

<p>Title: Permitted development right for the change of use from office to residential</p> <p>Original IA/RPC No: RPC15-CLG-3032 (2)</p> <p>Lead department or agency: Department for Levelling Up, Housing and Communities</p> <p>Other departments or agencies: N/A</p> <p>Contact for enquiries: Maria Darby</p>	Post Implementation Review
	Date: 29/10/2021
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 06/04/2016
	Recommendation: Updated and refined April 2021

1. What were the policy objectives of the measure? (Maximum 5 lines)

The national permitted development right for the change of use from offices (B1 (a)) to residential (C3) (Class O) was introduced in May 2013 and made permanent in April 2016. The policy objective was to allow more offices to be able to change to residential use without the need for a full planning application, so that such changes of use could take place more quickly and with more planning certainty, and so help ensure more new homes are created through the re-use of such buildings. The permitted development right at the same time reduces the planning burden on individuals, businesses, and local planning authorities.

2. What evidence has informed the PIR? (Maximum 5 lines)

The PIR has been informed by Departmental planning application data, net additional dwellings statistics on the number of new homes delivered under the measure since April 2016, and the results of independent research commissioned by the Department into the impacts of the policy.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The measure has led to an increase in new homes being created through change of use from offices, with approximately 52,000 new homes having been delivered under the right between April 2016 and March 2020.

Sign-off for Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: *Christopher Pincher*

Date: *20th January 2022*

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? (Maximum 5 lines)

The permitted development right established the principle of development, and the streamlined prior approval process was expected to provide more planning certainty for developers that such proposals would be able to go ahead than would otherwise be the case, leading to an increase in housing units delivered. The financial assumptions were that the policy would lead to reduced planning costs to developers as the prior approval fee for such development proposals is lower than the equivalent planning application fee, and that there would be a significant land value uplift.

5. Were there any unintended consequences? (Maximum 5 lines)

Independent research commissioned by the Department into the quality standard of the homes delivered under the policy found that a disproportionate number of the homes were smaller than would normally be considered acceptable compared to those delivered following a full planning application, while others lacked adequate natural light. In addition, some homes were found to be in unsuitable locations. The Government has subsequently introduced legislation to require that new homes delivered meet the nationally described space standards and provide for adequate natural light in all habitable rooms.

6. Has the evidence identified any opportunities for reducing the burden on business?

(Maximum 5 lines)

The measure is a deregulatory one which removed burdens on business, while delivering more new homes than would otherwise have been brought forward under a planning application. Experience of the right, and in particular the greater planning certainty it provided for developers, led government to introduce further permitted development rights for the change of use of other types of buildings, and more recently for the construction of new homes through extending buildings upwards to create new homes.

From 1 September 2020 the government made changes to the planning use classes. This included the creation of the Commercial, Business and Service use class (E), into which offices now fall. This then required either amendment or replacement of the existing right. Following consultation, the government has introduced a new permitted development right for the change of use from the Commercial, Business and Service use class to residential. From 1 August applications may be made under this broader Class MA right. From 31 July 2021, applications cannot be made under the Class O permitted development right for the change of use from office to residential.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

This measure applies to England only. Planning is a devolved matter.

Post Implementation Review of the permitted development right for the change of use from office to residential: Additional supporting evidence

The objectives of the legislation

1. Planning permission may be granted following a planning application or by Order. The Town and Country Planning (General Permitted Development) (England) Order 2015 S.I 2015/596 (“the GPDO”), as amended, sets out national permitted development rights.
2. In May 2013, the government introduced the first national permitted development right that provided for the change of use of existing buildings to residential: from office (B1 (a)) to residential (C3). This temporary right was subject to prior approval by the local planning authority, in force for three years and provided exclusions for exemption areas set out in the legislation. The measure led to an increase in new homes being created through change of use. Departmental net additional housing data¹ shows a marked increase in the number of homes created through the change of use: from 12,523 in 2012/13, to 20,650 in 2013/14, and 30,598 in 2015/16 of which 12,824 were directly attributable to the office to residential right.
3. The national permitted development right for the change of use from offices (B1 (a)) to residential (C3) was made permanent² on 6 April 2016 (Class O) (The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016). The policy objective was to allow more offices to be able to change to residential use without the need for a full planning application, so that such changes of use could take place more quickly and with greater planning certainty and so help ensure more new homes are created through the re-use of existing buildings.

Considerations

4. The impact assessment prepared alongside the 2016 regulations (IA No: RPC15-CLG-3032 (2)) estimated that between 3,800 and 11,400 new dwellings would be created each year under the right. It also estimated that the owners of such buildings would benefit from a land value uplift of £609.7 million as the reduced cost and increased certainty of the right would lead to an increase in valuation of convertible office space.
5. Departmental planning application data shows that in the period from April 2016 to March 2020 there were 8,948 applications for prior approval, of which 6,841 (76.4%) were able to proceed. Net additional housing data shows that 51,974 new homes were delivered under the right between April 2016 and March 2020³. This means that the measure has exceeded the upper end of the forecast in terms of housing delivery. This equates to 5.5% of the total net housing additions for that period (925,273).
6. When it was made permanent, the right introduced two important changes. First a new matter for prior approval allowed for local consideration of the impact on future residents of noise from commercial buildings. This was introduced at the time particularly to address concerns about the loss of live music venues whereby nearby offices changed use and the new residents then made statutory noise complaints, leading to the venue being closed. In line with the ‘Agent of change’ principles, the prior approval allows the local planning

¹ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-net-supply-of-housing>

² <https://www.legislation.gov.uk/uksi/2016/332/made> NB the other changes introduced by this legislation were considered through a separate PIR.

³ Table 123 <https://www.gov.uk/government/statistical-data-sets/live-tables-on-net-supply-of-housing>

authority to consider proposals to mitigate the impact of potential noise on residents. Prior approval application data shows the rate able to proceed (prior approval granted, or prior approval not required) fell slightly from 79.3% in 2015/16 to 78.2% in 2016/17. The second change extended the application of the exemption areas until 30 May 2019 to give local planning authorities time to withdraw the Class O rights, where appropriate, by issuing Article 4 directions in line with national policy, without incurring liability for compensation.

7. Evidence suggests that office and brownfield land values have increased since 2014. For example, Knight Frank's Residential Development Land index suggests that land values grew by around 25% between December 2014 and September 2020. Similarly Savills's Development Land Index shows that urban development land increased in value by 15% from March 2016 to September 2020. However, it is not possible to disentangle the impact of the Permitted Development Rights from other factors, such as economic conditions, which also affect land values.
8. On 13 March 2019 the Secretary of State announced a review of permitted development rights for conversion of buildings to residential use in respect of the quality standard of homes delivered.⁴ Independent research commissioned by the Department into the quality standard of the homes delivered under the permitted development rights compared with the quality those delivered through a planning application was published in July 2020⁵. The report by University College London and the University of Liverpool found that:

“In some factors considered, such as external appearance, energy performance, access to services or neighbourhood deprivation, on average there was little difference between change of use schemes consented through permitted development and those consented through a full planning permission. However, there was a noticeable difference between schemes consented through the two routes in relation to the following key issues:

 - *Delivery against space standards for dwelling units*
 - *The mix of units in a scheme (studios, one-bedroom flats etc.)*
 - *Adequacy of natural light into dwelling units*
 - *Access to amenity space (most significant for larger scale conversions)*
 - *Immediate location (for example, if surrounded by neighbouring industrial uses)”*
9. The Government has subsequently introduced legislation to ensure from August 2020 that homes provide for adequate natural light in all habitable rooms⁶, and require that from April 2021 all new homes delivered under all permitted development rights for change of use must meet, as a minimum, the nationally described space standards⁷. Together these changes will help the delivery of better quality homes.
10. The National Planning Policy Framework sets out that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership. Planning guidance notes that development under permitted development right is generally considered to be acceptable and therefore planning obligations would not ordinarily be necessary, and that any entered into should be limited to the matters for prior approval. There has been criticism of the lack of affordable housing or funding contribution. There may be a limited impact on affordable housing delivery where a development is brought forward under the right that would otherwise have been brought forward under a planning application, permission

⁴ <https://questions-statements.parliament.uk/written-statements/detail/2019-03-13/HCWS1408>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902220/Research_report_quality_PDR_homes.pdf

⁶ <https://www.legislation.gov.uk/uksi/2020/632/contents/made>

⁷ <https://www.legislation.gov.uk/uksi/2020/1243/contents/made>

granted, and an affordable housing contribution been agreed. It is not known how many such larger developments might otherwise have come forward via a planning application in order to estimate any potential adverse impact.

11. However, the permitted development right has delivered more new homes than would otherwise have been the case, which helps reduce pressure on the housing market overall, particularly for studios and one and two bed flats that may be more affordable to buy or to rent.
12. National government funding delivers the majority of affordable housing. Around 464,000 affordable homes were delivered in England since April 2010, including 331,000 for rent. 57,000 affordable homes were delivered in 2018-19 - an increase of 22% compared to the previous year. The Government announced in Budget 2020 that it is investing a further £9.5 billion in the Affordable Homes Programme which in total will allocate £12.2 billion of grant funding from 2021-22 to support the creation of affordable homes across England. From July 2020, the programme has now been extended until 2023. The new £12 billion Affordable Homes Programme – which will start next year – will support up to 180,000 new affordable homes, including for shared ownership and social rent. The programme will lead to a further £38 billion in public and private investment in affordable housing. This will support councils and housing associations to build additional more affordable homes, in areas of acute affordability pressure, where families are struggling with the costs of rent, and some are at risk of homelessness. This national programme will therefore continue to provide the majority of affordable housing.
13. The delivery of additional homes can add to pressure on local services and infrastructure such as schools and hospitals without provision for contributions or forward planning by the local planning authority. The reuse of existing buildings will benefit from the current infrastructure already in place, such as roads. The government consulted as part of the white paper on whether the proposed Infrastructure Levy could apply to permitted development rights. Further announcements will be made in due course.
14. Applicants that have used the right have benefited from the greater planning certainty and reduced fees. It has been noted however that businesses in some premises have been displaced as a result of the right and that it led to a shortage of office space particularly for start-ups. A study commissioned by the Greater London Authority (GLA) found that 40% of PDR schemes across London involved fully occupied buildings⁸. Whilst this estimate only covers London and not the whole of England, this is the best estimate we hold of the proportion of prior approvals that were granted for offices in fully occupied space⁹.
15. There are less matters for the local planning authority to consider through the prior approval process in comparison to a full planning application, requiring less work for local authorities in assessing such proposals. Local planning authorities have therefore benefited from the reduced administrative burden offset by the prior approval fee compared with that for a planning application. The specified matters for prior approval mean that local planning authorities cannot give the same full consideration as they would to a planning application, and can mean that prior approval is granted for homes that might not accord with the local plan. A number of local planning authorities have made an Article 4 direction to remove the right. This includes those authorities that were subject to an exemption from the original

⁸ https://www.london.gov.uk/sites/default/files/london_office_policy_review_2017_final_17_06_07.pdf

⁹ Research by London Councils suggests that 39% of prior approvals were granted for offices for fully occupied spaces, which whilst is limited by the sample used is broadly consistent with the assumption we have adopted <https://www.londoncouncils.gov.uk/our-key-themes/housing-and-planning/permitted-development-rights/impact-permitted-development-rights>

temporary right. The UCL research noted 58 Directions as of July 2020, representing a small proportion of local planning authorities.

16. The key benefit for communities arises from the delivery of new homes, including an element which might not otherwise have come forward under a planning application. This stems from the greater planning certainty whereby a smaller number of planning matters may be considered through the prior approval process, and the reduced planning costs for individuals and developers. The prior approval process provides an opportunity for the local community to comment on the matters for prior approval. The community may also comment on the consultation on making an Article 4 direction to remove the right.
17. The reduced planning bureaucracy afforded by the right means that such changes of use take place more quickly and with more planning certainty, and so help ensure more new homes are created through the re-use of buildings. This makes effective use of existing buildings on brownfield land and reduces the pressure to build on greenfield land. It can help bring additional residents into high streets and town centres, supporting them to be places where people shop, use services, spend their leisure time and live. At the same time, it reduces the administrative cost of the planning system on local authorities, individuals and businesses.
18. The office to residential permitted development right is deregulatory: reducing impact on business, while delivering more new homes than would otherwise have been brought forward under a planning application. Experience of the right, and in particular the greater planning certainty it provided for developers, led government to introduce further permitted development rights for the change of use of other types of buildings, and more recently for the construction of new homes through extending buildings upwards to create new homes. Following changes to the use classes and consultation¹⁰, the government has now introduced a new permitted development right for the change of use from the Commercial, Business and Service use class to residential, within which offices now fall. This broader right applies from 1 August 2021. From 31 July 2021, applications for prior approval may no longer be submitted under the Class O permitted development right, however transitional provisions are provided in respect of applications already submitted.
19. The detail of the new Class MA right reflects comments made in response to the consultation, and addresses some of the points seen in the operation of Class O. For example, to help avoid the risk of displacement of viable businesses it requires the premises to have been vacant for three continuous months prior to the application for prior approval. This helps to ensure that premises, including on the high street, are not left empty for a protracted period of time. The right also provides for local consideration of a wider range of planning matters through the prior approval process. In particular this includes consideration in respect of location (impact on future occupiers from the introduction of residential use in an area that is important for general and heavy industry, waste management and storage or distribution), and in conservation areas, the impact of the change of use of the ground floor on the character or sustainability of the conservation area. The requirements in respect of natural light and space standards apply. The 1,500 sq m size limit on space changing use will have the effect of both protecting larger premises and limiting the impact of the introduction of larger numbers of new residents on an area. Taken together the provisions within the right, while reducing planning bureaucracy and preserving the greater planning certainty, will support the delivery of quality homes in suitable locations. It is accepted that the Class MA right is in certain respects more limited than the Class O right as it applies to offices. The fee of £100 per dwellinghouse will help support the effective operation of local planning authorities.

¹⁰ <https://www.gov.uk/government/consultations/supporting-housing-delivery-and-public-service-infrastructure>

