



Briefing Note: New Permitted Development Rights for Change of Use from Office to Residential

On 24th January 2013 Communities Secretary, Eric Pickles, [announced](#) the implementation of a much discussed set of new permitted development rights. The most prominent of which would allow the change of use from office (Use Class B1 (a)) to residential (Use Class C3) without the need for planning permission. It has been suggested that this could generate as many as 40,000 new homes in London.

Following a consultation in April 2011, it was believed that the Government would not adopt the proposed relaxation of planning rules, opting instead for a strong, national planning policy within the NPPF ([paragraph 51](#)).

However, the Government has now decided that the new permitted development rights are to be revived in order to ease the national housing shortage, create jobs in the construction industry and help regenerate town centres.

What do we know so far?

- An amendment to the General Permitted Development Order will be made to authorise the change of use from office to residential without the need for Planning Permission.
- The change will come into force in ["Spring 2013"](#) and will initially apply for a period of 3 years. However, the Government will consider towards the end of that period whether the change should be extended indefinitely.
- A change of use will not be automatic. It will be subject to a *"tightly drawn prior approval process"* which will check whether a change of use might cause significant transport and highways issues, flood risk, land contamination and impacts on safety hazard zones. In other words, it will be necessary to get clearance from the Local Authority that these matters don't justify the permitted development rights being withheld. Authorities may try to use this power to limit the use of the new rights but the Government statement is clear that only significant impacts would justify withholding the right.
- Local Authorities have until 22nd February 2013 to apply for an exemption from the new permitted development rights. The Government has indicated that an exemption can be granted for a specific area or the entire Local Authority (which looks likely to be case for the City of London). An exemption will only be allowed where Local Authorities can demonstrate that the new permitted development rights will lead to the loss of a *"nationally significant area of economic activity"* and/or *"substantial adverse economic consequence at the local authority level"*. We expect the Government to grant only very limited exemptions.

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What does this mean for development?

- **What additional works would require Planning Permission?** The new permitted development rights will only allow for the change of use of the building. Any associated operational development may still require Planning Permission in the usual way where the works would “materially alter the external appearance of the building”. The requirement for Listed Building Consent would also remain unaltered for internal works to a Listed Building. This provides the Local Authority some leverage over the development but authorities should not use these powers to resist the principle of the change of use.
- **What about affordable housing, EIA and other policy requirements?** Unless the Government introduces a very heavily qualified change to permitted development rights in the “Spring”, which does not seem likely, there would be no planning requirement to meet affordable housing or other planning policy requirements when changing from office to residential use. It should be noted, however, that permitted development rights are not completely beyond the scope of EIA legislation for very large scale changes of use (e.g. whole blocks) and the relevant EIA thresholds/ criteria may need to be considered in extreme cases.
- **What about Building Regulations?** The changes to permitted development rights would have no effect on the existing requirements of the Building Regulations, and related legislation, which must be complied with to the satisfaction of the Local Authority Building Control Officers.
- **Will a change of use from Office to Residential be CIL liable?** Changes of use to residential are not exempt from the Community Infrastructure Levy but an offset is allowed for existing floorspace that has been occupied for 6 of the last 12 months. Permitted development is also not exempt from CIL, although there are transitional arrangements which do temporarily exempt permitted development until 6th April 2013 (which might be about the same time that the new rights for change of use are introduced). Unless a CIL Chargeable Development Notice can be served before then, the transitional exemption won't apply and developers would need to rely on the occupancy test (that the floorspace has been occupied for 6 of the last 12 months). It will be important to ensure that buildings are kept in lawful use for as long as possible and not to begin vacating buildings in preparation for the new permitted development rights. Developers should consider these timing implications carefully.
- **Can Local Authorities revoke permitted development rights?** Article 4 of the Town and Country Planning (General Permitted Development) Order (as amended), allows Local Authorities to remove most permitted development rights on one or more property within their administrative boundaries. Whilst, Article 4 is most often used as a means to protect historic buildings and areas, it could be used by a Local Authority as an alternative way to prevent the change of use from office to residential in specific areas. It will be up to the Government to decide the extent to which Article 4 Directions could be applied, bearing in mind that they might be exercised to undermine the new freedom.

Additional changes to permitted development rights

In addition to the change of use from office to residential, the Government also announced the following additional changes to permitted development rights:

- Agricultural buildings will be able to convert to a range of other uses, excluding residential dwellings;
- Increasing the thresholds for permitted development rights for change of use between business/ office (B1) and warehouse (B8) and from general industry (B2) to B1 and B8 from 235sqm to 500 sqm;
- Allowing a range of buildings to convert temporarily to other uses including shops (A1), financial and professional services (A2), restaurants and cafes (A3) and office (B1) for up to two years; and
- Allowing Free Schools to open in “almost any building” for a year without needing planning permission. This is part of separate legislation and will come into effect later in the year.

This Briefing note is for information purposes only and it is important that you seek formal advice before taking action based on this information.