

31 March 2010

CHANGES TO PLANNING REGULATIONS FOR DWELLING HOUSES AND HOUSES IN MULTIPLE OCCUPATION

INTRODUCTION

1. This circular gives guidance on the planning regulations for dwelling houses and houses in multiple occupation, as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010/653) which amends the Town and Country Planning (Use Classes) Order 1987 (the UCO), and The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (SI 2010/654) which amends Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).
2. Both statutory instruments come into effect on 6 April 2010. These changes follow on from the consultation 'Houses in multiple occupation and possible planning responses'.
3. This circular gives general guidance on the new use classes. It is not intended to detail the circumstances in which a use may fall within one of the classes of the Order or where planning permission is required. Given the complexity of different living arrangements and their impacts on neighbourhoods it cannot cover all possible situations that may arise. Where there is any doubt as to whether planning permission is required, advice should be obtained from the local planning authority.

BACKGROUND

4. The UCO sets out classes of uses, changes within which do not require planning permission due to the similarity in their impact on the local amenity. The GPDO adds further flexibility by classifying certain changes between use classes as permitted development which, accordingly, do not require an application for planning permission.
5. Article 3(6) of the UCO provides that certain uses, due to their unique nature, are not within any class of the Order. Such uses are *sui generis* (of their own kind).

THE AMENDED ORDERS

6. SI 2010/653 amends the UCO in relation to residential properties. It effectively splits the old C3: Dwellinghouses class into two classes C3: Dwellinghouses and C4: Houses in multiple occupation.
7. From the 6 April 2010 planning permission will be needed for any material change of use from C3 to C4.
8. The courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the primary use of the land. Each case will always be a matter of fact and degree and require a judgement from the local planning authority in the first instance.
9. SI 2010/654 amends Part 3 of Schedule 2 to the GPDO. It gives permitted development rights for a change of use from C4 houses in multiple occupation to use as a C3 dwellinghouse.
10. SI 2010/653 also restates class C2A for clarity, as some opinions had been expressed that this class applied only to the Crown, when that was not the intention. We are also taking this opportunity to include guidance on the change to class D1 made by SI 2006/1282 for completeness.

GUIDANCE ON THE CLASSES

Class C2A: Secure residential institutions

11. Use 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.
12. The list of institutions falling within the C2A class is not exhaustive. However, the class should include all the various categories of secure facilities in the criminal justice and immigration estates. Two non-Crown uses have been included (secure local authority accommodation and secure hospitals) because they share the land use characteristics and impacts of some of the Crown uses. The list contains two types of institution: the first type is those uses already described, where security is concerned with preventing the residents from leaving. The second type is military barracks, where security is concerned with preventing unauthorised entry, but where the planning impacts are similar to some of the other uses in the list. For example, it might be possible to convert a disused military barracks to a low-category prison without major perimeter works.
13. 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.

Reclassification of use as a result of the amended UCO

14. After the amended UCO comes into effect, uses that previously fell into the former C3: Dwellinghouses use class will fall into one of the new C3 or C4 use classes. Reclassification of a use does not amount to development within the meaning of the Town and Country Planning Act 1990.
15. The following paragraphs, 16–34, replace paragraphs 66–77 of the ODPM circular 03/2005, Changes of use of buildings and land.

Class C3: Dwellinghouses

16. This class is now 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 (HMO).
17. For the purposes of C3(b) and (c) single household is not defined in the legislation.
18. 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 6 people.
19. A single household under C3(a) is formed by a family (a couple whether married or not, persons related to one other 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.
20. C3(b) continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems.
21. 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, 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.
22. C3(c) allows for groups of people (up to 6) living together as a single household. This is to allow for those groupings that do not fall within the C4 HMO definition but which fell within the former C3 use class to be provided for ie a small religious community may fall into this section as could a homeowner who is living with a lodger.
23. The term ‘dwelling house’ is not defined in this part of the UCO. The question of whether a particular building is a dwelling house will therefore depend on the facts of that case.

24. The common feature of all premises which can generally be described as dwelling houses 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, homes and dwelling houses. Whilst such premises may not be regarded as dwelling houses in the traditional sense, they may be so classified for the purposes of the UCO.
25. 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 dwelling house 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 dwelling house
26. 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 HMO.

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

27. The new C4 class covers small shared dwelling houses occupied by between 3 and 6 unrelated individuals who share basic amenities.
28. Small bed-sits will be classified as C4.
29. To fall within the HMO 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.
30. 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*.
31. Properties containing the owner and up to two lodgers do not constitute HMOs for these purposes.
32. To classify as a HMO a property does not need to be converted or adapted in any way.

Large houses in multiple occupation

33. Large HMOs - those with more than 6 people sharing – are unclassified by the UCO.

34. Although the control limit of 6 persons defines the scope of the C3 dwellinghouses and C4 HMO 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.

Class D1: Non-Residential Institutions

35. 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.

MANPOWER AND FINANCIAL CONSIDERATIONS

36. The changes to the Orders are not expected to have significant expenditure or manpower implications for local authorities. An Impact Assessment relating to these changes can be found at: <http://www.communities.gov.uk/publications/planningandbuilding/hmoimpactassessment>.

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