

## PLYMOUTH CITY COUNCIL

**Subject:** Proposed Non-Immediate Article 4 Direction for Houses in Multiple Occupation

**Committee:** Cabinet

**Date:** 23 August 2011

**Cabinet Member:** Councillor Fry

**CMT Member:** Director for Development and Regeneration

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**Ref:**

**Key Decision:** Yes

**Part:** I

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### Executive Summary:

- (a) Concentrations of Houses in Multiple Occupation (HMOs), and the geographical concentration of certain groups residing in them, can lead to substantial changes and problems in the nature of particular locations as the characteristics and social infrastructure of a neighbourhood can change. The problems associated with HMOs and the tensions within local neighbourhoods have been well publicised and can include issues such as noise, low-level anti-social behaviour, parking congestion and other environmental impacts.
- (b) Some of the issues that may be associated with HMOs are linked to the nature and characteristics of occupiers, including lifestyle and transience, creating a localised impact. There are also cumulative impacts that can arise when the concentrations of HMOs are increased within communities.
- (c) A suite of measures exist in relation to the regulation and management of HMOs that involves various bodies, including the City Council. Each tool is capable of preventing, solving or mitigating certain impacts that are as a result of HMOs and will be appropriate in different circumstances:
  - Planning Services control the spatial distributions of different uses to ensure that the provision of dwellings (including HMOs) meets demand in a spatially sustainable way;
  - The Housing Licensing team provides controls over the state and standard of accommodation that is being offered to tenants;
  - The Public Protection Service investigate, and where appropriate enforce, breaches of legislation in relation to noise, litter and other amenity related matters;
  - Highways and Transport apply and enforce on street parking restrictions and permits;
  - The Anti-Social Behaviour Unit apply legislative powers in relation to individuals' and groups' conduct, and;

- The Building Control team ensure, where the Building Regulation are applicable, the health and safety of people in and around buildings.
- (d) Furthermore, the Police play a role where a disturbance of the peace is experienced and the University of Plymouth keep a list of approved HMO properties on their Landlord Accreditation Scheme.
- (e) All of these bodies and organisations have a role to play in improving awareness and promoting community cohesion. The most successful approaches to HMOs are those where the council's service providers and external partners work jointly to tackle the challenges that are created. In Plymouth, such a joined up approach takes place with cross service work in partnership with Higher Education Institutions (HEIs), Student Union representatives and the Police.
- (f) In order to provide an understanding of the local context as an evidence base for decision making in the context of planning and other disciplines, Plymouth City Council commissioned Arup to produce a report ('Student Housing in Local Communities') into the issue of HMOs. The report was published in January 2011 and showed that certain areas of the city, especially in proximity to the University of Plymouth, experience high concentrations of student HMO properties. The report highlighted that there is concern from residents regarding a range of impacts as a result of HMOs on their communities and on them as individuals, but also that there are other groups such as students and landlords who would not be supportive of additional restrictions on changes of use to HMOs.
- (g) Plymouth City Council's adopted Core Strategy promotes a city of sustainable linked communities, where there is an appropriate balance of housing provision and quality of life is provided for all and is currently supported by guidance contained in the Development Guidelines SPD. The evidence from the Arup reports suggests that this principle is under threat in those parts of the city which experience the highest concentrations of HMOs.
- (h) Currently planning control by the Council exists only in relation to changes of use of family dwellings (Use Class C3) to HMOs where these are to be occupied by more than 6 un-related individuals ('Sui-Generis' Use). Permitted Development Rights allow the change of use of a dwelling to a HMO with less than 7 occupiers (Use Class C4) without the need to apply for planning permission. In these current circumstances it is difficult for the Council, using its planning powers, to control and manage HMO development so as to ensure that its Core Strategy vision of sustainable and balanced communities is achieved.
- (i) As a result of its analysis of the issues, Arup recommended that measures be taken to increase the level of planning control over HMOs in certain parts of the city. This can be achieved through the designation of an Article 4 Direction (A4D) which withdraws the permitted development rights for specified types of development, thereby meaning that planning permission would need to be sought from the local planning authority.
- (j) The option of using an A4D to give greater control over HMOs was recently consulted upon in the Sustainable Neighbourhoods Development Plan Document consultation and received support. The feedback received showed that there was

some support for greater controls over HMOs but some landlords were opposed to this.

- (k) Although Article 4 Directions cannot be applied retrospectively, additional restrictions would aid in achieving the goal of better balanced communities and would ensure that further areas of the city will not exceed significantly harmful concentrations of HMOs.
- (l) There are two types of A4D that need to be considered:
  - An Immediate A4D, which would come into effect once the Direction had been confirmed. However, such an A4D would expose the Council to potentially considerable financial risks as disadvantaged landowners could claim compensation for refused planning permissions or if additional restrictions are applied by condition.
  - A Non-immediate A4D, which would remove the risk of compensation but requires prior notice of 1 year before it can come into effect.
- (m) The report before Cabinet recommends that a non-immediate A4D is declared, to cover the area recommended in the Arup report (See Appendix). This area covers (approximately) the existing high concentration areas of Mutley & Greenbank, and the City Centre. It also would provide controls in the most at risk parts of the surrounding neighbourhoods of Stonehouse, Stoke, Peverell, Beacon & Pennycross, Hartley & Mannamead, Higher Compton, Efford, Lispson & Laira, Mount Gould and East End, where future pressures could harm the balance and sustainability of these communities. This would in effect be a 'buffer' to ensure that latent demand for HMO housing is not merely located immediately adjacent to existing high concentration areas.
- (n) There is not considered to be sufficient evidence at this time to justify a city wide A4D. The Arup report did not find high concentrations of existing HMOs outside of the proposed A4D area and the evidence suggests that significant future pressure is unlikely to be placed upon those areas.
- (o) The risks associated with the implementation of an A4D include: Legal challenges to the A4D process itself and planning appeals resulting from the additional planning applications received; landlords actions during the 12 month notice period, including accelerated changes of use to HMO; the need to re-advertise should alterations to the A4D area be required as a result of consultation, and; limitations to supply of HMOs and as a result not meeting demand for this type of housing.
- (p) It should be noted that any reduction in student occupied HMOs through further development of purpose built student accommodation will not necessarily see these existing HMOs returned to family dwellings. It is possible and indeed likely that many will be occupied by other individuals. However, an A4D supported by sufficient policy guidance will be able to protect against further areas exceeding a sustainable mix of uses
- (q) The existence of an A4D in itself does not dictate the outcome of the resulting planning applications. All planning applications must be judged on their own merits and in accordance with the Core Strategy, the Development Guidelines Supplementary Planning Document (SPD) (which includes some guidance on HMOs) and other local development documents. In addition, the same rights of appeal to the

Secretary of State apply. For this reason, it will be important for the A4D to be implemented alongside some further planning guidance which can set out how the Council will implement its higher level policy aspirations in relation to applications for HMOs. This could be an SPD or some other form of planning tool. Such guidance will help ensure that the overall provision of housing (of both C3 and C4 uses) is provided and distributed in a way that promotes sustainable and balanced communities. The report therefore also recommends that work on such guidance is undertaken at the same time as the process for designating an A4D.

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#### **Corporate Plan 2011-2014:**

The recommendations of the report directly support the council's 'delivering growth' priority including its level 1 outcome measure of creating a good range of houses in safe, inclusive and sustainable communities.

At the same time, the measures proposed would help to deliver growth in a way that reduces inequalities by providing affordable accommodation whilst responding to the growing and changing needs of the population.

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#### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

There are several potential financial implications arising from the introduction of an Article 4 Direction (A4D) in relation to Houses in Multiple Occupation.

- 1. Compensation liability.** Given that an A4D in effect withdraws a deemed planning permission given by the General Development Order, statutory provision exists to enable an applicant to seek compensation for loss of value of properties should their proposal not be granted consent. The potential costs could be considerable, depending on the number of cases arising. However, this liability can be avoided altogether if a twelve month notice period is given prior to the introduction of an A4D. We are not aware of any local planning authority that has chosen to go down the route of imposing an A4D without allowing for this period to elapse. Therefore we have no comparable information from another authority to help identify the potential level of liability, however, based on £50,000 compensation per property, we estimate that it could be in the order of £2 million to £3 million. This figure could be higher.
- 2. Additional staff resource burden on Planning Services with no additional fee income.** The national planning application fees system is in place to help meet the costs of local planning authorities in fulfilling their development management function. This system is currently under review. However, at the present time, no fee would be payable on planning applications which are needed because of the imposition of an A4D. Furthermore, an additional appeal and enforcement workload will result from the additional control afforded by an A4D. The resource burden arising from A4Ds in relation to Houses in Multiple Occupation is estimated to be in the order of 1 – 1.5 posts (£39,057 - £58,585 including on-costs).



**3. Costs associated with introducing an A4D and associated planning guidance.** These include printing, advertising and consultation costs, and officer time, and are estimated to be in the order of £7,000 to £10,000.

In the absence of budgetary provision for compensation liability, the report proposes that the A4D comes into force 12 months after notice of the withdrawal of permitted development rights is given.

In relation to the staff resource implications for Planning Services, it is proposed to manage the additional case load within the existing staffing structure. This might involve the redeployment of staff from other tasks, and this is a judgment that will be made through the business planning process.

In relation to the cost of introducing an A4D these can be met by the current Planning Services revenue budget.

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**Other Implications: e.g. Section 17 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.**

The implementation of an Article 4 Direction (A4D), and other proposed measures will support the policies of the Adopted Core Strategy in seeking to deliver safe sustainable mixed communities, and provide a choice of house type and tenure.

By exercising a degree of control over the number and location of Houses in Multiple Occupation (HMOs), it will also reduce some of the negative impacts of high concentrations of such properties and improve community cohesion.

There is the potential for the introduction of an A4D to have the unintended consequence of an accelerated change of use to C4 HMO uses with potential adverse affects, see paragraph 4.5 in the main report for further details.

An Equalities Impact Assessment has been carried out and has identified the following actions:

- i) Ensure consultation with diverse community groups regarding the A4D and any associated planning policy guidance.
- ii) Ensure that communications are accessible to people with disabilities.
- iii) To consider the adequate provision and acceptable distribution of HMOs through the drafting, consideration and implementation of planning policy guidance.

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**Recommendations & Reasons for recommended action:**

It is recommended that the Cabinet:

- I Resolve to make a non-immediate Article 4 Direction to control changes of use to Class C4 (Houses in Multiple Occupation) as set out in detail in the Appendix of this report, pursuant to Article 4(1) of The Town and Country Planning (General Permitted Development) Order 1995 (as amended), to come into force no sooner than 12 months after notice of the withdrawal of permitted development rights is given.

**Reason:** To enable planning control over changes of use from C3 to C4 use to promote sustainable mixed communities and to ensure that the risks of compensation liabilities being brought against the Council are avoided.

- 2 Instruct officers to serve notice locally and notify the Secretary of State in accordance with The Town and County Planning (General Permitted Development) Order 1995 (as amended), and Annex A of the 'Department for Communities and Local Government Replacement Appendix D to Department of Environment Circular 9/95: General Development Consolidation Order 1995 (978 0117531024)', November 2010.

**Reason:** To ensure that stakeholder opinion on the details of a proposed Article 4 Direction can be considered and that appropriate legal procedures are followed to enable the correct implementation of an Article 4 Direction.

- 3 Delegate authority to the Cabinet Member for Planning, Strategic Housing and Economic Development to determine whether to confirm the Article 4 Direction taking into account any representations received during the six week consultation period, or to instruct further consultation should material changes to the Direction be appropriate as a result of consultation.

**Reason:** To enable expedient procedures to be in place to progress the Article 4 process, including any amendments to the Article 4 Direction that may be appropriate in the context of comments received during consultation.

- 4 Instruct officers to prepare supporting planning guidance to amplify existing policy in relation to changes of use to Houses in Multiple Occupation, including necessary evidence gathering and consultation.

**Reason:** To ensure that a robust planning framework is in place to deal with the additional planning applications that will result from an Article 4 Direction.

- 5 Instruct officers to refer the report to Planning Committee for information.

**Reason:** To ensure that the statutory committee responsible for the determination of planning applications is aware of the proposed non-immediate Article 4 Direction and related matters.

- 6 Instruct officers, in the event that an Article 4 Direction is confirmed, to carry out a review of the Article 4 Direction's area and effect for consideration by Cabinet 12 months after a Direction comes into force.

**Reason:** To ensure that a review mechanism is in place to assess and monitor the operation of an Article 4 Direction in accordance with good practice.

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#### **Alternative options considered and reasons for recommended action:**

The main alternative option is for Cabinet to resolve not to implement an Article 4 Direction (A4D). Applying these additional restrictions will place additional resource pressures on existing planning services and this should be weighed carefully against the

An alternative option available to Cabinet is to resolve to implement an immediate Article 4 Direction in preference to a non-immediate Article 4 Direction. This option is not recommended by Officers on account of the substantial risk of compensation claims that could result from an immediate Article 4 Direction.

*Sustainable Neighbourhoods DPD Representations Summaries, June 2011*

*Student Housing in Local Communities*, report by Arup, January 2011

Development Guidelines Supplementary Planning Document, April 2010

*Evidence Gathering – Housing in Multiple Occupation and possible planning responses Final Report, Communities and Local Government, September 2008*

*LDF Core Strategy, adopted April 2007*

*Sustainable Neighbourhood Assessments, Produced between 2005 and 2007*

**Sign off:**

Fin	DevFI 11200 22	Leg	JAR/12 271	HR	n/a	Corp Prop	n/a	IT	n/a	Strat Proc	n/a
Originating SMT Member: Paul Barnard Assistant, Director for Development & Regeneration											

## **1.0 INTRODUCTION**

- 1.1 As a university city and a major urban area, Plymouth experiences considerable pressure in parts of the city for change of use from family dwellings to houses in multiple occupation (HMOs). Uncontrolled, such development has the potential to harm the fabric and sustainability of existing communities, and indeed evidence suggests that this has already happened in parts of the central area. One main problem for the Council in relation to this threat has been that many HMO developments do not require planning permission, and therefore fall outside planning control. However, a statutory tool is available to local planning authorities to bring HMO development under greater control, namely an Article 4 Direction (A4D). This report presents the case for and against the use of an A4D in Plymouth, recommending on the basis of evidence and consultation that it would be appropriate to implement an A4D in the city.

## **2.0 THE EXISTING SITUATION IN PLYMOUTH**

- 2.1 This section provides a context for decisions relating to HMOs. Furthermore, for all A4Ds it is a legal requirement that the Local Planning Authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. In order to satisfy this requirement the reasons for making an A4D should be justified by evidence of local circumstances being such that there are compelling reasons to impose an exception control and should be in accordance with Government guidance.

### **Impacts of HMOs**

- 2.2 Concentrations of HMOs, and the geographical concentration of certain groups residing in them, can lead to substantial changes and problems in the nature of particular locations as the social infrastructure of a neighbourhood can change. The problems associated with HMOs and the tensions within local neighbourhoods have been well publicised. Over a number of years Members of Parliament and government ministers have received a high level of correspondence from residents on the problems associated with high concentrations of HMOs, and in particular in relation to areas where there are high concentrations of students and student housing, a term now known as ‘studentification’.
- 2.3 Such lobbying and the responses to it have received coverage in both the national and local press. These impacts are discussed in more detail in Section 2 of the ‘Evidence Gathering – Housing in Multiple Occupation and possible planning responses Final Report’, Communities and Local Government. However, to summarise they include:
- 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 private rented sector at the expenses of owner-occupation
  - pressure upon local community facilities and

- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

2.4 The ARUP report ('PCC Student Housing in Local Communities'), in conjunction with recent consultations in association with the Sustainable Neighbourhoods DPD, forms the core of our local evidence base regarding HMOs and the following notes and recommendations should be read in conjunction with that evidence. The ARUP report highlights a number of positive effects and challenges associated with Student populations that were recognised at a Stakeholder Workshop run as part of the evidence gathering for the report (see Tables 1 and 2).

**Table 1: Student populations: positive effects**

<b>Social</b>	<b>Cultural</b>	<b>Physical</b>	<b>Economic</b>
<p>Student volunteering makes an important contribution to many aspects of social life.</p> <p>Student housing needs prevent serious depopulation in many inner-city areas.</p> <p>Increases the range of goods, services and attractions available to the town/city's population.</p>	<p>Create a critical mass and demand for diverse range of cultural events.</p> <p>Enhances reputation of city/town as vibrant, dynamic location and as an attractive destination for night-clubbing, evening economy, or tourism.</p>	<p>Higher/rising property prices provide a level of incentive for upgrading properties which might otherwise remain empty, languish in a neglected state or be generally unfit for habitation.</p> <p>Many older properties receive considerable investment by private landlords which extends their life.</p>	<p>High demand for student housing and the stimulus to private rented sector leads to rising house prices.</p> <p>Growth in buy-to-let market and private investment opportunities.</p> <p>Students constitute a flexible part-time labour force undertaking seasonal employment.</p>
<p>A critical mass of students can ensure transport links to the benefit of the whole community.</p> <p>Student communities can also support nurseries and multi faith centres.</p>	<p>Creates an international/ cosmopolitan feel/ outlook.</p>	<p>The existence of large numbers of young people help to make city centres attractive to social and retail uses.</p> <p>Changes in type of retail and entertainment services available – e.g. local shops becoming cafes, bookshops, live music venues.</p>	<p>Student presence can help stimulate urban regeneration.</p> <p>Student presence ensures the viability of some retail businesses.</p> <p>Repairs, renovations and extensions to student properties benefits the construction and service sector of the economy.</p> <p>Availability of a graduate workforce.</p>

**Table 2: Communities of students: challenges**

<b>Social</b>	<b>Cultural</b>	<b>Physical</b>	<b>Economic</b>
<p>Increase in low-level anti-social behaviour</p> <p>Concentration of vulnerable young people with low awareness of security and highly attractive possessions leading to increased levels of crime. This can result in higher insurance premiums (ie, house, contents, vehicle)</p> <p>Decreased demand for some local services leading to closure – particularly educational services</p> <p>Residents feel pressure to move to avoid becoming marginalised and isolated as permanent residents. This can lead to the demoralisation of established residents</p> <p>Increased competition for private rented houses</p> <p>Pressure for greater provision of establishments catering for night time entertainment and consequent detrimental impact on residential amenity</p> <p>Seasonal availability of some retail and service provision – development of a ‘resort economy’</p>	<p>Expansion of HMOs in traditional owner-occupied, family areas can lead to change in nature of communities</p> <p>Gradually self reinforcing unpopularity of area for families wishing to bring up children</p> <p>Conversion of houses into student residences, often make difficult transformation back into family homes</p> <p>Transient occupation engenders a lack of community integration and cohesion and less commitment to maintain the quality of local environment</p> <p>Turnover and short stay are disincentive and barrier to self policing and aversion to crime</p> <p>Different perceptions of what is considered acceptable behaviour and communal obligations by different social groups</p> <p>Lifestyle frictions – late night student culture disturbs children and working people</p>	<p>Reduction in quality of housing stock and neglect of external appearance to properties including gardens, due to lack of investment by absentee landlords</p> <p>Turnover of properties and preponderance of property letting boards – recurring annually – detract from streetscape</p> <p>Increased population density and increased pressures on services (policing, cleansing, highways, planning, public transport)</p> <p>Increased on-street parking pressures arising from shared households and seasonal traffic congestion (e.g. at graduations, end of term)</p> <p>Increase of squalor (litter/refuse), as infrastructure is designed for lower density usage, low awareness of refuse collection arrangements and different conceptions of what is tolerable</p> <p>Noise between dwellings at all times especially music and at night – parties and gatherings and late night street noise disturbance</p>	<p>High demand for student housing and the stimulus to private rented sector leads to a rise in house prices, deterring access to housing ladder for other sections of community</p> <p>A rising concentration of students in particular streets acts as a strong inducement to owner-occupiers of non student properties to take advantage of a lucrative sale to private student landlords</p> <p>Changes in type of retail and entertainment services available – e.g. local shops becoming takeaway’s and cafes, and re-orientation of stock</p> <p>Fluctuating demand for private rented housing</p> <p>Seasonal employment (in shops, pubs) and provision of retail and leisure services</p>

- 2.5 Nine comments were made in relation to the Sustainable Neighbourhoods DPD consultation event that was held between 16<sup>th</sup> February and the 30<sup>th</sup> March with reference to HMOs. Issues of noise, parking, transient population, excessive numbers of wheelie bins, litter, anti-social behaviour and intensive use of greenspaces were cited as issues in the Peverell, Mutley & Greenbank, and Stonehouse neighbourhoods.
- 2.6 In addition to the comments above and the sections of the community that they represent, other residents have reported during the Stakeholder workshop that, because of the existing high concentrations of HMOs in some streets, should an A4D be introduced and resulting planning applications refused at their property they would have difficulty selling on their property as a family house only. There is also a strong lobbying group from landlords, the majority of whom would not wish to see additional restrictions in place that create additional delays and costs.

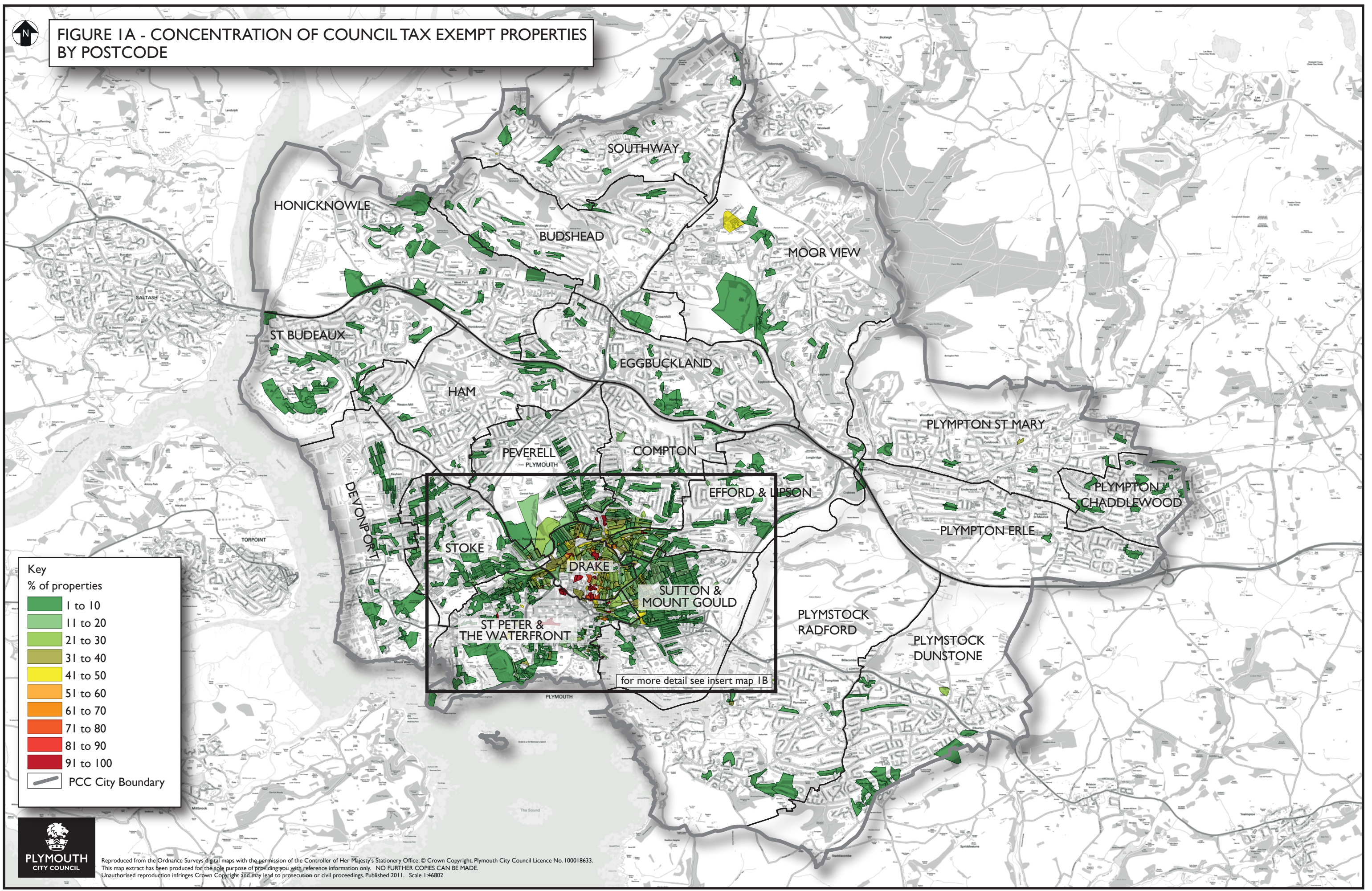
### **Student Population and Distribution**

- 2.7 There are currently estimated to be 22,514 full-time undergraduate students living in Plymouth taking into account all of the Higher Education Institutions (HEIs). The student population has grown 26.5% over last decade which has not been met by a relative increase in bed-space provision within purpose built student accommodation placing increased demand on privately rented accommodation. Discussions with Higher Education Institutions suggests that student numbers are unlikely to increase so rapidly over the coming decade in Plymouth, particularly with the current funding constraints in Higher Education and changes to the student tuition fee regime.
- 2.8 The University of Plymouth has reported that 94% of students would prefer to live in purpose built accommodation on arrival in Plymouth and that there is a shortfall of circa 1,175 bedspaces to meet this provision. A positive approach to purpose built student accommodation is recommended as this will also help to reduce pressure on the private rented sector, potentially acting as a positive force to reduce the numbers of HMOs in the city and returning them to 'family housing'. Alternatively, this release of capacity could be filled by other HMO occupants.
- 2.9 Using Council Tax records to show Council Tax exempt properties as an indicator of the location of Student HMOs, a distribution map of HMO concentration based on Postcodes was produced (Figure 1A and 1B of this cabinet report). This map provides an indication of the spatial distribution of concentrations in the City.
- 2.10 As noted above, future private rented sector HMO provision is unlikely to increase as a result of the growth of HEIs and may in fact be reduced if purpose built accommodation is developed. However, recent changes to housing benefit that increases the age before which an individual can receive payments towards unshared properties means that there will be a potential demand in the near future for an estimated 900 individuals who will require approximately 150-300 HMO properties across the City.





FIGURE 1A - CONCENTRATION OF COUNCIL TAX EXEMPT PROPERTIES BY POSTCODE



Key  
% of properties

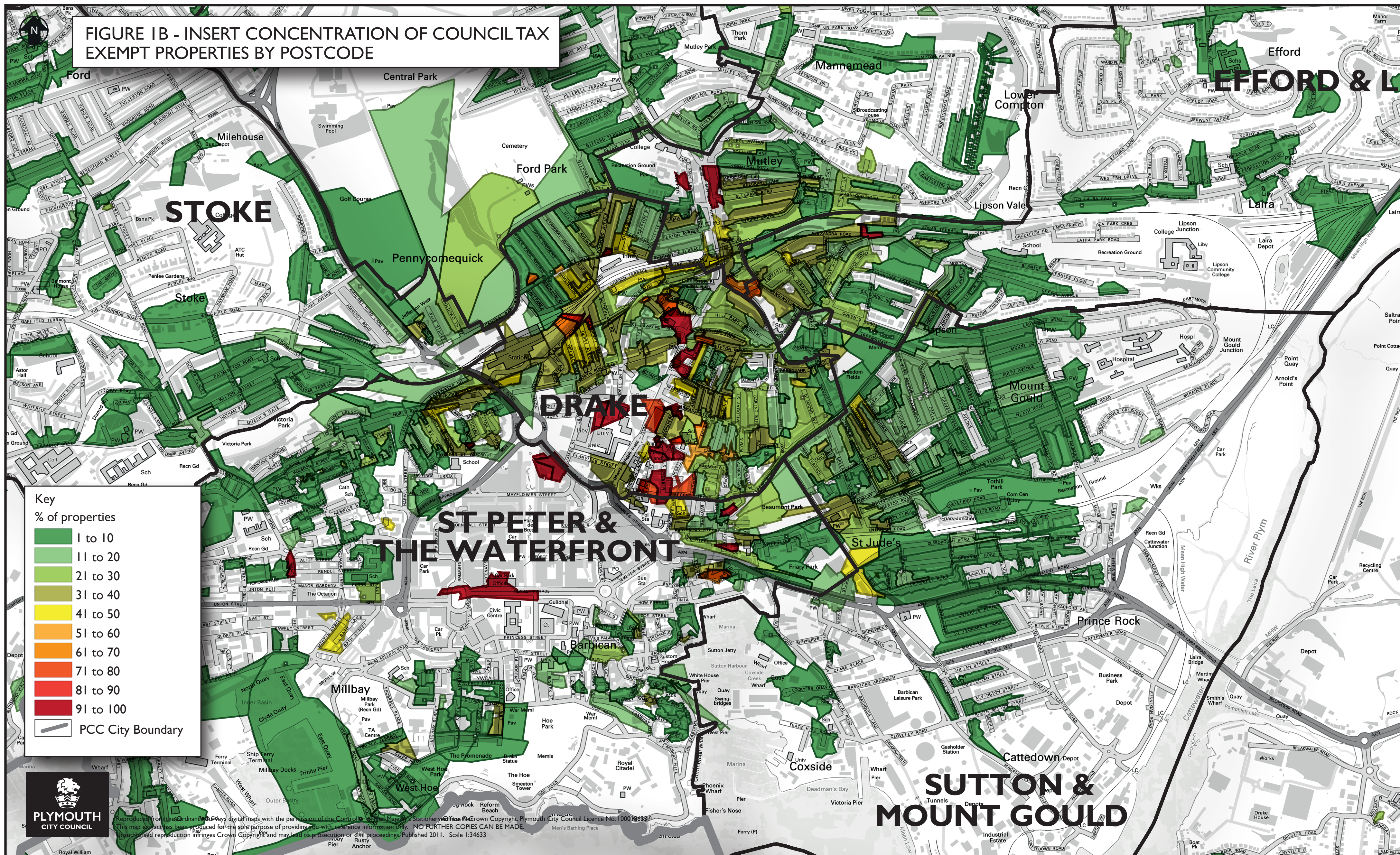
1 to 10
11 to 20
21 to 30
31 to 40
41 to 50
51 to 60
61 to 70
71 to 80
81 to 90
91 to 100

PCC City Boundary





FIGURE 1B - INSERT CONCENTRATION OF COUNCIL TAX EXEMPT PROPERTIES BY POSTCODE





## **Recommendations of the ARUP Report**

- 2.11 The report acknowledges that it is unlikely that one intervention alone will be able to deal with all the issues surrounding HMOs in the Mutley and Greenbank area, and that a range of complementary actions be considered including:
- A positive policy to encourage the development of purpose-built student accommodation. This will alleviate some of the pressure on the private rented sector, will allow the University of Plymouth to fulfil its desire to provide accommodation for all first year students, and will cater for a growing number of international students in the city. Core Strategy policy and guidance has already supported a total of 1,863 purpose built units to come forward with planning permission (correct on 01 August 2010).
  - That a 'Threshold Approach' policy is also adopted. Twenty percent is the most commonly used threshold by other authorities, and given the current distribution of student housing in Plymouth, it is suggested that this could be the most appropriate threshold here too.
  - The City Council should further consider introducing an Article 4 Direction to strengthen the recommended policy framework, providing 12 months notice to avoid compensation payments. To reflect the threshold approach, this may be most effective if applied to all neighbourhoods where there are currently 8% or more student or HMO dwellings and adjacent neighbourhoods as a buffer zone.
  - Additional licensing might not be the best use of limited resources, but this should be kept under review.
  - The impact of a range of interventions on community cohesion, which probably extend to more than are explored in the ARUP report.

## **Other Authorities' Approaches**

- 2.12 A number of other Planning Authorities have opted to introduce A4D restrictions for changes of use from class C3 Dwellings to class C4 HMOs using a non-immediate procedure and thereby allowing 12 months notice to those properties affected. Some of the authorities to announce that they will implement additional restrictions have chosen to apply them to the entire city, for example Manchester and Nottingham. These decisions have been justified on the basis of local circumstances such as significantly large student populations and citywide pressures in relation to HMO conversions. The evidence collected in Plymouth indicates that the pressures are more localised and that there is insufficient justification for a citywide A4D in Plymouth.

## **3.0 CHANGES TO LEGISLATION RELATING TO HMOs**

- 3.1 Until 5<sup>th</sup> April 2010 the C3 'Dwellinghouses' planning Use Class included not only all dwelling units (family houses, self-contained flats and houses where care is provided), but also all privately-rented shared houses, where up to six unrelated occupants (eg students, young professionals and others) lived as a single household. This meant that there were no planning controls over the conversion of properties from 'family houses' to 'shared single household properties of 6 or less persons'. Properties of more than 6 individuals were unclassified by the Use Class Order and therefore planning permission was (and still is) required for this changes of use.

3.2 Informed by the national 'Evidence Gathering – Housing in Multiple Occupation and possible planning responses' report, a separate planning Use Class for C4 'Houses in Multiple Occupation' was created by the Government on 6<sup>th</sup> April 2010. This brought changes of use to C4 into the control of the planning system (See 'The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 653)' for details). At this time changes of use from C4 to C3 were permitted development but not vice versa.

3.3 The existing Use Class framework for C3 and C4 dwellings is shown below:

**Class C3: Dwellinghouses** – this class is formed of 3 parts:

- C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a 'family');
- C3(b): those living together as a single household and receiving care, and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

**Class C4: Houses in multiple occupation (3-6 occupants)** – in broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

**Large houses in multiple occupation (those with more than 6 people sharing)** – these are unclassified by the Use Classes Order. In planning terms they are described as being sui generis (of their own kind). Changes of use to a sui generis use require the submission of a planning application to the Council.

3.4 From 1<sup>st</sup> October 2010, in addition to permitted changes of use from C4 to C3, the Coalition Government granted permitted development rights for conversions from C3 to C4 thereby removing the automatic control of local planning authorities for this change of use.

3.5 Permitted development rights enable certain types of development to occur without the need to apply for planning permission from the Council. In exceptional circumstances an Article 4 Direction (A4D) can be used by Local Planning Authorities to remove permitted development rights in order to secure local amenity or the proper planning of the area.

## 4.0 ARTICLE 4 DIRECTION

4.1 An Article 4 Direction (A4D) is a tool that can be implemented to require the submission of a planning application to the Council, thereby enabling control over specified types of development that would otherwise be 'permitted' by virtue of the General Development Order. The existence of an A4D in itself does not dictate the outcome of the resulting planning applications. These must be judged on their own merits and in accordance with the Development Plan, like other planning applications. In addition, the same rights of appeal to the Secretary of State apply.

4.2 The merits of different policy approaches that could be adopted in parallel or independently of an A4D to guide future decisions are discussed in later sections of this report. However, it is important to be aware of some of the limitations of A4Ds as a tool for controlling HMO developments:

- a) There is no distinction in planning law and practice between HMOs occupied by students and those occupied by other un-related individuals.
- b) The planning process is unable to control HMOs purely on the basis that they are adjacent to, or in proximity of, family housing and that this distance would lead to a loss of amenity in respect of, for example, noise. In other words there is a presumption that C3 and C4 uses are compatible in proximity to one another. However, the planning process can be used to seek to ensure that the overall provision of housing (of both C3 and C4 uses) is provided and distributed in a way that promotes sustainable communities and can seek to protect the character of an area.
- c) Some areas of Plymouth already experience a high proportion of HMO properties. The introduction of an A4D can not apply restrictions retrospectively and therefore these areas are likely to retain their existing concentrations. These may even rise further.
- d) Any reduction in student occupied HMOs through further development of purpose built student accommodation will not necessarily see these returned to family dwellings. It is possible, and indeed likely, that many existing HMOs will be occupied by other individuals. However, an A4D supported by sufficient policy guidance will be able to protect against further areas exceeding a sustainable mix of uses.

### **Process**

4.3 A4Ds can be property or area specific, or they can cover the entire city area but the need for introducing additional control must be justified. The planning controls can either be brought into effect immediately or non-immediately. The primary advantage of a non-immediate A4D is to avoid potential compensation claims being brought against the Council (This issue is discussed in the finance implications section of the cover report).

4.4 The full process for implementing an A4D can be found in 'The Town And Country Planning (General Permitted Development) Order 1995', as amended, and is supported by guidance in the 'Replacement Appendix D to Department of the Environment Circular 09/95: General Development Consolidation Order 1995 (9780117531024)'.

### **Possible Unintended Consequences**

4.5 A non-immediate A4D allowing a 12-month notification period to avoid potential compensation claims will create a period during which landlords can take advantage of the interim permitted development rights and convert their dwellinghouses into the more lucrative C4 HMOs. Depending on the numbers of new HMO conversions under permitted development rights, this could result in the further erosion of family homes in all areas of the proposed A4D, but especially so in areas of high demand for HMOs near the University of Plymouth. This could accentuate the adverse effects on the respective neighbourhoods and the social and physical strains on local communities.

- 4.6 Any potential increase in the number of changes of use to C4 HMO dwellings during the 12-month notification period could increase demand for licensing of new HMOs, which can have implications on the workload of the licensing team. Similarly, additional changes of use could result in an increase in requests for permits from the Transport Service during that period.

## **5.0 ARTICLE 4 DIRECTION RECOMMENDED APPROACH**

- 5.1 Strategic Objective 3 (Delivering Sustainable Linked Communities) and Policy CS01 (Development of Sustainable Linked Communities) of Plymouth's adopted Core Strategy seeks to ensure, amongst other things, that an appropriate and well integrated mix of housing types and tenures is provided to support a range of household sizes, ages and incomes to meet identified housing needs. These aims contribute towards the character of neighbourhoods and it is appropriate that where a demonstrably harmful concentration of non-family dwellings would occur from development or changes of use that these changes should be resisted.
- 5.2 The implementation of an A4D would mean that controls are in place for changes of use to C4 HMOs and ensure that development resulting in harmful concentrations of uses can be resisted. Ultimately, the potential benefits that can be expected from introducing an A4D having regard to likely development scenarios should be weighed against the resources required to implement it.
- 5.3 Although the Core Strategy provides the general principles for sustainable communities, it is often necessary to set out the Council's specific approach to certain issues within adopted Supplementary Planning Documents (SPD). The existing Development Guidelines SPD provides guidance on dealing with applications to convert properties to HMOs, including resistance to conversions in areas where there is already a high concentration of non-family dwellings. However, it is considered that a more explicit approach could be adopted through either updating the existing SPD or producing separate guidance.
- 5.4 Any changes to how planning applications are considered by way of the adoption or amendment of an SPD will require a formal consultation process with stakeholders impacted by those decisions. Nonetheless, the ARUP report suggests using a Threshold approach when assessing the acceptability of change of use planning applications and that conclusion is supported in the context of the evidence relevant to the circumstances in Plymouth. Similarly, a positive approach to purpose built accommodation is supported by existing planning guidance and officers consider that further amplification of this position could be beneficial, in line with recommendations in the ARUP report.
- 5.5 Should the Cabinet resolve to introduce additional A4D restrictions, it is recommended that the area proposed in the ARUP report would be most appropriate for Plymouth (See Figure 2). This approach would allow controls over existing high concentration areas in addition to control where future pressures could arise in surrounding neighbourhoods with housing that has the potential to be converted to ensure that they remain sustainable. The creation of a 'buffer' would also ensure that latent demand for HMO housing is not merely displaced into immediately adjacent areas. There is not considered to be sufficient evidence at this



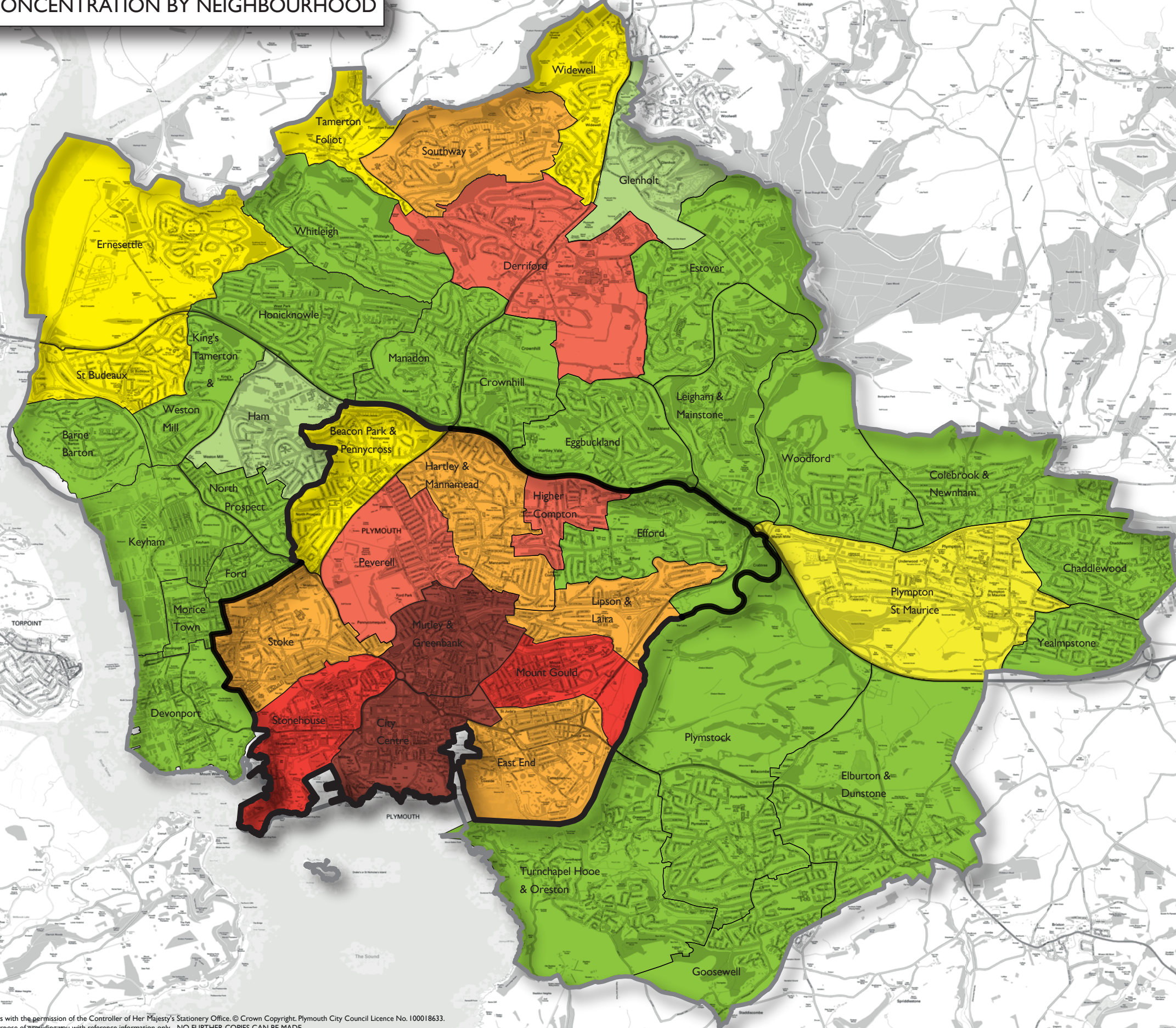


FIGURE 2 - STUDENT CONCENTRATION BY NEIGHBOURHOOD

**Key**  
% Properties wholly occupied by students

0
1 - 3
4
5
6 - 7
8 - 11
12 - 26

PCC City Boundary  
 Recommended extent of Article 4 direction





time to show that a city wide A4D would be appropriate for Plymouth. The ARUP report did not find high concentrations of existing HMOs outside of the proposed A4D area and the evidence suggests that significant future pressure is unlikely to be placed upon those areas.

#### **Article 4 Direction Outcomes**

- 5.6 The problems reported to arise from concentrations of HMOs in an area, or from some HMO occupants, have a real impact on the communities in which the HMOs are located. However, it is important to understand the role that an A4D would, and would not, have in relation to mitigating these impacts, so that expectations of the resulting outcomes are reasonable and proportionate.
- 5.7 An A4D is more suited to controlling the concentration of HMOs than it is to controlling the impacts associated with individual HMOs. It will be difficult to use the A4D to resist proposals for individual HMOs where there is not already a concentration. Creating additional control in the planning system over the change of use of a C3 Dwelling to a C4 HMO will allow harmful concentrations of HMO type housing to be avoided, thereby helping to create more sustainable communities. However, the planning system is not able to restrict these types of conversions in areas that do not have a high concentration already. Indeed, successful planning would ensure that, overall, the need for this type of important housing is provided to meet demand.
- 5.8 To use an example by way of elaboration, the noise arising from a concentration of HMOs can be shown to have detrimental impacts, and this therefore adds weight to the argument that harmful concentrations of HMOs should be controlled. However, in relation to individual HMOs, it is considered that C3 and C4 uses are compatible with each other as adjacent uses and therefore a HMO could not be resisted on noise impacts alone. The legislation applied by the Council's Public Protection Service and Anti-Social Behaviour team and the role of the Police Force are tools intended to deal with individuals that create a nuisance.
- 5.9 Similarly, issues such as parking, refuse storage and littering, whilst being considered as part of the planning process, are unable to be used as 'in principle' reasons for refusing a proposal to convert a property to a HMO, although some measures can be implemented through the planning process to help to mitigate these impacts where necessary.
- 5.10 The planning system can not control the condition of properties, or base decisions on the potential unlawful actions of individuals.

#### **Other Controls Over HMOs**

- 5.11 The implementation of an A4D and the adoption of supporting planning policy are tools that form part of a suite of measures in relation to the control of HMOs. As described above, not all of the issues raised by residents of HMOs can be overcome through the application of an A4D. Other tools that are available in relation to HMOs are described below:
- The Housing Licensing team provide controls over the state and standard of accommodation that is being offered to tenants;

- The Public Protection Service investigate, and where appropriate enforce, breaches of legislation in relation to noise, litter and other amenity related matters;
- Highways and Transport apply and enforce on street parking restrictions and permits;
- The Anti-Social Behaviour Unit apply legislative powers in relation to individual's and groups' conduct;
- HMOs must comply with the health and safety requirements of the Housing Health and Safety Rating System (HHSRS). This requires accommodation to be healthy and safe, have adequate natural and artificial lighting and sound insulation, and;
- The Building Control team ensure, where the Building Regulation are applicable, the health and safety of people in and around buildings.

## **6.0 CONCLUSIONS**

- 6.1 The evidence gathered highlights that certain areas of Plymouth experience high concentrations of HMO uses and that significant concentration can cause harm to the fabric and sustainability of existing communities. Control over changes of use from C3 Dwellings to C4 HMOs can be created by the implementation of an A4D thereby requiring a planning application for specified types of development that would otherwise be 'permitted' by virtue of the General Development Order.
- 6.2 The report recommends that a non-immediate A4D is declared, to cover the area recommended in the Arup report (See Appendix). This area covers (approximately) the existing high concentration areas of Mutley & Greenbank, and the City Centre. It also would provide controls in the most at risk parts of the surrounding neighbourhoods of Stonehouse, Stoke, Peverell, Beacon & Pennycross, Hartley & Mannamead, Higher Compton, Efford, Lispson & Laira, Mouth Gould and East End, where future pressures could harm the balance and sustainability of these communities. This would in effect be a 'buffer' to ensure that latent demand for HMO housing is not merely located immediately adjacent to existing high concentration areas.
- 6.3 It will be important for the A4D to be implemented alongside some further planning guidance which can set out how the Council will implement its higher level policy aspirations in relation to applications for HMOs. This could be an SPD or some other form of planning tool. Such guidance will help ensure that the overall provision of housing (of both C3 and C4 uses) is provided and distributed in a way that promotes sustainable and balanced communities. The report therefore also recommends that work on such guidance in undertaken at the same time as the process for designating an A4D.



## **APPENDIX: ARTICLE 4 DIRECTION**

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)  
ORDER 1995 AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS Plymouth City Council being the appropriate local planning authority within the meaning of article 4(4) of the General Permitted Development Order, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured red on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), hereby direct that the permission granted by article 3 of the General Permitted Development Order shall not apply to development on the said land of the description(s) set out in the Schedule below.

THIS DIRECTION is made under article 4(1) of the said Order and, in accordance with article 5, shall come into force on the ... day of ..... 2012.

SCHEDULE

Development consisting of a change of the use of a building to a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order from a use falling within Class C3 (dwellinghouse) of that Schedule being development comprised within Class I of Part 3 of Schedule 2 to the General Permitted Development Order and not being development comprised within any other Class.

1. *To be completed when making the article 4 direction.*

Made under the Common Seal of Plymouth City Council

this ... day of ..... 2011 The Common Seal of the Council was affixed to this Direction in the presence of .....

Chief Executive Officer

2. *To be completed when confirming the article 4 direction.*

Confirmed under the Common Seal of Plymouth City Council

this ... day of ..... 2012 The Common Seal of the Council was affixed to this Direction in the presence of .....

Chief Executive Officer



## AREA TO BE COVERED BY ARTICLE 4 DIRECTION

