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London Borough of Merton  
Landlord Licensing and HMO Planning Controls Consultation  
14<sup>th</sup> November 2022 to 22<sup>nd</sup> January 2023

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# 1. Introduction

1. Merton 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 Houses in Multiple Occupation (HMOs).
2. The private rented sector is an important part of Merton's housing stock and has grown rapidly in recent years. Whilst many landlords operate within guidelines, there are also others who do not, often taking advantage of some of the most vulnerable members of Merton's community. This leads to issues affecting health and safety, the wider community, and the environment.
3. Merton Council (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 due to the private rented sector performing poorly; including the impact of unscrupulous landlords. To this end, the Council is working on a strategy which will include a raft of measures and actions to be taken, including the introduction of Selective and Additional Licensing for existing rented properties; the introduction of new planning rules (known as an Article 4 Direction) for future rented properties; as well as targeted and effective enforcement of existing properties.
4. Merton Council's overarching ambition is to rebuild pride within the borough with three strategic themes as follows:
  - » Creating a Borough of Sport
  - » Building a Sustainable Future
  - » Nurturing Civic Pride
5. The above themes would be supported by the proposals for Selective and Additional licensing, as well as the Article 4 Direction for small Houses in Multiple Occupation (HMOs).

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## What is Licensing?

### Selective Licensing

6. The Housing Act 2004 gives Councils the power to introduce Selective Licensing schemes for privately rented properties in order to improve standards of management in the private rented sector and lead to improvement of the area. This is known as “designating” an area for licensing.
  7. The power to designate is subject to certain conditions and criteria, including the requirement to consult persons who are likely to be affected by the designation; and the Council must consider any representations made as part of that consultation in their decision making. A designation lasts five years. If the council wish to renew the scheme beyond that, then a separate round of consultation must take place.
  8. Where a Selective Licensing designation is in effect, any landlord or agent (hereafter just “landlord”) wishing to privately rent a property must obtain a licence to do so from the Council, which contains certain conditions that must be met. Some of these conditions are mandated by Government, however the Council has scope to add its own conditions that are tailored to dealing with the specific problems in the designation relating to the private rented sector.
  9. There is a fee associated with obtaining the licence. The Council use this money to administer the scheme (i.e. perform certain checks on the landlord and property prior to issuing the license), conduct inspections of licensed properties, identify landlords that fail to meet the licence conditions, and engage in enforcement activity where necessary.
  10. Selective Licensing was introduced in Part III of the Housing Act 2004 to empower Local Authorities when faced with a specific area that suffers with significant and persistent issues such as:
    - » Low housing demand
    - » A significant and persistent problem caused by anti-social behaviour (ASB)
    - » Poor property conditions
    - » High levels of migration
    - » High level of deprivation
    - » High levels of crime
  11. Merton has a population estimated to be 206,453 in 2020 and projected (by the GLA) to be 213,209 by 2030. Currently there are around 85,767 residential properties in the borough and 29,181 (about 34% of total stock) are estimated to be in the private rented sector. Merton’s private rented sector has grown by over a third in the past 10 years; and all of Merton’s wards have a private rented sector of above the average national private rented sector rate (around 19.6%).
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12. Housing conditions in the PRS tend to be worse than in other tenures. Additionally, poorly managed privately rented properties have a negative impact upon many neighbourhoods with high levels of noise complaints and accumulation of rubbish.

### **Merton Council's Selective Licensing Proposal**

13. Based on robust research, the Council have identified issues related to poor property conditions and anti-social behaviour connected with the private rented sector in some parts of Merton. Having proactively used existing enforcement and other powers, the Council now feels that the introduction of Selective Licensing in these specific areas will result in a reduction of these problems.
14. It is the intent of the Council to designate the following wards for Selective Licensing: Figge's Marsh, Graveney, Longthornton, and Pollards Hill. According to the Council's data there are approximately 5,500 privately rented properties in these four wards that would require a licence under the proposed scheme.

### **Additional Licensing**

15. Whilst houses in multiple occupation (HMOs – homes occupied by three or more people from more than one household) play an important role in providing housing and meeting the needs of a wide range of residents, poorly managed HMOs can often have some of the worst housing conditions. Additionally, HMOs are often cited as a major anti-social behaviour issue in wards and many complaints are received by Merton Council enforcement teams.
16. There is already a national requirement applying to HMOs occupied by five or more persons (from 2 or more separate households), for the landlord of such a property to obtain a licence. This is known as mandatory licensing. However, it does not apply to smaller properties occupied by three or four persons from multiple households.
17. Part II of the Housing Act 2004 gives each council the power to introduce an additional licensing scheme in the area of their district or specific wards within their district. Additional Licensing applies to these smaller HMOs that fall outside the scope of the mandatory HMO licensing scheme, (i.e. those HMOs that have two, three or four bedrooms, occupied by three or four persons, from two or more separate households). As with Selective Licensing, the landlord would be required to pay for a licence to rent such properties. The Council use this money to administer the scheme (i.e. perform certain checks on the landlord and property prior to issuing the license), conduct inspections of licensed properties, identify landlords that fail to meet the licence conditions, and engage in enforcement activity where necessary.
18. An Additional Licensing scheme can be introduced if the Council is satisfied that a significant proportion of the HMOs within the designated area are being poorly managed; and are consequently affecting members of the public or the occupiers.

19. Additional licensing will include mandatory conditions that must be met by the landlord of the HMO. As with Selective Licensing, some additional conditions can be imposed by the Council as part of the scheme.

### **Merton Council's Additional Licensing Proposal**

20. The Council have identified issues related to poor property conditions and anti-social behaviour connected with HMOs in some parts of Merton. The Council believes that the introduction of Additional Licensing in these specific areas will address these problems and improve circumstances for HMO tenants and their neighbours.
21. It is the intent of the Council to designate the following wards for Additional Licensing: Figge's Marsh, Graveney, Longthornton, Pollards Hill, Colliers Wood, Cricket Green, and Lavender Fields. According to the Council's data there are approximately 700 currently unlicensed HMOs in these wards that would need to become licensed under the proposed scheme.

### **New planning rules for small HMOs (Article 4 Direction)**

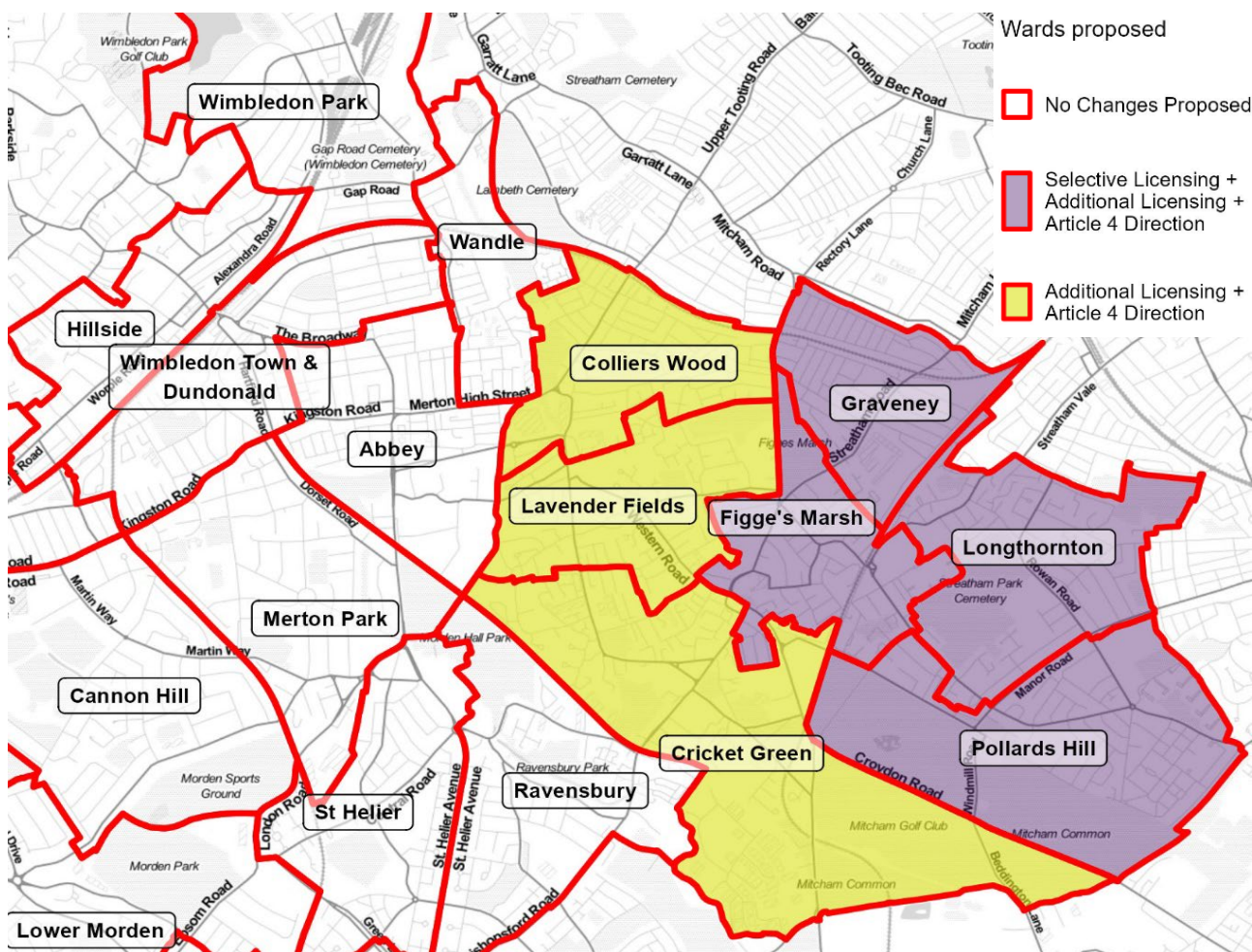
22. In addition to the Selective and Additional Licensing Schemes, the Council also propose to introduce a new planning rule called an Article 4 Direction, which would apply to the same wards designated for Additional Licensing.
23. An Article 4 Direction is a requirement for owners of properties that would like to convert an existing home into a small HMO (housing between 3 and 6 people, from 2 or more households) to apply for planning consent beforehand (currently, large HMOs [7 people or more, from 2 or more households] already require planning permission). This allows the Council to consider local amenity issues such as litter, parking, noise, bin storage, and the wellbeing of the area when considering whether or not to grant planning permission. The Council feels that this extra control will allow them to address some of the issues being experienced across Merton both by HMO tenants and members of the community.
24. If a property owner wishes to convert a home into a small HMO, the Article 4 direction would require planning permission to be sought to do so in the following wards: Figge's Marsh, Graveney, Longthornton, Pollards Hill, Colliers Wood, Cricket Green, and Lavender Fields.

## Where are the new licensing and planning rules proposed to apply in Merton?

25. The diagram below illustrates that:

- » In Graveney, Longthornton, Figge’s Marsh, and Pollards Hill (purple shading) all three proposed measures apply: Selective Licensing, Additional Licensing, and the Article 4 Direction;
- » In Cricket Green, Colliers Wood, and Lavender Fields (yellow shading) two of the three proposed measures apply: Additional Licensing and the Article 4 Direction.

Figure 1: Map of Merton illustrating in which wards licensing and Article 4 Direction will apply



26. To find out whether any of these designations covers your property, check which ward you live in by visiting the postcode checker on the [Merton Council Website](https://myneighbourhood.merton.gov.uk/MyNeighbourhood/MyNeighbourhood-Search.aspx) (<https://myneighbourhood.merton.gov.uk/MyNeighbourhood/MyNeighbourhood-Search.aspx>)

27. To use the checker, simply enter your postcode, click “submit” and select your address from the options that follow. This will open an information page about that address. If you click “Wards and Councillors” under “About this Address” on the information page, this will confirm which ward your address is in.

## What does licensing mean for landlords in the designated areas?

28. Licensing means that landlords/agents who privately rent properties in the designated areas of the borough would need to licence each rented property prior to renting it out making them a “licence holder”. They must then comply with the conditions of their licence.
29. As part of the application process, checks are made to ensure that potential licence holders are “fit and proper” under the requirements of the Housing Act 2004 (Part 3) to manage properties. Further to this, they must declare that the property has an appropriate number of occupants (i.e. is not overcrowded), has up-to-date safety certificates, appropriate fire alarms, and other similar checks are made to ensure that the property is acceptable for renting out to tenants.
30. The conditions of the licence contain several stipulations designed to protect tenants, such as ensuring they have all the information necessary (e.g. a copy of the tenancy agreement, instructions on refuse disposal etc.), and a clear understanding of their rights and responsibilities.
31. During the five years of the designation, the Council will be undertaking a programme of inspections to ensure that licence conditions are being followed by licensed landlords, and to identify landlords who have not licensed their property. Where issues are found, the Council will work with the landlord in question to deal with the problem. Where serious issues are found, or landlords are not willing to comply with the licence scheme, the Council has the power to prosecute or impose civil penalties as necessary.
32. The Councils intention is to inspect all properties within the 5-year period of the designation. Applications will be subject to a risk assessment based on any indications of serious issues; and will be visited as a priority at the application stage if the assessment indicates this is required.

## The Consultation

33. A 10-week consultation on the three proposals is being carried out by Opinion Research Services (ORS) on behalf of the Council, and ORS will also be seeking the views of all stakeholders that wish to contribute. This may include (but is not limited to) landlords, agents, industry associations, residents and resident’s groups, private tenants, third sector organisations, advice agencies, registered housing providers, councillors, and businesses.
34. The consultation aims to fully engage with a wide cross section of organisations and individuals affected by these proposals, to give everyone the chance to have their say and ensure all views are properly considered and recorded.

35. The consultation will run from November 14<sup>th</sup> to January 22<sup>nd</sup>. Feedback will be considered by the Council before making a final decision on the scheme. A final decision will be made on the Article 4 Direction by April 2023, and it is anticipated that, if approved, licensing will be in effect from September 2023. The final decision on licensing designations (if approved) will be made public through a press release and appropriate statutory notices.

## **The intended benefits of Selective Licensing, Additional Licensing, and the Article 4 Direction**

36. Through landlords complying with the licence conditions, the intention is that this will result in a level playing field for the properties in the proposed designation - with licence holders treated the same and tenants having clear expectations about the property they are renting.
37. The Council believe that a joined-up approach with other housing enforcement powers has a greater impact on tackling poorly managed or unsafe properties, and the development of positive working with landlords. This is intended to make private renting a more attractive option, creating homes that people want to live in.
38. Licensing can help to improve neighbourhoods and communities by addressing some of the issues that have been identified within the research. This should result in better property standards and ensure that both tenants and landlords are aware of what is expected of them.
39. Landlord licensing gives the Council the ability to identify and take the strongest action against criminal and non-compliant landlords whose unprofessional or poor property management causes problems for the tenants, putting them at unacceptable risk and de-stabilising neighbourhoods.
40. Outcomes that may be expected of the new proposed licensing schemes are as follows:
- » Improved housing conditions for those in the private sector;
  - » A reduction in significant and persistent problems caused by anti-social behaviour;
  - » An increase in good landlords and an elimination (or at least a significant reduction) of rogue landlords.

## **Evidence in support of licensing**

41. The Council commissioned a report from a company called Metastreet, which conducted analysis and modelling of the different wards of Merton, seeking to provide information on issues connected with the private rented sector and HMOs in the borough. The data in this section is taken from that document (London Borough of Merton Private Rented Sector: Housing Stock Condition and Stressors Report – Metastreet, Sept 2022). The full document and other supporting evidence can be viewed on the Council website at [PRS Consultation \(https://www.merton.gov.uk/prsconsultation\)](https://www.merton.gov.uk/prsconsultation).



## Selective licensing key evidence

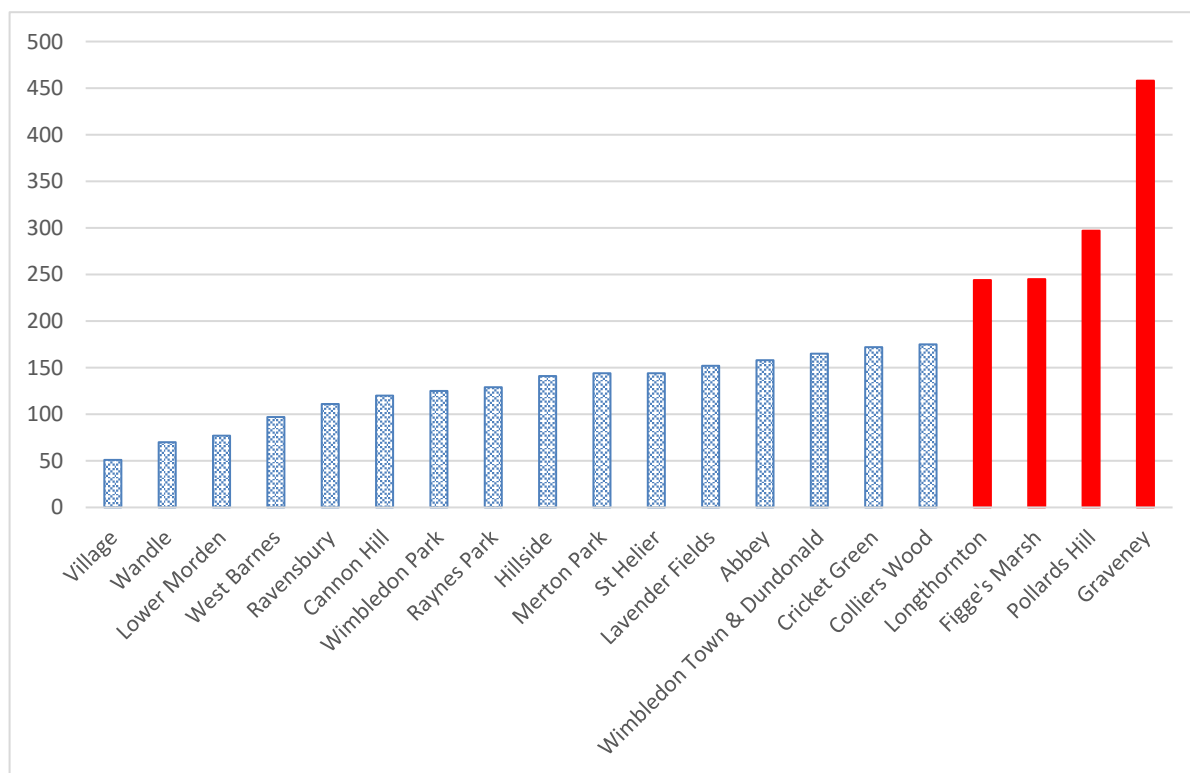
### Complaints to the Council

42. On the subject of complaints to the council, the Metastreet report states that:

*“Complaints made by PRS<sup>1</sup> to the council about poor property conditions and inadequate property management are a direct indicator of low quality PRS. Merton recorded 3,275 complaints from private tenants linked to the PRS properties over a 5-year period.”*

43. It then provides a bar chart showing the number of complaints in each ward. The top four most-complained about wards are the four wards selected for Selective Licensing (Figure 2):

**Figure 2: Private Rented Sector related complaints made by private tenants and others to the Council (Source: Metastreet 2022, from Fig 19 – wards within proposed Selective Licensing designation highlighted in solid red, other wards are represented by cross-hatched blue).**

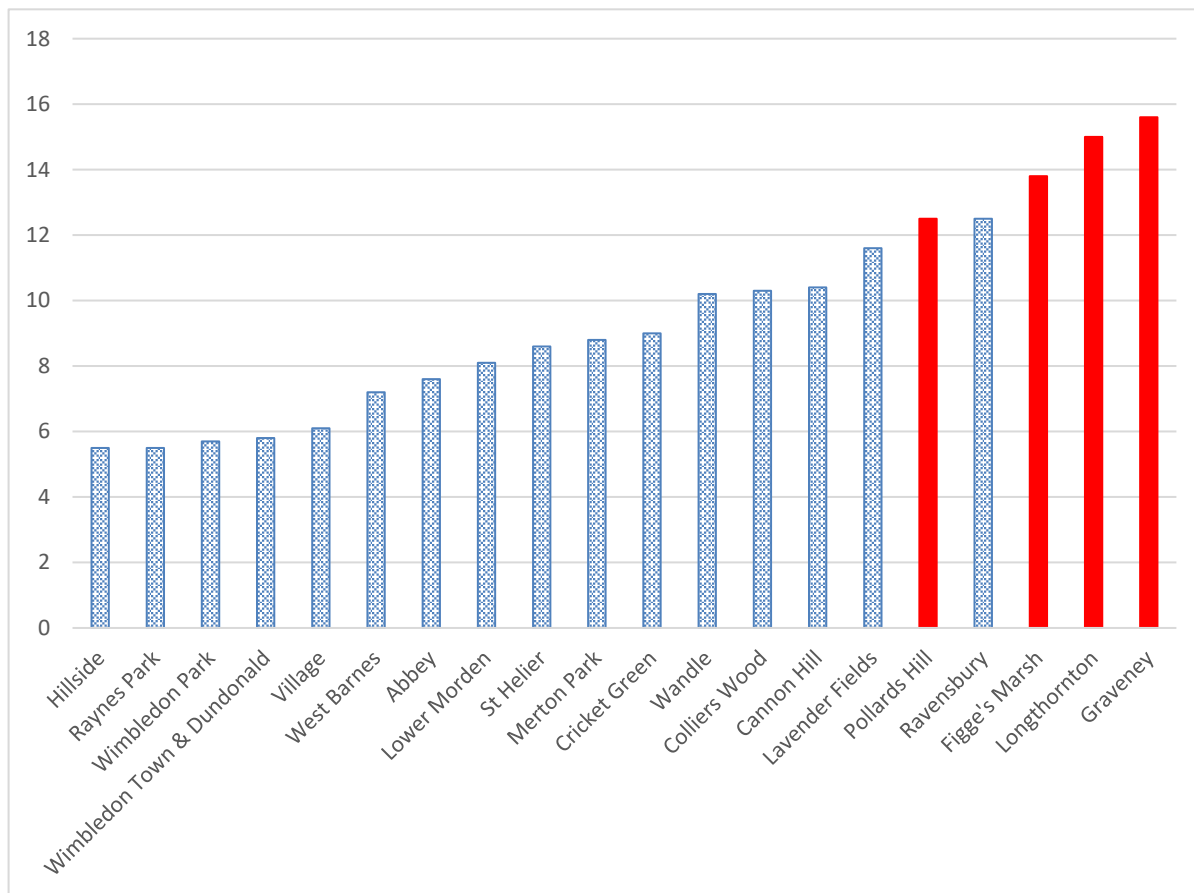


<sup>1</sup> PRS – Private Rented Sector

### Incidents of Anti-Social Behaviour (related to the private rented sector)

44. The report also discusses rates of anti-social behaviour (ASB) incidents. The four wards proposed for Selective Licensing designation were 4 of the top 5 wards with the highest rates of ASB incidents related to the private rented sector (Figure 3):

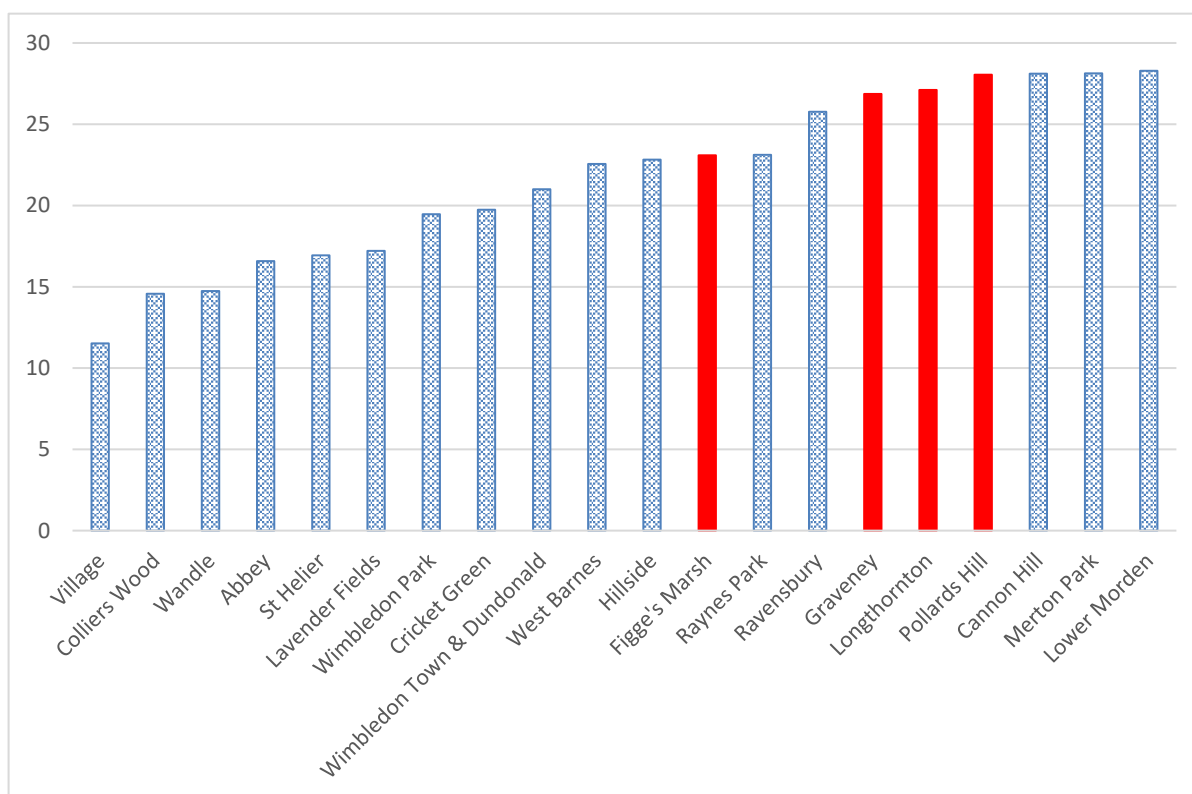
**Figure 3: Anti-social behaviour incidents linked to the private rented sector per 100 properties by ward (Source: Metastreet 2022, from Fig 23 – wards within proposed Selective Licensing designation highlighted in solid red, other wards are represented by cross-hatched blue).**



## Predicted rates of serious hazard

45. The Metastreet report also discusses rates of predicted hazards, specifically the most serious, known as a Category 1 hazard. This definition comes from the nationally utilised Housing Health and Safety Rating System (HHSRS). Under the HHSRS, Category 1 hazards are the type of hazard where the most serious harm outcome is identified, i.e. the hazard is a serious and immediate risk to a person's health and safety. All Councils have a duty to take reasonable steps to remedy a Category One hazard.
46. This data shows that the four wards proposed for Selective Licensing designation were 4 of the top 9 wards with the highest predicted rates of Category 1 hazard related to the private rented sector (Figure 4):

**Figure 4: Rates of predicted Category 1 hazards per 100 private rented sector dwellings by ward (Source: Metastreet 2022, from Fig 18 – wards within proposed Selective Licensing designation highlighted in solid red, other wards are represented by cross-hatched blue).**



## In conclusion

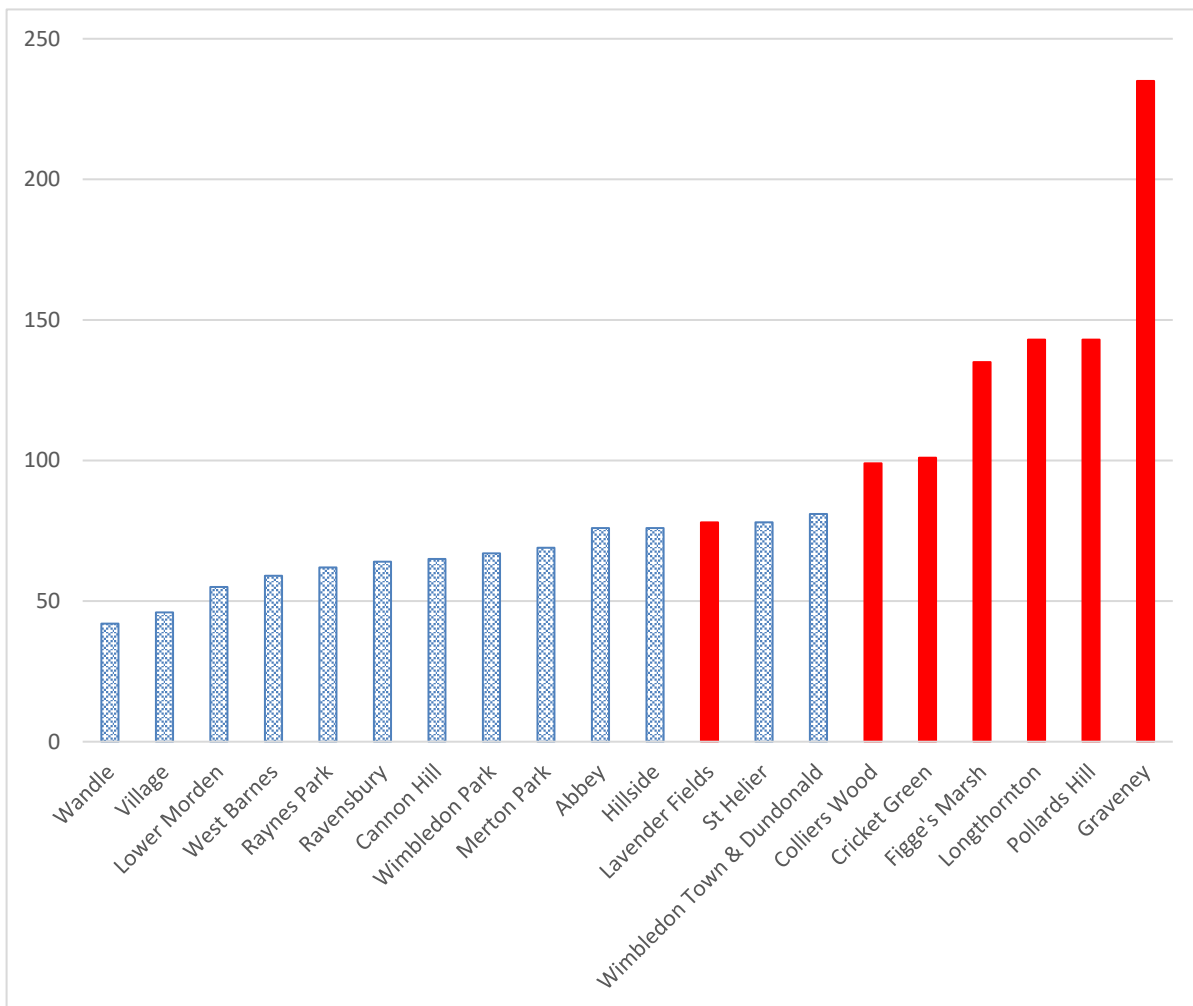
47. The Council believe that this data, supported by further data in the Metastreet document, along with other Council held data, strongly support the selection of the four wards of Figge's Marsh, Graveney, Longthornton, and Pollards Hill for Selective Licensing designation. This data can be viewed in full at [PRS Consultation \(https://www.merton.gov.uk/prsconsultation\)](https://www.merton.gov.uk/prsconsultation).
48. Furthermore, the Council believe that the introduction of Selective Licensing in these four wards will improve the condition of private rented sector properties, and lead to a reduction in anti-social behaviour incidents connected with these properties.

## Additional Licensing Key Evidence:

### HMO Density:

49. The Metastreet report offers data on where it predicts HMOs to be located. This data is presented in Figure 5 below. The red highlighted bars are the proposed areas for additional licensing, and also for the Article 4 Direction. This shows that the 7 wards that form the proposed additional licensing designation are all in the top 8 wards in Merton in terms of the numbers of HMOs in them (predicted), with six of them collectively forming the top 6 overall (Figure 5):

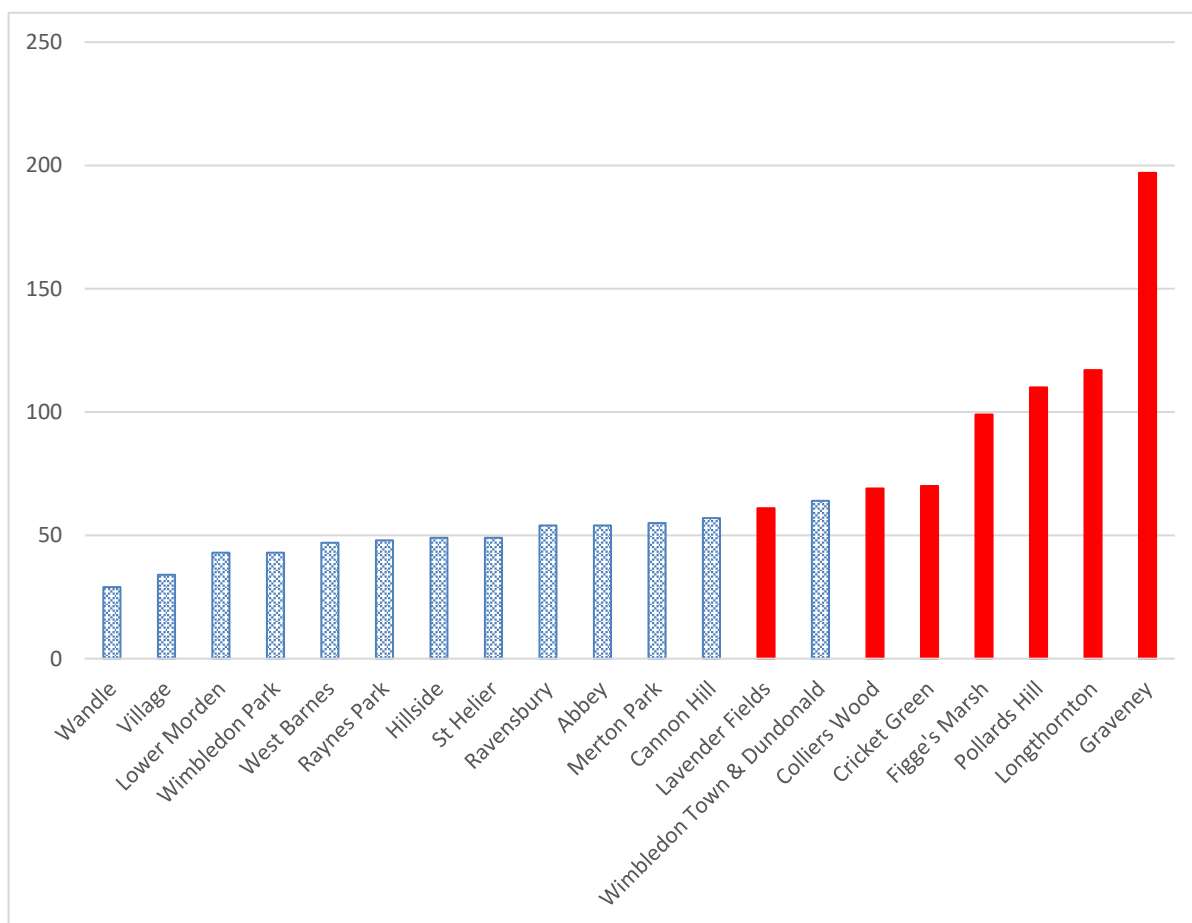
**Figure 5: Number of HMO dwellings (predicted) (Source: Metastreet 2022, from Table 5 – wards within proposed Additional Licensing designation and Article 4 direction highlighted in solid red, other wards are represented by cross-hatched blue).**



## Predicted rates of serious hazard

- 50. The Metastreet report also discusses rates of predicted hazards, specifically the most serious, known as a Category 1 hazard. This definition comes from the nationally utilised Housing Health and Safety Rating System (HHSRS). Under the HHSRS, Category 1 hazards are the type of hazard where the most serious harm outcome is identified, i.e. the hazard is a serious and immediate risk to a person's health and safety. All Councils have a duty to take reasonable steps to remedy a Category One hazard.
- 51. This data shows that the 7 wards that form the proposed additional licensing designation are all in the top 8 wards in Merton in terms of the numbers of predicted serious hazards, with 6 of the 7 collectively forming the top 6 overall (Figure 6).

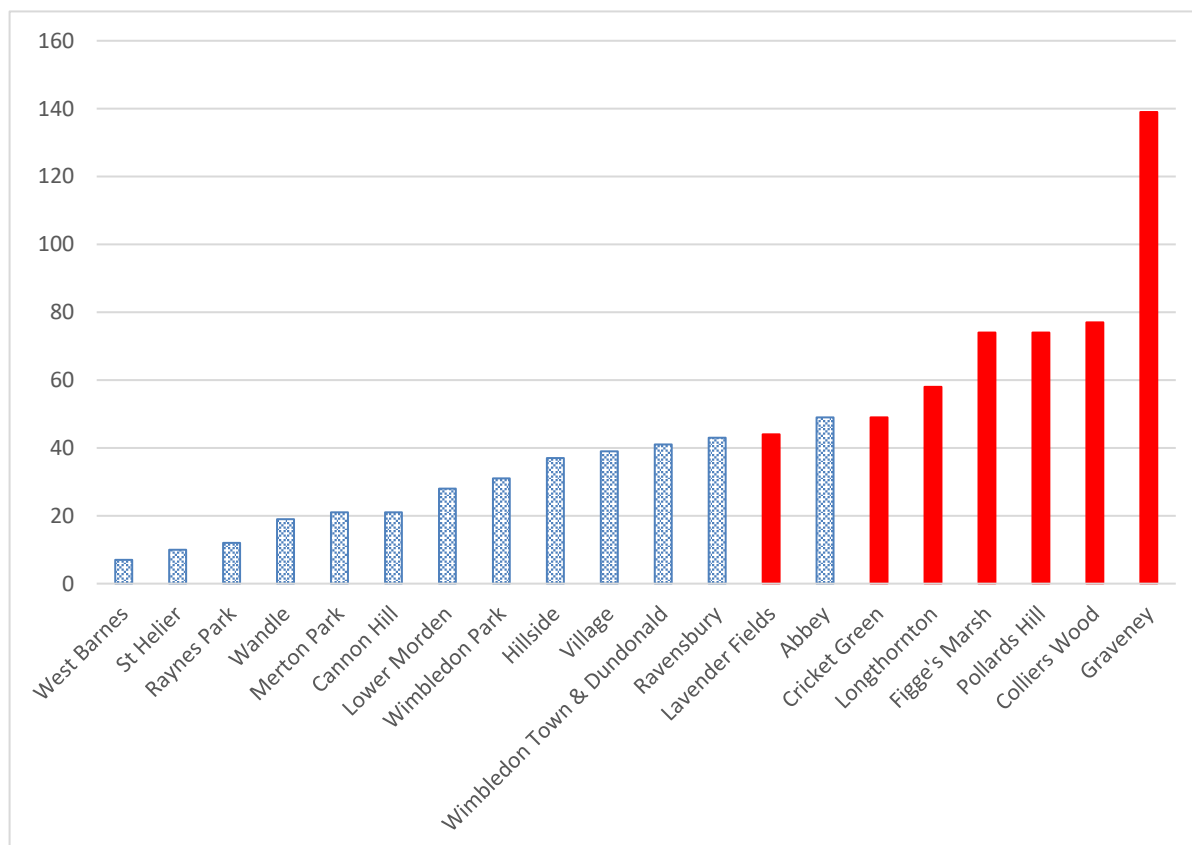
**Figure 6: Numbers of HMOs predicted to contain a serious hazard (HHSRS Category 1) (Source: Metastreet 2022, from Table 5 – wards within proposed Additional Licensing designation and Article 4 direction highlighted in solid red, other wards are represented by cross-hatched blue).**



## Anti-social behaviour Complaints

52. The report also contains data relating to anti-social behaviour incidents linked to HMOs. This again shows that the 7 wards that form the proposed additional licensing designation are all in the top 8 wards in Merton in terms of the numbers of anti-social behaviour complaints linked to HMOs, with six of them collectively forming the top 6 overall (Figure 7).

**Figure 7: Number of anti-social behaviour incidents linked to all HMOs by ward (Source: Metastreet 2022, from Table 5 – wards within proposed Additional Licensing designation and Article 4 direction highlighted in solid red, other wards are represented by cross-hatched blue).**



## In conclusion

53. The background evidence for the council's Article 4 Direction and Additional Licensing is available via the council's website at [PRS Consultation \(https://www.merton.gov.uk/prsconsultation\)](https://www.merton.gov.uk/prsconsultation).
54. The Council considers that this robust evidence strongly supports the selection of the seven wards of Figge's Marsh, Graveney, Longthornton, Pollards Hill, Colliers Wood, Cricket Green, and Lavender Fields for both the introduction of an Additional Licensing designation to improve the conditions in the existing HMO sector in these wards, and the introduction of an Article 4 Direction to control the growth in small HMOs within the designation in future.

## Rationale for Selective and Additional Licensing

55. Both the Housing Act 2004 and guidance issued by the Department for Communities and Local Government requires the Council to consider whether any alternative means would be effective, instead of licensing, to address the problems the Council has identified. The guidance - Selective licensing in the private rented sector: A guide for local authorities (March 2015) – states that:
56. The local housing authority must show:
- » it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and;
  - » how the making of the designation will significantly assist the local housing authority in achieving its objectives (whether or not in conjunction with those other measures).
57. The Council has considered a number of other courses of action or alternatives to selective and additional licensing, but do not believe that, individually or collectively, they provide an effective, or as effective a, means of tackling anti-social behaviour and poor housing conditions in the borough, or of delivering the scale of improvement that we believe is required in the PRS. The following section sets out the alternatives that have been considered and explains why they are not sufficient to meet the Council’s objectives.

### 1) Use of Part 1 Housing Act 2004 enforcement powers (HHSRS) and Public Health powers

58. **Strengths:** Formal notices can be served that require improvements to be carried out. Councils can carry out work in default if a notice is not complied with. Landlords also risk being prosecuted if they do not comply with the notice. The Council has prosecuted landlords and has issued Civil Penalty Notices (CPNs) for offences committed. Cases have received media attention, raising the profile of the Council’s enforcement action. However, offences still continue.
59. **Weaknesses:** Formal action is generally a slow process with appeal provisions against most types of notices served, which can significantly delay the time period for compliance. These powers do not place any obligation on landlords to be proactive in improving conditions. Work in default can be effective but is expensive and time consuming for the Council, with the risk that not all costs are recovered. Successful prosecutions do not themselves secure improvements in property conditions and the Council’s prosecution costs are often not met in full.

60. Furthermore, the Council's powers under Part 1 do not enable it to regulate the management of the property. It is noted that in some cases where successful prosecutions have been achieved, or civil penalty notices issued, the landlords had other properties which were properly managed. This indicates that some offences are committed by landlords that are fully aware of the regulations and the requirements for safe and effective management of rented properties.

## **2) Voluntary Accreditation schemes to facilitate improvement in management practices and standards**

61. **Strengths:** For those landlords who take part, accreditation can improve the ability to effectively manage a property.
62. **Weaknesses:** This requires voluntary landlord engagement; and rogue operators are unlikely to engage. In Merton, there has been a poor take up of the voluntary accreditation schemes available. The 2021 English Private Landlord Survey (EPLS) showed that the majority of landlords (71%) had no current or previous membership of any organisation. Only eight percent of landlords reported current or previous membership of a landlord accreditation scheme.
63. This evidence indicates that reliance on voluntary accreditation schemes is not sufficient to be relied upon in raising standards in the private rented sector.

## **3) Reliance on prosecutions and civil penalties for housing offences**

64. **Strengths:** Provides a disincentive to keep properties in poor condition.
65. **Weaknesses:** These powers do not place obligations on landlords to be proactive in improving property conditions. Successful prosecutions, or the imposition of civil penalties, do not themselves secure improvements in property conditions. The absence of large-scale licensing significantly reduces the scope of the Council's ability to impose civil penalties in respect of identified breaches of housing legislation.

## **4) Improvement grants to improve sub-standard properties**

66. **Strengths:** Grants subsidise improvement works, improving standards and deriving benefits for landlords and tenants.
67. **Weaknesses:** There is no current grant funding from government to enable the Council to offer grants to private landlords to bring properties up to standard. The Council therefore has very limited scope to offer grants. Whilst grant awards would fund improvements it is reasonable to consider that landlords should be carrying out works to maintain their properties to ensure that their legal obligations are met. Any grant scheme would be discretionary and would rely on voluntary landlord engagement



**5) Anti-social behaviour powers: The Council works in partnership with the police and other statutory bodies to address and reduce incidents of anti-social behaviour in the borough.**

68. **Strengths:** The strategic partnership work enables appropriate interventions where anti-social behaviour is reported. Formal notices can be served that address anti-social behaviour identified at individual properties, which, if complied with, would address the anti-social behaviour issues identified.
69. **Weaknesses:** Action would generally be taken against the tenant in occupation. These powers do not place any obligation on landlords to be proactive in managing their properties to prevent or reduce the likelihood of anti-social behaviour occurring.
70. Each of the above powers or measures supports the Council in achieving the objectives of selective and additional licensing, however, it is the Council's opinion that, none of them, either individually or collectively, is capable of achieving the objectives that they intend to deliver through the proposed licensing schemes.

## Why Licensing is proposed in the Wards Identified

### Private Rented Sector Complaints

71. Complaints made by private rented sector tenants to the council about poor property conditions and inadequate property management are a direct indicator of low quality private rented properties. Merton recorded 3,275 complaints from private tenants linked to privately rented properties over a 5-year period<sup>2</sup>.
72. The top four wards with the highest number of complaints, Longthornton, Figge's Marsh, Pollards Hill, and Graveney (Figure 2) have been proposed for the selective licensing designation. The Council believes that the total number of complaints represents an under-reporting of issues. This is based on case evidence indicating that some tenants are reluctant to report complaints for fear of jeopardising their tenancy. In some cases occupants have declined to cooperate with Council enquiries relating to the management of their properties, and this reluctance is believed to be due to the perceived risk of losing their accommodation if the Council becomes involved.

### Anti-Social Behaviour

73. Over a 5-year period, 873 anti-social behaviour incidents have been linked to all HMOs in Merton. Anti-social behaviour incidents are incidents such as noise, verbal abuse, harassment, intimidation, nuisance animals, nuisance vehicles, substance misuse, prostitution, rubbish, fly tipping etc. The evidence shows that the four wards proposed for selective licensing designation were 4 of the top 5 wards with the highest rates of anti-social behaviour incidents related to the private rented sector (Figure 3). In addition, the 7 wards that form the proposed additional licensing designation are all in the top 8 wards in Merton in terms of the numbers of anti-social behaviour complaints linked to HMOs, with six of them collectively forming the top 6 overall (Figure 7).

### Serious Hazards

74. The data analysis in the Metastreet report sets out rates of predicted Category 1 hazards, as defined by the nationally utilised Housing Health and Safety Rating System (HHSRS). Category 1 hazards are the type of hazard where the most serious harm outcome is identified, i.e. the hazard is a serious and immediate risk to a person's health and safety. All Councils have a duty to take reasonable steps to remove a Category 1 Hazard. Analysis of data shows that the four wards proposed for selective licensing designation were 4 of the top 9 wards with the highest predicted rates of Category 1 hazard incidents related to the private rented sector (Figure 4).
75. The data also shows that the 7 wards that form the proposed additional licensing designation are all in the top 8 wards in Merton in terms of the numbers of predicted Category 1 hazards, with six of them collectively forming the top 6 overall (Figure 6).

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<sup>2</sup> London Borough of Merton - Private Rented Sector: Housing Stock Condition and Stressors Report (Metastreet Sept 2022) – page 45, also in Figure 19 and Map 4.

## **Strategic Partnership Working**

76. Private sector housing plays a significant part in the housing provision within Merton, and the Council is committed to enhancing enforcement processes and partnership working to improve conditions in the sector.
77. The Private Sector Enforcement Policy has been updated and new policy initiatives have been set out to enable the Council to achieve its objectives. These initiatives include:
- » Selective Licensing
  - » Additional Licensing
  - » An Empty Homes Strategy
  - » Article 4 Directions
78. These policy initiatives underpin our approach to enforcement and utilising the range of options available to improve conditions in the sector. In furtherance of this objective the Council will continue to work with strategic partners such as Safer Merton, Environment and Regeneration teams, the Police, Regulatory Shared Services Partnership, housing associations, and landlord forums, to improve housing conditions in the private rented sector.

## Licence conditions

79. The “conditions” of the licence are the rules that the licence holder (the landlord or agent) must follow to keep the right to rent the licensed property to tenants. There are some conditions that the Government require are included (known as mandatory licence conditions), and the remainder are set by the Council (known as discretionary licence conditions); and are intended to tailor the licence to support the goals of the Council in designating the area.
80. The mandatory conditions for a Selective Licence and those for an Additional Licence are different, so there are necessarily two different sets of conditions as a result.

## Proposed Selective Licensing conditions

### Tenancy Management

#### MANDATORY

##### 1. Terms of occupation

1. The licence holder must 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.

##### 2. 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**

### **3. Anti-social behaviour (ASB)**

6. 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.
7. 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**

#### **4. Gas**

8. 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).

#### **5. Electrical Appliances**

9. The licence holder must 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.
10. The license holder 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.

#### **6. Furniture and Furnishings**

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

## **DISCRETIONARY**

### **7. Refuse and waste**

12. 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.
13. 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.
14. The 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.
15. 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.
16. 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.

### **8. HHSRS**

17. 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.

### **9. Certificates**

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

## Fire Safety

### MANDATORY

#### 10. Smoke Alarms and Carbon Monoxide Alarms

20. 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.
21. 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

22. 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

#### 11. Space Standards

23. 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:
  - » The maximum number of people allowed to occupy the property
  - » The maximum permitted number of persons per room

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## Proposed Additional Licensing conditions

### Tenancy Management

#### MANDATORY

##### 1. 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.

##### 2. 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

##### 3. Anti-social behaviour (ASB)

6. 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.
7. 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.
8. 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.



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## Property Management

### MANDATORY

#### 4. Gas

9. 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).

#### 5. Electrical Appliances

10. The licence holder must 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.
11. The license holder 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.

#### 6. Furniture and Furnishings

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

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#### 7. Refuse and waste

13. 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.
14. 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.
15. The 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.
16. 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.

17. 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.

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18. 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.

## **9. Certificates**

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

## **Fire Safety**

### **MANDATORY**

#### **10. Smoke Alarms and Carbon Monoxide Alarms**

21. 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.
22. 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**

23. 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

### MANDATORY

#### 11. Space Standards

24. 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:

- » The maximum number of people allowed to occupy the property
- » The maximum permitted number of persons per room

### How Much Will a Licence Cost?

81. 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.
82. 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)
83. Applicants who are both accredited and apply within the Early Bird timeframe will receive a combined discount.
84. 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.
85. Licence fees are payable in two instalments. Part A fees are payable at the application stage if the licence application is refused by the Council or withdrawn by the applicant, the Part A payment will not be refunded.

86. Payment in respect of the Part B instalment 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.
87. 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.
88. The licensing fees, including available discounts, are presented in the following tables:

### Selective Licensing

	Part A	Part B	Total Fee
<b>Standard Fee</b>	£247	£405	£652
<b>Early Bird</b>	£247	£340	£587
<b>Accredited Landlord</b>	£247	£355	£602
<b>Accredited Landlord &amp; Early Bird</b>	£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

89. 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

90. 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.

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

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

92. 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.

## **New planning rules for small HMOs – an Article 4 Direction**

93. Government policy states that the use of Article 4 directions to remove national permitted development rights should....
- » “be limited to situations where an Article 4 Direction is necessary to protect local amenity or the wellbeing of an area” and
  - » “in all cases be based on robust evidence, and apply to the smallest geographical area possible”

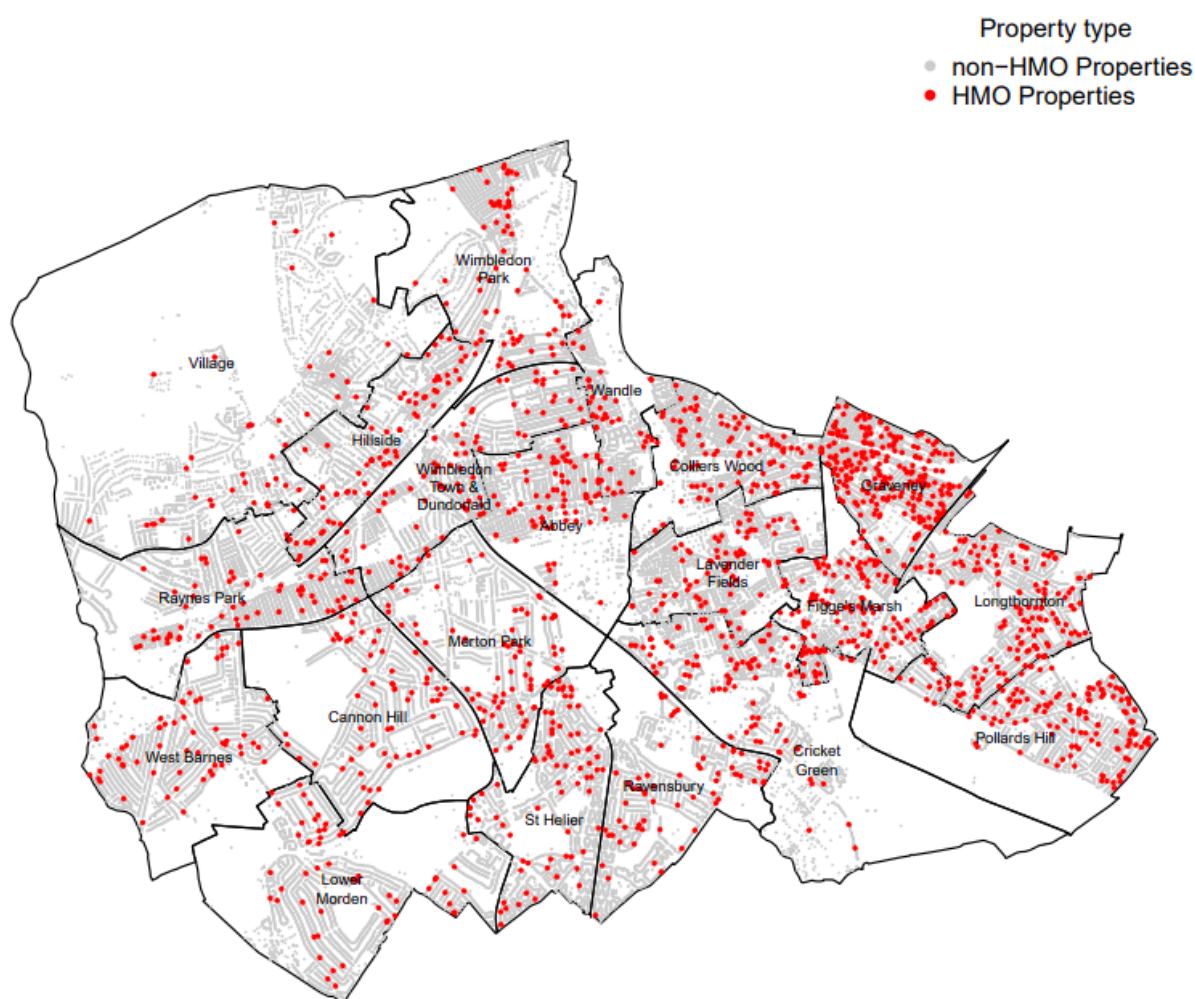
### **Protecting local amenity and wellbeing**

94. Landowners have to seek planning permission to create large HMOs (i.e. those occupied by seven people or more from two or more households) but can operate a small HMO (occupied by between three and six people from two or more households) without the need for planning permission. There may be very limited, or no change to the physical fabric of the house or flat before it is occupied as a HMO, particularly for small HMOs where between three and six people may be sharing.
95. However, HMOs need to be properly managed and maintained, as they can be a source of unsuitable accommodation and cause harm to amenity, both for the occupiers and the wider community. The impacts from such changes can include issues related to waste management, noise and disturbance, negative impacts on the physical appearance of the neighbourhood and increasingly, anti-social behaviour (ASB).
96. The Council are proposing the introduction of an “immediate” Article 4 Direction. This will come into effect on the date that the notice is posted. In Merton this will be the 17th of November. Once posted, the Article 4 Direction needs be confirmed by Council within 6 months. Within those six months, any and all representations made to this consultation must be considered in their decision whether to continue, amend or stop the Article 4 Direction. The confirmation is scheduled for April 2023.

## Where in Merton will the Article 4 Direction apply?

97. Based on the robust evidence gathered, 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.
98. While Lavender Fields ward is ninth in the list of wards with highest numbers of HMOs, it is included in the Article 4 Direction as it is surrounded to the north, east and south by wards with high densities of 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. Lavender Fields is 8<sup>th</sup> on the list of the highest numbers of ASB complaints relating to HMOs, and also 8<sup>th</sup> on the list of predicted Category 1 hazards relating to HMOs. 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 8: Map of predicted geographic locations of HMOs in Merton by ward (Source – Metastreet 2022)



99. This data is also illustrated in a chart by ward total in Figure 5, along with supporting information concerning HMO related issues in the proposed additional licensing wards in Figure 6 and Figure 7.

100. Therefore, based on the robust evidence, from November 17<sup>th</sup> (with confirmation anticipated April 2023 – see paragraph 96), the Article 4 Direction will now require small HMOs to seek planning permission in Graveney, Longthornton, Pollards Hill, Figge’s Marsh, Cricket Green, Lavender Fields, and Colliers Wood wards, the same seven wards that comprise the additional licensing designation. This approach is in compliance with national policy requiring Article 4 Directions to be “based on robust evidence” and “the smallest geographical area possible”.

### **What size of HMO will now require planning permission in those wards?**

101. In England, landlords are already required to seek planning permission to change the use from a house or flat to a large HMO (housing seven people or more).
102. This document sets out a public consultation on an Article 4 Direction (the full wording of the direction can be found in the Council’s website at [PRS Consultation](https://www.merton.gov.uk/prsconsultation) (<https://www.merton.gov.uk/prsconsultation>), which, as of November 17<sup>th</sup> (with confirmation anticipated April 2023 – see paragraph 96), requires landlords in certain wards of Merton to seek planning permission to change the use of any house or flat in the relevant wards into a HMO (i.e. to start renting the property to three or more tenants from two or more separate households).
103. The proposed Article 4 Direction would remove the permitted development rights for small (i.e. fewer than seven person) HMOs, requiring new landlords to apply for planning permission to operate a house or flat as a small HMO. Any planning application would need to be assessed in the normal way and a decision made as to whether the proposal complied with the Development Plan, taking into account all material considerations.
104. Article 4 Directions do not apply retrospectively, in other words they cannot be used to require any small HMOs that already exist in Merton to now seek planning permission.



## Next Steps

105. If approved, it is proposed that the licensing schemes would go live in September 2023, and that the Article 4 Direction will come into effect as of November 17<sup>th</sup> 2022 (with confirmation anticipated April 2023 – see paragraph 96). The Council wants your views and comments on these proposals. A 10-week public consultation will run from November 14<sup>th</sup> to the end of January 22<sup>nd</sup>. Further details of the consultation process can be found online at [PRS Consultation](https://www.merton.gov.uk/prsconsultation) (<https://www.merton.gov.uk/prsconsultation>).
106. A final decision will be made at Full Council, after the Council has carefully considered all the responses received during the consultation.

## How you can get involved

107. The Council are seeking to gather feedback, opinions and suggestions from tenants, owner occupiers, other residents, landlords, businesses, letting or managing agents and any other interested parties.

## Complete a questionnaire

108. The quickest and easiest way to have your say on the proposal is to complete the online questionnaire. The Council have appointed Opinion Research Services (ORS), an independent research company, to manage the questionnaire responses and other consultation feedback. ORS will produce an independent consultation report in which feedback from individual members of the public will be anonymous, but views from organisations who make submissions directly may be attributed in full.
109. Alternatively, if you would like to request a paper questionnaire or request a copy in any other format, please contact Merton's [Translating and Interpreting Services](https://www.merton.gov.uk/communities-and-neighbourhoods/translating-and-interpreting-services) (<https://www.merton.gov.uk/communities-and-neighbourhoods/translating-and-interpreting-services>) via email at [translationservicebookings@merton.gov.uk](mailto:translationservicebookings@merton.gov.uk) or call 020 8545 3397 (Monday to Friday, 9am-5pm).
110. To complete a questionnaire, this can be done online at [PRS Consultation](https://www.merton.gov.uk/prsconsultation) (<https://www.merton.gov.uk/prsconsultation>).  
If you would prefer not to complete the questionnaire online, you can print a copy from the above link.
111. All paper questionnaires and comments should be returned to ORS via the return envelope and not to the Council's offices.

112. Please note that the return address for paper surveys is below:

Merton Consultation  
Opinion Research Services,  
FREEPOST (SS1018),  
PO BOX 530,  
Swansea  
SA1 1ZL

113. If you would like to make a written representation concerning the proposed Selective and/or Additional Licensing schemes, please email your submission to [mertonlicensing@ors.org.uk](mailto:mertonlicensing@ors.org.uk) . All representations must be received by 22 January 2023.
114. If you would like to make a direct representation to the Council for the Article 4 Direction only, please email [future.merton@merton.gov.uk](mailto:future.merton@merton.gov.uk) . All representations must be received by 22 January 2023.

### **Attend a forum or meeting**

115. ORS will be running a selection of forums, workshops, and depth interviews to give tenants, landlords, and all interested parties an opportunity to discuss the proposals.
116. To register your interest, please select the type of meeting you would like to attend in the relevant section of the website at [PRS Consultation](https://www.merton.gov.uk/prsconsultation) (<https://www.merton.gov.uk/prsconsultation>).

### **What happens after the consultation**

117. The feedback gathered will help the council in making a decision on moving forward with these initiatives. The consultation report will be published on this page once all responses have been received and reviewed (expected to be March 2023).