

Borough-wide Non-Immediate Article 4 Direction

**House in multiple occupation (HMO)
Evidence Report**

January 2019

Background

Purpose

This report provides a summary of the research and evidence gathered on Houses in Multiple Occupation (HMO) in Croydon in order to inform and justify the Council's decision to remove the current 'permitted development right' that allows the change of use from a dwellinghouse (C3) to a small House in Multiple Occupation HMO (C4). To support and justify why a borough-wide, Non-Immediate Article 4 Direction is needed to remove the permitted development right, the other statutory and non-statutory means the Council uses to manage HMOs have been considered to ensure that the removal of the permitted development right is necessary. Following a period of representations, if confirmed, the Article 4 Direction would come into force 12 months after the start date of the representation period. The suite of means the Council uses is set out in detail in this report; not only as they provide evidence of the issues associated with HMOs, but to demonstrate the scope and limitations of other powers. This work was initiated as it was considered that the Council has, overall, a robust corporate approach to address the issues with HMOs not only for the occupiers, but for other residents, and the ongoing management of HMOs. However, through the production and examination of the recently adopted Croydon Local Plan 2018 (Local Plan) it became apparent there is a gap in the process which allows a small HMO to be established without the need for planning permission that could be addressed by removing the permitted development right. The Local Plan, as an important strategic policy, seeks to prevent the loss of 3 or more bedroom family homes to meet the borough's housing needs. As the Local Plan does not apply to permitted development and therefore the 3 bedroom policy cannot be implemented in these cases, this provides strong justification for the removal of permitted development right.

Houses in Multiple Occupation

Houses in Multiple Occupation are a component of a borough's housing stock providing low cost, flexible housing. The formal definition of a House in Multiple occupation for planning purposes is set out in the Town and Country Planning (Use Classes) Order 1987 (as amended), which states that there are two different types of HMO. The first is a Use Class C4, which are small HMOs that are defined as the use of "a dwelling house between three and six unrelated individuals, used as their only or main residence, who share basic amenities such as a kitchen or bathroom". The second type of HMO is a large HMO which is Use Class Sui-Generis. These are properties where there are seven or more occupants. Large HMOs that fall into the Use Class 'Sui Generis' would not be restricted by the Article 4 Direction as these require planning permission for a change of use as a change of use from Use Class C3 to Sui-Generis is not allowable under permitted development.

Houses in Multiple Occupation are additionally defined in section 254 of the Housing Act 2004 and regulated under various parts of this act. This is separate to and outside of planning control and controls how licences are granted and managed. This legislation forms part of the control of an HMO once it is established and does not provide permission for the conversion of a dwellinghouse to a small HMO.

The legislation above sets out the statutory definition, however in practical terms an HMO can come about by a property owner through the way that they manage a property. For example, a landlord may purchase a large family home and let it to individuals on a single room letting basis, and if there are three (3) or more unrelated people, the dwelling is classed as an HMO. There is no planning control over the conversion of the property as this is allowed as permitted development.

HMOs, once established, are recognised and regulated through other forms of both formal regulation and informal means by the Council to meet their obligations as a statutory part of its role as a local authority. HMOs, through the Housing Act 2004, require licences and regular monitoring which is a role undertaken through the Council's Public Realm division which has a dedicated Houses in Multiple Occupation Team. The team issue licences and checks compliance with statutory requirements and provides advice and support to ensure occupants are safe. Additional ways in which HMOs are controlled is through Planning Enforcement and Environmental Nuisance legislation.

Issues associated with HMOs

For the context of this report, there are many issues associated with HMOs which, while may not be direct planning matters, are relevant in context of this report and should be considered in terms of how they are addressed and justify the introduction of an Article 4.

The most common problems associated with some HMOs beyond that expected from a family home are:

- Anti-social behaviour;
- Noise;
- Litter and management of refuse;
- Excessive parking;
- Fires;
- Cramped living conditions;
- Unkempt premises; and
- Overcrowding.

HMOs and the Housing Market

It is recognised that HMOs form part of the housing stock, particularly providing low cost housing, which is recognised as needed in both the local and national housing context. The Council's Strategic Housing Market Assessment (SHMA - 2015), which informs the Local Plan, identifies that there is a shortfall of affordable housing in Croydon. The analysis suggests that as at mid-2014, there were 14,836 households living in unsuitable housing (or without housing), representing about 10% of all households in the Borough. Overall, a net need of between 2,247 and 2,333 affordable homes per annum is identified for the Local Plan period. The SHMA also found that the rental sector plays an important housing role both in the borough and London wide. Croydon is considered to be a fairly reasonable affordable place to live, shown as

being ranked 16th out of the 19 Outer London boroughs in affordability¹ with only Barking and Dagenham, Bexley, and Havering having lower rents.

Owner occupation is the most common tenure type in the Borough accounting for 59% of households, with private rented accounting for 21% of households, and social rented at 18%. The percentage of properties in Croydon under owner occupation fell between 2001 and 2011. At 6%, the fall in Croydon was greater than the fall seen in the Outer London boroughs or London as a whole, which the SHMA concluded indicated that there is a growing private rented sector in the borough as less people are able to access homes to buy or properties under social rented schemes. Therefore, the amount of housing stock used as HMOs will remain as a means to meet the needs of those who are unable to access homes to buy. There will also be continuing pressure on the existing housing stock to be converted to HMOs, as a way in which people are able to access accommodation. Therefore, whilst recognising that existing HMOs will continue to play a role in the housing market, there is a requirement to ensure that a stock of good quality family accommodation is available for residents in the long term, so that the objectives of the Local Plan can be achieved and housing supply is balanced across the borough.

Local Plan Approach to Housing

The planning approach to housing is set out in the Local Plan adopted in February 2018, which provided a strategic approach as well as a number of policies to protect and provide for housing in Croydon. The strategy and policies seek to deliver market and affordable housing as a type and tenure mix to meet the identified housing need. The significant issue that the Local Plan seeks to address is the need to provide family homes which HMOs through their ability to be established through permitted development have an impact on that is significant that cannot be controlled through the Local Plan. The evidence and plan-led approach through the Local Plan is, therefore, relevant and justifies the making of an Article 4 Direction.

In addition to the overall housing need, when considering the housing mix required, an acute need for family homes, specifically 3-bedroom homes, was identified in the Strategic Housing Market Assessment (SHMA)². For this reason the Local Plan includes specific policies to protect 3-bedroom and small homes from redevelopment and requires development to deliver a proportion of 3-bedroom homes, depending on the number of units delivered. This policy even applies to the high density Croydon Metropolitan Centre (CMC), where a 20% requirement for 3-bedroom homes applies, demonstrating that even in high density areas family accommodation is needed.

The SHMA indicates that to meet future housing needs over 20 years, approximately 50% of homes need to be delivered with 3 or more bedrooms³. Informed by the SHMA evidence, Policy SP2.7 of the Local Plan sets a strategic target for 30% of all new homes in Croydon up to 2036 to have 3 or more bedrooms to provide homes for existing and future families in Croydon. Additionally, Policy DM1.2 on Housing Choice for Sustainable Communities seeks to protect the loss of 3 bedroom homes (as

¹ When considering lower median rents.

² Strategic Housing Market Assessment, June 2015, London Borough of Croydon, GL Hearn, Final Report.

³ Strategic Housing Market Assessment, Addendum Report, September 2015, London Borough of Croydon, GL Hearn, Final Report.

originally built) or the loss of homes smaller than 130m². Policy DM1.1 requires that any new build development or conversions consisting of 10 or more units will need to provide a minimum percentage of 3 or more bedroom units as part of their scheme.

Research into planning permissions over the past 10 years has found that Croydon has lost over 900 family homes to conversion and to large HMO properties. This does not include the number of family homes lost under the current permitted development, which is not specifically monitored through the Local Development Framework Annual Monitoring Process. Given the projected rapid decline in the stock of family homes in the borough as indicated in the SHMA due to the acute housing need and the inability for people to access home ownership due to local affordability rates, the introduction of this Article 4 Direction has never been more relevant.

The introduction of an Article 4 Direction would require small HMOs to be considered through the Development Plan as it is necessary to apply Development Plan policies for design and neighbour amenity, such as providing refuse and storage facilities and managing car parking arrangements, to ensure a plan-led approach to the sustainable development of the borough and an appropriate balance between the need for HMOs and family housing.

Detailed controls on the format and design of HMOs

In October 2018, the MHCLG introduced new regulations⁴ associated with the Housing Act for HMOs which set minimum sleeping room sizes. The regulations state that local housing authorities, through their statutory role through the Housing Act, must impose conditions as to the minimum room size which may be occupied as sleeping accommodation to reduce overcrowding in HMOs⁵.

When the Article 4 Direction is in place, the planning application will be considered against Local Plan Policy SP2.8, which is supported by the Mayor of London's Housing Supplementary Planning Guidance (SPG) (March 2016). This will ensure adequate living standards for residents of Croydon, as new HMOs will be established through the plan-led process and will consider other policy requirements.

Environmental health's role in the management of HMOs

The Council undertakes a statutory role through its environmental health responsibilities to manage the issues associated with HMOs in the borough and as a result of complaints through a dedicated HMO team.

The private rented sector, of which HMOs form part, has undergone significant growth. It is now the second largest tenure in the UK and comprises around 4.3 million households in England. It is suggested that licensing larger HMOs has led to 'rogue' landlords focussing their operations on smaller HMOs⁶. In October 2016, the

⁴ *Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities*, Ministry of Housing, Communities and Local Government, December 2018

⁵ Source: Ministry of Housing, Communities and Local Government, 2018, *Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities*.

⁶ House of Commons Library – Briefing Paper – Number 0708 – 14 July 2017 – Houses in Multiple Occupation (HMOs) England and Wales.

Government announced an intention to extend mandatory licensing to include all HMOs of 5 or more unrelated people and also to introduce a minimum room size in these properties⁷. Smaller HMOs (of fewer than 5 people) are already monitored through the Croydon Private Rented Property License (CPRPL) scheme, however under the new legislative requirements, HMOs of 5 or more people now require a mandatory HMO license.

Regular landlord forums are held to share information and to help landlords understand the need to provide adequate and healthy accommodation for tenants. On inspection, if the Council determines that category 1 hazards (A-C hazards) are present under the Housing Health and Safety Rating System (HHSRS) there is a duty to take enforcement action. Taking enforcement action for category 2 hazards is at discretion of the Local Authority. The Council has taken a local view to take enforcement action for any D-H category 2 hazards.

Initially, an informal Improvement Notice will usually be served. This will allow the landlord the opportunity to respond to the initial complaint, prior to statutory enforcement action being taken. The Improvement Notice will require remedial action to be carried out to remedy/mitigate the hazard(s) within a given timeframe (which can vary from one hazard to another within the notice).

If the landlord does not respond to the informal notice or does not make adequate progress within the given timescales, the Council will look to serve a formal (statutory) Improvement Notice. It is an offence to fail to comply with the formal Improvement Notice. Landlords can be prosecuted for failing to comply with an Improvement Notice which carries an unlimited fine. As an alternative to prosecuting, the Council now also has the provision to issue a Financial Penalty Notice which carries a maximum penalty of £30,000. In addition to either of these, the Council can carry out works in default of the Notice and recover expenses. This action will continue to be used for HMOs, once established, and other dwellings within the borough.

In some instances, for example, where there is a statutory nuisance, where the landlord is absent or has a poor management record, or where the landlord or managing agent has a history of failing to respond to informal action, the serving of an informal Improvement Notice may be bypassed and formal enforcement action may be taken in the first instance. Where there is an imminent risk to the health and/or safety of the occupiers, emergency remedial works or prohibition orders can be served.

The approach is to use informal processes before undertaking formal action wherever possible and appropriate, which will continue to occur to improve the current stock of HMOs but would not prevent them being established. It is through this process that evidence has been found which shows that HMOs lead to inadequate residential accommodation as, to date, the Council's HMO team have issued over 600 Improvement Notices to HMO properties across the borough since 2015.

⁷ The Government allows Local Planning Authorities to set their own minimum room sizes. Croydon Council have opted to maintain the existing minimum room size standards which were in place prior to the Government changes in legislation.

The Council's HMO team manage a licence register to record HMO properties in the borough. However, given the quantity of HMO properties in Croydon, the HMO team are under constant time and resourcing pressure, particularly to identify unlicensed HMOs in the borough or monitor and respond to complaints regarding these properties.

Planning Enforcement's Role in the Management of HMOs

Statistics from the Council's Planning Enforcement team show that since 2013, there have been a number of complaints made to the team relating to HMOs in the borough. These have been analysed in order to consider the concentration and rate of increase during this time. The following statistics are taken from the planning enforcement complaints database and does not include multiple complaints for individual addresses:

- Over 220 (222) planning complaints specifically referenced 'HMO';
- Initially, the words 'sub' and/or 'conversion' were filtered to identify complaints relating to converted or sub-divided property. A second filter removed anything relating to loft conversions for example.
- Further analysis of complaints data was carried out to assess unauthorised flat and studio conversions and the use of outbuildings (also known as 'beds in sheds'). Typically, these types of development are often associated with potential HMOs. In this search, there were over 400 complaints identified for flats/studios and over 150 complaints were identified for outbuildings.

Croydon Private Rented Property License Scheme

Although there is a Mandatory Licensing Scheme for 'Houses in Multiple Occupation', recent changes in legislation covering HMOs also gave power to local authorities to extend the scope of HMO licensing by adopting 'selective licensing'⁸. Croydon Council, as part of its drive to make Croydon a better place to rent, has designated the whole borough a private rented property license area and decided to extend its statutory role to help to deliver good quality low cost housing for its residents. For this reason, the Council operates a selective licensing scheme referred to as the CPRPL scheme.

The CPRPL scheme is proving successful in making Croydon a better place to rent and Croydon now has over 925 licensed HMOs across the whole of the borough. The number of licensed HMO properties under the mandatory licensing scheme is likely to grow in the upcoming months due to the introduction of the new HMO Regulations, introduced on 1st October 2018. The new requirements of the mandatory licensing scheme now extends to include properties under 3 storeys (with 5 or more occupants), which were previously not captured as part of the scheme. This will see an increase

⁸ Selective licensing is dependent on a designation by the local authority. A local authority may designate the whole of their district or part of their district, subject to selective licensing. An area may be designated for selective licensing either (i) if the area is (or is likely to be) an area of low housing demand or (ii) the area is experiencing a significant and persistent problem caused by anti-social behaviour and some or all of the private sector landlords are failing to take action to combat the problem that it will be appropriate for them to take. A designation can last for five years and can be renewed. Selective licenses are required for houses within the designated area where the whole of the house is occupied either under a single tenancy or licence or under two or more tenancies or licences in respect of different dwellings contained in it. (Source: Residential Landlords Association, 2018, Housing Act Guide: What Selective Licensing is all about)

in the number of licensed properties in Croydon under the Mandatory HMO Licensing Scheme.

The scheme is useful to ensure that landlords are fit and proper who rent out properties in the borough. It also seeks to manage some key factors to ensure that rented homes are fit and safe by requiring that certain conditions are met in order to be granted a licence such as having gas certificates. However, the system only regulates established HMOs and none of the physical requirements that a planning application determination would manage, such as bin storage or parking - which are issues that cause harm to neighbours. It is considered that if HMOs required planning permission, these matters would be presented as part of a planning application to see whether the development is acceptable before it is converted.

Policy Requirements and Guidance

An Article 4 direction is made under article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in accordance with Schedule 3 of that order to restrict Class L(b), dwelling house to HMO. The making of an order has to be in accord with the National Planning Policy Framework (NPPF) and Departmental guidance.

Paragraph 53 of the NPPF states that;

The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)..

Paragraph 38 of the Departmental Guidance (Reference ID: 13-038-20140306) explains when it is appropriate to use article 4 directions:

The use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- *a wide area (e.g. those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)*
- *agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty*
- *cases where prior approval powers are available to control permitted development*
- *leisure plots and uses*
- *the installation of microgeneration equipment*

Currently, changes of use between a dwelling house (C3) and small HMO (C4) do not require planning permission as it is permitted development under Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015. The change of use from a dwelling house (C3) to a 'large' HMO (Sui-Generis) does however require planning permission.

The permitted development process has a wide scope which is used to free up the planning process and applicants from matters that require control, and ranges from conservatories on homes, to the operations of infrastructure providers.

The Local Plan sets out the requirement for homes needed in the borough up to 2038. While it does not specify the specific use classes, it does include the requirement for affordable homes to meet the boroughs needs and a mix of homes by size, including specific provision of family homes (with 3 or more bedrooms). It is considered therefore, that although there is a suite of regulatory and non-regulatory ways to regulate HMOs, there is a gap in the Council's approach which is resulting in the loss of family homes, as well as other neighbour amenity issues, that need to be addressed to provide good quality housing for Croydon residents. This 'gap' would be addressed through the introduction of an Article 4 Direction.

Detailed Evidence Gathering to Support Introducing a borough-wide Non-Immediate Article 4 Direction

It is recognised through the Local Plan process and evidence available through Croydon Council's other functions utilised to manage HMOs, that there was a problem with some of these properties. Therefore, the Council undertook additional evidence gathering to investigate the need and as a result support the introduction of a "non-immediate" Article 4 Direction across the entire borough.

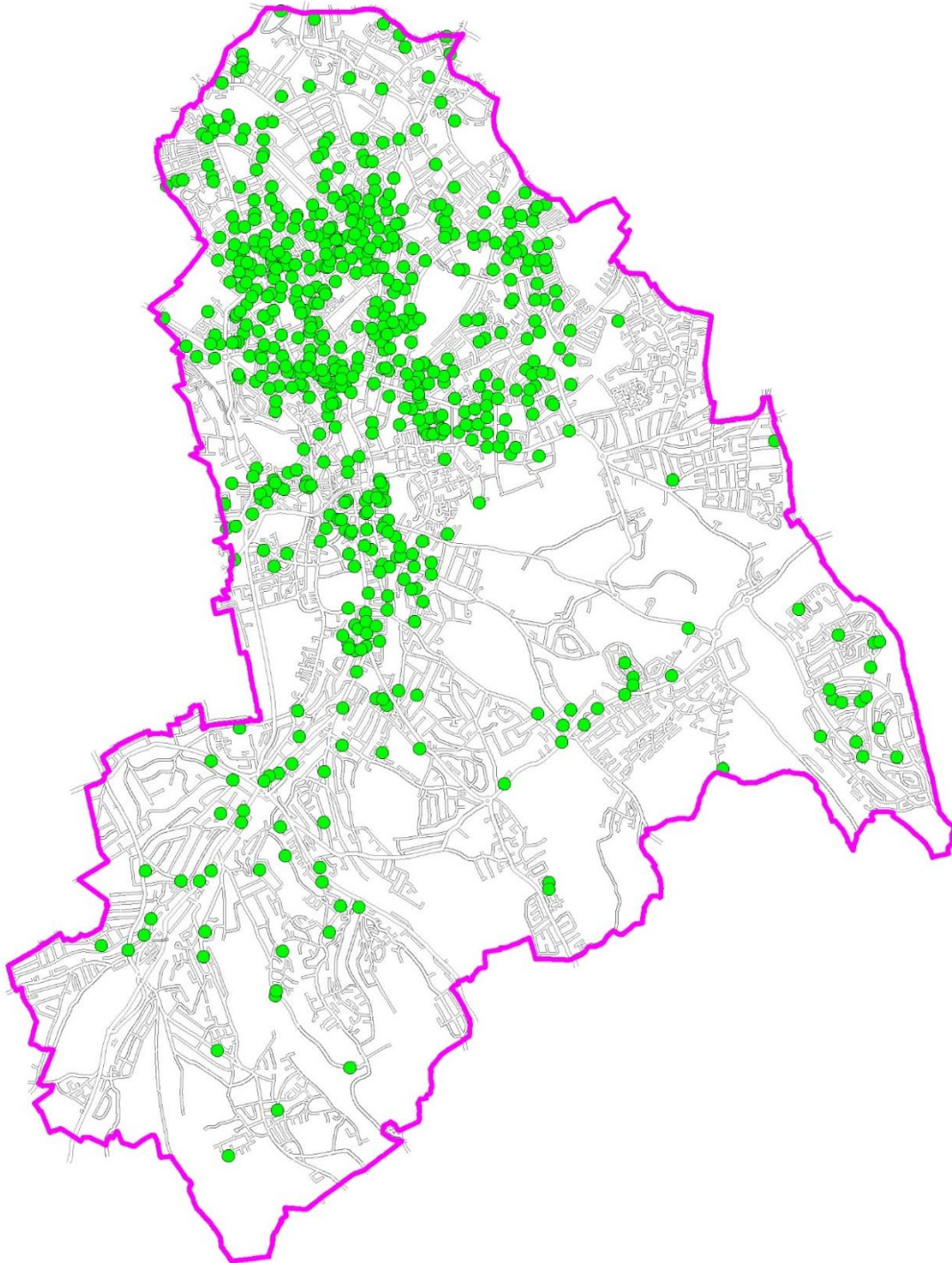
To date, evidence gathering has included:

- Data regarding mandatory licenced HMO properties in the borough; and
- Evidence about the loss of 3-bedroom homes (family homes) and homes smaller than 130m² in line with Policy DM1.1 of the Local Plan.

Evidence

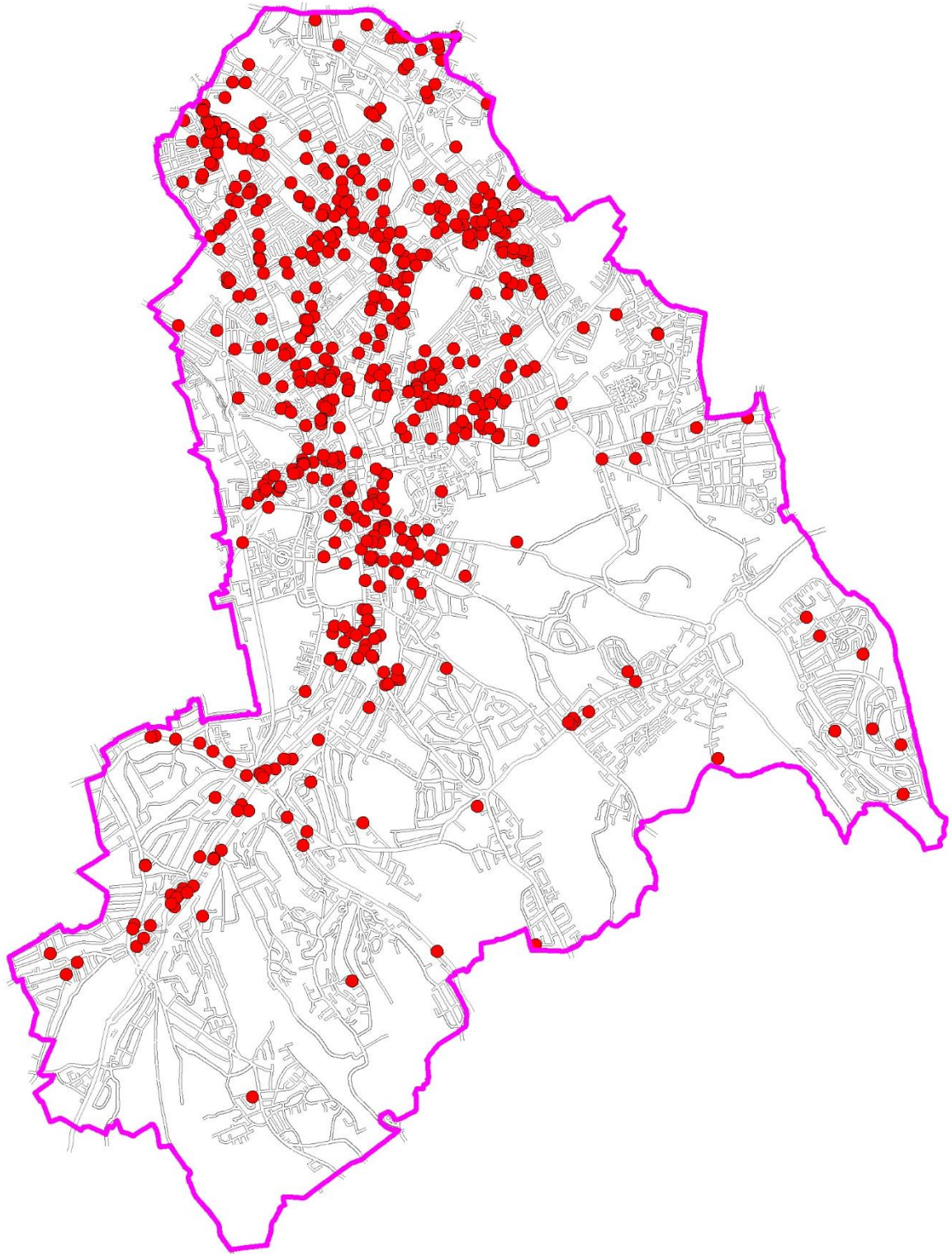
The map below illustrates where the licensed HMO properties are located in the borough. It can be seen that there is a spread of HMOs across the borough, however it should be noted that the higher concentration areas reflect a higher housing density in the north of the borough compared to the south. A borough-wide Direction will assist in ensuring that there is not further displacement of HMOs across areas of the borough that have a lower concentration.

Figure 1 – November 2018



The map below illustrates where over the last 10 years family homes in the borough are known to have been lost to conversion/change of use.

Figure 2 – November 2018



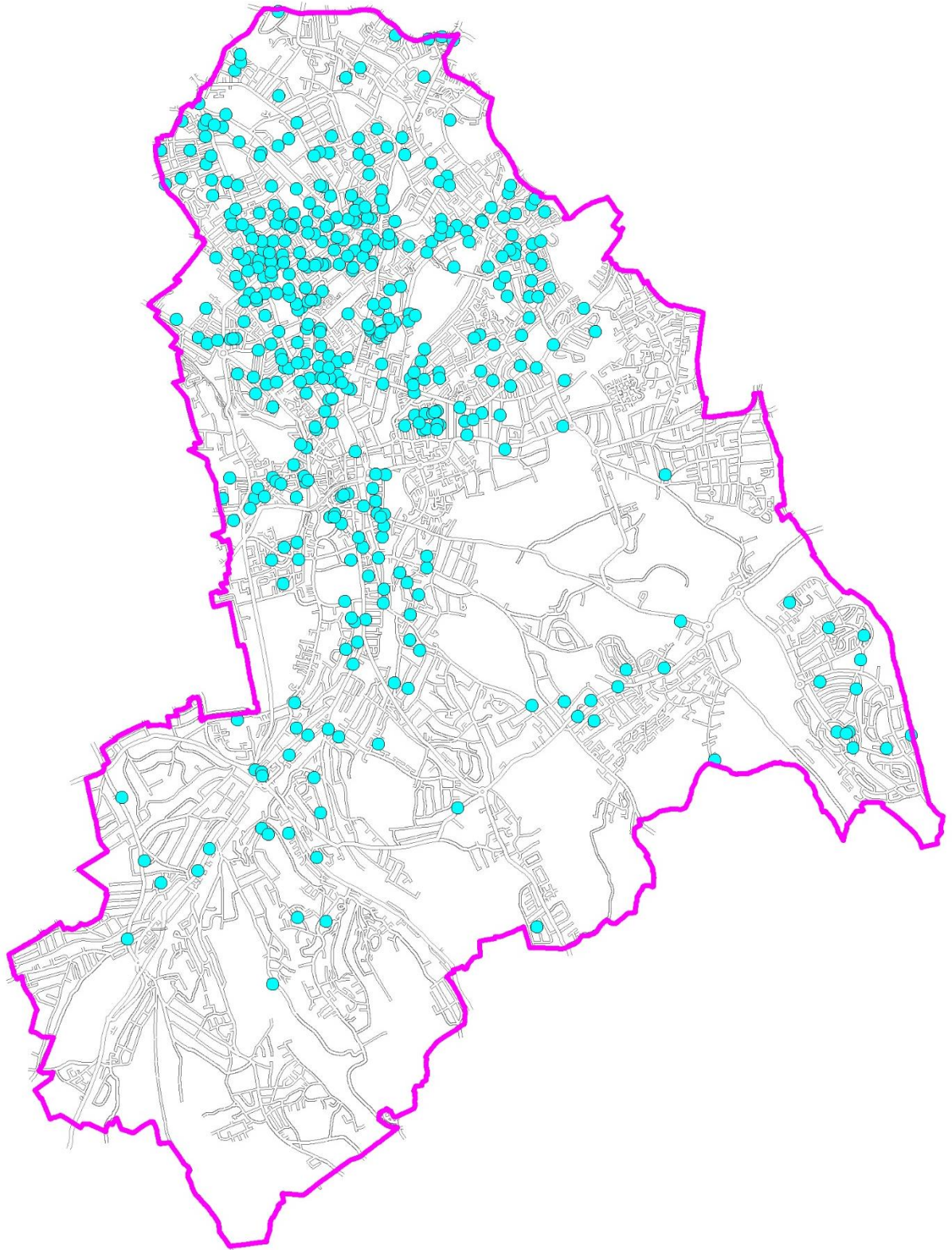
It is evidenced from the above maps that while there is a higher concentration of HMO properties and a greater loss of homes to conversion in certain parts of the borough, the issue is a concern across the entire borough.

Policy DM1.2 of the Local Plan aims to ensure that the conversion of single family houses does not further reduce provision of three bedroom homes or homes with a gross internal floor area of less than 130m². Furthermore, introducing an Article 4 Direction will help to retain the family homes (3 bedroom homes) and homes smaller than 130m² that the Council are currently losing to conversion.

An Article 4 Direction will also ensure that any new proposed small HMOs are compliant with other planning issues, such as the Council's bedroom space standards for HMOs and the provision of adequate bin storage. These have become increasingly relevant issues within the borough as a number of HMO properties currently do not meet these standards, leading to poor living conditions. The aim of an Article 4 Direction is to regulate living standards through planning permission (notwithstanding the recently introduced Housing Legislation on space standards), helping to provide a better standard of living for residents who may reside in an HMO property in the future, potentially reduce the negative impacts of anti-social behaviour and to encourage families to remain in the borough by retaining our existing stock of family homes.

The map below illustrates the number of improvement notices served on HMOs throughout the borough.

Figure 3 – November 2018



At present, 15 out of 33 London Boroughs have introduced an Article 4 Direction, removing the permitted development right on the change of use from a dwelling house (C3) to a small HMO (C4) to either the entire borough or a focused area. This equates to over 40% of all London Boroughs demonstrating a need to remove the existing permitted development right on small HMOs, clearly illustrating that there is an issue with HMOs across all of London, not just in Croydon.

London Lockdown is an initiative of the Ministry for Housing, Communities and Local Government who commissioned 6 London Boroughs and the Association of London Environmental Health Managers (ALEHM) to investigate an emerging and rapid expansion of a landlord business model which places vulnerable tenants in sub-standard, converted, small properties marketed to give the illusion of self-contained flats, in order to secure the maximum level of housing benefit payments which are paid on behalf of tenants, direct to the landlords⁹.

Officers from Croydon attended one of the monthly London Lockdown meetings in mid-2018 where it was discussed that initially, the boroughs which had the cheapest house prices were targeted first as hotspots for HMO conversions, as it was cheaper for the HMO converting companies to set up. However it has become clear now that London as a whole is experiencing this rapid increase in conversions.

Although it is known and recognised by the MHCLG that HMOs form a vital part of England's housing stock as they typically provide cheaper accommodation for people who have limited choices to housing, as well as providing housing for the most vulnerable people in our society. These include the risk of overcrowding in properties that were not built for multiple occupiers, as well as an increased risk of fire. Croydon's Fire Safety Team, who work on behalf of the London Fire Brigade, have provided the Council with data which reports 21 counts of HMO specific related fire incidents in the borough since January 2015.

The Croydon SHMA notes that a symptom of the under-provision of housing is increased over-crowding and growth of households living in HMOs. Across Croydon, there was an increase of 38% from 2011-2011 in the number of over-occupied properties. During this period, the number of people living in HMOs grew by 42%¹⁰, representing a percentage increase that is on-par with London and greater than outer London and England as a whole.

The SHMA also found that affordability rates in Croydon remain considerably worse than the national average, despite the lower quarter affordability being slightly higher than Outer London and London as a whole¹¹.

In addition to the risk of overcrowding, HMOs in some cases known to affect the local environment and neighbours in various ways through (but not limited to) increased anti-social behaviour, excessive litter and fly tipping. Over the past 5 years, there have been over 270 complaints reported to the Council in relation to noise, litter and anti-social behaviour associated with an HMO when the report incident states the property is an HMO.

⁹ Source: Association of London Environmental Health Managers: <https://alehm.org.uk/services/criminal-landlords/>

¹⁰ Strategic Housing Market Assessment, June 2015, London Borough of Croydon, GL Hearn, Final Report.

¹¹ Strategic Housing Market Assessment, June 2015, London Borough of Croydon, GL Hearn, Final Report, Page 71, Table 8.

Using the research and evidence gathered to date, the Council proposes to introduce a “non-immediate” Article 4 Direction to the entire borough.

Conclusion

While the Council continues to manage the means by which people access lower-cost housing to ensure it remains acceptable through the CPRPL, Planning Enforcement team and Local Plan, an Article 4 Direction will assist the Council in closing the gap which may allow for unregulated, sub-standard accommodation, while helping to manage many of the associated impacts on neighbour amenity.

There has been significant growth in the number of HMOs in the borough, particularly concentrated in the central-north. This can be linked to a number of factors, including the introduction of Article 4 Directions in other boroughs.

There is clear evidence to demonstrate that there has been an increase in the number of smaller HMOs, particularly at the expense of family homes. Further loss of residential properties and family homes to conversions will continue to undermine the Council's objective to ensure a balanced choice of homes is available in the borough that will address the borough's need for homes of different sizes. The family homes policy in the Local Plan, supported by evidence, justifies the introduction of an Article 4 Direction to maintain family housing stock within the borough.

Under Paragraph 53 of the NPPF (Refer 1.4), the Council is justified to introduce an Article 4 Direction as the removal of permitted development right that allow the change of use from a dwelling house (C3) to a small HMO (C4) will assist the Council in protecting local amenity and the family housing stock in the borough.

Furthermore, the quality of the HMO properties typically provides a poor standard of living and is not compliant with size standards. Similarly, the associated issues with HMO properties (namely anti-social behaviour, fire incidents and fly-tipping) have incurred numerous complaints to the Council, resulting in Improvement and enforcement notices.

A non-immediate Article 4 Direction across the borough will assist the Council in the aforementioned issues relating to the change of use from a dwelling house (C3 to a small HMO (C4).