

## **Building Classification – Domestic or Residential**

***Scenario 1 - SFRS referral - building constructed as a house (dwelling) occupied by a single family, see attached document for full background information***

***Feedback summary*** – majority consider this to be a dwelling (with a floor area more than 200m<sup>2</sup>).

***Scenario 2 - A large two storey dwelling has been bought by a family consisting of a mother and two adult sons, each with severe physical disabilities and deteriorating health. The house is being altered to have all the facilities of a care home (sensory rooms, pharmacy store, etc) including a live-in carer. It has also been proposed that when a family member dies, they might take in friends with disabilities.***

***Feedback summary*** – majority consider this to be a dwelling.

***Scenario 3 - A two storey house bought by a residential school for children with learning disabilities. A carer and pupil sleeping on each storey.***

***Feedback summary*** – majority consider this could potentially still be a dwelling, however clarity and defined use from applicant should be requested.

## **Full Consortia responses**

Moray - With these we are falling to the definition of dwelling. We have discussed this situation and sought guidance on a number of different scenarios and this has always come back to this interpretation.

*Dwelling means a unit of residential accommodation occupied (whether or not as a sole or main residence):*

*a. by an individual or by individuals living together as a family; or*

*b. by not more than six individuals living together as a single household (including a household where care is provided for residents)*

All 3 scenarios have the potential here to be demonstrated to show that the properties are being occupied as above – that they are living as a family or as a single household not exceeding 6 and care is provided.

Aberdeenshire - This issue has been debated a number of times. If an applicant clearly states the application is domestic and the building meets the definition of dwelling (6 or less people) we accept that use and compliance with the domestic handbook is demonstrated. There have been occasions where the layout sits somewhere between the domestic and non-domestic handbooks with additional safety measures. We would not ask for these additional safety measures to be removed just because the building is considered a dwelling. As the building would be considered a relevant premises by the SFRS we would accept the fact that the SFRS would assess the building for compliance with the fire safety act to ensure the safety of the residence. This is far from perfect but until the guidance issued by the BSD is amended to cover these situations we are left with little alternative.

East Lothian - I would agree that in all 3 scenarios the buildings should be classed as dwellings in terms of the building Scotland regulations irrespective to what other legislation dictates. Scenario 1 could be vetted as a non-domestic building as the dwelling is out with the scope of the domestic handbook as it contains a storey above 200 m<sup>2</sup>.

City of Edinburgh - I passed around for comment and it was unanimous that all three should be classed as domestic under the THB with reference to point b in the definition of a dwelling: b. by not more than six individuals living together as a single household (including a household where care is provided for residents), any more then it becomes a care home. It was noted that Section 2.0.8 may be cover some of the scenarios by Part 3 of the Fire (Scotland) Act 2005 (2005 Act) "The regime also applies to domestic buildings that are licensed as Houses in Multiple Occupation and to some domestic buildings where certain care services are provided". Clearly in all scenarios the buildings are being used as care homes and it was felt that this offered an increased level of risk over a family home used by people with greater levels of mobility. In the same way a hospital has greater protection for its residents than a hotel, escape windows, for example, are unlikely to be an option in these scenarios and perhaps greater protection should be afforded such as smoke detection in all bedrooms.

Fife - Firstly we think we shouldn't get blinded by legislation for which we are not responsible, we should apply the standards and that as far as we go. Of course there may be things included as a consequence of the other legislation, but we would address that as any other item included in a building warrant submission. Therefore we would apply the domestic handbook when it is stated that there is not more than six individuals living together as a single household (including a household where care is provided for residents). In our opinion scenario 1 falls within the definition of a dwelling. It is complicated by the fact that one storey exceeds 200sqm (DTH clause 2.0.3) and therefore could be subject to an alternative approach. Again we think scenario 2 is a dwelling. The arrangements are very much like the "care in community" houses that are prevalent around the country. I don't think we can concern ourselves with how the building may or may not be used in the future; but if people live in the building as their permanent residence it is irrelevant whether they are a relative or not. The definition of "dwelling" should be used to determine whether the building is domestic or residential. In scenario 3 we think the location of the building is key. If the building is within the grounds of a residential school, then think it should be considered part of the overall campus i.e. Non Domestic regs apply. However, if the building is stand-alone it could be considered a dwelling.

Scottish Borders - Scenario 1 - This is still a dwelling, but would need an HMO license as the occupants are not all related.

Scenario 2 - At present this is a still a dwelling, definition of s dwelling allows 6 individuals living together as a single household (including a household where care is provided for residents). In the future, if they take in friends with disabilities, depending on the total occupancy this may change to shared residential/residential, or stay as a dwelling, but need HMO licensing.

Scenario 3 - This may be still a dwelling, but depending on total occupancy, use may change to shared residential or residential and a licensing for an HMO may be required.

West Lothian - Scenario 1 - This is still a dwelling, the fact that it is over 200m<sup>2</sup> does not change the fact that it is a dwelling. It may be that an alternative approach was taken at the time when the dwelling was built regards fire ( Section 2 only) which generally is mainly the grade of the smoke detection system needs upgraded and I would refer to BS5839 Part 6 for guidance on that aspect. Although, currently and proposed it's still a dwelling and therefore deemed to comply as it is just now – no works required. Dwellings can be used for other purposes as described in the definition such as surgeries, consulting rooms etc so it is still within the definition of a dwelling. The fact that it is registered by the Care Inspectorate would not change the dwelling definition.

Scenario 2 – This is still a dwelling, the fact that someone who is living there has a disability does not change the definition of a dwelling. They may have to reconfigure the internal layout to accommodate the person with the disability but it does not change the definition of the building and therefore is still a dwelling. Future use should not be considered by Building Standards. As long as it stays less than 6 people in total.

Scenario 3 – I think it is down to the designer to define its use, however for what it is worth I think a 'school accommodation service' (residential care building) is more along the lines of a building containing dormitory type accommodation and don't think it was intended for a building constructed to accommodate 4 people (one carer and pupil on each floor).

Highland and Island Consortia - The unanimous view in H&IC is that all three scenarios fall within the definition of dwelling in Appendix A and may thus be assessed for compliance with domestic standards. That said, Highland have suggested that "the third scenario could equally be deemed a residential building if that's what the school wanted but unlikely as there would be additional cost involved."

Perth and Kinross - Scenario 1 - PKC – school care accommodation. Scenario 2 - PKC – Dwelling. Scenario 3 - PKC – Residential care home.

Dundee - Scenario 1 - Would consider this school care accommodation but open to treating it as dwelling dependant on further information. Scenario 2 - Domestic dwelling. Scenario 3 - Residential care home.

Angus - have had discussions with Colin Hird and base their interpretation on advice provided by him in the following emails;

*Copy 2 of 2 emails*

*I have discussed these issues with Colin Hird (Head of Fire, Structure and Environment, Scottish Government). Mr Hird has stated in an email yesterday that "Small domestic premises where the care service provider is registered with the Care Inspectorate as providing a 'care home service' is a 'relevant premises' as defined in Section 78 of the Fire (Scotland) Act 2005 and as such a fire risk assessment is required. This means additional fire safety measures may be required over and above the minimum requirements for a dwelling but this should be proportionate and commensurate with the risk. The definition of dwelling in the Building (Scotland) Regulations 2004 includes a unit of residential accommodation having "...individuals living together as a family or by not more than six individuals living together as a single household (including a household where care is provided for residents)..." This implies that you might have care services with residential staff in a dwelling environment. -----aims and values promote a home environment for children and young adults to recover from trauma, abuse, and neglect and grow to achieve their full potential and in the process, some care leavers will make life long connections with staff and peers. It is difficult to argue that -----principles do not fall into this dwelling category."*

*Following your conversation with Colin today and our subsequent teleconference with him, Colin has confirmed that "the intent behind the building standards and guidance that apply to residential care buildings is in relation to traditional care homes and not dwellings where care is provided for up to six residents. Clearly additional fire precautions may be applied as a result of the fire risk assessment. The intent is that these measures are proportionate to mitigate the risk identified. Therefore, where a 'dwelling' might additionally fall within the definition of a 'residential care building' due to the registration process, this does not mean that the most onerous use category be*

*applied. It is for the building warrant applicant (where a warrant is required) to provide the designated use on the BW application form. Local Authorities are entitled to question this through their due diligence processes and if challenged, ultimately a matter for the Courts, through the warrant refusal process.*

*We have looked at the revised guidance in the 2019 Edition of the technical handbooks (Clause 2.0.8) which comes into force on 1 October 2019 and can confirm that all of our residents and staff can self-evacuate in the case of fire. We will respond to the consultation on the Specialist Housing Guide in due course.*

*Copy 1 of 2 emails*

- Small domestic premises where the care service provider is registered with the Care Inspectorate as providing a 'care home service' is a 'relevant premises' as defined in Section 78 of the Fire (Scotland) Act 2005 and as such a fire risk assessment is required. This means additional fire safety measures may be required over and above the minimum requirements for a dwelling but this should be proportionate and commensurate with the risk.*
- The definition of dwelling in the Building (Scotland) Regulations includes a unit of residential accommodation having "...individuals living together as a family or by not more than six individuals living together as a single household (including a household where care is provided for residents)..." This implies that you might have care services with residential staff in a dwelling environment.*
- Clearly ----- aims and values promote a home environment for children and young adults to recover from trauma, abuse, and neglect and grow to achieve their full potential and in the process, some care leavers will make life long connections with staff and peers. It is difficult to argue that ----- principles do not fall into this dwelling category.*
- Where the number of residents and staff exceed 6 persons, the building type (in building regs terms) is likely to be 'shared residential accommodation' or 'residential care building'. Definitions repeated below for ease of reference.*
- I accept that some local authorities will take a pragmatic view and agree that a building warrant (BW) is not required to convert the dwelling provided the number of occupants is not more than 6.*
- Others may take a different view and suggest that a BW is required to convert the 'dwelling' into a 'residential care building' simply because of the registered care home service element. This would attract quite onerous building regulations including automatic fire suppression systems.*
- I have been liaising with my colleague in the Fire and Rescue Advisory Unit and agreed some revised wording in the Technical Handbooks (TH) 2019 Edition which comes into force on 1 October 2019. We hope this new guidance will provide some clarity of intent rather than create even more confusion. You can find the revised wording of the TH in clause 2.0.8 under the Care Inspectorate sub-heading para's 2-4 (repeated below for ease of reference) <https://www.gov.scot/policies/building-standards/monitoring-improving-building-regulations/>*

- *You should also be aware that the Specialised Housing Guide referred to in the TH is currently out for public consultation which closes on 22 October 2019 and can be found at <https://consult.gov.scot/fire-and-rescue/fire-safety-guidance-specialised-housing/> I would urge you to respond to this consultation to provide more clarity if required as the TH refers to the document.*
- *2019 Guidance (see extract below) – intent that automatic fire suppression systems should be considered as part of a fire risk assessment where the occupant(s) cannot evacuate from the building in the event of a fire. The words ‘cannot self-evacuate’ might be what’s causing the issue here where vulnerable young children and adults require assistance to evacuate in the case of fire. However, I see no difference between this and any other domestic premises with young family or elderly residents.*

*If this is the case, I can consider including some supplementary guidance in 2019 Edition - Frequently Asked Questions (still to be developed)*