

## **Appendix 1 – Evidence from Appended to Cabinet Report of 8<sup>th</sup> December 2022**

### **Article 4 Directions and the suitability of implementation in the Netherfield Ward to introduce a requirement for planning permission to change from a C3 Dwellinghouse (family dwelling) to a C4 HMO (3-6 unrelated people who share facilities)**

#### **1.0 Background**

1.1 In April 2010, changes were made to planning regulations involving the introduction of a new C4 HMO Use Class (applicable to residential properties occupied by between 3 and 6 unrelated people who share facilities). Prior to this, there had been no distinction in planning terms between such properties and those occupied as a family home. The April 2010 changes also introduced a requirement for planning permission to be obtained for a material change of use from a C3 Dwellinghouse (family dwelling) to a C4 HMO (3-6 unrelated people who share facilities). The result of this was that, it became possible to assess the merits of individual proposals against local plan policies and any other material considerations such as traffic impacts and antisocial behaviour. Planning permission could either be granted with conditions or refused.

1.2 The changes were welcomed by many local authorities, particularly those with high student populations where there is often a significant demand for HMOs.

1.3 In June 2010, the coalition government announced its intention to introduce further amendments to the regulations governing HMOs that would introduce a permitted development right to change the use of a C3 Dwellinghouse to a C4 HMO thereby removing the newly introduced requirement to obtain planning permission for this change of use. The changes were subsequently implemented and took effect in October 2010.

1.4 Local Planning Authorities wishing to reinstate this requirement would then be required to implement provisions under Article 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GDPO"). This article allows Local Planning Authorities to withdraw "permitted development" rights for specified development which would otherwise be permitted where it considers it is expedient that the development should not be carried out unless permission is granted for it on an application.

#### **2.0 The Use of Article 4 Directions**

2.1 The National Planning Policy Framework (NPPF) at paragraph 53 advises that the use of Article 4 directions to remove national permitted development rights should be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area and in all cases, be based on robust evidence, and apply

to the smallest geographical area possible. The advice is reaffirmed in the Planning Practice Guidance (PPG) at Paragraph 038, Revision date 20 08 2021. Local Planning Authorities can therefore only make article 4 direction where it can justify both its purpose and extent. Use of article 4 directions should be limited to situations where it is necessary to protect the local amenity or wellbeing of the area and the Local Planning Authority should clearly identify the potential harm the direction is intended to address.

2.2 An article 4 direction does not prevent development but means that an application for planning permission must be made prior to any development taking place. If a Local Planning Authority makes an article 4 direction it can be liable to pay compensation to those whose development rights have been withdrawn.

2.3 Two types of article 4 direction can remove permitted rights to change from a C3 Dwellinghouse to a C4 HMO. Firstly, an article 4 direction may take effect immediately but this must be confirmed by the local planning authority following consultation within six months or it will lapse. Secondly, a non-immediate article 4 direction may be made which results in development rights being withdrawn only upon confirmation of the direction following local consultation. The Secretary of State has the power to cancel any direction.

2.4 The legal requirement for a non-immediate direction is that the local planning authority considers it is expedient that the development should not be carried out unless permission is granted for it on an application. For an immediate direction the local planning authority must also consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Local authorities can elect to make a non-immediate direction in instances where it would be legally possible to make an immediate direction. The immediacy of the threat and compensation liability may be considerations in determining which to use.

2.5 A direction coming into effect immediately would have the clear advantage of straight away requiring a C4 HMOs to require planning permission. However, it would also expose the Council to potentially very high levels of compensation liability in cases where applications submitted within the first 12 months of the removal of the permitted development rights were refused or granted subject to conditions, such compensation being based, in part, on the difference in property values arising from the Council's decision.

2.6 A non-immediate direction with a prior notice period of 12 months would avoid compensation liability and also allow the results of local consultation to be taken into account in advance of the Council deciding to confirm the direction removing permitted development rights.

2.7 As detailed above, any article 4 direction must be evidenced based to comply with the requirements of the NPPF and the PPG and applied in a measured and targeted way

### **3.0 Current Evidence**

#### **3.0 Recent Planning Applications**

3.1 Over the past 5 years, there have been 4 determined applications for planning permission in Netherfield to change the use of a property from a dwelling to a HMO proposing the occupation of the property by more than 6 unrelated people sharing basic amenities.

3.2 These applications are detailed below:

2020/0484

56 Meadow Road, Netherfield

Single storey extension to rear elevation and change of use from C3 to sui generis, 6 bedrooms, 7 occupants House in Multiple Occupation

The proposal was refused planning permission contrary to officer recommendation. A revised scheme was subsequently implemented under permitted development comprising 6 bedrooms.

2020/0630

45 Ashwell Street, Netherfield

Change of use from C3 dwellinghouse to seven bedroom (Sui Generis) HMO including loft dormer extension.

The proposal was refused planning permission by the Borough Council, contrary to officer recommendation. An appeal was subsequently made by the applicant to the Planning Inspectorate. The appeal was allowed and permission was granted.

2020/0789

112 Victoria Road, Netherfield

Proposed change of use from existing residential apartments C3 to a large HMO sui generis

The proposal was granted planning permission under delegated authority, following consultation with the Planning Delegation Panel.

2022/0153

49 Chandos Street, Netherfield

Proposed change of use from dwelling (C3) to 7 bedroom HMO including rear dormer loft conversion

The proposal was granted Planning permission following referral to Planning Committee.

3.3 The four determined applications were each considered in light of the relevant policies contained within the NPPF, Greater Nottingham Aligned Core Strategy (Part 1 Local Plan), Local Planning Document and the Parking Provision for Residential Developments – Supplementary Planning Document.

3.4 The principle of the proposed use, impact upon residential amenity, highway safety, flood risk and other issues were fully considered by officers in each report and no conflict was found with any of the Councils adopted planning policies or national policies.

3.5 In relation to highway safety, advice was sought from the Highways Authority prior to determining each application and no objections were received. There is no evidenced highway safety risk identified by the Highway Authority which would indicate that existing and proposed HMOs in the Netherfield ward would result in undue highway safety issues. Dwellings in this locality are situated in close proximity to the Netherfield designated shopping area where there are a number of amenities, shops etc. which are within walking distance and the wider area is well served by public transport.

3.6 There are no highway safety grounds identified through the determination of recent planning applications which would support an Article 4 direction.

3.7 The analysis of planning applications over the past five years indicates that HMOs requiring planning permission are in full conformity with national and local planning policies and no harm has been identified by officers or the Planning Inspectorate.

#### 4.0 Residents Meeting

4.1 A residents meeting was held at 7pm on 03 March 2022 at the St Georges Church, Victoria Road, Netherfield. The meeting was arranged and chaired by a local resident, and the purpose was to discuss a pending planning application at Chandos Street

(which has now been determined and detailed above) and HMOs/Article 4 directions more generally. The meeting was attended by approximately 50 residents.

4.2 The key concerns raised are detailed below and each concern is assessed in relation to the relevant planning considerations, which have been established through appeal decisions and case law.

- Loss of private rented accommodation

Comment: HMOs have the potential to increase the level of private rented accommodation and diversify the stock of private rented accommodation.

- Loss of family homes

Comment: There has undoubtedly been a loss of some larger properties which are suitable for families. Planning permission has however been granted for 830 new homes at Teal Close and there have already been a significant number of completions. There is also a resolution to grant planning permission for the redevelopment of the Kendon Packaging site and other housing is anticipated to be delivered in the wider area.

- Waste bins on pavements

Comment: it is accepted that (larger) HMOs have the potential to generate more litter but there is no evidence to suggest that this is causing an undue problem or that it cannot be managed.

- Drainage and water supply

Comment: There is no evidence to suggest that HMOs are causing problems with drainage or the supply of water.

- Impact upon property values

Comment: This is not a material planning consideration.

- Loss of community cohesion

Comment: The numbers are low and there is no evidence that there is a significant concentration of HMOs or grouping on any particular street.

- Highway safety concerns

Comment: As detailed above, no concerns have been raised by the Highway Authority.

- Loss of car parking

Comment: As above.

- No demand for further HMOs as some of the rooms within the recently converted accommodation have not been let.

Comment: If there is an over-supply to meet demand, this is likely to reduce the number of future HMOs coming forward in Netherfield. The demand for a particular housing product cannot usually be given significant weight in the overall planning balance when determining a policy compliant application for planning permission.

- Some of the rooms are being advertised at £700 per calendar month

Comment: This is not a planning consideration and rents will be determined by the market.

- Insufficient school places in the Netherfield area.

Comment: A new primary school has been constructed at Teal Close, with the first intake of students expected in September 2022.

- An Article 4 direction should be implemented to deter investors from targeting properties in Netherfield.

Comment: This is no justification for an Article 4 direction.

4.3 From a planning perspective, none of the concerns either singularly or in combination would merit suitable justification to progress an Article 4 direction. No subsequent submissions have been made by residents in support of the concerns following the meeting, with the exception of further objections to planning application 2022/0153, which has now been determined.

## 5.0 Submission from Tom Randall MP

5.1 A written submission was however received by the Leader of Gedling Borough Council on 20 April 2022, detailing the results of a survey undertaken by the MP and a County Councillor. It is stated that there were 111 respondents. A copy of this submission is contained in appendix 2.

5.2 The following data is included in the covering letter:

- Of those surveyed, 93% said they would like to see Gedling Borough Council introduce an Article 4 direction in Netherfield.
- 40% said that an increase in HMOs in Netherfield is removing family homes off the market and resulting in the community not knowing their neighbours
- 68% said an increase in HMOs is adding to issues around lack of on street-street parking.

5.3 Appended to the covering letter is are the survey questions:

- How does the increase in HMOs in Netherfield affect you?
- Are you aware of any HMOs in Netherfield?
- Have HMOs always been in the area?
- How do you feel about an increase in HMOs in Netherfield?
- Gedling Borough Council could introduce an Article 4 direction that will require property owners to apply for planning permission should they wish to convert their property into a HMO. Would you like to see this introduced in Netherfield?

5.4 No details have been provided in relation to how the data was collected or the overall number of residents/properties surveyed. It would however appear to be primary data collected in the local area which reflects the views of the respondents. The data indicates that the respondents have concerns about HMOs, but it does not demonstrate any demonstrable harm which needs to be addressed by implementing an Article 4 direction or any other measures.

## **6.0 Applications made by Landlords for a Licence under the Housing Act 2004.**

6.1 From the 01 October 2018 the Government has extended the scope of mandatory HMO Licensing throughout England. All HMOs in the Gedling Borough with 5 or more tenants who do not form a single household require a licence under the Housing Act 2004 and any licences granted include conditions relating to mandatory national minimum sleeping room sizes and waste disposal requirements.

6.2 In Netherfield, there have been licences granted at 1A Meadow Road, 46 Chandos Street, 5 Matlock Street, and 72-74 Station Road. A mandatory licence has also been granted for 1-3 Conway Road for a long established HMO permitted to accommodate 15 persons. This was not previously identified as the licence address states Carlton, but the site is actually in the Netherfield Ward.

The Council has received HMO license applications for 3 further properties which are still being processed:

56 Meadow Road  
112 Victoria Road

45 Ashwell Street

The Council has a 12 month timescale for issuing HMO licences. The licence holders have met their legal duty when submitting the application.

No application has been made for 49 Chandos Street as it is not currently occupied by 5 or more individuals.

## **7.0 Applications made under the Netherfield Selective Licensing Area**

7.1 An analysis of Selective Licensed HMOs has identified that there are 3 small HMOs each accommodating 3 unrelated individuals sharing. The addresses of these properties are 48 Forester Street, 37 Curzon Street and 7A Victoria Road

## **8.0 Antisocial Behaviour**

8.1 The Community Protection Manager has advised that between all of the known HMOs in Netherfield, antisocial behaviour levels reported to the Council have been very low or non-existent so far and their position remains unchanged since being consulted in May 2022. The bulk of complaints are generated by renovation works needed to convert the properties into HMOs, but typically no diary sheets were ever returned and builders generally worked between reasonable hours so no further action could be taken anyway. Additionally, there seems to be a running theme of complaints about the state of bins which can and has led to pest control complaints and concerns about residents parking, as the streets that HMOs are typically on are terraced with no driveways. The car parking concerns have not however generated any objections from the highways authority on safety grounds. In relation to noise, litter and antisocial behaviour, these matters can be controlled through other legislation and do not require an Article 4 direction.

## **9.0 Composition of the Netherfield Housing Stock**

9.1 There are 2915 residential properties within the ward of Netherfield and evidence available to the Council indicates that there are 9 confirmed HMOs providing accommodation for 5 or more unrelated individuals. There are 3 smaller HMOs providing accommodation for 3 unrelated individuals. The total number of HMOs is 12. Therefore, 0.41% of the housing stock in Netherfield is comprised of HMOs. Furthermore, the existing HMOs appear to be distributed across the ward and at the current time, there does not appear to be an over concentration in one particular locality. The distribution is shown at Appendix 4.

## **10.0 Conclusion**



10.1 The private rented sector is an important part of our housing market and HMOs form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited. The available information demonstrates that HMOs in Netherfield are distributed across the ward and comprise a low percentage of the overall number of residential properties.

10.2 Having regard to the requirements set out in the NPPF and the PPG, in my view there is currently insufficient evidence to demonstrate that an Article 4 direction is necessary to protect local amenity or the well-being of the Netherfield Ward. The situation should however be monitored to ensure that a proliferation of HMOs does not emerge in any particular locality or the Netherfield ward as a whole.