

Office to resi

An update



The coalition government amended legislation in May 2013 to allow for offices to convert to homes using a process of prior approval rather than an express need for full planning permission.

This was subject to a number of significant qualifications, including:

- the rights only apply to buildings used as an office immediately before 30 May 2013 or, if vacant, where its last use was as an office - as such vacant new offices are excluded;
- only B1(a) offices can be converted, not office units within A2 financial or professional services nor B1(b) or (c) offices i.e research and development or light industry respectively;
- listed buildings and scheduled ancient monuments are excluded; and

- associated external physical development may still require planning permission

An Estates Gazette survey (10/01/2014) found that there had been more than 2,250 applications for change of use from office to residential in the first six months since this change was introduced, but it was also revealed by Planning Magazine (30/07/13) that the government received 1,387 requests for exemptions from 165 councils, including Manchester City Council.

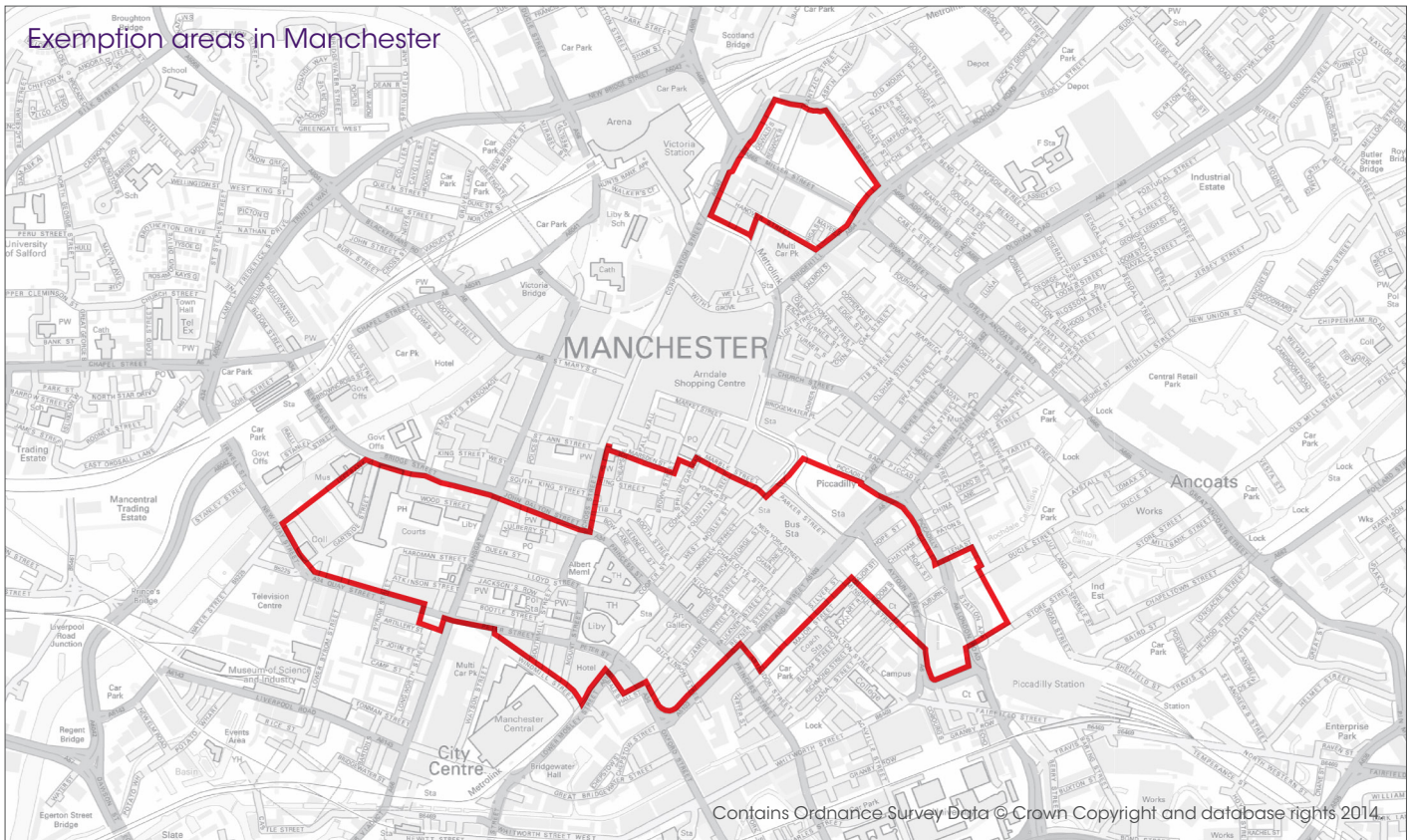
This is a policy that divides opinion. Critics say that it threatens the availability of commercial premises at a time when local authorities should be promoting enterprise. Supporters say that it promotes brownfield regeneration, increases town centre footfall and boosts the supply of housing supply. As the anniversary of this initiative approaches this update considers the issues that have arisen since its introduction.

The issues

Reasons for refusal

It was the government's intention that prior approval of the local planning authority (LPA) is required in relation to flooding, highways and contamination matters only. The LPA has 56 days from receipt of the application to confirm whether further details in relation to these matters is required, failing which development may proceed.

Camden Council has, it is understood, received legal advice that indicates that the Council is entitled to look at considerations beyond flooding, highways and contamination. Reliance is being placed on a sub provision that states that LPAs have to have regard to the NPPF "as if the application were a planning application". In at least one instance Camden has refused a prior notification request and issued a decision notice that goes beyond the matters intended by Government.



Challenge to exemption areas

Recognising that this new national right could affect areas differently, provision was made for rights not to apply to buildings in an 'exemption area' (there are two in Manchester). As stated above, many LPAs sought exemptions on the basis of an adverse economic impact and 33 'exemption areas' were identified across 17 local authorities. Lambeth and Islington mounted legal challenges to the government's refusal of their applications for exemption status, but their claims were dismissed by the High Court in December and have not been appealed.

Article 4 directions

A LPA is able to remove a national permitted development right by using what is known as an Article 4 direction.

Eight local authorities have notified the Secretary of State, who has reserve power, of an intention to make an Article 4 direction. In six cases (Brighton & Hove, Richmond, Sutton, Harrogate, Epsom & Ewell and Watford) these directions apply to specific sites, but Islington and Broxbourne have sought to apply exemptions to their entire local authority areas and Planning Minister Nick Boles confirmed recently that in doing so they were acting 'disproportionately' and would be written to with a request to consider more targeted directions.

Two other authorities, Merton and Bromley, have published directions that have yet to be considered by DCLG. Camden is said it is drawing up an order.

Unjustified levies

Some LPAs have sought to levy developer contributions on matters unrelated to the prior approval process.

Summary

The number of requests for exemptions was an indication of the level of resistance to this policy so the fact that some LPAs have sought to obstruct its implementation should have been anticipated.

It is equally clear though that the government remains committed to it and Nick Boles has confirmed that revised practice guidance will be forthcoming covering the use of Article 4 directions and developer contributions. Clarity on reasons for refusal should also be expected.

The ability to convert buildings in this way is a temporary relaxation that, unless extended, will expire on 30 May 2016, but for the owners of buildings that meet the main qualifications and can be converted without detriment to flooding, highways and contamination, it should be a genuine option for future use.

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