

HMO Briefing Paper – May 2019

Houses in Multiple Occupation (HMOs)

House / flat shares or “houses in multiple occupation” (HMOs) play an important role in helping to meet London’s housing needs. HMOs are regulated by the council’s housing and planning functions depending on their size and characteristics. Concerns have been raised about the number, concentration and quality of HMOs.

This briefing paper summarises the council’s role in regulating HMOs.

Planning legislation

As with any type of home, planning permission addresses whether the HMO meets the strategic need for housing in that area and consideration of the effects of the development on local neighbour amenity. Planning legislation does not cover issues such as fire safety or the ongoing maintenance or management of HMOs and how they are looked after.

The Town and Country Planning (Use Classes) Order 1987 (as amended) sets out two different types of HMOs which are:

Small shared houses (Use Class C4 = “small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.”). Planning permission is not required to change from a family home to a small shared house and back again.

Large HMOs (Use Class ‘Sui-Generis’ – these are large HMOs where seven or more occupants reside.) Planning permission is required for a property to be a large HMO.

Development Plan approach to HMOs

The Draft London Plan (December 2017) echoes the adopted London Plan (March 2016) in recognising the importance of HMOs and states:

Houses in multiple occupation (HMOs) are an important part of London’s housing offer, reducing pressure on other elements of the housing stock. Their quality can, however, give rise to concern. Where they are of a reasonable standard they should generally be protected and the net effects of any loss should be reflected in Annual Monitoring Reports. In considering proposals which might constrain this provision, including Article 4 Directions affecting changes between Use Classes C3 and C4, boroughs should take into account the strategic as well as local importance of HMOs.

Merton’s Sites and Policies Local Plan (2014) acknowledges that HMOs contribute towards addressing housing needs and as with all homes, HMOs will be expected to meet good standards both for the occupiers and neighbours and the council will have regard to relevant guidance in the assessment of HMOs.

Housing legislation

The Housing Act 2004, Section 254 defines Houses in Multiple Occupation and regulates them as part of this Act. The housing legislation controls how licences are granted and managed and is separate from planning controls.

Housing Act - Mandatory licensing

Under the Housing Act's mandatory licensing, HMO means a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where more than one household shares – or lacks – an amenity, such as a bathroom, toilet or cooking facilities
- is occupied by more than one household and which is a converted building – but not entirely self-contained flats (whether or not some amenities are shared or lacking)
- is converted self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short tenancies.

The building is occupied by more than one household:

- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time
- for other purposes prescribed by the government.

At present Merton Council operates the mandatory licence scheme. Therefore:

- If you have an HMO anywhere in the borough with five or more people (includes adults and all children) you need to apply for a mandatory licence.
- If you have an HMO with fewer than five people (includes adults and all children) you do not need a licence.

Please note that licensing only applies to HMOs where rents or other considerations are payable.

In October 2018, the MHCLG introduced new regulations associated with the Housing Act for HMOs¹ which set minimum sleeping room sizes. The regulations state that local housing authorities, through their statutory role through the Housing Act, must impose conditions as to the minimum room size which may be occupied as sleeping accommodation to reduce overcrowding in HMOs.

Details on Merton's mandatory HMO licence can be found on the council's website

www.merton.gov.uk/licensing-of-houses-in-multiple-occupation

The licence can cover issues such as:

- the maximum number of people and households who may live in the HMO;

¹ Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities, Ministry of Housing, Communities and Local Government, December 2018

- provision of a valid current gas safety certificate;
- proof that all electrical appliances and furniture are kept in a safe condition;
- proof that all smoke alarms are correctly positioned and installed;
- that each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.
- evidence that arrangements have been made for the collection, storage and disposal of waste (commercial waste contract)
- restrictions or prohibitions on the use of parts of the HMO by occupants
- a requirement that the condition of the property, its contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order
- a requirement for specified works or repairs to be carried out within a particular time frame
- a requirement that the Licencee attends an approved training course

The Housing Enforcement Team officers work with owners of housing to meet their legal obligations. Formal action is taken, including prosecution, against those who flout the law. In June 2019 Cabinet will consider a report to strengthen the role of housing enforcement in Merton, including a new Housing Enforcement Policy, Civil Payment and Rent Repayment Order policy and charges, building capacity in the Housing Enforcement Team and agreeing on further evidence towards Selective Licensing in Merton.

What is a HMO? Differences between planning and housing legislation

We can only know how many HMOs we have and the benefits and problems they bring to Merton when we know what a HMO is.

all sorts of house-sharing properties, such as purpose built student accommodation, domestic violence refuges, shared accommodation for adults with disabilities, small children's homes, accommodation for ex-prisoners, accommodation for homeless households etc are considered as HMOs in Housing Act terms but are not HMOs under the Town and Country Planning Act.

There is also a difference between the definitions of a large HMO

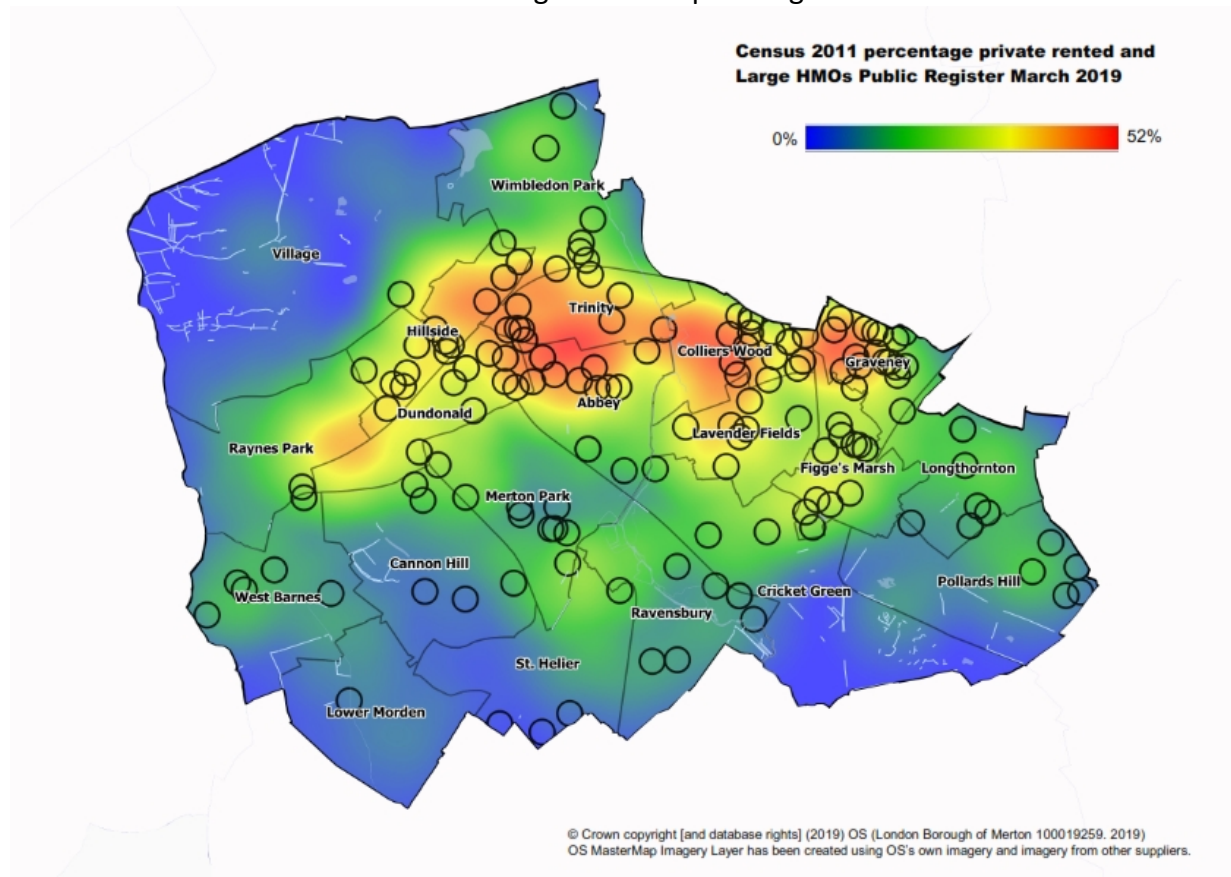
- the housing licence is mandatory if five or more people live in a HMO;
- planning permission is required for large HMOs where seven or more unrelated people live together.

Merton's HMO Licence register contains properties that would not be classed as HMOs under the planning act but require a HMO Licence under the Housing Act. These include:

- Merton's only purpose built block for student accommodation;
- Properties created under "prior approval" (i.e. no planning permission required) by the conversion of warehouses or other commercial buildings to homes;
- Hostels where people stay while they are undertaking training (over several years);
- Homes where people might need some level of support but not care provided under the Mental Health Act or other acts.

Number of HMOs in Merton

Currently there are 173 properties on the Merton's Mandatory Large HMO Public Register. However due to the Housing Acts covering a far broader range and type of property (e.g. including purpose built student accommodation, training colleges etc), it appears that less than 40 of these would be classed as Large HMOs in planning terms.



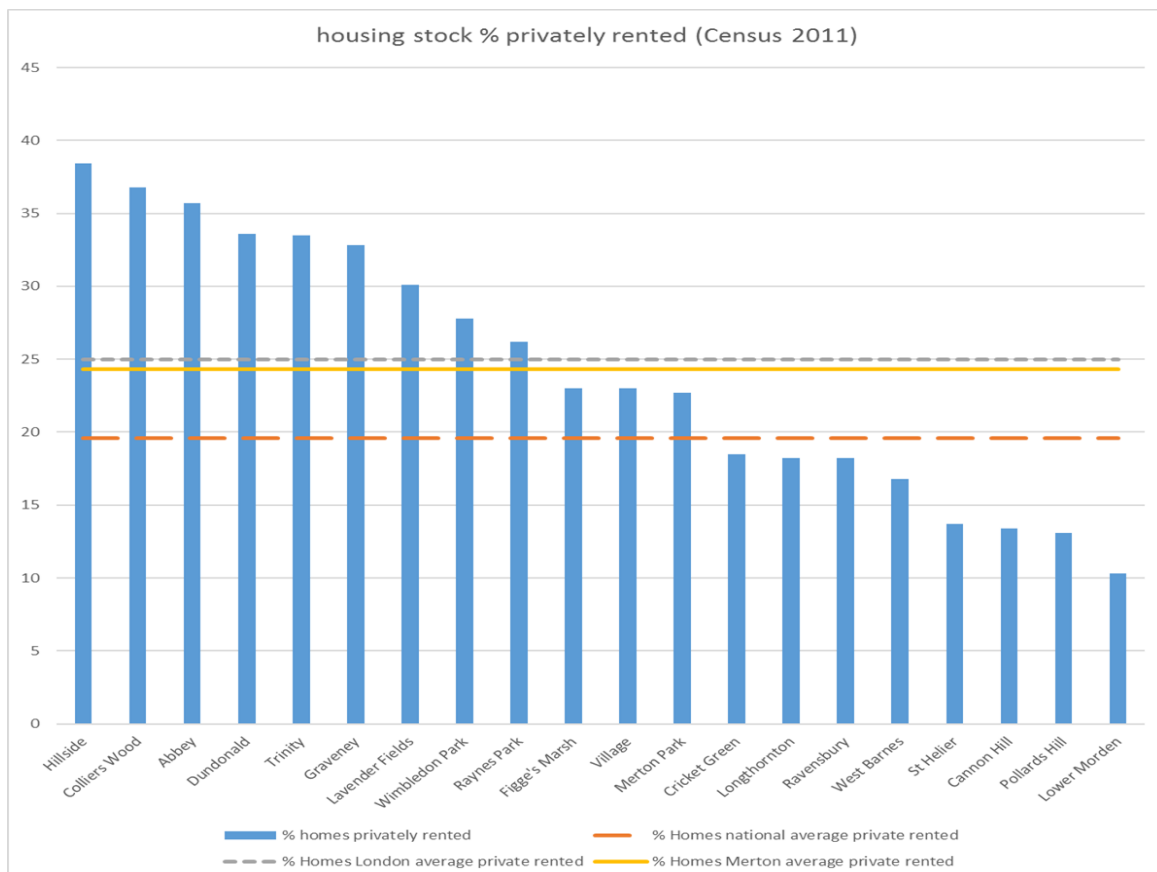
Issues associated with HMOs

It is recognised that house and flat shares provide lower cost and more flexible housing choices which are attractive to a wide range of people from young professionals, to people either visiting an area for work or on employment contracts shorter than a year (e.g. junior doctors and other staff working at St George's hospital) to people who cannot afford to or do not want to rent a one-bed property on their own.

About 9% of Merton's housing stock in the 2011 Census was defined as "Other Household Group: Other" which is effectively unrelated households living together. However this is not all HMOs and would include refuges, small care homes, supported living, bedsits and other conversions under "prior approval" where rooms are rented individually.

For an area to be considered for a Selective Licensing scheme it must have a high level of privately rented housing. A “high level” is defined as being above average and currently the national average is 19.6%.

The table below sets out the size of the housing stock by ward with details of the percentage of the private rented sector .



In addition to having a high level of private rented housing, there are a number of other criteria that must be met in order to introduce a selective licensing scheme. These criteria are set out in the Housing Act 2004 and the Ministry of Housing, Communities and Local Government Guide.

Local agents report that demand for all types of privately rented properties in Merton has surged in the last 12 months, with increasing demand for all types of rental properties placing pressure on availabilities in HMOs and their appeal in offering flexibility, particularly with changing household structures and the growth of smaller households.

The private sector is an important part of Merton’s housing market, making up 24.3% of the homes in Merton. The majority of privately rented homes are well-managed but some rented homes, including some HMOs, are not. Some ward councillors have reported a large number of potential HMOs and problems being associated with them. The most common problems associated with some HMOs include:

- Anti-social behaviour;
- Noise;
- Litter and management of refuse;
- Excessive parking;
- Fires;
- Cramped living conditions;
- Unkempt premises; and
- Overcrowding.

However, it should be noted that the above problems are not confined to HMOs and could relate to any dwelling irrespective of whether it is a HMO or not.

Managing problem HMOs

Housing Act - Selective and Additional Licensing

The Housing Act 2004 provides the ability to the Council to introduce Selective and Additional Licensing in its area in addition to the existing Mandatory Licensing.

Local authorities may have to get Secretary of State permission for some Selective Licensing Schemes.

Additional Licencing applies to certain HMOs that fall outside of the scope of Mandatory HMO Licencing and can only be used if the Council is satisfied that a significant proportion of the HMOs are being poorly managed and are likely to give rise to problems affecting the occupiers or members of the public. *To designate an area of selective licensing it has high private sector housing supply*

In June 2019 Cabinet will consider a report on strengthening Housing Enforcement including a recommendation to undertake detailed research into the private rented sector standards of accommodation to inform Selective Licensing. Cabinet will receive a report in autumn 2019 with the findings of this research and subsequent recommendations.

Article 4 Directions

As already stated, in planning terms between 3 and 6 people can share a dwelling house (Use Class C3) without having to seek planning permission for it to become a HMO (Use Class C4).

Planning permission will always be required when changing a single dwelling house to a larger HMO(containing seven or more people) as this falls into a separate 'sui-generis' use class.

However, if the local planning authority (LPA) believes that in their area, or part of it, there is robust evidence to justify the withdrawal of this permitted development right, the LPA can use an Article 4 direction under the Town and Country Planning (General Permitted Development) (England) Order 2015.

An Article 4 Direction does not mean that a particular type of development is prevented; it simply means that the landowner now has to seek planning permission to undertake the work whereas before the work was considered permitted development that didn't need planning permission.

The making of an Article 4 order has to be in accord with the National Planning Policy Framework (NPPF) and Departmental guidance. Paragraph 53 of the NPPF states that;

The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area

Paragraph 38 of the National Planning Practice Guidance (Reference ID: 13-038-20140306) states that concerning the use article 4 directions:

The potential harm that the direction is intended to address should be clearly identified.

Other councils in England and Wales have introduced Article 4 Directions to restrict permitted development rights for HMOs, either at a borough-wide level or individual areas sometimes alongside additional or selective licensing under the Housing Acts.

Each Article 4 Direction must be carefully justified against the specific characteristics of that particular housing market, including how the council is meeting its housing needs. Article 4 Directions requiring houses to be converted to small HMOs to seek planning permission are particularly popular in towns or council areas with a high student population. However the Article 4 Direction will not deal with any ongoing management or maintenance issues within the HMO as these are dealt with by the Housing Act licensing regime; it will simply require one-off planning permission to be granted for that specific development.

Merton has three Article 4 Directions in place: one restricting the permitted development (or "prior approval") of offices to residential in the specific areas of Wimbledon town centre and the designated industrial estates. The two other Article 4 Directions relate to conserving the characteristics of John Innes conservation area.

Article 4 Directions must be clearly justified against what they are trying to achieve. In other words it must be demonstrated that restricting permitted development rights across properties in a wide area is the most appropriate solution and that the issues cannot be solved in other ways, for example by taking enforcement action on specific households. For Merton's "office to residential" Article 4 Direction, the council had to justify that it was meeting its share of London's housing needs each year and that restricting permitted development rights would not harm the council's ability to meet its housing needs.

Article 4 Directions take about two years / 2.5 years to complete from start to finish – one year for making the Article 4 including public consultation and then another year before it can be brought into effect. The Secretary of State has to receive an Article 4 and can make amendments to it before it is approved by the council. It is possible to start an Article 4

immediately without a year's advanced warning, however this means that the council could be liable for compensation from the difference in value from developments affected by the Article 4.

The direction does not apply retrospectively so any development undertaken before it came into force is not affected. Therefore, if an existing property is in use as a HMO before the Article 4 Direction takes effect, it may continue as a HMO without the need for planning permission.

Unlike normal planning applications the council cannot charge any fees or recover costs for planning applications submitted under Article 4 Directions.

Article 4 Directions restricting permitted development can be tailored to the needs of the borough – for example the Direction might only cover specific streets or by specific sizes or types of property rather than a blanket solution for the whole borough. Some councils in England and Wales have introduced Article 4 Directions for HMOs in conjunction with bespoke Housing Enforcement licensing regime within that area in order to target specific problem areas without inadvertently penalising well-performing parts of the private rented sector.

To improve standards in the private rented sector with landlords and occupants, particularly where residents and ward councillors have raised concerns, in June 2019 Cabinet will consider a report to strengthen the role of private sector housing enforcement in Merton, including new housing enforcement policies and penalties, building capacity in the Housing Enforcement Team and agreeing that detailed evidence is gathered to inform knowledge and direction on how we can further improve private sector rent standards in Merton. The research will undertake detailed of analyse of private sector accommodation (including HMOs), crime rates, anti-social behaviour records, private rented housing conditions, housing turnover and other matters within small groups of properties known as Lower Super Output Areas (as a guide, there are 5 Lower Super Output Areas in Graveney and 6 in Dundonald wards).

Once this research is complete in autumn 2019, Cabinet will receive a further report with the outcomes of the research and recommendations on deliverable improvements to private sector rental standards in Merton, including Housing Enforcement licensing and planning interventions such as Article 4 Directions covering all or parts of the borough. Depending on the measures, some of these interventions would then be subject to public consultation.