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# Building The Case in PD Cases



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When an application for prior approval or permitted development is submitted, developers face competition for officer attention on their applications, especially with larger and more complex applications.

Officers often do not look at PD applications until at least 5-6 weeks' in, due to staffing and workloads. Therefore, it is important to prepare the case for prior approval thoroughly. Particular care should be taken in clarifying whether the site is subject to an Article 4 Direction, as sometimes there can be a lack of clarity at the local level about this.

In a recent case for a client, we were asked to withdraw the application by an officer who initially thought that the site was covered by an Article 4 Direction. This proved not to be the case and we managed to obtain prior approval within eight weeks.

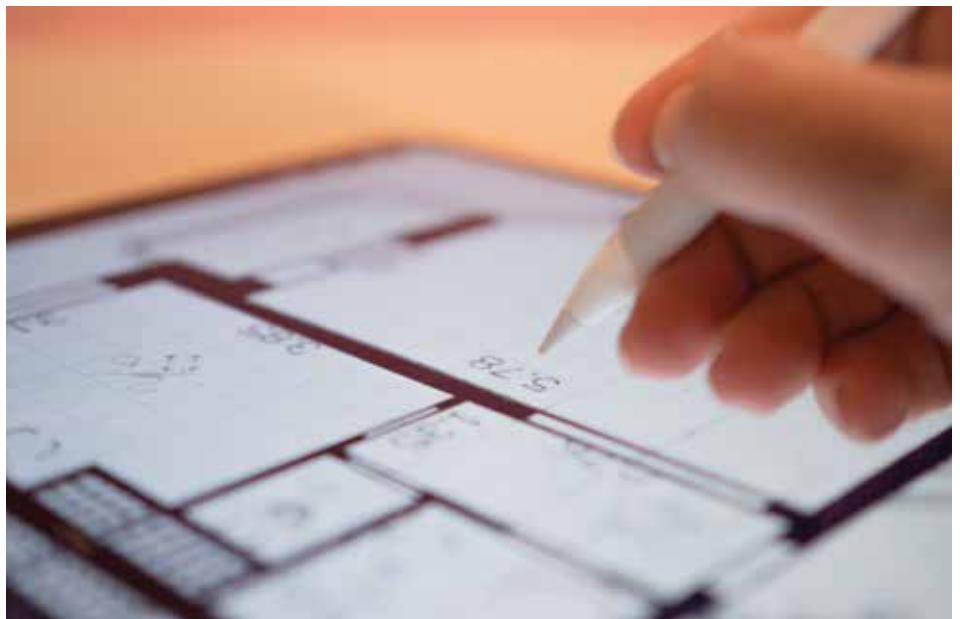
## The PD opportunity

The building in question comprises a 4-storey office building, which forms one half of a semi-detached block. It is located in a Strategic Employment Area. This is a Local Plan designation that seeks to prevent the loss of employment floor space in the area, but does not on its own withdraw or limit permitted development rights unless the Council also makes an Article 4 Direction.

The building comprised of about 4,500 sq ft of office floor space, with ample car parking in a reasonably central location to the local town centre. Neighbouring buildings on the same estate had already been converted to residential use and it was proposed to convert the offices in this building to 6 x 1-bedroom studio flats and a 2-bedroom, 3-person apartment.

## Risks presented by business park sites

When looking at buildings on existing business parks for change of use from



commercial to residential use, great care needs to be taken for a number of reasons.

Firstly, whether specifically designated or not in the local plan, most Councils will have their own local plan policies that seek to prevent the loss of such floor space. Normally, before converting such space to residential use by way of a full planning permission, commercial premises would need to be subject to robust open marketing for a period of 12 months (or however long is specified in the local plan). Therefore, PD helps to circumvent this as such restrictions are not relevant to PD.

As such sites, including on strategic employment land, is so important to the future employment land supply to many local authorities, they are obvious targets for Article 4 Directions.

Secondly, even if there is no Article 4 Direction in place, the Council would still have the right to refuse PD under Class MA in certain situations, in particular where:

“The impact on intended occupiers of the development of the introduction of

residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.”

This means that the PD rights under Class MA acknowledge that flats are not always appropriately located in areas of “general or heavy industry (Class B2), waste management (B2 use or sui generis), storage and distribution (Class B8)” or a mix of such uses. The scope for a local planning authority to refuse PD in such cases is greater than if the subject site sits on an office business park (former B1 use class/ Class E). This can overlap with responses during the application from the Environmental Health Officer (see below).

The third principal risk is that the business park environment is not particularly conducive to a good or high quality residential environment and different agents will have varying perceptions of this, often leading to wide variations in sale prices, difficulties

in selling units or in obtaining strong valuations from lenders.

#### Pre-application enquiries about Article 4

The Council we dealt with in this case comprises a number of former separate local authorities that have merged into one larger authority, albeit with different areas within the same planning authority. A similar merger has taken place in other parts of the country, such as near Bournemouth, which has merged with Christchurch and Poole.

These public authority mergers can cause administrative and organisational difficulties, with resources online sometimes not being updated or transferred over to the new local authority's website or online planning portal. Therefore, there can be a risk that an Article 4 Direction has been made but not uploaded to the Council's website, or that new or draft Directions (not yet in force) have been overlooked in the transition.

Therefore, when the client was settling their offer and exchange on the site, we emailed the Council's Planning Policy team, sending them a location plan and asking for confirmation of (1) is there an Article 4 Direction in place already and (2) are there any plans for new Directions in the next 12 months.

We received written confirmation from policy officers that there were no such Class MA Article 4 Directions and that none were planned. We refreshed this check a couple of months' later, when we were about to submit the prior approval application. This written confirmation came in very handy!

#### Map of Planning Data for England

The most reliable method to check on whether an Article 4 Direction has been made in respect of a property or an area is on the Council's website, rather than a central database. However, the Government has created a 'Map of Planning Data for England': <https://www.planning.data.gov.uk/map/>.

This map allows a location to be searched for a limited number of constraints, including Article 4 Directions. However, this map is out-of-date as it refers to Class O constraints (the forerunner of Class MA), and Class O permitted development was 'phased out' from August 2021. If an Article 4 Direction against 'office to residential' (Class O permitted development) had not been replaced by an Article 4 Direction

against 'commercial to residential' (Class MA permitted development), then it would have automatically expired by 1 August 2022, leaving the premises open to a lawful change of use under PD rights.

#### Keeping the application on track

We were contacted by the case officer during the course of the application asking us if we wanted to withdraw the application!

The officer had not been able to see an Article 4 Direction in place for the site on the Council's own portal. However, presumably thinking that this might be incomplete (due to local authority merger and reorganisation), she had checked online and viewed the Map of Planning Data for England. This showed that the site was within an Article 4 area and there was no PD for change of use to residential.

However, we were able to send the case officer a copy of the email from her colleagues in Planning Policy to confirm that there was no PD in force against Class MA rights. We also pointed out that the national mapping portal only addressed Directions relating to Class O rights and was thus now out-of-date.

#### Air quality, noise, and EV chargers

The only significant comment during the application was from the Environmental Health Officer (EHO). Such officers will naturally comment on matters of concern to them, even if they might be raising concerns outside of the law on PD. It will be for the planning officers to set the limits of these comments.

The EHO wanted to see EV charging points fitted in order maintain good levels of air quality to the site. However, air quality is not relevant consideration under Class MA

and therefore EV charging points (which obviously add cost) are not required.

A noise assessment was submitted with the application. This managed to make the case that the current construction of the offices would be sufficient to provide good levels of noise mitigation for the future flats. This helped to avoid the need for any further compliance costs in terms of additional noise insulation to the new flats.

As the building sits on a business park comprising mainly Class E commercial uses and no sui generis, B8 or B2 uses, the condition noted above regarding flats being located in areas of 'heavy industry' and the like did not apply. Therefore, any attempt to apply concerns over air quality through this condition would also have been irrelevant.

#### Conclusion

Prior approval was granted for this proposed change of use in October, within 56 days of the submission of the application. However, the due diligence and added 'insurance' of confirmation on the Article 4 position was definitely worth obtaining first and helped to avoid any unnecessary delays or an incorrect refusal of the application on the basis of an Article 4 Direction that no longer exists. Such advance queries, such as with Planning Policy officers, are also useful in checking the likelihood of a new Article 4 Direction coming in before Prior Approval is granted, either in 56 days or within 7-8 months (if an appeal is needed). Sometimes, the map accompanying the Direction is not clear and a high resolution map is needed, and such enquiries can be made for this reason too.

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