

## **Article 4 Direction in relation to houses in multiple occupation (HMOs) in the Garden Quarter area of Chester**

### **Frequently asked questions (updated, February 2013)**

#### **Introduction**

In July 2012 the Council made a “non-immediate” Article 4 Direction to control changes of use from dwelling houses to houses in multiple occupation (HMOs). This was subject to a period of public consultation which was carried out last summer. The results of the consultation exercise were analysed and reported to the Council’s Executive on 5 December 2012, which resolved that the Article 4 Direction be confirmed. Accordingly, the Direction has been confirmed and it will take effect on 8 July 2013.

#### **Why is the Council introducing planning controls over changes of use to small houses in multiple occupation (HMOs)?**

For planning purposes, the wide variety of building and land uses are defined in particular use classes. These are set out in the Town and Country Planning (Use Classes) Order 1987. Planning permission is normally required to change the use of a building between different classes.

However, some changes of use do not require a planning application because they benefit from what are known as permitted development (PD) rights. These rights are set out in national legislation.

In April 2010, a new C4 use class covering small HMOs was created. A small HMO is defined as a property where between three and six unrelated persons live together and share basic amenities. Following the creation of the C4 use class, planning permission was required for a change of use of a dwelling house (use class C3) to a small HMO (C4).

Subsequently, in October 2010, the permitted development rights legislation was amended. As a result, change of use of a dwelling house (C3) to a small HMO (C4) became permitted development and a planning application was no longer required.

#### **What is an Article 4 Direction?**

If a local planning authority (LPA) wishes to prevent development which is classed as PD, then Article 4 Directions enable this to be prevented. It involves a legal process which has a number of stages. Prior to making the Direction significant work has been required to justify use of the procedure. Confirmation of the Direction will have implications both for the LPA and for those who may own property or live in the affected area.

#### **When can an Article 4 Direction be made?**

National advice from the Department for Communities and Local Government is that Article 4 Directions should be made only in those exceptional circumstances where

evidence suggests that the exercise of PD rights would harm local amenity or the proper planning of the area. The advice states that LPAs should identify clearly the potential harm that the Direction is intended to address.

The advice goes on to indicate that LPA's should consider whether the exercise of PD rights would undermine the visual amenity of the area, damage the historic environment, or undermine local objectives to create or maintain mixed communities.

### **Why has the Council introduced an Article 4 Direction covering the Garden Quarter?**

The reasons for making and confirming the Article 4 Direction are set out in full the respective reports of June 2012 and December 2012 to the Council's Executive, However, in summary, the Council has become increasingly aware of tensions surrounding high concentrations of HMO properties within this part of the city, in particular. It is a fact that university towns tend to experience higher proportions of HMOs; mainly due to the student population.

Evidence suggests there have been a number of negative effects within the local community arising from increased HMO concentrations, including: anti-social behaviour; increased noise and nuisance from properties and on the street; imbalanced and unsustainable communities; adverse impact on the physical environment and streetscape; increased pressure on parking spaces; untidy gardens; higher occurrence of 'To Let' boards and the accumulation of rubbish.

The Council also recognises that HMOs make a valuable contribution to the city's stock of affordable and private rented housing. They help to meet the needs of many city residents including students and are a vital part of the overall housing market.

The intention of the Article 4 Direction is to allow the Council, in its role as LPA, to positively manage the location of new HMOs in order to create sustainable, healthy and inclusive communities and to avoid further increases in concentrations in certain city streets. The Article 4 Direction is not intended to restrict the number of conversions to small HMOs, merely to help guide their location.

### **Who confirms Article 4 Directions?**

It is the LPA that confirm Directions, with no requirement to obtain approval from the Secretary of State which was formerly required. The Secretary of State still needs to be informed and reserves the right to influence or even prevent confirmation of an Article 4 Direction should he consider it unnecessary, unreasonable or unjustified. In this case, following consideration of the responses received to the public consultation exercise, the LPA has confirmed the Direction.

### **Will compensation be payable as a result of the Article 4 Direction?**

No compensation is payable in this instance. Compensation would have been payable in some circumstances to those whose PD rights are withdrawn if the LPA imposed what is known as an "Immediate" Article 4 Direction and then refused planning permission for that which would otherwise have been PD; or granted

permission subject to more limiting conditions than would have been applied by the General Permitted Development Order (GPDO).

However, in this case as the Council is providing 12 months' prior notice of the removal of PD rights in respect of HMOs (known as a "Non-Immediate" Article 4 Direction), then there is no ability to claim compensation.

### **What does the Article 4 Direction control?**

It means that what would otherwise be PD is not and so requires planning permission. However, it does not automatically prevent such development from occurring – it means that because it is not PD then a planning application must be submitted to the LPA for consideration. It also does not in itself mean that any such applications will be refused – they would have to be considered against development plan policy and other material planning considerations.

### **What are the timescales involved?**

The Council has undertaken a very substantial amount of research and collection of data and evidence to demonstrate that planning issues arising from increased concentrations of HMOs within the Garden Quarter exist. The Council's Executive agreed to this course of action at its meeting in June 2012. The following summarises the process from inception to implementation:

- 3 July 2012: the Article 4 Direction was made and was subject to a publicity and consultation exercise during the summer of 2012. It was publicised in the local newspaper and public notices inviting representations were displayed within the community. Notices were also sent to various bodies, including local and national Landlords' Associations. This consultation period ran until 31 August 2012.
- Following the consultation process, all written representations received as a result were evaluated and assessed. A further written report was considered by the Council's Executive on 5 December 2012, setting out the comments received during the consultation exercise. The Executive resolved that the Direction be confirmed.
- The Council is now publishing a further notice in informing people that the Article 4 Direction has been confirmed and will be implemented on 8 July 2013, as planned.
- 8 July 2013: the Article 4 Direction will become effective from that date onwards, when planning permission will be required for future conversions of C3 dwellings to C4 HMOs.

- The effects of the Direction upon the Garden Quarter area of Chester and other areas of the City will be monitored closely and will be reported back to the Council's Executive, as necessary

### **What use class is a property that is let to more than 6 unrelated people?**

A property that is let to more than 6 unrelated people is a large HMO. This is known in planning terms as a 'sui generis' use, which means that it is in a class of its own. It does not fall within the C4 use class. Planning permission is already required for a material change of any other use to a sui generis use and therefore large HMOs are not the subject of the Article 4 Direction.

### **Is planning permission required to change from a HMO (C4) to a dwelling house (C3)?**

No, that change of use is permitted development. The Council has no plans to restrict that change of use.

### **If a dwelling has been let as an HMO in the past, but is now being let to a family, will it need planning permission to let it again as an HMO?**

If a property that is in HMO use is let to a family the property would no longer be classed as a HMO. Planning permission would be required to revert back from a dwelling house (C3) to a HMO (C4).

### **If my HMO property is empty for a period of time between lettings, will it lose its small HMO (use class C4) status?**

A property will not lose any lawful HMO (C4) use if it is empty for short periods of time between lettings, and provided no other use takes place in between. Further advice on this matter may be obtained by contacting the local planning authority by emailing [planning@cheshirewestandchester.gov.uk](mailto:planning@cheshirewestandchester.gov.uk) or by calling 0300 123 7027.

### **How much does a planning application cost?**

There is no fee payable for planning applications arising directly from an Article 4 Direction. No fee would therefore be payable for a change of use application from a dwelling house (C3) into a HMO (C4) within the Garden Quarter area covered by the Direction. A fee may be payable for applications for changes of use to a mixed C3/C4 use. Normally a fee of £335 is payable for a change of use planning application.

### **How long does a planning application take to be decided?**

The majority (around 80%) of smaller planning applications, such as changes of use, are determined within eight weeks of registration.

**Do I require planning permission if a small HMO is created before but not occupied until after 8 July 2013?**

In the case of a material change of use of a premises (where no physical external alterations are proposed), it is the use of the premises that determines whether or not planning permission is required. Unless the use as a HMO has commenced before the date that the Article 4 Direction takes effect, then you will require planning permission. It is recommended that you make early contact with the local planning authority for advice by emailing [planning@cheshirewestandchester.gov.uk](mailto:planning@cheshirewestandchester.gov.uk) or by calling 0300 123 7027.

**I have a small HMO in the Garden Quarter that has not obtained planning permission and has been in use for a number of years. Will this be affected by the Article 4 Direction?**

Yes. Immunity from enforcement occurs only after 10 years have elapsed in respect of use as a HMO. If the premises does not benefit from a continuous use as a HMO for 10 years or more then you will require planning permission. It is recommended that you make early contact with the local planning authority for advice by emailing [planning@cheshirewestandchester.gov.uk](mailto:planning@cheshirewestandchester.gov.uk) or by calling 0300 123 7027.

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