

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 28 March 2017	<b>Meeting Name:</b> Planning committee
<b>Report title:</b>		Confirmation of Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) covering Bywater Place	
<b>Ward(s) affected:</b>	<b>or</b>	<b>groups</b>	Bywater Place, Surrey Docks
<b>From:</b>		Director of Planning	

## RECOMMENDATIONS

That planning committee:

1. Authorises the confirmation of the Article 4 Directions (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for changes of use from dwellinghouses (Class C3) to Houses of Multiple Occupation (HMOs) (Class C4) covering any property on Bywater Place (Appendix B).
2. Notes the updated equalities analysis of the proposed Article 4 Directions (Appendix C).
3. Delegates to the Director of Planning the arrangements for confirming the Article 4 Direction including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) Order 1995.

## BACKGROUND INFORMATION

4. Houses of multiple occupation (HMOs) play an important role in meeting some housing needs. HMOs provide residential accommodation suitable for vulnerable people, such as people in need of support or care and individuals on housing benefit; particularly single people under 35. HMOs also provide housing for single person households such as students, young professionals and people with more limited means.
5. An overconcentration of HMOs may result in harmful impacts to amenity within their vicinity. These impacts can include excessive noise, anti-social behaviour, poor refuse management, transport stress and negative impacts on the physical environment and streetscape. A high prevalence of HMOs can affect the character of an area due to the loss of family housing and the resultant demographic impacts. HMOs are also typically associated with a relatively high population churn which may damage social cohesion.
6. Residents of Bywater Place have reported a deterioration of amenity resulting from the growing number of family homes on the estate being used as HMOs. This report sets out how to manage changes of use from family homes to HMOs in Bywater

Place where a high prevalence of HMOs is being reported as causing harmful impacts to the amenity and character to a local area.

7. Family homes and HMOs are different land uses under the Use Class Order. The different planning categories which apply to family homes and HMOs are set out below.

Type of home	Planning use class
Family homes	C3
HMO for between three and six people	C4
HMO for more than six people	Sui generis

8. A planning application is not required to change use from a family home (C3 use) to a smaller HMO (C4 use) as the change is permitted under the General Permitted Development Order (GPDO). Change of use from C3 or C4 to a larger HMO (sui generis) is not permitted under the GPDO and a full planning application must be granted by the local planning authority (LPA) prior to the lawful change of use in those circumstances.
9. A local planning authority may introduce an Article 4 Direction to remove permitted development rights where the impact of development brought forward under provisions in the GPDO cause harm. An Article 4 Direction removing permitted development rights for changes of use from C3 to C4 means that changes between these uses will only be lawful after planning permission has been granted by the LPA. Article 4 Directions do not mean the change of use will be unacceptable in all cases and the planning authority must assess the merits of each individual application in accordance with local plan policies and other material considerations.
10. The council introduced an Article 4 Direction removing permitted development rights to change use from C3 to C4 uses to properties on Henshaw Street in 2014. This was introduced to manage impacts resulting from changes of use from C3 to C4 due to the already high concentration of HMOs on the street. Residents of Bywater Place have reported a deterioration of local amenity resulting from a growing proportion of homes being converted to C4 use on the street. However, in the absence of an Article 4 Direction the council currently has no powers to manage changes of use between C3 and C4 uses on Bywater Place.
11. On 11 October 2016 planning committee resolved to make an immediate Article 4 Direction to remove permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) covering Bywater Place. The regulations require the council to take into account any representations received during the consultation period when confirming an Article 4 Direction. These are outlined within the report and summarised in further detail in the attached consultation report (see Appendix D). The immediate directions must be confirmed within 6 months of the date in which the Direction came into force (27 October 2016) to prevent expiration of the direction in accordance with Schedule 3, part 2 (6) of the Town and Country Planning (General Permitted Development) Order 2015.

### **HMOs on Bywater Place**

12. Bywater Place is a housing estate towards the north-eastern tip of the Rotherhithe peninsula (see Appendix 1). The housing mix includes a range of flats, terraces,

semi-detached and detached housing with a 1980's London Docklands Development Corporation architectural style (see Appendix 2). The streets immediately to the north (Admiral Place and Heron Place) are of a similar architectural style and may be part of the same development. Residents of Bywater Place have approached the council to express their concern that the character of the street and residential amenity is being adversely affected by the high proportion of properties being converted to HMOs, some of which have been extended prior to the change of use<sup>1</sup>. A number of HMOs on Bywater Place and across the Rotherhithe peninsula are managed by Ultimate Housing. Ultimate Housing provides flexible HMO tenancies aimed at young professionals new to London and who typically work in Canary Wharf and the City of London.

13. Some Bywater Place residents report that the growing use of family homes as HMOs is changing the character of the area and causing harm to residential amenity. This is primarily a consequence of greater pedestrian and vehicular movements leading to an increase in noise and the generation of more household waste. It has also been reported the properties in use as HMOs have poorly maintained private amenity space which adversely affects visual amenity. The suburban character of the area is particularly suitable for families with children and widespread loss of family homes would alter the demographic mix in the area.
14. There are 90 properties on Bywater Place and 14 (15.6%) are known to be in use as HMOs by the council. Information provided by the estate's management company indicates that a further four homes are suspected<sup>2</sup> of being used as HMOs. Twenty three homes are privately rented and there is a possibility they are being used as HMOs. The remaining 49 properties are recorded as being owner-occupied. The following table shows the estimated prevalence of HMOs on Bywater Place. This shows 20% to 45% of properties on the street may be in use as HMOs.

Property status	Number	Percentage
Unlikely to be an HMO	49	54.4%
Possibly an HMO	23	25.6%
Suspected of being an HMO	4	4.4%
Identified HMO	14	15.6%
<b>Total</b>	90	

#### Article 4 Directions

15. An Article 4 Direction can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether, but instead ensure that development requires planning permission. A planning application would need to be submitted that would then be determined in accordance with the development plan. Article 4 Directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.
16. The government's national planning practice guidance (NPPG entitled "When is permission required?") sets out guidance on the use of Article 4 Directions. The

<sup>1</sup> The Council previously granted planning permission for an extension and conversion of a garage to residential use on Bywater Place and attempted to impose a planning condition to restrict its use as part of an HMO. A planning inspector stated the Council could not require the developer to submit to this condition.

<sup>2</sup> Information sourced from estate management company, planning enforcement and environmental health team.

NPPG states that an Article 4 Direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 Direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (paragraph 38).

17. Article 4 Directions can either be immediate or non-immediate. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 045). In the case of this report, the council introduced an immediate Article 4 Direction on 27 October 2016, for which the process is as follows:
- Stage 1 - The council makes an Article 4 Direction withdrawing permitted development rights with immediate effect.
  - Stage 2 – Publication/Consultation stage. The council:
    - 1) publishes the notice of direction in a local newspaper
    - 2) formally launches representation period with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of at least 21 days
    - 3) and place notices up on site for not less than 6 weeks.
  - Stage 3 – On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has powers to modify or cancel a Direction.
  - Stage 4 – Confirmation Stage (current stage) - The Direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and 6 months to decide whether to go ahead and confirm the Direction, taking into account any representations which have been received. If confirmation this does not happen within 6 months, the Direction will lapse.

## **Compensation**

18. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 Directions. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 Direction withdraws, if they:
- 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 GPDO would normally allow, as a result of an Article 4 Direction being in place.
19. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes 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.

20. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
21. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). In cases such as these compensation is not payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act:
  - The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended).
  - The permitted development right is withdrawn in the prescribed manner.
  - Notice of withdrawal is given in the prescribed manner:
    - Not less than 12 months before it takes effect.
    - Not more than the prescribed period of two years.
22. Permitted development rights granted by Schedule 2, Part 3, Class L (b) is prescribed development, which means that compensation will only be payable for 12 months from the date that the immediate Direction comes into force.

### **Planning applications**

23. When permitted development rights are withdrawn and planning permission is required, the council is obliged to determine a proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan (2016), the Core Strategy (2011), saved policies in the Southwark Plan (2007) and adopted area action plans. The relevant saved policies relating to change of use in the Southwark Plan is Policy 4.7 "Non self-contained housing for identified user groups." The policy seeks to regulate new HMOs to ensure the use does not result in a significant loss to amenity to neighbouring occupiers and to ensure there is adequate infrastructure in the area to support the increase in households. Furthermore, the policy seeks to ensure such development makes suitable provisions for adequate amenities and facilities to support the specific needs of the occupiers, including servicing and management arrangements. Southwark Plan Policy 4.3 "Mix of dwellings" prevents subdivision of larger family homes into two or more units. This policy does not apply to the conversion of family homes into HMOs, however the effect of such conversions is similar in terms of loss of family housing stock and the intensification of use. As such, there is a strong policy basis against which to assess applications for change of use from C3 to C4.
24. The reason for confirming the Article 4 Directions is to protect residential amenity and the quality of residential accommodation. The relevant policies that therefore apply are saved Southwark Plan policies 3.2 ("Protection of amenity"), policy 3.12 ("Quality

in design”), policy 4.2 (“Quality of residential accommodation”). The council’s Residential Design Standards SPD (2015) also contains guidance relating to the quality of residential accommodation which would be applicable in the determination of planning applications for changes of use which included any additional floorspace or reconfiguration of the home.

25. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 Direction, the council cannot charge a planning application fee.

## **KEY ISSUES FOR CONSIDERATION**

26. As is noted above, the NPPF advises that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the NPPG which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.
27. The immediate Article 4 Direction came into effect on Bywater Place on 27 October 2016 following reports from residents of the street regarding negative amenity impacts attributable to the high prevalence of HMOs. The reported impacts included increased disturbance, waste and parking stress and a detrimental effect on the character of the area. Due to the reports being limited to Bywater Place, the Article 4 Direction was applied only to Bywater Place, and not the surrounding streets where reports on the impact of HMOs had not been received. Following the introduction of the Direction, the council launched a representation period to enable local residents and other interested parties to register support for or objections to the Direction. A summary of the representations can be found in sections 40 to 46 of this report as well as in the appended consultation report (Appendix D).

## **Impact of concentration of properties identified as “definite” and suspected HMOS**

28. The use of a single family dwellinghouse (C3) as an HMO (C4) is an intensification of use because single households typically generate less waste and movements per person than multiple households. The outer area of the Rotherhithe peninsula is suburban in character with relatively poor public transport accessibility and a relatively high prevalence of family homes. Following the introduction of the Article 4 Direction on Bywater Place on 27 October 2016, new proposals for change of use from dwellinghouses (C3) to HMOs (C4) on Bywater Place have required the grant of planning permission from the council. This is justified to preserve the character of the area and to ensure development is managed sustainably as it enables the council to ensure there are adequate waste management and parking facilities to cope with the intensification of use. It would also enable the council to preserve the character of an area by protecting existing family housing. As established above in paras 23 -25, there is a strong policy basis upon which the council can assess planning applications for a change of use from C3 to C4, submitted as a result of the introduction of the Article 4 Direction.
29. The key issues resulting from a high concentration of HMOs on Bywater Place were identified as affecting the street through representations, listed in paragraph 40. Confirmation the Direction will enable the council retain control over changes of use

from C3 to C4 in Bywater Place in accordance with the policies in the development plan.

30. The Secretary of State (SoS) allowed an appeal for an application ref: (14/AP/3743) for the removal of a condition of a planning permission to restrict the use of an extended property at No. 32 Bywater Place as a HMO. The reasons the SoS cited for allowing the appeal included that "...the evidence does not suggest this is an area where an overconcentration of HMOs is likely to result in significant harm to residential amenity." The appeal decision was made in October 2015.
31. To ascertain the extent to which reports of negative amenity impacts resulting from a high prevalence of HMOs was supported by evidence, the council sought to establish the prevalence of HMO properties on the street from a range of reliable sources including:
  - recent planning applications
  - mandatory HMO licenses
  - Rendall and Ritner (the estate owner and manager) data
  - the council's more recent "additional licensing" HMO records.
32. During the representation period the council received 19 supportive responses from residents of Bywater Place. These 19 responses corroborated the initially reported impact the uncontrolled conversion of properties from C3 to C4 was having on the amenity of the occupiers and character of the street. The responses received in support of the Direction detailed the amenity impacts and impacts on the character of the street caused by the current prevalence of HMOs. These responses, combined with the use of data on the number of definite and suspected HMOs provides a strongly evidenced figure that around 20% (18 properties) of the 90 properties in the street are likely to be HMOs, with 15% of these (14 properties) confirmed as definite HMOs. This quantitative and qualitative-driven evidence informs the recommendation to confirm the Direction to enable the proper planning of the area. Enabling the proper planning of the area will enable the council to minimise further amenity impacts and harm to the street's character through uncontrolled conversions of C3 to C4 permitted under Schedule 2, Part 3, Class L (b) of the Order.

### **25% of properties identified as "possibly" being HMOs**

33. 25% of the properties on the street are identified as "possibly" being an HMO as they are in use as private rented accommodation, rather than owner-occupied. Due to the lack of available data confirming their status as either C3 or C4 accommodation their status as "possibly" HMOs should not form a key consideration in determining their contribution to current prevalence of HMOs on the street. However, the fact that they are identified as "possibly" being HMOs (by virtue of being private rented accommodation) should be an important consideration in determining the possible likelihood of these properties being converted from C3 to C4 in the future, should they not already be unconfirmed HMOs.
34. In light of these private rented properties it is reasonable to predict that there would be an increase in the future prevalence of HMOs on the street based on recent market trends. In recent years there has been a significant increase in the number of

HMOs within the street. It is acknowledged that all or some of these “possible” properties, confirmed as private rented accommodation and identified as “possible” HMOs, could be occupied by renting families. However, private rented properties frequently experience a higher churn of inhabitants relative to owner-occupied housing. Therefore there is a heightened risk of uncontrolled change of use from C3 to C4 in the absence of a permanent Article 4 direction.

### **Impact of the increased number of households from HMO conversion**

35. In determining whether to confirm the Article 4 Direction it is not appropriate to consider whether the type of occupiers of the existing HMOs would affect the extent of the reported amenity impacts (such as noise and disturbance from increased households, comings and goings, parking/traffic impacts and waste management issues). One objection to the Article 4 Direction argued the type of resident who would occupy an HMO on Bywater Place would not have a negative impact on amenity because many HMOs on Bywater Place are occupied by young professionals working in the City of London and Canary Wharf. This is a specious presumption not grounded in evidence. The council maintains the view that the amenity impacts described above and reported by the supporters of the direction occur regardless of the type of occupiers. This is on the basis that the impacts occur as a result of the number of households occupying the properties, and not as a result of the type of occupiers.

### **Potential dis-benefit of confirming the Direction – restricting housing supply**

36. The decision to confirm the Article 4 Direction must be taken in view of the benefits and dis-benefits of restricting the type of permitted development prescribed under Schedule 2, Part 3, Class L (b) of the Order. The benefits include the LPA having the ability to better manage any negative impacts, such as those described in para 40, of any conversion of self-contained properties (C3) to HMOs (C4) by requiring planning approval. One objector has argued that a dis-benefit of confirming the Article 4 would be restricting housing supply. It is acknowledged that HMOs by definition house multiple households, often comprising of employed single and co-habiting couples “house-sharing,” split between bedrooms within a house with others in a similar situation. If the HMOs were to be used as family-sized homes as they were originally designed, each bedroom would most likely be accommodating either an adult or a child and there is nothing to suggest otherwise. Therefore between each of the two uses (C4 and C3, respectively) the amount of housing in use remains the same, and will not be reduced through the confirmation of the Direction. Rather, it is argued that the confirmation of the Direction will help protect existing family-sized housing for which there is an identified need and for which we have existing policies in place to retain (see paragraphs 23 to 25 and 37 to 38).

### **Bywater Place - suitability for family-sized homes**

37. As noted above, Bywater Place was developed in the 1980s in suburban-style, featuring cul-de-sacs and ample car parking provision. As a result of this, in current and emerging policy terms the street and the surrounding area are designated as the “suburban” density zone and features a strong suburban character. The (revised) Canada Water Area Action Plan was adopted in 2015 following the Mayor’s designation of the Canada Water opportunity area in the London Plan, signifying the area’s anticipated growth (including for approximately 5,500 new homes up to 2026). However, this growth will be delivered through key town centre sites within the action

area core and not within the wider action/opportunity area, in which Bywater Place is situated. The prevailing suburban built form, established character and density designation of the Rotherhithe peninsula outside of the action area core is, within the adopted and emerging development plan, proposed to remain as existing and will not be a key area for housing delivery.

38. The area's suitability for the provision of new, and retention of existing, family homes is an important element of the area's character and existing policy context. To help maintain and enhance this character, and help fulfill the important function that the provision of family homes fulfills in this part of the borough, the Core Strategy currently requires that any new developments of 10 residential units or more provide a minimum of 30% of units as three, four or five bedroom family-sized homes. The draft New Southwark Plan policy, currently at preferred option stage, also proposes the same requirement. The established and emerging policy contexts therefore demonstrate that this part of the Rotherhithe peninsula is not anticipated to be a key area for housing delivery and that it is suitable for suburban-style, family-sized homes. In view of this and that put forward in paragraph 38, claims that confirmation of the Direction would result in dis-benefits such as restricting housing supply should be given little weight.
39. In summary, there is a strong rationale to confirm the Direction and maintain control of future change in the amount of family-sized housing on Bywater Place. This rationale is supported by evidence of the prevalence of HMOs on the street and their resultant impacts as detailed in representations submitted as summarized in paragraph 40.

### **Representation period**

40. The council made the Article 4 Directions on 27 October 2016. Notification was given to the Secretary of State. Subsequently, notification was published in Southwark News, site notices were placed in several locations covering Bywater Place and occupiers of the properties subject to the Article 4 Direction were notified by letter. Formal public representation period took place between 27 October and 8 December 2016 although late responses were accepted. The Article 4 Directions and reports were published on the council's website, and email notification was sent to all those on the planning policy email database. Comments were invited via email, post and via the council's online consultation hub.
41. The council received 24 responses during the representation period. 19 respondents expressed support for the Article 4 Direction. The reasons given include the ability to better control and manage the impacts arising from the conversion of properties from C3 to C4. The key impacts that residents reported as problematic due to the existing prevalence of HMOs include:
- Impact on the family-orientated character of the street, which has a strong sense of community, affected by the transient nature of occupants of the HMOs.
  - Impact on parking and traffic, overcrowded parking on spaces not designed for parked cars owing to of the scarcity of parking spaces due to the increased number of vehicles resulting from the increase in number of households; the impact of this on streetscape and safety for children.

- Restricting access to family housing due to HMOs providers competing for properties which come on the market for sale.
  - Waste management issues with increased number of households not adhering to waste collection protocols resulting in waste left out and spilling onto the street for prolonged periods with resultant increases in vermin activity. Issues with prevalence of fly tipped furniture and other bulky items left on the street from increased rate of HMO occupier turnover, negatively affecting visual amenity and safety of streetscape.
  - Increase in noise and disturbance from more frequent comings, goings and activities of residents and visitors of HMO occupiers.
42. These responses have been considered under the “Key issues for consideration” section.
43. Several points were raised in support of the confirmation of the Direction which cannot be considered in the decision to confirm the Direction. These include:
- Suspicions that properties do not meet fire safety regulations standards:
    - Response: this is an issue for building control and the council’s HMO licensing teams to address.
  - Unauthorised development being undertaken on the HMO properties contrary to plans submitted to and approved by the LPA:
    - Response: Residents should report suspected violations to the council’s planning enforcement team.
  - Increase in accommodation from the conversion of the ancillary garages on the street:
    - Response: Conversion of garages into accommodation on Bywater Place should be subject to planning permission, therefore it is assumed that in most instances development of this type would have been subject to a planning application, assessed against the policies within the development plan and approved by the council. Where it is suspected that planning permission has not been obtained for development of this type undertaken on the street this should be reported to the planning enforcement team.
  - That some properties were being let on an “Air BnB” arrangement (i.e. short term holiday lets) further impacting on the sense of a stable, long-term community with an increase in transient occupiers:
    - Response: Prior to January 1 2017 the council did not have control over home owners renting out their properties for short-term holiday lets. Since January 1 2017, property owners letting their London properties as short term holiday lets for more than 90 days per year require planning permission for a change of use to C1, owing to the extent of short-term holiday lets constituting a material change of use.

44. These issues cannot be considered in determining whether to confirm the Direction due being unrelated to the impact arising from the unrestricted change of use from C3 to C4 under the Order, i.e. the permitted development prescribed in the Order which the Article 4 Direction is seeking to curtail. However, where identified as such the issues could be looked into further and tackled through other teams/service providers within the council.
45. 3 respondents objected to the Article 4 Direction. The reasons given include:
- Limited evidence of the impact of development permitted under Schedule 2, Part 3, Class L (b) of the Order is having on the street.
  - That no consultation had been carried out prior to the implementation of the Direction.
  - Limiting the ability of property owners to increase housing supply in a time of housing need.
  - That the occupiers of one of the HMO providers on the street are primarily professionals who work in the City of London and Canary Wharf and therefore amenity, waste and parking impacts are limited relative to that which might be expected from other types of HMO occupiers.
  - That there is not justification on implementing an Article 4 Direction on Bywater Place while not implementing one on the adjoining streets part of the same 1980s London Docklands Development Corporation development.
46. These objections have been considered within the bulk of the report within “Background information” (paragraphs 4 to 25) and “Key issues for consideration” (paragraphs 26 to 39). A further detailed summary of representations received during the representation period, along with the council’s response, can be found in the consultation report, attached as Appendix D. Paragraphs 26 to 39 discuss the issues raised through representations relevant to the confirmation of the Direction in more detail.

## **Conclusions**

47. Having taken into account the representations made and for the reasons as detailed in this report, the council is satisfied that permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) prejudice the proper planning of Bywater Place and presents an immediate threat to the residential amenity of current and future occupiers of the street and therefore the Direction should be confirmed.
48. It is recognised that converting dwellinghouses to HMOs can provide housing which meets some household’s housing needs. However there are a number of concerns relating to the proliferation of HMOs in areas which currently have a high concentration.

## **Community impact statement**

49. Southwark Council is striving to deliver quality homes of every kind to meet the needs of a diverse range of households and families within the borough. The council is

working hard to deliver new housing with a strong commitment to the delivery of new affordable homes. The demand for housing in Southwark and across London is extremely high, and it is vital that a strong policy framework ensures new housing maintains a high quality of design of residential accommodation and protects the amenity of residents. The Article 4 Directions seek to manage changes of use from dwelling houses to HMOs in a street which has been identified as having a high prevalence of HMOs and is part of a longer term strategy to provide good quality residential accommodation in the borough.

50. The equalities analysis (Appendix C) has concluded that the Article 4 Directions will have a neutral impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

### **Financial implications**

51. The introduction of an Article 4 Direction necessitates the submission of a planning application to lawfully undertake development that is prescribed in the GPDO. Any application submitted for reason of the direction must be processed by the council for no fee. Considering the limited number of properties affected by the proposed Article 4 Direction this cost is likely to be minimal.
52. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by Schedule 2, Part 3, Class L (b), the council's potential liability for compensation is limited to one year from the date the Direction is introduced. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore there is a risk that the proposed Directions will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims. However, the magnitude of the claim owing to any depreciation in value of land or buildings is assessed by valuing the land or buildings in their current use and the use that would have been permitted development in the absence of an Article 4 Direction. It is unlikely that a valuation of a home in use as a C3 dwellinghouse and as a C4 HMO would result in any significant divergence.
53. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. This position will be monitored and any award that cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council reserves.
54. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.
55. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

56. Planning committee is being asked to confirm an immediate Article 4 Directions which relates to “prescribed development” as defined by regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).
57. Part 3F of the council’s constitution entitled “Matters reserved for decision by the planning committee” at paragraph 3 reserves to planning committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This, therefore, confirms that planning committee has authority to take the decisions being asked of it.
58. In regard to compensation matters, section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order.
59. Section 107 of the 1990 Act which sets out the entitlement to compensation where planning permission has been revoked and modified is of relevance here as section 108 of the 1990 Act extends the entitlement for compensation under s107 to circumstances where planning permission granted by a development order has been withdrawn by an Article 4 Direction.
60. In regard to the immediate Article 4 Directions withdrawing rights granted under Schedule 2, Part 3, Class L (b) is a ‘prescribed description’ development and because it is an immediate direction (the council is not giving more than 12 months notice of the making of the direction) then the council will need to pay compensation for claims made within 12 months of the date of the direction.
61. The value of the claim for compensation would differ in each individual case but in the event that claims are between £5,000 and £50,000 then they would be sanctioned by the relevant cabinet member under Part 3D paragraph 5 of the constitution. Any compensation claims over that amount would require the approval of full cabinet.

### **Human rights and equalities**

62. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various convention rights may be engaged in the process of confirming this Article 4 Direction, including under Article 1 of the First Protocol (Protection of property) and Article 8 (Right to respect for a private and family life). The European Court has recognised that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”. Both public and private interests are to be taken into account in the exercise of the council’s powers and duties as a local planning authority. Any interference with a convention right must be necessary and proportionate.
63. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 Directions have been considered under the Human Rights Act 1998 and it has been determined that to confirm the Article 4 Direction is not incompatible with the ECHR.

64. In consulting upon the introduction (including the confirmation) of the Article 4 Directions the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
65. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.
66. The council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed immediate Article 4 Directions and the non-immediate Direction on these groups of people have been considered and where possible mitigated (Appendix C).

### **Strategic Director of Finance and Governance**

67. This report is requesting planning committee to authorise the confirmation of Article 4 Directions (Appendix A) to withdraw the permitted development rights as part of the regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended) for changes of use from dwellinghouses (Class C3) and Houses of Multiple Occupation (HMOs) (Class C4) covering any property on Bywater Place (Appendix B), as detailed in the recommendations. Full details and background are contained within the main body of the report.
68. The strategic director of finance and governance notes that there is a risk that the proposed Article 4 directions may lead to potential compensation claims. It is noted that although it is not possible to gauge the magnitude of such claims but this is not considered to be significant as reflected in the financial implications. Any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
69. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from councils reserves are requested.
70. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Saved Southwark Plan 2007	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan</a>	<a href="mailto:planningpolicy@southwark.gov.uk">planningpolicy@southwark.gov.uk</a>

The Core Strategy 2011	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan</a>	planningpolicy@southwark.gov.uk
Residential Standards SPD 2015	<a href="https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/supplementary-planning-documents-spd/spd-by-planning-topic?chapter=5">https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/supplementary-planning-documents-spd/spd-by-planning-topic?chapter=5</a>	planningpolicy@southwark.gov.uk
General Permitted Development Order 2015	<a href="http://www.legislation.gov.uk/uk/si/2015/596/pdfs/uksi_20150596_en.pdf">http://www.legislation.gov.uk/uk/si/2015/596/pdfs/uksi_20150596_en.pdf</a>	planningpolicy@southwark.gov.uk

## APPENDICES

No.	Title
Appendix A	Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
Appendix B	Maps area subject to proposed Article 4 Direction
Appendix C	Equalities analysis (also available on the council's website)
Appendix D	Consultation Report (also available on the council's website)

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Tom Weaver, Graduate Planner	
<b>Version</b>	Final	
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<b>CONSULTATION WITH OTHER OFFICERS/DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	<b>Yes</b>	<b>No</b>
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