

Cabinet

1 November 2011

Report of the Cabinet Member for City Strategy and Cabinet Member for Housing Health and Adult Social Services

The Distribution and Condition of Houses in Multiple Occupation in York

Summary

- 1 This report considers how best to respond to the challenges facing the shared housing sector in terms of supply and quality, and its effects within parts of the City. Specifically:
 - a) It seeks authority to confirm the Article 4 Direction made by the Council on the 15th April 2011, to remove permitted development rights for changes of use from dwelling houses to houses occupied by between 3 and 6 unrelated residents (planning use class C4 HMOs), within the urban area of the City. Confirmation would require planning applications to be submitted after 20th April 2012 for such a change, but does not in itself consider how such applications will be decided. A policy will be developed which will do this to help to manage (rather than restrict) the supply and distribution of new shared housing
 - b) It also advises members about the different measures available to improve the management and condition of HMOs and proposes the introduction of a city wide landlord accreditation scheme.

Background

- 2 Shared HMOs represent a significant and growing proportion of all sectors in York. Many households live in such accommodation but in particular students, working people due to the flexibility that this type of tenure gives, and people who are unable to gain access to other forms

of housing due to financial constraints . Whilst shared accommodation is regarded as a valuable asset to the city, there has been debate about the wider impact that student households and other households using shared accommodation have on the wider housing market.

3 The increased and increasing number of shared houses in the city is as a result of:-

i) Expansion of the Universities. The Local Development Framework Working Group report of February 2011 included an historical mapping exercise showing the spread of student housing over the last decade. From 6 'output areas' of more than 20% student areas in 2000, there were 19 such areas in 2010.

ii) Prevailing economic conditions. Private rented shared housing is an increasingly important element of the City's housing stock as the affordability of first time properties to buy diminishes. The better rental returns from shared housing and the consequential conversion to HMO use potentially reduces the stock available for private rent as family housing. This issue was highlighted very recently in the report relating to the affordability of private rented housing by Shelter. This demand for houses to rent out generally tends to inflate the purchase price of such housing, again reducing affordability for families.

iii) There is likely to be an increase in the number of HMOs operating within the City following the changes to the benefit rules in 1st April 2012. The new rules will mean that single working age people under 35 years old will only be eligible to receive benefits for a single room in a House in Multiple Occupation / Shared House, currently the age limit is 25 years.

Reasons for the Proposed Measures

4 A number of effects of the increase in shared housing in parts of the city have been raised by residents and community groups . These include social, cultural, physical and economic impacts In particular these are :-

- higher incidences of anti social behaviour;
- increased levels of crime and the fear of crime
- poorer standards of property maintenance and repair;
- littering and accumulation of rubbish;
- noise between dwellings at all times and especially music at night, alongside late night street disturbance;
- decreased demand for some local services, particularly local schools;

- increased parking pressures arising from shared households;
 - changes in type of retail provision, particularly local shops becoming takeaways;
 - lack of community integration and ‘community spirit’ resulting in less
 - commitment to maintain the quality of the local environment
- 5 Analysis carried out in September 2010 to produce an evidence base on the impact of shared housing. This highlighted:-
- Above average instances of antisocial behaviour and crime. Occupants of shared housing are often the victims of crime such as burglaries
 - Incidences of littering are above average in the areas with highest proportion of shared housing
 - In some output areas identified the number of noise nuisance complaints was double the city average
 - Impact on community facilities, with fewer school age pupils in areas with higher concentrations of shared housing.
 - Whilst more difficult to provide statistical evidence, residents in areas with more shared housing are raising complaints regarding parking on grass verges, junctions and across other drives because of the higher number of car ownership in shared houses..
 - Reduction in the stock of family housing as more properties are used for shared housing.

Current and Potential Management of HMOs

Housing Act Controls

- 6 The standard and management of Houses in Multiple Occupation¹ (HMO) is primarily controlled through the Housing Act 2004 (the Act) and regulations made there under.
- 7 Our current approach recognises that HMOs are a vital source of accommodation within the city used by a range of tenants not just students but also others working and in receipt of benefit .
- 8 The City already has a high number of HMOs (approx 2000- 2500) ; about 20% of these are licensed with the council. Much of the HMO stock is provided for the shared student market and through council tax records we have a relatively good picture of the number and location of shared student accommodation (see Annex A). However, we have less knowledge about the exact number and location of the other types of HMOs and in particular we don’t know whether there are sufficient

¹ HMOs are defined in section 254 of the Housing Act 2004

numbers of HMOs to cope with these changes.

- 9 The Private Sector Stock Condition Survey 2008 confirmed that nearly 40% of HMOs failed the decent homes standard compared to the city average of 20%. However, we receive relatively few complaints about the condition of student accommodation, finding the poorest conditions in non student shared accommodation.

Approaches to improve the management and condition of HMOs

- 10 Therefore we know that we need to have a balanced approach encouraging responsible letting and promote good practise through improving management and knowledge of landlords but also that we should use the wide range of powers at our disposal to tackle the minority of rogue landlords who fail in their responsibilities and bring the sector in to disrepute and more importantly put tenants lives at risk.
- 11 Our current approach is to:
- Rigorously enforce the mandatory provisions of the Act by licensing larger HMOs (three storey and more with five or more unrelated occupants).
 - Ensure that we fulfil our duty to inspect all licensed HMOs
 - Respond to and investigate complaints about general housing conditions and management. We use the legal tool called the Housing Health and Safety Rating System to assess the condition and the HMO management regulations which provides a framework for managers to ensure that the accommodation including the outside space is kept in a good order, tidy and clean.
 - Investigate complaints of overcrowding. Although the problem of overcrowding in the city is low we have found that HMOs can be more prone to overcrowding than other sectors.
- 12 This approach is complemented by the code of best practice (The Code) for shared student accommodation. This code has been developed in partnership since 2000 with the further educational establishments and is reviewed each year by the partnership group. The code provides clear information about housing standards and is part of our strategy to ensure that students feel welcomed and reassured by taking some of the uncertainties out of house hunting. The code is based on self assessment and regulation, with the landlord or agent completing an application form and providing certification to the educational establishment (gas and electrical safety certificates). These properties are then advertised on each establishment's website. Currently the scheme is free; any costs are either resourced through adverts in the booklet and by the universities and colleges.

Weaknesses of the code which have been identified are that we don't have the resources to carry out inspections of these properties to ensure that they comply with code but we do act on complaints nor does it separate out those which meet the minimum safety standards from those which provide a higher standard.

13 Five potential approaches have been identified to address the condition and management of HMOs:-

1. No change to our current approach- Use of the mandatory legal tools and the continuation of the code of practise for shared student accommodation.
2. Use of the mandatory legal tools and implementation of an accreditation scheme of HMOs
3. Use of the mandatory legal tools and implementation of additional licensing for HMOs²
4. Use of mandatory legal tools and implementation of selective licensing for the general rented sector ³
5. Use of mandatory legal tools and a combination of the above discretionary tools e.g. additional or selective licensing for a designated area and an accreditation scheme across the city.

14 The above approaches have been listed in a specific order reflecting that each approach requires the council to demonstrate that the previous approach may not be working for part or the whole of the city. For example prior to the implementation of either Additional or Selective licensing certain legal tests must be met including demonstrating whether viable alternative schemes have failed such as accreditation

Accreditation Scheme

15 An accreditation scheme could be considered as the next stage up from our existing approach, breaching the gap between the code and additional licensing. Accreditation schemes have been introduced in many forms over the country. Landlords and/or properties can be accredited. It has similarities to the code of practise in that it relies on the voluntary compliance by private landlords with good standards in the condition and management of their properties and their relationship with their tenants. By acknowledging good landlords they enjoy a clear

² **Additional licensing**- the council may designate either the area of their district, an area in their district or a type of HMO. The council must consider a significant proportion of the HMOs which are to be included are being managed sufficiently ineffectively as to give rise to be likely to give rise to problems either for the occupiers of the HMOs or for members of the public.

³ **Selective licensing** – The council may designate either the area of their district or , an area in their district to regulate private rented homes. Concept outlined in under the previous government department of the ODPM document "Licensing in the private sector" Introduced because of areas of low demand in the North and the Midlands – an absence of owner occupiers lead to some areas attracting an influx of speculative landlords offering the homes to tenants whose behaviour was some times unacceptable

market advantage as tenants should rent from accredited landlords as they provide quality accommodation.

- 16 Accreditation schemes can be run at a local level by local Councils, Higher Educational Institutions and their agents and Landlord Associations. There are three main elements to a scheme:-
- a satisfactory Code of Practice
 - sufficient resources to effectively operate a scheme
 - a satisfactory mechanism to undertake compliance checking, complaint investigation and disciplinary action
- 17 The current code of practice could be developed to provide the first element but it is the other two elements which would need to be explored to ensure that tenants, landlords, letting agents and residents had confidence that the scheme is working. We also realise that there will need to be real incentives to ensure that all involved see the benefits of the scheme and in particular any proposed scheme will need to be positively and actively promoted by the council to ensure that the good reputable landlords are recognised. It is anticipated that such a scheme could be self financing in the long term but initially there would be resources need to develop a scheme.

Additional Licensing:

- 18 In order for the council to consider adopting additional licensing for an area we will have to have considered:
- a. Whether there any other courses of action available to us that might provide an effective method off dealing with the problem or problems in the question. In particular we will need to have considered whether the use of voluntary accreditation schemes for private sector landlords is a viable alternative to be instead of additional licensing.
 - b. That they consider that the designation will significantly assist us to deal with the problem or problems

Selective Licensing:

- 19 In order for the council to consider adopting selective licensing for an area we will need to provide evidence to that the area is one of:
- i) Low demand
 - ii) That the area is experiencing significant and persistent problem cased by anti social behaviour and that at least

- some of the private sector landlords who have premises in the area are failing to take appropriate action to combat the problem
- iii) That the authority must consider that the designation will when combined with other measures eliminate or reduce the problem
- 20 The attached Annex B provides an outline of the advantages and disadvantages of the existing and potential controls.
- 21 Given the legal tests that need to be proven for the implementation of the two types of discretionary licensing (additional and selective) and the need to demonstrate that other effective controls are not working such as a voluntary accreditation scheme then the proposal would be to recommend that the council seeks to build on the existing framework but ensure that the proposed system includes more emphasis on landlord development and includes an inspection regime.
- 22 As stated the controls and potential controls under the Housing regulations do not limit the number or distribution of HMOs within the city or consider their wider cumulative impact on an area or areas the city their focus is on the condition and management of the HMO property to ensure that is safe for the tenant. Concerns have been raised with the Council by residents and local community groups in parts of the city that the increase in number of HMOs and concentrations were having a detrimental impact on for example significantly above average litter, anti social behaviour, noise complaints, and impact on local school rolls balance of communities. This prompted the investigatory work into the actual distribution effect of the proliferation HMOs. The findings and options to address the issues raised were presented to Members at the Local Development Framework Working Group in September 2010 and January 2011(see Annex A).

Planning Measures - Article 4 Direction

- 23 Under the planning regulations, an Article 4 Direction is a mechanism for removing specific permitted development rights and requiring applications to be made, but it does not suggest how they will be decided. Therefore in itself it has negligible impact other than requiring the submission of applications (with no fee). It is the policy position taken to deciding subsequent applications that determines its effectiveness. In this case, the Direction relates to a change of use from Planning Use Class C3 (dwelling house) to a use falling within Class C4 (dwelling house in multiple occupation), and removes

permitted development rights for this change i.e. Planning Permission would be needed for the change.

- 24 At its meeting of the 1st February 2011, the Council's Executive resolved to approve Option 2 of the 10th January 2011 report to the Local Development Framework (LDF) Working Group. This was to progress with implementing an Article 4 Direction under the Town and Country Planning (General Permitted Development) Order , covering the main urban area of York and for Officers to continue working with stakeholders to establish detailed planning guidance and consider ways of mitigating the effects of concentrations of short-term lets on local neighbourhoods. On the 15th April 2011 the Council formally made the Direction (copy at Annex C), subsequently gave notice of the making of the Direction and began public consultation.
- 25 The proposed use of Article 4 Direction powers to require planning approval for C4 HMOs is widespread nationally. Cities including Leeds, Portsmouth and Manchester have confirmed Directions, and other towns and cities including Oxford have adopted coordinated housing and planning initiatives including Article 4 powers to manage shared housing in their areas. As explained above, the Direction does not mean that subsequent applications will all be refused; only where there is clear harm to the local area, neighbours or approved policy would refusal be considered. Policies under consideration elsewhere include possible limit on the proportion within the street or section of street e.g. proportion of residential properties within 100 metres of street length either side of the property does not exceed 20%. Where applications are to be approved, conditions upon the use or the provision of facilities e.g. cycle storage and accessibility may be included to ensure they are of appropriate standard and have limited impact upon neighbouring amenity.

Consultation

- 26 Representations on the Article 4 Direction were invited between 20th April 2011 and 19th July 2011. The formal notice of the making of the Direction was given via a York Press newspaper notice, information being published on the Council's website, the display of notices at 14 locations across the City and the documents being deposited at the Council offices at 9 St Leonard's Place. In addition, those who had made comment at the time of LDF Working Group and/or Executive consideration of the making of the Direction were also informed of the consultation. Parish Councils, Planning Panels and developers and agents were also consulted. The Secretary of State was notified as required.

- 27 We have also consulted with a range of councils about their approaches controlling the quality of the private rented sector. Information is provided in Annex D. Further consultation to develop the policy would be required both with existing partners, for example the members of the steering group of the code of practice⁴ and other groups such as the local Association of Residential Letting Agents (ARLA) to ensure support.
- 28 The representation received in respect of the consultation on the Article 4 Direction are summarised at Annexes E and F.

Analysis of Representations Received

Response to Representations in Support:-

- 29 The representations received in support as summarised in Annex E generally reflect those set out in the LDF Working Group report of 10th January 2011. These are outlined in paragraph 4 above. The effects upon local communities are highlighted, with concerns related to the effect on local school roles, loss of family houses, and neighbourly relationships and community balance cited. The provision of on campus and off campus purpose built student accommodation is urged. A number of the concerns appear to have been validated by the evidence produced for the LDF report.

Response to Representations Against in Template Letter (Annex F) :-

- 30 ‘Negative Implications for Tenants’.
- Many of the comments such as rents rising and lack of competition assume that the Article 4 Direction would prevent any future changes of use from C3 to C4. The Direction is not intended to unreasonably suppress an appropriate level of shared accommodation in the city. Only where there is a harmful or potentially harmful impact that is contrary to the policy would permission be refused, or conditions be attached to approval mitigating against any impact.
 - Confirmation of the Direction would not in itself lead to a rise in traffic congestion or force students to live in smaller sized accommodation. The effects of potential dispersal of new HMOs would be considered within the formulation of the policy.

⁴ The steering group includes accommodation officers of the further education establishments, independent landlords, representatives of the York Residential Landlords Association (YRLA) Representatives from the student unions as well as City of York Council representatives

- The University is committed to providing additional accommodation on campus as part of the Heslington East approvals.
- The Equality Impact Assessment does not suggest that the Direction itself would have an adverse discriminatory impact. The policy may seek to reduce the scope for additional HMOs in some areas of the city where significant concentrations and resultant problems exist, but would not seek to target specific groups (such as students) or by age or ethnicity.

31 *'Negative Impact on landlords'.*

- The comments mostly assume a ban on new HMOs rather than the measures to manage the supply sought. The Article 4 Direction is proposed in the public interest, to address the issues and evidence as set out in the LDF Working Group report of 10th January 2011. It is not intended to curtail the private rented sector which is recognised as a vital element of the housing offer in York, or returns on landlord investment. Existing shared housing would not be affected by the Direction.
- The Direction would require the submission of a planning application with appropriate documentation e.g. floor plans, and would involve time to determine such an application. There is currently no fee for applications where permitted development rights have been removed. If Government proposals to decentralise planning fees proceed, the Council can decide whether such applications would remain free or whether a charge is introduced. Overall the costs and time taken to gain planning approval (where the change is acceptable) would be relatively limited.
- For future sales of properties in C4 use, those already operating prior to the Direction would have a lawful use. Provided evidence in the form of rental receipts etc could be produced, it is doubtful that purchasing solicitors or mortgagees would need a Certificate of Lawful Use. Less formal clarification from the local planning authority is often sufficient for similar situations.
- Non compliance with the requirements of the Direction would be at the risk of the owner/landlord of the property. The Authority will seek to ensure the need to apply for C4 use is widely publicised.
- The Direction has been widely publicised, and if confirmed, work would continue with landlords to ensure they are consulted on the formulation of the policy to accompany the Direction.
- Splitting of houses to flats as raised in the response would require planning permission and therefore be subject to control with or without an Article 4 Direction.

- It is acknowledged there will be some effect where a shared house reverts back to a family house in needing to apply to again be used as C4 HMO.

32 ‘*Negative Implications for Local Residents (Owner Occupiers)*’.

- House values are not normally considered to be a material planning consideration. There is no evidence to suggest that the Direction would make some houses more difficult to sell. The Direction has been widely publicised and it should become apparent as part of the local search process that an Article 4 Direction is applicable within the main urban area.
- For York, the justification for making an Article 4 Direction to control HMOs lies in the harm that would be caused to local amenity or to the proper planning of a particular area as a result of a significant increase in concentration of HMOs. The concern about the impacts of high concentrations of HMOs in York is mainly driven by the increasing number of student private rented properties, which is why the report to the LDFWG on 10th January 2011 concentrated on student HMOs. There is evidence, referred to in the report, that neighbourhoods can be damaged by high concentrations of such HMOs. It is therefore considered appropriate to seek to control the concentrations of HMOs to reduce the impacts to local communities.

33 ‘*Negative Implications for City of York Council*’.

- The Direction is not a policy in itself ; the policy is yet to be developed and will take into account the impact on equality strands within the City. However, Annex G assesses the impact of the confirmation of the Direction upon equality strands .
- Concerns relating to single room allowance claims assume no additional HMOs as a result of the Direction which is not proposed.
- There is no evidence to suggest an increase in homelessness
- Because the main urban area which is well served by public transport the impact on travel of any dispersal of rented properties would be limited.
- Whilst applications resulting from the Direction would be free of charge, the total number received since class C4 HMO was created on 6th April 2010 and prior to permitted development rights being introduced (1st October 2010) was 17. This was from 910 planning applications and 2138 overall submissions received for the period. The additional workload from introducing the Article 4 Direction is not therefore expected to be proportionately significant. The Government has consulted upon the introduction of decentralised planning fee setting, which may allow local authorities to introduce fees for dealing with applications required by virtue of an Article 4 Direction. However

the Council may choose not to introduce a charge for such applications. Non compliance would be dealt with as appropriate.

- The Direction is not proposed as a result of ‘poor landlords’, but to address the wider potential issues of the impact of a concentration of HMOs within an area.

34 ‘*Negative Implications for Universities and Colleges*’.

- There is a legal obligation for the University of York to provide sufficient on-campus accommodation to house additional students as result of the Heslington East extension. The provision of on-campus accommodation to meet demand would be of benefit to the University. Permission has recently been granted for student accommodation off campus which does not impact on the private rented stock e.g. at Hull Road and at Navigation Road, within walking distance of university sites. More work with the Universities on accommodation of students on campus/in off site bespoke accommodation will be undertaken.

35 ‘*Negative Implications for the Economy of York*’.

- The Policy would not be formulated to result in a significant lack of such accommodation. Young professional graduates and employees in the City would not therefore be disadvantaged as suggested.
- The planning process is legitimately used to control the impact of development, in the public interest. The government circular relating to Article 4 Directions confirms that where justifiable to address identified planning concerns, it is appropriate for local authorities to use Article 4 Directions to remove permitted development rights for change of use from C3 to C4.
- Issues regarding the effect on the Universities are mentioned above, and private sector student accommodation is coming forward which does not impact on housing stock. There is no evidence that the Direction would subdue the housing market or reduce the value of properties in the City. However the measure may help to ensure that housing within areas of highest HMO use is not priced to effectively exclude buyers for family occupation. There is also no reason to believe the Direction would result in fewer living units in the City, since any policy for dealing with applications would not seek to prevent changes of use altogether.

Response to other representations against (Annex E):-

- 36 As mentioned above, the reintroduction of permitted development rights for change of use from C3 to C4 in October 2010 was accompanied by new legislation and guidance relating to Article 4 Directions, which

specifically referred to the control of HMOs using these powers. The Housing Act provisions and the landlord accreditation scheme proposed do not offer the same opportunity to address the wider environmental and social impacts of the distribution of HMOs that the Direction that would allow. The Council has, in preparing the previous reports for consideration of an Article 4 Direction, collated evidence relating to the current impact of HMOs and that which is likely if changes of use were allowed to continue without being subject to planning controls. Specifically in relation to shared housing, planning authorities can consider whether the exercising of permitted development rights would undermine local objectives to create or maintain mixed communities.

- 37 In accordance with the new guidance (Replacement Appendix D to Circular 9/95 (November 2001) under *Section 2 The Use of Article 4 Directions*), a Direction can be made in respect of potential harm, to control problems before they occur where evidence suggests that it would be expedient to do so. Data was collated and presented within this context. All data in the report to the 10th January 2011 LDF Working Group was presented in the annexes in an open and transparent manner. A comparison could be made between the areas with high concentrations of HMOs and the city wide average. What were presented in the body of the report were the headline messages of what has been experienced in areas of higher HMO concentration. Conclusions were drawn relating to the potential harm that could be caused if permitted development rights remain in such areas. It is considered that a significant amount and range of evidence underpinned the decision to introduce an Article 4 Direction in York.
- 38 In terms of the consultation process, the regulations for giving notice of the making of an Article 4 Direction require a local advertisement to be placed, and at least two public notices to be displayed in the area subject to the Direction. In this case, as recognised in the regulations, it was considered impracticable to serve notice on all owners and occupiers within the specified area (i.e. the entire main urban area). A minimum period of 21 days for comments is required and the Direction should not be confirmed within 28 days of the start of the consultation period. In this case a Press notice was placed, 14 public notices across the city were displayed, and a three month period of consultation was held. Interested parties were also contacted directly. It is therefore considered that the publicity for the Direction exceeded the minimum requirements set out in the regulations.
- 39 Other comments raised relating to costs, and landlord and student interests are addressed above.

Options

- 40 The options suggested to the Cabinet are:
- a) No change to current approach towards housing standards in the private rented sector and no confirmation of the Article 4 Direction
 - b) Explore approaches to improving the standard of HMOs through an accreditation scheme but not to confirm the Article 4 Direction
 - c) Explore approaches to improving the standard of HMOs and confirm the Article 4 Direction at Annex C covering the urban area of the City to take effect on 20 April 2012
 - d) Explore approaches to improving the standard of HMOs and amend the Direction in light of the representations received.
(Amendment could involve alteration of the area affected by the Direction and/or a change of the date it takes effect)
 - e) No change to current approach towards housing standards in the private rented sector and amend the Direction in light of the representations received. (Amendment could involve alteration of the area affected by the Direction and/or a change of the date it takes effect)

Analysis of Options

- 41 Option a) The code of practice aimed at shared student properties provides excellent information for landlords and letting agents renting houses in multiple occupations to students. However there is no such framework for landlords and letting agents renting to other types of tenants. It could also be argued that without a checking regime that the code is weakened. Such checks could include :-
- Inspection of all HMOs or random selection of HMO properties owned by a landlord
 - Checking to see whether a landlord/agent is fit and proper and whether they are adequately trained.
- 42 If the Direction is not confirmed then Permitted Development rights to change dwellings houses to C4 HMOs would continue to be available within the City. The impact of and concerns relating to the effects of an increasing number of conversions of C3 dwellings for C4 HMOs within the City could not be addressed in a subsequent policy.

- 43 Option b) This would involve implementation of a city wide accreditation scheme to ensure that all good landlords and letting agents are recognised and helped to provide good quality accommodation to tenants, not just those which rent to students. The scheme would seek to include the inspection of properties and carry out checks to ensure that the person managing is suitably trained for the job. Having such a scheme will enable the existing enforcement team to focus on tackling the minority of rogue landlords. It will also benefit landlords and letting agents in particular by providing positive publicity (certification and logos) which will give confidence to tenants that the properties of a good standard and well managed. It is important that for any scheme to be successful that it has full support of the council. However, if the Article 4 Direction is not confirmed Permitted Development rights to change dwellings houses to C4 HMOs would continue to be available within the urban area and the wider impacts of HMOs in local areas as identified in earlier work would not be addressed.
- 44 Option c) The introduction of an accreditation scheme as described above and confirmation of the Direction taking effect from 20th April 2012 would provide a coordinated approach to addressing quality issues and issues of local impact within the urban area of York. Such an approach would potentially allow a flexible Planning policy to be developed which does not limit the number of HMOs across the urban area but manages their use and distribution.
- 45 Option d) The introduction of an accreditation scheme and amendment of the Direction in light of the representations received. However in terms of the Article 4 following consideration of the representations, the Direction made could be amended, for example to increase the area covered by the Direction, or to change to period of time before the Direction takes effect. Amendment of the Direction to this extent would however require a reconsultation process to be undertaken, and any further representations received being considered prior to confirmation of the Direction. Any reduction of the time period by which the Direction takes effect would leave the Council open to compensation claims on applications submitted within 12 months of it taking effect which are refused or approved subject to restrictive conditions.
- 46 Option e) No change to the housing regime would have the implications as outlined at paragraph 38 above. Amendment of the Direction would require the measures as at paragraph 45.

Council Plan Priorities

47 The confirmation of the Direction assists in the delivery of the following priorities:-

- Build Strong Communities – by introducing clear workable standards for private landlords and letting agents which have been developed in-conjunction with landlords letting agents and other stakeholders. In addition the appropriate planning control of HMOs in the City would help to ensure that sustainable, balanced and mixed communities can be maintained throughout the urban area.
- Protect the Environment – The impact of HMOs within a concentrated area will be more readily mitigated by the requirement for planning applications to be submitted and determined in accordance with a policy which seeks to manage against such effects. This may involve appropriate conditions being attached to an approval rather than outright refusal of an application. Also by ensuring that accreditation standards are practical and focus on issues such as reducing carbon emissions through the use of energy performance certificates. It is a key objective in the Private sector renewal strategy Strategic Aim 2; to encourage private landlords to provide good quality and well managed properties for their tenants.

Implications

Financial

- 48 There are cost implications associated with the development and the implementation of an accreditation scheme. One of the principles of such a scheme will be to ensure that the scheme is self-financing through a fee structure. However it must be recognised that to develop such a scheme especially to reach out and support landlords and letting agents who are renting outside of the shared student market that there will be a need to resource (staff) the upfront development of the scheme.
- 49 As mentioned above, the Local Authority would be at high risk of substantial compensation claims by applicants, who can claim compensation under section 108 of the Town and Country Planning Act 1990 (as amended), if the Article 4 Direction were to take effect within 12 months of notice being given i.e. before 20th April 2012. Applicants are entitled to claim compensation for financial losses incurred, including process costs, loss of land value and loss of future income.

Human Resources

- 50 The development of an accreditation scheme will need additional officer time. Part of the role of the officer will be to develop a fully costed business case for the scheme.

The introduction of the Article Direction will potentially lead to additional applications being submitted to convert C3 dwellings to C4 HMOs after April 2012. However as explained in paragraph 20, the number is not expected to be significant compared to the total submissions received by the Planning Authority. The monitoring of HMOs to ensure that the Direction is being adhered would be undertaken by the existing planning enforcement team. Wide publicity for the Article 4 direction and provision of information on the planning requirements via Housing services contact with landlords and prospective landlords will assist in avoiding or minimising any additional workload.

Equalities

- 51 An Equalities Impact Assessment has been carried for the introduction of the Article 4 Direction (Annex G). The confirmation of the Direction itself would not result in any notable adverse impact; it simply involves the withdrawal the permitted development rights across the urban area. The only potential adverse effect identified would be on home owners and prospective landlords needing to apply for permission (with no fee currently payable) to change from C3 to C4. The landlord cohort in York is not believed to include a significant proportion of persons potentially disadvantaged by one or more of the recognised equality strands. The policy formulated and used to determine such applications would need to be subject to an Equalities Impact Assessment to consider whether it has any particular impacts on more vulnerable groups, but the objectives of the policy would have a positive benefit on local people in preserving and ensuring mixed and balanced communities.

- 52 A full Equalities Impact Assessment for the implementation of an accreditation scheme has not been carried out but it is not envisaged that it would result in any adverse impact. However, the business case for such scheme would need to be fully assessed.

Legal

- 53 The statutory provisions relating to the introduction of the Direction are outlined in the report to the LDF Working Group dated 10th January

2011. If the Direction is confirmed, notice of confirmation will be given through, for example, site notices, in the Press and informing the Secretary of State. The Direction will then come into force automatically on 20th April 2012. The circumstances in which the Council may be liable to pay compensation are set out in paragraph 45 above.

- 54 Implementation of an accreditation scheme would have no legal implications. However, there is a legal process which will need to be followed should the discretionary licensing approaches be pursued.

Crime and Disorder

- 55 Whilst there are no direct crime and disorder implications arising from this report, it is recognised that by improving landlord/letting agents awareness of their responsibilities that this will reduce the risk of any potential problems.

Information Technology

- 56 None at this stage but there will be a few but limited implications if members chose to develop an accreditation scheme e.g. the development of information and in particular the ability to publicise accredited landlords and letting agents so that they are incentivised to join such a scheme.

Property

- 57 None.

Other

- 58 None.

Recommendation

- 59 That the Cabinet :-

- (i) Having taken into account the consultation responses to the making of the Article 4 Direction, considers all the options and agree one of them outlined in paragraph 40.
- (ii) Instructs officers to continue to work with the Stakeholders and Landlord representatives to develop a strategic approach towards HMOs
- (iii) Reviews and considers the impact and effectiveness of implementation of Article 4 Direction and/or other measures

introduced as set out in the options above, 12 months after they have taken effect.

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Wards Affected: All

For further information please contact the authors of the report.

Annexes

- A** Report to LDF Working Group 10th January 2011
- B** Legal Tools for Management of HMOs
- C** The Direction and Plan of the Area
- D** Measures Introduced by other Local Authorities
- E** Summary of representations received
- F** Template letter of objection
- G** Equality Impact Assessment for Article 4 Direction