

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 11 January 2022

Decision Type: Non-Urgent Non-Executive Non-Key

Title: UPDATE ON HOUSES IN MULTIPLE OCCUPATION

Contact Officer: Ben Johnson, Head of Planning Policy and Strategy
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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: (All Wards);

- 1.1 The report provides an update on evidence relating to Houses of Multiple Occupation (HMOs) in the Borough, following a report to Development Control Committee, Renewal, Recreation and Housing Policy Development and Scrutiny Committee and Executive in summer 2021.
 - 1.2 At the meeting of 15 July 2021, Executive authorised the making of two Article 4 Directions to remove C3 to C4 permitted development (PD) rights; an immediate Direction covering Biggin Hill and Darwin wards, and a non-immediate Direction covering the rest of the Borough. The immediate Direction must be confirmed by 28 February 2021 in order to remain in force after this date, while the non-immediate Direction must be confirmed before 1 September in order for it to come into effect.
 - 1.3 The report summarises the current evidence available in relation to HMOs in the Borough, and considers that there is not sufficient justification to confirm either of the Directions, in line with the requirements of national planning policy and guidance.
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- 2.1 **To note the updated evidence relating to HMOs set out in this report, which supplements the May 2021 evidence base document at Appendix 1.**
- 2.2 **That the immediate Article 4 Direction covering Biggin Hill and Darwin wards is not confirmed.**
- 2.3 **That the non-immediate Article 4 Direction covering all wards of the Borough with the exception of Biggin Hill and Darwin is not confirmed.**
- 2.4 **That officers continue to monitor evidence relating to HMOs in the Borough, including seeking more information on smaller HMOs borough wide and within existing and developing clusters.**

2.5 That officers will report back to Development Control Committee when further data and / or guidance is available, particularly data from the 2021 Census, which suggests that additional planning controls may be necessary and justified.

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: N/A
 2. BBB Priority: Regeneration
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: Ongoing work and research related to HMOs (relevant to planning) will be met from the Planning Policy and Strategy budget.
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.568m
 5. Source of funding: Existing Revenue Budget for 2021/22
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Personnel

1. Number of staff (current and additional): 10fte
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Article 4 and Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: None
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

Background

- 3.1 In May 2021, an evidence base report considering information relating to Houses in Multiple Occupation (HMOs), including consideration of existing concentrations and impacts, as well as approaches to control them, was considered by Development Control Committee (DCC)¹; this report is provided at Appendix 1. The report set out details of the Article 4 Direction process (at paragraphs 4.4 to 4.11). Considering this evidence base report, officers noted in the accompanying May 2021 DCC report that there was currently little justification for putting in place Article 4 Directions to remove the PD rights which allow conversion of homes to HMOs, either Borough-wide or in specific areas. The May 2021 DCC report recommended that evidence relating to HMOs in the Borough was monitored further and that officers would report back to DCC when further data and / or guidance is available, particularly data from the 2021 Census.
- 3.2 Following consideration of the report, DCC endorsed the making of an immediate Article 4 Direction to remove PD rights which allow conversion of homes to HMOs in Biggin Hill and Darwin wards; and a non-immediate Article 4 Direction to withdraw these PD rights across the remainder of the Borough². The Directions suggested by DCC were referred to Executive for consideration.
- 3.3 Prior to consideration by Executive, the Renewal, Recreation and Housing Policy Development and Scrutiny Committee (RRHPDS) considered the proposed Directions at the meeting of 16 June 2021³. RRHPDS resolved that the Executive be recommended to consider the imposition of Article 4 Directions as proposed by DCC⁴.
- 3.4 Executive considered the proposed Article 4 Directions at the meeting of 30 June 2021⁵. Executive sought clarification on the evidence base to support the proposed Directions and asked officers to investigate strengthening this evidence base in time for the matter to be re-considered at the next meeting of the Executive⁶. Officers provided a further update regarding available evidence at the next meeting of the Executive on 15 July 2021⁷. Executive then resolved that the proposed Directions should be made⁸.
- 3.5 The Directions were 'made' on 1 September 2021. The immediate Article 4 Direction for Biggin Hill and Darwin wards became effective straight away, but must be confirmed within six months, i.e. by 28 February 2022, in order to remain in force after that date. Without confirmation before this date, the immediate direction will expire.
- 3.6 The non-immediate Article 4 Direction covering the remainder of the Borough comes into effect (subject to a further decision to confirm) 1 September 2022).

¹ Committee report available from: <https://cds.bromley.gov.uk/ieListDocuments.aspx?CId=133&MId=6912>

² Minutes of committee meeting available from: <https://cds.bromley.gov.uk/documents/g6912/Public%20minutes%20Thursday%2020-May-2021%2019.30%20Development%20Control%20Committee.pdf?T=11>

³ Committee report available from: <https://cds.bromley.gov.uk/ieListDocuments.aspx?CId=117&MId=7196>

⁴ Minutes of committee meeting available from: <https://cds.bromley.gov.uk/documents/g7196/Public%20minutes%20Wednesday%2016-Jun-2021%2019.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20.pdf?T=11>

⁵ Committee report available from: <https://cds.bromley.gov.uk/ieListDocuments.aspx?CId=121&MId=7095>

⁶ Minutes of committee meeting available from: <https://cds.bromley.gov.uk/documents/g7095/Public%20minutes%20Wednesday%2030-Jun-2021%2019.00%20Executive.pdf?T=11>

⁷ Committee report available from: <https://cds.bromley.gov.uk/ieListDocuments.aspx?CId=121&MId=7231>

⁸ Minutes of committee meeting available from: <https://cds.bromley.gov.uk/documents/g7231/Printed%20minutes%20Thursday%2015-Jul-2021%2009.00%20Executive.pdf?T=1>

- 3.7 Consultation on the Directions was undertaken from 1 September to 14 October 2021 (a period of six weeks). The consultation did not include serving notice on owners and occupiers of every part of land within the area to which the Direction relates, as this level of notification was considered impracticable; this is consistent with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”).
- 3.8 Notice was given by local advertisement and site notices in a central location within each ward, which exceeds the minimum requirements of the GPDO. Details were also provided on the Council’s website.
- 3.9 No representations on the Directions were received consultation period, although the Directions did attract some press attention on Licensing blogs⁹ after the consultation period had expired.
- 3.10 Executive, at the meeting of 15 July 2021¹⁰, also resolved that Licensing officers be asked to review arrangements for all sizes of HMOs including those with three or more occupants. Licencing colleagues are currently undertaking a ‘Tenure Intelligence’ project improve the understanding of the quantum and quality of HMOs in the Borough. This work is ongoing.

Evidence Base Update

- 3.11 The Houses of Multiple Occupation in Bromley Evidence Base document (May 2021), at Appendix 1, brings together evidence relating to HMOs across planning, housing and licensing. The report remains largely up to date, but there are several areas with further updates post-May 2021.

Planning Policy

- 3.12 It is noted that the NPPF was amended in July 2021 in relation to Article 4 Directions, but the substantive change was for Directions which relate to a change from non-residential use to residential use; for other Directions (such as any Direction removing C3 to C4 PD rights), the requirements remain unchanged, i.e. Directions should be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area.
- 3.13 The NPPF change does state that Directions should apply to the smallest geographical area possible. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified.

Licensing

- 3.14 Table 1 of the May 2021 HMO evidence base document (at Appendix 1) details the total number of HMO Licences by Planning Use Class and Postcode, based on figures available at end of April 2021. Since April 2021, there has been an increase in the total number of licensed HMOs in the borough. The updated Table 1 below details the total number of HMO Licences by Planning Use Class and Postcode, based on figures available at end of November 2021; the table includes the April 2021 figures for comparison.

Table 1: HMO Licences by Planning Use Class and Postcode, based on figures available at end of April 2021 and November 2021 (

HMO Licences	Planning Use Class	Spread by postcode	Licences within postcode
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⁹ ‘Shock as Bromley Councillors approve HMO planning restrictions against planning officer advice’, London Property Licensing, available from: <https://www.londonpropertylicensing.co.uk/shock-bromley-councillors-approve-hmo-planning-restrictions-against-planning-officer-advice>; and ‘Council secretly votes through HMO planning restrictions following petition pressure’, Landlord Zone, available from: <https://www.landlordzone.co.uk/news/council-secretly-votes-through-hmo-planning-restrictions-following-petition-pressure/>

¹⁰ Op cit, footnote 8

			29/04/21	23/11/21	Difference
5 person & 6 person	C4	BR1	21	22	1
		BR2	12	19	7
		BR3	15	16	1
		BR4	1	1	0
		BR5	23	33	10
		BR6	13	11	-2
		BR7	2	3	1
		SE19	1	0	-1
		SE20	14	14	0
		SE26	5	5	0
		SE9	1	3	2
TN16	0	3	3		
Total HMO Licences - 5 person & 6 person			108	130	22
7 persons and above	Sui Generis	BR1	14	15	1
		BR2	7	7	0
		BR3	11	13	2
		BR5	12	12	0
		BR6	8	10	2
		BR7	2	2	0
		SE19	1	1	0
		SE20	11	13	2
		SE9	1	0	-1
Total HMO Licences - 7 persons and above			67	73	6
Total HMO licenses Licences for 5 persons and above HMOs			175	203	28

- 3.15 As shown in Table 1 and the evidence base document, there are postcodes with relatively higher numbers of HMOs, but there is little additional evidence to suggest that this has manifested into specific adverse impacts. There are now 203 licenced 5 person+ HMOs, which falls short of the anticipated increase following the October 2018 mandatory licencing changes (see paragraph 3.1 of the May 2021 document); at that time 219 registrations were anticipated.
- 3.16 There has been an increase of 10 HMO licensed properties in the BR5 postcode in the 7 months since April 2021, and an increase of three HMO licenses in TN16 (Biggin Hill) over the same period.
- 3.17 There has also been an increase of 7 properties licenced as HMOs within the BR2 postcode (Bromley South / Bromley Common).
- 3.18 Paragraphs 3.14 to 3.16 of the May 2021 Evidence Base report noted a lack of reliable data relating to smaller 3 and 4 person HMOs. This is still the case, as no reliable information has come to light following the production of the May 2021 document. The first results from the Census 2021 are expected to be released in late Spring 2022; this may include data relating HMOs, although this could be delayed until a later data release.
- 3.19 The licensing team have prepared revised amenity standards for HMOs, to drive up standards in Bromley and improve housing conditions to protect vulnerable private rented sector tenants.

The revised standards were considered at the General Purposes and Licencing Committee meeting on 30 November 2021¹¹, where the Committee resolved to adopt them¹².

Planning Enforcement

3.20 Paragraph 3.18 and Table 2 of the May 2021 HMO evidence base document provide details on Planning Enforcement Investigation cases relating to HMOs (since 2015). Since May 2021, there have been an additional 22 investigations, 13 of which were not in breach of planning regulations.

3.21 Of the remaining 9 investigations, 8 are still currently being investigated. One investigation found a breach but there is a planning application pending consideration for this site which would regularise the use if permitted. Table 2 below sets out the updated figures.

3.22 There has been a significantly increasing number of investigations in the last couple of years, with the vast majority of cases since 2015 - 52 properties - being registered for investigation in 2020 and 2021. As Table 2 shows, the majority of investigations have concluded that there was no breach, with a large proportion still under investigation.

Table 2: Planning Investigation Cases since 2015 (Updated 1 December 2021)

Year	Planning Investigations relating to HMOs	No Breach	Other (e.g. notice served or permission)	Current Investigation
2015	2	2	-	-
2016	3	1	2 (1 application granted, 1 notice issued)	-
2017	6	5	1 (notice issued)	-
2018	3	1	1 (Appeal in Progress)	1
2019	3	2	1 (application granted)	-
2020	14	8	1 (application granted)	5
2021	38	19	1 (application pending)	18
Total	69	38	7	24

3.23 Table 3 looks solely at investigations registered in 2021 grouped by ward. Biggin Hill has the largest number of investigations of any ward, of which 3 have been found not to be in breach.

¹¹ 'REVISED AMENITY STANDARDS FOR HMOS', General Purposes and Licencing Committee report, 30 November 2021, available from:

<https://cde.bromley.gov.uk/documents/s50093966/Revised%20Amenity%20Standards%20for%20HMOs.pdf>

¹² Based on informal notes of the meeting. The formal minutes of the meeting have not yet been published at the time of writing.

Table 3: Planning Investigation Cases 2021, by ward

Ward	Total Investigations	Investigation Pending	Breach	No Breach
Bickley	2	2	0	0
Biggin Hill	8	5	0	3
Bromley Common & Keston	1	0	0	1
Bromley Town	1	1	0	0
Chelsfield & Pratts Bottom	1	0	0	1
Copers Cope	1	1	0	0
Cray Valley East	5	1	1	3
Cray Valley West	4	3	0	1
Crystal Palace	1	1	0	0
Darwin	1	0	0	1
Hayes & Coney Hall	1	0	0	1
Mottingham & Chislehurst North	6	1	0	5
Orpington	5	2	0	3
Penge & Cator	1	1	0	0
TOTAL	38	18	1	19

Conclusion and recommendations

- 3.24 Taking into account the limited additional evidence post May 2021, officers consider that there remains no strong justification to support the Article 4 Directions, in line with the requirements of national planning policy and guidance. Officers therefore consider that there is no justification to confirm either the immediate Direction or non-immediate Direction.
- 3.25 While there has been an increase in licensed HMOs since May 2021, this increase is not significant and there are no obvious harms associated with the increase; as noted above, the total amount of licensed HMOs still falls below levels previously projected. Associated activity such as planning enforcement investigations remains fairly low, suggesting a lack of any evidenced harms from HMOs that are operating.
- 3.26 There remains a gap in data for smaller HMOs, which is unlikely to be addressed until data becomes available through the Census or through further work being undertaken by the Council's licensing team. The lack of information is not reason in itself to justify an Article 4 Direction.
- 3.27 As with the May 2021 report, the evidence does indicate specific areas of which should be kept under review with potential for future action; there is a trend of increasing HMO provision (albeit limited) in the BR2 and BR5 postcodes, with potential increases noted in Biggin Hill.
- 3.28 Officers will draw on relevant data to maintain an up-to-date position on HMOs in the Borough, including Census 2021 data when available. Officers in planning, housing and licencing will continue to work closely together to assess the balance of the contribution of HMO's to meeting local and strategic housing needs and the impact on local neighbourhoods.
- 4.1 There are no specific policy implications arising from this report. As noted, HMOs can potentially cause adverse impacts with regard to policy objectives (e.g. quality of housing) but

evidence does not suggest any particularly significant adverse impacts in the Borough currently. It is also noted that HMOs can also have positive impacts in terms of addressing housing need.

- 4.2 The Council is in the early stages of a Local Plan review. The review could look at developing policies related to HMOs.
- 5.1 If the immediate Direction is not confirmed, this will remove the risk of compensation liability which currently applies.
- 5.2 Continued work and research relating to HMOs will be undertaken using existing staff resource.
- 5.3 If the Article 4 Directions are confirmed, compensation liability will remain for the Biggin Hill and Darwin immediate Directions until 1 September 2022. Any applications submitted prior to this date that would otherwise have been permitted through C3 to C4 PD rights could claim compensation if the application is refused or approved subject to more limiting than those that would have been imposed by the PD rights.
- 5.4 The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. this could include differences in rental value between a C3 residential dwelling and an HMO, which could be substantial.
- 5.5 The non-immediate Direction would not attract compensation liability if confirmed, as one year's notice has been given prior to it coming into effect.
- 6.1 There are no specific legal implications arising from the report recommendations.
- 6.2 If a decision is made to confirm the Directions, the decision would be delegated to the Portfolio Holder for Renewal, Recreation and Housing, subsequent to being considered by RRHPDS. As a key decision, confirmation of the Directions would need to be added to the Council's forward plan for 28 days prior to a decision being made, although it could be considered by RHPDS during this period. Call-in would also be applicable to any decision.
- 6.3 As noted in the report, the immediate Direction will expire on 1 March 2022 if it is not confirmed before this date. Taking into account the process noted above, there is sufficient time to confirm the immediate Direction if such a decision is made.
- 6.4 The GPDO requires notice of any confirmed Directions to be given as soon as practicable after the Directions have been confirmed. Notice would be given by local advertisement and site notice, as per the requirements of the GPDO.
- 6.5 There is a requirement to give notice of confirmation of any Directions to owners and occupiers of every part of land within the areas to which the Directions relate, unless the local planning authority considers that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable. The HMO Article 4 Directions together encompass tens of thousands of properties. If a decision is made to confirm the Directions, this level of notification would be impracticable, hence individual notice will not be given (which is consistent with the approach taken as part of the notification process when the Directions were first made).
- 6.6 It is noted that the local planning authority (LPA) cannot modify a Direction; that power resides with the Secretary of State only. If members consider that the areas covered by a Direction should be amended, the only ways to achieve this is either by requesting that the Secretary of State modifies the Direction (which he would have no obligation to do); or by cancelling the

Direction and making a replacement Direction covering the modified area. The latter approach would mean that the one-year notice period for any non-immediate Direction would restart.

<p>Non-Applicable Sections:</p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf</p> <p>London Plan (adopted 2 March 2021), available from: https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf</p> <p>National Planning Policy Framework (July 2021) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf</p> <p>National Planning Practice Guidance - https://www.gov.uk/guidance/when-is-permission-required</p> <p>The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), available from: https://www.legislation.gov.uk/uksi/2015/596/contents/made</p> <p>Development Control Committee report, 21 May 2020, HOMES IN MULTIPLE OCCUPATION - http://cdslbb/documents/s50081785/Houses%20in%20Multiple%20Occupation.pdf</p> <p>Houses of Multiple Occupation in Bromley - Evidence Base (May 2021), available from: https://cds.bromley.gov.uk/documents/s50088965/Enc.%201%20for%20HOUSES%20IN%20MULTIPLE%20OCCUPATION.pdf</p>