

More MHCLG permitted development

In May 2019 the Government laid regulations before Parliament introducing new permitted development (PD) rights allowing the conversion of shops, takeaways and other high street uses to offices, homes and community uses without the need for planning permission. Set to come into force on 25 May, the regulations were published alongside the government's response to its consultation late last year on these proposals.

Key changes in the regulations (see panel below) include a new class JA of the General Permitted Development Order (GPDO) allowing the conversion of shops, takeaways, betting offices, payday loan shops, and launderettes to offices under a prior approval process. They also permit takeaways to change use to housing under class M of the GPDO, which already allows retail and sui generis uses to convert to residential. The regulations do not include the proposed PD right allowing upward extensions to create new housing, though the government's consultation response said it still intends to proceed with this.

The government is introducing "more limited" PD rights for the conversion of shops and takeaways to offices and housing than the consultation proposed, said Steven Norris, director of regeneration at consultancy Lambert Smith Hampton. "Housing secretary James Brokenshire has listened to some extent to concerns widely expressed about the blanket PD right which has enabled extensive office conversions to residential without the need for a planning application," he said. "Ironically, these latest changes to permitted development could increase the supply of offices."

"This is a more bespoke form of permitted development right than was initially envisaged in the consultation," said Claire Dutch, planning partner at law firm Hogan Lovells. Dutch pointed out that, under the new class JA, the conversion to offices is limited to retail units below 500 square metres. The new regulations also only allow takeaways of up to 150 square metres to change use to housing under class M, she added.

Mark Batchelor, director at planning consultants Boyer, suggested that local authorities will be in a position to block some prior approval applications under class JA, which allows councils to assess whether there is adequate provision of the existing use before granting consent. "An applicant would be required to produce evidence that it has tried to attract occupiers as part of its prior approval application for a change of use," he said. "Councils could also turn down an application arguing that the scheme would undermine the sustainability of its shopping area." Similarly, Norris said the prior approval process should allow local authorities to continue with town centre planning strategies. "Councils with a well-developed town centre strategy, could be in a position to resist change of use," he suggested.

But Mike Kiely, chair of the Planning Officers Society, which represents public sector planners, said the new PD rights would restrict councils' ability to shape their high streets. "They would not be in a position to ensure a quality town centre is produced," he argued. "Councils will have limited controls over premises' external appearance." Kiely raised further concerns about cost: "The administration of prior approval applications for local planning authorities will take up a lot of officers' time. To scrutinise an application for prior approval will require almost as much time as a planning application but the fee would be much less."

Ian Fletcher, director of real estate policy at lobby group the British Property Federation, added: "Despite the various checks the government has introduced, we are concerned that the new permitted development could result in a disjointed offer on the high street."

Matthew White, head of planning at law firm Herbert Smith Freehills, observed that the government's consultation response did not say that ministers would proceed with their proposal to merge the current A1, A2 and A3 retail use classes. "Ministers clearly understood that to ensure diversity in the high street, councils and developers need to be able to discriminate between shops, estate agents and restaurants," he said.

Four new permitted development rights in the regulations

1 A new class JA of the General Permitted Development Order (GPDO) allows the conversion of shops and other high street uses, including takeaways, betting offices, payday loan shops, and launderettes, to offices.

2 They allow takeaways to change use to housing under class M of the GPDO, which already allows retail and sui generis uses to convert to residential without the need for planning permission.

3 They allow the temporary conversion of shops and other high street premises to a wider range of community uses.

4 They make permanent a temporary PD right for single-storey home extensions of up to eight metres, which was introduced in 2013.