



CharlesRussell
Speechlys

Building Up



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Building Up: What are London's limits?

In the first of our 'Building Up' series, we look at some of the key challenges to delivering taller developments in the capital. With pressure for growth and land values at record levels in certain areas, property experts are seeking innovative ways to deliver high quality developments at increased densities. In this publication, we go beyond the typical issues of planning, construction and lettings to look at the specific issues that come with building up.

Charles Russell Speechlys co-hosted a panel discussion with GIA on 'London's skyline and the challenges of building up' on 5 June 2018. At the seminar, we drew together industry insight from our panel of experts from across development, planning, politics and law and through live polling of our audience of leading professionals working within the real estate sector. This gave us an in-depth understanding of this topic from different perspectives in the market.

If you have any questions on this publication, please get in touch with Claire Fallows on claire.fallows@crsblaw.com or James Souter on james.souter@crsblaw.com with any questions.

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Is London falling short on tall buildings?

The London skyline is everchanging, with tall buildings rising up across the capital. Perhaps unsurprisingly, these buildings provoke emotive reactions from those living in the capital and beyond. The anti-tall building lobby say they are ruining the skyline. Those in favour of tall buildings say we should look at ways to promote more of them.

Charles Russell Speechlys hosted a panel discussion on 'Building Up' in June. The panel featured leading practitioners from the worlds of rights of light, architecture and planning, as well as local government. The audience was made up of more than 100 developers, planners, surveyors, architects and public sector officers. The question posed was: as one of a handful of world cities in which businesses perennially want to do business, even in the face of political and economic change, is London able to deliver the types of tall buildings needed to accommodate future growth?

Audience polling

The key issues that emerged from the discussion and results of audience polling were rights of light and planning. Some 77% of the participants agreed that the legal framework for tall buildings, and the impact they have on neighbours, is unclear. The audience was split on planning. Only 54% of the participants agreed that the planning system in London is fit for purpose when it comes to assessing proposals for tall buildings.

Rights to light

It is the uncertainty that surrounds the law in this area which causes most concern to developers. The threat of an injunction for breaching a neighbour's right of light sits high on a developer's risk register. Case law in recent years has shown that the courts are prepared to order injunctions for breaches of rights of light even where

buildings have been completed. The well-known case of *HKRUK II (CHC) Ltd v Heaney* [2010] EWHC 2245 (Ch); [2010] 3 EGLR 15 is a prime example of a completed development which had been prelet to a commercial tenant but was nevertheless subject to injunction requiring part of it to be torn down. The more recent decision of the Supreme Court in *Lawrence v Coventry (t/a RDC Promotions) and others* [2014] UKSC 13; [2014] 1 EGLR 147 suggests that injunctions may be less likely in the future. However, the gravity of the risk they present, and the lack of clarity as to whether an injunction will be awarded, means they cannot be ignored.

It isn't just the uncertainty around injunctions that causes concern. There is a growing body of opinion that we should review how light is measured and at what point a reduction in light should be considered an actionable nuisance. Once a nuisance has been established, and if the developer manages to avoid an injunction, there is further uncertainty as to how an award of damages will be calculated. In 2014 the Law Commission put forward reforms to address some of the concerns, but there is no sign of their proposals making it onto the statute book. This leaves developers to rely on insurance or, in the case of more significant schemes with local authority support, powers akin to compulsory purchase to mitigate the risk.

"The industry is concerned that uncertainties stand in the way of the capital's future growth."

Planning

Audience concern as to whether the planning system is fit for purpose is not surprising. Obtaining planning permission for a tall building can be a challenge – but surely rightly so. It is the role of the planning system to balance competing needs for land and the benefits and harm arising from specific development proposals.

It was identified that the basic planning process has changed little over the years. Yet the body of national, London Plan and borough policies against which proposals are assessed continues to evolve and expand into new areas. Those policies may encourage individual or clusters of tall buildings in certain locations, discourage them in others, but there will always be landowners or developers promoting schemes without specific policy support for tall buildings or even contrary to policy.

Every scheme therefore involves substantial preapplication consultation on how such policies may be interpreted, particularly with statutory consultees such as Historic England, which often leads to significant scheme changes. Consultation and the potential for change continue through the determination process.





London's protected views are a particular constraint, but the debate did not evidence any desire to revisit those. High-quality design is viewed as essential by all, yet is deeply subjective. Decision makers must also consider any adverse impacts on daylight and sunlight received by neighbouring buildings (a separate issue to private rights of light) and overshadowing of amenity areas. How guidance is applied on such issues remains controversial. Technology is helping to a degree by making it easier to model and visualise them.

Overall, the application process can be lengthy and ultimately uncertain. Decisions are political, being made by council members, London's mayor or potentially government ministers following call-in. The timing of applications is generally considered carefully against political cycles. The views of one administration may not be shared by the next.

"It will be for parliament and the courts, alongside planning authorities, to dictate whether, how and when any change happens."

The desire for change

Following the discussion we asked two further questions. First was whether London as our capital city sets a good example to other cities for taking forward the right schemes and shaping the skyline.

Our polling results were finely balanced with 54% agreeing that it does.

The final question was whether the legal, planning and political framework for delivering tall buildings in London needs revolution, evolution or no change. Only 3% of the audience felt that it needed no change and a surprisingly low 18% voted for revolution, with the remaining 79% favouring evolution.

It will be for parliament and the courts, alongside planning authorities, to dictate whether, how and when any change happens. The hope is that, in the meantime, the current legal, planning and political framework does not act as a barrier to the development of the types of tall buildings that London needs to maintain its place as one of the world's leading cities.

This article was first published in Estates Gazette on 7 July 2018.

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Dame Judith Hackitt's review following the Grenfell fire: the final report

Dame Judith Hackitt's final report following her independent review into building regulations and fire safety was published on 17 May 2018.

The review provides a powerful critique of the current regulatory framework and practices applicable to high-rise residential tower blocks. Dame Hackitt identifies the industry's mentality towards safety as a key issue and calls for systematic change, as well as the inception of a new regulatory body to oversee and enforce such change.

The report identifies ignorance, lack of clarity on roles and responsibilities and inadequate regulatory oversight amongst the culprits for the system's failures. Dame Hackitt pushes for a more principle-based and outcome-focused regulatory framework. The proposed changes, should these be implemented, will be relevant to building owners and everyone involved in the construction industry.

Recommendations and practical implications

The report proposes that a Joint Competent Authority (JCA) be set up comprising of local authorities, fire and rescue authorities and the Health and Safety Executive (HSE).

The JCA would need to approve building safety at regular intervals throughout the life-cycle of a project, from early design to practical completion. It would have the power to levy hefty fines, issue 'stop' notices and even impose prison sentences for non-compliance. A mandatory incident reporting mechanism would be put in place. The new regulatory



body may also have the ability to recover costs for its intervention, in a similar fashion to the HSE's fees for intervention.

The changes proposed are, for the time being, relevant only for high-rise residential buildings of 10 storeys or more. Dame Hackitt suggests extending these proposals to other categories of building in the future.

"The review provides a powerful critique of the current regulatory framework and practices applicable to high-rise residential tower blocks. Dame Hackitt identifies the industry's mentality towards safety as a key issue and calls for systematic change, as well as the inception of a new regulatory body to oversee and enforce such change."

The intention is for the new regime to be similarly structured to the Construction (Design and Management) Regulations, with clearly defined duties and duty holders at each stage of the building's life cycle. It is worth noting that continuing duties may extend through to occupation – for instance, residents may have the right to request fire risk assessments.

What will happen next?

Within 24 hours of the report's publication, the Government committed to bringing forward legislation that delivers "meaningful and lasting change". In addition to a consultation on combustible cladding materials, the Government is consulting on significantly restricting or banning the use of "desktop studies" to assess cladding systems.

The Government has also confirmed that it will work with industry to provide clarity and guidance in respect of the new framework. It will be important for such guidance to come in advance of the regulations coming into effect, and for the industry to be given time to comply. In the interim, it would be advisable for businesses and building owners alike to begin considering the potential implications of the changes.

Moving forward, it will be important to focus in any contractual documentation on the specific roles and responsibilities of duty holders. If enforced robustly, as is encouraged by the report, the new regime will result in increased accountability and substantially harsher penalties for non-compliance.

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Whose light is it anyway? Releasing rights of light reaches the High Court

Unlike any other easement a right to receive light can be acquired by a tenant independently of its landlord and, in certain cases, against its own landlord. This provides an additional layer of complexity for developers seeking to mitigate their rights of light risk. The High Court has provided a rare insight into the relationship between landlords and their tenants in this context. Before looking at the detail of the decision a brief reminder on rights of light generally might be helpful to set the scene.

How do rights of light arise?

Rights of light generally arise as a result of long use or enjoyment. This is known as prescription. A prescriptive right may arise if the person claiming the benefit can show twenty years enjoyment of light through a window in their building. There are, however, three different forms of prescription each with particular requirements to be satisfied. Only one form of prescription can be claimed by tenants in their own right – statutory prescription under Section 3 of the Prescription Act 1832. This makes it difficult to determine whether a right has arisen and, if so, on what basis. Prescriptive rights are not registered at the Land Registry and so their existence must be determined by detailed research.

"Ideally the developer wants to deal with just one party but unfortunately in a multi-let building the freeholder might not be in a position to enter into a release binding on all of the tenants."



To determine whether a window enjoys a right over neighbouring land you must first identify when it first started receiving light over the development site. It is then necessary to review the titles to the neighbouring land and the development site to establish any historic agreements that might prevent a right from arising. It is only once this research has been carried out, and advice taken from specialist surveyors and lawyers, that you know whether to assess whether a right of light exists which might impact on the proposed development.

Who has the benefit?

Once it has been established that rights exist the next question is who can claim the benefit. This will be important if the developer plans to negotiate a release of any rights which affect their development. In most dense urban environments buildings are unlikely to be owner occupied. Therefore, there can be a variety of occupiers and often several layers of leases. The developer must consider the terms of all relevant leases to consider who they must deal with. This is far from straightforward and requires further legal and historical research.

Key points to understand are: what rights might have existed at the date each of the leases were granted; whether those rights were passed to the tenant on the grant of the lease; and whether the tenant might have acquired its own prescriptive right.

Ideally the developer wants to deal with just one party but unfortunately in a multi-let building the freeholder might not be in a position to enter into a release binding on all of the tenants. In practice, if there is any doubt, the freeholder will be reluctant to provide the necessary indemnity to the developer for any claims which might be made by its tenants.

"Unlike any other easement a right to receive light can be acquired by a tenant independently of its landlord and, in certain cases, against its own landlord. This provides an additional layer of complexity for developers seeking to mitigate their rights of light risk. A recent decision of the High Court has provided a rare insight into the relationship between landlords and their tenants in this context."

Some help from the High Court?

On 24 October 2017 Mr Justice Morgan handed down his decision in case of *Metropolitan Housing Trust Limited v RMC FH Co Limited*. The facts were relatively simple. RMC was the freehold owner of a property on Royal Mint Street in London of which Metropolitan owned a head-lease. The building had been built by Metropolitan shortly after the grant of its head-lease in 1987. The windows in the building had enjoyed light passing over a neighbouring property for more than twenty years and so, at face value, had acquired a prescriptive right to light. The neighbouring property was in the process of being developed and the question for the Court was whether Metropolitan as tenant was in a position to grant a release of the right.

Mr Justice Morgan grappled with the legal basis of statutory prescription under Section 3 of the Prescription Act 1832. Whilst acknowledging that the enjoyment of light had been by Metropolitan, or its sub-tenants, and not by RMC, he found that the right of light which had been acquired as a result of that enjoyment attached to RMC's freehold interest. This could be seen as a surprising result given that tenants are able to acquire prescriptive rights of light of their own and independently of their landlord.

Mr Justice Morgan did go on to say that the benefit of the right was then passed back to Metropolitan as a result of the terms of its head-lease. However, and importantly, this did not allow Metropolitan to grant a release to the developer. The head-lease contained a covenant not to allow any encroachment on the demised premises. On this basis Mr Justice Morgan decided that by entering into a release which allowed an encroachment to the light received by the demised premises over the development site, Metropolitan would be in breach of the non-encroachment covenant.



"Rights of light generally arise as a result of long use or enjoyment. This is known as prescription. A prescriptive right may arise if the person claiming the benefit can show twenty years enjoyment of light through a window in their building. There are, however, three different forms of prescription each with particular requirements to be satisfied. Only one form of prescription can be claimed by tenants in their own right – statutory prescription under Section 3 of the Prescription Act 1832. This makes it difficult to determine whether a right has arisen and, if so, on what basis. Prescriptive rights are not registered at the Land Registry and so their existence must be determined by detailed research."

What does this mean in practice?

Whilst of considerable academic interest to practitioners, the decision does provide some concern for developers. Each case will, of course, turn on the results of detailed historic analysis and the terms of any relevant leases. However, developers will need to be more wary than ever as to the position of tenants in the buildings neighbouring their sites before finalising a strategy to mitigate their rights of light risk.

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Love thy neighbour: starting your development on the right foot

A viable tall building will need a myriad of rights over adjoining land. The hard graft of a planning application can seem the biggest obstacle to building up, but often the detailed work of addressing legal rights demands just as much resource and attention.

We have addressed rights of light elsewhere in this publication and so in the following article we take a look at some of the other key legal rights that may need to be considered when turning a potential development site into a viable scheme. Early consideration of such rights and engagement with third parties can help prevent obstacles to delivery down the line.

The right stuff

Broadly a developer needs to consider two categories of legal rights when formulating a strategy for a development:

1. Rights they have, or don't already have but need; and
2. Rights they wish other people didn't have.

The first step is therefore to assess the legal titles both to the developer's land and the adjoining land to identify existing rights and covenants. This informs which neighbours need to be approached and highlights any alternative options the developer might have.

Access denied

Obviously, establishing rights of way to the property is fundamental. Where the property abuts a public highway there may be limited scope for concern, but it is worth considering what other rights may be needed, particularly rights of escape.

Lack of available fire escapes will severely hamper a building's maximum allowable capacity and should be properly addressed at the design stage to avoid escape routes that cross third party land.

Rights of access or escape need to exist as legal easements rather than as licences or contractual rights, so that they are binding on successive owners without the need for further documentation.

Easements can be created in a variety of ways: the most obvious is by way of express deed, but they can also arise in certain situations without an express agreement, for example where a right of way has been exercised for many years (known as acquisition by prescription). Such easements are, however, likely to be of limited use for a new tall building as they do not permit intensification of use – for example a right of way acquired by prescription for use by the occupiers of a single storey building will not allow the volume of use required by a 50-storey building. Where a right is fundamental to the operation of a building, a developer would be well advised to ensure it is granted expressly for the sake of certainty. A funder is unlikely to want to rely on prescriptive easements.



Even if the registered title to a plot of land appears to benefit from all necessary legal easements, it is important to fully interrogate them to ensure they are fit for purpose. Easements can, for example, be limited in time or require payment of money as a *quid pro quo* for continued enjoyment – how does this impact on the proposed development?

More importantly an easement which was granted for a specific purpose or scope cannot be unilaterally extended nor the use intensified (as referred to above). Consider, for example, a development plot comprised of two registered titles. One of these titles ("Land A") has a right of drainage over a third party's adjoining land ("Land B") – so far so good. However, the new building will require drainage for the whole site, including land within a separate title ("Land C") and Land C does not have a right of drainage over Land B. The right of drainage that Land A has cannot be extended unilaterally. It is irrelevant that the owner of Land A and Land C are the same. Accordingly, even though it looks at first glance like the development site has sufficient rights, on closer inspection it becomes clear that it does not – an additional right will need to be negotiated.

"Dealing with third party rights and releases can be costly and time consuming and are worth considering early."

Licence to drill

In addition to the above, the developer must consider what rights are needed in order to actually build the property. Here it is unlikely that fully blown legal easements would be proportionate and it may be more sensible to enter into licences with adjoining owners. It is important to remember that, legally, a freeholder's title to property extends both below the ground and into the sky – so rights may need to be agreed for more than initially anticipated.

The developer needs to consider whether any of the following require a third party's consent:

1. Scaffolding;
2. Temporary rights of access;
3. Crane oversailing; or
4. Excavation works.

When drafting the licences it is important that any funder's rights are protected. It is quite likely that the licences will have termination provisions for breach but a funder will want to have notice of that breach before termination and the right to step in and remedy the same before the licence actually falls away. Further, the developer should make sure that any adjoining freeholder actually has the right to grant the licences it purports to have, rather than any tenant.

The price is wrong

Just as important is dealing with those rights of third parties that may affect the construction or operation of the development site. Rights of light are the most obvious of these, but what about any rights of way or drainage rights that a third party has over the development land? Interfering with a third party's



easement creates a potentially actionable claim – one that may result in an injunction that stops building work while matters are resolved or, in the worst case scenario, permanently.

Consideration should be given as to whether rights that burden the development land are likely to be released through agreement, or whether insurance should be sought against those rights being enforced. Clearly, negotiating the release of a right generally comes at a cost which will need to be factored into the scheme viability assessment. A word of warning: the above analysis should take place before any third parties are approached, as doing so may make insurance impossible to obtain.

"A viable tall building will need a myriad of rights over adjoining land. The hard graft of a planning application can seem the biggest obstacle to building up, but often the detailed work of addressing legal rights demands just as much resource and attention."

Love thy neighbour

Dealing with third party rights and releases can be costly and time consuming and are worth considering early. The likelihood is that any rights which are missing from the title will need to be created by express deed, which means negotiation with adjoining land owners. A long term building project will bring a developer into close and regular discussion with their neighbours. Opening up clear channels of communication early can help build a positive relationship and smooth progress, including at the planning stage. In addition a clean legal title with sufficient rights will make it easier to obtain funding and attract the tenants that will ultimately drive the success of the building itself.

"The first step is therefore to assess the legal titles both to the developer's land and to adjoining land so as to identify existing rights and covenants."



If new rights or release of existing rights cannot be obtained, and insurance isn't available to cover the risk, then amendments to the scheme design may be required. As a last resort, arrangements can be entered into with local authorities whereby they acquire land for planning purposes and grant an interest back to the developer – any development for those purposes by successors in title to the authority will not be actionable even if third party rights are infringed. Further, it is possible for land and rights to be acquired through a compulsory purchase power. However, the use of such powers is complex and frequently controversial and requires careful analysis.

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Branding your Building (before someone else does)

Property professionals are no doubt aware of the London landmarks at 122 Leadenhall Street, 20 Fenchurch Street, and 30 St Mary Axe. For many those addresses will be meaningless. By contrast, mention the Gherkin, the Cheesegrater, or the Walkie Talkie to most Londoners and there will be an instant association with the tall buildings that were given those nicknames. Allowing others to choose a name for a building, however, always carries risk as well as the potential benefit of wide-spread recognition. The creation, and protection, of a striking brand for a building is therefore something that should be considered at an early stage when creating new projects.

Norman Foster's famous spiralling skyscraper at 30 St Mary Axe opened in 2003 and its resemblance to a pickled cucumber soon led to it being popularly dubbed "the Gherkin". The name is undoubtedly one that the architects and developers of the building would not have chosen themselves. The original intention was for the tower to be informally known as the Swiss Re Building, after its principal tenant. The Swiss Re name did not stick and the owners of the building ultimately recognised that its much more widely used nickname could be of benefit.

In 2011, the developers applied to register GHERKIN and THE GHERKIN as trade marks and they now use the name themselves to refer to and promote the building, including via its website at thegherkinlondon.com. The trade mark registrations for GHERKIN cover a range of goods and services that extend well beyond 'building services'. It includes merchandise items such as jewellery, clothing, leather goods, figurines and keyrings. Whilst it is unlikely that the owners of the building have a lucrative sideline selling GHERKIN key rings, the

ability to protect a highly distinctive brand such as the GHERKIN from undue use by others will help preserve its goodwill and reputation. This in turn, will help to ensure that the Gherkin remains an attractive address for potential tenants who want to associate themselves with such a well-known building.



After the Gherkin blazed a trail, the public continued to nickname newcomers to London's skyline. 122 Leadenhall, or The Leadenhall Building as it is also known, was opened in July 2014. Its triangular design allowed for extra storeys without falling foul of the City of London's protected view regime, St Paul's Heights. Before long, its unique shape resulted in the building being widely referred to as "the Cheesegrater". The owner of the building applied to register THE CHEESEGRATER as a trade mark in April 2016. In an improvement over the eight-year delay in seeking to protect the Gherkin, only two years passed before THE CHEESEGRATER was protected. Although the owner of the building does not use THE CHEESGRATER name to promote the building as extensively as is the case with the Gherkin, it nonetheless provides a distinctive, informal brand, that ensures wide-spread recognition of the development.

As London's skyline continues to evolve, rather than wait for their buildings to be given (sometimes rather unflattering) nicknames, developers are focusing more on developing a strong brand for their structures before even breaking ground –

and that includes securing trade mark protection. A good example of this is "The Shard". The informal name for London's tallest building was part of the development process from an early stage. Indeed, an application to register "THE SHARD OF GLASS" as a trade mark was made as long ago as October 2004.

Construction of the building only began in 2009, and by the time construction was finished in March 2012 the developers had already applied to register the name THE SHARD as a trade mark. Further applications for a host of ancillary terms and logos such as THE VIEW AT THE SHARD have since been filed, with the building becoming a major destination for visitors to London.

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As shown by The Shard, developers would be wise to establish a strong brand for their tall buildings, before the public comes up with its own. The promotion of the (now-modified) "Pinnacle" development at 22 Bishopsgate led the public away from attempts to dub the original design for the building "the Helter Skelter". It is, however, still worth keeping an eye out for attractive informal names that may arise and protecting them as trade marks where possible. The developers of the new tower at 34 Leadenhall have leapt upon a nickname coined by the Financial Times in 2012 and applied to register a trade mark for THE SCALPEL.

"In 2011, the developers applied to register GHERKIN and THE GHERKIN as trade marks and they now use the name themselves to refer to and promote the building, including via its website at thegherkinlondon.com. The trade mark registrations for GHERKIN cover a range of goods and services that extend well beyond 'building services'."

Registering a name as a trade mark brings a number of benefits. It can clarify who has rights to a name, particularly where it originates as a nickname, and allows its owner to prevent others from using the name in an inappropriate manner (for example, in relation to competing services or in a manner that takes unfair advantage of the reputation of the mark). A straightforward application for a UK trade mark registration (that is, one unopposed by other parties and without objections from the UK's Intellectual Property Office) usually takes between four and six months to proceed to registration. This should fit comfortably within the timescale of a modern tall building project, providing protection for a development's brand well before it opens its doors.



"As London's skyline continues to evolve, rather than wait for their buildings to be given (sometimes rather unflattering) nicknames, developers are focusing more on developing a strong brand for their structures before even breaking ground – and that includes securing trade mark protection."

The history of branding London's iconic skyline provides lessons for observant developers. A distinctive name to match a striking design, such as The Shard, can ensure that a strong brand is established and protected before even the first brick is laid. If a developer does not itself create a strong brand for its building, it may find itself at the mercy of the public. Whilst this can have a positive outcome, such as the Gherkin, developers would always be wise to seize the initiative themselves.

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The only way is up? How new national planning policy will increase pressure on building height and density

The Government is targeting the construction of 300,000 net additional homes every year. Those homes need to be accompanied by retail, leisure, education and community facilities – and of course employment floorspace supporting jobs. Where should all the new development go?

There can be no single answer to that question, but part of the solution must be to increase the density and height of our towns and cities where it is appropriate to do so. The recently revised National Planning Policy Framework (July 2018) supports a more critical look at where it might be appropriate to build up our urban form.

The Framework includes a new chapter entitled 'Making effective use of land', the focus of which is to require strategic plans to help meet development needs for an area by making as much use as possible of previously developed or brownfield land.

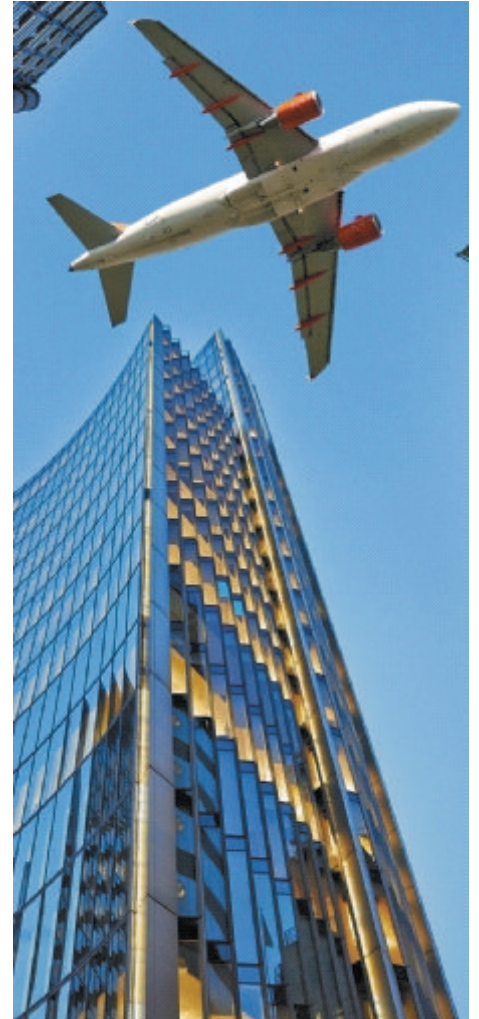


Unsurprisingly, particular emphasis is given to finding places for new homes.

- Substantial weight is to be given to the value of using suitable brownfield land within settlements for homes and other identified needs.
- The development of under-utilised land is supported, especially where it helps to meet identified housing needs and where land supply is constrained – examples quoted include converting spaces above shops and building on or above service yards, car parks, lockups and railway infrastructure.
- Changes of use of unallocated retail and employment land to provide new dwellings are also encouraged in areas of high housing demand, provided key economic sectors, town centres and other Framework policies are not undermined.
- Authorities are also advised to support opportunities for upward extension of residential and commercial premises for new homes where development is consistent with the prevailing height and form of neighbouring properties and street scene, is well designed (always subjective) and provides safe access for occupiers. Indeed, a potential permitted development right to build upwards, dismissed by previous administrations, is back on the table for further consideration.

"The Government is targeting the construction of 300,000 net additional homes every year."

The Framework makes it clear that, where there is a shortage of land to meet housing needs, it is especially important that policy and decision making avoids homes being built at low densities and there is optimal use of the potential of each site. Plans should include minimum density standards for city and town centres and other locations well served by public transport, seeking a significant uplift in average densities unless there are strong reasons why it would be inappropriate.



Minimum density standards or ranges should also be considered for other areas. Applications which fail to make efficient use of land should be refused.

There is always scope for debate as to what is appropriate by way of height and density. Helpfully, when considering applications for housing, the Framework seeks a flexible approach by authorities in applying daylight and sunlight policies and guidance where an otherwise efficient use of a site would be inhibited - provided the scheme results in acceptable living standards. No doubt debate will continue on how such policies and guidance should be interpreted – or indeed refined - in light of the increasing need for new homes.

The guidance also notes other factors that should be taken into consideration in determining what comprises efficient use of land – including the desirability of maintaining an area’s prevailing character and setting (including residential gardens) or of promoting regeneration and change. It might be said that authorities need to be bolder in accepting and encouraging change within town centres in particular.

"The Government is targeting the construction of 300,000 net additional homes every year. Those homes need to be accompanied by retail, leisure, education and community facilities – and of course employment floorspace supporting jobs. Where should all the new development go?"

The Framework does not seek to impose any particular policies on the height of buildings, although it sets the national context in which their design will be considered and assessed, particularly in regard to harm to heritage assets. It is for policy makers to go on and interpret national policy at a strategic or local level.

By way of example, the emerging revised London Plan requires Borough development plans to define what is considered a tall building. It retains a planned approach to change, whereby policies will identify locations where tall buildings will be appropriate in principle with an indication of general acceptable heights.

"The draft Framework proposes a new chapter entitled 'Making effective use of land', the focus of which is to require strategic plans to help meet development needs for an area by making as much use as possible of previously developed or brownfield land."



Factors to be taken into account include visual (including in long range, mid-range and immediate views), functional and environmental impacts, the potential to contribute to new homes, economic growth and regeneration and public transport connectivity. However, as in previous versions, the Plan acknowledges that high density does not need to imply high rise.

Beyond London, particularly as cross-authority planning creeps back into play, it remains to be seen whether there will be an increasing role for strategic policies in setting the scene for denser and higher rise development in urban centres and other accessible locations. The rise of residential, commercial and mixed use towers looks likely to continue.

This article was written by Claire Fallows. For more information please get in touch via claire.fallows@crsblaw.com or +44 (0)20 7427 1046.

About Charles Russell Speechlys

Charles Russell Speechlys works with clients in the UK and throughout the world. Our lawyers are based in 11 locations across the UK, Europe, the Middle East and Asia, through each of these locations, clients are able to access the full range of the firm's skills and expertise.

The vibrant Real Estate & Construction sector lies at the heart of Charles Russell Speechlys' business activities and is one we understand inside and out.

We provide comprehensive property-related advice to clients that draws on the integrated resources of our banking, tax, corporate, construction, environmental, planning and property litigation lawyers. We advise at all stages of the property asset lifecycle including buying and selling, planning and development, and management and investment of property.

Our combined expertise in these key disciplines, coupled with our commercial, forward-thinking and practical approach, helps us build long-term relationships with clients. As well as a first class legal service, we provide clients with strategic vision and introduce them to opportunities whenever possible.



Who to contact

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