

ARTICLE 4 DIRECTION IN RELATION TO HOUSES IN MULTIPLE OCCUPATION (HMO's) IN THE GARDEN QUARTER AREA OF CHESTER

Frequently Asked Questions

Introduction

The Council has made a "Non-immediate" Article 4 Direction to control changes of use from Dwelling Houses to Houses in Multiple Occupation. This is now subject to a period of public consultation. If the Direction is confirmed it will come into effect in July 2013.

What requires planning permission?

Firstly it is worth setting out what HMO's constitute in terms of development; what may be Permitted Development (PD); and what may require planning permission. This may well assist in setting the scope of what the Article 4 Direction can actually achieve or prevent.

Dwelling houses fall within Class C3 of the Town and Country Planning (Use Classes Order) 1987 (UCO). In March 2010 a new Class C4 was introduced for Houses in Multiple Occupation occupied by not more than six residents.

From October 2010 PD rights were modified so that it is PD to change from C4 use to C3, but more significantly in this instance, from C3 to C4.

This means that it is not necessary to apply for planning permission to create HMO's of up to 6 residents residing in a single dwelling house.

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, and if the Direction is subsequently confirmed there will be 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 LPA's 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.

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.

Compensation

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 HMO's (known as a "Non-Immediate" Article 4 Direction), then there is no ability to claim compensation.

What does the Article 4 Direction prevent or require?

It will mean 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 considerations.

It is also important to understand that the Article 4 Direction does not apply to development or changes of use that have already taken place. Therefore, existing HMO's would not be affected by the Article 4 Direction.

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 HMO's within the Garden Quarter exist. The Council's Executive agreed to this course of action at its meeting in June 2012. The way forward now comprises the following stages:

- 3rd July 2012 The Article 4 Direction Order was made and will be publicised in a local newspaper and public notices inviting representations will be displayed within the community. Notices are also being sent to various bodies, including local and national Landlords' Associations. This consultation period will run until 31st August 2012.
- After 31st August 2012, all written representations received as a result of the consultation exercise will be evaluated and assessed and a further written report presented to the Council's Executive in the late Autumn 2012 recommending whether or not to confirm the Direction.
- 8th July 2013 If the Article 4 Direction is confirmed it will become effective from that date onwards.
- The effects of the Direction upon the Garden Quarter and other areas of the city will be monitored closely and will be reported back to the Council's Executive as part of a periodic process of updates.

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