

Proposed extensions of permitted development rights: are planning authorities losing control?

In 2013 permitted development rights were seen to shift the balance of power from the planning authority to the developer. But with an extension of existing legislation on the horizon, are planning authorities set to lose control of the planning process or will they fight back?

In May 2013, the previous Government introduced a number of permitted development rights (PDRs). These changes reflected the evolving nature of the relationship between the planning authorities and developers. The aim was to reduce the planning burden on developers by simplifying the planning process and removing unnecessary regulation, as well as adding much-needed impetus to housing supply.

In our spring 2014 newsletter, Martin Wilks considered one such PDR available to developers in his article 'Living in the office' to change the use from Class B1(a) offices to Class C3 residential dwellings.

This particular PDR caused quite a stir when it was introduced as it could be argued it watered down the planning authority's control of our town centres' future development. Among other things, concerns centred on the potential loss of prime office accommodation, the impact on local employment prospects and the loss of being able to expressly require the developer to provide affordable housing and other section 106 obligations.

To mitigate these concerns, local authorities were able to seek an exception against this right and others over certain areas.

To obtain an exception, they needed to be able to demonstrate it would lead to the loss of a nationally significant area of economic activity or substantial adverse economic consequences at the local authority level, which would not be offset by the positive benefits the new rights would bring.

Interestingly, 165 authorities applied for this exemption, a surprisingly high figure as it represents around 61% of all authorities. However, only 17 authorities were ultimately successful, including two-thirds of London authorities. Although only 17 authorities met the aforementioned qualification criteria, the sheer number of authorities seeking exemption status indicates widespread reservations with this PDR.

On the other hand, there is evidence to suggest that this PDR is having a positive impact, with unused secondary office space being brought back into use. It has also led to much-needed stimulus in housing supply, although as discussed above, the exemptions have curtailed its impact in the London area. But with this right due to expire in May 2016 will office conversions to residential via the PDR remain an attractive prospect for both smaller and larger developers?

What's on the horizon for office to residential conversion?

When the PDR was introduced in 2013, it was meant to be temporary. However, over the course of the last two years, the success of the rights has led to calls for it to be extended. This has been driven by the overwhelming need to increase traction in housing supply, principally in London where the housing shortfall is felt hardest.

Following consultation, the Secretary of State for Culture and Local Government outlined a number of changes to the use of PDRs for converting existing buildings to residential use. These changes not only propose to extend the current rights until 2019, but also extend the use classes that may be permitted to be converted to residential use to include:

- Up to 500 sq m of storage or distribution buildings (B8) to change use to residential (C3) within a three-year period, subject to prior approval.
- Up to 150 sq m of amusement arcades/centres and casinos to change use to residential (C3), subject to prior approval.

The extension of use classes permitted to be changed to C3 came into effect via a new statutory instrument: The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015). However, the extension of the current B1(a) rights was notably absent.

This is due to concerns raised by key stakeholders during the Government's consultation that the extension will further reduce future availability of business premises, continue to have a negative impact on surrounding businesses and the quality of the new dwellings built via this route.

However, on 13 October 2015, the Housing and Planning Minister announced via a press release the Government's intention to push through the extension and to potentially make it permanent once the existing order expires.

The question, therefore, is: if the Government pursues the extension of B1(a) conversions, will local authorities fight back? The question is particularly pertinent, given the new rights permitting further use classes to be converted into dwellings, further reducing local planning authorities' influence over the ever-changing landscape of our towns and cities.

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