

## **REPORT TO EXECUTIVE**

Date of Meeting: 28 November 2023

## **REPORT TO COUNCIL**

Date of Meeting: 12 December 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?**

No

### **Is this an Executive or Council Function?**

Council

#### **1. What is the report about?**

- 1.1 This report summarises the results of a six-week period of public consultation undertaken by the Council this summer on a draft 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).
- 1.2 The report also explains how the consultation has informed the final versions of the Article 4 Direction and HMO SPD; recommends that the Council should make and give notice of the amended Article 4 Direction and adopt the amended HMO SPD; and sets out a timetable for the Council to confirm the Article 4 Direction in a year's time.

#### **2. Recommendations:**

- 2.1 That the Executive recommends that Council approves the making of the Article 4 Direction (including the Article 4 area plan) attached at Appendix A with non-immediate effect;
- 2.2 That the Executive recommends that Council approves the adoption of the Houses in Multiple Occupation Supplementary Planning Document attached at Appendix B; and
- 2.3 That the Executive gives delegated authority to the Director of City Development, in consultation with the Council Leader and Portfolio Holder for City Development, to agree a change to the date of the confirmation of the Article 4 Direction attached at Appendix A if required.

### **3. Reasons for the recommendations:**

- 3.1 The first recommendation is made to enable progress towards confirming a revised Article 4 Direction (hereafter referred to as the Direction), in place of an existing Direction that came into force in 2011.
- 3.2 The second recommendation is made to ensure that the revised HMO SPD (hereafter referred to as the SPD) can be given significant weight by the Council when determining planning applications for new HMOs made within the Article 4 area, at the earliest opportunity.
- 3.3 Officers intend to bring a further report to Council on 20 February 2024 with a recommendation to confirm the revised Article 4 Direction, following the statutory period of notification (see paragraph 6.3 of this report for further details). The third recommendation is made to ensure that the report can be brought to an alternative Council meeting, should this become necessary as a result of responses made during the notification period.

### **4. What are the resource implications including non financial resources**

- 4.1 The budget for reviewing, making and giving notice of the Direction and adopting the SPD was approved by Council in December 2021.
- 4.2 The recommended 'non-immediate approach' 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. This is explained elsewhere in this report.
- 4.3 The amended Article 4 area is larger than the existing Article 4 area. Expanding the Article 4 area will therefore increase the number of dwellings in Exeter with restricted permitted development rights. This may result in additional planning applications, with workload implications for the Council's development management team that will need to be monitored and managed appropriately.

### **5. Section 151 Officer comments:**

- 5.1 There are no significant financial risks, if the recommendation is adopted as written.

### **6. What are the legal aspects?**

- 6.1 The legal processes for considering representations made to consultations on SPDs, and adopting SPDs, are set out in Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012. 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 making and confirming the Direction and adopting the SPD.
- 6.2 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. The recommended 'non-immediate approach' 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. This is explained further in paragraph 8.8 of this report.

- 6.3 Under the 'non-immediate' route to making a Direction, the Council is legally required to publicise (give notice of) the Direction in specified ways as soon as practicable after it is made. This includes notifying relevant parties and the Secretary of State, giving a period of 28 days for consultation responses. Subject to approval by the Council, this formal notification process will take place as soon as possible after the 12 December 2023. Following formal notification, the Council will need to decide whether to alter the Direction or confirm it. Confirmation of the Direction will need to be approved by Council and the earliest potential date for this is at the Council meeting of 20 February 2024. This is shown in the Direction at appendix A. However, the new Direction will not come into effect until one year after the legal notification exercise.
- 6.4 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, up until the point that it comes into effect. 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.
- 6.5 At the same time that the Direction is confirmed, it will be necessary to seek Council approval to make a cancelling direction of the existing Article Direction.

## **7. Monitoring Officer's comments:**

Other than direct members attention to the legal implications set out in paragraph 6 above, the Monitoring officer has no further comment to make.

## **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 \(exeter.gov.uk\)](#)) 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 University<sup>1</sup>. 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 late 2021, Executive resolved that the existing Direction and SPD should be reviewed following receipt of a petition from local residents. To inform the view,

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<sup>1</sup> 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

Figura Planning Ltd were appointed by the Council to analyse available data and engage with a broad range of stakeholders. Five options for the future of the Direction and SPD were identified as a result of Figura's work:

- Option 1: Make no change to the existing Direction and SPD
- Option 2: Expand the Article 4 Area (and amend the SPD accordingly) to include:
  - 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).
- Option 3: Expand the Article 4 area to a greater extent (and amend the SPD accordingly) to include:
  - 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.
- Option 4: Article 4 coverage of the whole city.
- Option 5: Remove the Article 4 Direction.

8.3 A report was taken to Executive on 28 February 2023 seeking approval to publicly consult on a draft Direction and SPD worded to reflect 'preferred' option 2, which was considered by Figura and officers to be the most appropriate option (the advantages and disadvantages of each of the options are provided in paragraph 8.5 of that Executive report and are not repeated here). Public consultation took place for six weeks between 22 May and 3 July 2023 in accordance with the Council's Consultation Charter and Statement of Community Involvement. Whilst the draft Direction and SPD reflected option 2, for transparency the consultation material contained information on all of the options except for option 5, which was not considered to be appropriate by the Executive. The consultation made use of Commonplace, the interactive online engagement platform that has been used by the Council for several other consultations, and also included three public exhibitions to enable in-person engagement.

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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.

## Consultation Report

8.4 323 consultation responses were received and these are summarised and analysed in appendix C. It is notable that the vast majority of responses were from residents living in areas with higher concentrations of student housing. However, the views of students and young people were not evidentially well reflected in the consultation responses, perhaps because of the timing of the consultation. There were also few responses from landlords and agents, despite efforts to engage.

8.5 In terms of the Direction, key findings were that:

- 38% of respondents supported option 2 (the preferred option) – this being the largest level of support of the options consulted upon. Of these respondents, a common comment was that option 2 was a reasonable compromise between control and making provision for non-student HMOs. Several respondents commented that acting as soon as possible was most important, that option 2 was a good interim step and the Council could monitor and expand again later if warranted;
- 44% of respondents did not support option 2. However, of the 323 total responses, only 21% expressed a first preference for option 3, 8% for option 1 and 12% for option 4. Therefore, of the options consulted upon, option 2 received the most support;
- Of those that did not support option 2, a number of respondents requested that specific postcodes or streets where they reside should be added to the Article 4 area;
- Many of the people supporting option 4 (a city-wide Article 4 area) suggested that efforts should be made to halt the growth in student numbers in the city. However, aside from the many benefits that the University brings to the city, the growth in student numbers is outside of the Council's control. The Council is required under the National Planning Policy Framework to plan to meet the housing needs of specific groups, including students;
- Many responses from non-student residents living in the existing "exempt" areas suggested that they felt abandoned in terms of dealing with issues such as parking and noise, and that there was a need to bring these areas back under some sort of control.

8.6 As noted above, of the options consulted upon, option 2 received the most support. Since this was also the Council's preferred option, and in the absence of a more appropriate and clearly evidenced alternative, it is recommended that option 2 becomes the basis for a new Article 4 Direction to restrict the creation of new HMOs.

8.7 76% responses to the question "Do you support the Council's proposed HMO SPD" were in the affirmative. This is considered to justify a recommendation to adopt the SPD that was consulted upon. However, the final SPD has been amended to reflect that it is no longer a consultation draft.

## Implementing the revised Direction and SPD

8.8 Subject to Council approval, the new HMO SPD can be adopted and implemented with immediate effect.

8.9 As set out in section 6 of this report, implementing the Direction with immediate effect 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. Deferring the implementation of the Direction for one year avoids this liability. On this basis, the Direction will be implemented with non-immediate effect.

## **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 Regarding the Direction, there is a risk that responses are received during the notification period that do not support the made Direction. There is also a risk that the Secretary of State may choose to modify or cancel the Direction when it is confirmed by the Council. However, these risks are not considered to be significant given that the Direction reflects the option that received most support during the public consultation.

10.2 The Government has been consulting on reforms to the Levelling-Up and Regeneration Bill, including amendments to national planning policy. The consultation included 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. Further consideration will need to be given to an appropriate response to this risk in due course.

## **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 recommendations.

## **13. Are there any other options?**

13.1 The Council could choose not to make the new Article 4 Direction and instead retain the existing Direction or make an alternative version. However, the new Article 4 Direction reflects the option that received most support during the consultation process and is the Executive's preferred option. A clearly evidenced alternative was not identified through the consultation process. As such, these are not considered to be suitable alternative options.

13.2 The Council could choose not to replace the existing HMO SPD with the new version. However, given the level of support expressed for the new HMO SPD in the public consultation, this is not considered to be an appropriate option.

### **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

28 February Executive Report on Review of the Article 4 Direction and HMO SPD

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