

Alternative Referral of Service Committee Decision – Article 4 Directions

Strategic Planning and Infrastructure Committee Briefing Note for the Alternative Referral of Service Committee Decision in respect of Houses in Multiple Occupation in Fant.

This matter began by way of a motion to Full Council in September 2021. This was followed up by an officer report to SPI in November 2021, which suggested that the matter be explored, and again in February 2022, when it was revisited along with requests for further article 4 directions to be explored too.

The February report suggested that to achieve tangible results, the exploration of article 4 directions should be prioritised as follows: -

- Complete work on potential HMO article 4 direction(s) in the Fant area. To date, only Charles Street has any potential. Completion of the work should take around 3 months.
- Exploratory work commences on article 4 directions in connection with 'protecting' everyday services in the villages identified for growth in the Development Plan.
- Exploratory work commences on article 4 directions on conservation areas.
- Exploratory work commences on article 4 directions in relation to employment protection areas.

An article 4 direction removes permitted development rights and therefore a planning application becomes necessary.

The Committee decided against this prioritisation and instead resolved to:

'Work on prioritising Conservation Areas and getting the management plans in place to be completed, before proceedings with Article 4 Directions'.

This decision was initially referred for reconsideration by Councillors Harper Rose and Coates, who wanted the officer recommendation to be agreed, which was to focus initially on the possibility of article 4 directions in Fant. This initial referral is attached at Appendix 1.

An alternative referral was then submitted by Councillors Purle, Cannon, Forecast and Holmes, which whilst ostensibly sought the same outcome, was more detailed, and proposed a multi-faceted approach to resolve the perceived issues with the growth of HMOs, initially in the Fant area. This alternative referral is attached at Appendix 2, and was permitted by Council Procedure Rule 33(8) as outlined below:

'In either case, should new and relevant information come to light, or a more acceptable course of action be proposed which may resolve the matter to the satisfaction of the Committee, then a Committee Chairman, at the request of any three Councillors in writing, may choose whether to call another meeting of the original Committee to re-consider the decision within five working days of receipt of a referral. The referral to Policy and Resources Committee or the Council would then fall away and the matter would be treated as having been dealt with by the original service Committee. No further referral of the matter would be permitted'.

Moving forward, , to decide on the best approach, there needs to be consideration of the baseline position of the quantum of HMOs in Fant. To move the discussion forward, this gathering of baseline information has been accelerated, and can be summarised as follows:

Street	Licensed HMO's	Shared Test HMO's	Converted Building HMO's	Converted Flats HMO's	Total	Units on Street	% HMO of Total
Bower Lane	2	1			3	95	3.2%
Bower Place	1			8	9	77	11.7%
Bower Terrace		11			11	27	40.7%
Chamberlain Avenue	1				1	87	1.1%
Charles Street	4	2			6	39	15.4%
Charlton Street	1			9	10	94	10.6%
Douglas Road	3			1	4	68	5.9%
Dover Street	1			2	3	75	4.0%
Everlyn Road		2			2	19	10.5%
Fant Lane	1			1	2	84	2.4%
Florence Road	3			1	4	106	3.8%
Hart Street		1		1	2	285	0.7%
Hartnup Street		3			3	121	2.5%
Lower Fant Road		1		1	2	102	2.0%
Milton Street	3	2		2	7	174	4.0%
Old Dover Works		1			1	6	16.7%
Reginald Road	3	1			4	58	6.9%
St Michaels Road			1		1	20	5.0%
Tonbridge Road	9	5		4	18	395	4.6%
Upper Fant Road	8	6	1	6	21	369	5.7%
Western Road		1			1	57	1.8%
	40	37	2	36	115		

Further explanation of the column headings is provided below:

- Licensed HMO's – these are properties with 5 or more people in 2 or more households.
- Standard Test HMOs are where facilities are shared, i.e., shared houses and bedsits (3 or more tenants in 2 or more households). If a dwelling is owner occupied with lodgers there must be 3 lodgers to make it an HMO.
- Converted Building HMOs are where not all the flats are self-contained. These are licensable if there are 5 occupants in the building.
- Converted flats are where the building was converted before 1992 and/or not to 1991 Building Regulations Standard and less than 2/3rd of the flats are occupied by leaseholders.

In terms of the table, it shows only one street with a relatively high proportion of HMO's, Bower Terrace, but this is arguably skewed by there being a relatively small total number of dwellings on the street. Also, given there are circa 5,000 dwellings in Fant, the % that are converted is just 2.3% of the total stock.

Therefore, the key consideration is:

"Is the amount of HMOs in Fant so high today, that it is harming the community through the issues commonly associated with the densification of housing, so: pressure on parking, pressure on bin storage, too many people in one location, changes to the curtilage of properties etc".

If 'no', then no further action should be taken on the matter in Fant, and the next priority should then be pursued.

If 'yes', it does not necessarily follow that an article 4 direction is the solution. There are several possibilities that could be explored to improve the situation:

- Strengthening the design quality criteria for HMOs in the forthcoming "Design and Sustainability" Development Plan Document (DPD) that this Committee has already committed to progress. This exercise should take into account that Fant area is classed as "edge of centre" in local plan residential parking policy DM23 and this means that the 'sustainability' of the location is factored in and, moreover, the standards are expressed as maxima. Therefore, this parking policy could be reviewed.
- Residents' parking restrictions on occupants of HMOs
- A Council licencing regime for all types of HMO.
- Council Tax disincentives to creating HMOs (low chance of success)

If article 4 direction(s) were deemed to be suitable, they should only be introduced once the DPD is in place, or Planning Committee would still potentially need to approve the planning applications, as there would not be strong policy grounds for refusal. Furthermore, article 4 direction(s) should only be introduced on a street-by street basis at the point that the number of HMOs on any given street exceeds a threshold (which relies on an evidence base demonstrating 'harm' beyond this point) such as 25% of the total housing stock on that street. This is common practice where the prevalence of HMOs has become an issue elsewhere, say in university or coastal towns. This targeted approach will be necessary as the NPPF says that such directions must be targeted / affect the smallest area possible.

The alternative referral did also moot the possibility of the Council buying stock in Fant for its 1,000 Affordable Homes Programme, to either de-convert existing HMOs or to buy homes that are placed on the market that might be susceptible to being converted to HMOs. This idea is not workable as Homes England do not provide grant to create affordable homes from existing street properties. i.e., their grant monies are only available to create new build stock only.

Therefore, if this Committee answers 'yes' to the question posed, the following course of action is suggested for the next municipal year:

That the relevant portfolio holder(s) be recommended to:

1. Take forward the "Design and Sustainability" DPD to include a review of DM23, and once adopted seeks to bring in A4Ds in Fant on a street-by street basis, once HMO prevalence reaches the evidenced threshold.
2. Take forward a review of residents' parking entitlement for either all HMO residents or just residents of new HMOs created after.
3. Explore the possibility and merits of creating a formalised licencing arrangement for all HMOs.
4. Take forward an exploration of referring all HMO properties to the Valuation Office for revaluation, based on their net rental income (as an HMO), rather than their valuation as a single self-contained dwelling, as is currently the case. This is unlikely to be successful as Royal Institution of Chartered Surveyors advice is that residential valuations are based purely upon comparable sales values, rather than rental streams (as is the case with

commercial property). However, the concept can be explored further in case precedents have been established elsewhere.

Once all these lines of enquiry have been explored, a cross-cutting report should be prepared by officers and presented to the Cabinet for approval, by a target date of 30 September 2022.

Appendices

Appendix 1 – Alternative referral of Service Committee Decision

Appendix 2 – Original referral of Service Committee Decision

Appendix 3 – Article 4 Report presented to the Strategic, Planning and Infrastructure Committee on 8 February 2022, including urgent update.

Appendix 4 – Minute 175 of the Strategic, Planning and Infrastructure Committee Meeting held on 8 February 2022.

Background Documents

Original Motion - Council Meeting held on 29 September 2021 and associated Minute: [Your Councillors - Maidstone Borough Council](#)

Reference from Council – Motion – HMOs – Presented to the Strategic Planning and Infrastructure Committee on 9 November 2021 and associated Minute: [Your Councillors - Maidstone Borough Council](#)