



City Property Association

# CPA Quarterly Insight

Planning, transportation and legal updates for Q2 2023

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A NEWMARK COMPANY



MACFARLANES

CITY PROPERTY  
ASSOCIATION PLANNING  
UPDATE  
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CITY OF LONDON ('the City')

**The Local Plan**

Background

The draft Local Plan 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.
- On 14 December 2021 however, Members of the Planning and Transportation Committee agreed to "pause" the [preparation of the draft Local Plan](#) to prepare an updated evidence base and to review the draft policies.
- 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 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.

Next Steps

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 autumn 2023, starting with Planning and Transportation Committee in October 2023, Policy and Resources Committee in November 2023 and the Court of Common Council in December 2023, with formal consultation (regulation 19) to commence in late December 2023 or January 2024, with a target for submission to the Secretary of State by late spring/early summer 2024 and the Examination taking place in autumn 2024. Adoption of the City Plan is currently anticipated for mid-2025. 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 was awarded to Arup and should be concluded in April/May 2023 and will then be taken to Local Plans sub-committee on 23 May 2023, and published as soon possible after committee as part of the evidence base for the Local Plan.

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 [briefing note](#) 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. The PAN was formally adopted at Planning and Transportation Committee on 07 March 2023. An **appendix to the PAN** is expected to be published on the week commencing 10 April 2023 setting out the scope and recommended approach for independent verification.

It is expected that the feedback on the PAN will feed into the **draft Sustainability SPD**. The draft SPD was not taken to Planning & Transportation Committee for approval for consultation in March 2023 as expected and we understand that this is now delayed until the July 2023 Planning and Transportation Committee. The draft Sustainability SPD is being prepared with input from Buro Happold.

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. Officers have anticipated that this SPD will be published for consultation alongside the Local Plan in early 2024.

The City's revisited **Lighting Strategy** was considered 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 closed on 09 February 2023 and is expected to be adopted in summer 2023.

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

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

A draft Sports Strategy and draft SME Strategy are expected to be published in summer 2023.

## 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 and are currently undergoing consultation which closed 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 prepared representations on behalf of the CPA. The Developer Engagement Guidance and SCI are expected to be taken to the 11 May 2023 Planning and Transportation Committee for approval.

## 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)
- Janey Lin Zhao – Planning Officer (started March 2023)
- Jack Wride – Senior Planning Officer (started March 2023)
- Ella Knipe – Planning Obligations Officer (started January 2023)
- James Flynn – Planning Obligations Officer (started February 2023)

Alison Hayes (Senior Planning Officer) left the Corporation in November 2022 and Daisy Estrada (Senior Design Officer) returned from maternity leave in early 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

### The London Plan

The Mayor is progressing with the Planning for London Programme, a programme of events designed to allow for detailed discussion of the long-term challenges facing London and its built environment. The findings from this programme will help to inform a new or updated London Plan after the end of this Mayoral term.

### 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;
- **Sustainable Transport, Walking and Cycling** – adoption 19 December 2022;
- **Urban Greening Factor LPG** – adopted 2 February 2023
- **Air Quality Neutral and Air Quality Positive Guidance** – both adopted 8 February 2023
- Characterisation and growth strategy LPG – consultation ended March 2022 – adoption expected spring 2023; and
- Optimising Site Capacity; A Design-led approach – consultation ended March 2022 – adoption expected spring 2023.

**\*Fire Safety** has become a significant area of policy focus for the GLA and National Government, the changes mainly impact residential developments, albeit some commercial schemes are also affected. It has become an 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, recently the GLA have not been issuing Stage II reports for residential buildings over 30 metres without two staircases. Some London LPAs have adopted an approach whereby all buildings over 18m (not 30m) should be designed with two staircases. 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 GLA have said that consultation on the following documents is expected shortly:

- Affordable housing and viability (Business LDN briefing led by the GLA being held on 18/04/22)
- Accessibility
- Digital connectivity
- Large-scale purpose-built shared living (second round of consultation)
- Planning for Industrial Capacity

## NATIONAL POLICY AND GUIDANCE

### 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 were sought on proposed changes to the NPPF and other changes to the planning system. The consultation was 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 the 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.

Gerald Eve prepared representations on behalf of the CPA/London Property Alliance s on those items which affect central London, including the changes to the evidential requirements for local plan policies and the role of densification in achieving planning objectives.

## Fire Safety

In December 2022, the Government launched a 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.

## Biodiversity Net Gain (“BNG”)

The Government has recently issued its response to the Biodiversity Net Gain (“BNG”) consultation held last year. This response sets out the Government's intention for how BNG is likely to be implemented in practice. The new BNG requirements will be coming into force in November this year for major developments. The requirement comes from the Environment Act 2021 brought in to law a mandatory ‘Biodiversity Gain Objective’ for development to deliver an improvement of at least 10% to the biodiversity value of the onsite habitat.

Permitted development is excluded from the requirement. There is still some uncertainty about how the BNG would be calculated where there is no biodiversity on an existing site (which would cover many buildings within the Square Mile). The Government intends to make regulations to make exemptions for:

- a. Development impacting habitat of an area below a ‘de minimis’ threshold (25sqm or 5m for
- b. linear habitats)
- c. Householder applications
- d. Biodiversity gain sites
- e. Small scale self-build and custom housebuilding (intended to be defined in a way that doesn't

f. enable large sites made up of many custom plots being exempt).

Whilst exempt from BNG, the response acknowledges that these sites still have opportunities to deliver biodiversity enhancements. Therefore, DLUHC will be looking to develop planning policy for minor development to secure proportionate on-site biodiversity enhancements where possible.

The Government does not propose to specifically exempt:

- a. Previously developed land (although some sites will effectively be exempted by a zero baseline score in the metric)
- b. Change of use applications
- c. Temporary applications (though the metric makes allowances for short term habitat loss)
- d. Developments which would be permitted development but are not on account of their location in conservation areas, AONBS or national parks
- e. e. Development on statutory sites designated for nature conservation.

Further secondary legislation / regulations / guidance is expected to be issued by the Government shortly, prior to November 2023.

### 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.

The LURB is progressing through Parliament and it is currently at the Committee Stage in the Lords. The Government has indicated it hopes it will receive Royal Assent in the Spring, albeit a number of amendments have been tabled in the Lords so this could well be delayed. Key planning-related provisions include introduction of the infrastructure levy, 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.

### Infrastructure Levy Consultation

The Infrastructure Levy consultation began on 17 March 2023 and runs until 9 June 2023. It is available to view [here](#). The Infrastructure Levy seeks to replace the existing system of developer contributions through Section 106 Legal Agreements and the Community Infrastructure Levy ("CIL") with a rate per square metre linked to Gross Development Value.

Gerald Eve are preparing a response on behalf of the London Property Alliance.

### Environmental Outcomes Reports

A [consultation](#) was launched on 17 March 2023 and closes on 9 June 2023 in respect of the new proposed Environmental Outcomes Reports process. The new proposed system would replace the EU-derived Strategic Environmental Assessment and Environmental Impact Assessment processes with a more streamlined system.

### Planning Application Fees Increase Consultation

The DLUHC [published](#) a consultation on 28 February 2023 in respect of increasing planning application fees and improving performance within local planning authorities. The consultation closes on 25 April 2023 and Gerald Eve are preparing representations on behalf of the London Property Alliance/CPA. The consultation proposes to increase planning fees by 35% for major applications and 25% for all other applications, as well as other measures to seek to improve the resource and performance of planning departments.



## Permitted Development Rights Consultation

The DHLUC also [published](#) a consultation on 28 February 2023 relating to changes to permitted development rights, which ends on 25 April 2023. The consultation proposes changes to the rights relating to campsites, film-making, flexibility for local authorities to undertake development and changes to the rights for solar equipment on and within the curtilage of domestic/non-domestic buildings to help facilitate the take up of solar equipment.

## Minimum Energy Performance of Buildings Bill

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum level of energy efficiency for rented property in England and Wales that require non-domestic properties to achieve EPC E or greater from 01 April 2023.

A Private Members Bill was introduced to the House of Commons on 22 March 2023 which seeks to introduce a requirement for non-domestic buildings to achieve EPC B by 2030. The Bill is at the Second Reading stage.

## 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. A decision is expected in May 2023, albeit this may be delayed until after the publication of the revised NPPF.

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. A decision is expected in May 2023, albeit this may be delayed until after the publication of the revised NPPF.

## Other

Members of the PCS civil service union which includes the Planning Inspectorate are to strike on 28 April 2023.

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## TRANSPORT UPDATE – APRIL 2023

This transport note sets out the key transport issues relevant to the City of London since January 2023.

### Streets & Walkways Sub Committee

The Streets & Walkways Sub Committee met on 17th January, 14th February and 7th March. Below are items of interest from the agenda/minutes:

#### Dockless Cycles Policy and Legal Powers Update

Since 2020, over half a million dockless bike trips have been undertaken by City residents, workers, and visitors; with demand continuing to grow. A number of complaints were received from Members, businesses and members of the public regarding dockless bike schemes in the City in 2022. These largely concerned inappropriate parking, obstructions to pavements, fire escapes and loading bays, and anti-social riding behaviours.

In autumn 2022, the City undertook a review of Lime and HumanForest's operations which included parking audits, operator meetings and data requests, and internal consultation with impacted divisions within the City. It was found that dockless cycle hire parking compliance was lower than those observed in the pan-London e-scooter trial (90-95%), highlighting operational differences between cycle and e-scooter schemes and the impact of regulatory powers for e-scooters. The data also indicates that thousands of dockless cycles are being parked outside of bays each month, due to oversaturation of existing parking places and increased demand for dockless cycle hire services across Central London.

A summary of the challenges and opportunities associated with dockless cycle hire within the City were outlined. Dockless bikes causing obstructions were noted as a very frequent and high impact challenge with proposed mitigations including user education, operators promptly removing bikes and improving the visibility of parking areas. Other mitigations suggested included operators patrolling parking areas to rebalance and tidy bays and potentially dockless cycle parking stands, as well as asking operators for financial contributions. It was noted that dockless cycles have supported an increase in cycling rates in the City and provide additional network capacity during disruption.

As part of the review, operators have agreed to explore several improvements, such as temporary stencils in non-compliance hotspots, additional behavioural campaigns and dynamic parking bay statuses to prevent users ending their trips in bays at capacity.

The Committee approved to continue to approve dockless cycle hire operators in the City, renewing HumanForest's status and extending the review period on Lime's approval status until May 2023. Lime will be asked to develop a plan for ongoing operational improvements and provide monthly compliance data updates. It is proposed that HumanForest and Lime will both be asked to make voluntary financial contributions.

The Government has not yet released a timetable for the legislation on e-scooters and micromobility. Fleet

#### Street Area Healthy Streets Plan

The Fleet Street Area Healthy Streets Plan (HSP) will provide a framework for improvements to streets and public realm in the area in support of the City of London's Transport Strategy. The Committee approved the draft HSP for public consultation, which will start in February 2023. A final plan will be prepared in July 2023 following consultation and some pedestrian and traffic modelling.



The draft HSP can be [found online here](#).

#### Vision Zero Plan 2023 – 2028

The City of London Corporation made a commitment that by 2040, all transport related deaths and serious injuries will be eliminated from the streets of the Square Mile by 2040. This commitment is included within the City's Transport Strategy and a number of road danger reduction measures have been delivered. However, the City is not currently on track to achieve this target and as a result, a new Vision Zero Plan has been devised. This includes additional measures to reduce road risk structured around the Safe Systems themes of Safe Speeds, Safe Streets, Safe Vehicles, Safe Behaviours and Post Collision Response. New interim targets have also been set for 2026 and 2030 to support the overall 2040 commitment. If approved, the Vision Zero Plan will be a joint document with the City of London Police, and TfL would be anticipated as a co-signatory. The draft plan has been progressed to the Police Authority Board and to the Planning & Transportation Committee.

The draft Vision Zero Plan 2023-2028 can be [found here](#). Traffic

#### Order Review – Phase Two Update

Following a Court of Common Council motion in April 2022, all Traffic Management Orders (TMOs) in the City are under review. All experimental and permanent traffic orders have been indexed, with Stage 2 now underway. This has consisted of a desktop review of all non-excluded TMOs (1299) and an assessment against an agreed scoring criteria. High scores indicate a disagreement with a policy outcome or a potential negative impact on the street network. The highest scoring TMOs are now being further analysed and site visits undertaken. This will identify TMOs that may require amending, revoking or further review which will be reported to the Planning & Transportation Committee this March and the Court of Common Council in April 2023.

#### Bank Junction Improvements (All Change at Bank) Traffic Mix and Timing Review Update

Following the Court of Common Council motion in April 2022, the 'All Change at Bank' project was asked to review the traffic and timing mix of the restrictions at Bank. Initial feasibility modelling indicates that it would be significantly detrimental to reintroduce general traffic through Bank at all times. It would have significant implications on journey times for buses and general traffic travelling on London Wall, particularly westbound in peak times. As a result, no further work will be undertaken on the option of reintroducing general traffic through Bank during restricted hours.

Feasibility and viability assessments will continue for the remaining scenarios, as listed below:

- Taxis with buses and cycles
- Powered two wheelers with buses and cycles
- Taxis and powered two wheelers with buses and cycles

#### Pedestrian Priority Streets Programme

The Pedestrian Priority Streets Programme is a three-year programme seeking to improve the comfort, safety and accessibility of people walking across the Square Mile. Following the experimental traffic order's statutory and public consultation exercise, Members have approved permanent traffic changes (subject to TfL approval) at:

- King Street (one-way northbound with contraflow cycle lane)
- Old Jewry (closed to motor vehicles from Poultry to Fredericks Place, with remainder two-way)
- King William Street (traffic restrictions at certain times, except for loading, access and pick up/drop off)

The Cheapside scheme, the Old Broad Street/Threadneedle Street scheme and the Chancery Lane scheme will be reported on in May 2023 following the completion of the six-month statutory period.

### Annual On-Street Parking Accounts 2021/22

In 2021/2022 £10.699m was surplus arising from on-street parking activities, with a total of £6.172m applied in 2021/22 to fund approved projects. The surplus from the On-Street Parking Reserve was £51.652m, which will be wholly allocated to funding various highway improvements and other projects over the medium term.

### Moorgate Crossrail Station Links Update

The Moorgate Crossrail Stations Links (MCSL) project seeks to improve public realm in the Moorgate area for people walking and cycling. It focuses on:

- Improvements to the Moorgate corridor between London Wall and Ropemaker Street, with improvements to pedestrian crossings at key junctions.
- Public realm enhancements on the northern section of Moorfields and on the western arm of Finsbury Circus.

The project has progressed slowly with delays on the Finsbury Circus western arm and Ropemaker Street junction. In relation to the Moorgate/London Wall junction, the concept designs propose to remove the central islands on Moorgate and London Wall west of the junction to create more space for pedestrians and cyclists. A signalised pedestrian crossing close to the Finsbury Circus junction would help to divert some pedestrians away from the two main junctions to the north and south.

Designs are still being developed and modelled, and will also be informed by future vehicular access arrangements on Bishopsgate and Beech Street.

### Planning and Transportation Committee

The Planning and Transportation Committee met on 7<sup>th</sup> March. Below are items of interest from the agenda.

#### Traffic Order Review

As discussed above, following the Court of Common Council motion in April 2022, a review of current Traffic Management Orders (TMO) has been underway. The 78 highest-ranking orders from an initial assessment underwent detailed review by consultants with site visits to identify issues and potential modifications to orders. The consultants identified 36 orders with potential for improvements, the majority of which were waiting and loading restrictions. City Officers identified an additional 32 orders that could be amended to better support the delivery of the Transport Strategy. A new programme will be set up to assess the recommendations (from both the consultant and City Officers) and to deliver any necessary changes to orders.

Traffic survey data was included within the review from 23<sup>rd</sup> November 2022. This indicates that all-day motor vehicle volumes in the City of London are at approximately 80% of pre-pandemic levels (2019), all-day cycle at 102% of pre-pandemic levels, and all-day pedestrian levels at 63% of pre-pandemic levels. Furthermore, cycles now make up the largest category of daytime vehicular traffic on City Streets (27% of all traffic), compared to 2019 where cars and private hire vehicles were the largest category at 27%. Cycles are also over 40% of vehicular traffic during the morning and evening peak hours.

### OTHER UPDATES

#### Bank Station Upgrade Complete

Bank Station's new ticket hall provides improved access with a new entrance on Cannon Street, six new escalators to the Northern Line and DLR, and two new lifts which provide step-free access to the

Northern Line for the first time. The ticket hall marks the completion of the Bank Station upgrade, which now has 40% greater capacity.

### Proposals to Make Lorries Safer

Transport for London is currently consulting on proposals to improve the existing HGV safety permit scheme to reduce the risk to vulnerable road users. The proposals include incorporating new technology, such as Camera Monitoring Systems (CMS) to eliminate blind spots on the passenger side and Moving Off Information Systems (MOIS) to prevent collisions at the frontal blind zone. The consultation closes on 3<sup>rd</sup> April and can be [found here](#).

### Elizabeth Line Ridership

At the start of February, the Elizabeth Line reached more than one hundred million journeys since it opened in May 2022. Ridership is currently above expected levels with around 600,000 journeys daily, making it one of the busiest railways in the UK. It also performs above the average industry performance rating and achieves the highest customer satisfaction score across all TfL services.

On 21<sup>st</sup> May, the final version of the timetable will be introduced which will remove significant dwell times for trains between Paddington and Acton Main Line. At peak times, there will be 24 trains per hour between Paddington and Whitechapel in each direction, with 16 trains per hour off-peak.

### TfL's Annual Budget for 2023/24

TfL's £9.1bn revenue over the next financial year will cover the operational running and costs of TfL services. It is expected that TfL will achieve an overall operating surplus of £79m, which will be reinvested directly into transport network enhancements as part of TfL's wider £2bn capital programme.

TfL has a current funding agreement with the Government until March 2024. TfL is awaiting confirmation from the Government on its £475m funding for 2024/25 that is required to support the delivery of the committed contracts in relation to the Piccadilly line and DLR.

TfL ridership continues to grow, with TfL's latest assessment assuming, that by the end of 2023/24, ridership on TfL services will be a further 7% higher than current levels.

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# Real estate legal update

April 2023

## Landlord and tenant

- The Law Commission will be conducting a review of the security of tenure provisions contained in the Landlord and Tenant Act 1954. The Government announced the review in its [Antisocial Behaviour Action Plan](#). The review follows Law Commission reports, published in summer 2020, in which a wider review of leaseholder law was considered. A consultation will be launched in December this year.
- The Supreme Court has considered the interpretation of residential service charge provisions in the case of [Aviva v Williams \[2023\] UKSC 6](#). The court confirmed that a provision in a residential lease that seeks to oust the jurisdiction of the First Tier Tribunal (FTT) will be void, for example if the landlord's service charge decision is expressed to be final. The service charge payable under the leases was a specified percentage, however the wording of the lease permitted adjustment of the figure by the landlord. The court did not believe that this ousted the jurisdiction of the FTT and therefore the landlord's revisions to the service charge percentage payable under the leases were upheld.
- In what has been widely regarded as a positive judgment for commercial landlords, the Supreme Court decision in [Sara & Hossein Asset Holdings v Blacks \[2023\] UKSC 2](#) has established a "pay now argue later" principle. The lease provided for landlord's certification of service charge which would be conclusive except in case of manifest error. The court held that the certification provision established the landlord's cost but not the tenant's liability for payment.

## Regulatory and compliance

- The HMRC Trust Registration Service (TRS) manual was updated on 31 January 2023. It previously stated that "unit trusts are not required to register on TRS". The revised position is set out in the amended [TRSM10030](#), which now states that HMRC considers that unit trusts (both authorised and unauthorised) are registrable on TRS if they satisfy the registration conditions for express trusts. As a general rule, unauthorised unit trusts will need to register if they meet the general registration requirements set out at [TRSM21010](#). Offshore unit trusts such as JPUTs and GPUTs are therefore likely to be required to register with the TRS if the trustees are liable to a relevant UK tax or if they acquired an interest in UK land on or after 6 October 2020. Registration of existing trusts should therefore be expedited.

## Development and investment

- The Spring Budget took place on 15 March 2023. We have published a [summary](#) of the relevant real estate content. The Spring Finance Bill has since been tabled. It reflects the measures announced by the Chancellor in the Budget and it is currently at committee stage in the House of Commons. The tax section of this update contains further details.
- The [Levelling Up and Regeneration Bill](#) is currently passing through Parliament. It includes provisions relating to matters such as town and country planning, Community Infrastructure Levy, regeneration, compulsory purchase of land, the environment and heritage (our [summary article](#) provides further detail). In particular, Part 11 of the Bill includes new measures to require provision of information about interests and dealings in land. This is not a new concept; the Government has previously consulted on transparency of land ownership ([read our summary](#)). The Bill also provides for regulations to be made which may require transactional information to be provided about 'instruments, contracts and other arrangements' relating to relevant rights or interests in land.
- With the aim of achieving greater consistency and clarity in property measurement, a new [PMS: All Buildings](#) international standard has been published. This will assist developers, occupiers and investors in the measurement of assets such as offices and retail premises and has been developed by a collaboration of 80 professional bodies globally.
- The Mayhew Review into retirement living was published on 1 November 2022 and sets out Professor Les Mayhew's research into retirement living, in the context of the ongoing social care and housing crises in the United Kingdom. The review was prepared by the International Longevity Centre UK and supported by Associated Retirement Communities Operators (ARCO). [See our summary of the Review](#).
- The Law Commission has announced that it is launching a review into compulsory purchase laws with the aim of modernising and streamlining existing law. It follows previous reports prepared in 2003-4 and further consultation with key stakeholders will be undertaken. The procedural aspects of CPO acquisition and the system of compensation allocation will form the basis of the assessment.

## ESG/environmental

- The [MEES Regulations](#) provide that from 1 April 2023 landlords of non-domestic private rented property cannot continue to let sub-standard property (that is property with an EPC rating less than 'E'). A landlord who chooses to let property or continue to let such property without ensuring that improvements are carried out or registering a valid exemption will be at risk of enforcement action. This may also have an adverse impact on marketability, rent, value and may engage lender requirements. MEES Regulations only apply to properties where there is a legal requirement to obtain one. We have summarised anticipated further changes to the MEES Regulations in this [article](#).
- Amid the wave of government announcements to mark "[Green Day](#)", the catchily named Nature Markets: A framework for scaling up private investment in nature recovery and sustainable farming is of particular interest. In order for the UK Government to meet its nature recovery targets set out in the Environment Act 2021, there is a broad consensus that the British countryside needs significant green investment. We have published a [summary](#) of the framework.
- Natural England has published its [biodiversity metric 4.0](#) following DEFRA's [response](#) to the consultation into the technical operation of the metric which will be used to calculate biodiversity net gain. The requirement, under the Environment Act 2021, is for new development to achieve at least 10% biodiversity net gain (expected to come into force in November 2023). This may be achieved, in whole or in part, through use of nature based solutions; see our [article](#) on the topic.
- The Skidmore Review delivered its 340-page report Mission Zero on 13 January 2023. The Review sets out how the net zero target can be delivered through practical, targeted actions, and makes 130 recommendations. It also confirms the High Court decision of July 2022 that the UK Government is not on track to meet its own target of net zero by 2050, and risks falling behind further if action isn't taken swiftly. In particular, the Review sets out 25 policies that it considers could be realistically delivered by 2025. The Review focuses on structural elements such as the planning system and government regulation rather than changes to be made by individuals. The key headlines in relation to the built environment are summarised in our [article](#).

## Construction

- The majority of developers who committed to the Building Safety Pledge have signed up to the Government's developer remediation contract. Under the contract, developers agree to remedy life critical fire safety defects in residential buildings 11m or taller in England which they developed or refurbished (except when they were involved solely as a contractor) in the last 30 years. Those who do not sign up will face sanctions including not being able to implement planning permissions and restrictions on building control approvals and sign offs on residential and commercial developments. Secondary legislation setting out details is awaited.

- Between January and March the Government consulted on proposed changes to the building control regime including the role of approved inspector, the transition to registered building control approver and what this means for projects currently underway as well as the new role of registered building inspector. These changes, which stem from the Building Safety Act 2022, will impact all projects once in force. Secondary legislation setting out details is awaited.
- The [Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations 2023](#) were made on 6 March 2023 and came into force on 6 April 2023. The regulations clarify what amounts to a higher-risk building for the purposes of the new occupation phase regime and the design and construction and refurbishment of those buildings. The definition will be relevant when trying to establish whether developments will be subject to the proposed new higher-risk building construction phase regime when it comes into force (possibly in October 2023). Secondary legislation setting out details is awaited.
- The Government has accepted recommendations that sustainable drainage systems (SuDS) are put on a statutory footing rather than relying on the planning system. A consultation is due later this year and it is possible the new regime will be in force in 2024.
- In [Abbey Healthcare v Simply Construct \[2022\]](#) the Court of Appeal confirmed that a contractor collateral warranty in favour of a tenant was a "construction contract" within the meaning of the HGCRA 1996 (as amended). This meant that the tenant had a statutory right to refer claims for defects in the works to adjudication even though the collateral warranty did not expressly say this. The decision has been referred to the Supreme Court for review.

## Tax

March saw Jeremy Hunt's first Budget. The real estate tax highlights were as follows.

- Perhaps the most eye-catching announcement was the Government's decision to drop its proposal to reform sovereign entities' UK tax immunity. The proposal, revealed in a consultation announced last year, included the withdrawal of sovereigns' tax exemption from real estate investments, and would have had a significant impact on the real estate sector. As recently as January this year, HMRC had asked stakeholders for input on various detailed questions on the implementation of the proposed reforms, indicating that it was a matter of "when" not "if" the proposals would be adopted. The announcement in the Budget that the Government are dropping the proposals therefore came as a (welcome!) surprise. The reasons for the Government's change in direction are not clear, which leaves the possibility that this is just a temporary reprieve. The danger remains that a Labour government (or a Tory one in a more clement economic climate) could reactivate the proposals. Sovereigns that had started to consider alternative tax exemptions, and how they might restructure their holdings to adapt to losing their immunity, may still need to do this work.



- “Full expensing” for new capital expenditure on plant and machinery. The introduction of “full expensing”, namely 100% first year tax relief for expenditure on certain qualifying fixtures, is clearly intended to cushion the blow of the corporation tax rate increase from 19% to 25%, and the end of the “super-deduction”, as well as to encourage investment. A few points for landlords to note.
  - Full expensing is not quite as generous as the super-deduction, which allowed 130% tax relief for some items.
  - As with the super-deduction, the rate is only 50% for “integral features” such as lifts, escalators, air conditioning systems.
  - Landlords can benefit from full expensing provided the fixtures in question are “background plant” (this was an important concession lobbied for in relation to the super-deduction, which otherwise would not have been available to landlords thanks to the general exclusion from first year allowances for leased equipment).
  - Only companies can benefit from full expensing. Partnerships, even ones with corporate partners, are not eligible.
- Investment Zones. These are similar to freeports, with multiple tax reliefs designed to attract investors in the 12 chosen zones (eight in England and one in each of Wales, Scotland and Northern Ireland). These include enhanced capital allowances, full SDLT relief, business rates relief and relief from NICs. Unlike freeports, local authorities in the zones will have discretion as to which of these tax reliefs they apply their share of government funding towards.
- Further REIT reforms. A few helpful changes to the REIT regime were included in the Budget, part of the Government’s ongoing reform of the regime aimed broadly to make it more user-friendly.
  - Currently three or more properties are required for a company to qualify as a REIT. While HMRC have interpreted this condition broadly, allowing e.g. a single office block or shopping centre to qualify on the basis that they can be let to three or more tenants, this condition provided a barrier for groups holding a single large logistics/storage building. This rule will now be met where a company owns a single commercial building provided it is worth at least £20m.
  - Currently where a REIT sells a property within three years of redeveloping it, and the development costs exceed 30% of the property’s value at the time it was acquired, the proceeds of sale are taxable and do not qualify for the REIT exemption. This rule will be modified so that profits are only taxable if the development costs exceed 30% of the property’s value at the commencement of the development works, clearly a fairer measure for buildings that have been owned by a REIT for many years prior to redevelopment.

- REITs with partnership shareholders can now apply a pro-rata withholding on distributions to the partnership, reflecting each partner’s eligibility for gross payment/ withholding. This will improve the administration for REITs with partnership shareholders, as currently they must withhold tax on the full amount of the distribution if the partnership has any non-exempt partners, leaving the exempt partners to reclaim their share of tax withheld.

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