



OFFICE CONVERSIONS – A WORK IN PROGRESS

HEIN VAN DER MEER AND PAUL THOMPSON

In many regions and cities facing changing demographics and a limited supply of constructible land, conversion is attractive. Factor in rental income differentials between housing and offices, construction and conversion costs and, in some cases, a substantial percentage of vacant office space and it's a no-brainer. But is it really? Let's have a look at what has been done in England and in the Netherlands from a legal perspective.

Although most development in England requires express planning permission, secondary legislation allows 'permitted development' without the need to undertake the full application procedure. Conversions from office to residential in England became permitted development on 30 May 2013. Applicants are still required to submit an application for whether or not 'prior approval' is required as to flood risk, contamination, and transport and highways grounds.

The number of prior approval applications has significantly exceeded government estimates and vary from a few dwellings to several hundred. There have been almost a thousand applications in London alone, with several thousand across the whole of England. To date, only a few conversions have occurred and the practical effects are yet to be seen. Complications have arisen as a result of the permitted development being for a change in use only and 'prior approvals' have been required and refused if any necessary physical works made the conversion unviable. The legislation is subject to a 'sunset clause' that no building will benefit from the 'permitted development' if the change in use has not occurred by 30 May 2016 and it is unknown how conversions will be treated if they are completed but not in use by this date.

Many support the UK government's view that the change in law is providing much-needed new homes on brownfield sites, rather than building in the English countryside. Equally, many have deep-seated reservations, as it will result in a loss of central commercial land by converting sub-standard properties which fail to provide any affordable housing. In the Netherlands, the Dutch Crisis and Recovery Act (CRA) came

into force in March 2010, providing the ability to accelerate government decision-making processes and regulations for the execution of projects. One of the CRA's objectives is to strengthen the Dutch economy in difficult times. For example, the CRA can facilitate the conversion of an office building into campus-style student living accommodation. The following case study illustrates this.

A development company purchased a leasehold plot of land containing an empty office building, which was to be converted into student houses and then sold to an investment company acting for an investment fund. The municipality – as landowner – played a key role. Not only did it have to approve the sale of the land and cooperate in changing leasehold regulations, it also had to act as licensing authority in approving the project to deviate from the current zoning plan and in granting the relevant permits for the reconstruction works.

As the building did not have to be demolished but could be redeveloped and converted into an apartment complex, time and money were saved. The building naturally had to comply with the regulations of the Dutch Building Decree, but only the inside of the property needed to be reconstructed and the municipality cooperated under the CRA. As the sold property was considered an 'existing building' under Dutch tax legislation, it was subject to only 6% of real estate transfer tax (RETT), much lower than the 21% of non-deductible VAT which would otherwise have been due. The financing of the project via forward funding was relevant to the feasibility of the project as it enabled the seller to finance the cost of redevelopment and construction. Finally, it should be emphasised that the conversion of an office building into houses can also be realised without the CRA, but the CRA can certainly influence the view of parties – especially local authorities – in terms of the potential and benefits of conversion.

Hein van der Meer is a real estate lawyer at law and tax firm CMS' Utrecht office and Paul Thompson is a real estate lawyer at CMS London