

A race against time

Permitted development Chad Sutton urges developers to press ahead with any incomplete office-to-residential conversion schemes ahead of the 2016 deadline

In May 2013 the government altered permitted development rights to allow a change of use of a building and any land within its curtilage from offices (use class BI(a)) to residential (use class C3) without the need to obtain planning permission. These rights are subject to a prior approval procedure that is focused on an assessment of transport and highways impacts, contamination and flood risk. The residential use must start by 30 May 2016.

Since the introduction of these rights – under class J of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 – one of the main issues for developers has been whether the government will extend these rights. Without this extension some developers may have insufficient time to complete their office-to-residential conversion schemes and begin the residential use.

Extension of rights

On 31 July 2014, developers received a glimmer of hope, following the publication of the government consultation paper: Technical Consultation on Planning, which proposed extending the deadline to 30 May 2019.

Nearly a year passed without any indication from the government as to whether these rights would be extended, until recently when the Town and Country Planning (General Permitted Development) Order 2015 was published. This order consolidates all previous amendments to permitted development rights and came into force on 15 April 2015. Notably though, this order contains no provision to extend the office-to-residential permitted development rights (now contained in class O of Part 3 of Schedule 2 of the order) and the 30 May 2016 deadline remains.

A statement to parliament by Eric Pickles on 25 March 2015 merely confirmed that the government would “further consider the case for extending the office to residential reforms”. There is therefore no current indication that these rights will be extended and the chance of extension may be further reduced under a new government.

Effect of current status

The increased uncertainty regarding the extension of these rights has made many developers nervous about whether or not they can complete their

Key points

- There is no indication that the office-to-residential permitted development rights will be extended past the current deadline of 30 May 2016
- It is therefore crucial for developers to complete office-to-residential conversion schemes and begin the residential use before the deadline
- The non-extension of these rights will potentially strengthen the bargaining position of local planning authorities with enforcement powers to obtain from developers affordable housing provision and other planning obligations

office-to-residential conversion schemes and begin the residential use by 30 May 2016 – little over a year away. Developers are also concerned about what practical steps they need to take to evidence that they have “begun” the residential use. These questions are also being raised by funders and potential purchasers of the residential units within these schemes and planning solicitors and barristers are being approached by developers for their opinion.

This uncertainty is also starting to have an effect on the number of sites with prior approvals that are coming to the market for sale and the values that can be achieved for them. Where these sites may have been considered attractive and achieving higher values a year ago, some owners are now desperate to dispose of them for lower values.

There is also a potential negative effect

on future housing supply that results from office-to-residential conversion schemes. If many of these schemes are put in doubt as to whether they can be delivered, then less housing will come forward as a result.

A clear message

The clear message to developers who have already obtained a prior approval and commenced works to convert offices to residential use is essentially to “get on with it”, complete the works and begin the residential use by the current deadline.

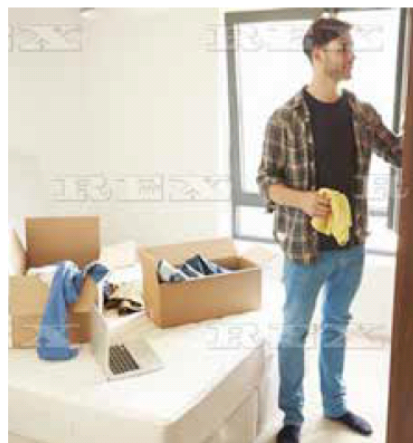
Where schemes are incomplete and there is no evidence that a residential use has begun by the deadline, does any subsequent completion of the scheme and commencement of residential use at a time after the deadline constitute a breach of planning that is enforceable by a local planning authority?

If there is a breach of planning, local planning authorities still have discretion as to whether to commence enforcement action. It will be interesting to see in future whether any enforcement action eventuates, given that the views of local planning authorities vary widely on permitted development rights. Many authorities such as the London borough of Islington and the London borough of Richmond oppose these rights and introduce Article 4 Directions withdrawing them in parts of their boroughs. Other authorities take a more positive view.

At the very least, this may be an opportunity for local planning authorities to use the potential threat of enforcement action for a breach of planning to strengthen their bargaining position with developers in order to obtain from them what they are currently missing from offices converted to residential use under permitted development rights: affordable housing provision and other planning obligations typically imposed under section 106 agreements.

It may not be known until after the general election and the winning party (or parties) has had the opportunity to implement its planning reform agenda whether office-to-residential permitted development rights will be extended. However, in the meantime, there is a period of uncertainty and the race is now on to complete office-to-residential conversion schemes by next year's deadline.

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Conversions: residential use must start by 30 May 2016