

Leveraging Permitted Development Rights

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Overview

- PDR within the planning system and mechanisms of change
- Impact of PDR in your region
- 2018 changes to agricultural PDR
- ‘Article 4’ directions
- Future potential changes

PDR within the planning system and mechanisms of change

- S.55 TCPA 1990: “Development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
- Subject to certain exceptions including internal works, limited works by statutory undertakers and agriculture/forestry.

PDR within the planning system and mechanisms of change

- Development requires planning permission, however certain classes of development are permitted by virtue of the GPDO.
- Historically, PDR covered ‘minor’ development, however there has been increased appetite within government to bring a broader range of development within the PD regime.
- As a result, PD has become an increasingly relevant, but complex, area of law.

PDR within the planning system and mechanisms of change

- Types of development now covered by PDR include:
- Minor householder development
- Certain changes of use
- Temporary uses
- Developments linked with agriculture or forestry

Impact of PDR in your region

- Eastern region has seen:
 - diversification/ change of use in agricultural buildings;
 - substantial increase in office to residential particularly of the older 1960's and 1970's buildings;
 - Norwich has seen a decline in the last three years of approx. 65,000 square metres of office space
 - Combined London Boroughs reported a loss of 834,000 square metres of office space between May 2013 and April 2015 equating to 16,600 new dwellings

Impact of PDR in your region

Consequences of office conversions:

- Loss of office accommodation

If no new office development is planned, businesses are forced to look elsewhere

- Increase in office rents

Scarce office stock has an impact on land values

Impact of PDR in your region

- Introduction of poor quality new housing

It has long been accepted that there is a shortage of housing especially in the south-east of England but the need to increase housing supply should not come at the cost of producing sub standard housing. Office to residential conversions do not have to be plan compliant and many do not comply with minimum space standards or have adequate light and ventilation.

Impact of PDR in your region

- Loss of affordable housing supply

If conversions of office to residential go through planning process, many would have been a significant source of new affordable housing or an off-site contribution.

London Boroughs have calculated that office to residential schemes under PDR has meant a loss of over a 1,000 affordable housing dwellings between 2013 and 2015.

2018 changes to agricultural PDR

- Increased size limits for development permitted on agricultural holdings:
- Up to 1000sqm on agricultural holdings >5Ha
- Extension of existing buildings on smaller agricultural holdings up to 1000sqm provided cubic capacity increase <20%

2018 changes to agricultural PDR

- Expansion of change of use rights:
- Class Q: 3 larger homes maximum of 465 sq. m.; 5 smaller homes, maximum 100 sq. m.; or mix of the two

Beware!

- Limits of PDR in respect of Article 2(3) land, Article 2(4) land and article 2(5) land.
- PDR not a substitute for listed building consent and certain PDR cannot be exercised in the curtilage of a listed building.
- Need for prior approval in respect of the exercise of certain PDR

‘Article 4’ directions

- Permitted development rights can be removed by the local planning authority by imposing an Article 4 direction.
- *What is an Article 4 direction?*

A direction under article 4 of the GPDO which gives either the Secretary of State or the local planning authority the ability to withdraw specified permitted development rights across a defined area.

‘Article 4’ directions

- *What can an article 4 direction do?*

Provided there is justification for its purpose and its extent an article 4 direction can:

- Cover an area of any geographic size from being site specific

e.g. Birkett Hall, Main Road, Woodham Ferrers to prevent use of land as a temporary festival site (caused mayhem to local road network) Council had previously relied on the farmer saying wasn’t going to permit the festival to happen again but the following year it did so Council placed article 4 direction over his land removing Class B of Part 4 of Schedule 2 and class A of Part 5 of Schedule 2;

‘Article 4’ directions

e.g. Waveney District Council (Lowestoft area) have a blanket wide Article 4 Direction across the district in respect of HMOs

- Remove specified permitted development rights related to operational development or change of use

e.g. St Edmundsbury Borough Council Article 4 Direction removing various householder, minor operation and demolition PD rights in the Town Centre and Victoria Street Conservation Areas

- Remove permitted development rights with temporary or permanent effect

‘Article 4’ directions

- *When is it appropriate to use article 4 directions?*

Should be limited to situations where it is considered necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified

‘Article 4’ directions

- *Can all permitted development rights be withdrawn by an article 4 direction?*

Some permitted development rights cannot be removed via article 4 directions. These are set out in article 4(1) to (3) of the GPDO. These exemptions are to ensure permitted development rights related to national concerns, safety, or maintenance work for existing facilities cannot be withdrawn.

‘Article 4’ directions

- *Does an article 4 direction mean that development is not allowed?*

An article 4 direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail.

Future potential changes

- Autumn Budget 29 October 2018
- Proposals for further expansion to PD rights in a number of areas.
- MHCLG consultation paper: *Planning Reform: Supporting the high street and increasing the delivery of new homes*

Upward extensions to existing buildings

- A proposed right to develop airspaces above existing buildings to create additional homes.
- Consultation considers different ways in which this could be achieved including reference to the highest existing building in a terrace or ‘prevailing roof height’. The former would be more certain than the latter.
- Maximum limit of five additional storeys being considered.

Upward extensions to existing buildings

- Consultation includes consideration of the types of premises that would be suitable for upwards extension.
- May result in a range of premises benefiting from rights to build upwards to provide new homes.
- It is proposed that such right would be subject to prior approval.

A5 (hot food takeaway) to C3 (residential)

- To support the development of further housing through the PD system.
- Would bring hot food takeaways in line with other high street uses i.e. A1, A2, pay day loan shops and laundrettes
- It is proposed such right would be subject to prior approval.

Demolition of commercial premises for residential development

- Recognition of the fact that not all buildings are suitable for conversion to residential use.
- Proposal to allow for the demolition of existing commercial premises and replacement with housing.
- Government considering how developer contributions could be sought.
- It is proposed such right would be subject to prior approval.

A1(shops), A2(financial and professional) and A5 (hot food takeaway) to B1 (office)

- Intention of meeting the needs of a changing high street by allowing diversification from the traditional high street shop.
- Government consider it desirable to encourage businesses into town centres.
- It is proposed such right would be subject to prior approval.

Larger electric car charging points

- Government target to increase the uptake of ‘zero emission’ vehicles with the majority of cars and vans electric by 2050.
- Current PD rights allow for small chargers (up to 1.6m in height) in areas lawfully used for off-street parking.
- Proposed to increase this to 2.3m to provide for expansion of rapid charging points that don’t fall within current size limit.

Expansion of temporary changes of use

- Current Class D PD right allows A1, A2, A3, A5, B1, D1, D2, betting office, and pay day loan shop to change to A1, A2, A3 or B1 for a period of up to 2 years.
- Proposed expanding this to include change to a public library, exhibition hall, museum, clinic or health centre.
- Proposed that temporary period be extended from two years to three years.

Making temporary rights permanent

- Two time-limited PD rights due to expire in 2019: B8 to C3 (Class P) and larger single storey extensions to dwellinghouses (amended Class A).
- Government considers that both rights have been successful and is therefore proposing these become permanent.

Removal of PD rights for telephone boxes

- Current PD rights allow for installation of ‘phone boxes and for advertising on those ‘phone boxes.
- Government consider that there is a sufficient network of ‘phone boxes now in place given technological changes.
- Also propose removing the ‘deemed consent’ for new advertising on ‘phone boxes.

Proposed amendment to Use Class Order

- Purpose of use class order is to give flexibility to how premises are used.
- Government considering amending the definition of shops (A1) to reflect a broader range of uses appropriate for the modern high street.
- Considering also introducing a new ‘mixed’ use class to merge A1, A2 and A3 uses.