

PERMITTED DEVELOPMENT RIGHT CLASS MA AND ARTICLE 4 DIRECTIONS

1. Background

- 1.1. The Town and Country Planning (Use Classes) Order 1987 ("Use Classes Order") was amended through Regulations which came into force on 1 September 2020. The amended Order introduced a new Class E which subsumed a number of previous use classes. The new Class E encompasses retail; restaurants; financial & professional services; publicly accessible indoor sport, recreation and fitness; publicly available medical / health services; creches, day centres and day nurseries; offices (including research & development); and industrial uses (those which do not harm amenity).
- 1.2. The Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") sets out the permitted development rights afforded to use classes from the Use Classes Order. As a result of the new Class E, a number of changes were also required to the GPDO including the previous permitted development rights for changes of use from offices to residential use (Part 3 Class O) and, moreover, a new permitted development right came into being, namely, Part 3 Class MA which applies to Class E uses. Class MA is the categorisation of the permitted development (there are others with different categories).
- 1.3. The new Part 3 Class MA rights came into force from 1 August 2021 and allow (subject to certain limitations) permitted changes of use to residential via the prior notification process.
- 1.4. The new permitted development right does not inter alia apply to buildings of over 1500 sq metres(*), listed buildings and protected land such as areas of outstanding natural beauty. In addition, the use of permitted development rights would be conditional on matters such as:
 - "transport impacts of the development, particularly to ensure safe site access"
 - Flooding risks
 - Noise impacts
 - In conservation areas, for the whole or part of the ground floor, "the impact of that change of use on the character or sustainability of the" CA.
 - Provision of natural light to all habitable rooms
 - Potentially, fire safety
- 1.5. Prior to this, a new 'control' was introduced from the 6th April 2021 whereby minimum space standards had to be adhered to.

APPENDIX 1

- 1.6. A consequence of the changes, MBC's current Article 4 Directions (A4Ds) on 14 office buildings which removed Part 3 Class O permitted development rights would now fall under the new Part 3 Class MA permitted development rights. However, transitional arrangements allow for the 'old' office use class (and therefore the A4Ds) to continue to have effect until the 31st July 2022.
- 1.7. The Community Infrastructure Levy (CIL) does apply in principle to new residential floorspace created under this permitted development allowance (i.e., conversion to residential), however, where new built floorspace is **not** proposed then there is no CIL charge (so 'pure' changes of use).
- 1.8. The Government has also produced guidance to advise local authorities that they need to be more specific in their approach to A4Ds by way of a Written Ministerial Statement (1 July 2021) and also by effecting amendments to NPPF para 53 to clarify the need for there to be exceptional circumstances to warrant the introduction of a new A4D and robust evidence to demonstrate this.

2. **Likely consequences**

- 2.1. This new permitted development right (Class MA) would allow more commercial buildings to be converted into residential without the need for planning permission. This is likely to result in smaller (typically one bedroom) apartments being provided without the need for planning permission and so a preponderance of one bedroom apartment schemes.
- 2.2. Between 1 April 2015 until 14 September 2021, 84 prior approvals for office to residential had been received; and 14 retail to residential (these include resubmissions). Since 1 April 2017 until 14 September 2021, a total of 46 prior notifications had been received with 35 approved, 9 refused and 2 pending. Reasons for refusal included flood risk, noise, contamination and poor daylight.
- 2.3. Although there are now more limitations and conditions, these are unlikely to significantly restrict the conversion of Class E uses to residential. Of note is that the 1500 sq metre threshold can, potentially, be used at different times so that buildings over this threshold can be converted in stages e.g., floor by floor.
- 2.4. An increased number of small apartments will clearly affect the balance of uses in the town centre and potentially retail and business parks etc affecting the character and appearance of such areas. It is also likely to result in a more pronounced demographic (i.e., small, young households) putting more strain on the existing infrastructure.

- 2.5. A direct consequence will be that as of 1 August 2022, the 14 A4Ds referred to above will cease to have effect so there is the potential for part or all of the 14 office buildings to be converted to residential use, albeit very large offices would have to be converted in stages up to the 1500 sq metre limit each time.
- 2.6. Although the 'new' prior approval tests are somewhat stricter than under the previous Part 3 Class O permitted development rights, there is still significantly less control than there would be through the planning application process.
- 2.7. Nationally, the Government are seeking to boost housing numbers and so is the Local Plan Review, particularly in the Town Centre. In addition, a 5% contingency is being proposed as part of the Regulation 19 draft Local Plan Review and permitted conversions would be defensible under this contingency.
- 2.8. However, the Strategic Housing Market Assessment (SHMA) identifies a need for all types of housing with a significant proportion being 'family housing' and it is highly unlikely that such a range of housing would be provided with a non-protectionist approach. Secondly, there would be no place shaping.

3. **Options**

- 3.1. **Do Nothing:** the existing suite of A4Ds remain valid under the transitional arrangements up to and including 31 July 2022. After that date they would cease to have effect and the permitted development rights under Part 3 Class MA would be available to those premises. Enhanced controls exist under the prior approval process, otherwise the Council has no ability to review and assess the proposed conversion. External legal advice on making better use of the controls available under the prior approval process has been received.
- 3.2. **Intervene:** under NPPF para 53 it is clear that robustly evidenced A4Ds are still able to be put in place where the exceptional circumstances can be demonstrated. The Council could consider implementing new A4Ds to remove the new permitted development rights. An A4D can be made in one of two ways:
 - To have immediate effect; or
 - To come into force at some date in the future
- 3.2.1. Where the A4D comes into force with less than 12 months' notice, for certain permitted development rights there is a compensation regime

APPENDIX 1

applicable. Part 3 Class MA rights are included in this regime, and so a new A4D that gives less than 12 months' notice gives rise to a degree of risk. Compensation can be claimed in certain circumstances for expenditure incurred, including loss of value of the land / property, as a result of having to make a planning application that is then refused or is granted but with conditions that would not have been applicable under the permitted development right.

- 3.2.2. If new A4Ds are put in place giving at least 12 months' notice then the compensation risk is avoided. On the current suite of sites, the existing A4Ds remain valid until 31 July 2022, but since we are already in August 2021, any new A4D with at least 12 months' notice would mean a window with no A4D in place. During that window an application for prior approval could be made.
- 3.3. **Blend:** for example, there may be less need to protect office space but a greater need to protect retail space and a new A4D could be applied to a core retail area(s).
- 3.4. If Intervention is the chosen option, the potential actions include:
 - i. **Potential new article 4 directions for the Town Centre**
 - a. **'Renewing' the existing 14 article 4 directions concerning office to residential:** these would have to be reviewed in the light of the new Government guidance on making A4Ds but also the impact that they have had and, lastly, within the context of Covid 19.
 - b. **Area based article 4 directions:** the existing A4Ds mentioned above apply to 14 individual buildings surveyed as 'good quality' office accommodation. For a broader geographic area and a mixture of existing uses therein, then there would need to be a clear and robust justification as Government advice is that A4Ds need to be 'focused'. So, this could be applied to the core retail area identified in the adopted Local Plan (2017).