

## LONDON BOROUGH OF EALING

### DESIGNATION OF AN AREA FOR ADDITIONAL LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMOs)

The London Borough of Ealing, in exercise of its powers under section 56 of the Housing Act 2004 (“the Act”), hereby gives notice that a designation has been made for additional licensing of Houses in Multiple Occupation (“HMOs”) for the area described in paragraph 4.

#### CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the London Borough of Ealing Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022.
2. This designation is made on 21 December 2021 and shall come into force on 01 April 2022.
3. This designation shall cease to have effect on 31 March 2027 or earlier if the Council revokes the scheme under section 60 of the Act.

#### AREA TO WHICH THE DESIGNATION APPLIES

4. This designation shall apply to the whole area of the London Borough of Ealing as delineated and edged red on the map at **Annex A**.

#### APPLICATION OF THE DESIGNATION

5. This designation applies to all HMOs:
  - (i) as defined by section 254 of the Housing Act 2004 (as detailed in **Annex B**), which are HMOs rented to three or more occupiers in two or more households that share (or lack) a toilet, personal washing facilities or cooking facilities;
  - (ii) Converted building HMOs, as defined by section 257 of the Housing Act 2004 (as detailed in **Annex B**), but only where all accommodation units are privately rented and the building and accommodation units are in the same ownership or control or considered by the housing authority to be effectively under the same ownership or control. This includes buildings within mixed use developments or above non-residential premises.  
  
all within the area described in paragraph 4 unless –
    - (a) the building is of a description specified in Schedule 14 of the Act (Buildings which are not HMOs for the purposes of the Act excluding Part 1), as detailed in **Annex C**;
    - (b) the HMO is subject to an Interim or Final Management Order under Part 4 of the Act;
    - (c) the HMO is subject to a temporary exemption under section 62 of the Act; or
    - (d) the HMO is required to be licensed under section 55(2)(a) of the Act and the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (mandatory HMO licensing).
    - (e) Converted building HMOs, as defined by section 257 of the Housing Act 2004 that consist of no more than two flats.

## EFFECT OF THE DESIGNATION

6. Subject to sub paragraphs 5(a) to (e) above, every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.
7. The London Borough of Ealing will comply with the notification requirements contained in section 59 of the Act and shall maintain a register of all houses registered under this designation, as required under section 232 of the Act and Regulation 11 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

This designation falls within the description of designations in relation to which the Secretary of State has given a general approval under section 58 of the Housing Act 2004 and The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 which came into force on the 1<sup>st</sup> April 2015.

A person having control of or managing a prescribed HMO must apply to the London Borough of Ealing for a licence. Failure to apply for a licence in the designated area is an offence under section 72(1) of the Housing Act 2004, punishable on conviction by payment of an unlimited fine. As an alternative to commencing prosecution proceedings, the Council may impose a financial penalty of up to £30,000 under section 249A and Schedule 13A of the Act. The Council may also take over the management of an unlicensed HMO by the making of a Management Order under Part 4 of the Act. Additionally, liable persons may be required to repay up to 12 months' rent if the tenant or the Council, in the case of housing benefit payments, apply to the First Tier Tribunal (Property Chamber) under the provisions of section 73 and section 74 of the Housing Act 2004 for a rent repayment order. Under section 75 of the Act, No notice under section 21 of the Housing Act 1988 may be given in relation to an assured shorthold tenancy of the whole or part of an unlicensed HMO so long as it remains an unlicensed HMO.

Landlords, persons managing and tenants are advised to seek advice from the Council as to whether their property is affected by this designation.

Advice, applications for licences and a copy of this designation for inspection are available at:

Property Regulation  
Ealing Council  
Perceval House,  
14-16 Uxbridge Road,  
Ealing W5 2HL  
Telephone 020 8825 9512 or email [PRSLicensing@ealing.gov.uk](mailto:PRSLicensing@ealing.gov.uk)

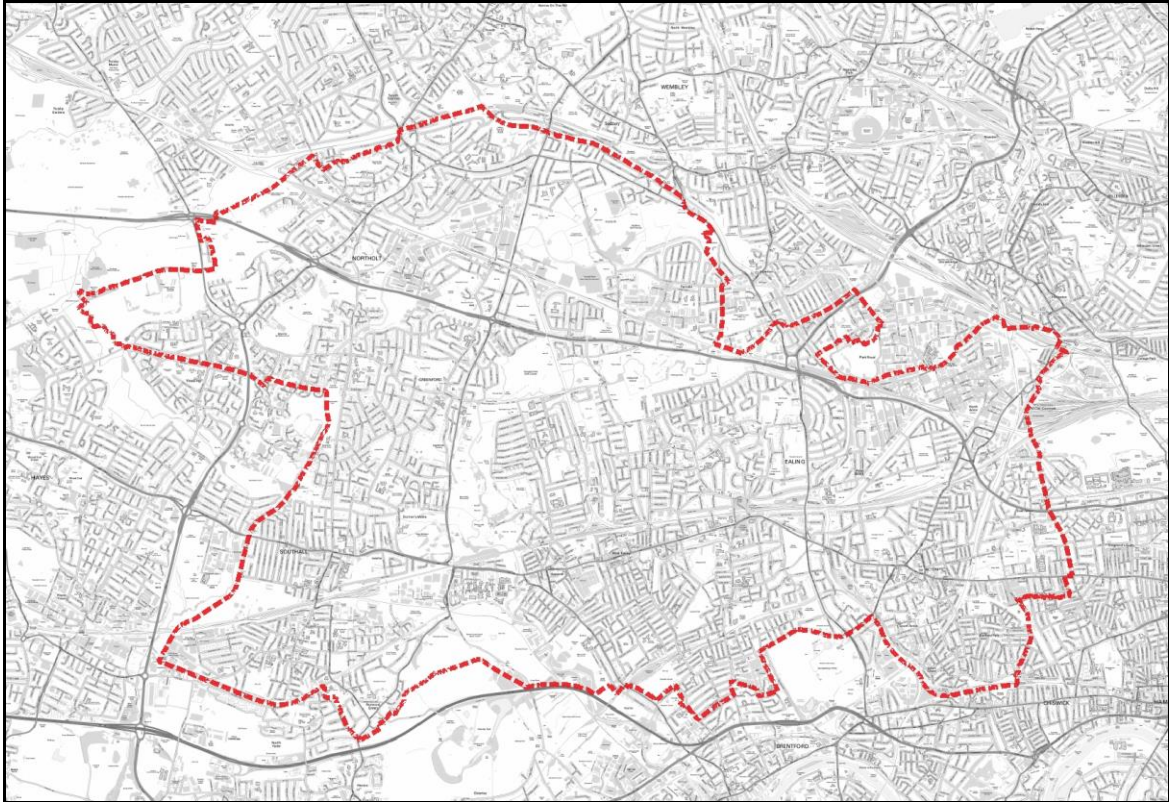
**Date: 21 December 2021**

**Signed:** 

**Director of Community Development**

**For and behalf of the London Borough of Ealing**

## Annex A - Additional Licensing Designation



## **Annex B: HMOs to which this designation applies (subject to paragraph 5 above)**

### **Section 254, Housing Act 2004 (meaning of “house in multiple occupation”)**

*A building or a part of a building meets the standard test if—*

- (a) It consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) The living accommodation is occupied by persons who do not form a single household<sup>4</sup>;
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it<sup>5</sup>;
- (d) Their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) Two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

*A part of a building meets the self-contained flat test if—*

- (a) It consists of a self-contained flat; and
- (b) Paragraphs (b) to (f) of standard test definition above apply (reading references to the living accommodation concerned as references to the flat).

*A building or a part of a building meets the converted building test if—*

- (a) It is a converted building;
- (b) It contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c) The living accommodation is occupied by persons who do not form a single household<sup>6</sup>;
- (d) The living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it<sup>7</sup>;
- (e) Their occupation of the living accommodation constitutes the only use of that accommodation; and
- (f) Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

*“Basic amenities” means—*

- (a) A toilet,
- (b) Personal washing facilities, or
- (c) Cooking facilities

<sup>4</sup> For the definition of “persons not forming a single household” please see section 258 Housing Act 2004

<sup>5</sup> For the definition of “persons treated as occupying premises as only or main residence” please see section 259 Housing Act 2004

<sup>6</sup> For the definition of “persons not forming a single household” please see section 258 Housing Act 2004

<sup>7</sup> For the definition of “persons treated as occupying premises as only or main residence” please see section 259 Housing Act 2004

“*Converted building*” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“*Enactment*” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“*Self-contained flat*” means a separate set of premises (whether or not on the same floor)—

- (a) which forms part of a building;
- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) in which all three basic amenities are available for the exclusive use of its occupants

#### *HMO declarations*

If a local housing authority are satisfied that a building or part of a building in their area meets either:

- the standard test; or
- the self-contained flat test; or
- the converted building test

they may serve a notice under this section (an “HMO declaration”) declaring the building or part to be a house in multiple occupation.

#### **Section 257, Housing Act 2004 (HMOs: certain converted blocks of flats)**

A “*converted block of flats*” means a building or part of a building which -

- (a) has been converted into, and
- (b) consists of,

self-contained flats.

*This section applies to a converted block of flats if—*

- (a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and
- (b) less than two-thirds of the self-contained flats are owner-occupied.

“*Appropriate building standards*” means—

(a) in the case of a converted block of flats—

- (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and
- (ii) which would not have been exempt under those Regulations, building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and

(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

A flat is “*owner-occupied*” if it is occupied—

- (a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,
- (b) by a person who has the freehold estate in the converted block of flats, or
- (c) by a member of the household of a person within paragraph (a) or (b).

The fact that this section 257 applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.

“self-contained flat” here has the same meaning as in section 254 (see above).

## **Annex C – Housing Act 2004 Schedule 14 Buildings which are not HMOs for the purposes of this Act (Excluding Part 1)**

*Introduction: buildings (or parts) which are not HMOs for purposes of this Act (excluding Part 1)*

- 1 (1) The following paragraphs list buildings which are not houses in multiple occupation for any purposes of this Act other than those of Part 1.
- (2) In this Schedule “building” includes a part of a building.

*Buildings controlled or managed by public sector bodies etc.*

- 2 (1) A building where the person managing or having control of it is—
  - (a) a local housing authority,
  - (aa) a non-profit registered provider of social housing,
  - (b) a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52),
  - (c) a police and crime commissioner,
  - (d) the Mayor’s Office for Policing and Crime,
  - (e) a fire and rescue authority, or
  - (f) a health service body within the meaning of section 9 of the National Health Service Act 2006.
- (2) In sub-paragraph (1)(e) “fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c. 21).

- 2A A building –
  - (a) which is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, and
  - (b) where the person managing or having control of it is a profit-making registered provider of social housing.

*Buildings controlled or managed by cooperative society*

- 2B (1) A building where—
  - (a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met, and
  - (b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy.
- (2) The conditions are—
  - (a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,
  - (b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,
  - (c) that each member has equal voting rights at such a meeting, and
  - (d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.
- (3) For the purposes of sub-paragraph (a) “co-operative society” means a body that—
  - (a) is registered as a co-operative society under the 2014 Act or is a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act, and

- (b) is neither—
  - (i) a non-profit registered provider of social housing, nor
  - (ii) registered as a social landlord under Part 1 of the Housing Act 1996.

(4) In this paragraph—

- “the 2014 Act” means the Co-operative and Community Benefit Societies Act 2014;
- “assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;
- “protected tenancy” has the same meaning as in the Rent Act 1977;
- “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985.

#### *Buildings regulated otherwise than under this Act*

- 3 Any building whose occupation is regulated otherwise than by or under this Act and which is of a description specified for the purposes of this paragraph in regulations made by the appropriate national authority.

#### *Buildings occupied by students*

- 4 (1) Any building—
  - (a) which is occupied solely or principally by persons who occupy it for the purpose of undertaking a full-time course of further or higher education at a specified educational establishment or at an educational establishment of a specified description, and
  - (b) where the person managing or having control of it is the educational establishment in question or a specified person or a person of a specified description.

(2) In sub-paragraph (1) “specified” means specified for the purposes of this paragraph in regulations made by the appropriate national authority.

(3) Sub-paragraph (4) applies in connection with any decision by the appropriate national authority as to whether to make, or revoke, any regulations specifying—

- (a) a particular educational establishment, or
- (b) a particular description of educational establishments.

(4) The appropriate national authority may have regard to the extent to which, in its opinion—

- (a) the management by or on behalf of the establishment in question of any building or buildings occupied for connected educational purposes is in conformity with any code of practice for the time being approved under section 233 which appears to the authority to be relevant, or
- (b) the management of such buildings by or on behalf of establishments of the description in question is in general in conformity with any such code of practice, as the case may be.

(5) In sub-paragraph (4) “occupied for connected educational purposes”, in relation to a building managed by or on behalf of an educational establishment, means occupied solely or principally by persons who occupy it for the purpose of undertaking a full-time course of further or higher education at the establishment.

#### *Buildings occupied by religious communities*

- 5 (1) Any building which is occupied principally for the purposes of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering.

(2) This paragraph does not apply in the case of a converted block of flats to which section 257 applies.

*Buildings occupied by owners*

- 6 (1) Any building which is occupied only by persons within the following paragraphs—
- (a) one or more persons who have, whether in the whole or any part of it, either the freehold estate or a leasehold interest granted for a term of more than 21 years;
  - (b) any member of the household of such a person or persons;
  - (c) no more than such number of other persons as is specified for the purposes of this paragraph in regulations made by the appropriate national authority.
- (2) This paragraph does not apply in the case of a converted block of flats to which section 257 applies, except for the purpose of determining the status of any flat in the block.

*Buildings occupied by two persons*

- 7 Any building which is occupied only by two persons who form two households.