1 Planning and legal considerations

This chapter examines the influence of planning and other legal mechanisms on the loft conversion process in England. Obligations imposed by the Building Regulations are considered in Chapter 2.

The controls and mechanisms examined both here and in Chapter 2 are largely separate from each other. Planning and building control, for example, are administered independently. Approvals granted under one mechanism do not automatically confer rights under another, nor are they intended to. Building Regulations and planning law have specific and generally unrelated aims.

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PERMITTED DEVELOPMENT

Most loft conversions are carried out under permitted development legislation. Where permitted development rights exist, no specific application for planning permission is required, provided that work is carried out in accordance with the legislation. Permitted development rights apply to dwellinghouses only. A loft conversion in a building containing one or more flats, or a flat contained within such a building, would require planning permission. The following section considers current permitted development legislation for England only.

Permitted development law

Permitted development legislation is set out in The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008. This came into force on 1 October 2008 and represents the first major change in planning law relevant to small-scale domestic building works, such as loft conversions, since 1995.

One of the notable features of the 2008 General Permitted Development Order (GPDO 2008) is that it is rather more generous in its scope than the earlier legislation. It dispenses with the principle of a whole-dwelling volume allowance (at least as far as loft conversions are concerned) and only the volume of the roof is now considered (Fig. 1.1). A ground floor extension to a dwellinghouse, whether proposed or existing, no longer counts against a loft conversion.

Loft Conversions, Second Edition. John Coutts.
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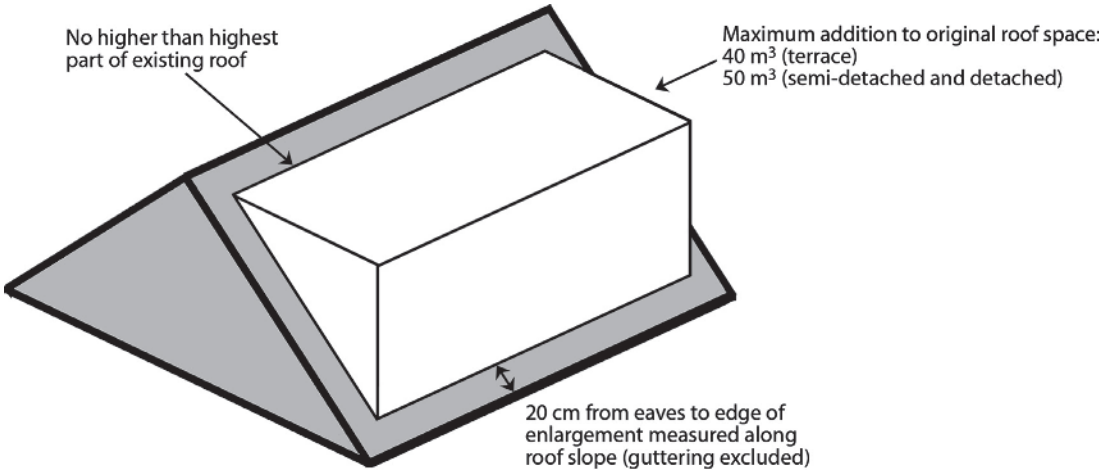

Fig. 1.1 Permitted development (England): primary constraints.

Reproduced below are three extracts from The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008. All are relevant, or potentially relevant, to loft conversions. The meaning and implications of the GPDO 2008 are considered in the next section.

Class B

Permitted development

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Development not permitted

B.1 Development is not permitted by Class B if –

(a) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;

(b) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;

(c) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than –

(i) 40 cubic metres in the case of a terrace house, or

(ii) 50 cubic metres in any other case;

(d) it would consist of or include –

(i) the construction or provision of a veranda, balcony or raised platform, or

(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe; or

(e) the dwellinghouse is on article 1(5) land.

Conditions

B.2 Development is permitted by Class B subject to the following conditions –

(a) the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

(b) other than in the case of a hip-to-gable enlargement, the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves of the original roof; and

(c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse shall be –

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Interpretation of Class B

B.3 For the purposes of Class B 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.

Class C

Permitted development

C. Any other alteration to the roof of a dwellinghouse.

Development not permitted

C.1 Development is not permitted by Class C if –

(a) the alteration would protrude more than 150 millimetres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;

(b) it would result in the highest part of the alteration being higher than the highest part of the original roof; or

(c) it would consist of or include –

(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.

Conditions

C.2 Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse shall be –

(a) obscure-glazed; and

(b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Class G

Permitted development

G. The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

Development not permitted

G.1 Development is not permitted by Class G if –

(a) the height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or

(b) in the case of a dwellinghouse on article 1(5) land, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which –

(i) fronts a highway, and

(ii) forms either the principal elevation or a side elevation of the dwellinghouse.

Commentary on permitted development provisions – England

A degree of caution should be exercised when exercising rights associated with permitted development. Where any doubt exists, clarification should be sought from the local planning authority and a Lawful Development Certificate obtained (see p. 13) before undertaking any work.

Permitted development rights are not universal: they do not apply to flats, for example, nor do they apply to dwellinghouses on designated land (see section on Article 1(5) land, below). It is also emphasised that development that is not permitted under one class may be permitted development under another: chimneys, soil pipes and solar panels all fall into this category.

It should also be noted that interpretation of the GPDO varies considerably between local planning authorities. Areas of inconsistency include:

- Raising a party wall (see also appeal decision letter in Appendix C)
- Providing a highway-facing roof window in a dwelling in a conservation area

There are also risks when working at the volume limits of permitted development. A local planning authority has discretionary powers to take enforcement action if, in its view, there is an unacceptable breach of planning control. In cases where any degree of doubt exists, therefore, it is prudent to consult the local planning authority before work commences.

The Department for Communities and Local Government has sought to clarify some of the 2008 provisions and has published two supporting documents. These are: *Changes to Householder Permitted Development 1 October 2008 – Informal Views from Communities and Local Government* (this document has now been superseded) and *Permitted development for householders – Technical guidance* (published August 2010). The latter document is described as 'CLG guidance' where it is referenced below.

The following section highlights areas that require consideration in the 2008 GPDO.

Development within the curtilage of a dwellinghouse

This is the title of Part 1 of the 2008 GPDO. The meaning of 'curtilage' is subject to a degree of interpretation. This has important implications for conversions that involve raising a party wall between dwellinghouses: some local authorities consider raising a party wall to be permitted development, others do not. See *Curtilage: raising party walls*, below, and Appendix C.

B. Dwellinghouse

The GPDO 1995 definition remains valid in this section for the purposes of Part 1:

> 'dwellinghouse' does not include a building containing one or more flats, or a flat contained within such a building.

B.1 (a) Defining the highest part of an existing roof

The ridge of a conventional pitched roof is generally its highest part. Where the roof is of slated or tiled construction, it is usually capped with ridge tiles. But the definition of precisely which part of the ridge is to provide the highest point datum remains open to a degree of interpretation, particularly where the original roof is capped with decorative 'crested' ridge tiles which may project more than 150 mm above the apex.

The position with walls and other masonry projections is less ambiguous. In the case of buildings with butterfly roofs and a front parapet wall, local planning authorities have tended historically to take the roof as the highest point, even though the highway-facing parapet is higher (Fig. 3.1c). This position is supported by CLG guidance, which suggests that:

> Chimneys, firewalls, parapet walls and other protrusions above the main roof ridge line should not be taken into account when considering the height of the highest part of the roof of the existing house.

B.1 (b) Roof slopes: principal elevation fronting a highway

Alterations to a roof slope fronting a highway (other than the installation of roof windows in the same plane as the existing roof) are not permitted development. For example, a front dormer window (i.e. one occupying and projecting from the principal roof slope facing a highway) could not be considered permitted development. Planning permission would be needed.

Defining precisely what constitutes a 'principal elevation' is not always a simple matter, however. CLG guidance states the following:

> The effect of this [i.e. B.1(b)] is that dormer windows as part of a loft conversion, or any other enlargement of the roof space, are not permitted development on a principal elevation that fronts a highway and will therefore require an application for planning permission. Roof-lights in a loft conversion on a principal elevation may however be permitted development as long as they meet the requirements set out under Class C [].
>
> In most cases, the principal elevation will be that part of the house which faces (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main

architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation (for example, on a corner plot), a view will need to be taken as to which of these forms the principal elevation.

The principal elevation could include more than one roof slope facing in the same direction – for example, where there are large bay windows on the front elevation, or where there is an 'L' shaped frontage. In such cases, all such roof slopes will form the principal elevation and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes [].

A highway will usually include public roads (whether adopted or not) as well as public footpaths and bridleways, but would not include private driveways. The extent to which an elevation of a house fronts a highway will depend on factors such as:

(i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not be fronting a highway;
(ii) the distance between the house and the highway – in cases where that distance is substantial, it is unlikely that a building can be said to 'front' the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.

B.1 (c) Cubic content

For a terrace house, the 2008 GPDO allows an addition of up to at 40 m^3 and for other types of dwelling (semi-detached and detached), an addition of 50 m^3 beyond that of the 'original roof space' (see below). This has the effect of 'capping' the volume of loft conversions but note that these volume figures are limits, not entitlements. In a significant number of cases, it will not be possible to take full advantage of the 'allowance' because the physical footprint of the building, and the limitations imposed by B.1 (a) and B.1 (b), will not permit it.

Note that when the proposed work includes both a hip-to-gable and a dormer conversion, the volumes of both elements must be considered relative to the cubic content 'allowance', that is, both must be deducted from it (Fig. 1.2). Any earlier addition to the cubic content of the original roof space must also be taken into account.

B.1 (c) Original roof space

The GPDO provides a definition of 'resulting roof space' for the purposes of Class B (i.e. *the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not*), but it does not define original roof space. However, CLG guidance states that:

> 'original roof space' will be that roof space in the 'original building' …

in which 'original' means:

> … a building as it existed on 1 July 1948 where it was built before that date, and as it was built when built after that date.

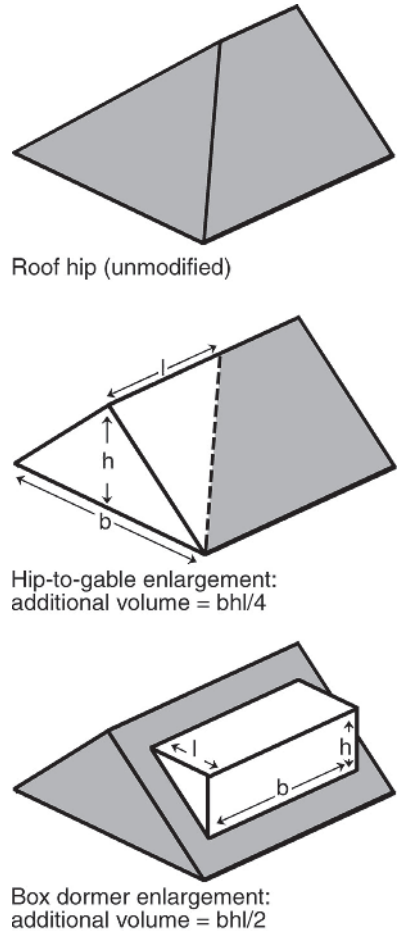

Fig. 1.2 Roof enlargement: calculation of additional volume.

This is broadly the same definition that is used in the 1995 GPDO.

B.1 (c) Terrace house

For the purposes of Part 1, the GPDO defines 'terrace house' as follows:

> *… a dwellinghouse situated in a row of three or more dwellinghouses used or designed for use as single dwellings, where –*
> *(a) it shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side; or*
> *(b) if it is at the end of a row, it shares a party wall with or has a main wall adjoining the main wall of a dwellinghouse which fulfils the requirements of sub-paragraph (a).*

B.1 (d)(i) Veranda, balcony or raised platform

Projecting structures (such as balconies) require planning permission. However, a 'Juliet' balcony (with a balustrade but no external platform, and therefore not a true balcony) is normally accepted as permitted development.

B.1 (d)(ii) Chimney, flue or soil and vent pipe

These are permitted development under Class G, but not Class B.

B.1 (e) Article 1(5) land

The reference to Article 1(5) land is of importance because it defines where permitted development does not apply and planning permission must be sought. Article 1(5) land (sometimes described as 'designated land') is described in Schedule 1 of the 1995 GPDO and subsequent amendments. Roof extensions are not permitted development in areas that include:

- A National Park
- An area of outstanding natural beauty
- An area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas)
- The Broads
- A World Heritage site

However, these are not the only exceptions. For example, permitted development rights can also be removed by mechanisms including:

- Article IV directions
- Planning conditions
- Listing

B.2 (a) Materials of similar appearance

The intention is to minimise the visual impact of the conversion and to ensure that it is sympathetic to the existing house. CLG guidance notes that:

> The flat roofs of dormer windows will not normally have any visual impact and so the use of materials such as felt, lead or zinc for flat roofs of dormers will therefore be acceptable.

The face and sides (cheeks) of a dormer window should be finished using materials that are similar in appearance to the existing house:

> … the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape.

Design guidance published by the local planning authority may provide an indication of what is and what is not likely to be acceptable (see *Sources of planning guidance*, below).

B.2 (b) Hip-to-gable enlargement

In the majority of cases, this would now be considered to be permitted development.

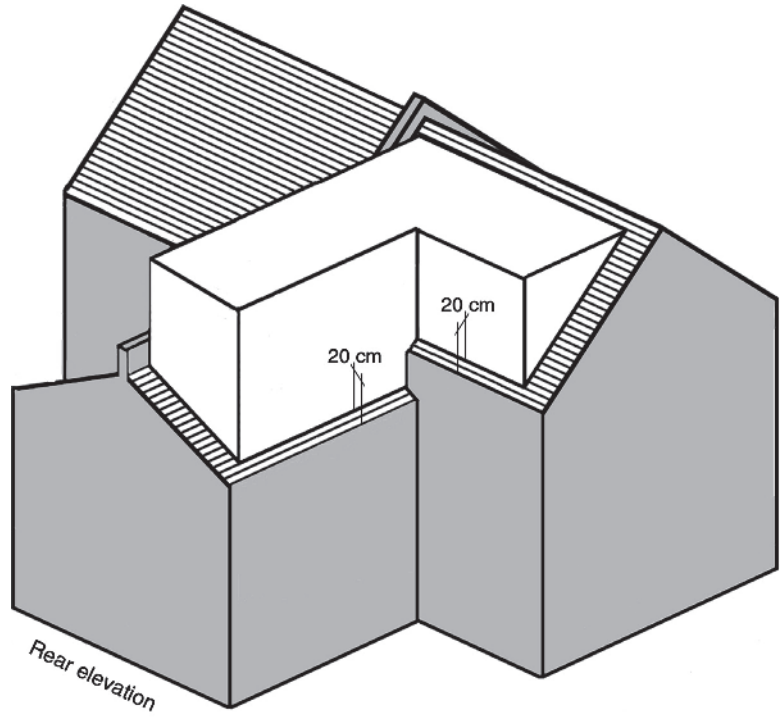

Fig. 1.3 L-shaped loft conversion. Typical relationships between conversion, main roof slope, back addition roof slope and eaves.

B.2 (b) 20 cm from the eaves of the original roof

According to CLG guidance, the 20 cm measurement:

> … should be made along the original roof slope from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement. Any guttering that protrudes beyond the roof slope should not be included in this measurement.

The CLG guidance states that the 20 cm setback is required unless it can be demonstrated that it is not practical due to 'practical or structural considerations':

> One circumstance where it will not prove practical to maintain this 20 cm distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house.

Fig. 1.3 illustrates the relationship between an L-shaped loft conversion that encompasses both the principal rear roof slope and the subordinate roof slope of a back addition (outrigger).

B.2 (c)(i) Obscure glazed

CLG guidance suggests that windows should be obscure glazed to a minimum of level 3 (on a scale of 1 to 5, where 5 represents the highest level of obscuration). One-way

glass is not suitable. Note that the scale referred to is an informal one used by glazing manufacturers and suppliers as a guide for their customers. It is not based on a quantifiable standard.

C.1 (a) 150 mm protrusion

One of the intentions of this is to limit the prominence of protrusions such as roof windows. CLG guidance notes the limitation to project from the roof plane:

> … should not be applied in cases where the roof of an extension to a house that is permitted development under Class A is joined to the roof of the original house. In such cases, the roof of the extension should not be considered as protruding from the original roof.

Note that height considerations in C.1 (a) and C.1 (b) are referenced to the 'original roof' while those in B.1 (a) and B.1 (b) refer to the 'existing roof'.

C.1 (c)(ii) Solar photovoltaics

Permitted development rules for solar photovoltaics and solar thermal are set out in Part 40 of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008.

PERMITTED DEVELOPMENT RESTRICTIONS

As noted above, permitted development rights do not apply universally. The major restrictions and ambiguities are considered in more detail below.

Curtilage: raising party walls

When a full-width loft conversion is carried out in a mid-terrace dwelling, party walls on both sides are sometimes raised at full thickness to form new flank walls. It is emphasised, however, that a considerable number of local planning authorities consider that such conversions fall *outside* the scope of permitted development, arguing that half of each wall lies outside the curtilage of the dwellinghouse. Given the degree of uncertainty surrounding the matter, it would be prudent to ascertain the local planning authority's disposition before undertaking work of this sort. This subject is considered in Appendix C.

Conservation areas

Permitted development rights are restricted in conservation areas and there is a presumption that any work on a roof in such an area requires planning permission. A new dormer loft conversion, for example, would certainly require an application for planning permission.

Matters are less clear-cut in relation to rooflights and roof windows. Many local planning authorities take the view that these, too, require planning permission by virtue of the provisions of the GPDO.

However, some local planning authorities accept the use of co-planar roof windows (i.e. ones that do not project beyond the plane of the roof), even in roof slopes fronting a

highway, under permitted development. As a consequence, roof-space only conversions are sometimes carried out in conservation areas without planning permission.

Because the provisions of the GPDO are open to interpretation, consultation with the local planning authority is advised before undertaking work of *any* description on a roof in a conservation area. The section on planning permission (below) outlines how a planning application may be made and the sources of guidance available.

Article IV directions

An Article IV direction allows the local planning authority to impose additional controls to restrict work that would normally be permitted development. Under an Article IV direction, such work would require planning permission. There is normally no fee for a planning application that is required as a result of an Article IV direction.

Article IV directions are most commonly used in conservation areas, but not exclusively so, and are generally applied to groups of dwellings rather than individual houses. As far as loft conversions are concerned, an Article IV direction might require that planning permission be sought for the installation of roof windows or replacement roofing materials. But as noted above, such work is often considered to require planning permission anyway by virtue of the provisions of the GPDO.

Planning conditions affecting permitted development

'Planning conditions' (there is no other specific technical name for them) are used to remove permitted development rights and they are being used increasingly to restrict developments such as loft conversions. Planning conditions are most often applied to new high-density housing, although not exclusively so. Where a local planning authority has applied such a condition, it is necessary to apply for planning permission. Some local authorities, however, waive the normal application fee in such cases.

Because planning conditions may apply to areas and building types that would traditionally have enjoyed permitted development rights, property owners are sometimes unaware of their existence. Conditions such as these ('charges' in legal terms) are recorded in the Local Land Charges register which local authorities are required to maintain. There is, therefore, a case for checking the register even in an area where a building could reasonably be assumed to have permitted development rights.

Listed buildings

A loft conversion in a listed building would require both planning permission and listed building consent. Current legislation requires consent to be sought for any works to a listed building that would affect its character as a building of special architectural or historic interest. Note that listed building consent is needed for internal alterations as well as external ones, so even a conversion without projecting elements would require consent.

Listed building consent may also be needed for work on buildings within the grounds of a listed building. It is an offence to carry out any work requiring such consent without first obtaining it.

Applications for listed building consent are subject to similar procedures to planning permission, and the process is administered by the local planning authority. There is normally no planning fee for an application for listed building consent.

OTHER CONDITIONS AFFECTING DEVELOPMENT

Restrictive covenants

A restrictive covenant imposes conditions on how an owner may use land. This sometimes includes alterations and extensions to buildings. In cases where a restrictive covenant applies, the permission of the original developer may be required before an extension can be built. The restrictive covenant should appear in the land register entries to the title of the property. Note that the register referred to in such cases is maintained by the Land Registry and is quite separate from the Local Land Charges register.

A restrictive covenant can take many forms and can apply to more or less any type of property. It should be noted that local authorities widely apply such covenants to council houses sold under right-to-buy rules and that the local authority therefore has the benefit of the covenant. However, it is generally possible to escape the covenant through negotiation. In cases where there is a very old and apparently out-of-date restrictive covenant, it is sometimes possible to insure against the risk of enforcement. Restrictive covenants are generally a civil matter and operate independently of the planning system.

Mortgage lenders

Where property is mortgaged, it may be necessary for the householder to obtain bank or building society permission before undertaking a loft conversion. This is because any work might affect the lender's interest in the building and would apply whether or not it had advanced the money to pay for the work. Some lenders may charge a fee for consent.

Buildings and contents insurance

It is a requirement of most household insurance policies to inform the insurer before undertaking any building alterations; premiums may be adjusted accordingly. This applies to both buildings and contents insurance. In addition, it is generally necessary to modify policies to reflect the greater size of the property once work is complete.

Tree preservation orders

A tree preservation order (TPO) is an order made by the local authority to protect a tree or group of trees. An application must be made to the local authority to fell or undertake work, including pruning, on a tree subject to a TPO. Such matters are generally dealt with by the local authority's planning department.

Bats

It is an offence to remove or disturb bats without first notifying the relevant Statutory Nature Conservation Organisation (SNCO) before undertaking any work. In England, this is Natural England and in Wales, the Countryside Council for Wales. Note that bats and

their roosts are protected by more than a dozen conventions and sets of legislation including the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats &c.) Regulations 1994.

LAWFUL DEVELOPMENT CERTIFICATE

A Lawful Development Certificate (LDC, sometimes called a Certificate of Lawfulness) is a legal document that may be used to establish that proposed building work is lawful and does not require express planning permission. It is of particular use when working at the limits of permitted development rights.

Application for an LDC is made to the local planning authority, which generally bases its decision to grant or refuse on the applicant's submission and drawings. In some cases, the local planning authority will grant a certificate for part of the application. The application should be determined within 8 weeks and a fee is payable in all cases.

The importance of providing accurate drawings and documentation is emphasised in applying for an LDC, and, where a certificate is granted, it is equally important that subsequent work conforms to the drawings submitted. Note that a local planning authority can revoke a certificate issued as a result of false information, or if any material information is withheld.

PLANNING PERMISSION

An application for planning permission is made to the local planning authority when a proposal cannot be considered under permitted development.

However, before making a formal application and producing detailed drawings, it is prudent to discuss proposals with the local authority's planning department. It is also worth checking planning records to ascertain whether similar conversions have been granted planning permission and to check their planning history.

Note that permitted development rights for highway-facing front dormers were removed by The Town and Country Planning General Development Order 1988.

Planning applications

Applications may be made either electronically or on paper. Online applications are made using the Planning Portal and details are forwarded automatically to the relevant local authority. Currently, almost half of all applications are submitted online. It is also possible to make payments via the Planning Portal; more than 260 local authorities offer this option.

When applications are made on paper, they are submitted directly to the local authority, generally using a householder application form. Note that the method of submission – electronic or hard copy – does not affect the way a planning decision is made. In both cases, information provided on the application form, and other supporting documents, may be published on the local authority's website.

Once an application has been made, the local authority should decide whether to grant permission (sometimes with conditions) or refuse permission within 8 weeks.

Where permission is refused, granted with conditions that are not acceptable, or if the application is not determined within the statutory period, there is a right of appeal.

Planning permission normally remains valid for 3 years. If work does not start during that time, it may be necessary to re-apply. However, it is possible to extend planning permission before it expires. Note that the local planning authority may carry out checks on compliance during and after construction. Building control surveyors may alert planning enforcement teams to potential planning transgressions.

Note that matters such as restrictive covenants, party wall agreements, questions relating to the Building Regulations and the applicant's personal circumstances are not 'material considerations' as far as deciding a planning application is concerned.

Most of the questions on the householder application form (both on paper and online) are relatively straightforward. However, attention should be given to the following points.

Ownership

The application must include a completed certificate relating to the ownership of the land. If the proposed conversion involves raising a party wall, the statement of ownership must reflect that the property to which the application relates is not entirely owned by the applicant and there is a requirement to formally notify neighbouring owners about the application before it is submitted. Note that this is not the same as a party wall agreement.

Location plan (site location plan)

A location plan (generally at 1:1250 scale but see also *Drawings general*) is required that accurately shows the property in relation to roads and other properties. The application site (e.g. the house and garden) must be outlined in red. Any other land owned by the applicant in the vicinity is outlined in blue. The location plan should be based on up-to-date Ordnance Survey mapping and be configured to fit on an A4 page. A north point and a scale are required.

Site layout plan (block plan)

The site layout plan at 1:500 (or a larger standard scale, e.g. 1:200, but see also *Drawings general*) should indicate the position of the proposed development in relation to the site boundaries and other existing buildings on the site, with written dimensions including those to the boundaries. A north point and a scale are required. Where relevant to the proposed development, the following may also be needed: the position of all buildings, roads and footpaths adjoining the site including access arrangements; all public rights of way crossing or adjoining the site; the position of all trees on the site, and those on adjacent land; the extent and type of any hard surfacing; and boundary treatments including walls or fencing where this is proposed.

Floor plans and elevations

Plans are drawn to a scale of either 1:50 or 1:100 (but see also *Drawings general*) and should distinguish between existing and proposed structures. Floor plans should show the

room layout for the whole building with one drawing for each floor. Doors, windows and wall thicknesses should be indicated. Elevations should show what the proposed conversion will look like from the outside. Where neither side of the conversion is visible, a section drawing should be provided. The drawings must indicate the building materials to be used. Photographs showing aspects of the existing site may be of assistance in making an application.

Drawings general

All plans and drawings should be to a recognised scale and only metric measurements should be used. Plans should be identified clearly and drawing numbers provided. There is no restriction on the size of drawings. However, drawings sized to A4 or A3 are preferred for online applications.

The shift from analogue to digital drawing has increased the danger of scaling errors, particularly when documents are printed. To reduce this risk, drawings should state the size of paper they are to be printed on and the relevant scale when printed out at that size. As an additional safeguard, a scale bar indicating the length of 1 and 10 m, and written dimensions, should always be included.

Design and Access Statement

A Design and Access Statement (DAS) is required for a planning application when a dwelling is in a conservation area or a World Heritage site, or is listed.

SOURCES OF PLANNING GUIDANCE

Because most planning law is essentially negative, local planning authorities are encouraged to produce guidance to clarify what *can* be done. Many local planning authorities now produce detailed guidance on what is acceptable in specific localities.

However, changes to the planning system (and the ease with which documents can now be produced) mean that the volume of statutory and non-statutory guidance has proliferated in recent years, so it is not always easy to unearth relevant documentation.

When searching for potentially useful information, it is worth noting that the words 'loft conversion' are often not used in documentation published by local planning authorities. The following expressions are more commonly used instead:

- Roof extension
- Roof alteration
- Loft extension

Advice on relevant documentation, and whether or not its use is a material consideration for the purposes of an application, should be sought from the local planning authority. It is emphasised that considerable time and effort can be conserved at the proposal stage if relevant local guidance is taken into account.

When producing drawings for an application for planning permission, the following types of documents may provide detailed guidance, or contain references to where relevant guidance might be found.

Supplementary planning guidance

Most local planning authorities produce supplementary planning guidance (SPG) that expands on statutory policies. In some cases, this will include detailed guidance on residential extensions such as loft conversions. Such guidance, while non-statutory in itself, is taken into account as a material planning consideration when determining applications. The weight accorded to SPG increases if it is prepared in consultation with the public and has been the subject of a council resolution.

Supplementary planning documents

Site-specific guidance on residential extensions and alterations is sometimes included in supplementary planning documents (SPDs).

Design guides

These guides are usually drawn up for conservation areas, often after consultation with residents. In the case of loft conversions, a design guide might provide indications of acceptable scale and use of materials in a proposed dormer construction. Where adopted, design guides have the same status as supplementary planning guidance and are thus taken into account as a material planning consideration.

Design codes

A design code provides illustrated design rules and requirements which instruct and may advise on the physical development of a site or area. These generally paint a broader picture than design guides (see above), but may contain potentially useful references to preferred forms and choice of materials.

Local Development Framework

This encompasses all the local planning authority's local development documents, including Development Plan documents and supplementary planning documents. The Local Development Framework (LDF) replaces the Unitary Development Plan.

Unitary Development Plan

The Unitary Development Plan (UDP) is now replaced by the Development Plan system, although through transitional provisions they will continue to operate in many cases. The UDP may set out acceptable roof alterations in some detail.

THE PARTY WALL ETC. ACT 1996

The Act usually applies when lofts are converted and it provides a framework for preventing and resolving disputes in relation to party walls. Anyone planning to carry out work of the kinds described in the Act must give notice of their intentions to the adjoining

owner. The Act applies in England and Wales and is invoked by the building owner. Local authorities are not usually involved in the process.

In semi-detached and terraced dwellings, it is usually necessary to carry out work on a wall shared with another property (a party wall) as part of a loft conversion. Any work on a party wall, other than minor operations, is likely to fall within the scope of the Party Wall etc. Act 1996. Some common examples of work on party walls as part of a loft conversion include:

- Cutting into an existing party wall to provide support for a beam
- Constructing a dormer stud cheek over part of an existing party wall
- Raising the height of an existing party wall to form a new flank gable wall
- Raising a compartment wall if there is no separation in the roof void

Section 2 of the Act deals with work to existing party walls and, if the correct procedures are followed, it confers a number of valuable rights, including rights of access (subject to conditions). It is emphasised that the Act should be invoked even if the proposed work does *not* extend beyond the centreline of the party wall. For example, the Act would still apply where a beam with a bearing of 100 mm is to be supported by a 9" wall (i.e. penetrating less than half the thickness of the wall).

Perhaps the single most important factor in preventing disputes from arising is the building owner's relationship with the adjoining owner. Wherever possible, the building owner should discuss the proposed work with the adjoining owner before notice is served.

Procedure

The building owner must serve a *party structure notice* on any adjoining owner. A party structure notice must be served at least 2 months before the planned starting date for work to the party wall. Note that the notice is only valid for 1 year. There is no official form for giving notice, but the Act stipulates that the notice contains the following:

- The name and address of the building owner (joint owners must all be named)
- The nature and particulars of the proposed work (drawings may be included)
- The date on which the proposed work will begin

Although not specifically mentioned in the Act, it might be prudent also to include in the notice:

- The address of the building to be worked on
- The date of the notice
- A statement that it is a notice under the provisions of the Party Wall etc. Act 1996

The adjoining owner's agreement and written consent to the proposed work, if it is received, does not relieve the building owner of obligations under the Act – for example, the requirement to avoid unnecessary inconvenience while work is carried out. Neither does it eliminate the possibility of differences arising between the adjoining owner and the building owner once work has begun. The two-month period between serving notice and the planned commencement of work may be reduced with the agreement of the adjoining owner.

Disputes

If the adjoining owner disagrees and does not consent to the work proposed, one of two approaches may be adopted:

- The building owner and adjoining owner concur in the appointment of a single surveyor – the 'agreed surveyor'. The agreed surveyor produces an 'award' (sometimes called a party wall award) that sets out in detail the work proposed and conditions attached to it.
- The building owner and adjoining owner each appoint a surveyor to settle any differences and to produce an award as outlined above. In such cases, the appointed surveyors select an additional surveyor – the 'third surveyor' – who would be called in to mediate if the two appointed surveyors cannot reach an agreement.

Note that if the adjoining owner fails to respond to the party structure notice within 14 days of service, a dispute is considered to have arisen. In this case, a surveyor is appointed on behalf of the adjoining owner and the procedure described above is followed.

The Act defines a surveyor as a person who is not party to the matter. This means, in theory at least, that anybody can act as a surveyor in a party wall dispute. In practice, of course, it would be prudent to appoint, or agree on the appointment of, a person with a good knowledge both of construction and of administering the Act. Surveyors appointed under the dispute resolution procedure of the Act must consider the interests and rights of both the building owner and the adjoining owner. They do not act as advocates for the respective owners, and an award must be drawn up impartially. Fees for the surveyor (or surveyors) are generally paid by the building owner.

Details of surveyors specialising in the Party Wall etc. Act 1996 may be obtained from the Royal Institution of Chartered Surveyors or the Pyramus & Thisbe Club. Contact information is provided in the bibliography.