

Commercial Property Update

April 2010

Legal Update

What is Strategic Land Development?

You may have noticed that there is now a section of our website devoted to this subject area and may have wondered what it is all about. It is worth saying that this is not some new area of law (the property lawyers alone can boast over 50 years of collective experience on it) but it is something which is increasingly in demand and which requires a specialist knowledge which is not generally available. In short, it is the work around securing, promoting and developing sites for new development.

At its simplest, it could be a single developer approaching a landowner for an option to acquire land, subject to the developer securing consent for an alternate use. It might be a promoter approaching a group of landowners with a proposal to secure planning, with a view to a sale on the open market and the parties sharing the “profits” from the venture on conclusion of the sales.

At its most complex, it can involve a consortium of landowners negotiating with a consortium of developers for the wholesale development of a green field site to build a new settlement. The possibilities (and the permutations) are almost limitless and, certainly, no two deals are ever exactly the same.

The subject area crosses a variety of disciplines of law and usually calls upon additional expertise, particularly on planning policy and the structuring of the transactions themselves to produce a project which is both deliverable and which does so in the most commercially and tax efficient way.

The team acts for all kinds of organisations, be they developers (house builders, commercial developers or public sector organisations undertaking development) landowners (private individuals, companies, charities and trusts) or third parties such as local authorities and housing associations who may be interested parties or, indeed, active participants.

We will take you through the process from the negotiating of the heads of terms for a proposed transaction, settling the terms of the agreements themselves, investigating title (which is often the case, even where no sale is due to take place for some time) and advising on the agreements between the landowners to deal with distribution of the final sale monies between themselves.

Often more than one lawyer will be involved in advising

the parties. Where a consortium is involved, a lawyer is usually appointed to represent the consortium “as a whole” with others being retained to protect the interests of an individual or group of landowners within that consortium. It is important to remember that the success or failure of a project depends very much on the parties’ ability to co-operate and work together. If one party is unwilling or unable to work with the others, then a project will fail. Equally, the agreements themselves will contain clauses similar to those found in partnership or other joint venture agreements, so that dissenters can air concerns, or so that disputes can be resolved in the interests of allowing the project to move forwards.

If you would like to know more, then please feel free to contact any member of our Strategic Land Development Team.

The CRC Energy Efficiency Scheme

The Carbon Reduction Commitment, recently renamed the CRC Energy Efficiency Scheme, came into effect on 1 April this year. The scheme aims to tackle excessive energy usage by imposing a requirement on certain organisations to compulsorily purchase carbon emission ‘allowances’ from the government.

These allowances permit the organisation to use a certain amount of energy that year, so sufficient allowances must be bought in advance. If an organisation does not buy enough initially, further allowances can be bought from the government at a premium and there is intended to be a secondary “market” to buy allowances from other organisations with surplus credit. A variety of penalties will be imposed for non-compliance with the scheme.

The participants in the scheme will then be ranked in a public league table according to how well they have improved their energy efficiency. All of the money collected from government sales of allowances will then be recycled back to participants according to their position in the table. This adds the incentive of recouping the cost of buying allowances, along with promoting corporate social responsibility.

The scheme will be of interest to large landlords which lease out a lot of land and procure a supply for their tenants, as their energy consumption will be dictated by how much electricity their tenants use. As such, there should be consideration given as to how to pass the cost of the scheme on to the tenants.

Currently, all organisations using over 6,000 MWh of electricity per year (roughly equivalent to an annual

electricity bill of £500,000) across all their offices and holdings combined are covered by the scheme. It targets the highest UK parent body within the group, and while the government estimates that some 5-6,000 businesses will initially be required to register and purchase allowances, some predict that the final figure could be considerably higher. However, even if your organisation is not above the threshold, you may still be required to make an information disclosure, giving details of your annual energy usage. Those above the threshold already must register for the scheme by September 2010 and the first round of purchasing in April next year.

While the threshold is currently quite high, there is scope for the government to bring it down in future such that more businesses are caught by the scheme, and more will be required to purchase allowances. The fact that a company does not yet qualify for the scheme should not be a cause for complacency.

For more information and a user guide see the DECC website at:

http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/crc/crc.aspx

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Minimising Risk in Contracts

Seminar on contracts in the construction industry.

Kingfisher House, Norwich
03 June 2010
07:15 to 09:15

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Kingfisher House, Norwich
06 July 2010
07:45 to 09:15

Trinity Park, Ipswich
08 July 2010
07:45 to 09:15

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