

## **Houses of Multiple Occupancy (HMO) Frequently Asked Questions – Lewisham Council**

### **What is an HMO?**

HMOs are defined differently within the Planning, Housing, Licensing, Council Tax, and Census context. In general, HMOs are a dwelling that is occupied by 3 or more individuals who form two or more households and share basic amenities. Within this form of housing, two categories exist that are subject to different planning laws:

- A 'Small HMO' has between 3 and 6 occupiers and does not require planning permission
- A 'Large HMO' has more than 6 occupiers and requires planning permission

Please see below for information on licensing laws.

### **What is meant by 'household'?**

A household is a single person, or family members living together. This includes people who are married or living together as a couple. It also includes close relatives and foster children living with foster parents.

### **Why is the number of HMOs increasing?**

There are a multitude of reasons behind the rise in HMOs across the UK beyond the permitted development rights of small HMOs. Three key reasons are:

- Councils have a statutory duty to meet housing need. However, there exists a chronic lack of social housing and the Council is unable to build social housing at a level that keeps up with demand. As such, HMOs within the private sector are a housing option for those in need of low cost accommodation.
- HMOs are increasingly attractive forms of investment to private property developers.
- Local councils' power and scope to restrict the creation of HMOs is limited.

### **What planning guidance exists for HMOs?**

Where an HMO requires planning permission, local policies direct them to areas with good accessibility and where the creation of HMOs would not reduce the availability of family homes. The National Planning Policy Framework does not set out explicit guidance on HMOs. However, it directs local authorities to ensure a wide array of housing options are available for residents. The London Plan (2021) acknowledges the crucial role of HMOs to meet the housing needs of London's residents. Within Lewisham, the Council recognises that HMOs offer local housing provision, especially in regard to low-income groups, students, and vulnerable people. HMOs are a legitimate form of housing that meets a need for some of Lewisham's residents.

### **What can the Council do to address immediate issues around HMOs impacting street quality and causing ASB?**

The Council's Environmental Crime Enforcement team and Street Environmental Services respond to fly-tipping and waste issues (such as uncontained builders waste) and complaints. Action can be taken via section 59 of the Environmental Protection Act which allows the Council to serve notices to occupier/owner to remove controlled building waste on private property that is uncontained and not secured within a receptacle. Over-spilling bins are dealt with via a Community Protection Notice (CPN) to owner, occupier, managing agent or landlord. Both can be dealt with by the courts for failure to comply. Please note there is a 21 day period to appeal these notices.

Lewisham Council's Private Sector Housing Agency continues to address anti-social issues (ASB) with ASB enforcement. However, the faster and more effective route to ASB enforcement is through the Crime Enforcement & Regulation Service.

The Council is taking further preventative and mitigating steps to address this issue through the extension of landlord licensing. This will help to address poor standards and growing ASB within the Private Rented Sector through stricter licence conditions relating to the standard and management of rented properties within the borough.

#### **What are the current licensing laws for HMOs?**

Mandatory licensing is required by law for HMOs with 5+ residents. In Lewisham, additional licensing rules apply to any HMO above a commercial premises. Local councils have no discretion to refuse to licence a property purely on the basis that a development is unpopular with local residents.

HMOs with 4 or less residents do not require a license.

#### **What are the planning rules for HMOs – what can the council do to control their development?**

The conversion of a house into a small HMO (between 3 and 6 occupiers) does not require planning permission. As such, in general circumstances, the Council cannot control the creation of small HMOs as this is permitted development. Such developments, where they are undertaking building works, would still require Building Regulations. However, this can be undertaken by private contractors (known as Approved Inspectors) meaning that in some cases the works can be outside of the control of the Council. However, local councils can attempt to increase their control over the development of Small HMOs in certain geographic regions through the imposition of an Article 4 Direction.

#### **How does an Article 4 Direction work?**

To implement an Article 4 Direction, in line with government guidance, councils must evidence exceptional circumstances in regard to HMOs causing harm to the well-being and amenity of a local area. For instance, in terms of street quality, waste issues, or Anti-Social Behaviour. Where an Article 4 Direction is justified and comes into effect, local councils can withdraw the permitted development rights that would otherwise normally apply for Small HMOs. As a result, planning permission for Small HMOs within this area would become required. It is important to note that an Article 4 Direction merely requires the submission of a planning application for a proposed HMO so that the impacts can be assessed. It is not the case that any such application would automatically be refused.

#### **What has Lewisham Council done in the past in relation to Article 4 Directions?**

In 2016, Lewisham Council carried out a review into HMOs and their impacts. A key reason for doing so was to assess potential justification for the creation of an Article 4 Direction. However, evidence was not sufficient to justify an Article 4 and it was noted that the issues being faced were more appropriate to be dealt with via licensing.

In 2018, the Council conducted another review following increased complaints and the observation of a high number of HMOs in certain wards. Again, justification for a borough-wide Article 4 Direction was not found. However, an Article 4 direction to remove permitted development rights for Small HMOs in Lewisham's southern wards (Bellingham, Whitefoot and Downham) and Grove Park was recommended. This was due to the harm to amenity from the over concentration of HMOs in these wards. This came into effect in 2020.

**Why was an Article 4 Direction not implemented in all wards in 2018 when the Council implemented Article 4 Directions elsewhere?**

At the time of preparing the evidence base in 2018 for the Article 4 Direction, there was insufficient evidence to demonstrate a significant increase in HMOs or that the HMOs identified were causing significant harm to the well-being of the area in wards except Bellingham, Whitefoot and Downham and Grove Park. This was in line with the required evidence by the National Planning Policy Framework (NPPF) to justify the use of an Article 4 Direction.

The Council is currently updating the HMO evidence base to understand if and where there may be further issues with an unacceptable increase or over concentration of HMOs. This will again look Borough wide and assess the need for any new Article 4 Directions.

**Since the 2018 Article 4 Directions (came into effect 2020), developers have now concentrated their HMO development in other wards. Why did the Council not prevent this from happening?**

On 7th January 2020, the Council confirmed a non-immediate Article 4(1) Direction made on 5 March 2019, for Lewisham's southern wards of Bellingham, Downham, Grove Park and Whitefoot. As part of the evidence base supporting this we undertook a review of HMOs within the borough looking at prevalence and clustering. At that time there was not sufficient evidence in other wards that the Council could use to show further Article 4 Directions were warranted. This does not mean that there were no HMOs in other wards. Rather, there was not a high concentration that demonstrated a harmful change in the character of an area which is required as per the National Planning Policy Framework (NPPF) to justify the use of an Article 4.

**What penalties and fines have been considered by the Council within the Council's jurisdiction?**

There are no penalties or fines that can be imposed by the Council for the conversion of residential properties to small HMOs within the scope of permitted development rights set by the government. For HMOs with 5+ residents, fines can be charged to individual landlords if they fail to licence their HMOs or fail to keep to licensing conditions. However, developing an HMO is legal and therefore there is no power to collectively fine HMO developments.

**What are the Council's current actions and plans in relation to HMOs?**

The Council is currently assessing the need for new Article 4 Directions across the borough. Such a Direction can only be introduced where there is strong evidence that it is justified. The Council has therefore started a new round of evidence collection to help implement Article 4 Directions where necessary and possible. This is looking Borough wide. This will be complemented by close work with communities to further understand the impacts of HMOs on local residents/neighbourhoods in order to evidence harm to amenity. An HMO reporting email address is also operational at [HMOreport@lewisham.gov.uk](mailto:HMOreport@lewisham.gov.uk) to collect reports or concerns regarding HMOs which will help build an evidence base for a new Article 4 Direction. This is not a complaints or general queries inbox.

**How long will this review take?**

This is likely to be a 6 month exercise. Moreover, national government has changed Article 4 rules. Article 4 imposition is now more difficult and requires a minimum of 12 months from when they are made before they are implemented in order to avoid financial compensation claims.

The Council is taking further preventative and mitigating steps to address this issue through the extension of landlord licensing. This will help to address poor standards and growing ASB within the Private Rented Sector through stricter licence conditions relating to the standard and management

of rented properties within the borough. This additional licensing scheme will be launching in April 2022.

The Council are also applying to the Secretary of State to impose a new borough-wide selective licensing scheme in response to growing ASB within the Private Rented Sector.

**The property adjoining mine is being converted in to an HMO without a party wall agreement.  
What can the Council do to help?**

There have been reports that some HMO developers have not entered into Party Wall Agreements. This is a civil matter and the Council has no role or remit to enforce. Anyone affected by this should seek their own legal advice. Provision of evidence by developers that they have entered into Party Wall Agreements has now been made a requirement of licensing applications.