

Appendix 1A

Report title	Article 4 Direction and Houses in Multiple Occupation (HMOs) Position Report from a planning perspective
Report author	Judith Orr - Assistant Planning Policy Manager
Department	Planning, Economy and the Built Environment
Exempt?	No

Purpose of report:

For information

Synopsis of report:

The purpose of this report is to inform Members about the work that has been undertaken to date by the Planning Policy Team to consider introducing Article 4 Direction(s) for Houses of Multiple Occupation (HMOs) in Runnymede.

It is clear from the data that has been collected and set out in the Briefing Paper accompanying this report (see Appendix 1B) that whilst HMOs are distributed throughout the borough, there are notable concentrations focused in the north of the borough, particularly in the wards of Egham Town and Englefield Green (East and West). This is likely to be associated with the presence of Royal Holloway University London (RHUL) given their proximity. There are also smaller clusters of HMOs around both Addlestone and Chertsey town centres.

This report, together with the accompanying Briefing Paper starts to consider whether there is sufficient evidence to introduce an Article 4 Direction(s) (and where further evidence may need to be gathered) to try and control potential adverse issues that may be arising as a result of these HMOs, particularly those arising as a result of significant clusters.

The report also summarises what the purpose of an Article 4 Direction for HMOs would be, the process for putting one in place, the actions needed for implementing the Direction(s), and the need for a close relationship between their introduction and the review of the Runnymede 2030 Local Plan.

1. Context and background of report

- 1.1 A House in Multiple Occupation, commonly known as an HMO, is a property occupied by at least three people who are not from one 'household' (e.g., a family) but share facilities such as a bathroom and kitchen. Examples include bedsits, shared houses, lodgings, accommodation for workers/employees and refugees.
- 1.2 Planning use classes distinguish between 'small' HMOs of up to six people (C4 use class), and 'large' HMOs of seven or more occupants which are categorised as *sui generis* (i.e., uses that do not fall within any specified use class). NB The licensing

requirements for HMOs use different size thresholds to those used for planning purposes (see para. 4.5 in Appendix 1B for the licensing thresholds).

- 1.3 A separate briefing paper is also included with this agenda item which is concerned specifically with licensing requirements for HMOs and the role of the Private Sector Housing Team. There is some overlap between the two briefing papers in terms of the data presented. Discrepancies between the two papers exist in places due to the fact that the Planning briefing paper was produced in November 2022, whereas the Licensing Briefing Paper was produced a year later.
- 1.4 On 1 October 2010, the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order introduced a permitted development right to change the use of a building from a single house (C3) to a 'small' House in Multiple Occupation (C4) without the need to make a planning application.
- 1.5 Local planning authorities have powers to make an Article 4 Direction under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to remove permitted development rights for the area covered by the Direction. Importantly however, the introduction of an Article 4 Direction does not mean all planning applications for a change of use from a dwellinghouse to a Use Class C4 HMO will be refused planning permission. The Direction only requires the submission of a planning application for consideration by the Local Planning Authority, and any application will be determined on its merits having regard to the policies in the development plan and any other material considerations.
- 1.6 The National Planning Policy Framework (paragraph 53) requires the use of Article 4 Directions to be limited to situations where it is "necessary to protect local amenity or the wellbeing of the area" and "in all cases, be based on robust evidence, and apply to the smallest geographical area possible."
- 1.7 The national Planning Practice Guidance (PPG) further states that evidence is required to justify the purpose and extent of the Direction, to demonstrate that such action is needed to protect local amenity or well-being of the area. The PPG also requires the potential harm that the Direction is intended to address to be clearly identified.
- 1.8 The adopted Runnymede 2030 Local Plan does not contain a policy which would resist the principle of converting dwellinghouses to HMOs. Policy SL23 of the adopted Runnymede 2030 Local Plan deals with student accommodation. This policy allows the conversion of houses into HMOs provided that certain specific criteria are met. If an Article 4 Direction were to be introduced for HMOs in parts of the borough, this would be based on evidence gathered to demonstrate why such an approach was considered necessary, and would subsequently underpin a review of Policy SL23 to allow the introduction of stronger policy controls for HMO proposals. This is discussed in more detail later in this report.
- 1.9 The process for making an Article 4 direction is set out within legislation¹. There are two types of Article 4 direction:
 - An immediate direction - this comes into force the day it is made and must be confirmed within 6 months, or it will lapse.

¹ [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- A non-immediate direction - this is made following a decision being taken by the local planning authority, a 12-month notice and consultation period, and then is confirmed when it comes into force.
- 1.10 Planning legislation states that compensation may be payable to applicants if planning permission is refused within 12 months of the serving of an Article 4 Direction, unless 12 months' notice is given by the local planning authority of their intention to serve the notice. It is for this reason that the vast majority of local authorities who introduce Article 4 Directions in their areas have chosen to introduce non-immediate directions.
- 1.11 The Government changed the wording of para. 53 of the National Planning Policy Framework in 2021, with regards to Article 4 Directions. The purpose of this change was to restrict the use of Article 4 Directions so as to limit the use of them to situations to "where it is essential to avoid wholly unacceptable adverse impacts", while ensuring that they are "in all cases" applied "to the smallest geographical area possible". As a result, a number of local authorities have had the boundaries of their Article 4 Directions reduced or refused in recent years. However, all of the affected Directions that officers have been able to find details of, have all related to office to residential uses, as opposed to HMOs. It is not yet therefore known how Directions relating to HMO will be received by the Government, but it is important that if the Council is to bring forward any Directions in Runnymede, that they are based on robust evidence, and apply to the smallest geographical area possible.
- 2. Report and, where applicable, options considered and recommended**
- 2.1 Members may be aware that a report was taken to the Planning Committee meeting on 22nd March 2023 which set out details of the work that had been undertaken to date to investigate the number and potential impacts associated with HMOs in Runnymede. In addition, the Planning Committee agreed that *'the Planning Policy Team should continue to gather evidence on the distribution and impacts of HMOs in Runnymede in tandem with the Local Plan Review, to underpin a future report which would be brought before the Planning Committee to decide whether it is appropriate to introduce an Article 4 Direction(s) in the Borough'*
- 2.2 The initial findings of the work considered by the Planning Committee in March are set out in the Planning Briefing Paper, which forms Appendix 1B of this report. However, as recognised by the Planning Committee in the resolution reproduced at paragraph 2.1, given the close relationship between the Local Plan review and the HMO Article 4 Direction work, it will be necessary that any progress on the Article 4 Direction work takes place alongside work on the review of the Local Plan.
- 2.3 With regards to the timetable for the review of the Local Plan, Members may be aware that on 7th September 2022, the Planning Committee noted that work on the review of the Runnymede 2030 Local Plan had been temporarily paused, due to uncertainty at a national level because of the proposed planning reforms. A meeting of the Council's Planning Committee on 28th June 2023 revisited the pause to the Local Plan Review, and high-level timetables for resuming work on the Local Plan, based around three potential options, were discussed. Members elected to proceed with the option for preparing a Plan under the new plan-making arrangements (expected to commence at the end of 2024).
- 2.4 A further update on the government's planning reforms was provided at the meeting of the Council's Planning Committee on 25th October 2023. The officer report included information about a further consultation paper, published by the Government

in July 2023, on the Levelling Up and Regeneration Bill and its plan making reforms. It also set out a high-level picture of the current and future workstreams of the Planning Policy team up until the new plan making system is expected to commence in late 2024. Following a discussion with the Planning Committee, the meeting minutes reflect that it was agreed that a future workstream for the Planning Policy team should also include the justification work needed to support the potential introduction of an Article 4 Direction for Houses in Multiple Occupation, particularly in the context of the recently approved Council motion asking the Planning Committee to consider the feasibility of implementing an Article 4 directive within the Egham Town and Englefield Green West Wards. It was agreed that this would be added.

- 2.5 If the Council were to introduce Article 4 Directions for HMO, this would necessitate changes being made to Policy SL23, as referred to above in para. 1.8, in order to have stronger controls in place against which planning applications for conversions of dwellings to HMO could be assessed. This issue is discussed in the accompanying Planning Briefing Paper, with an example of the type of criteria that could be included in the policy set out within para. 4.43 of the paper.
- 2.6 The initial work carried out by officers has been undertaken at a high level and has focussed on the distribution of HMOs across the borough and the impacts that these are having in terms of amenity issues. The work shows that there are undoubtedly significant concentrations of HMOs in the north of the Borough in Egham Town and Englefield Green, in close proximity to RHUL. However, beyond this, in terms of quantifying impacts of these concentrations, the results of the analysis undertaken to date are less clear. This is because the anti-social behaviour data that has been collected is amalgamated together and includes various categories including dog fouling, graffiti, drug dealing, rough sleeping, fly tipping and other categories which aren't typically worse in an area with a high concentration of HMOs than in other areas of the borough. This data is therefore too generic to assist. From the noise data gathered to date from Environmental Health, it is difficult to draw a strong correlation between noise complaints and mandatorily licensed HMOs, although there do appear to be more complaints related to this source than would be expected based on the number of students. Moving forward officers will need to explore what other available data sources may exist which could help draw robust conclusions about whether the concentrations of HMOs identified are causing 'wholly unacceptable adverse impacts'.

3. Policy framework implications

- 3.1 If an Article 4 Direction for HMOs is, at a later date, introduced in the borough, the accompanying justification report would provide part of the evidence base underpinning the next iteration of the Local Plan. This evidence would help to justify introducing stronger criteria into Policy SL23, or the equivalent policy in the new Local Plan, to help more robustly assess any planning applications for conversions of dwellinghouses to HMO. Planning law dictates that planning applications should be determined in accordance with the policies within the Development Plan unless material considerations indicate otherwise.

4 Resource implications/Value for Money

- 4.1 Work on the evidence needed to justify the introduction of Article 4 Directions is being undertaken in-house, led by the Planning Policy Team. There are no additional financial or resource implications anticipated beyond that provided for within the agreed Planning Policy budget.

5. Legal implications

- 5.1 No specific implications have been identified at the time of writing this report. However, if the Council were to go ahead and introduce Article 4 Directions, there could be legal implications if the Directions were to be challenged. It is likely that in the future, once the relevant evidence base has been completed, that a report will be brought back through the Planning Committee asking Members to confirm whether they wish to pursue an Article 4 Direction(s) for HMO. At this point in time, the legal implications would be set out in detail to enable Members to make an informed decision.

6. Equality implications

- 6.1 The Council has a Public Sector Duty under the Equalities Act 2010 (as amended) to have due regard to the need to:
- a) Eliminate unlawful discrimination, harassment or victimisation;
 - b) Advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it;
 - c) Foster good relations between those who share a relevant characteristic and persons who do not share those characteristics;

in relation to the 9 'Protected Characteristics' stated within the Act.

- 6.2 If a decision is taken in the future to progress with Article 4 Direction(s) for HMO, the justification report once prepared will be screened to establish whether there may be any impacts, either positive or negative on any of the nine protected characteristics (namely, age, disability, race/ethnicity, pregnancy and maternity, religion, sexual orientation, sex, gender reassignment and marriage/civil partnership). This will be reported in later Committee reports.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 None identified at this stage.

8. Risk Implications

- 8.1 None identified at this stage.

9. Other implications (where applicable)

- 9.1 None identified at this stage.

10. Timetable for Implementation

- 10.1 As set out above, the timetable for implementing an Article 4 Direction for HMOs in Runnymede will need to be closely aligned with the timetable for the review of the Local Plan. Work on the Local Plan Review will not commence until at least Autumn 2024. Once commenced, plan making is expected to take 30 months. The HMO Article 4 work will be timetabled once the Council has a confirmed start date for plan making.

11. Conclusions

11.1 The Overview and Scrutiny Committee is asked to NOTE the findings of the work that has been undertaken to date to investigate the number and potential impacts associated with HMOs in Runnymede.

12. Background papers

None.

13. Appendices

Appendix 1B – Briefing paper on evidence currently available to introduce an Article 4 Direction within parts of Runnymede