

## CHANGES TO PLANNING REGULATIONS FOR DWELLINGHOUSES AND HOUSES IN MULTIPLE OCCUPATION

### **INTRODUCTION**

1. This circular gives guidance on planning regulations, in particular on changes of use for dwelling houses and houses in multiple occupation following changes to legislation in April and October 2010. The general effect of these changes is to allow changes of use between dwellinghouses and houses in multiple occupation to take place without the need for an application for planning permission, unless a local authority has specifically identified an area in which planning applications will be required.
2. A high concentration of shared homes can sometimes cause problems, especially if too many properties in one area are let to short term tenants with little stake in the local community. So changes to legislation will give councils the freedom to choose areas where landlords must submit a planning application to rent their properties to unrelated tenants (i.e. houses in multiple occupation). This will enable high concentrations of houses in multiple occupation to be controlled where local authorities decide there is a problem, but will prevent landlords across the country being driven from the rental market by high costs and red tape.
3. The circular gives general guidance only. To be certain that changes of use in specific cases are lawful and do not require planning permission, advice should be sought from the local planning authority or other sources of professional advice. In particular, in certain circumstances local planning authorities are able to issue directions that require applications for planning permission to be submitted where they would not normally be needed – see paragraph 14 below.

4. The guidance replaces guidance set out in circular 05/2010<sup>1</sup>, and the guidance in paragraphs 66-77 of the circular 03/2005<sup>2</sup>.

## **BACKGROUND**

5. Under planning legislation<sup>3</sup>, the requirement to obtain planning permission covers not only new building work but also changes in use of buildings or land.
6. However, the Use Classes Order<sup>4</sup> places uses of land and buildings into various classes. Changes of use within a class do not require an application for planning permission. In addition, there are also separate provisions that allow changes of use between certain classes in the Order without the need for planning permission. These are set out in separate legislation – the General Permitted Development Order<sup>5</sup> – and are known as permitted development rights.
7. Dwellinghouses and small houses in multiple occupation are now covered by the following classes in the Use Classes Order:

**Class C3: Dwellinghouses** – this class is formed of 3 parts:

- C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a ‘family’);
- C3(b): those living together as a single household and receiving care, and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

**Class C4: Houses in multiple occupation (3-6 occupants)** – in broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

**Large houses in multiple occupation** (those with more than 6 people sharing) – these are unclassified by the Use Classes Order. In planning terms they are described as being *sui generis* (of their own kind). In consequence, a planning application will be required for a change of use from a dwellinghouse to a large house in multiple occupation or from a Class C4 house in multiple occupation to a large house in multiple occupation where a material change of use is considered to have taken place. Paragraph 17 of Annex A to this circular provides further guidance on this.

8. Detailed guidance on the classes in the Use Classes Order which cover dwellinghouses and houses in multiple occupation is set out in Annex A to this circular.

1 Communities and Local Government Circular 05/2010 *Changes to planning regulations for dwelling houses and houses in multiple occupation* (March 2010)

2 See ODPM Circular 03/2005 *Changes of use of buildings and land* (March 2005).

3 The Town and Country Planning Act 1990

4 The Town and Country Planning (Use Classes) Order 1987 (as amended)

5 The Town and Country Planning (General Permitted Development) Order 1995 (as amended)

## AMENDMENTS TO LEGISLATION MADE IN 2010

9. On 6 April 2010, an amendment to the Use Classes Order<sup>6</sup> introduced a definition of small-scale houses in multiple occupation into the planning system. It effectively split the old Class C3 (dwellinghouses) class into 2 separate classes – Class C3 (dwellinghouses) and Class C4 (houses in multiple occupation).
10. The result of this was that development previously falling under Class C3 was reclassified and now falls into either the new C3 or C4 Classes. This reclassification does not amount to a change of use under planning legislation (it is not classified as development) – so no consequences arise from the reclassification in terms of the need to seek planning permission.
11. A further amendment was also made in April 2010 to the General Permitted Development Order<sup>7</sup>. This gave permitted development rights for changes of use from C4 to C3, thereby allowing a change of use from a small-scale house in multiple occupation to a dwellinghouse without the need to apply for planning permission.
12. The amendment to the General Permitted Development Order also restated class C2A (secure residential accommodation) for clarity, as some opinions had been expressed that this class applied only to the Crown, when that was not the intention. Guidance on Class C2A is also included in Annex B to this circular.
13. On 1 October 2010 further amendments were made to the General Permitted Development Order<sup>8</sup>. These changes gave permitted development rights for changes of use from C3 to C4.
14. The April and October changes to legislation mean that from 1 October 2010 a change of use from a dwellinghouse (class C3) to a house in multiple occupation (Class C4) and from a house in multiple occupation to a dwellinghouse is possible under permitted development rights and planning applications are not needed.
15. However, as with most types of permitted development rights, local authorities will be able to use existing powers, in the form of article 4 directions, to remove these rights and require planning applications for such changes of use in defined areas. Anyone considering a change of use from a dwellinghouse to a house in multiple occupation or vice versa is advised to contact the local planning authority for the area concerned to check whether any article 4 directions have been made.
16. In addition to the amendments to the Use Classes Order and the General Permitted Development Order, new regulations<sup>9</sup> reduced local authorities' liability to pay compensation where they choose to make article 4 directions to remove permitted development rights in relation to houses in multiple occupation. As a result:

6 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010/653)

7 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (SI 2010/654)

8 The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 (SI 2010/2134)

9 The Town and Country Planning (Compensation) (No.3) (England) Regulations 2010 (SI 2010/2135)

- (i) where a local authority gives 12 months' advance notice of a direction taking effect there will be no liability to pay compensation
- (ii) where directions are made with immediate effect or less than 12 months notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are then either refused or granted subject to conditions.

### **CANCELLATION OF GUIDANCE**

Department for Communities and Local Government circular 05/2010, and paragraphs 66-77 of the Office of the Deputy Prime Minister circular 03/2005 are hereby cancelled.

# Annex A

## DWELLINGHOUSES AND HOUSES IN MULTIPLE OCCUPATION – GUIDANCE ON CLASSES

### Class C3 (dwellinghouses)

1. This class is now formed of three parts:
  - C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a ‘family’)
  - C3(b): those living together as a single household and receiving care, and
  - C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

For the purposes of C3(b) and (c) single household is not defined in the legislation.

2. There is no limit on the number of members of the single household under C3(a). The limit for C3(b) and (c) is no more than six people.
3. A single household under C3(a) is formed by a family (a couple whether married or not with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
4. C3(b) continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems.
5. It remains the case that in small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class (Class C2), regardless of the size of the home. Local planning authorities should include any resident care staff in their calculation of the number of people accommodated.
6. C3(c) allows for groups of people (up to six) living together as a single household. This is to allow for those groupings that do not fall within the C4 house in multiple occupation definition to be provided for e.g. a small religious community may fall into this section as could a homeowner who is living with a lodger.
7. The term ‘dwellinghouse’ is not defined in this part of the Use Classes Order. The question of whether a particular building is a dwellinghouse will therefore depend on the facts of that case.
8. The common feature of all premises which can be generally be described as dwellinghouses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence. It is recognised that unlikely or unusual buildings, such as churches or windmills, have been used as, or adapted to become, dwellinghouses. Whilst such premises may not be regarded as dwellinghouses in the traditional sense, they may be so classified for the purposes of the Use Classes Order.

9. The criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. Premises can properly be regarded as being used as a single dwellinghouse where they are:
- a single, self contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;
  - designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;

This would not include bed-sitting rooms. Here the planning unit is likely to be the whole building which would therefore be classified as a house in multiple occupation.

#### **Class C4: Houses in multiple occupation (3-6 occupants)**

10. In broad terms, the new C4 class covers small shared houses or flats occupied by between three and six unrelated individuals who share basic amenities.
11. Small bed-sits will be classified as C4.
12. To fall within the 'house in multiple occupation' definition a property must be occupied as the main residence. Guests visiting for short periods should not be included in any calculation of number of occupants. Students, migrants and asylum seekers who do not occupy the property all year will be considered as occupying the property as their main residence and should be included in any calculation of occupant numbers.
13. Social housing is excluded from C4 as are care homes, children's homes and bail hostels. Properties occupied by students which are managed by the education establishment, those occupied for the purposes of a religious community whose main occupation is prayer, contemplation, education and the relief of the suffering are also excluded. Some of these uses will be in C3, others will be in other use classes or fall to be treated as *sui generis*.
14. Properties containing the owner and up to two lodgers do not constitute a house in multiple occupation for these purposes.
15. To classify as a house in multiple occupation a property does not need to be converted or adapted in any way.

#### **Large houses in multiple occupation**

16. Large houses in multiple occupation – those with more than six people sharing – are unclassified by the Use Classes order and are therefore considered to be 'sui generis'.
17. Although the control limit of six persons defines the scope of the C3 (b) and (c) dwellinghouses and C4 houses in multiple occupation classes, this does not imply that any excess of that number must constitute a breach of planning control. A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household.

# Annex B

## **GUIDANCE ON CLASS C2A AND CLASS D1**

### **Class C2A: Secure residential institutions**

1. Class C2A is for secure residential institutions, which enables changes between similar types of premises (but with different uses) to be made without requiring planning permission for a change of use.
2. The list of institutions falling within the C2A class is not exhaustive. The list contains two types of institution:
  - (a) those uses covering where security is concerned with preventing the residents from leaving. This will include all the various categories of secure facilities in the criminal justice and immigration estates, as well as secure local authority accommodation and secure hospitals (these share the land use characteristics and impacts of some of the Crown uses).
  - (b) uses such as military barracks, where security is concerned with preventing unauthorised entry, but where the planning impacts are similar to some of the other uses identified in (a) above. For example, it might be possible to convert a disused military barracks to a low-category prison without major perimeter works.
3. A new C2A development such as a prison, secure hospital or immigration detention centre will require a planning application. These types of development require a large area of ground. Such uses need good road links for staff, visitors and deliveries and space for car-parking as well as good public transport links. They also provide a significant number of long-term jobs for local people. For these reasons such institutions may not easily be accommodated within existing residential land allocations. The Secretary of State considers that the physical requirements and employment-generating aspects of these schemes are an important consideration and that despite their residential classification, location on land allocated for employment uses is appropriate.

### **Class D1: Non-residential institutions**

4. Class D1 (non-residential institutions) also includes use as a law court. Law courts have similar planning impacts to other D1 uses, such as art galleries, museums and exhibition halls, where people come and go throughout the day.

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