

**NLC's Response to Inspector's Query re SCUH 11 Use Classes**

As part of Matter 3 Scunthorpe proposed housing site SCUH-11 Station Road, the Inspector asked the Council to clarify and confirm that the scheme can be classed under the use class C3 with the site been proposed for an Extra Care Scheme following circular 8/2010 C3.

The Station Road Extra Care scheme will comprise of 70, mainly 1 bed apartments plus some 2 beds, plus 4 or 5 x 2 bed bungalows.

For information - Extra Care Housing is a model of delivery independent living accommodation with on site care facilities. This differs to a residential care home as the resident of each property lives independently within their own dwelling house, has their own postal address and is able to access housing benefit entitlements as an occupier of a dwelling. This is as opposed to living within a bedroom and accessing shared facilities as is the model of a residential care home. The attached briefing from the Housing Lin sets this out clearly and refers to the latest definition of C3 dwelling houses in circular 08/2010 also attached.

The council have successfully delivered this type of accommodation at the Ashby Meadows Extra Care Housing scheme - the attached planning permission I feel demonstrates how the units were dealt with through this planning application.

Please let me know if you require anything further on this.

Elizabeth Pearson  
Senior Planning Officer



## Planning Use Classes and Extra Care Housing

This Viewpoint explains how extra care housing schemes are treated by planners and discusses the implications of the categorisation of proposals.

The purpose of this Viewpoint is to explore the planning position and provide some thoughts on the things that can be done to ease the planning process. It will become clear, however, that ultimately it is arguable that planning law does not adequately deal with current forms of provision of housing with integral care described as “extra care” housing.

Produced for the Housing Learning & Improvement Network by  
**Nigel King**, Housing & Support Partnership

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## The issues

Housing and Support Partnership (HSP) recently prepared an extra care housing strategy for a two-tier local authority. Difficulties in classifying planning applications for extra care housing were identified by planning officers as one of the most significant hurdles to development progress. Other studies have also referred to this issue while difficulties over planning consents generally are frequently raised by developers.

Planning applications for extra care housing may fall into either category C2 (or Class as it is termed in planning law) which covers “residential institutions” or C3 which is “dwelling houses”. It is frequently unclear which “box” extra care housing should be put into. This in itself leads to uncertainty and possibly conflict with developers and other agencies. The Class of a planning approval has a number of significant consequences for all parties (for legal distinctions, go to page 4).

The categorisation of an application for planning permission is, from a planner’s perspective, ultimately a matter of law. Disagreement with developers (and others) can lead to planning appeals, review by an inspector and a series of disputed planning applications for extra care housing have ended up in court. With a growing number of older homeowners, the market for extra care housing is beginning to see a greater variety of lifestyle and care choices across all tenures. More private sector developments are coming forward and bigger retirement villages or Continuing Care Retirement Communities (CCRC) are becoming much more common. This means that the scale of development (both financial and land use) and the stakes have got higher.

From a developer's perspective, at the heart of the issues, are often financial considerations. Historically, extra care housing has mostly been provided by Registered Social Landlords (RSLs) and a handful of charitable organisations, often in partnership with an RSL. They have usually sought planning for housing under C3. The primary purpose of an RSL is to provide social housing and an element of social housing grant has been available from the Housing Corporation and its successor the Homes and Communities Agency, via the Department of Health’s Extra Care Housing Fund (2004-2010) and, in some instances, via the Private Finance Initiative. This subsidy contributes to achieving affordable rents. These funding streams would not normally be available in the same way for a “residential institution” like a care home. The exceptions most often arose in “villages” which incorporated a separate care home where both C2 and C3 consents were appropriate and not usually contentious.

As the number of older people has grown and their needs and aspirations have changed, some private developers have moved from providing residential care in to extra care housing (see Housing LIN factsheet no.17, *The Potential for Independent Care Home Providers to Develop Extra Care Housing*). Extra care housing is akin to very sheltered housing, offering independent living but with the benefit of on-site care provision. If extra care housing is considered as Use Class C3, the developer may be required to include an amount of affordable housing in the scheme. This in turn could have consequences for financial viability.

Applications for C3 use also have to be tested against the housing development plans and policies for the area, in particular the location of new housing development. If classed as C3 use, extra care housing schemes must meet the location requirements for general housing. On the other hand C2 applications can be regarded more flexibly; and, for example, it would appear more easily be approved outside of the established settlement boundaries.

In light of the above, private sector developers, largely unable to access social housing grant, may have a different agenda. They might in the past have offered “close care” apartments adjacent to a home and now extended or developed this approach, but re-branded it as “extra care”. For them to seek C2 consent is a natural and obvious path. Other private sector developers may have no history of care homes and are new entrants to the

market or are making a transition from traditional retirement housing for sale. The issues here are that if planning consent is obtained for “housing”, two things can follow and be incorporated in a Section 106 planning agreement. The developer may be required:

- To include an amount of social or affordable housing in the scheme. This in turn could have consequences for financial viability by reducing saleable properties and possibly reducing the value of the saleable properties, adding to the complexity of the management of the eventual scheme and marketability. The developer may be able to provide the affordable housing off-site instead of incorporating in the extra care housing scheme.
- To make some financial contribution to the local authority. This may take the form of providing some other facilities.

In a two-tier authority, any direct financial benefit will accrue to the planning authority – the district or borough council – but the primary driver for the scheme and potential commissioner and/or funder of many places is likely to be Adult Social Care i.e. the County Council. The balance of benefit and cost is more complicated than this. Developments which are or incorporate social housing may offer the District or Borough Council nomination rights, whereas those which are defined as residential care may not. The provision of good quality, self-contained housing in an extra care housing setting may encourage older people to move from under-occupied family housing.

From a Council with Adult Social Care Responsibility (CASCRC) perspective, any provision which will appeal to self-funders will tend to reduce pressure on the local authority budget. This gain is often tempered by a fear that:

- Self-payers will exhaust their funds in (expensive) extra care housing and ultimately become a financial burden that falls on the City or County
- The provision of attractive extra care housing will encourage more people in need of care services to relocate to the area moving across local authority boundaries

For both these reasons, CASCRC may have a strong desire to be involved in planning decisions about new extra care housing developments but, at least in two-tier authorities, this can be problematic. A frequent complaint by a CASCRC is that they are not adequately involved in decisions about new extra care housing schemes by developers. Developers in turn complain about how difficult it is to find and engage the right person in discussions. Also, they are not sufficiently involved in formulating extra care housing strategies.

The planning class is also an issue in relation to the regulation of the care provision by the care provider, irrespective of the status of the developer. A residential care home is regulated by the Care Quality Commission<sup>1</sup> (CQC), according to regulations under Section 20 of the Health and Social Care Act 2008. CQC regulates care homes according to a set of essential standards of quality and safety, which were published in March 2010. The standards set out what homes must do in order to comply with the regulations. All homes are subject to an inspection and a reporting regime.

There is also a pure “planning” angle to the status of proposals. C3 are housing applications and therefore have to be tested against the housing development plans and policies for the area. In particular, the location of new housing developments and land zoned for housing and, as already noted, a requirement to include a proportion of social or affordable housing.

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<sup>1</sup> The CQC regulates all health and adult social care providers in England. It makes sure that essential standards of quality and safety are being met where care is provided. All adult social care providers must be registered and licensed with the CQC. The CQC has a range of legal powers and duties and can take enforcement action when standards are not met.

Many larger extra care housing applications initially fail because they are not in the right place as far as local location strategy is concerned.<sup>2</sup>

On the other hand, C2 applications are sometimes dealt with as specialist housing or care facilities and may, it appears, occasionally be approved outside of the boundary set down for future settlement. Applications for uses in the countryside or green belt and thus outside a defined settlement boundary have to follow the policies and criteria set down in local plans. These are restrictive. In particular, green belt policy where appropriate developments are set out in PPG2 Green Belt, C2 use is not considered appropriate under PPG2.

## What are C2 and C3 planning classes?

Planning law categorises different forms of land use according to an alphanumeric system. It puts planning applications and consents into classes according to the use that will be made of the premises. The current categories come from the Town and Country Planning (use classes) Order 1987 and subsequent amendments (see in particular “Changes to Planning Regulations for Dwelling Houses and Houses in Multiple Occupation”, CLG Circular 8/2010).

Classes run from “A”, things like shops and restaurants to “D”, things like leisure centres with several sub-sets of premises in each broad class. There is also a category “other” or “Sui Generis” (which translates as “of their own kind”).

Extra care housing falls in Use Class C, although because neither is entirely satisfactory some have argued it is best dealt with as “other”. There are two relevant sub-categories:

Use Class C2 is defined as:

*“Use for the provision of residential accommodation and care to people in need of care (other than a use within a class C3 (dwelling house). Use as a hospital or nursing home. Use as a residential school, college and training centre”*

Following circular 8/2010 Class C3 is a dwelling house which is now defined as:

- C3(a) those living together as a single household – a family
- C3(b) those living together as a **single household and receiving care**
- C3(c) those living together as a single household who do not fall within C4 definitions of a house in multiple occupancy  
(Bold our emphasis)

Care is also defined in the original order as:

*“Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or past or present mental disorder”*

In the past there was little dispute that a residential care home consisting usually of just a bedroom (and possibly a bathroom) but with everything else communal, including meals, was C2. Sheltered housing based on self-contained accommodation with simply a warden or scheme manager and no direct provision of care was housing and thus C3. A category C4 was introduced in 2010 to deal with houses in multiple occupation. These are homes or flats occupied by unrelated individuals who share basic amenities.

Arguments about how to treat extra care housing have arisen as self-contained accommodation – a hallmark of sheltered housing and modern extra care housing – has

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<sup>2</sup> Regional spatial strategies provided a statutory framework for planning at a regional level. They were intended to inform more local development plans. The Government has announced it wants to abolish Regional Strategies through the new “Localism Bill”. Local planning authorities are still to be responsible for establishing the right level of housing provision and identify a long term supply to meet local housing targets.

been combined with extensive communal facilities and the provision (or availability) of personal care, and often some meals, within the same overall scheme.

Cases that have eventually been decided in court for the most part are concerned with fine distinctions and interpretations of the three definitions set out above of C2, C3 and “care”.

In circular 8/2010, the new C3 (b) explicitly refers to “a single household receiving care”. This circular does not redefine care. It is the view of some planning officers that the effect of this circular is that ambiguity surrounding extra care housing, whether intended or not, has been removed. Developer’s proposals that projects should be considered as C2 simply in order to avoid a financial contribution may now fall under C3 (b). It is early days as far as the courts view of this interpretation of the changes in 8/2010 are concerned.

## **Guidance on planning**

National guidance on planning for extra care housing is set out in the Royal Town Planning Institute General Practice Note 8, “Extra Care Housing Development Planning, Control and Management”

This starts with a definition of extra care housing taken from the Department of Health Extra Care Housing Toolkit as:

*“Purpose built accommodation in which varying amounts of care and support can be offered and where some services are shared”*

It explains the growth in extra care housing linked to demographic shifts and social policy focused on supporting older people to be as independent as possible, in their own homes, on extending choices in later life and reducing reliance on more institutional provision.

The note reminds planners that Planning Policy Statement 3 requires a Strategic Housing Market Assessment to inform local development plans. Assessments should:

- Lead to a strategy for the development of extra care housing in the local area (the DH subsequently provided funding for every Local Authority to create a strategy).
- Involve older people in developing local plans
- Consider all tenure options

In assessing individual proposals planners were advised to consider:

- The benefit to local housing and care provision of individual schemes:
  - Will some frail older people be able to avoid admission into residential care?
  - Will the scheme help older people stay independent and remain active in old age?
  - Does the scheme offer an opportunity for elderly owner-occupiers to purchase their own property in a scheme where an increasing level of care can be provided?

Of direct relevance to planning class issues, the Note suggests planners ask themselves:

- If the scheme is solely or predominantly leasehold, is it an extra care housing scheme or retirement housing?
  - Does the scheme have facilities not normally associated with retirement or sheltered housing such as bar/ lounge, kitchen/dining room, laundry, crafts room, IT suite, shop, gym etc?
  - Are 24 hour care services available to all residents according to their need?

- Can residents receive/ purchase care from the on-site team?
- Has the developer opened similar schemes in other parts of the country? If so, what is the average age on entry, and how much care per week was purchased during the first year of operation?
- What efforts have been made to link the scheme into the local community?
- Will daily hot meals be available?

Local guidance on extra care housing is very much a matter for the individual planning authority. Planners involved in the strategy creation project mentioned at the outset of this Viewpoint felt local guidance, as part of a local extra care housing strategy, would be very useful for both themselves and developers.

Arguments have arisen with the provision of modern extra care schemes because, as noted, they provide independent self-contained accommodation, with extensive facilities and the availability of flexible personal care within the same overall scheme.

There was a broad view that extra care housing was really housing and thus should normally be considered as C3. In Continuing Care Retirement Communities, where there is a physically separate building designed as a care home as part of the scheme, then a mixture of C2 and C3 is reasonable. However, the professionals are aware, partly as a result of local disputes and cases, that decisions may be tested in court. It becomes problematic, as the regulations stand, to issue definitive local guidance on planning treatment of extra care housing.

## Case law

Extra care housing is not one, simple concept, with a statutory definition. Schemes vary in scale and nature so it may be, indeed has been the case, that schemes warrant different classification in terms of use class order. However, it would also appear that some schemes that look to be very similar have been classified differently.

A “lay” view from a CASRC, social policy or housing perspective that point to a C3 classification might be:

- Extra care housing is by definition “housing”. This is part of the terminology of the Homes and Communities Agency and Department of Health
- A fundamental building block is self-contained dwellings – flats, bungalows, cottages...
- The fact that dwellings are clustered together and may be adjacent to leisure and other facilities does not make any difference to this being a housing complex. It is just a modern version of sheltered housing.
- Most extra care housing is designed for and let or sold to people who have a range of needs from little or no care to quite high needs. Allocation policies and practice are often designed to maintain a balanced community. It is not like a residential care home where everyone has a similar, high level of need from the outset
- Care is made available on an individual basis (another fundamental of extra care housing) using a domiciliary care model where care and support staff come to the person in their own personal dwelling. Staff are not living with the person they look after. This is like anyone else living in their own home in a village, town or city
- A limitation in the lease or tenancy to being over a certain minimum age; 55, 60, 65, does not automatically mean everyone needs care. People may seek extra care housing because they are lonely, in need of more appropriate physical accommodation, disabled and many similar reasons. A view that reaching a certain



age equates with care meaning extra care housing must be C2 is arguably naïve or too simplistic.

- In traditional sheltered housing (or indeed any ordinary property in the community), it is perfectly possible to receive an individual package of care to allow the person to continue to live independently. Furthermore, the Government has set down a target that all adults entitled to care should be in receipt of an individual budget by 2013. The receipt of care in your own home does not make it a “residential institution”. C3 uses can include households where care is provided. The new circular makes this explicit.

On the other hand, the following features may point to a C2 classification:

- The units are not for sale on the open market but are restricted by a S106 obligation requiring occupants to be either in need of a specified level of care or in receipt of a specified minimum package of care services and/or above a specified minimum age.
- Applying eligibility criteria and undertaking an initial assessment of care needs with regular reviews and monitoring can reinforce this.
- Given the additional costs involved in paying for care and accommodation, it makes sense for the units to be occupied by those in genuine need of care.
- The distinguishing feature of C2 establishments is the provision of personal care for those who need it. Where extra care units are restricted to those in need of care by reason of old age, this would fall within the definition of Use Class C2.
- The provision of care is directly linked to the extra care unit, which cannot be occupied unless certain criteria are met.
- The involvement of a registered Care Quality Commission care provider in the delivery of care.
- The availability of care rather than an absolute requirement to receive a pre-determined package may be sufficient, especially relative to older persons where a degree of future inevitable decline can reasonably be built into the model.
- In the case of larger schemes providing a range of accommodation and care such as Continuing Care Retirement Communities (CCRC) the degree of integration of the various elements scheme into a wider total community.

What view have the courts taken? What does case law tell us?

A helpful briefing paper by planning consultants on these issues summarises eight recent Appeals and High Court rulings (Extra Care Units – use class order, client briefing, [www.dlpconsultation.co.uk](http://www.dlpconsultation.co.uk), 2010). These mostly involve larger retirement village scale proposals where the developer wanted C2 use for some or all of the scheme.

In these cases, a recurring theme is the degree of care provided to the majority, or all residents. It appears that conditions limiting occupation to those in need of care and support and receipt of a domiciliary care package of at least 2 hours per week are likely to underpin acceptance of a C2 classification. The 2 hours appears, in some of the cases, to be considered more than would normally be available in sheltered housing. It is argued provision of care by an on-site care team is more than would normally be provided by a warden within a sheltered housing scheme. While domiciliary care can be received in sheltered housing, the receipt of care is not a condition of occupation as it may be in extra care schemes. It is the explicit requirement to be in receipt of care as a condition of occupation that can make the difference.



This, however, appears to ignore the fact that residents in sheltered housing can receive varying and sometimes substantial amounts of domiciliary care (self-funded or assessed by their local CASCAR) on an individual basis. In some instances, this has extended to a personal budget.

The central importance of receipt of domiciliary care was very apparent in the HSP project. Also, the pragmatic approach local authority planners feel forced to take.

*“One thing that I tend to focus on (at least initially) when looking at the level of care being provided within a typical scheme is the “basic” or minimum package that residents have to pay for and what does this provide. I know this approach may be against some of the appeal decisions that you might have come across, but I find it a good starting point. If this minimum package does not seem to include a compulsory care element then clearly there could be difficulties in a developer persuading us that their particular development falls within Class C2” (District Council Planning Officer)*

DLP consultants conclude:

*“we have found that, where extra care units are part of a larger retirement community, and linked to close care units and nursing rooms, where all residents have to be over 65 years of age and are required to pay care charges for services beyond those available to residential dwellings, they can be sufficiently distinguished from class 3 and do in fact comprise class 2 accommodation.”*

There are, however, appeal decisions that contradict the view that need for and, even better, receipt of domiciliary care in excess of a minimum of around 2 hours per week, is a definite indicator of C2 use.

An excellent analysis of the wide range of planning matters, including C2/C3 classification by Tetlow King (Planning and Delivering Continuing Care Retirement Communities, Rosie Rogers, Tetlow King Planning, 2011) refers to several.

In an appeal in Hereford the Inspector decided:

*“the proposal contained a mixed C2/C3 use, considering that the definition of C3 in the Use Classes Order states ‘use as a dwelling house’, including ‘a household where care is provided for the residents’. The Inspector acknowledged that ‘the level of care to be provided is not relevant, since the Use Classes Order does not refer to that’ (paragraph 29). Thus **the Inspector takes the view that the inclusion of units ‘with their own front door’ should be classed as C3, even if a significant level of care is provided.** (our emphasis)*

*A similar conclusion was reached by the Secretary of State, in determining an application on the former HMS Royal Arthur Site, in Corsham, North Wiltshire. The Inspector felt that the Section 106 did not provide sufficient controls on the occupations of the units, in terms of age and care provision, and as such they could be occupied as class C3.”*

In a third case quoted where:

- Occupation was limited to those over 55 years
- Who had to purchase at least a minimum care package
- Properties were for sale
- The emergency call system was via a link to staff in a care home,

the Inspector decided that the extra care housing apartments on site should be classified as C3.

## Local authority strategic approaches – tips and traps

At the root of many of the debates and uncertainties, are short comings in understanding (or the formulation) of what extra care housing is or can be. One sentence attempts to 'define' extra care housing in a robust, legalistic way are bound to disappoint. One sign of this is the many different terms that have been used to identify a broad family of provision that can be called extra care housing; very sheltered housing, category 2.5, housing with care, flexi-care, close care, assisted living... Some are attempts to 'brand' a providers own version of extra care housing. Another clue is the many and varied definitions that can be found in the literature and guidance.

A different approach to extra care housing has been to think of it in terms of a "typology". To define the main variables that characterise extra care housing but recognise that developments will have different mixes. The position and choice made on each variable define that particular extra care housing scheme. This approach helps:

- Make explicit what the choices are and how schemes can differ and be shaped to fit local needs and circumstances
- Make clear what the key decisions are
- Show the versatility and potential of extra care housing
- Illustrates that extra care housing is not one single, limited, construct

Key variables suggested in one typology are:

1. Built form
  - Scale - max and minimum
  - Facilities range – what are essential, what desirable
  - Dwelling type – any restrictions or preferences
  - Dwelling features – any must haves or avoid such as kitchens; design or space standards
  - Building standards – none, mobility/wheelchair, Lifetime Homes...
2. Tenure – for sale, shared ownership/equity, rent, mixed
3. Allocation and eligibility criteria – level of need to be catered for; sheltered to residential and nursing care. To include dementia or not. Learning disabilities and functional mental health needs or not.
4. Provision of meals – what level if any. Is a catering kitchen an essential feature? Are a restaurant/ café essential? Will the café/restaurant be available to the wider community?
5. Housing and support provider model – housing and care organisation arrangements; same, one housing provider, separate care provider, multiple care providers...

As Rosie Rogers concluded in Planning and Delivering Continuing Care Retirement Communities (Tetlow King, 2011):

*"Decision makers often struggle with conceptualising exactly what is being proposed. CCRCs can vary in the services and facilities on offer and as such can sometimes warrant different classifications in the Use Classes Order. However in many cases, exactly the same products are being proposed and yet they are classified very differently. This inconsistent approach is leading to uncertainty and confusion, which*

*only leads to further difficulties in delivering housing with care. In order to speed up the planning process and provide greater certainty for developers and decision makers, it is evident that further clarity is needed, from developers in terms of what is being proposed but also in the form of good practice guidance as to how such applications should be determined”*

It is clear first, the simple categorisation of proposals in planning terms as C2 or C3 is outdated and inadequate. It does not match the range and types of developments being put forward as “extra care”. Second, a simple all-embracing, workable definition of extra care housing that can encompass the wide range of provision being developed for older people is likely to be illusory. The scale and form of accommodation, the mix on site, the nature of care and support, the arrangements for delivery of care, the type and extent of facilities, financial arrangements for occupation, policy and practice on eligibility can all vary; and this is only a short list of variables.

Given this, and the conclusion that really revised regulation and possibly approach is the key to better decision making in planning, what can Government and local authorities do to make extra care housing more satisfactory to deal with in planning terms?

### **A strategic approach to extra care housing planning**

At a government level, the National Planning Framework (Draft National Planning Policy Framework, CLG, July 2011) needs to make reference to planning for an ageing population, fully recognise the demographic shifts and drivers to different forms of housing development. Along with this, there needs to be recognition of the wider housing choices becoming available and being demanded in both the public and private sector.

Of general relevance to planning for older people's housing, the draft National Planning Policy Framework says that in order to boost the supply of housing, local planning authorities should:

- *“use an evidence base to ensure that their Local Plan meets the full requirements for market and affordable housing in the housing market area, including identifying key sites which are critical to the delivery of the housing strategy over the plan period*
- *Identify and maintain a rolling supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The supply should include an additional allowance of at least 20 per cent to ensure choice and competition in the market for land*
- *Identify a supply of specific, developable sites or broad locations for growth, for years 5-10 and, where possible, for years 11-15” (Para 109)*

One of the objectives of the National Planning Policy Framework is to extend the choices available. Since there is relatively little extra care housing in relation to the size and growth of the retired population this should imply consideration of different models of provision for older people. The draft says:

*“To deliver a wide choice of quality homes and widen opportunities for home ownership, local planning authorities should:*

- *Plan for a mix of housing based on **current and future demographic trends**, market trends and the needs of different groups in the community (such as families with children, **the elderly** and people with disabilities)*
  - *Identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand, and*
  - ***Where they have identified affordable housing is required, set policies for meeting this need on site, unless off site provision or a***

*financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities” (para 111, our emphasis)*

At a local level, local planning authorities have some ability to improve the process. Often, but particularly in two-tier authorities, only working in collaboration with other agencies will be effective.

Suggestions are:

- Establish an extra care housing strategy
- In this strategy (or, if necessary, elsewhere in other local development plans and guidance) set out the kind of model(s) of extra care housing preferred in that area. This should help to make clear if a predominantly housing model or residential care model is preferred and its scale. Ensure this includes some details of the standards, size and mix of dwellings, tenure mix and the other key variables
- Housing Needs Assessments must include demographic shifts and consider in detail the requirements and aspirations of older people, including wider determinants of health and wellbeing, disability etc. This will be particularly important in defining the scale of extra care housing provision required. Similarly any housing market studies commissioned by local authorities should explicitly consider older and disabled people. In the past they have often been weak in this area lacking detail (see forthcoming Housing LIN/ADASS resource pack, ‘Strategic Housing for Older People: Planning, designing and delivering innovation and choice in independent living’)
- Case studies suggest developers could help by providing greater detail about the care aspects of the scheme at an early stage of a planning application. Things like qualifying age, entry criteria, minimum expected number of care hours per week, proportion of residents expected to need different levels of care. This would help to make the type of extra care and the intention in providing the scheme clear.

## **Conclusion**

The new National Planning Policy Framework is an opportunity to develop policy in relation to older people’s provision. Circular 8/10 may offer some further assistance to local authorities, but it appears likely that a more fundamental and explicit consideration of the planning position of extra care housing is really required.

## **Acknowledgement**

We would like to thank the planning officers in several local authorities who were kind enough to comment on an early draft and in particular help to make clear normal practice. Robin Tetlow of Tetlow King Planning also provided very helpful detailed comments and additional material. The views expressed in this paper are those of the authors and are not necessarily those of the Housing Learning and Improvement Network.

## About the Housing LIN

The Housing Learning and Improvement Network (LIN) is the leading 'knowledge hub' for a growing network of 5,800 housing, health and social care professionals in England involved in planning, commissioning, designing, funding, building and managing housing, care and support services for older people and vulnerable adults.

The Housing LIN welcomes contributions on a range of housing and related care and support issues. If there is a subject that you feel should be covered, please email us at [info@housinglin.org.uk](mailto:info@housinglin.org.uk).

For further information about the Housing LIN and to access its comprehensive list of on-line resources, visit [www.housinglin.org.uk](http://www.housinglin.org.uk)

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TOWN AND COUNTRY PLANNING ACT 1990

## FULL PLANNING PERMISSION



**APPLICATION NO:** PA/2007/2041

**Applicant:** Mrs H Ford  
Hanover Housing Association

**Address/Agent:** Mr M Henderson  
Brewster Bye Architects  
5 North Hill Road  
Headingley  
LEEDS  
LS6 2EN

**North Lincolnshire Council** hereby give notice that the application received on 07/01/2008 to:

**erect 48 two-bedroom apartments, 3 one-bedroom apartments, community facilities and associated staff accommodation on land off The Link, Burringham Road, Scunthorpe**

has been considered and that permission for this development in accordance with the plans and written particulars submitted has been granted subject to the following conditions and reasons:

1.

The development must be begun before the expiration of three years from the date of this permission.

Reason

To comply with section 91 of the Town and Country Planning Act 1990.

2.

No development shall take place until details showing an effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been approved in writing by the Local Planning Authority. These facilities shall be implemented prior to the access and parking facilities being brought into use.

Reason

In the interests of highway safety and to comply with policy T19 of the North Lincolnshire Local Plan.

3.

No loose material shall be placed on any driveway or parking area within ten metres of the adopted highway unless measures are taken in accordance with details to be submitted to and approved in writing by the Local Planning Authority to prevent the material from spilling onto the highway. Once agreed and implemented these measures shall be retained.

Reason

In the interests of highway safety and to comply with policy T19 of the North Lincolnshire Local Plan.

4.

Works shall not commence on site until wheel cleaning facilities in accordance with details to be approved in writing by the Local Planning Authority, have been provided within the curtilage of the site and this facility shall be retained for the duration of the works.

Reason:

To prevent material being deposited on the highway and creating unsafe road conditions.

5.

The proposed new unit shall not be brought into use until the vehicle access to it and the vehicle parking, turning and servicing areas serving it have been completed in accordance with the approved details. Once complete the vehicle parking, turning and servicing areas shall be retained.

Reason

In the interests of highway safety and to comply with policies T2 and T19 of the North Lincolnshire Local Plan.

6.

Development shall not commence until details showing the method of constructing, draining and lighting the proposed access road have been submitted and approved in writing by the Local Planning Authority.

7.

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason

To protect local controlled water receptors.

8.

Development shall not begin until a scheme to deal with arsenic contamination of the site has been submitted to and approved in writing by the Local Planning Authority.

- (a) The above scheme shall include an investigation and assessment to identify the extent of arsenic contamination and the measures to be taken to avoid risk to the human health, buildings, and the environment when the site is developed.
- (b) The development shall not commence until the measures approved in the scheme have been implemented.



**Reason**

To ensure that the future development has appropriate risk management procedures in place to address the issue of elevated arsenic levels and to comply with the provisions of Policy DS7 of the North Lincolnshire Local Plan in relation to contaminated land.

9.

No development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

**Reason**

To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

10.

No development shall take place until details of the positions, design, materials and type of boundary treatment to be built/planted have been agreed in writing by the Local Planning Authority. The agreed boundary treatment shall be built/planted before the apartments/staff accommodation are occupied and the community facilities brought into use, and once built/planted it shall be retained.

**Reason**

To ensure the living conditions of local residents are protected in accordance with policy DS1 of the North Lincolnshire Local Plan.

11.

Prior to the occupation of any part of the building, the area of casual public open space shown on the attached plan shall be landscaped and set out to a standard to be agreed in writing by the Local Planning Authority.

**Reason**

To ensure that the area of public open space is of a standard acceptable to the Local Planning Authority in the interests of amenity in accordance with policy H10 of the North Lincolnshire Local Plan.

Dated: 27th March, 2008.

Signed:

  
**M Welton**  
**Head of Planning**

This decision (based on the plans and information submitted with and contained in the application) has, where appropriate, been considered against and meets the provisions of the following policy/policies contained in:

- |   |                        |
|---|------------------------|
| 1. North Lincolnshire Local Plan:                             | ST2, ST3, R1, DS1, H16 |
| 2. Regional Spatial Strategy for<br>Yorkshire and the Humber: | None                   |

## **WARNING**

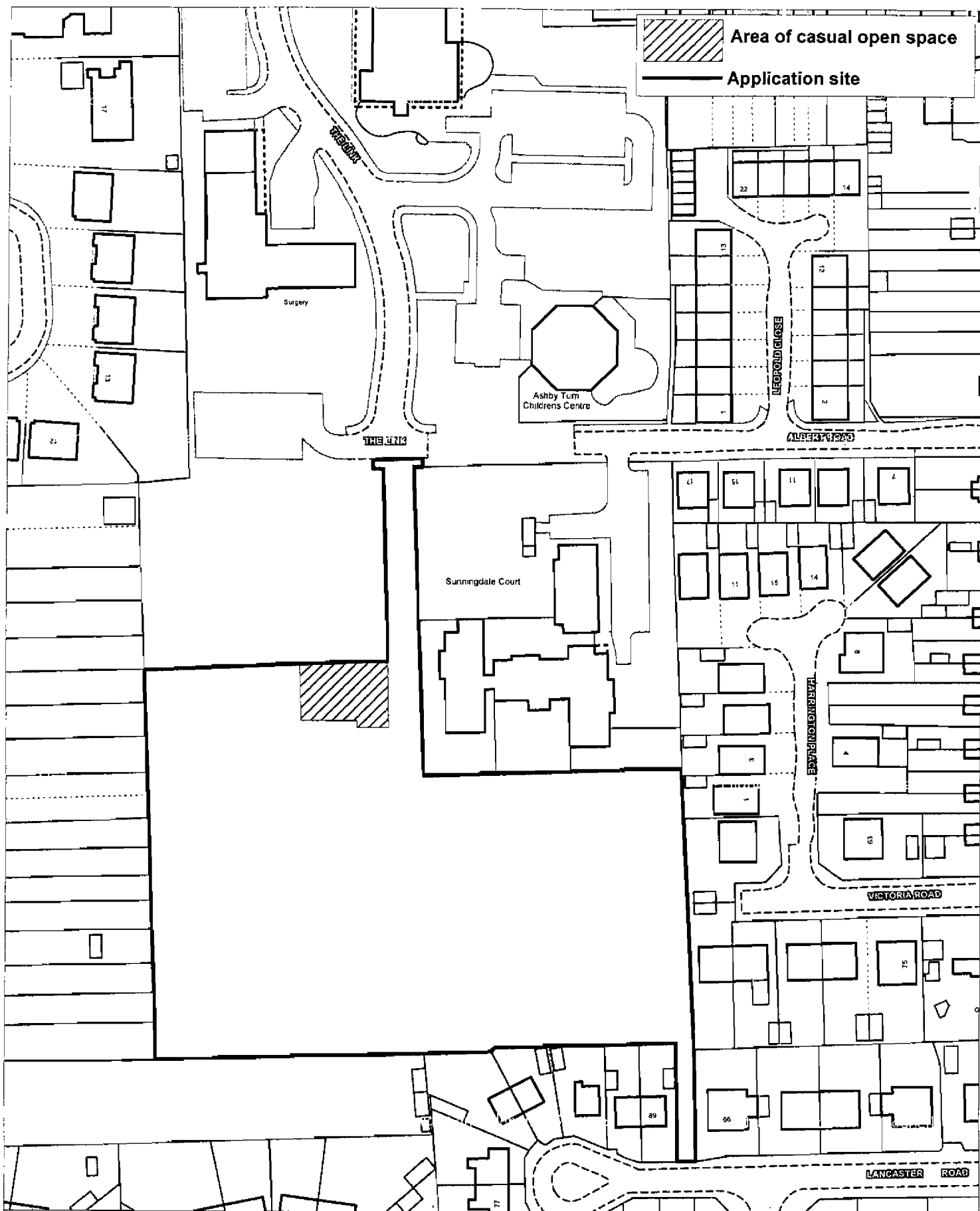
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### **WARNING**

1. This is a **PLANNING PERMISSION ONLY**. It does NOT convey any approval or consent required under any enactment, byelaw, order or regulation other than those referred to in the heading of this notice. It is **IMPORTANT** that you should read the notes concerning **APPEALS** below.
2. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Planning Inspectorate, in accordance with Section 78 of the Town and Country Planning Act 1990, within six months of the date of this notice. Appeals must be made on a form which is obtainable from The Planning Inspectorate, Room 3/04A, Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN .

The Planning Inspectorate has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Planning Inspectorate is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provision of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.

3. If permission to develop land is refused, or granted subject to conditions, whether by the Local Planning Authority or by the Planning Inspectorate, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the council in whose area the land is situated a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
4. In certain circumstances a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Planning Inspectorate on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.



Drawing Title: 2007/2041 - condition 11

OS Grid Ref: SE89290847

Drawn by: KC

Scale: 1:1,250

Date: 26/03/2008



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Highways and Planning Service

Service Director,  
G Popple

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## 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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