

Appendix 2 – Updated Evidence

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 to introduce a new Use Class C4 Use Class for small HMOs; 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 Use Class C3 Dwellinghouse to a Use Class C4 HMO (3-6 unrelated people who share facilities). This amendment enabled Local Planning Authorities to assess the merits of individual proposals against relevant 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 These changes were largely welcomed by 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 amend The Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GDPO”). to introduce a permitted development right to allow the change the use of a Use Class C3 Dwellinghouse to a Use Class 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 remove the permitted development right for changes of use from Use Class C3 to Use Class C4 would be required to implement provisions under Article 4 of the GDPO. This allows Local Planning Authorities to withdraw “permitted development” rights for specified development 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 54 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 an 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 the type of development specified but does ensure that an application for planning permission must be made prior to any development which it restricts 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 Use Class C3 Dwellinghouse to a Use Class 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 is able to cancel or modify any direction made.

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. The circumstances in which an immediate direction can restrict development are limited and the local planning authority must also consider that the development to which the direction relates presents an immediate threat to local amenity or the proper planning of an area. The immediacy of the threat and compensation liability may be considerations in determining which type of direction to use.

2.5 A direction coming into effect immediately would have the clear advantage of straight away requiring Use Class 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 limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights

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 supported by robust evidence in order 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 Within the last 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 One additional application was granted for the change of use of 48 Bourne Street to a 7 person HMO under reference 2023/0925. This property was however already in use as a Use Class C4 HMO with 6 occupants.

3.4 In addition to the determined planning applications detailed above, the Local Planning Authority is currently considering 1 application for a Lawful Development Certificate for a HMO of up to 6 occupants (Use Class C4) at 24 Bourne Street. In addition, 2 Certificates have recently been granted for HMOs at 42 Forester Street and 5 Beech Avenue. These are not applications for planning permission but seek confirmation that the proposed development is lawful in planning terms, i.e. permitted development, and therefore the usual material considerations are not relevant in the determination of the applications.

3.5 The planning applications detailed above 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 (Part 2 Local Plan) and the Parking Provision for Residential Developments – Supplementary Planning Document.

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

3.7 In relation to highway safety, advice was sought from Nottinghamshire County Council as the Highway 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 unacceptable 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.

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

3.9 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 meeting with Councillor Hunt and a small number of local residents was held at the Civic Centre on 28th May 2025. The meeting was arranged to discuss the pending applications for Certificates of Lawful Development HMOs and article 4 directions more generally.

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.

- Behaviour of builders and contractors during property conversions and extensions and lack of regard to health and safety regulations.

Comment: Any anti-social behaviour should be reported to the Council's Community Protection Team and breaches of health and safety regulations during construction should be reported to the Health and Safety Executive as it is not possible to enforce these concerns through Planning Legislation.

- Loss of car parking

Comment: Due to the character of Netherfield, a large proportion of dwellings do not benefit from off-street car parking. The Highway Authority has not raised any concerns when consulted on the planning applications for the change of use of dwellings to HMO's and there is currently no evidence that residents are unable to find on-street parking in the vicinity of their properties. In terms of vehicle ownership, the Office for National Statistics Census of 2021 shows that 32.9% of households in the ward do not have a car (compared to 18.3% for Nottinghamshire) 46.8% have 1 car (41.8% for Nottinghamshire) 16.4% have 2 cars (30% for Nottinghamshire) and 3.9% have 3 or more cars (9.9% for Nottinghamshire). The evidence is that car ownership in Netherfield is low when compared to Nottinghamshire and demand for car parking is therefore reduced.

- Loss of family homes

Comment: There has undoubtedly been a loss of some larger properties which are suitable for families. However, the proportion of dwellings within the ward that have been converted is very low. Furthermore, the Housing Delivery Test measurement (published December 2024) for 2023 shows there were 699 homes delivered in the borough against a requirement of 497. There is currently no evidence that the housing mix in Netherfield is not appropriate.

- Waste management issues and waste bins on pavements

Comment: it is accepted that larger HMOs have the potential to generate more household waste but there is no evidence to suggest that there are currently issues with waste management or collection.

- Drainage issues due to the extensions being constructed.

Comment: The properties being extended utilising permitted development rights and drainage matters therefore cannot be considered by the Local Planning Authority. However, there is currently no evidence to suggest that HMOs are causing problems with drainage.

- Loss of community cohesion

Comment: The proportion of dwellings that have been converted is low and there is no evidence that there is a significant concentration of HMOs or grouping on any particular street at this time.

4.3 From a planning perspective, none of the concerns raised either singularly or in combination would merit suitable justification to progress an article 4 direction.

5.0 Applications made by Landlords for a Licence under the Housing Act 2004.

5.1 All HMOs in 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.

5.2 In Netherfield, there have been licences granted at 14 properties and the Council has received HMO license applications for 2 further properties which are still being considered;

- 6 Godfrey Street

- 41 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.

6.0 Antisocial Behaviour

6.1 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 initially consulted in May 2022. The majority of complaints are generated by renovation works needed to convert the properties into HMOs. The car parking concerns have not however generated any objections from the Highway 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.

7.0 Composition of the Netherfield Housing Stock

7.1 There are 3120 residential properties within the ward of Netherfield and evidence available to the Council indicates that there are 14 confirmed HMOs providing accommodation for 5 or more unrelated individuals. Therefore, 0.44% of the housing stock in Netherfield is comprised of HMOs.

7.2 There is currently one application being considered for Lawful Development Certificates for a HMO of up to 6 occupants at 24 Bourne Street with Certificate having recently been granted at 42 Forester Street and 5 Beech Avenue. Should all these properties developed into HMO's, the total number of HMOs in Netherfield Ward would be 17, or 0.54% of the housing stock.

7.3 Furthermore, whilst there are 2 HMOs present on Chandos Street, 3 on Ashwell Street and 2 on Victoria Road, there does not appear to be an excessive concentration in one particular locality. The distribution is shown at Appendix 3.

9.0 Conclusion

9.1 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.

9.2 Having regard to the requirements set out in the NPPF and the PPG, it is considered that 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.