



Living in the Office: New Permitted Development Rights

Developers are increasingly applying to convert offices to residential. New permitted development rights have reduced the planning burden but to what extent? Martin Wilks highlights some of the lingering constraints.

The Story so Far

On the 30th May 2013 the Government introduced permitted development rights to enable a change of use from Class B1(a) offices to Class C3 residential dwellings without the need to go through a full planning process.

The intention of the scheme is to make the best use of developed sites by allowing existing buildings to be brought back into productive use. This has been seen as a welcome move by both landowners and developers. It is also a potentially important additional tool in the push to increase the highly constrained supply of residential accommodation in urban centres.

One of the prime advantages is that a development with permitted development rights is likely to be more economically viable than a residential development of comparable size. Where full planning permission is required for instance, the local authority's planning policy will require a proportion of units as affordable housing. A change of use from offices to residential using permitted development rights, however, will not be subject to those planning policies.

Constraints and Issues

Yet despite this welcome move, developers continue to face a number of constraints, some of which are outlined in more detail below:

- Prior approval is still required in relation to matters of transport, highways, flooding and land contamination. In respect of these issues, the development is permitted subject to the condition that before beginning the development the developer applies to the local authority for a determination on whether prior approval is required.
- Full planning permission is still required for external works that may be required as part of the development to change the offices into residential units.
- The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 requires *“the building to have been used for a use falling within Class B1(a) (offices) immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use.”*

This means that new offices are excluded as are offices which have been built but which have not been used.

- Only Class B1(a) offices can be converted. This is significant as it means that offices with professional or financial services Class A2 etc, cannot be converted using the permitted development rights process.

Importantly, certain areas can be exempt, where the local authority can demonstrate that it would have 'substantial adverse economic consequences'. This may have a negative impact on developers who have invested in a building and budgeted for a permitted development rights process.

It's interesting that a significant swathe of central London Boroughs have applied for (and in many cases been granted) exemptions. The makeup of the capital's landscape is therefore unlikely to change radically – it doesn't look like large quantities of new residential development will be springing up amid London's prime commercial districts anytime soon.

- Listed buildings and scheduled monuments are excluded.
- The developer should check the office use permission. There may be an express condition on the permission imposed by the local authority which restricts the use of the land to office use and expressly removes permitted development rights. Section 106 agreements should also be checked to see if they impose any conditions on the use of the building.

To add to this, there are potentially wider implications:

Residential developers who have sites with no office use may not be happy with the changes due to an influx of competing developments which previously would only have been limited to office use.

This may even result in increased legal challenges where a residential developer going through the full planning process is disadvantaged because they are required to provide, for instance, affordable housing or a financial contribution.

There is a possibility that office rents will rise over the medium term as office space is converted into residential units. This may be seen as an advantage to landlords, but for tenants it could cause problems if new available office space does not keep pace with demand.

A landowner with the benefit of a restrictive covenant which restricts the use of neighbouring land to office use, may not be put on notice of the breach if the neighbouring landowner decides to convert the office space using permitted development rights.

Ordinarily where full planning permission is required there would be a full consultation process which would put any beneficiaries of restrictive covenants on notice.

What Happens Next?

There are indications that despite these constraints the new powers are being used with success by developers. It remains to be seen however, whether local authorities will insist on a greater degree of control as the economy starts to improve.

Martin Wilks is Commercial Underwriter at First Title