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Background Document:

Further Article 4 Direction for the removal of permitted development rights for the change of use from Use Class C3 (dwellinghouses) to C4 Houses in Multiple Occupation (HMOs)

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1 Introduction

1.1 Purpose and Scope of the Article 4 Direction

1.1.1 In October 2024 an Article 4 Direction came into force in 9 wards within the Borough which removed permitted development rights for the change of use from dwellinghouses (Use Class C3) to small houses in multiple occupancy (HMOs) (Use Class C4.) This document sets out the policy context and supporting evidence to justify the introduction of a further Article 4 Direction under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The new Article 4 Direction would remove these same permitted development rights in the remaining Wards of the borough:

- Briercliffe;
- Cliviger with Worsthorne;
- Coalclough with Deerplay;
- Hapton with Park;
- Lanehead; and
- Whittlefield with Ightenhill

1.1.2 The new Article 4 Direction will give the Council greater control over the number and location of HMOs for the remaining wards in the Borough. HMOs individually, and particularly cumulatively, can have significantly detrimental impacts on amenity, social cohesion, crime and anti-social behaviour, housing choice and wider economic prosperity. They can also provide poor quality accommodation for occupiers.

1.2 HMOs Legislative Overview

Housing Act

1.2.1 Houses in Multiple Occupation (HMOs) are defined separately by housing and planning legislation. The definition of HMOs was originally set by the Housing Act 2004 – see section 3.1 for further explanation.

1.2.2 HMO licensing is also governed by the Housing Act – see section 3.3 for further explanation.

Use Classes Order

1.2.3 In April 2010, the then Government introduced a new Use Class (C4) Houses of Multiple Occupation (HMOs) to the Use Classes Order. This use class comprises dwellinghouses (including flats) occupied by 3 to 6 unrelated individuals who share basic amenities. HMOs 7 or more people are a *Sui Generis* Use. See section 3.2 for further explanation.

Permitted Development

1.2.4 In October 2010, the then Government also introduced 'permitted development rights' to allow the change of use of a C3 dwellinghouse to the new C4 use without the need to apply for planning permission. See section 3.2 for further explanation.

1.2.5 Proposals for *sui generis* HMOs containing 7 or more residents still require planning permission.

1.3 Article 4 Directions

1.3.1 Article 4 of the General Permitted Development Order (GPDO) allows Local Planning Authorities (LPAs) to issue Directions to remove specific permitted development rights from all or specific parts of its area. These specific developments then require planning permission. Bringing these developments under planning control can then help LPAs to better manage their impacts.

1.3.2 Further details of the different types and procedures for Article 4 Directions are set out in the following chapter.

2 Article 4 Directions

2.1 Legislation

2.1.1 Article 4 of the General Permitted Development Order (GPDO) (2015)[1] allows a Local Planning Authorities (LPAs) to issue Directions to remove specific permitted development rights from all or parts of its area. These specific developments then require planning permission.

2.2 National Policy

2.2.1 The National Planning Policy Framework 2024 (NPPF)[2] (Paragraph 53) states that the use of any Article 4 Directions to remove national permitted development rights of this type should *"be limited to situations where a Direction is necessary to protect local amenity or the well-being of the area",* and *"be based on robust evidence and apply to the smallest geographical area possible".*

2.2.2 According to the accompanying National Planning Practice Guidance,[3] this means that the potential harm that the Direction is intended to address must be clearly identified and adds that a "*particularly strong justification"* is needed or the withdrawal of permitted development rights relating to a wide area (e.g. that covering a large proportion of the LPA area).

2.2.3 'Local amenity' and the 'well-being of an area' are very wide terms and can have specific meanings in policy interpretation depending on the matter being considered. e.g. visual amenity or residential amenity. Amenity generally can be defined as a "positive element or elements that contribute to the overall character or enjoyment of an area."[4]

2.2.4 NPPF Para 130 states that *"Planning policies and decisions should ensure that developments: …. add to the overall quality of the area …… are visually attractive … are sympathetic to local character … create attractive welcoming undistinctive places to live work and visit …. f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience."*

2.3 Types of Article 4 Direction

2.3.1 There are two types of Article 4 Direction:

- Directions with immediate effect
- Non-immediate Directions

2.3.2 In addition to meeting the tests set out above, immediate direction should only be used where the development presents an *"immediate threat to local amenity or prejudices the proper planning of*

[1] The Town and Country Planning (General Permitted Development) Order 1995 was amended by The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, which has since been both amended and then superseded by Orders in 2013 and 2015.

[2] National Planning Policy Framework (publishing.service.gov.uk)

[3] When is permission required? - GOV.UK (www.gov.uk) Paragraph: 038 Reference ID: 13-038-20210820

[4] Planning Portal

an area".[5] In accordance with Sections 107 and 108 of the Town and Country Planning Act 1990[6] and The Town and Country Planning (Compensation) (England) Regulations 20157 (as amended), compensation provisions apply to directions which have an immediate effect. Such directions expire at the end of the period of 6 months beginning with the date on which they come into force unless confirmed by the local planning authority before the end of the 6-month period.

2.3.3 Non-immediate Directions may be served, giving 12 months' notice of the intent to bring into force a Direction, without the need to grant any subsequent compensation.

2.3.4 Schedule 3 of the GPDO sets out the procedures and requirements relating to how Article 4 Directions must be prepared, consulted on and confirmed. These are explained in Section 5.

[5] When is permission required? - GOV.UK (www.gov.uk) Paragraph: 045 Reference ID: 13-045-20140306

[6] Town and Country Planning Act 1990 (legislation.gov.uk)

[7] The Town and Country Planning (Compensation) (England) Regulations 2015 (legislation.gov.uk)

3 What is a House in Multiple Occupation (HMO)?

3.1 The Housing Act

3.1.1 Houses in Multiple Occupation (HMOs) are defined separately by housing and planning legislation. The definition of HMOs is set by the Housing Act 2004, with a linked definition of HMOs introduced in the Use Classes Order for planning purposes in 2010.[8]

3.1.2 Under Section 254 of the Housing Act 2004,[9] a property is considered to be a HMO if it is occupied by more than 2 people[10] and meets one of the 5 tests below. These complex tests are set out in more detail in Appendix A, along with further information from the Housing Act. In summary a property is a HMO if:

- (a) it meets the conditions in subsection (2) ("the standard test")

  i.e., the building, or part of the building is not a self-contained flat and is rented and occupied by more than one single household who share facilities such as a toilet, bathroom or kitchen. This is known as the 'standard test'; or,

- (b) it meets the conditions in subsection (3) ("the self-contained flat test");

  i.e. the part of the building is a self-contained flat and is rented and occupied by more than one single household who share facilities such as a toilet, bathroom or kitchen; or

- (c) it meets the conditions in subsection (4) ("the converted building test");

  i.e. the building, or part of the building has been converted from its original use and it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats); is rented by at least one of the persons and occupied by more than one single household whether or not there is also a sharing or lack of amenities); or

- (d) an HMO declaration is in force in respect of it under section 255; or

- (e) it is a converted block of flats to which section 257 applies.

  i.e. the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulations and more than one third of the flats are owner occupied

3.1.3 A 'household' is defined within the Housing Act 2004 as an individual or members of the same family, partners or co-habiting couples and relatives.

3.1.4 The Act also defines types of living accommodation that are not HMOs even where the S254 tests apply.[11] These include, but are not limited to, properties occupied by the owner and up to two lodgers, higher education student accommodation, properties controlled or managed by a registered provider of social housing or properties occupied by religious communities.

[8] Town and County Planning (Use Classes) Order 1987 (as amended).

[9] Section 254 of the Housing Act (2004)

[10] s.254(2) and para 7, Sch. 14 Housing Act 2004

[11] See Schedule 14 of the Housing Act (2004)

3.2 Planning Legislation

Use Classes

Use Class C4 (i.e. small HMOs)

3.2.1 Planning legislation defines two different types of HMO. Until 2010, HMOs were either included within the definition and use class of dwellinghouses (C3) or were *sui generis* i.e. in a use class of their own.

3.2.2 In 2010, changes to the Use Classes Order introduced a new Use Class, C4 (Houses in Multiple Occupation), which relates to:

- the "use of a dwellinghouse by not more than six residents as a *"house in multiple occupation""*
- "house in multiple occupation" is as defined in the Housing Act (apart from e) converted block of flats) and in broad terms occurs where tenanted living accommodation is occupied by persons as their only or main residence, who are not related, and who share one or more basic amenities (a toilet, personal washing facilities, or cooking facilities).[12],[13], [14]

3.2.3 Use Class C3 was amended accordingly to reflect this new C4 use class, and C3 use now consists of the following:

- Class C3a - Those living as a single household as defined by the 2004 Housing Act 2004 (basically a 'family' where there is no limit on the number of members of the household)
- Class C3b - Not more than six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health conditions
- Class C3c - Not more than six people living together as a single household who do not fall within the C4 definition of a HMO (for example a small religious community, or homeowners with up to 2 lodgers)

[12] For the purposes of Class C4, "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.

[13] The now withdrawn Circular 08/2010 Annexe A described the new C4 class as broadly covering small, shared houses or flats occupied by between three and six unrelated individuals, as their main residence, and who share basic amenities. Withdrawn March 2014 [Withdrawn] Changes to planning regulations for dwellinghouses and houses in multiple occupation: circular 08/2010

[14] The Explanatory Memorandum to the GPDO 2010 amendment giving permitted development rights for use of dwellinghouses as small HMOs, sets out the policy background to the changes. Paragraph 7.2 states that the new C4 use class "*was introduced to allow local authorities to deal with the problems, such as increased noise and loss of community balance, which can arise from high concentrations of HMOs*." but acknowledges in 7.3 that the requirement for planning permission "*is imposing an unnecessary burden on landlords and local authorities in the areas where HMO development is not causing problems*." Paragraph 7.4 suggests that in those areas where concentrations of HMOs are having a significant impact on the quality of life of those living there, local authorities might use article 4 directions to require planning applications for such changes of use or alternatively work with higher education institutions to develop housing and community strategies or local landlord accreditation schemes.

Sui Generis (i.e. larger) HMOs

3.2.4 Larger HMOs are typically defined as having more than 6 unrelated residents sharing basic amenities such as a kitchen or bathroom.

3.2.5 For planning purposes such HMOs are regarded as a *'Sui Generis'* use (meaning that they are in a Use Classes of their own). Planning permission **is** therefore required for the creation of this type of HMO.

Permitted Development Rights and Planning Permission

3.2.6 Currently, the GPDO (2015) (Part 3, Class L, (part b)) grants permitted development rights to allow the conversion from a use falling within Use Class C3 (dwellinghouses) to a use falling within Class C4 (HMOs) subject to certain conditions. Planning permission **is not** therefore currently required for the change of use of a Class C3 dwellinghouse (including a flat) into a single small HMO (Use Class C4).

3.2.7 Conversely, the GPDO (2015) Part 3, Class L, (part a) permits the change of use from a C4 (HMO) to a C3 (dwellinghouse).

3.2.8 Planning permission **is** currently required for the change of use of a premises falling outside a Class C3 dwellinghouse (i.e. a non-residential building) into a Class C4 small HMO.

3.2.9 Whether or not planning permission is required for the change of use, it may be required for any external physical works to facilitate it. Where flats are being converted, planning permission will usually be required for external works such as changes to window or door styles and materials, new window and door openings, external staircases, and extensions. Information on how and where to seek advice on the need for planning permission is available on the Council's website.[15] For listed buildings, all internal and external alterations which affect the building's special interest may also require listed building consent. Building Regulations approval may also be required for internal and external works.[16]

3.2.10 The expansion of an existing large HMO through the increase in the number of bedrooms or occupants may require also planning permission (e.g. if a previous planning permission included the number of residents, or other restrictive conditions were applied).

3.3 HMO Licensing

3.3.1 Licensing is a separate consenting regime also governed by the Housing Act. The considerations for the granting of a licence differ to those for the granting of planning permission but there is some common ground concerning the suitability of the property for the number of occupants proposed.

3.3.2 Under HMO licensing legislation, a lack of planning permission is not a relevant factor when making a decision on whether to grant or refuse an HMO licence. However, Government guidance 'Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities' [17] states that *"We actively encourage local authorities to ensure planning permission has been given before issuing a licence. Wherever possible we recommend processing consents in parallel,*

[15] https://burnley.gov.uk/planning/planning-permission/do-i-need-planning-permission/

[16] https://burnley.gov.uk/planning/building-control-pennine-lancashire/

[17] Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities' October 2019

to resolve any issues as early as possible". Conversely, having planning permission in place (or not requiring it) does not mean a premises is licensed to operate an HMO and this may need to be applied for separately.

3.3.3 Where the Council becomes aware of a HMO which does not have the required planning permission through its licensing activities, it will consider whether it is expedient to take enforcement action.

Licenced HMOs

3.3.4 A licence is required for HMOs rental properties that meet all the following criteria:

- Is occupied by 5 or more people;
- Is occupied by people living in 2 or more separate households; and
- It meets either
    - The standard test under section 254(2) of the Act; or
    - The self-contained flat test under section 254(3) of the Act (but is not a purpose-built flat situated in a block comprising three or more self-contained flats); or
    - The converted building test under section 254(4) of the Act.[18]

Unlicensed HMOs

3.3.5 Unlicensed HMOs therefore relate to those smaller HMOs of 3 to 4 unrelated people.

Selective Licencing

3.3.6 The Council has used the powers under the Housing Act 2004 Part 3, to introduce Selective Licensing Scheme areas requiring owners of all rented properties (not just HMOs) to apply for a selective licence. Selective Licensing has been introduced in the following areas:

- Trinity;
- Queensgate;
- Gannow;
- Danehouse and Stoneyholme;
- Burnley Wood with Healey Wood; and
- The Leyland Road area

3.3.7 More information on Selective Licensing in Burnley is available on the Council's website.[19]

3.3.8 Under Part 2 of the same Act, the Council is also able to designate an 'Additional HMO licensing scheme' which requires owners of all smaller HMOs (3 and 4 people) within the designated area to be licensed as HMOs by the authority, just like the larger (5 or more people) mandatory HMO licensed properties. To justify having an additional licensing scheme, the Council must be satisfied that a significant proportion of 3 and 4 person HMOs across the Borough are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public. The use of additional licensing must be consistent with the Council's housing strategy and should be co-ordinated with the authority's approach on homelessness, empty properties and antisocial behaviour.

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[18] The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (legislation.gov.uk)

[19] https://burnley.gov.uk/housing/private-rented-sector/selective-licensing/

3.3.9 Decisions to designate an area as subject to additional licensing must be approved by the Secretary of State unless they fall under general approval.[20] A general approval was issued in 2024 to enable local authorities to make such designations without the Government's approval, provided there is a minimum 10-week consultation period.[21] The 10-week period does not commence until the local authority produces a draft proposal identifying what is to be designated and consequences of failing to licence an HMO.

3.3.10 Additional licensing can come into force no earlier than three months after the designation has been approved or it falls under the general approval.[22] It lasts for as long as set out in the designation, up to a maximum of five years, and its operation must be reviewed from time to time.[23] The local authority can revoke the designation at any time and must publish notice of this decision. The Council is currently undertaking work to explore the effectiveness of bringing forward additional licensing schemes or further selective licensing areas in Burnley.

[20] s.58 Housing Act 2004.

[21] https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/the-housing-act-2004-licensing-of-houses-in-multiple-occupation-and-selective-licensing-of-other-residential-accommodation-england-general-approval--2

[22] s.58(4) Housing Act 2004

[23] s.60 Housing Act 2004.

4 Local Planning Policy

4.1 Burnley's Local Plan

4.1.1 Current local planning policies can be found in Burnley's Local Plan, adopted on 31st July 2018. Local Plans are prepared to be consistent with national policy.

4.1.2 Whilst the Local Plan does not contain any policies that specifically relate to HMOs, Local Plan Policy SP4 sets the development strategy for the Borough and supports new development within defined Development Boundaries where it is of an appropriate type and scale, bearing in mind the role of the settlement in the hierarchy, and where it satisfies a number overarching criteria including that: *it makes efficient use of land and buildings; it is well located in relation to services and infrastructure and is, or can be made, accessible by public transport, walking or cycling; it does not have an unacceptably detrimental impact on residential amenity or other existing land users; and it appropriately reuses existing buildings and infrastructure.*

4.1.3 Policy SP5 requires high standards of design, construction and sustainability through setting a number of minimum requirements to be addressed, including: *respecting existing or locally characteristics street layouts, scale and massing; having respect for its townscape setting; ensuring there is no unacceptable adverse impact on the amenity of neighbouring occupants or adjacent land users, including by reason of overlooking; not resulting in unacceptable conditions for future users and occupiers of the development; and ensuring the provision of adequate and carefully designed storage for bins and recycling containers.*

4.1.4 Similarly, Policy HS4 states that new housing developments should be high quality in their construction and design in accordance with Policy SP5 and sets out requirements on a range of matters relating to all housing developments, to ensure that developments provide a good level of amenity for future occupiers including outdoor amenity space, privacy, outlook, daylight; and for larger schemes, requirements for adaptable homes and public open space.

4.1.5 A wide range of other Local Plan policies would also be relevant to any schemes for HMOs or small flats depending on the particular type and location of the scheme in question, e.g. parking requirements (IC5) flood risk (CC4) and designated heritage assets (HE2).

4.2 Houses in Multiple Occupation and Small Flats SPD

4.2.1 In April 2022 the Council adopted the Houses in Multiple Occupation and Small Flats Supplementary Planning Document (SPD).[24] The SPD relates to proposals for Houses in Multiple Occupation (HMO) and small flats (including studios and self-contained bedsits).[25] Its particular focus is on conversions and changes of use rather than new build schemes as these are much less common in Burnley. The principles and guidance would still be relevant to new build schemes, but a wider range of considerations would also be applicable.

4.2.2 The SPD addresses those issues that are unique or of particular relevance to HMOs and small flats, rather than the full scope of all the Local Plan policies which may apply. It was prepared to assist

[24] Houses in Multiple Occupation and Small Flats Supplementary Planning Document (April 2022)

[25] For the purposes of the SPD a small flat will be a flat with a gross internal floor area of less than 39m

property owners, planning applicants, planning officers and elected councillors in preparing, commenting on and determining planning applications.

4.2.3 There are no specific minimum space standards prescribed for HMOs or small flats in the Local Plan. The national 'Technical Housing Standards: National Described Space Standard'[26] (NDSS) sets out minimum requirements for internal space standards within new dwellings at defined levels of occupancy as well as floor areas and dimensions for key parts of the home including bedrooms, storage and floor to ceiling heights. Whilst these national standards are not mandatory or adopted through the Local Plan, they are a useful guide to ensuring comfortable living space for developments and are now prescribed for certain Permitted Development rights. Accordingly, schemes which fail to meet them may be judged to not meet the requirements of Policy SP5 2) h) *"to provide acceptable living conditions for future occupiers"* and may give rise to other planning issues associated with the overdevelopment of sites.

4.2.4 In 2018, the Council adopted 'Burnley Council's Standards for Houses in Multiple Occupation' for all HMOs (both licensable and non-licensable).[27] These are reproduced in Appendix B of the SPD. They include minimum space standards for bedrooms kitchens and dining/living rooms.

4.2.5 Whilst these standards were not developed as planning policy, they do provide appropriate standards for ensuring that HMO proposals comply with the Local Plan, in particular Policy SP5 2) h). Therefore, where these standards relate to matters within planning control, planning applications for HMOs are expected to meet them. A failure to meet them in full would not automatically be a reason for refusal of planning permission providing that an alternative approach can be justified to the Council's satisfaction. As with developments of small flats, schemes which fail to meet these standards may be judged to not meet the requirements of Policy SP5 2) h) and may give rise to other planning issues associated with the overdevelopment of sites.

4.2.6 HMOs in particular, when these are concentrated in a specific area, can have wider cumulative impacts that can change an area's physical and social character. These impacts can affect neighbourhoods or individual streets. They will be most acute in areas of high-density terraced housing (terraced housing makes up around 50% of Burnley's housing stock). Whilst impacts can be controlled through planning applications, permitted changes which do not require permission, when carried out alongside approved schemes, can cause negative cumulative impacts.

4.2.7 The impact of a concentration of HMOs (or small flats) is considered harmful if:

- It significantly adversely affects the purchase and sale of single household dwellinghouses;
- It significantly reduces the choice of housing available in specific areas;
- It no longer provides for a mixed and balanced community;
- It changes the overall physical character of the area through excessive physical works to buildings, lower levels of property maintenance, loss of gardens etc; or
- The increased level of occupation affects the quietness of an area or creates critical parking issues.

4.2.8 When considering proposals for HMOs and small flats, the Council will therefore consider the potential cumulative impacts under the requirements of Policy SP4 and SP5.

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[26] Technical Housing Standards: Nationally Described Space Standard (2015) sets out requirements for the Gross Internal (floor) Area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home, notably bedrooms, storage and floor to ceiling height

[27] Burnley's HMO standards - burnley.gov.uk

5 HMOs in Burnley and the 2024 Article 4 Direction

5.1 Initial Data Sources

5.1.1 Following the adoption of the HMO and Small Flats SPD in 2022, the Council worked to establish a baseline of the number of large and small HMOs in the Borough.

5.1.2 The data sources below were used to gather and collate the HMO data. Where the data allowed, it was mapped to establish the quantity and spatial distribution. The original data and mapping will only be made available on request and may need to be anonymised for data protection reasons.

- Census Data
- Council Tax Data
- The Register of Licensed HMOs;
- Burnley Council Accredited Agent properties and properties managed by Serco;
- Data from letting and managing agent websites;
- Data from websites such as RoomShare and RightMove which list houseshares;
- Planning Applications Data
- BRE Modelling Data (of current and potential HMOs)

5.1.3 The accurate identification of the quantity and spatial distribution of HMOs was problematic due to:

- Permitted development rights since 2010 which allowed the conversion of dwellinghouses (Class C3) to houses of small HMOs (Class C4) without planning permission.
- Possible existing HMOs which are unknown to the Council which may or may not have required planning permission and/or a licence.
- Licencing only covering HMOs of over 5 persons.

5.2 Initial Data Results

Combined Data Sets

5.2.1 The combined data, excluding the BRE Modelling Data, indicated that, in September 2023, there were approximately 283 HMOs of all sizes in Burnley. 15 were Larger HMOs and 268 Smaller HMOs.

Table 1: Combined data sets of HMOs in 2023

Ward	Licensed HMOs	Student Exemptions	Accredited Agents/ Websites	All	Approx no. households[28]	% HMO
Bank Hall	8	7	17	32	2,777	1.15
Briercliffe	2	4	6	12	2,468	0.49
Brunshaw	3	5	12	20	2,978	0.67
Cliviger with Worsthorne	0	3	0	3	2,298	0.13

[28] Approx number of households data is derived from Table TS054 2021 Census Tenure by household

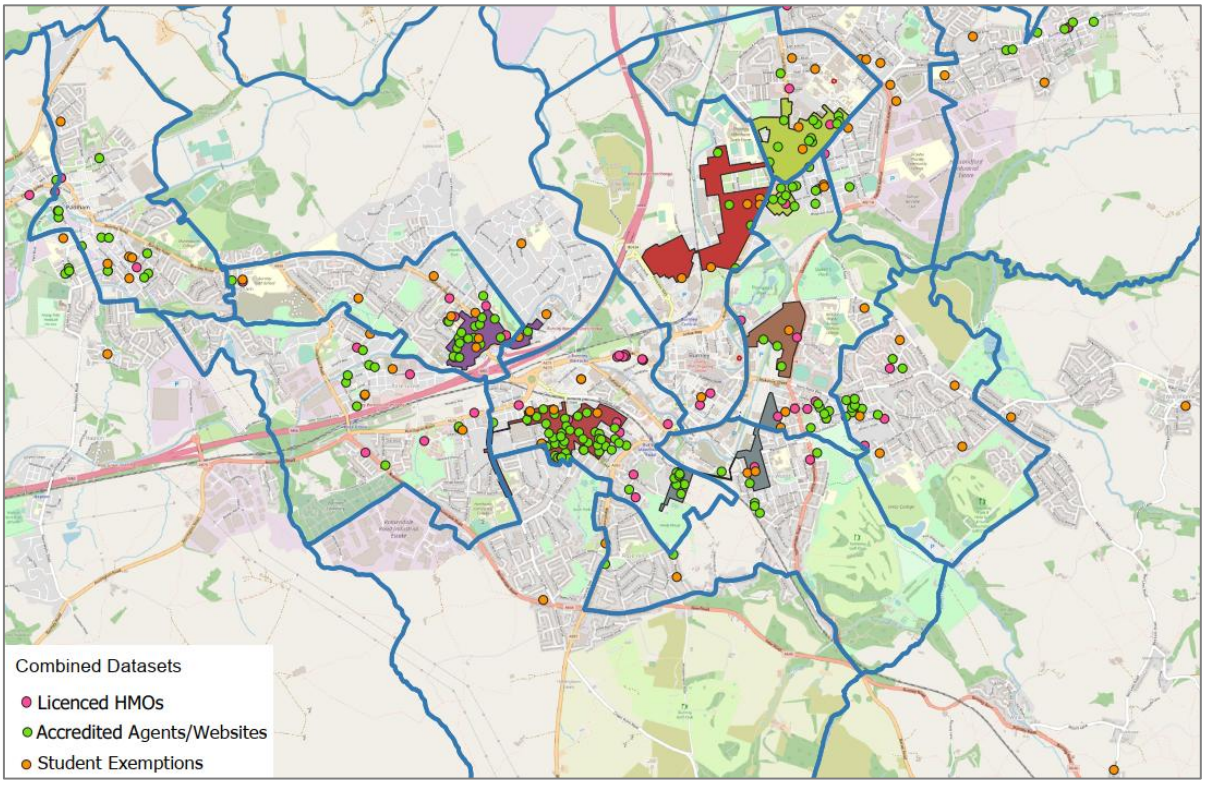
Coal Clough with Deerplay	0	2	0	2	2,286	0.09
Daneshouse with Stoneyholme	2	5	4	11	2,361	0.47
Gannow	2	7	20	29	2,625	1.10
Gawthorpe	2	5	11	18	2,929	0.61
Hapton With Park	4	2	4	10	2,811	0.36
Lanehead	2	5	1	8	2,614	0.31
Queensgate	2	4	15	21	2,534	0.83
Rosegrove with Lowerhouse	9	5	10	24	3,062	0.78
Rosehill with Burnley Wood	4	3	8	15	2,825	0.53
Trinity	16	5	53	74	2,764	2.68
Whittlefield with Ightenhill	0	3	1	4	2,541	0.16
	56	65	162	283	39,873	0.71

Source: Various as stated. The HMOs identified from all the data sources were plotted and any double-counting removed

5.2.2 As can be seen, the numbers within Trinity ward were the highest, with approximately 2.68% of the occupied dwellings being identified as HMOs, and then in Bank Hall ward where 1.15% of occupied dwellings are in HMO use.

5.2.3 The HMO properties identified above tended to be concentrated in particular areas and primarily along terraced streets - as shown in in Figure 1 below. The impact of HMOs in theses streets was exacerbated due to the density of these areas, the position of the terraced properties either abutting the pavement or with short front gardens and the lack of off-street parking.

Figure 1: Coverage of HMOs from the Combined Datasets to show concentrations in 2023 within Wards and Selective Licensing Areas



Source: Various as stated above. ©OpenStreetMap

BRE Modelling Data (2023)

5.2.4 In addition to the work undertaken by the Council, BRE were appointed to carry out a series of modelling exercises of the borough's housing stock, primarily related to its condition. This work included producing an integrated stock model which used Local Land and Property Gazetteer (LLPG), Houses in Multiple Occupation (HMO), Tenancy Deposit Scheme (TDS) and Selective Licensing records provided by the Council.

5.2.5 The work published by BRE[29] updates the 2009 Private Sector House Condition Survey. The 2009 survey was prepared using a different methodology, but by way of context and to further highlight the increase in HMOs over time, the 2009 survey identified that within the borough there were 10 non-licensable and 8 licensable HMOs.

5.2.6 The BRE modelling estimates the number of HMOs and the number of mandatory licensable HMOs:

- Number of private sector HMOs:
  This is modelled using specific criteria from a number of Experian data sources and information derived from the SimpleCO_2 model. The criteria include privately rented dwellings with 3 or more bedrooms occupied by male/female/mixed home sharers, mixed occupancy dwellings or classified as the following Experian Mosaic classifications:
    - Renting a room
    - Career Builders
    - Flexible Workforce
    - Bus Route Renters
    - Learners and earners
    - Student scene
- Number of mandatory licensable HMOs under the Government's new definition, as of 1 October 2018:

  This is modelled using the above criteria for HMOs plus the dwelling having 4 or more bedrooms. This applies to both houses and converted flats.

  Purpose built flats are modelled where there are up to two flats in the block and one or both have 4 or more bedrooms.

5.2.7 Tables 2 and 3 below summarise the results for the private sector stock in Burnley.

Table 2: Summary of estimated HMOs within the Burnley private sector stock

No. of Private Sector dwellings	HMOs	Mandatory Licensing Scheme HMOs
35,693	916	67

Table 3: Geographical distribution of the estimated HMOs

Ward	HMOs	Mandatory Licensing Scheme HMOs
Bank Hall	184	21
Briercliffe	22	0
Brunshaw	48	1

[29] BRE Client Report: BRE Integrated Dwelling Level Housing Stock Modelling and Database for Burnley Council (Extract) Draft July 2023

Cliviger with Worsthorne	14	1
Coal Clough with Deerplay	12	0
Daneshouse with Stoneyholme	68	7
Gannow	62	2
Gawthorpe	72	3
Hapton With Park	32	6
Lanehead	44	2
Queensgate	67	2
Rosegrove with Lowerhouse	36	0
Rosehill with Burnley Wood	58	5
Trinity	180	17
Whittlefield with Ightenhill	17	0
Total	916	67

Source: BRE - of these figures, 400 came from data supplied by the Council for licensed and suspected HMOs, and the remainder are dwellings that have the potential to be classed as an HMO

6 New Article 4 Direction

6.1 Monitoring of HMOs since the 2024 Article 4 Direction

6.1.1 On 14 October 2024 an Article 4 Direction came into force in 9 wards within the Borough which removed permitted development rights for the change of use from dwellinghouses (Use Class C3) to small HMOs (Use Class C4.)

6.1.2 During the preparation of that Article 4 Direction, it was stated that with regards to the wards not covered by the Direction, that the Council would monitor the situation to ensure that issues are not merely displaced to these wards.

6.1.3 To enable this monitoring, Planning Policy and Housing Officers have been working on improving the collation of HMO data. This has involved adding new sources from Accredited Lettings agents and removing student exemptions, as this data source may have included properties which were not HMOs.

6.1.4 Using these amended data sources, the table below compares the number of HMOs, excluding student exemptions, in the wards outside of the Article 4 Direction.

Table 4: Comparison of the number of HMOs in 2023 and 2026, All Wards

Ward	HMOs 2023	HMOs 2026	Increase in Known HMOs 2023-2026	
			Number	% Change
Bankhall	25	42	17	68
Briercliffe*	8	8	0	0
Brunshaw	15	18	3	20
Cliviger with Worsthorne*	0	0	0	0
Coal Clough with Deerplay*	0	8	8	800+
Daneshouse with Stoneyholme	6	18	12	200
Gannow	22	35	13	59
Gawthorpe	13	20	7	54
Hapton With Park*	8	10	2	25
Lanehead*	3	11	8	267
Queensgate	17	29	12	71
Rosegrove with Lowerhouse	19	21	2	11
Rosehill with Burnley Wood	12	18	6	50
Trinity	69	96	27	39
Whittlefield with Ightenhill*	1	4	3	300
Totals	218	338	120	

* Wards currently outwith the Direction

6.1.5 As can be seen from the table above, 21 additional HMOs have been recorded outside of the Article 4 Boundary. All of these HMOs are small HMOs (Class C4). And as can be from the following table, all but one of the HMOs outside of the Article 4 Boundary are small HMOs (Class C4).

Table 5: Type of HMOs in 2026, All Wards

Ward	HMOs 2026	Type of HMO	
		Small (C4)	Larger (Sui Generis
Bankhall	42	36	6
Briercliffe*	8	8	0
Brunshaw	18	18	0
Cliviger with Worsthorne*	0	0	0
Coal Clough with Deerplay*	8	8	0
Daneshouse with Stoneyholme	18	14	4
Gannow	35	35	0
Gawthorpe	20	20	0
Hapton With Park*	10	10	0
Lanehead*	11	10	1
Queensgate	29	29	0
Rosegrove with Lowerhouse	21	21	0
Rosehill with Burnley Wood	18	17	1
Trinity	96	90	6
Whittlefield with Ightenhill*	4	4	0
Totals	338	320	18

* Wards currently outwith the Direction

6.1.6 It is important to note, that, as highlighted earlier, the accurate identification of the quantity and spatial distribution of HMOs remains problematic due to:

- Permitted development rights since 2010 which have allowed the conversion of dwellinghouses (Class C3) to houses of small HMOs (Class C4) without planning permission.
- Possible existing HMOs which are unknown to the Council which may or may not have required planning permission and/or a licence.
- Licencing only covering HMOs of over 5 persons.

6.1.7 This means that there may be a greater number of additional HMOs in these wards than it has been possible to collate. Removing student exemptions could also have affected the totals as some of the properties removed may have been HMOs. Although some of these will have been re-added through other sources, such as lists of HMOs from Accredited Agents, there may be a small number that haven't been able to be included.

6.1.8 The University of Lancashire (ULan) has been implementing ambitious growth plans in recent years and has worked with the Council to develop a cohesive, long-term plan for a significant university presence in Burnley. To this end, purpose-built student accommodation has been delivered on Sandygate in Burnley.

6.1.9 As the University presence continues to grow in the town, accommodation requirements beyond the purpose-built accommodation will need to be met within the private rented sector and websites such as Rightmove and Spare Room list shared houses for students or for a mixture of students and professionals. Working with the university, the Council will continue to plan how best to manage this growth, which may include a number of suitably managed clusters of accommodation in locations near to the university buildings.

6.1.10 In addition to this, local employers have in recent years worked with HMO providers and local agents to increase the number of HMO properties for their workforce and local property agents, including E&M Properties, advertise on their websites that Burnley is a great target area for HMO Conversion[30]. Such initiatives show the need and the attractiveness to investors, of the provision of such accommodation.

6.1.11 The Council is aware that Burnley and Padiham are seen as a highly attractive investment opportunities for property developers. In June 2026, 'unbiased' reported that Burnley was the highest yielding area in the North West, with average annual rental yields of 8.2% – the then highest area listed in England[31]. Zoopla's March 2026 article on the highest yielding areas for buy-to-let property in the UK showed that the average yield nationwide was currently 5.8% in England. The research showed that landlords in Burnley were able to gain greater returns than most areas in the UK, with an average house price at just £92,473, and annual rents of £7,608.[32] The net annual yield of HMOs was even higher in 2021 with a 13 bed HMO listed on Pure Investor with a yield of 10.13%.[33] Even after the Introduction of an Article 4 Direction for part of the Borough in 2024, Pure Investor maintains the position in 2026 that "Burnley presents a compelling opportunity for property investors looking for their next HMO purchase due to the town's affordable property prices and attractive rental yields." Concluding that "*Rental yields in Burnley are also notably high. Data indicates that the North West region, including Burnley, boasts average HMO yields of 17.9%, surpassing many other regions in the UK. This high yield is attributed to strong rental demand and relatively low property prices, enhancing the return on investment for landlords*".[34]

6.1.12 Property investors will be aware that the Borough is in close proximity to Manchester with good transport links and does not have an Article 4 Direction in place across the whole of the Borough (i.e. there are opportunities for changing dwellings into small HMOs without planning permission in parts of Burnley that could appeal to those who would otherwise invest elsewhere.) Inappropriate small HMOs or concentrations of HMOs (small and large) could therefore increase unless all small HMOs in the Borough are brought under planning control.

6.1.13 As noted earlier in this report, there were at least 283 HMOs in the borough in 2023 according to the various data sources. Whilst the overall number of known HMOs was not a particularly high, as stated above it was considered likely to rise and there was a clear concentration and clustering of HMO within certain areas which, left uncontrolled, could continue to spread across the Borough. The most recent monitoring of the number of known HMOs, without the inclusion of student exemptions, and a comparison to 2023 is shown in Table 4.

6.1.14 Whilst this table shows a lower figure for 2023 (218), due to removal of student exemptions, it nevertheless shows an increase in the number of HMOs across the Borough, which demonstrates that as predicted in 2023 the number of HMOs would increase.

6.1.15 The Modelled Estimates of HMOs undertaken by BRE in 2023 showed that there was the potential for a further 500 HMOs within the Borough's housing stock, the vast majority of which would

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[30] https://eandmps.com/blog/burnley-a-great-target-area-for-hmo-conversion/36734

[31] https://www.unbiased.co.uk/discover/mortgages-property/buy-to-let-renting/the-best-areas-for-buy-to-let-in-the-uk

[32] https://www.zoopla.co.uk/discover/property-news/best-buy-to-let-locations/

[33] https://www.pureinvestor.co.uk/news/hmo-option-available-in-burnley-pure-investor

[34] HMO for Sale Burnley | HMO Properties for Sale Burnley - Pure Investor

be small HMOs. Monitoring to date does show that a number of new HMOs have indeed come forward, but it does not indicate the scale of growth predicted.

6.2 Impacts of HMOs in Burnley

6.2.1 HMOs form part of the borough's privately rented housing provision, contributing to people's housing choices. This form of accommodation is generally more affordable and flexible than other housing types and therefore suitable for younger people and other households that are not living as families. As well as reducing housing costs for individuals, sharing homes can also have positive social benefits for occupiers, helping individuals, especially young people, to form new networks and relationships.

6.2.2 Whilst an individual HMO can create adverse impacts, it is normally the concentration within certain areas and/or clustering of HMOs that harms local amenity or the well-being of an area. Without the control provided by an Article 4 Direction it is possible that concentrations or clusters of HMOs will be established in areas of the borough where traditionally the numbers of HMOs were low.

6.2.3 In 2008 the Department for Communities and Local Government published a report prepared on their behalf by Ecotec titled "Evidence Gathering – Housing in Multiple Occupation and possible planning responses." [35] The report identified the following impacts that can occur as a result of high concentrations of HMOs, including:

- Anti-social behaviour, noise and nuisance
- Imbalanced and unsustainable communities
- Negative impacts on the physical environment and streetscape
- Pressures upon parking provision
- Increased crime
- Growth in the private rented sector at the expenses of owner-occupation
- Pressure upon local community facilities

6.2.4 The Explanatory Memorandum to the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 states that *"It is generally not disputed that licensing has been largely successful in improving management and safety standards in those HMOs.*

7.2 However, since mandatory licensing was first introduced there has been a significant increase in the use of smaller properties, notably two storey houses- originally built for families- and flats, as HMO accommodation. Although some of these HMOs are licensed under local HMO licensing schemes, many are not. Some of these HMOs are operated by rogue landlords who exploit their vulnerable tenants and in some cases the public purse through housing benefit, by renting sub-standard, overcrowded and dangerous accommodation. Poor practice can include: housing illegal migrants; failing to meet the required health and safety standards; permitting overcrowding; and ineffective management of tenant behaviour. This has a significant impact not only on tenants, but also the local community through excessive waste, excessive noise and anti-social behaviour which can include the intimidation of local residents."[36]

[35] webarchive.nationalarchives.gov.uk/ukgwa/20120919180121/http://www.communities.gov.uk/publications/planningandbuilding/evidencegatheringresearch

[36] https://www.legislation.gov.uk/uksi/2018/616/pdfs/uksiem_20180616_en.pdf

6.2.5 In Burnley borough, a number of these issues are exacerbated by the nature of the housing stock and relatively high levels of deprivation.

6.2.6 Burnley has a much higher proportion of households living in terraced housing than England or the region as a whole. According to the 2021 Census, 46.6% of Burnley's occupied housing stock consisted of terraced houses compared to the regional average of 28.1% and the England average of 23%. Much of the terraced housing stock comprises pre-1919 two bedroomed houses. Burnley's Local Plan Policy SP4: Development Strategy seeks to deliver a range of housing choice and tenures and Policy HS3: Housing Density and Mix which requires that a balanced mix of dwellings is provided.

Table 6: Housing Type by Household

Type	Burnley 2011 Census		Burnley 2021 Census	
	Number	%	Number	%
Detached	5,112	13.6	5,650	14.2
Semi-detached	10,873	29	11,921	29.9
Terraced	18,291	48.8	18,580	46.6
All flats	3,161	8.4	3,621	9.1
Caravan/mobile structure	95	0.3	101	0.3

Source: ONS 2011 Census, Table KS401EW, ONS 2021 Census, Table TS044

6.2.7 The Indices of Deprivation 2025 uses a group of statistical indicators to rank 33,755 small geographical areas in England with an average population of 1,500 people (Lower Layer Super Output Areas 'LSOA's) in terms of aspects of their deprivation. There are 60 such areas in the borough. 37 indicators are grouped into 7 'domains' and also combined to produce an overall Index of Multiple Deprivation (IMD). Scores are ranked to provide a table of relative deprivation levels. The 7 domains cover income, employment, health and disability, education, skills and training, barriers to housing and services, crime and the living environment.

6.2.8 Based on average overall scores, Burnley is ranked the 3rd most deprived area out of 296 local authority areas in England (based on rank of average scores). In 2019 it was ranked 8th. The most prevalent form of deprivation in Burnley relates to health and disability.

6.2.9 Issues with HMOs are raised by members of the public to the Council. The main concerns raised usually relate to car parking problems, issues with bins and refuse, anti-social behaviour and noise nuisance.

6.2.10 As mentioned previously, there is evidence of new HMOs beyond the boundary of the 2024 Article 4 Direction.

6.2.11 Whilst licencing of HMOs can seek to ensure adequate living standards for occupiers, this cannot cover HMOs with 3 to 4 people outwith selected licencing areas. Given the Borough's high level of smaller back-of-pavement terraced housing with limited amenity and no gardens space, particularly within certain areas, use of such housing as HMOs could mean that adults and children are living in small bedrooms and sharing a bathroom and small kitchen with very limited and poor quality outdoor amenity space. New selective licensing areas or Additional HMO licensing could address living standards, but would not give any control over clustering.

Conclusion

6.2.12 When taken together, the issues highlight above amount to a compelling reason for bringing Use Class C4 small HMOs within full planning control across the remainder of the Borough, and is in the public interest. It will ensure that the Council can respond in a timely way to individual proposals of concern and also the emergence of new concentrations of HMOs to prevent harm to these areas.

6.2.13 It is important to note that the Article 4 Direction only has the effect of bringing certain changes of use, which would otherwise not require planning permission, within planning controls. The Council would need to determine any associated planning applications for changes of use of dwellinghouses to small HMOs in accordance with the development plan and other material considerations and would only be able to refuse an application if it could clearly demonstrate that the proposed HMO would be likely to give rise to unacceptable harm (for example adversely impacting on the amenity of neighbouring residents because of an over concentration of such uses). The Council would also have to identify why a small HMO would give rise to any greater harm than a family living together in a single dwelling.

6.2.14 Since the 2024 Article 4 Direction came into force, 17 Change of Use applications for small HMOs have been determined. Of these, 11 were approved and 6 were refused. Of the 6 refusals, 1 was allowed on appeal and 2 were subsequently approved for a revised application with a reduced number of occupants. A number of the approvals were also amended to address potential reasons for refusal.

6.3 Appropriate Area for the Direction

6.3.1 National Planning Practice Guidance requires there to be a “particularly strong” justification if a Direction is to relate to a wide area (for example covering the entire area of a local planning authority). It was this guidance that in 2023 dictated that the original Article 4 Boundary covered 9 of the Borough’s 15 wards. With regard to the wards not covered by the Direction, a commitment was made to monitor the situation to ensure that the issues identified in justifying the Direction were not merely displaced to other wards.

6.3.2 Burnley as a borough is still being advertised as a high yield investment opportunity for HMOs and monitoring since 2024 shows there is evidence of an increase in HMOs in these areas, all of which have been small HMOs (Class C4).

6.3.3 In addition to this, a number of neighbouring Councils and Councils across Lancashire have in place or are introducing Article 4 Directions relating to Small HMOs which will most likely put more pressure on those areas within Burnley not covered by an Article 4 Direction.

Table 7: Lancashire HMO Article 4 Directions

Local Planning Authority	Details of HMO Article 4 Direction
Blackburn with Darwen	Non immediate Article 4. All urban Areas of the Borough. Confirmed July 2023. In force August 2023.
Blackpool	Non immediate Article 4. Borough wide. Confirmed February 2022. In force October 2022.
Chorley	Immediate Article 4. Borough wide. Made and in force September 2025. Confirmed March 2026.
Hyndburn	Immediate Article 4. Remaining wards of the Borough. Made and in force May 2026.

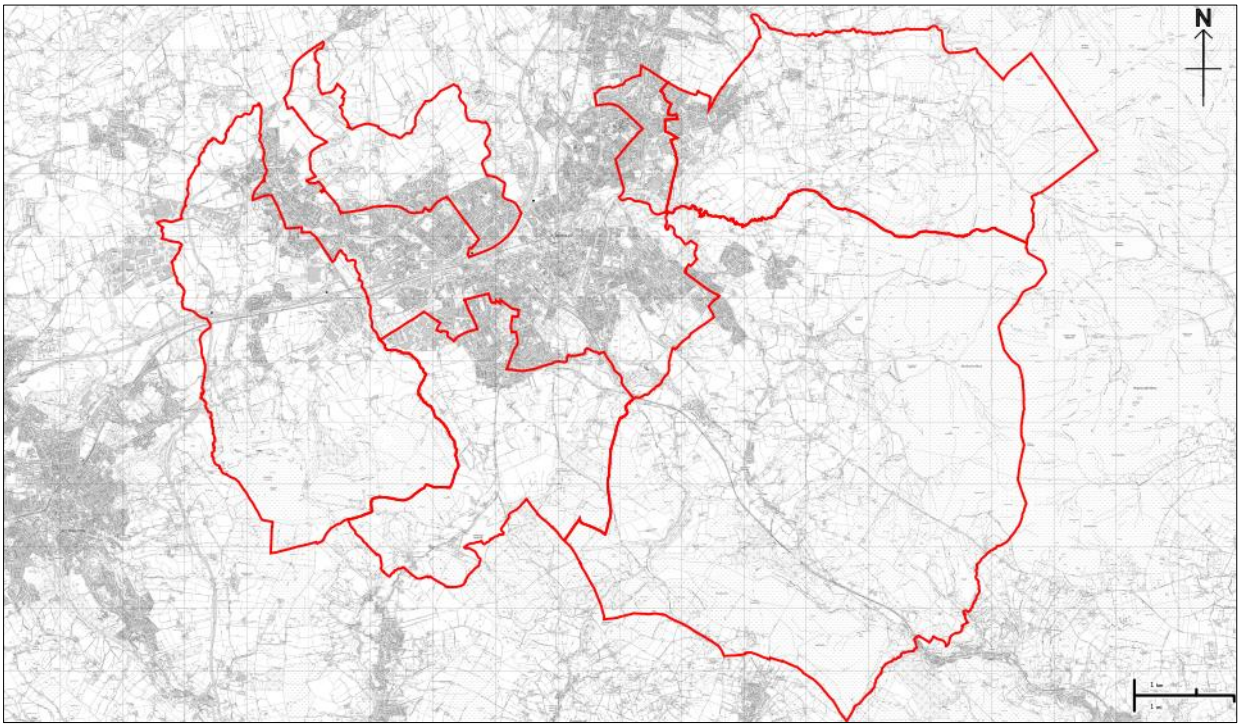
Lancaster	Non immediate Article 4. Covers 8 wards and one Village. Confirmed March 2021. In force November 2021.
Rossendale	Immediate Article 4. Borough wide. Made and in force September 2025. Confirmed March 2026.
South Ribble	Immediate Article 4. Borough wide. Made and in force March 2026. Confirmed July 2026.
Wyre	Immediate Article 4. Covers Fleetwood and Thornton-Cleveleys. Made and in force February 2026.

6.3.4 It is therefore considered appropriate for the further Article 4 Direction to cover the remaining wards not covered by the 2024 Article 4 Direction. These wards are:

- Briercliffe;
- Cliviger with Worsthorne;
- Coalclough with Deerplay;
- Hapton with Park;
- Lanehead; and
- Whittlefield with Ightenhill

6.3.5 The following map shows the area to which it is proposed that the further Article 4 Direction applies.

Figure 2: Area to be covered by the proposed HMO Article 4 Direction



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6.4 Consultation

6.4.1 Article 4 Directions need to be made through a two-stage process. The first is for the Council to 'make' the Direction (including setting a date that it is to take effect if it is a non-immediate direction) and to undertake consultation. The second is the 'confirmation' of the direction by the Council. Prior to

confirming the Direction, the Council must consider all comments made during the consultation and consider whether materials changes are necessary to the Direction. If significant amendments are needed, further consultation may be required.

6.4.2 Schedule 3 of the GPDO 2015 sets out the procedures for publicity and consultation of Article 4 Directions and requires local advertisement and site notices at no fewer than 2 locations within the affected area. Individual service of the notice on owners and occupiers of every part of the land is required by legislation in the area the proposed Article 4 Direction is to cover unless, as is the case here, the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.

6.4.3 In meeting the legislative requirements, the following consultation will be undertaken:

- Advertisement in the local press: Burnley Express
- Display of the Article 4 Direction Notice at all main libraries within Burnley borough (Burnley library and Padiham library), for a period of 6 weeks
- Display of the notice in Burnley Town Hall and Contact Burnley
- Notice published on the Council web pages, accompanied by a Press Release and social media posts
- Site notices (minimum 2 per ward)
- Correspondence to targeted bodies including local Private Sector Landlord groups and groups identified by Housing and Licensing colleagues.

6.4.4 The notice will include all details required by Schedule 3 (4) including a description of the development and area, a statement of effect, and a copy of the map area.

6.4.5 Legislation[37] states that a period of at least 21 days must be given for representations to be made. In meeting this, a period of **6 weeks** is proposed for representations to be made, following which the Council will consider all representations made and take them, with a final report, to the Executive to seek confirmation of the Direction.

6.4.6 Any representations resulting in material changes to the Article 4 Direction may warrant further consultation.

6.4.7 The Secretary of State (SoS) will be notified of the relevant details on the date the notice is first published/displayed and following its confirmation by the Council.

6.5 Proposed Timetables

6.5.1 The proposed Article 4 Direction will be considered by the Council's' Executive at both the preliminary stage, i.e. to 'make' the notice, and at the final stage, i.e. to consider the representations made and to 'confirm' it.

Immediate Direction

6.5.2 If it is considered that there is an immediate threat to local amenity, or to the ability of the Council to undertake proper planning, due to the absence of an Article 4 Direction in the wards identified above, the procedure for an Immediate Direction could be followed. In this scenario, the Article 4 would come into effect when it is made.

[37] The Town and Country Planning (General Permitted Development) (England) Order 2015

6.5.3 As mentioned earlier though, in accordance with Sections 107 and 108 of the Town and Country Planning Act 1990 and The Town and Country Planning (Compensation) (England) Regulations 2015 (as amended), compensation provisions apply to directions which have an immediate effect. These provisions would leave the Council open to compensation claims from any landlords/investors affected by the Article 4 Direction coming into force. These compensation claims could be made for a 12-month period from the date that the Article 4 Direction comes into force if the Council refuses planning permission or grants it subject to stricter conditions than would have originally applied under the permitted development rights which have been removed.

Table 8: Timetable for preparation of an Immediate Article 4 Direction

Report to Executive seeking approval for the making of the Article 4 Direction	August 2026
Make Direction and the Direction comes into force. Serve notice locally and to the Secretary of State with a consultation period of six weeks	September 2026
Report to Executive to consider the consultee comments and determine whether to confirm the Direction *	March 2027
If confirmed, serve notice locally and to the Secretary of State *	March 2027

* The timing of this stage can be at any point up to the date six months after the Article 4 Direction comes into force.

Non-immediate Direction

6.5.4 So as to reduce the risk of financial compensation at a cost to the Council, there is a 12-month lead-in period from the date the Direction is 'made' to the date it takes effect.

Table 9: Timetable for preparation of the Non-immediate Article 4 Direction

Report to Executive seeking approval for the making of the Article 4 Direction	August 2026
Make Direction and serve notice locally and to the Secretary of State with a consultation period of six weeks	September 2026
Report to Executive to consider the consultee comments and determine whether to confirm the Direction *	April 2027
If confirmed, serve notice locally and to the Secretary of State *	April 2027
If confirmed, Article 4 Direction comes into force	September 2027

* The timing of this stage can be at any point up to the date set for the Article 4 Direction to come into force. The timetable suggests the mid-point to give ample notice of the confirmation, but it is not a fixed date.

6.5.5 If the consultation results in any representations that the Council considers necessitate 'material changes' to the document, then this will require another round of consultation which may alter the timetable relating to the date the direction notice may be confirmed or brought into force.

6.5.6 Councils have the power to 'confirm' all Article 4 Directions. However, the Secretary of State (SoS) must be notified at both the preliminary (notice 'made') and final (notice 'confirmed') stages. The SoS's approval is not required for Article 4 Directions and they will only intervene where there are clear reasons for doing so.

6.5.7 Once the Direction is made, the Council will monitor and review the appropriateness of the Direction and its extent.

Appendices

Appendix A – HMOs and the Housing Act (2004)

s254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);

(b) it meets the conditions in subsection (3) (“the self-contained flat test”);

(c) it meets the conditions in subsection (4) (“the converted building test”);

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if—

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations—

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c)make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
(8) In this section—
"basic amenities" means—
(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);
"self-contained flat" means a separate set of premises (whether or not on the same floor)—
(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c)in which all three basic amenities are available for the exclusive use of its occupants.

A1.1 The Housing Act 2004 clarifies the definition of a house in multiple occupation (HMO), replacing the definition under the Housing Act 1985. The definition of an HMO is found in Part 7 of the 2004 Act.[38]

A1.2 To be defined as an HMO, a building, or part thereof, must fall within one of the following categories:

- a building or flat in which two or more households share a basic amenity, such as bathroom, toilet or cooking facilities: this is known as the 'standard test' or the 'self-contained flat test'
- a building that has been converted and does not entirely comprise of self-contained flats: this is known as the 'converted building test'
- a building that is declared an HMO by the local authority
- a converted block of flats where the standard of the conversion does not meet the relevant building standards and fewer than two-thirds of the flats are owner-occupied: this is known as a section 257 HMO

[38] s.254 Housing Act 2004.

A1.3 These tests are explained in detail below.

Standard test for HMOs

A1.4 A building is an HMO under the standard test if the:[39]

- occupants share one or more of the basic amenities (defined as a toilet, personal washing facilities and cooking facilities) or the accommodation lacks one or more of these amenities
- building does not entirely consist of self-contained flats (it may, however, comprise some self-contained units)
- building is occupied by at least three people who constitute more than one household
- building is the occupants' main residence (or should be treated as such)
- occupation constitutes the only use of the accommodation, and
- rents are payable, or some other form of consideration, for at least one person's occupation

A1.5 This test applies to the most common type of HMO. It applies to shared houses (shared by more than one household such as students) and purpose-built bedsit accommodation. It may also apply to a hostel if the accommodation does not entirely comprise of self-contained units.

Self-contained flat test

A1.6 The criteria to meet the self-contained flat test are the same as the standard test, except that they apply to an individual flat that is in multiple occupation.[40]

A1.7 A unit of accommodation is self-contained if it is a separate set of premises, and all three basic amenities are available for the exclusive use of its occupants.[41]

A1.8 If a building comprises both self-contained and non-self-contained accommodation and there is some sharing of facilities, then the standard test applies.

Converted building test

A1.9 The converted building test is met where:[42]

- a building or part of a building consists of living accommodation and has been converted, where one or more of the units of accommodation have been created since the building was originally constructed
- it contains at least one unit of accommodation that is not a self-contained flat (there may be some self-contained flats)
- the accommodation is occupied by three or more persons who do not form a single household
- the accommodation is the occupants' main or only residence (or should be treated as such)

[39] s.254(2) and para 7, Sch. 14 Housing Act 2004

[40] s.254(2) and (3) Housing Act 2004.

[41] s.254(8) Housing Act 2004.

[42] s.254(4) Housing Act 2004.

- occupation as living accommodation constitutes the only use of that accommodation
- rents are payable

A1.10 This test would apply, for example, in the case of a house converted to bedsits, where bathrooms and/or toilets are shared.

HMO declarations

A1.11 The local authority can make a declaration that a house is in multiple occupation where it is satisfied that the premises meets one of the three tests above and the occupation of the living accommodation (by more than one household) constitutes a 'significant use',[43] rather than 'sole use', of the property.[44]

A1.12 An HMO declaration makes it clear that the building shall be regarded as an HMO for the purposes of the Act. The declaration could be used where a hotel taking short-term guests is also providing accommodation for homeless people.

A1.13 The local authority must serve a notice that the building has been declared an HMO on each relevant person (any person with an interest in the building, or who manages or has control of the building, but not a tenant) within seven days of making the decision.[45]

A1.14 The notice comes into force after 28 days, which is the period for appeal to the First-tier Tribunal (Property Chamber).[46] If there is an appeal, the notice only comes into effect once it has been confirmed by the Tribunal and the time for appeal against that decision has elapsed (normally 28 days) or the Upper Tribunal confirms the notice.

A1.15 The local authority may revoke the declaration at any time on its own initiative or on application by a relevant person, where the building no longer meets any of the HMO tests. If the local authority refuses an application to revoke an HMO declaration, this decision can be appealed to the First-tier Tribunal (Property Chamber) within 28 days.

Converted houses – section 257 HMOs

A1.16 Section 257 of the Housing Act 2004 applies to whole converted properties rather than individual dwellings and describes a HMO as a building:[47]

- which has been converted into and consists of self-contained flats
- where the conversion work did not comply with the appropriate building standards and still does not
- where less than two-thirds of the flats are owner-occupied

[43] s.260 Housing Act 2004.

[44] s.255 Housing Act 2004; Herefordshire Council v Rohde [2016] UKUT 39 (LC).

[45] s.255(4) Housing Act 2004.

[46] Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169; the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2013 SI 2013/1187.

[47] s.257 Housing Act 2004; Hastings BC v Turner [2020] UKUT 184 (LC).

A1.17 The appropriate building standards are those required by the Building Regulations 1991 or 2000 (whichever were in force at the time of the conversion).

A1.18 Owner-occupiers are those with a lease of more than 21 years or who own the freehold in the converted block of flats, or a member of the household of the person who is the owner.

Definition of a single household

A1.19 A building is considered an HMO if it is occupied by more than one household. The Housing Act 2004 defines a single household as:[48]

- a family, for example a couple (whether married or not and including same-sex couples) or persons related to one another
- an employer and certain specified domestic employees
- a carer and the person receiving care
- a foster parent and foster child

Only or main residence

A1.20 To be an HMO the accommodation has to be used by persons as their only or main residence. It is usually apparent if this is the case, but secondary legislation specifies certain situations where the nature of occupation is less clear cut. These include:[49]

- a residence for the purpose of undertaking full-time further or higher education
- a refuge, that is a building or part of a building used by a voluntary organisation for temporary accommodation for people who have left their home as the result of domestic violence
- occupation by migrant or seasonal workers where the employer or agent provides the accommodation
- occupation by asylum seekers and their dependents, where the accommodation has been provided under section 95 of the Immigration and Asylum Act 1999 and the accommodation is provided by a private landlord under contract to or on behalf of UKVI

A1.21 A hostel or night shelter providing accommodation to homeless people may be an HMO because, even if the accommodation is overnight, it is the occupants' only residence. Rent (or consideration) must be paid for the HMO definition to apply.

Exemption from HMO regulations

A1.22 Certain buildings that meet the criteria to be defined as an HMO under the Housing Act 2004 are exempt from the licensing provisions and the management regulations.

A1.23 This comprises buildings that are:[50]

[48] s.258 Housing Act 2004.

[49] s.259 Housing Act 2004; reg 5 Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 SI 2006/373.

[50] Sch. 14 Housing Act 2004, as amended.

- managed or controlled by private registered providers of social housing, a co-operative society, local authorities and other specified public sector bodies
- buildings regulated under other legislation, for example boarding schools, prisons, accommodation centres for asylum seekers and care homes
- occupied by religious communities, unless they are section 257 HMOs
- halls of residence (or other accommodation occupied by students) that are managed or controlled by one of the educational establishments listed in the regulations
- only occupied by an owner/occupier, members of their household and no more than two tenants or licensees. This exemption does not apply to section 257 HMOs
- only occupied by two people who form two households
- properties subject to a temporary exemption notice or an interim management order

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