

Merton Council

Borough Plan Advisory Committee Agenda

Membership

Councillors:

Dennis Pearce (Chair)
Sheri-Ann Bhim
Caroline Charles
James Williscroft
Kirsten Galea
Matthew Willis
Daniel Holden

Substitute Members:

Thomas Barlow
Jil Hall

Date: Thursday 8 September 2022

Time: 7.15 pm

Venue: Council Chamber - Merton Civic Centre, London Road, Morden SM4 5DX

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda please contact future.merton@merton.gov.uk or telephone [020 8545 3837](tel:02085453837).

All Press contacts: communications@merton.gov.uk, 020 8545 3181

Borough Plan Advisory Committee Agenda

8 September 2022

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|---|--|---------|
| 1 | Apologies for absence | |
| 2 | Declarations of Pecuniary Interests | |
| 3 | Briefing on the Borough Plan Advisory Committee | 1 - 2 |
| 4 | Local Plan Update | 3 - 12 |
| 5 | Proposed Article 4 direction for Houses in Multiple Occupation | 13 - 24 |

Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. For further advice please speak with the Managing Director, South London Legal Partnership.

Part 3B RESPONSIBILITY FOR NON-EXECUTIVE COUNCIL FUNCTIONS

1.6 Borough Plan Advisory Committee

(a) Membership: 6 Members (Members of the Cabinet and Assistant Cabinet members may not be appointed to this Committee)

(b) Functions: 1. To discharge the Council's responsibilities contained in the Local Government Act 2000 and Planning and Compulsory Purchase Act 2004 (as amended) with respect to the Merton Local Plan specifically to make recommendations as appropriate to the Cabinet and Council on matters including:-

- (i) Local Development Scheme
- (ii) Statement of Community Involvement
- (iii) Development Plan Documents
- (iv) Local Development Documents
- (v) Area Plans and Supplementary Planning Documents
- (vi) Strategic Environmental Assessment
- vii) Tests of Soundness of Development Plan Documents
- (viii) Neighbourhood plans

2. To consider and advise the Cabinet and Council on the Report of the Inspector conducting the Independent Examination of Development Plan Documents of the Merton Local Plan.

3. To advise the Cabinet and Council on the preparation of Local Plans prepared with adjoining boroughs, specifically the Joint Waste Development Plan Document.

4. To advise the Cabinet and Council on other Strategic / London-wide spatial planning and transport planning matters.

5. To consider the need for information, research, studies and investigations further to the preparation of the Merton Local Plan and to advise the Council on the resources required to prepare and review the Merton Local Plan.

6. To consider new and emerging legislation relevant to the preparation and review of the Merton Local Plan.

7. To consider and advise Cabinet and Council on buildings and structures to be included in the Local List, considering officer recommendations and consultation feedback.

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Committee: Borough Plan Advisory Committee

Date: 8th September 2022

Wards: All

Subject: Merton's Local Plan and Policies Map – submission to the Secretary of State

Lead officer: Interim Director of Environment and Regeneration, Adrian Ash

Lead member: Cabinet Member for Housing and Sustainable Development

Contact officer: Deputy Future Merton Manager, Tara Butler

Recommendations:

That the Borough Plan Advisory Committee note the contents of this report, updating councillors on the independent examination of Merton's Local Plan.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report updates councillors on the progress of Merton's new Local Plan through the independent examination, led by the Planning Inspectors on behalf of the Secretary of State.
- 1.2. Merton's *Local Plan* is the detailed development plan for Merton, containing the overall borough-wide planning strategy, detailed planning policies for assessing planning applications and allocates sites for new development.
- 1.3. Merton's Policies Map is being revised at the same time, which will designate land for specific uses, such as open spaces, town centre boundaries, neighbourhood parades and nature conservation.
- 1.4. The new Local Plan was started in late 2017; it was prepared in line with statutory regulations, informed and improved by a total of nine months of public consultation, local and national research and the latest data from a variety of sources. The plans are in general conformity with the Mayor's London Plan 2021 and the National Planning Policies Framework 2021.
- 1.5. Merton's Local Plan was submitted to the Secretary of State in December 2021, who appointed two Planning Inspectors to examine it. The Inspectors asked the council and other participants a series of questions during spring 2021, culminating in a Stage 1 hearing in the Council Chamber in June 2022, chaired by the Inspectors.
- 1.6. The Inspectors have scheduled Stage 2 hearings from 4th to 7th October 2022 and 18th - 22nd October 2022, which will also take place in the council chamber.

2 DETAILS

- 2.1. Every borough should have an up-to-date development plan to guide planning decision in their area. Government has set a deadline of December 2023 for every

Local Planning Authority to have an up-to-date plan adopted. Currently (August 2022) Merton's statutory development plan is:

- The Mayor's London Plan 2021
- Merton's Estates Local Plan 2018 (only for Eastfields, High Path and Ravensbury)
- Merton's Sites and Policies Plan 2014
- The South London Waste Plan 2012 (currently being revised and only for planning applications for waste management facilities)
- Merton's Core Planning Strategy 2011

2.2. Without up-to-date planning policies, the NPPF and other material considerations can be used to guide local planning decisions, rather than adopted local council policy. This means that local issues may not be able to be adequately considered in decision-making, especially at planning appeals.

2.3. Appendix A to this report summarises the Local Plan strategy, which was reported to councillors in July 2021.

Planning Inspectors' independent examination

2.4. The new local plan was submitted to the Secretary of State on 2nd December 2021 who appointed two Planning Inspectors to examine Merton's Local Plan. The Inspectors lead the examination process with the council and other interested parties as participants.

2.5. The examination is a quasi-legal process with specific requirements and timescales summarised in government's *Planning Inspector procedure guide for local plan examinations* <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations>

2.6. As set out from paragraph 13 onwards of the Planning Inspectors guidance notes https://www.merton.gov.uk/system/files/INSP14_Merton_Guidance_Note_Stage2.pdf the starting point for the examination is that the council has submitted what it considers to be a sound and legally compliant plan. Those seeking changes must demonstrate why the plan is unsound by reference to one or more of government's tests of soundness, or identify any issues of non-compliance with legal requirements.

2.7. The Inspectors state that they will aim to work with the council and the other examination participants in a positive, proactive, and pragmatic manner. They will examine the soundness of the whole Plan, having regard to the comments people and organisations submitted, rather than just the objections made.

2.8. The examination started in December 2021 when the two Planning Inspectors received Merton's Local Plan and it will finish when the Inspectors deliver their final report (likely early 2023).

2.9. As part of their examination the Inspectors asked the council a series of questions between January and June 2022 and chaired a first round of hearings, known as Stage 1, in the council chamber during June 2022.

2.10. Details of the Planning Inspectors questions to the council and the council's and other participants written statements can be found on the council's website [Hearing Statements | Merton Council](#)

- 2.11. The Inspectors have scheduled Stage 2 hearings from 4th to 7th October 2022 and 18th - 22nd October 2022.
- 2.12. The Planning Inspectors have identified questions for Stage 2 of the examination and the council must respond to these by 19th September 2022. Representors may also submit responses to the questions relevant to their representations by the same deadline. The Inspectors Stage 2 questions are available online [INSP13 Merton MIQs](#) and after 19th September, the Inspectors will require the council to add their statements and anyone else's statements to the council's website.
- 2.13. After the hearings have closed, the Inspectors are likely to require the council to consult one final time on the draft Local Plan, incorporating any main changes that arose from the examination. Then the Inspectors will prepare a report for the Council with conclusions and recommendations.. The Inspectors will take people and organisations' responses to this final consultation into account while writing their report. If it is found that the Plan is legally non-compliant or unsound in any respect, the Inspectors can recommend Main Modifications to make it compliant and sound.
- 2.14. The council can only adopted the Local Plan as the new planning policies for the borough if the Inspectors' report finds it sound. As the hearings will only finish in late October 2022 and the Inspectors are likely to require public consultation after the hearings, the Inspectors are only likely to deliver their report to the council in early 2023.

3 ALTERNATIVE OPTIONS

- 3.1. Not applicable.

4 CONSULTATION UNDERTAKEN OR PROPOSED

Consultation undertaken

- 4.1. Plan preparation started in 2017. Community feedback is vital to preparing a local plan and three different stages of public consultation have been carried out, totalling over nine months of engagement:
- 4.2. **A “call for sites” Stage 1 public consultation** took place between October 2017 and January 2018. This was the first stage, asking general questions about what sites or what policies the Local Plan might contain. Over 1,000 responses were received; far more than previous Local Plan consultations.
- 4.3. A **Stage 2 draft Local Plan public consultation** took place between October 2018 and January 2019. It contained draft policies, potential sites for allocation and land designations (e.g. town centre boundaries) Approximately 240 respondents raised over 1,500 separate points. The feedback we received was reported to Merton's Borough Plan Advisory Committee in March 2019 (see link to report: <https://democracy.merton.gov.uk/documents/s26977/04%20BPAC%20Local%20Plan%20and%20FW%20masterplan%20summary%20of%20consultation%20responses%20Mar2019.pdf>)
- 4.4. All responses received to each stage of the consultation are also available online (with personal details removed) www.merton.gov.uk/newlocalplan
- 4.5. A **Stage 2a draft Local Plan public consultation** took place between 13th November 2020 to 1st February 2021. As set out in the report to the Borough Plan Advisory Committee in October 2020, Merton's Local Plan stage2a public consultation was conducted entirely online due to Covid19 restrictions. In line with

the Coronavirus Planning Regulations, Merton's Statement of Community Involvement was amended to reflect this.

- 4.6. Although the consultation finished on 1st February 2021, the council continued to accept responses after the consultation date in recognition of the difficult situation people are going through with Covid19 and that the sustainability appraisal document was not visible without password protection online until 4th January 2021 due to an IT issue.
- 4.7. A **Stage 3 Local Plan publication** took place between 22nd July and 6th September 2021 for local communities, businesses, landowners and any other interested parties to comment on the final plan. These comments, together with the final plan and associated supporting documents, were then submitted to the Secretary of State on 2nd December 2021.
- 4.8. All of the consultation responses have been considered and the plan has been amended accordingly at each stage. The plan is accompanied by a Statement of Consultation, setting out what people and organisations told us about the plans, and what actions have taken place as a result of their comments.

4.9.

5 TIMETABLE

- 5.1. As part of their examination of Merton's Local Plan, which started on 3rd December 2021 the planning inspectors chaired Stage 1 public hearings in June 2022 across two weeks.
- 5.2. The Planning Inspectors have scheduled Stage 2 hearings for the weeks of 4th – 7th October 2022 and 18th -22nd October 2022, which will take place in Merton's Council Chamber.
- 5.3. The Planning Inspectorate has published a procedure guide for Local Plan examinations which sets out how the examinations are conducted, including the timescales in which the Inspectors will operate.
<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>
- 5.4. The Planning Inspectors have published a draft hearings programme. Please note this is subject to change and the Inspectors will finalise this programme in the weeks immediately before the hearings.

STAGE 2 HEARINGS PROGRAMME V1 3 AUGUST 2022

This programme will be subject to review during the course of the hearing sessions. It is the responsibility of all participants to keep up to date with hearing timetables and any agendas as they evolve throughout the Examination, which will be published on the Examination website. This programme should be read alongside the Matters, Issues and Questions document and the related Guidance Note/s which it accompanies.

Week 1 – 4 October – 7 October 2022

<i>Date/Time</i>	<i>Matters & Issues</i>	<i>Participants</i>
Tuesday 4 October 2022 1000 - 1300	<ul style="list-style-type: none"> Inspectors' Opening Remarks Opening statement from the Council Matter 1: Plan period and Clarity Matter 2: Climate Change 	TBC The Council
Tuesday 4 October 2022 1400 - 1700	<ul style="list-style-type: none"> Matter 3: Housing Supply and Mix 	TBC The Council
Wednesday 5 October 2022 1000 - 1300	<ul style="list-style-type: none"> Matter 4: Tall Buildings 	TBC The Council
Wednesday 5 October 2022 1400 - 1700	<ul style="list-style-type: none"> Matter 5: Site Allocation Wi3 (All England Lawn Tennis Club) 	TBC The Council
Thursday 6 October 2022 1000 - 1300	<ul style="list-style-type: none"> Matter 6: Town Centre and Employment Policies 	TBC The Council
Thursday 6 October 2022 1400 - 1700	<ul style="list-style-type: none"> Matter 7: Neighbourhood Policies and Healthy Places 	TBC The Council
Friday 7 October 2022 1000 - 1300	<ul style="list-style-type: none"> Contingency session 	TBC

Week 2 – 18 – 21 October 2022

<i>Date/Time</i>	<i>Matters & Issues</i>	<i>Participants</i>
Tuesday 18 October 2022 1000 – 1300	<ul style="list-style-type: none"> • Matter 8: Site Allocations 	TBC The Council
Tuesday 21 June 2022 1400 – 1700	<ul style="list-style-type: none"> • Matter 9: Transport and Infrastructure 	TBC The Council
Wednesday 19 October 2022 1000 – 1300	<ul style="list-style-type: none"> • Matter 10: Biodiversity 	TBC The Council
Wednesday 19 October 2022 1400 - 1700	<ul style="list-style-type: none"> • Matter 11: Green and Blue Infrastructure 	TBC The Council
Thursday 20 October 2022 1000 - 1300	<ul style="list-style-type: none"> • Matter 12: Design, Heritage and Development Management 	TBC The Council
Thursday 20 October 2022 1400 - 1700	<ul style="list-style-type: none"> • Contingency session • Closing session including closing remarks of the Council and the Inspectors 	TBC The Council
Friday 21 October 2022 1000 - 1300	<ul style="list-style-type: none"> • Contingency session 	TBC

2

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The financial resources for preparing the Local Plan have been from within existing resources, supplemented by successful bids to external resources such as the Mayor of London's Homebuilding Capacity Fund.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. The Town and Country Planning (Local Development)(England) Regulations 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 have both informed the statutory procedure to be followed before a Local Plan is submitted to the Secretary of State for independent examination.

7.2. Failure to adhere to the statutory procedure or a lack of robust evidence to support the plan may result in legal proceedings to challenge the validity of the plan.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. An Equalities Impact Assessment has been prepared in conjunction with Merton's Local Plan.

8.2. The plans have also been informed by an ongoing Strategic Environmental Assessment and Sustainability Appraisal, prepared in parallel with each stage of the plan and used to ensure that the plans deliver social, economic and environmental benefits equally. Some of the objectives that the plans have been appraised against relate to improving community cohesion.

9 CRIME AND DISORDER IMPLICATIONS

9.1. The Metropolitan Police have been engaged in all stages of the preparation of Merton's Local Plan, and have made representations on several issues.

9.2. The Sustainability Appraisal, prepared in parallel with each stage of the plan to ensure that the plans deliver social, economic and environmental benefits assesses the plans against objectives to reduce crime and the fear of crime.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. There are several risks to the Local Plan project and a risk log is kept and regularly updated to help manage risks.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

12 BACKGROUND PAPERS

12.1. Planning Inspector procedure guide for local plan examinations
<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations>

12.2. Written Ministerial Statement January 2021 <https://questions-statements.parliament.uk/written-statements/detail/2021-01-19/hcws720>

12.3. Government letters to Chief Planning Officers
<https://www.gov.uk/guidance/planning-guidance-letters-to-chief-planning-officers#section>

12.4. NPPF 2021 <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

12.5. Legislation relating to the preparation of Local Plans

Summary of overall planning strategy in new Local Plan

- a) The overall strategy and many of the amendments to it has arisen out of community consultation feedback, local Merton evidence and national / London-wide planning policies. The objectives have been reordered following consultation feedback.
- b) Tackling the causes of climate change and its effects – Merton has adopted a Climate Change Strategy and Action Plan in 2020. The Local Plan has made tackling the causes of climate change and managing its effects one of the key strategic priorities and it is now embedded throughout the plan. This was strongly supported by responses at public consultation early in 2021 from all across the borough.
- c) Recovery and resilience following Covid19 – the pandemic is changing the way we live our lives: where and how we want to work, shop, socialise, live and travel. It has also had a devastating effect on local businesses and jobs and has rapidly accelerated changes to our high streets that had already started pre 2020. Together with other council strategies, projects and investments, the Local Plan is supportive of measures to embed recovery and improve the borough's resilience.
- d) Places for people – this objective ensures Merton can meet its needs for new homes, including affordable homes, of the types and sizes for different households is a key part of Merton's Local Plan. This will be coupled by working with the voluntary sector, businesses, the NHS, Met Police, Transport for London and other partners to deliver social and community services, both by providing new infrastructure and repurposing under-used spaces. Other council strategies and projects – such as the emerging Housing Strategy and the Neighbourhood Fund for community infrastructure levy – contribute to this objective.
- e) Good growth – the council wants to create the conditions for growth that helps with economic recovery and one of the Local Plan's objectives is ensuring it takes place in the most appropriate and sustainable locations. The council also wants to guide the benefits of this growth to meets the needs of Merton's communities and enhances the borough's unique character and appearance, thus achieving positive social, environmental and quality of life objectives as well.
- f) Place plans and the 20-minute neighbourhood – promoting healthy streets through boosting local businesses and high streets, reducing pollution and supporting walking and cycling will all help to create a local neighbourhood where residents can access the services they need within 20 minutes of their home. The new Local Plan will draw these considerations into planning decisions.

New planning policies

- g) The Local Plan contains new planning policies including
 - policies to support delivering the boroughs' commitment to net zero carbon by 2050, including on smaller sites
 - detailed policies to guide planning applications for **new homes, particularly affordable homes and associated infrastructure** such as schools, crèches and other community facilities. This includes re-introducing the requirement to collect contributions towards affordable homes from smaller developments as well as large ones
 - policies to encourage walking and cycling, to manage parking and to consider the transport impacts of new development;
 - policies to protect open spaces, nature conservation areas and trees;

- Policies to support our high streets, town centres and other business areas, including considering
- policies to enshrine the importance of design considerations in new development, including high quality urban design, managing heritage assets and a specific approach to inform planning applications for tall buildings and basements;
- policies to help mitigate flood risk, pollution and to improve the energy efficiency of new buildings, including seeking to retain and use additional funding from development to improve local community buildings.

Allocating sites to accommodate growth

- h) The Local Plan allocates sites for new development. Every borough does this about every 10 years. It assists greatly with knowing where development might happen over the following 10 years, helping councils, their public sector partners, businesses and others recognise in advance where new homes and business opportunities might be, and plan for their investment as necessary.
- i) In 2018 sites in the plan were proposed by a wide variety of organisations including private sector landowners, local residents, the council, the NHS, Transport for London and local community groups. Since then, officers have investigated each of these sites, undertaken the necessary research including three rounds of public consultation totalling nine months to help inform potential development scenarios.

Designating land for specific uses

- j) The council has undertaken a very extensive review of the whole of the borough's area – regardless of ownership - to identify where specific land use designations should apply and to record these on a map, known as the Policies Map. Once adopted, the Policies Map 2021 will replace Merton's Policies Map 2014, illustrating where specific planning policies apply in the borough, for example where open space is protected in Merton, where are the boundaries of Merton's town centres, what parts of Merton are nature reserves and where industrial areas are.
- k) These designations include:
- Town centre boundaries and industrial areas
 - Metropolitan open land and other open spaces
 - Cycling and walking routes
 - Sites of Importance for Nature Conservation
 - Designations relating to the historic landscape including conservation area boundaries, archaeological priority zones and ancient monuments.
- l) We would like to thank all the consultation responses we have received from individual residents, community groups and other Merton organisations on the policies map. Local people have a forensic and in-depth knowledge of their local area and it is thanks to them taking the time to engage with and improve the Local Plan, for example in mapping the specific boundaries of individual open spaces or defining borough wide cycling routes.

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Committee: Borough Plan Advisory Committee

Date: 8th September 2022

Wards: Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood.

Subject: Proposed Article 4 direction for Houses in Multiple Occupation

Lead officer: Interim Director for Environment and Regeneration, Adrian Ash

Lead member: Cabinet Member for Planning and Housing, Cllr Andrew Judge

Contact officer: Deputy FutureMerton manager, Tara Butler

Recommendations:

- A. recommending public consultation on an Article 4 Direction requiring landowners seek planning permission for small Houses in Multiple Occupation (i.e. occupied by between three and six people) in Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood wards.
 - B. That delegated authority be given to the Director of Environment and Regeneration, in consultation with the Cabinet Member for Housing and Sustainable Development, to approve documents for public consultation and make any amendments necessary to progress successful consultation on the Article 4 Direction.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. In November 2021 and in March and June 2022, councillors at the Leaders Strategy Group (LSG) received reports on creating a new planning rule called an Article 4 Direction regarding Houses in Multiple Occupation (HMOs).
- 1.2. The private rented sector is important to Merton, covering about 30% of the council's 86,000 homes and many landlords perform well. However the council has increasingly been receiving complaints about HMOs those that are poorly managed, causing noise and disturbance for neighbours and being potentially hazardous for their occupiers.
- 1.3. Therefore the council is taking forward a co-ordinated policy approach across housing and planning in order to protect local amenity for residents and businesses, wellbeing of the borough and to improve the quality of accommodation in the private rented sector. This includes recommendations to expand the council's existing HMO licensing programme (which will be reported to Cabinet on 19th September too) and changing planning rules to cover all Houses in Multiple Occupation.
- 1.4. Large HMOs (occupied by seven people or more) already require planning permission but small HMOs (occupied by between three and six people) are currently permitted without the need for planning permission. Councils can create Article 4 Directions to remove permitted development rights. To address the harm to local amenity and improve the quality of accommodation, the council proposes

require landowners to seek planning permission if they want to rent a small home (flat or house) to three or more unrelated people as a HMO in parts of Merton.

- 1.5. This report recommends that the Borough Plan Advisory Committee advises Cabinet to approve public consultation on an Article 4 Direction Order 2015, across Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood wards, in order to withdraw permitted development rights for change of use from dwelling house (Use Class C3 in planning terms) to small HMO (Use class C4 in planning terms).
- 1.6. Although it is not part of the Borough Plan Advisory Committee, councillors should note that in September 2022 Cabinet will consider this report in conjunction with a recommendation to extend the licensing of private rented properties under the Housing Act 2004.

2. DETAILS

Where in Merton will the Article 4 Direction apply?

2.1. The National Planning Policy Framework 2021 (para 53) states that *the use of Article 4 directions to remove national permitted development rights should...*

be limited to situations where an Article 4 Direction is necessary to protect local amenity or the wellbeing of an area” and

“in all cases be based on robust evidence, and apply to the smallest geographical area possible”

- 2.2. The private rented sector is an important part of Merton’s housing market, occupying approximately 30% of the housing stock. The majority of landlords and tenants perform well and the private rented sector offers flexibility and choice for people who do not want or, increasingly, cannot afford to buy a property in Merton.
- 2.3. Houses in Multiple Occupation (HMOs) are a key part of Merton’s private rented sector, providing low cost, flexible housing for residents who may be on low incomes and are not eligible for housing by the council, for workers that may need to live temporarily in the area.
- 2.4. HMOs can have shared facilities such as bathrooms and kitchens and are occupied by people who do not live as one household (e.g. having meals together). Landowners have to seek planning permission to create large HMOs (i.e. those occupied by seven people or more) but can operate a small HMO (occupied by between three and six people) without the need for planning permission. There may be very limited, or no change to the physical fabric of the house or flat before it is occupied as a HMO, particularly for small HMOs where between three and six people may be sharing.
- 2.5. However, HMOs need to be properly managed and maintained, as they can be a source of unsuitable accommodation and cause harm to amenity, both for the occupiers and the wider community. The impacts from such changes can include issues related to waste management, noise and disturbance, negative impacts on the physical appearance of the neighbourhood and increasingly, anti-social behaviour (ASB).

- 2.6. Over the past few years, the Council has seen a rise in the number of complaints received by members of the public in relation to poorly managed HMOs and identified the need for a joined-up approach across Council departments to manage them. Merton's accessible and attractive location, high housing prices and good quality housing stock has meant there is a huge demand for HMO type accommodation. In those that are poorly managed, the neighbours suffer noise and disturbance from HMOs, and the wellbeing of the occupiers and neighbours may be harmed by overcrowding, inadequate bin storage and insufficient living space.
- 2.7. Given the increase in complaints, the council is bringing forward different options available to address some of the most significant concerns across the Council departments. On 19th September 2022 Cabinet will consider reports proposing local changes to the planning system (via the Article 4 Direction) and via the housing powers (extra licensing powers known as Selective or Additional Licensing on top of the licenses that the council already requires HMO landlords to have)
- 2.8. To ensure that the council has robust data as required by the National Planning Policy Framework, the council has analysed its existing planning and licensing records on HMOs. The council's Housing Needs team procured a data management company, Metastreet, to provide information on the private rented sector in Merton. The analysis uses data on council tax records, turnover of council tax names, Anti-Social Behaviour records, receipt of benefits and other statistics and overlays the data to predict the likely numbers and locations of HMOs.
- 2.9. As the data demonstrates, HMOs are accessible to many of Merton's residents who are in receipt of housing benefit and who can't afford to access other forms of private rent. The data demonstrates that this is more prevalent in the east of the borough, which is less affluent than western wards.
- 2.10. Although this is incredibly extensive data analysis, it is far less likely to pick up shared houses and flats (HMOs) where tenants have no anti-social behaviour records against the property and are in a stable tenancy and are not in receipt of benefits.
- 2.11. This helps to identify the poorest performing HMOs but not all HMOs; for example, people renting property on a long-term tenancy that aren't in receipt of housing benefit or don't have anti-social behaviour will not be identified by this data.
- 2.12. The data tells us that Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, and Colliers Wood wards are likely to have more HMOs that are causing harm to the wellbeing of the area. This is illustrated in the map and the graph below and is based on the extensive analysis carried out by Metastreet.
- 2.13. While Lavender Fields ward is ninth in the list of wards with the poorest performing HMOs, it is included in the Article 4 Direction as it is surrounded to the north, east and south by wards with worst performing HMOs (with the western side bordering a non residential area), it is the sixth highest ward for numbers of complaints the council receives on the private rented sector and numbers of reports of anti-social behaviour and it is characterised by housing stock that is typically used as Houses in Multiple Occupation. The council considers that this

provides robust evidence to require an Article 4 Direction to protect local amenity and the wellbeing of the area.

Figure 1 – map of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 2 graph)

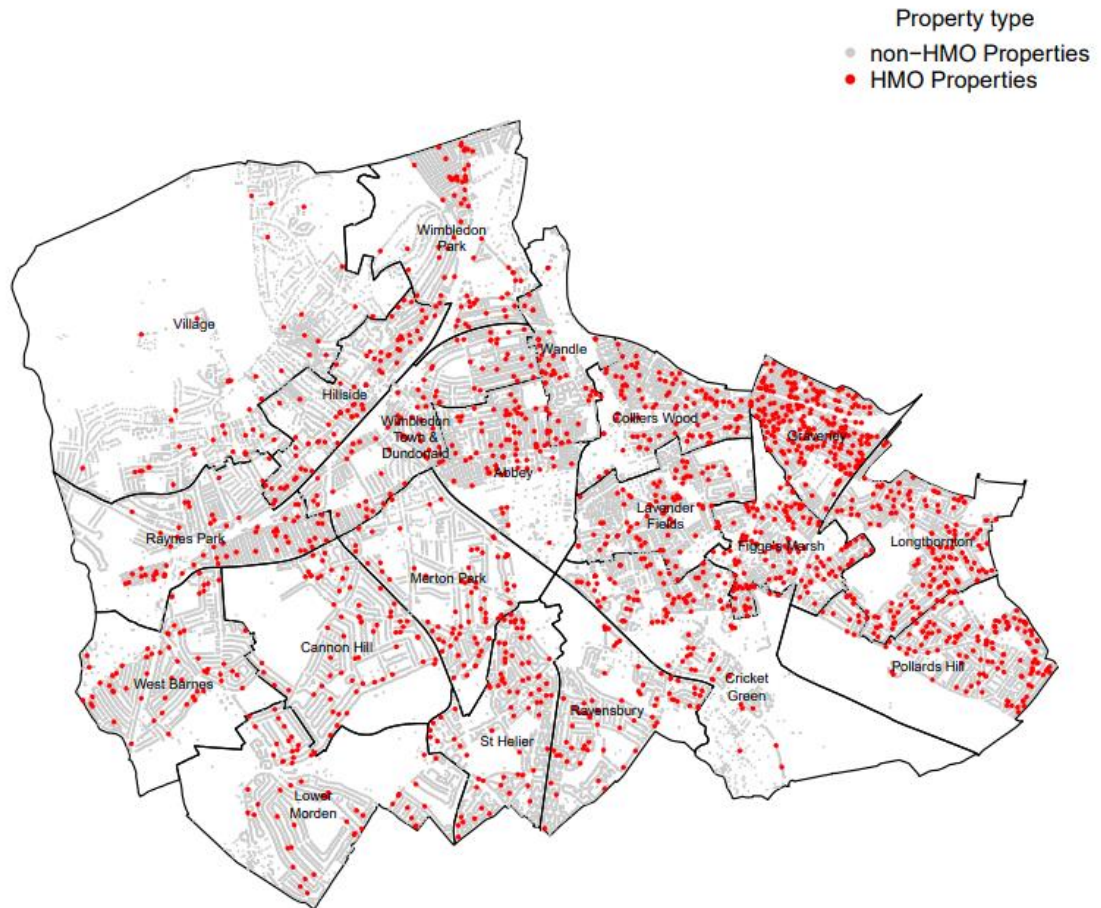


Figure 2: graph of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 1 graph)

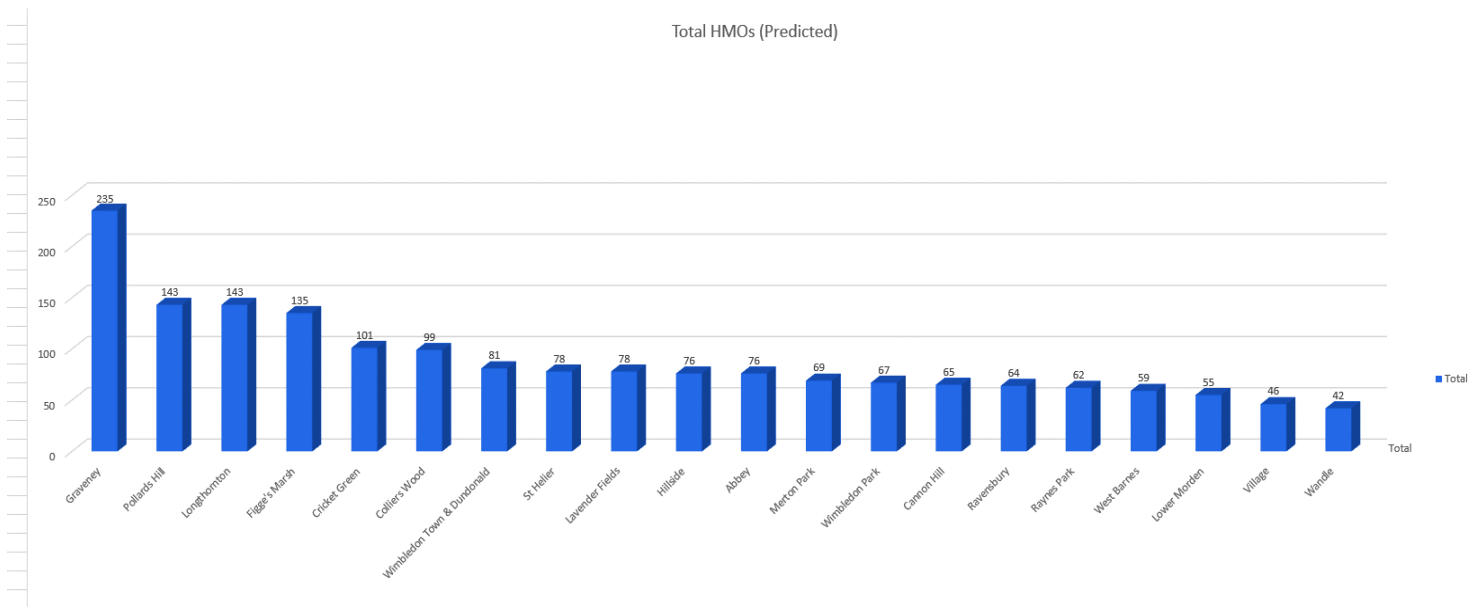
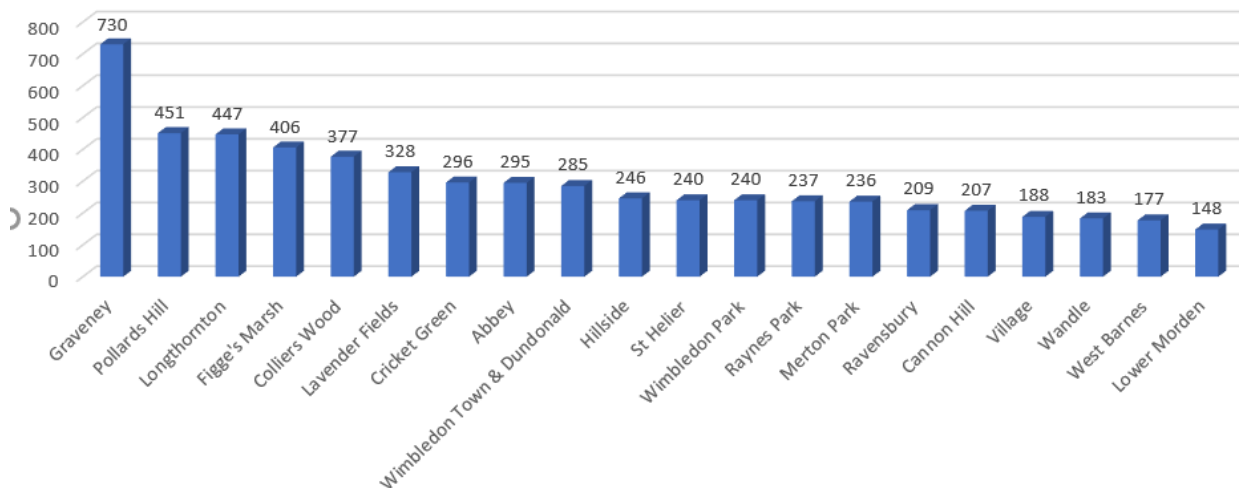


Figure 3: total number of complaints received by the council relating to the private rented sector and on anti-social behaviour



2.14. Therefore, based on the robust evidence, officers are recommending that an Article 4 Direction to require small HMOs to seek planning permission should be limited to Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green,

Lavender Fields and Colliers Wood wards, in compliance with national policy requiring Article 4 Directions to be “*based on robust evidence*” and “*the smallest geographical area possible*”.

What size of HMO will now require planning permission?

- 2.15. In England, landlords are already required to seek planning permission to change the use from a house or flat to a large HMO (housing seven people or more).
- 2.16. In Merton this report recommends undertaking public consultation on an Article 4 Direction which, if approved, would require landlords to seek planning permission any house or flat in the relevant wards rented by more than two people as an HMO.
- 2.17. The proposed Article 4 Direction would remove the permitted development rights for small HMOs, requiring new landlords to apply for planning permission to operate a house or flat as a small HMO. Any planning application would need to be assessed in the normal way and a decision made as to whether the proposal complied with the Development Plan, taking into account all material considerations.
- 2.18. Article 4 Directions do not apply retrospectively, in other words they can't be used to require any small HMOs that already exist in Merton to now seek planning permission.
- 2.19. In making these recommendations, officers have also considered the impact on housing delivery in Merton. As small HMOs in the relevant wards can apply for planning permission in the normal way, it is not considered that the implementation of an Article 4 Direction for small HMOs in seven wards in the borough will affect housing delivery.

3. ALTERNATIVE OPTIONS

- 3.1. There are options to set the Article 4 Direction at a different starting point, for example houses or flats with four people (e.g. two couples; a couple and two friends; two single parents and children etc) not to require planning permission but require five people or more sharing to require planning permission, i.e. setting the Article 4 Direction at 5 people or more.
- 3.2. This option has not been taken forward at this time as it is considered more effective to include all potential HMOs in the Article 4 Direction to improve the wellbeing of the area as part of the public consultation. There isn't clear evidence that setting the Article 4 Direction at a different level of occupancy would address the harm to local amenity or improve the wellbeing of the area.

4. CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The statutory public consultation required for Article 4 Directions is a minimum of 21 days. Merton's Statement of Community Involvement 2021 states that the council will undertake planning policy consultations for six weeks to allow comments to be received.

- 4.2. The Article 4 public consultation will run in parallel with engagement on selective licensing.

5. TIMETABLE

- 5.1. Subject to Cabinet's recommendation on 19th September 2022, it is intended to combine public consultation on the Article 4 Direction with that on selective and additional licensing, to start from October 2022 and to run until January 2023.
- 5.2. The date that the Article 4 Direction will come into effect is dependent on the date it is resolved by full council and whether it is "immediate" or "non-immediate". An immediate Direction comes into force once resolved by full council (i.e. "made") and is then consulted on; a non-immediate Direction comes into force after consultation, and usually 12 months later to avoid the risks of compensation as set out in Section 10 of this report.
- 5.3. At their meeting on 19th September 2022, Cabinet will determine whether to introduce an immediate or non-immediate Article 4 Direction for the wards affected.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. As also stated in Sections 5 and 10 of this report, Cabinet will determine whether to introduce an immediate or non-immediate Article 4 Direction to reduce the council's liability to pay compensation to HMO landlords.
- 6.2. Under an "immediate" Article 4, Local Planning Authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:
- Refuse planning permission for development (such as the creation of a small HMO) which would have been permitted development but for the Article 4 direction
 - Grant planning permission subject to more limiting conditions than the General Permitted Development Order would normally allow but for the Article 4 Direction being in place.
- 6.3. Landlords may claim compensation from the council for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 6.4. Officers are working on identifying financial and resource implications which will continue to be explored during the production of the Article 4. This includes the following matters:
1. An increase in planning applications to the planning team which will be covered by existing resources and the planning applications fee.
 2. Introducing an Article 4 Direction will, rightly, lead to expectations that the council has the resources to implement it and therefore that the council will enforce on non-compliant HMOs via the planning enforcement team.

Future Merton and Development Management Officers are working to gather data on how many additional enforcement cases this may lead to.

7. LEGAL AND STATUTORY IMPLICATIONS

- 7.1. In accordance with the Function Regulations 2000 Schedule 3 and 4, decisions to approve an Article 4 Direction should be made by resolution of full council.
- 7.2. An Article 4 Direction is a direction under Article 4 of the General Permitted Development Order which enables local planning authorities to withdraw specified permitted development rights across a defined area.
- 7.3. The statutory procedure for making Article 4(1) Directions is set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Once the direction has been proposed to be made by the Local Planning Authority, it shall give notice of the Article 4 Direction:
 - by local advertisement in at least one newspaper in the local area (as defined in article 1(2) of the GPDO)
 - by site display at no fewer than two locations on site for a period not less than six weeks
 - on the same day that the notice of an Article 4 Direction is first published or displayed locally, the local planning authority shall notify the Secretary of State.
 - specify the date on which the proposed direction comes into force (which must be at least 28 days from the end of the specified date of consultation period but no longer than 2 years from the end of that specified date)
- 7.4. Although not a statutory obligation, it is considered good practice to publish a notice of the Article 4 direction on the LPA's website.
- 7.5. The local planning authority cannot confirm the direction until after the expiration of either a period of at least 28 days following the latest date on which any notice relating to the direction was served or published, and no longer than 2 years or such longer period as may be specified by the Secretary of State (after having been notified by the local planning authority of making a direction). The approval of the Secretary of State is not required.
- 7.6. The Secretary of State has the power to modify or cancel an Article 4 Direction at any time before or after it is made. The Secretary of State will not exercise this power unless there are clear reasons why intervention is necessary, such as non-compliance with the National Planning Policy Framework paragraph 53, which requires all Article 4 directions *“be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area;.... In all cases be based on robust evidence, and apply to the smallest geographical area possible.”*
- 7.7. To avoid compensation liability on the effect of the proposed Article 4 Direction, the Council will need to publish its intention to make the Article 4 Direction at least 12 months (and not more than two years) in advance of the Article 4 Direction taking effect.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Officers have identified some positives in terms of equalities and some potential in-combination equalities implications.
- 8.2. Whilst there is no statistical data indicating the profile of HMO residents by age, sex or ethnicity, there may be a potential adverse impact towards people of specific ages, genders or ethnicities if the future growth of HMOs is restricted. The demographic make-up of the wards in the east of the borough is younger and home to more ethnic minorities and in addition some ethnic groups will wish to live in an area that is already culturally diverse. Dialogue with council officers indicates that in officer's experience more men live in HMOs, although we don't have robust statistical data on this.
- 8.3. Whilst this adverse impact is not proven, it also cannot be wholly discounted due to an absence of accurate equality profiling data. We will continue to review this during the course of this project.
- 8.4. Consulting on an Article 4 Direction to require all HMOs (shared homes of more than two people) to require planning permission will improve equality of opportunity, resulting in higher standards of HMO accommodation within the borough as new HMOs will be determined against planning policies and potentially reduce overcrowding in below standard HMOs.
- 8.5. It should also improve and foster good relations between people who will occupy HMOs and those who occupy properties close to them, especially as the latter will have opportunity to engage with and enjoy rights of representation within the statutory planning process to improve the quality of accommodation.

9. CRIME AND DISORDER IMPLICATIONS

- 9.1. The robust evidence for the Article 4 Direction and Licensing schemes in combination have considered crime and disorder implications in making their recommendations. These policies are designed to reduce anti-social behaviour from poorly performing HMOs, raising the standard of accommodation and improving the wellbeing of the area.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. There are two types of Article 4 directions under the 2015 Order: non-immediate directions (which take a year to come into effect once approved) and directions with immediate effect.
- 10.2. In summary, an immediate Article 4 Direction withdraws permitted development rights straight away, and then consults on it, and a non-immediate Direction carries out the consultation first. As set out in Section 7 of this report, councils are liable to compensation by introducing an immediate Article 4 Direction, however councils can avoid compensation liabilities by waiting 12 months before introducing the Direction. At their meeting on 19th September 2022 Merton's

Cabinet will consider whether to introduce an immediate or non-immediate Direction.

11. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Merton’s Article 4 Direction

12. BACKGROUND PAPERS

- National Planning Policy Framework
- Metastreet data

LONDON BOROUGH OF MERTON

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER
2015 (AS AMENDED)

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH PARAGRAPH 1 OF SCHEDULE 3 OF THE
ORDER APPLIES (direction with / without immediate effect)

WHEREAS the London Borough of Merton ("the Council") being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order"), is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land shown shaded in INSERT COLOUR (for identification purposes only) on the plan attached to the Second Schedule (being Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood wards within the London Borough of Merton) ("the Land"), 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 it by Article 4(1) of the Order hereby directs that the permission granted by Article 3 of the said Order shall not apply to the development of the description set out in the First Schedule below on the Land.

THIS DIRECTION is made under Article 4(1) of the Order and in accordance with Schedule 3 of that Order it is proposed that it shall come into force on XXX
FIRST SCHEDULE In respect of the Land, the following permitted development right in Part 3 of Schedule 2 of the Order is withdrawn: Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class C3 (Dwelling Houses) of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (Houses in Multiple Occupation) of that Schedule, being development comprised within Class L(b) of Part 3 of Schedule 2 of the Order and not being development comprised within any other Class.

This Direction was made under the common seal of the Mayor and Burgesses of the London Borough of Merton this day of 2022.

The Common Seal of The Mayor and Burgesses of the London Borough of Merton was hereunto affixed to this Direction in the presence of:

This Direction was confirmed under the common seal of the Mayor and Burgesses of the London Borough of Merton this day of 2023. The Common Seal of The Mayor and Burgesses of the London Borough of Merton was hereunto affixed to this Direction in the presence of:
Authorised Signatory: 6th July

SECOND SCHEDULE Map of the Land affected by the Article 4(1) Direction being Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood wards within the London Borough of Merton.

INSERT MAP OF WARDS: Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood