route for making an Article 4 Direction. To avoid compensation payments, a local planning authority can confirm and publish its intention to make the Direction at least 12 months, and not more than 2 years, ahead of the Article 4 taking effect.

11. An Article 4 Direction could, therefore, be used by the Council to remove permitted development rights for the conversion of dwelling houses to a small HMOs and require them to be considered through the planning system in the same manner as large HMOs. It would give the Council greater opportunity to manage the overall number of HMOs in the area and mitigate some of the issues attributed to their concentration. It is recommended that a non-immediate Article 4 Direction be pursued, to minimise the financial exposure of the Council.

12. It's important to note that an Article 4 Direction would not ban development of HMOs; it would simply mean that, regardless of size, they would require planning permission.

13. Any Article 4 Direction that the Council makes can only apply to the area, or part of the area, for which it is the local planning authority under the provisions of the Town and Country Planning Act 1990. As such, an Article 4 Direction could apply to any part of the borough, except for the area covered by the Middlesbrough Development Corporation.

Justification for introducing an Article 4 Direction in Middlesbrough

14. HMOs provide a form of low-cost housing, particularly for students, younger people and people on low-incomes. They provide flexible accommodation for people with short-term housing requirements. This includes people in-between properties, people employed on short-term contracts and people who are saving to purchase a home. They also provide housing for people that simply prefer to live with large numbers of other people, such as friendship groups. Given the limited number of purpose-built private rented property in the borough, the sector will be reliant on conversion of existing properties.

15. Notwithstanding their importance in meeting housing needs, poor quality HMOs, or an over-concentration of them, can have significant negative impacts and have caused concern to local residents and Members. These concerns include: transient populations; anti-social behaviour; noise and nuisance; changing character of an area; living conditions and property standards; impact on parking and highways; mismanagement of waste; and poorly maintained properties and gardens. This can impact the lives of their sometimes more vulnerable occupants and their surrounding neighbourhoods. In

addition, landlords are often better placed to acquire properties than local families, thus undermining the ability of larger family households to meet their needs.

16. It is, therefore, considered appropriate to introduce an Article 4 Direction to remove the permitted development right to change from a C3 dwelling to a C4 HMO in Middlesbrough (except in the area covered by the Middlesbrough Development Corporation). Once it comes into effect, the Article 4 Direction will require all future proposals for HMOs within the area to be considered by the Council's Planning Service.

Interim Policy on the Change of Use from C3 Dwellings to C4 Houses in Multiple Occupation

17. There are currently no local planning policies in Middlesbrough to guide development proposals involving HMOs. In order for future applications for HMOs to be properly considered, it will be necessary for an HMO policy to be included in the new Local Plan.
18. However, the new Local Plan will not be adopted until after the Article 4 Direction comes into effect. It is, therefore, recommended that an interim policy be adopted by the Council to set out the Council's approach to how it will deal with planning applications for HMOs in the meantime. A draft policy will be included in the Draft Local Plan and subject to public consultation in 2024. Following this consultation, and subject to any amendments, the draft policy will be used as an interim policy until the Local Plan is adopted.

Next Steps

19. In order to make an Article 4 Direction, a public notice specifying the date the direction will come into force will need to be made. The Council must advertise the notice of making in the local press (i.e. the Evening Gazette), and provide a minimum of 21 days for representations to be made by members of the public. The notice must also be displayed in at least 2 locations in the area to be covered by the direction for at least 6 weeks. Given the significant number of properties affected, it is considered impracticable to serve individual notice of the Article 4 Direction on owners and occupiers. Under the GPDO we do not, therefore, need to serve such notice.
20. A copy of the Article 4 Direction and notice of making must also be sent to the Secretary of State on the same date the notice is published or displayed.
21. The Council must consider any representations that are received when deciding whether or not to confirm the direction. If a decision is taken to confirm the direction, notice of confirmation will need to be prepared and again advertised in the Evening Gazette and the Council's website, and displayed and a copy of the confirmed direction sent to the Secretary of State.
22. In addition, the Council will undertake a public consultation on the draft policy as part of the Draft Local Plan in 2024. Following this consultation, the draft policy will be used as an interim policy until the Local Plan is adopted, and used in the consideration of planning applications involving HMOs.

What decision(s) are being recommended?

23. That the Executive agrees to the making of a non-immediate Article 4 Direction to remove the permitted development right to change from a C3 dwelling to a C4 HMO in Middlesbrough (except in the area covered by the Middlesbrough Development Corporation).

Rationale for the recommended decision(s)

24. The introduction of an Article 4 Direction will enable the Council to control the location and quality of new HMOs. This will help deliver the Council aspiration of providing high quality, affordable housing for all.

Other potential decision(s) and why these have not been recommended

25. Not to introduce an Article 4 direction. This was rejected as it would mean that the Council had little control or influence on the establishment of new HMOs, and it is not considered in the best interests of ensuring the delivery of good quality affordable housing for all.
26. To introduce the Article 4 Direction immediately. This was rejected as it would open the Council up to challenge and potential compensation claims. In addition it would not allow for the effective consultation and engagement on the introduction of an interim policy to guide new HMO development.

Impact(s) of the recommended decision(s)

Legal

27. The consideration of planning proposals must be undertaken in accordance with the Town and Country Planning Act 1990. The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for certain classes of development without the requirement for a planning application to be made under the requirements of the 1990 Act. It also sets out the processes and procedures for implementation of an Article 4 Direction to remove such grants of planning permission. The Council must, therefore, implement the Article 4 Direction in accordance with the GDPO.
28. It is only possible for a Local Planning Authority to implement an Article 4 Direction in the area for which it has the relevant legal duties and responsibilities. Therefore, the Article 4 Direction can only apply within the borough of Middlesbrough, but not within the part of the borough that lies within the Middlesbrough Development Corporation area.

Strategic priorities and risks

29. The following risks are affected by this report:

O8-055	If the Council doesn't respond effectively and efficiently to legislative changes it could be in breach of statutory duties in relation to service delivery and fail to make the most of opportunities.	The Article 4 Direction for HMOs has been prepared in accordance with the legislation. This will provide the opportunity to best ensure legislative requirements will be satisfied, so this will have a positive impact on this risk.	
O1-005	If poor economic growth occurs, then this will reduce public and private sector investment in the town, including town centre retail, housing development and business.	The Article 4 Direction for HMOs will bring greater controls over this type of development. This will help the Council ensure better quality HMO developments which will support the revitalisation of the town with urban housing etc. and will have a positive impact on this risk.	

Human Rights, Equality and Data Protection

30. This report has been subject to an initial Impact Assessment (IA), which accompanies this report (see Appendix 1). This identifies that a full IA is not necessary.

Financial

31. There are minimal costs associated with the preparation and implementation of the Article 4 Direction for HMOs, such as advertising the direction in the local press and the administration of undertaking public consultation. These will be met through established departmental budgets.

32. The consequence of implementing an Article 4 Direction is that proposals that are currently permitted development must, in the future, be considered through the planning application process. A fee of £578 will be payable for such applications, bringing additional income to Middlesbrough Council to help cover the costs of dealing with the applications. As these developments currently sit outside of planning control, it is not possible to know how many conversions currently take place in Middlesbrough. However, it is estimated that around 25 of these applications could be expected each year once the Article 4 Direction comes into effect.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Complete the statutory processes for the HMO including advertising, public consultation and referral to the Secretary of State	Paul Clarke	30 th June 2024

Appendices

1	Initial Impact Assessment
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Background papers

There are no background papers associated with this report.

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