

Report of the Chief Planning Officer

Report to Scrutiny Board (Housing and Regeneration)

Date: 25 March 2014

Subject: Permitted development changes to house extensions and office to residential

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. On 30 May 2013 the Government amended legislation to allow certain types of development to go forward without the need for planning permission for a three year period. This included larger single storey rear house extensions and conversion of offices to residential use. The Government has indicated that the changes were in a bid to make it easier to convert redundant, empty and underused office space into new homes and allow home owners to extend their properties to meet their needs.
2. The larger house extension changes were controversial with local planning authorities (LPA) and in the House of Lords and a late amendment introduced a neighbour notification process. This means immediate neighbours are informed of proposals and they have the opportunity to make an objection. Applications without any objections after the 21 day notification period are permitted development (PD). Applications which have received representations are required to come to the Local Planning Authority for determination through the prior approval process. In such cases, the LPA can only assess the impact on amenity and no other issues can be considered.
3. The office to residential changes were also controversial, with concerns over the loss of prime office spaces. The government offered local authorities the opportunity to seek an exemption to the permitted development rights and Leeds City Council sought such an exemption for the prime office area in the city centre, a major employment hub for the city and region; like many other authorities, Leeds was unsuccessful. A light touch

prior approval process to allow transport, contamination and flooding issues to be addressed by LPA is now in place, with no further approval required.

4. The changes generate work for the LPA, but in the case of the house extension process, no fee is payable. Since 1 October 2013 a £80 prior approval application fee is paid to the LPA for office to residential changes.
5. So far there have been 121 large house extension applications which meet the criteria, of which 105 received no objections and are therefore permitted development. 16 received neighbour representations and were determined by the LPA. 24 prior approval applications for office to residential have been received, with three not being granted prior approval.
6. The new PD rights have been in place for almost a year and the service continues to monitor applications and assess any impact of the changes. The service also continues to liaise with the Core Cities on potential long term implications. However, it is clear that the Government sees the changes as a positive step in promoting brownfield regeneration, boosting housing supply and allowing homeowners to meet aspirations for improving their homes and whilst the changes are temporary, the government will review in due course to assess the scope for extending the scheme.

Recommendations

7. Members are recommended to
 - 7.1. note the report
 - 7.2. consider if there are any particular concerns over the changes which can be fed back to the Department of Communities and Local Government.

1 Purpose of this report

- 1.1 The government amended legislation in the Growth and Infrastructure Act, 2013 to allow for offices to convert to homes without having to apply for full planning permission and for large house extensions to go forward without the need for formal planning permission. These measures are in place for three years from 30 May 2013 to 30 May 2016.
- 1.2 Scrutiny Board (Housing and Regeneration) requested a report on the impact and policy implications of the government's decision to increase the permitted development rights and this report describes the activity which has arisen from the changes to permitted development rights and the implications of the new legislation on the city.

2 Background information

2.1 Householder permitted development

- 2.2 The permitted development (PD) rights amended on 30 May 2013 allow rear extensions of up to 8 metres deep on detached dwellings and up to 6 metres deep on other dwellings through a prior approval process and only apply to single storey extension, not exceeding 4 metres in height. The rights do not apply to dwellings in sensitive areas such as conservation areas or national parks etc and will "initially" only apply to extensions to be developed before 30 May 2016, although the Government has stated that "the policy will be kept under review to establish the scope for extending the scheme". An extract from the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 is attached as appendix 1.
- 2.3 A developer wishing to take advantage of the permitted development rights must first notify the Local Planning Authority (LPA) and provide a written description of the development including measurements, a plan and addresses of neighbouring properties. The council will notify owners or occupiers of any adjoining properties about the proposed development and neighbours have at least 21 days to object to the proposal scheme. If no objections are received the LPA will issue a notice to the developer informing them that prior approval is not required and that the proposal is permitted development. There are no fees to offset the costs of administering this process.
- 2.4 Where representations have been received, the prior approval of the LPA is required and therefore the LPA must assess the impact of the development upon the amenity of all adjoining premises, no other issues are considered.
- 2.5 The measures were highly controversial in the House of Lords and faced much opposition. Immediate neighbour consultation was added as a very late amendment to allow those who could potentially be affected by the large scale extensions to comment on their impact.

2.6 Office to residential

- 2.7 The Government changed PD rights to allow for changes of use from Class B1(a) office to Class C3 residential without the need for planning permission. Prior to making any change of use, developers must apply to the LPA to determine whether the prior approval of the authority will be required as to:
- transport and highways impacts of the development;
 - contamination risks on the site; and
 - flooding risks on the site
- 2.8 Where prior approval is required, development shall be carried out in accordance with details approved by the LPA. Other aspects of development which may be associated with a change of use, such as alterations to facades, extensions etc will continue to require planning permission.
- 2.9 The rights only apply where the building has either, been in use as an office immediately before 30 May 2013 or, if vacant, where its last use was an office use. This will disqualify buildings that have not actually been used for offices. DCLG has confirmed that the legislation is intended to avoid developers building offices with the sole intention of sidestepping the requirements for residential planning permission such as the provision of affordable housing or other section 106 obligations. However, it has been argued that as developers would not have to meet financial obligations it could make the difference between a scheme becoming viable and standing empty.
- 2.10 These measures were also controversial. The government consulted on the proposals in April 2011, discounted them and instead included a policy statement within the National Planning Policy Framework to promote change of use. However, the changes formed part of the measures in the Growth and Infrastructure Act 2013.
- 2.11 The government in recognising that the new rights could affect areas differently offered local authorities the opportunity to seek an exemption. 17 Councils were granted exemptions to cover areas where the new rules would cause "either the loss of a nationally significant area of economic activity or a substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring¹". Along with other Core Cities, Leeds was unsuccessful in securing an exemption for the prime office area of the city. The Government only granted an exemption in "exceptional circumstances". A recent legal challenge by a number of authorities to the change has been unsuccessful in the High Court. Some authorities have issued Article 4 directions restricting the PD for some or all parts of their areas.
- 2.12 The measures continue to be controversial; Nick Boles, Planning Minister issued a statement on 6 February 2014 criticising local authorities "disproportionate" use of Article 4 directions to remove permitted development rights. The government's has asked authorities to reduce the extent of their direction and are minded to cancel

¹ DCLG Relaxation of planning rules for change of use from offices to residential. Impact Assessment May 2013

Article 4 directions in those authorities which “seek to re impose unjustified or blanket regulation²”.

3 Main issues

3.1 Household permitted development

- 3.2 The service has received 213 householder extensions under the new permitted development rule (to 18 February 2014). Of these 55 were returned to the applicant as they did not fit the new permitted development criteria and 37 are currently pending during the consultation and/ or determination period (for those that have received neighbour representations).
- 3.3 121 met the criteria and have gone through the process. 105 received no objections and therefore are permitted development. This means 86% of applications have not had objections or representations from neighbours. 16 applications received neighbour representations meaning the prior approval of the LPA was required. Of these 11 were refused and 5 approved. The service received 2,097 householder applications in 2012-13. Based on these figures, the new PD process has taken about 5% of applications out of the planning application system.
- 3.4 Where the prior approval of the LPA is required, the only consideration that can be taken into account is impact on amenity. There are usually three main considerations in determining impact on amenity: overlooking, over dominance and overshadowing. The revised permitted development regulations do not require developers to provide either elevational details or details relating to boundary treatments, instead being required to only provide details of siting and size. The LPA cannot insist on any further details being provided and must therefore make a determination on the proposal as submitted. Prior approval can only be withheld where an impact upon neighbouring amenity would be unreasonable, not simply where there will be an impact.
- 3.5 For those proposals that did not receive any neighbour objections, just under half of them were for extensions between four and five metres in length, significantly smaller than what is allowable under the new PD rights. Only seven proposed extensions where there was no neighbour objection were for larger schemes between seven and eight metres in length.
- 3.6 Eleven applications requiring the prior approval of the Council have been refused. Of these, nine were semi-detached and one a terrace property which under the new rules could take advantage of up to six metre extensions and one was a detached house which could take advantage of an eight metre extension. In terms of scale, five of the nine properties applied for the maximum sized extension. The officer view on these applications was that in all cases the proposals would result in over dominance and over bearing on the neighbours rear gardens and windows and in some cases with designs which would result in neighbours looking onto an unremitting brick wall. Therefore there would be an unreasonable impact on the neighbours' amenity. So far, there are no appeals on any of these proposals.

² Written statement to Parliament Change of use: new homes Planning Minister Nick Boles 6 February 2014

3.7 Five applications requiring the prior approval were granted. All properties were semi-detached and in most of the cases there was already an existing extension on the adjoining property. The officer view was there would not be unreasonable over dominance, due to the neighbour's extension.

3.8 Office to residential

3.9 So far 24 offices to residential proposals have been made under the new PD rights. Three have been refused. One proposed change of use was from B1 (offices) to student accommodation and so did not constitute Permitted Development due to the proposed use falling outside the definitions of Class C3 (dwelling houses); the other two refusals had significant parking issues, although these were subsequently granted prior approval when resubmitted a few months later after addressing these issues.

3.10 17 proposals required prior approval and have been approved. Four were in the city centre; three on The Headrow and one on Park Row, but the majority have been in suburban locations including Saint Martin's House Chapeltown for 12 units, three schemes in Horsforth totalling 13 units. Largely these have been upper floor office conversions to apartments and flats. Most are small in scale, 12 units or less, with the majority under five units, only two have been larger proposals on The Headrow for 28 and 22 units. A total of 113 units have been approved through this process, 62 of them in the city centre. A list of office to residential schemes is attached as appendix 2.

3.11 At the time of writing, a further three applications are currently going through the process, two of which are more significant in size including a 50 unit scheme at Park Square in the city centre. This is a popular location with the building in question having previously been subject of preliminary proposals for an important office occupier.

3.12 Implications of the new permitted development arrangements

3.13 The household PD involves the management of the process: validating applications to ensure they fit the criteria, sending letters to adjoining neighbours and where no representations have been made sending out a decision notice to the applicant. If a decision has not been made in six weeks, prior approval is automatically granted (e.g. the scheme can go ahead). The LPA receives no fee for the work it carries out on this new permitted development determination. A householder application fee is currently £172.

3.14 Similar schemes on the same road can be dealt with in different ways, leading to potentially different outcomes, depending if neighbours object or not- no objections it is deemed as permitted development; if an objection is received the application is determined by an officer who will use their professional judgment to ascertain if there is unreasonable impact or not. This could cause concerns and complaints by applicants and neighbours, but with no means of redress.

3.15 Although planning policies do not form part of the council's decision, the Leeds City Council Householder Design Guide SPD outlines the way in which the authority begins to assess house extensions. The new legislation is at odds with the Council's

Householder Design Guide. As a general rule, single storey extensions can project approximately 3.0m on a common boundary and reference is made to the 45° code, which is used to assess the impact that an extension would have on neighbours. The 3.0m projection and the 45° code attempt to ensure that extensions do not significantly over dominate neighbouring gardens and windows. However, the new PD allows eight metres on detached properties and six on other properties.

- 3.16 Initially there was no fee for the office to residential prior approval application, but from 1 October 2013, a fee of £80 is payable to the LPA. A change of use application is £385 per dwelling; if applications were received on these PD proposals it would have generated approximately £43,500.
- 3.17 As these proposals are outside of the scope of Section 106 agreements, there is the potential to lose out on developer contributions. Affordable housing is triggered at 15 units and two schemes in the city centre would have hit this threshold and been subject to providing 5% affordable housing that is 2.5 affordable units. Greenspace contributions are triggered at 10 units and a number of these prior approval schemes would have met this threshold, but again through this process there is no requirement to provide any greenspace or financial contribution. Permitted developments may be liable for Community Infrastructure levy (CIL) in the same way as development permitted by planning permission. Usually however, a simple change of use will not trigger CIL, as no new buildings are being created. However existing floorspace may only be used to offset the CIL liability where it has been in continuous use for at least six months in the 12 months. So if the office building has not been in use for at least 6 months in the last 12 months and the use changes to residential, CIL could be triggered.
- 3.18 The council feared that “Grade A” employment space in prime office areas would be at risk. However many office to residential schemes appear to be focused on smaller secondary office stock in suburban areas, resulting in a loss of office space most suitable for Small and Medium Enterprises. To date, the conversion of large unsustainable office to residential schemes has not occurred. However, there still remains the risk that large or prominent buildings could be converted into residential schemes without the need for planning permission.
- 3.19 In many cases it will not be possible to implement a change of use without undertaking some operational development, for which planning permission will still be required. So if, for example, external works or reconfiguration of access arrangements are required to facilitate the change of use, this will still need a planning application. This may act as a significant constraint on the new right.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 There has not been the need for wide consultation or engagement on this report.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no specific equality considerations arising from this report. As such it has not been necessary to prepare an Equality Impact Assessment.

4.3 Council Policies and City Priorities

4.3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the City and plays a key part in the regeneration and growth agenda. The service makes a key contribution to the delivery of housing growth, a priority in the City Priority Plan 2011-15.

4.4 Resources and Value for Money

4.5 The changes arising from the new permitted development process for large extensions has meant there has been a loss of planning fees, £172 per application, but the LPA still has to undertake a significant amount of administrative work. Similarly, a change of use application fee of £385 per unit compared with £80 for the office to residential prior approval process has resulted in a loss of approximately £43,500 in fees. The limited areas which only can be considered means there is less officer input and consideration time and less use of consultees. However, the approach is at odds with the planning system's principle of financial self-sufficiency.

4.6 Legal Implications, Access to Information and Call In

4.6.1 There are no specific legal implications and this report does not relate to a key or major decision. All planning decisions are taken in line with the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.

4.7 Risk Management

4.7.1 There remains a risk that Grade A offices in the city centre will be converted into residential scheme, reducing the office accommodation available in prime locations. This could have significant implications in attracting new development opportunities in the key employment hub for the city.

5 Conclusions

5.1 The new householder permitted development regulations initially caused controversy following strong opposition in the House of Lords. The consultation scheme was introduced as a very late amendment to the order; originally the government had not intended to introduce any means by which development might be challenged. The government has indicated that these measures are temporary until 30 May 2016, but will keep the policy under review to establish the scope for extending the scheme.

5.2 The service has received 213 applications under the new householder PD rules; however, almost a quarter were returned as they did not fit the criteria for the new PD. To date approximately 86% of the large householder extensions have not received any neighbour comments and are therefore permitted development. Based on 2012-13 data, the PD changes would have removed 5% of applications from the planning permission process.

5.3 24 prior approval applications have been received for the office to residential changes. These have been generally small in scale so far, with usually upper floors

of offices being converted into new homes. However, there are more proposals currently going through the process including a large scheme for 50 units in the city centre in a prime location. In total these changes have created permission for 113 units. However, any changes from office to residential have the potential to displace office developers; this could have significant implications if larger scale schemes come forward in the future, particularly in the city centre.

- 5.4 The new permitted development rights have been operating since 30 May 2013. The service will continue to monitor the applications arising from the PD changes and will continue to liaise with the Core Cities in assessing the impact. However, the message is clear from the Government that home owners should be allowed to meet their aspirations for improving their homes and that office to residential conversions are a way of regenerating areas, increasing footfall in town and city centres and boosting housing supply.

6 Recommendations

- 6.1 Members are recommended to

6.1.1 note the report

6.1.2 consider if there are any particular concerns over the changes which can be fed back to the Department of Communities and Local Government.

7 Background papers³

- 7.1 None

³The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

Amendments in relation to home extensions

4. (1) In Part 1 of Schedule 2 (development within the curtilage of a dwellinghouse), Class A is amended as follows

(2) In paragraph A.1(e) at the beginning insert “subject to paragraph (ea),”.

(3) After paragraph A.1(e) insert—

“(ea)until 30th May 2016, for a dwellinghouse not on article 1(5) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i)extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii)exceed 4 metres in height;”

(4) After paragraph A.3 insert—

“**A.4.** (1) The following conditions apply to development permitted by Class A which exceeds the limits in paragraph A.1(e) but is allowed by paragraph A.1(ea).

(2) Before beginning the development the developer shall provide the following information to the local planning authority—

(a)a written description of the proposed development including—

(i)how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse;

(ii)the maximum height of the enlarged part of the dwellinghouse; and

(iii)the height of the eaves of the enlarged part of the dwellinghouse;

(b)a plan indicating the site and showing the proposed development;

(c)the addresses of any adjoining premises;

(d)the developer’s contact address; and

(e)the developer’s email address if the developer is content to receive communications electronically.

(3) The local planning authority shall notify owners or occupiers of any adjoining premises about the proposed development by serving on them a notice which—

(a)describes the proposed development, including—

(i)how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse;

(ii)the maximum height of the enlarged part of the dwellinghouse; and

- (iii) the height of the eaves of the enlarged part of the dwellinghouse;
- (b) provides the address of the proposed development;
- (c) specifies the date when the information referred to in paragraph (2) was received by the local planning authority and the date when the period referred to in paragraph (8)(c) would expire; and
- (d) specifies the date (being not less than 21 days from the date of the notice) by which representations are to be received by the local planning authority.

(4) The local planning authority must send a copy of the notice referred to in paragraph (3) to the developer.

(5) Where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.

(6) The local planning authority may require the developer to submit such further information regarding the proposed development as the local planning authority may reasonably require in order to consider the impact of the proposed development on the amenity of any adjoining premises.

(7) The local planning authority shall, when considering the impact referred to in paragraphs (5) and (6)—

- (a) take into account any representations made as a result of the notice given under paragraph (3); and
- (b) consider the amenity of all adjoining premises, not just adjoining premises which are the subject of representations.

(8) The development shall not be begun before the occurrence of one of the following—

- (a) the receipt by the developer from the local planning authority of a written notice that their prior approval is not required;
- (b) the receipt by the developer from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 42 days following the date on which the information referred to in paragraph (2) was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.

(9) The development shall be carried out—

- (a) where prior approval is required, in accordance with the details approved by the local planning authority;
- (b) where prior approval is not required, or where paragraph (8)(c) applies, in accordance with the information provided under paragraph (2),

unless the local planning authority and the developer agree otherwise in writing.

(10) The development shall be completed on or before 30th May 2016.

(11) The developer shall notify the local planning authority of the completion of the development as soon as reasonably practicable after completion.

(12) The notification referred to in paragraph (11) shall be in writing and shall include—

- (a) the name of the developer;
- (b) the address or location of the development, and
- (c) the date of completion.”

Appendix 2

Office to residential schemes

Address	Status	Units
117 The Headrow, Leeds	Refused	
Parkmews House, Horsforth	Refused	
358-360 Broadway Horsforth	Refused	
Office 6 Block B Twenty Twenty Skinner Lane Sheepscar	Withdrawn	
109-113 The Headrow	Approved	22
21 Upper Accommodations Road Cross Green	Approved	1
6-7 Albion Street, Morley	Approved	4
Saint Martin's House 210-212 Chapeltown	Approved	12
Parkmews House Broadway Horsforth	Approved	3
358-360 Broadway Horsforth	Approved	4
356 Broadway Horsforth	Approved	6
119 Harehills Lane Harehills	Approved	3
56A Otley Road Guiseley	Approved	1
305 Town Street Bramley	Approved	1
First Floor Granby House 7 Otley Road	Approved	6
117 The Headrow	Approved	28
First Floor Victoria House 143-145 The Headrow	Approved	9
Office 6 Block B Twenty Twenty Skinner Lane Sheepscar	Approved	5
First Floor 19-21 North Street Wetherby	Approved	1
263 Roundhay Road Leeds	Approved	4
17 Park Row Leeds	Approved	3
Freedom House 111 Bradford Road Tingley	Pending determination	7
Rivers House 21 Pak Square Leeds	Pending determination	50
Sunshine House Whingate Business Park	Pending determination	39