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## CLASS E TO RESIDENTIAL PERMITTED DEVELOPMENT RIGHT

### Introduction

1. The Government has introduced legislation to bring into force from 1 August 2021 a new Permitted Development Right ('PDR').<sup>1</sup>
2. The new PDR will apply to premises in Use Class E (the class created in 2020 comprising 'Commercial Business and Service use'), accommodating town centre uses such as office, retail, café / restaurant and indoor fitness.
3. The new PDR would allow the change of use of Class E premises, or parts, to residential use, subject to prior approval in relation to a small number of specific considerations. This note summarises the new PDR and its effect in Central London.

### Operation of the New Permitted Development Right

4. The operation of the new PDR, known as "Class MA" is similar to the previous PDR first introduced for office to residential change of use in 2013 ("Class O").
5. The legislation also amends the "Class O" PDR, inserting a date of 31 July 2021 by which a prior approval request must be submitted to benefit from that Right. This creates an end date after which the ability to use "Class O" PDR is removed.
6. Properties which benefitted from PDR for office-to-residential change of use under Class O will therefore no longer do so in the future, unless they meet the terms of the new "Class MA" PDR, as set out in the remainder of this note.
7. In relation to the new Class "MA" PDR, prior approval will be required in relation to flooding; the impact of noise from commercial premises; provision of adequate natural light to habitable rooms; in Conservation Areas, the impact of the loss of ground floor Class E use on the character and sustainability of the Conservation Area; and the impact of the loss of health centres and registered nurseries on the provision of such local services.
8. In response to significant objections across the spectrum of built environment organisations regarding unrestrained PDRs in commercial locations, the following restrictions will also apply to the building or part of building where a change is sought:
  - a. A maximum size limit of 1,500 sq m (a significant change from Class O);
  - b. In Class E use for at least 2 years; and
  - c. Vacant for at least 3 months before the date of the prior approval application.
9. The new PDR will **not** apply to listed buildings but will, otherwise, apply in conservation areas.
10. It will also not apply in other protected 'Article 2(3)' areas such as national parks and Areas of Outstanding Natural Beauty (AONBs).
11. Where there is an Article 4 direction in place on 31 July 2021 relating to the previous PDR for change of use from office to residential, that direction will continue to have effect on office to residential change of use until 31 July 2022, effectively extending the lifespan of existing Article 4 Directions and allowing LPAs an extended window to implement replacements.

<sup>1</sup> The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

12. There is no suggestion that the PDR would exempt development including physical external changes from requiring planning permission.
13. Prior Approval applications can be made only after 1 August 2021.

#### Effect in Central London

14. Unlike the previous office-to-residential PDR under Class O, the new PDR would apply in Conservation Areas, which cover much of Central London.
15. However, the Central Activities Zone ('CAZ') currently benefits from an Article 4 direction which removes the office-to-residential change of use PDR in this area (meaning planning permission is still required). The extension of existing Article 4 directions for office-to-residential changes of use means that **planning permission will still be required for office-to-residential change of use until 1 August 2022.**
16. The existing Article 4 Direction only relates to changes from office-to-residential, not any of the other Class E uses. It appears therefore that the PDR would allow change of use from other uses now within Class E, such as gyms and retail, to residential subject to prior approval, from 1 August this year.
17. However, within central London's extensive conservation areas, where ground floor changes in these 'other' Class E uses are proposed, LPAs will retain some control, via their ability to consider the implications of the change on the "character and sustainability" of the Conservation Area. This appears most likely to be applied to 'active' Class E uses such as retail, cafés and gyms, given these are mostly located at ground level in 'high street' settings (unlike offices).
18. LPAs will be able to make Article 4 Directions to prevent the change of use of other Class E uses to residential. New Article 4 directions are subject to approval by the Secretary of State and the Government has recently consulted on changes to the National Planning Policy Framework ('NPPF') which could make it more difficult for LPAs to introduce Article 4 directions to remove PDRs at a local level.
19. The new 1,500 sq m size restriction is a notable change, given the scale of buildings within central London. Existing office-to-residential permitted development rights were not size limited, whereas a 1,500 sq m limit will apply to the new rights. Irrespective of the presence, or not, of Article 4 directions, this may significantly limit the utility of the new right, especially for the large-scale conversion of office accommodation.

#### Next steps

20. The secondary legislation to make this change (and to provide for other, extended, permitted development rights for ports and various buildings in public service uses) has been made.
21. It is subject to "negative procedure" and, thus, no further parliamentary approval is required, unless a motion to reject it is approved by either House. The legislation as a whole will come into force on 21 April, although the Class MA PDR will not be available until 1 August.
22. To avoid potentially having to pay compensation, LPAs are required to give one year's notice of an Article 4 coming into force. Consequently, central London LPAs may need to move quickly to make replacement directions before the end of July this year, if they wish to maintain continuous protection of office space following the expiry of the existing arrangements on 1 August 2022.

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