

Corporate Policy and Resources Committee

15 April 2024



Title	Houses in Multiple Occupation
Purpose of the report	<ul style="list-style-type: none">To make a decision
Report Author	Esmé Spinks, Planning Development Manager Tracey Wilmott-French, Senior Environmental Health Manager Susan Turp, Principal Environmental Health Officer
Wards Affected	All wards
Exempt	No
Exemption Reason	N/A
Corporate Priority	Community Addressing housing needs Environment Services
Recommendations	<p>The Corporate Policy and Resources Committee is asked to note:</p> <ul style="list-style-type: none">the contents of this report.that HMOs will be continued to be monitored by the Planning Enforcement and Environmental Health teams; and <p>The Corporate Policy and Resources Committee is asked to agree:</p> <ul style="list-style-type: none">that if the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a further report will be brought to the CP&R Committee by 1 May 2025.
Reason for Recommendation	The Planning and Environmental Health services assessed whether an Article 4 Direction should be served in respect of HMOs in 2018 and 2020 and it was agreed that there was insufficient evidence. This matter has now been reassessed with a further four years of data. It is now recommended that there is still insufficient evidence but that that if the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a

	further report will be brought to the CP&R Committee by 1 May 2025. that if the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a further report will be brought to the CP&R Committee by 1 May 2025.
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1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> In 2018 and 2020, HMOs were assessed to consider whether an Article 4 Direction should be served. It was agreed there was insufficient evidence to justify taking this action. A further assessment has now been undertaken. 	<ul style="list-style-type: none"> Planning and Environmental Health services have a duty to investigate complaints and to ensure that the licencing process is properly enforced.
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> To continue to monitor the Planning and Environmental Health complaints associated with HMOs to establish if further controls are needed. 	<ul style="list-style-type: none"> If the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a further report will be brought to the CP&R Committee by 1 May 2025.

- 1.1 Under current planning legislation, the conversion of a dwelling to a house in multiple occupation (HMO) is 'permitted development' and a planning application is not required, providing it is occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
- 1.2 However, it is possible to make an Article 4 Direction under the Town & Country Planning (General Permitted Development) (England) Order to remove Permitted Development Rights for HMOs (which would mean that planning permission would be required for any HMO regardless of the number of occupants) in certain areas. Article 4 Directions do not stop development; they simply mean that planning permission is required for the specified development which, without the Article 4 Direction, would be permitted development (i.e. does not require planning permission). Article 4 Directions are intended for use in exceptional

circumstances where evidence suggests that development under Permitted Development rights harms local amenity or the proper planning of an area.

- 1.3 This report uses Planning and Environmental Health data to undertake a spatial analysis, by ward, of the numbers and types of HMOs which exist and the extent of the complaints received in Spelthorne.
- 1.4 It is considered that given the available data, evidence is insufficient to justify the introduction of an Article 4 Direction in Spelthorne. However, it is recommended that HMOs continue to be monitored by the Planning Enforcement and Environmental Health teams. If the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a report will be brought to the CP&R Committee in the future.
- 1.5 This matter was previously considered by the former O&S Committee in November 2018 and January 2020 where it was also agreed that given the available data, evidence was insufficient at that stage to justify the introduction of an Article 4 Direction. Copies of the previous reports (which covered three years from 01/10/16 - 30/09/19) and their appendices are attached as an annex to this report.

2.0 Key issues

- 2.1 Under planning legislation, The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO) sets land use activities into various use classes. Uses are grouped into Classes B, C, E, F and *sui generis* (a unique use class not within a specified class) and within each group, there are further subdivisions of use classes. Planning permission is normally required to change from one use class to another although there are exceptions where the legislation does allow some changes between uses (The Town and Country Planning (General Permitted Development) (England) Order 2015).
- 2.2 Dwellings fall within use class C3 of the UCO. Houses in multiple occupation (HMOs) are contained within both Use Class C4 or *sui generis*. Class C4 defines an HMO as:

Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
- 2.3 An HMO larger than this (i.e. with 7 or more unrelated people) is classed as a '*sui generis*' use for which planning permission is always required.
- 2.4 It is currently permitted to change from a Class C3 dwelling house to Class C4 HMO property without planning permission. It is also permitted to change a Class C4 HMO property back to a Class C3 dwelling house without planning permission.
- 2.5 However, converting dwellings to an HMO, when classed as *sui generis* (i.e. seven or more occupants) will require planning permission. Likewise, a

conversion from a large HMO to any other use will also require planning permission.

- 2.6 When planning restrictions were freed up in October 2010, it was made clear by the government that, *“in those areas experiencing problems with uncontrolled HMO development, local authorities will be able to use their existing direction making powers to restrict this freedom of movement by requiring planning applications.”*
- 2.7 In 2013 the (then) Communities and Local Government Select Committee considered the issue of high concentrations of HMOs as part of its inquiry into the private rented sector. The Committee concluded that controlling the spread of HMOs should be a matter for local determination and supported the use of Article 4 Directions to manage conversions to HMO. The Government agreed with the Committee’s recommendation.
- 2.8 Directions are made under the Article 4 Direction of the Town & Country Planning General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. They remove Permitted Development Rights for certain types of specified development in certain areas but cannot be used to restrict changes between uses in the same use class of the Use Classes Order. Article 4 Directions do not stop development; they simply mean that planning permission is required for the specified development which, without the Article 4 Direction would be permitted development (i.e. does not require planning permission).
- 2.9 Article 4 Directions are intended for use in exceptional circumstances where evidence suggests that development under Permitted Development rights, such as the spread of HMOs, harms local amenity or the proper planning of an area.
- 2.10 The National Planning Policy Framework (NPPF) 2023 advises that all article 4 directions should be applied in a measured and targeted way. They should be based on robust evidence and apply to the smallest geographical area possible. Requirements for removing permitted development rights compels the planning authority to demonstrate that the removal is necessary to protect local amenity or the wellbeing of a particular geographic area. The PPG advises that article 4 directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area. The potential harm that the article 4 direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to, for e.g., a wide area (e.g. those covering a large proportion of or the entire area of a local planning authority) and an area extending beyond the essential core of a primary shopping area.
- 2.11 The PPG further advises that if a local planning authority makes an article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:
 - refuses planning permission for development which would otherwise have been permitted development; or

- grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

2.12 In procedural terms there are two types of Article 4 Directions: -

- Non-Immediate Direction – permitted development rights are withdrawn 12 months from service of the direction after a period of consultation.
- Immediate Direction – permitted development rights are withdrawn immediately but must be confirmed within six months after a period of consultation. The Council becomes liable for abortive expenditure or other loss or damage attributable to withdrawal of the permitted development rights, if a subsequent application is refused. The ‘other loss or damage’ would include the difference in the value of the site and would expose the Council to potentially significant financial liability.

2.13 Consequently, compensation would be payable in some circumstances to those whose PD rights are withdrawn if the LPA imposed what is known as an “Immediate” Article 4 Direction and then refused planning permission for that which would otherwise have been PD; or granted permission subject to more limiting conditions than would have been applied by the General Permitted Development Order (GPDO). However, if the Council is providing 12 months’ prior notice of the removal of PD rights in respect of HMOs (known as a “Non-Immediate” Article 4 Direction), then there is no ability to claim compensation.

2.14 The circumstances in which an immediate direction can restrict development are limited. Immediate directions can be made in relation to development permitted by the General Permitted Development Order, where the development presents an immediate threat to local amenity or prejudices the proper planning of an area. Immediate directions can also be made in relation to certain types of development in conservation areas. In all cases the local planning authorities must have already begun the consultation processes towards the making a non-immediate article 4 direction. Consequently, if the Article 4 takes effect less than one year from issue, compensation can be payable to affected landowners.

2.15 A local planning authority must, as soon as practicable after confirming an article 4 direction, inform the Secretary of State. The Secretary of State does not have to approve article 4 directions and will only intervene when there are clear reasons for doing so. The Secretary of State has the power to modify or cancel article 4 directions at any time before or after they are made but will not use their powers unless there are clear reasons why intervention at this level is necessary.

2.16 It should be noted that planning applications required by Article 4 Directions were previously exempt from planning application fees, but this exemption has been removed and a planning fee is payable. The current fee would be £578 per

application. In addition, a HMO licence fee may also be payable should it meet the HMO licensing requirements, that is if the property is an HMO with 5 or more occupants where there is sharing of basic amenity.

3.0 Options analysis and proposal

3.1 At a time when house prices remain high and access to finance limited, sharing a dwelling with others will continue to be an attractive option. HMOs fulfil a vital role in providing accommodation for individuals and are an essential part of the housing stock. The cost of living in an HMO is cheaper than self-contained accommodation, which is beyond the affordability of many residents. HMOs provide an essential tenure of housing and are an important element of the Council's housing stock. The Council's Corporate Plan identifies under 'Addressing Housing Need' three actions for 2024/2025, one of which is to "work proactively with landlords and private housing providers of Homes of Multiple Occupation and temporary B&B accommodation to tackle poor conditions and anti-social behaviour".

3.2 However there are concerns that as well as providing much needed affordable accommodation to residents, HMOs can also have negative effects. Impacts, either real or perceived from complaints received include the following:

- Noise and anti-social behaviour □
- Imbalanced and unsustainable communities
- Negative impact on the physical environment
- Pressures upon parking provision
- Growth in private rented sector at the expense of owner-occupation
- Increased crime, and
- Pressure upon local community facilities.

3.3 All planning enforcement complaints received relating to HMOs which did not require planning permission because they contained six residents or less have been recorded.

The following dates have been used:

- 01/10/19 – 30/09/20
- 01/10/20 – 30/09/21
- 01/10/21 – 30/09/22
- 01/10/22 – 30/09/23

The reports considered by the former O&S Committee meeting in November 2018 and January 2020 assessed data over the three preceding years, 01/10/16 - 30/09/19. These are attached as an appendix.

3.4 The results for the four most recent years are shown by ward in the following tables. The search criteria used was 'Case Reference' - "'*HMO*'", date range in 'Date Received' and 'Ward'. Each of the tables are followed by a table showing

the reasons why planning permission was not required. Several complaints listed were investigated by the Planning Enforcement officers and it was established they were not HMOs at all.

Table 1 - HMO complaints by ward where Planning Permission was not required as it was Permitted Development between 1 October 2019 and 30 September 2020

Ward	Referred by EH	Numbers of Complaints	Numbers of Households	Number of complaints as a % of households
Ashford East	1	2	2,959	0.067%
Riverside & Laleham	2	2	2,846	0.07%
Staines	1	1	3,528	0.028%
Staines South	2	2	2,899	0.068%
Stanwell North	0	1	3,250	0.031%
Sunbury Common	1	1	3163	0.031
Average	-	-	3107.5	0.039
Total	7	9		

Table 1A - Reasons Planning Permission was not required between 1 October 2019 and 30 September 2020

By Ward & Reason	Count of Reason PP Not Required
Ashford East	2
HMO Permitted Development	2
Riverside & Laleham	2
HMO Permitted Development	2
Staines	2
HMO Permitted Development	1
Established use (8 person HMO)	1
Staines South	2
HMO Permitted Development	2
Stanwell North	3
HMO Permitted Development	1
Established Use (8 person HMO)	1
House was unoccupied	1
Sunbury Common	1
HMO Permitted Development	1
Sunbury East	1
Planning permission for 8 flats	1
Total complaints	13
Total Complaints HMO Permitted Development	9

- 3.5 Of the 13 complaints received between 1 October 2019 and 30 September 2020, only 9 related to HMOs which were permitted development.

Table 2 - HMO complaints by ward where Planning Permission was not required as it was Permitted Development between 1 October 2020 and 30 September 2021

Ward	Referred by EH	Numbers of Complaints	Numbers of Households (2021 Census)	Number of complaints as a % of households
Ashford North & Stanwell South	3	3	3,557	0.084%
Ashford Common	1	3	3,392	0.089%
Ashford East	1	1	3,061	0.033%
Ashford Town	1	2	2,968	0.067%
Riverside & Laleham	1	1	2,855	0.035%
Staines	3	4	4,009	0.1%
Staines South	1	1	2,912	0.034%
Stanwell North	1	3	3,390	0.089%
Average	-	-	3,268	0.055%
Total	12	18	-	-

Table 2A - Reasons Planning Permission was not required between 1 October 2020 and 30 September 2021

By Ward & Reason	Count of Reason PP Not Required
Ashford North & Stanwell South	3
HMO Permitted Development	3
Ashford Common	3
HMO Permitted Development	3
Ashford East	1
HMO Permitted Development	1
Ashford Town	2
HMO Permitted Development	2
Riverside & Laleham	1
HMO Permitted Development	1
Staines	6
HMO Permitted Development	4
Planning permission granted 2014 for 10 person HMO	1
14 person HMO – Established Use - CLD	1
Staines South	1
HMO Permitted Development	1
Stanwell North	4
HMO Permitted Development	3
Family Dwelling House	1
Sunbury East	1
Not HMO, Internal work on dwelling house	1
Total complaints	22
Total Complaints HMO Permitted Development	18

- 3.6 Of the 22 complaints received between 1 October 2020 and 30 September 2021, 18 related to HMOs which were permitted development. This year contained the highest number of complaints. This could reflect the Covid lockdown with more people at home to observe their neighbourhood (the total number of enforcement complaints increased in 2021) and possibly a change in the normal pattern of living during this unusual time.

Table 3 - HMO complaints by ward where Planning Permission was not required as it was Permitted Development between 1 October 2021 and 30 September 2022

Ward	Referred by EH	Number of Complaints	Number of Households 2021 Census	Number of complaints as a % of households
<u>Ashford North & Stanwell South</u>	3	3	3,557	0.084%
Ashford Town	1	1	2,968	0.034%
Ashford East	0	1	3,061	0.033%
Sunbury Common	1	2	3,258	0.061%
Average	-	-	3,211	0.053%
Total	5	7	-	-

Table 3A - Reasons Planning Permission was not required between 1 October 2021 and 30 September 2022

By Ward & Reason	Count of Reason PP Not Required
Ashford North & Stanwell South	3
HMO Permitted Development	3
Ashford Town	1
HMO Permitted Development	1
Ashford East	1
HMO Permitted Development	1
Staines	1
Large HMO for over 4 years, out of time .	1
Stanwell North	1
Not a HMO, single occupant	1
Sunbury Common	3
Family Dwelling House	1
HMO Permitted Development	2
Total complaints	10
Total Complaints HMO Permitted Development	7

- 3.7 Of the 10 complaints received between 1 October 2021 and 30 September 2022, 7 related to HMOs which were permitted development.

Table 4 - HMO complaints by ward where Planning Permission was not required as it was Permitted Development between 1 October 2022 and 30 September 2023

Ward	Referred by EH	Numbers of Complaints	Numbers of Households	Number of complaints as a % of households
Ashford North & Stanwell South	0	1	3,557	0.028%
Staines	0	1	4,009	0.025%
Stanwell North	3	3	3,390	0.088%
Sunbury Common	1	1	3,258	0.031
Sunbury East	1	1	3,162	0.022
Average	-	-	3475	0.039%
Total	5	7		

Table 4A - Reasons Planning Permission was not required between 1 October 2022 and 30 September 2023

By Ward & Reason	Count of Reason PP Not Required
Ashford North & Stanwell South	1
HMO Permitted Development	1
Staines	1
HMO Permitted Development	1
Stanwell North	3
HMO Permitted Development	3
Sunbury Common	1
HMO Permitted Development	1
Sunbury East	1
HMO Permitted Development	1
Total complaints	7
Total Complaints HMO Permitted Development	7

- 3.8 Of the 7 complaints received between 1 October 2022 and 30 September 2023, only 7 related to HMOs which were permitted development.

Table 5 HMO Permitted Development Complaints 2019 – 2023

Year	No. of HMO PD complaints	Number of complaints as a % of households*
01/10/19 – 30/09/20	9	0.023
01/10/20 – 30/09/21	18	0.043
01/10/21 – 30/09/22	7	0.017
01/10/22 – 30/09/23	7	0.017
Average over 4 years	10.25	0.025

* Total households in Spelthorne: 39,512 at 2011, 41,805 at 2021

- 3.9 Table 5 above shows that over the four years in question, there was an average of 10.25 complaints concerning HMOs which, when investigated, were permitted development (six occupants and below). This represents only 0.025 complaints per household in Spelthorne.
- 3.10 Table 6 below shows the number of complaints over the four-year period by ward. Ashford North and Stanwell South, Stanwell North and Staines had the highest number of complaints of 6 or 7, marked in red. In addition, 41 complaints were received over 2019 – 2023 relating to HMOs which did not require planning permission because the number of residents were six or less. This is also portrayed in a ward map in appendix 1.

Table 6 HMO Permitted Development Complaints 2019-2023 by ward

By Ward & Reason	PP Not Required
Ashford Common	3
Ashford East	4
Ashford North & Stanwell South	7
Ashford Town	3
Halliford and Sunbury West	0
Laleham and Shepperton Green	0
Riverside and Laleham	3
Shepperton Town	0
Staines	6
Staines South	3
Stanwell North	7
Sunbury Common	4
Sunbury East	1
Total PD complaints	41

- 3.11 Table 7 below shows the number of HMO complaints received by planning enforcement for the four years 01/10/19 – 30/09/23 as a percentage of the total complaints received. These relate to HMOs which were permitted development.

It can be seen that the % of planning enforcement complaints relating to HMOs is low, comprising an average of just 3% of all complaints received.

Table 7 – HMO Planning Enforcement complaints received compared with total Planning Enforcement complaints received 2019 – 2023

Year	No. of HMO PD complaints	Total number of Planning Enforcement complaints received	Number of HMO Planning Enforcement complaints received as a % of total complaints
01/10/19 – 30/09/20	9	328	2.74%
01/10/20 – 30/09/21	18	392	4.59%
01/10/21 – 30/09/22	7	279	2.5%
01/10/22 – 30/09/23	7	333	2.1%
Average over 4 years	10.25	333	2.98%

3.12 The number of planning applications for HMOs (containing seven or more residents) by ward which were determined between 1 October 2019 and 30 September 2023 are set out in table 8 below. A full list of the site details are contained as Appendix 2 to this report. It can be seen that 9 out of the 16 HMO proposals (15 applications) related to HMOs which contained 7 residents. This is the smallest number of residents within an HMO which requires planning permission.

Table 8 - Planning applications for HMOs by ward determined between 30 September 2019 and 1 October 2023

Ward	Numbers of planning applications approved	Numbers of planning applications refused
Ashford Common	1	0
Ashford East	0	0
Ashford North & Stanwell South	5	0
Ashford Town	0	0
Halliford and Sunbury West	0	0
Laleham and Shepperton Green	2	0
Riverside and Laleham	0	0
Shepperton Town	0	0
Staines	1	2

Staines South	1	1
Stanwell North	0	1
Sunbury Common	1	0
Sunbury East	1	0
Grand Total	10	4

- 3.13 Table 8 above show the spread of applications determined by ward in Spelthorne. This is also portrayed in the maps contained in appendices 3 and 4.
- 3.14 The Planning Officers and Planning Enforcement Officers work closely with the Environmental Health Officers and Environmental Health Regulatory Officers who are responsible for the licensing of HMOs that fall within Spelthorne Borough Council's mandatory HMO licensing scheme. The two Departments share information about licence applications and planning applications as well as intelligence about potential HMOs.
- 3.15 A licence for an HMO is required from Environmental Health under the mandatory scheme in the following circumstances:
- The dwelling is occupied by five or more people who form two or more households; and
 - all or some of the occupants share bathroom, toilet, or kitchen facilities.
- 3.16 It should be noted that before the licensing regime change (which was from the October 2018) a licence was only required for HMOs in three or more storey buildings. Consequently, a much larger number of HMOs now fall within the Environmental Health licensing process.
- 3.17 When determining whether to grant a licence for an HMO, Environmental Health are not able to take into consideration whether or not the property has or requires planning permission to operate as an HMO. Environmental Health does, however, consult with Planning on any licence applications received and notify them when granting a licence so that Planning can take appropriate enforcement action for unlawful development. Environmental Health also strongly advise HMO licence applicants to contact Planning where Planning Permission isn't in place and may be required.
- 3.18 Additionally, since 1 April 2024 when Environmental Health moved to a risk-based system to determine the duration of an HMO licence, the absence of planning consent for an HMO of 7 or more occupants has become a criteria resulting in a high score in the risk assessment. This would in turn lead to the licence being granted for the minimum period of one year, and the licence would be accompanied by a condition requiring that Planning Consent be obtained before the end of the licence term.
- 3.19 The following table shows the number of HMOs licensed by Environmental Health, by ward as well as the number of potential HMOs that have come to the attention of Environmental Health through complaints and enquiries. It should be noted that there is an overlap with the information in tables 1, 2 and 3 above.

3.20 Table 9 - Number of HMOs that have been licensed, and the number of potential HMOs brought to the attention of Environmental Health, by Ward.

Ward	Number of licensed HMOs* (2023-24)	Potential HMOs**			
		2019 - 2020	2020 - 2021	2021 - 2022	2023- 2024
Ashford Common	14	5	7	3	4
Ashford East	11	7	5	1	5
Ashford North & Stanwell South	35	10	5	2	0
Ashford Town	14	7	1	4	4
Halliford and Sunbury west	0	1	0	0	1
Laleham and Shepperton Green	3	0	0	0	0
Riverside and Laleham	5	5	1	1	1
Shepperton Town	1	1	1	0	1
Staines-upon-Thames	17	7	7	6	1
Staines-upon-Thames South	6	6	1	2	1
Stanwell North	16	10	4	2	4
Sunbury Common	16	4	4	0	1
Sunbury East	3	0	0	0	0
Grand Total	141	63	36	22	23

*Note this includes licence renewals that are in the system being processed

**This 'Potential HMOs' data has recently been extracted from the EH database for the years shown. The data relates to all service requests and enquiries which indicate the properties might be HMOs. From analysis of the data at this time it is not known if they are HMOs and if so whether need to be licensed.

3.21 Of the potential HMOs listed within table 9 above, several of the HMOs have since been licensed or have applications pending:

- 01/10/2019 - 30/09/2020, 38 Potential HMOs of which 11 are now licensed, and 0 are pending (which were not licensable at that time).
- 01/10/2020 - 30/09/2021, 31 Potential HMOs of which 4 are now licensed, and 0 are pending.
- 01/10/2021 - 30/09/2022, 24 Potential HMOs of which 5 are now licensed, and 4 are pending.
- 01/10/2022 - 30/09/2023, 44 Potential HMOs of which 0 are now licensed, and 3 are pending.
- 01/10/2023 - 31/03/2024, 5 Potential HMOs of which 1 is pending.

- 3.22 The information shows that the highest number of licensed HMOs is within the wards Ashford North & Stanwell South, then Staines-upon-Thames and then Stanwell North and Sunbury Common.
- 3.23 Maps showing the distribution of licensed HMOs throughout Spelthorne and then the distribution of licensed HMOs by ward are included as Appendix 5 to this report. The maps were created in November 2023 based on the up-to-date information on licensed HMOs at that time.
- 3.24 For the years 2019 to 2024, tables 10,11, 12, 13 and 14 below provide a summary of the complaints relating to known HMOs received by Environmental Health about matters relating to accumulations of rubbish, antisocial behaviours, noise, bonfires, vermin, and pests. It should be noted that there is some overlap of complaints received by Planning and Environmental Health.

Table 10: Complaints received by Environmental Health about known HMOs between 1 October 2019 and 30 September 2020

Ward	No. of Complaints	No. of Households in Ward	No. of complaints as a % of households	Complaint Type
Riverside & Laleham	0	2846	0.00	
Ashford North & Stanwell South	0	3140	0.00	
Ashford Town	0	2703	0.00	
Ashford Common	1	3324	0.03	Rats
Other Wards	0	27999	0.00	
Grand Total	1	40012	0.002	

Table11: Complaints received by Environmental Health about known HMOs between 1 October 2020 and 30 September 2021

Ward	No. of Complaints	No. of Households in Ward	No. of complaints as a % of households	Complaint Type
Stanwell North	1	3250	0.03	Rubbish
Ashford Town	1	2968	0.03	Noise
Other Wards	2	33559	0.006	Overgrown garden, Rubbish
Grand Total	4	39512	0.01	

Table 12: Complaints received by Environmental Health about known HMOs between 1 October 2021 and 30 September 2022

Ward	No. of Complaints	No. of Households in Ward	No. of complaints as a % of households	Complaint Type
Ashford Common	0	3392	0.00	
Stanwell North	1	3390	0.03	Untidy Garden
Staines	1	4009	0.02	Noise alarm
Other Wards	1	31014	0.003	Rats
Grand Total	3	41805	0.007	

Table 13: Complaints received by Environmental Health about known HMOs between 1 October 2022 and 30 September 2023

Ward	No. of Complaints	No. of Households in Ward	No. of complaints as a % of households	Complaint Type
Ashford Common	8	3392	0.23	Untidy garden broken fence
Stanwell North	0	3390	0	
Staines	1	4009	0.02	Noise
Other Wards	7	31014	0.02	Anti social behaviour, rubbish, untidy garden
Grand Total	16	41805	0.04	

3.25 Table 14 below provides a summary of the complaints received by Environmental Health relating to residential properties in general (includes HMOs and non-HMOs) about matters relating to accumulations, antisocial behaviours, noise, bonfires, vermin and pests. It also shows what percentage of these complaints relate to HMOs.

Table 14: Complaints received by Environmental Health about all residential properties

Year	No. of Complaints Received	All complaints as a % of households	HMO complaints as a % of total complaints	Complaint type
2019 - 2020	661	1.86%	0.15% (1)	Rubbish Accumulation, noise, pests
2020 - 2021	984	2.35%	0.20% (2)	
2021 - 2022	759	1.81%	0.39% (3)	
2022 - 2023	788	1.88%	0.76% (6)	

2023 - 2024	586	1.40%	1.02% (6)	
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4.0 Environmental Health controls of HMOs

- 4.1 Environmental Health have powers under various legislation such as the Environmental Protection Act, the Prevention of Damage by Pests Act and the Anti-social Behaviour, Crime and Policing Act 2014 to deal with noise and other nuisance; accumulations of rubbish; and along with our colleagues in Community Safety, to address complaints about anti-social behaviour (ASB) These powers apply to all residential properties in the Borough including licensed and unlicensed HMOs. There are also requirements under The Management of Houses in Multiple Occupation (England) Regulations 2006 that apply to all HMOs which include such matters as rubbish disposal and untidy gardens as well as conditions within the property.
- 4.2 Additionally, licensed HMOs are subject to programmed inspections to check compliance with relevant legislation and licence conditions relating to fire safety, amenities, and management. These licence conditions include matters that might adversely impact on nearby residents, particularly in relation to anti-social behaviour and accumulations of rubbish.
- 4.3 Spelthorne's HMO licence condition for ASB has recently been revised and strengthened following discussion with our Community Safety team, where it was agreed that HMO landlords should be taking more responsibility to manage anti-social behaviour from the residents of their HMO. A landlord guide to ASB has also been produced and is available on our website. The condition is as follows:
- The Licence Holder must take all reasonable and practicable steps for preventing and dealing effectively with anti-social behaviour (ASB)* by people occupying or visiting the premises; and for preventing the use of the premises for illegal purposes. These steps must include:
 - **Written contract**
Ensuring that the tenancy agreement or terms of occupancy contains a clause holding the occupants responsible for any anti-social behaviour by themselves and/or their visitors, and that this clause is drawn to the attention of occupants when they take up residence.
 - **Dealing with complaints**
Responding to complaints of anti-social behaviour that concern occupiers of the premises or their visitors. Where anti-social behaviour is discovered, the Licence Holder must inform the tenant responsible in writing of the matter within 2 days and warn them of the consequences of its continuation, which could include eviction. If the ASB continues, the Licence Holder must put further measures in place such as set up an acceptable behaviour contract**.
 - **Prohibition of use of outbuildings**
Ensuring that all outhouses, garages, and sheds are kept secured and used for their intended purpose. The Licence Holder must not allow them to be occupied as individual habitable rooms, kitchens, or bathrooms.

**ASB is behaviour causing harassment, alarm, or distress to one or more people who are not in the same household as the perpetrator. It covers a wide range of unacceptable behaviour, such as playing loud music, shouting, and screaming, threatening or abusive behaviour, taking/selling drugs, using racist or homophobic language, allowing the build-up of refuse in the property or garden, parking illegally or inappropriately.*

***For further information, visit the Council's website (<https://www.spelthorne.gov.uk/article/16974/Antisocial-behaviour>) or refer to Spelthorne's landlord guide to ASB.*

4.4 Spelthorne's HMO licence condition for rubbish is as follows:

Ensure that waste bins, which are provided by the Council in line with our bin allocation policy, are made available for all residents of the accommodation. Ensure that suitable refuse bins are provided within the accommodation including within all kitchens. Additional arrangements should be made for the storage and disposal of household waste from the property to ensure compliance with Spelthorne Borough Council's refuse and recycling disposal scheme. For further details about the scheme please go to <https://www.spelthorne.gov.uk/rubbishwasterecycling> or contact Neighbourhood Services on 01784 446411 or email at neighbourhoodservices@spelthorne.gov.uk.

5.0 New risk-based HMO licensing scheme

5.1 In April 2024, the HMO licensing scheme changed to a risk-based system so that the duration of a new or renewal HMO licence is determined by the landlord's level of compliance, the condition of the property, and the risks posed by the HMO to its occupants and neighbours.

- Landlords who provide well-managed, safe accommodation, to a good standard, will receive a 5-year licence.
- Properties calculated as being medium risk by virtue of confidence in management and the level of property defects found during inspection will receive a 3-year licence.
- Properties calculated as being of high risk will only receive a 1-year licence.

5.2 The purpose of the changes to the mandatory scheme is to drive up standards by rewarding compliant landlords with the maximum licence period while those less compliant landlords of HMOs of a poorer standard that take more Council resource (for example by needing to be inspected more frequently), will be granted a shorter licence meaning they pay more.

6.0 Additional HMO Licensing

6.1 Another option (other than Article 4) is to increase the scope of HMOs that would need to be licensed by way of setting up an additional licensing scheme. This would require all HMOs of 3 or more occupants within certain or all areas of the Borough to have a licence from the Council to operate. Additional Licensing is a

decision that has to be granted by the Secretary of State upon successful application that includes strong evidence-based reasoning for invoking the Scheme, based on HMO mismanagement and Anti-Social Behaviour (ASB).

- 6.2 The current data showing evidence of mismanagement and ASB in Spelthorne Borough is not sufficient to warrant making such an application.
- 6.3 Currently no other Surrey authorities have either an additional licensing scheme or an Article 4 direction in place for HMOs, and this includes Runnymede and Guildford who as university boroughs would be expected to have a significantly greater HMO population.

7.0 Consultations

- 7.1 The following officers have been consulted on the consideration of whether an Article 4 direction should be made in respect of HMOs.

Strategic Lead • Housing Options

- 7.2 At a time when house prices remain high and access to finance limited, sharing a dwelling with others will continue to be an attractive option. HMOs do fulfil a vital role in providing affordable accommodation for individuals and they are an essential part of the housing stock.
- 7.3 The housing benefit system is complex and most people under the age of 35 who do not live with a partner or children, will usually only be able to claim for a single room in a shared house. This is called the Local Housing Allowance shared accommodation rate (SAR), unless they fall in some exceptional categories, such as they are a care leaver, they have previously lived in a homeless hostel for at least 3 months, receiving the care component of Disability Living Allowance or Personal Independence Payment, are victims of domestic abuse or modern slavery, and a few other exceptions.
- 7.4 SAR limits the amount of housing support available through the benefits system for most single private renters under the age of 35. The SAR was introduced in 1996 and originally limited the Housing Benefit a single person under the age of 25 could receive to the average rent level for a room in a shared house. As part of the October 2010 Spending Review the Government announced the SAR's extension to cover single claimants up to age 35 from April 2012. This change was brought forward to 1 January 2012.
- 7.5 Universal Credit has been replacing Housing Benefit for working-age households since 2013 and retains the SAR in calculations of housing support.
- 7.6 In 2017, the Government abandoned plans to use LHA to calculate rental support in the social rented sector, so the SAR does not apply to people aged 35 and under renting from a local authority or registered housing association.
- 7.7 The SAR has been controversial since its introduction. Prior to its extension to the under-35s, draft regulations, an Impact Assessment and an Equality Impact

Assessments were published and referred to the Social Security Advisory Committee (SSAC) for consultation. The Impact Assessment said around 20% of the 1-bedroom LHA caseload (at March 2010) would receive, on average, £41 per week less benefit than under the previous rules.

- 7.8 The extension to under 35s was expected to affect around 63,000 people. Since its introduction, commentators and campaigning organisations have continued to point to shortages of shared rooms available to young benefit claimants, and shortfalls between benefit levels and rent.
- 7.9 Organisations such as Crisis have been calling for Government to invest in Housing Benefit “so that covers the true cost of rents”.
- 7.10 Due to the financial pressure, HMOs are in high demand and remain the only affordable options on privately rented market to those on housing benefit under the age of 35.

Neighbourhood Services

- 7.11 The Environmental Health service works together with Neighbourhood Services (NS) to improve waste management and collection from HMOs. HMOs are treated as a single dwelling for waste provision purposes and are provided with 1 x 240 litre rubbish bin and 1 x 240 litre recycling bin, both collected fortnightly and 1 x curbside food waste bin, collected weekly. However, where the provision is insufficient, NS has been working with Spelthorne Direct Services (SDS) to provide additional provision. SDS is able to offer HMOs a commercial waste collection service that can operate alongside the Council. The service can include a general waste and/or a dry mixed recycling service, generally on a weekly or fortnightly basis and can supply a range of bins from 240ltrs to 1100ltrs.. In most cases NS pass the details of SDS onto the Landlord, although, in some cases the Landlord requests that NS pass their details and SDS makes direct contact. This service is currently used by around a dozen HMOs.

Community Safety Manager

- 7.12 Spelthorne Borough Council’s Community Safety Team does manage a range of complaints regarding HMOs. While it is true that the complaints are not disproportionately high in relation to other complaints of anti-social behaviour, the nature of the complaints can often be complicated, particularly in HMOs where there is a short-term occupancy and a high turnover of tenants. It has been found that many of the total complaints in relation to HMOs relate to a small number of venues. Persistent re-offending is common in cases such as these. The Community Safety Team manages anti-social behaviour in partnership with other statutory partners under the Crime & Disorder Act 1998. When managed by the police, the full range of criminal law can be utilised. Often, cases are managed by the Community Safety Team by either warning or prosecuting offenders under S.43 Anti-Social Behaviour, Crime & Policing Act 2014. This allows authorised officers to issue a ‘Warning Notice’ to rectify behaviour that is having a detrimental

effect, of a persistent or continuing nature, on the quality of life of those in the locality. Failure to comply with the warning will lead to the issue of a Community Protection Notice that places conditions on the suspected party. If these conditions are not met, the Community Safety Team will prosecute. This method has been used on both landlords and tenants alike and is generally successful.

- 7.13 What has been noticed, however, is the lack of responsibility of some landlords when managing anti-social behaviour within their own HMO. It is clear in some cases that the landlord feels that they can solely rely on public services without the need to take remedial action in the first instance. This attitude often leads to an increase in anti-social behaviour as can be evidenced in some local cases. It has been found that some landlords appear to extricate themselves from such responsibilities. Good examples of landlord management include ASB clauses within tenancy agreements, posted acceptable conduct notices and expedient action to tackle ASB.

8.0 Options for Article 4 Direction

- 8.1 There are four alternative options in relation to an Article 4 Direction which are set out below for consideration with commentary as to their appropriateness.

(i) That the Council introduces an Article 4 Direction across the whole Borough

Commentary

- 8.2 The evidence over the past four years show that some wards (three in total) have received no complaints of HMOs which are permitted development (i.e. 3-6 occupants) whilst four others only received 1-3 complaints. On this basis, imposing an Article 4 Direction across the whole Borough would be unnecessary and excessive.

This option is not recommended.

(ii) That the Council introduces an Article 4 Direction across the wards of Ashford North & Stanwell South, Staines and Stanwell North (the wards with the highest number of complaints and applications) withdrawing the permitted development rights to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) with immediate effect.

Commentary

- 8.3 There would be a compensation liability if an Article 4 Direction is introduced without 12 months' notice. The right to compensation arises if an application is made for planning permission for development formerly permitted by the General Permitted Development Order and this application is refused or granted subject to conditions. Compensation can be claimed:- (a) for abortive expenditure (such as expenditure incurred in the preparation of plans); and, (b) for depreciation of land value where the loss is directly attributable to the removal of permitted development rights – this would include loss of future profit; (Exeter City Council found that there would be a premium added to the value of a HMO property

compared to a dwelling and the council could be faced with significant compensation liabilities).

This option is not recommended.

- (iii) That the Council introduces an Article 4 Direction across the wards of Ashford North & Stanwell South, Staines and Stanwell North (the wards with the highest number of complaints and applications) withdrawing the permitted development right to convert a dwellinghouse (C3) to a House in Multiple Occupation (C4) coming into effect after 1 year of its introduction.**

Commentary

- 8.4 Such an approach would need to be justified by evidence. These three wards have had 6 or 7 complaints received by Planning Enforcement over the past four years where planning permission was not required and hence there were no planning controls. This equates to an average of 1.5 - 1.75 complaints per year for each ward. It is considered that given the low number of complaints received on HMOs which were permitted development, the evidence available to the Council is insufficient at this stage to justify the introduction of an Article 4 Direction which will require planning permission for a change of use from C3 to C4 from the date at which the Article 4 Direction comes into effect.
- 8.5 It should be noted that the introduction of an Article 4 Direction could indirectly result in a reduction in the supply of HMOs which in turn might impact on the groups who typically occupy this type of low cost accommodation. Local authorities will still be required to plan to meet the housing needs of those groups and this duty has recently increased following the Homelessness Reduction Act 2017 which came into effect in April 2018. Given the very low level of complaints received not requiring planning permission (which would be covered by an Article 4 Direction) as a proportion of the number of households (as shown in Table 5), a total of 0.025 complaints per household across the whole Borough, it is not considered that a non-imminent Article 4 Direction can be justified at present.
- Given the available data, this option is not recommended at this stage

- (iv) To continue to monitor HMOs and to review if the position changes within a year (1 May 2025)**

Commentary

- 8.6 It is considered that evidence available to the Council is insufficient at this stage to justify the introduction of an Article 4 Direction and it is recommended that if the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a further report will be brought to the CP&R Committee by 1 May 2025.
- This option is recommended.

- 8.7 HMOs provide a useful form of housing tenure. At a time when house prices remain high and access to finance limited, sharing a dwelling with others will continue to be an attractive option. The cost of living in an HMO is cheaper than self contained accommodation, which is beyond the affordability of many residents. HMOs do fulfil a vital role in providing affordable accommodation for individuals and they are an essential part of the housing stock. The introduction of an Article 4 Direction could indirectly result in a reduction in the supply of HMOs which in turn might impact on the groups who typically occupy this type of low cost accommodation. Local authorities will still be required to plan to meet the housing needs of those groups and this duty has increased following the Homelessness Reduction Act 2017 which came into effect in April 2018.
- 8.8 The Council already has existing powers to control some of the perceived negative effects of HMOs. This is in accordance with The Council's Corporate Plan which identifies under 'Addressing Housing Need' three actions for 2024/2025, one of which is to "work proactively with landlords and private housing providers of Homes of Multiple Occupation and temporary B&B accommodation to tackle poor conditions and anti-social behaviour". For example, Environmental Health has powers in the licencing process to control the number of occupants, ensure satisfactory conditions and amenities for the occupants, and to ensure that anti-social behaviour is properly managed by the licence holder. Additionally, they can also take action through other legislative powers in relation to noise, accumulations of rubbish and pests. Community Safety also have powers to control ASB from occupants. The Police and the Highway authority have powers to control dangerous or illegally parked vehicles and vehicles causing damage to highway verges and crime. Neighbourhood Services has powers to serve notices in relation to poor waste management.
- 8.9 The Police and the Highway authority have powers to control dangerous or illegally parked vehicles and vehicles causing damage to highway verges and crime. Neighbourhood Services has powers to serve notices in relation to poor waste management.
- 8.10 The introduction of an Article 4 Direction would need to be justified by evidence. Given the very low level of complaints received not requiring planning permission (which would be covered by an Article 4 Direction) as a proportion of the number of households, it is considered that there is insufficient evidence at this stage to justify the making of an Article 4 Direction. However, If the position changes and the number of complaints relating to HMOs which are permitted development and which are causing negative impacts on neighbours increases significantly, a further report will be brought to the CR&R Committee by 1 May 2025.

9. Financial Management Comments

- 9.1 An introduction of an Article 4 Direction with immediate effect would have financial implications associated with the (a) for abortive expenditure (such as expenditure incurred in the preparation of plans); and, (b) for depreciation of land value where the loss is directly attributable to the removal of permitted development rights –

this would include loss of future profit. Any work associated with the introduction of an Article 4 Direction with it coming into force within one year would be absorbed within the existing workforce, although it may be necessary to seek external legal advice. Any planning application would attract a fee of £578.

10. Risk Management comments

10.1

11. Procurement Comments

11.1 There are no procurement issues.

12. Legal Comments

12.1 The decision of the LPA to make an Article 4 direction can be subject to judicial review proceedings. If the proceedings are successful, the Article 4 direction could be quashed.

12.2 Judicial review is the procedure by which the courts examine the decisions of public bodies to ensure that they act lawfully and fairly. On the application of a party with sufficient interest in the case, the court conducts a review of the process by which a public body has reached a decision to assess whether it was validly made.

12.3 A claim for judicial review can be made on the following grounds:

12.3.1 Illegality

Illegality arises when a decision-maker:

- Misdirects itself in law.
- Exercises a power wrongly.
- Acts **ultra vires**, in purporting to exercise a power that it does not have.

12.3.2 Irrationality

A decision may be challenged as irrational, if:

- It is outside the range of reasonable responses of a public authority (this is sometimes phrased as being "so unreasonable that no reasonable authority could ever have come to it", using the standard of **Wednesbury unreasonableness**). The courts are very reluctant to find that a decision was irrational, particularly where the decision-maker is an expert.
- The decision-maker took into account irrelevant matters or failed to consider relevant matters.

12.3.3 Procedural unfairness

This ground arises, if the decision-maker has not properly observed:

- The relevant statutory procedures, such as a failure to consult or to give reasons.

- The principles of natural justice in the decision-making process (for example, if the decision-maker has shown bias or has failed to hear an affected party).

12.3.4 Legitimate expectation

A public body may, by its own statements or conduct, be required to act in a certain way, where there is a legitimate expectation as to the way in which it will act.

- 12.4 Accordingly, to make sure that the Council is not exposed to any possible judicial review challenges it is critical that a decision on making an Article 4 direction not only complies with any legal requirements but is also based on strong and robust evidence so that the authority is able to defend and justify making such decision.

13. Other Considerations

- 13.1 There are no other considerations.

14. Equality and Diversity

- 14.1 In considering whether an Article 4 Direction should be introduced in Spelthorne, due regard should be given to the Human Rights Act 1998 and the Public Sector Equality Duty (Equality Act 2010). The addition of these considerations ensures the provision of robust reasoning and justification for any action taken or not taken in respect of an Article 4 Direction.

15. Sustainability/Climate Change Implications

- 15.1 There are no sustainability/climate change issues.

16. Timetable for implementation

- 16.1 It is recommended that:

HMOs are continued to be monitored by the Planning Enforcement team and an updated report is brought to the Environment and Sustainability Committee within a year (1 May 2025).

17. Contact

- 17.1 For any queries regarding the Planning Enforcement aspect of HMOs, please contact Richard Jones, Planning Enforcement Team Leader on r.jones@spelthorne.gov.uk
- 17.2 For Planning matters, please contact Esmé Spinks, Planning Development Manager on e.spinks@spelthorne.gov.uk

17.3 For queries relating to Environmental Health, please contact Tracey Wilmott-French, Senior Environmental Health Manager or Susan Turp, Principal Environmental Health Officer on

s.turp@spelthorne.gov.uk

t.wilmott-french@spelthorne.gov.uk

Appendices:

Appendix 1 – HMOs which did not require planning permission 2019 – 2023

Appendix 2 – HMO planning applications determined 2019 - 2023

Appendix 3 - Planning Applications approved by ward 2019 - 2023

Appendix 4 - Planning Applications refused by ward 2019 – 2023

Appendix 5 – Maps showing distribution of licensed HMOs by ward*

Annex – Report to Overview and Scrutiny Committee – 20 November 2018

Appendices to Annex

Appendix 1 – Planning Applications for HMOs by ward determined April 2010 – May 2018

Appendix 2 - HMO complaints by ward where Planning Permission was not required (From April 2010)

Appendix 3 - Numbers of planning applications refused

Appendix 4 - Numbers of planning applications approved

Appendix 5 - Numbers of HMO licenced premises (up to 6 residents)

Appendix 6 - Numbers of HMO licenced premises (7 residents or more - Planning Permission required)

**based on data collected on licensed HMOs in Nov 2023*