

REPORT TO EXECUTIVE

Date of Meeting: 6 February 2024

REPORT TO COUNCIL

Date of Meeting: 20 February 2024

Report of: Director for City Development

Title: Review of the Article 4 Direction

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 The Council currently has an Article 4 Direction (hereafter referred to as a Direction) which 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) in an area of the city close to the University of Exeter's Streatham and St Luke's campuses. The existing Direction came into force in 2014. This report summarises comments and outcomes from the notification process undertaken to introduce a new, replacement, Direction, the making of which was approved by the Council on 12 December 2023. The new Direction would be larger than the 2014 version. In light of the notification results, the report recommends that the Council approves confirmation of the new Direction and cancellation of the 2014 Direction with non-immediate effect. Both recommendations would come into force on 23 December 2024.

2. Recommendations:

That the Executive recommends that Council approves:

2.1 The confirmation of the revised Article 4 Direction (including the Article 4 area plan) attached at Appendix A with non-immediate effect, meaning it will come into effect on 23 December 2024;

2.2 The making of a Direction ("the Cancellation Direction") cancelling the existing Article 4 Direction confirmed in 2014 as this area will be covered by the new Article 4 Direction; and

2.3 The Director for City Development to confirm the Cancellation Direction as of 23 December 2024 subject to the consideration of any representations received on the same.

3. Reasons for the recommendations:

3.1 The recommendations are made to enable the new Direction to come into force in December 2024 to limit financial liability of the Council.

4. What are the resource implications including non financial resources

4.1 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.

4.2 The new Direction area is larger than the 2014 Direction area. Expanding the 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 As explained in the reports to Executive on 28 November 2023 and Council on 12 December 2023, the Town and Country Planning (General Permitted Development) (England) Order 2015 provides that 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 8.7 of this report.

6.2 In accordance with the 'non-immediate' route to making a Direction, the Council has met its legal requirement to publicise (give notice of) the Direction in specified ways as soon as practicable after it is made. Further details are provided in paragraph 8.3 of this report. Now that the formal notification process for making the Direction has been completed, the Council must take into account the comments received during the notification period and decide whether to confirm the Direction (as made) or alter it. If the Direction is confirmed, the Council will be legally required to publicise it in specified ways once more. This will include notifying relevant parties and the Secretary of State.

6.3 The new Direction will not come into effect until a minimum of one year after it was made. For this reason, the proposed new Direction identifies an implementation date of 23 December 2024.

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 If Council agree the recommendation to confirm the new Direction, the 2014 Direction will be redundant as it is duplicated in the wider new Direction. The legislation specifies

that a Direction can be cancelled by a subsequent (Cancellation) Direction, although in this case, of course, the restrictions contained in the 2014 Direction will continue to apply, albeit in the new Direction. The same procedure applies to the making of a Cancellation Direction as applies to a Direction removing permitted development rights. Accordingly, the Cancellation Direction will need to be advertised and any representations will need to be taken into account in considering whether to confirm the Direction.

7. Monitoring Officer's comments:

7.1 Provided the statutory process is followed, the content of 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 2014 Direction applies to an area around the University of Exeter's Streatham and St Luke's campuses and was most recently updated in 2014 (see the Article 4 area plan in appendix B). 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.

8.2 In late 2021, Executive resolved that the 2014 Direction should be reviewed following receipt of a petition from local residents. Following public consultation on four options for the future of the Direction undertaken during the summer of 2023, on 12 December 2023 Council approved the making of a new Direction with non-immediate effect. The new Direction, which is larger than the 2014 version, is attached at Appendix A.

Notification process

8.3 Once a Direction has been made by a local planning authority, and before it can be confirmed, it must be subject to a period of notification undertaken in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015. The notification period must last for at least 21 days, during which time comments on the Direction can be sent to the local planning authority (the Secretary of State is excluded from this deadline – see paragraphs 6.4 and 10.1 of this report for further details). As such, following the Council's decision on 12 December 2023:

- Notification letters were posted by first class mail to all residential addresses within the area proposed to be newly affected by the Direction;
- Notification letters were sent to the Secretary of State for the Department for Levelling-Up, Homes and Communities and the Head of Planning at Devon County Council;

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.

- Ten site displays were posted on lampposts across the area proposed to be covered by the new Direction; and
- An advert was posted in the local press.

8.4 In addition, whilst not statutorily required, notification emails were sent to all respondents to the public consultation undertaken in the summer and to all estate agents on the Council's planning policy consultation database. The 21-day notification period was specified on all letters (etc.) as 18 December 2023 until 15 January 2024.

8.5 Nineteen responses were received to the notification. Five responses, all from residents living in the area proposed to be newly affected by the Direction, expressed support for the Direction on grounds that it would help restrict the creation of new HMOs in the area. Four responses expressed qualified support and ten responses did not support the Direction. The following concerns were expressed:

- An enlarged Direction will create pressure for more HMOs in areas further away from the city centre and University campuses, with potential implications for local services and the character of the areas.
- The number of students in Exeter is detrimental to the city and therefore no new HMOs should be permitted (i.e., a city-wide Direction should be introduced);
- The new Direction should be enlarged further to include specific streets/areas on grounds that they already include properties let to students/HMOs, creating an imbalance in the community;
- HMOs provide an important source of affordable and flexible housing in the city centre for (e.g.) shift workers, agency workers and NHS workers and the Direction should therefore be removed;
- The Direction should include a clause requiring the Council to annually monitor student HMOs and take action should a postcode newly reach the HMO threshold;
- The notification period was too short.

8.6 However, as explained in the 12 December 2023 report to Council, the area proposed to be covered by the new Direction reflects the option that received most support during the summer consultation. As set out in the Executive report of 28 February 2023, that option is considered to offer greater advantages and fewer disadvantages than the other options consulted upon (which included enlarging the Direction's area to a greater extent, introducing a city-wide Direction or removing the Direction). The advantages and disadvantages of the four options are set out in the 28 February 2023 report and are not repeated here). Council Tax data indicates that postcodes within the streets/areas mentioned by the notification respondents have fewer than 20% student-only properties, this being the proposed threshold for establishing the area of the new Direction. The data indicates that there are no student-only properties in some of these streets/areas. As such, and in the absence of a more appropriate and clearly evidenced alternative, it is recommended that the Direction that was made by the Council in December 2023 is now confirmed. The length of the notification period exceeded the 21-day statutory requirement by one week. The number of student-only HMOs will continue to be monitored by the

Council and there may be an opportunity to amend the Direction again in the future, should monitoring indicate that this is justified.

Confirmation and cancellation process

8.7 As set out in section 6 of this report, if the Council decides that the new Direction should be confirmed then it will be necessary to formally publicise this in ways specified by legislation. At the same time, it will be necessary to cancel the 2014 Direction. However, the confirmation and cancellation will not come into force until 23 December 2023. This will ensure that the Council is not subject 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 from when it was made 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 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 summer consultation.

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 confirm 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 summer consultation process and is the Executive's and Council's preferred option. A clearly evidenced alternative was not identified through the summer consultation process, nor through the December/January notification process. As such, these are not considered to be suitable alternative options.

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

Background papers used in compiling this report:-

Article 4 Direction Map, January 2014

Article 4 Direction Document, July 2011

28 February 2023 Executive Report on Review of the Article 4 Direction and HMO SPD

28 November 2023 Executive Report / 12 December 2023 Council Report on Review of the Article 4 Direction and HMO SPD

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