

## **Briefing note**

### **Notice of motion about Houses in Multiple Occupation in Fant Ward**

#### **Council Meeting 29 September**

The Motion states

The Council will be aware of the continuing problems associated with overdevelopment in the Fant Ward. These issues are accentuated by the ability to convert single family residential homes into Houses of Multiple Occupancy (HMOs) with no more than 6 persons under permitted development without the need for planning permission or democratic oversight. This is now a major topic of concern in the Ward.

However, the Council has the ability to serve an Article 4 direction to remove this permitted development right. This will not prevent HMOs in the area being proposed, but will make all HMOs subject to the democratic processes of seeking planning permission (large scale HMOs i.e. more than 6 persons already require planning permission).

It is therefore resolved that "Maidstone Borough Council impose an Article 4 direction to remove permitted development rights to convert residential properties from C3 use to C4 use and C4 use to C3 use in the area of Fant Ward to the east of Fant Lane/ Hackney Road. The uncontrolled development of HMOs under permitted development has had a negative impact in this densely populated and congested area, especially on grounds of sustainability and infrastructure, highlighted by problems associated with parking issues and the continuing inability of HMO conversions to demonstrate car parking provision in accordance with the local development plan."

#### **What is an HMO?**

- A house occupied by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as kitchen facilities and/or bathrooms etc. (Class C4 of the Town and Country Planning (Use Classes) Order 1987.
- Class C4 (as stated above) is solely for HMOs. Whereas Class C3 is for dwelling houses with a single household. A house for more than 6 unrelated individuals is known as a large HMO
- The Use Classes Order in England as of the 2021 allows permitted changes of use between Classes C3 and C4 and vice versa ie the change can be made without the need for planning permission.
- Where a larger HMO is proposed (ie for more than 6 people), the Council's planning department assesses such applications under policy DM9 of the adopted Maidstone Borough Local Plan 2017. When

planning applications for larger HMOs are assessed, the decision maker will have to bear in mind that planning permission is not required for a smaller HMO i.e up to 6 residents. An assessment therefore must be made of the likely impact of the additional residents over and above those that could be accommodated in the house without requiring planning permission.

### **What is an Article 4 Direction?**

An article 4 direction is made by the Local Planning Authority. It restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area.

- The NPPF advises that all Article 4 Directions should be applied in a measured and targeted way. They should be based on robust evidence and applied to the smallest geographical area possible. In relation to HMOs, Article 4 Directions should be limited to situations where it is necessary to protect local amenity for the wellbeing of the area. Lastly, the potential harm that the Article 4 Direction is intended to address will need to be clearly identified.
- There are two types of Article 4 Direction, immediate and non-immediate. The latter takes 12 months, but the risk of compensation payable to affected property owners is significantly reduced.
- It is important to point out that Article 4 directions do not stop development, the applications which result must be considered on their planning merits against the Development Plan.
- Therefore, it is possible to serve an Article 4 Direction, provided that the area is tightly defined such as streets or preferably parts of streets and there is a clear evidence base.

### **Fant Context**

There have been 8 HMO applications since 2015 (i.e. where the proposed HMO would accommodate more than 6 people). Considerations covered in the reports refer to the sustainable location ie walkable to the Town Centre and bus stops. 7 of the applications were approved, most did not provide any onsite parking; only one was refused on lack of parking.

In terms of policy. The pre-amble to the Local Plan policy DM9 states general support for HMO provision (subject to the criteria within the policy being met) as HMOs "aid the provision of accommodation for smaller households and contributes to the mix and choice of homes, advocated by the National Planning Policy Framework (NPPF) .....The intensified use of dwellings to create smaller households can cause problems for nearby residents, for example noise and disturbance from increased traffic movements and requirements for parking. Policy DM9 seeks to control the

potential problems arising from such proposals". The policy requires certain criteria to be met, one of which relates to the "intensified use of the building and its curtilage would not significantly harm the appearance of the building or the character and amenity of the surrounding area".

### **Scoping of Evidence Base**

There is an existing policy in the adopted Local Plan (DM9) on conversions including HMOs. There is a separate policy (DM23) on parking standards.

- **DM9 1. (ii)** The traditional boundary treatment of an area would be retained, and where feasible, reinforced.
- **(iv)** Sufficient parking would be provided within the curtilage of the dwelling without diminishing the character of street scene.

Therefore, policy controls are in place, however, these need to be scrutinised further. There are no bespoke parking standards for HMOs. However, note 3 to the standards states that reduced or even nil provision is acceptable for rented properties subject to effective tenancy controls. So, in effect, even where planning permission is required for HMOs and no parking is proposed, such applications have been interpreted as complying with the adopted parking standards, or as mentioned above, the locations have been judged to be sustainable in terms of proximity to the Town Centre etc.

### **Conclusion**

Non-immediate Article 4 Directions could be served on tightly defined areas within Fant (and other Wards). However, the specific harm occurring would need to be identified, and this will be difficult to evidence given the Council's adopted parking standards. Therefore, in addition to a robust evidence base, there would need to be allied policies.

### **Other relevant information**

Separate to planning legislation, is a requirement for certain HMOs to be licensed under the Housing Act 2004. This statute places a duty on landlords and managing agents with properties that are occupied by five or more people (in at least two households) to licence the dwelling with the Council. Purpose built flats where there are three or more flats in the block are exempt. The Government's guidance on licensing HMOs acknowledges that "houses in multiple occupation (HMOs) form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited." The onus is on the owner or managing agent to apply for a licence where it falls within the statutory definition. The local housing authority can investigate premises that have been notified to it as being used as an HMO where no licence exists. This function is carried out by the Council's Housing and Health Team within the Housing Service.

The purpose of the licensing regime is not to act as a replacement to the planning legislation but is concerned with the question of whether “the property is reasonably suitable for occupation by the number of persons or households specified in the application”. This will primarily be concerned with fire safety but also includes whether the landlord or managing agent is a ‘fit and proper person’ and the legislation provides a narrow definition of what this means.

Licenses are generally granted for a period of 5 years, but the local housing authority may review the licence at any time if it has good cause to do so. A licence can be revoked or amended, and disputes would normally be heard by a First-Tier Property Tribunal