

Article 4 Direction in relation to houses in multiple occupation (HMOs) in the Newry Park area of Chester

Frequently asked questions

Introduction

On 8 April 2015 the Council made a “non-immediate” Article 4 Direction to control changes of use from dwelling houses to houses in multiple occupation (HMOs). This was subject to a period of public consultation from 16 April 2015 to 7 May 2015. It was confirmed on 12 November and came into effect on 2 May 2016.

Why is the Council introducing planning controls over changes of use to small houses in multiple occupation (HMOs)?

For planning purposes, the wide variety of building and land uses are defined in particular use classes. These are set out in the Town and Country Planning (Use Classes) Order 1987, as amended. Planning permission is normally required to change the use of a building between different classes.

However, some changes of use do not require a planning application because they benefit from what are known as permitted development rights. These rights are set out in national legislation. Change of use of a dwelling house (Use class C3) to a large HMO (7 or more unrelated persons living together, which is a Sui Generis use) needs planning permission, but change of use of a dwelling house (Use Class C3) to a small HMO (Use Class C4) does not need planning permission.

What is an Article 4 Direction?

An Article 4 Direction can remove certain permitted development rights. In this instance, removal of permitted development rights relating to HMOs will mean that a planning application will be required when a family home (Use Class C3) is being converted into a HMO occupied by three to six unrelated people (Use Class C4).

Creation of an Article 4 Direction is a legal process which has a number of stages. Prior to making the Direction significant work has been required to justify use of the procedure. Confirmation of the Direction will have implications both for the Local Planning Authority and for those who may own property or live in the affected area.

When can an Article 4 Direction be made?

National advice within Planning Practice Guidance is that Article 4 Directions should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The advice states that Local Planning Authorities should identify clearly the potential harm that the Direction is intended to address.

Why has the Council introduced an Article 4 Direction covering the Newry Park area?

The reasons for making the Article 4 Direction are set out in full in the report of 9 March 2015 to the Council’s Executive. However, in summary, the number of HMOs in the area is resulting in impacts on local amenity and the wellbeing of the area, particularly in terms of car parking issues, waste issues and maintenance of properties. The area is also in close proximity to the University campus and the existing Garden Quarter Article 4 Direction area and as such it is likely to be attractive as a future location for additional HMOs and potential future harm to the area from additional HMOs could be significant.

The Council also recognises that HMOs make a valuable contribution to the city's stock of affordable and private rented housing. They help to meet the needs of many city residents including students and are a vital part of the overall housing market.

The intention of the Article 4 Direction is to allow the Council, in its role as Local Planning Authority, to positively manage the location of new HMOs in order to create sustainable, healthy and inclusive communities and to avoid further increases in concentrations in certain city streets. It also enables conditions to be added to planning approvals to ensure that any potential negative impacts are avoided or reduced.

Who confirms Article 4 Directions?

It is the Local Planning Authority that confirm Directions, with no requirement to obtain approval from the Secretary of State. However, the Secretary of State still needs to be informed and reserves the right to influence or even prevent confirmation of an Article 4 Direction should he consider it unnecessary, unreasonable or unjustified.

Will compensation be payable as a result of the Article 4 Direction?

No compensation is payable in this instance. Compensation would have been payable in some circumstances to those whose permitted development rights are withdrawn if the LPA imposed what is known as an "Immediate" Article 4 Direction and then refused planning permission for that which would otherwise have been PD; or granted permission subject to more limiting conditions than would have been applied by the General Permitted Development Order (GPDO). However, in this case as the Council has provided 12 months' prior notice of the removal of PD rights in respect of HMOs (known as a "Non-Immediate" Article 4 Direction), then there is no ability to claim compensation.

What does the Article 4 Direction control?

It means that a change from a family home (Use Class C3) to a HMO occupied by three to six unrelated people (Use Class C4) will need planning permission and will not be considered to be permitted development. However, it does not automatically prevent such development from occurring – it means that because it is not PD then a planning application must be submitted to the LPA for consideration. It also does not in itself mean that any such applications will be refused – they would have to be considered against development plan policy and other material planning considerations.

What are the timescales involved?

The Council has undertaken significant research and collection of data to demonstrate that an Article 4 Direction is necessary to protect local amenity and the wellbeing of the area. The Council's Executive agreed to put in place a non-immediate Article 4 Direction at its meeting in March 2015. The Direction was subject to three weeks of public consultation, which started on 16 April 2015 and ended on 7 May 2015. No responses were received. The Direction was then Confirmed on 12 November and this was publicised for a minimum of 28 days. The Direction came into effect on 2 May 2016.

The effects of the Direction upon the Newry Park area will be monitored and will be reported back to the Councillors, as necessary.

What use class is a property that is let to more than 6 unrelated people?

A property that is let to more than 6 unrelated people is a large HMO. This is known in planning terms as a 'sui generis' use, which means that it is in a class of its own. It does not fall within the C4 use class. Planning permission is already required for a material change of any other use to a sui generis use and therefore large HMOs are not the subject of the Article 4 Direction.

Is planning permission required to change from a HMO (C4) to a dwelling house (C3)?

No, that change of use is permitted development. The Council has no plans to restrict that change of use.

If a dwelling has been let as an HMO in the past, but is now being let to a family, will it need planning permission to let it again as an HMO?

If a property that is in HMO use is let to a family the property would no longer be classed as a HMO. Planning permission would be required to revert back from a dwelling house (C3) to a HMO (C4).

If my HMO property is empty for a period of time between lettings, will it lose its small HMO (use class C4) status?

A property will not lose any lawful HMO (C4) use if it is empty for short periods of time between lettings, and provided no other use takes place in between. Further advice on this matter may be obtained by contacting the local planning authority by emailing planning@cheshirewestandchester.gov.uk or by calling 0300 123 7027.

How much does a planning application cost?

There is no fee payable for planning applications arising directly from an Article 4 Direction. No fee would therefore be payable for a change of use application from a dwelling house (C3) into a HMO (C4) within the Newry Park area covered by the Direction. A fee may be payable for applications for changes of use to a mixed C3/C4 use. Normally a fee of £385 is payable for a change of use planning application.

How long does a planning application take to be decided?

The majority of smaller planning applications, such as changes of use, are determined within eight weeks of registration.

Do I require planning permission if a small HMO is created before but not occupied until after May 2016?

In the case of a material change of use of a premises (where no physical external alterations are proposed), it is the use of the premises that determines whether or not planning permission is required. Unless the use as a HMO has commenced before the date that the Article 4 Direction takes effect, then you will require planning permission. It is recommended that you make early contact with the local planning authority for advice by emailing planning@cheshirewestandchester.gov.uk or by calling 0300 123 7027.

I have a small HMO in the Newry Park area that has not obtained planning permission and has been in use for a number of years. Will this be affected by the Article 4 Direction?

Yes. Immunity from enforcement occurs only after 10 years have elapsed in respect of use as a HMO. If the premises does not benefit from a continuous use as a HMO for 10 years or more then you will require planning permission. It is recommended that you make early contact with the local planning authority for advice by emailing planning@cheshirewestandchester.gov.uk or by calling 0300 123 7027.