

REPORT TO EXECUTIVE

Date of Meeting: 28 February 2023

Report of: Director for City Development

Title: Review of the Article 4 Direction and Houses in Multiple Occupation Supplementary Planning Document

Is this a Key Decision?

Yes

Is this an Executive or Council Function?

Executive

1. What is the report about?

1.1 This report explains the progress made on reviewing the Article 4 Direction that restricts permitted development rights from dwellings (Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) to Houses in Multiple Occupation (HMOs) (Use Class C4), together with the related HMO Supplementary Planning Document (SPD). It seeks approval to consult on options, including a preferred option, to revise the Article 4 Direction and HMO SPD and sets out a provisional timetable for consulting on and adopting the documents.

2. Recommendations:

2.1 That the Executive approves the draft revised Article 4 Direction (including the Article 4 area plan) attached at Appendix A and the draft revised HMO SPD attached at Appendix B for public consultation.

3. Reasons for the recommendation:

3.1 In late 2021, Executive resolved that the existing Article 4 Direction (hereafter referred to as the Direction) and HMO SPD (hereafter referred to as the SPD) should be reviewed following receipt of a petition from local residents. The initial review process is now complete and a preferred option to amend the Direction and SPD has been identified. This has allowed a draft revised Direction including an Article 4 area plan and a draft revised SPD to be prepared.

3.2 As the local planning authority for Exeter, the Council has a statutory duty to consult on the draft revised SPD before it can be adopted. As set out later in this report, there is no legal requirement to consult on a draft Direction. However, the close relationship between the Direction and the SPD mean it is prudent for the consultation process to cover both documents. This consultation will enable the wider community to inform the two documents as they evolve towards their final versions, will fulfil statutory requirements and will be in accordance with the Council's Statement of Community Involvement (SCI).

4. What are the resource implications including non financial resources

4.1 The budget for reviewing the Direction and SPD was approved by Council in December 2021. Staff resources have been identified and are considered within the report on the Local Development Scheme which is on the agenda for this meeting of the Executive. The review has implications for the wider resourcing of planning policy work.

4.2 Depending upon the option taken forwards following the review, there may be workload implications resulting from additional planning applications to be dealt with by the Council's Development Management Team.

5. Section 151 Officer comments:

5.1 There are no additional financial requests arising from this report.

6. What are the legal aspects?

6.1 The legal process for preparing and consulting on Supplementary Planning Documents is set out in Part 5 of the Town and Country Planning (Local Development) (England) Regulations 2004. The legal process for restricting permitted development is set out in Article 4 and Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Council will need to ensure that these procedures are adhered to when amending the existing Direction and SPD.

6.2 There is no legal requirement to publicly consult in advance on the making of an Article 4 Direction. However, given the close relationship between the Direction and the SPD, it would be prudent for the consultation process to cover both documents.

6.3 The Town and Country Planning (General Permitted Development) (England) Order 2015 provides that Article 4 Directions can be implemented with either non-immediate or immediate effect. Paragraph 8.12 of this report explains that the revised Direction will be applied with non-immediate effect. This will limit any claims for financial compensation from the Council made under section 108 of the Town and Country Planning Act 1990 that may arise from making the Direction.

6.4 Under the 'non-immediate' route to making a Direction, the Council is legally required to publicise the Direction in specified ways as soon as practicable after it is made. This includes giving notice to owners and occupiers of land within the area covered by the Direction and to the Secretary of State. Following this formal publication / notification process set by the General Permitted Development Order, a future decision on how to progress the Article 4 Direction's review can be made and the Council can decide to confirm the Direction.

6.5 Rights are reserved to the Secretary of State who has power to modify or cancel the Direction at any time before or after its confirmation. The Planning Practice Guidance states however that the Secretary of State will only intervene in Article 4 Directions where there are clear reasons for doing so.

7. Monitoring Officer's comments:

7.1 Members attention is drawn to the comments set out in 6 above- otherwise this report raises no issues for the Monitoring Officer.

8. Report details:

Background

8.1 In 2010, the Council made an Article 4 Direction to restrict homeowners' permitted development rights to use their properties as HMOs. The current Direction (see [article-4-direction-document.pdf \(exeter.gov.uk\)](#)) currently applies to an area around the University of Exeter's Streatham and St Luke's campuses (see [article 4 map a4 colour dec 2013.pdf \(exeter.gov.uk\)](#)) and was most recently updated in 2014. It was introduced by the Council as one of two planning policy responses to help manage the potential impact of increasing numbers of students living in Exeter and studying at the University¹. The HMO SPD was originally adopted in 2011 to accompany the Direction and was updated in 2014 (see [hmp spd document jan 2014.pdf \(exeter.gov.uk\)](#)). The 2014 SPD amplifies saved policy H5 of the Exeter Local Plan First Review which states that the conversion of dwellings to HMOs will be granted planning consent provided that, amongst other requirements, it does not "create an imbalance in the local community" (see paragraph 3.2 of the 2014 version of the SPD).

8.2 In early 2022, the Council appointed Figura Planning Ltd to review the Direction and SPD. This appointment stemmed from a recommendation made by Executive in November 2021 and carried by Council in December 2021, following receipt of a petition from local residents about the impact of increasing numbers of HMOs outside the area covered by the existing Direction.

8.3 Following extensive data collection, analysis and discussions with a broad range of stakeholders including Members, landlords, the University of Exeter, student representatives and Council officers, Figura has produced a report which is attached as Appendix C. The report reviews and assesses a range of options for the future of the Direction and SPD. A summary of the report was presented to Planning Member Working Group in January 2023.

National Planning Policy

8.4 The consultants' work has taken into account paragraph 53 of the National Planning Policy Framework, which sets out that the use of Article 4 Directions to remove permitted development rights should:

- Be limited to situations where a Direction is necessary to protect local amenity or the well-being of any area and
- In all cases, be based on robust evidence and apply to the smallest geographical area possible.

Options for the Direction and SPD

8.5 Based upon their background work, the consultants have identified five options for the future of the Direction and SPD. Detailed assessments of the options, including their

¹ The second policy response is the target to accommodate 75% or more of additional student numbers in purpose built student accommodation (PBSA), located on, or close to, the University campuses, at sustainable locations at or near to major transport routes, or in the city centre. This policy response is being reviewed through work on the Exeter Plan.

advantages and disadvantages, are provided on pages 46 to 49 of the consultants' report. The assessments are summarised in the table below.

| Preferred option |
|--|
| <p>Option 2: Expand the Article 4 Area to include:</p> <ul style="list-style-type: none"> • Postcodes and output areas with 20% or more student properties, or which are expected to exceed that threshold in the near future • Postcode sector EX4 6 which has almost 30% student properties • The University of Exeter Streatham Campus and areas of PBSA that are contiguous with the affected postcode areas • Minor 'rounding off' including some non-residential postcodes to create a more contiguous/logical area • No change to the existing exempt areas (i.e. areas that were 'cut-out' from the area covered by the Direction in 2014 on grounds that they were already overwhelmingly student housing) <p>Advantages</p> <ul style="list-style-type: none"> • It is based on clear evidence and therefore is robust against objections and challenges • It will help to maintain some balance between student and non-student accommodation in affected area • It will not unduly restrict the provision of non-student HMOs • It will respond to the concerns and expectations of some residents • It conforms with the requirement of paragraph 53 of the National Planning Policy Framework (NPPF) that Directions should apply to the smallest geographical area possible <p>Disadvantages</p> <ul style="list-style-type: none"> • The relatively small expansion in the area has the potential reduce the supply of student HMOs, which may impact upon rents. However, this is uncertain |
| Other potential options |
| <p>Option 1: No change to the Article 4 Area.</p> <p>Advantages</p> <ul style="list-style-type: none"> • Changes in the number of HMOs since 2010 have been relatively limited in number/scope, mainly due to the success of the Council's PBSA planning policy • Future growth in student HMOs is expected to be slower than seen previously. <p>Disadvantages</p> <ul style="list-style-type: none"> • Some Council resources have already been spent to address this issue • Data indicates that some changes to the Direction can be justified • It is not possible to be fully certain that future growth in student HMOs will slow • It fails to respond to the concerns and expectations of some residents |
| <p>Option 3: Wider expansion of the Article 4 Area to include:</p> <ul style="list-style-type: none"> • Postcodes and output areas with 10% or more student properties (with a minimum of 2 student properties) • The University of Exeter Streatham Campus and areas of PBSA that are contiguous with the affected postcodes • Minor 'rounding off' including some non-residential postcodes to create a more contiguous/logical area • Expansion of the existing exempt areas within the Article 4 area to ensure some continued provision of student HMOs close to the University campuses in order to meet housing needs <p>Advantages</p> <ul style="list-style-type: none"> • It will not substantially risk the delivery of non-student HMOs in Exeter • It may be supported by residents within the wider expanded area <p>Disadvantages</p> |

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|---|
| <ul style="list-style-type: none"> • Small postcodes on either side of the boundary may regularly change between meeting/not meeting the 10% threshold, showing the volatility of the position and therefore drawing the boundary into question • Work to expand the exempt areas will require additional time and cost, and will likely result in significant concerns from affected residents • It is a significant departure from the Council's current planning policy approach to HMOs, potentially requiring the adoption of a new planning policy and SPD rather than an update of the existing SPD • It could require a higher rate of PBSA growth to meet student housing needs, with market delivery being uncertain • It is contrary to the NPPF requirement to apply Directions to the smallest geographical area possible |
| <p>Option 4: Article 4 coverage of the whole city</p> <p>Advantages</p> <ul style="list-style-type: none"> • Some support for this option was expressed during stakeholder discussions <p>Disadvantages</p> <ul style="list-style-type: none"> • It is highly contrary to the NPPF requirement to apply Directions to the smallest geographical area possible • It is not justified by evidence • It is a significant departure from the Council's current planning policy approach to HMOs, requiring the adoption of a new planning policy and SPD rather than an update of the existing SPD • It would severely inhibit the delivery of HMOs for non-students including low income households and households with specialist requirements (including Equalities Act protected characteristics) • It is unclear whether all future student growth can be achieved in the PBSA sector, which would be required if the number of HMOs was significantly restricted. • There would be significant resource implications for the Council's Development Management service, as all developments involving a change of use from dwelling to HMO changes of use would require a planning application |
| <p>Discounted option</p> |
| <p>Option 5: Remove the Article 4 Direction</p> <p>Advantages</p> <ul style="list-style-type: none"> • It will free up the student accommodation market, with the potential to reduce rents • There will be some resource benefits for the Council's Development Management service because it will result in a reduction in numbers of planning applications for residential conversions <p>Disadvantages</p> <ul style="list-style-type: none"> • There is likely be significant opposition from some residents • It is not justified by evidence and does not reflect the success of the existing Direction in balancing needs and impacts • It will remove all planning control over the expansion of HMOs in the city • It risks halting the development of PBSA due to market uncertainty arising from increased potential competition from HMOs, contrary to adopted Council planning policy • It may require a significantly increased resource for the Council's HMO Licensing service. |

8.6 As shown in the table, of the five options, the consultants recommend option 2 as the basis of a revised Direction and SPD. Officers agree with the consultants' assessment that option 2 is most appropriate. Based upon the consultants' advice, option 2 is the

preferred option and therefore the draft Direction and draft SPD have been worded to reflect option 2.

8.7 The 2014 SPD states that the Council will resist any further changes of use to HMOs within the area covered by the Direction. This is on the basis that, within the area, the Council regards the existing proportion of properties with student Council tax exemptions to be an over-concentration of HMOs for the purposes of Local Plan Policy H5(b) and St James Neighbourhood Plan Policy C(e). Paragraph 5.2 of the draft SPD proposes that the Council will continue to apply this approach within the area covered by the proposed expanded Article 4 Direction.

Public consultation

8.8 To comply with relevant legislation, it will be necessary to publicly consult on proposals to revise the SPD for a minimum period of 4 weeks. As set out in paragraph 6.2 of this report, it would be prudent to consult on the Direction at the same time.

8.9 Whilst the draft Direction and SPD are worded to reflect option 2, for transparency the consultation material will contain information on all of the options in the consultants' report including the advantages and disadvantages of each.

8.10 Details of the consultation are to be determined, but it will be proportionate to the scale of the issue and available resources and will accord with the Council's adopted Statement of Community Involvement ([Exeter Statement of Community Involvement](#)) and Consultation Charter ([Consultation Charter \(exeter.gov.uk\)](#)), including in terms of accessibility. It will make use of 'Commonplace', the interactive online engagement platform that was used for recent Council consultations on the Exeter Plan and CIL Charging Schedule Review, together with face-to-face engagement opportunities.

Provisional timetable for implementing a revised Direction and SPD

8.11 The provisional timetable for implementing a revised Direction and SPD is as follows:

- May - July 2023: public consultation on a draft Direction and SPD
- July – September 2023: consultation responses used to inform preparation of final versions of the Direction and SPD
- November - December 2023: reports to Executive and Council seeking approval to make and publicise the Direction and to adopt the SPD
- November 2024: implementation of the Direction

8.12 Members will note the 12 month period between the third and fourth bullet points above. Implementing the Direction with immediate effect in December 2023 will leave the Council open to financial liability claims from applicants who can demonstrate that they have been adversely affected by changes to the area covered by the Direction – for example, from newly affected homeowners who have to apply for planning permission to convert to an HMO and have that permission refused. The 12 month period avoids this liability.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The Direction and SPD consultation will be important in ensuring the delivery of the objective in the Council's Corporate Plan of building great neighbourhoods, by working towards avoiding community imbalances within the area covered by the Direction.

10. What risks are there and how can they be reduced?

10.1 There is a risk that significant support may be expressed during the consultation for an option which is not possible to implement, particularly if contrary to national policy. To reduce this risk, the consultation material will clearly explain the reasons for option 2 being selected as the preferred option whilst also underlining why other options are considered inappropriate.

10.2 There is a risk that the Secretary of State may choose to modify or cancel the Direction when it is made by the Council. The evidence base and undertaking robust and transparent public consultation on the Direction should reduce this risk.

10.3 The Government is currently consulting reforms to the Levelling-Up and Regeneration Bill, including amendments to national planning policy. The consultation includes a proposal that existing SPDs will only remain in force until the local authority is required to adopt a new Local Plan. If this proposal comes into force, it will affect the lifespan of the SPD. To reduce the risk of losing the planning policy controls afforded by the SPD, it may be necessary to incorporate its provisions into the emerging Exeter Plan in future.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

12.1 There are no direct carbon/environmental impacts arising from the recommendation to hold public consultation on the revised draft Direction and SPD. However, digital consultation methods will minimise the carbon footprint of the consultation.

13. Are there any other options?

13.1 The draft SPD must undergo statutory public consultation. Bringing the consultation forwards in time is not an appropriate option due to the need to avoid consulting during the pre-election period. Pushing the consultation further back into 2023 is not an appropriate option as it will delay the Council's ability to adopt the SPD and divert resources from consultation on the Exeter Plan which is due to commence in the autumn of 2023.

13.2 There is an option to amend the Direction without undertaking public consultation. However, as previously stated, this is not considered appropriate due to the close relationship between the Direction and the SPD. Robust and transparent consultation on the draft Direction may also reduce the risk of modification or cancellation by the Secretary of State.

Director for City Development – Ian Collinson

Author: Katharine Smith – Principal Project Manager, Local Plan

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

Houses in Multiple Occupation SPD, January 2014

Article 4 Direction Map, January 2014

Article 4 Direction Document, July 2011

Exeter Local Plan First Review

Contact for enquires:
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