



EDITORIAL

Geneva does not differentiate itself by the flexibility of its real estate legislation, particularly in the area of conversions, and it is therefore a real pleasure to be able to comment on a rare simplification in the law, especially when it has been elected by an overwhelming majority in a referendum. Yes, the people, in their great wisdom, have deemed it appropriate for any administrative or commercial property to be converted into housing without any particular restriction or constraint! Elsewhere, such a measure would seem to be just common sense, but, in Geneva, this is a historic event and it remains to be seen whether it is an isolated one or whether it heralds a new trend. Because the following question needs to be asked: has the unremitting state interventionism characterising Geneva in the real estate sector done anything other than generate and maintain a shortage?

This being the case, let us not forget that the practical scope of this amendment of the LDTR (Swiss law on demolitions, conversions and renovations) will remain modest since many administrative properties obviously do not lend themselves well to being converted into housing. But this does not stop us from celebrating this victory of pragmatism, and the likely emergence of some additional housing taken from the stock of the least competitive offices.

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Conversion of commercial and administrative properties into housing under the new LDTR

1 Amendments made to the LDTR

The LDTR (Swiss law on demolitions, conversions and renovations of houses – support measures for the benefit of tenants and employment) was the subject of a historic vote on 14 June 2015, during which the people of Geneva agreed to an amendment to the law leading to major easing of the latter in the event of the conversion of commercial, administrative, small business or industrial premises into housing. Law No. 11394 amending the LDTR entitled “More housing for Genevans!” reads as follows:

Art. 3, para. 4 (new content)

Under this law there is no change of use when commercial, administrative, small business or industrial premises are used for housing. Neither is there a change of use under this law when these premises take on their former commercial, administrative, small business or industrial purpose again. The rent or the price of the premises converted into housing cannot be controlled under this law. This is subject to any control already existing under another law on subsidised buildings and continuing under the conditions thereof.

Art. 7 Principle (new content)

Subject to article 3, paragraph 4, no one can, unless an exception is granted under article 8, change the use of all or part of a building pursuant to article 2, paragraph 1, whether occupied or unoccupied.

Since 20 June 2015¹, any owner of properties intended for commercial, administrative, small business or industrial use may convert them into housing without having to obtain permission from the Department for town and country planning, housing and energy (DALE) based on the LDTR and without the rent of the newly created housing or its future sale price being controlled by the Department. Nevertheless, the owner must obtain the required building permits stipulated by the law on constructions and installations (LCI)² and the other applicable regulations (see section 2). Rent control of the housing thus created endures if it already existed under other laws on subsidised buildings at the time of the conversion, such as the LGL (general law

on housing and protection of tenants) or the LUP (law on the construction of social housing).

Before the amendment of 14 June 2015, the conversion of commercial, administrative, small business or industrial premises into housing was already possible under the LDTR in accordance with the conditions stipulated in art. 3 para. 4 of the former content. However, this conversion, which was not considered as a change of use subject to permission from the Department, could only be temporary and the newly created housing had to be returned to its former use and never have been previously used for housing. The Department had fixed the authorised duration of the conversion depending on the time required for the owner to recoup the cost of the conversion work. Since an LDTR permit was required for performance of conversion work as such (but not the change of use), the regulations prevailing up until 14 June 2015 only very slightly encouraged owners to carry out such conversions, given the control carried out by the Department on the rents of newly created housing. Turning the housing created back into commercial, administrative, small business or industrial premises was possible without permission given the temporary nature of the conversion.

2 In which sectors are situated vacant properties that could potentially be used for housing, and how many are there?

According to the statistics drawn up by SPG Intercity³ in 2015, taking into account vacancy rates by sector over a total of 225,150 m² of vacant properties, we can make an initial observation: the largest number of vacant commercial, administrative, small business or industrial premises are situated in the Airport sector (21% or 46,176 m²) and the city centre Left Bank (19% or 43,629 m²). The lowest proportion of these properties is situated on the Right Bank, not including the city centre (10% or 22,611 m²) and in the Praille-Carouge sector (10% or 22,611 m²).

On analysing the level of equipment of these premises on the basis of the statistics drawn up by the canton of Geneva⁴ in 2012, we observe that the properties located

¹Date of entry into effect of the amendment to the LDTR.

²Pursuant to art. 1 para. 1 letter b LCI.

³SPG Intercity, specialist in commercial real estate.

⁴Vacant premises, according to the level of equipment and use, from 2000 to 2012* – OCSTAT (updated on 2 September 2012).

in the Airport sector (10% or 23,550 m²) and the city centre Left Bank sector (10% or 22,250 m²) are the least well equipped (“not equipped” or “poorly equipped”) for commercial, administrative, small business or industrial use⁵. Therefore they would be, theoretically and subject to the comments made below for the Airport sector, the best suited to being converted into housing since the conversion work would essentially consist of equipping these properties for use as housing (creating a kitchen and bathroom) and not of dismantling existing equipment that is exclusively for a use other than that of housing, in order to then equip them for this purpose.

However, the Airport sector must be considered with some reservations as a potential sector for conversion, given the fact that a large number of buildings situated to the west and south-west of the Airport in the municipalities of Meyrin and Vernier are in an industrial or small business zone, or an industrial and small business development zone, which would prevent any conversion of existing vacant properties into housing with regard to the provisions stipulated by the implementing legislation of the federal law on town and country planning (LaLAT)⁶. Furthermore, implementation of the rules provided for by the federal law on major accident protection (OPAM⁷) and noise protection (OPB) could prevent conversions planned for properties situated in this same sector in ordinary or development zones to be built⁸.

This rather restrictive observation leaves us to think that the opportunity offered by the new art. 3 para. 4 LDTR for converting small business or industrial premises into housing – which, by default, are situated in an industrial or small business zone or an industrial and small business development zone – will in practice remain a dead letter, subject to exceptions, given the conformity of use to the zone, which must be respected when creating new housing.

Now let us take an example of a conversion in a building situated in the city centre to illustrate the concrete effects of the legislative amendment voted on 14 June 2015 by the Genevan people.

3 Example of a conversion of office premises into housing in the city centre Right Bank sector

Let us take a property situated on the Right Bank with a shopping arcade of an area of 560 m² on the ground floor and, on the first floor, premises intended for office use but currently vacant, amounting to approximately 1,000 m².

The first floor of offices would accommodate eight loft-type apartments of a total habitable area

of approximately 790 m², i.e. on average 98 m² per apartment.

The equipment status of the existing office premises is considered as “poorly equipped”, since there is only a toilet and a single kitchen on the premises.

The average cost of conversion per square metre of the office premises is estimated at CHF 3,081.–, i.e. approximately CHF 304,238.– per apartment. This cost includes installing a kitchen and one or more bathrooms in each of the eight apartments depending on the size of the apartment.

The future rent of the apartments that would be newly created is estimated at approximately CHF 1,900.– per month for the smallest ones and CHF 3,700.– per month for the largest, i.e. an average rent of CHF 372.– per m²/year. Comparing this rent with that obtained previously by the owner for the office premises (CHF 274.– per m²/year⁹), the new average rent aimed at after conversion of the premises into housing would be higher by approximately 36% and would thus enable the cost of the conversion to be recouped.

In the event that the discounted rent of the future apartments should be less than that of the vacant office premises, an estimation of the time required for the owner to recoup the cost of the conversion work should be carried out to determine the break-even point of a potential conversion. The rental loss borne by the owner in the event of failure to rent the office premises should, in particular, be considered in relation to the return that may be obtained from renting the premises as housing (including the recouped cost of conversion). If the owner needs little time to find a tenant for the office premises, assuming that the tenant then stays in the premises until the end of the lease, profitability over the short or medium term of conversion of the premises into housing would be debatable. Likewise, if the owner has to lower his target rent to find a tenant for the office premises, the break-even point of a conversion into living accommodation would be reduced accordingly. Lastly, being able to find tenants quickly due to converting the property into housing, and this despite the time required to recoup the cost of the

conversion, should in general contribute to the value of the property. This is not the case if the property is vacant for too long and the owner is forced to look for commercial tenants in the current market conditions.

In order to assess the pertinence and profitability of a conversion of commercial or administrative premises into housing, the owner should firstly estimate, for his building, the chances of success of renting the office premises at the discounted rent within a given period (also assessing the time required to rent them with a reduced target rent). He should then estimate the actual cost of converting the premises into housing and equipping them in accordance with his financial means and the specific features of his property to identify the minimum target rent that would have to be obtained for renting the housing, taking into account the risk of a control and potential correction of the initial rent under the Swiss Code of Obligations in the event of dispute by the new tenant.

4 Conclusion

The conversion of commercial and administrative properties into housing under the new LDTR has become a reality from a legal point of view since the vote of the Geneva population on 14 June 2015. However, not all the sectors of the canton of Geneva lend themselves well to such conversions due, on the one hand, to the large concentration of commercial properties in sectors situated in a building zone but where housing cannot be authorised, and, on the other hand, in light of the existing level of equipment identified in these properties. Lastly, the profitability of conversion work must of course be analysed in each concrete case, taking account, in particular, of the time already dedicated by the owner wishing to carry out a conversion to finding a tenant for the commercial premises at a given target rent and the level of target rent aimed at for the housing that would result from the conversion.

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⁵It should be noted that these same properties are, conversely, also counted as being the most “fully equipped” for commercial, administrative, small business or industrial use. However, we are not taking this characteristic into account for this analysis given that they include in any case the greatest potential for properties that could be converted into housing on the canton’s territory.

⁶See art. 19 para. 4 LaLAT.

⁷See in particular art. 8 letter *m* of the Cantonal implementing regulation of OPAM (RaPAM).

⁸These restrictions have been emphasised by the cantonal councillor Antonio Hodgers in the report on bill 11394 (cf. pp. 23-24).

⁹It should be noted that the total area rented as offices was greater than that of the total new habitable area, which is explained by the use of a part of the former offices to create the communal areas for the apartments.

Within SOCIÉTÉ PRIVÉE DE GÉRANCE, a Department, Commercial Rentals, is fully dedicated to renting offices of all categories and surface areas, shops and warehouses, as well as small business and industrial premises. It works on the basis of its existing portfolio, currently comprised of more than one hundred properties, and external mandates, with owners entrusting us with their properties for rent, as well as mandates for finding premises. The Commercial Rentals Department takes responsibility for all consulting up until signing of the lease: valuation of the property, provision of documents, marketing the property through all available channels (Internet, real estate portals, press advertisements, etc.), viewings, negotiations and drafting the lease. Each lease is drafted in a personalised way, under the direction of lawyers, in order to satisfy all the parties. The Commercial Rentals Department is aimed at multinationals, banks and finance companies, start-ups and international organisations. Comprised of a team of multilingual professionals, the Department is particularly knowledgeable about the Geneva market and the requirements of a specialised client base.



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