

CPA Quarterly Insight

Planning, transportation and legal updates for Q1 2023









CITY PROPERTY ASSOCIATION
PLANNING UPDATE
January 2023

CITY OF LONDON ('the City')

New Committee Format

On 01 November 2022, the Planning & Transportation Committee approved a recommendation to update the planning protocol which established a new Planning Application's Sub-Committee. All planning applications will now be determined at the special sub-committee which meets on a broadly monthly basis. Planning & Transportation Committee will deliberate strategic matters quarterly. The updated Planning Protocol is available here.

The Local Plan

The draft Local Plan, 'City Plan 2036' sets out the City Corporation's vision, strategy and objectives for planning, together with policies that will guide future decisions on planning applications. Once adopted, the new Plan will replace the current City of London Local Plan adopted in January 2015.

The Publication (Regulation 19 Version) Local Plan was published for consultation on 19 March 2021 and concluded on 10 May 2021.

It was anticipated that following submission of the Plan in Autumn 2021, the Examination in Public ("EiP") would likely to occur in early 2022. On 14 December 2021 however, Members of the Planning and Transportation Committee agreed to "pause" the <u>preparation of the draft Local Plan</u> to prepare an updated evidence base and to review the draft policies.

The City Members agreed in December 2021 that in the light of the representations received, extended uncertainty over the impacts of the pandemic on office demand and development activity, and the priority need to embed climate action into the Plan, alongside the increasing age of the Plan's evidence base, that some material changes are needed to ensure that the Plan will be found sound by a Planning Inspector. Members that considered that the opportunity should therefore be taken to revise the Plan to ensure that it is fit for a post-Covid and climate-resilient future.

It was also agreed to extend the Plan period to an end date of 2040 to align with the headline net zero target in the City Corporation's Climate Action Strategy.

The City are yet to formally publish a timetable for the next stages, although it is expected that the draft Plan will go through a Committee approvals process through spring 2023, with formal consultation (regulation 19) to commence later in the summer 2023, with a target for submission to the Secretary of State by Autumn of 2023 and the Examination taking place in Winter 2023. Adoption of the City Plan is currently anticipated for 2024. These timescales are subject to further review.

At the Planning and Transportation Committee held on 10 January 2023, Members noted a report that recommended that the Policy Team appoint a consultant to carry out a review of the office market to underpin the evidence base for the emerging Local Plan; we understand this is currently being commissioned.

Draft Supplementary Planning Documents (SPD), Area Strategies and Other Documents

The City Corporation's Planning Advice Note (PAN) on Whole Life Carbon Optioneering was published on 07 June 2022 and approved for consultation by Members of the Planning and Transportation Committee. Consultation began on 06 July 2022. Gerald Eve have published a <u>briefing note</u> and worked with Arup to prepare the CPA's





consultation response. The City Corporation's Policy Team held a series of consultation workshops, one of which was held on 13 September 2022 and was well attended by the CPA Membership. Consultation on the draft PAN closed on 30 September 2022 and the CPA representations were issued to the Board. It is expected that the feedback on the PAN will feed into the **draft Sustainability SPD**, which the City Corporation recently appointed Buro Happold to assist with preparing. The draft SPD is expected to be taken to Planning & Transportation Committee for approval for consultation in March 2023.

We understand that the City are carrying out a review of the evidence base to support an updated **Protected Views SPD** working with Miller Hare to widen the scope of townscape assessment viewpoints across neighbouring London Boroughs. It is not clear when the updated document is likely to be published for consultation.

The City's revisited **Lighting Strategy** was consideration by the Planning and Transportation Committee in November 2022 and was published for consultation on 9 December 2022. Gerald Eve are preparing the CPA Representations jointly with Equation Lighting Consultants. The consultation closes on 09 February 2023.

The following SPD's are currently delayed with no updated on when consultation is expected:-

- Culture;
- Trees Strategy; and
- City Placemaking.

Developer Engagement Guidance and Statement of Community Involvement

The Developer Engagement Guidance and updated Statement of Community Involvement (SCI) were published for consultation on 09 December 2022 are currently undergoing consultation which closes on 03 February 2023.

There is a much greater focus on digital engagement with the community and it puts forward a series of recommendations on how developers should engage with Members of the Planning and Transportation Committee and Planning Applications Sub-Committee and the local community. This includes a requirement to provide a physical model for tall building proposals.

There are also changes proposed to consultation requirements for planning applications that are amended during the determination period where the City will require amendments to applications are considered "material changes", rather than "significant changes" will require full formal re-consultation.

Gerald Eve are preparing representations on behalf of the CPA.

Officer Recruitment

The Environment Department has recently recruited several new Officers to the Planning and Development Team:-

- Emma Kate Barral Planning Officer (started November 2022)
- Georgia McBirney Planning Officer (started November 2022)
- Mark Butler Design Officer (started December 2022)
- Fiona Williams Design Officer (started December 2022)
- Sam Abrahams Design Officer (started beginning November 2022)
- Tom Roberts Design Officer (started in December 2022)
- Katerina Koukouthaki Design Officer (started in November 2022)
- Carina Pohnke Sustainability Officer (started November 2022)
- Ella Knipe Planning Obligations Officer (started January 2023)
- Anna Tastsoglou Principal Planning Officer (started January 2023)

We understand that Transport Officers are being recruited to support Iain Steele and that these will be funded by Planning Performance Agreements. There have been some officers who have changed their roles within the





Department of Environment including Ruby Raw (formerly Design, who has moved to Digital Engagement).

MAYOR OF LONDON

Supplementary Planning Guidance

Several London Planning Guidance ("LPG") documents are being prepared and are at various stages of consultation, some have now been formally published (highlighted in **bold**):-

- Fire Safety LPG* pre-consultation draft published consultation closed in June 2022 London Property
 Alliance prepared a detailed response being reviewed with the London Fire Brigade adoption expected
 in 2023;
- Urban Greening Factor LPG closed 20 December 2021, adoption targeted for early 2023, with some changes to address fire safety issues;
- Air Quality Neutral and Air Quality Positive Guidance closed 27 February 2021 no update;
- Characterisation and growth strategies consultation ended March 2022 adoption expected 2023; and
- Optimising Site Capacity; A Design-led approach consultation ended March 2022 adoption expected 2023.

We understand the GLA are focussing their efforts on finalising the draft LPGs listed above before moving onto others.

*Fire Safety has become a significant area of policy focus for the GLA and National Government, the changes mainly impact residential developments. It has become and area of significant scrutiny at the GLA which is leading to delays in the stage I and stage II process, as a result of uncertainty on the respective positions of the GLA, Government, HSE and Fire Brigades regarding second escape stairs in taller buildings, there have been delays in the consideration of residential schemes by the Mayor at Stage I and Stage II. This position is evolving rapidly. Further detail on the national position is set out below.

Part L 2021 of national building regulations took effect on 15 June 2022 and the Energy Assessment Guidance and Carbon Emissions Reporting Spreadsheet have been updated accordingly. A cover note to accompany the guidance has also been published to explain the key changes.

We understand that the accompanying Part L 2021 software is now available, meaning that planning applicants should now use the new guidance and software. This means that policy SI2 of the London Plan requires a minimum on-site carbon reduction of at least 35% beyond Part L 2021, instead of Part L 2013. It recognises that non-residential development may find this "more challenging."

Future Supplementary Planning Guidance

The formal consultation process on the following guidance was due to take place before the end of 2021, however the GLA have not published updated timeframes for consultation so we expect this to occur in mid-end of 2022. The GLA has also announced the intention to consult on the following additional draft London Planning Guidance topics during 2023:-

- Large-scale purpose-built shared living
- Industry & logistics
- Affordable housing
- Viability
- Green infrastructure strategies
- Parking design & management
- Air quality assessments
- Digital infrastructure
- Accessibility, equality, diversity and inclusion
- Social infrastructure
- Child-friendly city
- Specialist housing





- Cultural and creative workspace

NATIONAL POLICY AND GUIDANCE

Rishi Sunak has replaced Liz Truss as Prime Minister. Jeremy Hunt is Chancellor, with Michael Gove back as Levelling Up, Housing and Communities Secretary. Lucy Frazer is Housing and Planning Minister. Lee Rowley is junior Minister for Local Government and Building Safety. Lee Rowley was a Westminster Maida Vale ward councillor between 2006 and 2014, alongside Alistair Moss.

National Planning Policy Framework Consultation

A further consultation on planning reforms, the Levelling-up and Regeneration Bill: reforms to national planning policy, was launched in December 2022. Views are sought on proposed changes to the NPPF and other changes to the planning system. The consultation is essentially in two parts, one focused on immediate changes to the NPPF especially relating to establishing housing targets, speeding up plan making, and reducing the evidential requirements for local planning policies, and the second presaging more extensive future changes, including on the4 potential for more consistent / holistic carbon assessment of development proposals and the introduction of national development management policies. Some NPPF amendments will, subject to consultation, be adopted formally in Spring 2023, with further alterations to the NPPF, and the other reforms, pursued later.

The CPA/London Property Alliance are expected to prepare representations on those items which effect central London, including the changes to the evidential requirements for local plan policies and the scope of national development management policies.

Fire Safety

In December 2022, the Government launched consultation on changes to Building Regulations on fire safety, including proposals to require residential buildings of more than 30m to have a second staircase. The National Fire Chiefs' Council has issued a position statement indicating that this should be required at 18m rather than 30m. Uncertainty on the requirement for a second staircase for developments of this scale, and the implications of these requirements for submitted planning applications, are causing delays to decision-making at planning stage.

Levelling Up and Regeneration Bill

On 10 May 2022, the Levelling Up and Regeneration Bill ("LURB") was announced as part of the Queen's Speech. It was reported that the Bill will include a replacement Infrastructure Levy, potentially to replace s106 affordable housing contributions with a single flat-rate tariff. The Government has confirmed this would be based upon "final sales values". The previously mooted Planning and Infrastructure Bill based on Liz Truss and Kwazi Kwarteng's "Growth Plan" has ben abandoned.

The LURB is progressing through Parliament and it is currently at Second Reading in the Lords. The Government has indicated it hopes it will receive Royal Assent in the Spring. Key planning-related provisions include more centralised and standardised national development management policies, digitisation of the planning system, support for design codes, street votes and neighbourhood planning, measures to accelerate local plan preparation, and improvements to the system for amending planning permissions.

The Housing Minister has confirmed that a further consultation on the Infrastructure Levy will be launched "shortly".

Key Called in Planning Applications

Michael Gove, the current Secretary of State for DLUHC "called-in" the Marks and Spencer Oxford Street scheme in Westminster which was heard at public Inquiry in October 2022. The Secretary of State's decision is likely to affect how local authorities approach retrofit and demolition on projects. The Inspectors report is anticipated in January 2023 which will be sent to the SoS for decision.





On 31 August 2022, the former SoS for DLUHC, Greg Clark also "called-in" the ITV Studio application at 72 Upper Ground in Lambeth which was heard in December 2022. The Decision is expected in early 2023.

Other

Members of the PCS civil service union at the Planning Inspectorate are to strike from 1 February 2023, which is likely to lead to delays in appeals, including potentially the M&S and ITV Studios decisions. PCS workers at DLUHC have also voted to strike.

Contacts



Lisa Webb Senior Partner

Email: lwebb@geraldeve.com Tel: 020 7333 6225 Mob: 07747 607 309



Jeremy Randall Partner

Email: jrandall@geraldeve.com Tel: 020 7333 6328 Mob: 07768 617 235



Liam Lawson Jones Associate

CPA Next Gen Chair Email: llawsonjones@geraldeve.com

Tel: 0203 486 3605 Mob: 07557 202 231





CITY PROPERTY ASSOCATION

TRANSPORT UPDATE - JANUARY 2023

This transport note sets out the key transport issues relevant to the City of London since October 2022. **Streets & Walkways Sub Committee**

The Streets & Walkways Sub Committee met on 8th November 2022. Below are items of interest from the agenda/minutes:

Beech Street Transportation and Public Realm Project

In September 2022, Members considered a report for proceeding with the public consultation for the Beech Street zero emission scheme. It was recommended to consult on Option 1, which included the below options:

- 1a would close the Golden Lane/Beech Street junction to all motorised traffic
- 1b would close the Golden Lane/Beech Street junction to all motorised traffic except zero emission vehicles
- 1c would allow the Golden Lane/Beech Street junction to remain open to all southbound vehicles (the left turn from Beech Street into Golden Lane would only be available to zero emission vehicles).

LB Islington stated they only support consulting on Option 1c and that they are committed to working with the City on a joint area-wide approach, where both authorities share many strategic objectives. LB Islington wish to progress with this.

Air quality modelling for Options 1a/b, Option c and a 'do nothing' option show the best air quality results for Options 1/b with Option 1c only marginally worse. Both options show an improvement on the 'do nothing' option. It is estimated that Option c would increase traffic by 1,200 vehicles a day on Golden Lane, however that this would remain below pre-scheme traffic levels of approximately 3,300 vehicles a day. Concerns were raised regarding Golden Lane becoming a rat-run and the impact on the local school.

It has been agreed to proceed with Option 1c; however, Members noted that Option 1c together with making Golden Lane a school street could deliver a more agreeable outcome.

Engagement on the longer-term area wide approach in partnership with LB Islington is underway. An initial online engagement form and public drop-in sessions are running from 16th January to 6th March. This will help to develop a Healthy Neighbourhood Plan for the Bunhill, Barbican and Golden Lane neighbourhoods. Further details can be found here.

City Cluster Programme

An update was provided on the progress of the City Cluster programme, which includes the pedestrian priority and traffic reduction workstream, as well as wellbeing and climate resilience, and activation and engagement.

There is currently a funding gap for the progression of longer-term projects, including key transformational projects such as Leadenhall Street. A funding strategy of internal and external sources has been devised; however, no capital bid is considered for next year. As a result, progress on such projects will be delayed and may no longer align with the timescales of current and future developments in the area. It is proposed to submit a capital bid for 2024/25 onwards so these projects can continue.





The Fleet Street Area Healthy Streets Plan

The Fleet Street Area Healthy Streets Plan (HSP) will provide a framework for improving the public realm and managing traffic within the area in support of the City of London's Transport Strategy. The neighbourhoods of focus are Chancery Lane, Fleet Street and Lanes, Old Bailey, Ludgate and Whitefriars.

The first step is finalising a draft set of proposals for consultation, which if approved, will begin in February 2023. Following the consultation and traffic and pedestrian modelling, a final HSP is planned for Committee in July 2023. The plan will include proposed projects and an implementation programme, with projects subject to additional consultation and approvals once initiated.

Draft proposals maps can be <u>found here</u>. <u>Transport</u>

Strategy Review

As part of the Transport Strategy Review, an evaluation has been undertaken to understand which of the Transport Strategy's 54 proposals will require major change and which are likely to only need minor amendments. Following analysis and engagement with stakeholders, 14 proposals are noted to need significant change, 21 minor updates and 19 require no change.

Updates and reviews relate to key issues such as accessibility, cycling, emerging transport technologies and prioritising pedestrians. For example, in relation to delivery and servicing, the City may need to take a less active role in facilitating consolidation services since planning requirements have helped to create a viable market for these services. Instead, an updated approach needs to consider support to finding suitable sites within the Square Mile for delivery hubs, as well as for opportunities to collaborate with BIDS on freight and servicing initiatives. Another proposed update is incorporating micro-mobility within proposals and ensuring these modes are well managed and safe.

Alongside a proactive engagement plan, the Transport Strategy Review has undertaken extensive data collection. Data from TfL on London Underground volumes in the City from late summer and early autumn indicate that weekday commuting patterns have stabilised at 65-70% of pre-pandemic levels with Thursday the busiest day for travel to the City. Weekend travel has returned to pre- pandemic levels, and in October exceeded pre-pandemic levels.

Consultation on the proposed changes to the Transport Strategy is planned for Summer 2023. Traffic Order

Review

Following a Court of Common Council motion in April 2022, all Traffic Management Orders (TMOs) in the City are being reviewed. The deadline for the TMO review has been extended due to the amount of work involved from December 2022 to March 2023, with a final report to the Court due in April 2023.

The Stage 2 review will incorporate two linked scoring and review phases. The first is a desktop review of all non-excluded Orders and Measures against a set of scoring criteria. This approved scoring system scores the TMOs against the seven Transport Strategy Outcomes and other metrics and includes Member and stakeholder feedback. The second phase will involve site visits and further examination of those that scored poorly in the first phase. This second phase is planned to be complete by February 2023.

Planning and Transportation Committee

The Planning and Transportation Committee met on 11th October 2022, 1st November 2022 and 10th January 2023. Below are items of interest from the agendas.

Pan-London rental e-scooter trial extension

The Pan-London rental e-scooter trial has been extended until 31st May 2024, of which the City of London will continue to participate in.





The experimental traffic orders (ETOs) originally put in place to provide parking for rental e-scooters, dockless cycles and pedal cycles are due to expire in January 2023 and cannot be extended as an experimental order. It has been agreed that an Order which continues the provisions of the ETOs indefinitely will be made.

In the first year of the e-scooter trial in the City of London, over 70,000 trips have been made and e- scooter parking bay compliance is estimated at above 95%. As of September 2022, no serious injuries were reported in the City of London from TfL, e-scooter operators, the Metropolitan Police or the City of London Police. However, a manual review of e-scooter casualty data from the Department of Transport suggests nine e-scooter collisions occurred in the City of London. This did not provide detail on the severities of the casualties, nor whether it was private or rental e-scooters that were involved.

OTHER UPDATES

St Paul's Gyratory Scheme

The City of London has launched a survey to gather feedback on how people use and feel about St Paul's gyratory. This is to help develop three options that seek to transform the area's streets and public realm.

The survey will close on 25th January 2023 and can be found here.

Culture Mile

The Culture Mile will become embedded within Destination City from April 2023. This is to further inform Destination City and support ongoing creative collaboration between stakeholders across the City of London.

The Culture Mile has supported the establishment of a new Business Improvement District (BID) in the area. The ballot on the BID proposal opens to the business community on 23rd January and will run for a month. If successful, the new BID will start a 5-year term in April 2023.

Liverpool Street Consultation

A second consultation event for proposals to upgrade Liverpool Street Station is being held on 18 - 19 January. The proposals include a new commercial building that will support the delivery of £450 million for the station improvements. The transformation seeks to improve the public realm and accessibility of the station and deliver a leisure and retail destination.

Further details on the consultation event can be found here.

Santander Cycles Hire Scheme

The bike hire scheme has seen another record-breaking year with over 11,506,889 hires over the year. Furthermore, in October a fleet of 500 e-bikes were introduced. So far, 129,232 e-bike hires have been made, with Waterloo Station being the most popular docking station.

Roy.mcgowan@momentum-transport.com

CPA quarterly update

January 2023

Landlord and tenant

- A reminder that, from 1 April 2023, it will be unlawful for a landlord to continue to let a commercial property with an EPC rating of below E, unless an exemption applies and has been validly registered on the PRS Exemptions Register.
- In the case of Lambeth LBC v Kelly and others [2022] UKUT 290 (LC) a landlord was granted dispensation from the statutory consultation requirements under section 20 Landlord and Tenant Act 1985 despite the First Tier Tribunal already determining the service charge payable by an affected leaseholder. The Upper Tribunal held that the FTT could have granted dispensation and had jurisdiction to lift or alter the cap on leaseholders' contributions where a landlord has failed to consult on a dispensation application. The landlord had failed to consult and served section 20 notices on tenants after the works had already been completed. However, the claimant (tenant) has not suffered any actual loss and therefore dispensation was not unreasonable.
- The case of Hush Brasseries Ltd v RLUKREF Nominees (UK) One Ltd provided some further comment on the topic of forfeiture. The tenant was granted a 25-year lease and an option to renew in the final year of the term. The landlord could terminate the option if it had ground to forfeit the lease and sought to terminate as a result of tenant rent arrears. However, the landlord did not seek to forfeit the lease. The court granted the tenant relief from forfeiture on the basis that the landlord could not elect to terminate an option and not forfeit the lease for the same breach - by doing so the landlord would benefit twice-over.
- The Telecommunications Infrastructure (Leasehold Property) (Conditions and Time Limits) Regulations 2022 came into force on 26 December 2022. They are part of the implementing regulations for the Telecommunications Infrastructure (Leasehold Property) Act 2021 which gives operators statutory grounding to apply for interim Code rights in respect of multiple dwelling buildings, where a tenant has submitted a service request to the operator, but the landlord has repeatedly failed to respond to the operator's formal notices requesting access.

Regulatory and compliance

- The Register of Overseas Entities (Verification and Provision of Information) (Amendment) Regulations 2022) came into force on 12 January 2023. It excepts certain information from the verification regime, for example, information about the beneficiaries of a pension scheme trust and information previously verified. It also provides for certain information to be verified using documents or information from a reliable source that is not independent of the individual being verified.
- The new Economic Crime and Corporate Transparency Bill is passing through Parliament and deals primarily with companies and limited partnerships. However, the Government may seek to roll-out similar changes to LLPs and unregistered companies in secondary legislation. The proposals within the Bill do not generally affect registration/disposal of land since the proposals are primarily of a corporate nature. However, the Bill contains a clause that would result in an Overseas Entity not being treated as "registered" if it fails to respond to a new form of notice from Companies House. Failure to be treated as registered has potential to impact dealings with property.
- The Secretary of State for Levelling Up, Housing and Communities has asked the Competition and Markets Authority (CMA) to consider undertaking a market study of the housebuilding sector in order to ensure the market is working in the interests of consumers. The request is based on the need to assess "significant changes in both the market and the challenges facing the country as a whole – such as net zero, changes to the structure of the market following the financial crisis and changing demographic trends."
- The Fire Safety (England) Regulations 2022 come into force on 23 January 2023. They impose new duties on responsible persons (as defined in the Fire Safety Order) and apply to all buildings in England that comprise two or more domestic premises although there are more obligations on responsible persons depending on the height of the building. Obligations include a requirement for a safety information box to be installed and updated at least annually, to display fire safety instructions, provide required information about fire doors to residents of the building, inspection of fire doors and installation of wayfinding signage.

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 The Royal Institution of Chartered Surveyors is consulting on proposed changes to guidance in relation to the valuation of investment properties. They are seeking to implement changes to the UK supplement to the Red Book in respect of Regulated Purpose Valuations (such as for takeovers and CIS) to produce a more trusted valuation service. Proposals include mandatory rotation of valuers and a maximum eight-year tenure for valuers.

Development and investment

- The Levelling Up and Regeneration Bill continues its passage through Parliament. Proposed mandatory housing targets have recently been removed from the remit of the Bill. The current proposals include:
 - limiting CIL to Greater London and Wales, and introducing a new infrastructure levy;
 - new information disclosure requirements relating to land transactions entitling the Land Registry to require information about the ownership and control of land;
 - piloting Community Land Auctions; and
 - reducing the mitigation measures required to offset nutrient pollution.
- The Product Security and Telecommunications Infrastructure Act received Royal Assent on 6 December 2022. Operators will have rights to upgrade, access and share subterranean infrastructure provided the impact on the owner/occupier of the land is not materially impacted. They will also have recourse to court orders where an occupier fails to respond to repeated notices seeking an agreement. Disputes regarding renewal and the terms of new Code agreements will more closely mirror renewal processes under the Landlord and Tenant Act 1954.
- In the case of Fairhaven Shipping Company (UK) Ltd v Rolf Hugo Munding [2022] the sale of a property fell foul of a preemption agreement which had been protected by a restriction on title. In advance of disposal, the property had been offered to the person with the benefit of the pre-emption however they had failed to accept within the relevant time period. The person with the benefit of the pre-emption challenged the sale and the application made by the purchaser to remove the restrictions on title on the basis that a) the transfer was not a disposal under the terms agreed or b) that it was not a disposal on terms no less favourable than those offered. The case turned on the drafting of the pre-emption and the fact that the court considered that the terms offered to the purchaser were less favourable than those offered to the beneficiary.

ESG/environmental

Part 7 of the Environment Act is now in force. This introduces
the concept of conservation covenants, which will operate
as local land charges to preserve conservation in respect of
land to which they apply. Landowners and local authorities/
specific organisations will be able to agree conservation
covenants and, once in place, they will bind the landowner and

their successors. Such covenants will exist in perpetuity on freehold land unless expressed otherwise (although they can be terminated by agreement) and certain covenants (i.e. biodiversity covenants) must last for at least 30 years. The Government has also published guidance on conservation covenants.

 Draft legislation has been laid to implement new long-term environmental targets under the Environment Act 2021, which is anticipated to pass onto the statute books early in 2023. The regulations relate to setting targets for increasing biodiversity on land (species abundance and habitat restoration/ creation, increasing resource efficiency and waste reduction, improving air and water quality and increasing woodland cover (through planting and associated biodiversity targets).

Construction

- Developers who have committed to the Building Safety Pledge are unwilling to sign the Government's proposed contract citing that it goes beyond the requirements of the pledge. Negotiations are still continuing.
- The Government is currently consulting on the Building Safety
 Levy which it hopes will raise £3bn over ten years. Current
 proposals mean that, once in force, the levy will apply to all
 new residential buildings. Given the breadth of the definition of
 "residential building", this may include hotels. The Government is
 considering whether BTR, purpose-built student accommodation
 and the older living sector will be exempt from the levy.
- The Government is also consulting on amendments to Approved Document B which supports Part B of the building regulations (fire safety). Those proposals include a requirement for a second staircase in residential buildings more than 30m tall.
- Draft regulations setting out what will amount to a higherrisk building for the purposes of the Building Safety Act have been laid before Parliament for review. Buildings which fall within the definition will be subject to a new occupation phase regime and an enhanced building control regime during the construction phase. The need to obtain regulator approval before start on site and at practical completion will have a significant impact on programme.
- FIDIC has published updates to its 2017 editions of the Red, Silver and Yellow Books.
- The Government has launched a pilot of the Medium-Rise Scheme which will provide funding for the remediation of unsafe external wall systems or measures to mitigate the risk associated with the external wall system on residential buildings 11m or taller (and where the original developer cannot be traced or identified). Money from the Building Safety Levy (see above) will be used to fund the scheme when it is launched in full. It extends Government support to residential buildings below 18m or seven storeys for the first time.
- The Levelling Up, Housing and Communities Committee has announced that it will be undertaking follow-up work on building safety in early 2023. It is anticipated that the Committee will consider identified shortcomings within the

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Building Safety Act 2022, the (as yet unsigned) developer pledge, funding for buildings 11-18m in height and general issues relating to building safety and remediation.

Optimares SpA v Qatar Airways Group [2022] (Comm) is a reminder that the courts will, generally speaking, respect the right of a contract party to take its own commercial interests into account when deciding whether to terminate a contract and will be reluctant to find that a party is subject to requirements to act in good faith or reasonably when deciding whether to terminate a contract. If parties wish to impose this kind of obligation, they must do so clearly and unequivocally in their contract.

Tax

- From April 2023, changes to the REIT rules will come into effect following a Government announcement on 9 December 2022, designed to make REITs more attractive as an investment vehicle. Changes include amendments to the "development rule" and the property holding requirements. For example, REITs that hold a single property asset valued at £20m or more will not be required to own at least three properties in their rental business.
- HM Treasury's proposals on sovereign immunity reform will be eagerly awaited. Although the Government clearly has sovereigns' UK real estate assets in their sights, it remains to be seen whether they will accept that any property assets should continue to benefit from exemption (for example, passive investment properties, as contrasted with ones involving significant development activity by the sovereign).
- REITs are likely to become increasingly popular as holding vehicles for non-UK investors, thanks to the increase in the corporation tax rate. Currently, the difference between the corporation tax rate (19%) and the treaty rate applicable to overseas' shareholders' REIT distributions (commonly 15%) is not always enough to justify the use of a REIT for these investors. However, from next April the potential saving will be much more significant. This, combined with HMRC's ongoing relaxation of certain aspects of the regime, in particular for ones owned by "Institutional Investors", is likely to make REITs the vehicle of choice for many of these investors. An exception to this may be sovereigns, whose status as "Institutional Investors" is under threat as part of the sovereign immunity reform project referred to above. Removal of this status would cause major headaches for existing "private" REITs that rely on their sovereign shareholders' "Institutional Investor" status to satisfy the non-closeness condition, and benefit from the relaxation of the listing requirement.
- HMRC's approach to the VAT treatment of remedial fire safety works will be watched closely. Following the Grenfell tragedy in 2017 HMRC confirmed to various taxpayers and industry groups that these works could be zero-rated provided certain conditions were met, accepting that the defects in the affected

buildings effectively meant the properties' construction had not been completed and the works were akin to "snagging" works. HMRC have now indicated that these clearances do not reflect their policy, which is that zero-rating will not apply other than in very narrow circumstances. Apart from the technical merits of the case for zerorating, and the potential cost impact on buildingowners (many of whom cannot recover VAT on their residential assets), this raises interesting questions about the status of HMRC rulings and taxpayers' entitlement to rely on them.

Long-awaited changes to the UK/Luxembourg double tax treaty were expected to come into force this year, however, as the treaty has not been ratified by Luxembourg the changes will not take effect until 2024. From a real estate perspective one of the key changes is removing the exemption from UK tax for Luxembourg companies selling UK property rich vehicles. Unlike the extension in domestic legislation of capital gains tax to non-residents owning UK real estate, this change will not be accompanied by a rebasing of affected companies' assets. This means that the date of the treaty change will be a cliff edge for these companies, many of whom may well look to exit their investments (or perhaps onshore them) prior to the change.

Contacts

Real Estate



Clare Breeze Partner DD +44 (0)20 7849 2404 clare.breeze@macfarlanes.com



Rebecca Delaney Senior Knowledge Lawyer DD +44 (0)20 7791 4094 rebecca.delaney@macfarlanes.com



Construction Angus Dawson Partner DD +44 (0)20 7849 2419

angus.dawson@macfarlanes.com



Fiona Bishop Senior Knowledge Lawyer DD +44 (0)20 7791 4110 fiona.bishop@macfarlanes.com



Tax Kirsten Prichard Jones Senior Counsel DD +44 (0)20 7849 2613 kirsten.prichardjones@macfarlanes.com



Macfarlanes LLP | 20 Cursitor Street London EC4A 1LT T +44 (0)20 7831 9222 | F +44 (0)20 7831 9607 | DX 138 Chancery Lane | macfarlanes.com

