Houses in multiple occupation & the Use Classes Order

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Author: Wendy Wilson
Section Social Policy Section

From 6 April 2010 changes implemented by *The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010* meant that, in certain circumstances, a landlord wishing to let out a property as a house in multiple occupation (HMO) may have needed to seek planning permission before doing so. The changes introduced by the Order were not retrospective and did not affect existing HMOs.

The 2010 Order was made in response to concerns around the impact of concentrations of HMOs in certain areas in terms of anti-social behaviour, crime, parking and pressure on facilities. Concentrations of student housing have been identified as a particular issue but the problems associated with high numbers of HMOs also arise in coastal towns because of the plentiful supply of rented accommodation in these areas.

Private landlords' organisations argued that the need to seek planning permission could reduce the supply of private rented accommodation. Following the change of Government the new Housing Minister, Grant Shapps, announced in June 2010 that further changes would be introduced to allow changes of use between family houses and small, shared houses to take place freely without the need for planning permission. Local authorities would be able to use their existing direction making powers to restrict changes of use by requiring planning applications where they deem it necessary. The relevant statutory instruments, *The Town & Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order* 2010 (2010 No. 2134) and *The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135)* came into force on 1 October 2010.

This note provides background information on the 2010 Orders and explains their impact.

General information on Planning Use Classes can be found in Library note SN/SC/1301, *Planning Use Class Orders.*

General information on authorities' powers to set standards in HMOs within their areas can be found in Library note SN/SP/708, *Houses in multiple occupation.*

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1 Background

In September 2008 Communities and Local Government (CLG) published *Evidence Gathering - Housing in Multiple Occupation and possible planning responses* which reviewed the problems caused by high concentrations of houses in multiple occupation in certain areas, a phenomenon sometimes referred to as "studentification". The paper set out the reasons for commissioning the study:

> Concentrations of HMOs, and the geographical concentration of certain groups residing in them, can lead to substantial changes and problems in the nature of particular locations as the social infrastructure of a neighbourhood can change. The problems associated with houses in multiple occupation and the tensions within local neighbourhoods have been well publicised. Over a number of years Members of Parliament and government ministers have received a high level of correspondence from residents on the problems associated with high concentrations of HMOs , and in particular in relation to areas where there are high concentrations of student housing and population, a term now known as "studentification" .
>
> Such lobbying and the responses to it have received coverage in both the national and local press. These impacts are discussed in more detail in Section 2. However, to summarise they include:
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> - anti-social behaviour, noise and nuisance
> - imbalanced and unsustainable communities
> - negative impacts on the physical environment and streetscape
> - pressures upon parking provision
> - increased crime
> - growth in private rented sector at the expenses of owner-occupation
> - pressure upon local community facilities and

- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

Residents' groups who are members of the National HMO Lobby have put forward the majority of representations made to Government. The National HMO Lobby is an association of some forty community groups in thirty towns across the UK, who are concerned to ameliorate the impact of concentrations of HMOs on their communities. The Lobby *"opposes concentrations of HMOs in general and 'studentification' in particular"*.

Their main aim is to lobby for Government to change legislation. It argues that HMOs must be clearly defined, controlled to limit concentrations by planning and housing legislation, and taxed. Some residents' groups have secured the backing of their MP, which has led to ministerial correspondence, a Private Members' Bill (introduced by Alan Whitehead MP on 22 May 2007) and a Westminster Debate held on 5 June 2007.

A Communities and Local Government Housing Research Summary on dealing with 'Problem' Private Rented Housing has recognised the issue of 'studentification'. This recognition was followed by discussions within Parliament, the National Union of Students and the national HMO Lobby. Further research and guidelines have been developed by Universities UK (UUK) to provide examples of a range of good practice which can be taken forward by Higher Educational Institutions (HEIs) and stakeholders to support the effective management and integration of students into local communities.[1]

Announcing the report Caroline Flint, then Minister for Housing and Planning, said:

> It is not acceptable that current rental practices allow unplanned student enclaves to evolve to such an extent that local communities are left living as ghost towns following the summer student exodus.
>
> Today's report has identified a series of proven steps councils and universities can take to reduce the dramatic effects of 'studentification' where Houses of Multiple Occupation (HMOs) cluster too closely together.
>
> I also want to consider further how the planning proposals might help councils change term time only towns into properly planned towns that blend the student populations into well mixed neighbourhoods that are alive all year round.[2]

The question of whether planning controls could play a role in controlling the growth of HMOs in certain areas was considered in response to a PQ March 2009:

> **Mr. Ellwood:** To ask the Secretary of State for Communities and Local Government what powers local authorities have in relation to the development of houses in multiple occupation in areas identified as tourist destinations.
>
> **Mr. Iain Wright:** There are no planning powers conferred on local authorities specifically in relation to the development of houses in multiple occupation in areas identified as tourist destinations. But local authorities may make use of their general planning powers in such areas.
>
> The Town and Country Planning (Use Classes) Order 1987 (as amended) is intended to be a deregulatory mechanism which removes the need for planning permission between certain specified uses by grouping into classes land uses which have similar

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1 CLG, *Evidence Gathering - Housing in Multiple Occupation and possible planning responses*, 2008

2 CLG Press Release, *New report tackles neighbourhood studentification problem*, 26 September 2008

> implications for local amenity. The Use Classes Order defines dwelling houses under the C3 use class as houses used by a single person, any number of persons living together as a family, or by no more than six people living together as a single household.
>
> HMOs do not fall within any of the specified use classes, and therefore are "sui generis" (in a class of its own) in terms of use. Planning permission is needed for a change of use to or from a sui generis use. Therefore, planning permission would be needed for a proposed change of use from a private dwelling to a HMO, or if such is deemed to have occurred.
>
> The current definition of a dwelling house implies that up to six people living together as a single household should not, prima facie, be considered as a HMO. However local planning authorities may determine individual cases on the basis of "fact and degree" and may decide that a dwelling with fewer than six people living together other than as a single household constitutes a HMO.
>
> In addition, local authorities have powers under the Housing Act 2004 to licence certain HMOs. These measures concern the condition and management of these properties and, again, are not specifically related to areas identified as tourist destinations.[3]

Subsequently in May 2009 CLG published a consultation document, *Houses in multiple occupation and possible planning responses*. In this document CLG sought views on three options for addressing the impact of high concentrations of HMOs:

- Option one is a non-legislative option which would involve local management solutions.
- Option two would involve amendments to the Use Classes Order to allow tighter planning controls over HMOs.
- Option three would involve the use of an article 4 direction to remove powers for properties to convert to HMOs.[4]

The consultation period closed on 7 August 2009 and in January 2010 the Labour Government announced its intention to implement option two to amend the *Town and Country Planning (Use Classes) Order 1987*:

> In the light of the responses to this consultation I have decided to amend the Town and Country Planning (Use Classes) Order 1987, as amended, to provide for a specific definition of an HMO. Planning permission will then be required, where a material change of use occurs, to change the use of a property from C3 dwelling house to an HMO.
>
> At the same time as amending the Use Classes Order, I will amend the Town and Country Planning (General Permitted Development) Order 1995, as amended, to provide that a change from an HMO back to the C3 class dwelling house will not require planning permission.
>
> The consultation responses and research work have indicated that good practice alone cannot solve the problems encountered in a number of communities. This measure is strongly supported by responses to the consultation and it will enable local planning authorities to identify new HMOs with more certainty and act in particular neighbourhoods where there is concern about the mix and balance of communities and

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3 HC Deb 23 March 2009 cc72-3W

4 CLG, *Houses in multiple occupation and possible planning responses,* 13 May 2009

> concerns about standards of conversion and maintenance of properties, to improve community balance.
>
> I intend to introduce the necessary secondary legislation in time for it to come into force on 6 April 2010.[5]

A summary of responses to the consultation process was also published on 27 January 2010.[6]

The then Government explained the timetable for implementation on 2 March 2010:

> **Mr. Stewart Jackson**: To ask the Secretary of State for Communities and Local Government what the planned timetable is for introduction of secondary legislation to require houses in multiple occupation to have planning permission.
>
> **Mr. Ian Austin**: We are aiming to make the Order amending the Town and Country Planning (Use Classes) Order 1987, which will create the HMO use class, by 8 March 2010. This order does not need to be laid before Parliament.
>
> We are also aiming to make the Order amending the Town and Country Planning (General Permitted Development) Order 1995, which will make a change from a HMO to a C3 dwelling house permitted development, by 8 March and lay it before Parliament by 15 March 2010. Both amendments will come into effect on 6 April 2010.[7]

2 The new Use Classes Order (April 2010)

The planning system takes account of three different types of activity – development for which full (or express) planning consent is required; development covered by permitted development rights; activities that do not come within the definition of development and do not require planning consent at all. Change of use comes within the definition of development, apart from changes within a use class. Changes of use between certain particular use classes are covered by permitted development rights. Other changes of use require express planning consent.

The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 653) was made on 8 March 2010 and came into force on 6 April.

The main effect of the new Use Classes Order was to amend Class C3. This is the Class before the new Order came into force:

> **Dwellinghouses**
>
> Class C3 Use as a dwellinghouse (whether or not as a sole or main residence)-
>
> (a) by a single person or by people living together as a family, or
>
> (b) by not more than six residents living together as a single household (including a household where care is provided for residents).

The new Use Classes:

> **Class C3. Dwellinghouses**

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5 HC Deb 27 January 2010 c55WS
6 CLG, *Houses in multiple occupation and possible planning responses: summary of responses*, January 2010
7 HC Deb 2 March 2010 cc1151-2W

> Use as a dwellinghouse (whether or not as a sole or main residence) by—
>
> (a) a single person or by people to be regarded as forming a single household;
>
> (b) not more than six residents living together as a single household where care is provided for residents; or
>
> (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).
>
> **Interpretation of Class C3**
>
> For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004."
>
> **Class C4. Houses in multiple occupation**
>
> Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".
>
> **Interpretation of Class C4**
>
> For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004."

CLG published guidance on the changes in the form of Circular 05/10 on 1 April 2010, *Circular 05/10: Changes to Planning Regulations for Dwelling Houses and Houses in Multiple Occupation.*

3 The Permitted Development Rights Order (April 2010)

The PQ of 2 March 2010[8] (see above) made it clear that a move from an HMO to a dwelling house was covered by permitted development rights, i.e. this change did not require a planning application. However, a move from a dwelling house to an HMO was not covered by permitted development rights and may have required a planning application.

4 The impact on private landlords

4.1 What did the Order mean?

The Residential Landlords Association's website stated:

> After April 6th 2010 if you want to rent a house to three unrelated people such as nurses sharing, a family with a lodger, students, young professionals, immigrant workers and even the elderly, you will need planning permission.
>
> Popularly called Studentification - these new powers will affect any rented property not rented by a family or related group.[9]

Between 6 April 2010 and 1 October 2010 if someone bought a residential dwelling house (e.g. a family home) with the intention of converting it and renting it out as a property which

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8 HC Deb 2 March 2010 cc1151-2W

9 RLA, "Planning use class order is bad for landlords and the private rented sector – urgent action is required", 10 June 2010

brought it within the definition of an HMO set out in section 254 of the *2004 Housing Act,*[10] there was an additional requirement of seeking planning permission for this "material change of use." There was a possibility of planning permission being refused – thus it may not have been as straightforward for prospective private landlords to buy properties and let them to groups of people who did not form a single household. There were additional administrative costs and fees for landlords associated with seeking planning permission.

However, planning applications have to be determined in accordance with the development plan "unless material considerations indicate otherwise".[11] Local planning authorities may have policies in their local development frameworks to justify limiting the number of HMOs in particular areas. For such policies to be incorporated in the local development framework, they would have to be approved by the Secretary of State after a recommendation by a planning inspector at an independent examination. In other words, it was not simply a question of a local planning authority stating that they did not want more HMOs in some areas.

If the local planning authority did not have such a policy in the local development framework, but still wanted to reject an application for conversion to an HMO, they would have had to justify the decision in terms of material considerations. Otherwise they would risk being overturned on appeal.

CLG published an impact assessment on the changes in March 2010. This assessment and CLG's January 2010 paper made it clear that the change did not apply retrospectively – thus it was not necessary for landlords who were already letting out an HMO to seek planning permission. It applied to landlords who sought to establish a new HMO within the terms of the new definition; CLG advised that landlords "will need to seek advice from the Local Planning Authority on whether a material change of use will occur and thus whether a planning application will therefore be required."[12] The impact assessment stated:

> Therefore, as a general rule, planning permission will be needed before a dwelling house can undergo a material change of use to a HMO. However, this will depend upon the circumstances of each particular case and it is possible for a dwelling house which was occupied by a family to then be occupied by a group of up to 6 individuals living as a single household without the need for planning permission.
>
> This policy change will increase the number of new HMOs which require planning permission allowing local planning authorities the opportunity to consider the impacts of such proposals. Where there are problems associated with a concentration of HMOs in a particular area local authorities will be able to adopt local policies to support mixed communities by controlling the density and spread of this type of housing. Planning applications will be assessed against these local policies allowing local authorities greater control over HMOs. By avoiding over concentrations of HMOs local authorities will be able to avoid the problems often associated with them - noise, litter, anti-social behaviour, lack of use of community facilities. It will be for individual local planning authorities to consider the balance of costs and benefits in their particular area in deciding whether to have local policies or not.[13]

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10 In broad terms, an HMO exists where tenanted living accommodation is occupied by persons as their only or main residence and those persons are not related and share one or more basic amenities.

11 *Planning and Compulsory Purchase Act 2004* s.38(6)

12 CLG, *Introducing an definition of HMO into the Use Classes Order: Impact Assessment*, March 2010

13 *ibid*

4.2 Impact on the supply of private rented accommodation

The summary of responses to the consultation process published on 27 January 2010 covered the question of whether a change to the Use Classes Order would be likely to reduce the supply of HMO accommodation:

> ***Question 10:***
>
> ***Would a change to the Use Classes Order reduce the supply of HMO accommodation in your area?***
>
> 3.24 Around 12 per cent of all respondents answered this question. The opinion of those answering was relatively evenly split between the main choices. Some 40 per cent of question respondents felt that a change to the UCO would reduce the supply of HMO accommodation in their areas, whilst 45 per cent felt that a change in the UCO would not reduce the supply.
>
> 3.25 Specific points raised by respondents included:
>
> - uncertain impact on current supplies, with a perception that a UCO change could negatively impact future supply
> - the main factor that would reduce current supply would be if any change applied retrospectively
> - moving forwards, landlord investors might be deterred or only make purchases where there is greater certainty that HMO status can be achieved. There would be a general increase in costs to landlords which might discourage supply
> - might enable local authorities to better regulate the supply and manage the stock to disperse supply where appropriate. This would remove ambiguity and make living conditions better overall.[14]

The CLG March 2010 impact assessment set out the monetised and non-monetised costs of the changes contained in the Order:

> Description and scale of **key monetised costs** by 'main affected groups'
>
> - We have estimated that there may be an average additional 8,500 planning applications pa. Of these we estimate that 4.6% pa will give rise to appeals.
> - Costs to applicant and fees for application for planning permission.
> - Costs to appellants for appeals arising from refused/ not determined applications
> - Costs to local planning authorities from increased number of appeals arising from refused/not determined applications.
> - Costs to the Planning Inspectorate from increased number of appeals arising from refused/not determined applications
> - No transitional costs as relies on existing planning system.
> - The changes would not be retrospective.

[14] CLG, *Houses in multiple occupation and possible planning responses: summary of responses*, January 2010

> Other **key non-monetised costs** by 'main affected groups' May result in a reduced number of HMOs coming into the housing market. Possible higher rents paid by occupants of HMOs if there is a reduction in supply. There may also be additional costs to local planning authorities from an increase in enforcement action however it has not been possible to quantify this.[15]

CLG rejected the proposition that increased costs for landlords would lead to a reduction in the supply of HMOs:

> Respondents to the consultation did not provide any evidence in support of the suggestion that increased costs would tend to reduce supply. In any case the additional cost is relatively low when compared to the potential rental income (landlords could expect to receive anywhere between £800 and £3,200 per month for a 4 bed property depending on location) and as such is unlikely to result in a significant number of landlords choosing not to enter the HMO market. And local authorities will still have a duty to meet the housing needs of these groups[16] and therefore are unlikely to seek to curb overall numbers of HMOs. We have therefore assumed for the purposes of this assessment that any impact on supply is unlikely to be significant.[17]

4.3 The Rugg Review

Landlords' groups pointed to findings in the Labour Government commissioned review of the private rented sector carried out by Julie Rugg and David Rhodes (October 2008), to support their case against changes to the Use Classes Order. Rugg and Rhodes said:

> However, census data demonstrate that intensive student habitation is not common: there are more than 8,000 wards in England, and of these just 59 had student densities where a student household reference person comprised ten per cent or more of all household reference persons in the ward.
>
> Despite the low incidence of this problem, lobbyists seek a change to the Use Classes Order, which would allow local authorities to effect tighter control of HMO numbers and so limit student housing numbers in a given area. However, it could be argued that many of the 'housing' problems being described are in fact policing issues.[18]

The summary of responses published by CLG in January 2010 indicated that the concentration of HMOs in certain areas may be more common than suggested by Rugg & Rhodes:

> Just under 40 respondents offered some quantitative evidence relating to HMOs, most particularly the concentrations of HMOs in various cities. These ranged from 10 per cent of all households being occupied by students in Liverpool, according to a 2007 City Council survey, to 90-95 per cent of stock being student-occupied in Jesmond, Newcastle. Various statistics were offered for Nottingham (Lenton 39.5% student occupation, Dunkirk 41%), Leeds (possibly 90% student occupation in some streets), Southampton, York, Bath, Birmingham and Manchester. **Nearly all statistical information offered concerned the high concentration of students in some roads/neighbourhoods. In addition, statistical evidence was offered to suggest that the concentration of students at a finer level of analysis is higher than the Rugg Report might suggest.**[19]

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15 CLG, *Introducing an definition of HMO into the Use Classes Order: Impact Assessment*, March 2010
16 The unemployed, students, migrants etc
17 CLG, , *Introducing an definition of HMO into the Use Classes Order: Impact Assessment*, March 2010
18 Rugg & Rhodes, *The Private Rented Sector: its contribution and potential,* October 2008
19 CLG, *Houses in multiple occupation and possible planning responses: summary of responses*, January 2010

CLG committed to ongoing monitoring and a specific review of the change three years after implementation.

5 Coalition Government – further amendments (October 2010)

On 17 June 2010 the new Housing Minister, Grant Shapps, announced his intention to further amend the planning rules in relation to HMOs:

> The Minister for Housing and Local Government (The Rt Hon Grant Shapps): Today I am announcing the Government's intention to amend the planning rules for houses in multiple occupation (HMOs) which were introduced on 6 April 2010.
>
> I understand the concerns of local people who see their neighbourhoods being damaged by undue concentrations of HMOs and the significant impact this is having on their quality of life. However there are also many areas where HMOs are not causing problems and indeed provide an important supply of low cost housing. I believe that the planning system needs to take account of both these differing circumstances and allow for local solutions rather than continue with the present 'one size fits all' approach.
>
> The current rules impose a blanket requirement for planning permission in order to change use from a domestic house to a HMO. When introduced, it was estimated that these rules could result in an additional 8,500 planning applications per year and could lead to a reduction in supply. This goes against the recommendations in successive reports on the planning system that Government should reduce the number of planning applications for minor development. It also runs the risk of losing low cost housing in areas where it is needed most.
>
> I believe that we need to move away from this kind of centralised, regulatory approach which has dominated planning in recent years and create a system which encourages local people to take responsibility for shaping their communities. Decisions should reflect local priorities expressed through the local plan, rather than nationally imposed rules.
>
> I therefore intend to amend the HMO rules to allow changes of use between family houses and small, shared houses to take place freely without the need for planning applications. However, in those areas experiencing problems with uncontrolled HMO development, local authorities will be able to use their existing direction making powers to restrict this freedom of movement by requiring planning applications. This change will allow the free development of smaller shared housing, which is a vital component of our private rented sector, unless there is a serious threat to the area.
>
> My officials will work through the detail of the proposed changes with interested partners to ensure that the new rules work for local people without placing an unnecessary burden on businesses.
>
> My aim is to have the revised arrangements in place by 1 October 2010[20]

The relevant statutory instruments, *The Town & Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order* 2010 (2010 No. 2134) and *The Town and Country Planning (Compensation) (No. 3) (England) Regulations 2010 (2010 No. 2135)* came into force on 1 October 2010.

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[20] HC Deb 17 June 2010 c55WS

A letter explaining the amendments was sent to all Chief Planning Officers on 7 September 2010.[21] A press notice also issued on 7 September summarised the key changes:

> The definition of a small HMO (the C4 use class) will remain and permitted development rights will be extended to allow all changes between the C4 and C3 classes without the need for planning applications. In areas where there is a need to control HMO development, local authorities will be able to use an Article 4 direction to remove these permitted development rights and require planning applications for such changes of use.
>
> 3. These proposals will mean that any change of use between dwelling houses and small HMOs will be able to happen without planning permission unless the local council believes there is problem with such development in a particular area. In these areas they will be able to use article 4 powers to require planning permission.[22]

Updated guidance was published by CLG in November 2010 in the form of Circular 08/10: *Circular 08/10: Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation.*

6 CLG Select Committee inquiry 2013-14

The Communities and Local Government Select Committee considered the issue of high concentrations of HMOs as part of its inquiry into *The Private Rented Sector*. The Committee concluded that controlling the spread of HMOs should be a "matter for local determination" and supported the continued use of Article 4 directions by councils to remove permitted development rights allowing a change of use to an HMO.[23] The Government agreed with the Committee's recommendation.[24]

The Committee thought that it should not be left to local authorities to address the consequences of high concentrations of students and recommended close working between universities and student groups "to ensure there is sufficient housing in appropriate areas and that students act as responsible householders and members of the community."[25] The Government, in response, said that universities already work with local authorities but gave a commitment to "encourage this to continue in the future."[26]

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21 Letter to Chief Planning Officers: Amendments to the planning rules for houses in multiple occupation, 7 September 2010

22 CLG, Press Release, 7 September 2010

23 HC 50, First Report of 2013-14, *The Private Rented Sector*, 18 July 2013, para 63

24 Cm 8730, October 2013

25 HC 50, First Report of 2013-14, *The Private Rented Sector*, 18 July 2013, para 64

26 Cm 8730, October 2013