

Housing and Planning Scrutiny Select Committee

19 May 2026

Part 1 - Public

Matters for Cabinet - Non-key Decision



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Cabinet Member	Cllr Mike Taylor, Cabinet Member for Planning
Responsible Officer	Eleanor Hoyle, Director of Planning, Housing & Regulatory Services
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Scoping report for use of an Article 4 Direction to withdraw Permitted Development Rights for small Houses of Multiple Occupation (HMO)

1 Summary and Purpose of Report

1.1 This report provides Members with an overview of Article 4 Directions and considers whether there is sufficient evidence to justify the introduction of an Article 4 Direction to withdraw permitted development rights for small Houses in Multiple Occupation (HMOs) within Tonbridge & Malling. It draws on national policy, government guidance and comparative practice from other local authorities, alongside local Tonbridge & Malling data, to inform scrutiny and discussion.

2 Corporate Strategy Priority Area

2.1 Improving housing options for local people whilst protecting our outdoor areas of importance.

3 Recommendations

Members are asked to:

- 3.1 Note the content of the report and the evidence presented in relation to the potential use of an Article 4 Direction for small HMOs.
- 3.2 Consider whether further work should be undertaken to formally review the potential for an Article 4 Direction for small HMOs and recommend to the Cabinet Member that this work is progressed, with funding being put in place via a supplementary budget estimate, so that the Cabinet could make a decision on the Article 4 Direction no later than their meeting on 1 September 2026.

4 Introduction and Background

- 4.1 Article 4 Directions are powers available to local planning authorities under the General Permitted Development Order, allowing specified permitted development rights to be withdrawn in defined areas where justified. In the context of HMOs, this would require planning permission for changes of use from dwellinghouses (Use Class C3) to small HMOs (Use Class C4), rather than allowing these to occur under permitted development rights. Article 4 Directions are a mechanism of control rather than prohibition, requiring planning judgement on individual proposals.
- 4.2 National planning policy advises that Article 4 Directions should be applied in a measured and targeted way, supported by robust evidence and limited to the smallest geographical area necessary to address clearly identified harm. Guidance states that there are a number of circumstances where a particularly strong justification will be required, one of which is where the geographic area proposed is the entire area of a local planning authority.
- 4.3 Mandatory HMO licencing applies nationwide if 5 or more tenants from 2 or more households share facilities. In addition, Councils can require additional or selective licencing following the introduction of a scheme to administer this, which must be based on evidence relating to significant standards issues in the HMO sector.
- 4.4 Although HMO numbers remain low in the borough, there are examples where boroughs in London and the surrounding areas have seen this increase happen in relatively short time periods. Officers were therefore requested to review the Council's position on this issue by the Cabinet Members in late March and to bring forward a report to progress an Article 4 direction on Houses of Multiple Occupation as soon as possible.

5 Proposal

- 5.1 The proposal considered in this report is whether Tonbridge & Malling Borough Council should pursue the introduction of an Article 4 Direction to remove permitted development rights for small HMOs. The report summarises the type of evidence used by other local authorities who have adopted such Directions, including licensing data, planning and enforcement records, census and housing data, and antisocial behaviour indicators. It then assesses the local Tonbridge & Malling position against these metrics.
- 5.2 Requiring planning permission for small HMOs would potentially allow the Council:
- the opportunity to coherently support and manage the delivery of mixed and balanced communities in neighbourhoods throughout the town or district;

- the ability to drive up standards of HMO accommodation in terms of appearance and function and to manage the effects of additional HMOs by the use of planning conditions;
- the ability to minimise the negative effects that could arise from high concentrations of HMOs;
- the opportunity to consider proposals for HMOs on their merits having full regard to local issues; and
- the ability to improve conditions in neighbourhoods for existing residents and enhancing the attractiveness of the area to visitors, investors and potential new residents.

5.3 Some of these factors will depend on the Council's current DM policies and whether these have the policy requirements needed. Many Councils have SPDs that relate to Housing and reference HMOs, which TMBC does not have (as this has not been an issue historically). The emerging Local Plan contains Policy H9, which details HMO requirements. However, at present this would only apply to those HMOs that do not have permitted development rights. Supplementary Planning Documents (SPDs) can only be adopted until 30 June 2026 under the transitional national planning policy requirements and therefore this option is not available to the Council.

5.4 In order to provide some initial context for the potential for an Article 4 Direction for small HMOs in Tonbridge & Malling, information has been gathered from the following boroughs, with their approximate number of HMOs in brackets. Ashford (164 in 2022 plus an estimated 100 additional prior to licencing regime), Dartford (75), Maidstone(690 which includes an estimate of unregistered), Medway (1018), Lewisham (1645, which is estimated to represent c.30% of the HMO stock), Redbridge (650 licenced, considered to be a small percentage of the actual figure, with some estimates suggesting this could be as high as 6000) and Ipswich (225). The evidence documents for these boroughs are linked in the background papers table at the end of this report.

5.5 In general, where other local authorities have put an article 4 direction in place for the purpose of withdrawing permitted development rights for small HMOs, an evidence base document is produced to lay out the details of actual harm. These documents tend to cover:

5.5.1 Census data – demonstrating where their percentage of private rented sector properties and the percentage of licenced HMOs within that is significant.

5.5.2 HMO licencing records – providing data on mandatory licencing (5+ persons and 2+ households sharing facilities), any additional/selective licencing schemes. This may highlight geographic concentrations of HMOs or demonstrate a recent proliferation/significant increase in numbers. In all of the example boroughs this

data includes ward specific information providing evidence for the area-based approach to their Article 4. In Dartford, this data indicated that although there are not a significant number of licenced HMOs (77), there had been a 33% increase in the year previously, which gave rise to concern about proliferation.

- 5.5.3 Council Tax information – used as an indicator rather than definitive data to show student-exempt properties (as these may be operating as de facto HMOs) or properties with multiple liable adults. Ipswich utilised data around student dwellings to indicate that there might be some overlap with HMOs and therefore these properties might also be considered to present the same challenges.
- 5.5.4 Planning application records – showing permissions for large HMOs, LDCs for small HMOs and any trends in applications. Dartford have had between 8 and 13 applications for large HOs over the past 7 years. Ipswich had 49 applications between 2011 and 2022.
- 5.5.5 Planning Enforcement records – may show unauthorised HMOs, geographic concentrations of complaints. Some of the larger boroughs have significant HMO related enforcement cases, with Lewisham having 65 between 2019 and 222 and Ipswich having 24 over the same period.
- 5.5.6 Electoral roll data – could indicate HMO risks if there are properties with high numbers of unrelated surnames or rapid and repeated turnover of occupants.
- 5.5.7 ASB/environmental crime data – noise complaints, fly-tipping complaints, police crime data could also be used to see where there are correlations with locations of HMOs.
- 5.5.8 Medway’s evidence base shares data on ASB reports and HMO locations and shows the correlation between these two data sets (although there is no suggestion that HMOs are solely responsible for the ASB figures).
- 5.5.9 Housing standards compliance – data on identified category 1 hazards and overcrowding and where these issues have been enforced against is used to demonstrate where there are significant issues with property standards and management. For example, the Medway report highlights that one of their wards has 27 HMOs identified as having hazards, the second highest in the borough and that they have received 32 complaints from existing tenants.
- 5.5.10 Strategic Housing information – Strategic Housing Market Assessments, housing registers and affordability ratios can be indicators of a likely increase in HMO requirements.
- 5.5.11 Parking – to demonstrate where existing parking issues could be exacerbated by increased vehicle numbers due to HMO development. This is not utilised in the majority of evidence bases, but forms a key part of Dartford’s report, focusing on key transport routes with already oversaturated parking.

5.5.12 Maidstone does not have a current Article 4 but is exploring one for Invicta House. They have an HMO SPD in place to manage standards and planning considerations for larger HMOs.

5.6 The following paragraphs looks at the various data sources utilised by other Councils to support their Article 4 Directions relating to HMOs and assesses the TMBC position.

5.6.1 HMO licensing records – the Council’s public register shows 26 licenced HMOs. The location breakdown is as follows.

Aylesford	1
Borough Green	1
East Malling	3
Larkfield	1
Plaxtol	1
Snodland	2
Tonbridge	13
Wateringbury	1
West Malling	2
Wrotham Heath	1

5.6.2 Council Tax information – there are 74 properties in the borough with exemptions in the ‘wholly occupied by students’ category. This includes boarding houses for Tonbridge School

5.6.3 Planning application records – in the last 6 years TMBC has had 2 smaller (Class C4) LDCs and 3 larger HMO applications.

5.6.4 Planning Enforcement records – there have been 5 enforcement cases relating to HMOs. None are live.

5.6.5 Electoral roll data – this is not something that has been noted as an issue by TMBC electoral services, albeit this currently isn’t specifically recorded, for example through addresses being split into sub-house designations, such as ‘room 1’.

5.6.6 ASB/environmental crime data – there have been 3 reported issues of noise nuisance from HMOs between 2018 and 2025, which did not go beyond initial information letter stage.

5.6.7 Housing standards compliance – the Council has received a minimal level of complaints about HMOs. In the 5-year period to December 2024 there had been no complaints. The Housing Improvement team works with the Immigration Service where they have information on a suspected number of occupants in a

property being greater than permissible. The Council team will undertake inspections to assess whether the property is licensable and whether housing conditions are being met. The Council does not keep a list of non-licensable HMOs and would deal with any standards issues on a case by case basis, in the same way as with self-contained dwellings.

- 5.6.8 Strategic Housing information (incorporating census data) – the borough is 72.1% owner occupied, significantly exceeding wider comparators. Therefore, the overall private rented sector, of which HMOs form part, is much smaller than other areas. The borough's affordability ratio is 12.44 and hasn't changed significantly in the last 5 years. The Council's SHMA (part of the evidence base published alongside Reg 18 Local Plan and therefore up to date – see background papers for link) discusses HMOs and suggests there may be an additional 10 HMOs in the borough that aren't licenced but should be and in the region of 165 HMOs that are small enough to not require a licence. The SHMA states that the evidence doesn't support the introduction of Article 4 Directions to manage HMO issues.
- 5.7 Planning Policy – the Council's adopted Development Plan does not have any specific policies relating to HMOs. See earlier information about emerging policy position.

6 Other Options

- 6.1 An alternative approach would be to retain permitted development rights for small HMOs and monitor the position over an agreed time period using existing data sources. This could include periodic reviews of HMO licensing, complaints, enforcement activity and housing market indicators, with further consideration of an Article 4 Direction if evidence of harm emerges. This option aligns with national guidance that Article 4 Directions should only be used where clearly necessary.
- 6.2 The Council could also consider making an immediate Article 4 Direction. However, given the compensation risk and the limited evidence to support a need for immediacy, it is not proposed that this is progressed.

7 Financial and Value for Money Considerations

- 7.1 Compensation is not automatically payable when permitted development rights are withdrawn but may arise in limited circumstances depending on how and when an Article 4 Direction is introduced. Where a non-immediate Article 4 Direction is used, taking effect after at least 12 months' notice, compensation liability is avoided. Given the relatively small number of licenced HMOs within the borough, any compensation risk is considered likely to be low. However, an applicant only needs to make an application within 12 months of an immediate Article 4 Direction being made to be able to apply for compensation.
- 7.2 No budget is currently identified for this work. An initial estimate of £25,000 has been made by officers and it is proposed that this is met through a supplementary

estimate process as there are no relevant reserves. This will be presented to Members as soon as possible.

- 7.3 The Director of Planning, Housing and Regulatory Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

8 Risk Assessment

- 8.1 The principal risk relates to introducing an Article 4 Direction without sufficient supporting evidence, which could be subject to challenge or to the Secretary modifying or cancelling the Direction.
- 8.2 There is also a reputational risk if intervention is perceived as disproportionate to the scale of the issue locally. These risks can be mitigated through evidence gathering, proportionate review periods, and, if appropriate, the use of a non-immediate direction.
- 8.3 Requiring planning permission for HMOs would immediately place the local authority in the position of decision maker. This means that any subsequent approvals, or refusals that are overturned at appeal, the Council may be seen as bearing some or all of the responsibility for this.
- 8.4 Capacity to manage this work at pace is also a risk; the project is not identified in the Annual Service Delivery Plan and resource is not currently available in the Planning, Housing & Regulatory Services Directorate. This risk can be mitigated through the appointment of consultants to prepare a more detailed evidence case for an Article 4 Direction and to manage the process of consultation and implementation should the Direction be made and confirmed.
- 8.5 There are some specific risks relating to the making of an immediate Article 4 Direction, not least the need to meet the evidence requirement. The current officer assessment is that the evidence threshold for an immediate Direction is not met and therefore progressing this option would be at odds with this professional assessment.
- 8.6 The compensation risks and issues associated with Directions are covered in section 7 of this report.

9 Legal Implications

- 9.1 Any Direction must comply with national legislation, government guidance and procedural requirements, including consultation and notification.
- 9.2 Compensation provisions are set out in sections 107 and 108 of the Town and Country Planning Act 1990 and associated regulations.

9.3 The licensing of HMOs is managed under separate legislation at Part 2 of the Housing Act 2004.

10 Consultation and Communications

10.1 Any proposed Article 4 Direction must be consulted on for a period of a minimum of 21 days.

11 Implementation

11.1 Should Members recommend to Cabinet that the proposed work is taken forward, a procurement exercise will be undertaken to appoint a consultant, with the intention to present a follow up report as soon as possible. The quickest route to do this would be through a decision report going straight to Cabinet, as it is considered unlikely that the evidence report would be procured and finalised before the July meeting of this committee, meaning that this may need to wait until the autumn meeting cycle should the report be required to come back to the Scrutiny Committee.

11.2 The proposed timetable is;

Cabinet Member decision – asap after H&PSSC

Procure consultants (via framework) – by mid-June 2026

Draft report prepared – by end of July 2026

Cabinet covering report drafted – early August 2026

Cabinet decision on Article 4 – 1 September 2026

12 Cross Cutting Issues

12.1 Climate Change and Biodiversity

12.1.1 Adaptation and resilience have been considered.

12.1.2 Climate change advice has not been sought in the preparation of the options and recommendations in this report.

12.2 Equalities and Diversity

12.2.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

12.3 Other If Relevant

- Procurement

Background Papers	TMBC HMO register TMBC SHMA Medway A4D evidence base Dartford A4D evidence base Lewisham A4D evidence base Ipswich A4D evidence base Redbridge A4D evidence base Maidstone HMO SPD
Annexes	None