



City Property Association

CPA Quarterly Insight

Planning, transportation and legal updates for Q3 2023



MACFARLANES

**CITY PROPERTY ASSOCIATION
PLANNING UPDATE
July 2023**

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.

Local Plan Progress

The City has now confirmed the revised timeline for the next stages of the Local Plan, starting with Local Plans Sub-Committee in September 2023, Planning and Transportation Committee in November 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 February/March 2024, with a target for submission to the Secretary of State summer 2024 and the Examination taking place later in 2024. Adoption of the City Plan is currently anticipated for mid-2025. These timescales are subject to further review.

The City of London is hosting a series of informal public engagement sessions, including a series of workshops on key topics, transport issues and areas in the City that are likely to experience significant change over the Plan period between 8th and 29th June 2023. The full timetable is available to view [here](#).

Various topic papers have been taken to the Local Plans (Planning and Transportation) Sub-Committee over May and June. The brief headlines from these Sub Committee meetings is set out below:-

- Two areas are identified for tall buildings, the City Cluster and the Fleet Valley Area, with height limits prescribed in these areas accompanied by tools in two and three dimensions;
- A proposed new Creechurch Lane Conservation Area is being taken for consideration to July Planning and Transportation Committee;
- Future office floorspace requirements in the City are likely to be significant, with little evidence of long term adverse impacts on growth as a result of the pandemic;
- Members debated the role and nature of the City's future office demands and a suggested policy approach to enable the 'fast track' change of use of offices (Grade B space) where the existing building is being retained and upgraded and is changing use to a hotel, educational or cultural use. This links to the City's wider objectives on energy and sustainability and promoting 'Destination City';
- Sub-Committee Members were not supportive of an approach to identify specific residential sites. There was generally some support for identifying an additional residential area;
- Some consideration that student accommodation and BtR can meet housing need;
- Sub Committee Members were supportive of policy to encourage hotel development;
- Looking to embed a 'retrofit first' approach into the new City Plan, and incentivise the retention of existing buildings through a potential 'retrofit fast track';

- A refreshed Cultural policy would set out the types of public uses and public spaces that could be delivered at different locations within the City. The new policy would set out requirements for the
- amount of floorspace for these uses or spaces based on the scale and type of the proposed development.

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

The City Corporation's **Planning Advice Note (PAN) on Carbon Options Guidance** was formally adopted at Planning and Transportation Committee on 07 March 2023. A final version of the **Carbon Options Guidance PAN** and **Carbon Options Tool** (in excel format) was published on 24 April and sets 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 is 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 analysis is also informing the updated policies in the Local Plan.

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 has prepared the CPA Representations jointly with Equation Lighting Consultants. The consultation closed on 09 February 2023 and the document is expected to be adopted in summer 2023.

The following SPD's are currently delayed with no updated 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 SCI were taken to the 11 May 2023 Planning and Transportation Committee and approved.

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

Officer Recruitment

We understand that Transport Officers are currently being recruited, to replace the recently departed Iain Steele.

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. There are currently a number of stakeholder events being run to inform the progress of the plan review. No formal consultation events have occurred to date, and dates for this are unknown.

London 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 – adoption date unknown;
- **Characterisation and growth strategy LPG** – adopted June 2023;
- **Optimising Site Capacity; A Design-led approach** – adopted June 2023;
- **Small Sites Design Codes LPG** – adopted June 2023; and
- **Housing Design Standards LPG** – adopted June 2023.

*As previously advised, **fire safety** has become an area of intense scrutiny at the GLA which has resulted in delays to the consideration of schemes by the Mayor at Stage 1 / Stage 2. Currently, the GLA is working on the basis that residential developments over 30m in height will need to provide two staircases (in line with the emerging national position) but this is subject to change, both at a national and a London level and could be reduced to a lower threshold (some boroughs are working to an 18m threshold). The London Fire Brigade remain of the view that even residential buildings between 18m and 30m will still need fire safety justification and that more than the bare minimum will be expected. Whilst the issue principally is affecting residential schemes, fire evacuation issues have also been raised on non-residential schemes.

The Mayor has recently published the **Affordable Housing and Development Viability LPGs** for consultation – the deadline for responses is 24 July.

Future Supplementary Planning Guidance

The GLA have said that consultation on the following documents is expected shortly:

- Accessibility
- Digital connectivity infrastructure
- Large-scale purpose-built shared living (second round of consultation)
- Planning for Industrial Capacity (due later in 2023)

A revised London View Management Framework is also anticipated to be progressed, albeit dates for this are unclear.

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. On Monday 24 April 2023, the Rt Hon Rachel Maclean, Minister of State for Housing and Planning confirmed at the Levelling Up, Housing and Communities Select Committee that the Government had received over 26,000 consultation responses which were still being considered and could not commit to a timeframe for the publication of the revised NPPF.

Gerald Eve prepared representations on behalf of the CPA/London Property Alliance 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. A response to the consultation from the Government is targeted in October but this could be delayed. 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 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 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.

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 Report Stage in the Lords. It is not clear when the Bill will receive Royal Assent.

Infrastructure Levy Consultation

The Infrastructure Levy consultation began on 17 March 2023 and ran 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.

The London Property Alliance has submitted [a response](#), noting the considerable complexity of the proposed system, and coordinating with other industry bodies.

Environmental Outcomes Reports

A [consultation](#) was launched on 17 March 2023 and closed 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 DHLUC [published](#) a consultation on 28 February 2023 in respect of increasing planning application fees and improving performance within local planning authorities. The consultation closed on 25 April 2023 and Gerald Eve [prepared representations](#) on behalf of the London Property Alliance/CPA. The DHLUC has indicated that they expect the planning fee increase changes to be in place before January 2024.

Short Term Lets

The DHLUC published a consultation on introducing a new use class for short-term lets (Class C5) and associated permitted development rights between Class C5 and Class C3. It is unclear how this would interact with the 90 day rule within London. The consultation closed on 7 June 2023.

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 July 2023, albeit this may be delayed further.

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 was expected in May 2023, but this is now delayed and a decision date is not currently known.

Other

Active Travel England have been made a statutory consultee as of 1 June on all planning applications for developments equal to or exceeding 150 housing units, 7,500 sqm of floorspace or an area of 5 hectares.

Contacts



Jeremy Randall
Senior Partner

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



Liam Lawson Jones
Associate

CPA Next Gen Chair
Email: llawsonjones@geraldev.com
Tel: 0203 486 3605
Mob: 07557 202 231



Suzanne Thurtle
Associate

Email: sthurtle@geraldev.com
Tel: 020 7333 6303
Mob: 07788 345 907

TRANSPORT UPDATE – JULY 2023

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

Streets & Walkways Sub Committee

The Streets & Walkways Sub Committee met on 23rd May. Below are items of interest from the agenda/minutes:

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. In February 2023, feasibility modelling indicated there was a significant detrimental impact when reintroducing general traffic through Bank at all times. As a result, it was agreed no further work would be undertaken on this option. Feasibility assessments would continue for the remaining scenarios, as listed below:

- Taxis with buses and cycles (taxis with same access as buses)
- Powered two wheelers with buses and cycles (powered two wheelers with same access as buses)
- Taxis and powered two wheelers with buses and cycles (taxis and powered two wheelers with same access as buses)
- Taxis with buses and cycles (taxis same access as buses but not given access to northbound Princes Street)
- Taxis with buses and cycles (taxis have access to Cornhill and Poultry in an east/west direction only and assumed the bus gate on Cheapside remains in situ without access to taxis)
- Taxis with buses and cycles (taxis have access to Cornhill and Poultry in an east/west direction only and assumed the bus gate on Cheapside remains in situ with access to taxis)

To date, analysis of the use of the junction by people walking and cycling, casualty data, air quality monitoring and interim equalities analyses has not identified a clear need for change to the restrictions at Bank on transport grounds. The most likely potential driver for change is whether changing the mix of traffic addresses the equality concern around accessibility for people who rely on taxis. The balance of potential benefits and disbenefits is not yet clear and requires further exploration.

The traffic modelling undertaken so far has shown that there may be options that could be explored to relax the restrictions, however there is significant difficulty in being able to predict how attractive the route through Bank may be, and whether journey times would be significantly impacted as a result of additional traffic. The current level of uncertainty means the model outputs are not robust enough to accurately predict impacts.

Officers have recommended that further work on the traffic modelling exercise is paused while the need and evidence for change is identified, and how this can best be addressed. Further work to understand the potential latent demand is also recommended. Subject to the outcome, this would then form the basis of resumed modelling, in advance of public consultation and the final decision as to whether to make a permanent or experimental change to the scheme.

Transport Strategy Review

The Transport Strategy review is entering its final stages following a programme of stakeholder engagement between November and July. A number of proposed changes to the Transport Strategy have been outlined. This includes providing a summary of the principles and approach to managing traffic movement and access in the City within the Transport Strategy. It is hoped that by setting out the approach for different modes, it will be easier to understand how Transport Strategy proposals will affect the allocation of street space and access. The draft approach can be [found here](#). An approach to managing the kerbside is also being developed.

Other changes to proposals that were identified as requiring a major update or change include a new overarching proposal related to embedding an inclusive approach into transport planning and delivery. 'Outcome 5: More people choose to cycle in the City' will be expanded to include scooters, electric scooters and other forms of micromobility. The outcome will be linked to three new proposals to:

- Improve the experience of riding cycles and scooters in the City
- Increase the amount, variety and quality of cycle and scooter parking in the City
- Support and celebrate micromobility in the City All the

proposed key changes can be [found here](#).

The public engagement phase for the 'City Plan 2040' and the 'Transport Strategy' has recently launched. There are a number of engagement workshops planned and responses can be provided on the [Commonplace page](#).

Finalisation of the Transport Strategy is planned for September – February 2024. **Pedestrian Priority**

Streets Programme

The Pedestrian Priority Streets Programme seeks to enhance comfort, safety and accessibility for people walking across the Square Mile. In February, traffic measures at Old Jewry, King Street and King William Street were agreed to be made permanent. The Committee has now approved to make the traffic changes at Cheapside and Old Broad Street/Threadneedle Street permanent.

The Chancery Lane scheme is still within its six-month statutory consultation period.

St Paul's Gyratory Transformation

This project seeks to transform the streets and public realm between the old Museum of London site and St. Paul's Underground station. Phase 1 covers the project area to the south of the rotunda roundabout, while Phase 2 focuses on highway changes on the roundabout and is awaiting the outcome of the Museum of London/Bastion House redevelopment.

Three concept designs have continued to progress in relation to Phase 1. Traffic modelling has been undertaken with TfL and indicates that all three options are forecast to have an acceptable impact on traffic. A public engagement exercise during December and January showed strong support for the proposed public space on King Edward Street and for measures to improve the walking and cycling environment.

Option 1 has therefore been approved for further progression since it delivers a larger amount of public space and attracts a significant external funding contribution. Option 1 introduces two-way traffic on Newgate Street and St Martin Le Grand to its junction with Angel Street, and closes the southern section of King Edward Street and the Newgate Street slip road to all vehicles to enable the creation of a new public space (over 3,00sqm). There is also Option 1A, which is the same as Option 1 except it introduces two-way traffic on Montague Street between its junction with the rotunda and Little Britain north. This option was developed as analysis of traffic movements suggests there is likely to be an increase in traffic using Little Britain south if the gyratory system is modified – which the project seeks to avoid.

Further public consultation is planned for early autumn 2023 on the preferred highway layout and concept designs for the new public space.

Liverpool Street Area Healthy Streets Plan

As proposed by the Transport Strategy, a number of Healthy Streets Plans are being developed to create an integrated approach to public realm improvements and traffic management for different areas of the City. A draft Healthy Streets Plan (HSP) for the Liverpool Street area has been developed following engagement with local stakeholders. The draft HSP includes transport and public realm analysis and identifies areas for improvement. It outlines proposals to improve the connectivity, safety and pedestrian experience in the area, including opportunities arising from upcoming developments.

Public consultation on the draft HSP is planned for June and July 2023 with the responses informing the final HSP which will go to Committees in autumn 2023. The final HSP will include an outline of the proposed projects and an indicative programme for implementation, informed by upcoming developments and potential funding sources.

The Crossrail Liverpool Street Urban Integration (Phase 2) project, which looked to improve the pedestrian environment due to anticipated uplift from Crossrail, will now become incorporated into the wider HSP programme.

Planning and Transportation Committee

The Planning and Transportation Committee met on 11th May. Below are items of interest from the agenda.

Local Implementation Plan funded schemes 2023/24

City of London has received the below from TfL's Local Implementation Plan (LIP) funding:

- Corridors and Neighbourhoods: £400,000
- Borough Cycling (Cycle Network Development): £60,000

- Cycle Training: £30,000
- Cycle Parking: £66,000

The LIP funding for Corridors and Neighbourhoods will largely fund the Healthy Streets minor schemes programme (£325,000), with the remaining allocation for the Strategic Transport programme and Vision Zero behaviour change activities. For cycle network development, projects include preliminary design refinement of the Aldgate to Blackfriars Cycleway, as well as feasibility designs to deliver protected cycle lanes on Moorgate (south of London Wall) and Houndsditch.

OTHER UPDATES

Fleet Street Area Healthy Streets Plan

The City of London and the Fleet Street Quarter Business Improvement District (BID) are developing a programme of improvements to the streets and public realm in the neighbourhoods around Fleet Street and Ludgate Hill. An initial consultation is underway on the draft Fleet Street Area Healthy Streets Plan and the proposed changes to each neighbourhood. The Commonplace page can be found [here](#), with consultation closing on 20th June 2023. Further engagement and consultation is planned as the schemes develop.

Road traffic casualties in London 2022

TfL has published its report on road traffic casualties during 2022. While the number of people killed on London's roads is one of the lowest years on record (excluding 2020 and 2021), the capital has seen a return to near pre-pandemic levels of the number of people killed and seriously injured on London's roads.

However, there has been progress with a 38% overall reduction in the number of people killed and seriously injured compared to the 2005-09 baseline, and the number of children killed and seriously injured (KSIs) 63% lower. People walking, cycling and motorcycling continue to be most at risk, making up 80% of all KSIs in 2022. The number of people killed while cycling has fallen by 58%, but the number of cyclists seriously injured has increased by 42% against the 2005-09 baseline. Over this time period, cycling journeys have increased by 88%, suggesting that cycling trips have become safer overall. However, there is still a need to continue to provide safe cycling infrastructure, lower speeds and other measures to deliver the Mayor's Vision Zero goal of eliminating death and serious injury from London's transport network

Roy.mcgowan@momentum-transport.com

CPA real estate legal update

June 2023

Landlord and tenant

- The **Non-Domestic Rating Bill** received its second reading on Monday, 24 April 2023 and is continuing to progress through Parliament. It introduces more frequent valuations, to take place every three years instead of the current five, and a new business rates improvement relief, so businesses making qualifying building improvements will not face higher business rates bills for 12 months. Concerns have been raised over the additional compliance burden that the new rules will place on small businesses and the need for greater flexibility in the operation of the improvement relief.
- The much-anticipated **Renters (Reform) Bill** and associated **guidance** has been published. The proposed changes in the Bill will have a significant impact on the private and social rented sectors. The Bill proposes abolition of section 21 “no fault” evictions and a move to a simpler tenancy structure (removing the concept of assured shorthold tenancies). It also seeks to reform possession grounds to make it easier for landlords to repossess their properties where tenants are at fault. Private landlords will be required to join a newly established Ombudsman which is intended to be quicker, cheaper, and less adversarial than the court system and a database of residential landlords and privately rented properties in England will also be established. Landlords will be able to increase rents to market price for their properties, however tenants will be able to appeal above-market rents.
- It has been widely reported that plans to abolish the “feudal” system of leaseholds across England and Wales by implementing a commonhold system have been dropped despite an announcement to the contrary made by the levelling up and housing secretary in January 2023. It is expected that Mr Gove will announce measures to reform residential leaseholds in a speech in June 2023. It is possible that such measures will include caps on existing ground rents (there is already legislation in place which caps future ground rent at a peppercorn) and greater powers for leaseholders to establish and select management companies for their buildings.
- *Avon Grounds Rents Ltd v Canary Gateway (Block A) RTM Co Ltd* concerns the rights of shared ownership leaseholders and their right to participate in statutory right to manage. The question centred around the “long leases” held by such leaseholders where they had not yet “staircased” to 100% ownership. The decision, which found in the leaseholders’ favour, is thought to impact around 200,000 shared ownership leaseholders. The decision is also thought to have wider implications in terms of such leaseholders’ general enfranchisement rights since the legislation that governs that process is similarly drafted to that which governs the right to manage.
- *Pretoria Energy Co (Chittering) Ltd v Blankney Estates Ltd* is a reminder that heads of terms are not binding. The claimant argued that the heads of terms amounted to a binding agreement for lease. However, it was not possible to be reasonably certain as to the term commencement date of the lease and the court found in favour of the defendant.
- In *Kaushal Corporation v O’Connor* the High Court considered whether a service charge clause extended to payment of litigation costs. The court held that when construing service charge clauses, words should be given their natural and ordinary meaning and the position would be considered from the viewpoint of the reasonable person who had knowledge of the facts at the time the lease was entered into. The court also held that costs relating to “any application or request for approval or consent” do not extend to the costs of legal proceedings and where a clause requires a demand for payment to be made, liability does not arise until the demand is made. In this case, no demand had been made by the landlord to the tenant for the costs of the legal proceedings.
- The judgment in *PizzaExpress Group Ltd and others v Liberty Mutual Insurance Europe SE and another* has been published. Pizza Express Group brought a claim against two insurers regarding COVID-19 related business interruption losses. The policy wording was extended so as to cover instances beyond business interruption arising directly from physical damage. The preliminary issue, decided in this judgment, relates to the fact that the relevant insurance policies contained sub-limits which the claimant argued did not apply on an “any one occurrence” basis. The court found in favour of the insurers; that the sub-limits did apply “any one occurrence” unless otherwise stated. The sub-limits will therefore confine the claims made to a maximum indemnity limit.

Regulatory and compliance

- The corporate transparency reforms, set out in the [Economic Crime and Corporate Transparency Bill](#), are currently progressing through Parliament. The Bill completed its committee stage in the House of Lords on 11 May 2023 and will now move to the report stage for further scrutiny. A date has not been scheduled for this yet. The Bill broadens the powers of the Registrar and Companies House, information submitted can be verified and declined and there are enhanced enforcement powers and rights to investigate company data. Amongst other things, the reforms introduced in the Bill will impact on LPs as set out in this [policy paper](#). The Bill also includes provisions that relate to money laundering and the register of overseas entities.
- The [Register of Overseas Entities \(Definition of Foreign Limited Partner, Protection and Rectification\) Regulations 2023](#) came into force on 1 June 2023. They supplement the new register of overseas entities regime by setting out the characteristics of a foreign limited partner (relevant for the purposes of determining an overseas entity's registrable beneficial owners) and providing for a process for applications to be made for the removal of material from the register of overseas entities on grounds that it derives from anything that was done without the authority of the overseas entity or from anything invalid, inaccurate or fraudulent. The regulations also amend the grounds on which an application for protection of relevant individuals' information can be made by removing the need to demonstrate that disclosure of personal information will result in a risk of violence or intimidation towards the applicant (or someone they live with).

Development and investment

- The Government has consulted on proposals for reform of the compensation element of a CPO and the [consultation response](#) has been published. In summary the Government's position is that: (i) the processes for applying for a direction and the making of a CPO will be combined; (ii) the use of directions should be on a scheme-by-scheme basis and could be limited to carefully defined circumstances; and (iii) a standard capping policy should be implemented to ensure different land markets are reflected along with consistency being delivered to landowners who are the subject of directions. It concluded that it will not be proportionate to remove or cap hope value compensation in all compulsory purchase instances - the implementation of a direction approach on a scheme-by-scheme basis will have the advantage of allowing for individual cases to be justified on their own merits. The Government's objective is to enable more land value to be captured and then invested for the public benefit in schemes where there is a compelling case in the public interest to do so.

- The [Charities \(Dispositions of Land: Designated Advisers and Reports\) Regulations 2023 \(SI 2023/467\)](#) have been made. These regulations relate to reports that charity trustees must obtain before disposing of land held by or in trust for the charity and broaden the category of persons who can prepare the report and set out what matters are to be dealt with in the report. The regulations are not retrospective and do not apply where an adviser has been instructed prior to the regulations coming into force. The regulations are not yet in force however an implementation order is expected to be made shortly.

ESG/environmental

- The [Healthy Homes Bill](#) is currently progressing through Parliament. It is a Bill to make provision for the delivery of healthy homes and neighbourhoods in England and Wales and sets out the principles that define a "healthy home". The Bill as drafted will require the Secretary of State to prepare a policy statement on healthy homes principles. Those principles include requirements that all new homes must be safe in relation to risk of fire, include minimum liveable space and include living areas with access to natural light. The principles also enshrine environmental and net zero requirements for new builds. A Healthy Homes Commissioner is to be established to ensure the promotion and implementation of the principles.
- Dunlin Ltd, a landowning company in Yorkshire, has been fined for allowing vegetation to be burnt without a licence in an area of Special Scientific Interest on Midhope Moors in October 2022. The Crown Prosecution Service (CPS) said that areas of land on Midhope Moors were burned illegally. View the [full press release](#).

Construction

- The [Building Safety \(Responsible Actors Scheme and Prohibitions\) Regulations](#) were laid before Parliament for review in April 2023. The regulations set up a Scheme which entities involved with the development or refurbishment of residential buildings over 11 metres or five storeys in height in England between 1992 and 2022 will be invited to join. Members of the Scheme will be expected to identify and remediate life-critical fire safety defects in the buildings they had a hand in developing or refurbishing and to repay any government funding which has been used to remedy any of those buildings. Entities which are eligible to join but do not do so and members which do not comply with the Scheme will face significant restrictions when trying to implement planning permissions and/or obtain building control sign off. The restrictions are not limited to residential development so could apply to commercial and office development. Those controlled by that entity are at risk of similar sanctions.

Tax

- A written ministerial statement was published on 27 April 2023. The statement sets out technical tax policy proposals for a package of tax administration and maintenance measures arising from the spring budget. These include a consultation on modernising stamp taxes on shares and a call for evidence regarding the simplification and smarter use of data and information. The focus of the proposals is to increase transparency and improve tax administration.

- A **Reserved Investor Fund consultation** has been

launched. It follows a review of the funds regime conducted by the Government in 2022. The consultation seeks feedback on a new type of UK-based fund vehicle.

- Businesses are increasingly turning their attention to the OECD's "Pillar Two" proposals for a 15% global minimum effective tax rate (ETR) for large MNEs as we approach the 31 December 2023 deadline by which many countries are aiming to implement the rules. Legislation implementing Pillar Two in the UK is included in Finance (No 2) Bill 2023, which has now passed all of its substantive Commons stages. The Bill introduces a new Multinational Top-up Tax (MNTT), which will apply to low-taxed foreign subsidiaries of in-scope UK-parented groups, and a Domestic Top-up Tax (DTT), which will apply to any low-taxed UK members of in-scope groups. Both taxes will have effect in relation to accounting periods beginning on or after 31 December 2023. Although primarily aimed at large trading groups, the Pillar Two rules will also apply to real estate holding structures that meet the €750m revenue threshold. Most major jurisdictions that attract real estate investment tax both rental income and capital gains from real estate at rates higher than 15%, so we expect that in most cases real estate profits will not be subject to top-up tax. There however, potential for anomalies to arise in relation to real estate investment vehicles that are not subject to a conventional corporate income tax, for example REITs. The Pillar Two Model Rules include special provisions that apply to "real estate investment vehicles". Initially there was some concern that UK REITs might not fall within that definition, however the UK legislation alleviates that by expressly referring to UK REITs alongside the generic definition. The position of REITs should be straightforward where they are the "ultimate parent entity" (UPE) of a group – broadly where none of its shareholders include the REIT in their own consolidated financial statements. In those cases the REIT will be an excluded entity and its profits will not be subject to top-up tax. The position becomes more complicated where the REIT is not the UPE, which will require (among other things) looking at which jurisdiction's ETR calculation withholding tax on distributions will be included in.

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 and Engineering



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 and Reward



Kirsten Prichard Jones

Senior Counsel

DD +44 (0)20 7849 2613
kirsten.prichardjones@macfarlanes.com

