# Further relaxation

*Jamie McKie casts a critical eye over the latest expansion of permitted development rights*

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What are permitted development rights? Section 59(1) of the Town and Country Planning Act 1990 empowers the Secretary of State to make development orders granting deemed planning permission for certain development which would otherwise require express planning permission. The rights enshrined in such development orders are known as permitted development rights (PDRs). PDRs can be subject to specific conditions and limitations.

Some PDRs can be withdrawn through the making of an Article 4 direction (Art 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) (the 2015 Order)). This means that deemed planning permission will no longer be granted automatically under the 2015 Order and a planning application is required.

## Legislative background

On 6 April 2016, the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (SI 2016/332) came into force (the 2016 Order). This amended its predecessor, the 2015 Order.

The 2015 Order had, itself, consolidated and built upon amendments made to earlier development orders. However, the 2016 Order represents the latest step on the seemingly inevitable long and winding road towards greater deregulation and simplification of the planning system. It introduces further PDRs and ends the previous uncertainty concerning office-to-residential conversions by making permanent Class O.

## Wider planning reform context

The latest chapter in the PDR story should be viewed against the background of wider planning reform. House building, in particular, is a key focus behind many of the changes, the office-to-residential PDR being the most obvious. While the regime now covers a multitude of development, the focus of this article is firmly on the expansion of PDRs where its primary purpose is to facilitate greater housing delivery.

In tandem with the push for housing delivery, the general direction of travel has been for many of the perceived 'smaller' aspects of development to be taken out of the planning regime. The obvious example is householder extensions. The justification for this approach is simple – with less 'red tape', more development can take place at a faster pace.

It is also meant to free up the increasingly scarce resources of local planning authorities, allowing officer time to be diverted to larger scale developments which demand greater professional input, although in practice it is arguable whether resources have actually been released as a result of this approach. This is particularly so given the surge of interest generated by the likes of Class O and its stripped-down, yet nevertheless time-consuming, prior approval process.

Article 4 directions are also resource intensive. They have gained increasing importance, becoming symbolic of the struggle between the edict of deregulation emanating from the centre and a tightening of grip at a local level, as councils attempt to retain some control over development.

## New PDRs under the 2016 Order

Aside from changes of use to residential, the 2016 Order also brings in amendments in relation to:

- development within the curtilage of a dwelling house (Art 4);
- the change of use of shops to financial and professional (Art 5);
- the temporary use of buildings or land for film-making purposes (Art 11); and
- minerals – drilling of boreholes to carry out groundwater monitoring, seismic monitoring or locating and appraising the condition of mine operations where preparatory to the drilling of boreholes for petroleum exploration (Arts 12, 13 and 14).

The 2016 Order increases the scope of PDRs in relation to changes of use to residential. There are three such PDRs that merit particular consideration:

### Class O – office to residential: here to stay

Article 7 amends Class O, part 3, Sch 2 of the 2015 Order to bring into effect changes to this PDR. While not strictly a new PDR, the 2016 Order puts on a permanent footing what was originally introduced as a temporary right for three years. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101) had inserted a new Class J, which granted permission for the change of use of a building and any land within its curtilage from Class B1(a) (offices) to a use falling within Class C3 (dwelling houses).

It should, however, be noted that the 2016 Order also brings in a new review mechanism (Art 7A) which allows for future consideration of how Arts 1 to 7 are operating in practice. The first review is to take place within five years from 6 April 2016, with a report being published. Thereafter, reports will be published at least every five years.

The process will involve the Secretary of State setting out the conclusions of a review in a report to be published. The report will consider the objectives intended to be achieved by the regulatory system established by those articles. It will assess the extent to which those objectives are achieved and whether they remain 'appropriate'. Interestingly, if they are considered to remain appropriate, it will assess whether the objectives could be achieved with a system that imposes less regulation. A nod perhaps to further deregulation in the future.

#### All things to all men?

On 13 October 2015, the government ended the uncertainty and announced the permanent extension of this PDR in typically hyperbolic fashion. Heralded as a 'planning shake-up' which would 'provide thousands of new homes', it was clear that there was (and is) much expectation riding on its young shoulders. The Department for Communities and Local Government (DCLG) press release encapsulated the wider context of planning reform perfectly, couched in terms that focused on the negatives of the PDR going rather than the positives of it staying – the failure to make it permanent would potentially introduce:

> ... a raft of unnecessary red tape and bureaucracy that would have hampered the conversion of underused office buildings and slowed down the delivery of thousands of new homes.

It was even suggested that it may be part of the solution to the elephant in the room – the green belt. Brandon Lewis proclaimed that it would:

> ... tap into the potential of underused buildings to offer new homes for first-time buyers and families long into the future, breathing new life into neighbourhoods and at the same time protecting our precious green belt.

Housing, regeneration and the green belt – a striking example of the complexities associated with housing delivery. It is the manifestation of the government's view that deregulation can play an important role in increasing housing delivery, while addressing wider issues such as where to put them.

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#### New housing at any cost

Unsurprisingly, this PDR has gained a significant amount of coverage and provoked strong reactions, polarising opinion.

The British Property Federation (BPF), on behalf of the property industry, had cautiously welcomed its impending arrival back in January 2013, saying that:

> ... office-to-residential conversions won't work for all buildings, or in every area, but any trip through our suburbs soon exposes redundant office space that with the best will in the world is never going to be brought back into commercial use.

Fast forward to August 2015 and a briefing by London councils suggested that it was having a detrimental impact on office accommodation and

## Onwards and upwards?

A recent consultation has sought views on providing greater freedom to 'build up' in London to support housing supply.

It proposed three options for incentivising the delivery of more housing in this way:

- the creation of a new PDR;
- the use of local development orders; and
- bringing forward new policies in the London Plan.

The consultation closed on 15 April 2016, so watch this space.

on affordable housing provision in particular. Issued before the extension was announced, it stated that at least 100,000 sq m of wholly occupied office floorspace was lost between May 2013 and April 2015. In total, 834,000 sq m of total office space had gone. This had led to an increase in office rents. It also bemoaned the loss of affordable housing as a result of such developments not having been taken through the planning process.

**How effective has it been in practice?**

The latest statistics capturing the volume of applications for prior approvals are published online by DCLG (www.legalease.co.uk/planning-app-stats).

While the perception is that this PDR has proved popular, there is a notable lack of comprehensive data covering the period from its inception to April 2014. Between April 2014 and June 2015, 4,887 office-to-residential prior approval applications were decided in England. Many of these were concentrated in London. These numbers do not, however, paint a full picture, given that the PDR was introduced back in May 2013.

The London councils briefing carries analysis from London boroughs to the Greater London Authority which looks to plug that data gap, albeit not definitively. It states that at least 2,639 applications were received from May 2013 to April 2015. This has translated into approval for at least 16,600 new dwellings since May 2013. These numbers suggest that, while not in itself the sole answer to meeting the government's housing targets, it could make a useful contribution if those developments come forward.

**Restrictions and conditions attached to the PDR**

It is important to remember that, despite the political rhetoric, the PDR is not a high-speed juggernaut with brakes in need of attention, bound only for 'Destination: Development'. The 2015 Order, as amended by the 2016 Order, builds in some important safeguards which restrict its use. They are not all replicated here but the following are highlighted:

***Conditions and limitations***

Conditions attached to the PDR mean that an application to the local planning authority is required to consider whether prior approval is needed in respect of specific matters. These matters were extended under the 2016 Order to include noise impacts.

Under para O.2, the full list of conditions now relate to:

- the transport and highways impact of the development;
- contamination risks on the site;
- flooding risks on the site; and
- noise impacts from commercial premises on intended occupants of the development. Commercial premises are defined as being:

> ... any premises normally used for the purpose of any commercial or industrial undertaking which existed on the date of the application under paragraph 0.2(1) and includes any premises licenced under the Licensing Act 2003 or any other place of public entertainment.

Interestingly, noise impacts are only a consideration when assessing the change of use of office buildings. It is not immediately apparent why this condition should not, equally, apply to changes of use to residential from other similar uses such as shops, financial and professional services, and laundrettes.

***Exempt areas and Article 4 directions***

Under para O.1(a) which is substituted under the 2016 Order, there will remain, until May 2019, areas which are exempt from the operation of this PDR. After that point, those local planning authorities that wish to retain these exemptions and require applications to be submitted for this type of development in those areas will need to make an Article 4 direction.

**What is missing?**

It had been expected that the 2016 Order would extend the PDR to demolition and rebuild. This followed the October 2015 announcement which stated that:

> ... to further support the delivery of new homes, the rights will in future allow the demolition of office buildings and new building for residential use.

However, the 2016 Order does not go this far. The House of Commons Library briefing paper 'Planning: change of use' (at p7) confirms that:

> ... the rights to allow for demolition of offices and new build as residential use will be subject to limitations and prior approval by the local planning authority. Further details will be provided in due course.

It is expected that these extended rights will, eventually, come forward

## References

'Data blog: What latest planning statistics reveal about office-to-residential activity', Jamie Carpenter, *Planning Resource*, 24 September 2015 (www.legalease.co.uk/data-blog)

Live tables on planning application statistics, Department for Communities and Local Government, last updated 8 March 2016 (www.legalease.co.uk/planning-app-tables)

'Maps of areas exempt from office to residential change of use permitted development right 2013', Department for Communities and Local Government, 9 May 2013 (www.legalease.co.uk/exempt-areas)

'Property industry welcomes offices to homes plan', British Property Federation, 24 January 2013 (www.legalease.co.uk/bpf)

'The impact of permitted development rights for offices', London Councils, 1 September 2015 (www.legalease.co.uk/pdr-offices)

'The rush to turn offices into flats', Brian Wheeler, BBC News, 19 December 2013 (www.legalease.co.uk/offices-to-flats)

'Thousands more homes to be developed in planning shake up', Department for Communities and Local Government and Brandon Lewis MP, 13 October 2015 (www.legalease.co.uk/planning-shakeup)

once the Housing and Planning Bill hits the statute books.

### Other changes of use

The 2016 Order introduces further PDRs in respect of changes of use, again focused on housing provision.

#### Laundrettes to housing – Class M

Article 6 of the 2016 Order has expanded the scope of PDRs in Class M of part 3, Sch 2 to include development consisting of a change of use of a building from a use as a laundrette to a use falling within Class C3 (dwelling houses).

This constitutes an expansion of Class M, which already allowed change of the use of a building to Class C3 (dwelling houses) from Class A1 (shops), Class A2 (financial and professional services), a betting office, payday loan shop and specified mixed uses.

#### *Conditions and limitations*

As with Class O, this PDR shares some of the same conditions, requiring a determination as to whether prior approval will be needed. These relate to transport and highways impacts, contamination risks and flooding risks.

It also now requires an assessment of whether the change of use to C3 (dwelling houses) is undesirable as a result of the impact on the adequate provision of services, but only where there is a 'reasonable prospect' of the building being used to provide such services.

#### *Class M dismissed?*

The PDR allowing the conversion of shops to residential has failed to capture the imagination in the way that office conversions have. Despite arriving with much fanfare in April 2014, only 650 have been approved since, compared to 4,700 office to residential conversions (source: para 2.7, February 2016 consultation on upward extensions in London). One possible reason for the modest take-up is the limitation on floorspace of 150 sq m.

#### Light industrial to housing – Class PA

Article 8 of the 2016 Order introduces a new, temporary, PDR – Class PA. It will not come into force until 1 October 2017 and will last for three years.

This PDR applies to development consisting of a change of use of any building and any land within its curtilage from a use falling within Class B1(c) (light industrial) to a use falling within Class C3 (dwelling houses).

#### *Conditions and limitations*

The development permitted under Class PA is limited to the extent of gross floorspace of the existing building being a maximum of 500 sq m. Other express limitations concern previous use and the existence of agricultural tenancies.

As with Classes M and O, it requires an application for determination as to whether prior approval is needed in respect of transport and highways impacts, contamination risks and flooding risks.

In addition, it requires an assessment of the impact of residential use on the sustainability of industrial services or storage or distribution services (or a mix), where the authority considers that the building to which the development relates is within an area considered important for providing those services (PA.2(1)(b)(iv)).

The long lead-in time before this PDR comes into effect provides developers with a good opportunity to identify suitable light industrial buildings and interrogate local planning policies that seek to protect these services in particular areas. This lead-in time offers the chance to learn from the difficulties associated with Class M (see above) where a similar condition (M.2(1)(d)(ii)) considers the desirability of the impact of residential use 'where the building is located in a key shopping area on the sustainability of that shopping area'. It could be argued that many councils have a more established and solid evidence base underpinning planning policies which protect key shopping areas when compared to those concerning light industrial use.

### Common conditions and limitations – Classes M, O and PA

#### Completion of development

Development under these classes (and others) must be 'completed' within a period of three years, starting with the prior approval date. The precise meaning of completed has, of course, provoked some debate but is beyond the remit of this particular article.

#### Statement on units

Under Art 10 of the 2016 Order, anyone wishing to exercise the PDRs under Classes M, O and PA (and others) must submit a statement to the local planning authority 'specifying the net increase in dwelling houses proposed by the development'. Net increase means the number of dwelling houses proposed by the development that is additional to the number of dwelling houses on the site immediately prior to the development. Article 15(2) provides that this requirement will not have retrospective effect and will apply only to those applications for prior approval determination post-5 April 2016.

### Conclusion for practitioners

While the continued expansion of PDRs demonstrates the increased drive to deregulate the planning system, there are inherent limitations. These are particularly relevant when analysing the availability of PDRs and their ability to meet wider government expectations. Will the new PDRs introduced by the 2016 Order contribute in a meaningful way to housing delivery? Time will tell. What is certain now is that PDR and housing delivery are becoming inextricably linked. ■

## House of Commons Library briefing papers

'Permitted Development Rights' (Number 00485), 30 March 2016

'Planning: change of use' (Number 01301), 30 March 2016

## Update

The government has recently issued its response to s2 of the 'technical consultation on planning' (July 2014) concerning PDR. It gives an overview of responses and explains action taken on individual measures that have already been introduced.