
Clarification of confirmation of Article 4 Direction relating to the conversion of Class C3 Houses to Class C4 Houses in Multiple Occupation

Decision to be taken by: City Mayor

Decision to be taken on: 9 February 2023

Lead director/officer: Kamal Adatia

Useful information

- Ward(s) affected: Abbey, Aylestone, Braunstone Park & Rowley Fields, Castle, Fosse, Knighton, Saffron, Stoneygate, Westcotes
- Report author: Kamal Adatia, Monitoring Officer
- Author contact details: Ext 1401
- Report version number: 1

1. Summary

- 1.1** A non-immediate Article 4 Direction was made in November 2021 and subsequently confirmed on 18th November 2022 in line with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- 1.2** It subsequently came to light that the Direction contains some mistaken text. This report clarifies, when read with the confirmation Decision, the correct reading of the Direction which has been confirmed and recommends that the Council proceeds to issue “notice” of the Direction with the slips duly clarified.

2. Recommended actions/decision

- 2.1** The City Mayor is recommended to approve this clarification to the confirmed Article 4 Direction so that the Council can proceed to give notice thereof in accordance with the law.

3. Scrutiny / stakeholder engagement

N/A

4. Background and options with supporting evidence

- 4.1** On 16th November 2021 the Council “made” an Article 4 Direction to restrict permitted development rights for conversion of C3 houses to C4 houses in multiple occupation (“HMOs”), in accordance with Schedule 3 paragraph 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the 2015 GPDO”).
- 4.2** On 18th November 2022, the City Mayor “confirmed” the Article 4 Direction in accordance with Schedule 3 paragraph 1(7) of the 2015 GPDO [Decision - CONFIRMATION OF ARTICLE 4 DIRECTION APPLYING TO CONVERSIONS FROM CLASS C3 DWELLINGS TO CLASS C4 HOUSES IN MULTIPLE OCCUPATION \(leicester.gov.uk\)](#)

4.3 The third and final stage of the process in law is to give “notice” of the Direction in accordance with Schedule 3 paragraph 1(11) and (12) of the 2015 GPDO.

4.4 At the point of preparing to give “notice” in accordance with the law it came to the attention of the Council that the Direction as made contained obviously mistaken text. The Council therefore deferred giving “notice” of the confirmed Direction until legal advice was sought regarding the significance and legal impact of those drafting “slips”.

The “slips” comprise the following:

4.5 Firstly, the Direction, as made in November 2021, refers to “*Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended)*”. However, Class L(b) is in schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. There can be no doubt that the reference to the 1987 Order is a slip and that it should have referred to the 2015 GPDO.

4.6 Secondly, the second use of the phrase “*to a use falling within Class 4 (houses in multiple occupation) of that Schedule, being development comprised in any other class*” is extraneous and adds nothing, being an unnecessary repetition of words which properly appear in an earlier part of the Schedule.

4.7 The text below indicates what the Direction was intended to say (and what it obviously means and should have said) and is provided to avoid any scope for any confusion.

4.8 The Schedule to the Direction should read:

Development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Schedule, being development comprised within Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

4.9 The Direction can only be properly understood as having this meaning anyway and is legally effective to have the result intended which is to remove permitted development rights for a change of use from class C3 to class C4 without express planning permission. This clarification falls within the de minimis or rectifying construction rule, gives effect to the obvious intent of the Direction, and it reflects the substance of the Direction that was intended to be made. There is no possible prejudice to anyone. The Direction properly read as a whole in its statutory context is clear that it removes the above permitted development rights.

4.10 A note to the above effect will be appended to the Direction, and a corrected version of the Direction will be made available on the Council’s website, to be read alongside

the original text, to provide clarity as to what the Direction was intended to say (and what it obviously means and should have said) and is provided to avoid any scope for any confusion. A copy is also at Appendix A.

5. Legal, financial, equalities, climate emergency and other implications

5.1 Legal implications

The body of the report recites the legal issues.

The Direction as “made” in November 2021 and as “confirmed” in November 2022 is, despite the errors, legally effective to remove permitted development rights for conversion of C3 houses to C4 houses in multiple occupation. The mistakes are obvious and do not impact the obvious effect and purpose of the Direction.

The merits of the decision to make the Article 4 Direction or the legality of that decision are not in issue.

The proposed steps ensure the Council complies with Schedule 3 para 1 (11) of the GPDO 2015 which requires a local authority to, as soon as practicable after a Direction has been confirmed, to (a) give notice of such confirmation and the date on which the direction will come into force; and (b) send a copy of the direction as confirmed to the Secretary of State.

5.1 Financial implications

None – this clarification report is solely concerned with legal issues (*Stuart McAvoy, Head of Finance*)

5.3 Equalities implications

None – this clarification report is solely concerned with legal issues (*Kalvaran Sandhu, Equalities Manager*)

5.4 Climate Emergency implications

None – this clarification report is solely concerned with legal issues (*Aidan Davis, Sustainability Officer*)

6. Background information and other papers:

[Decision - CONFIRMATION OF ARTICLE 4 DIRECTION APPLYING TO CONVERSIONS FROM CLASS C3 DWELLINGS TO CLASS C4 HOUSES IN MULTIPLE OCCUPATION \(leicester.gov.uk\)](#)

7. Summary of appendices:

Appendix A – Extract of Article 4 Direction dated 18th November 2022, with clarificatory note.

8. Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)?

No

9. Is this a “key decision”? If so, why?

No

The Direction as made contained obviously mistaken text. The text below indicates what the Direction was intended to say and what it obviously means and should have said and is provided to avoid any scope for any confusion*. The original 2021 Direction will append a note confirming the corrected text after the original text.

*Words underlined are added, and words struck-through are to be disregarded. What follows is not a complete version of the Order. Only the relevant extract (Schedule 1) is reproduced here. Schedule 2 remains intact as published and requires no clarification.

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT

(ENGLAND) ORDER 2015 (AS AMENDED)

DIRECTION MADE UNDER ARTICLE 4(1) OF THE TOWN AND COUNTRY PLANNING

(GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 (AS AMENDED)

LEICESTER CITY COUNCIL HMO ARTICLE 4 DIRECTION 2021 ("the Direction")

WHEREAS LEICESTER CITY COUNCIL (hereafter called "the Council") being the appropriate local planning authority within the meaning of article 4(5) of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order") are satisfied that it is expedient that development of the descriptions set out in Schedule 1 below should not be carried out within the Land and/or properties shown edged red on the attached plans at Schedule 2 ("the Land") unless planning permission is granted on an application under Part III of the Town and Country Planning Act 1990 as amended.

For the avoidance of doubt the Leicester City Council HMO Article 4 Direction 2021 shall apply to the following 3 areas:-

- Sub-Area —West
- Sub-Area —East
- Sub-Area —South

The following areas covered by the Article 4 Direction made on 8th August 2013 remain unchanged by the Direction:-

- Westcotes
- Clarendon Park
- Central area

AND WHEREAS the Council considers that development of the said descriptions set out in the Schedule below should not be carried out unless permission is granted by an application made under Part III of the Town & Country Planning Act 1990.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Order hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in Schedule 1.

THIS LEICESTER CITY COUNCIL HMO ARTICLE 4 DIRECTION 2021 was made on 16th November 2021 under Article 4(1) Section 1 of the said Order. In accordance with Paragraphs 1(11) and 1(12) of the Order, the Council confirmed the Article 4(1) Direction on 18th November 2022 and shall take effect on 28th November 2022

SCHEDULE 1

Development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Schedule, being development comprised within Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). ~~Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Schedule, being development comprised within any other Class.~~
