

Planning Committee

10 December 2024



Title	Houses in Multiple Occupation (HMOs)
Purpose of the report	<ul style="list-style-type: none">To make a decision
Report Author	Esmé Spinks, Planning Development Manager Liz McNulty, Planning Enforcement Officer Fidelma Bahoshy, Joint 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	The Planning Committee is asked to note: <ul style="list-style-type: none">the contents of this report and to agree.to consider whether to confirm the Article 4 Direction made on 21 August 2024 in respect of Staines, Ashford North and Stanwell South, and Stanwell North wards having regard to the representations made; andto continue to monitor the number of investigations relating to HMOs which are permitted development in the ten remaining wards and to bring back a further report to the Planning Committee by December 2026.
Reason for Recommendation	The Planning and Environmental Health Services assessed whether an Article 4 Direction should be served in respect of HMOs in April 2024. This followed on from previous assessments in 2018 and 2020. In the earlier years, it was agreed that there was insufficient evidence. In April 2024, it was decided that an Article 4 Direction should be made for three wards in the borough; Ashford North & Stanwell South, Staines and Stanwell North. This was made on 21 August 2024 and has been the subject of consultation which is referred to in this report. The committee now needs to consider the representations made before deciding whether to confirm the

	<p>Direction. If confirmed, the Article 4 Direction will come into effect one year after it was made, on 25 August 2025.</p> <p>The HMO data for the borough has now been reassessed with one year's additional data which is contained in this report. From assessing the most recent data, it remains officers' opinion that there is insufficient evidence to serve a blanket Article 4 Direction. However, officers will continue to monitor the data and if the position changes for the remaining ten wards in the borough and the number of investigations 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 Planning Committee by December 2026.</p>
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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, 2020 and 2024, Planning and Environmental Health data were assessed to consider whether an Article 4 Direction should be served in respect of restricting HMOs. It was agreed in the earlier years that there was insufficient evidence to justify taking this action. However, in April 2024, it was resolved that an Article 4 Direction should be made in respect of three wards; Ashford North & Stanwell South, Staines and Stanwell North. This was made on 21 August and will come into effect one year later. A further one year's assessment of data 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 investigations associated with HMOs to establish if further controls are needed. 	<ul style="list-style-type: none"> If the position changes in the remaining ten wards and the number of investigations 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 Planning Committee by December 2026.

- 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 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. However, more recently in April 2024, it was resolved an Article 4 Direction in respect of three wards should be made. The direction was made in August 2024 and comes into effect one year later. Representations have now been received and are attached at **Appendix 1**. Members need to consider if they wish to confirm the Direction in the light of the comments made.
- 1.4 This report uses Planning and Environmental Health data over the past year to update the data in the April report. It includes a spatial analysis, by ward, of the numbers and types of HMOs which exist and the extent of the investigations undertaken in Spelthorne by the Planning Enforcement team.
- 1.5 It is considered that given the available data, evidence is insufficient to justify an extension to the Article 4 Direction in Spelthorne. If the position changes for the remaining ten wards in the borough and the number of investigations and 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 Planning Committee by December 2026 which would provide a data base consistent with the Committee’s earlier decision.

- 1.6 To assist in the interpretation of the planning and licencing requirements, a table explaining the position is set out below.

Planning and Licensing Requirements for All HMOs								
		Number of Occupants in HMO						
Service	Requirement	1	2	3	4	5	6	7+
Environmental Health	Licensing Required?	No	No	No	No	Yes	Yes	Yes
Planning	No Article 4 Direction – Planning Permission Required?	No	No	No	No	No	No	Yes
	Article 4 Direction in effect – Planning Permission Required?	No	No	Yes	Yes	Yes	Yes	Yes

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 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).
- 2.7 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.
- 2.8 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 Planning Policy Guidance (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)
- 2.9 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.
- 2.10 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.
- 2.11 Consequently, compensation would be payable in some circumstances to those whose Permitted Development (PD) rights are withdrawn if the Local Planning Authority (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.
- 2.12 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.
- 2.13 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.
- 2.14 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 investigations undertaken relating to HMOs which did not require planning permission because they contained six residents have been recorded.

The Committee report in April considered four years of Planning and Environmental Health data:

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

This report considers an additional year: **01/10/23 - 30/09/24.**

3.4 The results for the most recent year, 1 October 2023 – 30 September 2024 are shown by wards in the tables further below. Several investigations listed were inspected by the Planning Enforcement officers and it was established they were not HMOs at all.

Table 1 - HMO Investigations by Planning Enforcement by ward where Planning Permission was not required as it was Permitted Development between 1 October 2023 and 30 September 2024

Ward	Referred by EH (not a complaint)*	Total numbers of Investigations**	Numbers of Households	Number of investigations as a % of households
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Ashford North & Stanwell South	0	1	3,557	0.028
Ashford Town	2	4	2968	0.13
Ashford East	1	1	3,061	0.033
Stanwell North	2	2	3,390	0.059
Sunbury East	1	1	3,162	0.032
Average			3,175	0.047%
Total	6	9		

*Referred by EH due to licence application

**Numbers refer to complaints per property

In the last year, there were nine investigations undertaken by planning enforcement, six of which were referred by Environmental Health following an application for a licence. This data is shown in a ward map attached as **Appendix 2**.

Table 2 - Reasons Planning Permission was not required between 1 October 2023 and 30 September 2024

By Ward & Reason	Count of Reason Planning Permission Not Required
Ashford North & Stanwell South	2
HMO Permitted Development	1
C3 use not a HMO	1
Ashford Town	4
HMO Permitted Development	4
Ashford East	1
HMO Permitted Development	1
Stanwell North	3
HMO Permitted Development	2
Has planning permission for 9	1
Sunbury East	2
HMO Permitted Development	1
Dwelling house – C3 Use	1
Riverside & Laleham	1
Has planning permission for 10	1
Total HMO investigations Not Requiring Planning Permission	13
Total HMO Investigations - HMO Permitted Development	9

- 3.5 Of the 13 HMO investigation that did not require planning permission received between 1 October 2023 and 30 September 2024, **9** related to HMOs which were permitted development. Therefore, **9** investigations is the relevant figure in the consideration of an Article 4 Direction.

Table 3
HMO Permitted Development Investigations/Complaints as a % of households 2023-24

Ward	No. of HMO PD investigations**	No. of households	Number of investigations as a % of households*
Ashford North & Stanwell South*	1	3,140	0.032%
Ashford Town	4	2,703	0.148%
Ashford East	1	2,959	0.034%
Stanwell North*	2	3,250	0.062%
Sunbury East	1	2,831	0.035%
Total	9		

*These two wards are already subject to an Article 4 Direction

3.6 Table 3 above shows that over the past year, three wards were subjected to only one investigation each relating to an HMO which was permitted development and two of these were referred by EH following a licence application. Two of the wards in the table above are already subjected to an Article 4 Direction made in August. There were no HMO investigations which were permitted development in the past year in eight borough wards. The number of investigations/complaints as a % of the number of households is exceptionally low; between 0.031% and 0.147%.

3.7 Table 4 below shows the number of HMO investigations undertaken by planning enforcement for the year 01/10/23 – 30/09/24 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 investigation relating to HMOs is low, comprising an average of just 2.48% of all complaints received.

Table 4 – HMO Planning Enforcement investigations/complaints received compared with total Planning Enforcement complaints received 2023 – 2024

Year	No. of HMO PD complaints/investigations	Total number of Planning Enforcement complaints received	Number of HMO Planning Enforcement complaints received as a % of total complaints
01/10/2023 – 30/09/2024	9	363	2.48%

3.8 The number of planning applications for HMOs (containing seven or more residents) by ward which were determined between 1 October 2023 and 30 September 2024 are set out in table 5 below. A full list of the site details is contained as **Appendix 3** to this report and the information is also portrayed in the maps contained in **Appendices 4 and 5**. Of the five applications, three were refused permission and two were approved. The two approved were smaller HMOs containing 7-8 residents. Seven is the smallest number of residents within an HMO which requires planning permission. The three refused applications contained 10 – 16 residents.

Table 5 - Planning applications for HMOs by ward determined between 1 October 2023 and 30 September 2024

Ward	Numbers of planning applications approved	Numbers of planning applications refused
Ashford Common	0	0
Ashford East	0	1
Ashford North & Stanwell South	1	1
Ashford Town	0	1
Halliford and Sunbury West	0	0
Laleham and Shepperton Green	0	0
Riverside and Laleham	0	0
Shepperton Town	0	0
Staines	0	0
Staines South	1	0
Stanwell North	0	0
Sunbury Common	0	0
Sunbury East	0	0
Grand Total	2	3

3.9 Table 6 further below shows the number of HMO enforcement investigations over the past five years 2019-2024 by ward. This information is also shown by ward map in **Appendix 6**. This is a combination of the data in this current report for the past year and the four years contained in the April committee report covering 2019-2023. Ashford North and Stanwell South, Stanwell North and Staines (coloured **green**) are already the subject of an Article 4 Direction.

Table 6 HMO Permitted Development Investigations by Planning Enforcement 2019-2024 by ward (five years data)

By Ward & Reason	PP Not Required
Ashford Common	3
Ashford East	5
Ashford North & Stanwell South	8
Ashford Town	7
Halliford and Sunbury West	0
Laleham and Shepperton Green	0
Riverside and Laleham	3
Shepperton Town	0
Staines	6
Staines South	3
Stanwell North	9
Sunbury Common	4
Sunbury East	2
Total PD Investigations	50

- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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 where Planning Consent would apply (currently for properties with 7 or more occupiers) 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.

- 3.14 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. If the licence holder applied for a renewal on expiry of the year, Environmental Health would again liaise with Planning to ensure that either planning consent was in place, or if not, that appropriate enforcement action could be taken.
- 3.15 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.

Table 7 - Number of HMOs that have been licensed as of 30 September 2024, and the number of potential HMOs brought to the attention of Environmental Health between 1 October 2023 and 30 September 2024, by Ward.

Ward	Number of licensed HMOs* (as of 30 Sept 2024)	Potential HMOs** (2023-2024)
Ashford Common	12	2
Ashford East	12	6
Ashford North & Stanwell South	35	14
Ashford Town	18	6
Halliford and Sunbury West	0	1
Laleham and Shepperton Green	5	1
Riverside and Laleham	5	6
Shepperton Town	1	1
Staines	19	1
Staines South	5	4
Stanwell North	17	22
Sunbury Common	17	4
Sunbury East	3	2
Grand Total	149	70
<p>*Note this includes licence renewals that are in the system being processed</p> <p>**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.</p>		

- 3.16 Of the potential HMOs listed within table 7 above, 2 of these have since been licensed and 5 have applications pending:
- 3.17 The information shows that the highest number of licensed HMOs is within the wards Ashford North & Stanwell South, then Staines, then Ashford Town and then Stanwell North and Sunbury Common. Ashford Town is the ward with the biggest increase (by 4) of licensed HMOs in the last year. The wards subject to an Article 4 Direction are marked in **green**.
- 3.18 Maps showing the distribution of licensed HMOs throughout Spelthorne and then the distribution of licensed HMOs by ward are included as Appendix 7 to this report. The maps were created in November 2024 based on the information on the number of licensed HMOs as of 30 September 2024.
- 3.19 Environmental Health have noted a marked increase in the number of potential HMOs during the period 1 October 2023 to 30 September 2024 compared to previous years. In the last year, the number of potential HMOs has tripled from 23 to 70 as can be seen in Table 8 below. This could be as a result of some landlords deciding to create HMOs before August 2025 when the Article 4 declaration across 3 wards comes into effect following the decision made at the April 2024 committee meeting, as well as increased awareness from residents following the subsequent consultation relating to this. It can be noted that the number of potential HMOs rose significantly in Ashford North and Stanwell South from 0 in 2023-2023 to 14 in this last year and for Stanwell North from 4 to 22.

Table 8 – Showing the comparison between number of potential HMOs brought to the attention of Environmental Health last year (October 2022-September 2023) and this year (October 2023 - September 2024), by Ward

Ward	Potential HMOs	
	2022-2023	2023-2024
Ashford Common	4	2
Ashford East	5	6
Ashford North & Stanwell South	0	14
Ashford Town	4	6
Halliford and Sunbury west	1	1
Laleham and Shepperton Green	0	1
Riverside and Laleham	1	6
Shepperton Town	1	1
Staines	1	1
Staines South	1	4
Stanwell North	4	22
Sunbury Common	1	4
Sunbury East	0	2
Grand Total	23	70

- 3.20 Environmental Health have also noted an increase in HMO licence applications, which may also be a result of landlords wanting to establish HMOs in advance of August 2025. In the past year (1 October 2024 to 30 September 2024), we received 77 HMO licence applications, compared to last year where the figure was 33.
- 3.21 For the period 1 October 2023 to 30 September 2024, Table 9 below provides a summary of the complaints relating to known HMOs received by Environmental Health about matters relating to accumulations of rubbish, antisocial behaviours (ASB), noise, rats, mice and overgrown gardens. The complaints relate to issues that could affect nearby residents (generally made to Environmental Health by neighbours). It is however worth mentioning that Environmental Health will always arrange to carry out an inspection of the property once they are aware the property is an HMO (whether it requires a licence or not) and will address any issues relating to the conditions within the property as well (including fire safety and other potential hazards that would affect the occupants). It should be noted that there is some overlap of complaints received by Planning and Environmental Health. The complaints included in this data refer to HMOs that are licensed or for which Environmental Health have received a licence application that is pending (whether or not they had at the time of the complaint). The data does not include complaints about properties that were vacant where building works were taking place which may have related to their use changing to become an HMO.

Table 9: Complaints received by Environmental Health about known HMOs between 1 October 2023 and 30 September 2024

Ward	No. of Complaints	No. of Households in Ward	No. of complaints as a % of households	Complaint Type
Ashford Common	2	3392	0.06	accumulations, noise
Ashford North and Stanwell South	8 (5 about same property)	3557	0.22	accumulations. noise
Ashford Town	2	2968	0.07	accumulations, noise, mice
Laleham and Shepperton Green	2 (both about same property)	3470	0.06	noise
Staines	1	4009	0.02	ASB
Staines South	2	2912	0.07	rats, noise
Stanwell North	2 (about same address)	3390	0.06	rats and mice and noise and ASB
Sunbury East	3 (2 about same address)	3162	0.09	Noise, ASB, accumulations, overgrown garden
Other Wards	0	14945	0.0	
Grand Total	22	41805	0.05	

3.22 Table 10 below provides data on the total number of complaints received by Environmental Health relating to residential properties in general (includes HMOs and single occupation properties) about accumulations, ASB, noise, rats and mice and overgrown gardens. It also shows what percentage of these complaints relate to HMOs.

Table 10: Relevant complaints received by Environmental Health about all residential properties (whether HMOs or properties in single occupation) between 1 October 2023 and 30 September 2024.

Total no. of relevant complaints received	All complaints as a % of households	HMO complaints as a % of total complaints
718	1.72	3.06% (22)

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. There however needs to be a strong evidence-based reasoning for invoking the Scheme and it is necessary to demonstrate that other strategies to address the problems have been implemented. The current data we have is not sufficient to warrant making such an application.

6.2 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 Local Housing Allowance (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 Assessment 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. However, the cost of rooms in HMO accommodation is also unaffordable for many. Whilst Spelthorne does not have enough of HMOs to meet the demand, at the same time many people do not want to share due to the poor quality of HMOs, even if they can't afford to cover the rent, despite support given by Rentstart. Nevertheless, the Strategic Lead, Housing Options advises that whilst HMOs are not the first choice for those looking for housing, given there is a lack of housing options and given we are experiencing a housing crisis, Housing Options would definitely not want to lose HMOs as an option. HMOs are helpful and numerous placements are made with the help of our Rentstart colleagues every month.

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.

Consultation on the Article 4 Direction already made

- 7.14 In accordance with statutory procedures, consultation was undertaken following the making of the Article 4 Direction on 21 August 2024 for the wards of Stanwell North, Ashford North and Stanwell South and Staines. A total of five letters of representation have been received to the consultation process, four letters of support and 1 of objection. These letters are attached **Appendix 1** to this report with personal details redacted.
- 7.15 The main issues raised in the letters of support for the creation of an Article 4 Direction are summarised as
- HMOs generate more cars parking on green verges/attracts commercial vehicles
 - HMO landlords have little regard to local residents
 - HMO properties are in very poor conditions
 - Litter problems
 - HMOs occupied by shift workers coming and going day and night
 - Adverse impact on services
 - Article 4 should be in all parts of the borough
 - Article 4 should be made before the issues arise (officer comment: the NPPF states that Article 4 Directions should be based on robust evidence and apply to the smallest geographical area possible).
 - Adverse impact on the neighbourhood/building sites.
 - Residents feel intimidated
- 7.16 The main issues raised in the letters of objection to the creation of an Article 4 Direction are summarised as:
- Serving of an Article 4 is devastating to landlords who strive to provide high quality accommodation to professionals working within the Spelthorne and surrounding areas.
 - Provide high quality accommodation which is affordable
 - Private and small landlords are crucial to local economy and investment / Article 4 approach would have devastating effect on local economy and residents
 - [Most landlords and neighbours have never had an issue over years](#)
 - HMOs help to address the needs of those on low incomes that cannot afford to buy or rent an entire flat or property to which HMO provides a perfect solution
- 7.17 Members of the Planning Committee are required, having regard to the comments above, to make a decision on whether or not to confirm the Article 4 Direction made in August 2024 in respect of Ashford North and Stanwell South, Stanwell North and Staines wards.

8.0 Options for Article 4 Direction

A Article 4 Direction Made in August 2024

8.1 To confirm the existing Article 4 Direction in respect of Ashford North & Stanwell South, Staines and Stanwell North having taken into account the representations received; or

To not confirm the existing Article 4 Direction.

B Options for Article 4 Direction for Remaining 10 wards

8.2 There are four alternative options in relation to a further 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 (ten additional wards)

Commentary

8.3 Such an approach would need to be justified by evidence. The evidence over the past five years (table 6) show that some wards (three in total) have received no planning complaints or investigations of HMOs which are permitted development (i.e. 3-6 occupants) whilst four others only received 2-3 complaints and the remainder have just 4-7 investigations. 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 a borough wide Article 4 Direction, the effect of which will be for planning permission to be required for a change of use from C3 to C4 from the date at which the Article 4 Direction comes into effect.

8.4 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 Tables 5 and 6, it remains officers' opinion that there is insufficient evidence to serve an Article 4 Direction. On this basis, imposing a blanket Article 4 Direction across the whole Borough would be unnecessary and excessive. Such action risks being challenged through the courts. It should also be noted that there would be a compensation liability if an Article 4 Direction is introduced without 12 months' notice.

This option is not recommended.

- (ii) **That the Council introduces an Article 4 Direction across the ward of Ashford Town (the ward 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

- 8.5 Such an approach would need to be justified by evidence. Planning enforcement undertook 7 investigations into HMO use over the past five years where planning permission was not required and hence there were no planning controls. This equates to an average of 0.047 complaints/investigations per year for this 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.
- 8.6 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 remains officers' opinion that there is insufficient evidence to serve an Article 4 Direction. It is not considered that a non-imminent Article 4 Direction can be justified at present. It should also be noted that there would not be a compensation liability if an Article 4 Direction comes into effect is introduced without 12 months' notice. The comments above about concern this could indirectly result in a reduction in the supply of HMOs also applies.

Given the available data, this option is not recommended at this stage

- (iii) **That the Council introduces an Article 4 Direction across the ward of Ashford Town (the additional ward 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

- 8.7 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). Furthermore, such an approach would need to be justified by evidence which is presently insufficient (see above under (ii)). The

comments above about concern this could indirectly result in a reduction in the supply of HMOs also applies.

This option is not recommended.

(iv) To continue to monitor HMOs and to review if the position changes within two years (December 2026)

Commentary

8.8 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 Planning Committee by December 2026.

This option is recommended.

8.9 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.

8.10 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.

- 8.11 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.
- 8.12 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 Planning Committee by December 2026.

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.
- 9.2 The work associated with the introduction of an Article 4 Direction include making the order, consulting and referring the order back to Committee to confirm. This involves mainly resources from Planning Development Management (PDM) and Legal Services.
- 9.3 There will also be additional resource implications for PDM associated with an increase in planning applications if an Article 4 Direction was confirmed for small HMOs (for 3 – 6 occupants which currently do not need planning permission). It is not known how many additional planning applications will be received as a result of serving a borough wide HMO. Table 7 above shows the number of potential HMOs that have come to the attention of Environmental Health (EH) through complaints and enquiries. This totals 70 for the past year. However, an HMO licence through EH is only needed for 5+ occupants whereas an Article 4 HMO would require any HMO with 3 – 6 occupants to submit an application.
- 9.4 There would be further resource implications for PDM enforcement officers. The number of complaints / investigations relating to a property being occupied by three or more tenants from different households with shared facilities across the borough, which has a total of 41,805 households (2021 census), is potentially enormous. The planning enforcement officers (of which there are three (fte) are already stretched by dealing with close to 400 complaints a year, some of which are very complex cases.

10. Risk Management comments

- 10.1 There are risk management considerations associated with an Article 4 Direction including financial risks and possible judicial review proceeding (see legal comments below).

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 The Public Sector Equality Duty was created by the Equality Act 2010 in order to harmonise the previous race, disability and gender equality duties and to extend protection to the protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. In summary, the Council must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

- 14.2 Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

- 14.3 The Council's Corporate Plan and Equality Diversity and Inclusion Statement of Intent provide an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.

15. Sustainability/Climate Change Implications

- 15.1 There are no sustainability/climate change issues.

16. Timetable for implementation

16.1 It is recommended that:

- the contents of this report are noted and to agree.
- to continue to monitor the number of investigations relating to HMOs which are permitted development in the ten remaining wards and to bring back a further report to the Planning Committee by December 2026
- to consider whether to confirm the Article 4 Direction made on 21 August 2024 in respect of Staines, Ashford North and Stanwell South, and Stanwell North wards having regard to the representations made.

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 Fidelma Bahoshy, Joint Senior Environmental Health Manager or Susan Turp, Principal Environmental Health Officer on s.turp@spelthorne.gov.uk
f.bahoshy@spelthorne.gov.uk

Appendices:

Appendix 1 –CP&R Committee Report, April 2024 plus appendices

Appendix 2 – Ward Map of investigations of HMOs which did not require planning permission 2023 – 2024

Appendix 3 – Table of HMO planning applications determined 2023 - 2024

Appendix 4 - Planning Applications approved by ward 2023 - 2024

Appendix 5 - Planning Applications refused by ward 2023 – 2024

Appendix 6 - Ward Map of investigations of HMOs which did not require planning permission 2019 – 2024

Appendix 7 – Maps showing distribution of licensed HMOs by ward*

**based on data collected on licensed HMOs in Nov 2024*