

## READING BOROUGH COUNCIL

### REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE		
DATE:	15 JULY 2015	AGENDA ITEM:	12
TITLE:	SMALL HOUSES IN MULTIPLE OCCUPATION AND THE ARTICLE 4 DIRECTION - REVIEW		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	PLANNING	WARDS:	ALL
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#### 1. EXECUTIVE SUMMARY

- 1.1 New provisions in the planning system that created a new use class for small houses in multiple occupation, (HMO's, Use Class C4) were introduced in 2010. The Council reacted to these provisions in making an Article 4 Direction to cover parts of Katesgrove, Park and Redlands Wards, where the growing student population in HMO's was having deleterious impacts on local residential areas. In approving the Article 4 Direction in May 2012, Committee committed to undertake a future review of the Direction to see how it was working and see whether it could be applied in other areas of the town. In March 2015, this Committee considered a report on the enhancement of conservation areas in the Borough and referred to this review of HMO policy as one measure that could be considered to deal with adverse impacts on the character and appearance of conservation areas. It will also be recalled that at the last meeting of this Committee, a petition was received requesting of the extending the existing Article 4 Direction that covers Jesse Terrace in Abbey Ward to also bring changes of use to small HMO use under planning control.

## 2. RECOMMENDED ACTION

- 2.1 That this review of changes of use from C3 dwellinghouses to C4 small houses in multiple occupation within the Article 4 Direction area be noted;
- 2.2 That Committee agree that the Residential Conversions Supplementary Planning Document be reviewed and be brought back to a future meeting of this Committee;
- 2.3 That proposals for an Article 4 Direction covering Jesse Terrace to prevent changes of use from a C3 dwellinghouse to a C4 small house in multiple occupation be brought forward to a future meeting of this Committee.

## 3. POLICY CONTEXT

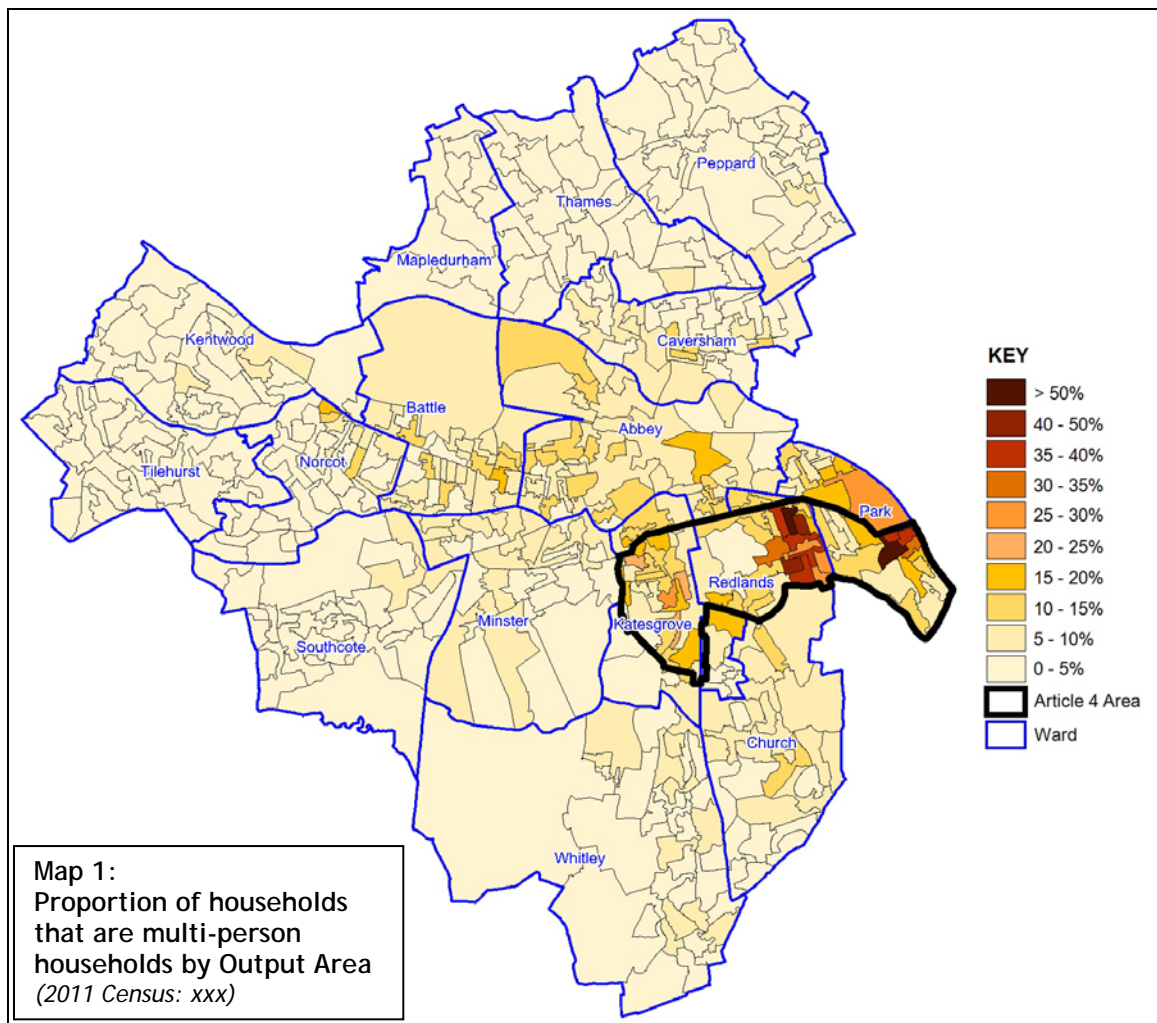
- 3.1 An Article 4 Direction was made on 16<sup>th</sup> May 2012 to remove the permitted development right to convert a dwellinghouse (C3 use class) to a small house in multiple occupation, with between 3 and 6 unrelated inhabitants (C4 use class). This Article 4 Direction was for an area covering much of Katesgrove, Park and Redlands wards. The Article 4 Direction came into force one year later, on 16<sup>th</sup> May 2013. It has therefore now been in operation for over two years. This then represents a reasonable period to evaluate its effects so far.
- 3.2 The principal policy used to assess applications in the Article 4 area is the Residential Conversions Supplementary Planning Document, which supplements higher level policy in the Core Strategy (policy CS17) and the Sites and Detailed Policies Document (policy DM9). Although a number of criteria are to be taken into account, the headline requirement is that there should not be more than 25% of the properties within a 50m radius of the application site that are in HMO use. The SPD was adopted at Strategic Environment, Planning and Transport Committee on 20<sup>th</sup> November 2013 (Minute 21 refers).
- 3.3 At its meeting in March 2015, this Committee considered a report on the enhancement of Conservation Areas in the Borough and agreed that a working group of relevant officers be set up to work with the Baker Street Area Neighbourhood Association to examine priorities for environmental action and improvement and ways to deal with priority matters within available budgets and resources.

## 4. THE PROPOSAL

- (a) Current Position

### *Current level of HMOs in Reading*

- 4.1 The Reading Borough Private Sector House Condition Survey 2013, published in January 2014, found that, using current classifications, 5,241 dwellings (10.0%) in the Borough fall within the definition of a house in multiple occupation (HMO). The main concentrations of HMOs fall in Redlands, Park, Church and Battle Wards, where over 15.4% of dwellings are in HMO use.
- 4.2 Since the Article 4 Direction was confirmed in May 2012, information from the 2011 Census has become available. This includes information on the number of multi-person households in each Output Area (a geographical unit for Census purposes) in Reading<sup>1</sup>. Map 1 shows the percentage of households that are multi-person households according to the 2011 Census. It can be seen that this is a relatively good fit to the Article 4 area, with the possible exception of some areas north and west of Palmer Park.

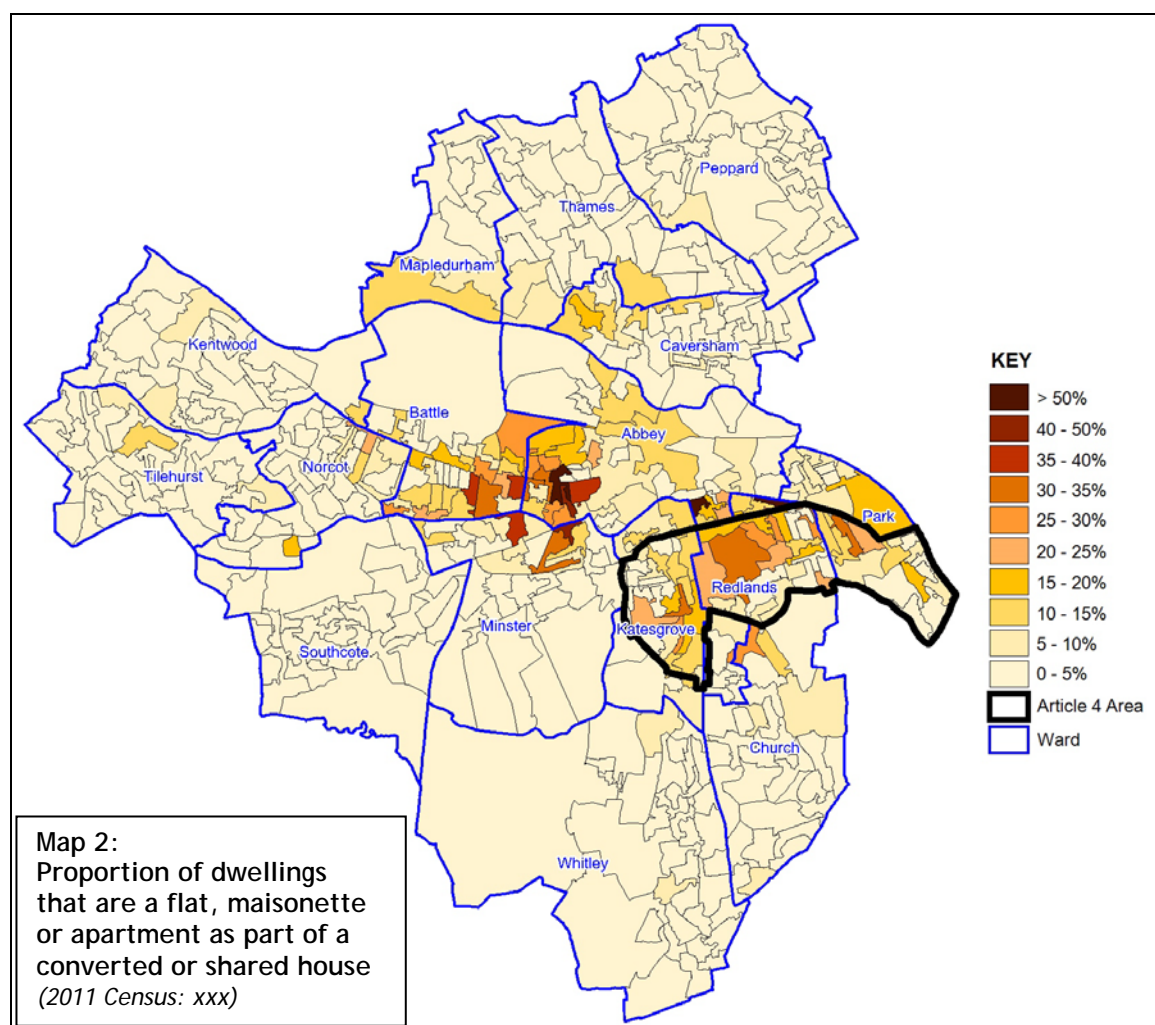


- 4.3 However, the above data excludes some types of HMO use, where a dwelling is converted into bedsits - in a case where a dwelling is

<sup>1</sup> Census Ref: QS116EW

converted into, for instance, seven bedsits with shared bathroom facilities, this would count as seven separate single person households for Census purposes, so would not show on the above map.

- 4.4 In order to highlight those areas, we can use other Census data, specifically the percentage of dwellings<sup>2</sup> that are converted into flats, apartments or maisonettes (which will include bedsits). It can be seen that this highlights some very different areas, many of which are outside the Article 4 area. In particular, there is a large area covering parts of Abbey, Battle and Minster wards centred on Oxford Road, and some much smaller areas with very high concentrations north of London Road just outside the Article 4 area boundary. However, it is important to bear in mind that this represents all conversions of houses to smaller spaces, in particular flats, so it is not a map of specifically HMO concentrations.



### *Applications*

- 4.5 Since the Article 4 direction came into force on 16<sup>th</sup> May 2013, there have been 8 applications determined for a change of use from a C3

<sup>2</sup> Number of dwellings is not necessarily the same as number of households used on the previous map, but is close enough to highlight the issue for these purposes.

dwellinghouse to a C4 small HMO within the Article 4 direction area. Six were permitted, one was withdrawn and one was not determined due to incorrect ownership certificates<sup>3</sup>.

- 4.6 The headline consideration in the Residential Conversions SPD as to whether a new HMO would lead to an over-concentration is whether 25% of houses within a 50m radius would be in HMO use. The table below shows the proportions that result from the six permitted changes of use. It can be seen that reducing the threshold to, for instance 10%, would have meant only one successful application since the Article 4 direction came into force.

**Permitted applications for change of use to C4 HMO**

Ref	Address	% in HMO use within 50m
131707	175 Wykeham Road	11
141058	84 Pell Street	23
150268	357 Elgar Road	3
150092	27 Auckland Road	21
141298	11 College Road	17
141428	44 College Road	17
150436	7 Iliffe Close	15
141589	6 The Old British School Mount Pleasant	21
141592	7 The Old British School Mount Pleasant	21
141816	8 The Old British School Mount Pleasant	21

- 4.7 It is perhaps also worth noting that there have been no applications within the areas where levels of HMOs are highest and already exceed the 25% threshold, particularly areas north and south of Erleigh Road. Such proposals may have been discouraged by the new approach.

### ***Appeals***

- 4.8 As no planning applications have been refused so far, there is not yet any evidence of how Reading's policy approach has held up at appeal. However, a number of other authorities have applied similar thresholds and been subject to appeals against refusal, notably Manchester, Brighton, York, Southampton and Portsmouth.
- 4.9 The outcomes of those appeals have been highly mixed to say the least, although it should be noted that many took place at a time when the threshold was an emerging policy rather than an adopted one. In some cases<sup>4</sup> the Inspector simply applied the threshold without significant further analysis. In others, the Inspector gave weight to whether there was additional evidence of noise and disturbance associated with the C4 HMO use. An appeal in Southampton was dismissed on environmental and amenity grounds partly due to the particular consideration that bins

<sup>3</sup> Correct to 15<sup>th</sup> June 2015

<sup>4</sup> APP/B4215/A/10/2139091 in Manchester and APP/C2741/A/12/2183491 in York

would be left out affecting the character of the area<sup>5</sup>. Conversely, appeals in York<sup>6</sup> and Brighton<sup>7</sup> were allowed despite exceeding the threshold, in part because the local authority could not present evidence that a C4 use would necessarily cause additional noise and disturbance. Inspectors in a number of cases in Portsmouth were also not convinced that a C4 use was intrinsically more likely to cause noise and disturbance than a C3 dwellinghouse<sup>8</sup>.

- 4.10 One of the unintended consequences thought to be happening elsewhere, in York for instance, is that an Article 4 direction accompanied by a restrictive policy can actually lead to a lack of availability of family housing in the affected area. This is because landlords are unwilling to let their properties to single households for fear of losing their C4 permission and not being able to let to the lucrative student market in the future. We have no evidence at this point of whether this is happening in Reading, but it is a possible implication of the current approach.

#### *Enforcement*

- 4.11 A total of 9 complaints about changes of use the Article 4 area have been investigated and resolved by the Enforcement Team since the Direction came into force. There are currently 20 open cases arising from complaints where investigations are continuing. Officers are also following up information from Environmental Health on HMO licences which have been granted in the area of the Article 4 Direction since it came into force in May 2013, where there is no corresponding planning permission.
- 4.12 Many of the cases being investigated will not be breaches of planning control, for instance because the HMO use has not actually yet started or it was in existing use at 16<sup>th</sup> May 2013. Many of the cases of HMO licences will be renewals of existing licences. However, it gives some indication of the scale of the investigations needed and the potential size of the enforcement task associated with the Article 4 Direction at a time when resources are constrained.

#### *Lessons so far*

- 4.13 Experience in dealing with planning applications in the Article 4 area point to some problems and confusion in applying the policy in the Supplementary Planning Document on Residential Conversions. The document is not always particularly user friendly and is sometimes unclear. The document is intended to cover all forms of residential conversion including conversions to flats and large HMOs. Some of the

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<sup>5</sup> APP/D1780/A/12/2182572

<sup>6</sup> APP/C2741/A/12/2182758

<sup>7</sup> APP/Q1445/A/14/2214205

<sup>8</sup> See Portsmouth City Council committee report:

<http://democracy.portsmouth.gov.uk/Data/Planning%20Committee/20121107/Agenda/PC20121107r9.pdf>

requirements are not really applicable to small HMOs governed by the planning use class C4. Some of the matters are more to do with Building Regulations or Environmental Health than planning. Planning has limited control over such matters in the context of a change of use. The various appeal decisions, albeit they are far from consistent, also provide some indications that could be taken account of through revisions to the SPD. The key point of the policy in relation to small HMOs is not environmental control. It is the maintenance of mixed and sustainable communities. This should be the main focus for any policy assessment.

4.14 Calculating the number of HMOs in an area is also problematic. The application of the policy relies on:

- Records of planning permissions or certificates of lawfulness;
- Environmental health licencing data noting that only larger HMO's of 5 or more bedrooms and 3 storey accommodation needs to have a license;
- Council tax data that records student only properties for which an exemption from Council tax applies and relatively few properties which are registered as HMOs solely because the bill is sent to the landlord who does not live on the premises.

The application of the policy is only as good as the data available and it needs constant updating. In addition, because of data protection, the Council cannot publish much of the data, in particular the council tax data. This means that residents produce their own lists of HMOs that have to be investigated further if addresses do not correspond with the available data. This can be very time-consuming. It needs to be appreciated that the Council receives no fee for applications made as a result of an Article 4 Direction.

#### **Concerns in Conservation Areas.**

4.15 The report to this Committee in March 2015 on the Enhancement of Conservation Areas referred to issues associated with changes of use of dwellings to HMO's in Conservation Areas in terms of their impact on the character and appearance of such areas. Committee also received a petition at its March meeting calling for an Article 4 Direction to control such changes of use to cover Jesse Terrace which lies within the Russell Street/Castle Hill Conservation Area and is a fine, relatively unspoilt street that is already covered by an Article 4 Direction to control changes to front elevations. Committee resolved to investigate this matter further.

4.16 A meeting was held in June 2015 with a number of invited representatives of community groups who have previously raised issues about the need for the enhancement of conservation areas in their localities. The meeting discussed various issues affecting conservation areas and changes of use of dwellings to HMO's was a key issue for some areas. It was agreed that further work would be undertaken with a view



to holding a further meeting in September to which Historic England would be invited. It was also noted that the Council would look into making an Article 4 Direction for Jesse Terrace.

(b) Option Proposed

***Update Supplementary Planning Document***

- 4.17 In light of the review discussed above, it is proposed that the Council update the Residential Conversions Supplementary Planning Document. There are concerns for instance that the checklist for HMO schemes within the SPD includes some items that are disproportionate or unachievable for small HMO proposals, for instance avoiding stacking of habitable rooms above or adjacent to kitchens or bathrooms. There may also be more evidence emerging that enables us to look again at whether 25% is the appropriate threshold for a development. This review could potentially take place over the next few months, with a revised SPD being consulted on and adopted during 2016.

***New or Extended Article 4 Directions***

- 4.18 There have been questions raised as to whether there is a need to extend the existing Article 4 area, or to issue new Article 4 directions, to cover conversions from C3 dwellinghouses to C4 HMOs in other parts of the Borough.
- 4.19 New or extended Article 4 areas would need to be supported by good evidence. Map 1 in this report indicates that the existing Article 4 area covers the area of greatest concentration of HMOs in Reading, and we are not currently aware of strong evidence of a strong move towards C4 small HMOs outside this area. Whilst there is clear evidence of a concentration of conversions of houses to smaller spaces (such as flats or bedsits) in parts of west and central Reading, most of those uses would fall within planning control in any case, so concerns could potentially be resolved through revisions to policy (either through the forthcoming Local Plan review, or in a revised version of the Residential Conversions SPD).
- 4.20 There are substantial implications for extending the Article 4 direction area beyond the area where evidence shows that it is necessary, in particular in terms of Council resources. The main issue is a lack of evidence. The main evidence in the existing Article 4 area is Council Tax records of houses wholly occupied by students who are claiming exemption from paying Council Tax. For areas where HMO residency is not by students, Council Tax records provide very weak indications of properties in HMO use. Applications for a change of use from C3 to C4 are not subject to a planning application fee, whilst there would also be likely to be significant implications for the planning enforcement service. If the threshold were to remain at 25% within a 50m radius, the evidence shows that the vast majority of areas outside the current Article 4 boundary would pass the current threshold test.



- 4.21 A specific issue has been raised in terms of Jesse Terrace. A petition was presented to the Strategic Environment, Planning and Transport Committee in March 2015, requesting that Jesse Terrace be covered by an Article 4 Direction. The data available in terms of numbers of HMOs existing or proposed do not indicate that this is one of the highest concentrations of such uses - the output area containing Jesse Terrace had 4.1% multi-person households in the 2011 Census, among the lowest rates in Reading. Council Tax and Environmental Health records point to only 3 properties being in HMO use which means that the street has a proportion of HMOs which is no greater than for Reading as a whole (i.e.10%).
- 4.22 However, it is considered that there may be more of an argument for considering restricting HMO use in Jesse Terrace based on the particular, unspoilt character of the street. Jesse Terrace lies within the Russell Street/Castle Hill Conservation Area and is an important example of a very fine, attractive street with interesting architectural detail of a type that is important to Reading's heritage. As such, it is already subject to an Article 4 Direction that removes permitted development rights to make certain physical changes to the properties. Officers will undertake further work to examine whether this Article 4 direction can be extended to also cover changes from C3 to C4 in order to prevent detrimental effects on the physical character of the street and bring a report back to this committee.
- 4.23 Members will be aware of the Council's initiative to improve standards in the private rented sector. The initiative involves providing support to tenants and landlords, the creation of a private rented sector charter and improved mechanisms to work corporately in managing the negative impacts that high levels of tenure turn over can have on communities. It is recognised that this work may help to improve both the quality of accommodation and any environmental implications.

(c) Other Options Considered

- 4.24 The alternative option regarding the SPD is not to review it. However, this would lead to some of the issues that have been highlighted remaining unaddressed, which will cause unnecessary work for both applicants and the Council. It would also fail to take emerging evidence into account in terms of whether the threshold being applied is the right one.
- 4.25 In terms of the Article 4 Direction, the main alternatives are to not proceed with any new or extended areas, or to seek a more extensive Article 4 direction area.
- 4.26 Not proceeding with new or extended areas would save resources for the Council. However, it would not do anything to address the specific

concerns regarding preserving the character of Jesse Terrace that have been raised.

- 4.27 Applying Article 4 Directions to other areas in the Borough would be significantly harder to justify on the basis of the available evidence, given the comparatively low level of multiple occupation in the area and the less clear arguments in terms of the character of individual areas.

## **5. CONTRIBUTION TO STRATEGIC AIMS**

- 5.1 The SPD and any Article 4 direction will contribute to achieving the following strategic aims:

- The development of Reading as a Green City with a sustainable environment and economy at the heart of the Thames Valley;
- Establishing Reading as a learning City and a stimulating and rewarding place to live and visit;
- Promoting equality, social inclusion and a safe and healthy environment for all.

## **6. COMMUNITY ENGAGEMENT AND INFORMATION**

- 6.1 A review of the Supplementary Planning Document would be subject to community engagement in line with the Council's adopted Statement of Community Involvement.

- 6.2 A new or extended Article 4 Direction would necessitate consultation the following measures, in accordance with Annex A of replacement Appendix D to Circular 9/95:

- Local advertisement
- Site notices and
- Individual notice to every owner and occupier of every part of the land within the area or site to which the direction relates.

## **7. EQUALITY ASSESSMENT**

- 7.1 Measures to control small houses in multiple occupation may have a particular adverse impact on younger people, as these types of accommodation tend to be occupied by younger people, and students in particular. As no specific proposals are being made through this report, an Equality Impact Assessment scoping has not been carried out, but such an assessment would be required to support a later report around changes to the SPD or to Article 4 areas, along with potentially a full Equality Impact Assessment.

## **8. LEGAL IMPLICATIONS**

- 8.1 The process for producing Supplementary Planning Documents is set out in the Town and Country Planning (Local Planning) (England) Regulations 2012

- 8.2 Article 4 Directions relate to Section 4 of the Town and Country Planning Act 1990. If a non-immediate Article 4 direction comes into force, a planning application will be required for any change of use from C3 (dwellinghouse) to C4 (small HMO) within the identified area. Permitted development rights will remain to change from C4 use to C3.

## **9 FINANCIAL IMPLICATIONS**

- 9.1 In terms of the SPD, costs will be accommodated within existing budgets. A consultation exercise can be resource intensive, particularly at early stages where the focus is on engaging as many people as possible, and on asking wide-ranging and open-ended questions. However, the Council's consultation process is based mainly on electronic communication, which helps to minimise resource costs.

- 9.2 There would be significantly greater financial implications associated with a new or extended Article 4 direction, depending on the scale of the area subject to the direction. These are summarised below:

- Collating the evidence to justify the Article 4 Direction would have an associated cost;
- There will be costs involved in individually notifying every owner and occupier of land within the area to which the direction relates and placing an advertisement in the press;
- Planning applications submitted solely because of an Article 4 Direction are not subject to any fee and the whole cost of considering and determining such applications therefore falls to the local planning authority; and

There could be substantial resource implications for the planning enforcement service of following up reports of unauthorised changes of use to small HMOs.

### **Risk Assessment**

- 9.3 There is a significant risk that this work will bring to light many unauthorised HMOs, which could place a significant additional burden on the authority's enforcement function. Owners of properties falling into this category may decide to apply for a certificate of lawfulness rather than planning permission depending on when the change of use to an HMO took place.
- 9.4 Any increase in workload will need to be carefully monitored. Additional resources may be required to deal with the increase in workload. Alternatively, the increase in workload will affect the Planning section's ability to deal with other priorities.

## **BACKGROUND PAPERS**

- Residential Conversions Supplementary Planning Document
- Reading Borough Private Sector House Condition Survey 2013
- 2011 Census