

Item No.	Classification: Open	Date: 2 September 2014	Meeting Name: Planning Committee
Report title:	Authorisation of confirmation of the Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class I of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) on Henshaw Street, SE17, East Walworth		
Ward(s) or groups affected:	All		
From:	Director of Planning		

RECOMMENDATIONS

That the Planning Committee:

1. Authorise the confirmation of the Article 4 Direction (Appendix A) to remove permitted development rights granted by Schedule 2, Part 3, Class I of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) which allows a change of use from a dwellinghouse (use class C3) to a house in multiple occupation (use class C4) and vice versa on Henshaw Street, SE17 (Appendix B).
2. Note the updated equalities analysis of the Article 4 Direction (Appendix D).
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

Legislation

4. On 1 October 2010 changes were made to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) which granted a permitted development right allowing a change of use from use class C3 (dwellinghouse) to use class C4 (houses in multiple occupation) without the need for a planning application. The Government's broad definition of the C4 Use Class is 'small shared houses or flats occupied by between three and six unrelated individuals who share basic amenities' (Circular 08/2010).
5. The change to legislation has meant that any change of use between a dwellinghouse and a small HMO has been able to occur without the need for planning permission.
6. The Housing Act 2004 in sections 254-259 defines an HMO as follows:
 - An entire house or flat which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet.
 - A house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to three or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.

- A converted house which contains one or more flats which are not wholly self contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households.
- A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

Over-concentration of HMOs on Henshaw Street

7. Henshaw Street (Appendix B) is located in the northern part of the borough, in the East Walworth Ward. Situated close to the amenities of Elephant and Castle town centre, and within walking distance to underground and mainline rail links from Elephant and Castle and good bus links, it is an extremely well connected area, with a public transport accessibility level (PTAL) of 6a.
8. Complaints were received by the council from residents of Henshaw Street throughout 2010 and 2011 in relation to noise and other anti-social behaviour in connection with the large number of properties on the street in use as HMOs.
9. Further investigation in regard to these complaints and the number of HMOs on the street was carried out by the council during May and June of 2012. Efforts have been made to address problems with noise disturbance and anti social behaviour through Southwark Mediation, working with some landlords and residents. While this has produced some results, these have only been in cases where landlords are willing to go further than what is required of them by law.
10. The residents of Henshaw Street have provided a signed petition from 32 households in the street requesting that an Article 4 Direction be introduced to restrict any further permitted development from a dwellinghouse to an HMO. Two property owners signed the petition on behalf of the 19 properties they own between them, which makes a total of 51 properties supporting the Direction. Residents believe that an Article 4 Direction will stop further harm occurring from additional HMOs, and, over time, may lead to a reduction in the number of HMOs present on the street.
11. Further details about the over-concentration of HMOs in Henshaw Street and their impact can be found in paragraphs 30-35 of this report.

Article 4 Directions

12. 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 for the proposal would need to be submitted that would then be determined in accordance with the development plan.
13. The National Planning Policy Framework (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 (paragraph 200).

14. The government's on-line National Planning Practice Guidance (NPPG) sets out guidance on the use of Article 4 Directions. The 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 (paragraph 038). The guidance in the NPPG has replaced the government's previous guidance on Article 4 Directions which was found in the Replacement Appendix D to DoE Circular 9/95: General Development Consolidation Order 1995 (June 2012). Replacement Appendix D was archived on 6 March 2014.
15. The NPPG (paragraph 038) 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.
16. Article 4 Directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. An immediate direction can withdraw permitted development rights straight away; however they must be confirmed by the local planning authority within 6 months of coming into effect to remain in force. 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).
17. On 8 October 2013 Planning Committee agreed to the making of a non-immediate Article 4 Direction, withdrawing the permitted development rights for the change of use from use class C3 (dwellinghouse) to use class C4 (houses in multiple occupation), and vice versa, on Henshaw Street, SE17. In accordance with articles 5 and 6 of the (GPD0) (2010), the council went through the following stages to make the Article 4 Direction.

	Requirement	Progress
Stage 1	The council makes an Article 4 Direction withdrawing permitted development rights with non-immediate effect	Complete An Article 4 Direction was made with non-immediate effect on 17 October 2013 providing 12 months notification (Appendix A)
Stage 2	The council: <ol style="list-style-type: none"> i. publishes the notice of direction in a local newspaper; ii. formally consults with the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of 21 days; iii. and places a notice up on site for 6 weeks; 	Complete Consultation on the Article 4 Direction was undertaken between 17 October and 28 November 2013 (see section on Consultation and Appendix E) and the requisite notifications on site and in the newspaper were placed.
Stage 3	On the same day that the notice is given under Stage 2 above, the council refers its decision to the Secretary of	Complete The Secretary of State was notified on 17 October 2013 (Appendix E).

	State who has wide powers to modify or cancel a Direction.	
Stage 4	Confirmation The Direction comes into force on the date on which the confirmation notice is served on the owners/occupiers of the land.	<u>Current stage</u> This report recommends that Planning Committee confirm the Article 4 Direction for implementation on or after the 17 October 2014 which is the earliest date that the Article 4 Direction can be confirmed.

CONSULTATION

18. The consultation undertaken following the implementation of the Article 4 Direction on 17 October 2013 has complied with provisions set out in the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010. Further detail is set out in Appendix E.
19. Notice of the Directions were made by:
- Local advertisement in the Southwark News;
 - By placing no fewer than two site notices along Henshaw Street for a period of at least 6 weeks;
 - Written notification sent to every owner/occupier on Henshaw Street, specifying a period of six weeks (17 October – 28 November 2013) in which representations can be made; and.
20. In accordance with the government guidance, the notification documents for the Article 4 Direction included:
- A description of the development and the area which the direction relates i.e. Henshaw Street;
 - A statement of the effect of the direction i.e. removing the permitted development rights;
 - Specifying that the direction is made under article 4(1) of the GPDO;
 - Specifying a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority i.e. the representation period was noted as being a period of six weeks from 17 October to 28 November 2013;
 - Naming a place where a copy of the direction and a copy of a map defining the area/ site to which it relates can be seen at all reasonable hours i.e. the documents were noted as being available by appointment at the council offices at 160 Tooley Street, London SE1 2QH, between the following hours: 9am – 4.30pm Monday Friday. A copy of the Article 4 Direction and the map defining the area covered by the direction was also made available for download from the Council's website:
http://www.southwark.gov.uk/info/856/planning_policy/3289/article_4_directions
21. On the same day that the notice of the Article 4 Direction was published (17 October 2013), the council notified the Secretary of State by forwarding a copy of the Direction (and the map defining the area to which the Direction relates) as well as a copy of the

local consultation notices to the National Planning Casework Unit at the Department for Communities and Local Government (DCLG). The notification letter was acknowledged and a response has been received on 6 February 2014 from DCLG on the Article 4 Direction.

22. Any representations received during consultation must be taken into account by the local planning authority in determining whether to confirm a Direction (see paragraphs (9) and (10) of article 5 of the GPDO). Material changes to the direction resulting from consultation will require re-consultation.
23. In order to avoid any claims for compensation the non-immediate Article 4 Direction must be confirmed between 12 and 24 months from when the notice of it was first given. The non-immediate Article 4 Direction was made on 17 October 2013 and this was also the date that the last consultation/notification in respect of the Article 4 Direction was carried out which means that the non-immediate Article 4 Direction needs to be confirmed between 12 and 24 months after this date.

Summary of representations

24. We received two representations during the consultation period. Provided below is a summary of the main points raised. The full responses are in Appendix E.

English Heritage

- The National Planning Policy Framework requires, as one of its core principles, that heritage assets be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. As Henshaw Street does not comprise of designated heritage assets or fall within a designated conservation area, as such we must conclude that the proposals do not have implications for the historic environment and we do not wish to comment in this instance.

Local resident on Henshaw Street –Mrs Barbara May

- The street is plagued by anti-social behaviour. The peace and quiet of the street has now gone.
- One landlord owns 19 properties which are all HMOs and student let. Another owns 4 properties all in HMO occupation. Others are let by letting agents.
- Another two properties have been bought, Number 68 and 70. We now have over 50% of HMOs on the street which is far too many in a residential street.
- The Article 4 Direction should have gone through immediately as this does not stop any other empty properties bought for HMOs.
- Council acted too slowly. Should have been action 20 years ago. Now the street has turned into a nightmare street.

The Department for Communities and Local Government (DCLG) responded on 6 February 2014 stating that the council will need to advise the Secretary of State about confirmation of the Direction in those circumstances as set out in the regulations. DCLG also noted that it would also be helpful to know if the Council decides in due course not to confirm the Direction.

KEY ISSUES FOR CONSIDERATION

25. The consultation responses received have been fully considered. Officers consider it is right and necessary to confirm the Article 4 Direction to withdraw the permitted development rights for change of use from use class C3 (dwellinghouse) to use class C4 (houses in multiple occupation), and vice versa, on Henshaw Street, SE17.
26. The following sections of this report set out the justification for and evidence supporting the confirmation and implementation of the Article 4 Direction on 17 October 2014.
27. 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 (paragraph 200). Further guidance on the use of Article 4 Directions is set out in the government's recently published on-line National Planning Practice Guidance (NPPG) (which has now replaced the document 'Replacement Appendix D to DoE Circular 9/95: General Development Consolidation Order 1995'). The guidance 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.
28. The House of Commons Communities and Local Government Committee prepared a report called "The Private Rented Sector" in July 2013 which put forward certain recommendations many of which the government adopted later that year in October 2013. One of the relevant recommendations can be found at paragraph 63 of the report which states "*Where there are community concerns about high concentrations of houses in multiple occupation, councils should have the ability to control the spread of HMOs. Such issues should be a matter for local determination. We therefore consider it appropriate that councils continue to have the option to use Article 4 Directions to remove permitted development rights allowing change of use to HMO.*"
29. The government's response to this recommendation was "The Government agrees with the Committee's recommendation. Councils will continue to have the option to use Article 4 directions where there are concerns from the local community about high concentrations of houses of multiple occupation. An Article 4 Direction is made by a Local Planning Authority, and confirmed by the Government. It serves to restrict permitted development rights in certain areas".
29. In summary, local authorities are advised to provide evidence of the harm that would result from further uncontrolled HMO development on the amenities of an area and or the proper planning of an area. Where there are concerns from the local community about high concentrations of HMOs councils have been encouraged to use their powers to use Article 4 Directions which is what the council is doing here.

Evidence from the community of the concentration of HMOs in Henshaw Street and beyond

30. In light of the government's objectives through the Localism Act (2011) of handing power back to local communities to protect and promote important environmental and social interests it is considered that evidence brought forward by the residents of Henshaw Street about the social harm caused by high numbers of HMOs is material to any consideration of the making of Article 4 directions. In making such directions the council would be seeking to act in the wider interests of its communities.
31. Henshaw Street itself is a cul-de-sac, with access from Balfour Street to the south west, and no through route (Appendix B). The street measures approximately 200 metres in length and accommodates 78 three storey terraced houses, of which 77 are in use as single houses, and one has been converted into two flats, making a total of 79 properties. The streets immediately surrounding Henshaw Street, namely Chatham Street, Searles Road, Darwin Street and Balfour Street exhibit, in part, a similar type, size and age of property to Henshaw Street. However these surrounding streets are not as in tact as Henshaw Street, also accommodating more modern houses and blocks of flats.
32. The excellent transport connections and close proximity to places of employment and study has made Henshaw Street attractive to landlords looking to let out properties on a room by room basis, or a whole house to a group of people.
33. Evidence provided by residents of Henshaw Street to date, and the follow up investigation by the Planning Enforcement team during 2012 has provided a comprehensive picture of the number of HMOs on the street. Initial data from the residents of Henshaw Street put the number of properties in use as HMOs at 42 of the 79 properties on the street, accounting for 53% of the street. Using Land Registry details and Planning Contravention Notices further information was requested regarding the use of these 42 properties. Responses were received in relation to 32 of the 42 properties contacted, a response rate of 76%. 29 of the 32 responses met the criteria of a HMO. In total, 29 properties were confirmed to be in use as a C4 HMO (37%). However further information received by residents in 2014 suggest that the number of HMOs in the street is at a higher figure of 42 properties (53%) (Appendix C) This is considered to be a very high concentration of HMOs for one particular street. Although Southwark has no policy identifying an acceptable level of HMOs in any particular street or area, other local authorities have adopted thresholds of 10%.
34. Data has been obtained from Private Sector Housing and Public Health teams which identifies the use of residential properties in the borough. It is a record of properties that they have visited/inspected through necessity rather than a full survey or record of the borough's residential properties. This data is not a complete record. However it is considered that it provides a good overview of HMOs across the borough.

Table 1 - By Postcode Area

SE1	SE4	SE5	SE8	SE11	SE14	SE15	SE16
428	2	343	27	37	2	472	318
SE17	SE19	SE21	SE22	SE23	SE24	SE26	
222	18	21	312	5	42	3	

Table 2 - By Ward

Brunswick Park	Camberwell Green	Cathedrals	Chaucer	College	East Dulwich	East Walworth
131	126	141	72	67	133	146
Faraday	Grange	Livesey	Newington	Nunhead	Peckham	Peckham Rye
97	117	96	90	110	78	141
Riverside	Rotherhithe	South Bermondsey	South Camberwell	Surrey Docks	The Lane	Village
64	125	83	65	125	156	86

35. The breakdown by postcode district area and ward above suggests that HMOs are more concentrated in particular areas of the borough. SE1 and SE15 list the highest number of HMOs, however these postcode areas cover larger areas than others and are not fully contained within Southwark's boundaries. Looking at HMO data by ward produces similar conclusions. The data indicates that the East Walworth ward contains the second highest number of HMOs in the borough.

Harm caused by high concentrations of HMOs

36. The 2010 report by DCLG "Evidence Gathering – Housing in Multiple Occupation and possible planning responses" sets out how to respond to the challenges of high concentrations of HMOs. The report identifies various impacts that occur as a result of high concentrations of HMOs:
- 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
 - restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population
37. Common complaints in regards to HMOs relate to noise, anti-social behaviour, refuse arrangements and transports considerations such as parking and cycle storage. In addition HMOs are often seen to increase the amount of residents living at a property, with a C4 HMO permitting up to six inhabitants, and introduce a more transient population to an area. Analysis of complaints from residents of Henshaw Street show that they have mainly been concerned with an increase in noise, nuisance and anti-social behaviour as a result of the high concentration of HMOs in the street. During follow up meetings with residents concerns were also raised over the impact of such a concentration of HMOs on the local community, due to a more transient, mainly student, population occupying the HMOs.

38. A high concentration of HMOs reduces the provision of purpose built family sized dwellings within the borough's housing stock.

Contribution of HMOs to Housing Needs

39. Across Southwark HMOs form a significant part of the private rented housing stock. The Southwark Private Sector House Condition Survey 2008 estimated that there were 3,650 HMOs in the borough.
40. They can provide residential accommodation to identified groups, sometimes in need of support or care, individuals on housing benefit, and general housing to individuals such as students or young professionals. Following recent reform to housing benefits, the entitlement for a single, childless adult under the age of 35 is a single room in shared house as opposed to a self-contained unit.
41. HMOs are sometimes no more than a change in the mode of occupation of the property, where for example a group of unrelated students or friends sign an Assured Shorthold Tenancy (AST) for the whole property. HMOs that have undergone internal conversion are usually let out on a room by room basis, with the landlord or estate agent responsible for finding new tenants and, who beyond the shared facilities may have little interaction with each other.
42. In London the contribution of HMOs to general housing provision is considered significant. This is due to a number of factors:
- people wanting basic accommodation during the week;
 - the affordable nature of renting a room rather than a self contained unit, and
 - the attractiveness to landlords, as a result of the often minimal physical changes needed to a property, and that the conversion to a 6 person HMO, including any internal works does not need planning permission.
43. The London Plan (with Revised Early Minor Alterations October 2013) Policy 3.8 advocates that Londoners should have a genuine choice of homes that they can afford and which meet their requirements for different sizes and types of dwellings in the highest quality environments. It identifies HMOs as a strategically important part of London's housing offer and advocates their protection where they are of reasonable standard. The London Plan also requires that in considering proposals which might constrain HMO provision, including Article 4 Directions affecting changes between Use Classes C3 and C4, boroughs should take into account the strategic as well as local importance of HMOs.
44. However, the council must ensure that HMOs are spread out appropriately across the borough and measures are put in places to control the development of further HMOs in those areas where there are higher numbers of HMOs and a high number of complaints. This will help to ensure that local objectives to create more mixed, balanced and cohesive communities are not undermined.
45. Southwark's Strategic Housing Market Assessment (SHMA) (2008) and Housing Requirement Study identify that there is a need for more family housing in the borough across all tenures. The SHMA shows there is 60% need for 3 bedroom plus dwellings when modelled against the London Plan targets. The SHMA also shows a need for 2 bedroom dwellings, particularly within market housing. 2 bedrooms dwellings also

frequently provide homes for families in need of larger dwellings due to the deficit of 3 bedroom plus homes.

46. The last London SHMA refers to the failure to provide enough larger homes has seen over-crowding among families grow by a third over the decade to 2007. At the moment, as identified in Southwark's Housing Requirements Study 13,986 households live in overcrowded accommodation.
47. The creation and maintenance of mixed, balanced and sustainable communities is a strategic objective of the Core Strategy. Policies within the document seek to promote housing choice and aim to prevent concentrations of particular housing types that may limit housing choice in an area or harmfully erode the mix and balance of a community. In particular, Core Strategy policies 6 and 7 require all new residential development to provide a mix of housing tenures, types and sizes. Policy 8 sets out the approach to new student housing. Our strategy is to work with local universities and colleges to make sure that new student housing is built where it is needed. The council encourage student housing in town centres and places with good public transport accessibility. However the policy requires provision of 35% affordable housing within student housing schemes. This is to encourage wider conventional housing in addition to encouraging student housing where it does not harm the local character and is supported by local educational institutions. Southwark has the highest amount of specialist purpose build student accommodation and overall when combined with private bed spaces, the borough accommodates the second largest number of student homes in London.

Current controls over HMOs

48. The Housing Act 2004 introduced mandatory licensing, which placed a duty on local authorities to license all HMOs that are three storeys and over, and are occupied by five or more people forming two or more households. Private Sector Housing and Public Health are the responsible sections in the council for HMO Licensing.
49. The properties on Henshaw Street are three storeys high. However, the investigation into the properties during 2012 showed that the vast majority of these properties were occupied by no more than four people, meaning that they fall short of the mandatory licensing threshold of five people. Local authorities can, at their discretion, apply to the Secretary of State to extend licensing (additional licensing) to smaller types of HMOs.
50. Private Sector Housing and Public Health also have adopted HMO Standards, which apply to all HMOs, licensable or not. These standards place requirements upon landlords relating to issues such as fire safety, state of repair, room size, light, noise, security, food safety, minimum facilities, and management of the property.

Other Local Authorities

23. A borough wide Article 4 Direction to remove permitted development rights related to small HMOs has already been implemented by Barking and Dagenham Council, Enfield Council and Newham Council.

Conclusions

51. An Article 4 Direction can be made if the council is satisfied that it is necessary to protect local amenity or the wellbeing of an area. In determining whether to implement a Direction the council should have regard to material considerations including the guidance set out in the government's National Planning Practice Guidance (NPPG). As noted in this report, the guidance 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. This report has set out the harm caused by the concentration of HMOs on Henshaw Street and also the concerns of local residents.
52. Class I of the GPDO grants permitted development rights to change from a dwellinghouse to an HMO and vice versa. It is not possible to withdraw permitted development rights for selective developments within a Class in the GPDO and if permitted development rights are withdrawn, both the above changes would require planning permission. Overall it is considered that the potential for harm generated by change of use from a dwellinghouse to an HMO significantly outweighs the benefits gained by enabling occupiers to exercise permitted development rights to change from an HMO to a dwellinghouse.

Compensation

53. 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.
54. However, in the case of the Direction which is the subject of this report, the council will not be liable to pay compensation. This is because:
 - The permitted development rights granted by Schedule 2, Part 3, Class I are a prescribed development, which means that compensation would only be payable for 12 months from the date that the Direction comes into force;
 - Because the council will have provided at least 12 months notice of the implementation of the Direction, no compensation will be payable.

Planning applications

55. When permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan, the Core Strategy, saved policies in the Southwark Plan and adopted area action plans. The relevant saved policy in the Southwark Plan is 4.7 Non Self-contained housing for identified user groups. It should be noted that an Article 4 Direction would not apply

retrospectively and would not necessarily reduce the current number of HMOs, and would also not necessarily mean that applications for new HMOs would be refused.

56. In addition, 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.

Community Impact Statement

57. Concerns have been expressed by residents of Henshaw Street on the impacts associated with the concentration of HMOs on the street, and, more broadly the undermining of the general amenity and quality of life of the permanent residents of the area. A petition from 32 households of Henshaw Street on the making of an Article 4 direction was received by the council.
58. It is clear from the problems which have been identified and the concerns expressed by residents that further uncontrolled HMO expansion on Henshaw Street would result in further harm to the owner occupiers living on the street. In the circumstances, the council would wish to control the development of further HMOs in this area where there is a high number of HMOs and a high number of complaints.
59. Officers do not consider that either the process or direct outcome of introducing an Article 4 direction raises any equalities issues. Affected parties would only include those required to submit a planning application i.e. existing or prospective landlords on Henshaw Street. Such an action could not be construed as discriminatory against any protected characteristic or disadvantaging to any particular group. Overall the equalities analysis (Appendix D) resulted in a positive impact on the protected characteristic groups as a result of the implementation of the Article 4 Direction. On the basis of the evidence available, the council will be seeking to encourage a broader mix of housing over the long term and to reduce the problems associated with a concentration of HMOs. An inability to control further changes of use to HMOs will therefore undermine local objectives to create more mixed, balanced and cohesive communities.

Financial Implications

60. There are no immediate direct financial implications arising from the recommendations. All prior preparatory and background work feeding into the report was undertaken by existing establishment staff. The cost of the consultation process including the staffing resources, collation and evaluation of responses was contained within Planning budgets with no call on other council resources.
61. However, as noted in the report, should the decision be made to refuse planning permission for development that otherwise would have been granted by Schedule 2, Part 3, Class I the landowner/developer will have a period of 12 months in which they can make a claim to the council for compensation, from the date when the Direction comes into force. 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.

62. By giving 12 months notice before bringing the Direction into force, the council has removed its liability to pay compensation.
63. The recommendation in this report is for the confirmation of the Article 4 Direction (following a 12 month notice period) so no compensation claims or any further financial implications are anticipated.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services (SH/08/2014)

64. Planning Committee is being asked to authorise confirmation of a non-immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2 Part 3, Class I of the GPDO 1995 (as amended). Part 3F of the Constitution under the section titled "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 these decisions.
65. The statutory authority for making an Article 4 Direction is Article 4 of the GPDO. Government guidance in respect of HMO's encourages and supports the control of HMOs through the use of Article 4 Directions and therefore the Council has authority both legislatively and constitutionally to make this Article 4 Direction.
66. 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. Section 108 has been recently amended to deal with those circumstances where permission granted under a development order has been withdrawn for development of a 'prescribed description' which is defined in section 2 of the Town and Country Planning (Compensation) (England) Regulations 2013. The effect of these new provisions is to limit the circumstances where compensation is payable for "prescribed description" development. In cases where notice of the withdrawal of the permitted development rights was published at least 12 months before the direction took effect NO compensation will be payable, even if the claim was made within 12 months of the direction coming into effect. As this Direction relates to development of a "prescribed description" and the council is giving more than 12 months notice of the Article 4 Direction from the date of 17 October 2013, being the last date that the Council consulted/notified on the non-immediate Article 4 Direction, the council would not need to pay any compensation.
67. Once the Article 4 Direction has been confirmed the council will need to notify all the statutory consultees in accordance with the requirements of the GPDO which includes the Secretary of State, who under Article 5(13) of the GPDO has the power to cancel or modify any direction under Article 4(1) either before or after its confirmation.

Human rights and equalities

68. 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 making and considering the Article 4 Direction, including under Articles 1 and 8 of the First Protocol. 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.

69. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of all of the owners of land in Henshaw Street have been considered under the Human Rights Act 1998, in particular those contained within Article 1 of the Convention which relates to the Protection of Property and Article 8 of the Convention, which protects private and family life, home and correspondence and both have been taken into account by the council in the consideration of consulting upon the making of this non-immediate Article 4 Direction. The effect of confirmation of the Article 4 Direction will not be to interfere with the existing development rights enjoyed by the residents of Henshaw Street as the Article 4 Direction does not have retrospective effect. It will only affect future planning applications made in respect of a change of use from a dwellinghouse (use class C3) to a House in Multiple Occupation for not more than 6 people (use class C4) by ensuring that an express application for planning permission is made. The effect of confirmation of the Article 4 Direction being made will be to reduce harm to the amenity of existing residents and to also encourage a balanced and mixed community. The council considers that the advantages of confirming the Article 4 Direction substantially outweigh the disadvantages to those residents who will no longer be able to benefit from the permitted rights granted for any future change of use.
70. In consulting upon the introduction and now confirmation of the non-immediate Article 4 Direction the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
71. 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.

Strategic Director of Finance and Corporate Services (CED/MD/14/20)

72. The financial implications in paragraphs 60 to 63 above are noted, and it is recognised that the cost of the consultation has been contained within existing departmental budgets. No further costs are expected at this stage: as this is a non-immediate direction no compensation will be payable to any party affected by this decision.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Saved Southwark Plan 2007	http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan	planningpolicy@southwark.gov.uk
The Core Strategy 2011	http://www.southwark.gov.uk/info/200210/core_strategy	planningpolicy@southwark.gov.uk

	ategy	
Residents' Petition	160 Tooley Street, SE1 2QH	planningpolicy@southwar k.gov.uk

APPENDICES

No.	Title
Appendix A	Draft Article 4 Direction
Appendix B	Henshaw Street map
Appendix C	List of Henshaw Street HMOs – in hard copy only
Appendix D	Equalities analysis
Appendix E	Consultation Responses

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Tim Cutts, Team Leader, Planning Policy	
Version	Final	
Dated	21 August 2014	
Key Decision?	Non-key	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	21 August 2014	