PROPERTY LAW UPDATE
SEPTEMBER 2017

Property Update

Speaker: Richard Snape
8th September 2017
3 CPD Points
ABOUT DJB

Established in 1999, Davitt Jones Bould is now the largest national real estate law firm in the UK. DJB’s clients receive a fabulous service benefiting from their own dedicated Account Manager to ensure that the service they receive is on time, on price and totally meets their needs. DJB is entirely focused on real estate.

Covering commercial property, planning and other related areas we have one of the most experienced teams of solicitors in the country with a total of over 800 years’ PQE. DJB does not use paralegals to undertake legal work.

We act for a diverse range of clients in the real estate sector spanning many industries and our client base includes some of the most significant landowners and occupiers in the country.

Handling any size of property transaction or planning project, the team is comprised of City trained and highly regarded lawyers that operate from the firm’s offices in London, Manchester, Birmingham and Taunton.

The firm enjoys top tier rankings in all of the main directories and is a winner of the Lawyer Awards.

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- North West: Commercial Property
- South West: Real Estate: Commercial Property, Planning, Property Litigation, Local Government

CHAMBERS UK
- London: Real Estate
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“Clients feel protected to the greatest extent.”
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LAN DLORD AND TENANT ACT 1954

GROUND (f) – intention to demolish and reconstruct

S Franses Ltd v Cavendish Hotel (London) Ltd [2017] EWHC 1670 (QB) [2017] WLR (D) 503  Here the court accepted that ground (f) could be used even though the work of reconstruction was specifically planned in order to terminate the lease. However, as the work would not commence for 12 months then the intention was not sufficiently immediate.

GROUND (g) – Intention to Occupy

Gulf Agencies Ltd v Ahmed [2016] EWCA Civ 44  The landlord was a solicitor and a notary public. The property was a ground floor and basement let out to the tenant. The landlord and tenant had poor relations ever since the landlord required the freehold in 2007.

The landlord served a s.25 notice to obtain possession to which the tenant objected. The landlord opposed this on ground (g) i.e. occupation for his own purposes. He intended to occupy the premises as a solicitors practice and minicab business which he also owned. The first instance judge rejected the claim and accordingly to the Court of Appeal, showed bias against the landlord.

The Court of Appeal stated that for ground (g) to apply the landlord must show:

(a) A fixed and settled desire to do what he says he intends to do, ‘out of the zone of contemplation and in to the valley of decision’ to quote from the case of Cunliffe v Goodman [1950] 2 KB 237

(b) There was a reasonable prospect of being able to bring about the desired effect including a real chance or reasonable prospect for planning permission for the proposed change of use.

The Court of Appeal decided that the landlord had a clear intention to occupy. This is subjective and the first instance judge had erred. The second test was objective but there was a real prospect of occupation which was not illusory or short term as under current planning legislation there was a possibility of the landlord occupying under Class A2. The case was sent back to be heard by a different trial judge.

All a landlord need do is to show a genuine intention to occupy, whatever the reasons. See also Dolgellau Golf Club v Hett (1999), the landlord may succeed even if his intended plans are doomed to failure.
Arnold v Britton [2015] UKSC 36 here 99 year leases of holiday chalets required a service charge to be paid based on the work which was done on the premises plus a yearly sum of £90 which rose by 10% compound interest each year. The consequence of this was that by 2072 the liability would be £554,000 per annum. The Supreme Court confirmed that as this was the clear meaning of the provision they would not be prepared to re-write it.

The topic of escalating ground rents, in particular in relation to the leasehold houses, has been in the media of late and some mortgage companies are beginning to refuse mortgage offers in certain circumstances.

There is also a debate as to whether, if the ground rent exceeds £250 per annum or £1,000 per annum in Greater London, it will create a possible assured tenancy. If this was the case then forfeiture provisions would be inapplicable and if the rent was to fall 2 months in arrears there would be a mandatory ground 8 for possession.

In late June 2017 the CML produced guidance on Newbuild Leasehold Properties. It states that it may also apply to existing leaseholds dependent on the term. Although merely guidance, and the mortgage companies do not need to change their individual instructions, they are advised to take this into account. The overriding principle is that the borrower should be able to afford the loan. This is also a FCA requirement. If need be, professional advice should be sought from a valuer. A major factor may include the lease term.

**General Points**

The CML guidance states the following:

- “Given that lenders must consider both affordability of the borrower, and the sustainability of the value of the property, lease terms which involve obligations for future payment, such as ground rents, are more likely to be considered acceptable for lending purposes if they are set at levels that will not materially change mortgage affordability in the future, or impact on the value of the property; and that the lease length is suitably long (i.e. is granted for hundreds, rather than tens of years).”

- Lenders may query why a property is offered as leasehold. This is particularly so for leasehold houses.
It is important that lease information for new homes is made available as early in the home buying process as possible, so that conveyancers and valuers can provide advice and lenders can make appropriate lending decisions. New build leasehold properties.

In relation to ground rents, lenders would expect to see nominal ground rents, reflecting the origins of the ground rent being ‘peppercorn’ in nature.

Under current leasehold legislation, there are certain provisions which present a risk that the lease may be terminated or forfeited by the landlord (freeholder), leaving the property owner without a leasehold interest, and the lender mortgagee without a security. Therefore, lenders will expect that a conveyancer acting on their behalf advises on such risks and how they might be mitigated. An example is the relevant provisions of the Housing Act 1988 in relation to the creation of an Assured Tenancy where the ground rent exceeds £250 per annum or £1000 in Greater London.

Lenders will expect professional advisers such as conveyancers and valuers to consider:

- The length of the initial lease term granted. As a general principle, longer lease terms will help sustain the property’s value for longer, as there should not be a need to seek an extension of the lease in the medium term (i.e. over the term of the mortgage). Lenders using the CML Lenders’ Handbook already stipulate a minimum lease residue requirement (see s 5.14.1 of the CML Lenders’ Handbook). o Lenders recognise that there may be different lease lengths for houses and flats.

- The mortgage term in relation to the lease term, with particular regard to a likely review of the lease once 80 years or less are remaining.

- The initial annual ground rent figure. Professional advisers should take into consideration: o the level of the ground rent in relation to the property’s market value, o the type of property (e.g. a flat or a house) o whether the ground rent is fixed or rises periodically, o if the ground rent does rise periodically, the formula by which it rises. o Where the property value is below £100,000, some lenders may wish to see a de minimis maximum initial ground rent figure (e.g. £100) is applied.

- Whether the ground rent figure is at a level which triggers legislative provisions (such as under Part 1 of the Housing Act 1988), potentially creating a risk for the lender’s security.

- The ground rent review formula (if not a fixed figure). Professional advisers should take into consideration: o The CML Lenders’ Handbook at s 5.14.9, which provides that lenders will accept a periodic increase in ground rent, provided that the amount of the increased ground rent is fixed or can be readily established and is reasonable. o Where the formula is one which uses increases in line with an index, whether the index is a recognised UK index and is appropriate and/or acceptable to them. Some lenders may also expect a cap on the maximum
ground rent amount, to guard against the ground rent reaching an unreasonably high sum, which could impact on the property’s value, the continued affordability of the mortgage and the future saleability of the property. Some lenders may be concerned to see the use of compounding formulas, or the use of minimum increases, in conjunction with an index-linked formula. Where the formula does not link with a recognised index, and instead uses a multiplier (e.g. doubles) at set intervals, the frequency of the rent review intervals. There is no single industry view on a minimum acceptable frequency, as it may depend on other factors such as the initial amount of the ground rent, and whether there is a cap on the number of times the rent is reviewed.

- Other fees charged under the lease Where other fees are charged under the lease (for example, on a transfer of equity) lenders will expect that these are set at reasonable levels. Where the fees follow the ground rent formula (for example, if they are set at 50% of the prevailing ground rent), lenders will have similar expectations as set out above for ground rent formulas”.

On 25th July 2017 the Government produced a consultation paper on ground rents in leasehold houses. Possible changes include:

- banning newbuild leasehold houses, with some exceptions
- Banning increases of ground rent at lease than 21 year intervals
- Preventing ground rents of more than £250 per annum giving rise to assured tenancies
- Allowing tenants of leasehold houses to have the same rights as those in flats to question the reasonableness of administration charges.

The Government also intends to ban help to buy leasehold houses.
These provisions are not yet in force in Wales.

**Community Right to Bid (Assets Of Community Value)**

The Localism Act introduces a Community Right to Bid (Assets of Community Value) which aims to ensure that buildings and amenities can be kept in public use and remain an integral part of community life. Under the Localism legislation, voluntary and community organisations and parish councils can nominate an asset to be included in a ‘list of assets of community value’. The local authority will then be required to maintain this list. If the owner of a listed asset then wants to sell the asset a moratorium period will be triggered during which the asset cannot be sold. This is intended to allow community groups time to develop a proposal and raise the required capital to bid for the property when it comes onto the open market at the end of that period.

These provisions came into force in England on 21 September 2012. Although the Government have stated that they intend to implement the legislation we are still awaiting a date.

**What is the procedure for including land on the ‘assets of community value’ list?**

- The local authority will determine the format of the list, any modifications made to any of the entries on the list and any removal of an entry from the list.

- A community nomination must come from a parish council, a community council or a locally connected voluntary or community body. The nomination has to be made for land or buildings in the nominee’s local area.

- If the local authority deems that the asset does have community value, and it is in their local area, than it will add that asset to the ‘assets of community value’ list.

- If the nomination is unsuccessful the local authority must notify the nominee in writing and provide an explanation as to why the nomination was unsuccessful.

- The local authority must notify the landowner, the occupier and the community nominee of any inclusion or removal of an asset to the list.

- A landowner can ask the local authority to review the inclusion of the asset from the list and there will be a process for an appeal to an independent body.
The local authority must also maintain a list of ‘land nominated by an unsuccessful community nomination’.

- If land is included in the list of assets of community value it will remain on that list for five years.

**What is defined as ‘community value’?**

- A building or piece of land will be deemed to have community value only if:
  
  - The use of the land or building currently, or in the recent past, furthers the social well-being or cultural, recreational or sporting interests of the local community.
  
  - This use (as described above) of the building will continue to further the social well-being or interests of the local community.
  
  - The use of the building or land must not be deemed ‘ancillary’, i.e. of secondary purpose. This means that the use of the land or building to further social well-being or interests of the community must be its principle use.

- The regulations set out by the Secretary of State will provide more detail on assets that will be exempt from listing and who has the power to make this exemption.

**What is the Moratorium period?**

- If a building or piece of land is listed as an ‘asset of community value’ and the owner wants to sell the asset, they must inform the local authority. This will then trigger a moratorium period.

- During a moratorium period the owner cannot conclude the sale of the asset.

- There are two moratorium periods to note, both of which start from the date the owner of the asset notifies the local authority of their intention to sell the asset:

  - *Interim moratorium period* – this is a six week period during which a community group wishing to bid for the asset must notify the local authority that they wish to be considered as a potential bidder. If this does not happen the owner can proceed to a sale.

  - *Full moratorium period* - this is a six month period during which a community group can develop a proposal and raise the capital required to purchase the asset.

- There is also a ‘protected period’ of 18 months from the same start date to protect the owner from repeated attempts to block a sale.
Does the moratorium period apply to all disposals of land and buildings named on the “assets of community value” list?

- There are some circumstances when the disposal of an asset that is listed as having community value can be exempt from the regulations concerning the moratorium period. These include:
  
  - If the disposal is a gift
  - If the disposal is made between members of the same family.
  - If the land or building being disposed of is part of a bigger estate.
  - If the disposal is of a building or piece of land on which going-concern business is operating, provided that the sale is to a new owner to continue the same business (for example if an owner of a pub wants to sell the pub to a new owner, to continue running it as a pub).

In R (Edgar) v Bournemouth Borough Council (2013), judicial review of the local authorities refusal to list a community centre failed. It could be not be shown that the property had been of community value in the past 5 years.

In Patel v Hackney Borough Council (2014) the applicants did not have to show on a balance of probabilities that listing would enable the land to be used for community purposes. All that is needed is a probability that this would be the case.

St Gabriels Properties v Lewisham Borough Council [2015] The First Tier Tribunal has held that the Campaign for Real Ale has a sufficient local connection to apply for the listing of a public house as it had a branch office in the locality.

Evenden v Brighton and Hove City Council [2015] Here the court decided that all that was required was a realistic prospect that the premises may be a community asset in the future. As the future was uncertain there was such a prospect. Moreover, it was irrelevant that the premises, a public house, had been unprofitable in the past and that the community did not have the funds to purchase.

Matterhorn Capital v Bristol City Council (2015) here a scout hut was listed as an asset of community value even though its lease had come to an end and the property had been demolished by the time of the listing. There was still a prospect of the scouting association obtaining a new lease and obtaining funding through charitable donations.

Banner Homes Ltd (BHL) v St Albans District & City Council (1) & Verulam Residents Association (2) [2016] UKUT 0232 (AAC) This was the first Upper Tribunal decision on assets of community value. The local planning authority had acted reasonably in refusing planning permission for an asset of community value. This will usually prevent successful planning applications. Here the land consisted
of a piece of open space and although there was no permission to be on the land it could still constitute such an asset.

**Note:** The General Permitted Development (Amendment) (England) Order 2015 takes away permitted development in relation to change of use of drinking establishments which are assets of community value.

**Note:** The Town and Country Planning (England) (Amendment) (No 2) Order 2017. The provisions came into force on 23rd May 2017. Drinking establishments will no longer have permitted development for conversion to retail, restaurants, state funded schools, flexible use or demolition.

**Land Registry Restrictions**

*(Extract from Land Registry Guidance on Restrictions)*

Chapter 3 of Part 5 of the Localism Act 2011 deals with assets of community value. It came into force in relation to England on 21 September 2012. It is not in force in relation to Wales.

Local authorities in England must maintain a list of assets of community value, such as a village shop, a pub or a community centre, which further the social well-being or social interests of the local community.

Section 100 of the Localism Act 2011 provides for the listing of an asset of community value to be a local land charge, administered by the listing local authority.

The owner of listed land is prohibited from entering into a relevant disposal of it except where specified conditions are satisfied. These conditions provide for notification to the local authority by the owner of an intention to make a relevant disposal, and for a moratorium during which a community interest group may bid for the land. The owner does not have to accept a bid.

A relevant disposal is defined as a disposal with vacant possession of a freehold estate or the grant or assignment with vacant possession of a lease granted for at least 25 years. Certain types of relevant disposals are exempted from the right to bid: for example, gifts/transfers at nil value, transfers between family members, business-to-business going concern exemptions and disposals where only part of the land is listed.

The Land Registration Rules 2003 have been amended, by the Assets of Community Value (England) Regulations 2012 made under the Localism Act 2011, in relation to Form QQ and first registrations.
New standard Form QQ restriction

Registered land

Where the listed land is registered the relevant local authority is under a duty (under rule 94(11) of the Land Registration Rules 2003) to apply for the registration of a restriction in standard Form QQ against the registered estate:

No transfer or lease is to be registered without a certificate signed by a conveyancer that the transfer or lease did not contravene section 95(1) of the Localism Act 2011.

They must apply as soon as practicable after listing unless there is an existing Form QQ restriction in respect of the same registered estate.

Unregistered land

Where the listed land is not registered an applicant for first registration of that land must at the same time apply for entry of the Form QQ restriction in respect of that land (rule 27A of the Land Registration Rules 2003).

Where a person applies for first registration of that land and any of the deeds and documents accompanying the application includes a conveyance or lease to the applicant, or to a predecessor in title made at any time when the land was listed land, the applicant must, in respect of each conveyance or lease, provide a certificate by a conveyancer that the conveyance or lease did not contravene section 95(1) of the Localism Act 2011.

Cancellation of the restriction

A Form QQ restriction only catches transfers and leases (including those by operation of law). On registration of a transfer or lease, we will not normally cancel the restriction unless a specific application is made in form RX3 by or with the consent of the relevant local authority or its successor authority.

Beware

A transfer or lease in breach of section 95 of the Localism Act 2011 will be ineffective from the outset, unless the owner who made it did not know that the land was listed despite making all reasonable efforts (regulation 21 of the Assets of Community Value (England) Regulations 2012).

Further information

For information about assets of community value please see the Localism Act 2011 and The Assets of Community Value (England) Regulations 2012.
A non-statutory advice note for local authorities is available on the Department for Communities and Local Government’s website.

Practice Guide 19 – *Notices, restrictions and the protection of third party rights* has been updated to include the new Form QQ restriction.
THE COMMONS ACT 2006

Registration of Rights of Common

Creation

A right of common cannot at any time after the commencement of the relevant provision be created over land by virtue of prescription.

A right of common may be created over land by way of express grant if:

(a) the land is not registered as a town or village green; and

(b) the right is attached to land

The creation of a right of common in accordance with the above only has effect if it complies with such requirements as to form and content as regulations may provide.

The creation of a right of common in accordance with the above does not operate at law until on an application under this section:

(a) the right is registered in a register of common land; and

(b) if the right is created over land not registered as common land, the land is registered in a register of common land

An application under this provision to register the creation of a right of common consisting of a right to graze any animal is to be refused if in the opinion of the commons registration authority the land over which it is created would be unable to sustain the exercise of:

(a) that right; and

(b) if the land is already registered as common land, any other rights of common registered as exercisable over the land

Registration of Greens: s15

These provisions came into force 6th April 2007 and 6th September 2007 in Wales.

Any person may apply to the commons registration authority to register land to which this provision applies as a town or village green.
This provision applies where:-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application

Where:-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before any time of the application but after the commencement of this provision; and

(c) the application is made within the period of one year (or two years in Wales) beginning with the cessation

This subsection applies (subject to subsection (5)), where:-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the commencement of this section; and

(c) the application is made within the period of five years beginning with the cessation referred to above

The above does not apply in relation to any land where:-

(a) planning permission was granted before 23 June 2006 in respect of the land;

(b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and

(c) the land:-

(i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or

(ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes

In determining the period of 20 years there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11 - The Supreme Court has reversed the Court of Appeal decision and held that dog walking on a municipal golf course gave rise to a claim for Village Green, in spite of the fact that the walkers gave priority to the golfers.

The case involved 18 acres of a local authority owned golf course, comprising a part of a fairway, the first and 18th holes and the clubhouse. The course had existed from at least the 1920’s until 2002 and was leased to the Cleveland Golf Club. The land was earmarked for a mixed development including 300 houses in conjunction with Persimmon Homes. Four of the locals made a claim that the land should be registered as Village Green based on dog walking and family recreational activities. The Court of Appeal rejected the application, as it was always understood that any pastimes were in deference to the golfers who always had priority. The Supreme Court has now said that this is an irrelevance. The land was being used without force, secrecy or permission for the requisite time period and there was no further requirement in the legislation in relation to deference to others.

After this case, large amounts of land where the owner has allowed the locals onto the site, may give rise to Village Green claims. In particular, playing fields may be open to such claims. In Wales, there is also a draft Disposal of Playing Fields (Wales) (Community Involvement) Measure 2010 which requires extensive consultation before the disposal of playing fields.

Taylor v Betterment Properties (Weymouth) Ltd and another [2012] EWCA Civ 250

This case concerns 46 acres of grazing land. The owners had put up signs forbidding entry to the land and had also fenced it. Gaps had appeared in the fences and the signs had been vandalised. The Court of Appeal accepted the argument that the court could review previous registrations, and not merely act on appeal from decisions of the Council. They sent the case back to the High Court for decision. It was accepted the owner of the land had stopped putting up signs some time previously, but it was accepted that the locals would have realised that they were trespassing by entering through gaps in the fence. Moreover the landowner had taken reasonable steps to prevent the locals using the land and the registration was removed nine years after it had been made. See also Smith v Brudenell-Bruce (2002) signs merely need to be consistent with the owner’s means the resources.

See also in relation to public footpaths: Oxfordshire and Buckinghamshire Mental Health NHS Trust v Oxfordshire County Council 2010 LGR 631. Users of the land ought to have reasonably known that the owner was objecting to their presence by signs. Contrast this with Lewis (above) where signs saying that trespassers were not welcome showed an insufficient intention to bar the users. See also Field Common v Elmbridge Borough Council 2005 where correspondence complaining about user prevented a claim for a public footpath, and Godmanchester Town Council v The Secretary of State for the Environment [2008] 1 AC 221 where a notice was largely ignored but still prevented use as a public footpath.

However, in Adamson v Paddico (267) Ltd and others [2012] EWCA Civ 262 the Court of Appeal refused to de-register a village green where, although the original application was wrong, the landowner had waited several years to make the application.
Adamson v Paddico and Taylor v Betterment [2014] UKSC14 have now been heard by the Supreme Court where it was held that a lapse of time is not immaterial in allowing rectification of the register of Town and Village Greens. However, in both of these cases, there was no evidence to show that a significant detriment had occurred and both registrations were removed.

BDW Trading Ltd (t/a Barratt Homes) v Spooner (representing the Merton Green Action Group) [2011] EWHC B7 (QB)

In this rather startling case, the High Court held that where a local authority had appropriated land for planning purposes under s122 Local Government Act 1972, or s233 Town and Country Planning Act 1990, it could then sell off the land free of any registered village green. This is the first case to discuss such a point, but must be of questionable authority.

Leeds Group v Leeds City Council [2011] EWCA Civ 1447

A claim for Village Green succeeded, although there was not a single, but two, neighbourhoods involved in the claim. The land holder’s contention that the claim did not involve a locality within the neighbourhood also failed as the occupants of neighbouring streets showed a degree of cohesiveness.

R (Barkas) v North Yorkshire County Council and Scarborough District Council [2012] EWCA Civ 1373. Here the Judge decided that playing fields which were being maintained as a recreation ground under s80 Housing Act 1936 could not constitute a village green as of right. The Judge accepted Obiter statements given by the House of Lords in R (Beresford) v Sunderland City Council [2003] UKHL 60. This case has now been confirmed by the Supreme Court.

In R (Newhaven Port & Properties Ltd) v East Sussex County Council [2015] UKSC 7 The Newhaven Harbour Improvements Act 1847 gave the port authority power to maintain and improve the harbour. In addition, the Harbour’s Docks and Piers Clauses Act 1847 allowed bye-laws to be passed in relation to the harbour. The authority had passed byelaws allowing access to various parts of the port with conditions, e.g. dogs to be kept on a lead.

The locals had for many years been bathing off a beach within the harbour land and claimed that this gave rise to a village green.

The Supreme Court has now reversed the court of appeal and held that this was not a village green. Although a beach may be a village green, the bye-laws meant that the user was not as of right but under a licence, see Barkas above. Moreover if a village green claim was allowed then the improvements of the harbour under legislation would not be possible as the surface of the village green cannot be changed and this would be contrary to the 1847 Act, see also BDW v Spooner above. It was also stated that similar arguments may be made in relation to prescriptive rights generally, see Mills v Silver 1977.

The concept of an overriding statutory obligation as recognised in the East Sussex and Barkas cases has now started to cause its own problems. In Lancashire County Council v The Secretary of State for the Environment, Food and Rural Affairs and Another [2016] EWHC 1238 (Admin) the court accepted that where the land was owned by a Central Government body which was subject to its own
legislation a village green claim could not be made. The court also decided that the need for a specific locality was not satisfied as the people using the land must be spread throughout the whole of the locality. Furthermore, the locality had changed over the 20 year period required for a village green claim. It is understood that this case is going to appeal. In *R (NHS Property Services Ltd) v Surrey County Council [2016] EWHC 1715 (Admin)* a similar argument was accepted by the judge in that there was overriding statutory obligation in relation to NHS land.

In *R (on the application fo the Master Fellows & Scholars of College of Saint John the Evangelist in the University of Cambridge) v Cambridgeshire County Council [2017] EWHC 175 3 (Admin) [2017] All ER (D) 96 (Jul)* the Court of Appeal allowed multiple applications in relation to a village green claim where the original application was defective.
THE GROWTH AND INFRASTRUCTURE ACT 2013

The Growth and Infrastructure Act 2013 received Royal Assent on 25 April 2013. Most of the legislation is now in force in England but not in Wales.

Although the majority of the Act proposes amendments to the planning system there are important property implications including restrictions on the registration of town or village greens and business rate revaluation.

Section 7 and Schedule 2: Modification or discharge of affordable housing requirements in planning obligations

Section 7 proposes to allow an application to be made to the LPA if the affordable housing requirements in an English planning obligation mean that development is not economically viable. The LPA will have the ability to modify, replace, remove or discharge the affordable housing obligation.

If the LPA does not modify the planning obligation as requested, or fails to make a determination, within a specified time, there will be a right of appeal to the Secretary of State.

The Department for Communities and Local Government hope this will kick-start development.

This is separate to the consultation on renegotiating section 106 agreements which has just finished.

Section 12: Stopping up and diversion of public paths

Section 257 of the TCPA 1990 authorises the stopping up or diversion of footpaths or bridleways to enable development to be carried out in accordance with planning permission.

Section 12 of the Act proposes amendments to sections 257 and 259 of the TCPA 1990 to enable a stopping up or diversion order to be made in anticipation of planning permission.

Section 12 applies to England only.

Section 13: Declarations negating intention to dedicate way as highway

Section 31(6) of the Highways Act 1980 (HA 1980) allows a landowner to deposit a map and statement with the highway authority, showing admitted public paths, followed by a declaration that the landowner has no intention to allow any other part of the land to become subject to a public right of
way. This procedure provides a date from which to reference the lack of intention to dedicate and identifies the land in respect of which the deposit is made.

Section 13 of the Act proposes to amend section 31 of the HA 1980 to allow the Secretary of State to make regulations prescribing the:

- Form of the statement, map and declaration.
- Fees to be levied in relation to the deposit of a map and statement and the lodging of a declaration

The Secretary of State will also be able to make regulations that prescribe the steps an appropriate council must take in relation to a map, statement, or declaration deposited with it, as well as the manner and time in which such steps must be completed.

**Section 14 - Registration of town or village green: reduction of section 15(3)(c) period**

This will allow regulations to reduce the time period of non-use prior to a village green claim from two years to one. It only applies to England.

**Section 15: Registration of town or village green: statement by owner**

Section 15 of the Commons Act 2006 (CA 2006) provides that anyone can apply to register land as a town or village green (TVG) where "a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years".

Use "as of right" means without force, secrecy or permission.

Section 13 of the Act proposes to insert a new section 15A in the CA 2006 to allow a landowner in England to deposit a statement and map with the commons registration authority, to bring to an end any period of use "as of right for lawful sports and pastimes on the land".

The form of the statement and map will be prescribed by regulations. The regulations can also provide for the TVG statement to be combined with a statement or declaration made to counter rights of way claims under section 31(6) of the HA 1980. Regulations may provide for the TVG statement to refer to a map deposited under section 31(6) of the HA 1980. The aim is to reduce the administrative burden on landowners who, for example, wish to make statements or declarations for both purposes at the same time.

Section 13 will also insert into the CA 2006, a new:

- Section 15A(5), which will allow a landowner to make a statement referring to a map which accompanied an earlier statement, whether or not the landowner is the same person that deposited the earlier statement.
Section 15B, which will require the commons registration authority to keep a register containing prescribed information about deposited statements and maps.

**Section 16 and Schedule 4: Restrictions on right to register land as town or village green.**

These provisions came into force on 25 April 2013 in England.

Section 16 and Schedule 4 of the Act propose to insert a new section 15C and Schedule 1A into the CA 2006, which will exclude the right to apply to register land as a TVG where any specified event related to the past, present or future development of land occurs. These events known as "trigger events" are set out in Schedule 1A. Trigger events include publicity for a planning application, adoption of a development plan and the making of a neighbourhood development plan.

Schedule 1A also specifies "terminating events" which correspond to each trigger event and result in the right to apply becoming exercisable again.

The exclusion of the right to apply does not affect the accrual of any period of user as of right or prevent any such user ceasing to be as of right.

The Secretary of State may by order make provision as to when a trigger event or terminating event has occurred and define circumstances in which the exclusion will not apply. The Secretary of State may also insert additional trigger or terminating events, or amend or omit any trigger or terminating events specified in Schedule 1A. However, any additional trigger or terminating event specified must be an event related to the development of the land.

If an application for registration of land as a TVG is made in reliance of section 15(3) of the CA 2006 (where use of the land as of right ceased before the application was submitted), any period during which the right to apply was excluded by section 15C is disregarded for the purpose of calculating the period of two years in which an application must be made.

The amendments will be welcomed by developers as TVG applications made after planning permission has been granted create delay and uncertainty.

This section applies to England only.

**Trigger Events**

The document, Registration of new town or village greens: changes were made on 24th February 2014 to Schedule 1A (exclusion of Right under section 15) to the Commons Act 2006, assesses the impact of the proposed amendments to the provisions for the registration of town and village greens.

Section 15 of the Commons Act 2006 sets out the circumstances in which applications can be made to commons registration authorities to register land as a town or village green. The Growth and
Infrastructure Act 2013 includes provisions that reform aspects of the system for making such applications. Section 16 inserts a new section 15C and Schedule 1A into the Commons Act. Their effect is that the right to apply to register land as a town or village green ceases to apply where a ‘trigger’ event related to the development of the land occurs, and becomes exercisable again if a corresponding ‘terminating’ event occurs.

The Commons Act as now amended also gives the Secretary of State power, subject to a resolution of each House of Parliament, to amend Schedule 1A including by adding new trigger and terminating events. During the Parliamentary stages of the Growth and Infrastructure Act we announced the government’s intention to include certain additional trigger and terminating events in Schedule 1A.

The new events are intended to:

(a) ensure that the exclusion on town and village green applications lifts in relation to draft local and neighbourhood plans in circumstances where development ceases to be proposed and

(b) protect development proposed or permitted by virtue of three matters not already included in Schedule 1A, namely in relation to Local Development Orders, Neighbourhood Development Orders and orders under the Transport and Works Act 1992.

If a draft development plan does not come into force within 2 years, the trigger event will now terminate.

The Planning (Wales) Act 2015 has provision to introduce sections 15 and 16 in Wales was due to come into force on 1st April 2017 but as of September we are still waiting for a date. Section 16 will only prevent village green claims on the grant of planning permission or on production of a development plan and not as in England, publication of a planning application or a draft development plan.

**Commencement dates for England:**

16 - 25 April 2013  
6, 7, 10, 11, 12, 17 and 20 - 25 June 2013  
Enabling provisions for Regulations for Sections 13 and 15 - 25 June 2013  
Section 21 - 21 July 2013  
Section 14 - 1 October 2013  
Sections 1 and 2 come into force on 1 October 2013  
We are currently awaiting relevant dates in Wales
The Government has commenced consultation on building regulations and fire safety in the light of the Grenfell Tower disaster. It will look at possible changes to construction, conversion and ongoing management of buildings and possible changes to enforcement. In the light of this, fire safety risk assessments in particular may be changed in the future.

Both residential and commercial service charges are likely to be greatly effected, especially, where is usually the case, service charge allows recovery of payments for improvements and statutory works. In *Finchbourne v Rodrigues [1976] All E.R 581* it was held that there would be an implied term that the work must be reasonably incurred. In council house right to buys, the purchaser will be given an estimate of future works within the next five years from purchase but after this time the service charge may increase greatly. Due to the so called ‘Florries Law’, the liability of former council tenants cannot exceed £10,000 in any five year period. However, this will only apply in relation to works funded by Central Government.

**Service Charge Consultation**

Under the Service Charge Consultation Requirements (England) Regulations 2003 and the Service Charge Consultation Requirements (Wales) Regulations 2004, which came into force on 31 October 2003 and 1 March 2004 respectively, then if consultation does not occur between landlord and tenants in relation to service charges and dwellings, there will be a statutory cap of £250 for the works. Therefore, it is suggested that a management enquiry is made to the effect of, whether there has been any major works within the meaning of the Regulations and if so did consultation occur.

**Ss18-30 Landlord and Tenant Act 1985**

(a) **Definition and Reasonableness of service charges: s18.**

Historically, s18 of the Act defined a service charge as:

.... an amount payable by the tenant of a dwelling as part of or in addition to the rent:

(i) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance or the landlord’s costs of management; and

(ii) the whole or part of which varies or may vary according to the relevant costs; and the relevant costs are the costs or estimated costs (including overheads) incurred or to be incurred in any
period … By or on behalf of the landlord or a superior landlord in connection with matters for which the service charge is payable.

**Reasonableness of service charges: s19.**

The costs of the service charge must be:

- reasonably incurred; and
- the services or works must be of a reasonable standard.

If works or services are not of a reasonable standard, there may be a proportionate deduction.

A charge may be recovered before the costs are incurred as long as the amount is reasonable. This is subject to a requirement for adjustment after the expenditure has been incurred.

An application may be made to a Leasehold Valuation Tribunal or a court as to whether the charge is reasonable.

Likewise, there may be an application for a determination as to whether future costs would be reasonable if incurred, or whether future works or services would be of a reasonable standard, or what amount payable before costs are incurred would be reasonable.

The Commonhold and Leasehold Act makes a number of changes to provisions relating to leasehold management under the Landlord and Tenant Act 1985 (‘the 1985 Act’). It extends the definition of ‘service charge’ above for the purposes of the 1985 Act to include any charge which is required to be paid under the terms of the lease to cover the costs of improvements. The effect of this change is that leaseholders’ existing rights in relation to service charges under the 1985 Act (e.g. a requirement of reasonableness and the right to challenge reasonableness at a LVT) are extended to cover improvements. Note, however, that improvements cannot be charged for unless the service charge allows this: see *Mullaney v Maybourne Grange* [1986] 1 EGLR 53 – where replacement of wooden window frames by UPVC double glazing was held an improvement, and *Rapid Results College v Angell* [1986] 1 EGLR 70. It also includes a power further to extend the definition by secondary legislation.

**Craighead v Homes for Islington Ltd [2010] UKUT 47**

Where windows were not replaced like for like, due to intervening changes in Part L of the Building Regulations, it was implied that the landlord could improve the windows to modern standards under the repairing obligation and add the cost to the service charge. This in spite of the fact that the building was listed and potentially exempt from Part L. Contrast this with *Mullaney v Maybourne Grange Ltd* [1982] where service charges which allowed repairs, but not improvements, to be charged for did not cover replacement of wooden single glazed window frames with UPVC double glazing. The difference between the two cases seems to be due to the intervening statutory provisions. If correct, this may be an extremely useful argument for landlords, e.g. in relation to increased energy performance of buildings.
**Note:** that the service charge must relate to the actual work done

*Russell v Liamond Properties Ltd [1983] 269 EG 947*

Costs might include interest paid or a reasonable return on capital employed.

**Note:** that the lease itself must allow recoupment through a service charge. This will not be the automatic effect of *s.18*

**Boldmark Ltd v Cohen [1985] Sol Jo 356**

Interest on money loaned to make emergency repairs can only be recovered if the charge allows this.

**Reston Ltd v Hudson [1990] 2 EGLR 51**

External windows were not a part of the demise. A service charge could not apply to them.

**Jollybird Ltd v Fairzone Ltd [1990] 1 EGLR 253**

A clause cannot be used to recover costs outside the contemplation of the parties. A power to increase heating costs did not include installation of a new central heating system

*s20B* a service charge cannot be claimed for a period more than 18 months prior to the demand unless the landlord notified the tenant in writing within this 18 month period that he would be charged. By *s20C* application may be made to a Leasehold Valuation Tribunal that court costs are not relevant costs to be added to a service charge.

By *s21* the tenant may ask for a summary of relevant costs for the previous one or two months or the previous accounting period. The landlord must comply with the request within one month or within six months of the end of the accounting period, whichever is later.  

Under *s21(6)* if the lease consists of more than four flats, the summary must be certified by a qualified surveyor as being fair and sufficiently supported by accounts, receipts and other documents.

By *s22* the tenant may ask to inspect supporting accounts within six months of the summary and be allowed reasonable facilities to inspect and to take copies. The accounts must be made available for a two-month period not later than one month after the request.

A failure to comply with *s.21* to *s.22* is a criminal offence (level 4 fine).

The Act also extends the jurisdiction of LVTs so that they can determine whether nor not leaseholders are liable to pay service charges as well as the reasonableness of such charges.

The Act makes a number of changes to the existing requirements in the 1985 and 1987 Acts covering the accounting and safeguarding of service charge monies. Revised statements of account makes it easier for leaseholders to see where their money has gone. In particular, the onus is on the landlord to give details of service charges without request, these must be certified by a qualified accountant.
Service charge funds have to be held in a separate designated trust account for each property or group of service charge payers. Leaseholders will have a new right to withhold payment of further service charges if key requirements are not met.

(b) Estimates and consultation: s20

Service Charges (Consultation Requirements) (England) Regulations 2003

Service Charges (Consultation Requirements) (Wales) Regulations 2004

The provisions came into force on 31st October 2003.

These Regulations relate to the amount that tenants can be required to contribute, by the payment of service charges, to relevant costs incurred by landlords in carrying out works or under certain agreements. Unless a landlord complies with prescribed consultation requirements or obtains a dispensation from a leasehold valuation tribunal under section 20(9) of the Landlord and Tenant Act 1985 in respect of all or any of those requirements, his tenants’ contributions by way of service charges are limited.

Regulation 3(1) exempts from the consultation requirements applicable to agreements for a term of more than 12 months (“qualifying long term agreements”):

(a) contracts of employment;

(b) agreements between a tenant management organisation or an arm’s length management organisation (a body established under section 2 of the Local Government Act 2000) and a local housing authority under section 27 of the Housing Act 1985 (management agreements);

(c) agreements between a holding company and any of its subsidiaries or between two or more subsidiaries of the same holding company; and

(d) agreements for a term of not more than five years relating to buildings or other premises which are untenanted when the agreement is entered into.

Regulation 3(2) provides that an agreement entered into before the coming into force of these Regulations is not a qualifying long term agreement even if more than 12 months of the term of the agreement remain when these Regulations come into force.

Regulation 3(3) provides that an agreement for a term of more than 12 months is not a qualifying long term agreement if it provides for the carrying out of works on a building or any other premises (“qualifying works”) for which notice has been published in the Official Journal of the European Union (“the Official Journal”) (to comply with EU procurement rules) before these Regulations come into force.

Regulation 4 imposes a limit of £100 in any accounting period (defined in regulation 4(2)) in respect of service charges attributable to the provision of goods or services, or the carrying out of works, under a qualifying long term agreement. That limit will apply unless the landlord complies with the
consultation requirements prescribed by regulation 5 or obtains a dispensation from a leasehold valuation tribunal in respect of all or any of those requirements.

Regulation 5 deals with the consultation requirements applicable to qualifying long term agreements. Except in the cases mentioned below, the consultation requirements are those specified in Schedule 1. Where, on or after the coming into force of these Regulations, notice is required to be published in the Official Journal (to comply with EU procurement rules) of goods or services to be provided or works to be carried out under the agreement, the consultation requirements are those set out in Schedule 2. Where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (right to buy) (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996) the landlord is only required to comply with such of the consultation requirements applicable to the agreement as remain to be complied with after the thirtieth day of that person’s tenancy.

Regulation 6 imposes a limit of £250 as regards a tenant’s contribution in respect of service charges attributable to qualifying works. That limit will apply unless the landlord complies with the consultation requirements prescribed by regulation 7 or obtains a dispensation from a leasehold valuation tribunal in respect of all or any of those requirements.

Regulation 7 deals with the consultation requirements relevant to qualifying works of the descriptions specified in that regulation. In relation to other qualifying works, the consultation requirements under section 20 of the Landlord and Tenant Act 1985, as it stood immediately before the substitution effected by section 151 of the Commonhold and Leasehold Reform Act 2002, continue to apply by virtue of article 3 of the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings)(England) Order 2003 (SI 2003/1986 (c 82)).

Paragraph (1) of regulation 7 relates to qualifying works that are the subject of a qualifying long term agreement. Subject to the exception for which paragraph (5) provides (“the paragraph (5) exception”), the consultation requirements are those set out in Schedule 3 to the Regulations.

Paragraphs (2) to (4) relate to qualifying works that are not the subject of a qualifying long term agreement.

Paragraph (2) deals with the consultation requirements in a case to which paragraph (3) applies. Subject to the paragraph (5) exception, the consultation requirements in such a case are those set out in Schedule 3 (the same requirements as apply to qualifying works under qualifying long term agreements).

Paragraph (3) applies where qualifying works are carried out:

(a) on or after the date that falls two months after the date on which these Regulations come into force under an agreement entered into before these Regulations come into force; or

(b) under an agreement for more than 12 months where notice of those works was published in the Official Journal before these Regulations come into force.
Paragraph (4) applies to cases to which paragraph (3) does not apply. Where notice of the qualifying works is required to be published in the Official Journal (to comply with EU procurement rules), and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 1 of Schedule 4. Where notice is not required to be published in the Official Journal, and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 2 of Schedule 4.

The paragraph (5) exception applies where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996). In that case, and in relation to that person and particular qualifying works, the landlord is only required to comply with such of the consultation requirements applicable to those works as remain to be complied with after the thirtieth day of that person’s tenancy.

Consultation Requirements for Qualifying Long Term Agreements

Details of the consultation process are included below:

1. **Notice of intention**

   (1) The landlord shall give notice in writing of his intention to enter into the agreement—

   (a) to each tenant; and

   (b) where a recognised tenants’ association represents some or all of the tenants, to the association.

   (2) The notice shall—

   (a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

   (b) state the landlord’s reasons for considering it necessary to enter into the agreement;

   (c) where the relevant matters consist of or include qualifying works, state the landlord’s reasons for considering it necessary to carry out those works;

   (d) invite the making, in writing, of observations in relation to the proposed agreement; and

   (e) specify—

   (i) the address to which such observations may be sent;

   (ii) that they must be delivered within the relevant period; and

   (iii) the date on which the relevant period ends.
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(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

2 Inspection of description of relevant matters

(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3 Duty to have regard to observations in relation to proposed agreement

Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants’ association, the landlord shall have regard to those observations.

4 Estimates

(1) Where, within the relevant period, a single nomination is made by a recognised tenants’ association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants’ association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants’ association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants’ association, the landlord shall try to obtain an estimate—
(a) from at least one person nominated by a tenant; and
(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

5 Preparation of landlord’s proposals

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord—

(a) of the party’s name and address; and
(b) of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord—

(a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
(7) Where, as regards each tenant’s unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.

(8) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord’s obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a) that the person whose appointment is proposed—

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.
(13) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord’s response to them.

6 Notification of landlord’s proposals

(1) The landlord shall give notice in writing of proposals prepared under paragraph 5—

(a) to each tenant; and

(b) where a recognised tenants’ association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

7 Duty to have regard to observations in relation to proposals

Where, within the relevant period, observations are made in relation to the landlord’s proposals by any tenant or recognised tenants’ association, the landlord shall have regard to those observations.

8 Duty on entering into agreement

(1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, he shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants’ association (if any)—

(a) state his reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and
(b) where he has received observations to which (in accordance with paragraph 7) he is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Consultation Requirements for Qualifying Works for which Public Notice is not required

1 Notice of intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants’ association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord’s reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

2 Inspection of description of proposed works

(1) Where a notice under paragraph 1 specifies a place and hours for inspection—
(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3 Duty to have regard to observations in relation to proposed works

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants’ association, the landlord shall have regard to those observations.

4 Estimates and response to observations

(1) Where, within the relevant period, a nomination is made by a recognised tenants’ association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants’ association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants’ association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants’ association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

   (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

   (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

   (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

   (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

   (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

   (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

   (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

   (a) each tenant; and

   (b) the secretary of the recognised tenants’ association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

   (a) specify the place and hours at which the estimates may be inspected;
(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

5 Duty to have regard to observations in relation to estimates

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants’ association or, as the case may be, any tenant, the landlord shall have regard to those observations.

6 Duty on entering into contract

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants’ association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Wallace-Jarvis v Optima [2013] UK UT 328 - there was an ability to add water rates to the service charge and there was a general water meter from which the rates would be apportioned, but the tenant had an individual meter in the flat, it was unreasonable to apportion high water rates on this basis.
Service Charge Consultation Case Law

Under the Service Charge Consultation Requirements (England) Regulations 2003 and the Service Charge Consultation Requirements (Wales) Regulations 2004, which came into force on 31 October 2003 and 1 March 2004 respectively, then if consultation does not occur between landlord and tenants in relation to service charges and dwellings, there will be a statutory cap of £250 for the works. Therefore, it is suggested that a management enquiry is made to the effect of, whether there has been any major works within the meaning of the Regulations and if so did consultation occur.

Note:  Daejan v Benson [2013] UKSC 14. Where the landlord missed a stage of consultation the Supreme Court held that the discretion to waive consultation may be exercised, in particular, because of the large loss which would have otherwise been incurred. The landlord had carried out £270,000 worth of works for which the five tenants were refusing to pay more than £1,250. Also relevant was the fact that if consultation had occurred, it would probably not have changed the decision as to who did the works. See also Philips v Francis [2012] EWHC 3650. What amounts to qualifying works can be viewed on an accounting year basis. If all the works within that year come to a combined value of more than £250 per tenant and consultation did not go through then the tenants are limited to the above amount.

In October 2014, the Court of Appeal reversed the first instance decision. As to whether consultation is required will depend on a step-by-step approach as this must have been what was intended by Parliament.

Qdime v Bath Buildings (Swindon) Ltd [2014] UKUT 261. In this case the upper tribunal allowed the landlord to charge the tenants for terrorism insurance. Surprisingly, the tribunal decided that this was required as the leases and the CML Handbook require insurance in relation to explosions. Terrorism insurance, which can be very expensive, would be included in the definition of explosions.

Windermere Marina Village v Wild [2014] UKUT 163. It was held that a provision whereby the service charge decided by a third party was conclusive, was void. Likewise, in Gater v Wellington Real Estate [2014] UKUT 561 a provision whereby sub-tenants paid a proportion of the service charge owed by the head tenant was also void.

In Burr v OM [2013] EWCA 479 an energy oil bill was not presented to the landlord until six years after the oil had been provided. The tenants still had to pay the service charge as the relevant date the liability crystallises is not until the bill is presented.

Regulatory Reform (Fire Safety) Order 2005

On 1 October 2006 the Fire Precautions Act 1971 and a whole raft of employment protection fire safety legislation was repealed and replaced by the responsible person in non-domestic premises requiring a fire safety risk assessment under The Regulatory Reform (Fire Safety) Order 2005.
The fire authority is responsible for enforcement and may also serve improvement, alteration and prohibition notices. They will not, however, carry out the risk assessment. At least as frightening as the threat of prosecution, non-compliance with the legislation may well vitiate insurance the next time a policy is up for renewal. Presumably, insurers will require such an assessment before they commit themselves to reinstatement after fires. The prospect of not having insurance will no doubt spur lenders into also requiring such a risk assessment.

Who is responsible?

The person responsible for such an assessment will vary depending on the circumstances, but one thing is abundantly clear, the obligations go far beyond any previous requirement for a fire certificate and are not dependant on size of the enterprise or number of staff. The Office of the Deputy Prime Minister (ODPM) has said that the only non-domestic premises which would not require such an assessment is probably where someone works from home, either self-employed or as an employee and, for good measure, buried in the middle of one hundred and twelve pages of Regulations, the common parts of blocks of flats are (as with The Control of Asbestos Regulations 2012) defined as being non-domestic premises. Purchasers must ask for, and landlords provide, a fire safety risk assessment. The prospect of vitiating insurance policies will presumably mean that where no assessment is available, the mortgage lender must be notified and will withdraw any mortgage offer. The fact that a purchasing residential long-leaseholder, who will become a director of a residents management company after completion, will instantly become a criminal might also exercise the mind of the domestic conveyancer and managing agent. In relation to business premises, if an employer is in control of premises occupied by his or her staff, then that will trigger the need for a risk assessment which must assess the risk, including necessary remedial work, not merely for the workforce but any relevant persons, including visitors and neighbouring land owners, who may be affected. A tenant in control of their premises (as will almost certainly be the case) must also have an assessment whether or not they are also an employee, and a landlord who retains control of the common parts will require a quite separate assessment. As the costs of the assessment will inevitably be added to the service charge (as also will the cost of any remedial work provided that the landlords may charge for the carrying out of statutory works), then the tenant must fully enquire as to the landlord’s assessment.

Who carries out the assessment?

The risk assessment is personal to the responsible person and criminal liability cannot be delegated. The assessment must be a satisfactory one and the Government recommend it be done professionally by an expert. In one statement from early 2005, the ODPM estimates that the cost of employing an expert to assess a small business unit would be something in the order of £50. One wonders what type of expert they are expecting! In addition, especially for older premises which did not require fire certificates in the past, remedial work may give rise to a substantial cost.

Conclusion

The far reaching effect of the legislation and, most importantly, the likely effect of non-compliance on buildings insurance, means that measures must be taken immediately. The cost, yet one more expense for the small business tenant before they start trading, will be unwelcome.
Most tenants, as with asbestos risk assessments under the 2002 Regulations, may be tempted to flout the law regardless of any criminal consequences. Landlord’s agents cannot allow this. No landlord can allow the tenant potentially to vitiate insurance. There would be a claim in damages against the existing tenant which may well be, in practice, worthless. As with asbestos assessments, once more, the ultimate sanction may be to threaten forfeiture. Serving a Section 146 notice in these circumstances may well be foolish in the extreme however. The effect would be preferable to any break clause for the tenant who may well not seek relief and be free of an onerous property which is difficult to re-let. Landlords would be advised to amend future leases in order to allow them to enter, carry out works and charge the tenant not merely in relation to disrepair but also on non-compliance with any statute.

Control of Asbestos Regulations 2012

The legislation applies to non-domestic property, but this expressly includes the common parts of dwellings. The Control of Asbestos Regulations 2012 replaced the previous Control of Asbestos at Work Regulations 2002 and 2006.

1. In this regulation "the dutyholder" means:-

   - every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access thereto or egress therefrom; or
   
   - in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access thereto or egress therefrom,

   and where there is more than one dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

   Note: that although the Regulations do not apply to domestic premises, a landlord of residential flats who retains the common parts will not be a domestic landlord and will be bound by the Regulations. This might greatly increase service charge contributions.

2. Every person shall cooperate with the dutyholder so far as is necessary to enable the dutyholder to comply with his duties under this regulation.

3. In order to enable him to manage the risk from asbestos in non-domestic premises, the dutyholder shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

4. In making the assessment:-

   - such steps as are reasonable in the circumstances shall be taken; and
5. Without prejudice to the generality of paragraph (4), the dutyholder shall ensure that:

- account is taken of building plans or other relevant information and of the age of the premises; and
- an inspection is made of those parts of the premises which are reasonably accessible.

6. The dutyholder shall ensure that the assessment is reviewed forthwith if:

- there is reason to suspect that the assessment is no longer valid; or
- there has been a significant change in the premises to which the assessment relates.

7. The dutyholder shall ensure that the conclusions of the assessment and every review are recorded.

8. Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder shall ensure that:

- a determination of the risk from that asbestos is made;
- a written plan identifying those parts of the premises concerned is prepared; and
- the measures which are to be taken for managing the risk are specified in the written plan.

9. The measures to be specified in the plan for managing the risk shall include adequate measures for:

- monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;
- ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and
- ensuring that information about the location and condition of any asbestos or any such substance is:
  - provided to every person liable to disturb it, and
  - made available to the emergency services.

10. The dutyholder shall ensure that:

- the plan is reviewed and revised at regular intervals, and forthwith if -
o there is reason to suspect that the plan is no longer valid, or

o there has been a significant change in the premises to which the plan relates;

- the measures specified in the plan are implemented; and

the measures taken to implement the plan are recorded.

**Note:** Strictly speaking newbuilds require Asbestos Assessments although white asbestos was finally banned as a building material in January 2000. A newbuild should have a Health and Safety File under the Construction (Design and Management) Regulations 2007 and within this should be confirmation that asbestos has not been used. Enquiry might be made as to the existence of the Health and safety file.
DIGITAL ECONOMY ACT 2017

The Government explanatory notes states that this intends to achieve the following:

- reform the Electronic Communications Code, to deliver better coverage in rural areas through greater investment and faster rollout of mobile and broadband infrastructure
- make it easier for communications providers to have access to land - moving to a “no scheme” valuation system more akin the regime enjoyed by utility providers
- protect landowners by strengthening the “access principle” and requiring communication providers to pass a public interest test
- clarify roles and responsibilities for all parties that use the Code, helping commercial agreements to be reached more easily and disputes to be resolved more quickly
- make it easier for digital communications companies to upgrade and share their equipment and get faster access to maintain sites
- work with industry and Ofcom to develop a Code of Practice to ensure effective implementation of new rights.
- powers for Ofcom to use new technologies to better manage spectrum and make it easier for different users to share spectrum
- make it easier to install broadband cabinets, overhead lines and poles in all areas except Sites of Special Scientific Interest (SSSIs) by making regulations introduced in 2013 for a period of five years to be made permanent.

The provisions will not be retrospective. The new code states that the Landlord & Tenant Act 1954 will not apply and that there can be no contracting out. A land owner may be able to obtain possession on persistent rent arrears or other significant breaches by the operator. They may also serve at least 18 months notice, terminating no earlier than the end of the fixed term, that they intend to develop the site and that they cannot do so without possession.

Any equipment which comes within the code will give rise to an overriding interest which will bind purchasers of the land. This will include under ground equipment.
The new Electronic Communications Code came into force on 31st July 2017. It is not retrospective. The code makes clear that the Landlord and Tenant Act 1954 will not apply to the relevant equipment. Terminating no earlier than the end of the agreement, the land owner may serve at least 18 months notice to leave. If this is counter noticed then the land owner must apply to courts and show that there has either been persistent rent arrears, breach of other terms of the agreements, or that they have no intention to demolish and reconstruct the site.

Any equipment within the code will give rise to an overriding interest which will bind purchasers, regardless of registration at HMLR. This will include underground equipment.
MISREPRESENTATION GENERALLY

Misrepresentation is a false statement of fact which at least in part induces another to enter into a contract. Silence, save in exceptional circumstances, such as insurance contracts, will not constitute a misrepresentation but a half-truth will. See e.g. **Nottingham Patent Brick Company v Butler [1889]** where a solicitor stated that he was not aware of any restrictive covenants not having attempted to find out.

More recently, **Cottingham v Attey Bower Jones [2000]** found that a solicitor who had allowed a seller to respond to an enquiry about Building Regulations by saying not available was in breach of contract for not checking why the Regulations were not available.

If circumstances change, there will be a duty to notify parties of the change without request. See e.g. **With v O’Flanagan [1939]** where a dental practice had been profitable was no longer so by the time of sale. A genuine statement of law or opinion as opposed to fact will not be a misrepresentation but the opinion must be genuinely held. See e.g. **Bissett v Wilkinson [1927]** where an opinion as to the sheep holding capacity of a farm was made. The seller had no previous experience of sheep farming and this was held to be a statement of opinion. Contrast **Smith v Land and House Property Company [1889]** where a tenant was described as being most desirable even though he was one quarter in arrears of rent. This constituted a misrepresentation. More recently, see **McMeekin v Long [2003]** where a enquiry about neighbour disputes was answered by the word “none”. In fact there had been an ongoing parking dispute. This was actionable.

**Negligent mis-statements**

As well as inducing a contract a negligent mis-statement may give rise to liability in tort and a claim may be made by anyone who reasonably relies on the statement.

Normally, liability in tort only arises for physical loss or financial injury which is associated with such loss. There will be no claim for pure economic loss. See e.g. **Murphy v Brentwood District Council [1991]** where a local authority negligently failed to check plans and an architect negligently designed a property with infill. A subsequent purchaser who did not have a contract with either and where the builder had become insolvent could not claim as the only loss suffered was economic, i.e. he had a less valuable building. See also **Department of Environment v Thomas Bates [1991]** where a building could not achieve its design load. The architect could not be sued as once more the loss was merely economic. For this reason collateral contracts may be desirable between purchaser and design team.

The exception to the above is where the loss is caused by a negligent mis-statement. See, e.g. **Hedley Byrne v Heller [1963]** where negligent references were held to be actionable. If someone holds themselves out as having specialist knowledge such that is reasonable to expect others to rely on that representation, and they do so rely and loss is caused, there will be a claim available. This will usually occur in the course of a business but see, e.g. **Chaudrey v Prabhakar [1987]** where a friend of the
claimants held themselves out as being an expert in cars and purchased an insurance write-off for the claimant. This was actionable.

There must also be a degree of proximity in that it must be reasonable for the claimant to rely on the representation. See, e.g. Caparro v Dickman [1988] where yearly accounts were relied on during the course of a takeover. There was no claim here. Contrast Morgan Crucible v Hill Samuel [1989] where accounts were produced when there was already an identifiable bidder for the business.
Clinicare Limited v Orchard Homes [2004]

This case, at first glance, seems to drive a veritable coach and horses through the concept of caveat emptor “let the buyer beware”. It is of fundamental importance to both solicitors and surveyors alike and it is one in a line of recent cases which increase the potential for claims of misrepresentation against both the agent and the client.

In response to an enquiry about dry rot, the solicitor replied that he was not aware of any but that the buyer should rely on their own inspection or survey. The buyer then arranged for a survey which revealed major problems in relation to damp, advised that this might have given rise to dry rot and that a further survey was therefore recommended. The buyer went ahead without having had a further survey. The dry rot was subsequently discovered and the seller’s solicitor was successfully sued.

The court held that knowingly failing to disclose the existence of the dry rot, presumably on instruction from the client, amounted to an actionable misrepresentation. The burden cannot merely be passed on to the buyer and their solicitor by stating that they must rely on their own survey or, presumably, on their own skill and judgment. Where to draw the line is very unclear and this decision may present major difficulties for both solicitors and surveyors and, indeed, their clients. The only thing which may not be construed as a misrepresentation is silence and the buyer’s solicitor cannot not accept this. An impasse between the parties will soon be reached. Furthermore, what does a solicitor do if a seller requires him not to disclose the existence of dry rot, for instance? Will he have to refuse to act as otherwise he may be faced with a conflict of interest? In following instructions the solicitor may be opening himself to a damages claim. There is, finally, less incentive for the buyer to employ his or her own specialists in the knowledge that they might have a cause of action against the seller in any case. This is indeed regrettable.

The case is based on Sindall v Cambridge County Council whereby a local authority selling land for development was asked questions about drains under the land and replied that they were not aware of any. If they had looked at their records they would have found that drains have been laid under the land some 60 years previously. This was found to be a misrepresentation. In responding to enquiries about public drains, do not state that the seller is not aware of any.

See also Morris v Jones [2002] - here a response to an enquiry about damp stated that other than work carried on by a guarantee there was none to the vendor’s knowledge but the buyer should rely on his own survey. The survey found damp but the seller was still liable as he failed to disclose more severe damp which was in his knowledge.
In McMeekin v Long [2008] a misrepresentation occurred when neighbour a dispute was not disclosed on request damages were assessed at £67,000.

In the American case of Stambovsky v Ackley 1991, a seller was held to be liable in misrepresentation when they responded to an enquiry about hauntings that they were not aware of any. In fact they had recently written an article in the Readers Digest about the haunted house.

More importantly, in Sykes v Taylor-Rose [2004] EWCA 296 the standard enquiry of the time as to whether there were any other factors which might influence the purchaser’s decision was answered in the negative. To the seller’s knowledge there had been a murder committed in the premises previously which they did not disclose. It was held as the question is subjective and it could not be proven that the seller’s thought this important, there was no liability.
Check that building regulations consent was granted.

The Building Regulations control the methods and materials to be used in the construction of a property to ensure that proper standards are maintained in all new properties. Thus, although enforcement proceedings for breach can only be brought within 2 years (Housing and Regeneration Act 2008)(s317 Housing and Regeneration Act which amended s35 Building Act 1984), dependent on the type of breach, the lack of building regulations consent in a recently constructed property may suggest that it may not have been constructed to the proper standards and that it may be sensible to advise the client to point this out to his surveyor in order that a proper check on the structure of the property is made.

Note: Under s36 Building Act 1984 the local authority can, within one year of the works, tell the property owner to either remove the building or build up to standards. This notice can only be served on the owner - unlike s35 prosecutions which may be brought against owner or builder.

Note: In addition, if there is a risk to health and safety, a local authority may obtain an injunction dealing with building regulations breaches without limit for the time period.
BUILDING REGULATIONS AND COMPLETION CERTIFICATES

The first instance case of Cottingham v Attey Bower Jones [2000] although controversial, continues to cause problems. In this case, an extension had been built on ten years prior to the conveyance in the late 1980’s. The solicitor raised enquiries and was told that completion certificates were not available. This would be normal as completion certificates were not introduced until between 1992 and 1997 dependent on the locality. A surveyor had failed to spot rising damp in the premises, but at a later stage the surveyor had retired without insurance. This case stated that although local authorities were unlikely to proceed against someone with lack of completion certificates after a year, there was a theoretical possibility of an injunction under s.33 of the Building Act 1984. As a consequence local authorities may be contacted to obtain retrospective completion certificates if they are available. In spite of standard enquiries such a right may be available in perpetuity.

Cottingham is also authority for the proposition that if an enquiry is made, here as to building regulations approval or lack of completion certificate, a lack of response or a response of “not available” which is not followed up, can give rise to liability for the buyer’s solicitor.

**Note:** Some mortgagees e.g. Nationwide, are not allowing reliance on self issue building regulations but are requiring regularisation certificates.

**Note:** If Building Regulations documents are missing then this should be referred to a valuer, in particular in relation to parts of premises which are being used as habitable rooms. A surveyor and/or structural engineer may also be notified. Furthermore, if premises without Building Regulations are being used as habitable rooms any insurance policy may be vitiating.

**Note:** Insurance policies will usually cover the cost of local authority enforcement and not the possibility of there being a dangerous building. Moreover, insurance will be vitiating if the local authority is approached for a regularisation certificate or if, for instance, any extension is further extended at a later stage.

Certain policies can only be taken out after one year however, see for instance HOPP policies where insurance is available immediately.

Many insurance policies will require the property to have been for residential use for at least 12 months, no formal or informal enforcement notice must have been served, and a survey or valuation must have been carried out with no adverse comments.

**Note:** As to how far in the past building regulations documents must be sought depends to some extent on the work done. The long stop is included in the Protocol and it states that if the seller commissioned the works they must provide building regulations and planning
documents but otherwise if documents are required which are more than 20 years old then this must be at the buyer’s expense.
REGULARISATION CERTIFICATES

Regularisation certificates may be used to obtain approval for work that has been carried out since 11 November 1985 and was not subject to a Building Regulations Application at the time.

This situation can become apparent when the property is being sold and the omission is discovered during a Solicitor’s enquiry. Upon request, we inspect the property and, at our discretion some areas of the work may have to be altered to meet the Regulations.

Once we are satisfied with the work we will then issue you with a certificate. Currently, the charges payable are 120% of the normal charge for the work, however VAT is not payable in this case. Please be aware that the following information will be required when applying for a Regularisation certificate:

- Completed Full Plans application form
- Applicable fee (the fee will fall under schedule 3 of our scale of fee's. For regularisation applications you will also need to add an additional 20% however the fee will be exempt from VAT)
- Accompanying the application must be a full set of construction drawings including applicable structural calculations which detail the work that has already been carried out and also the remedial works you propose to do to ensure compliance with the current Building Regulations.

*Please note that we may request a certain amount of "opening" up works takes place so our Surveyor can inspect existing works. We will advise you of this either prior to our fist site inspection or at the time of our first site inspection.

**NHBC**

An NHBC inspector may be designated the approved building inspector. This will show on the NHBC certificate. If this is the case the NHBC certificate will constitute the completion certificates, otherwise completion certificates will be required. As the NHBC Certificate is evidence of building regulations compliance it should be kept for more than ten years.

**Exemptions from Buildings Regulations**

Certain buildings are exempt, for example those not frequented by people, greenhouses, agricultural buildings, temporary buildings, ancillary buildings, small detached buildings that with extensions are less than 30 square metres unless used for sleeping accommodation. However Part P and H (Drainage) may be required.

Part L exemptions in relation to energy efficiency include e.g. listed buildings and buildings in conservation areas where necessary for the appearance or finish, temporary buildings and stand alone buildings if less than 15 square metres in area.
SEPTIC TANKS

As of 6 April 2010 Consent to Discharge is being phased out, to be replaced by the need for a Discharge Permit or Exemption from the Environment Agency. By 1 January 2012 all septic tanks will need to be registered, no matter how old. New tanks which are fully compliant with modern Building Regulations will be registered as being exempt. In August 2011 it was announced that the registration of small septic tanks would be reviewed in England. Registration for an exemption may occur, but will not be necessary by 1 January 2011.

The provisions will still come into force on 1 January 2012 in Wales however.

On 18 December 2011 the Environment Agency clarified the rules in relation to registration of septic tanks. In England, registration will be required by no later than the end of December 2012. There are two exceptions to this where registration should occur by 1 January 2012, i.e. where there is a discharge of more than 2m$^3$ a day or where the discharge is within a Zone 1 ground water protection zone. The Environment Agency will advise over the telephone whether the latter is the case. In Wales registration should occur as soon as possible, but the Environment Agency will accept registrations until 30 June 2012. The Welsh Assembly intends to send leaflets to anyone with a septic tank. In England and Wales the cost of a discharge permit is temporarily set at £125.

The Environment Agency announced on 6 June that they were still consulting on the registration of small septic tanks and there will be no obligations in the immediate future.

Note: Regardless of registration, maintenance records should be kept in relation to the tank and TA6 Enquiries ask for these to be provided to the buyer.

Note: That implementation of these provisions in England was put on hold in August 2011. However, they came into force in Wales on 1 January 2012.

Note: On 6 June 2013 the Environment Agency announced that small septic tank registration would not be required in the immediate future, although larger tanks and those in water protection zone areas should have been registered already.

On 9th October 2014 the Environment Agency announced results of their consultation and draft regulations will be produced for implementation on 1st January 2015. As of 1st January 2015 large septic tanks discharging more than 2m$^3$ of waste a day will need to be registered with a discharge permit costing £125. Small tanks will not need to be registered with an exemption but will need a discharge permit if in a zone 1 water protection zone area or within 50m of a drinking supply or if the discharge is above the low water mark. Tanks in areas of outstanding natural beauty will now not need to be registered. None registration is a criminal offence although the Environment Agency intend to be lenient and educate property owners rather than prosecute.
The provisions came into force in England on 1st January 2015. New tanks in designated areas will need to be registered and obtain a permit but not existing tanks. The number of designated areas has been reduced. Larger tanks will still require a permit.
THE WATER INDUSTRY (SCHEMES FOR ADOPTION OF PRIVATE SEWERS) REGULATIONS 2011

These came into force on 1st July 2011. On 1st October 2011 all private lateral drains outside the curtilage of the premises will become adopted, as will any shared drains within private premises. The Crown may opt out.

Private pumping stations and private surface water drains which run into a watercourse will go into public ownership by 1st October 2016. The Water Authority will require a build over agreement and there must be compliance with Part H4 of the Building Regulations if a building is to be built within three metres of a public sewer.

**Note:** This will have implications for planning permission and building regulations as both will be required to undertake to build over a public drain.

**The Procedure**

Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private sewer:

(a) which is situated within the area of that undertaker; and

(b) which, immediately before 1st July 2011, communicates with a public sewer.

Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private lateral drain which, immediately before 1st July 2011, communicates with a public sewer which is vested in that undertaker.

The relevant duty pursuant to a main scheme is not owed in relation to any private sewer or private lateral drain:

(a) which is exempt; or

(b) which is, immediately before 1st July 2011, the subject of a declaration.

Each main scheme must provide that any declaration which is made pursuant to that scheme in relation to a private sewer or private lateral drain:

(a) must specify 1st October 2011 as the date of vesting of that sewer or lateral drain (except any part of that sewer or lateral drain which is a pumping station), and
must specify a date no later than 1st October 2016 as the date of vesting of any pumping station which forms part of that sewer or lateral drain except where it is not possible, in respect of a particular sewer or lateral drain, to make a declaration specifying such a date because a proposal to make a declaration in respect of that sewer or lateral drain is subject to an outstanding appeal under section 105B of the Act (adoption schemes: appeals).

Any number of declarations may be made pursuant to a main scheme.

- See section 219(1) of the Water Industry Act 1991 for the definition of “public sewer”.
- Section 105B was inserted by the Water Act 2003, section 98.

Exempt private sewers and exempt private lateral drains

A private sewer or private lateral drain is exempt for the purposes of a main scheme or a supplementary scheme if that sewer or lateral drain is owned by a railway undertaker.

A private sewer or private lateral drain is exempt for the purposes of a main scheme if:

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before 1st July 2011 from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

A private sewer or private lateral drain is exempt for the purposes of a supplementary scheme if:

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before the relevant date from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

A. Which assets will be transferred?

(i) The Scope and Extent of Transfer

The aim of transfer is to relieve the owners of private underground drainage of responsibility for its maintenance where that drainage connects to the public sewerage system. Where existing foul, surface water or combined sewers, and any drains of that nature serving individual properties which are outside the curtilage of the property they serve, connect to the public sewerage system then the ownership of and responsibility for their maintenance will transfer to the water and sewerage company for the area. Shared drainage pipes are known as “sewers” and drainage serving individual properties which are outside the property boundary as “lateral drains”. The terms “sewer” and “lateral drain” are defined in Section 219 Water Industry Act 1991, and these definitions apply in the transfer Regulations. Essentially, however, a sewer is defined as a drain which is shared or used by more than one property. A lateral drain is a one which serves a single property but which lies outside that property’s curtilage (that is beyond its boundary) and therefore within or beneath another property’s curtilage or the street. These definitions include all ancillaries used in the operation of the sewerage system including manholes, ventilating shafts, access chambers, pumps, valves, penstocks, telemetry and other machinery or apparatus.
On 1st October 2011 all privately owned sewers and lateral drains which communicate with (that is drain to) an existing public sewer as at 1st July 2011 will become the responsibility of the sewerage undertaker – normally the water and sewerage company for the area. This includes private sewers upstream of pumping stations that have yet to transfer, but excludes lengths of sewer or drain that are the subject of an ongoing appeal or which have been excluded from transfer as a result of an appeal or which are on or under land opted-out by a Crown body. The transfer specifically excludes sewers and lateral drains owned by a railway undertaker. Sewers upstream of such assets, however, are transferred.

Private pumping stations which form part of the drainage arrangements and which are on pipework that transfers on 1st October will transfer later. Such pumping stations will transfer between 1st October 2011 and 1st October 2016, with all pumping stations that have not been transferred before then transferring on 1st October 2016. The Government expects that sewerage undertakers will wish to consider drawing up works programmes to achieve a progressive transfer of pumping stations over this 5 year period. Pipework upstream of a pumping station will transfer on 1st October 2011.

Supplementary transfer arrangements

The transfer regulations provide for the making of a supplementary transfer scheme. This recognises the Government’s intention that when Section 42 of the Flood and Water Management Act 2010 comes into effect, it will introduce a requirement for new sewers and lateral drains that connect to the public sewerage system to be automatically adopted as “public” by sewerage companies.

The date for this part of the Act coming into effect has yet to be set and, as a result, sewers and lateral drains connected to the public sewerage system after July 1, 2011, but before Section 42 comes into effect, will remain private for the time being unless they have been the subject of an agreement under Section 104 agreement for their adoption by sewerage companies as “public” assets.

The making of a supplementary transfer scheme upon Section 42 coming into effect will ensure the automatic adoption by sewerage companies of sewers and lateral drains built in this interim period. This will ensure that there is no legacy of private sewers connected to the public sewerage system as a result of the main transfer taking place ahead of the new arrangements for automatic adoption of newly connected sewers and lateral drains. The arrangements for the supplementary transfer scheme will be the subject of a separate consultation.

The provisions came into force in Wales on 1st October 2012. There was a transitional period whereby if planning permission predated October 2012 then the sewers could be laid prior to October 2013 without a Section 104 Agreement. They were meant to come in to force in England in October 2013 but as of December 2016 we are still waiting for a date and it won’t be until late 2017 at the earliest, if at all.
SOLAR PANELS

**Note:** In August 2015 the government announced that the solar panel tariffs would be reduced by over 90% as of 1st January 2016 and would disappear entirely by 2019. This will not affect existing tariffs where whatever payment applied when the leases were registered with Ofgem will apply for the remainder of the term plus an RPI based yearly increase. In December 2015 the Government announced that the tariffs would be reduced not by 90% but by around two thirds as of 8th February 2016.

**Planning Permission**

Solar panels on domestic premises are within General Permitted Development, as are, since April 2012, solar panels on non-domestic premises. For commercial properties permitted development exists if the installation is connected to the business use and the external appearance of the building is not materially affected. For office buildings there will only be permitted development for the ground floor. Generally solar panels must not materially affect the amenity within the locality. Some local authorities e.g. Bury Borough Council have required removal of solar panels because of nuisance caused by glare.

**Note:** Exceptions to Permitted Development include where an Article 1 Paragraph 4 Direction applies or where a condition of planning permission bans Permitted Development. Listed buildings will require listed building consent as will panels within the curtilage of the listed building (which will not usually include paddocks and fields). If in a conservation area, National Park, or World Heritage Site the panels should not be visible from the highway or watercourse.

**All solar installations are subject to the following conditions:**

- Panels on a building should be sited, so far as is practicable, to minimise the effect on the appearance of the building.
- They should be sited, so far as is practicable, to minimise the effect on the amenity of the area.
- When no longer needed for microgeneration they should be removed as soon as possible.

**Roof and Wall Mounted Solar Panels**

The following limits apply to roof and wall mounted solar panels:

- Panels should not be installed above the ridgeline and should project no more than 200mm from the roof or wall surface.
- If your property is a listed building installation is likely to require an application for listed building consent, even where planning permission is not needed.
• Wall mounted only - if your property is in a conservation area, or in a World Heritage Site, planning consent is required when panels are to be fitted on the principal or side elevation walls and they are visible from the highway. If panels are to be fitted to a building in your garden or grounds they should not be visible from the highway.

**Standalone Solar Panels**

The following limits apply to standalone solar panels:

- Should be no higher than four metres
- Should be at least 5m from boundaries
- Size of array is limited to 9sq m or 3m wide and 3m deep
- Should not be installed within boundary of a listed building
- In the case of land in a conservation area or in a World Heritage Site it should not be visible from the highway.
- Only one stand alone solar installation is permitted.

**Solar Photo Voltaic Panels**

The installation of Solar PV panels is work controlled under the Building Regulations

The following Regulations may apply to an installation:

- Part A – Structure
- Part B - Fire Safety
- Part C - Resistance to Moisture
- Part P - Electrical Installation

Method of demonstrating compliance with the Building Regulations:

Many installers of Solar PV systems are registered with a Competent Person Scheme (CPS). Provided that the installer is registered with a CPS which covers all relevant parts of the Building Regulations as detailed above (you must confirm this with your installer), then the installer can self-certify the work as complying with the Regulations. He must then notify his registered CPS body who in turn should notify the Local Authority of the installation.

If the installer is not registered with a CPS, or you are doing the work yourself, then you will need to submit an application for Building Regulation Consent (either as a Building Notice or a Full Plans Application) and show how you intend to comply with all the relevant Building Regulations. The Building Control Officer may inspect the work as it progresses and may require further information to justify what you have done or ask for work to be altered. When satisfied that the work complies with the Regulations, a Completion Certificate will be issued.
Stamp Duty Land Tax

HMRC consider solar panels to be fixtures and thus chargeable to SDLT. It would appear that this would also apply where the roof space is leased and they constitute tenant’s fixtures (see below).

Other Taxes

Income from Solar Panels

Solar PV, or photovoltaic, panels are a way of households generating electrical energy to run their appliances from solar power. This can be used to power the homes electrical appliances. Any excess power produced can be sold back to the national grid. Installation of residential solar panels by a MCS (Microgeneration Certification Scheme) approved supplier creates costs reductions and two revenue streams.

Firstly there is a reduction in bills for electricity as the solar electricity produced is free. The installation generates income by a government schemes known as Feed In Tariffs (FITS) and by the resale of excess electricity produced to the national grid, known as the generation tariff.

Taxation for Domestic Installations

Although the FITS and generation tariff are additional income, the government confirmed in 2009 that people who receive income in the form of tariffs will not be subject to income tax. For a basic rate tax payer, this would represent a tax saving of 20% on typical projected income of £500 a year. For higher rate tax payers, the savings could be in the region of £400 to £500. Tax is not due so long as the electricity generated is predominately used for domestic purposes. Feed in tariffs are not limited to solar power, so householders who receive tariffs for other renewable energy sources such as wind will also not pay tax on the income.

Taxation for Business Installation

For businesses that install solar panels and receive tariffs they are subject to tax on their income. The rate of tax will depend on what you pay so for business paying small profits rate the 2012 corporation tax rate is 20%. The main rate of corporation tax in 2012 is 26%. Maintenance costs are likely to be tax deductible.

Consideration will also need to be given to whether the purchase of the panels would be subject to capital allowances. VAT may also be recovered on the purchase of solar panels. Of course, the business will benefit from reduced electricity costs which should be factored in when calculating the return on investment. Your accountant will be able to advise you if solar panels are an appropriate investment for your business.

Restrictive covenants

There may be breach of consent to plans and alterations covenants and, possibly, breach of non-business user covenants especially where the roof space has been leased out. If leasehold, there may also be breach of the covenants of the lease.
Re Nos 11 and 27 Parklands View Sheffield 2011 EW LVT

The case involved a 200 year lease and whether placing solar panels on the roof was a breach of leasehold covenants. To some extent the decision depends on its facts. Installing solar panels amounted to a breach of an alteration covenants. Contrast *Bickmore v Dimmer* 1903 1 Ch 158 where installation of a clock on the outside of a shop was not a breach. However, the landlord could not unreasonably refuse consent to the solar panels. See also *Mahon v Sims* [2005] 3 EGLR 57: Consent to alteration covenant is always subject to an implied test of reasonableness.

Nuisance and Annoyance

Whether there is a breach of such a covenant amounts to an objective test depending on the fact; and there was held to be no breach here. Contrast *Davies v Dennis* [2009] EWCA 1081 where building of an extension which blocked river views was held to be a breach.

Non-business user

As there was no income tax payable and the business user was ancillary to the residential use, there is no breach. See also *Florent v Horez* [1983] 12 HLR 1.

Right of First Refusal - Part 1 of Landlord and Tenant Act 1987

Part 1 provides that where the landlord proposes to make a relevant disposal and its terms.

Relevant Disposals

This concept causes major problems. It consists of a disposal of any estate or interest, whether legal or equitable including a disposal of an estate or interest in the common parts.

Specifically included are contracts for sale whether conditional or unconditional, disposals by way exchange, sale by auction, options and rights of pre-emption.

Excluded are grants of a tenancy of a single flat, interests under a mortgage, sale of incorporeal hereditament, assignments by a trustee in bankruptcy or under matrimonial law, compulsory purchase orders, gifts to the landlord's family or to a charity, transfers by will or on intestacy, disposals to The Crown, disposals to an associated employer.

*Mainwaring v Henry Smiths Charity Trustees* [1996] 2 EGLR 267 made clear that the landlord's duty arises as soon as, or soon after, he proposes to dispose: not on actual disposal. Making the disposal conditional on the proposed purchaser serving s.18 notices (see below) will not exonerate him.

*Kay-Green v Twinsectra* [1996] 2 EGLR 258

Here, there were three buildings held under two separate registered titles. Part I applied on a building by building basis, i.e. even though there were not the requisite majority of qualifying tenants in one of the buildings, the other two were still subject to the rights. Moreover, mistakes in the tenants request under s.l2, see below, including the third building did not prevent them exercising their rights.

Sale also included appurtenances land, e.g. gardens, and the parts of the buildings not occupied by qualifying tenants.
Note: Note that leasing of roof space for the purpose of a solar panel on a block of flats would fall foul of Part 1 and would constitute a criminal offence unless first refusal was offered.

Buildings Insurance

Buildings insurance may be vitiated if the insurer is not notified.

Disclaimer

Some leases of roof space have been disclaimed on insolvency. Restrictions have been found on the Register retaining title on behalf of the original producer.
GAS SAFE REGULATION CHANGES 2013

From January 2013 Gas Safe introduced new regulations regarding flues for gas boilers. It will be compulsory for all gas engineers to be able to inspect and see flues. Should the flue not be visible then it will be necessary for an inspection hatch to be fitted by this date in order for an engineer to carry out a check adequately. If there is no access or the engineer fails to inspect the flue they will be unable to issue a gas safety certificate or indeed carry out any works.

The new revised guidelines require inspection hatches to be fitted in properties where the flue is concealed within voids and cannot be inspected. The Homeowner/Landlord had until 31 December 2012 to arrange for inspection hatches to be installed. Carbon monoxide alarms are not an alternative to being able to see the flue and you will still need to have inspection hatches fitted. This work must have been completed by 31 December 2012. It is recommended that inspection hatches are fitted as soon as you are able to do so.

Any gas engineer working on an affected system after 1 January 2013 will have to turn off boilers if the flue is not visible. Although most of the affected boiler and flue systems are relatively new (installed since 2000), the risk of faults leading to release of carbon monoxide increases as the systems get older. It is important that you have your gas appliances serviced annually.

If your property is less than two years old then contact your builder. If your property is between two and ten years old contact your home warranty providers. If your property is 10 years or older you should contact a Gas Safe registered engineer.

In relation to rented property a Landlord must at any time have a Gas Safe certificate which is no more than one year old and must present a copy to the Tenant within 7 days. As of October 1st, 2015 the Landlord may not use the shorthold ground for possession if there is not a valid certificate in place. This latter provision was introduced by the Deregulation Act 2015 and applies to England only.

**Electrical Wiring Certificates**

These are not currently required for buy to lets although an HMO licence will not be obtained without one. There is provision in the Housing & Planning Act 2016 to make them compulsory.
PART P BUILDING REGULATIONS

The provisions came into force on 1 January 2005. The relevant provisions are thus. The provisions apply to dwellings, including common parts and shared amenities and also to mixed business/residential properties with a common supply.

Notification of work

0.6 The requirements apply to all electrical installation work.

When necessary to involve building control bodies

0.7 Except in the circumstances outlined in paragraph 0.8 below, notification of proposals to carry out electrical installation work must be given to a building control body before work begins.

When not necessary to involve building control bodies

0.8 It is not necessary to give prior notification of proposals to carry out electrical installation work to building control bodies in the following circumstances:-

a. the proposed installation work is undertaken by a person who is a competent person registered with an electrical self-certification scheme authorised by the Secretary of State. In these cases the person is responsible for ensuring compliance with BS 7671: 2001 and all relevant Building Regulations. On completion of the work, the person ordering the work should receive a signed Building Regulations self-certification certificate, and the relevant building control body should receive a copy of the information on the certificate. The person ordering the work should also receive a duly completed Electrical Installation Certificate as or similar to the one in BS 7671. As required by BS 7671, the certificate must be made out and signed by the competent person or persons who carried out the design, construction, inspection and testing work.

OR

b. The proposed electrical installation work is non-notifiable work of the type described in Table 1 and does not include the provision of a new circuit.

i) When the non-notifiable work described in Table 1 is to be undertaken professionally, a way of showing compliance would be to follow BS 7671: 2001 and to issue to the person ordering the work a Minor Electrical Installation Works Certificate as or similar to the model in BS 7671. As required by BS 7671, the certificate must be made out and signed by a competent person in respect of the inspection and testing of an installation. The competent person need not necessarily be a person registered with an electrical self-certification scheme, and may be a third party.

ii) When the non-notifiable work described in Table 1 is to be undertaken by a DIY worker, a way of showing compliance would be to follow the IEE guidance or guidance
in other authoritative manuals that are based on this, and to have a competent person inspect and test the work and supply a Minor Electrical Installation Works Certificate. The competent person need not necessarily be registered with an electrical self-certification scheme but, as required by BS 7671, must be competent in respect of the inspection and testing of an installation.

iii) In any event, non-notifiable works should be drawn to the attention of the person carrying out subsequent work or periodic inspections. A way of doing this would be to supply Minor Electrical Installation Works Certificates covering the additions and alterations made since the original construction of the installation or since the most recent periodic inspection.

Table 1

Work that need not be notified to building control bodies

Work consisting of:-

I. replacing accessories such as socket-outlets, control switches and ceiling roses
II. replacing the cable for a single circuit only, where damaged, for example, by fire, rodent or impact
III. re-fixing or replacing the enclosures of existing installation components
IV. providing mechanical protection to existing fixed installations

Work that is not in a kitchen or special location and does not involve a special installation and consists of:-

I. adding lighting points (light fittings and switches) to an existing circuit
II. adding socket-outlets and fused spurs to an existing ring or radial circuit

Table 2

Special locations and installations

Special locations:
- Locations containing a bath tub or shower basin
- Swimming pools or paddling pools
- Hot air saunas

Special installations:
- Electric floor or ceiling heating system
- Garden lighting or power installations
- Solar photovoltaic (PV) power supply systems
- Small scale generators such as microCHP units
- Extra-low voltage lighting installations, other than pre-assembled, CE-marked lighting sets

**Building Regulations: Dwellinghouse and Extensions**

From 1 March 2003 a new central heating boiler will have needed a certificate of installation by the contractor (or a Building Control Certificate).

Since 1 January 2005 requirements that certain electrical wiring installed or added to since that date must carry a certificate from a competent electrician that it has been done in accordance with current standards. Exemptions apply to wiring or extra sockets in a dwelling as long as they are not to wet rooms, e.g. bathrooms and kitchens (nor any outside works).

The following are examples of building works which would need Building Regulations:

- Internal alterations such as the removal or part removal of a load bearing wall, joist, beam or chimney breast would need approval.
- A loft conversion.
- Installation of a new lavatory (not just a replacement) which involves a new connection into a soil pipe.
- Conversion of a house into flats.
- Insertion of cavity wall insulation.

Replacement of all or part (more than 25%) of the roof covering e.g. tiling

**Boilers and Heating**

The Building Regulations will apply to the following:

- installing or replacing a hot water cylinder
- installing, replacing or altering the position of any type of gas, solid fuel and oil appliances (including boilers)
- installing a fixed, flueless, gas appliance

However if you employ a registered installer with the relevant competencies to carry out the work on gas appliances, you will not need to involve a building control service. Find out more about building control services from the link below. If you want to alter or repair, the construction of fireplaces, hearths or flues, in any way which could affect their safe operation and heat containment; Building Regulations will apply if the work involves the provision of a new or replacement fixtures.
Gas boiler regulations

If you are planning to install or replace an existing gas boiler you should choose a condensing boiler. This is a requirement of Part L1 of the Building Regulations that relate to the conservation of fuel and power.

Why install a condensing boiler?

Gas-fired boilers installed after 1 April 2005, and oil-fired boilers installed after 1 April 2007, must be condensing boilers, whether they are replacements or new installations.

- Condensing boilers are more efficient than ordinary boilers as they:
  - produce less carbon dioxide while still meeting heating needs
  - reduce the amount of heat that is lost through the flue, compared with ordinary boilers
  - convert 86 per cent or more of the fuel they use into useful heat (older types of ordinary boilers may convert as little as 60 per cent of fuel to useful heat)

The new standards apply only if you decide to change your existing hot-water central-heating boiler or if you decide to change to one of these boilers from another form of heating system.

Climate change has been caused by increasing amounts of carbon dioxide being released into the atmosphere. Around 16 per cent of the carbon dioxide that the UK produces comes from the gas and oil boilers that we use to heat our homes.

Other recent changes

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These provisions apply to any premises or part of a premises which is rented for residential purposes. The provisions also apply to people occupying under a Licence. As of October 1st, 2015 there must be smoke and carbon monoxide detectors in place. The provisions do not apply if the Tenants share accommodation with the Landlord.

Woodburners

The flue for a woodburner requires building regulations, and also requires a carbon monoxide detector installation nearby for new installations since October 2015.
Planning Enforcement and Deceit

Time limits for enforcement of planning breach

Planning enforcement periods are

- Four Years:
  - for unauthorised building, engineering, mining or other operations in, on, over or under land (TCPA 1990, s171B(1)); and
  - for unauthorised change of use of any building to use as a single dwelling house (section 171B(2), TCPA 1990). This includes breach of a planning condition relating to use as a single dwelling house: First Secretary of State v Arun District Council and Another [2006] EWCA Civ 1172

- Ten years for any other breach (section 171B(3), TCPA 1990)

In Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15 the Supreme Court held that where a structure that looks like a barn but was in fact containing a three bedroom house, after four years enforcement could still occur as there had been a deliberate concealment of the breach.

In Fidler v Secretary of State for Communities and Local Government [2010] EWHC 143 a fifteen room castle was built behind straw and after four years the straw was removed. It was held that removal of the bales of straw amounted to building work and the enforcement period still ran. Likewise, in Sage v Secretary of State for Environment, Transport and the Regions [2003] UKHL22 doing finishing work and placing in doors and windows still amounted to development.

Note: As of 15 January 2012, the Localism Act 2011 has made clear that if there is at least partial deliberate concealment of breaches then the enforcement action can be taken within six months of the local authority becoming aware. The concealment must be deliberate and possible enquiry may be made of any breaches, however, insurance may often be required by purchasers. As of 6 April 2012 the Local authority has a discretion not to regularise breaches after an enforcement notice has been served. The above provisions are retrospective.

Sometimes planning permission will be conditional on the roads being built up. This should always be checked. Enforcement steps may be taken against the purchaser and not merely the developer.
SECTION 106 AGREEMENTS

Section 106 Agreements will bind the purchaser and give rise to joint and several liability unless they make clear otherwise. If an S.106 Agreement gives rise to joint and several liability, then it is suggested that the mortgage company should be notified, as it will bind them on possession and will also affect value. CML Handbook states that you should refer to Part II to see if they wish to know about onerous S.106 Agreements. It is also suggested that if a development contains social housing this should be notified to the purchaser.

Note: Subject to showing on local authority searches, subsequent purchasers may also be jointly and severally liable. The time period for enforcement is a claim in debt and 12 years. However, as many obligations do not need to be complied with until after the development has ceased, problems may arise for some years in the future.

Planning Conditions

As we have seen above, planning conditions can be enforced for ten years from the breach unless there has been a deliberate concealment. Amongst the most important planning conditions for conveyancers are those that ban Permitted Development, or e.g. prevent a garage being used as living accommodation. The date of the breach is relevant and not the date the condition was imposed. The Conveyancing Protocol states that if the seller commissioned the work then they should obtain planning consent, if a buyer wishes to obtain consents more than 20 years previously it is at their expense. The other important conditions are those which should be satisfied before the purchaser can go into occupation.

As of August 1977 planning conditions should be noted on local land charges as should S.106 agreements if any monetary payment is to bind a subsequent purchaser.

Be careful in particular of pre-occupancy and pre-commencement conditions. If the latter are breached this will vitiate the planning permission and enforcement action can occur. A new planning application would have to be made.

Pre-Commencement Planning Conditions

The case of Whitley v Secretary of State for Wales (1992) 64 P&CR 296 it was held that if a condition precedent to commencing the development was breached then there would be no planning permission at all. To be such a condition it must be phrased negatively, e.g. “no development will commence”. The judge stated "the permission is controlled by and subject to the conditions. If the operations contravene the conditions they cannot be properly described as commencing the
development authorised by the permission. If they do not comply with the permission they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful."

In **R (Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 Admin**, involving agreeing restoration of land after quarrying activity had ceased, the judge held that the condition must go to the core of the activity.

In **Greyfort Properties v Secretary of State for Communities and Local Government [2011] EWCA Civ 908**, this was disputed. The case involved a condition requiring the ground floor plan to be determined prior to development commencing. The court decided that non-compliance meant that there would be no planning permission and therefore a refusal to grant a Certificate of Lawful Use was valid 20 years later.

The court stated:

- The Whitley principle, noted above, is approved such that if an operation contravenes a condition it cannot be properly described as commencing the development authorised by the permission. The Court of Appeal here appears to favour the more general approach taken in Whitley in respect of the wording of conditions. Hart appeared to restrict Whitley by requiring Planning Authorities to be explicit with the wording of their planning conditions.

- Hart is generally approved in that the condition must be one which goes to the heart of the planning permission. Breaches of pre-commencement conditions dealing with more trivial matters are less likely to be caught.

Currently, the National Planning Policy in England states that planning conditions should not be imposed unless necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in other respects. The **Neighbourhood Planning Act 2017** is now passing through parliament. Clause 7 allows the Secretary of State to introduce regulations to restrict the imposition of planning conditions upon the grant of planning permission but without the agreement of the applicant.

Pre-commencement conditions must be complied with before any operation or material change to use is begun. However, if the applicant refuses to accept an agreement which the local Planning Authority considers necessary, the authority can refuse permission. Consultation to the legislation gives examples of refusals such as on the grounds of heritage, natural environment, green space and flooding. If there is no agreement the applicant would have to appeal. These restrictions will not apply to outline planning permission.
SOME SPECIFIC AREAS

Satellite Dishes

There is permitted development for two satellite dishes on a building of less than 15m in height. If more than 15m, there can be four satellite dishes. If in a conservation area etc, there is no permitted development if the dish is visible from a highway.

Forecourt car parking

Since 2008 planning permission is required to change a surface of more than 5sq m between the front elevation of a building and the highway unless the change in surface is made of porous or permeable materials. Since September 2013 this also applies in Wales (see later).

Decking

Since October 2008 decking of more than 30cm height is treated in the same way as a building and planning permission is required if it and other buildings cover more than 50% of the area of the land.

Use Classes


The provisions came into force on 6 April 2010 and introduce a new form of Use Class for Houses in Multiple Occupation, which brings it into line with Section 257 Housing Act 2004 and Houses in Multiple Occupation generally. The provisions apply to short term lettings where there is sharing of kitchen, bathroom or toilet facilities. Pre 6 April, such premises would be categorised as dwellings within Use Class C3, as long as there were no more than 6 occupants. Now, if there are three or more occupants who are not related, planning permission will be required for conversion into short term lettings. These provisions are now under review.

Note: These provisions were repealed on 1 October 2010. However, local authorities were encouraged to use Article 4 directions as an alternative, and many authorities have reduced HMOs to properties where there are three or more people sharing anyway.

The Planning (Wales) Act 2015

Planning law in Wales is now delegated. In particular there will be a new National Planning Framework for Wales. Enforcement periods will be changed and Living Decision Notices will be
introduced whereby spent planning conditions etc will be removed from searches. Village green registration will also be amended (see later).
LISTED BUILDINGS & CONSERVATION AREAS

Planning (Listed Buildings/Conservation Areas) Act 1990

A 'listed building' is defined in section 1 of the Act as a building which is for the time being included in a list compiled or approved by the Secretary of State under that section. For the purpose of the Act any object or structure fixed to the building, which, since on or before 1 July 1948, has formed part of the land and is comprised within the curtilage of the building is treated as part of the building.

'Building' is defined as including any structure or erection and any part of a building.

Listed Building Consent is required for the demolition or partial demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. Examples of the types of alteration or extension which would normally require listed building consent are:

a) an extension to a building whether or not it is within the permitted development limits of the Town and Country Planning General Permitted Development Order 1995;
b) alteration such as the removal and replacement of doors and windows; and
c) alterations to the interior fabric of a listed building.

Conservation Area Consent - The provisions of the Act relating to listed buildings are applied, with modifications, to the demolition of unlisted buildings in conservation areas. This requires conservation area consent.

Listed Building Enforcement - Your local planning authority (LPA) may issue an enforcement notice when:

- Demolition or works for alteration or extension have been carried out to a listed building, without consent, and the works affect its character as a building of special architectural or historic interest.
- There is failure to comply with any condition attached to a listed building/conservation area consent.
Conservation Area Enforcement - A conservation area enforcement notice is issued by a LPA when they consider an unlisted building in a Conservation Area has been demolished without the grant of Conservation Area Consent.

Breaches in relation to listed buildings are a criminal offence and there is no time limit between the date of the offence and the issue of any enforcement notice. Even if retrospective listed building consent is obtained, there may still be prosecutions of the person committing the offence for activities committed beforehand. Bespoke insurance may be available.
Discharge of Restrictive Covenants

Graham v Easington District Council (2009) - The Lands Tribunal allowed discharge of a restrictive covenant under section 84 of the Law of Property Act 1925 as not securing any practical benefits where the beneficiary of the covenant was a local authority whose planning department had already given planning permission for development. The land, which was the subject of the Lands Tribunal application, was situated in the north east of England. It was on the site of a former colliery in Horden in County Durham. The Local Authority, Easington District Council, had sold the land in August 2000 and had imposed restrictive covenants against use other than as a coach depot and an associated residential bungalow, which would be used in conjunction with the coach depot. The bungalow had been built but no coach depot had subsequently materialised.

Soon afterwards a planning application to build housing on the site was made. The Planning Officer objected, on the grounds that the area including the depot had been earmarked for the industrial regeneration within the locality, and, if residential housing was allowed, this would detract from the possibility of industrial development. Nevertheless, the Planning Authority gave planning permission for thirty houses.

Planning permission would, of course, be of little worth unless the covenants were discharged and the local authority Estates Department refused to do this.

This led to an application to The Lands Tribunal under S.84(1) Law of Property Act 1925.

S.84(1) provides that a covenant may be discharged on the following grounds:-

“(a) By reason of changes in the character of the property or the neighbourhood or other circumstances the restriction ought to be deemed obsolete.

(aa) The restriction impedes reasonable use of the land and does not secure to the persons entitled to the benefit any practical benefits of substantial value or the restriction is contrary to public interest. It may be the case that if the owners’ interest in the land is only in relation to a monetary payment there may be no practical benefit.

(b) The person entitled to the benefits of the restriction has agreed either expressly or by implication for the covenant to be discharged.”
(c) The proposed discharge or modification will not injure the person entitled to the benefit.”

In the current case, the Lands Chamber accepts that a covenant might be obsolete even though, as here, it was less than eight years old. However, the ground was not applicable here.

However, ground (aa) the covenant prevents reasonable use of the land and does not secure to the person entitled any practical benefits was highly relevant. In particular, the argument was accepted that, as the local authority Planning Committee had given planning permission, and as there was a perceived need for affordable housing in the area, the District Council were preventing reasonable use of the land in failing to discharge the covenants.

Moreover, it also followed that ground (d) was also applicable in that the authority would suffer no loss or injury should the covenant be discharged.

The Lands Chamber may award compensation to the beneficiary of a restrictive covenant which has been discharged. The Local Authority wanted compensation based on Stokes v Cambridge (1968) principles, i.e., one third of the enhanced value of the land, which amounted to some £272,000. However, the Tribunal accepted that, following Stockport Borough Council v Alwiyah Developments (1983), this was not a valid means of assessing compensation in the present case. In the Stockport Borough Council case, compensation for the discharge of restrictive covenants which allowed the building of 42 houses on open land was assessed by reference to the reduced value of neighbouring land. This was valued at £2,250.

However, neither was compensation on this basis valid in the present case as the Local Authority had suffered no loss and would, therefore, receive no compensation. Instead the Tribunal awarded compensation based on the difference in value of the land with and without the restrictive covenants at the time of the original purchase in August 2000. This amounted to £23,500.

**Conclusion**

This rather startling proposition that a Local Authority Planning Authority, by giving planning permission for a particular activity, most notably residential development, might tie the hands of the Estates Department in relation to the discharge of local authorities must be noted by all, both in the public and the private sector.

It might be envisaged, in particular, that a large number of covenants may be open to being questioned from covenants, as here, preventing major development down to more everyday residential covenants against, for instance, use other than as a single private dwelling only, and consent to plans and alterations covenants.

Specifically, in R v Braintree District Council ex parte Halls (2000), the Court of Appeal held that a local authority could not charge the owner of a former council house purchased under the Right to Buy provisions in Schedule 6 of the Housing Act 1985 for discharge of a restrictive covenant preventing use other than as a single private dwelling. This, as an indirect form of clawback, was ultra vires the authority’s powers. This has always led to something of a dilemma, in that a local authority may be tempted, therefore, not to discharge the covenant at all.
In these circumstances, **Graham v Easington District Council 2009** may, it is submitted, be effectively used and such covenants may, in the future, be of little worth.

In terms of compensation, if there is no loss suffered to the beneficiary of the covenant, then compensation will be assessed as being the reduced value of the land due to the covenants existing. However, remember that this will be assessed at the time of imposition. In the present case this was less than eight years previously and compensation was only £23,500. Some of the more antiquated covenants may be of little worth whatsoever.

If, in the future, a local authority wishes to enforce user covenants as a means of development planning on their disposals, it might be more effective to impose positive clawback, for example, on planning permission being obtained 90% of the enhanced volume of the land will be paid to the authority.

This cannot be used in relation to council house right to buy, because of the **Braintree** case above, but may be effective elsewhere.

**Note:** In early 2009 the Court of Appeal confirmed this decision.
THE HOUSING & PLANNING ACT 2016

In January 2017 the Government announced 30 local authority areas which would be the first to allow building of starter homes in England. The provisions do not apply to Wales.

As of 2016 the government will enable first time buyers of new build properties who are under the age of 40 to buy with a government provided discount of 20%. The major conveyancing implication is that there will be clawback on the discount if the property is sold within 5 years. There will therefore be a second charge and restriction on the Register. The provisions are included in the Housing and Planning Act 2016. Developers will be able to sell at the reduced rate as they will be exempted from Community Infrastructure Levy (see later) and s106 obligations which do not relate to the actual site.

These are not expected to come into force until 2017. Consultation regulations have been produced. Qualifying developers will be expected to set aside 20% of housing as starter homes. People under the age of 23 will not be able to purchase and there will be clawback for 5-8 years if the property ceases to be a main residence.
COMMUNITY INFRASTRUCTURE LEVY

About the Community Infrastructure Levy

The Community Infrastructure Levy is a new planning charge, introduced by the Planning Act 2008. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. Development may be liable for a charge under the Community Infrastructure Levy (CIL), if your local planning authority has chosen to set a charge in its area.

Who may charge the levy?

The Community Infrastructure Levy charging authorities (charging authorities) in England will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge the levy.

In London, the boroughs will collect the Mayor’s levy on behalf of the Mayor.

What development is subject to a charge?

Most buildings that people normally use will be liable to pay the levy. But buildings into which people do not normally go, and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay the levy. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay the levy.

Any new build – that is a new building or an extension – is only liable for the levy if it has 100 square metres, or more, of gross internal floor space, or involves the creation of one dwelling, even when that is below 100 square metres.

While any new build over this size will be subject to CIL, the gross floor space of any existing buildings on the site that are going to be demolished may be deducted from the calculation of the CIL liability. Similarly the gross floor space arising from development to the interior of an existing building may be disregarded from the calculation of the CIL liability. The deductions in respect of demolition or change of use will only apply where the existing building has been in continuous lawful use for at least six months in the 3 years prior to the development being permitted.

What will the charge be levied on?

The Community Infrastructure Levy must be levied in pounds per square metre of floor space arising from any chargeable development. The charge will be applied to the gross floor space of most new buildings or extensions to existing buildings.
The Community Infrastructure Levy will not normally be charged on the floor space resulting from a change of use or any floor space lost through the demolition of buildings as part of a development. Deductions in respect of the demolition or the change of use of existing buildings will only apply where the existing building has been in continuous lawful use for at least six months in the 12 months prior to the development being permitted.

**How will the charge be levied?**

The trigger is commencement of development, though payment may be made in instalments if the charging authority has a payment by instalments policy.

**What will money raised be spent on?**

The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

The levy Charging Authority must produce an annual report for the financial year detailing the total receipts for the reported year, total expenditure and a summary of the items of infrastructure to which these receipts were applied.

**Additional information required when making a planning application**

The introduction of the levy means that charging authorities require additional information to determine whether a charge is due and to determine the amount.

Applicants will therefore be required to answer additional questions to enable authorities to calculate levy liability. These questions are found in the document below, which should be submitted alongside the planning application form.

Once planning permission is granted, collecting authorities will issue applicants with a levy liability notice. Applicants should then assume liability to pay the levy charge prior to commencement of development by sending a completed assumption of liability form (‘Form 1: Assumption of Liability’) to the collecting authority.

A liable party who subsequently wishes to withdraw or transfer their liability must complete either ‘Form 3: Withdrawal of Assumption of Liability’ or ‘Form 4: Transfer of Liability’ and send this to the collecting authority.

The levy charge becomes due when development commences. A commencement notice must be issued to the collecting authority (Form 6: Commencement Notice) and all owners of the relevant land to notify them of the intended commencement date of the development. The collecting authority will then send a Demand Notice to the person or persons who have assumed liability.
Development under General Consent and the Community Infrastructure Levy

Development commenced under general consent is liable to pay CIL. ‘General consent’ includes permitted development rights granted under the General Permitted Development Order 1995. If you intend to commence development under general consent you must submit a Notice of Chargeable Development (Form 5) to the local authority before you commence this development. The only exception to this requirement to submit a Notice of Chargeable Development is if the development in question is less than 100 square metres of new floor space and the development does not comprise one or more new dwellings. If the development meets these criteria a Notice of Chargeable Development does not have to be submitted before the commencement of development.

Relief and Exemption

Relief from the levy is available in three specific instances.

First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes. The charging authority must publish its policy for giving relief in such circumstances.

Secondly, the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing.

A social housing relief calculator has been developed that will assist you to calculate this relief.

Exceptional circumstances relief is only available where a charging authority has made it available in their area. Claims from landowners will only be considered on a case by case basis, provided the following three conditions are met.

Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development.

Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy’s charge on the development and that paying the full charge would have an unacceptable impact on the development’s economic viability.

An assessment of this must be carried out by an independent person with appropriate qualifications and experience. The person must be appointed by the claimant and agreed with the charging authority.

Finally, any relief the charging authority chooses to give must not constitute a notifiable state aid.

If you wish to apply for exemption or relief, please use ‘Form 2: Claiming Exemption or Relief’.
Community Infrastructure Levy

The Community Infrastructure Levy allows local authorities to set charges which developers must pay when bringing forward new development in order to contribute to new or enhanced services and infrastructure.

The Localism Act includes provisions to make regulations which will require a meaningful proportion of these funds to be passed to neighbourhoods where the development has taken place.

Note: The levy will not apply to development which is wholly internal. In Orbital shopping Park Swindon Ltd v Swindon Borough Council [2016] EWHC 448 (Admin) (03 March 2016) a mezzanine floor was built and separately a new shop front. The council argued that this was all part of the same development and therefore attracted the levy. The applicant successfully argued that they were separate and the mezzanine floor being wholly internal did not attract the levy.
COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) REGULATIONS 2014

These provisions came into force on 24 February 2014. These regulations introduce:

- Limitation on pooling of s 106 obligations delayed until April 2015
- New mandatory exemptions for self-build housing, and for residential annexes and extensions
- A change to allow charging authorities to set differential rates by the size of development (i.e. floorspace, units)
- The option for charging authorities to accept payments in kind through the provision of infrastructure either on-site or off-site for the whole or part of the levy payable on a development
- A new ‘vacancy test’ - buildings must have been in use for six continuous months out of the last three years for the levy to apply only to the net addition of floorspace (previously a building to be in continuous lawful use for at least six of the previous 12 months)
- A requirement on the charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across the area. Previously the authority only had to ‘aim to strike the appropriate balance’
- Provisions for phasing of levy payments to all types of planning permission to deal fairly with more complex developments.
Local authorities must maintain a register of those wishing to build properties at least 50% designed by themselves in the locality. This must be taken into account in the development plan. Such properties do not attract Community Infrastructure Levy unless they cease to be the main residence within 3 years.
GENERAL PERMITTED DEVELOPMENT
(ENGLAND) ORDER 2015

This consolidates permitted development orders into one general order. Temporary permitted
development introduced on 31st May 2013 came to an end at the end of May 2016 with two
exceptions.

Householder PD

Allows larger single storey rear house extensions to be built. – From 31 May 2013 householders will be
able to extend beyond the rear wall of the original dwelling up to 8m for detached dwellings and 6m
for semis and terraced properties, providing it doesn’t exceed 4m in height. Other current restrictions
apply – ie matching materials, not more than half the garden area etc as do the restrictions affecting
outbuildings.

Permitted development rights of properties in conservation areas also remain unchanged.

- These permitted development rights are subject to a new procedure. Before commencement, the
  resident must notify the local authority
- The local authority then has to notify neighbouring properties (adjoining – ie have a physical
  boundary)
- The local authority has to send a copy of the neighbour letter to the developer
- If neighbours do not object within the 21 day period a letter can be sent stating the development
can commence (ie written notice that prior approval is not required)
- If neighbours object the local authority must consider whether the extension should be approved
  based on amenity grounds of all properties adjoining (ie not just the one that objected)
- If it is ok the local authority provides a written notice giving prior approval, within the 42 days
- If it’s not ok – the local authority give a written notice giving prior refusal, within the 42 days - in
  which case the development cannot take place. There is however a right of appeal for the
  developer
• The development may not start until the local authority have notified the person of the local authority decision or until the expiry of 42 days without such a decision being notified i.e. if they go out of time, permission is automatically granted

• The developer must notify the local authority in writing when the development is complete

**Note:** These provisions have been extended to the end of May 2019.

**B1(a) Offices to C3 Residential Changes for Use**

• Allows buildings in B1(a) office use to be used for C3 residential purposes.

• The new permitted development right is temporary in that no prior approvals can be implemented after 30 May 2016 (but use remains presumably)

• These rights do not apply on land in certain areas. Those areas are certain military sites, safety hazard areas, listed buildings or scheduled monuments and areas described as article 1(6A) land.

• Article 1(6A) land is effectively those council’s who were successful in their application for exemption

• This is subject to a prior approval process, but the local authority can only consider against transport and highways, contamination and flooding issues

• Procedure for applying for approval set out below

**Note:** it was announced in October 2015 that this would be extended indefinitely.
GENERAL PERMITTED DEVELOPMENT (AMENDMENT) (CONSEQUENTIAL PROVISIONS) (ENGLAND) REGULATIONS 2014

These were announced on 17th March 2014. They came into force on 6th April 2014. Major provisions:

- Makes a number of amendments to the GPDO in relation to permitted development rights for dwellinghouses.
- Introduces a number of new permitted development rights for change of use, some of which include permission for limited operational development:
  - new Class CA allows a building used as a shop to be used as a bank, a building society, a credit union or a friendly society;
  - new Class IA allows buildings used as shops or for the provision of financial or professional services to change to residential use;
  - class K is expanded to allow buildings used for a variety of uses to become nurseries;
  - new Class MA allows agricultural buildings to become schools or nurseries; and
  - new Class MB allows agricultural buildings to change to residential use.

However, conditions, limitations and restrictions apply to each of the new rights. For certain matters, the prior approval of the local planning authority is required.

Class MB is proving controversial. There are major limitations to its use, including:

- the area converted must comprise no more than 450m² in gross internal floor area and there must be no more than three dwellings
- the provisions do not apply to conservation areas, national parks or areas of outstanding beauty
• there will be no permitted development for further extensions
• any changes to the appearance must be no more than needed to convert the premises to a dwelling
• the premises must have been used for agricultural purposes on 20th March 2013 or on the last day it was in use.

Note: Class MB has now been re-enacted as Class Q. If work done on a farm building in the previous 10 years there will be no permitted development.
GENERAL PERMITTED DEVELOPMENT (WALES) (AMENDMENT) REGULATIONS 2013

These provisions came into force on 30th September 2013. The major changes are that single storey extensions at the rear of the house may now be 4 metres and not as previously 3 metres in length and off street car parking obligations have been amended to bring them in line with the provisions in England.

SCHEDULE

PART 1

DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

Class A - Permitted development

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

A.1. Development is not permitted by Class A if:

(a) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(b) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

(c) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

(d) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse and—

(i) the height of the eaves of any part of the enlarged part which is within 2 metres of the boundary of the curtilage of the dwellinghouse would exceed 3 metres; or

(ii) the height of any part of the enlarged part which is within 2 metres of the boundary of the curtilage of the dwellinghouse would exceed 4 metres;
(e) the enlarged part of the dwellinghouse would extend beyond a wall comprised in the principal elevation of the original dwellinghouse;

(f) the enlarged part of the dwellinghouse would extend beyond a wall comprised in a side elevation of the existing dwellinghouse, and would be nearer to the highway than—

(i) the wall comprised in that side elevation which is nearest to the highway; or

(ii) any point 5 metres from the highway; whichever is the nearer to the highway;

(g) the enlarged part of the dwellinghouse would extend beyond a wall comprised in a side elevation of the original dwellinghouse, would have a single storey and—

(i) the enlarged part of the dwellinghouse would exceed 4 metres in height; or

(ii) the width of the widest part of the resulting dwellinghouse would exceed the width of the widest part of the original dwellinghouse by more than 50%;

(h) the enlarged part of the dwellinghouse would extend beyond a wall comprised in a side elevation of the original dwellinghouse, would have more than one storey, either in its own right or if considered together with any part of the existing dwellinghouse, and—

(i) the enlarged part of the dwellinghouse would be within 10.5 metres of any boundary which is—

(aa) a boundary of the curtilage of the dwellinghouse; and

(bb) opposite the relevant side elevation;

(ii) the width of the widest part of the resulting dwellinghouse would exceed the width of the widest part of the original dwellinghouse by more than 50%;

(i) the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse, would have a single storey and would—

(i) extend beyond the relevant part or, as the case may be, any of the relevant parts of the rear wall of the original dwellinghouse by more than 4 metres; or

(ii) exceed 4 metres in height;

(j) the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse, would have more than one storey, either in its own right or if considered together with any part of the existing dwellinghouse, and—

(i) the ground floor storey would extend beyond the relevant part or, as the case may be, any of the relevant parts of the rear wall of the original dwellinghouse by more than 4 metres;
(ii) the first floor or higher storey would extend beyond the relevant part or, as the case may be, any of the relevant parts of the rear wall of the original dwellinghouse by more than 3 metres; or

(iii) the first floor or higher storey would be within 10.5 metres of any boundary which is—

   (aa) a boundary of the curtilage of the dwellinghouse; and

   (bb) opposite the rear wall of the dwellinghouse;

(k) it would consist of or include external wall insulation which projects from that part of the exterior of the dwellinghouse to which it is affixed by more than 16 centimetres; or

(l) it would consist of or include—

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

   (ii) the construction or provision of a balcony which—

      (aa) contains a platform of any description;

      (bb) projects from the part of the exterior of the dwellinghouse to which it is affixed by more than 30 centimetres;

      (cc) if projected downwards in a vertical line to ground level, is within 10.5 metres of any boundary of the curtilage of the dwellinghouse opposite the relevant side elevation; or

      (dd) would be affixed to a wall comprised in the principal elevation of the dwellinghouse;

(iii) the construction or provision of a roof terrace, whether or not it would incorporate associated railings, fencing or other means of enclosure;

(iv) the installation, alteration or replacement of a microwave antenna;

(v) the installation, alteration or replacement of a chimney;

(vi) the installation, alteration or replacement of an air source heat pump, solar PV or solar thermal equipment or a flue forming part of a biomass heating system or combined heat and power system;

(vii) the installation of shutters on any part of the principal elevation of the dwellinghouse; or

(viii) an alteration to any part of the roof of the dwellinghouse, being an alteration which does not fall within paragraphs A.1(l)(i) to(vii).

A.2. In the case of a dwellinghouse on article 1(5) land or within a World Heritage Site, development is not permitted by Class A if—

(a) it would consist of or include the cladding of any part of the exterior of the existing dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic, metal or tiles;

(b) it would consist of or include external wall insulation;
(c) the enlarged part of the dwellinghouse would have a single storey, would extend beyond a wall comprised in a side elevation of the original dwellinghouse and would—

(i) extend beyond the relevant part or, as the case may be, any of the relevant parts of a wall comprised in a side elevation of the original dwellinghouse by more than 3 metres; or

(ii) be set back, by less than 1 metre, from the nearest point in any wall comprised in the principal elevation of the original dwellinghouse; or

(d) the enlarged part of the dwellinghouse would have more than one storey, either in its own right or if considered together with any part of the existing dwellinghouse.

Conditions

A.3. Development is permitted by Class A subject to the following conditions—

(a) the appearance of the materials used in the walls, roof or other element of any exterior work must so far as practicable match the appearance of the materials used in the majority of the equivalent element of the existing dwellinghouse;

(b) if any element of an upper-floor window located in a wall, roof slope or other element of a side elevation of the dwellinghouse would, if projected downwards in a vertical line to ground level, be within 10.5 metres of any boundary of the curtilage of the dwellinghouse opposite the relevant wall or roof slope, then the window must be—

(i) obscure-glazed;

(ii) non-opening unless any part of the window which can be opened is, when measured at any point along the lowest edge of that part, at least 1.7 metres above the internal floor or stair of the dwellinghouse directly below that point; and

(iii) permanently maintained in compliance with paragraphs A.3(b)(i) and (ii); and

(c) where the enlarged part of the dwellinghouse has more than one storey, the roof pitch of the enlarged part must, so far as practicable, match the roof pitch of the existing dwellinghouse.

Interpretation of Class A

A.4. For the purposes of paragraph A.1(b)—

(a) in determining the height of the highest part of the roof of the existing dwellinghouse, no account is to be taken of any relevant structure projecting from that roof;

(b) in the determination of the height of the highest part of the dwellinghouse enlarged, improved or altered, account is to be taken of any relevant structure comprised in that part; and

(c) “relevant structure” means any parapet wall, firewall, chimney or other roof furniture or similar structure.

A.5. In determining the height of the eaves for the purposes of paragraphs A.1(c) and A.1(d)—
the determination is to be made by reference to the point where the external walls of the dwellinghouse would, if projected upwards, meet the lowest point of the upper surface of the roof; but

(b) no account is to be taken of any parapet wall or any part of the roof slope which overhangs the external walls of the dwellinghouse; and

(c) where the existing dwellinghouse has eaves at differing heights, a determination for the purposes of paragraph A.1(c) is to be made by reference to the eaves of the part of the existing dwellinghouse from which the enlarged, improved or altered part of the dwellinghouse extends.

A.6. For the purposes of paragraphs A.1(e) and A.1(f), the enlarged part of the dwellinghouse is to be determined to extend beyond a wall referred to in those paragraphs if it would be in front of —

(a) In the case of a wall referred to in paragraph A.1(e)—

(i) that wall in its original form; or

(ii) that wall as it would exist if its original form were to have been extended, continuing the line of the wall, from each of its side edges to the boundary of the present curtilage of the dwellinghouse; or

(b) In the case of a wall referred to in paragraph A.1(f)—

(i) that wall as it exists; or

(ii) that wall as it would exist if it were to be extended, continuing the line of the wall, from each of its side edges to the boundary of the curtilage of the dwellinghouse.

A.7. In determining the height of the enlarged part of the dwellinghouse for the purposes of paragraph A.1(g)(i) or A.1(i)(ii), account is to be taken of any parapet wall, firewall, chimney or other roof furniture or similar structure comprised in that part.

A.8. For the purposes of paragraph A.1(g)(iii) or A.1 (h)(iii) “resulting dwellinghouse” means the dwellinghouse as enlarged, improved or altered, taking into account any enlargement, improvement or alteration to the original dwellinghouse, whether permitted by this Part or not.

Class F - Permitted development

F. Development consisting of—

(a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or

(b) the replacement in whole or in part of such a surface.

Development not permitted

F.1. Development is not permitted by Class F within the curtilage of a listed building.
Conditions

F.2. Development is permitted by Class F subject to the condition that where:

(a) the area of ground to be covered by the hard surface is situated forward of the principal elevation of the dwellinghouse and between the principal elevation and a highway, or

(b) the area of hard surface to be replaced would be forward of the principal elevation of the dwellinghouse and between the principal elevation and a highway, and (taking into account any area of hard surface previously replaced) would exceed 5 square metres, the hard surface must be —

(i) porous or permeable; or

(ii) provided to direct run-off water from the hard surface to a porous or permeable area or surface within the curtilage of the dwellinghouse; and

(iii) permanently maintained so that it continues to comply with the requirements of paragraph (i) and (ii).

Interpretation of Class F

F.3. For the purposes of F.2—

“previously replaced” means replaced without compliance with that condition within the 6 month period prior to undertaking the development in question; and the “principal elevation” is (i) the wall of the principal elevation in its original form; or (ii) that wall as it would exist if its original form were to have been extended, continuing the line of the wall, from each of its side edges to the boundary of the present curtilage of the dwellinghouse.
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