

Title of Report	USE OF ARTICLE 4 DIRECTION: HOUSE IN MULTIPLE OCCUAPTION IN KEGWORTH	
Presented by	Councillor Robert Ashman Planning and Infrastructure Portfolio Holder	
Background Papers	National Planning Policy Framework: National Planning Practice Guidance: Housing Act 2004:Part 2 Town and Country Planning (General Permitted Development) (England) Order 2015: Evidence Gathering – Housing in Multiple Occupation and possible planning responses; Department for Communities and Local Government 2008	Public Report: Yes
		Key Decision: Yes
Financial Implications	The cost of preparing and consulting on a possible Article 4 will be met from existing resources.	
	As outlined in the report making an 'immediate' Article 4 could result in a cost claim against the Council in the event that planning permission is refused where it is proposed to create a small HMO. Any such additional costs would need to be met from the contingency budget held by the Planning Service.	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	Detailed in the report.	
	Signed off by the Monitoring Officer: Yes	
Staffing and Corporate Implications	None.	
	Signed off by the Head of Paid Service: Yes	
Purpose of Report	To consider the introduction of an Article 4 Direction in Kegworth prohibiting the change of use of a dwelling to a small House in Multiple Occupation.	
Reason for Decision	In accordance with the Council's constitution, making an Article 4 Direction falls within the remit of Cabinet.	
Recommendations	THAT CABINET: <ol style="list-style-type: none"> 1. APPROVE THE MAKING OF A NON-IMMEDIATE ARTICLE 4 DIRECTION WHICH WILL BE APPLIED TO THE VILLAGE OF KEGWORTH TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR THE CHANGE OF USE OF A DWELLING HOUSE (C3 USE) TO SMALL HOUSES IN MULTIPLE OCCUPATION (C4 USE) (APPENDIX A), 2. THAT MEMBERS ADVISE AS TO WHETHER THE NON-IMMEDIATE DIRECTION SHOULD BE BROUGHT IN TO 	

	<p style="text-align: center;">FORCE AFTER 12 MONTHS OR 18 MONTHS;</p> <p>3. THAT NOTICE OF THE ARTICLE 4 DIRECTION (APPENDIX B), IS PUBLICISED FOR A PERIOD OF AT LEAST SIX WEEKS TO ALLOW MEMBERS OF THE PUBLIC TO SUBMIT COMMENTS ON THE PROPOSALS,</p> <p>4. RECEIVE A FURTHER REPORT FOLLOWING THE END OF THE REPRESENTATION PERIOD TO CONSIDER ANY COMMENTS RECEIVED AND TO DECIDE WHETHER TO CONFIRM THE NON-IMMEDIATE ARTICLE 4 DIRECTION.</p>
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1. BACKGROUND

- 1.1 Kegworth Parish Council have expressed concerns about the high concentration of Houses in Multiple Occupation (HMO) in the village of Kegworth, and the negative impact they are having on its character, well-being and housing profile. They have therefore requested that the District Council consider issuing an Article 4 direction so as to manage the creation of new small HMOs within the village.

2. WHAT IS A HOUSE IN MULTIPLE OCCUPATION (HMO)

- 2.1 A HMO is a property rented out by at least 3 people who are not from 1 'household' (for example a family) but share facilities such as a bathroom and kitchen. This includes properties occupied as shared houses and student houses. Over recent years, occupants of this form of accommodation has expanded to now include young professionals and single workers.
- 2.2 HMOs are recognised as meeting an important and specific housing need, for example, they provide a form of rented, affordable accommodation at a time when many people cannot afford to buy a property. They also provide a suitable form of accommodation for students and others who may only want to stay in the area on a temporary basis.
- 2.3 However high concentrations of HMOs can present challenges to the future sustainability of neighbourhoods and impact on their character, amenity and well-being.

A report prepared by ECOTEC Research & Consulting Limited on behalf of Communities and Local Government in 2008 summarises the potential negative impacts as including:-

- Noise and anti-social behaviour;
- Imbalanced and unsuitable communities;
- Negative impacts on the physical environment;
- Pressures upon parking provision;
- Growth in private rented sector at the expense of owner-occupation;
- Loss of some forms of community facilities and infrastructures.

However the report also highlights that there are positive impacts associated with a student population including:-

- Increase in a range of goods and services, and available social/leisure attractions;
- Increased demand for public transport;
- Economic benefits to the local economy, such as students contributing to local spending power, a skilled workforce and a flexible labour;
- Provision of and access to lifelong learning opportunities and sporting and cultural facilities;
- Demand for private rented properties can lead to housing stock improvements and properties brought back into use;
- Improvement to local environment and regeneration benefits.

3. RULES IN RELATION TO HMOs

- 3.1 The management of HMOs are subject to a range of national mandatory regulations, which are implemented by different parts of the Council, and there are instances when the different regulations are not always consistent. For example, a property rented to 5 or more people who form more than 1 household needs to have obtained a mandatory HMO license (although planning permission is not needed). An application for a license is submitted to the Council's Environmental Protection Team for determination and if approved would last five years. The purpose of this license is principally to ensure that the residential accommodation is safe, well managed and of good quality, with a particular focus on safety.
- 3.2 There are also instances when planning permission is needed for a HMO. Planning permission is needed for a HMO where more than six unrelated people are sharing (a large HMO) and will always be required, regardless of its existing use or location. It should be noted that the definition of a HMO in this instance is slightly different to that which requires a license.
- 3.3 However planning legislation does allow a family house (C3 use) to change to a 'small HMO' (C4 use) without the need for planning permission, and vice versa. A small HMO is where there are between three and six people who comprise more than one household sharing basic amenities such as the kitchen. It is these small HMOs which can be created without requiring planning permission which Kegworth Parish Council has concerns about.

4. THE USE OF ARTICLE 4 DIRECTIONS

- 4.1 An Article 4 direction enables the local planning authority to withdraw specific permitted development rights across a defined area. Effectively it would mean that a particular form of development (in this instance a change of use from a residential dwelling to a small HMO) cannot be carried out under permitted development and therefore needs planning permission. However it cannot be applied retrospectively to changes of use which have been permitted (where required), commenced or which has already been carried out at the time an Article 4 is issued.
- 4.2 The withdrawal of permitted development rights does not necessarily mean that planning consent would not be granted, nor does it provide a presumption against such development. It simply means that an application has to be submitted, so that the Local Planning Authority can examine the plans in detail. Each application will then be determined on its own merits having regard to all material considerations. This planning control would be in addition to the planning controls that currently exist in relation to the creation of large HMOs as outlined above.
- 4.3 However, where a property is occupied by two unrelated individuals, or if occupied by the resident owner with no more than 2 lodgers, the property will not be considered an HMO. Using a property in such a way will not be regarded as a material change of use from a single family dwelling house/flat, and planning permission will not be required.
- 4.4 National Planning Policy Practice Guidance provides advice on the use of Article 4 Directions, which should be limited to situations where necessary to protect local amenity or the wellbeing of the area. An Article 4 Direction can cover a geographic area, remove permitted developments in relation to the change of use of land, and remove rights on a permanent basis.

5 HMOS IN KEGWORTH – WHAT IS THE ISSUE?

- 5.1 As outlined in paragraph 2.3 it is generally recognised that a concentration of HMOs can harm residential amenity, particularly through increased noise nuisance, anti-social behaviour, incidences of crime and adverse impacts on the physical environment. This harm is largely due to:

- an imbalance in the mix of the population, with higher proportions of single people, undermining objectives to create mixed communities; and
- a high proportion of privately rented accommodation with short-term lets where the standards of upkeep of the property are generally lower.

- 5.2 An intensification of HMO accommodation can also harm the local housing market, particularly when family accommodation is used for HMOs as this restricts access to such accommodation for those seeking to purchase.
- 5.3 The use of Article 4 Directions to remove permitted development rights is a tool used by many local authorities to help them to manage the impact from HMOs. Locally Charnwood Borough Council have an Article 4 Direction in place in respect of Loughborough, and Leicester City also has one in place. Both of these directions are as a result of a proliferation of HMOs linked to universities.
- 5.4 Whilst there is not a university within the district, Nottingham University has a campus at Sutton Bonnington which is approximately 2 miles (car travel) from Kegworth. Kegworth Parish Council believes that students attending the University create much of the demand for HMOs in Kegworth. However, there may also be other pressures including the significant employment development taking place at the East Midlands Gateway which lies approximately 2 miles (car travel) to the west of the village
- 5.5 In this particular instance, Kegworth Parish Council has identified a number of concerns they have regarding the proliferation of HMOs within the village. In particular, that HMOs are resulting in:
- A lack of available housing for first time buyers and families;
 - Car parking issues because of insufficient parking provision within the curtilage of properties. This results in on-street parking issues such that people may not be able to park close to where they live, pavements being blocked and difficulty for other vehicles (e.g. waste collection lorries) accessing;
 - Impact upon local amenity such as the unkempt appearance of properties, on-street refuse and anti-social behaviour; and
 - Impact upon the Kegworth Conservation Area.
- 5.6 Officers have looked in to the various concerns raised and to date have not been able to find any specific demonstrable evidence to link amenity type issues directly to HMOs. For example, it has been observed on site that higher levels of on street parking can be found within the vicinity of some HMOs particularly in the University term time, and it is a given that the more intense use of these properties does bring about higher car ownership levels. However, any problems associated with parking may also be as a result of overall higher car ownership levels, 'flyparking' (users of the airport parking their cars in Kegworth), 'car sharing' for workers in Nottingham, parking from local employers and also occupants at Kegworth's two hotels.
- 5.7 On the issue of whether there is a concentration of HMOs in Kegworth, officers have undertaken an exercise to identify and map the existing distribution of licensed HMOs and properties occupied exclusively by students (as such households are exempt from Council Tax). Data has been drawn largely from Environmental Health and Council Tax records. It is appreciated that some of the information is not directly comparable but it does provide a "profile" of where such properties are located and the concentrations of this form of accommodation that can be found in Kegworth. It is also possible that records will not provide a completely comprehensive record of all HMOs, as for example, there will be small HMOs in existence that are not subject to licensing or planning regulations.
- 5.8 As of November 2019, there were only 21 HMOs within the district overall that have been granted a licence. However, 14 of these, which equates to 67% of the district total, are

located within Kegworth. There are a further 16 properties currently waiting for their licences, and 14 of which are in Kegworth. Assuming that all of these were to be approved the number of HMOs in Kegworth would represent 76% of the districts total.

- 5.9 Council Tax Records (July 2019), show there to be 21 HMOs within Kegworth. For the purposes of Council Tax a HMO is recorded as a shared household property where there are only 2 or more occupants, shared communal areas and locked access to rooms.
- 5.10 For the period to December 2019, Council Tax Records show there to be 173 properties within Kegworth wholly occupied by students.
- 5.11 Having taken measures to ensure there is no double counting, this information identifies there to be a total of 174 HMOs and/or student properties within Kegworth. Appendix C identifies the streets where these properties are located, and provides an illustration of where higher concentrations of HMOs can be found, for example within Station Road, Wylvle Crescent, Hollands Way, London Road and Pritchard Drive.
- 5.12 Taking into account the number of properties recorded in Kegworth during the 2011 Census (1,588 properties), and the subsequent number of properties that have been built since and up to October 2019 (223 new homes), student/HMO properties represent just under 10% of all properties within Kegworth.
- 5.13 Data from the 2011 Census shows that there was already a significantly higher student population living in Kegworth than the rest of the district. When looking at the 'Economic Profile' of Kegworth's residents, the number of full time students was recorded as 317 (11.6%) compared to 2,611 (3.8%) of residents in the district as a whole.
- 5.14 Contact has also been made with the University of Nottingham, given the close proximity of its Sutton Bonnington Campus. The university have advised that for the academic year 2018/2019, 604 students provided a term time address in Kegworth. The numbers in the above paragraph are likely to include non-Nottingham University students as well, so this latest information suggest that there has been a significant increase in student residents in recent years. Looking forward, the university has recently announced its intention to increase the number of students at the Veterinary School by moving to a two-year intake in the new academic year (September 2019 and April 2020). It is reasonable to assume that some of these additional students may look to live in Kegworth due to its proximity to the campus and its good range of services and facilities further increasing the demand for HMO type accommodation.
- 5.15 There is also anecdotal evidence from the Parish Council that people employed at the nearby East Midlands Gateway development are residing in HMOs in Kegworth, and there is also significant interest being received from potential workers, particularly around the time when recruitment is being undertaken by companies operating at this site.
- 5.16 Therefore in this instance, there is evidence that there are a significant number of HMOs in Kegworth, associated with students as well as elements of the working population. Furthermore, it would appear that student and HMO occupation of the general housing stock in the village is on the increase, and it is likely that this trend will continue for the foreseeable future.
- 5.17 Informal discussions with estate agents also suggest that there is an on-going pressure on the availability of family housing, as they have suggested that homeowners looking to rent out a property are more likely to do so as a HMO rather than a family home, as the rental levels are significantly higher.
- 5.18 It is considered that the concentration of HMOs and student properties is having a negative impact on the housing profile and the character and well-being of Kegworth, including the increase in the percentage of transient occupiers and consequently a loss of residents with a long-term stake in the community. It is also considered likely that this is a trend that will

continue in the future, particularly with the increased intake in students at the Sutton Bonnington campus.

6.0 IS AN ARTICLE 4 JUSTIFIED?

6.1 As outlined above, officers have not been able to substantiate with any clear evidence that there are specific amenity related issues in Kegworth that can be specifically attributed to the number of HMOs.

6.2 Based on the available evidence there is a concentration of HMOs in Kegworth compared to the rest of the district. It would appear that this is largely as a result of the proximity of Kegworth to the Sutton Bonnington campus.

6.3 The Planning Practice Guidance is clear that an Article 4 can be used to protect local amenity OR the wellbeing of the area. In this instance, there are concerns that the concentration of HMOs is affecting the wellbeing of the area. Therefore, an Article 4 Direction would be justified.

7.0 PROPOSED ARTICLE 4 DIRECTION

7.1 On balance, it considered that there is a case to introduce an Article 4 prohibiting the change of use of a dwelling house to a small HMO.

7.2 A Kegworth-wide approach is recommended and will provide a blanket approach to the village of Kegworth. The advantages of this approach are that it would ensure consistency and more comprehensive management of HMO distribution in the future. Furthermore, if only parts of the village were included within the Article 4 direction, rather than addressing the issue it would simply result in displacement of HMOS to other areas.

8.0 WHAT TYPE OF ARTICLE 4 DIRECTION?

8.1 There are two types of Article 4 directions that can remove permitted development rights to change from a dwelling house to a small house in multiple occupation, namely:

- A non-immediate direction where permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation.
- Immediate directions can withdraw permitted development rights straight away and can be used if the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of the area or constitute a threat to the amenities of the area. Should this approach be the one that is chosen, the order would be made and confirmed at the same time.

Advantage/Disadvantage of an Immediate Direction

8.2 The key advantage of making an immediate direction is that its provision are brought in to effect immediately, thus enabling the concentration issues to be considered straightaway.

8.3 However, the key disadvantage is that an immediate Article 4 Direction means that the local planning authority can be liable to pay compensation to those whose permitted development rights have been withdrawn. Compensation claims can be made against the District Council by landowners and developers where the council:

- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
- Grant planning permission subject to more limiting conditions than the permitted development rules would normally allow.

- 8.4 Compensation can also be claimed for abortive expenditure or losses and damages directly related to the withdrawal of permitted development rights, including abortive expenditure' for works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work not then able to be undertaken. Compensation may be payable in relation to planning applications which are submitted within 12 months of the effective date of the directions.
- 8.5 Having sought legal advice, it has been confirmed that in the event of a claim for abortive expenditure the onus would be upon an applicant to demonstrate what the financial impact has been. It has also been advised that it would not be possible to attach a cost to possible claims at this time; there is no precedent for what it might be as it would depend upon the individual circumstances of the claim. There is the potential for any compensation claims (individually or cumulatively) to be significant. These would fall to the district council as local planning authority to pay.

Advantage/Disadvantage of a Non-Immediate Direction

- 8.6 The key advantage of a non-immediate direction is that it removes any financial risk to the local planning authority.
- 8.7 The disadvantage of issuing a 'non-immediate direction' is that it would, to some extent, negate the impact of the Article 4 Direction as it could encourage more changes of use in the intervening period.

Approaches Undertaken by Other Local Authorities

- 8.8 The use of a non-immediate Article 4 Direction is the favoured approach in the majority of cases identified by officers where an Article 4 has been issued in respect of small HMOs. For example, non-immediate Article 4 Directions have been introduced in Loughborough, Nottingham City, Birmingham City and Leicester City. It would appear that this approach was undertaken to protect the Council from compensation claims, which had the potential to be considerable.
- 8.9 In the case of Trafford Council an immediate Article 4 Direction was used. Officers have been in contact with representatives of the Council who have advised that in relation to the immediate HMO Article 4 Direction, it has been in operation for over 18 months and no compensation claims have been made. However, the circumstances relating to the Article 4 Direction are rather different to that being experienced by Kegworth, in that it was prompted by the launch of the new University Academy 92 ('UA92') in Trafford which did not open until September 2019. However, the Article 4 Direction was made in December 2017 and intended to mitigate the potential impact from the arrival of the significant number of students attending the proposed 'UA92', and therefore a potential rise in the number of HMOs. The fact that the Article 4 Direction was made nearly 2 years prior to the opening in 'UA92' could explain why no compensation claims have been received.

Conclusions – Immediate or Non-Immediate Direction?

- 8.10 Essentially the decision as to whether to make an immediate or non-immediate Article 4 Direction comes down to a balance between the potential financial risk to the council of an immediate direction as compared to the risk of an increase in more HMO in the period before a non-immediate direction comes in to effect. Understandably, the Parish Council would favour an immediate Article 4 direction.
- 8.11 A further issue which needs to be considered is the policy basis on which planning applications would be determined following confirmation of an Article 4 Direction.
- 8.12 The current adopted Local Plan includes a policy designed to protect the amenity of an area (Policy D2 - Amenity). However, there are no policies regarding concentration of HMOs. Whilst Policy D2 could be used, there is not demonstrable evidence to justify the

Article 4 Direction on this basis alone, although in individual cases it may be possible to demonstrate that a proposed HMO would represent an impact upon the amenity of the area. Conversely, there is evidence regarding concentration but there is no policy basis which could then provide a reason for refusing an application.

- 8.13 The Local Plan Review will give consideration to the inclusion of a policy in respect of HMOs. The weight to be attached to any policy in determining any planning applications would depend upon the stage reached in the Local Plan preparation process. Full weight would only be achieved when the Local Plan has been adopted.
- 8.14 Regulations allow a non-immediate direction to be brought in to force between 12 months and 24 months. In order to ensure that the Local Plan Review has progressed to a stage where a policy could be given at least some limited weight, officers suggest that it would be prudent for a non-immediate direction to not come into place for a period of 18 months (i.e. August 2021).
- 8.15 If members consider that a period of 18 months is too long, then a shorter period can be chosen, but it does involve more risk as there would be a very limited policy basis to which weight could be attributed in determining any planning applications.
- 8.16 On balance, in view of the unquantifiable financial risk to the District Council, it is recommended that a 'non-immediate direction would be the most appropriate means to implement an Article 4 Direction in order to avoid potentially costly compensation claims.. During whatever period is chosen for the non-immediate direction, landlords of existing small HMOs can be asked to declare this and provide details of the address of the property and any evidence to show that it is an existing HMO. This would protect such property owners from complaints that a HMO has been created contrary to the Article 4 Direction.

9.0 NEXT STEPS

- 9.1 If Cabinet agrees to make the proposed non-immediate Article 4 Direction under Schedule 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015, this will remove permitted development rights for the change of use from dwellings houses (C3 use class) to houses in multiple occupation (C4 use class) that can accommodate up to 6 people.
- 9.2 Following the making of such a direction, local authorities are required to publicise the direction via the following means;
- Local advertisement of the direction;
 - Display of a minimum of two notices in different locations for a minimum period of six weeks;
 - Notify owners and occupiers within the affected area (these regulations can be relaxed where this would be impracticable);
 - Send the above documentation to the Secretary of State;
 - Provide a period of a minimum of 21 days within which representations concerning the direction can be made (in this instance it is suggested that 6 weeks consultation be allowed in accordance with the standard approach to consultation on planning policy matters);
 - The local authority must specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years, from the date that the consultation starts. In addition, although not a statutory obligation, it is considered good practice for notice of the direction to be published on the local authority website.

- 9.3 The proposed statutory notice to advertise the Article 4 Direction (attached as Appendix B), provides details of the consultation dates. It also provides the potential date for the Article 4 Direction to come into force, should it be confirmed. The proposed dates allow for a confirmation of a non-immediate direction, to negate the potential for compensation claims.
- 9.4 Following this consultation period and after considering any comments received, a further report to Cabinet will be required, for consideration to be given to any comments and to seek approval to confirm the Article 4 Direction if appropriate.

Policies and other considerations, as appropriate	
Council Priorities:	Our communities are safe, healthy and connected Local people live in high quality, affordable homes Developing a clean and green district
Policy Considerations:	None Identified
Safeguarding:	None Identified
Equalities/Diversity:	An Equality Impact Assessment has been undertaken
Customer Impact:	Making an Article 4 Direction would require some customers to submit a planning application, which would potentially entail additional costs.
Economic and Social Impact:	Making an Article 4 Direction will help to protect the social cohesiveness of Kegworth.
Environment and Climate Change:	Making an Article 4 Direction could help to protect the local amenities of Kegworth
Consultation/Community Engagement:	The proposed Article 4 Direction would be subject to consultation before being confirmed.
Risks:	As set out in the report, making an immediate direction represents a potential cost risk to the Council. Making a non-immediate direction would remove this risk. Where a planning application for a HMO is submitted because of the Article 4 Direction being in place and that application is then refused, there is no guarantee that a refusal would be supported in a subsequent appeal.
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