

**Committee: Cabinet**

**Date: 20<sup>th</sup> March 2023**

Wards: All

**Subject:** Confirmation of the Immediate Article 4 Direction in 7 Wards – Results of Consultation; and Update on Proposed Introduction of Landlord Licensing and Empty Homes Project

**Lead Directors:** Adrian Ash, Interim Executive Director Environment, Civic Pride, and Climate  
John Morgan, Executive Director Adult Social Care, Integrated Care & Public Health

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

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

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**Recommendations:**

- A. Following review of the consultation responses as well as consideration of legal advice from an external barrister, that Cabinet recommend to Council that the Immediate Article 4 Direction for small HMOs be Confirmed for the following wards: Figge’s Marsh; Graveney; Longthornton; Pollards Hill; Colliers Wood; Cricket Green and Lavender Fields.
- B. Note that there is an ongoing risk of compensation claims being submitted for any small HMOs (6 person and under) that relied on the permitted development rights that have been removed in the 7 wards, and note that claims are only valid if a planning application is submitted within 12 months from the introduction of the Immediate Article 4 (17<sup>th</sup> November 2022) and then subsequently refused; or if additional Planning Conditions are applied that reduce the development’s value
- C. Note the update on Landlord Licensing and Empty Homes, including the proposed charges and conditions appended, and note that once the full consultation report has been provided to the Council by ORS, a further report will be brought back to Cabinet in June to agree the way forward for Landlord Licensing, following consideration of representations received.
- D. Agree that the additional cost of £75,000 for project management, housing staffing; and external legal fees up to Oct 23 (date of implementation) be funded by a transfer from the corporate contingency fund.
- E. Delegate Authority to the Executive Director for Housing and Sustainable Development in consultation with the Cabinet Member for Housing and Sustainable Development to Approve the draft Supplementary Planning Document on HMOs for at least 6 weeks of public consultation and to approve any amendments required by proposed changes to the National Planning Policy Framework.

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 This report provides an update on three key projects which were reported to Cabinet in October 2022.

- The introduction of an Immediate Article 4 Direction, which requires 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.
- Proposals for 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 which cover 5 people and above.
- Empty Homes – An update was provided on this project at the October meeting

1.2 At Cabinet in October 2022, it was resolved to:

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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1.3 A large scale consultation exercise, led by the Council's consultants, Opinion Research Services (ORS), commenced on 14<sup>th</sup> November 2022.

1.4 A consultation webpage - [www.merton.gov.uk/prsconsultation](http://www.merton.gov.uk/prsconsultation) – was set up which enabled people to:

- Complete a questionnaire designed by ORS
- Book attendance at a Landlord or Stakeholder Forum
- Read the proposals for both landlord licensing and the Immediate Article 4 Direction

- View a wide range of background documents including the October 2022 Cabinet report and the Metastreet report.
- 1.5 The webpage is still up and running and updated to enable people to continue to review the proposals and background information.
  - 1.6 An Immediate Article 4 Direction for Small HMOs was introduced and came into effect on 17<sup>th</sup> November, as agreed by Cabinet in October 2022.. The Consultation Webpage was updated on the 17<sup>th</sup> November with the Article 4 Direction and Notice. All statutory notification procedures were followed and exceeded including: notification to the Secretary of State; notification to statutory bodies; posting of Notices on lampposts; and publication in the press. Plus, a 10 week Consultation Exercise took place – the statutory consultation period for an Article 4 Direction is 6 weeks.
  - 1.7 During, and following the closure of the consultation on 22<sup>nd</sup> January, 2023, a range of responses were received, including 487 Completed questionnaires; some direct email representations on licensing to ORS; direct email representations to the Council as the Local Planning Authority; 2 solicitors' letters; comments made during 2 Landlords Forums; comments made during a Landlords Forum specifically on Article 4 (requested by landlords); comments made during a Stakeholders Forum.
  - 1.8 At the time of writing, the full consultation results and the final report from ORS, is not available, and due to the consultation having only recently finished, will not be available for some time. However, as it will be necessary to 'Confirm' the Article 4 Direction within a period of 6 months, should it be deemed that it stays in place after consideration of the consultation responses, it was agreed that ORS would provide the consultation results relating to the Immediate Article 4 Direction only (in full), so that these, along with the results received direct to the Local Planning Authority, can be considered by March Cabinet, and subsequently reported to Council in April. These results are fully included in this report.
  - 1.9 Once the final consultation report is received from ORS, expected to be late March, early April, a further report discussing the responses for landlord licensing will be taken to June Cabinet – it should be noted there is no Cabinet in April or May.
  - 1.10 This report therefore updates briefly on the Empty Homes project and proposals for Landlord Licensing but focuses primarily on the introduction of the Immediate Article 4 Direction.
  - 1.11 Funding was agreed for the Consultation at £30,000 and it was possible to secure an agency for this amount. Additional housing and project management staffing costs were also agreed to take the project up to May 2023. To continue to October 2023, when it is proposed that Landlord Licensing will have been introduced, a further amount of £70,000 will be required.
  - 1.12 Additionally, as we have been required to engage an external Barrister to provide legal advice and respond to a legal challenge we received, a sum of up to £5k is needed.

1.13 This cost, and the £70,000 identified above, (a total of £75,000) will be funded by a transfer from the Corporate Contingency Fund.

## **2 BACKGROUND AND CURRENT SITUATION**

2.1 It is important to reiterate 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.

2.2 The PRS is an important part of our housing stock and has grown 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.

2.3 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.

2.4 To this end, the Council is working on a strategy which will include a raft of measures and actions to be taken to improve the wellbeing of our communities, including proposals for the introduction of Selective and Additional Licensing; the introduction of the Immediate Article 4 Direction in November 2022; as well as targeted and effective enforcement.

2.5 A Supplementary Planning Document (SPD) is also being produced (see Para 10.5) to ensure that guidance is in place against which planning applications for change of use to HMOs can be assessed. Once approved for consultation, the SPD Consultation Draft would be a material consideration in the consideration of these applications and will provide guidance to inform when HMOs are likely to be considered acceptable and unacceptable.

2.6 Additionally, the overarching ambition of the Administration is to rebuild pride in Merton with three strategic themes as follows:

- Nurturing Civic Pride;
- Building a Sustainable Future;
- Creating a Borough of Sport.

2.7 The proposals for selective and additional licensing, as well as the introduction of the Immediate Article 4 Direction for small HMOs, supports both the theme of Building a Sustainable Future, and Nurturing Civic Pride.

2.8 The Council commissioned Metastreet to gather data to assist in assessing which wards would be most appropriate for the introduction of Selective Licensing; Additional Licensing; and the Immediate Article 4 Direction.

2.9 The recently published census 2021 tenure data has been reviewed and compared with the data from the Council's commissioned tenure analysis. Whilst data on the numbers and percentages of PRS dwellings in some wards shows comparable alignment, there are some wards where there is a significant difference between the figures.

- 2.10 The census provides a figure of 29.5% PRS households in Merton, compared with the Council's commissioned analysis projecting the % PRS to be 34%. The government guidance requires an authority to have regard to census and other sources of data in assessing the levels of PRS in areas being considered for licensing.
- 2.11 Having reviewed the census data it is considered that the Council's commissioned data analysis provides a more realistic projection of the level of PRS dwellings in the relevant wards. This is based on a number of considerations. The census reported 81,726 households in Merton, which, whilst allowing for empty homes, is much lower than the government Valuations Office Agency record of 86,740 residential dwellings.
- 2.12 It is known that not all landlords declare that their properties are let, including multiple let dwellings. The census data would be unlikely to identify situations where tenants are sub-letting to other households, or where dwellings conceal informal accommodation such as outbuildings or garden structures.
- 2.13 The census data is considered likely to indicate a lower figure for PRS households in the borough than is actually the case. The census data does not adversely affect the proposals relating to the Article 4 Direction and landlord licensing.

### **3 OVERVIEW OF INITIAL CONSULTATION RESULTS**

- 3.1 The consultation commenced on 14<sup>th</sup> November 2023 and closed on 22<sup>nd</sup> January 2023.
- 3.2 A consultation webpage was set up which hosted a questionnaire designed and administered by the Council's retained consultants, ORS, as well as enabling interested parties to book attendance on:
- A virtual Landlords Forum held in the daytime
  - An in-person Landlords Forum held in the evening
  - A virtual Landlords Forum purely to discuss the Immediate Article 4 Direction held in the daytime in response to Landlords' requests
  - A Stakeholders Forum – for organisations such as the Fire Services; Public Health and the National Residential Landlord Association (NRLA)
- 3.3 The forums were hosted by ORS but attended by council officers who responded to numerous questions including clarifying the proposals. The Forums (other than the stakeholders forum) were very well attended with 20/25 individuals at each. However, it was notable that some individuals attended all 3 landlord forums and in particular, several of the attendees held a portfolio of properties, so larger developers/landlords, rather than individual small landlords. In general, the forums were well-natured, and attendees expressed their thanks for the officers listening to their views.
- 3.4 In addition to the channels above, a dedicated telephone helpline was provided by ORS to enable stakeholders who needed assistance completing the questionnaire to be given suitable support, and an email address was

available to request versions of the questionnaire in alternative formats or languages.

3.5 With regard to the questionnaire, a total of 478 were received, with respondents primarily identifying with the following groups:

Stakeholder type	Number of respondents	% of respondents
Letting or managing agent with properties in Merton	25	5
Private landlord in Merton	190	40
Represent an organisation based in or covering Merton	4	1
Live in Merton	251	53
Other respondents	8	2
Total	478	100

3.6 As some respondents identified with more than one category, whilst the above table is what ORS used primarily for reporting the results, the table below also provides a bit more detail on some of the groups. Note that as some respondents identified with more than one group, the total number exceeds the number of questionnaires received:

	Count	Total %
Live in Merton - rent my home from a private landlord	62	13
Live in Merton - rent my home from the council or housing association	4	1
Live in Merton - own my home	239	50
Live in Merton - other type of occupier	9	2
Private landlord in Merton	197	41
Letting or managing agent with properties in Merton	24	5
Represent an organisation based in or covering Merton	7	1
Own or manage a business in Merton	5	1
Work in Merton	13	3
Have another connection with Merton	6	1
No connection with Merton	3	1

3.7 As well as completion of the questionnaire and/or attendance at a forum, it was possible to send a more detailed email representation to ORS about landlord licensing, or a specific representation on the Immediate Article 4 Direction direct to the Local Planning Authority via a Council email address.

- 3.8 The consultation webpage also contained an extensive amount of information on the proposals such as fees and conditions for landlord licensing; the Metastreet report showing the data that ward selection was based upon; the Article 4 Direction, Notice and map; a consultation document with further information produced by ORS, and other background material.
- 3.9 The webpage has been updated and is being kept live due to the usefulness of the information whilst proposals are still being considered.
- 3.10 As could be predicted, from those who responded to the questionnaire, there is a clear split between residents (including tenants) being in favour of the Article 4 Direction and Landlord Licensing and landlords opposing it.
- Headline results show:**
- Many larger landlords/developers are against introducing an Immediate Article 4 Direction (as opposed to a non-immediate)
  - 32% of landlords support an Article 4 Direction
  - 54% of landlords disagree with an Article 4 Direction
  - 81% of residents and tenants agree with an Article 4 Direction
- 3.11 However, greater numbers of landlords appear to oppose Landlord Licensing rather than the Immediate Article 4 Direction:
- 89% of landlords disagree with Selective Licensing
  - 78% of landlords disagree with Additional Licensing
  - 78% of residents and tenants agree with Selective Licensing
  - 81% of residents and tenants agree with Additional Licensing
- 3.12 The full consultation results for the introduction of the Immediate Article 4 Direction only, are reported in Section 11.

## **4 UPDATE ON THE EMPTY HOMES PROJECT**

- 4.1 At the October Cabinet 2022 Meeting an update was provided on the proposal to introduce an Empty Homes Scheme. This would bring into use some of the estimated 2,000 long-term empty homes in the borough, by providing incentives such as grant funding; loans; and advice for owners to bring qualifying properties up to a required standard for letting. The Council may require leasing of properties back to the Council for the provision of accommodation for households owed a housing duty.
- 4.2 It was decided that the scheme would be established under the Regulatory Shared Services Partnership (RSSP). This was based on the financial efficiencies achievable and the fact that the RSSP was already operating the Wandsworth and Richmond schemes, and had the organisational infrastructure; system; and processes in place to enable swifter implementation.
- 4.3 A joint Housing and RSSP project team was established last year and has been progressing the project transition to the RSSP and delivery of Project Delivery Plan requirements. Key elements within the plan are the

establishment of the required Finance and IT requirements, and policy and processes, for scheme implementation. The scheme is expected to go live in July 2023.

## **5 UPDATE ON THE INTRODUCTION OF LANDLORD LICENSING**

- 5.1 As stated in Para 1.8, due to timings and the unavailability of the final consultation report until late March, this report primarily deals with the introduction of the Immediate Article 4 Direction. It does not provide the results of the consultation exercise on landlord licensing, other than basic headline figures reported in Section 3. A full report will be submitted to June Cabinet.
- 5.2 However, meanwhile preparations for the introduction of Landlord Licensing continue and are on target, with proposals being to introduce Selective Licensing to Figge's Marsh; Graveney; Longthornton; and Pollards Hill Wards and Additional Licensing to Figge's Marsh; Graveney; Longthornton; Pollards Hill; Colliers Wood; Cricket Green and Lavender Fields Wards. All proposals will be subject to consideration of the consultation responses.
- 5.3 Joint working with the IT team to develop the online systems for licensing processing and administration continue, with a focus on current online processing and payment systems utilised across the Council as opposed to procurement of a new software system.
- 5.4 The current financial projections are that the selective and additional licensing scheme will require £3.3m expenditure over the five-year scheme period, including £2.5m staffing expenditure, based on a staff resource of 9.5 staff. These figures are provisional and are subject to further financial modelling, to be informed by consideration of the final consultation feedback.
- 5.5 Scheme operating costs will be required to be covered by the licence fee income. The Council is not legally able to generate a profit on the scheme, and income is ring-fenced to the scheme. Proposed licence fees, as set out in the Appendix B, have been consulted on and will be reviewed when the final consultation responses have been received and considered. The financial modelling will be updated based on the final fee structure and the projected operating model, which will depend on the level of online digital and automated processing established for the scheme.
- 5.6 Each type of license places a list of Conditions on a landlord as well as requiring a one-off license fee which will cover either 5 years or the proportion of time left of the 5 years.
- 5.7 The list of Conditions is appended as Appendix B and the schedule of fees is appended as Appendix A.

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## **6 INTRODUCTION OF AN IMMEDIATE ARTICLE 4 DIRECTION**

- 6.1 At its meeting in October 2022, Cabinet approved the introduction of an Immediate Article 4 Direction for small HMOs in 7 wards, as well as approval for a joint consultation exercise on both the Immediate Article 4 Direction for small HMOs and proposed Landlord Licensing.



- 6.2 The Council commenced the consultation process on 14<sup>th</sup> November and on 17<sup>th</sup> November 2022, an Immediate Article 4 Direction was introduced into the following 7 wards (the same ones proposed for Additional Licensing).
- Figge's Marsh
  - Graveney
  - Longthornton
  - Pollards Hill
  - Colliers Wood
  - Cricket Green
  - Lavender Fields
- 6.3 The Immediate Article 4 Direction came into force immediately on 17<sup>th</sup> November, and subject to consideration of the consultation responses and representations, will be Confirmed at Council in April 2023.
- 6.4 It is necessary to Confirm an Article 4 Direction within 6 months of commencement or it lapses.
- 6.5 There is a clear legal process to be followed for the introduction of an Article 4 Direction which is as follows:
- The Council has to give notice of a Direction to be made by site notices and press notice, for a period of not less than six weeks. The General Permitted Development Order 2015 requires notice to be served on the owner and occupier of every part of the land within the area or site to which the Direction relates unless the local planning authority considers that individual service is impracticable
  - A copy of the Direction and the relevant maps must be sent to the Secretary of State on the same day that the notice is first published. Any statutory undertakers and the Crown will also need to be sent individual letters with a copy of the Direction. A copy of the Direction including its associated maps to which it applies should also be placed on the Council's website
  - A period of at least 21 days will need to be specified in the Direction, stating the date on which that period begins and within which any representations concerning the Direction may be made to the Local Planning Authority. Any representations received must be duly considered by the Council before a decision is made whether or not to confirm the Direction.
  - The Article 4 must be Confirmed within 6 months, or it will lapse, and a second notification made to the Secretary of State at the time of Confirmation
  - The Secretary of State has the power to pause or stop the Article 4 at any time.
- 6.6 The above process was followed and exceeded with a wider number of individuals and bodies notified and consulted than was required under the statutory process. The actual consultation took place over ten weeks as opposed to six.

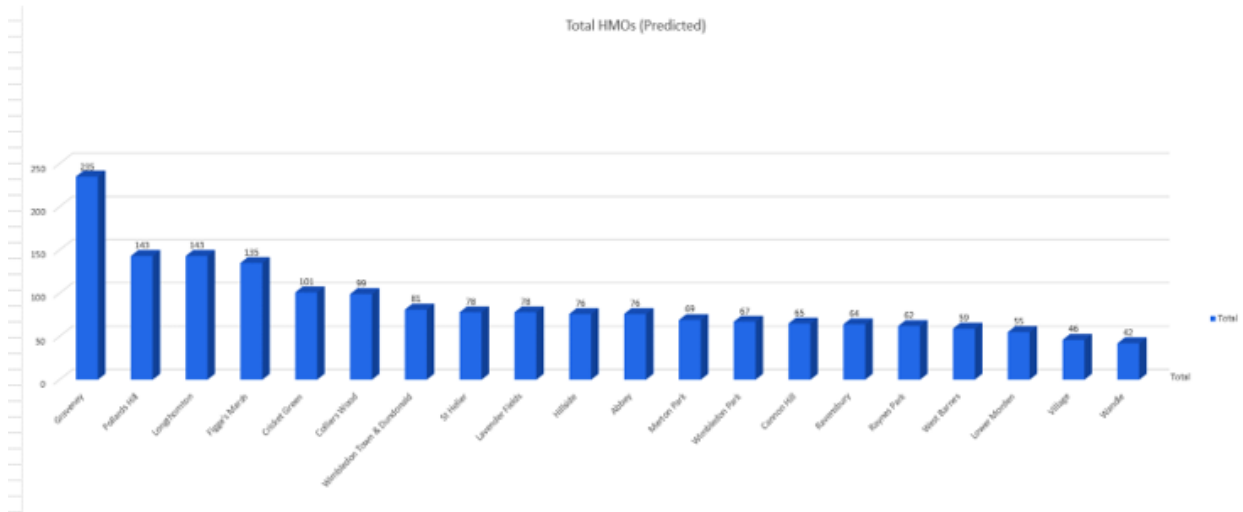
## **7 EVIDENCE FOR AN IMMEDIATE ARTICLE 4 DIRECTION**

- 7.1 It is necessary to produce robust evidence in support of the introduction of an Article 4 Direction. It is also necessary to limit the Article 4 Direction to the smallest geographical area possible as opposed to following a blanket approach across the borough.
- 7.2 Failure to do this can lead to intervention by the Secretary of State who has the power to request that the Council either pause or stop the Article 4 Direction. The Secretary of State is notified at two points in the process – at the initial stage of introducing the Article 4 Direction and at the Confirmation stage.
- 7.3 A response was received from the Secretary of State on 23<sup>rd</sup> December 2022. It stated that “...We are grateful to the council for the material already provided to support its decision to make this Direction. We or the policy team will be in contact if we require any additional evidence to assist with our assessment of the Article 4 direction and will inform you in writing of the Secretary of State’s decision in due course. Please do not assume that the Article 4 Direction has met the policy tests until you are notified by the Department.”
- 7.4 The National Planning Policy Framework advises that all Article 4 Directions should be applied in a measured and targeted way. They should be based on robust evidence and apply to the smallest geographical area possible.
- 7.5 It further states, that other than for those where it relates to a change from non-residential use to residential use, Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area.
- 7.6 This is further explained in Government Planning Guidance which states that the potential harm that the Article 4 Direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area (e.g. those covering a large proportion of or the entire area of a local planning authority, national park or area of outstanding national beauty).
- 7.7 For an Immediate Article 4 Direction, additional evidence is required in that the circumstances in which an immediate direction can restrict development are limited. Immediate directions can be where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.
- 7.8 Merton has used data from a number of sources to inform its decision on whether a non-immediate or immediate Article 4 should be introduced, as well as to determine the geographic area – in effect wards – that should be selected.

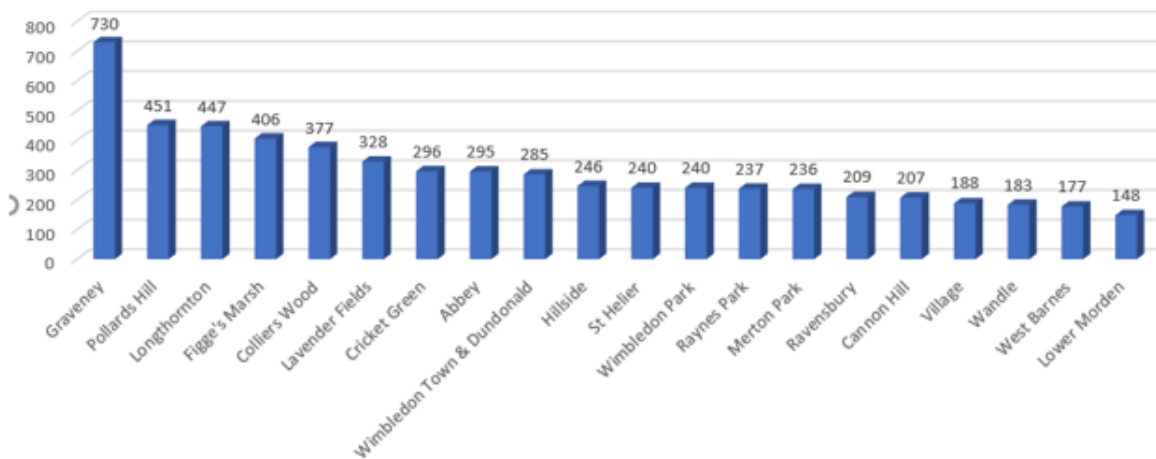
- 7.9 To ensure that the Council has robust data as required by the National Planning Policy Framework, the Council has analysed its existing planning and licensing records on the PRS and specifically HMOs including anti-social behaviour complaints and other complaints made to the Council. The Council's 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, complaints received by the Council on Anti-Social Behaviour, levels of serious hazards, particularly the most serious hazards, receipt of benefits and other statistics and overlays the data to predict the likely numbers and locations of HMOs and whether there is a link between HMOs and immediate threats to local amenity and the proper planning of any areas in Merton.
- 7.10 As the data demonstrates, HMOs are accessible to many of Merton's residents who are in receipt of housing benefit and who cannot 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.
- 7.11 Although this is extensive data analysis, it is far less likely to pick up shared houses and flats (HMOs) where tenants have no anti-social behaviour complaints, don't have Category 1 hazard records against the property, are in a stable tenancy, and are not in receipt of benefits.
- 7.12 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.
- 7.13 The data tells us that Graveney, Longthornton, Pollards Hill, Figge's Marsh, Cricket Green, and Colliers Wood wards are likely to have more HMOs that are causing harm to the wellbeing of the area and are an immediate threat to local amenity. This is detailed in the Metastreet report (available on the webpage [www.merton.gov.uk/prsconsultation](http://www.merton.gov.uk/prsconsultation)) and is based on the extensive analysis they carried out. Some of the relevant maps/charts illustrating this are shown below.
- 7.14 While Lavender Fields ward is ninth in the list of wards with the poorest performing HMOs, it is included in the Immediate Article 4 Direction as it is surrounded to the north, east and south by wards with the 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.



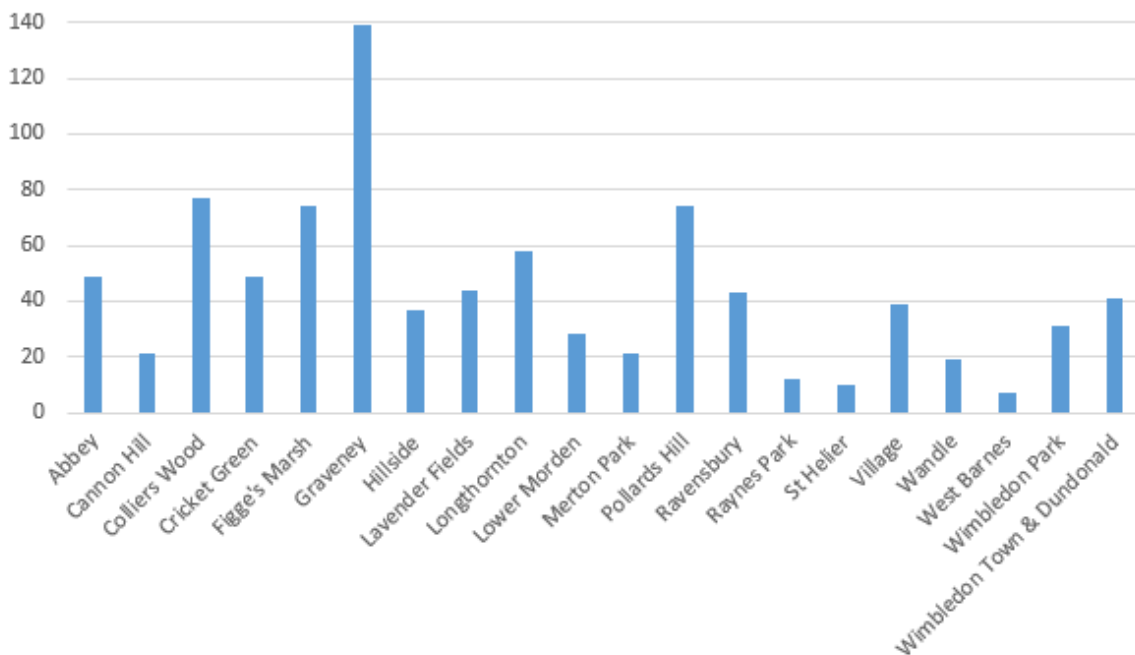
**Figure 2: graph of predicted geographic location of the worst performing HMOs by ward (source: Metastreet; same data as Figure 1 graph)**



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



**Figure 4: ASB linked to HMOs. Graveney (139) has the highest recorded ASB incidents linked to HMOs**



- 7.15 In addition to the extensive Metastreet data, consideration was given to the frequent complaints being received by several different service areas, including Environmental Health and Planning Enforcement amongst others. Numerous complaints were being received in the year preceding the introduction of the Immediate Article 4 Direction, from MPs; Councillors; and residents, on a regular basis.
- 7.16 Many of these outlined the harm being caused to local areas and the wellbeing of residents through the many small and badly managed HMOs which were springing up and not being controlled due to being allowed under Permitted Development Rights and in many cases being either too small to be covered by mandatory licensing or avoiding licensing.
- 7.17 Whilst many issues such as anti-social behaviour and fly-tipping can be dealt with once they have occurred by services and controls such as Environmental Health, it was felt that it was imperative to tackle the problems at source, proactively rather than reactively. Requiring small HMOs to apply for Planning Consent ensures that consideration is given at the time of development to adequate waste facilities; outside amenity space; appropriate internal layout and design; consideration of parking impacts; and proposed external changes which may be out of keeping with the neighbourhood.
- 7.18 It was agreed that due to the immediate threat posed to the amenity of the area by the many instances of complaints being reported relating to HMOs without planning permission, an Immediate Article 4 Direction was the only option for the Council to prevent further threats to local amenity not only to the areas selected but to local residents, many of whom were distraught by the issues, as well as to protect the wellbeing of tenants who were at risk due to inadequate facilities.

## **8 IMPACT UPON HOUSING NUMBERS**

- 8.1 HMO's are undoubtedly an important source of housing within London as a whole and specifically within Merton. This is recognised in the London Plan 2021 and Merton's own Local Plan.
- 8.2 HMO's provide housing for some of the most vulnerable in our society and flexible accommodation for many people who need to change home due to education requirements; work; family break-ups; or other personal circumstances.
- 8.3 Undoubtedly, HMO's provide a valuable contribution to Merton's overall housing capacity. However, it is really important to ensure that the quality of HMO's is adequate to meet the needs of tenants, without affecting their health and safety and also, that badly managed HMO's, or HMO's that are badly designed with inadequate facilities, do not lead to unacceptable impacts upon the amenity of areas and the wellbeing of residents.
- 8.4 For this reason, where Merton has identified that there is harm being caused to both residents and tenants by poorly designed and managed HMO's, the Council has brought in an Immediate Article 4 Direction – as well as considering proposals to extend mandatory licensing to smaller HMO's in the form of Additional Licensing.
- 8.5 There are concerns from landlords and from the NRLA that the introduction of the Article 4 Direction will result in a reduction or stagnation in housing numbers. However, there is no evidence that this is the case. Additionally, it should be noted that the Article 4 Direction cannot be applied retrospectively so will not affect small HMOs already in operation, although evidence such as a tenancy agreement will need to be provided, if the landlord has not already obtained a Lawful Development Certificate. The additional cost of applying for planning is also relatively low when compared to the potential rental income – for instance, Merton has above average rents for London, with 45.9% of median earnings used to pay rent (source TFL 2020). Therefore it is unlikely to result in a significant number of landlords choosing not to enter the HMO market.
- 8.6 The introduction of an Article 4 Direction will not mean that it is impossible to convert a single-family dwellinghouse into a small HMO. It will mean, however, that the Council will be able to manage the impact of such conversions and will be able to ensure that they are of an appropriate standard and that they do not give rise to a harmful impact on amenity or wellbeing of the area.
- 8.7 It is considered that, combined with the Council's proposed additional licensing scheme which aims to improve housing conditions and standards of management in the private rented sector and to reduce ASB associated with poorly managed HMO's, the Article 4 Direction will be an effective measure to ensure an increase in the standards of HMOs in the borough and to manage their impacts on wider amenity.

## **9 RISK OF COMPENSATION CLAIMS**

9.1 As stated in the October Cabinet report, whilst a non-immediate Article 4 Direction, gives 12 months' notice of its introduction, an Immediate Article 4 Direction leaves the Council open to the risk of compensation claims.

9.2 A property owner who wishes to change the use of a property from a C3 dwelling to an HMO following the introduction of the Immediate Article 4 Direction and loss of permitted development (PD) rights becomes eligible to claim compensation from the Council provided:

- They submit a planning application within 12 months of the commencement of the Immediate Article 4 Direction; and;
- Either Planning Consent is refused; or;
- Planning Conditions are applied to the approval that would reduce the value of the development.

9.3 In this instance, the cut-off date for submitting a valid planning application is 16<sup>th</sup> November 2023 – although the refusal can be at any time after this.

9.4 The measure of compensation in a compensation claim follows the rules for compulsory purchase compensation in Section 5 of the Land Compensation Act 1961 and is essentially the difference in the value of the subject property with and without the right to change to an HMO.

9.5 Claims could include such matters as:

- Expenditure in carrying out work which has been rendered abortive. It should be noted that this work should have been undertaken prior to the introduction of the Immediate Article 4
- 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

9.6 Claims would be made to the Council and if not agreed, would be determined by the Upper Tribunal of the Land Chamber

9.7 In the October Cabinet report, whilst it stated that it was not possible to quantify the cost of compensation claims, 2 statements were made:

- the typical cost of converting a family home to a small (6 bed and under) HMO could be between £10,000 to £30,000
- 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.



- 9.8 At the Landlords' Forums, there was criticism of both statements. In particular, the Forums were attended by several larger developers/landlords who develop many HMOs and who are at the upper end of the market as opposed to the many one-off, smaller, landlords. These bigger developers produce schemes which not only meet, but in many cases, far exceed the minimum standards required for an HMO with en-suite bedrooms; extensions; high quality renovations and furnishings.
- 9.9 Such conversions could cost between £100,000 to £300,000 (using their stated costs) so far above the £10,000 to £30,000 quoted. However, these are not typical small HMO conversions, they are at the top end of the market and aiming to attract high rents from professionals. Due to the nature and cost of these conversions any difference in sales value between an HMO and a family home, could also be significantly different.
- 9.10 It is very important to note that whilst the amounts spent on these conversions and property values could run into hundreds of thousands of pounds, the standards required of an HMO are not only met but exceeded, so in general there should be no reason for planning consent to be refused, or Planning Conditions applied that reduce the value, and therefore, no compensation claim could be submitted. An exception to this might be if parking restrictions are Conditioned.
- 9.11 It needs to be born in mind that the amount of compensation, if any, that might be recovered is dependent on the circumstances of a particular property. For example a house that is less suitable for a family, e.g. because of location, lack of amenity space or the number of floors might have a higher value as an HMO compared with a C3 use. Equally, the converse might be true.
- 9.12 Following a Legal Challenge to the Immediate Article 4 Direction, advice from an external Barrister been sought on a number of issues including whether the correct process has been followed, and what could be considered under a compensation claim.
- 9.13 The advice received confirmed that the Council had followed the correct procedure for implementing and consulting on the Immediate Article 4 Direction.
- 9.14 The advice further confirmed what could be claimed for should a compensation claim be submitted, and that these would have to be assessed on a claim-by-claim basis.

## **10 ASSESSING PLANNING APPLICATIONS CAUGHT BY THE ARTICLE 4**

- 10.1 It is very important to note that:
- Small HMOs that were already operating or ready for occupation prior to the introduction of the Immediate Article 4 on 17<sup>th</sup> November 2022 are not affected – although evidence of being completed will be required.

- Compensation Claims are only applicable to planning applications submitted within 12 months of the start of the Immediate Article 4 Direction, so by 16<sup>th</sup> November 2023, which have subsequently either been refused or had Planning Conditions applied that reduces the value of a development.
- 10.2 A planning application is either dealt with by an officer under Delegated Authority or called into Planning Application Committee (PAC) by a Member, or referred to PAC due to the number of objections received. As well as policies in the Council's Local Plan and the London Plan 2021, there are very clear standards against which HMOs are assessed by planning officers which consider such issues as Licensing space standards; design/layout; amenity space; waste provision; parking. They also seek the view of relevant officers in other teams such as the HMO Officer; Waste Officer; and Parking Officer.
- 10.3 A number of these are set out in a Housing document called HMO's – Requirements which is available on Merton's website: [Microsoft Word - HMO Requirements \(July 2021\) \(merton.gov.uk\)](https://www.merton.gov.uk/microsoft-word-hmo-requirements-july-2021)
- 10.4 The Council's [new Local Plan](#) is being examined by independent planning inspectors who have undertaken two public enquiries in 2022 and have stated that their final report is likely in spring 2023.
- 10.5 The Planning Policy Team is drafting a supplementary planning document (SPD) to provide planning guidance on assessing future planning applications for HMOs across the whole borough, to supplement the existing planning policies that already apply to HMOs in Merton. Topics that will be covered will include space standards, travel and parking, noise, bins and bike storage, and other local amenity issues. The SPD will also signpost to the Council's licensing regime for HMOs and clarify what is dealt with under planning rules and what is considered under licensing to ensure that applicants, decision-makers, tenants, landlords and neighbours are clear how the Council is promoting higher standards in the private rented sector.
- 10.6 All councils are required to carry out at least six weeks' public consultation on Supplementary Planning Documents. Recommendation E (for Cabinet) of this report proposes delegating approval to start the public consultation to the Executive Director of Housing and Sustainable Development in consultation with the Cabinet Member for Housing and Sustainable Development to accelerate the timetable for starting the consultation on the SPD, once drafted.
- 10.7 The SPD will be drafted based on the new policies in the Council's emerging Local Plan as these contain more up-to-date policies on design, pollution, travel and parking and other amenity issues that are relevant to guide HMOs. Developing the HMO guidance base on the newest planning policies will also prevent the SPD being out of date as soon as the new Local Plan is adopted.
- 10.8 The timetable for producing the new SPD will be confirmed with the Cabinet Member and is likely to be published for consultation in Spring 2023, linked to the Council's Local Plan.

- 10.9 Planning Applications Committee (PAC) Members have received a briefing session on the introduction of the Immediate Article 4 Direction and the assessment of HMO applications to ensure that they are fully up to date on issues that are relevant when considering planning applications for HMOs.
- 10.10 Consideration is also being given to a PAC site visit to an example of a high standard HMO with the developer providing information on how house shares of today are:
- Purchased
  - Converted
  - Run
  - Professionally and compliantly managed

## 11. CONSULTATION RESULTS FOR ARTICLE 4 DIRECTION

### 11.1 Results from the Forums

As stated in Section 3, three Landlord Forums (one purely on Article 4) and one Stakeholder Forum were held, both virtually and in person, during both the day and evening to maximise attendance. Overall, landlords who attended the events and expressed views, were cautious of the Council's Immediate Article 4 Direction. They mostly questioned its immediacy and the impact that it could have on landlords/developers already in the process of converting properties into small HMOs. The potential to reduce antisocial behaviour and availability of affordable housing was also questioned, amongst other issues.

### 11.2 Some key themes were noticeable, including:

(Note: a full summary provided by ORS is attached as **Appendix D**)

- **Evidence used for the Immediate Article 4 Direction**

Was there adequate evidence to justify it and how did this compare across other London Boroughs

- **Ability to reduce issues**

Are planning controls the right method to reduce ASB and couldn't licensing tackle problems more effectively

- **Potential impact on availability of HMOs and affordable housing**

Some seemed to feel affordable housing could be impacted and in any case the amount of HMO accommodation would be reduced

- **Immediacy of the Article 4 Direction and potential for planning decisions to be delayed or denied**

Considerable concern over this point from landlords who were already in the process of developing properties and were concerned about the cost of delays and whether they would even be granted planning permission

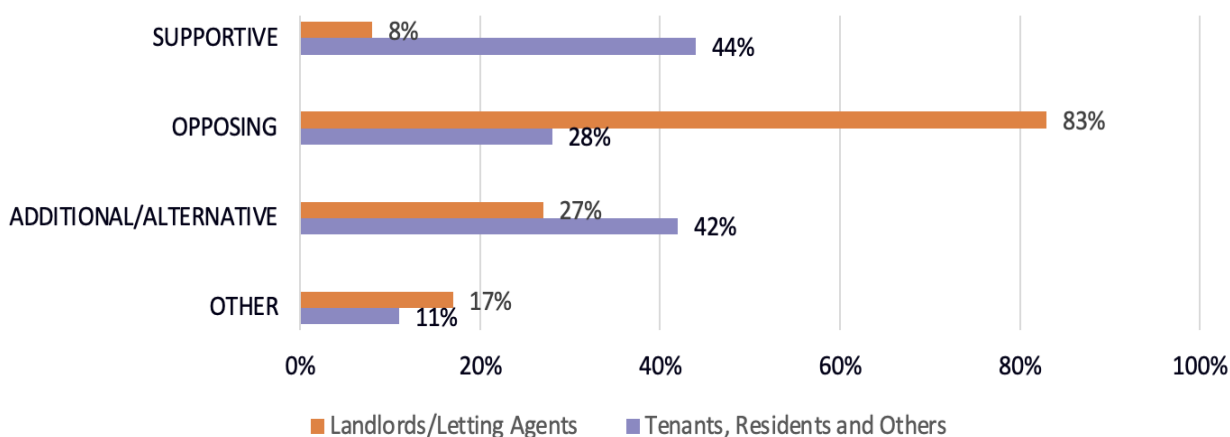
### 11.3 Article 4 Representations Direct to the Council

As well as responding to the questionnaire or attending a Forum, there was the opportunity to make a direct representation to the Local Planning Authority (the Council) by emailing Future Merton.

- 11.4 In total 15 different individuals or organisations made direct representations to the Council, including 9 landlords, a for-profit housing association operating in the borough, a legal representative, an MP, and one other who did not categorise themselves.
- 11.5 The full responses received are available (without personal information) on our webpage: [www.merton.gov.uk/prsconsultation](http://www.merton.gov.uk/prsconsultation).
- 11.6 2 respondents were supportive of the initiative, with one respondent stating it should be extended to other parts of the borough.
- 11.7 In addition to the written responses, several phone calls were received by the Future Merton and Development Management teams. Those who called in were asked to also submit their representations in writing.
- 11.8 All telephone representations were calling to object to the proposals, particularly the immediate introduction of the Article 4 Direction. A summary is provided below:
- Most related circumstances where they have purchased an existing shared house in poor condition
  - Their objections are that if they'd known about the Article 4 Direction in advance, they'd either have already applied for planning permission or considered their investment differently.
  - Frustration around the lack of notice. Callers say they'd never have bothered improving the property had they known; they'd have carried on renting it in the original condition.
- 11.9 **Responses to Questionnaire**  
As stated in Section 3 – Consultation Overview – a total of 487 questionnaires were received. These were categorised into different types of respondents, with some classing themselves as in more than one category – for instance a landlord could also be an owner occupier. ORS analysed the results based on the key category an individual identified with.
- 11.10 The 2 major groups – Landlords/Letting agents and Residents/Tenants made up the vast majority of respondents with these being quite similar in number. For instance, there were 215 Landlords/Letting Agents and 251 Residents/Tenants.
- 11.11 ORS were able to gather some information on the number of properties a landlord held. Whilst this information was only available for around half of landlords responding, results indicate that levels of disagreement with the Article 4 increase for landlords/letting agents with 2+ properties: 62% disagree with the general introduction, 66% disagree with the introduction in those seven wards.

11.12 There was a specific open-ended question: **'If you have any comments about the proposed policy to require planning permission to convert a single property into an HMO (Article 4 Direction) in some parts of Merton, or the areas that it should cover, please explain in the space below'**. The responses have been summarised in chart form. Fig 1 shows the proportions making comments split by high level theme (support, oppose etc) and Figs 2 to 5 indicate the proportions making detailed points within each of the overall themes. Not all respondents provided detailed comments, as can be seen from the limited base sizes shown.

Figure 1: High level summary



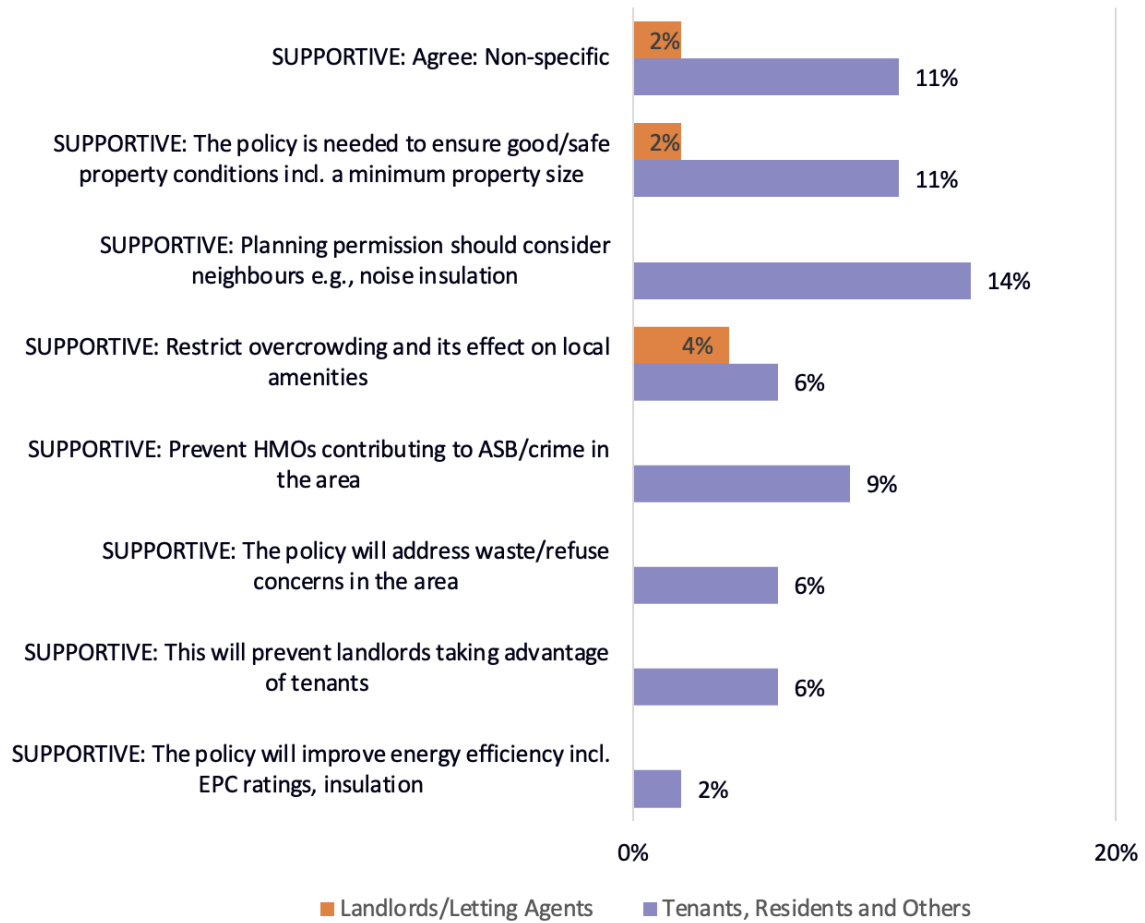
Base: Landlords/Letting agents (52 respondents, 70 comments), Tenants, Residents etc (64 respondents, 80 comments)

11.13 83% of landlords/letting agents providing a comment said something in their response which opposed the Immediate Article 4 Direction with only 8% saying something in support. Tenants/Residents/Others were more likely to say something in support with over 44% doing so.

11.14 Tenants/Residents/Others were more likely to mention an additional/alternative proposal with 42% who provided a comment mentioning one in their response. This compares with 27% of Landlords/Letting Agents mentioning an additional/alternative proposal.

11.15 There were only 3 responses from organisations to this question, with an even split of supportive/opposing comments and additional/alternative proposals provided.

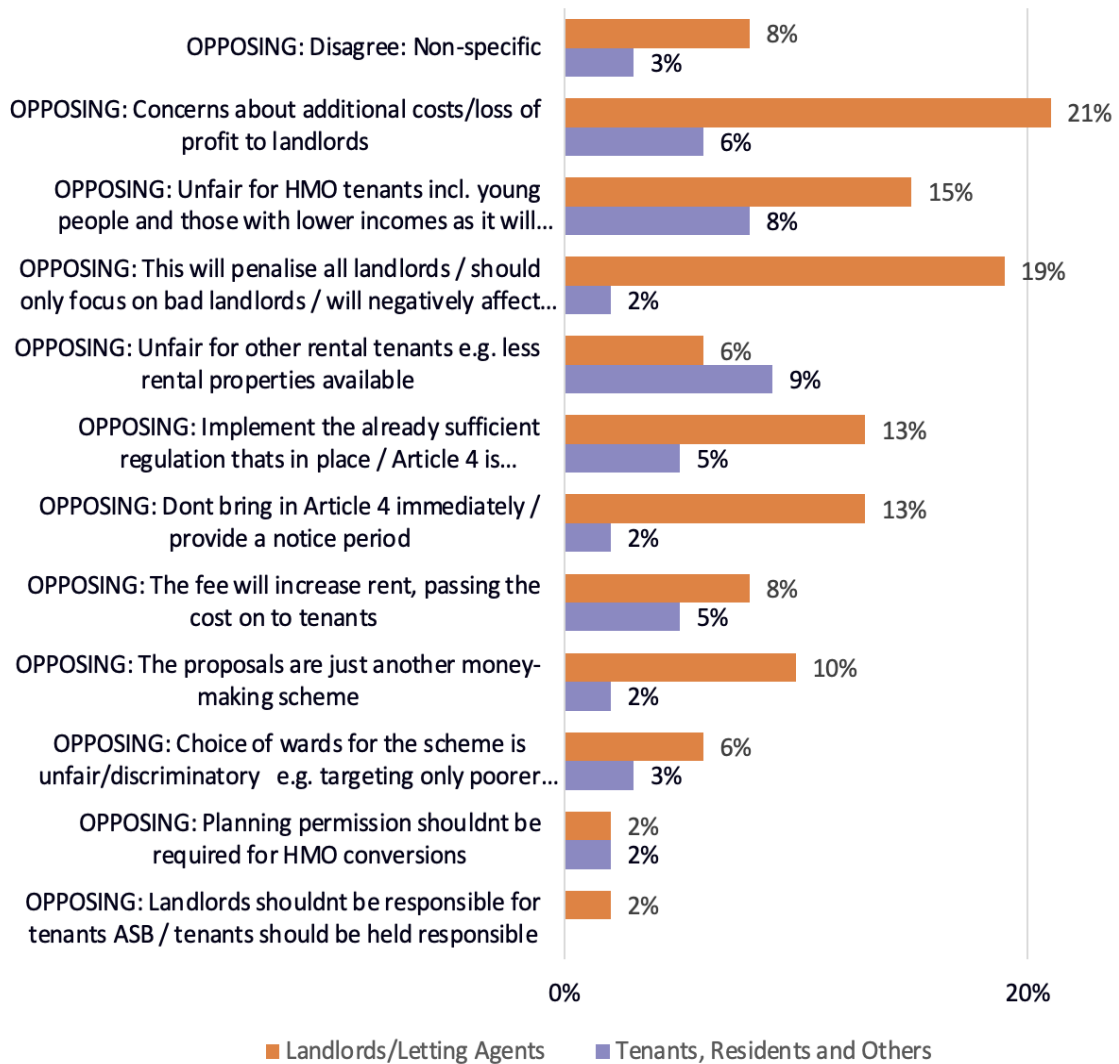
**Figure 2: Supportive responses**



**Base: Landlords/Letting agents (52 respondents), Tenants, Residents and others (64 respondents)**

- 11.16 14% of Tenants/Residents/Others providing a comment thought the planning permission should consider neighbours e.g. noise insulation, with a slightly smaller proportion (11%) saying the policy is needed to ensure good/safe property conditions including a minimum property size.
- 11.17 4% of Landlords/Letting Agents who gave a response said it would restrict overcrowding and its effect on local amenities.

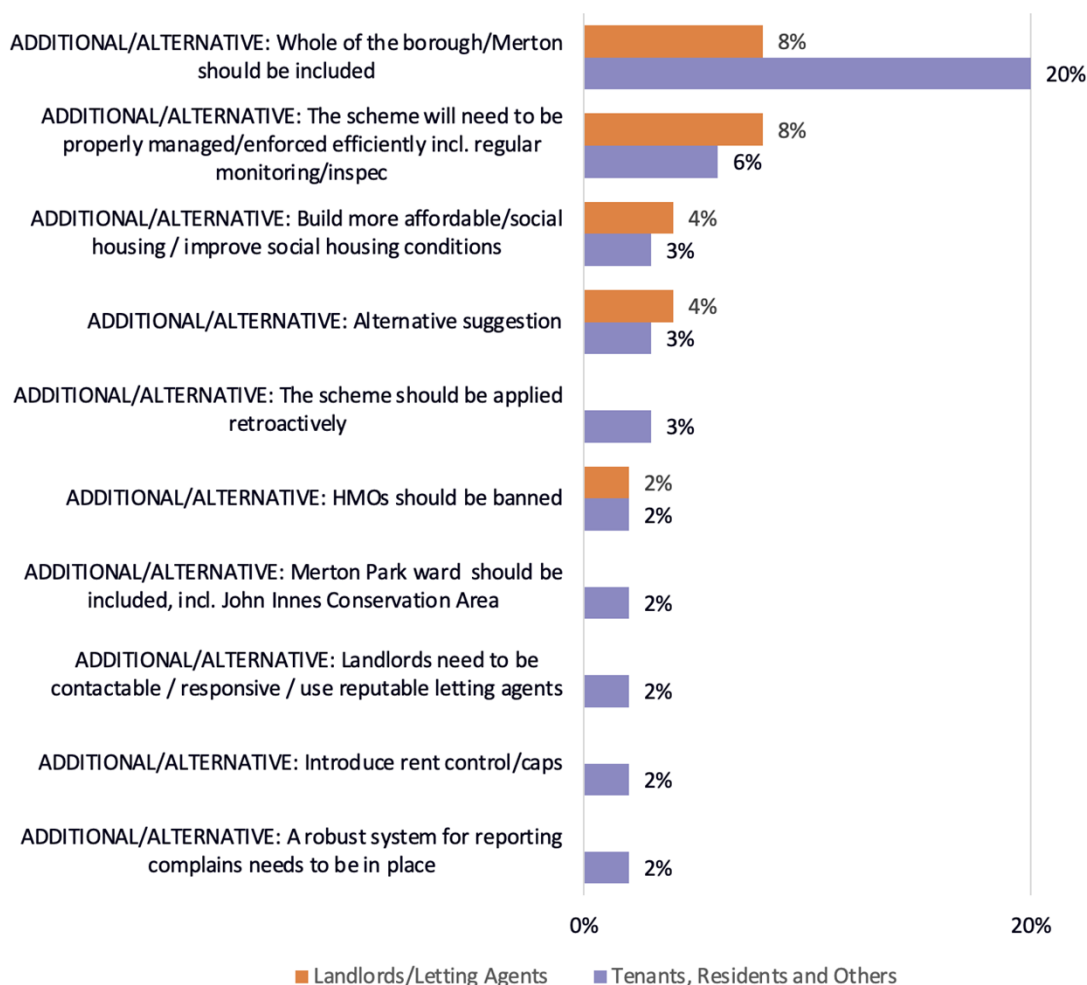
**Figure 3: Opposing responses**



**Base: Landlords/Letting agents (52 respondents), Tenants, Residents and others (64 respondents)**

- 11.18 21% of Landlords/Letting Agents who gave a response had concerns about additional costs/loss of profit to landlords, with 19% saying it will penalise all landlords/should only focus on bad landlords/will negatively affect good landlords.
- 11.19 Just under a tenth of Tenants/Residents/Others who provided a comment thought it would be unfair for HMO tenants including young people and those with lower incomes, and also other rental tenants, as it will reduce the amount of available properties often sought out by these groups.

Figure 4: Additional/alternative responses

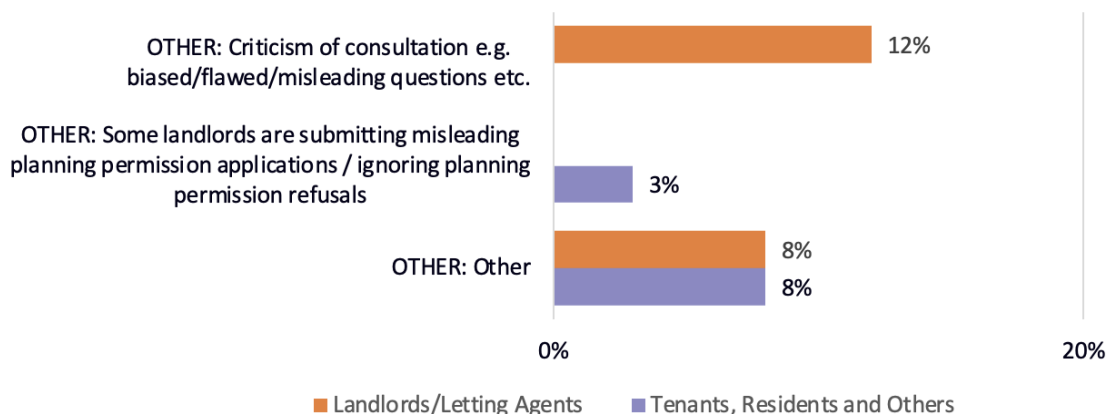


Base: Landlords/Letting agents (52 respondents), Tenants, Residents and others (64 respondents)

- 11.20 A fifth of Tenants/Residents/Others who gave a response suggested that the whole of the borough/Merton should be included and 6% highlighted the scheme will need to be properly managed and enforced efficiently.
- 11.21 8% of Landlords/Letting Agents providing a comment mentioned that the scheme will need to be properly managed and enforced efficiently with the same proportion suggesting the who whole of the borough/Merton should be included.



Figure 5: Other responses



Base: Landlords/Letting agents (52 respondents), Tenants, Residents and others (64 respondents)

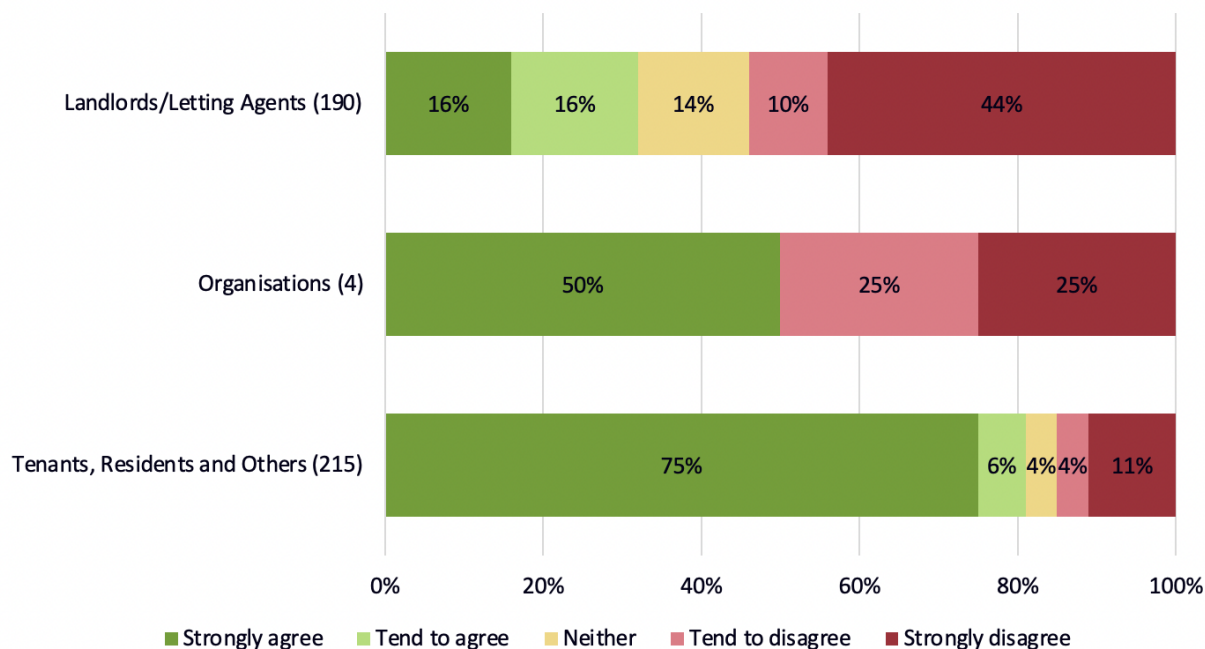
11.22 Fig 5 summaries the other type of comments provided not falling into any of the previous categories of response.

11.23 In addition to the expected concerns expressed by landlords around the immediate introduction of the Article 4 Direction, and the resulting risk to developers and potential compensation claims to the Council, the following points were made via the questionnaire:

- I understand that the Article 4 Direction relates only to the change from Class C3 (dwelling house) to Class C4 (small HMO), and not to changes from C4 to C3. If the latter was also contemplated, that would affect the flexibility with which landlords could use their premises and encourage / risk them leaving the sector.
- The rules outlined would treat the rental of a property to parents who are not married with a child from a previous relationship as an HMO (with only 3 people living in the house). Are un-married couples considered 1 or 2 households? When plans are submitted it may not be known who will be renting the property and the dynamics of the family.
- We think what the council should do is to introduce selective/additional licensing schemes to improve HMO standards then it's a win-win situation for the tenants and council. I am in favour of private landlord registration so that the tenants can check the properties meet all the standard on the website. The key thing is to help landlords increase rental property supplies and improve the standards. HMO article 4 works exactly the opposite.

11.24 The charts below (fig 6 to 9) represent the numerical responses to questions contained within the questionnaire. These are grouped by primary respondent.

**Figure 6: Agreement with the proposal to introduce a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction), in some parts of Merton**

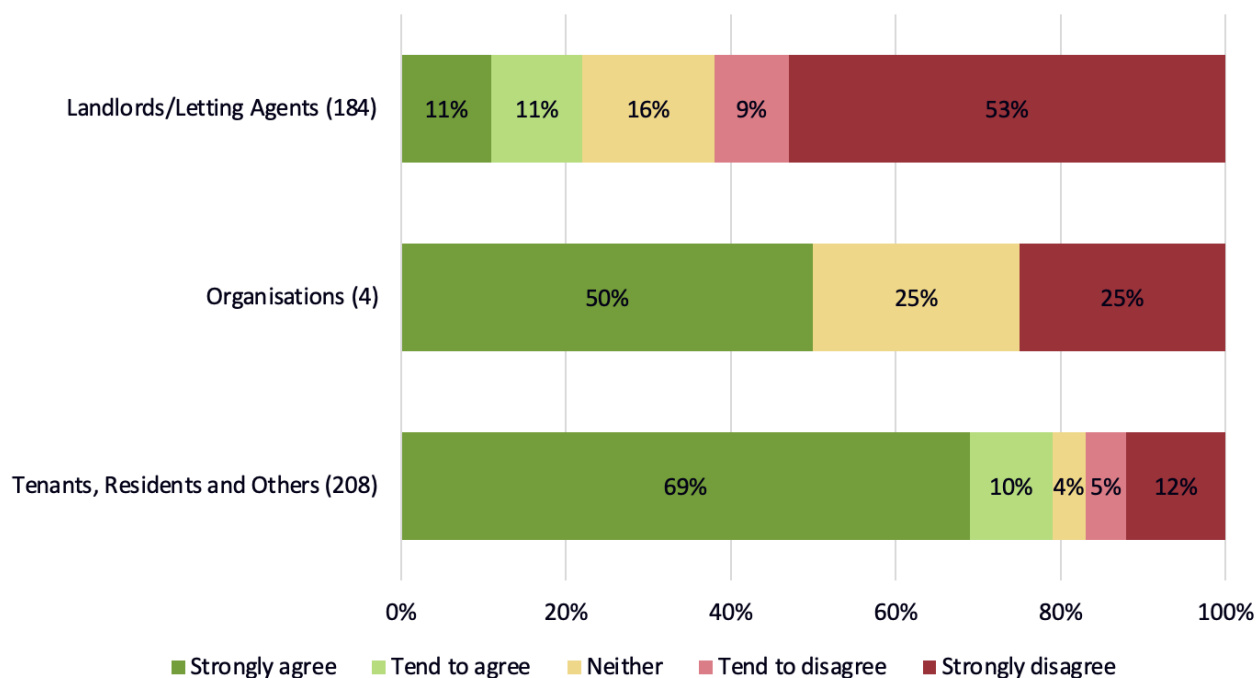


**Base: Numbers in brackets show the number of respondents giving a valid answer within each sub-group**

11.25 Almost a third (32%) of landlords/letting agents were in agreement with the proposal to introduce a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction) in some parts of Merton, but more than half (54%) disagreed. There was an even split in agreement and disagreement between organisations. It should be noted that the results for organisations are only based on 4 cases.

11.26 Tenants/residents/others, however, were far more supportive with 81% in agreement, and only 15% in disagreement.

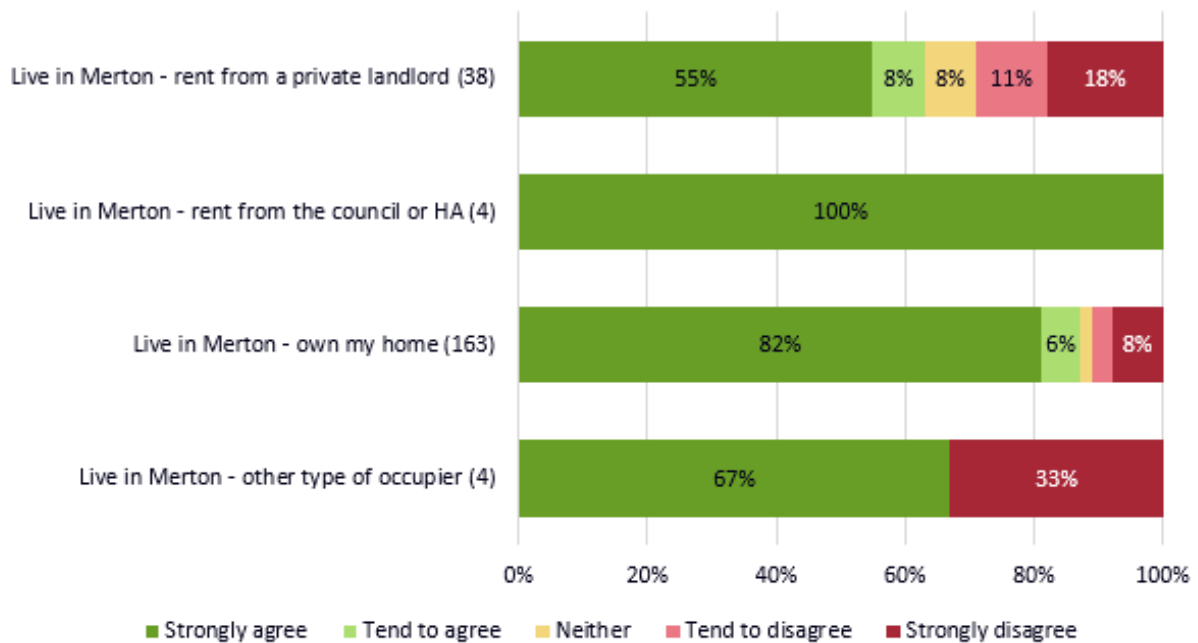
**Figure 7: Agreement with the Council’s proposal to introduce this policy (Article 4 Direction) covering seven particular wards**



**Base:** Numbers in brackets show the number of respondents giving a valid answer within each sub-group

11.27 Just over a fifth (22%) of landlords/letting agents were in agreement with the Council’s proposal to introduce this policy (Article 4 Direction) covering seven particular wards, but nearly two-thirds (63%) disagreed. Tenants/residents/others were far more supportive, with nearly four-fifths (79%) in agreement and only 17% in disagreement. It should be noted that the results for organisations are only based on 4 cases.

Figure 8: Agreement with the proposal to introduce a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction), in some parts of Merton (only respondents who live in Merton and are not landlords)

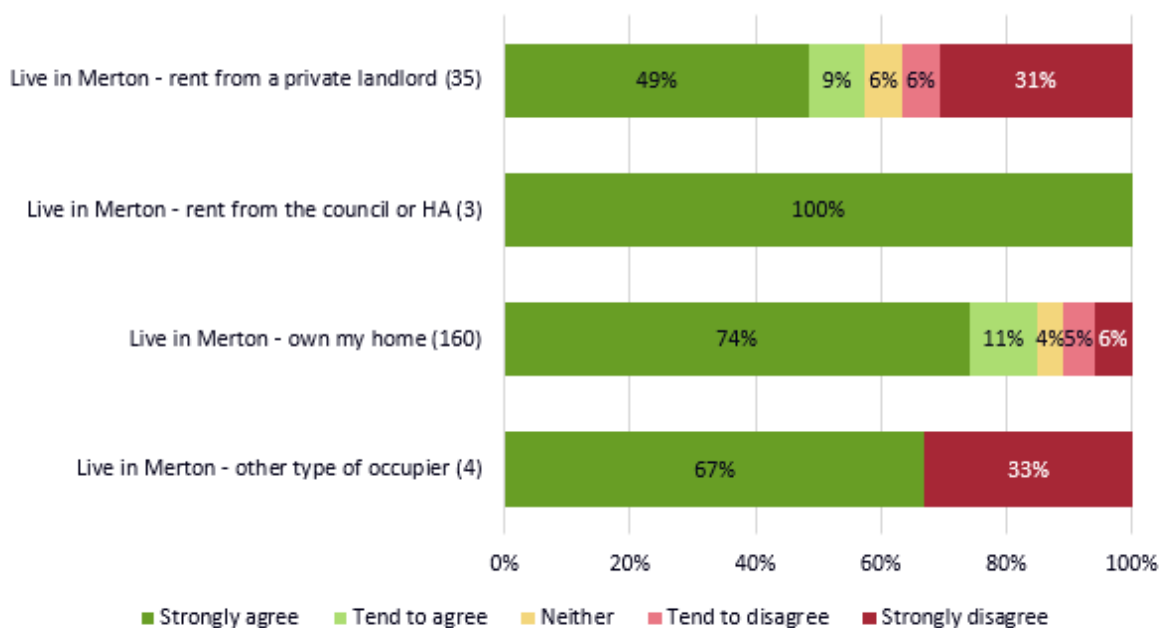


Base: Numbers in brackets show the number of respondents giving a valid answer within each sub-group

11.28 87% who live in Merton and own their home agreed with the proposal to introduce a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction), in some parts of Merton. In contrast, the proportion of those living in Merton and renting from a private landlord who agreed was somewhat lower at 63%

11.29 It should be noted that the results for those who live in Merton and rent their home from the Council or housing association or live in Merton as another type of occupier are both based only on 4 cases.

Figure 9: Agreement with the Council's proposal to introduce this policy (Article 4 Direction) covering seven particular wards (only respondents who live in Merton and are not landlords)



11.30 85% of those who live in Merton and own their home agreed with the proposal to introduce a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction), covering seven particular wards in Merton. In contrast, the proportion of those living in Merton and renting from a private landlord who agreed was somewhat smaller, although still more than half (57%).

11.31 It is worth noting that the results for those who live in Merton and rent their home from the council or housing association or live in Merton as another type of occupier are only based on 3 and 6 cases respectively.

**Summary of Consultation Outcome**

11.32 The results, from questionnaires; forums; and direct representations to the Local Planning Authority, clearly indicate that whilst there is considerable concern from landlords, there is overwhelming support from residents and tenants for the introduction of a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction) in some parts of Merton, with 87% of those who own their own home, and 63% of those renting from private landlords agreeing with the introduction.

11.33 Additionally, whilst a large number of landlords/letting agents (54%) disagreed with the introduction of a policy requiring planning permission to convert a single home into a small HMO (Article 4 Direction) in some parts of Merton, it is important to note that almost a third were in agreement with its introduction.

11.34 With regard to the specific 7 wards selected by the Council for the introduction of the Immediate Article 4 Direction, 79% of residents/tenants/others were in agreement with the Council's proposal

whilst tenants renting from a private landlord were somewhat lower at 57%. However, whilst 22% of landlords/letting agents responding to the questionnaire agreed with the Council's proposal to introduce the policy (Article 4 Direction) *in the seven particular wards*, nearly two-thirds (63%) disagreed.

- 11.35 When asked for comments about the proposed policy, or the areas that it should cover, one-fifth of tenants/residents/others providing a comment in the questionnaire suggested that the whole of the borough/Merton should be included and 14% thought the planning permission should consider neighbours, e.g. noise insulation.
- 11.36 Feedback concerning Article 4 indicated that landlords greatest concern related to the *immediacy* of the introduction, suggesting that a notice period should be provided to allow landlords to consider whether or not to go ahead with planned HMO conversions, and to avoid negatively affected landlords from making compensation claims against the Council. Many participants were broadly supportive of the introduction and aims of the Article 4; but felt that the introduction of an immediate directive was unfair, and that its introduction was insufficiently publicised at the time.
- 11.37 There was some concern that the guidance for HMO conversion under the Article 4 is not clear enough, creating risk and therefore stress for those wanting to convert their properties, along with the fear that planning permission would not be granted even if the stipulations of the guidance were exceeded. Related to this sentiment was the notion expressed that 'It's just more loopholes to jump through' and that the process is 'already a headache'.
- 11.38 The length of time required to get planning permission was a further concern, particularly in the case of those needing to utilise bridging finance. It was expressed that there were insufficient resources in the Council to deal with the resultant increase in applications in a timely fashion.
- 11.39 Several participants expressed the view that the Article 4 would lead to a reduction in new units of the only form of housing many residents can afford becoming available (evidence was cited that currently demand for HMOs significantly outstrips supply), and that this would be to Merton's detriment. Furthermore, there was concern that this will lead to the rents of existing HMOs increasing as supply reduces and planning costs are added to mortgages.
- 11.40 Some participants felt that the introduction of the directive was indicative of a generalised "anti-HMO" sentiment amongst members, and that that high quality HMOs were being assumed to be of detriment to the area by default simply by virtue of being a HMO, whilst conceding that there are issues with low quality HMOs.
- 11.41 The NRLA suggested that the immediate article 4 direction would lead to stagnation within the HMO sector in Merton, increasing rents and decreasing the availability of affordable housing. Public Health Merton, on the other hand, argued that the article 4 direction would likely be effective in

preventing illegal development or overdevelopment of rented properties whilst only having minimal impact on housing affordability.

- 11.42 Other comments were around using the licensing scheme and environmental health enforcement as a more appropriate mechanism for dealing with issues, rather than the planning system.
- 11.43 Additionally, some landlords felt that the true costs of compensation claims could run into hundreds of thousands of pounds and that this had been misrepresented in the Cabinet report in October 2022.
- 11.44 It was also felt that there was insufficient evidence to introduce an Immediate Article 4 Direction.

## **12. RESPONSE TO COMMENTS/REPRESENTATIONS RECEIVED**

- 12.1 All of the comments and representations received, either direct to the Council or via ORS, have been carefully considered and analysed. Responses to the key themes are detailed below.
- 12.2 Whilst a number of landlords complained about the lack of consultation over the introduction of the Immediate Article 4 Direction (not the immediacy but being made aware at all), it is quite clear that the consultation went well over and above what was required under the legal framework with regard to contacting affected bodies and individuals.
- 12.3 As stated earlier in the report, a comprehensive consultation exercise was undertaken with regard to the introduction of the Immediate Article 4 Direction.
- 12.4 Commencing with the public Cabinet report in October, 2022, which approved the Immediate Article 4 Direction in 7 wards; the questionnaire launch on the 14<sup>th</sup> November, 2022 was followed by on 17<sup>th</sup> November – the date the Immediate Article 4 Direction came into effect - the Article 4 Direction and Notice being posted on our consultation webpage; notification to the Secretary of State; notification to statutory bodies; posting of Notices on lampposts; and publication in the press.
- 12.5 The consultation period for return of questionnaires and comments to the Local Planning Authority was open for 10 weeks as opposed to the 6 weeks required under the statutory framework. Additionally, during this time, 2 public landlord forums were held, as well as an additional landlord forum purely on the Article 4 Direction at the request of some landlords. There was also a stakeholder forum. These were held both virtually and in person, during the day and the evening, to give as many landlords and property agents as possible, the opportunity to attend.
- 12.6 Additionally, further publicity on both the proposed Landlord Licensing and the Immediate Article 4 Direction took place as follows:

### **During November**

- Press releases from the Council's Communications Team
- Article in the printed Council newsletter for Nov 2022 distributed to households across the borough
- Email sent to statutory undertakers and those who have registered to be updated with changes to planning regulations/ policy in Merton (Approximately 1600+ individuals and organisations).
- Associations directly contacted by the Council's retained consultation agency, Opinion Research Services (ORS) included: NRLA, LLAS , Propertymark , The BLA, The Guild of Residential Landlords, SafeAgent, London Property Licensing, UKALA (UK Association of Lettings Agents) and RICS (Royal Institution of Chartered Surveyors)
- Letters sent to HMO licence Holders via post (royal mail first class). (Approx. 370 Landlords).
- Contacted Leaders & Chief Executives of the following Local Authorities; Wandsworth & Richmond upon Thames, Croydon, Sutton, Kingston and Lambeth to assist in raising awareness.
- MPs and Ward Councillors notified

### **During December**

- Email to London Landlord Accreditation Scheme (LLAS). LLAS confirmed they sent the notice of the consultation to approx. 1100 Landlords.
- Email to London Property Licensing informing them of the consultation.
- Email sent to Public Health, Fire brigade, Police service inviting them to a stakeholder engagement meeting.
- Email sent to Local Landlords who are in receipt of housing Benefit informing them of the consultation
- Consultation and forums details passed to the attendees of the regular Merton landlord forum.

### **During January**

- Reminder email sent to statutory undertakers and those who have registered to be updated with changes to planning regulations/ policy in Merton (approx. 1600 individuals and organisations)
- Reminder email sent to Landlords in receipt of Housing Benefit
- Consultation and forums details passed to the attendees of the regular Merton landlord forum.

12.7 The planning process is a concern for a number of respondents with the time taken; adequate staffing; member bias; and cost being cited by many. However, to enable the improvements required in certain wards, and to tackle the many issues identified pro-actively rather than reactively (see Paras 7.15 to 7.17) it was felt that it was necessary to require planning consent for small HMO's in the 7 wards most seriously affected. It is accepted that it will be more time consuming and expensive for landlords to do this rather than just developing under permitted development but it is believed that Merton had no other option if it wished to improve the situation for residents and tenants.



- 12.8 Planning Committee Members have received a briefing on HMOs to ensure that they are fully conversant with the latest guidance; a Supplementary Planning Document is being developed to enhance the information currently available (see Section 10) and planning case officers are actively assessing planning applications submitted that were previously allowed under PD Rights.
- 12.9 With regard to misrepresenting the potential costs of compensation claims that might be submitted, the October 2022 Cabinet report set out ‘typical’ costs of converting a small HMO. It is recognised that there are some developments that are at the top end of the market where the work undertaken far exceeds the standards required, by adding extensions and en-suite bedrooms and expensive renovations. These are by no means ‘typical’ small HMO conversions and whilst the cost of these can undoubtedly run into several hundred thousand pounds, it is considered that they should meet and exceed the standards required and therefore would be unlikely to be refused planning consent, so no compensation would be payable.
- 12.10 Many landlords were concerned about the ‘immediacy’ of the Article 4 Direction, but the Council felt it had no option but to introduce an Immediate Article 4 Direction into the 7 most affected wards, due to the immediate threat posed to the amenity of the area evidenced by the many instances of complaints being reported relating to HMOs without planning permission (see Para 7.18).
- 12.11 In line with the point above, several landlords raised the issue of whether there was evidence to justify an Article 4 Direction and whether or not the planning process was the correct system to tackle issues such as anti-social behaviour and others as opposed to using licensing and environmental health enforcement. This is addressed in Section 7 and also Para 7.17.
- 12.12 Another issue raised was the potential impact upon housing numbers with the view being that the introduction of an Article 4 Direction for small HMOs would reduce or stagnate the number of HMOs. As detailed in Section 8, there is no evidence of this, and it is important to note that the Article 4 cannot be applied retrospectively, so those HMOs already in operation will not be affected. Additionally, rents in Merton tend to be higher than average and compared with the relatively low cost of applying for planning consent, it is not felt that this would be a barrier to setting up a small HMO.

### **13 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 13.1 Funding was agreed for the Consultation at £30,000 and it was possible to secure an agency for this amount. Additional housing and project management staffing costs were also agreed to take the project up to May 2023. To continue to October 23, by which time it is proposed that Landlord Licensing will have been introduced, a further amount of £70,000 will be required.

- 13.2 Additionally, as we have been required to engage an external Barrister to provide legal advice and respond to a legal challenge we received, a sum of up to £5k is needed. These additional costs of £75,000 will be funded by a transfer from the Corporate Contingency Fund..
- 13.3 The current financial projections are that the selective and additional licensing scheme will require £3.3m expenditure over the five-year scheme period, including £2.5m staffing expenditure, based on a staff resource of 9.5 staff. These figures are provisional and are subject to further financial modelling, to be informed by consideration of the final consultation feedback.
- 13.4 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.
- 13.5 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.

#### **14 LEGAL AND STATUTORY IMPLICATIONS.**

- 14.1 This report sets out the statutory and regulatory requirements relevant for the Immediate Article 4. It also highlights the need for robust data in support of both the Article 4 Direction and Landlord Licensing to apply to the smallest, clearly defined, geographical areas based upon the evidence to avoid challenge.
- 14.2 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.
- 14.3 Under section 108 of the Town and Country Planning Act 1990 there is an entitlement to compensation where planning permission is refused for development that would have been permitted development but for an Article 4 Direction or granted subject to conditions, which were not also imposed under the permitted development, if that has resulted in the property having a lesser open market value than it would have had but for the Article 4 Direction and subject to such planning refusal or conditional planning

permission being in respect of a planning application made within a year of the date of the Article 4 Direction.

- 14.4 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.
- 14.5 New PD rules that came in force in July 2021, are set out in the National Planning Policy Framework (NPPF)
- 14.6 The Government are currently proposing changes to the NPPF. Under the proposals, In the reformed planning system, authorities will no longer be able to prepare supplementary planning documents (SPDs). Instead, they will be able to prepare Supplementary Plans, which will be afforded the same weight as a local plan or minerals and waste plan.
- 14.7 It is proposed that when the new system comes into force (expected late 2024), existing SPDs will remain in force for a time-bound period; until the local planning authority is required to adopt a new-style plan. Current SPDs will automatically cease to have effect at the point at which authorities are required to have a new-style plan in place. For example, if a planning authority's plan is more than 5 years old when the new system comes into force and that planning authority is required to begin new-style plan-making straight away, their SPDs will expire on the date at which they are required to adopt a new-style plan i.e. 30 months after they commence plan preparation . Where an authority is working towards the 30 June 2025 deadline and they miss it, their SPDs will expire 30 months after that date i.e. at the end of December 2027.
- 14.8 As well as the possibility of being paused or stopped by the Secretary of State at any time, there is the possibility of Legal Challenge to the introduction of the Article 4. One legal challenge has already been received but advice from external counsel found it to be without merit.
- 14.9 For Landlord Licensing, as the wards selected are under the 20% threshold, the Secretary of State does not have to give consent. However, there is still the risk of Legal Challenge.
- 14.10 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.

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

- 15.1 The Council has carried out an equalities assessment at each stage of developing the Article 4 Direction, considering the impact of the proposal on each of the protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race,

religion/belief, sex, sexual orientation, and socio-economic status). The outcome is that Equalities Assessment has not identified any potential for discrimination or negative impact and all opportunities to promote equality are being addressed. The Council is also considering the “in-combination” effects of the Article 4 Direction and the proposed new licensing regime and will keep this under review while the new selective and additional licensing proposals are being developed further and reported to councillors prior to their introduction in September 2023.

## **16 CRIME AND DISORDER IMPLICATIONS**

16.1 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.

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

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

17.1 No risks for the Council have been identified at this time relating to Selective Licensing.

17.2 Following the introduction in November 2022 of an Immediate Article 4 Direction, there is a risk of compensation claims being submitted as outlined in the report.

17.3 There is a risk of the Secretary of State intervening and stopping the Immediate 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.

17.4 There is a risk of a Judicial Review being brought against the Council

17.5 A legal challenge to the Immediate Article 4 has been received which we are taking external legal advice on.

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

A. Schedule of Proposed Charges for Licensing

B. List of Conditions for Licensing

C. Summary of Representations Received for the Immediate Article 4

D. Key Points from the Landlord and Stakeholder Forums from ORS

## **19 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

Cabinet Report 10 October 2022

Metastreet Report

ORS Article 4 Results

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