

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE		
DATE:	24 NOVEMBER 2015	AGENDA ITEM:	10
TITLE:	JESSE TERRACE - PROPOSED ARTICLE 4 DIRECTION IN RELATION TO SMALL HOUSES IN MULTIPLE OCCUPATION.		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	PLANNING	WARDS:	ABBAY AND MINSTER
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1. EXECUTIVE SUMMARY

- 1.1 At the meeting of this Committee on 26th March 2015, a petition was received requesting the extension of the existing Article 4 Direction that covers Jesse Terrace in Abbey Ward, which controls changes to the external appearance of buildings. The request was to also bring changes of use to small HMO use under planning control. In his response to the petition, Councillor Page (Lead Councillor for Strategic Environment, Planning and Transport) stated: "In the meantime I have arranged for a response to this petition, and an interim report on the review, to be brought to the next meeting of this Committee on 15th July."
- 1.2 In July 2015, this Committee considered a review of the current small HMO Article 4 Direction which covers parts of Katesgrove, Park and Redlands Wards, including whether it was a measure that could be used in other areas of the Borough. Committee noted the results of the review, agreed that the existing Supplementary Planning Document on Residential Conversions should be reviewed and 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 the Committee.
- 1.3 This report proposes the making of a new Non Immediate Article 4 Direction to control changes of use to small HMO use for the properties in Jesse Terrace, Reading.

2. RECOMMENDED ACTION

- 2.3 That Committee approves the making of a non-immediate Article 4 Direction to remove permitted development rights to convert from a C3 dwellinghouse to a C4 House in Multiple Occupation for Jesse Terrace as shown on the map in the Notice attached at Appendix 1.

3. POLICY CONTEXT

- 3.1 In September 2008, the Department for Communities and Local Government published a report entitled, 'Evidence Gathering - Housing in Multiple Occupation and possible planning responses. The report detailed the outcome of an evidence gathering exercise which was undertaken to review the problems caused by high concentrations of houses in multiple occupation.

- 3.2 This report summarised the impacts of HMOs (in particular where there are high concentrations of student housing and population) to include:

- *Anti-social behaviour, noise and nuisance;*
- *Imbalanced and unsustainable communities;*
- *Negative impacts on the physical environment and streetscape;*
- *Pressures upon parking provision;*
- *Increased crime;*
- *Growth in private rented sector at the expenses of owner-occupation;*
- *Pressure upon local community facilities; and*
- *Restructuring of retail, commercial services and recreational facilities to suit the lifestyle of the predominant population.'*

- 3.3 Planning legislation relating to Houses in Multiple Occupation (HMOs) subsequently changed on 6 April 2010 and a new planning use class (C4) for small HMOs (see definition below)¹ was introduced. Further changes came into effect on 1 October 2010. Currently, changes between a dwellinghouse (C3) and the new use class 'C4', which relates to a small HMO, can be carried out without the need for planning permission. They are classed as permitted development. However, there are powers for a Local Planning Authority to make an "Article 4 Direction" to remove those permitted development rights.

- 3.4 The findings of the impacts of concentrations of HMO's are very similar to the impacts that are highlighted in parts of the Borough. The Council

¹ A property, which is occupied by 3-6 unrelated individuals, who share one or more basic amenities, is an HMO under the new Use Class C4: Houses in Multiple Occupation. If there are more than 6, it is likely to be classed as a 'large HMO' (sui generis) which will be outside Use Class C4.

identified a particular problem with high concentrations of HMO's associated with the student population attending Reading University. An Article 4 Direction was made on 16th May 2012 to remove the permitted development rights 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.

- 3.5 In order to remove permitted development rights, evidence must suggest that there are exceptional circumstances where the exercise of the permitted development rights would harm local amenity or the proper planning of the area. There needs to be strong justification for the making of an Article 4 Direction.
- 3.6 An Article 4 Direction would mean that planning permission is required to convert a dwelling (C3) to a small HMO (C4). It would not mean that a particular type of development cannot be carried out, but simply that it is no longer automatically permitted. Applications would be assessed in the usual way against national planning policy and policies in the Local Development Framework. An Article 4 Direction would not necessarily mean that the Local Planning Authority would refuse planning permission for works but it would enable the authority to retain some control over the detail of the proposed development and to grant permission subject to appropriate conditions and to consider whether there was specific harm resulting from the proposed development.
- 3.7 In procedural terms there are two main types of Article 4 Direction:
- Non-immediate directions (the direction only takes effect and permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and
 - Immediate directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).

Article 4 (and Schedule 3, "Procedures for Article 4 directions") of The General Permitted Development Order (GPDO), which was fully revised in 2015, provides that an immediate direction can only be used where the authority consider that there is an urgent need to take action as the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.

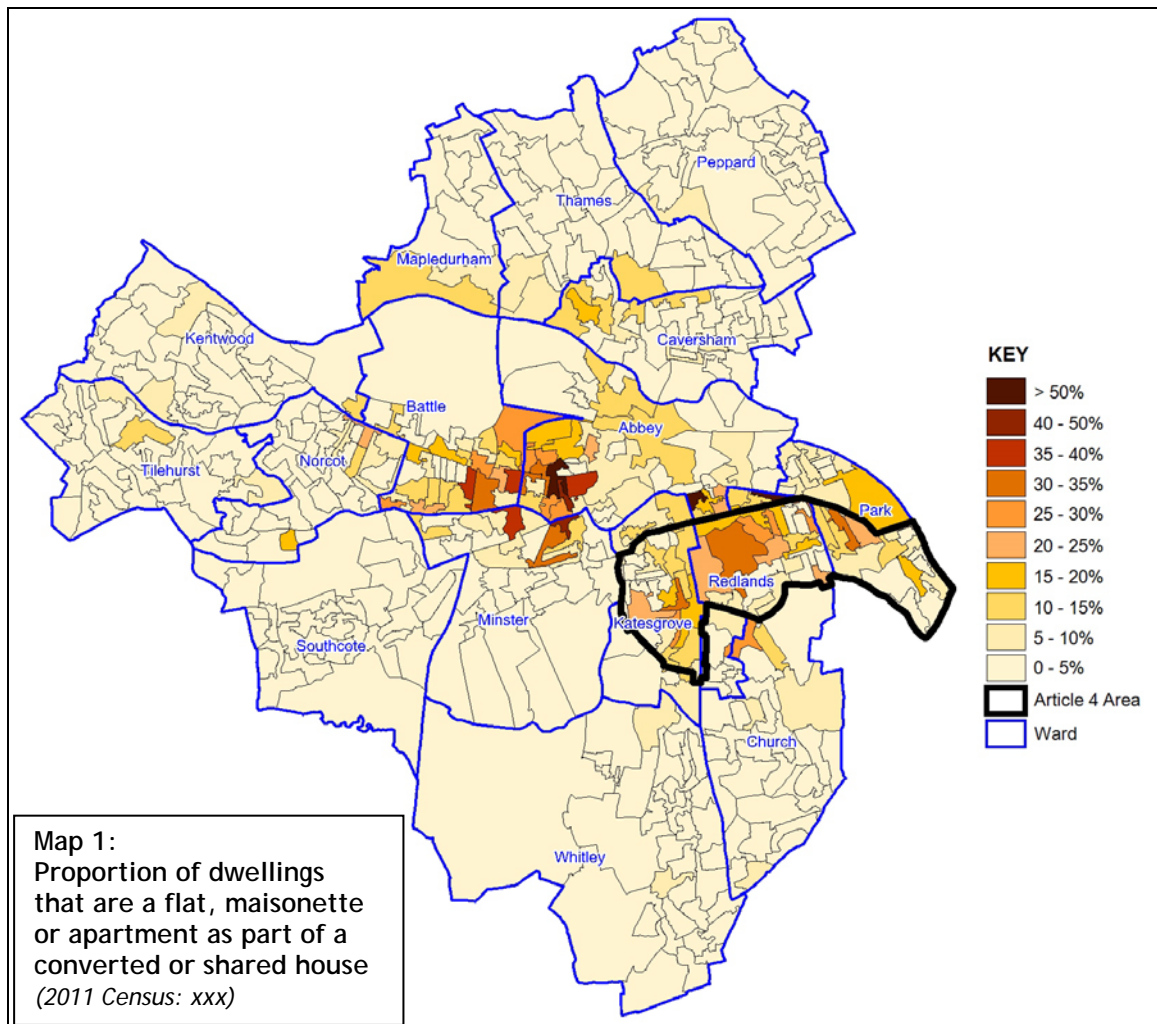
- 3.8 Where an application is made solely because of an Article 4 Direction, the Local Planning Authority could be liable for paying significant compensation for abortive work or other loss or damage directly attributable to the withdrawal of permitted development rights. This applies if an immediate direction is introduced. However, this risk is

removed if a non-immediate Article 4 Direction is served and a minimum period of 12 months prior notice of the withdrawal of permitted development rights is given. However that does give notice that might promote conversion activity to take place before the direction comes into effect.

4. THE PROPOSAL

(a) Current Position

- 4.1 At the March meeting of this Committee, a petition was received requesting the extending of the existing Article 4 Direction that covers Jesse Terrace in Abbey Ward to also bring changes of use to small HMO use under control.
- 4.2 At its meeting in July 2015, this Committee resolved 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. It was considered that its location within the Russell Street/Castle Hill Conservation Area, the unspoilt character of the street, and its importance as an example of a very fine, attractive street with interesting architectural detail of a type that is important to Reading's heritage, was justification for restricting further changes of use to HMO use in Jesse Terrace. The Article 4 Direction would seek to control the proliferation of HMO use in order to prevent detrimental effects on the physical character of the street.
- 4.3 Census information shows that the general area of the Castle Hill/Russell Street Conservation area has relatively high proportions of dwellings that are a flat, maisonette or apartment as part of a converted or shared house compared to other parts of Reading, although it does not have particularly high concentrations of HMO's compared to other parts of Reading. Nevertheless such concentrations are having detrimental impacts on the area of the sort noted in paragraph 3.2 above.



- 4.4 Council Tax and Environmental Health records point to three properties in Jesse Terrace being in HMO use. Information from the advertising of properties on the web points to two additional properties being used as HMO's. The total recorded proportion is therefore around 17%. This means that the street has a proportion of HMOs which is somewhat greater than for Reading as a whole (i.e.10%).
- 4.5 In moving forward with an Article 4 Direction, the original petition sought that the existing direction covering Jesse Terrace be extended to cover further changes of use to HMO use. However, any Article 4 Direction prepared now will have to be under the new 2015 GPDO. The existing Article 4 Direction is dated 19th July 2004 and was made under the GPDO 1995 and the new order changes all the statutory references. The existing direction also relates solely to operational development whereas the new one would be to cover change of use. Legal advice is that the Council should make a separate Article 4 Direction just covering Part 3 Class L.
- 4.6 As indicated, there are two forms of direction, an immediate and a non-immediate direction. The Council's clear legal advice is that an Immediate Article 4 Directions should be limited to situations where

there is an urgent need to protect the proper planning or local amenity of the area because there is evidence that the development to which the Direction relates has occurred and is and would be prejudicial to the proper planning of the area or constitute a threat to the amenities of their area. This is a high hurdle.

4.7 Legal advice is that if the Council sought to make an immediate direction it would be open to challenge either through representations to the Secretary of State who has to be notified of such a direction or through judicial review proceedings in the courts. In addition an immediate direction carries with it the threat of compensation. If planning permission is refused for an application only required as the result of an Article 4 Direction or is granted on less favourable conditions to those in the GPDO, an owner or any other person with an interest in the land may apply for compensation. Compensation covers (1) abortive expenditure and (2) loss or damage caused by the loss of PD rights.

(b) Option Proposed

4.8 It is recommended that the Council makes a non-immediate Article 4 Direction to remove permitted development rights to convert from a C3 dwellinghouse to a C4 House in Multiple Occupation for Jesse Terrace, Reading. A copy of the direction is attached at Appendix 1. This contains a map defining the area of Jesse Terrace to which the direction will apply. Once served following approval by Committee, there will be an opportunity for parties to make representations and the Council can consider amendments to the direction. The notice will make clear that the direction will not take effect until after 12 months from the date of the notice.

4.9 Once the direction takes effect, planning permission will be required to change use from a C3 dwellinghouse to a C4 small house in multiple occupation. Such applications will be considered in the light of relevant policies (currently policies CS18 and DM8) and the advice in the Council's Supplementary Planning Document on Residential Conversions.

4.10 Committee needs to note that exemptions from paying council tax exist where houses are occupied by students. Such exemptions are recorded on Council Tax records which, along with other information (mainly licencing information), provides a good indication of HMO use in those areas which have high concentrations of students. In areas not used by students, there are no such records of HMO use and it is therefore very difficult to establish through verifiable evidence those properties that are in HMO use at any one time. Obtaining such evidence is often very difficult and very resource intensive. It also has to be noted that applications made solely because permitted development rights have been removed by an Article 4 Direction are free of any planning application fees. Dealing with such applications, including any evidence gathering that is needed, will be expensive in terms of staff resources.

(c) Other Options Considered

4.11 Not proceeding with an Article 4 Direction 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.

4.24 Widening the coverage of an Article 4 Direction to a wider area would be significantly harder to justify on the basis of the available evidence, given the comparatively low level of evidence for HMO's in the area and the less clear arguments in terms of the character of individual areas.

5. CONTRIBUTION TO STRATEGIC AIMS

5.1 The Planning Service contributes to the Council's strategic aims in terms of:

- Seeking to meet the 2015 -18 Corporate Plan objective for "Keeping the town clean, safe, green and active."
- Seeking to meet the 2015 -18 Corporate Plan objective for "Providing homes for those in most need."
- Seeking to meet the 2015 -18 Corporate Plan objective for "Providing infrastructure to support the economy"

5.2 The Article 4 Direction will contribute, in particular, to achieving the strategic aim of keeping the town clean, safe, green and active.

6. COMMUNITY ENGAGEMENT AND INFORMATION

6.1 The Article 4 Direction will require the following consultation 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. An Equality Impact Assessment needs to be carried out.

8. LEGAL IMPLICATIONS

8.1 Article 4 Directions restrict development otherwise permitted by the GPDO and give development control back to the Local Planning Authority. 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 There will be financial implications associated with the new Article 4 Direction. These are summarised below:

- 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.
- Most significantly and as explained in detail above, the serving of an immediate direction carries with it the threat of compensation.

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

- 2011 Census

APPENDIX 1: DRAFT ARTICLE 4 DIRECTION

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 2015

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS Reading Borough Council being the appropriate local planning authority within the meaning of article 4(4) of the GPDO, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged black on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below:

SCHEDULE

Change of use from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation), being development comprised within Class I of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and not being development comprised within any other Class

Made under the Common Seal of
Reading Borough Council this
24th day of November 2015.

The Common Seal of the Council
was affixed to this Direction in
the presence of

.....

.....



**JESSE TERRACE ARTICLE 4 DIRECTION AREA
(FOR HOUSES IN MULTIPLE OCCUPATION)**

24th November 2015

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Reading
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