

GLA topic paper: specialist older persons housing

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1 Introduction and aims

“The number of people aged over 65 is forecast to rise over the next decade, from the current 11.7 million people, to 14.3 million by 2025, a 22 per cent rise. This means that one in five of the total population will be over 65 in 10 years’ time, which will become one in four by 2050.

In the UK, the vast majority of over 65s currently live in the mainstream housing market. Only 0.6 per cent of over 65s live in housing with care¹, which is 10 times less than in more mature retirement housing markets such as the USA and Australia, where over 5 per cent of over 65s live in housing with care.”
Housing our Ageing Population. 2017¹

1.1 London is a (comparatively) ‘young city’, however, it is expected to experience substantial growth in its older population. By 2029 the number of older person households (aged 65 and over) will have increased by 37 per cent, with households aged 75 and over (most likely to move into specialist older persons housing) increasing by 42 per cent.

1.2 It is essential that the London Plan ensures the provision of accommodation suitable to meet the needs of older Londoners.

1.3 Some older Londoners may wish to downsize, move closer to family or friends or be closer to services and facilities, but they may not want to move into specialist older persons housing. The important role that new, non-specialist residential developments play in providing suitable and attractive accommodation options for older Londoners, particularly developments in or close to town centres, near to relevant facilities and in areas well-served by public transport should be recognised.

1.4 London Plan policies requiring the highest standards of accessible and inclusive design, and accessible housing (accessible and adaptable and wheelchair user dwellings) should ensure that the option of remaining in general needs housing, and buying in additional services and care as and when required, is a realistic and attractive option for many older Londoners. An inclusive design approach is essential in ensuring that people can access the built environment, and allows Londoners, including older Londoners, to live independent and dignified lives. Applying inclusive design at neighbourhood level ensures that people can live interconnected lives- can get around, have easy access by public transport to services and facilities that are relevant to them, and can have safe and easy access to a network of spaces which meet their recreational needs. Integrating the diverse needs of all Londoners into development proposals from the outset is essential to ensuring the built environment is safe, accessible and convenient, and inclusive design is fundamental to improving the quality of life for disabled and older people in particular.

1.5 London Plan policy requirements must work within an inclusive design approach, to achieve the aims of providing choice and a barrier free environment for all Londoners, including older Londoners.

¹ https://www.local.gov.uk/sites/default/files/documents/5.17%20-%20Housing%20our%20ageing%20population_07_0.pdf

1.6 In some circumstances, older people may choose to seek alternative, more tailored specialist accommodation. This is also a very important element in the suite of accommodation options for older Londoners, and this type of accommodation should be an attractive and viable option/ choice for older Londoners.

1.7 Paragraph 50 of the National Planning Policy Framework² states that:

50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, 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, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes)

1.8 The draft London Plan (2017) aims to take a new approach and plans for growth on the basis of its potential to improve the health and quality of life of all Londoners, to reduce inequalities and to make the city a better place to live, work and visit. Draft policy GG1 Building strong and inclusive communities aims to build on the city's tradition of openness, diversity and equality, and help deliver strong and inclusive communities, supporting the creation of a London where all Londoners, including older people, disabled people and people with young children can move around with ease and enjoy the opportunities the city provides, creating a welcoming environment that everyone can use confidently, independently and with choice and dignity.

1.9 Draft policy GG4 Delivering the homes Londoners need highlights the importance of creating mixed and inclusive communities, with good quality homes that meet high standards of design and provide for identified needs, including the need for specialist housing.

1.10 The draft London Plan policy H15 Specialist older persons housing requires:

Policy H15 Specialist older persons housing

A. Boroughs should work positively and collaboratively with providers to identify sites which may be suitable for specialist older persons housing taking account of:

- 1) local and strategic housing needs information and the indicative benchmarks set out in Table 4.4
- 2) the need for sites to be well-connected in terms of contributing to an inclusive neighbourhood, access to social infrastructure, health care and public transport facilities
- 3) the increasing need for accommodation suitable for people with dementia.

B. Specialist older persons housing (Use Class C3) provision should deliver:

² <https://www.gov.uk/guidance/national-planning-policy-framework/6-delivering-a-wide-choice-of-high-quality-homes>

- 1) affordable housing in accordance with Policy H5 Delivering affordable housing, and Policy H6 Threshold approach to applications
- 2) accessible housing in accordance with Policy D5 Accessible housing
- 3) accessible and inclusive design in accordance with Policy D3 Inclusive design
- 4) suitable levels of safe storage and charging facilities for residents' mobility scooters
- 5) pick up and drop off facilities close to the principal entrance suitable for taxis (with appropriate kerbs) minibuses, and ambulances.

C. Sheltered accommodation and extra care accommodation is considered as being in Use Class C3. Residential nursing care accommodation (including end of life/hospice care and dementia care home accommodation) is considered as being in Use Class C2.

1.11 The indicative benchmarks referred to in the draft London Plan policy H15 Specialist older persons housing are supported by the published report 'Assessing future potential demand for older persons housing, care homes and dementia housing in London' by Three Dragons³.

1.12 This paper aims to explain the rationale behind the proposed policy approach, provide clarification and support the draft London Plan policy and its requirements in relation to specialist older persons housing, in particular the implications for accessible housing provision through:

- the definitions used to describe different types of specialist older persons housing
- the Use Class categorisation of specialist older persons housing in London

³ Assessing future potential demand for older persons housing care homes and dementia housing in London' can be found at <https://www.london.gov.uk/what-we-do/planning/london-plan/london-plan-technical-and-research-reports>

2 Definitions and classification

2.1 This section of the paper will explore issues around the definitions and the Use Class categorisation applied to specialist older persons housing.

2.2 The draft London Plan policy takes the following line in relation to defining specialist older persons housing:

4.15.3 In some circumstances, older people may choose to seek alternative, more tailored **specialist accommodation**. There is a range of specialist accommodation options and the following definitions should be applied in London:

- **sheltered accommodation and extra care accommodation should be considered as C3 housing:**

- **sheltered accommodation** (also referred to as supported housing) is self-contained accommodation specifically designed and managed for older people (minimum age of 55 years) who require no or a low level of support. Schemes normally include additional communal facilities such as a residents' lounge and a scheme manager, warden or personal alarm/ telecare system

- **extra care accommodation** (also referred to as assisted living, close care, or continuing care housing) is self-contained residential accommodation and associated facilities, designed and managed to meet the needs and aspirations of older people (minimum age of 55 years), and which provides 24-hour access to emergency support. A range of facilities are normally available such as a residents' lounge, laundry room, a restaurant or meal provision facilities, classes, and a base for health care workers. Domiciliary care will be available to varying levels, either as part of the accommodation package or as additional services which can be purchased if required

- **residential nursing care accommodation** (including end of life/ hospice care and dementia care home accommodation) **should be considered as C2** as it provides non-self contained residential accommodation for people who require additional personal or nursing care. Rooms may be private or shared and may provide an ensuite bathroom. Communal facilities are likely to include a dining room and residents' lounge, with meals and personal services routinely provided to all residents. Personal or nursing care is a critical part of the accommodation package at residential/nursing care accommodation. Care homes are unlikely to provide more than 80 bed spaces in total.

2.3 The policy stance on the Use Class categorisation of specialist older persons housing in the draft policy has been adopted due to significant debate and calls for clarification as to whether, for planning purposes specialist older persons accommodation should be classed as:

- C2 residential institutions, defined as residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres, or
- C3 dwelling houses i.e. use by a single person or family.

2.4 The Town and Country Planning (Use Classes) Order 1987⁴ as amended states:

Part C

- **C1 Hotels** - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels).
- **C2 Residential institutions** - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- **C2A Secure Residential Institution** - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
- **C3 Dwellinghouses** - this class is formed of 3 parts:
 - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another 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.
 - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
 - C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- **C4 Houses in multiple occupation** - small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

2.5 The proposed policy approach to the Use Class categorisation of specialist older persons housing is set out to clarify the Use Class that specialist older persons housing (extra care and sheltered) falls under.

2.6 Knight Frank Retirement Housing residential research paper 2014⁵ highlights the 'hurdle for retirement housing at the very beginning of the planning process' that a lack of clarification as to whether a development will be classified as C2 or C3 provides.

2.7 Housing Learning & Improvement Network (LIN) viewpoint 20 update⁶ covered the subject of Planning Use Classes and Extra Care Housing in November 2011 explaining that:

⁴ https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use

⁵ <http://content.knightfrank.com/research/696/documents/en/retirement-housing-2014-2388.pdf>

⁶

https://www.housinglin.org.uk/_assets/Resources/Housing/Support_materials/Viewpoints/Viewpoint_20_Planning_Use_Classes.pdf

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.

2.8 The Royal Town Planning Institute Good Practice note 8 Extra Care Housing development planning, control and management⁷ cited evidence of a broad view that extra care housing was really housing and thus should normally be considered as C3. And that in ‘Continuing Care Retirement Communities’ i.e. developments 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. It states it is ‘problematic’ as the regulations stand, to issue definitive local guidance on planning treatment of extra care housing.

2.9 In 2017 the Department for Communities and Local Government conducted an inquiry⁸ into whether the housing on offer in England for older people is sufficient in terms of not only availability of, but also suitability for their needs. It was launched against ‘a backdrop of significant housing shortages, rising numbers of older people, pressures on adult social care and with 2% of the country’s housing stock designed with pensioners in mind’. A number of written submissions submitted to the inquiry, including from housing providers. McCarthy and Stone, a provider of ‘retirement housing’ highlighted in their response⁹ difficulties that a lack of clarity around the Use Class order can cause:

In general terms, class C3 encompasses ‘dwelling houses’ and developments in this use class provide affordable housing contributions, whereas use class C2 encompasses ‘residential institutions’ and developments are not expected to provide affordable housing. Assisted Living Extra Care schemes providing on-site care and support typically are within C2 of the use class order but this is often questioned by local authorities, who are predisposed to seek affordable housing.... This debate leads to protracted negotiations and disputes between providers and local planning authorities with unnecessary cost and delay. These often use arbitrary characteristics of a development, such as whether apartments have their own front door, or are ‘self-contained units’ rather than look at more crucial factors such as the degree of support provided on-site.

2.10 The London Plan provides the opportunity to ensure a consistent London-wide approach, and should therefore provide guidance and clarity on the Use Class which should be applied to specialist older persons housing- whether this be

⁷ <http://www.housingcare.org/downloads/kbase/3003.pdf>

⁸ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/news-parliament-2015/housing-for-older-people-inquiry-16-17/>

⁹ https://www.mccarthyandstone.co.uk/global/media%20centre/reports%20and%20presentations/dclg_inquiry_2017.pdf/

'sheltered' or 'extra care' housing, to ensure specialist older persons housing is designed to be accessible and adaptable.

2.11 In 2005 the Office of the Deputy Prime Minister published Circular 03/2005¹⁰ which provided the following clarification around Class C3 accommodation:

70. 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 today 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 being dwelling houses in the traditional sense, they may be so classified for the purposes of the Use Classes Order.

71. 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;
- used as a dwelling, whether permanently or temporarily, by a single person, a family, or more than one person living together like a family, as a single household.

72. This interpretation would exclude such uses as bed-sitting room accommodation if the occupants share some communal facilities within a building, such as a bathroom or lavatory. Here, the "planning unit" is likely to be the whole building in use for the purposes of multiple residential occupation, rather than each individual unit of accommodation.

73. Sheltered housing developments will usually fall within the C3 class.

2.12 The 2005 circular focussed on whether specialist older persons residential units should be regarded as, and therefore counted as, a single housing unit or dwelling which rests on whether they are:

- self-contained;
- whether they provide facilities for cooking, eating and sleeping (normally associated with a dwelling house), and
- whether they are used as a dwelling.

2.13 In 2012 the Greater London Authority commissioned research¹¹ by

¹⁰

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11442/147573.pdf

¹¹ <https://www.cchpr.landecon.cam.ac.uk/Projects/Start-Year/2011/Role-planning-system-delivering-housing-choice-older-Londoners/Project-Report/Main-Report>

Cambridge Centre for Housing and Planning Research, Three Dragons, Land Use Consultants and Heriot Watt University entitled “The role of the planning system in delivering housing choices for older Londoners”. This research explored barriers to the delivery of specialist older persons housing within the planning system, and provided the following findings on the subject of definitions used/ applied to specialist older persons housing:

Planning barriers to increased provision of older people’s housing

4.10 The research found a number of barriers to increased delivery. These may be summarised as:

- A problem of definition and interpretation with respect to the use class categories for the various specialised housing options available for older people.
- Boroughs do not always appear to have detailed understanding of the needs of their older people and appear to be prioritising the housing needs of older people despite having older people’s housing strategies and policies in many cases¹⁴.
- Insufficient account is being taken of the viability issues associated with housing for older people.

2.14 The report then goes on to highlight definitions as a barrier to the provision of specialist older persons housing further, stating:

Barrier 1 Definitions

...

Use Classes C2 vs C3

4.12 There is debate about whether specialist housing for older people should be Use Class 2 or 3... In the absence of a separate class for specialist older people’s housing, some developers try to get specialist schemes classed as C2 in order to minimise S106 contributions because they think S106 will make schemes unviable. In some cases they succeed. As a result there is inconsistency across boroughs in the way they define and classify housing for older people.

...

4.15 The Housing Learning and Improvement Network (Housing LIN), an independent ‘knowledge exchange hub’ for housing, health and social care practitioners, has recently issued a useful summary of the debate around this controversial issue¹⁵ which sets out the arguments for viewing specialised housing for older people as either C2 or C3. The debate revolves around two considerations:

- Do all dwellings have their own front door? (C3)
- Is the level of care provided both so extensive and so fundamental a requirement of living in the development that it can more properly be regarded as residential care? (C2)

4.16 Extra Care housing is intended to cater for a cross section of older people and to offer the option of on-site care should they need it. It is not intended to cater exclusively for the very frail and the economics of provision of Extra Care housing break down if this group becomes the sole or main occupants.

4.17 The approach suggested in the Housing LIN note implies that all purpose-built schemes which provide self contained accommodation with full facilities (their own kitchen and bathroom) **and have their own front door** (i.e. an individual, secure

front door with access controlled by the occupier) should be C3 units. The level of personal care provided would then not be a material consideration. There is ample justification for this in planning Case Law (see Housing LIN Viewpoint 20 for examples).

4.18 Recent guidance from the Inland Revenue has clarified the tests which they deem appropriate to decide whether accommodation is C3 (exempt from VAT) or C2 (eligible for VAT). To be classified as C3 a dwelling must

- Be designed as self contained living accommodation
- Cannot be accessed directly from any other self contained living unit
- Constructed in accordance with valid planning permission
- Each unit can be sold separately from any other unit
- Each unit can be used separately from any other unit¹⁶

4.19 This approach implies that Extra Care, Assisted Living and all other permutations of retirement housing with personal care and/or support which also have a front door and other self contained facilities should all be treated as Use Class C3. They would potentially be eligible to pay S106 and affordable housing contributions as residential rather than institutional development. But they would also be subject to viability tests which would often restrict what could be requested in terms of section 106 contributions.

4.20 Where schemes incorporate an on-site, in-house care home (e.g. for dementia or nursing care), that element of the development would be classified as C2 but the rest of the scheme would be classified as C3 in terms of units or homes.

4.21 The classification of Retirement Villages would similarly be considered on the same basis, as they are distinguished only by scale (i.e. number of homes).

4.22 This approach provides a clear cut distinction between C2 and C3 uses which avoids the need for a typology of retirement housing schemes depending on the level of care and support provided and for that typology to determine the financial contribution sought from individual schemes. It has the additional advantage that the same approach can be applied to any future variations or new models of provision that come forward, regardless of changes in arrangements for residential and/or domiciliary care provision or funding – both of which are currently in flux.

2.15 A key finding of the report was that:

All purpose built housing for older people which provides self contained accommodation and their own lockable front door (whether within a block of flats or a group of houses) should be classed as C3 units. Units without these attributes should be C2 units.

3 Accessible housing standards

3.1 The GLA commissioned report 'Older Londoners and the London Plan: looking to 2050' 2016¹² evidenced need by finding:

"Older Londoners are the fastest growing population in London. By 2041 there will be more than 1.65m people aged 65 and over- 16% of the total population of London."

3.2 But also highlighted the importance of accessible housing for this group, and the importance of the application of the optional accessible housing standard given the limited choice which exists within London's housing stock for people who require accessible housing:

1.1.2 Accessibility of London's housing stock

There is limited information available on whether older Londoners are living in suitably accessible accommodation. The London Plan has included requirements to deliver Lifetime homes and wheelchair accessible homes since 2004. This has recently been updated to reflect that Government has introduced new 'optional' accesses standards into Part M of the Building Regulations⁹. However 85% of London's housing stock was built before the concept of Lifetime Homes was developed in 1992 and 90% of London's housing stock was built before Lifetime Homes standards were introduced in the 2004 London Plan¹⁰ suggesting much of London's existing stock will not be suitable for people with mobility issues.

3.3 The need for specialist older persons housing to be accessible is also illustrated in the Government published Disability prevalence estimates 201/2012¹³ which provides estimates (based on data from the Family Resources Survey) for disabled people in Great Britain by age:

¹²

https://www.london.gov.uk/sites/default/files/older_londoners_and_the_london_plan_march_2016.pdf

¹³ <https://www.gov.uk/government/statistics/disability-prevalence-estimates-200203-to-201112-apr-to-mar>

Disabled people in Great Britain (figures are in millions)

	Adults of Working Age*	Adults of State Pension Age**	All Adults	Children	All Ages
2002/03	5.0	4.7	9.7	0.7	10.4
2003/04	4.9	4.6	9.5	0.7	10.1
2004/05	4.8	4.6	9.5	0.7	10.1
2005/06	5.2	4.9	10.1	0.7	10.8
2006/07	4.9	4.9	9.8	0.7	10.4
2007/08	4.8	5.0	9.8	0.8	10.6
2008/09	5.0	5.1	10.1	0.7	10.9
2009/10	5.1	5.1	10.2	0.8	11.0
2010/11	5.3	5.2	10.4	0.8	11.2
2011/12	5.7	5.1	10.8	0.8	11.6

*Working Age: men aged 16-64 and women aged 16-59

**State Pension Age: men aged 65 and over and women aged 60 and over (State Pension age changed from 2010/11 and so the definition of State Pension age and Working age is not consistent over time. The State Pension age for men is 65 for men born before 6 April 1959. For women born on or before 6 April 1950, the State Pension age is 60. From 6 April 2010, State Pension age for women born on or before 6 April 1950 started to increase gradually between April 2010 and November 2018. For the purpose of this data, women are defined to be of State Pension age based on their date of birth and the date of the interview).

3.4 The Papworth Trusts report Disability in the United Kingdom 2016 facts and figures¹⁴ found that:

- Only 17% of disabled people were born with their disabilities
- The prevalence of disability rises with age: in 2012/13, 7% of children were disabled (0.9 million), compared to 16% of adults of working age (6.1 million), and 43% of adults over state pension age (5.1 million).
- Disabled people of state pension age are more likely than those of working age to report multiple impairments, including mobility (71%) and hearing (23%).

3.5 Both sources highlight the importance of ensuring that specialist older persons housing is accessible and adaptable to suit current and future needs.

3.6 London Plan policy has required the provision of accessible housing since 2004, when planning policy was introduced requiring 100% of dwellings in London to be 'Lifetime Homes'¹⁵ and 10% to be wheelchair accessible or adaptable¹⁶.

¹⁴

<http://www.papworthtrust.org.uk/sites/default/files/Disability%20Facts%20and%20Figures%202016.pdf>

¹⁵ <http://www.lifetimehomes.org.uk/>

¹⁶ https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/archives/bpg-wheelchair-acc-housing.pdf

3.7 The 'housing standards review' (HSR) was launched by the government in October 2012 following the housing and construction 'Red Tape Challenge', which began in Spring 2012, (the Harman Review) and participants included the House Builders Federation (HBF), the Local Government Association (LGA) and the National House Building Council (NHBC).

3.8 The HSR was a review of the building regulations framework and housing standards, which aimed to consolidate and simplify codes, standards and guidance.

3.9 As a result of the review, on the 27 March 2015 the Government announced, via a Written Ministerial Statement (WMS)¹⁷, new technical housing standards, and how these would be applied through the planning and building control processes. This was accompanied by the publication of a new set of streamlined national technical standards¹⁸, which included both a mandatory baseline and optional higher standards on accessible housing¹⁹. The new standards came into effect on 1 October 2015, and from this date the new optional national accessible standards could be required through the planning process, if incorporated into planning policy.

3.10 The accessible housing standards are now contained within Part M Vol 1 of the Building Regulations²⁰, which provides a 3-tier system of housing standards, two of which are optional housing standards:

- M4(1) Category 1: Visitable dwellings (mandatory baseline- not optional)
- M4(2) Category 2: Accessible and adaptable dwellings
- M4(3) Category 3: Wheelchair user dwellings

3.11 Powers to introduce these optional requirements are now included in the Building Act 1984 (as amended by the deregulation act 2015)²¹. For a new optional building regulation standard to be applied to a new dwelling, a condition on the planning consent must require it.

3.12 In March 2016 the Greater London Authority published Minor Alterations to the London Plan²² (MALP) to bring London Plan policies in line with the new national housing standards, and to 'switch on' the optional higher technical accessible housing standards. The new Policy adopted through the MALP required:

- ninety per cent of new housing meets Building Regulation requirement M4(2) 'accessible and adaptable dwellings', and
- ten per cent of new housing meets Building Regulation requirement M4(3) 'wheelchair user dwellings', i.e. are designed to be wheelchair accessible, or easily adaptable for residents who are wheelchair users

¹⁷ <https://www.gov.uk/government/speeches/planning-update-march-2015>

¹⁸ <https://www.gov.uk/guidance/housing-optional-technical-standards>

¹⁹ <https://www.gov.uk/guidance/housing-optional-technical-standards#accessibility-and-wheelchair-housing-standards>

²⁰ https://www.planningportal.co.uk/info/200135/approved_documents/80/part_m_-_access_to_and_use_of_buildings

²¹ Building Act 1984 (as amended by the deregulation act 2015).

²²

https://www.london.gov.uk/sites/default/files/housing_standards_malp_for_publication_7_april_2016.pdf

3.13 The type of planning application which the optional accessible housing standards can apply to is determined by the Statutory Instruments 2010 No. 2214 Building and Buildings, England and Wales, The Building Regulations 2010²³, amended by Statutory Instruments 2015 No. 767 Building and Buildings, England and Wales The Building Regulations &c. (Amendment) Regulations 2015²⁴. This means that the application of M4(1) (baseline mandatory standard applied via the Building Regulations process) and M4(2) and M4(3) (optional technical standards) is generally limited to ‘new build’ dwellings, and in general cannot apply to dwellings created via conversion work or change of use applications to buildings. Any planning policy requirements for the optional Building Regulations (M4(2) and M4(3)) have to be within these limitations.

3.14 The definition of development types to which Part M of the Building Regulations can apply is also defined in these documents, which dictate that the requirements of Part M vol. 1 can only apply to dwellings, and they define dwellings as:

“dwelling” includes a dwelling-house and a flat;

“dwelling-house” does not include a flat or a building containing a flat;

3.15 The statutory instrument also provides the following definition of:

“room for residential purposes” means a room, or a suite of rooms, which is not a dwellinghouse or a flat and which is used by one or more persons to live and sleep and includes a room in a hostel, an hotel, a boarding house, a hall of residence or a residential home, but does not include a room in a hospital, or other similar establishment, used for patient accommodation;

3.16 The building regulation standards for housing contained in Part M volume 1 can only apply to ‘dwellings’ and not ‘rooms for residential purposes’. The definition of ‘room for residential purposes’ and is very similar to the definition provided by Use Class C2: residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres, which in the specialist older persons housing sector would equate to residential nursing care, care home or hospice facilities. The wording of both the Building Regulations definition and the planning Use Class definitions are provided in Table 1 below:

²³ http://www.legislation.gov.uk/uksi/2010/2214/pdfs/uksi_20102214_en.pdf

²⁴ http://www.legislation.gov.uk/uksi/2015/767/pdfs/uksi_20150767_en.pdf

Table 1: accommodation definition comparison- planning Use Class and building regulations

Planning use class ²⁵	Building regulations ²⁶
<p>C3 Dwellinghouses - this class is formed of 3 parts:</p> <ul style="list-style-type: none"> - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another 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. - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. - C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger. 	<p>“dwelling” includes a dwelling-house and a flat;</p>
<p>C2 Residential institutions - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.</p>	<p>“room for residential purposes” means a room, or a suite of rooms, which is not a dwellinghouse or a flat and which is used by one or more persons to live and sleep and includes a room in a hostel, an hotel, a boarding house, a hall of residence or a residential home, but does not include a room in a hospital, or other similar establishment, used for patient accommodation;</p>

²⁵ https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use

²⁶ http://www.legislation.gov.uk/ukxi/2010/2214/pdfs/ukxi_20102214_en.pdf

3.17 The new draft London Plan policy on accessible housing will maintain the accessible housing standards adopted in 2016 by the GLA through the MALP process and require:

Policy D5 Accessible housing

To provide suitable housing and genuine choice for London's diverse population, including disabled people, older people and families with young children, residential development must ensure that:

1) at least 10 per cent of new build dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings', i.e. designed to be wheelchair accessible, or easily adaptable for residents who are wheelchair users

2) all other new build dwellings meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'.

3.18 The proposed policy also provides the following guidance on the application of these policy requirements:

3.5.8 M4(2) and M4(3) dwellings should be secured via planning condition to allow the Building Control body to check compliance of a development against the optional Building Regulations standards. Planning conditions should specify:

- Number of dwellings per size typology (i.e. x no. of y bed units) which are required to meet M4(2)
- Number of dwellings per size typology (i.e. x no. of y bed units) which are required to meet M4(3) wheelchair accessible standards
- Number of dwellings per size typology (i.e. x no. of y bed units) which are required to meet M4(3) wheelchair adaptable standards

3.19 The appointed Building Control Body is then responsible for checking compliance with planning conditions which require optional housing standards both on plan and on site. The Building Control Body cannot check compliance with the optional accessible housing standards unless a planning condition is placed on the planning consent, and a planning condition cannot be placed on the application unless the proposed dwellings are dwellings to which Part M of the building regulations applies.

3.20 The optional accessible housing standards are contained within the building regulations- if dwellings are categorised as Use Class C2 under planning- Part M volume 1 cannot be applied. In order to deliver accessible dwellings in accordance with the London Plan policy requirements and apply the national technical standards contained within Part M volume 1, specialist older persons housing is categorised as C3.

4 Impacts

4.1 To ensure that the draft London Plan aims of Building strong and inclusive communities, building on the city's tradition of openness, diversity and equality, and help deliver strong and inclusive communities, supporting the creation of a London where all Londoners, including older people, disabled people and people with young children can move around with ease and enjoy the opportunities the city provides, are achieved, and the ambition to deliver the homes Londoners need, the draft London Plan policy should provide a consistent approach in terms of the planning Use Class applied to specialist older persons housing, to assist developers and providers, as well as those trying to access specialist older persons housing.

4.2 This topic paper has highlighted the uncertainty which exists around what Use Class specialist older persons housing will be classified as (C2 or C3), and the 'barrier' to the delivery of specialist older persons housing this can be. Debating the subject of Use Class at planning application stage can cause confusion and delays. The draft London Plan policy provides clarity on a London wide scale as to what Use Class should be applied to specialist older persons planning.

4.3 To create as much choice as possible for older people wishing to move into specialist older persons housing, and to future proof the housing that older people choose to move into- ensuring it will remain suitable for their needs and can accommodate adaptations in the future if needed, it is essential that the London Plan policy results in specialist older persons housing which is accessible and adaptable, or meets wheelchair user dwelling standards.

4.4 The only way of ensuring that accessible specialist older persons housing is created, within the existing delivery system for the optional technical accessible housing standards provided in Part M vol. 1 of the Building Regulations, is to categorise specialist older persons housing as Use Class C3 dwelling houses under the planning Use Class order.

4.5 The policy stance is also an expression of the Greater London authority, via the London Plan, paying due regard to the need to eliminate discrimination, advancing equality of opportunity and fostering good relations between different people, in this case- older people wishing to access age restricted housing.

4.6 If specialist older persons housing is categorised under Use Class C2, it does not deliver accessible housing in accordance with accessible housing policy requirements- meaning that older people, accessing age restricted new build specialist older persons housing would experience a lower level of choice and availability of provision in terms of accessible housing, than others who are accessing the rest of the housing market.