

REPORT TITLE: POTENTIAL ARTICLE 4 DIRECTION(S) TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR CHANGE OF USE OF SINGLE DWELLING HOUSE TO HOUSE IN MULTIPLE OCCUPATION - WINNALL AND OTHER AREAS OF WINCHESTER

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REPORT OF PORTFOLIO HOLDER: CLLR V WESTON DEPUTY LEADER – BUILT ENVIRONMENT

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WARD(S): ALL WINCHESTER

PURPOSE

The purpose of this report is to consider whether one or more Article 4 Directions should be introduced in parts of Winchester to remove permitted development rights which allow dwelling houses to be converted to Houses in Multiple Occupation (HMOs) without requiring planning permission from the Council.

There are two types of Article 4 Directions. Immediate Directions which, as the name implies come into effect as soon as they are made, and non-immediate Directions that usually take effect 12 months after being made. Compensation is payable in the case of immediate Directions where subsequent planning applications are refused or permitted with conditions.

Some Town members and local residents have raised concerns that an increasing number of HMOs in certain areas of Winchester, such as Winnall, Highcliffe and Badger Farm, are having a detrimental impact on these neighbourhoods. Whilst the Council recognises that HMOs provide a valuable form of accommodation for students and other people who need to live in the city it is important to maintain an appropriate mix of housing within individual neighbourhoods.

A petition signed by residents in Fiona Close, Winnall, was submitted to the Council in November last year objecting to the proposed conversion of 11 Fiona Close to an HMO. Residents requested that an Article 4 be made so that this change of use would have needed planning permission from the Council. They further requested that such permission should be refused. This report considers the petition relating to Fiona Close and also whether there is evidence that the number of HMOs in Winnall and other parts of the city is increasing to a point where action would be justified in

terms of making an Article 4 Direction.

The proportion of HMOs in Badger Farm (approximately 1%) and Highcliffe (approximately 4.5%) is very low and it is considered that introducing restrictions on permitted development rights in these areas would be premature, disproportionate and therefore difficult to justify on planning grounds.

The Council estimates that around 8% of properties in Winnall are currently HMOs and the number is rising. Whilst there is therefore significant scope for the number of HMOs to rise before breaching the 20% restriction for the neighbourhood, or 25% for individual streets, other elements of the WIN9 Policy may help to limit the potential for more localised concentrations. For this reason making a non-immediate Article 4 Direction covering the whole of Winnall would be reasonable, as it would give the Council some control over the location of new HMOs.

Taking action only in relation to Fiona Close would not be effective as, even if an immediate Direction were to be made, converting one property in the cul-de-sac accords with the criteria in emerging Policy WIN9 in Local Plan Part 2. Indeed the policy would in principle allow up to 20% of homes in the area (Fiona Close in this scenario) to become HMOs. It would also be debatable whether the Council should be using its powers to remove permitted development rights in relation to individual roads when this is part of a wider issue being considered in the context of Winnall and other areas of the city.

RECOMMENDATIONS:

1. That the Head of Legal and Democratic Services be authorised to make a non-immediate Direction under the provisions of Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove permitted development rights under Class L of Schedule 2, Part 3 (development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule. The Direction will apply to the Winnall neighbourhood of Winchester as shown on the plan attached at Appendix A and will come into effect 12 months after the A4 is made ; and
2. That delegated authority be given to the Assistant Director (Environment), in consultation with the Portfolio Holder for Built Environment and the Head of Legal and Democratic Services, to consider any objections received after the Direction is made and publicised and, either to confirm the Direction or return the matter to Cabinet for further consideration.
3. That having considered the petition from the residents of Fiona Close, Winnall, Winchester, an immediate Article 4 Direction is not made for this road but that Fiona Close be included in the non-immediate Article 4 Direction covering the Winnall neighbourhood (recommendation 1 above).

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

- 1.1 One of the 5 Strategic Outcomes set out in the Council's Strategy is Housing. Restricting permitted development rights in Winchester, so that new Houses in Multiple Occupation require planning permission, is one of the identified actions to deliver this outcome.

2 FINANCIAL IMPLICATIONS

- 2.1 The only direct resource implications relate to planning fee income. When an Article 4 Direction becomes effective, an owner wishing to change the use of a dwelling house to an HMO has to submit a planning application for that change. However, no fee is payable for a planning application for development which would be permitted development had an Article 4 Direction not been made. However, the number of applications is expected to be low and the financial impact therefore negligible.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council has to inform the Secretary of State of the Direction and he has powers to intervene and can direct the Council to modify or cancel the Direction.

4 WORKFORCE IMPLICATIONS

- 5 Staff resources will be required to make and publicise the Article 4 Direction.

6 PROPERTY AND ASSET IMPLICATIONS

- 6.1 None

7 CONSULTATION AND COMMUNICATION

- 7.1 This issue has arisen from concerns raised by various Councillors and residents within different parts of Winchester. Whilst no public consultation has been undertaken prior to the recommendation in this report to make an Article 4 Direction for Winnall, officers have discussed the matter with Ward members representing Winnall, Highcliffe and Badger Farm, in addition to the Portfolio Holder for Built Environment and Leader of the Council who support the approach set out in this report.

- 7.2 However, when the Direction is made, it will be subject to extensive publicity and there will be an opportunity for interested parties to comment with any responses received being reviewed prior to confirming the Direction (see recommendation 2 above). The Secretary of State is also informed when an

Article 4 Direction is made and has powers to intervene to modify or cancel the Direction.

8 ENVIRONMENTAL CONSIDERATIONS

- 8.1 Making an Article 4 Direction will bring within planning control new HMOs which will be assessed in relation to Policy WIN9 in Local Plan Part 2. The policy is intended to maintain an appropriate mix of housing in areas of Winchester where HMOs are an issue and to stop local concentrations which can cause parking and other problems.

9 EQUALITY IMPACT ASSESSEMENT

- 9.1 Making the Article 4 Direction is not expected to raise any equality issues as removing permitted development rights for new HMOs will not impact on individuals or groups with protected characteristics

RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property None.</i>		
<i>Community Support. - There is evidence of concern from residents living in Winnall about increasing numbers of HMOs in the area.</i>	Make an Article 4 Direction to remove permitted development rights which allow dwelling houses to become HMOs without planning permission from the Council.	
<i>Timescales. -Making a non-immediate Article 4 Direction will mean that there will be period of 12 months for dwelling houses to become HMOs without needing permission from the Council before the Direction comes into effect.</i>	In the 12 month period between making the Direction and it coming into effect it is possible that the number of HMOs will increase. However there was little evidence of this when a Direction was introduced in Stanmore. Overall, the proportion of homes in Winnall which are HMOs is low and unlikely to increase significantly in the 12 month period before the Direction comes into effect.	
<i>Making an immediate</i>	This risk cannot be	

<i>Article 4 Direction would expose the Council to the risk of paying compensation if planning applications were refused or permitted with conditions in the first 12 months.</i>	mitigated so the Council would have to deal with any compensation claims that arise.	
<i>Project capacity None.</i>		
<i>Financial / VfM None other than as outlined at 2.1 above.</i>	No mitigation required.	
<i>Legal None other than as outlined at 3.1 above.</i>	The Council cannot mitigate the risk associated with the SoS's authority to direct the Council to modify or cancel the Direction other than to explain its reasons for taking this action which is based on sound planning grounds.	
<i>Innovation None</i>		
<i>Reputation Failure to take action to control rising numbers of HMOs in neighbourhoods in Winchester could undermine public confidence in the Council as local planning authority.</i>	Make Article 4 Directions in parts of the city where there is evidence that increasing numbers of HMOs is causing, or will in future if unregulated cause, an imbalance in the housing mix.	
<i>Other None</i>		

10 SUPPORTING INFORMATION:

Background

- 10.1 Councillors representing some wards in the city and members of the public have raised concerns about increasing numbers of HMOs in parts of Winchester. In November last year a petition was submitted to the Council by residents of Fiona Close in Winnall objecting to the then proposed conversion of no.11 to an HMO (now completed), requesting that the Council make an immediate Article 4 Direction and that planning permission be refused for the change of use of the property.
- 10.2 Many HMOs, but by no means all, are occupied by students attending Winchester University and Winchester School of Art.

- 10.3 Planning regulations allow dwellinghouses to be converted to small HMOs for three to six occupiers without requiring planning permission from the Council (permitted development). This means that the Council cannot exercise control over such changes of use. However, local planning authorities can introduce Article 4 Directions if they are concerned that the exercising of permitted development rights (PDRs) is having, or will have, detrimental effects. Larger HMOs, occupied by more than 6 unrelated residents, require planning permission regardless of whether an Article 4 Direction has been made.
- 10.4 In Stanmore the proliferation of HMOs resulting from PDRs was causing an imbalance in the housing mix of the area so an Article 4 Direction was made which came into effect in May 2016. This means that any new HMO now requires planning permission from the Council. Since the Direction came into effect one planning application for an HMO has been refused and none have been permitted
- 10.5 Policy WIN9 in the emerging Local Plan Part 2 specifically deals with HMOs in Winchester and indicates that the Council will introduce Article 4 Directions in areas where there are well founded concerns relating to an existing or potential over-concentration of this type of accommodation. However, it should be noted that the policy does not necessarily prevent permission being granted for all new HMOs in neighbourhoods where Directions are made and acknowledges that this type of housing has a valuable role to play in supporting our universities. It should also be recognised that HMOs can provide an important source of housing for other people and they are not only occupied by the student population. Policy WIN9 seeks to maintain a balance between HMOs and other types of residential accommodation. In areas where the proportion of HMOs has already reached 20% of the total housing stock (Stanmore), or 25% in one street, permission for additional HMOs will normally be refused. Furthermore it is designed to prevent localised concentrations by resisting proposals which would result in a dwelling house being bounded by HMOs on both sides or a continuous row of 3 or more as well as ensuring that proposed HMOs would provide adequate parking. Exceptionally, planning permission would be granted for a change of use to an HMO where these thresholds have been reached or exceeded, if the continued use of that property as dwelling house is already seriously compromised because of existing domination by HMOs.
- 10.6 In the light of concerns being raised over the apparently increasing number of HMOs in certain parts of the city, the Council has reviewed information it holds for properties in Badger Farm, Winnall and Highcliffe. This information takes a variety of forms including the Electoral Register, Council Tax records as well as information Housing has specifically for HMOs. It should be noted that the figures are approximate as they are based on data available to the Council and not a comprehensive survey of the neighbourhoods concerned.
- 10.7 The proportion of houses in use as an HMO in Badger Farm (approximately 1%) and Highcliffe (approximately 4.5%) is very low. The picture is different in

Winnall, however, where it is estimated that just over 8% of properties are currently HMOs and the number is rising. In 2012/13 the figure was believed to be in the region of 4.7% so there has been an increase of approximately 3.5% in the last 4 years or so. Whilst therefore the overall proportion is still modest, the trend is upward and there are already locations in Winnall where concentrations of HMOs exist such as Longfield and Imber Roads.

- 10.8 As referred to above, the Council received a petition last year from residents in Fiona Close, Winnall, which was triggered by the sale and then conversion of No.11 to an HMO. At present this is the only known HMO in the road although other houses are on the market and new owners could change them to small HMOs without requiring planning permission from the Council by exercising PDRs.

Consideration of Petition

- 10.9 The Council has adopted a Petition Scheme (Part 8 Section 9 of the Constitution refers) which sets out the circumstances when the Council will treat a document as a petition, and the action that it will take when one is received.
- 10.10 The Scheme provides that a document which is identified as a petition and which has at least ten signatories will be treated as a petition. Where a petition has more than 300 signatures (three member wards) or 500 signatures (where the petition affects two or more wards) then the petition will be debated at full Council. Otherwise, the petition is considered by an appropriate meeting. In this case, as Cabinet is considering the issue of an Article 4 Direction, the petition organiser has been advised that it will be considered by Cabinet. The organiser has been informed of the date of the meeting and invited to attend to present the petition and address Cabinet.
- 10.11 This report has taken into account the situation referred to in the Petition and Section 11 addresses the specific request for an Article 4 Direction for Fiona Close itself.

Proposed Actions

- 10.12 As explained earlier in this report, the Council has the power to introduce Article 4 Directions in areas of the city where an existing or potential concentration of HMOs is detrimental to local housing mix. However PDRs are conferred by Government and apply across the country so should not be removed lightly and without sufficient justification. Government guidance regarding the use of Article 4 Directions is set out in the National Planning Policy Framework which states that:

“The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4

directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.” (para 200).

- 10.13 The Guidance provides some examples of situations where Article 4 Directions may be appropriate including where PDRs undermine local objectives to create or maintain mixed communities.
- 10.14 In the case of Badger Farm and Highcliffe as the existing proportion of properties in HMO use is low, it is considered that removing PDRs is not justified on planning grounds as there is no imbalance in local housing mix and the number of HMOs would have to increase significantly before this becomes an issue. It is recommended therefore that no action be taken at the present time but the situation can be reviewed and the matter re-visited if there is evidence which suggests that the situation is changing materially.
- 10.15 The proportion of HMOs in Winnall is higher and evidence indicates that the numbers are increasing. This is a significant increase in a relatively short time period and it is likely that the number will continue to rise. Furthermore there are already certain locations in Winnall where a significant number of properties are HMOs like Imber and Longfield Roads.
- 10.16 It is considered therefore that whilst the overall proportion of HMOs is well below the 20% maximum for the area, or 25% in any one street, stated in Policy WIN9 there is sufficient justification for making an Article 4 Direction covering Winnall in order to retain a balance in housing mix. Policy WIN9 may help to limit the potential for more localised concentrations where rows of properties become HMOs or single family homes are bounded by them. For this reason making a non-immediate Article 4 Direction would be reasonable, and is recommended, as it would give the Council some control over the location of new HMOs to ensure that those permitted comply with the policy and thus avoid creating proliferations which cause an imbalance in the mix of housing in particular locations whilst helping to limit the overall growth in the quantum of such premises as a proportion of the whole. The area proposed to be included in the Direction is shown in Appendix A.
- 10.17 However, making a Direction does not mean that planning permission would necessarily be refused for all new HMOs. Applications which comply with Policy WIN9 and other relevant policies would be permitted and there is clearly scope for the overall proportion of HMOs to increase above the current 8% before reaching the policy’s general ‘trigger’ of 20% for the whole area or 25% for individual streets.

10.18 The situation relating to the request for making an Article 4 Direction just for Fiona Close is addressed below (section 9) and it is not being recommended.

11 OTHER OPTIONS CONSIDERED AND REJECTED

11.1 In relation to the request to make an immediate Direction for just Fiona Close in Winnall it is considered that such action is not justified. Even if an immediate Direction had been made, prior to the change of use of No.11 to an HMO, Policy WIN9 would allow a change of use of up to 20% of the properties. Such a step would most likely therefore be of little benefit bearing in mind that Fiona Close will be included in the area covered by the Winnall wide Article 4 Direction which will come into effect within 12 months of being made.

11.2 It is also debateable whether the Council should use its powers to remove PDRs for individual streets when this is part of a wider issue being considered in the context of Winnall and other areas of the city. Notwithstanding this issue, if an immediate Direction is made, it is perhaps unlikely that planning permission would be refused because the Council would be liable to pay compensation. It is recommended therefore that no immediate Article 4 Direction be made in respect of Fiona Close but it is included in the non-immediate Direction to be made for Winnall.

11.3 It would also be possible for the Council to make an Article 4 Direction covering more neighbourhoods of Winchester or even the whole city excluding Stanmore where PDRs have already been removed. However PDRs should not be restricted lightly and without sufficient justification and, in most neighbourhoods in Winchester, the number of HMOs is not an issue. Furthermore, introducing Directions over wider areas could be counter productive. The percentage of HMOs, as a proportion of the total number of homes, would be lower where Directions include areas where there are few of these types of property bearing in mind Policy WIN9 allows up to 20% of premises to be in HMO use in areas where Directions have been made. It is therefore more sensible to use Directions in carefully defined areas, where HMOs are a significant issue, rather than adopting a blanket approach. For these reasons the option of introducing Directions to remove PDRs from more of the city was rejected.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB2645 - HOUSES IN MULTIPLE OCCUPATION – ARTICLE 4 DIRECTION NB: report related to Stanmore.

CAB2615 DRAFT - WINCHESTER DISTRICT LOCAL PLAN PART 2:
DEVELOPMENT MANAGEMENT & SITE ALLOCATIONS – PUBLICATION AND CONSULTATION

Other Background Documents:-

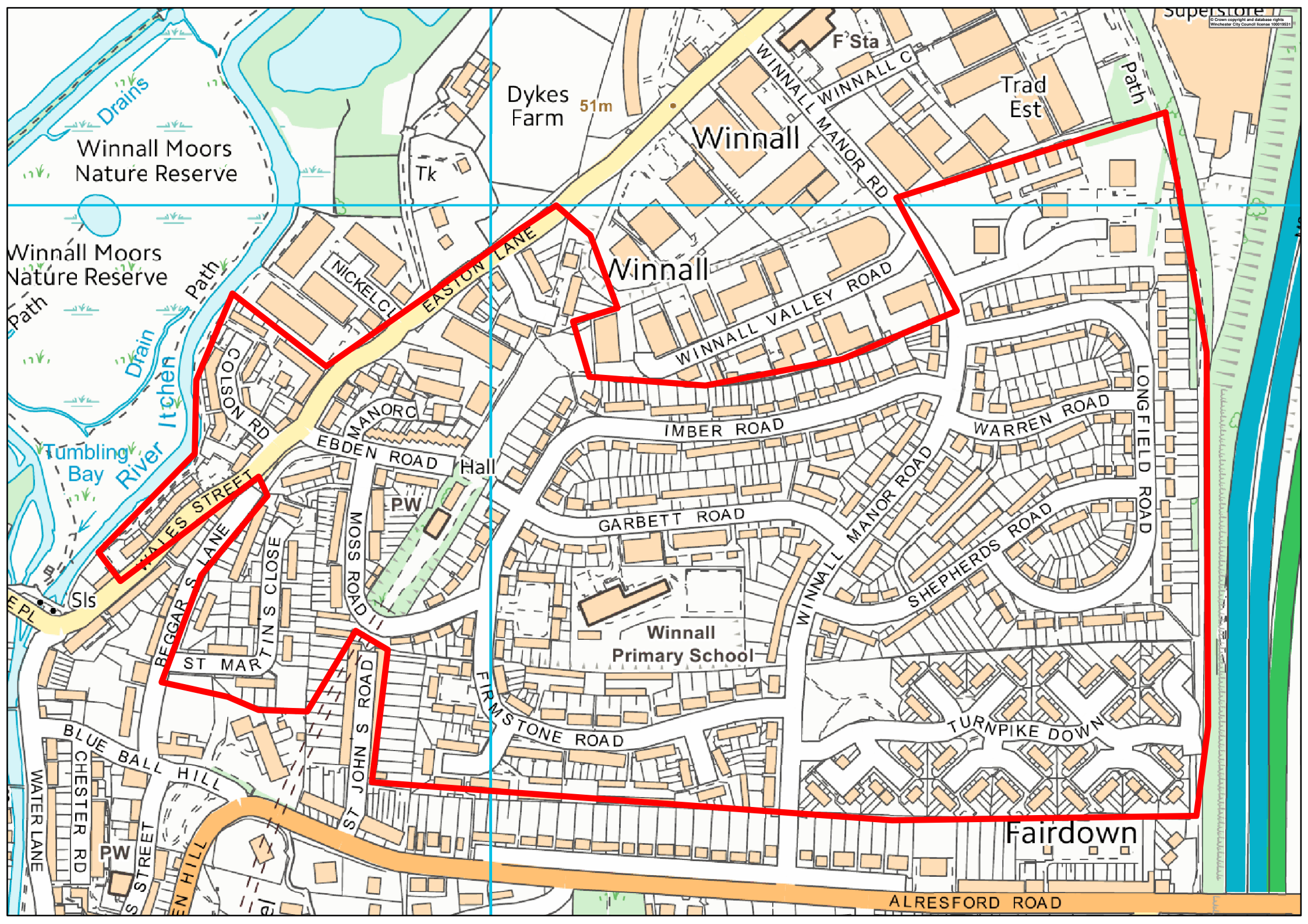
Winchester District Local Plan Part 2.

National Planning Policy Framework.

Petition by residents of Fiona Close, Winnall, Winchester.

APPENDICES:

Appendix A – Map showing the boundary of the proposed Article 4 Direction in Winnall.



Winnall Moors
Nature Reserve

Dykes Farm 51m

Winnall

Trad Est

superstore

Winnall Moors
Nature Reserve

Winnall

Tumbling Bay
River Itchen

NICKEL CL

EASTON LANE

WINNALL VALLEY ROAD

COLSON RD

EBDEN ROAD

IMBER ROAD

WARREN ROAD

WATER STREET

MOSS ROAD

GARBETT ROAD

SHEPHERDS ROAD

ST MARTIN'S CLOSE

Winnall
Primary School

WINNALL MANOR ROAD

LONGFIELD ROAD

BLUE BALL HILL

ST JOHN S ROAD

FIRMSTONE ROAD

TURNPIKE DOWN

Fairdown

ALRESFORD ROAD