

CHANGES TO PLANNING USE LAW AFFECTING PRIVATE RENTED SECTOR LETTINGS

Introduction

Landlords renting out residential properties in the private rented sector may have heard of the changes to the planning use laws, which affect this sector. As a result of a vigorous campaign by lobbies representing local residents in student cities and towns, planning law has been changed so planning permission may be needed in future if you change the use of what has been a single family house or flat (whether owner/occupied or privately rented) to a shared house/flat occupied by an unrelated group of three to six individuals. Shared houses/flats occupied by between three and six unrelated individuals are most affected. This article explores in depth how these changes will impact. The social sector (properties rented out by local authorities, arms length management organisations (ALMOs) and housing associations) will be unaffected by these changes; only private landlords (and in some cases owner/occupiers renting out accommodation in their own homes) renting out in the private rented sector. The changes are not retrospective. The critical date is the 6th April 2010 when the new law is in force. It does not just affect student lettings but will also effect other shared lettings to groups such as young professionals.

When is planning permission needed?

As a general rule planning permission may be necessary not only because you carry out physical work to a property but also if there is a material change of use of a property. When it comes to deciding whether there has been a material change of use you have to look at what is the relevant “planning unit”. For example, a house (whether detached, semi-detached or terraced) will be a planning unit. Each individual self contained flat within a block will be a separate planning unit for these purposes.

Planning use classes

To reduce the number of planning applications needed for insignificant changes of use, planning legislation provides that if you change a use within a use class then this is not treated as development needing planning permission. These different classes are detailed in the Use Classes Order. For example, there is a retail use class, so, if you change the use of a shop from a butchers shop to a gift shop, you will not need planning permission for this change of use. You may, however, need planning permission if it involves any physical change to the exterior of the property. When it comes to residential accommodation there has been a use Class C3 for certain residential properties and it is this which has changed.

Old types of use of residential accommodation

Prior to the 6th April 2010 when dealing with residential accommodation there have been four different categories for planning purposes:-

- A single dwelling –there was one single user class (C3) and this included a dwelling occupied by a single person; a family (with no limit on numbers of people making up the family – family’s not defined under the old law); and up to six unrelated individuals provided they are living as a single household. The new use class alters this last category so that it no longer includes shared houses and flats rented out in the private rented sector to between three and six unrelated individuals.
- A flat – where there is a self contained flat this is a different use for planning purposes. This means that, if a house is divided up into flats, planning permission for this change of use is required. However, the single dwelling rules also apply to any changes of use within the flat. In other words, once the flat (which is its own planning unit) has the planning status of a flat it could under the old rules be used by a single person, a family or by a group of unrelated individuals (up to six) who

are living a single household. Again, under the new use class this last category is altered in the same way as for houses.

- A house in multiple paying occupation or a house in multiple occupation for planning purposes (HMO) – this includes bed sits and may include mixed accommodation where there is a mixture of self contained and non self contained units. The Courts have held that multiple paying use connotes some degree of physical division so the different parts of the property are in separate occupation. It may however also include larger shared houses.
- Hostels – there is no statutory definition of what is a hostel. Hostels are a specific use of their own (what is called a sui generis use) and they are not considered further in this article.

For these purposes it does not matter under the old law whether the accommodation was owner occupied, private rented or social housing.

These are not always clear cut categories. For instance, the position is further complicated because, depending on the circumstances, having seven or eight unrelated individuals living as a single household, in a house or flat, may not have needed planning permission so long as there was no material change of use involved. We look at this issue further below. It should also be noted that there are special rules for small care homes where up to six people live with carers and who are in need of care eg. drug addicts, people with mental illness etc. For planning purposes, these have the status of a single dwelling. The rule changes do not affect them.

Sub-division into flats

There is specific statutory provision that use as two or more single dwellings of a building formerly used as a single dwelling constitutes a material change of use. This provision ensures that where a house is converted into flats planning consent is needed. As building is defined for these purposes to

include part of the building it may include a further subdivision into separate units of a building which has already previously been divided into flats. There have to be separate dwellings for these purposes ie. they have to be self contained units independent of other parts of the property. The fact that people are living separately does not necessarily mean they are living in separate dwellings. Nevertheless, the change of use of a single dwelling house (ie. a house of flat) into one where there is multiple paying occupation may well amount to a “material change of use”, necessitating planning consent.

New use classes for residential accommodation

As already indicated these rules, which have been in force since 1987, are altered and this takes effect from the 6th April 2010. The existing Class C3 is changed. Shared houses or flats occupied by between three and six unrelated individuals living as a single household which are rented out in the private rented sector will no longer be within Class C3. They are taken outside the scope of Class C3 into a new Class C4 where, again, the number of residents is not meant to exceed 6. New Class C4 (covers small houses in multiple occupation HMOs) will include private rented sector shared houses occupied by between three and six individuals who are not members of the same family (or who are not related) and it may also include bedsit accommodation (again so long as there are no more than six residents). Social housing will not be affected and there are certain other exemptions applicable – see below. For these purposes, however, private rented sector includes certain situations where owner/occupiers rent out residential accommodation in their own homes.

These changes are brought about by amending the Use Classes Order and redefining it using the same definitions as apply to houses in multiple occupation under the Housing Act 2004. This is a separate legal code regulating HMOs for housing and environmental health purposes. It must be remembered, however, that even though the same definitions may have been adopted, planning law is a separate code. Even though an HMO may be

licensable under the 2004 Act, the Local Authority must grant a license so long as certain criteria are met. Planning permission is a different matter. It is discretionary and depends on national and local planning policies.

Since the Government has adopted the same definitions as under the 2004 Act this can mean potentially that, if you change the use of what was a single dwelling ie. a house or flat to a privately rented shared house or flat occupied by three or more unrelated individuals, then planning permission may be needed where there is a “material change of use”. It does not matter whether the previous use as a single house/flat before the change was an owner/occupied property, whether it was privately rented or whether it was rented out as social housing. We will come back to issue of what is a material change of use later.

Changes are not backdated

This change is not retrospective. If a house or flat in the private rented sector which is affected is already lived in by between three and six unrelated individuals (living as a single household - using the old definition of household which applied for these purposes before the 6th April 2010) it can continue to be used as such without the need for planning permission. So long as there has been actual user there is no minimum qualifying period. Normally, to avoid planning enforcement action where you have materially changed the use of a property without planning permission, you need to demonstrate 10 years use (or four years if it is a change of use to a single dwelling). The 10 year (or four year) rule does not apply in this situation because it is a result of the law changing. Even if the property is empty as at the 6th April 2010, if its last use was as a privately rented shared house or flat occupied in this way by up to six unrelated individuals (as a single household) then you can resume such a use without applying for planning permission. On the other hand, if as at the 6th April 2010 the use of the house or flat is by a family, couple, single person or two unrelated individuals (or if this was its last use if it is vacant) then you could need planning permission if you want to change the use to a shared house or flat occupied by three or more unrelated

individuals and rented out in the private rented sector. This will be the case if there is a material change of use involved.

A landlord who has purchased a family house intending to rent it out as a shared house to a group will be caught and may need planning permission unless the tenants have actually moved in prior to the 6th April 2010.

Permitted development rights to change from C4 to C3 (but not vice versa)

Alongside these changes to the use classes, automatic planning permission (what is called permitted development rights) is granted if you want to change the use of a private rented shared house or flat from C4 to a single dwelling as defined in C3 but not vice versa. In other words, if after the 6th April 2010 such a house or flat is shared so that it is occupied by a group of between three and six unrelated individuals you can automatically let it to a family (including a couple), a single person, or two unrelated individuals without the need for planning permission. However, if you then wanted to change it back so that instead of being occupied by a family etc, it was again to be privately rented and occupied by three or more unrelated individuals, you could need planning permission.

Landlords are warned not to rent out houses or flats which have an established shared use (within Class C4) to a family or single person or other use within new Class C3. You may not be able to change back subsequently. This could involve loss in the value of the property. The change in planning law could therefore adversely impact on flexibility within the housing market as some landlords let the same properties both to families and to groups of sharers at different times.

Larger shared houses/bedsits

When it comes to larger shared houses (occupied by individuals who are not members of the same family) or bedsits where, in either case, the number of

residents exceeds six, the same rules as applied before the 6th April 2010 will continue to be applicable. This applies to all tenures whether owner/occupied, private rented or social housing. These will still be treated as a house in multiple paying occupation. Thus, if you change the use of what has been a single dwelling to a shared house or a house consisting of bedsits in either case occupied by more than six, planning permission may well still be required. There could be particular issues, however, as before where there are, say, seven or eight unrelated individuals involved as a change of use may not occur in this situation. We will look at this particular issue further when looking at the question of what amounts to a material change of use.

Owner/Occupiers

Under this new scheme, there is a special rule which applies to owner/occupiers. Owner/occupiers (whether freeholders or long leaseholders ie. at least 21 years were granted originally) can have up to two unrelated individuals (eg, lodgers) living with them without the need to obtain planning permission. The property is exempt from being a house in multiple occupation in this case. If they have between three and six unrelated individuals living with them then planning permission would be needed if rent is paid and there is a material change of use involved. Likewise if the number exceeds six. Unrelated individuals mean individuals who are not members of the same family or who are not relatives (as defined in the 2004 Act).

Members of their family and no more than two unrelated persons are disregarded. As well as ignoring family members and up to two unrelated individuals you also disregard any domestic help, nannies, carers etc who live in the property with the owner/occupier. Where there are three or more unrelated individuals living with the owner/occupier (other than domestic help etc) the property will be affected potentially if rented out, if there is a material change of use.

Impact on smaller shared houses/flats

These changes are directed at the smaller shared house (or flat) occupied by between three and six unrelated individuals ie. individuals who are not members of the same family and which are privately rented. It does not matter whether they are treated as a single household or not for these purposes, applying the old definition of “single household” which was applied prior to the 6th April 2010. At the heart of this change is the situation where you have a house or flat in the private rented sector which is occupied by between three and six individuals who are not related and who share amenities in the house ie. one or more of the following, namely kitchen, bathroom (or shower) and wc. Essentially, the new regime applies to a change of use so that it starts to be used as a smaller shared house (or flat). Primarily, it will apply to shared houses/flats occupied by young professionals, working people, students, nurses, migrant workers and asylum seekers and so on. As already indicated, the changes impact on lettings in the private rented sector, although they may apply to owner/occupiers who rent out accommodation in their own homes as we have already seen.

New Definition of Class C3

The new definition of Class C3 is as follows:-

“Class C3 Dwellinghouses

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(a).”

When one compares the new wording with the old, the reference to “family” is replaced by reference to a “single household”, which is then defined in accordance with the 2004 Act. Effectively, for the future, this equates “household” to “family/relatives” rather than the old definition of household which could include individuals who were not related. This new definition means couples (whether married or not) and same sex partners and defined relatives. We look at this in more detail below. A more significant change is that, whilst the reference to six unrelated individuals living as a household (where care is provided) is retained there is an exclusion. The effect of this is that where more than three individuals would constitute an HMO for 2004 Act purposes, they are then excluded from the scope of the new Class C3. It should be noted that single household is defined in terms of the 2004 Act definition in Section 258 of that Act (ie, it equals effectively a family/relatives) whereas new Class C4, which is the basis of the exclusion from new Class C3, is defined more broadly in terms of a house in multiple occupation. This means that if you do not fall within Class C4 (eg. because no rent is paid) you can only specifically be within Class C3 so long as you are members of the same family/related. This begs the question regarding the situation of two unrelated individuals who share a house or flat. This cannot be within Class C4 (because properties only occupied by two separate households are excluded from being houses in multiple occupation) but it does not, strictly speaking, satisfy the requirements of any of the categories within new Class C3! The reality is that this may be immaterial because there is unlikely to be a material change of use involved.

New Class C4

The new Class C4 reads as follows:-

“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.”

A converted block of flats within section 257 is a block of flats which has been converted but which does not comply with modern building regulations. This is a reference to the block as a whole as they are treated differently for planning purposes. Purpose built blocks of flats as a whole cannot in any case be houses in multiple occupation. Individual flats within any block of flats (whether purpose built or converted) are separate planning units, and it is the use within the individual flat which has to be looked at in the same way as a house.

It will be noted that there is some inconsistency between Class C3 and Class C4. This is because the opening words of new Class C3 referred to use whether or not as a sole or main residence. To be within Class C4, the property has to be the sole or main residence of all of the residents, or it is treated as such for the purposes of the legislation. Thus, six unrelated individuals who would otherwise fall within the new Class C4 will still be within Class C3 where they live together but at least one of them has his/her main residence elsewhere. This would only be relevant where the part time resident was not within those categories who are treated as if the property was their main residence ie. students, those living in a refuge, asylum seekers or migrant/seasonal workers.

What is a house in multiple occupation?

The definition of a house in multiple occupation (HMO) is complex and it needs to be unravelled.

For these purposes an HMO is a dwelling house (ie. a house or an individual flat) which is:-

- Not occupied by members of the same family or relatives (see below)
- Is the only or main residence of all of the persons residing there or treated as such – see below (visitors or casual overnight stays are ignored).
- Such residential use is the only use to which the property is put (eg. there is no mixed residential or commercial use).
- Rent (or some other consideration) is paid by at least one resident.
- Two or more households share one or more basic amenities ie. kitchen/cooking facilities, bath/shower or a wc (or one of these amenities is lacking altogether). One person can be a household. Not everybody need share one of these amenities. So long as more than one household share one of them, then the definition is satisfied.
- The property is not exempt from being an HMO for these purposes (see schedule 14 to the 2004 Act). The exemptions are outlined below but in reality this means that we are talking about private rented sector lets.

Alternatively, the property can be a converted building – see below.

Members of the same family/relatives

Individuals are members of the same family if they married, a couple living together or same sex partner or if they are relatives (of one or other of a married or unmarried couple or a partner as applicable). “Relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin. Relationships of half blood and step children are included.

Residents

Full time students in higher or further education, those living in a refuge, migrant and seasonal workers and asylum seekers are treated as if the property was their only or main residence.

Converted Buildings

As already indicated, this definition is modelled on the Housing Act 2004. Under that Act the HMO definition also includes what is called a converted building. In this regard a converted building is a dwelling house when one or more units have been created since the dwelling house was originally constructed. It has to include at least one non self contained unit (with or without there being self contained flats as well). A non self contained unit is one where at least one of the three basic amenities is outside the unit ie. bath (or shower), washing facilities or kitchen/cooking facilities. A converted building is an HMO where the residents of the property are not all members of the same family; the property must be their only or main residence; this must be the only use of the property and rent (or other consideration must be paid by the residents). It must not be exempt from being an HMO. The same provisions for interpreting who is a member of the family and what is their only or main residence apply as mentioned above. Small bedsit houses (where there are no more than six residents) fall within Class C4. The conversion must contain non self contained units (there may also be self contained flats) ie. where not every unit has the exclusive use of the three basic amenities. Under the 2004 Act a flat is defined as a self contained unit with all of its own basic amenities, effectively behind its own front door.

HMO Declarations

Under the 2004 Act there is power to make what is called an HMO declaration. This applies to mixed use of accommodation, such as a guest house which has both permanent and non permanent residents. This is unlikely to be relevant, however, in this context because such use is likely to be a different use for planning purposes anyway.

Exemptions

As already noted, the new planning use regime essentially focuses on the private rented sector. Effectively, various bodies are excluded so that if they

own/control residential accommodation they are unaffected. These comprise any of the following, namely buildings controlled or managed by public sector bodies which include local housing authorities, registered social landlords (housing associations), police authorities, fire rescue authorities or health service bodies. Also exempt are buildings regulated under some other legislation eg. registered care homes. Buildings occupied by full time students undertaking further or higher education at universities or colleges where the university or college itself has control of the building (so long as they have signed up to a designated code of practice) are excluded. This does not apply to private rented accommodation occupied by students. Likewise, it is not applicable to buildings occupied by religious communities.

Any building which is occupied only by two persons who are not members of the same family/not related are also not covered by new legislation because the property is exempt from being a house in multiple occupation for these purposes.

Social Housing etc exempt - effect of the exemptions

In the light of exemptions, what is the position, therefore, for example, if a housing association or a local authority converts what is a single dwelling into a shared house occupied by a group of students or young people. This is still within the new version of Class C3 so the housing association/local authority would not require planning permission (unlike a private landlord).

Material change of use

Throughout it has been stressed that planning permission is only needed where there is a “material change of use” involved. At present, we have little guidance from existing case law as to what will and what will not be treated as a material change of use for these purposes. The current case law (and there is not much of it) is in any case very much based on the old definition under Class C3 which no longer applies after the 6th April 2010.

What then is a material change of use? This is a question of fact and degree dependent on the particular circumstances of the premises in question. One has to look at the relationship between the occupiers and also the external impact of their use of the premises because planning is all about land use. The terms of any local planning policies may also be relevant. In particular, if the use of the premises generates noise, significant comings and goings, extra car parking or an untidy external appearance (eg. gardens) then this may be suggestive of a material change of use. Different considerations may apply in the case of houses than flats. Changing the way in which an individual flat in a block is occupied may be of less external impact than where it relates to an ordinary house in a street.

When it comes to the relationship of the occupiers, you have to look at a number of factors. This includes how well they know each other eg. are they friends. Whether or not the individuals within the group fluctuate and, if so, how often. You also look at issues regarding whether or not there is a single tenancy agreement for the property. You look at how the group was put together. For example, was it put together by the landlord or did the tenants themselves jointly approach the landlord? This traditional definition of a single household (although no longer relevant for interpreting new Class C3 or C4) could well still be relevant in determining whether or not there has been a material change of use.

In theory, all that a use class does is to determine when you do not need planning permission. Changes of use which fall within the same use class are exempted from being development so planning permission is not required. In practice, however, normally where you move from one use class to another this is usually being regarded as a material change of use. We will have to wait and see what view of this is taken by the planning inspectorate and the Courts in this case.

It should be noted that intensification of use ie. more people residing in a property can be a material change of use. However, it is all a question of fact

and degree when there are sufficient extra people living in the property for there to be a material change of use for planning purposes.

There are few deciding cases and in any case it is likely that the planning inspectorate and the Courts will have to revisit this whole question in the light of the new legislation – we look at this below.

Shared houses lived in by seven or eight residents

What about shared houses lived in by seven or eight unrelated individuals? This assumes that under the old rules the premises were regarded as being occupied by seven or eight individuals as a single household (using the definition referred to in the last section) who approached the landlord. In effect, this would mean that there will be a single letting of the property as a whole to the group of friends etc who knew each other and who approached the landlord (rather than the landlord finding individual tenants). There would also be minimal impact on the neighbourhood as a result of their occupation of the property. Despite the rule change, if the property has been used in this way for at least 10 years without any enforcement action being taken then it will be immune from enforcement action and this use will be lawful. On the other hand, if there has been less than 10 years use, there is an argument that there has been no material change of use but this may be challenged by the local planning authority. There will be a further problem if the number of occupants has increased over time. For instance, it may have been lived in for the last five years by six residents but in subsequent years an additional one or two more tenants may have been introduced by the landlord. Again, the local planning authority may well contend that there has been a material change of use. Whilst the applicable legal principles have been established under the old regime, what will happen in this situation under the new is a matter of some conjecture.

Case Law

The first relevant case was in 1986 prior to the introduction of the now superseded Class C3. Here the planning inspector held that two terraced houses in Oxford each occupied by four students (who were placed there by their college) constituted material changes of use (20 and 47 Oatlands Road, Oxford (Appeal Reference 85/1880-82-P6 and 1831/P6)). In another case a planning inspector decided that where there were nine occupants, this amounted to a material change of use (8 Arthur Street, The Arboretum, Nottingham (Appeal Reference 97/285289/P6)).

On the other hand the Planning Inspector decided that a large terraced house in Leeds, formerly occupied by a single man, was not the subject of a material change of use where the house was now occupied by eight students. He regarded them as being a single household. They had all signed the same tenancy agreement and had taken the house as a group of friends who already knew each other. They did not impact adversely on the neighbourhood (17 Ash Grove, Leeds LS6 8BG (Appeal Reference APP/N4720C/O1/1071001)). In this case the Planning Inspectorate considered the Waltham Forest case (see below) and decided that had the Enforcement Notice been worded in a different way so as to have alleged a change from use as a dwelling house occupied by one person to a use as a dwelling house occupied by eight persons, he would have found, as a matter of fact and degree, that there had been no material change in the essential character of the use – this is the most favourable case for landlords.

The opposite view was taken, in another case in Leeds where two groups of seven students had taken a house in two successive years. They had also signed a joint tenancy agreement and knew each other beforehand. However, there was very considerable evidence of noise, disruption and bad behaviour on the part of one of these groups in particular. As a result of the adverse impact on the neighbourhood the planning inspector held that there had been a material change of use (65 St Michael's Lane, Headingley, Leeds LS6). The main difference between these two cases in Leeds was the

behaviour of the occupiers. There was no real difference as regards their relationship with each other in the way in which they occupied the property, other than their conduct so far as outsiders was concerned.

Another case in Southampton concerned a house occupied by eight students, each of whom had their own study bedroom with a lock on its door. There was a shared kitchen and sitting room. They had all signed a single tenancy agreement and most of them had known each other before they moved in. The main issue concerned the difference between eight rather than six people referred to in the former Class C3 use class. Before that use had started the house had been occupied by a couple who had let rooms to up to five other people. The Inspector held that occupation by eight students was not materially different from that which resulted from occupation by six (48 Alma Road, Portswood, Southampton (Appeal Reference 98/1010352)). It should be noted this case was clearly decided against the background of the old wording of Class C3.

In the Secretary of State for Transport etc –v- Waltham Forest LBC [2002 EWCA Civ 330] the Court of Appeal dealt with a case where an application had been made for a Certificate of proposed lawfulness of an intended use. This is an advance clearance procedure. The property was a normal dwelling house and the proposed use was a dwelling house which provided residential accommodation for six people recovering from mental illness, plus one carer. The Inspector who heard an appeal did not enquire as to the actual use of the property at the time but considered that use as a dwelling by a large family could, especially where there were children or elderly relatives, including an element of care. On appeal the Court of Appeal refused the lawful Use Certificate. In essence the Court said that the relevant comparison was between the existing and proposed use. You could not introduce an intermediate stage of a change of use from the existing use to a notional use by a large family and then have a change of use from the notional use to the proposed use. In other words it applied before and after test as between the actual previous use and the new proposed use. This applies to the hypothetical situation of a proposed change of use rather than an actual

change of use but this could be relevant under the new rules for deciding whether or not there has been a “material change of use”.

Examples

Although the outcome must be speculative, in some instances, it is useful to look at some potential situations.

Example 1 A landlord rents out a two bedroomed flat to a couple. That couple want to bring in a friend who they have known for many years as a lodger to live in the second bedroom to share expenses.

Example 2 Prior to April 2010 a three bedroomed flat was occupied by two unrelated friends. On and off under previous lets it had been occupied by three unrelated tenants. There had always been a single joint tenancy of the property. After April 2010 the two tenants move out and the landlord is approached by three friends who want to take the flat and he lets it to them.

Example 3 A house is occupied by a mother, father and three adult working children, with four cars between them. A landlord purchased the property and rents it out to five students, who are well behaved. They have two cars between them.

Example 4 A house is occupied by mother, father and two young children. They sell the house and it is purchased by a landlord. He then rents it out to six students, who are, again, well behaved.

Example 5 As at 6th April 2010 the house is a shared house occupied by four young working people who are friends. They have a single joint tenancy agreement. The following academic year the landlord rents out the same house, under the same tenancy arrangements, but with six students, as the landlord has

subdivided two of the rooms to create two extra bedrooms. Again, they do not create any problems for the neighbourhood.

Example 6 A large terraced house is lived in by a single man, whose wife and family have moved out. It is bought by a landlord. It is a four bedroomed house with a dining room and lounge. Having converted the dining room to a bedroom and sub-divided one of the two rooms to create an extra bedroom, the landlord lets it out to a group of six young working people. They are friends. They sign a joint tenancy agreement. They have three cars between them. They behave themselves.

In each of these cases, despite all other changes, one could well argue successfully that there is no material change of use. If there is an adverse impact on the neighbourhood due to excessive noise, comings and goings, slamming of car doors or an unreasonable amount of extra car parking then in all probability, it will be decided that there has been a material change of use. This was always the situation under the old regime. The common thread in all these examples is, of course, the essential residential character of the premises in question but this is not enough for planning purposes. There is still a question of whether there has been a material change between one use and the other to be considered. However, in the case of example 4 there is a stronger case for suggesting there is a material change of use. Likewise, possibly in example 3. Again, in example 6, despite the decision involving 17 Ash Grove, Leeds, one could argue under the new rules that there is also a material change of use. These views can only be tentative.

Local Policies

Those local planning authorities which wish to restrict the number of shared houses/flats in their area will have to adopt a local planning policy. This may be incorporated as part of the local development framework or, at least initially, more likely will be in local supplementary planning guidance. The only precedent so far is in South Belfast. Northern Ireland adopted similar legislation a number of years ago. There, in various streets the number of

shared houses is not allowed to exceed 30% of the houses in the street in question. It may be the case that, as in South Belfast, the local plan will have to make provision for those areas where shared housing would be acceptable/encouraged. When such local plans are adopted as part of the local development framework they will be subject to objections and consideration under the appropriate statutory procedures. Supplementary planning guidance may end up being challenged by planning appeals.

Impact on planning policies intended to protect HMOs

A number of local planning authorities, particularly some London Boroughs, have planning policies which are intended to retain HMO accommodation. The introduction of the new Class C4 combined with the new permitted development right to convert houses or flats from shared use to single dwellings will drive a “coach and horses” through these policies, at least where there are no more than six residents. As a single dwelling a house can be far more valuable in this situation in London, although the reverse may apply elsewhere.

Flat shares

In certain areas, particularly London, flat share are very common. A group of friends/fellow workers may take a flat which they rent from a private landlord. If such a let involves a material change of use of the kind described in this article then planning consent would be required. This change to planning law may, therefore, have a significant impact on areas where flat shares are common, at least there the local planning authority is anxious to restrict such changes of use.

Impact on values

It is likely that houses or flats which have established rights for shared use (ie, falling within new Class C4) will be more valuable than those which do not, especially in university cities and towns and the same could apply where

planning permission is obtained for such shared use. Indeed, a landlord contemplating letting out a house or flat with established rights permitting shared use within Class C4 should think very seriously before they rent out this property to a family or single person (ie. a letting which would then fall within C3). It may well mean that the right to revert the use to a shared use, once the family etc has moved out, will be lost. There may well be local planning policies in force which would have the effect of meaning that planning permission could not be obtained for a change back. Whilst there may be a right to change the use from one within Class C4 to Class C3 there is no such right to return the use to Class C4 without the need to potentially obtain planning permission even though there may have been an established shared use of the house or flat (within Class C4) as at the 6th April 2010 (or planning permission has subsequently been obtained for such shared use after that date).

Permitted development rights to carry out work

Under the General Development Order there are certain permitted development rights. Certain of these rights include the right to carry out various types of works which apply to a “dwellinghouse”. However, for these purposes specifically, a dwellinghouse does not include a building containing one or more flats or an individual flat within the building. It therefore only applies to houses for this purpose. The use of the property can therefore be significant in determining whether or not a house (as opposed to a flat) has automatic planning permission to carry out the particular works. For instance, if a property is a house in multiple paying occupation, for planning purposes, then one cannot rely on permitted development rights which otherwise were attached to a dwelling house. It would appear, therefore, that a use within Class C4, since it is specifically defined in terms of a dwelling house, does have these permitted development rights. This would have been the case with a smaller shared house which was within the previous definition of Class C3 but would not have applied before to the case of the small bedsit house with no more than six residents. It is the present use which is of importance for these purposes; not the lawful use of the property for planning purposes.

The new categories of use for rented accommodation

As a result of these changes, as from the 6th April 2010, instead of the four categories referred to at the beginning, for planning purposes, there could now be five different categories of uses for rented accommodation:-

- A single house – used by six residents falling within the new definition of Class C3.
- A single flat – likewise, within the flat itself the use is within new Class C3.
- A shared house or a small bedsit house – where there is between three and six residents, all or some of whom are not related. By definition, this will be accommodation which is rented out in the private rented sector. It is the new Class C4.
- Houses in multiple paying occupations (HMOs for planning purposes)/larger shared houses – where the residents would be expected to exceed six, all of whom or some of whom are not related.
- Hostels.

With the exception of the third category (which is the new Class C4) tenure is irrelevant and the same rules should apply to owner/occupiers, the social housing sector, and the private rented sector. Class C4 is anomalous as there must be some element of private renting even where there is an owner/occupier property involved.

Conclusion

The whole situation, as a result of these changes, is wholly uncertain and unclear as to when planning permission may be needed. What the Government have done is to say that use by between three and six unrelated people of a shared house or flat is no longer exempt from being development. However, by doing this, it does not automatically make it development because one then has to look to see whether or not there is a material change of use involved. Only then is planning permission needed.