

# Planning for an IRC: Latest planning issues impacting the delivery of IRCs

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# Town and Country Planning (Use Classes) Order 1987 (“UCO”) (as amended)

“Retirement Communities” straddle between two use Classes C2 and C3 as found in the Town and Country Planning (Use Classes) Order 1987.

## **What is a C2 use?**

Schedule 1 Part 3, Paragraph 2

### Class C2 (Residential Institutions)

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





# Use Classes

## What is a C3 use?

Schedule 1 Part 3, Paragraph 3

### 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** (emphasis added); 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 “care”

## UCO Article 2 – Interpretation

“care” means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes personal care of children and medical care and treatment (emphasis added)



Source: *Google Image 2020*; Demand for UK residential care

# Depending on “care” provided

- There are no real definitions of housing with care.
- Retirement communities seem to sit uncomfortably between two use classifications, making it harder to obtain planning permission.

***What does the Planning Practice Guidance say?***

- It is for a local planning authority to consider into which use class a particular development may fall. When determining whether a development for specialist housing for older people falls within C2 (Residential Institutions) or C3 (Dwellinghouse) of the Use Classes Order, consideration could, for example, be given to the level of care and scale of communal facilities provided (emphasis added).





# Depending on “care” provided

It is left open for interpretation:

What is a resident?

What is care?

What level of care is provided?

What is the nature of the care provider's operation?

How do the residents choose to live?

The Use Class Debate for “Housing with Care” has been ongoing for many years now.

According to Compass Search:

**‘Care’ words:** 2,729 appeal decisions

**‘Retirement’ words:** 1,366 appeal decisions

**‘Retirement Village’ words:** 50 appeal decisions

There are many High Court decisions too!



# IRCs vs Care Homes

## Defining the sector

Senior Living		Care Homes
Retirement Housing	Integrated retirement communities (IRC)	
Often referred to previously as 'sheltered housing'. Age-restricted housing with minimal amenity or care facilities	Previously referred to as 'housing with care'. Offers a highly serviced product with amenities and access to care when needed, allowing residents to age in place	Often referred to as 'nursing homes', with high levels of care and support, 24-hours a day

Least care ←————→ Most care

Source: Savills Healthcare and Senior Living – Q1 2022

“Housing with care” services are varied and diverse. There are a number of different names for describing ‘Housing with care’....

The terms include:

- Housing with Care
- Extra Care
- Retirement Housing
- Retirement Village
- Assisted living facility
- Senior Living
- Over 55+
- Close Care
- Later Living
- Independent Living

The list goes on.....

# Need for Age-friendly Homes

## A HOME FOR THE AGES: PLANNING FOR THE FUTURE WITH AGE-FRIENDLY DESIGN - RIBA

- Within five years the over 60s will make-up over 25% of the English population and this is a trend that is set to accelerate.
- The number of people aged over 65 is forecast to rise, from 11.7 million to 14.3 million by 2025.
- Based on this growth target, over 11,000 housing with care units would need to be built each year to meet demand up to 2026 – but over the last decade an average of only 3,220 units a year have been built, according to data from JLL.
- Due to a gap in supply and demand, in the UK the vast majority of over 65s currently live in the mainstream housing market. Only 0.6% of retirees live in Housing with Care.



### A Home for the Ages

PLANNING FOR THE FUTURE  
WITH AGE-FRIENDLY DESIGN

Daniel Stern, Ian Warren and Andrew Forth  
Royal Institute of British Architects & Centre for Towns



RIBA   
Architecture.com



# Need for Age-friendly Homes

The opportunity will grow further as the UK's population continues to age



SENIOR LIVING | 21 FEBRUARY 2022

## Spotlight: UK Senior Living

"The Inflection Point: investment volumes, penetration rates and growth forecasts"

RETIREMENT RETIREMENT ACCOMMODATION

### Key points

**43%**

The total value of owner-occupied homes owned by over 65s in the UK

**£4.6bn**

Invested in and committed to UK senior living in the last 18 months

**1.0%**

The penetration rate of over 65s in Integrated Retirement Communities (IRCs), compared to 6.5% in the USA

**64%**

Proportion of households moving into senior living that are downsizing

**17%**

£psf premium for IRC homes over the wider new build market

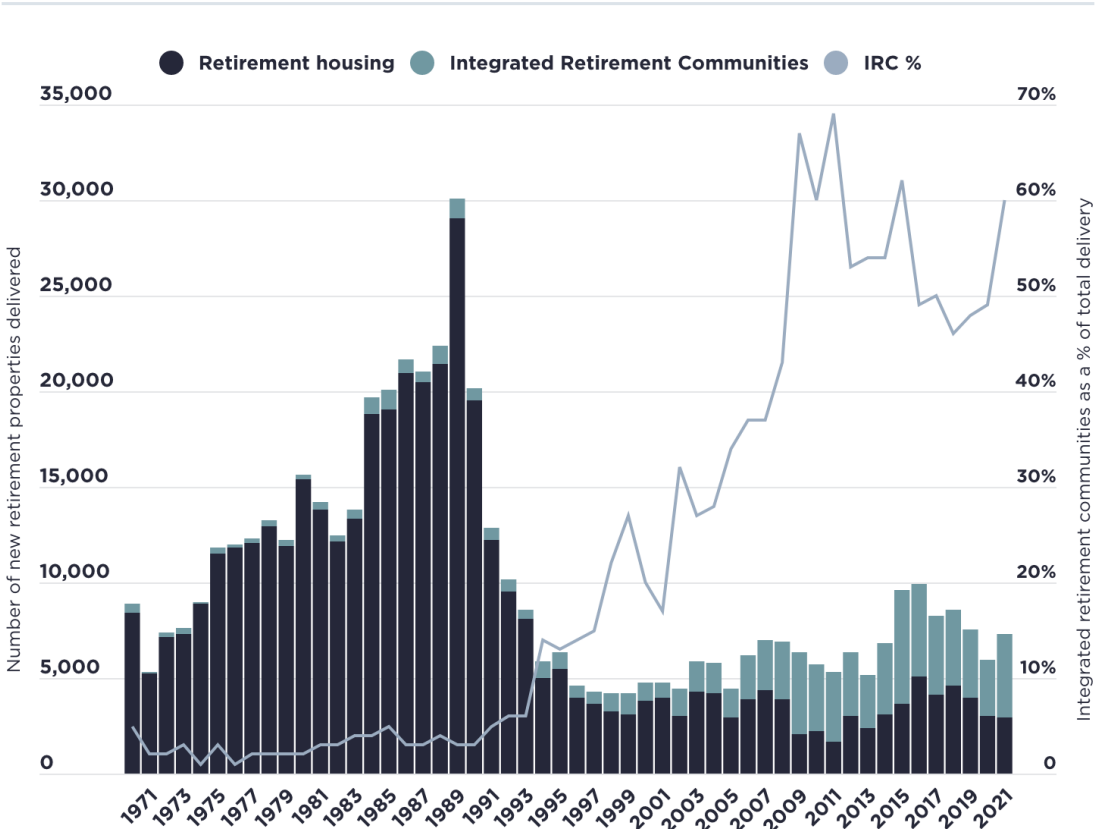
**325,000**

More IRC homes required if the penetration rate increases to 5%

**£125bn**

Scale of the IRC opportunity if the penetration rate increases to 5%

Total delivery of senior living homes



Source: EAC

Source: Savills Healthcare and Senior Living – Q1 2022

# What was Rectory Homes case about?

**Rectory Homes Ltd v (1) Secretary of State for Housing Communities and Local Government; (2) South Oxfordshire DC [2020] EWHC 2098 (Admin), 2020 WL 04370737, 31 July 2020. Holgate J.**

- Developer Rectory Homes Ltd challenged the SoS dismissal of their appeal against the decision of SODC to refuse planning permission for a 'Housing with Care' development (Class C2) in Thame.
- The question for the HC was whether on a proper interpretation of the development plan, a proposal for extra care housing within the Use Class C2 fell within the scope of the local plan policy requiring schemes for 3 or more dwellings to provide affordable housing.
- Rectory Homes pointed out that the UCO at C2 specifically excludes "C3 (dwelling houses)", and the local plan did not provide a definition of "dwelling" either.
- At para 65 Mr Justice Holgate concluded that ***"In summary, there is no reason why a C2 development or scheme may not provide residential accommodation in the form of dwellings. That possibility is not precluded by the operation of the C3 Use Class and its interaction with the C2 Use Class. Thus, the language of the Order does not support the Claimant's argument that the extra care accommodation proposed could not represent dwellings and therefore could not trigger the application of policy CSH3."***



# What did we learn from Rectory Homes case?

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- *The judgment clarifies that extra care developments falling within the C2 Use Class will not be exempt from the requirements of affordable housing policies unless the relevant policies in the plan distinguish between C2 and C3 uses so as to restrict the application of affordable housing requirements to dwellings in the C3 use class.*
- *Following this case, there is more uncertainty in respect of the planning costs associated with retirement living schemes – with higher build costs than traditional developments, the threat of paying affordable housing contribution only adds to the well-documented concerns that the planning process is currently a barrier to entry and/or growth in this undersupplied market.*







# Planning Issues and Recommendations

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- Significant need for IRC housing in the coming years – IRC housing is just as important as affordable housing – and there's even more of a shortage. The gap between supply and potential demand looks to get even bigger over the next few years. Government and the sector should do more to promote the IRC model both within public services and with the wider public.
- LPAs should develop and implement flexible planning policies that promote appropriate IRC housing models and reflect changing demand. Many schemes take 5+ years from inception to occupation.
- The most recent Government's draft Levelling Up and Regeneration Bill has little or no emphasis on achieving IRC housing. Need clear 'National Road Map' for the delivery of IRC housing along with the Government's 300,000 dwellings/year target.



# Planning Issues and Recommendations

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- The question of whether a facility is C2 or C3 has big financial ramifications for developers/investors. Clear guidance or the designation of a new use class (i.e. C2R) for IRC housing is required to avoid any confusion.
- A number of schemes, often built in the 1950s and 1960s, do not meet modern standards and are sometimes difficult to let. Clear design policies, guidance, and funding strategy are required to achieve highly sustainable units in line with the Government's net Zero Carbon and increase in Biodiversity Net Gain policies.
- Due to competition from alternative uses, particularly, general housing, requirements to provide affordable housing and other contributions can mean that IRC schemes are often financially unviable. Clarity is needed on the requirement of affordable housing policies and other financial contributions (i.e. reduce S106/CIL) – so the developers/investors confidently enter and/or grow in this undersupplied housing market.