

Subject: Immediate Article 4 Direction – Results of Consultation and Update on Proposed Introduction of Landlord Licensing

Appendices

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Appendix A: Schedule of Proposed Charges for Licensing

Fees

How Much Will a Licence Cost?

Licensing costs will be dependent on accreditation and time of application. Merton council will be offering an “Early Bird” discount of 10% to those who apply for a licence within the first two months of the scheme. A discount of 10% of the total fee will be applied to the part B payment, followed by the accreditation discount where applicable.

An applicant who is accredited under, or is a member of one of the following recognised schemes, may be entitled to a discount of £50.00:

- London Landlord Accreditation Scheme (LLAS)
- National Residential Landlords Association (NRLA)
- National Approved Lettings Scheme (NALS)
- UK Association of Lettings Agents (UKALA)
- Association of Residential Lettings Agents (ARLA)
- Royal Institution of Chartered Surveyors (RICS)

Applicants who are both accredited and apply within the Early Bird timeframe will receive a combined discount.

Discounts will be determined on submission and assessment of the full application and supporting documents. A discount will not apply where:

- a. The Council has made two or more consecutive requests for additional supporting documents or information.
- b. The Council has served a warning letter or notice for failure to license a property.

Licence fees are payable in two instalments. Part A fees are payable at the application stage (40%) If the licence application is refused by the Council or withdrawn by the applicant, the Part A payment will not be refunded.

Payment in respect of the Part B instalment (60%) will be required to be paid once the application has been assessed and the decision made to grant a licence. This payment will be required to be made within 7 days.

The licensing fees, including available discounts, are presented in the following tables:

Selective Licensing

	Part A (40%)	Part B (60%)	Total Fee
Standard Fee	£247	£405	£652
Early Bird	£247	£340	£587
Accredited Landlord	£247	£355	£602
Accredited Landlord & Early Bird	£247	£290	£537

Additional Licensing

Additional Licence number of bedrooms	Part A	Part B	Standard (no discount)
2	£247	£868	£1,115
3	£247	£918	£1,165
4	£247	£968	£1,215

Additional Licence number of bedrooms	Part A	Part B	Early Bird Licence Fee
2	£247	£757	£1,004
3	£247	£802	£1,049
4	£247	£847	£1,094

Additional Licence number of bedrooms	Part A	Part B	Accredited Landlord
2	£247	£818	£1,065
3	£247	£868	£1,115
4	£247	£918	£1,165

Additional Licence number of bedrooms	Part A	Part B	Early Bird & Accredited Landlord
2	£247	£707	£954
3	£247	£752	£999
4	£247	£797	£1,044

Additional charges are as follows (these apply to both selective and additional licences):

Process	Fee
Revocation of Licence	None
Application following revocation of licence	New Application Fee
Application refused or rejected	Part A Fee
Application withdrawn by applicant	Part A Fee
Temporary Exemption Notice (TEN) made by the Council	None
Application received following expiry of a TEN made by the Council	New Application Fee

Multiple properties in a single block

Where a multiple-dwelling application is made where the applicant owns, manages, and has control of multiple properties in a single block for which the application is submitted, the normal fee is applicable on the first property, and for subsequent properties a discount of a further 10% off the full fee is applied. This will be taken from the part B sum, in a similar fashion to the other discounts outlined above.

Three examples of the application of this 10% discount are provided below:

Example of Application of Multi-Property Discount	Part A (40%)	Part B (60%)	Total Fee
Standard Selective Licensing Fee (1st property in a single block)	£247	£405	£652
10% Multiple dwelling discount on further properties within that block: (10% of £652 full fee = £65 discount on part B)	£247	£340	£587
Early Bird Selective Licensing Fee (1st property in a single block)	£247	£340	£587
10% Multiple dwelling discount on further properties within that block: (10% of £652 full fee = £65 discount on part B)	£247	£275	£522
Accredited Llord & Early Bird Selective Licensing Fee (1st property in a single block)	£247	£290	£537
10% Multiple dwelling discount on further properties within that block: (10% of £652 full fee = £65 discount on part B)	£247	£225	£472

Licences will be issued for a maximum period of five years. The Council may issue a licence for a shorter period where evidence of concerns relating to the management of the property exists.

In accordance with the Housing Act 2004 section 87(7), the fee amounts are based on:

- a. The staff employed to process and issue the application; and
- b. The costs of monitoring and delivering the scheme, including staffing, operating the scheme, inspections, and enforcement.

Appendix B: List of Conditions

Proposed Selective Licensing conditions

Tenancy Management

MANDATORY

Terms of occupation

1. Supply to the occupants a tenancy agreement or occupancy agreements showing the terms upon which they occupy the property and provide copies to the Council upon request.
2. Tenancy or occupancy agreements to contain terms relating to date of commencement, rent, termination, security of tenure, grounds for possession, repairs, and occupant responsibilities in relation to pets, preventing anti-social behaviour, nuisance, harassment, and annoyance to third parties.
3. The licence holder must demand references from persons who wish to occupy the property. No new occupiers should be allowed to occupy the property if they are unable to provide a suitable reference. When referencing, consideration must be given to the tenant's history, credit and right to rent checks. The licence holder must provide evidence of such reference and checks carried out when requested by the Council within 14 days on demand.

Deposits

4. The licence holder must protect any deposits taken from the occupiers under an assured short-hold tenancy agreement, by placing them in a statutory tenancy deposit scheme.
5. The licence holder must give information about the scheme being used to the occupier within the statutory time limit (currently 30 days) of the time the deposit is taken. When requested this information must be provided to the Council within 14 days on demand.

DISCRETIONARY

Anti-social behaviour (ASB)

1. The license holder agrees to give information to the tenant prior to occupation about anti-social behaviour and the standard of behaviour expected and what the results of anti-social behaviour could be, namely that the police or local authority could become involved, that they may have to appear in Court or lose their tenancy.
2. The license holder must ensure that the responsibilities of occupiers, particularly in relation to ASB, nuisance and refuse, are provided in writing and that documents of occupiers' signed acceptance are retained for inspection by the Council if requested.

Property Management

MANDATORY

Gas

1. If gas is supplied to the property, the Licence Holder must produce to the Council, annually or within 7 days of a written request, a Gas Safety Certificate obtained in respect of all gas appliances in the property within the last 12 months. The Gas Safety certificate must be issued by a registered Gas Safe contractor (as required by the Gas Safety (Installation and Use) Regulations 1998).

Electrical Appliances

2. The Licence holder keep all electrical appliances in the property in a safe condition, in good repair and in a clean condition, and provide when requested by the Council a current Portable Electrical Equipment Test Report.
3. The licensee must ensure that all fixed electrical installations are inspected and tested at intervals not exceeding 5 years by a person qualified to undertake such inspection and

testing and obtain a certificate from the tester specifying the results of the test. Provide when requested a current electrical test certificate.

Furniture and Furnishings

4. The Licence holder agrees to ensure that all furniture and fittings comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

DISCRETIONARY

Refuse and waste

1. The Licence Holder must ensure that sufficient bins or other suitable receptacles are provided and are adequate for the requirements of each household in the property for the storage of refuse and litter pending their disposal, and that overflowing does not occur.
2. The Licence Holder must ensure that no appliances or other equipment, is stored or accumulates within the curtilage of the property. Where such accumulations are unavoidable, they shall be removed as soon as reasonably practicable.
3. License Holder must give instructions to tenants, at the beginning of their occupancy, regarding the storage and disposal and recycling arrangements in place in respect of refuse.
4. Evidence must be provided to the Council on application showing sufficient evidence that arrangements have been made for the collection, storage, and disposal of waste.
5. The Licence Holder must ensure that wherever possible waste arising from building works or improvements to the house, does not accumulate in the curtilage to the property. Where such accumulations are unavoidable, they shall be removed as soon as reasonably practicable.

HHSRS

6. The Licence Holder must ensure that the property is free from Category 1 Hazards and meets the Housing Health & Safety Rating System (HHSRS) standards as set out in the Council's Houses in Multiple Occupation (HMO) Requirements document.

Certificates

7. When requested, the licence holder must provide an Annual Buildings Insurance Certificate on application and thereafter on request, to the Council.
8. The Licence Holder must provide an Energy Performance Certificate for the property on application, and thereafter on request, to the Council.

Fire Safety

MANDATORY

Smoke Alarms and Carbon Monoxide Alarms

1. The licence holder must ensure that a smoke alarm is installed on each story of the house on which there is a room used wholly or partly as living accommodation and keep each alarm in proper working order. The licence holder must also supply the council, on demand, with a declaration by him as to the condition and positioning of the alarms.
2. The licence holder must ensure that the carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance other than a gas cooker. The alarm must be kept in good working order and the licence holder must supply a declaration, on demand, to the council as to the condition and position of any alarms.

DISCRETIONARY

1. The licence holder must provide on application a BS5389 test reports relating to any fire detection system and thereafter when requested. They must also provide on application a BS5266 test reports relating to the emergency lighting (if applicable) and thereafter when requested.

General

DISCRETIONARY

Space Standards

1. The licence holder must ensure that they address hazards associated with lack of space within the dwelling for living, sleeping and normal family/household life, and comply with the space standards as set out in Schedule 4 of the Housing Act 2004 relating to:
 - a. The maximum number of people allowed to occupy the property
 - b. The maximum permitted number of persons per room

Proposed Additional Licensing conditions.

Tenancy Management

MANDATORY

Terms of occupation

1. Supply to the occupants a tenancy agreement or occupancy agreements showing the terms upon which they occupy the property and provide copies to the Council upon request.
2. Tenancy or occupancy agreements to contain terms relating to date of commencement, rent, termination, security of tenure, grounds for possession, repairs, and occupant responsibilities in relation to pets, preventing anti-social behaviour, nuisance, harassment, and annoyance to third parties.
3. The licence holder must demand references from persons who wish to occupy the property. No new occupiers should be allowed to occupy the property if they are unable to provide a suitable reference. When referencing, consideration must be given to the tenant's history, credit and right to rent checks. The licence holder must provide evidence of such reference and checks carried out when requested by the Council within 14 days on demand.

Deposits

4. The licence holder must protect any deposits taken from the occupiers under an assured short-hold tenancy agreement, by placing them in a statutory tenancy deposit scheme.
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2. The license holder must ensure that the responsibilities of occupiers, particularly in relation to ASB, nuisance and refuse, are provided in writing and that documents of occupiers' signed acceptance are retained for inspection by the Council if requested.
3. Notice boards in communal areas must display the requirements of occupiers to comply with the requirements in respect of avoiding ASB, nuisance and refuse management issues.

Property Management

MANDATORY

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1. If gas is supplied to the property, the Licence Holder must produce to the Council, annually or within 7 days of a written request, a Gas Safety Certificate obtained in respect of all gas appliances in the property within the last 12 months. The Gas Safety certificate must be issued by a registered Gas Safe contractor (as required by the Gas Safety (installation and Use) Regulations 1998).

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 - a. The maximum number of people allowed to occupy the property
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Appendix C: Article 4 representations

Theme	Summary of comments	LB Mertons response
Compensation costs	HMO landlords and developers felt the estimated costs of £10,000 to £30,000 is not a true reflection for the costs of renovations which could be in the hundreds of thousands (£300K - £800K) which could be claimed in compensation if planning permission is denied.	It is noted that the cabinet report estimated costs of £10,000-£30,000 is an average, and it is acknowledged that some costs may exceed this. Where planning permission is sought and an application refused, the applicant is able to seek compensation
Evidence is weak	Respondents felt that there was insufficient evidence to support immediate Article 4 Direction, that the proposal is based on predictions and that the data has been skewed to represent the limited number of HMOs ignoring multiple complaints about the same HMO; the approach is broad brushed.	The Article 4 is considered to be a proportionate response, where there is an urgent, justified requirement for protection. Whilst it is acknowledged there may be small fluctuations in the real number of HMOs, the council are confident that the data used to inform the report is reliable.
Response of Planning Committee	Landlords and Developers stated they were concerned that the planning committee would refuse applications on non-planning related grounds following refusal of a planning application made to the Planning Committee Oct 2022.	Planning applications will be determined in accordance with national, regional and local policy, alongside new supplementary planning guidance which will ensure applications have the best chance of obtaining approval.
Immediacy	The lack of notice for landlords & developers meant projects started under different rules. Landlords & developers could have sought Planning permissions originally when the projects began if they had been given more notice.	The immediate implementation of the Article 4 is legal and is used where there is an urgent, justified requirement for protection. The immediate implementation of the Article 4 is considered to be a proportionate response to the current HMO standards in the borough.
Reputational Damage	One respondent stated they 'Would be forced to go to the media with the story including predicted losses as a result of the (Immediate) Article 4 (Direction)'	The council would decline to comment on any media coverage of the Article 4. Where planning permission is sought and an application refused, the applicant is able to seek compensation.
Merton Staffing	Some respondents noted that planning application take a long time. With the Immediate Article 4 Direction, there will be a significant financial loss to landlords & developers as they wait for planning approval to come through.	The planning decisions team have been well equipped and briefed to deal with additional applications which might be submitted.
Alternative options	Article 4 is not appropriate, and the issues would be better dealt with through licensing schemes and environmental health enforcement.	The council is looking to introduce Selective and Additional Licensing alongside the Article 4 Direction. The requirement for planning permission looks to ensure EH issues are dealt with at source.

Cost for landlords & developers	This is an additional cost to the landlords & developers in submitting planning applications which are expensive and would involve consultants etc..	The planning application fee is consistent across the whole of England, it is noted that additional costs might occur however the council consider that planning applications will ensure long term standards of HMOs are maintained.
No impact on current issues	This ties in with looking at alternative options as the introduction of an article 4 will have no impact on current HMOs operating below standards.	The Article 4 is to be viewed in accordance with the new licensing requirements, which current HMOs would need to comply with when their current license expires.
No guidance	Respondents felt the lack of guidance increased the chances of refusal for landlords & developers to gain planning permission	The council is currently in the process of putting together a formal planning guidance document for HMO planning applications, which will be issued in the spring of 2023. In the meantime, there is guidance included within the Core Planning Strategy, Estates Local Plan and the LBM HMO Requirements document published in 2019.
Number of HMOs reduced	Respondents suggested that the introduction of the Article 4 Direction will reduce the supply of HMOs across the borough, making it harder for residents to find quality accommodation. There is already a big shortage of rental properties and the council is trying to protect family homes.	It is not anticipated that the Article 4 would result in any overall decrease in the number of HMOs available but would ensure the quality of HMOs is improved.
Penalising good landlords & developers	Believes there should be exceptions for landlords & developers who already have a licence	Planning permission is not required in retrospect therefore LL already operating HMOs will not be required to apply for planning permission.

Appendix D: Immediate Article 4 Direction: Key notes from Landlords and Key Stakeholders from ORS

Immediate Article 4 Direction

Key notes from Landlords and Key Stakeholders

Overview

Overall, landlords who attended the events and expressed views, were cautious of Merton Council's Immediate Article 4 Direction. They mostly question 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 HMOs and affordable housing was also questioned, amongst other issues, as explained below.

Evidence used for the Immediate Article 4 Direction

- Some landlords claimed that the Metastreet data was "lonely" arguing that it should compare the saturation of HMOs across Merton with the rest of London, pointing out that if this is done, the density of HMOs in the borough is lower than elsewhere and the London average
 - o *"The Metastreet data about saturation of HMOs across the 7 wards... we consider that to be quite lonely data because it relates to the saturation of HMOs within those 7 wards but doesn't actually compare Merton to other boroughs and the saturation of HMOs that would be normal across London. When we've looked into that in more detail, what we've found is that the London average saturation of HMOs is 5.6% across each borough, whereas Merton as a whole, when you measure it borough-wide, is 2.7% saturation."*
- Some questioned whether the evidence available demonstrated sufficiently urgent problems to justify the introduction direction immediately (i.e. without a notice period).

Ability to reduce issues

- Many landlords questioned the link between well-managed HMOs and antisocial behaviour, feeling that ASB was more of a licensing issue (i.e. a problem related to management rather than planning). This led many to doubt whether the Article 4 Direction would have a meaningful impact on antisocial behaviour in the affected wards.
 - o *"Most people living in HMOs are probably a bit younger and single, so they will probably produce a little bit more noise... they will be louder than the next-door couple in their 50s... but it does not mean that those people cannot live in that neighbourhood..."*

Potential impact on availability of HMOs and affordable housing

- Numerous landlords expressed concern that the Article 4 Direction would lead to a restriction in the number of HMOs becoming available in the affected wards, or even a decrease in the number of HMOs in total.
- It was argued that a shortage of more affordable housing options in the area could be caused as a result, increasing housing costs in a sector that would have a potentially serious impact on those on low incomes, at risk of homelessness, or otherwise most vulnerable.
- It was also suggested that the Article 4 Direction could create a lack of student housing if it results in a reduction of HMOs
- The NRLA agreed that an Article 4 Direction would stagnate the HMO market in the affected wards and raise housing costs as a result
 - o *“there’s plenty of evidence in other boroughs up and down the country with Article 4 Directions: it crystalises what’s in place, stops new entries in the market, it drives rent up, and that’s the outcome.” – NRLA*
- On the other hand, Public Health agreed that the Article 4 Direction would likely be effective in preventing illegal development / overdevelopment of rented properties whilst having a minimal impact on housing availability.

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

- Some landlords suggested that they were not wholly opposed to the Article 4 Direction, they were primarily concerned over the immediacy of its introduction.
- As a result of the Article 4 Direction being introduced immediately, it was felt that landlords already converting their properties to small HMOs would be at risk of being denied planning permissions. Notably, this was of concern to both landlords of individual properties and those with larger portfolios.
- Some landlords were concerned that their applications may be denied regardless of whether their properties meet the criteria, in an effort to restrict the number new of HMOs in Merton overall.
- Feeling that Councils are in a position that means they only deal with the worst issues and have little to know involvement in all of the benefits provided by HMOs. Therefore, concern over the Council’s position towards HMOs in general.
- Even if planning was eventually granted on some converted properties, the delays in application and approval as a result of the article 4 direction introduces significant cashflow issues, and risk to developers, meaning that they would be unlikely to invest in improving properties in the area in future, potentially the whole of Merton, not only the seven wards
- Some landlords also questioned whether the Immediate Article 4 had been communicated well enough to the public.
 - o *“looking at October’s committee cabinet report in particular there was mention of an Article 4 being brought in, but it was going to be post-consultation and subject to the outcome of that, and the earliest it would be brought in is September 2023. That obviously hasn’t happened. Post hearing about the immediate Article 4 direction on 17th November the following week, I went back onto Merton Council’s website and... up until the 5th or 6th of November there was absolutely no mention whatsoever on the website that this had been brought in.”*

- Some landlords who should have received a notification based on the council's stated plan of publicity (existing HMO landlords currently with licenses) stated they did not receive anything.
- Due to the immediacy of the Article 4 Direction and its potential to deny planning permission to landlords that were in the process of converting their properties before it was introduced, numerous landlords suggested that they and others will be forced to seek financial compensation, should their planning applications be denied.
- It was suggested that the Article 4 Direction should instead have a prior notice of up to 12 months to ensure that landlords can make better-informed decisions on whether or not to go ahead with planned conversions, thus reducing the financial risk of having planning denied
 - o *"I'm not surprised you're bringing in HMO [planning applications] because Croydon had similar issues... [but] I was surprised that it was immediate. The other boroughs in my experience did 1 year's notice... I think a lot of landlords are in the middle of refurbishment and so this is significant."*
- It was also felt that planning guidance should be in place before an Article 4 Direction is introduced so that landlords can maximise their ability to meet the planning criteria and reduce the financial risks associated with having their planning denied
 - o *"My concern is people like us are needing help with planning... especially when it's not cut and dry..."*