

# Permitted Development Rights (Class MA) Commercial, Business and Service Use to Dwellings



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*Permitted Development Rights for a change of use of a building and any land within its curtilage from Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). The rights have conditions restricting the qualifying floorspace to no more than 1,500m<sup>2</sup> and the building must have been vacant for 3 months before prior notification applications can be made. The new rules take effect from 1<sup>st</sup> August 2021.*

Earlier consultation identified that new permitted development rights would allow for the change of use from any use, or mix of uses, within the Commercial, Business and Service use class (Class E) to residential use (C3). The right would replace those granted for the change of use from office to residential (Part 3, Class O of Schedule 2 to the General Permitted Development Order), and from retail etc. to residential (Part 3, Class M of the General Permitted Development Order). The new Class MA has brought these into effect.

Conditions have been introduced in respect of:

- A maximum cumulative floor space of 1,500m<sup>2</sup> square metres of buildings to be converted.
- The building must have been vacant for a period of 3 months prior to the application for Prior Approval.

Prior approval from the Local Planning Authority will be required to exercise the rights and can consider the following matters:

- Transport impacts including safe site access;
- Contamination in relation to the building;
- Flooding risks relating to the building;
- Impacts of noise from commercial premises;
- Provision of adequate natural light to all habitable rooms;

- The impact of the development for future residents from the introduction of residential use in an area considered important for industrial, waste management, storage and distribution uses; and,
- Where development involves loss of services by a registered nursery or health centre, what impact that loss of service would be.

Locational restrictions are broadly in accordance with Article 2(3) land, although, surprisingly, the rights can be exercised in Conservation Areas subject to further conditions. The character and sustainability of the Conservation Area can be considered as part of the prior notification process where the loss of ground floor commercial uses is proposed.

## Commentary

The new rights have been suggested in briefings to be part of a package of measures to revitalise England's high streets and town centres, by supporting the creation of much-needed homes. However, Class E (Commercial, Business and Service use) applies everywhere in all cases, not just on the high street or in town centres. Furthermore, planning permission can often be required for the external works needed to address "eyesore" developments as the Government have referenced.

The increased flexibility for commercial premises may be seen as a positive, but that is to ignore the previous scope of permitted development rights in respect of Office to Residential conversions under Class O of the General Permitted Development Order.

The consultation issued by Government stated the intent was to build on the successful delivery of permitted development rights for the change of use from office to residential and as such no size limit on the buildings that can benefit from the right was proposed. The right would allow for the building, or part of the building, to change use, rather than lying vacant for example. By limiting the

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maximum cumulative floorspace to 1,500m<sup>2</sup> that risk of vacancy has not been addressed at a time when many office premises may be struggling for occupation as home working or alternative locations reduce the need for such space.

Retail and office buildings can be substantial in size, and a significant number of new homes could be delivered from re-use of vacant buildings but that is not captured in these rights. The impacts of larger buildings could be managed through prior approvals. There remained the limitation in regard to permitted development rights not applying to development that is screened as requiring an Environmental Impact Assessment. This also controlled an upper level to some degree.

As all new homes in England delivered through any Permitted Development Right will be required to meet nationally described space standards it is unlikely that more than 35 apartments per building could be secured within the proposed threshold when circulation and ancillary space is taken into account.

Proposed fees for Class MA Part 3 Schedule 2 development are £100 per unit, up to a maximum of £5,000 (or 50 units). It is unlikely that the maximum fee would ever be met, however, as application of the National Space Standards to 1,500m<sup>2</sup> would restrict the number of units to significantly less than 50.

On this basis, the permitted development rights cannot be expected to meaningfully address the 35% uplift in housing requirements within the 20 largest English cities and urban areas. As the rights have withdrawn the potential for large scale office conversion, this will simply increase the pressure and need for Green Belt review and release of land for housing, in particular non-apartment types.

The required 3 month vacant period, prior to submission, will result in empty buildings with knock on impacts on the appearance, activity and vitality of affected areas.

Whilst changes were needed to ensure permitted development rights reflected revisions made to the Use Classes Order, these amendments fundamentally reduce the scope for converting office space to provide new residential properties and will likely result in an increase in vacant and redundant office properties with limited repurpose options.

If you have any queries or require any further information, please do not hesitate to contact DLP Planning Ltd.

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