Converting offices into homes

A summary guide to the new 'permitted development' (PD) procedure

From 30 May 2013, it will in many instances be possible to convert office buildings to residential use without planning permission. However, the position is much less straightforward than might be supposed, and developers intending to take advantage of the new freedom must clear a number of hurdles.

Below is a summary of these hurdles:

1. The building must be/have been in use as a Class B1(a) office on 30 May 2013. If it is/was vacant on that date, its last use must have been for Class B1(a) purposes. It will be necessary for developers to check the planning history of a building to ensure that the B1(a) use is lawful. (The procedure will not apply to buildings in Classes A2 (financial and professional services), B1(b) and (c) (light industry and research & development), B2 (general industry) and B8 (warehousing and distribution), or to buildings regarded as sui generis.)

2. Intending developers should also satisfy themselves that other restrictions do not apply – for example, there might be a condition or Section 106 obligation restricting the use of a building; many leases will contain user clauses restricting use; or there may be covenants which similarly restrict use.

3. If the building is Listed, or a Scheduled Monument, the new measure will not apply (though the developer can nevertheless apply for planning permission in the usual way).

4. The Government has specified a number of geographical areas where the new measure will not apply, including:
   - safety hazard areas (as notified to local planning authorities by the Health and Safety Executive) – for example, land close to gas holders;
   - military explosives areas (as licensed by the Secretary of State for Defence);
   - certain areas which have been exempted – including, for example, the Central Activities Zone in London, the whole of the Royal Borough of Kensington & Chelsea, and Manchester City Centre Core.

   Once again, there is nothing to stop a developer applying for planning permission (and taking advantage of favourable advice given in para 51 of the National Planning Policy Framework), but the PD right does not apply.

5. Some local authorities may make Article 4 Directions to remove the benefit of the PD right within other geographical areas.

6. It will in all cases be necessary to make a "prior approval" application to the local planning authority (LPA). Intended to screen out buildings and land where residential use would be unacceptable in terms of transport impact, contamination risk or flooding risk, this involves notifying the LPA of what is proposed. The LPA will consult certain statutory consultees and immediate neighbours, and may require information to enable it to assess impacts and risks. It can approve or refuse the application. If it does neither within 56 days, the developer may proceed (though this period may be extended by agreement). A refusal can be appealed as though it were a refusal of planning permission.

7. If the scheme requires material external physical alterations, these will need to be the subject of a planning application. The PD right only applies to the principle of use.

8. The PD right only applies for a three year period. The use must commence no later than 30 May 2016 (which could, of course, mean that conversion work has to start at a much earlier date).

9. Finally, Building Regulations approval will be required in the usual way.

If in doubt about whether the PD measure applies to a particular building, an intending developer could apply for a Lawful Development Certificate.

Other permitted development rights are being introduced at the same time, relating to state-funded schools, and agricultural buildings. These are not covered by this note. The summary above is intended to provide general guidance only; it is not a substitute for professional advice, and should not be relied upon.

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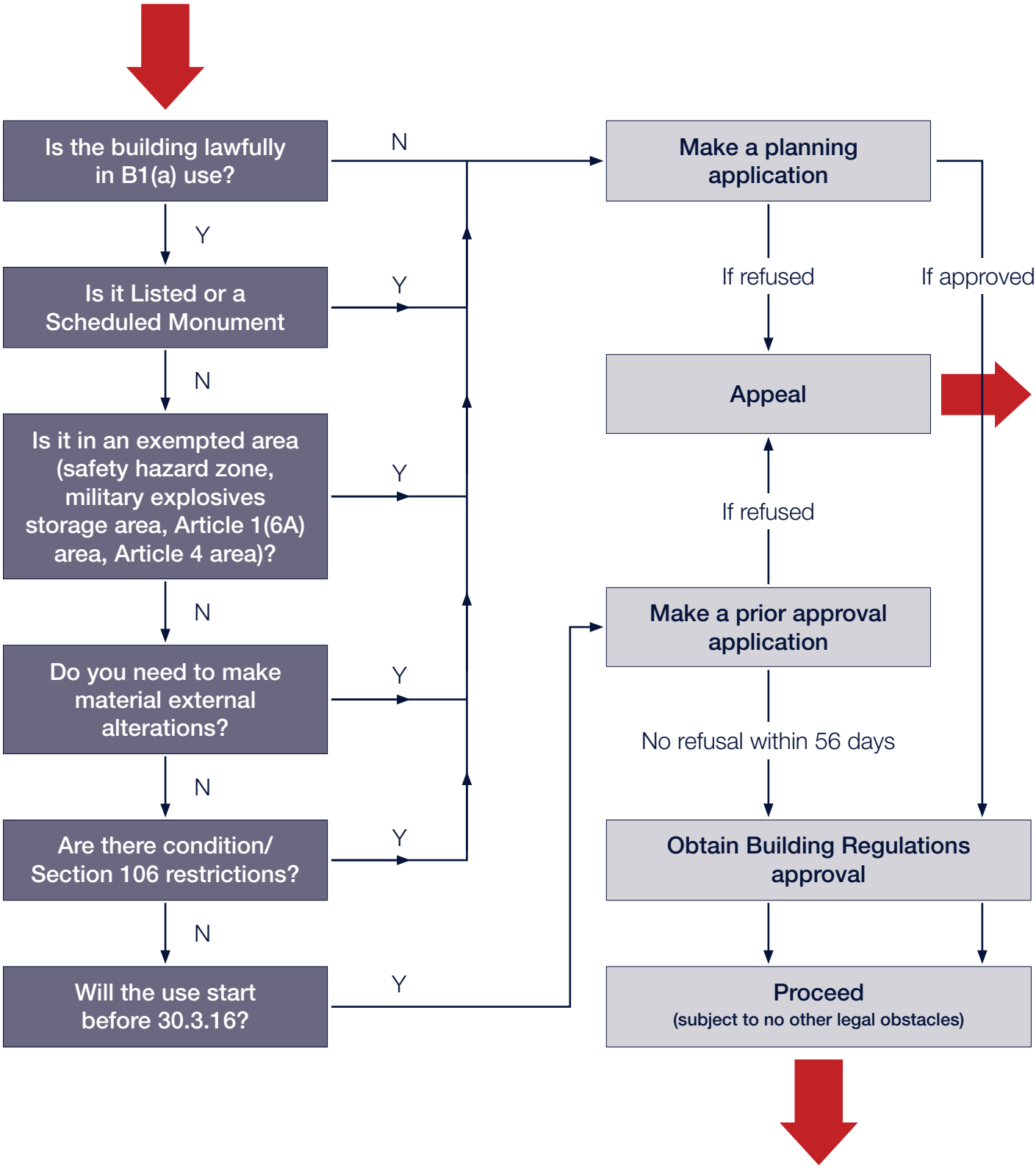

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