

HMO03 response Merton Council Article 4 HMO consultation – January 2023

Tara & Lesley,

Thank you for your time yesterday (10th January 2023) during the online Consultation Workshop Meeting.

Following our conversation we wished to again formally provide the attached statement as shared during that meeting.

We can confirm that since the meeting we have had contact from further parties affected by the unlawful implementation of this immediate action and sadly the likely quantum is growing yet further by substantial amounts; as warned within our statement. This is likely to only grow further.

No party wishes to take such action but are being placed in a position of grave financial risk and at no fault of their own. To simply suggest planning be sought is unfortunately not a straightforward or fast process, it is a lengthy one fraught with risk and will place yet further pressure on a very busy council department. All risks, delays and costs that will be held by these individuals and sadly will be factored into claims made.

As mentioned within our statement, we are open and welcoming of engaging directly with the council to work through this matter, and again is our reason for reaching out directly to yourselves. We do however have significant pressure from our working party and associated financial institutions, for our Barrister to commence legal representations.

We would like to request that direct contact be made and assurance given by 18th January to avert this action being necessary.

Attached is further detail on a previous project within the borough, completed in 2022 and clearly breaking down the costs associated (*this project had no extension work so is on the lower end of conversion expenditure*), the property value increase is also clearly noted - hopefully this provides clear sight to the council that the quantum of claim we are drawing to your attention is in no way over played and a long way different to that suggested within Octobers Cabinet Report.

This matter has also been brought to the attention of Siobhain McDonagh MP for Mitcham & Morden and we are looking forward to discussing these matters with her shortly.

Finally, we'd ask if the morals behind these decisions really align with how Merton Borough wishes to be perceived? And is flouting Planning Law the right example to set when its purpose is to hold others to operate within the Law?

Kind regards,

Statement to Public Consultation - 10th January 2023

I'm Lee Dumbarton and I make the following statement on behalf of a small group of investors and my Co living management business; Urbanhome, which manages over 300 tenants across the borough of Merton in high quality, well appointed accommodation, surpassing legislative standards - each of who is affected by this matter and most importantly the unnecessary and unfair immediate implementation of Article 4.

We provide much needed accommodation to white collar professionals and key workers alike. In 12 years of managing hmos in Merton Borough we have never had a complaint the council have had to deal with relating to our properties or tenants.

Whilst it is understood that not all HMO's run at the same standard and the council needs to take action to deal with anti-social behaviour, we question the direct benefit of the immediate implementation, when considering the level of compensation claims this action will cause the Council to settle.

Action which is creating significant financial and operational stress upon businesses & quality housing providers who have been acting within their *legal* rights, pressures which will be fully explained in our submission to the consultation.

As recorded in meeting minutes of the *10th October 2022 - Cabinet Committee points 4.9 - 4.17*, the council is fully aware and accepting that through the retraction of Permitted Development Rights without more than 12 months notice it makes itself liable to compensate anyone in the process of such permitted activities (*as set out within Section 108 of the Town & Country Planning Act 1990*), what it perhaps is unaware of however, is the level to which this compensation will run.

This same report notes conversion costs of £10,000 to £30,000 for an HMO and that property values remain similar from one use to another.

We can confirm this is grossly miss informed and that conversion costs can be from £100,000 to £300,000+ and the resultant property value can be **double** that of its residential counterpart, plus development expenses; all costs that can and will have to be claimed in line with *Sections 107 & 108 of the Town & Country Planning Act 1990*.

Such costs can be fully substantiated on an item-by-item basis and, as you may be aware, is likely the reason South Gloucestershire council (Bristol) stepped back from such action during December 2022 when the quantum of claims was set to run in to MILLIONS of pounds, choosing instead to follow a notified and **legal** implementation - *which is not objected to here*.

None of this group; or likely most in this forum, wish to take such action against the Council, however, unless this matter is approached in a notified manner inline with *Section 108 of the Town & Country Planning Act* giving between 12 & 24 months notice, legal action will be unavoidable to protect individuals from financial ruin.

This group alone will raise claims totalling upwards of £2 million, and it is likely there are many more sizeable claims across the borough making the total much more!

If put in that position we can confirm each of our party will seek compensation, and with sadness, barristers experienced in client V council cases are already engaged if this stance is not reconsidered.

We appreciate the council is acting in best intents and is informed by the information provided, however, we implore that it reviews the level of claims likely to be raised, and formally record that this action will waste MILLIONS of pounds of taxpayers money, remove desperately needed quality housing stock; which is ready waiting now and all because a 12 month notice period is not being adhered to inline with **Planning Law**.

Such permitted planning works have been acceptable and available since 2010, what quantum of difference does a further 12 months make? The imminent nature of Article 4 alone would deter further action in this sector and avoid MILLIONS of pounds of claims against the Council.

Unless reassurances can be given swiftly we will also be forced to seek media exposure to bring these upcoming public financial losses, and the council's prior knowledge of them, to public attention.

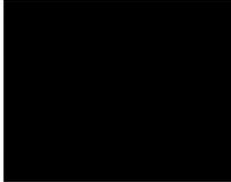
Finally, we'd be pleased to engage directly with the Council on this matter in a proactive manner and also invite other affected parties to join us in raising awareness of this hugely damaging action - both for ourselves and the general public who are unaware of the increased deficit this will make on available spending; already reported to be at **minus £4m** with public infrastructure closing as a result.

For reference I'll post this statement in the chat, along with the relevant case material and my contact details - enquiries@myurbanhome.co.uk



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

Date: 24/11/2022



Dear Owner/Resident,

LANDLORD LICENSING AND HMO PLANNING CONTROLS CONSULTATION

We are writing to inform you of proposals for improving the management of private rented sector (PRS) homes and houses in multiple occupation (HMOs).

The Council is committed to improving housing conditions in the PRS; and to tackling the many instances of anti-social behaviour, poor housing conditions, and other issues that arise from poorly managed rented properties and in particular HMOs.

To tackle the issues, we are proposing to introduce new landlord licensing schemes for privately rented properties and HMOs not currently covered under the existing mandatory licensing scheme, as well as new planning controls for small HMOs, in some parts of Merton.

The proposed Landlord Licensing Scheme (Selective Licensing) for PRS homes other than HMOs will apply to the following wards:

Figge's Marsh
Longthornton

Graveney
Pollards Hill

The proposed Landlord Licensing Scheme (Additional Licensing) as well as Planning Controls (an Article 4 Direction) for small HMOs will cover the following wards:

Figge's Marsh
Longthornton
Colliers Wood
Lavender Fields

Graveney
Pollards Hill
Cricket Green

The planning controls have come into effect immediately but will need to be confirmed by April 2023 if they are to continue. It is proposed that Landlord Licensing will come into effect in September 2023.

Committee: Cabinet

Date: 10th October

Wards: All

Subject: Update on Selective & Additional Licensing; Empty Homes; and the introduction of an Article 4 Direction

Lead officer: John Morgan, Interim Director of Community & Housing and
Adrian Ash, Interim Director of Environment & Regeneration

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

Contact officer: Lesley Barakchizadeh, Lead Programme Consultant Ext: 3099

Recommendations:

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.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. This report provides an update on two key projects which were reported to the March, June, and September LSG Meetings.

- Consideration of 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
- An Article 4 Direction, which would require 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.

Phase 1 cover 13.8% of the geographical area of the borough and 18.37% of the PRS in Ealing. Phase 2 will cover 56.89% of the geographical area of the borough and 41.35% of the PRS.

- 4.5 After careful consideration, it is intended to consider selective licensing in a phased approach with a small number of priority wards being targeted initially, with further consideration to extending the scheme at a later date based on the evidential indicators.
- 4.6 Should Merton introduce Selective Licensing initially to the wards that experience the most problems, ensuring that no more than 20% of either the geographical area or the PRS within the borough is exceeded, this would result in a number of benefits:
- Secretary of State Consent would not be required, which would considerably speed up the process of introducing Selective Licensing whilst also removing the uncertainty of whether or not consent would be granted
 - It would mean that those areas suffering the most acute issues in the borough could be tackled far more quickly than would otherwise be the case
 - It would enable the Council to trial the scheme, improving things that don't work as well as they could, whilst continuing to build on the strengths of the scheme, before introducing it across the borough in a phased manner.
 - It would also mean that rather than the need to set up a large new team, when it is widely recognised that there are recruitment difficulties in the market, a smaller team could be created
- 4.7 Merton could then introduce Selective Licensing either in one or more tranches to the rest of borough at a later date.
- 4.8 As cumulatively further phases would result in 20% of either the PRS or the geographical area being exceeded, it is recognised that Secretary of State consent would be required at that time.

Article 4 Direction

- 4.9 With regard to an Article 4 Direction, the only way that it could be introduced more quickly is by foregoing the 12 month notice period of commencement and instead opting for an Immediate Article 4 Direction. The main risk with this approach is that in certain circumstances, an immediate article 4 Direction gives rise to the authority being liable for claims for compensation where someone can show they incurred abortive expenditure or otherwise suffered loss or damage as a result of the Direction (i.e., conversion costs, business losses etc).
- 4.10 Claims could cover such matters as:
- Expenditure in carrying out work which is rendered abortive i.e., costs of then seeking permission

- 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

4.11 Claims would be made to Council and if not agreed, would be determined by the Upper Tribunal of the Land Chamber. It is important to note that the claimant would need to show a loss which needs to crystallise i.e., by sale or redevelopment.

4.12 In order to qualify for compensation there needs to be a refusal of a planning application for development that would have been PD but for the Direction. The refusal also needs to be not more than 12 months from the date that the Direction comes into operation (in effect when the Notice is published).

4.13 It is not possible to quantify the claims that the Council might receive. A typical cost of converting a family home to a small HMO could be anywhere between £10,000 to £30,000. As stated in 4.12, the cost of abortive works would only apply to those properties refused planning consent. All works undertaken and their cost would have to be fully evidenced. Only the work undertaken by the time the Notice is given is likely to be able to be claimed, as work once the Notice is service (at the start of the consultation) could be argued to be undertaken at risk.

4.14 The number of small HMOs that are set up per annum in each of the priority wards is not known. It was impossible to identify this from the data collection exercise undertaken by Metastreet, due to the difficulty of identifying small HMOs.

4.15 Claims could also potentially be made for the loss of value of a property should:

1. It not gain planning consent; and
2. It then be sold as a family home instead of an HMO.

4.16 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. But it certainly is not clear cut that a compensation claim could be successful for any difference in value.

4.17 It is important to note that the majority of local authorities introduce a Non Immediate Article 4 – so giving 12 months' notice of its intention. This means that no claims can be made. There are, however, some exceptions to this – for instance Trafford introduced a borough wide (21 wards) Immediate Article 4 Direction to control small HMOs in 2018 and did not receive a single compensation claim.

Bristol Retraction of December 2022

Decision to defer bringing into force the non-immediate Article 4 Direction to remove permitted development rights for a change of use from a dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4) within specifically defined areas of Filton and Stoke Park & Cheswick wards in accordance with the Town and Country Planning (General Permitted Development) Order 2015

From the 7 February 2022 – 4 April 2022, the Council carried out an 8 week consultation on its intention to make the Proposed Article 4 Direction (A4D). In doing so, it consulted on the following documents:

- a. An executive report to members setting out the various options.
- b. A report prepared by Arup and the Council on the informal business case for the introduction of the Proposed A4D.
- c. Maps showing the Proposed A4D boundaries.

The public notice explained that the Council was “*consulting on making a non-immediate Article 4 Direction*” and invited “*Public representations regarding the proposed Article 4 Direction(s)*”. It also noted that: “*If the decision is to proceed the Article 4 Direction(s) will come into force by 31st December 2022*”.

On the 26 August 2022, following consideration of the consultation responses and a further executive report, the Council decided to make the Proposed A4D. The Order making the Proposed A4D was sealed on 14 September 2022 (“the Sealed Order”). The Sealed Order indicated that it would come into force on 30 December 2022 if it was confirmed. The Council subsequently proceeded to undertake a public consultation for a period of 21 days, in accordance with the procedural requirements set out in paragraph 1, sub-paragraphs (1), (4) and (6), of Schedule 3 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).

In response to this consultation, the Council received a representation stating that if the Council proceeded to bring the A4D into force on 30th December 2022, it would risk being liable for any potential compensation claims in the event that planning permission was refused for the creation of an HMO that would previously have been permitted development. This was because the Council would not be providing 12 months’ notice before the Proposed A4D came into effect on 30 December 2022.

Having considered this matter, the Council considers that a significant risk of liability for compensation would arise from the decision made in August 2022 if the Council continued to confirm the A4D and bring it into force on 30 December 2022, as originally intended. Given the current Council budget pressures and need to protect taxpayers’ money this requires the Council to take appropriate action.

The council has therefore decided that the proposed Direction withdrawing permitted development rights requiring proposals to convert dwelling houses (C3) to a small Houses in Multiple Occupation (HMO) (C4) to apply for planning permission, within specifically defined areas of Filton and Stoke Park & Cheswick ward, will not be brought into force on 30th December 2022.

Instead, a new decision will be taken to introduce the A4D to withdraw permitted development rights. This will be subject to a minimum of 21 days consultation for any representations to be made in accordance with Schedule 3 to the GPDO. Consultation (subject to confirmation) is proposed to commence on 9th January 2023. Accordingly, the Council intends to publish and serve notice that the direction will come into force 12 months after the Decision Notice is published in the prescribed manner, as set under paragraph 1 (1) to (5) of Schedule 3 to the GPDO.

The effect of this, and subject to consultation starting on 9th January 2023, as set out in Schedule 3 to the GPDO, is that the implementation date for the Direction coming into force would be 10th January 2024, rather than the 30th December 2022.

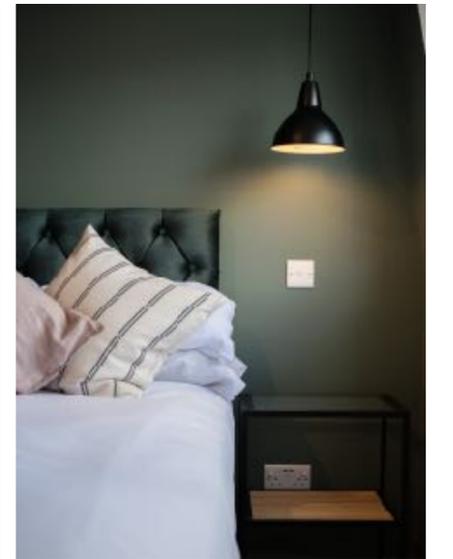
the property;



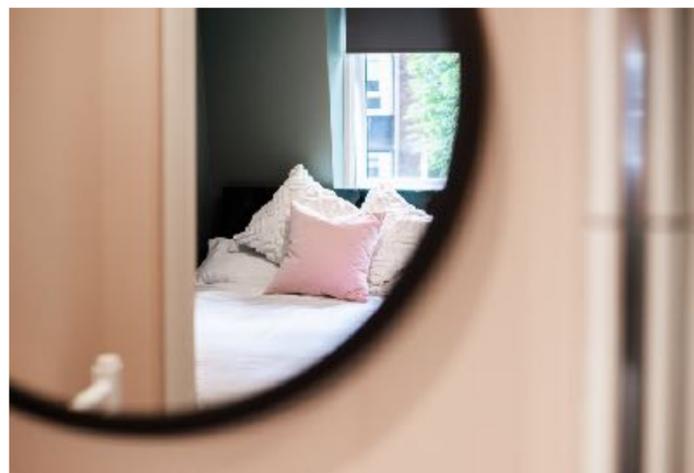
existing;



communal;



bedrooms;



ensuites;

capital costs;

<i>item</i>	<i>description</i>	£
<i>purchase</i>	'on market' purchase	£468,000
<i>conveyance</i>	SDLT, legals & disbursements	£30,845
<i>finance</i>	fees, valuation & interest	£36,640
<i>design</i>	architectural, planning & building control	£2,700
<i>conversion</i>	conversion & alteration to shell condition	£86,100
<i>fit out</i>	decoration, tiling, flooring & furnishing	£57,510
	TOTAL	£681,795

post works value;

<i>item</i>	<i>description</i>	£
<i>revaluation</i>	post works value	£995,000

specification;

- full renovation/conversion
- all en-suite rooms
- business Virgin & ubiquity wi-fi points on all floors
- robust finishes throughout;
 - solid core doors (inc. en-suites)
 - quality ironmongery & key suite throughout
 - quality sanitary fixtures & fittings
 - fixed head & handheld showers
 - Karndean flooring to communals & en-suites
- 300ltr unvented HW system & new CH
- electric towel rails with 'on demand' controls
- communal/kitchen;
 - integrated & soft close kitchen units
 - solid stone worktops & splashbacks
 - ample storage - fridge/freezer, freezer (+fridges beds 1, 2, 3 & 4)
 - cooking - induction hobs, extraction, double oven, microwave
 - washing - dishwasher, 1.5 sink & hot water tap (no more kettles!)
 - seating for 6 to eat (in doors & out)
 - defined lounge space
 - 50" smart wifi TV with Virgin connection
 - zoned lighting
- separate utility with 2x washer/dryers & storage
- zoned fire alarm system hard wired - best in class

“a package of works which have driven an *EPC rating of C (77)*,
improved sustainability and greater comfort.”

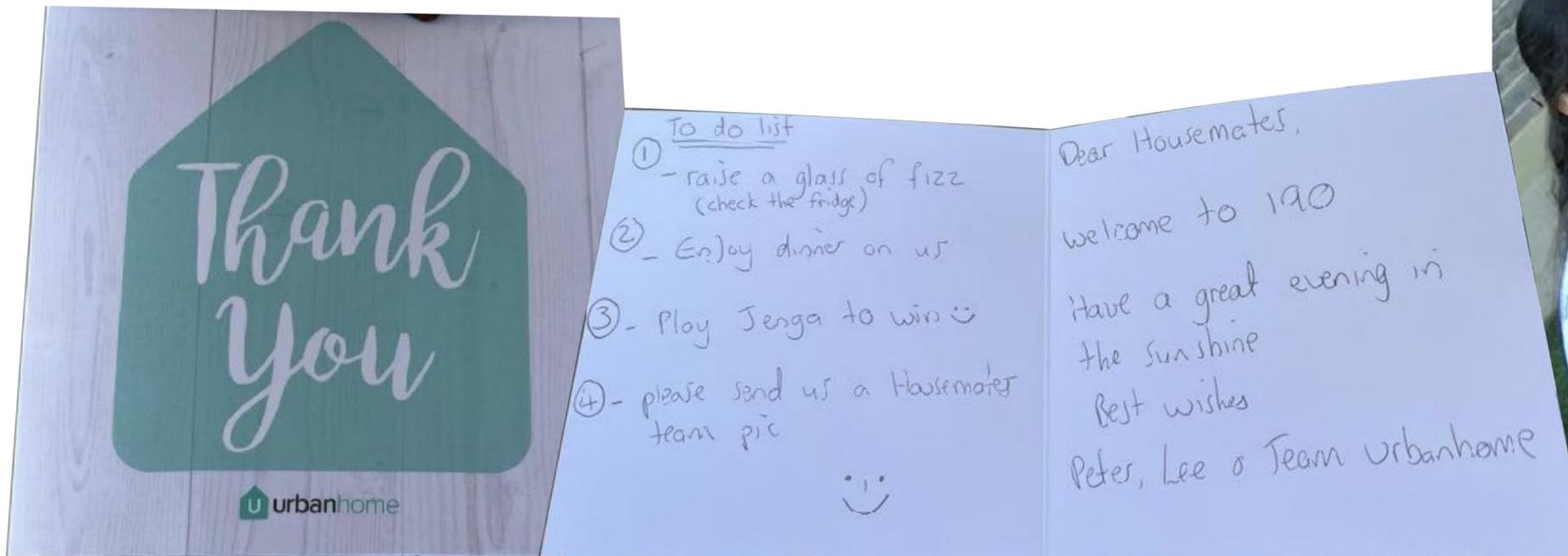
by creating a great product, tenant demand allows us to build a cohesive, coliving house share.

to kick off this new group of friends what better than dinner, drinks & jenga on us?!

the best way to break down those early barriers!

instilling a sense of community early is great for the housemates and also for our management of the house as a whole; win-win

housemates include; nurses, accountant, architect, film editor & managerial posts





“if we don't control our environment, our environment controls us”

