

REPORT TO: CABINET

DATE: 25 MARCH 2021

TITLE: IMPLEMENTATION OF AN ARTICLE 4
DIRECTION RELATING TO HOUSES OF
MULTIPLE OCCUPATION

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This is a Key Decision
It is on the Forward Plan as Decision number I011777
Call-in Procedures may apply
This decision will affect all wards.

RECOMMENDED that:

- A** Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Harlow Council implements the Direction made on 26 March 2020 under Article 4 (1), to which Schedule 3 applies, concerning small Houses in Multiple Occupation (HMOs) and relating to all land within the administrative area of Harlow Council.
- B** This Article 4 Direction shall come into effect on Monday 12 April 2021.
- C** A review of the Council's HMO policy in its newly adopted Local Plan is undertaken in 2022, with a completion of no later than 30 November 2022.

REASON FOR DECISION

- A** The period from 2015 to 2020 saw a significant increase in the number of Houses in Multiple Occupation (HMO) in Harlow. At the end of 2019 there were 319 licensed HMOs in Harlow compared to approximately 140 in 2015.

Given that virtually all HMOs were originally constructed as single family dwellings, it can be extrapolated that there has been a consequent reduction in this type of accommodation across the town.

In February 2020, Cabinet considered a report on the growth of HMOs within the town and made the following decisions:

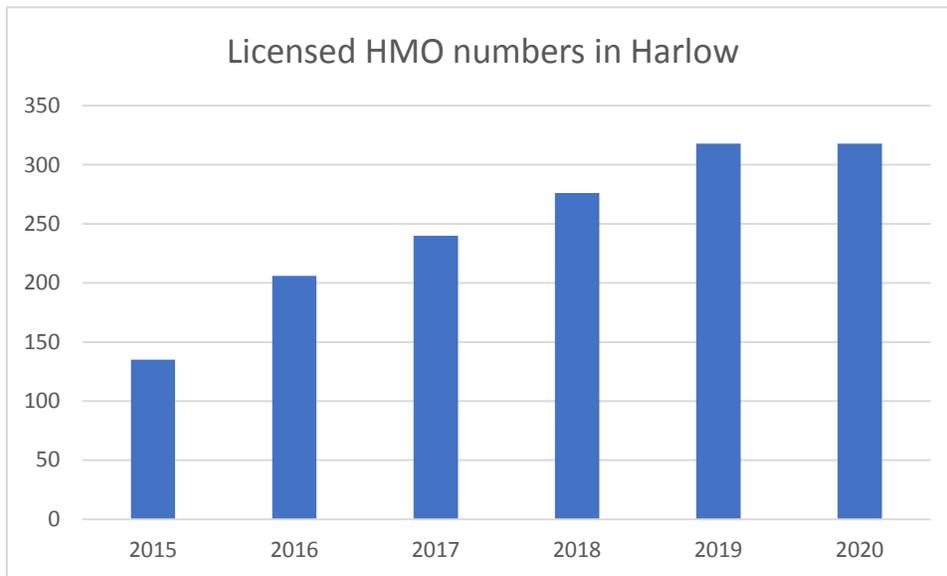
- i) Covenants restricting the use of properties to single family dwellings be enforced, where applicable, with any variation to this being agreed by the Head of Environment and Planning, in consultation with Portfolio Holder for the Environment.
- ii) Cabinet approved the making of a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 across the whole District to remove permitted development rights from properties for conversion to Houses in Multiple Occupation.
- iii) Cabinet agreed that the final decision on the implementation of the Article 4 Direction will be taken by Cabinet following the completion of the 12 month notification period.

This report now recommends the implementation of the Article 4 Direction following the completion of the 12 month notification period as set out in Decision iii) above.

BACKGROUND

1. There is no doubt that there has been a significant increase in the number of HMOs in Harlow over recent years. At the end of 2019 there were 319 licensed HMOs in Harlow, a figure which had more than doubled over the previous four years. Since the February 2020 Cabinet report, HMO numbers have stabilised and there are currently 318 licensed HMOs in Harlow. It is likely that a combination of tighter covenant control and the Council's stated intention of introducing an Article 4 Direction have contributed to this. The Covid pandemic has also probably meant that there have been fewer new developments.
2. By comparison, there are 212 licensed HMOs in Stevenage and 66 in Basildon (March 2021 figures).

Table One – Licensed HMO numbers in Harlow



3. An Article 4 Direction is intended to ensure that the development of HMOs happens within the context of the Council’s planning policy. In essence it removes permitted development rights for small HMOs and requires planning applications to be submitted for decision in the normal way. Large HMOs (those housing more than six people) are already subject to this requirement. An Article 4 Direction does not close down HMOs or prevent their development in itself. It simply ensures that any developments are in line with the Council’s planning policy.

ISSUES/PROPOSALS

Covenant Control

4. From March 2020, Harlow Council has taken a more robust line on the release or variation of covenants which restrict former Council and Corporation properties to a use as single family dwellings only. This followed the decision of Cabinet in February 2020.
5. A new policy has been established for reviewing whether or not to lift or vary a covenant restriction. The published criteria are:
 - a) Location – when deciding if the location is acceptable, the main factors we consider may include the views of neighbours, the proximity and number

of existing HMO's, potential parking problems, housing density and other social issues.

- b) Tenants – landlords will be expected to legally guarantee that tenants will have employment in or connection to the local economy or a connection to an existing family group or close family member in Harlow. This will be written into any deed of variation for the modification of the covenant.
 - c) Accommodation – the property must meet our published minimum amenity standards for HMOs in terms of individual and communal facilities and these should include bicycle storage. Tenancy agreements need to clearly set out the responsibilities for maintaining the internal and external facilities.
6. Since the new policy was introduced last year, there have been 13 applications for covenant release. Of these, six have been approved for conversion to HMO – many of these were in the pipeline before the introduction of the new policy and so that has also been taken into consideration in these cases. Conversely, it should also be noted that there have been several examples of property owners deciding not to proceed with an application when they were informed of the Council's new policy.
7. Information on covenant control is presented as contextual information in this report and is not directly related to the Article 4 implementation.

Local Plan Policy

8. All large HMOs (i.e. those housing more than six people) are required to seek planning consent prior to conversion. Small HMOs (i.e. those housing six or fewer people) can benefit from Permitted Development Rights which enables conversions to take place without the requirement to obtain planning permission. An Article 4 Direction, when implemented, removes the permitted development rights from small HMOs, thus requiring all property owners seeking conversion to HMO use to seek full planning permission.
9. Planning applications for large HMO's in recent years have in the majority been refused planning permission for the change of use. The grounds for refusal have centred in the main on parking and amenity issues; there was however no dedicated Local Plan policy against which planning applications for large HMO's could be judged with consistency. New policy in the Harlow Local Development Plan (HLDP) which was adopted in December 2020 has rectified this, and, with the confirmation of the Article 4 Direction the policy will also be applied to small HMO's when assessing a planning application for the change of use.

10. Policy H3 in the HLDP, as set out in Appendix 1 to the report, specifically sets out the Council's policy against which planning applications for HMO's (small and large). The policy sets out the following criteria which a proposed change of use must meet:

- a) The number of HMOs would not exceed one out of a row of five units;
- b) It is supported by a design rationale based on an understanding and analysis of local context and character taking into consideration the adopted Harlow Design Guide Supplementary Planning Document (SPD);
- c) The development makes adequate provision for refuse storage and collection;
- d) Parking is provided at a level of one space per bedroom, plus one secure covered cycle space per bedroom, or set at the current adopted parking standards; and
- e) Effective measures are proposed to minimise the effects of noise and disturbance.

11. With respect to criteria a the Planning Inspector stated in his report following the examination in public into the HLDP:

- a) "An increasing number of properties in the district have been converted to Houses in Multiple Occupation (HMOs) and in response Policy H3 seeks to introduce a limit on the number of HMOs to one in a row of five units. HMOs provide valuable accommodation and increase housing choice but an undue concentration in any area may have a detrimental impact and reduce the availability of family housing."

12. The Inspector modified Policy H3 to ensure the Plan was "sound" by stating that although the five in a row limit (see 10a) above) is justified as the right balance at the outset, to ensure the Plan is effective it is necessary to require an early review of the policy which should be two years from the date of adoption.

13. Before the adoption of the HLDP a planning appeal (July 2020) was dismissed by a Planning Inspector for the change of use from a small HMO to a large HMO. The Inspector in this appeal gave significant weight to the emerging Policy H3, stating the proposal was in conflict with H3 in that insufficient parking was provided contrary to criteria (d) of the policy. There is therefore evidence of the effectiveness of the policy even before the adoption of the Plan.

Equalities Impact Assessment

14. It has been considered important to assess whether any potential Article 4 Direction would have an adverse impact upon any particular segment of the Harlow community.
15. To undertake this assessment an Equalities Impact Assessment was commissioned through a procurement exercise. Three tenders were received for this work and McKenzie LLP was appointed to undertake this assessment having demonstrated considerable experience in this field.
16. Their report is set out in Appendix 2 to the report, but they have concluded that the introduction of an Article 4 Direction in relation to HMOs would have no adverse impact upon any particular community. As such, it is considered that there are no significant equalities implications in relation to this proposed action.
17. The report has identified some actions in relation to data collation and these will be taken forward as part of the review of the Local Plan policy on HMOs as required by the Planning Inspector within two years of the adoption of the Plan.

Article 4 Direction

18. Following the February 2020 Cabinet decision, a 21 day consultation was undertaken in line with statutory procedures. This consultation was launched in March 2020 and specified that any Article 4 Direction was not intended to come into force until 12 April 2021.
19. A total of 19 responses to the consultation were received. Of these, one was in support of the proposal, highlighting in particular the negative impacts of the clustering of HMOs. It should be noted that this is precisely one of the issues that the Council's new planning policy is intended to address.
20. The remaining 18 responses all expressed opposition to the proposal to establish an Article 4 Direction. Of these, eight were from HMO landlords and one from an HMO Managing Agent. Many of the comments related to the covenant policy rather than the proposed Article 4 Direction. Comments that were addressing the Article 4 proposal emphasised the need for HMO housing in the town and that these properties are providing a valuable service to people for whom there are few other alternatives.
21. A further nine responses were received from HMO tenants. All of whom expressed concern at being forced to leave their accommodation as a result of policies being put in place by Harlow Council. There had clearly been some misunderstanding about the nature of an Article 4 Direction. As with all Planning policy, this cannot be retrospective meaning existing HMOs will be unaffected by the implementation of an Article 4 Direction. No existing HMO tenant will have to

leave their accommodation as a direct result of the introduction of an Article 4 Direction and as such the concerns raised by tenants in this consultation are unfounded.

22. The arguments raised by existing HMO landlords are understood and to a large extent accepted. HMOs do provide a valuable source of accommodation for many people and it is acknowledged that this is important in Harlow. The purpose of the proposed Article 4 Direction though is to ensure that there is a greater balance of housing across the town and the intention is to reduce the growth of HMOs and to ensure that their development is controlled through the Council's planning policy, rather than through Permitted Development Rights.

Next Steps

23. Upon the agreement of the recommendations set out at the beginning of this report, an Article 4 Direction will come into effect on 12 April 2021.

24. Following this, formal notification of the Direction will be given to the Secretary of State at the Ministry of Housing, Communities and Local Government as required by legislation.

25. In line with the Local Plan Inspector's requirement, the Council will undertake a review of the HMO policy in the Local Plan during 2022. This will also include a review of the effectiveness and appropriateness of the Article 4 Direction and include a recommendation as to the need to continue with this or not.

IMPLICATIONS

Environment & Planning

As set out in the report.

Author: Andrew Bramidge, Head of Environment & Planning

Finance (Includes ICT and Properties and Facilities)

None specific.

Author: Simon Freeman, Head of Finance and Property and Deputy to the Chief Executive

Housing

The new process is aimed at controlling the numbers of Houses in Multiple Occupation (HMO's) in the Town, raising housing standards generally. This together with associated processes are essential in the raising of housing standards in the private sector recognising the important role HMO's will need to continue to play in supporting the supply of housing at Harlow.

Author: Andrew Murray, Head of Housing

Community Wellbeing (includes Equalities and Social Inclusion)

As contained with the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (includes HR)

As contained within the report.

Author: Simon Hill, Head of Governance

Appendices

Appendix 1 – Local Plan policy in relation to HMOs

Appendix 2 – Equalities Impact Assessment

Background Papers

None.

Glossary of terms/abbreviations used

HLDP – Harlow Local Development Plan

HMO – House in Multiple Occupation