

CABINET

14 January 2015

HOUSES IN MULTIPLE OCCUPATION – ARTICLE 4 DIRECTION

REPORT OF CORPORATE DIRECTOR

Contact Officer: Steve Tilbury Tel No: 01962 848256

RECENT REFERENCES:

Minutes of Cabinet held 3 December 2014

CAB 2615 - Draft Winchester District Local Plan Part 2: Development Management & Site Allocations – Publication And Consultation, 22 September 2014

EXECUTIVE SUMMARY:

The report considers the issue raised by the petition to be considered by the full Council meeting on 7 January 2015. The outcome of the Council meeting will be reported verbally to Cabinet. The petitioners have asked the Council to consider making an immediate direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, which would remove existing permitted development rights in Stanmore for the change of use of a dwelling house into a house in multiple occupation. The report suggests that there is inadequate evidence from other authorities on the use of an immediate direction, coupled with a risk of significant compensation payments having to be made by the Council, and as a result this cannot be recommended as a course of action. However, the report recommends that a non-immediate Article 4 direction should be made forthwith, to come into effect after 12 months.

**RECOMMENDATIONS:**

- 1 That a non-immediate direction be made under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to withdraw permitted development rights for the change of use of a dwelling house within Class C3 of the Order to a house in multiple occupation within Class C4 of the Order, in part of the St Luke ward as shown in the plan attached as Appendix 1 to the report, such direction to come into force 12 months after notice of the direction is published;
- 2 That the Assistant Director (Environment) be authorised to consider any objections received to the confirmation of the Order and, in consultation with the Portfolio Holder for Built Environment, either to confirm the Order or return the matter to Cabinet for further consideration.

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### HOUSES IN MULTIPLE OCCUPATION – ARTICLE 4 DIRECTION

#### REPORT OF CORPORATE DIRECTOR

##### DETAIL:

#### 1 Introduction

- 1.1 In April 2010 the outgoing Government introduced new controls on the change of use of a dwelling house (defined as a property occupied by any number of people constituting a single household which, for the sake of simplicity, will be referred to hereafter as ‘a family house’) into a house in multiple occupation (defined as 6 or fewer people living in the same property but not as a single household, referred to hereafter as ‘an HMO’).
- 1.2 The purpose of the legislation was to make such a change of use subject to planning control, so that the local planning authority would be able to judge whether or not the change was appropriate in accordance with its own local plan policies. For many local authorities, this would be of little concern. However, for those which already had a concentration of HMOs, often university towns or seaside resorts, it created the opportunity to manage HMO numbers and thereby any harmful social and economic consequences of the ways in which HMOs are occupied.
- 1.3 In October 2010 the new Coalition Government reversed this policy, by making the conversion of a family home to an HMO ‘permitted development’ as part of a deregulation exercise, and this is how things stand today. This means that no permission from the local planning authority is usually required for that change of use. However, the Coalition Government made clear that it expected local planning authorities to use the Article 4 procedure to remove permitted development rights where they considered that there was a local issue which they still wished to address through local policy.
- 1.4 Article 4 directions, made under the Town and Country Planning (General Permitted Development) Order 1995, are a legal mechanism by which a local planning authority may remove permitted development rights (usually limited to some specific right but occasionally all of them). The procedure is relatively simple and does not require authorisation from the Secretary of State. It should be stressed that the removal of permitted development rights does not mean that planning consent will not be granted, only that a planning application must be made so that planning considerations can be applied to the particular case.

1.5 The legislation permits two forms of Article 4 directions, immediate and non-immediate. As the name suggests, an immediate direction takes effect immediately, whereas a non-immediate direction takes effect at the end of a period of notice. As set out in more detail in Section 4 below, there are different compensation implications depending on which type of direction is used.

## 2 HMOs in Winchester

2.1 In most of the Winchester town area, there is currently no great problem caused by the conversion of family houses to HMOs. In fact, a supply of HMOs is essential to the housing market since they offer a relatively low cost housing option to people willing and able to live within this form of property.

2.2 However, in the Stanmore area the situation is rather different. Stanmore falls within easy walking distance of the University of Winchester and has a large number of good size family homes, built as council houses but many of which are now in private ownership. These are proving very attractive for acquisition and conversion to HMOs and letting to students as this offers a reliable rental income and a good return on capital for landlords. Most students and other HMO tenants are responsible and reasonable, but they may have different patterns of work and leisure from long term residents which can lead to economic and social issues. Landlords may well be Winchester residents but they are not living in the same community as their tenants and they have very limited means by which to control the behaviour of individuals outside of the property itself.

2.3 The Council has recently received representations which raise residents concerns, including a petition submitted to Council on 7 January 2015. The prayer of that petition is:

“License and Limit the number of houses for Multiple Occupation in Stanmore Winchester NOW and to take responsibility for the integration of the behaviour of Students/tenants.”

2.4 In part, this petition is addressed to the University of Winchester and private landlords. Insofar as it relates to the City Council, the spokesperson for the petitioners has clarified that it relates principally to the making of an immediate Article 4 direction. In accordance with normal procedure, it is open for the Council to refer the petition to Cabinet for consideration and this report assumes this course of action will be taken.

2.5 Although it is difficult to be precise about the number of HMOs in Stanmore (because there is no mechanism by which the Council can be certain that one has been created), the best estimates are that HMOs constitute nearly 20% of dwellings in some parts of Stanmore and this percentage has grown since 2010. In comparison with parts of some university towns, this is not a particularly high concentration. However, the trend has been for an increase in the number of HMOs and this would be given impetus by any increase in the number of students attending the University of Winchester. The size and

nature of the Stanmore community is such that there is genuine concern from residents and local Members about the impact of an increasing number of HMOs within the area, as expressed in the petition.

- 2.6 From the perspective of meeting housing need, it is also important that the supply of family homes, particularly those which might be slightly more affordable than elsewhere in Winchester, is subject to control and the application of local plan policy.

### 3 Current Position

- 3.1 The Council has already agreed that a planning policy in respect of the creation of new HMOs is necessary and that this should be given effect through the use of Article 4 directions. At its meeting of 22 September 2014, Cabinet gave delegated authority to the Assistant Director (Environment) to progress an Article 4 Direction in the Stanmore area, subject to consultation with the Portfolio Holder for the Built Environment and Ward members regarding details and boundaries (CAB2615 refers). This contained in the draft Local Plan Part 2 policy WIN10 which has recently been the subject of consultation. The outcome of that consultation has yet to be analysed so it is not possible to say what level of objection or support has been raised to the proposed policy, although initial indications are that it has not been subject to a large public response. The outcome of consultation will be reported to Cabinet (Local Plan) Committee in due course.
- 3.2 As noted in CAB2615, it was intended to give 12 months' notice before any Article 4 direction took effect, to avoid the potential requirement to compensate applicants whose planning applications are refused (i.e. to introduce a "non-immediate" direction). It was also intended that this 12 months' notice period would not commence until later in the Local Plan adoption process, so that by the time the Local Plan policy had been formally adopted, the Article 4 Direction could be brought into effect. However, if it is considered that there is a greater sense of urgency, the relevant Article 4 direction could be made now and could be made as an 'immediate' direction i.e. one which comes into force immediately, not after 12 months. As yet, Local Plan Part 2 policies carry minimal weight, but that will change gradually as they proceed through the examination and adoption process. WIN10 could provide the basis for planning decisions now, and although such a decision would be vulnerable on appeal this vulnerability would gradually reduce. The question that then arises is not whether to make an Article 4 direction, which the Council has already indicated that it will do, but when to make the direction and whether it should come into force immediately or, as is more common, to make a direction which takes 12 months to come into effect (and would thus align more strongly with the Local Plan policy and timing).

### 4 Compensation Implications

- 4.1 The key difference between an "immediate" direction and a "non-immediate" direction is that of compensation. If an immediate Article 4 direction is made, and a property owner applies for planning permission for development which

they would previously have been able to carry out as of right, that applicant can claim compensation, provided that the application for planning consent was made within the first 12 months after the direction takes effect AND the application is refused (Section 108(2A) of the Town and Country Planning Act 1990 (as amended)). The compensation payable is in respect of work rendered abortive as a result of the making of the direction, and (of more relevance in most cases) loss or damage directly attributable to the direction. This would be assessed by reference to the difference in the value of the property with the permitted development rights, against the value without those rights.

- 4.2 No further claims can be made after the expiry of the initial 12 month period following the direction coming into effect. Although this limits the scope for compensation to some extent, there remains a risk of numerous claims having to be dealt with.
- 4.3 If a non-immediate direction is made, however, and at least 12 months' notice of the introduction of the direction is given, then under Section 108 (3C) of the Town and Country Planning Act 1990 (as amended), no compensation is payable once the direction becomes effective, on the basis that anyone who wishes to take advantage of their permitted development rights has 12 months within which to do so.
- 4.4 Many Article 4 directions made by local planning authorities relate to matters which are important for conservation or urban design but have little or no impact on property value – such as types of window or the colour of paintwork. In this case, however, there could be a significant difference in the value of a property as an HMO rather than a family home, so significant claims for compensation are possible.
- 4.5 Only two local authorities, Milton Keynes and Northampton, appear to have made an immediate Article 4 direction in relation to HMOs. In both cases, these were restricted to relatively small areas of 'peak' concern and were accompanied or followed by non-immediate Article 4 directions in relation to larger areas. Both of the immediate cases were implemented soon after the change in the permitted development position in 2010 and early 2011 and neither resulted in any compensation claims. However, in the four years since then, although many authorities have implemented Article 4 directions in relation to HMOs, none appears to have done so with immediate effect.
- 4.6 It is therefore fair to say that there is no reliable basis on which to judge the risk of compensation claims arising from an immediate Article 4. The two cases that are known are some years old and even the authorities which implemented them clearly exercised caution when doing so. Since then, every authority which has made a relevant Article 4 appears to have considered the risk of successful compensation claims too high, even when balanced against the other benefits of the policy, and has chosen to implement non-immediate orders. Whether they were right or wrong can never be known (because of course no compensation claims could be made)

but every decision will have taken those risks into account and seems to have reached the same conclusion.

- 4.7 The Head of Estates has made an estimate of the likely difference in value between the same property as a family house and an HMO in Stanmore. The difference is significant enough to raise concerns about the financial impact of even a small number of successful claims.

## 5 Process for Making Direction

- 5.1 Following Cabinet's decision, the Direction will be formally drawn up and sealed by the Council. Notice of the making of the Direction must then be given by public notice in a local newspaper, and a site notice (which must be maintained in position for at least six weeks) in at least two locations within the area.
- 5.2 In addition, the owners and occupiers of properties in the area must normally be served with the notice, although the local planning authority can dispense with this requirement where the number of such owners and occupiers makes individual service impractical. It is considered that given the size of the area and the number of properties within it, such individual service is impractical and therefore it is not proposed to notify individual owners and occupiers.
- 5.3 The notice will be posted on the Council's website in the usual way as for other public notices, and a copy of the Direction will also be posted.
- 5.4 The notice must comply with the requirements of Article 5(4) of the 1995 Order, and must specify a period of at least twenty-one days for representations to be made to the Council in respect of the Direction. It must also specify when the Direction will come into force (which in this case will be not less than twelve months, to deal with the compensation issues outlined above).
- 5.5 At the same time as notice is given, the Direction must be sent to the Secretary of State. Notice must also be given to the County Council as county planning authority.
- 5.6 The Direction comes into force on the date specified in the notice, provided it has been confirmed by the Council. Before confirming the Direction, the Council must consider any representations which are received. Confirmation can only take place twenty eight days after the last notice of the Direction has been published.
- 5.7 Once confirmed, notice of confirmation must be given in the same way as notice of making the Direction was given, and a copy of the confirmed direction must be sent to the Secretary of State. Depending on the nature of any representations that may be received, the Direction will be confirmed either by the Assistant Director (Environment) in consultation with the Portfolio Holder for Built Environment, or by Cabinet (see recommendation 2).

## 6 Conclusions

- 6.1 It has been said by the spokesperson for the petitioners to be presented at Council on 7 January 2015 that the Council would be behaving unreasonably if it does not agree to make an immediate direction. There is no evidence to support that assertion. In fact, the Council would be acting very unusually if it did agree to make an immediate Article 4 direction and to do so when there is a significant financial risk might be considered unreasonable. Since the Council should not be willing to take such a financial risk except in the most exceptional circumstances and in the absence of other alternatives, it is suggested that making an immediate Article 4 direction would not be appropriate.
- 6.2 However, there is justification for commencing the process of making a non-immediate Article 4 now, rather than waiting until later in the year. This will align the implementation of Local Plan Policy WIN10 more closely with the implementation of the Article 4 direction (if it is confirmed) and reduce the period in which there are no additional controls. Some changes of use may well take place in this period but of course it is possible that they would have received planning consent in any case.
- 6.3 The Cabinet is therefore asked to agree that the appropriate response to the petition received by the Council is the making of an Article 4 direction for the area outlined on the map attached as Appendix 1 which should come into effect after 12 months. This is considered to be the area in which control through planning policy WIN10 is required in the foreseeable future. If there is any significant pressure on any other neighbourhood then an Article 4 in respect of additional areas can be considered at any time.

## OTHER CONSIDERATIONS:

### 7 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 7.1 The purpose of the Article 4 direction and the Local Plan Part 2 policy are to ensure the proper planning of the area in the interests of the community and housing supply.

### 8 RESOURCE IMPLICATIONS:

- 8.1 The only direct resource implications relate to planning fees. When the Article 4 Direction becomes effective, an owner wishing to change the use of a family house to a HMO use would need to submit a planning application and obtain planning permission for that change. While permitted developments remain in place (before the Direction becomes effective), no planning application is required. The consequence of making the Direction therefore could be an increase in the number of planning applications that have to be dealt with, but without any corresponding increase in fee income. This is because no fee is payable for a planning application in respect of development which would be permitted development had an Article 4 direction not been made. However,



the volume of applications is expected to be small and the financial impact therefore negligible.

## 9 RISK MANAGEMENT ISSUES

- 9.1 The principle risk management issue is referred to in the body of the report. This is the risk that substantial compensation could be payable if an immediate Article 4 direction is made. To mitigate this risk it is suggested that although the Article 4 is made now, it is implemented in 12 months time. No compensation is payable in these circumstances.

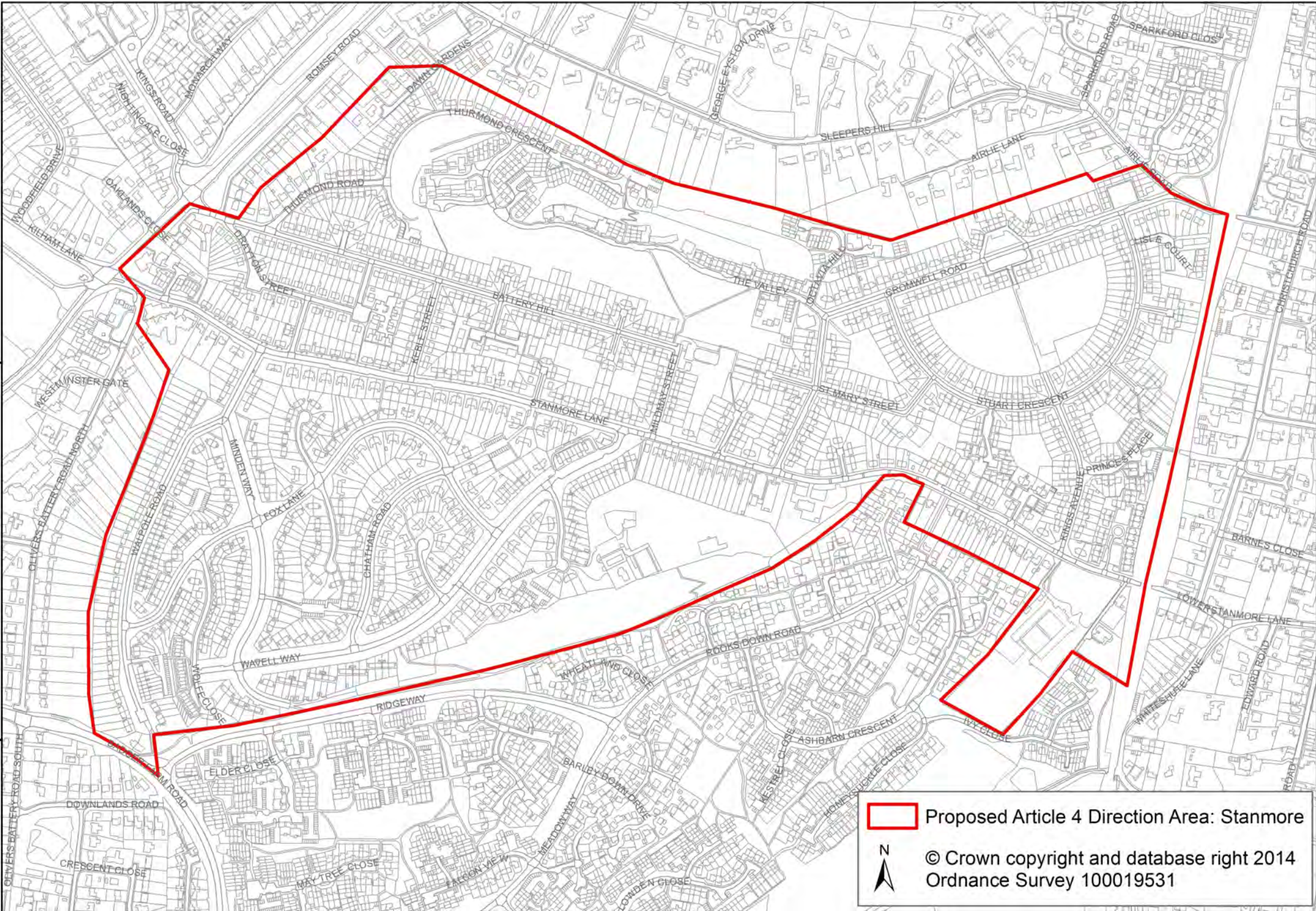
### BACKGROUND DOCUMENTS:

Petition to Council 7 January 2015.

### APPENDICES:

Appendix 1 – Plan of proposed area for Article 4 direction.





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 Proposed Article 4 Direction Area: Stanmore

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