

London Borough of Merton
Planning Policy
Merton Civic Centre
London Road
Morden
SM4 5DX

4 January 2023

Dear Sirs

Immediate Article 4 Directions – Dwellinghouses to Houses in Multiple Occupation

We act for Cromwood Housing Limited (“**Cromwood**”).

This letter acts as a formal response to the Council’s consultation with regard to the above Article 4 Direction, to which Cromwood strongly objects and urges the Council not to confirm.

This letter puts the Council on notice that should the Direction be confirmed in January 2023 that Cromwood will actively pursue all legal avenues available to it.

Background

1. Cromwood is a registered provider of social housing, and a recipient of grants from the Greater London Authority and the Ministry of Housing, Communities & Local Government. Specifically, Cromwood (in 2022) was the recipient of the largest single grant under the Rough Sleeping Accommodation Programme 2021-2024 (“**RSAP**”). This grant (of almost £13.5m) is aimed towards acquiring freehold houses to be converted to HMO properties for housing rough sleepers in Greater London. The prospectus states that “*RSAP’s objective is to provide Move-On homes, available as long-term assets, and accompanying support services to the Eligible Cohort to achieve a sustainable reduction in rough sleeping*”.
2. To that end, Cromwood has purchased a number of properties within Merton, with the intent of using them under this programme. These properties are spread across a number of Wards, including Figges March, Cricket Green and Lavender Hill. As part of the RSAP, all public funds utilised must be accounted for and will be subject to strict audits.
3. As the Council will of course be aware, an immediate direction removing permitted development rights to convert dwellinghouses into HMOs across seven wards (including the three listed above) was introduced on 17 November 2022. This came as a complete surprise to Cromwood.

London

Central Court, 25 Southampton Buildings
Holborn, WC2A 1AL

Postal and Administration address:

Churchill House, 137-139 Brent St, NW4 4DJ

+44 (0)203 150 1300

www.asserson.co.uk

4. According to the Council's report, the wards were selected based on a report prepared by Metastreet, purporting to show that HMOs within those wards have historically been the subject of complaints from residents. The report states that:
 - a. Over the past few years, the Council has seen a rise in the number of complaints received by members of the public in relation to poorly managed HMOs and identified the need for a joined-up approach across Council departments to manage them. Merton's accessible and attractive location, high housing prices and good quality housing stock has meant there is a huge demand for HMO type accommodation. In those that are poorly managed, the neighbours suffer noise and disturbance from HMOs, and the wellbeing of the occupiers and neighbours may be harmed by overcrowding, inadequate bin storage and insufficient living space.
 - b. The data tells us that Graveney, Longthornton, Pollards Hill, Figges Marsh, Cricket Green, and Colliers Wood wards are likely to have more HMOs that are causing harm to the wellbeing of the area.
 - c. While Lavender Fields ward is ninth in the list of wards with the poorest performing HMOs, it is included in the Article 4 Direction as it is surrounded to the north, east and south by wards with worst performing HMOs (with the western side bordering a non residential area), it is the sixth highest ward for numbers of complaints the council receives on the private rented sector and numbers of reports of anti-social behaviour and it is characterised by housing stock that is typically used as Houses in Multiple Occupation.
5. Notwithstanding the compensation provisions associated with immediate Article 4 directions, the Council nevertheless chose not to give notice of its plans. The Council's report notes that compensation claims could arise should any formal application for conversion to HMOs be refused.

Cromwood's response

6. It is submitted that the Article 4 Direction should not be confirmed, for a number of reasons.

Impact on rough sleepers

7. Cromwood's business model requires flexibility. In order to be able to provide the best possible and most appropriate accommodation, it is very important that the properties can be used as self-contained accommodation or HMOs, depending on the precise need at the time.
8. Under the proposals, Cromwood would be forced to apply for full permission each time it wishes to change the use of one of its properties. The additional time and expense expended would have a severe impact on future grant funding, and on Cromwood's ability to offer its services.

9. More immediately, the Council's imposition of the immediate direction has means that three properties can now no longer be immediately converted to HMOs, so a number of rough sleepers (who have an urgent and pressing need for accommodation) will need to be turned away.
10. This cannot be the Council's intention. As a responsible landlord, Cromwood is precisely the type of property owner that the Council needs, and Cromwood's contribution to the issue of rough sleeping is a clear benefit to the Council and its residents. The Council should not be placing additional barriers before Cromwood, and should instead offer it its full support.

Robustness of evidence

11. The Council's report correctly highlights the need for robust data to support the imposition of any immediate Article 4 Direction.
12. However, there are a number of significant concerns about the Council's evidence base.
13. Firstly, the Council's supporting report (and indeed Metastreet's report) is based on a predicted number of HMOs within wards etc. Every other metric flows from these predictions. However, it is very possible that predictions underestimate the number of HMOs – indeed the Council's report accepts that the data *"is far less likely to pick up shared houses and flats (HMOs) where tenants have no anti-social behaviour records against the property and are in a stable tenancy and are not in receipt of benefits"*.
14. The logical conclusion of this statement is that the data will be skewed towards the limited number of HMOs against which there have been reports, and will ignore the fact that there may well be a far higher number of HMOs against which there have been no complaints at all. The entire basis of the direction is therefore arguably unsafe.
15. Secondly, the data seems to ignore multiple complaints about the same HMO, and instead gives the impression that every HMO is problematic. For example, the Metastreet report states that wards with predicted numbers of HMOs of 76 and 99 were subject to 49 and 77 complaints respectively. It seems highly unlikely that the majority of HMOs were subject to complaints (and indeed if this was the case suggests that many residents simply have an in-principle objection to HMOs).
16. Tellingly, the Council has not made available lists of complaints made. Even redacted lists would be able to highlight problematic areas – the Council's broad brush approach of removing rights across entire wards is clearly disproportionate.
17. It should also be noted that the direction will not require the cessation of HMO use of properties already complained about. In this respect the Council is trying to play catch-up by prohibiting new HMOs. It would be far more logical to place more stringent licensing and other restrictions on all HMOs (existing or proposed).

Effect of direction

18. Neither the Council's existing nor emerging policy contains specific requirements for new HMOs. The emerging Local Plan states only that *"As supported by the London Plan, Houses in Multiple Occupation (HMOs) contribute towards addressing needs. As with all homes, HMOs will be expected to meet good standards both for the occupiers and neighbours and we will have regard to relevant guidance in the assessment of HMOs including national guidance, the London Housing Design Standards, the GLA Housing Supplementary Planning Guidance"*.
19. In fact, these are broadly supportive of HMOs, and focus mainly on the fact that they should be of sufficient quality. By contrast, the Council's direction is made on the basis of the impact of HMOs on neighbours. As a starting point therefore, the Council's approach would appear to go against local, national and regional policies.
20. In any event, the effect of the proposed direction, coupled with the fact that the clear motivation behind it is to reduce (alleged) complaints against HMOs, is that there will be an almost blanket ban on HMOs within the wards affected. It is difficult to envision any new HMO which could satisfy the Council that complaints will not be made, given the number of complaints which the Council have already seemed to identify.
21. This means that there will be a continuing shortfall in much-needed housing stock.
22. It is also clear that this will be in breach of the Article 4 provisions within the NPPF, which require directions to be as geographically constrained as possible. The removal of rights across entire wards does not meet this test.
23. In addition, it is difficult to see how any refusals of planning applications could reasonably be sustained by the Council, as there does not appear to be any policy support for the Council's position. Cromwood, among others, would therefore be forced to appeal any such decisions, and the Council could be vulnerable for three kinds of costs – compensation as per Article 4 of the GPDO, its own appeal costs and potential appellants' costs as refusals with no policy basis is a clear example of unreasonable behaviour.

Lavender Fields

24. Perhaps the most obvious demonstration that the Council has applied the Article 4 Direction in far too broad a manner is in connection with the Lavender Fields Ward. The Council's report states that *"While Lavender Fields ward is ninth in the list of wards with the poorest performing HMOs, it is included in the Article 4 Direction as it is surrounded to the north, east and south by wards with worst performing HMOs (with the western side bordering a non residential area)"*.

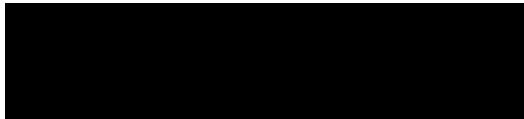
25. This shows that the Council has not even restricted the Direction to alleged locations with poor performing HMOs, but has instead taken an extremely broad brush approach, in contravention of the rules governing Article 4 Directions.

Conclusion

26. The Council is urged not to confirm the Article 4 Direction. The sweeping approach taken by the Council is in breach of policy and guidance, and will inevitably lead to more costs incurred by the Council in terms of comoensation and appeal costs.
27. More fundamentally, the Council's approach will only undermine Cromwood's (and another similar providers') ability to house rough sleepers in a quick, safe and efficient manner. The Council should be working with Cromwood on this issue, and not erect planning barriers to the detriment of all parties.

Please contact James Kon of this office on 0203 691 4797 or james.kon@asserson.co.uk with any response.

Yours faithfully



Asserson Law Offices