

Committee: Borough Plan Advisory Committee

Date: 8th September 2022

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

Subject: Proposed Article 4 direction for Houses in Multiple Occupation

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

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

Contact officer: Deputy FutureMerton manager, Tara Butler

Recommendations:

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

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

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

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

2. DETAILS

Where in Merton will the Article 4 Direction apply?

- 2.1. The National Planning Policy Framework 2021 (para 53) states that *the use of Article 4 directions to remove national permitted development rights should... be limited to situations where an Article 4 Direction is necessary to protect local amenity or the wellbeing of an area*” and *“in all cases be based on robust evidence, and apply to the smallest geographical area possible”*
- 2.2. The private rented sector is an important part of Merton’s housing market, occupying approximately 30% of the housing stock. The majority of landlords and tenants perform well and the private rented sector offers flexibility and choice for people who do not want or, increasingly, cannot afford to buy a property in Merton.
- 2.3. Houses in Multiple Occupation (HMOs) are a key part of Merton’s private rented sector, providing low cost, flexible housing for residents who may be on low incomes and are not eligible for housing by the council, for workers that may need to live temporarily in the area.
- 2.4. HMOs can have shared facilities such as bathrooms and kitchens and are occupied by people who do not live as one household (e.g. having meals together). Landowners have to seek planning permission to create large HMOs (i.e. those occupied by seven people or more) but can operate a small HMO (occupied by between three and six people) without the need for planning permission. There may be very limited, or no change to the physical fabric of the house or flat before it is occupied as a HMO, particularly for small HMOs where between three and six people may be sharing.
- 2.5. However, HMOs need to be properly managed and maintained, as they can be a source of unsuitable accommodation and cause harm to amenity, both for the occupiers and the wider community. The impacts from such changes can include issues related to waste management, noise and disturbance, negative impacts on the physical appearance of the neighbourhood and increasingly, anti-social behaviour (ASB).

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

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

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

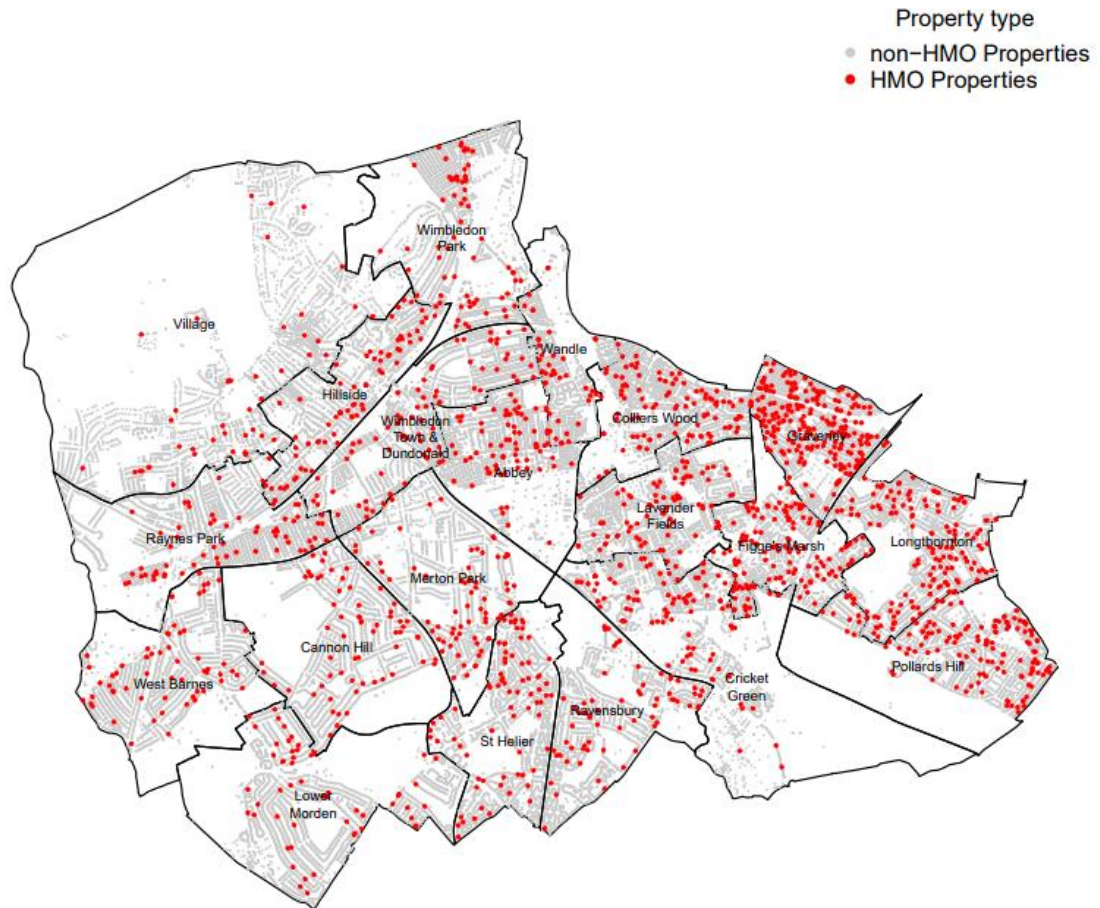


Figure 2: graph of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 1 graph)

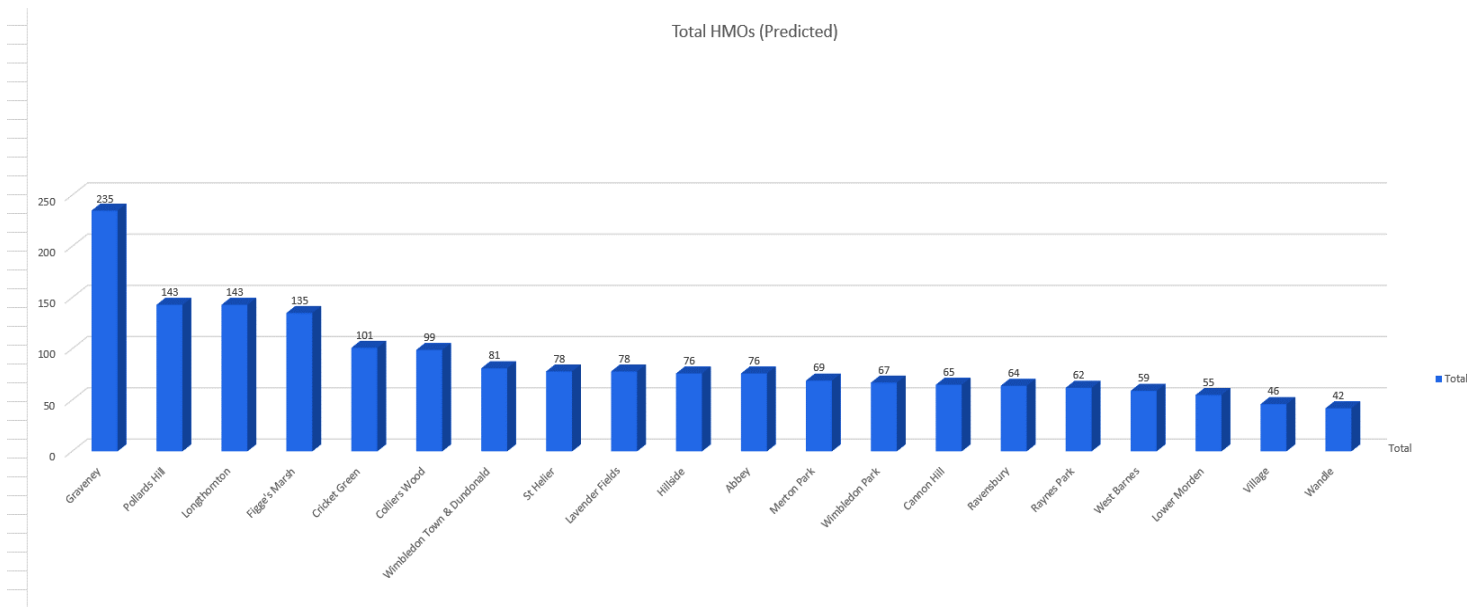
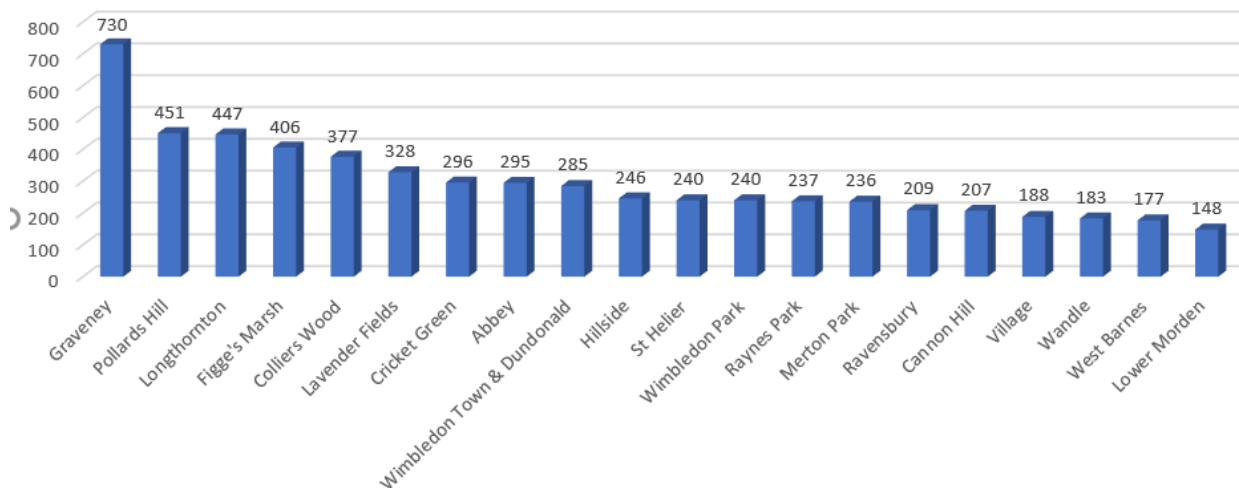


Figure 3: total number of complaints received by the council relating to the private rented sector and on anti-social behaviour



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

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

What size of HMO will now require planning permission?

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

3. ALTERNATIVE OPTIONS

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

4. CONSULTATION UNDERTAKEN OR PROPOSED

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

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

5. TIMETABLE

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

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

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

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

7. LEGAL AND STATUTORY IMPLICATIONS

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

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

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

9. CRIME AND DISORDER IMPLICATIONS

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

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

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

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

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

- Merton’s Article 4 Direction

12. BACKGROUND PAPERS

- National Planning Policy Framework
- Metastreet data

LONDON BOROUGH OF MERTON

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

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

WHEREAS the London Borough of Merton ("the Council") being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order"), is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land shown shaded in INSERT COLOUR (for identification purposes only) on the plan attached to the Second Schedule (being Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, Lavender Fields and Colliers Wood wards within the London Borough of Merton) ("the Land"), unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power conferred on it by Article 4(1) of the Order hereby directs that the permission granted by Article 3 of the said Order shall not apply to the development of the description set out in the First Schedule below on the Land.

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

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

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

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

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

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