

Appendices:  
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**NORTHAMPTON**  
BOROUGH COUNCIL

## CABINET REPORT

<b>Report Title</b>	<b>Proposed Article 4 Direction re Houses in Multiple Occupation</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	15 March 2017
<b>Key Decision:</b>	Yes
<b>Within Policy:</b>	Yes
<b>Policy Document:</b>	No
<b>Directorate:</b>	Regeneration, Enterprise & Planning
<b>Accountable Cabinet Member:</b>	Councillor Tim Hadland
<b>Ward(s)</b>	Delapre, Briar Hill and Rushmills

### 1. Purpose

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- 1.1 To enable Cabinet to determine whether the Council should introduce Article 4 Directions (immediate and non-immediate) to withdraw permitted development rights for the change of use from use within Class C3 Dwellinghouses to Class C4 Houses in Multiple Occupation in areas within Far Cotton, Delapre and Cliftonville.

### 2. Recommendations

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- 2.1 That Cabinet resolves the making of:
- 2.1.1 An immediate Article 4 Direction to remove permitted development rights for the change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, to a use within Class C4 (houses in multiple occupation) of that Schedule in the area bounded by the River Nene to the north, Cotton End Road to the east, Forest Road/ part of Pleydell Road/ Delapre Crescent/ Rothersthorpe Road to the south and heading north towards the rear of Rothersthorpe Industrial Estate where it meets St Leonard's Road roundabout before heading north along Towcester Road, as shown on Map 1

- 2.1.2 a non-immediate Article 4 Direction to remove permitted development rights for the change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, to a use within Class C4 (houses in multiple occupation) of that Schedule in the area bounded by London Road, heading south towards Mere Way then heading east up to the school, then heading north towards the rear of the properties at Friars Avenue, then following the northern boundary of the school and the recreation grounds, heading west towards Towcester Road, before heading north to the roundabout then turning west, north then west again up to the railway line, then heading north towards Rothersthorpe Road, then turning east towards Towcester Road, heading slightly north before turning east to include the Far Cotton Recreation Ground, some of the properties in Pleydell Road and properties south of Forest Road. Within the Cliftonville area, the proposed non immediate Article 4 Direction starts from the junction of Billing Road and Cliftonville Road, heading south to the rear of 2 to 22 The Nurseries, turning east along perimeter including all properties in the Nurseries leading to the south-western corner of Three Shires Hospital, heading north in a line to include all properties in the Avenue and Berkeley Close, including 32A to 29, up to the western boundary of 80 Billing Road (excluded from area), west along Billing Road as far as Cliftonville Road, including all properties on the southern side of Billing Road. These boundaries are shown on Map 2, and they are to come into force after 12 months

### **3. Issues and Choices**

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#### **3.1 Report Background**

##### **Article 4 Directions**

- 3.1.1 In 2010, the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order) was amended which created a new use class for small Houses in Multiple Occupation, Use Class C4 (HMO) and amended Use Class C3 (Dwellinghouses). In broad terms, Class C4 (HMO) covers small shared dwellinghouses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities
- 3.1.2 The change of use of a property from Class C3 (Dwellinghouses) to Class C4 (HMO) is likely to be a material change of use requiring planning permission. However, deemed planning permission is granted for such a change of use by Class L(b) of Part 3 (Changes of use) of Schedule 2 to the General Permitted Development Order 2015 (GPDO). This permitted development right may, in exceptional circumstances, be removed by an Article 4 Direction, in which case, express planning permission will be required from the Local Planning Authority (LPA).
- 3.1.3 An Article 4 Direction is a direction under Article 4 of the GPDO which enables the Secretary of State or the LPA to withdraw specified permitted development rights across a defined area.
- 3.1.4 Provided there is justification for both its purpose and extent, an Article 4 Direction can:

- cover an area of any geographic size, from a specific site to a local authority wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

3.1.5 The use of an Article 4 Direction to remove permitted development rights should be limited to situations where this is **necessary to protect local amenity or the wellbeing of the area**. The particular harm that a Direction is intended to address should be clearly identified. There should be particularly strong justification for the withdrawal of permitted development rights relating to a wide area e.g covering the entire area of a LPA.

3.1.6 An Article 4 Direction does not prohibit development but enables the LPA to have some control over the proposed development.

3.1.7 If a planning application is required solely because permitted development rights have been removed by an Article 4 Direction, no planning application fee is payable.

3.1.8 A planning application for development normally allowed by the GPDO, but for an Article 4 Direction, is made to the LPA in the usual way except no fee is payable. The planning application will be considered on its merits, the LPA will assess the proposed development in the light of policies in the development plan and consider any other factors that are material.

3.1.9 The normal right of appeal to the Secretary of State is available if permission is refused, granted subject to unacceptable conditions, or is not determined within the statutory eight week period.

3.1.10 If a LPA makes an Article 4 Direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it subsequently:

- refuses planning permission for development which would otherwise have been permitted development
- grants planning permission subject to more limiting conditions than the GPDO

3.1.11 The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

3.1.12 Section 108(2A) of the Town & Country Planning Act 1990 provides that compensation is **only** payable if an application for planning permission for the development formerly permitted by the GPDO is made within 12 months of the Article 4 Direction taking effect. However, no compensation is payable if an LPA gives notice of the intended withdrawal between 12 months and 24 months in advance.

3.1.13 An Article 4 Direction cannot prevent development which has commenced, or which has already been carried out.

- 3.1.14 An Article 4 Direction needs to be drafted, made i.e sealed, publicised and subject to due consideration of any representations by Cabinet, confirmed.
- 3.1.15 There are two types of Article 4 Direction: non-immediate Directions and Directions with immediate effect.
- 3.1.16 An immediate Direction can withdraw permitted development rights straight away; however it must be confirmed by the LPA within 6 months of coming into effect to remain in force. Confirmation occurs after the LPA has carried out local consultation and considered any representations. If the LPA does not confirm the Direction within six months following the date it came into force, the Direction will expire and have no effect.
- 3.1.17 A non-immediate Direction must specify the date that the Direction comes into force. This date must be within 28 days and two years following the date on which the public consultation period began. An Article 4 Direction must be confirmed by the LPA before it can come into force. The LPA must take into account any representations it receives during the consultation period when deciding whether or not to confirm the Article 4 Direction.
- 3.1.18 The circumstances in which an immediate Direction can restrict development are limited to **where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.**
- 3.1.19 Article 4 Directions cannot prevent development which has commenced, or which has already been carried out.
- 3.1.20 LPAs should regularly monitor any Article 4 Direction to make certain that the original reasons the Direction was made remain valid. Where a Direction is no longer necessary it should be cancelled.
- 3.1.21 A LPA must, as soon as practicable after confirming an Article 4 Direction, inform the Secretary of State. The Secretary of State does not have to approve Article 4 Directions, and will only intervene when there are clear reasons for doing so.

## **3.2 Justification for Article 4 Directions**

- 3.2.1 The problems associated with high concentrations of HMOs have been recognised nationally, by residents, organisations (including resident associations), the press and by the Government.
- 3.2.2 The study “Evidence Gathering – Houses in Multiple Occupation and Possible Planning Responses” carried out by ECOTEC for the Government in 2008 summarised the impacts as including:
- Noise and anti-social behaviour
  - Imbalanced and unsuitable communities
  - Negative impacts on the physical environment
  - Pressures upon parking provision
  - Growth in private rented sector at the expense of owner-occupation

- Increased crime
  - Pressure upon local community facilities, and
  - Restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.
- 3.2.3 The report adds that the problems associated with HMOs and the tensions within local neighbourhoods are well known, particularly in high concentrations of student housing and population, leading to the term “studentification”.
- 3.2.4 In 2015, the Welsh Government examined the extent of concentrations of HMOs in Wales and the issues with them, reviewing the existing legislation and considered best practice in both Welsh and non-Welsh authorities. The report confirms that very high concentrations of HMOs exist around long established universities. The report adds that these concentrations have led to major concerns such as displacement of established communities, exclusion of first time buyers, anti-social behavior, degrading of the general environment and street scenes and parking problems, to name a few.
- 3.2.5 It is clear from both the Ecotec and the Welsh Government studies that HMOs perform an important role in providing suitable, affordable homes to students, those on low incomes and young professionals. The main justification for an Article 4 Direction is when there is a high concentration of HMOs in an area and there is a local impact associated with the concentration of this use.

#### **The relocation of the University of Northampton**

- 3.2.6 In July 2011, Cabinet confirmed the Immediate Article 4 Direction which removed permitted development rights for change of use from C3 to C4 for an area bound by Holly Lodge Road to the north of the area, the Borough boundary to the east, Boughton Green Road to the south and Harborough Road to the west. Cabinet also confirmed the Non-immediate Article 4 Direction which removed permitted development rights for change of use from C3 to C4 for the rest of the area comprising the central and northern parts of the Borough. These were areas affected by the Park and Avenue campus, where houses in multiple occupation were on the increase because of student demand. This means that anyone wanting to convert their properties from a 3 bed house into a HMO for 3 – 6 unrelated people needs to apply for planning permission within the Article 4 Direction areas.
- 3.2.7 In 2013 planning permission was granted for a new University of Northampton campus at Nunn Mills, opening in September 2018. Construction of the new campus is progressing well. The existing Park and Avenue campuses will be vacated by the University. It is highly likely that students will want to move away from the areas close to the existing Park and Avenue campuses and move closer to the new campus whilst still being close to the town centre’s services and facilities.

## **The Proposed Article 4 Direction Areas**

- 3.2.8 Areas within Far Cotton, Delapre and Cliftonville are considered to be desirable locations. These areas will be within walking distance to the new campus with easy access to the town centre, local facilities and bus services.
- 3.2.9 The wards of Far Cotton and Delapre are attractive for HMOs because they are easily accessible to the new Campus, either by walking/ cycling or by bus. The residential areas are also serviced by Far Cotton local centre, as well as a supermarket, library, a pharmacy and a church. There is also ample open space/ recreational space including the open space/ recreational area close to the local centre as well as Delapre Park. Most of the houses comprise terraced Victorian dwellings and semi-detached post war houses which are well suited for conversion into HMOs.
- 3.2.10 The area in Cliftonville is within walking distance to the town centre and the new University Campus, and is therefore well suited to a student lifestyle. Some of the residential units comprise post war semi-detached and detached dwellings as well as flats which may be deemed suitable for conversion into HMOs by potential landlords.
- 3.2.11 There is a need to ensure that the growth of student accommodation requirements and demand for rented accommodation generally is balanced against the need to protect the physical environment of the area and the well-being of residents living next door and close to the HMOs.
- 3.2.12 Should demand for HMOs increase in these two areas, experience in other parts of the town suggests that the problems associated with concentrations of HMOs will increase. Therefore, to manage both the demand and concentration of HMOs, it is considered appropriate to issue Article 4 Directions in the areas which are likely to be affected, which means that planning consent is required prior to conversion. This does not mean that planning permission will be refused. It means that the Council is able to ensure that demand is met but at the same time make sure that this is balanced against the wider needs and wellbeing of the existing community. Where necessary, mitigation measures can also be considered. Once an Article 4 Direction is in place, planning applications will be determined in accordance with the Development Plan.
- 3.2.13 A Justification Report has been prepared which provides a detailed assessment of the reasons behind the proposal to introduce Article 4 Directions to the area. This report is attached to this Cabinet report as Appendix 1.
- 3.2.14 Map 1 shows the extent of the HMOs identified in the area to date. Details of these HMOs were obtained from the following sources:
- Council tax records showing where students were exempt;
  - Council tax records which codes where properties are HMOs;
  - Information from local residents as to potential HMOs are located;
  - Planning approvals from Development Management; and
  - Mandatory Licensing from Private Sector Housing.

- 3.2.15 The map shows that there are a small number of mandatory licenced HMOs and HMOs with planning approvals in the area, including West Cotton Close, Euston Road and Rothersthorpe Road. There are also, for example, properties along London Road, the streets between Delapre Crescent and St Leonard's Road, streets south of Delapre Crescent Road, Rothersthorpe Crescent, Thirlestane Crescent and Abbey Road which are recorded by Council Tax as HMOs and/ or have student exemption records.
- 3.2.16 Officers from the Borough Council's Private Sector Housing team also undertook site investigations and identified the locations of the existing HMOs. These investigations, which took place in December 2016 and January 2017, involved an assessment of each HMO property (physical appearance including number of doorbells, parking conditions, etc) and interviews.
- 3.2.17 There are also properties which were identified by local residents as potential HMOs since September 2016. Each property reported was investigated by Officers from Private Sector Housing team.

### **Boundary of the Proposed Article 4 Directions**

- 3.2.18 In determining the boundaries of areas which could potentially be affected by increasing HMO demand, Officers mapped and analysed the evidence base. It is clear that there are more properties within the northern section of Far Cotton being use for HMOs than there are to the south or in the Cliftonville area. It is therefore considered that issuing two Article 2 Directions would be more effective in addressing the management of HMOs. An immediate Article 4 Direction within the northern section of Far Cotton and a non-immediate within the remaining areas shown on the map attached would be a far more effective option, as it will provide the Council with the tool to manage HMO growth where required with immediate effect.
- 3.2.19 It is recommended that two Article 4 Directions are issued, as shown on the attached Maps 1 and 2. There are 107 streets in total within the proposed boundary, with 30 streets within the proposed immediate Article 4 Direction area and 77 in the proposed non-immediate Article 4 Direction area. If agreed, a total of 4,114 properties will be affected by the decision.

### **3.3 Choices (Options)**

#### **Option 1: Introduce two Article 4 Directions, one immediate and one non-immediate, removing permitted development rights for change of use from Use Class C3 Dwellinghouse to C4 Houses in Multiple Occupation in Far Cotton, Delapre and Cliftonville (Recommended)**

- 3.3.1 Currently, planning approval is not required for the change of use from dwellinghouses to HMOs. An Article 4 Direction will change this. It does not mean an application will be refused. It means that an application will be determined in accordance with policy guidance and amenity space standards.
- 3.3.2 Concentrations of HMOs can be managed (particularly where an Article 4 Direction is made) in an area which will have increasing pressure for HMOs particularly once the new University of Northampton has moved. Character of

the streets can be protected. Well-being of residents and adjoining occupiers will be considered as part of the planning application process.

3.3.3 There will be additional staff time required to deal with planning applications.

3.3.4 There will also be risks associated with compensation, but this will be limited to areas currently experiencing the most demand.

**Option 2: Issue an immediate Article 4 Direction for the whole area, therefore removing permitted development rights for change of use from Use Class C3 Dwellinghouses to C4 Houses in Multiple Occupation in Far Cotton, Delapre and Cliftonville with immediate effect. Confirmation on the direction needs to be made within 6 months or the Direction will cease.**

3.3.5 Planning permission will therefore be required for the change of use from C3 to C4 for 3 – 6 unrelated persons as soon as Cabinet agrees this and a legal notice is sealed. There are risks associated with this option particularly as the evidence shows that only the northern section of the proposed Article 4 area currently has a high concentration of HMOs. There could be challenges from landlords which could be time consuming and costly to address. Risks associated with costs may also emerge from having to compensate those who have purchased properties with a view to investing in them for HMO purposes (since they would lose rental value if planning permission was not to be granted in the future).

3.3.6 This option is therefore not recommended.

**Option 3: Issue a non-immediate Article 4 Direction on the whole area**

3.3.7 This option will remove permitted development rights for change of use from Use Class C3 Dwellinghouse to C4 Houses in Multiple Occupation in Far Cotton, Delapre and Cliftonville.

3.3.8 This process takes at least 12 months to complete. In the meantime, the issue associated with concentrations of HMOs in the area identified as already having a high number of HMOs will increase. Property owners will have 12 months to convert their properties into HMOs before the Direction is made therefore adding to the issues associated with the existing HMO concentration in the northern part of the area.

3.3.9 This option does not allow the Borough Council to manage the growth of HMOs. This option is therefore not recommended.

**Option 4: Do Nothing**

3.3.10 Make no change and allow HMOs to proceed under permitted development rights for 3 – 6 unrelated people.

3.3.11 Given the issues and impacts of C4 HMO uses this option is not recommended.



## **4. Implications (including financial implications)**

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### **4.1 Policy**

- 4.1.1 The introduction of an Article 4 Direction does not remove the concerns associated with HMO concentrations completely for the Council as local planning authority. It would simply result in a requirement to apply planning permission for a change of use from C3 to C4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The current Development Plan comprises the West Northamptonshire Joint Core Strategy Local Plan Part 1 (JCS), the Northampton Central Area Action Plan and the Northampton Local Plan Saved Policies.
- 4.1.2 Policy H5 of the JCS (adopted December 2014) states that the existing housing stock will be managed and safeguarded by allowing houses in multiple occupation where they would not adversely affect the character and amenity of existing residential areas. Paragraph 9.23 of the JCS states that where there is a local need to control the spread of HMOs, the local authorities are able to use existing powers, in the form of Article 4 Directions, to require planning applications in the area.
- 4.1.3 In November 2014 the Council adopted the Houses in Multiple Occupation Interim Planning Policy Statement (IPPS). This IPPS sets out guiding principles as to what the Council will consider when determining planning applications relating to a HMO, including acceptable threshold levels for HMO concentrations.

### **4.2 Resources and Risk**

- 4.2.1 Consulting and making Article 4 Directions have resourcing implications principally in terms of staff time that would otherwise be used on existing projects/ day to day work for the Council's Planning and Legal services. The Development Management service will deal with planning applications that would not otherwise have required planning permission and no fee can currently be levied for these applications. Planning application fees are waived for those applications which would have been unnecessary but for the Article 4 Direction.
- 4.2.2 Of greater significance are the implications for the Council's Planning Enforcement service, supported by the Private Sector Housing team, in respect of monitoring/ evidence gathering and enforcement action. Where possible this will be provided within existing resources by prioritising actions but increases in workload will need to be kept under review.
- 4.2.3 If Cabinet approves the making of an Immediate Article 4 Direction compensation could be claimed if planning permission is refused. A claim for compensation can include abortive expenditure and other loss/ damage directly attributable to the withdrawal of the permitted development right. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the costs of preparing the plans for the proposed works and loss of rent. The property owner/ landlord will

need to prove that there is a financial loss resulting from the imposition of the immediate Direction. For instance, a house has been purchased for the purpose of conversion into an HMO and work has already started but the property has not been used as a HMO yet. The landlord will need to apply for planning permission. If this is refused, and compensation is applied for, then the onus is on the landlord to provide the evidence that he/ she has suffered financial loss.

4.2.4 In order to estimate the scale of potential compensation claims in the proposed Immediate Article 4 Direction area, the number of properties sold in this area since the 1 January 2016 was obtained from the Land Registry. Information obtained from the Land Registry identified 136 properties as having changed owners since that date.

4.2.5 Since the proposed Article 4 Direction areas include a total of 4,114 properties, the risk of claims for compensation could be potentially high. Therefore, the proposal for an Immediate Direction to cover an area including 1,884 properties and a Non-immediate Direction to cover an area including 2,230 properties is considered to be the most prudent approach since it will deal effectively with the more immediate concerns within the areas which currently have higher numbers of HMOs.

### **4.3 Legal**

4.3.1 The proposals require the making, publicising and conformation of the Article 4 Directions following due legal process and procedures as prescribed by Schedule 3 the Town and Country Planning (General Permitted Development) (England) Order 2015. There is no right of appeal against an Article 4 Direction, however the decision of the Council to make an Article 4 Direction can be subject to judicial review proceedings. If the proceedings were successful the Article 4 Direction could be quashed.

#### **4.4.1 Equality and Health**

4.4.2 The introduction of an Article 4 Direction will affect the permitted development rights, and therefore occupiers/ owners, of all dwellinghouses in the area affected. Decisions on whether to grant planning permission are assessed on an individual basis and are not determined by the Article 4 Direction itself.

4.4.3 A full Community Impact Assessment has identified no specific impacts (positive or negative) for any equality group. There remains a need for good quality student and shared living accommodation in the Borough. Through the introduction of the proposed Article 4 Directions the Council would be seeking to ensure that new HMOs are of a high standard and would not lead to any unacceptable impact on neighbour amenity or other interest of acknowledged importance in the interests of all members of the community.

### **4.5 Consultees (Internal and External)**

4.5.1 Any Direction would only be confirmed following the completion of the requisite notifications/ consultations as set out in Paragraph 3.1.7 above.

## **4.6 How the Proposals deliver Priority Outcomes**

- 4.6.1 The introduction of an Article 4 Direction as recommended would introduce controls which would be exercised through the planning application process and associated planning enforcement process to help deliver *safer communities; help those that need it to have a safe and secure home; and ensure a clean and attractive town for residents and visitors.*

## **4.7 Other Implications**

- 4.7.1 None.

## **5. Background documents**

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National Planning Practice Guidance (2014)

West Northamptonshire Joint Core Strategy Local Plan Part 1 (2014)

Northampton Borough Council – Houses in Multiple Occupation Interim Planning Policy Statement (2014)

Evidence Gathering – Houses in Multiple Occupation and possible planning responses (ECOTEC 2008)

Houses in multiple occupation: review and evidence gathering (Welsh Government, April 2015)

Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015

The Town and Country Planning (Compensation) (England) Regulations 2015

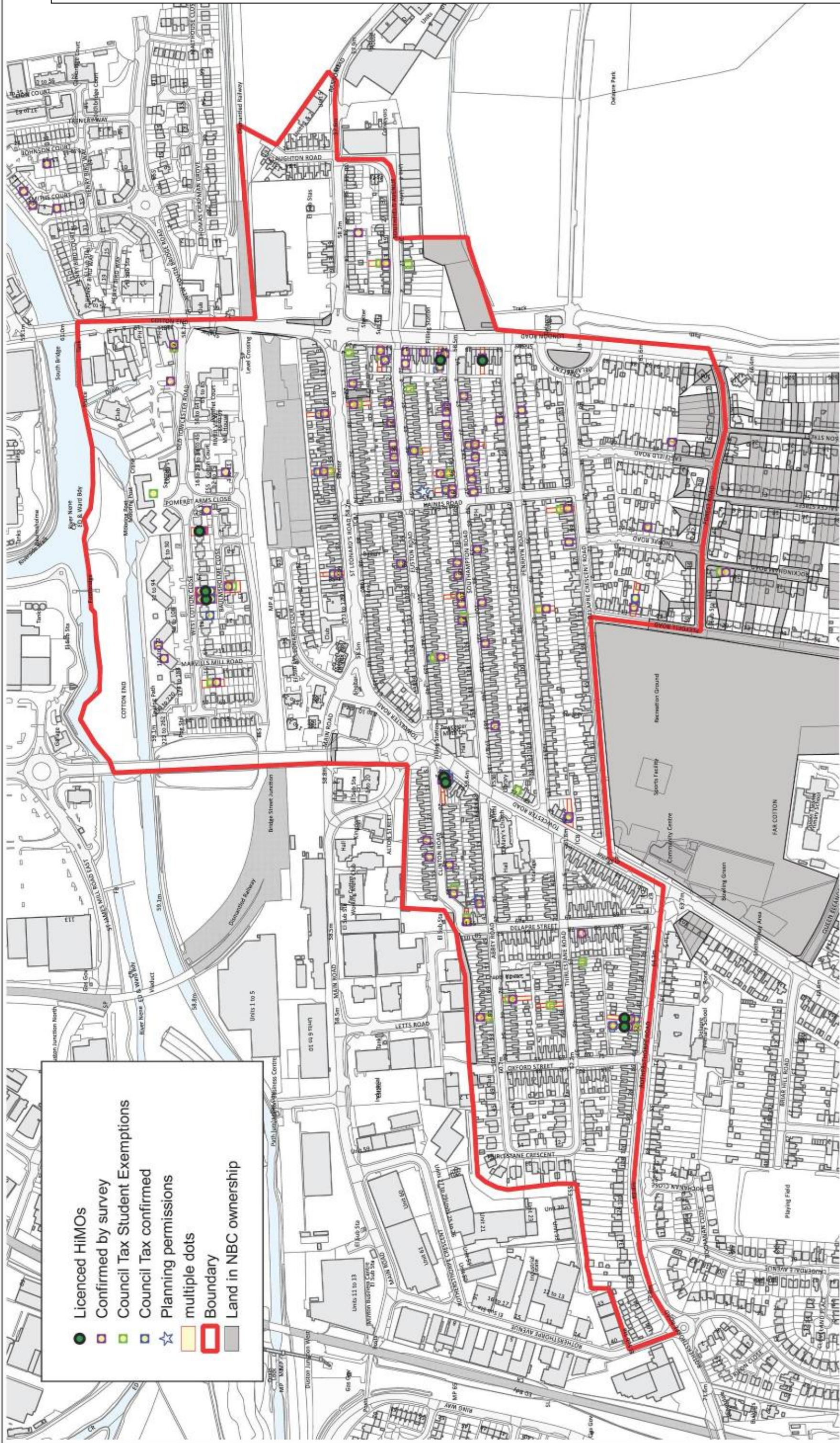
Town and Country Planning (General Permitted Development) Order 1995 (as amended)

Town and Country Planning (Use Classes) Order 1987 (as amended)

**Report Author:**

**Peter Baguley, Head of Planning Service**

Map 1: Boundary of the proposed immediate Article 4 Direction in Far Cotton and Delapre

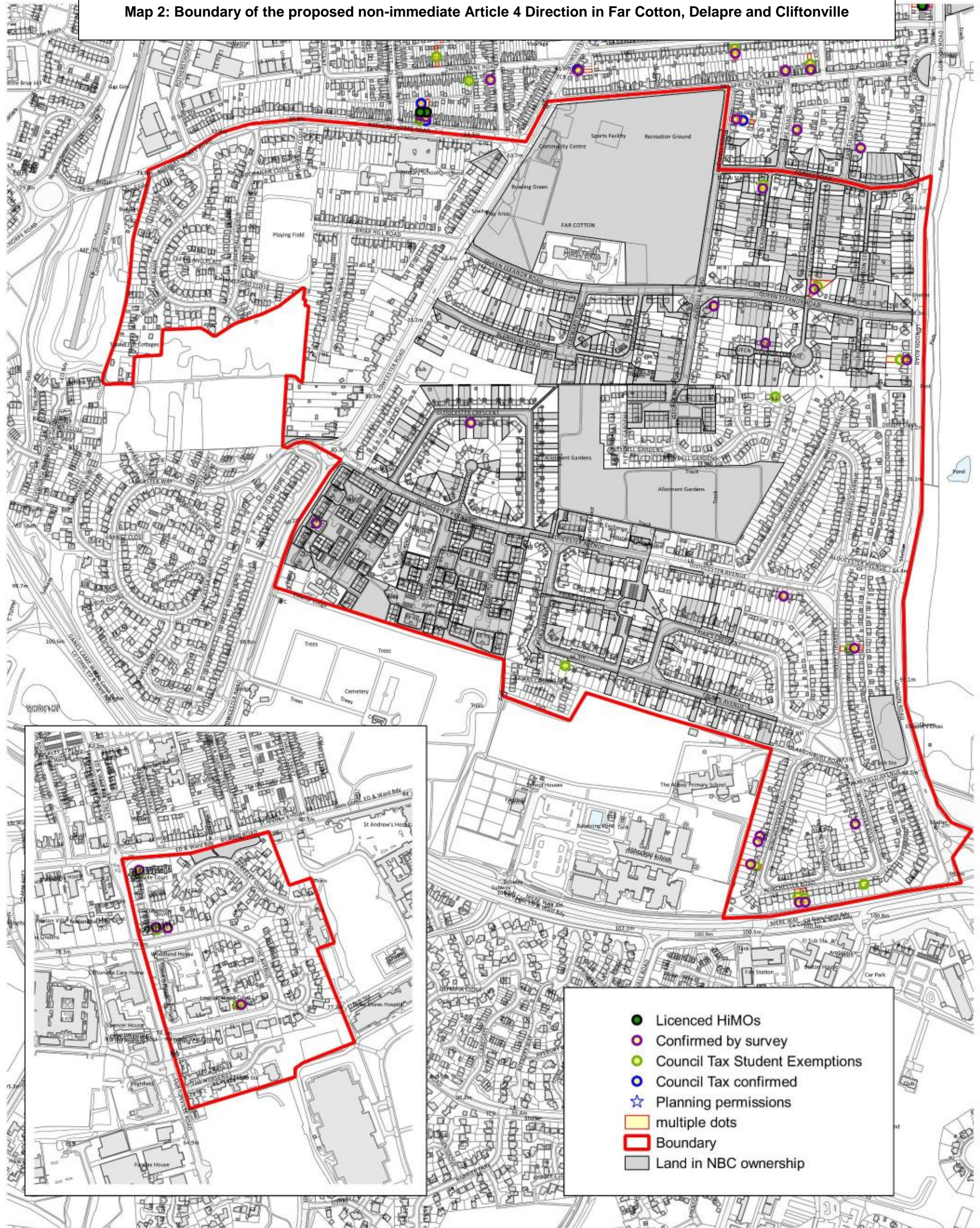


**NORTHAMPTON**  
**BOROUGH COUNCIL**

# Immediate Article 4 Direction boundary

27 February 2017  
not to scale  
drawn by M Burgess

Map 2: Boundary of the proposed non-immediate Article 4 Direction in Far Cotton, Delapre and Cliftonville



- Licenced HiMOs
- Confirmed by survey
- Council Tax Student Exemptions
- Council Tax confirmed
- ★ Planning permissions
- multiple dots
- ▬ Boundary
- Land in NBC ownership



## Non-immediate Article 4 Direction

27 February 2017  
not to scale  
drawn by M Burgess