

# 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 17 November 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](mailto:future.merton@merton.gov.uk) or telephone [020 8545 3837](tel:02085453837).

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# **Borough Plan Advisory Committee Agenda**

## **17 November 2022**

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### **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: 17<sup>th</sup> November 2022**

Wards: All

### **Subject: Merton's Local Plan and Policies Map update**

Lead officer: Interim Executive Director of Housing and Sustainable Development, Mark Gayor

Lead member: Cabinet Member for Housing and Sustainable Development

Contact officer: Deputy Future Merton Manager, Tara Butler

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### **Recommendations:**

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

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## **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 Stage 1 hearing in June 2022 and Stage 2 hearings in October 2022, chaired by the Inspectors.

## **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 2022 ( 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 2<sup>nd</sup> 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](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 throughout the examination process that they will aim to work with the council and the other examination participants in a positive, proactive, and pragmatic manner. They are examining the soundness of the whole Plan, having regard to the comments people and organisations submitted.
- 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 (they've stated around spring 2023).
- 2.9. As part of their examination the Inspectors asked the council a series of questions between January and June 2022 and chaired two rounds of hearings which took place in the council chamber
- Stage 1 for two weeks in June 2022
  - Stage 2 for two weeks in October 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
- 2.11. According to the Inspector's closing statement the Inspectors 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.

- 2.12. The council can only adopt the Local Plan as the new planning policies for the borough if the Inspectors' report finds it sound. 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](http://www.merton.gov.uk/newlocalplan)
- 4.5. **A Stage 2a draft Local Plan public consultation** took place between 13<sup>th</sup> November 2020 to 1<sup>st</sup> 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 1<sup>st</sup> 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 4<sup>th</sup> January 2021 due to an IT issue.
- 4.7. **A Stage 3 Local Plan publication** took place between 22<sup>nd</sup> July and 6<sup>th</sup> 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 2<sup>nd</sup> 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. As already stated, the Inspectors now require the council to complete all the actions arising from both hearings, assess any amendments for sustainability, equalities and habitats regulations and publish the plan one final time for six weeks of public consultation on the amendments only. Officers are currently undertaking these actions and the exact date of public consultation is still to be arranged with the planning inspectors.

4.10.

## **5 TIMETABLE**

- 5.1. As set out in the body of this report
- 5.2. 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>

## **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 meet the needs of Merton’s communities and enhance 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: 17<sup>th</sup> November 2022**

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

### **Subject: Consultation on Immediate Article 4 direction for Houses in Multiple Occupation**

Lead officer: Interim Director for Housing and Sustainable Development, Mark Gaynor

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

Contact officer: Deputy FutureMerton manager, Tara Butler

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#### **Recommendations:**

- A. That BPAC note the contents of this report including Cabinet's approval for public consultation on an immediate Article 4 Direction, to take place between November 2022 and January 2023.
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#### **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. 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.
- 1.2. Therefore the council is taking forward a co-ordinated policy approach across housing and planning in order to protect local amenity and to improve the quality of accommodation in the private rented sector. This includes expanding the council's existing landlord licensing programme and changing planning rules relating to Houses in Multiple Occupation (HMOs).
- 1.3. Planning permission is already required to turn a home into a large HMO (occupied by seven people or more from two or more households) but creating a small HMOs (occupied by between three and six people from two or more households) from a home does not currently need planning permission.
- 1.4. Councils can create Article 4 Directions to remove permitted development rights to address the harm to local amenity and improve wellbeing, where the approach is based on robust evidence and is applied to the smallest area possible.
- 1.5. In October 2022 Cabinet approved public consultation on an immediate Article 4 Direction 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. [Cabinet's October 2022 report](#) is attached as appendix A to this report. The same report includes proposals to extend the licensing of private rented properties under the Housing Act 2004; this was also supported by Cabinet.

1.7. Officers will update councillors at the meeting on the public consultation which will start after the publication of this report.

## 2. DETAILS

1.8. The information below is also contained as an appendix to the [October 2022 Cabinet report](#).

### Where in Merton will the Article 4 Direction apply?

1.9. 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”*

1.10. 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.

1.11. 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.

1.12. 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 from two or more households) but can operate a small HMO (occupied by between three and six people from two or more households) 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.

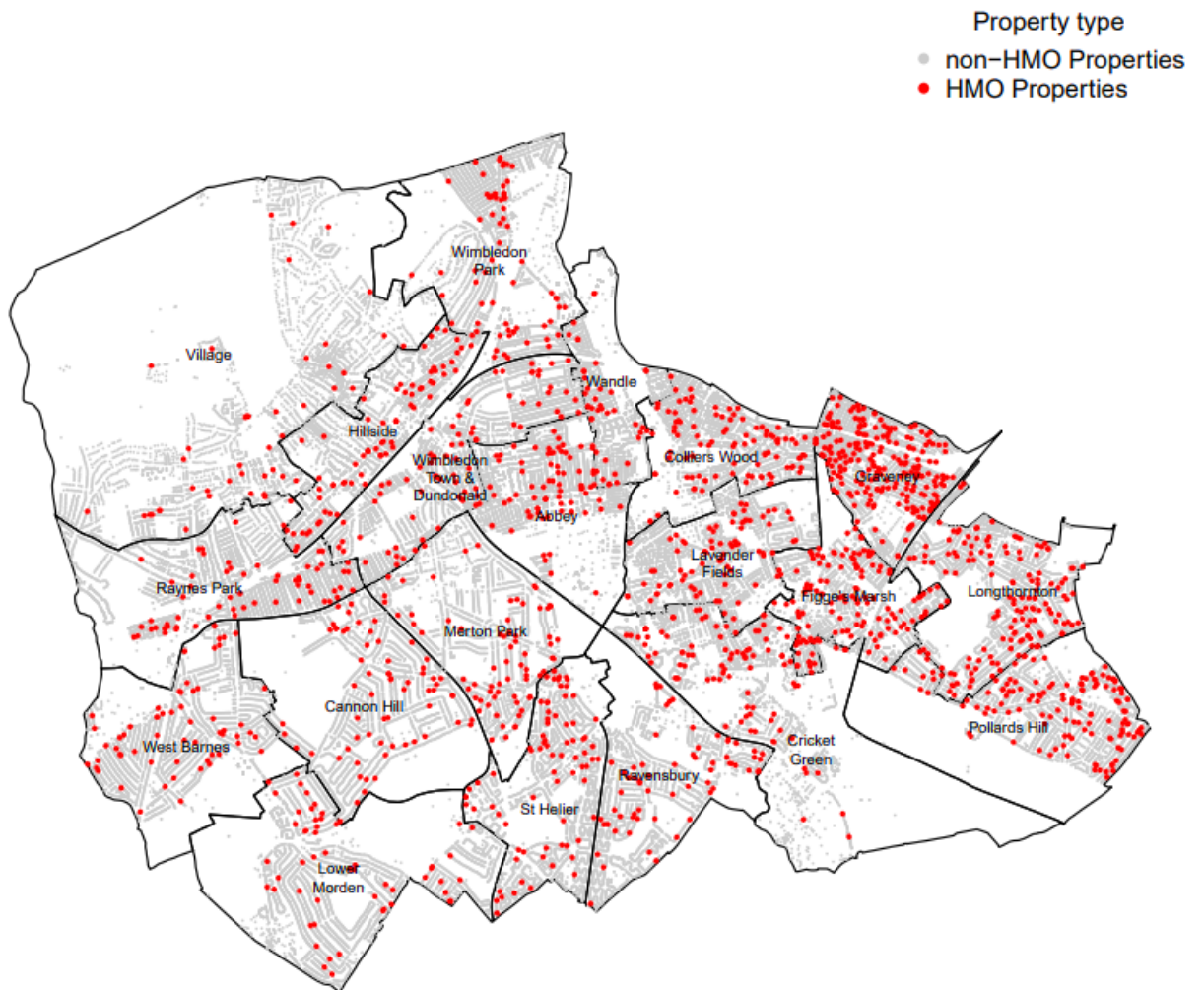
1.13. However, HMOs need to be properly managed and maintained, as they can be a source of unsuitable accommodation and cause harm to amenity, both for the occupiers and the wider community. The impacts from such changes can include issues related to waste management, noise and disturbance, negative impacts on the physical appearance of the neighbourhood and increasingly, anti-social behaviour (ASB).

1.14. 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.

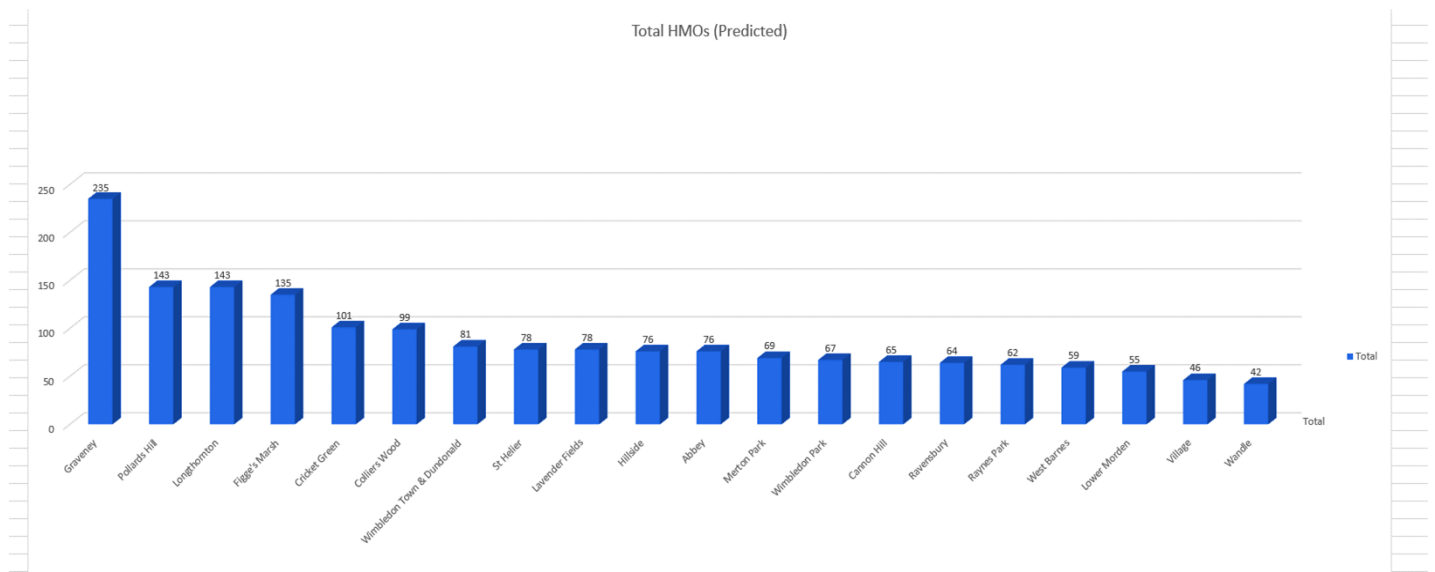
- 1.15. Given the increase in complaints, the council is bringing forward different options to address these including local changes to the planning system (via the Article 4 Direction) and via the housing powers (extra licensing powers known as Selective or Additional Licensing on top of the licenses that the council already requires HMO landlords to have)
- 1.16. 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.
- 1.17. 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.
- 1.18. 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.
- 1.19. 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.
- 1.20. 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.
- 1.21. 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)**

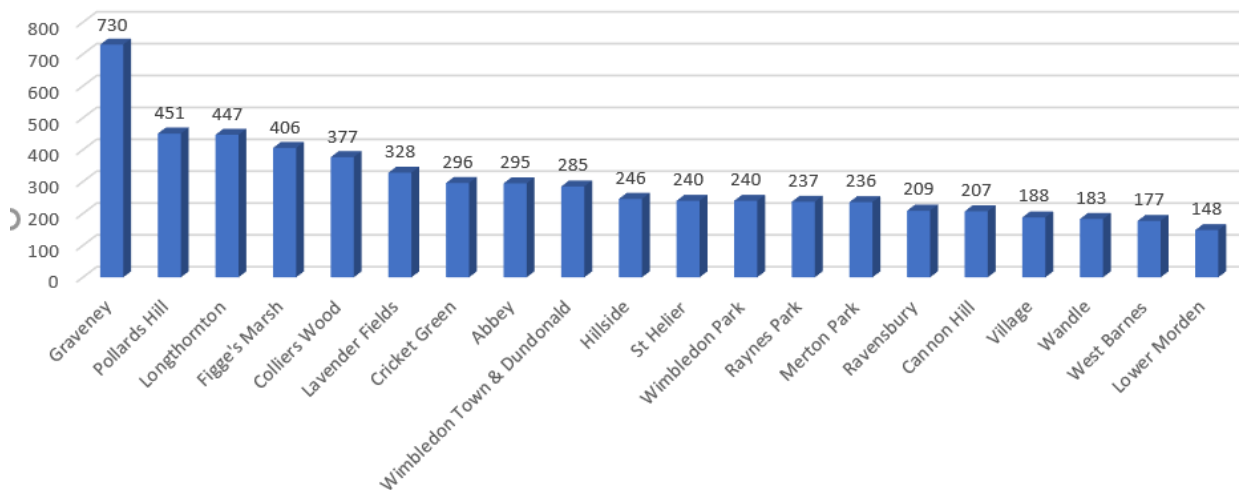




**Figure 2: graph of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 1 graph)**



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



1.22. Therefore, based on the robust evidence, in October 2022 Cabinet approved public consultation on an immediate Article 4 Direction to require small HMOs to seek planning permission in 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?

- 1.23. 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 from two or more households).
- 1.24. In Merton this report recommends undertaking public consultation on an immediate Article 4 Direction,. This is due to start in mid November 2022 and the day that the public consultation statutory notices are published and sent out would require landlords to seek planning permission any house or flat in the relevant wards rented by more than two unrelated people as an HMO.
- 1.25. 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 account of material considerations.
- 1.26. 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.
- 1.27. In making these recommendations to Cabinet, 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 immediate Article 4 Direction for small HMOs in seven wards in the borough will affect housing delivery.

### **3. ALTERNATIVE OPTIONS**

- 1.28. 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.
- 1.29. 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**

- 1.30. 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 at least six weeks to allow comments to be received.

1.31. In October 2022 Cabinet resolved that the Article 4 public consultation will run in parallel with engagement on selective and additional licensing, which will run for at least 10 weeks from November 2022 to January 2023

## **5. TIMETABLE**

1.32. As set out in the October 2022 Cabinet report, the immediate Article 4 Direction will take effect as soon as the statutory notices are published for consultation (i.e. November 2022, date to be confirmed at the meeting).

1.33. Public consultation will take place for approximately 10 weeks from mid November 2022 until 22<sup>nd</sup> January 2023. This is to align with engagement taking place on selective and additional licensing at the same time and is far longer than the six week period required by statute.

1.34. At the end of the consultation on 22<sup>nd</sup> January 2023, the council will consider all comments made and make a decision as to whether to continue with the immediate Article 4, to amend it or to cancel it. This will be a decision taken by full council, timetabled for April 2023 subject to the Secretary of State not intervening at either consultation or confirmation stage (the two stages where the Secretary of State must be notified).

## **6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

1.35. As set out in the Cabinet report – October 2022

## **7. LEGAL AND STATUTORY IMPLICATIONS**

6.1. 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.

6.2. 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.

6.3. 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)
- 6.4. Although not a statutory obligation, it is considered good practice to publish a notice of the Article 4 direction on the LPA's website.
  - 6.5. 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.
  - 6.6. 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.”*

## **8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 6.7. Officers have identified some positives in terms of equalities and some potential in-combination equalities implications.
- 6.8. 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.
- 6.9. 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.
- 6.10. 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 small HMOs will be determined against planning policies and potentially reduce overcrowding in below standard HMOs.
- 6.11. 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**

- 6.12. 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**

- 6.13. As set out in the [Cabinet report October 2022 – appendix A](#)

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

- Merton’s Article 4 Direction
- [Cabinet report 10<sup>th</sup> October 2022](#)

## **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 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

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## **Committee: Cabinet**

**Date: 10<sup>th</sup> October**

Wards: All

**Subject: Update on Selective & Additional Licensing; Empty Homes; and the introduction of an Article 4 Direction**

**Lead officer:** John Morgan, Interim Director of Community & Housing and  
Adrian Ash, Interim Director of Environment & Regeneration

**Lead member:** Councillor Andrew Judge, Cabinet Member for Housing and Sustainable Development

**Contact officer:** Lesley Barakchizadeh, Lead Programme Consultant Ext: 3099

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### **Recommendations:**

1. Approve Consultation on the proposed introduction of Selective Licensing to Figge's Marsh; Graveney; Longthornton; and Pollards Hill Wards
2. Approve Consultation on the proposed introduction of Additional Licensing to Figge's Marsh; Graveney; Longthornton; Pollards Hill; Colliers Wood; Cricket Green and Lavender Fields Wards
3. Approve an Immediate Article 4, noting the possible financial risk to the Council
4. Approve Consultation on the introduction of an Immediate Article 4 Direction for small HMOs in Figge's Marsh; Graveney; Longthornton; Pollards Hill; Colliers Wood; Cricket Green and Lavender Fields Wards
5. Note that following the consultation exercise, which is scheduled to run from November 2022 to January 2023, a further report will be brought back to Cabinet to agree the way forward following consideration of representations received
6. Note the report on Empty Homes which is for information only
7. Agree that the additional cost of £134k be funded by a transfer from the corporate contingency fund.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

1.1. This report provides an update on two key projects which were reported to the March, June, and September LSG Meetings.

- Consideration of Selective Licensing and Additional Licensing schemes, which would require a licence for private rented sector (PRS) properties, and for houses in multiple occupation (HMOs) not covered by the mandatory HMO regulations
- An Article 4 Direction, which would require new small house and flat shares (small HMOs) to seek planning permission instead of being covered by Permitted Development (PD). HMOs of 7 or more people, from more than one household, already require planning permission.

- More detailed papers are appended on each of the two projects.
  - Additionally, a third paper on a separate project for Empty Homes as part of our overall work on increasing homes is also attached.
- 1.2 At the June 2022 LSG Meeting, concern was expressed about the long lead in time to introduce both projects.
- 1.3 It was requested that further consideration be given to bringing forward the timetable for each of the projects where possible, dealing with them separately if this would help matters.
- 1.4 A further report was then required to be brought back to LSG/Cabinet with revised timescales and to seek Cabinet approval prior to commencing consultation.
- 1.5 It is important to note that the Council is committed to improving housing conditions in the Private Rented Sector (PRS); and to tackling the many instances of anti-social behaviour and other issues that arise from poorly managed rented properties and in particular HMOs.
- 1.6 The PRS is an important part of our housing stock and is growing rapidly in Merton. Whilst many landlords operate within guidelines, there are also others who do not, often taking advantage of some of the most vulnerable members of our community. This leads to issues affecting health and safety, the wider community, as well as the environment.
- 1.7 The Council strongly believes that it is necessary to pursue every action it can take to address the many issues and complaints that it receives resulting from the growth of the PRS in Merton and unscrupulous landlords.
- 1.8 To this end, the Council is working on a strategy which will include a raft of measures and actions to be taken, including the introduction of Selective and Additional Licensing; the introduction of an Article 4 Direction; as well as targeted and effective enforcement.
- 1.9 A Supplementary Planning Document (SPD) is also required to ensure that guidance is in place against which planning applications for change of use to HMOs can be assessed and to provide a basis on which applications may be refused. Once approved for consultation, the SPD Consultation Draft would be a material consideration in the consideration of these applications and will set out the circumstances when HMOs are likely to be considered acceptable and unacceptable.
- 1.10 Additionally, the overarching ambition of the new administration is to rebuild pride in Merton with three strategic themes as follows:
- Creating a Borough of Sport
  - Building a Sustainable Future
  - Nurturing Civic Pride
- 1.11 The proposals for selective and additional licensing, as well as the introduction of an Article 4 Direction for small HMOs, would support both the theme of Building a Sustainable Future, and Nurturing Civic Pride.

## 2 PROGRESS TO DATE

2.1 Since the last LSG Meeting in June, the following progress has been made:

- Both a headline report and more recently a draft final report has been received from Metastreet, the company that was tasked with data analysis and modelling. Review of the information received has shown 5 wards as having the most significant issues collectively, featuring Category 1 Hazards; complaints of Anti-Social Behaviour; and property related complaints. These are:
  - Figge's Marsh
  - Graveney
  - Longthornton
  - Pollards Hill
  - Colliers Wood
- An initial selective licensing scheme will be targeted at the top 4 priority wards within the group of five above, so Figge's Marsh; Graveney; Longthornton; Pollards Hill, keeping to under 20% of the geographical area and the PRS. An Additional Licensing Scheme, requiring small HMO's to be licensed, is also being considered. The proposal is for an Additional Licensing designation in the 7 wards proposed for the Article 4 Direction (see point below), subject to further review.
- Additionally, an Article 4 Direction for small HMO's is proposed for the 5 wards above plus Cricket Green and Lavender Fields.
- Consideration was given to running consultation exercises individually for the two projects, but it was felt that this would not speed up the progress of either project significantly and could lead to a risk to the Local Plan should consultation be started whilst the Examination of the Local Plan was taking place (due to the perceived risk that introduction of an Article 4 Direction could impact upon housing numbers). It could also lead to both consultation fatigue and claims of confusion over the same groups and individuals being consulted.
- Most members of the team identified to assist with moving the projects forward initially have been appointed and a need for an additional officer within Housing to assist with the implementation of selective and additional licensing has been identified at a cost of £32,000. Should members be minded to approve the project it should be noted that further project management staffing costs will be required from December for 6 months at a cost of £72,000.
- Work has now commenced on procuring a specialist agency to undertake the consultation and it is intended that Consultation will take place from November for a period of 10 weeks. This is likely to cost in the region of £30,000. This cost, and the £104,000 identified above, (a total of £134,000) will be funded by a transfer from the Corporate Contingency Fund.

### **3 DETAILS**

3.1. Merton has a population estimated to be 206,453 in 2020 and projected (by the GLA) to be 213,209 by 2030. Currently there are around 85,767 residential properties in the borough and 29,181 are estimated to be in the PRS. Merton's PRS is calculated to be 34% of housing stock. This represents an approximate 37% increase since the 2011 census. All Merton's wards have a PRS of above the average national PRS rate which is around 19.6%.

3.2. The size of the sector continues to grow as fewer people are now able to buy their own home and social housing remains difficult to access due to demand far outstripping supply.

3.3. The PRS offers flexibility in respect to tenure enabling people to move their accommodation to meet their requirements e.g., changes to employment, personal circumstances, access to schools and other facilities and moving closer to family and friends.

3.4. Although many landlords provide a good standard of accommodation and service to their tenants, there are a substantial number who do not. Given the demand for housing, unscrupulous landlords take advantage of those who have least choice in the market due to their personal circumstances and offer substandard and poorly managed accommodation.

3.5. Housing conditions in the PRS tend to be worse than in other tenures. Additionally, poorly managed privately rented properties have a negative impact upon many neighbourhoods with high levels of noise complaints and accumulation of rubbish.

3.6. The Housing Act 2004 allows local authorities to require landlords of most privately rented accommodation to license their properties (mandatory, additional and selective licensing). Licensing can be applied to specific areas/wards where evidence suggests there is poor quality, or poorly managed, private rented housing. This can help tenants, residents, and members of the wider community where landlords have failed to responsibly manage their properties.

3.7. Local authorities have the power to introduce additional licensing for Houses in Multiple Occupation (HMO's) not included in the mandatory scheme, in areas where the relevant criterion is met.

3.8. Whilst HMOs play an important role in providing housing and meeting the needs of a wide range of residents, HMO's can often have some of the worst housing conditions. Additionally, HMOs are often cited as a major Anti-Social Behaviour (ASB) issue in wards and many complaints are received by Council enforcement teams.

3.9. Merton is wishing to bring in a Selective and Additional Licensing Scheme, together with an Article 4 Direction requiring smaller HMOs to apply for planning consent (currently small HMO's can be set up under permitted development), to address some of the issues being experienced across Merton both by tenants and members of the community.

3.10. This would be consistent with the White Paper published on 16<sup>th</sup> June 2022, titled 'A Fairer Private Rented Sector'. The White Paper suggests that 21% of homes in the PRS are non-decent, while Category 1 hazards (which present the highest risk of serious harm or death) exist in 12% of properties. A report published alongside the White Paper, presenting the findings from a study commissioned by the Department

for Levelling Up, Housing and Communities, suggested that local authorities face 'significant barriers to tackling poor conditions resulting in an uneven picture of enforcement.'

3.11. The White Paper sets out a 12-point plan of action including a confirmation that it will abolish Section 21 'no-fault' evictions, and a reaffirmation of its aim to halve the number of non-decent rented homes by 2030:

1. We will deliver on our levelling up housing mission to halve the number of non-decent rented homes by 2030 and require privately rented homes to meet the Decent Homes Standard for the first time. This will give renters safer, better-value homes and remove the blight of poor-quality homes in local communities.
2. We will accelerate quality improvements in the areas that need it most. We will run pilot schemes with a selection of local councils to explore different ways of enforcing standards and work with landlords to speed up adoption of the Decent Homes Standard
3. We will deliver our manifesto commitment to abolish Section 21 'no-fault' evictions and deliver a simpler, more secure tenancy structure. A tenancy will only end if the tenant ends it or if the landlord has a valid ground for possession, empowering tenants to challenge poor practice and reducing costs associated with unexpected moves.
4. We will reform grounds for possession to make sure that landlords have effective means to gain possession of their properties when necessary. We will expedite landlords' ability to evict those who disrupt neighbourhoods through anti-social behaviour and introduce new grounds for persistent arrears and sale of the property.
5. We will only allow increases to rent once per year, end the use of rent review clauses, and improve tenants' ability to challenge excessive rent increases through the First Tier Tribunal to support people to manage their costs and to remain in their homes.
6. We will strengthen tenants' ability to hold their landlord to account and introduce a new single ombudsman that all private landlords must join. This will provide fair, impartial, and binding resolution to many issues and be quicker, cheaper, and less adversarial than the court system. Alongside this, we will consider how we can bolster and expand existing rent repayment orders and enable tenants to be repaid rent for non-decent homes.
7. We will work with the Ministry of Justice and Her Majesty's Courts and Tribunal Service to target the areas where there are unacceptable delays in court proceedings. We will also strengthen mediation and alternative dispute resolution to enable landlords and tenants to work together to reduce the risk of issues escalating.
8. We will introduce a new property portal to make sure that tenants, landlords and local councils have the information they need. The portal will provide a single 'front door' for landlords to understand their responsibilities, tenants will be able to access information about their landlord's compliance, and local councils will have access to better

data to crack down on criminal landlords. Subject to consultation with the Information Commissioner's Office (ICO), we also intend to incorporate some of the functionality of the Database of Rogue Landlords, mandating the entry of all eligible landlord offences and making them publicly visible.

9. We will strengthen local councils' enforcement powers and ability to crack down on criminal landlords by seeking to increase investigative powers and strengthen a requirement for local councils to report on the housing enforcement activity and want to recognise those local councils that are doing a good job.
10. We will legislate to make it illegal for landlords or agents to have blanket bans on renting to families with children or those in receipt of benefits and explore if similar action is needed for other vulnerable groups, such as prison leavers. We will improve support to landlords who let to people on benefits, which will reduce barriers for those on the lowest incomes.
11. We will give tenants the right to request a pet in their property, which the landlord must consider and cannot unreasonably refuse. We will also amend the Tenant Fees Act 2019 so that landlords can request that their tenants buy pet insurance.
12. We will work with industry experts to monitor the development of innovative market-led solutions to passport deposits. This will help tenants who struggle to raise a second deposit to move around the PRS more easily and support tenants to save ownership.

- 3.12 Bringing in additional controls for the PRS is also in line with Merton's Community Plan and in particular the priorities of:
- Protecting and enhancing the local environment
  - Enforcing action against anti-social behaviour
- 3.13 It is also consistent with the Strategic Themes the new administration is introducing of Building a Sustainable Future; and Nurturing Civic Pride.
- 3.14 There are different statutory processes to go through for Selective and Additional Licensing which is set out in S80 of the Housing Act 2004, and the introduction of an Article 4 Direction which is covered by the Town and Country Planning (GPD) (England) Order 2015.
- 3.15 The National Planning Policy Framework (2021) sets out specific circumstances that the use of Article 4 Directions needs to take account of.
- 3.16 Both Selective and Additional Licensing, and Article 4 Directions require consultation which is set out in a statutory framework.
- 3.17 Both projects require robust evidence to support their introduction as well as very careful consideration of the geographic areas they are applied to. A blanket approach would be unlikely to achieve approval.
- 3.18 Selective Licensing will require Secretary of State (SOS) approval for any scheme more than 20% of the PRS or more than 20% of the local authority geographical area.

- 3.19 It should be noted that in June 2021, Croydon had its bid for selective licensing rejected by the Secretary of State. Croydon had previously had a selective licensing scheme which had run between 2015 to 2020.
- 3.20 Croydon's Cabinet had agreed to continue with the scheme in 2020 but did not hear back on their bid to the Secretary of State for almost 12 months.
- 3.21 For Article 4 Directions, the Secretary of State must be informed at 2 stages. At the time consultation begins (in effect when the required Notice is posted), the SOS must be notified and sent a copy of the Direction and any relevant maps. The 2<sup>nd</sup> stage is when the Direction is confirmed. The SOS has the right to require the Council to amend or stop the Article 4 Direction.
- 3.22 A bid by 7 London Boroughs to introduce Article 4 Directions to block commercial to residential Permitted Development (PD) rights in a key area of central London was recently rejected by the Housing Minister. Whilst this was for a different PD right than the one under consideration by Merton, it is important to note that the Minister had requested additional evidence to demonstrate the effect on individual streets or smaller areas and to ensure that the Article 4 Direction was proposed only where it would have wholly unacceptable adverse impacts and applied to the smallest geographic area possible.
- 3.23 The above refusals illustrate the need to ensure:
- Robust Evidence in support of proposals
  - Application to the smallest geographical area(s) as opposed to a blanket approach.

#### **4 SPEEDING UP THE TIMESCALE**

- 4.1 Consideration has been given to ways in which the timetable for the introduction of both Selective Licensing and an Article 4 Direction could be brought forward.
- Selective Licensing**
- 4.2 For Selective Licensing, it should be noted that Secretary of State consent is only required for any scheme affecting more than 20% of the PRS or more than 20% of the local authority geographical area as stated in point 3.18 above.
- 4.3 Some local authorities have taken the decision to introduce Selective Licensing in a phased manner. For instance, at the end of last year, Bristol City Council gave approval for it to be introduced to cover 2 wards. As this amounted to less than 20% of the local authority area, this meant that it could be introduced under Section 80 of the Housing Act 2004 and SOS consent was not required
- 4.4 Ealing introduced Selective Licensing to a small number of wards in 2017. As discretionary licensing schemes can only last for a maximum of 5 years, this meant that it was due to expire in December 2021. Ealing has taken a decision to introduce Selective Licensing in 2 phases – the first phase renewing the licensing for the wards where it was due to expire and the second phase to introduce it to a greater number of wards. The wards in

Phase 1 cover 13.8% of the geographical area of the borough and 18.37% of the PRS in Ealing. Phase 2 will cover 56.89% of the geographical area of the borough and 41.35% of the PRS.

- 4.5 After careful consideration, it is intended to consider selective licensing in a phased approach with a small number of priority wards being targeted initially, with further consideration to extending the scheme at a later date based on the evidential indicators.
- 4.6 Should Merton introduce Selective Licensing initially to the wards that experience the most problems, ensuring that no more than 20% of either the geographical area or the PRS within the borough is exceeded, this would result in a number of benefits:
- Secretary of State Consent would not be required, which would considerably speed up the process of introducing Selective Licensing whilst also removing the uncertainty of whether or not consent would be granted
  - It would mean that those areas suffering the most acute issues in the borough could be tackled far more quickly than would otherwise be the case
  - It would enable the Council to trial the scheme, improving things that don't work as well as they could, whilst continuing to build on the strengths of the scheme, before introducing it across the borough in a phased manner.
  - It would also mean that rather than the need to set up a large new team, when it is widely recognised that there are recruitment difficulties in the market, a smaller team could be created
- 4.7 Merton could then introduce Selective Licensing either in one or more tranches to the rest of borough at a later date.
- 4.8 As cumulatively further phases would result in 20% of either the PRS or the geographical area being exceeded, it is recognised that Secretary of State consent would be required at that time.

#### **Article 4 Direction**

- 4.9 With regard to an Article 4 Direction, the only way that it could be introduced more quickly is by foregoing the 12 month notice period of commencement and instead opting for an Immediate Article 4 Direction. The main risk with this approach is that in certain circumstances, an immediate article 4 Direction gives rise to the authority being liable for claims for compensation where someone can show they incurred abortive expenditure or otherwise suffered loss or damage as a result of the Direction (i.e., conversion costs, business losses etc).
- 4.10 Claims could cover such matters as:
- Expenditure in carrying out work which is rendered abortive i.e., costs of then seeking permission



- Loss/damage attributable to removal of Permitted Development (PD) rights i.e., difference between price paid for building with existing use compared with open market value of building with prior approval
  - Reduction in profit in carrying out 'lesser' development where permission refused
  - Cost of complying with Conditions
- 4.11 Claims would be made to Council and if not agreed, would be determined by the Upper Tribunal of the Land Chamber. It is important to note that the claimant would need to show a loss which needs to crystallise i.e., by sale or redevelopment.
- 4.12 In order to qualify for compensation there needs to be a refusal of a planning application for development that would have been PD but for the Direction. The refusal also needs to be not more than 12 months from the date that the Direction comes into operation (in effect when the Notice is published).
- 4.13 It is not possible to quantify the claims that the Council might receive. A typical cost of converting a family home to a small HMO could be anywhere between £10,000 to £30,000. As stated in 4.12, the cost of abortive works would only apply to those properties refused planning consent. All works undertaken and their cost would have to be fully evidenced. Only the work undertaken by the time the Notice is given is likely to be able to be claimed, as work once the Notice is service (at the start of the consultation) could be argued to be undertaken at risk.
- 4.14 The number of small HMOs that are set up per annum in each of the priority wards is not known. It was impossible to identify this from the data collection exercise undertaken by Metastreet, due to the difficulty of identifying small HMOs.
- 4.15 Claims could also potentially be made for the loss of value of a property should:
1. It not gain planning consent; and
  2. It then be sold as a family home instead of an HMO.
- 4.16 It has not been possible to identify the difference in value between a small 6 person HMO as opposed to a family home. London property agents have advised that there may well be no difference in value due to a potentially reduced market for an HMO; how well a property has been converted; whether the buyer would need to convert it back to a family home etc. Having said this, as rents are increasing in London, it could be that some purchasers would be willing to pay more for a property with good rental yield. But it certainly is not clear cut that a compensation claim could be successful for any difference in value.
- 4.17 It is important to note that the majority of local authorities introduce a Non Immediate Article 4 – so giving 12 months' notice of its intention. This means that no claims can be made. There are, however, some exceptions to this – for instance Trafford introduced a borough wide (21 wards) Immediate Article 4 Direction to control small HMOs in 2018 and did not receive a single compensation claim.

- 4.18 Whilst there is undoubtedly a financial risk to the Council of opting for an Immediate Article 4 Direction, this should be considered in conjunction with the costs arising during the period a Non Immediate Article 4 is not in force including waste removal; parking issues; dealing with instances of ASB and other issues and of course the non-financial issues impacting upon the health and wellbeing of the community.
- 4.19 An Immediate Article 4 Direction must be confirmed within 6 months of the Notice (in effect the start of the consultation), or it will expire. Any representations made to the Council as a result of the consultation/Notice, must be duly considered before a decision is made whether or not to confirm the Direction.
- 4.20 There is no statutory appeal against the making of an Article 4 Direction. The proposed Direction would therefore be open to challenge by way of judicial review.
- 4.21 The alternative to an Immediate Article 4 Direction is a Non-Immediate one. This would come into effect 12 months from the date it is made, although it also has to be confirmed. This would considerably lengthen the timescale but would mean that no compensation claims from developers could be made.

## 5 TIMETABLE

- 5.1 The high-level timetable below (a more detailed one specifically for Selective Licensing is within the appended paper on that project) has been revised (brought forward) from the timetable presented in the LSG report in June 2022. It should be noted that it is still subject to change and is based upon:
- Secretary of State Consent not being required for the introduction of selective licensing due to the wards selected being under the 20% threshold outlined above
  - The introduction of an Immediate Article 4 Direction as opposed to a Non-Immediate Article 4 Direction
  - IT and Finance Systems being introduced within the timescale outlined
  - The Secretary of State not intervening in the Article 4 Direction at either consultation or confirmation stage (the two stages when the SOS must be notified)
  - A specialist consultation company being able to undertake the consultation exercise within the timescales set out below

Activity	Timescale
Receipt of Initial Data from Metastreet	July 2022

Analysis & Ward Identification	July/Aug 2022
Report to LSG and Cabinet	Sept/Oct 2022
Consultation Exercise for both projects and Article 4 Notice published – 10 weeks	Nov 2022 to Jan 2023
Review of representations made & scheme changes defined	Feb/March 2023
Publication of representation/consultation responses	Feb/March 2023
Report consultation outcome and update on projects to LSG/Cabinet	March 2023
Confirmation of Immediate Article 4 Direction approved by Council	April 2023
Report to Council on Selective & Additional Licensing proposals	April/May 2023
<b>Commencement of Immediate Article 4 Direction</b>	<b>1<sup>st</sup> May 2023</b>
Commission preferred licensing and payment processing system	April/June 2023
Financial processes and budget systems set up	April/June 2023
Online Licensing Management System Introduced	April/June 2023
Launch Communications Strategy	June 2023
Team Recruitment for Selective Licensing	June/August 2023
<b>Selective and Additional Licensing Go Live</b>	<b>September 2023</b>

## 6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 The initial additional staffing costs of the first six months of managing the project (£108,000) have been met by the Corporate Contingency fund. A further £30,000 is required for the Consultation Exercise. An additional housing officer is required to assist with the introduction of selective and additional licensing at a cost of £32,000. Additionally, should Members opt to continue with the project, further project management costs of £72,000 will be required to extend the project management work from December for a further 6 months. These additional costs of £134,000 will be funded by a transfer from the Corporate Contingency Fund.
- 6.2 It should be noted that should it be determined that Selective and Additional Licensing goes ahead, further funding will be required to set up a selective licensing team. Although the cost of staff and other day to day expenditure could be estimated, it is uncertain at this stage on what the potential income will be for this service to make it viable and would need to be brought back to a further meeting to agree the funding.
- 6.3 The cost of £25,000 for Data Collection has been met from Community and Housing who already had provision for this in the budget.
- 6.4 There will be an increase in the number of planning applications received following the introduction of an Article 4 Direction. It is difficult to quantify how many at this stage but there will additionally be an increase in planning application fees.
- 6.5 Any compensation claims that may be submitted as a result of introducing an Immediate Article 4 Direction are deemed to be capital expenditure and no provision exists in the capital programme for these.

## **7 LEGAL AND STATUTORY IMPLICATIONS.**

- 7.1 This report sets out the statutory and regulatory requirements relevant for each of the projects to be implemented. It also highlights the need for robust data in support of the scheme and for both projects to apply to the smallest, clearly defined, geographical areas based upon the evidence to avoid challenge.
- 7.2 The data will need to constantly be reviewed during the term of the Selective Licensing scheme should it proceed, and Members should be aware of the enforcement powers available to the Council under the Housing Act 2004 to ensure compliance with the scheme.
- 7.3 The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 makes a change of use from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) 'permitted development' – i.e., planning permission is no longer needed to do this. Under Article 4 of the General Development Order (as amended) ("GDO") local planning authorities can make directions withdrawing permitted development rights from development across a defined area listed in Schedule 2 of the same order. For all article 4 directions the legal requirement set out in paragraph (1) of article 4 of the GDO is 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.

7.4 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore should be made by resolution of full Council.

7.5 New PD rules that came in force in July 2021, are set out in the National Planning Policy Framework (NPPF)

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 For Selective Licensing, an Equality Analysis was undertaken and appended to the June 2019 Cabinet report and will be updated if approval for a licensing scheme decision is granted.

8.2 For an Article 4 Direction, 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. 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 selective licensing proposals are intended to reduce incidents of crime and anti-social behaviour related to poorly managed properties in the private rented sector. KPI measures will be set and monitored in relation to these indices if a scheme were progressed.

9.2 There are no direct crime and disorder implications in relation to the introduction of an Article 4 although the requirement to seek planning consent could lead to an improvement through greater awareness and controls.

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1 No risks for the Council have been identified at this time relating to Selective Licensing.
- 10.2 Should Merton choose to introduce an Immediate Article 4 Direction, there is a risk of compensation claims being submitted as outlined in the report.
- 10.3 There is a risk of the Secretary of State intervening and stopping the Article 4 Direction if it believes there is not adequate robust evidence to support the areas selected or if it believes too large an area has been selected.

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

[Paper on Selective Licensing & Additional Licensing](#)

[Paper on Empty Homes](#)

[Paper on Article 4 Direction](#)

**12 BACKGROUND PAPERS**

LSG Report 22 November 2021 – Selective Licensing Options and report on Article 4 Directions

LSG Report 7 March 2022 – Selective Licensing Update and Empty Homes

LSG Report 13 June 2022 - Update on Selective Licensing & Article 4 Directions

LSG Report 22 September 2022 - Update on Selective Licensing & Article 4 Directions

Metastreet Report

# Subject: Update on Selective Licensing – LSG September 2022

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## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report provides an update on the work undertaken since the June 2022 LSG meeting pertaining to the viability assessment for a selective licensing scheme. Such a scheme would require a licence for private rented properties, and an additional licensing scheme for houses in multiple occupation (HMOs) not covered by the mandatory HMO regulations.
- 1.2 The statutory framework for selective and additional licensing is set out in S.80 of the Housing Act 2004, Selective Licensing of Houses (Additional Conditions) (England) Order 2015, and in the MHCLG 2015 publication Selective Licensing in the Private Rented Sector.
- 1.3 A SL designation may be made if an area meets one or more of the following conditions (a scheme based on one condition would be unlikely to succeed, and for conditions 3-6 an area should have a higher than the average PRS stock (ca.19.6%)):
  1. That the area is, or likely to become, an area of low housing demand
  2. A significant and persistent problem caused by anti-social behaviour
  3. Poor property conditions
  4. High levels of migration
  5. High levels of deprivation
  6. High levels of crime
- 1.4 Secretary of State approval is required for a selective licensing scheme affecting 20% or more of the PRS, or 20% of the local authority area. The approach being considered is to target the wards reflecting the most serious conditions and environmental impact.
- 1.5 An Additional Licensing Scheme (ALS) may be introduced if a significant proportion of unlicensed HMOs are giving rise, or are likely to give rise, to problems affecting the occupiers or members of the public. The current mandatory scheme applies to properties rented to five or more people who form more than one household. An ALS would therefore apply to HMOs rented to less than five people. The powers to introduce an ALS are set out in the Housing Act 2004, and do not require Secretary of State approval.
- 1.6 As not all wards indicate the criteria for introducing licensing, consideration is being given to the small number of wards depicting the most serious issues, for example four wards, with possible further designations as part of a phased approach. This phased approach is being adopted by other councils, most recently Ealing Council.

- 1.7 As set out in the June LSG report an analytics company was appointed to carry out further detailed analysis of the Council's data, to enable more accurate prediction of current levels of relevant indices relating to the PRS, and HMOs, and the associated ward distribution. Headline data provided to the Council is set out in the details section of the report.
- 1.8 The data analysis provided is of relevance to the Article 4 Direction proposals, that would restrict permitted development for small Houses in Multiple Occupation (HMOs), addressed in the report under the agenda item cover report.
- 1.9 The headline data is summarised below:
- All Merton wards have a %PRS level above national average (ca 19.6%)
  - Merton %PRS overall is 34.0%
  - More PRS complaints are linked to houses in Multiple occupation (HMOs) compared with other tenures
  - Merton's HMO related figures are low compared to other London boroughs
- 1.10 Based on the data analysis provided by the analytics company an initial selective licensing scheme would be targeted at four priority wards demonstrating the most serious PRS related issues such as Category 1 hazards, ASB, and property related complaints within the group of five wards demonstrating the most significant issues, which are:
- Graveney
  - Pollards Hill
  - Longthornton
  - Figge's Marsh
  - Colliers Wood
- 1.11 The four wards that reflect the most serious issues are Graveney, Pollards Hill, Longthornton and Figge's Marsh. A scheme based on these four wards would be below the number of PRS properties required to reach the 20% PRS threshold, and would be below 20% of the Council's geographical area, that would require Secretary of State consent. Consideration will also be given to an additional licensing scheme, requiring small HMOs to be licensed, and this may apply to the wards targeted for selective licensing and consideration of the Article 4 Direction, or alternative a greater range of wards.



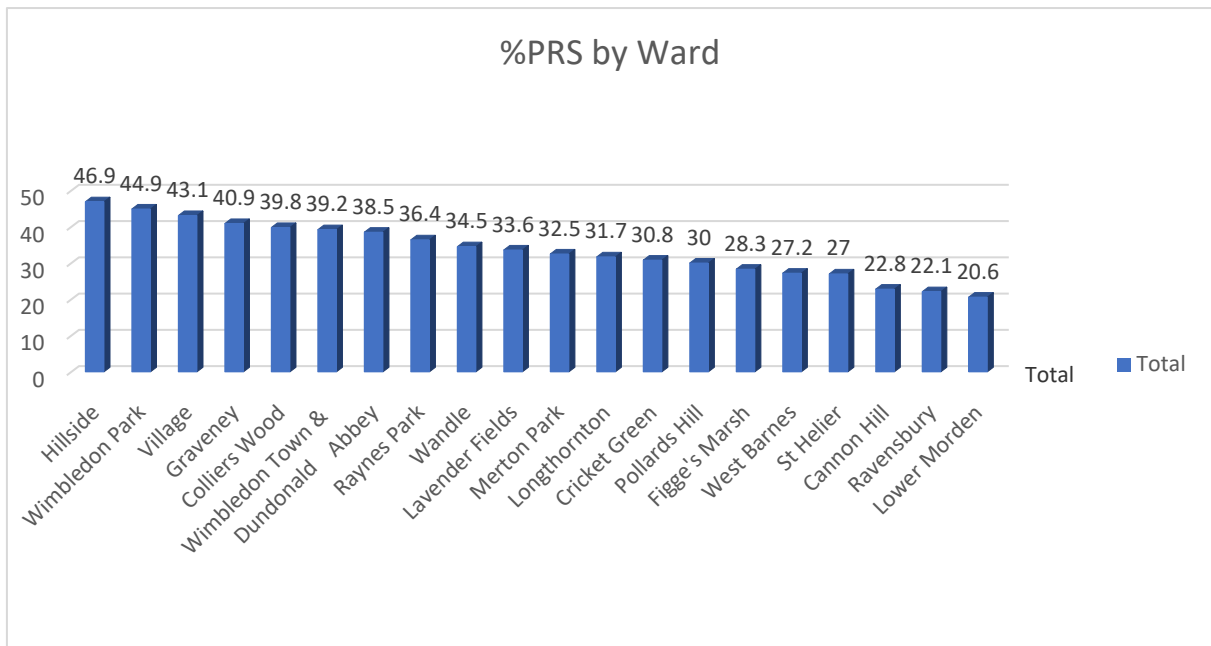
## 2. DETAILS

### Progress following the LSG in June 2022

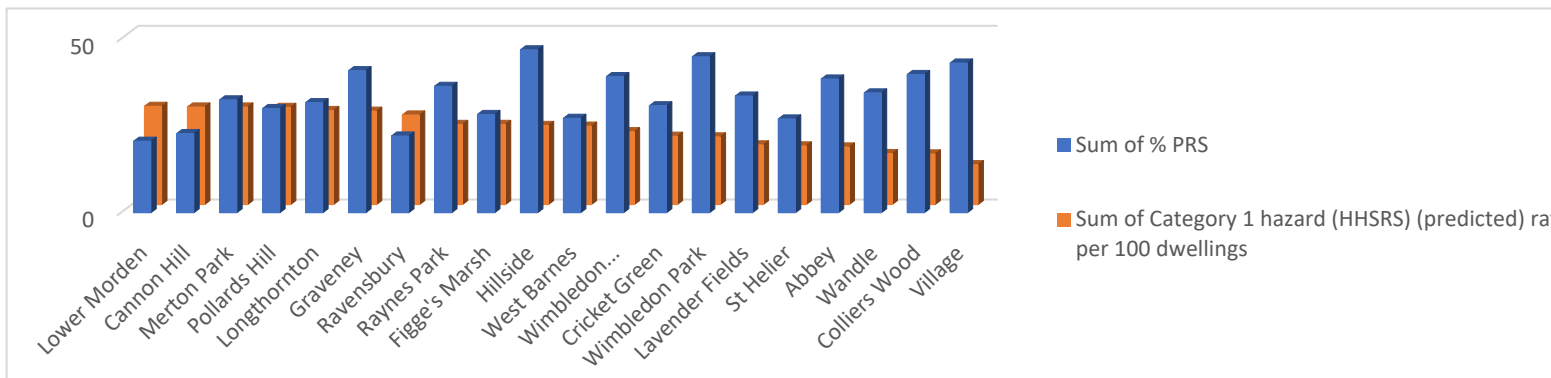
- 2.1 A data analytics company, Metastreet Ltd, was appointed to undertake more detailed analysis of the Council's data and produce a housing condition report (HCR).
- 2.2 The resultant PRS data is summarised in the following sections and highlights the five wards with the highest numbers of ASB and PRS related complaints. The proposed selective licensing scheme would target the four priority wards within the group of five presenting the most serious issues in the PRS, which are:
- Graveney
  - Pollards Hill
  - Longthornton
  - Figge's Marsh
  - Colliers Wood

### PRS Headline Data

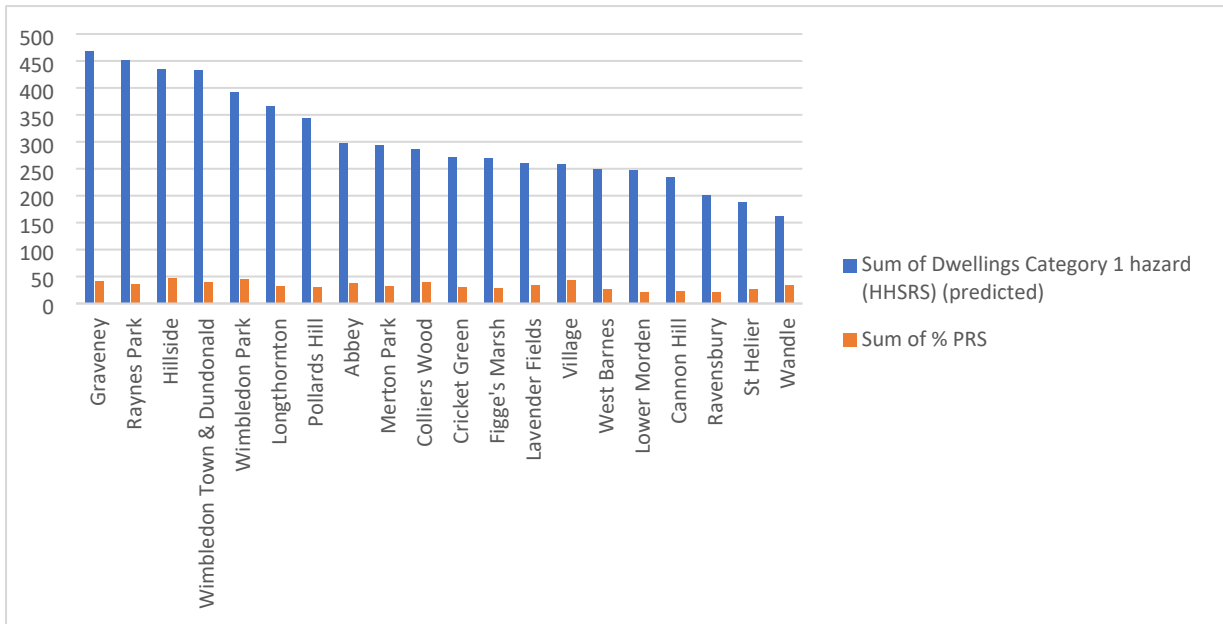
- 2.3 The latest analysis shows close alignment with the Council's previous analysis, with four out of five of the Council's highest licensing indice wards also featuring in the Metastreet top five wards with the highest levels of PRS and ASB complaints. The latest data presents positive findings in that the increase in the PRS across all wards, enables the Council to consider licensing in wards that reflect the greatest need for further interventions in order to address issues in the sector. However, the need to ensure that any proposed scheme is fully supported by robust data, and addresses key requirements such as linkage with the housing strategy, is paramount in avoiding legal challenge.
- 2.4 It should also be noted that the latest data incorporates the ward changes since May 2022. The previous analysis identified the top five licensing indice wards as being:
- Figge's Marsh
  - Colliers Wood
  - Cricket Green
  - Graveney
  - Longthornton
- 2.5 The percentage of PRS properties by ward is set out below.



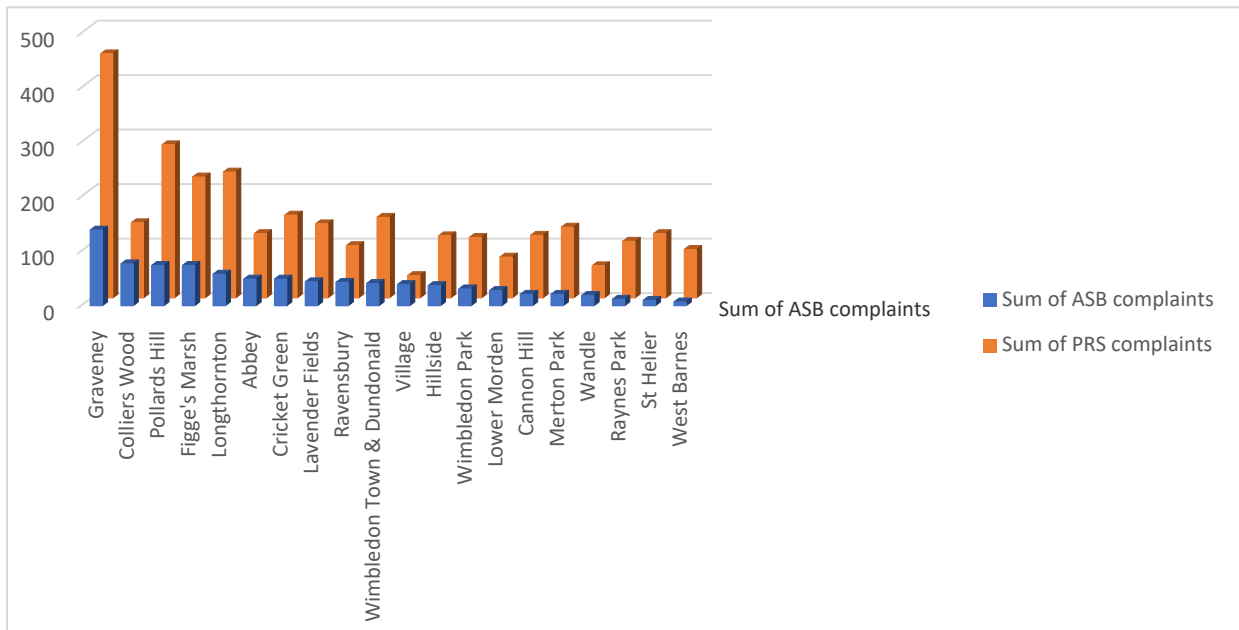
2.6 The sum of predicted Category 1 hazards per 100 dwellings across Merton wards is shown in the chart below.

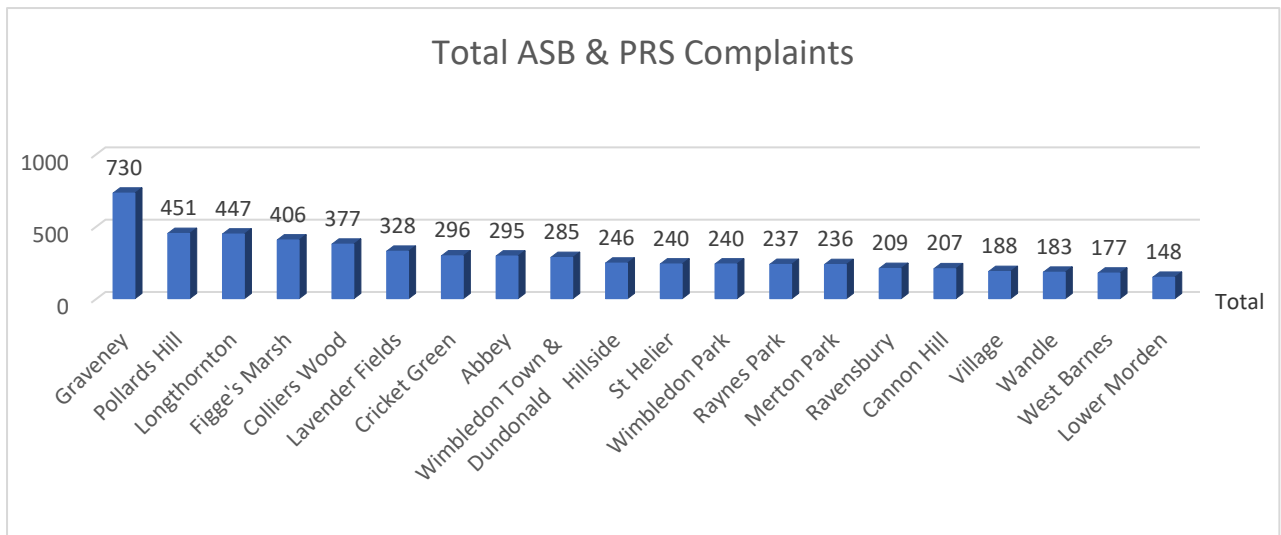


2.7 The number of dwellings with predicted Category 1 hazards in each ward and the corresponding % PRS level is shown in the following chart.



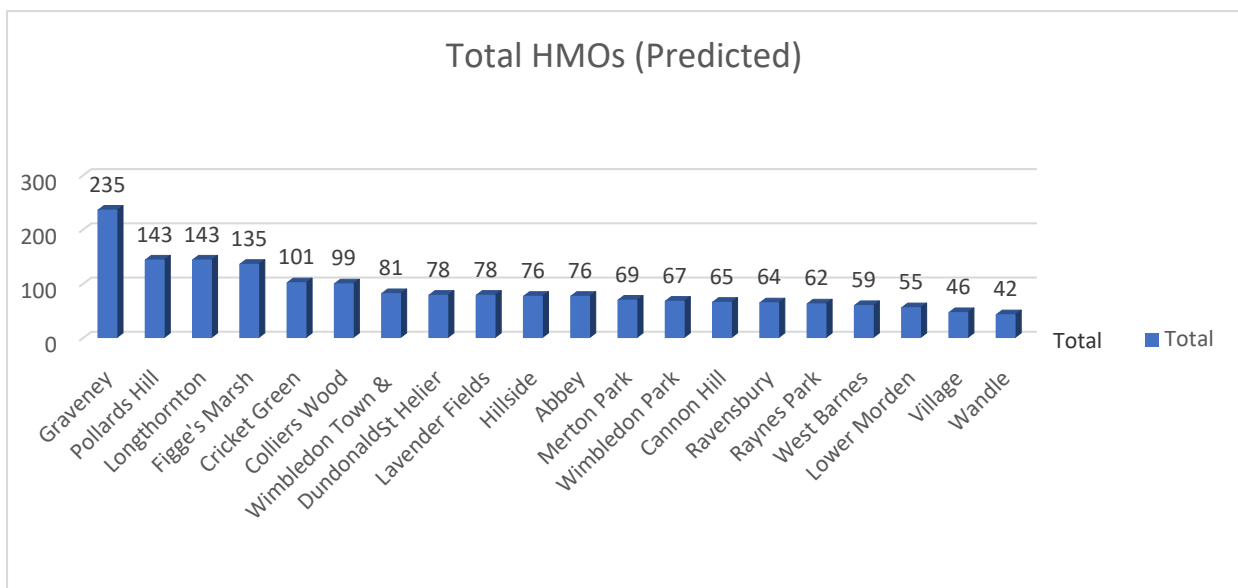
2.8 The total number of ASB and PRS complaints for PRS properties in each ward are shown below. The second charts shows the combined PRS and ASB figures.



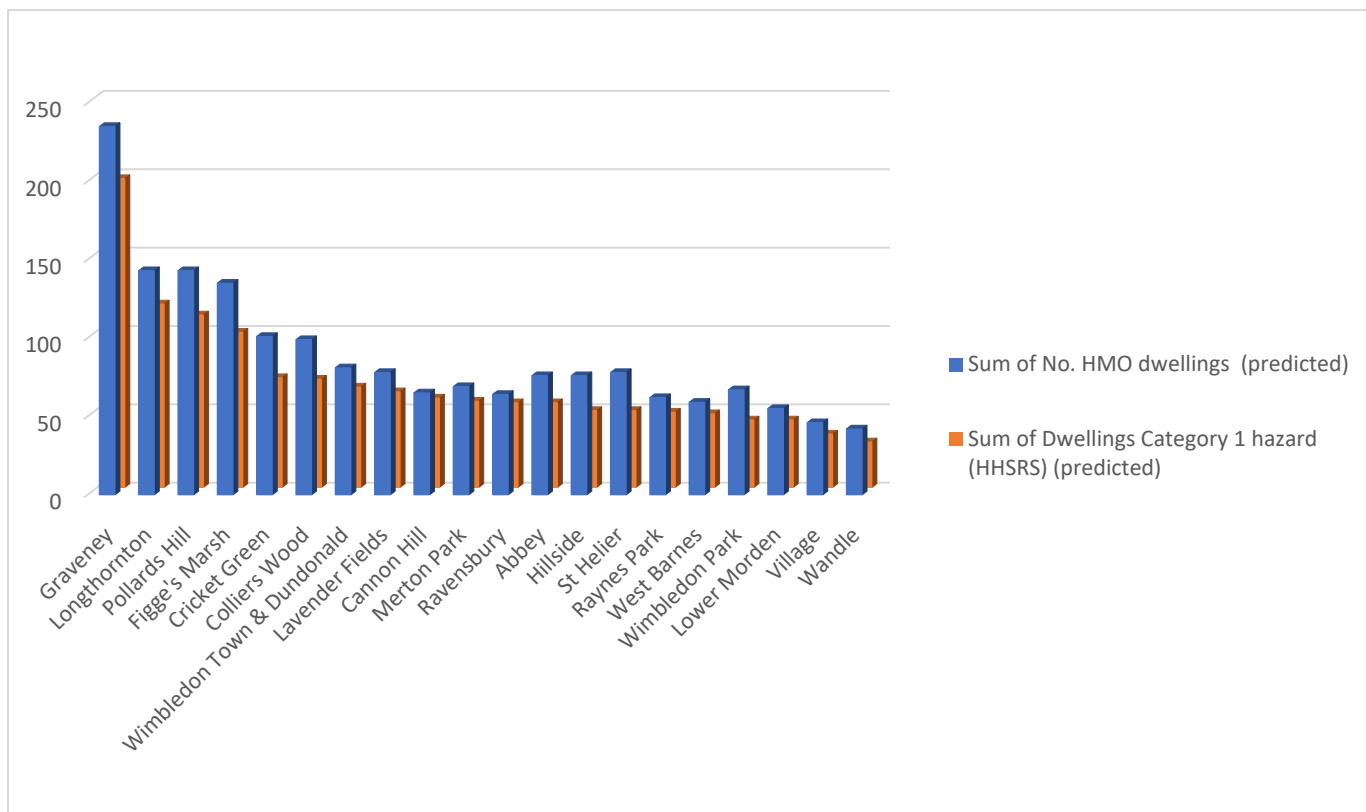


### HMO Headline Data

2.9 The number of HMO dwellings predicted across the wards are shown in the chart below.



2.10 There is a clear correlation between the wards with the highest numbers of HMO dwellings and the wards with the highest levels of HMO category 1 hazards, as shown in the following chart.



2.11 There is also a correlation between the wards with the highest HMO numbers and HMO Category 1 hazards, and the wards with the highest PRS and ASB Complaints. Four wards are common to both groups. The tables below show the relationship between the two groups.

Ward	HMO Dwellings (predicted)	Dwelling Category 1 hazard(predicted)
Graveney	235	197
Longthornton	143	117
Pollards Hill	143	110
Figge's Marsh	135	99
Cricket Green	101	70

Ward	Sum of Total ASB & PRS complaints
Graveney	730
Pollards Hill	451
Longthornton	447
Figge's Marsh	406
Colliers Wood	377

- 2.12 When wards with the highest number of Category 1 hazard dwellings in the PRS are compared to Category 1 hazards within HMOs, only Graveney features in both. The top five PRS category 1 hazard wards features some of the borough's more affluent wards, with lower levels of PRS and ASB complaints. The reason for this is believed to be due to energy performance data whereby larger older properties will generally feature lower thermal energy ratings.

Ward	Dwellings Category 1 hazard (HHSRS) (predicted)	% PRS
Graveney	468	40.9
Raynes Park	451	36.4
Hillside	435	46.9
Wimbledon Town & Dundonald	434	39.2
Wimbledon Park	393	44.9

### Next steps for selective licensing

- 2.13 Scheme licensing viability models including cost modelling have been updated, and are being reviewed by the Finance Team.
- 2.14 Following the finalising of the wards to be considered for Additional Licensing, final scheme proposals will be reported to LSG.
- 2.15 The Programme Board consisting of representatives from both Community & Housing, and Environment & Regeneration continues to meet to ensure that the licensing project is managed jointly with the Article 4 Directions project work.
- 2.16 A key requirement for a selective licensing scheme is that in addition to the evidential data required, the proposals must be consistent with a council's housing strategy. Further work is required to meet this requirement.

### 3. TIMELINE

- 2.17 For selective and or additional licensing, an indicative summary timetable, assuming approval for a scheme is set out below. Scheme implementation is dependent on a range of external inputs at key stages, and as these are outside of the Council's control they may impact on the indicated timescale. Discussions are ongoing with Finance and IT teams to identify the scheme support requirements. Viability assessment and project progress work is being monitored by the Programme Board, and the timetable will be kept under review to identify where activities can be expedited.

Summary Activity	Date
Data Analysis & Reporting	

Specialist analysis headline data report delivered to Council	July 2022
Review of specialist analysis & HCR	August 2022
Update scheme viability assessment & costs, based on specialist analysis.	August 2022
Scheme models produced and funding requirement confirmed	August 2022
Full analysis & Housing Condition Report delivered to Council	August - September 2022
DMT / CMT reports & LSG / Cabinet	August 2022 - September 2022
<b>Scheme Consultation</b>	
Commission consultation specialist	August 2022 - September 2022
Consultation specialist appointed	September 2022
Public consultation launch (10 weeks min)	October 2022
Consultation closes	January 2023
Review of representations made & scheme changes defined	January 2023 – February 2023
Publication of consultation responses	February 2023
Final licensing scheme(s) proposals produced subject to IT and Finance inputs confirmed	April 2023
Final licensing scheme(s) published	April 2023
DMT / CMT reports / LSG & Cabinet / Council scheme approval  (3-month statutory minimum period required after decision before a scheme can commence)	May - June 2023
<b>Implementation Plan</b>	
Identify IT systems for online licensing and case management	May 2022 – October 2022
Complete option appraisal of online of licensing applications and payments systems	August 2022 -November 2022
Scheme policies & procedures developed	April 2023 – June 2023
Commission preferred licensing and payment processing system	April 2023 – June 2023
Financial & budget reporting systems set up	April 2023 – June 2023
Income management cost centres and transaction management process set up in E5	April 2023 – June 2023
Staff Recruitment	June 2023 – August 2023
Launch of communication strategy	June 2023
Online licensing management system introduced	April 2023 – June 2023
<b>Go Live</b>	<b>September 2023</b>

# Subject: Update on Empty Homes Scheme Proposal – LSG September 2022

## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report provides an update on the viability assessment work relating to the proposed empty homes scheme (EHS), following the previous report in June 2022. An empty homes scheme is a discretionary tool that enables councils to fund measures to bring into use long-term empty homes, such as grant funding, loans, and advice for owners to bring qualifying properties up to a required standard for letting. Councils may require that such properties are leased to the council for the provision of accommodation for households owed a housing duty.
- 1.2 An EHS may utilise existing enforcement powers available such as Empty Dwelling Management Orders (EDMOs) under the Housing Act 2004, and Compulsory Purchase Orders (CPOs) under the provisions of the Compulsory Purchase Act 1965 (CPA 1965). Other relevant powers include the Environmental Protection Act 1990 and the Prevention of Damage by Pests Act 1949, under which a council may deal with waste, pests, and infestations.
- 1.3 Bringing empty homes back into use may assist councils in a number of ways, such as:
- Helping to meet housing need in the borough through increased supply
  - Reducing temporary accommodation expenditure
  - Reducing impact of unsightly and nuisance properties on neighbourhood street scene and increasing civic pride

## 2 DETAILS

- 2.1. Available data suggests that there are around 1,900 long term empty properties (defined as having been unoccupied or substantially unfurnished for over six months) in Merton that could be considered for targeting within an EHS.
- 2.2. Councils may provide grant or loan funding to owners to bring properties up to standard for letting, and may require such properties to be leased to the authority for a period of five years at an affordable rent, for example. The benefit of such an arrangement is the increase in availability of affordable accommodation in the borough. The Council currently provides temporary accommodation (TA) for around 230 households at a cost of £3.5m gross annually. For each property brought back into use and utilised by the Council for housing homeless households, a cost reduction of £15,000 per household may be achieved.



- 2.3. Additional funding streams have been explored. In particular, the New Homes Bonus (NHB), a grant paid by the DLUCH to local councils based on the amount of additional Council Tax revenue raised for new-build homes, conversions and long-term empty homes brought back into use. However, this grant scheme is under review and it is understood that the number of units expected to be brought back into use would not generate additional NHB income.
- 2.4. Community Infrastructure Levy (CIL) funding will not be able to be used for an EHS, as affordable housing is specifically excluded from the definition of infrastructure by the CIL Regulations.
- 2.5. S106 funding could be used for converting market housing into permanent affordable housing that meets the definitions of the Housing Act and Annex 2 of the National Planning Policy Framework - Glossary of Terms, however, further work would be required to work up the detail of the scheme and to assess whether the criteria would be met.
- 2.6. The previous report recommended that the scheme be established under the RSSP as it already has the organisational infrastructure, systems, processes in place, and operational know-how to establish the scheme in the shortest time. Cost efficiency was also demonstrated by the proposal in that the indicative five-year costs of operating the scheme under the RSSP was £2.3m compared with £2.5m if operated internally. The recommendation was to establish the scheme under the partnership service, for an initial period following which a review would be undertaken to inform the longer-term operation of the scheme.
- 2.7. Around 200 properties are currently being subject to the empty homes levy generating up to £276k annually. These properties would not be targeted within the scheme. If any of the households placed in the properties acquired qualified under the Council's Council Tax Support Scheme, this would be a further additional cost.
- 2.8. The assumptions on which the cost estimates are based include:
- 15 units brought back into use annually (5 units in start-up year) totalling 65 after 5 years
  - Average grant funding per unit £25,000
  - 2% annual inflation (which will be reviewed in light of current CPI rate)
- 2.9. There may be some savings against the TA budget if households are moved from TA into these properties on both the cost of the accommodation and savings in the cost of housing benefit subsidy. These costs would be kept under review as they could be a future source of funding as the scheme progresses.

### **Progress following June 2022 LSG Meeting**

2.10. The work undertaken since the previous LSG update report are summarised below.

- a) A capital funding bid has been prepared to support the proposal.
- b) Officers have met with the RSSP to discuss the requirements for a scheme, and an in principle agreement has been reached for the establishment of a RSSP managed scheme, subject to terms and conditions being agreed.
- c) Scheme operating model to be agreed.
- d) Recruitment of interim RSSP resources to enable scheme set-up to progress.
- e) Operating model costs to be reviewed and confirmed.
- f) Scheme governance arrangements to be defined.
- g) Indicative timescale to be updated.
- h) RSSP Board approval to be obtained.

### 3 ALTERNATIVE OPTIONS

3.1 This report is for information only and no decisions are recommended.

### 4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1 Consultation has been undertaken with the following:

- Assistant Director, Strategy & Improvement
- SLLP
- Service Financial Adviser (C&H)
- Head of Regulatory Services Partnership
- LB Wandsworth Empty Property Officer
- Private Sector Housing Manager, Regulatory Shared Service
- Senior Environmental Health Officer (C&H)
- Head Of Business Planning
- Planning Contributions Manager
- Head Of Revenues & Benefits

### 5 TIMETABLE

5.1 The indicative timescale for a scheme proposal as reported at the June LSG is set out below. However, the RSSP have indicated that the timescale is not tenable and will propose an updated timescale.

<b>Potential Empty Homes Scheme Timescale</b>	
<b>Activity</b>	<b>Date</b>
Review Revenue & Benefits data sets	April 2022
Develop borough EH profile and target properties	May 2022
Review funding streams and council resources available	May 2022
Operational costs and Cost benefit analysis	June 2022

Internal & External Scheme inputs defined	June 2022
Submission of a Bid for Capital Resources	June - Aug 2022
Scheme proposal developed / funding confirmed	July 2022
DMT/ CMT reports & LSG /Cabinet decision	Sep – Oct 2022
Staff Recruitment	Oct 2022 – Jan 2023
Implementation Plan	Nov 2022
Communications / consultation Plan	Nov 2022 – Jan 2023
Scheme Policies & Procedures	January 2023
Financial Management systems & processes	Nov 2022 – Jan 2023
IT reporting systems & processes	Nov 2022 – Jan 2023
<b>Scheme Commencement</b>	<b>February 2023</b>

## 6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 This initiative will increase the housing stock available in the borough and will require continuous investment from the borough which over 5 years the gross cost will be £2.3m if the RSSP option is selected or £2.5m for the in-house option. These figures are dependent on the income streams and the number of units brought back into use.
- 6.2 It would not be possible to use CIL for this scheme as housing as it is not considered infrastructure that addresses the demands of the development of the council's area. Additionally affordable housing is specifically excluded from the definition of infrastructure by the CIL Regulations. The Government is proposing to introduce a new Infrastructure Levy that would eventually replace CIL with its Levelling Up and Regeneration Bill and proposes to provide for Regulations to introduce Affordable Housing to be funded. However, there is much to be worked out in terms of the mechanics of how this would be possible and significant income is not likely to come forward until around 2027 at the earliest.
- 6.3 S106 could be used for converting market housing into permanent affordable housing that meets the definitions of the Housing Act and Annex 2 of the National Planning Policy Framework - Glossary of Terms. Detail would need to be provided to establish this and work with other London boroughs undertaken to ensure appropriate use.
- 6.4 Officers will need to bid for capital resources as part of the annual bidding process, and this has been added to the project timetable and the revenue costs if not funded by grant as per the paragraph below.
- 6.5 Where capital financing is provided for properties not owned by the Merton then this capital expenditure will be deemed as REFCUS (Revenue expenditure funded from capital under statute) for capital accounting &

financing and charged to service budgets as part of year end accounting. This will not affect overall revenue outturn position, but reported as revenue expenditure for year-end financial reporting, however, expenditure will be shown within service activity and financing will remain within the capital element of the balance sheet.

6.6 Local authorities are expected adopt new leasing standard IFRS16 from April 2024, once this is in force, all existing and new operating lease will become finance lease for accounting. This means, value of leased properties will create a lease liability within the Councils balance sheet, which increases the Council's Capital Financing Requirement. This will be reduced over the term of lease using lease repayments.

6.7 As set out in Section 2, the revenue costs will be met from the contingency budget in 2022/23 and built into the MTFs requirements ongoing as growth, subject to any savings in TA costs. Care must be taken in pursuing long term empty properties in balancing the need against the loss of CT.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

7.1 There are no legal implications arising out of the recommendations of this report. The report sets out the broad statutory powers available to tackle the issue of empty homes. Issues relating to a particular property, or exercise of a particular power may require specific legal advice, particularly as there may be broader powers that could be exercised if appropriate (for example under the Environmental Protection Act 1990 or the Prevention of Damage by Pests Act 1949).

7.2 Any works or services contracts to be entered into by the Council to meet the expenditure of the proposed funding will need to meet the Council's procurement obligations stated in the Council's Contracts Standing Orders and the Public Contracts Regulations 2015.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 No implications arise from the contents of this report.

## **9 CRIME AND DISORDER IMPLICATIONS**

9.1 No implications arise from the contents of this report.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1 No implications arise from the contents of this report.

# Appendix Update: Article 4 Direction for HMOs

## DETAILS

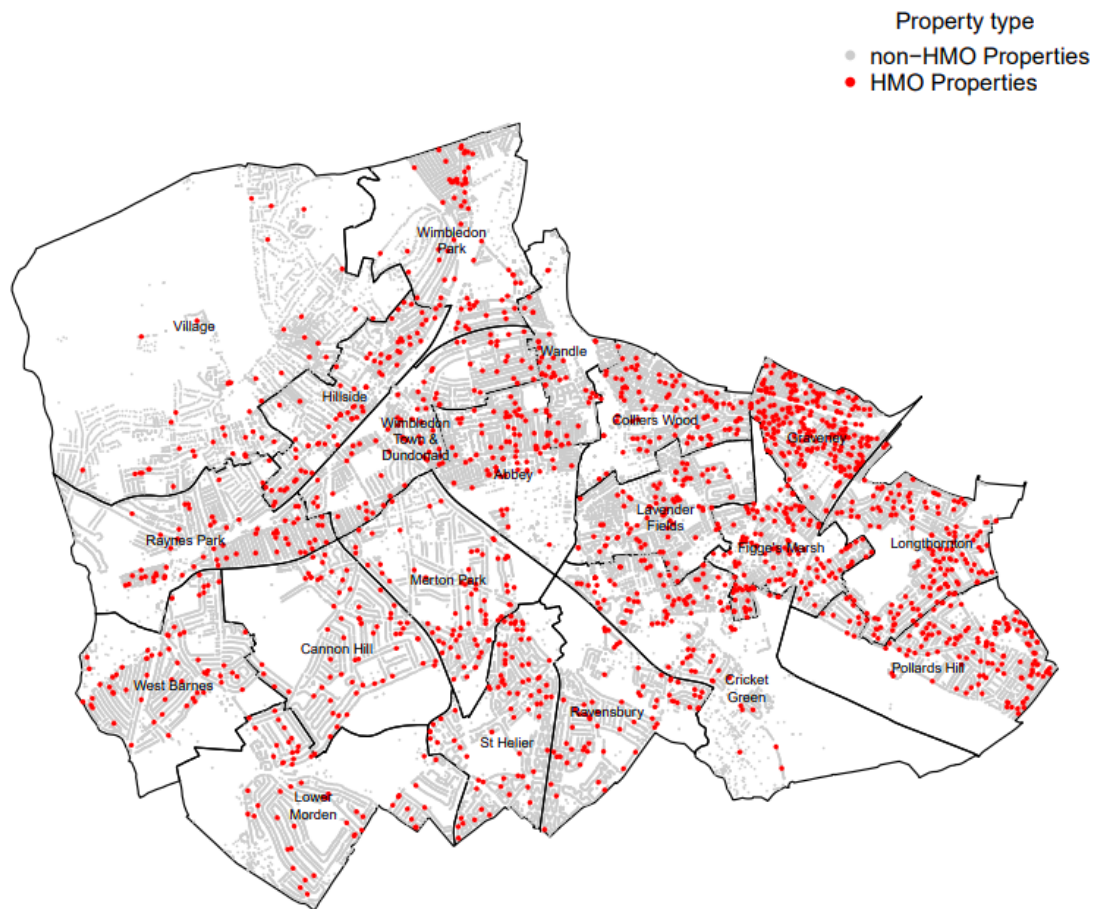
### WHERE IN MERTON WILL THE ARTICLE 4 DIRECTION APPLY?

1. The National Planning Policy Framework 2021 (para 53) states that *the use of Article 4 directions to remove national permitted development rights should...*
  - 1.1. *be limited to situations where an Article 4 Direction is necessary to protect local amenity or the wellbeing of an area*” and
  - 1.2. *“in all cases be based on robust evidence, and apply to the smallest geographical area possible”*
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.
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.
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.
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).
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.
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 19<sup>th</sup> September 2022 Cabinet will consider reports proposing local changes to the planning system (via the Article 4 Direction) and via the housing

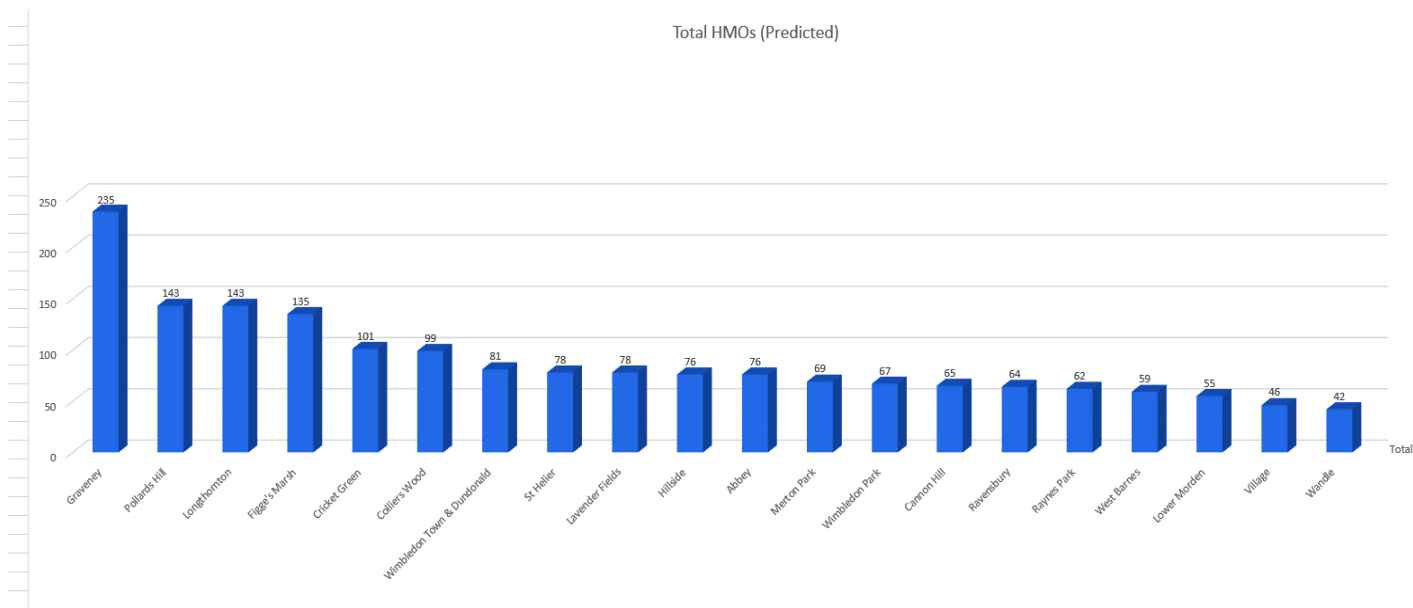
powers (extra licensing powers known as Selective or Additional Licensing on top of the licenses that the council already requires HMO landlords to have)

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.
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.
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.
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.
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.
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.

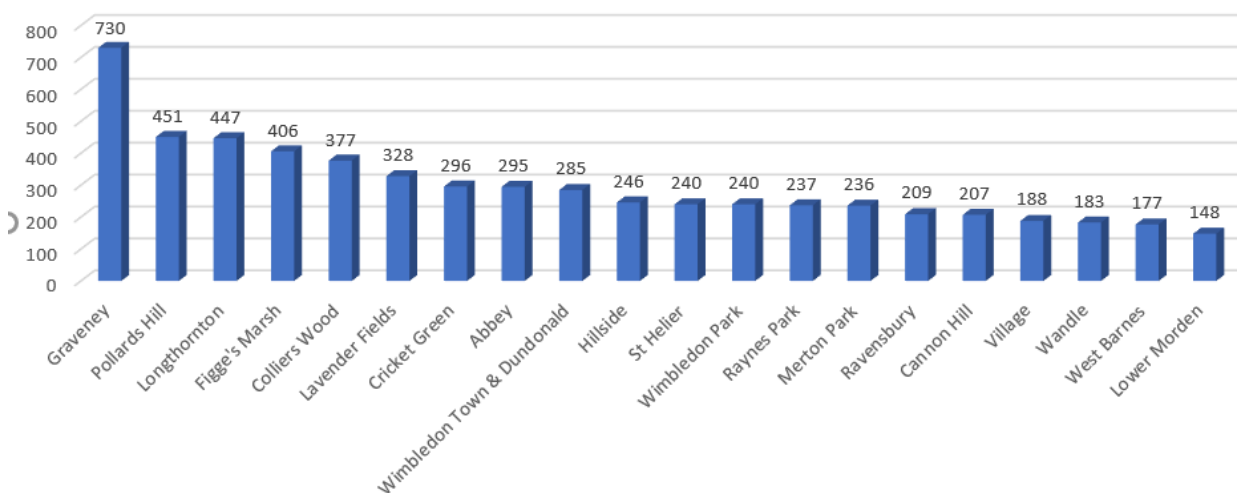
**Figure 1 – map of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 2 graph)**



**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**



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?**



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).
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.
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.
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.
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.

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