*"The Leading Specialist Independent Insurance Broker for Title Insurance"*

# PLANNING LAW FOR CONVEYANCERS

4th October 2022

Richard Snape

www.lawsureinsurance.co.uk

# ABOUT RICHARD SNAPE

Richard has been the Head of Legal Training at Davitt Jones Bould (DJB) since 2002. He speaks at numerous courses for law societies all over the country, various public courses, in-house seminars within solicitors' firms and has also talked extensively to local authorities and central government bodies. His areas of specialism include both commercial and residential property, in particular in relation to local government law, conveyancing issues, development land, commercial property and incumbrances in relation to land.

# ABOUT LAWSURE INSURANCE

LawSure Insurance is an award winning, leading independent UK based insurance broker specialising in providing title insurance covers. LawSure works with leading solicitors' firms and developers to facilitate all types of property developments and transactions, including finding solutions to complex bespoke issues as well as the more straightforward ones.

**Our service is free** and there is no obligation to take out any of our quotes.

We work with all the major title insurance providers so we can offer the most comprehensive title broking service to our clients. Working with us, you can ensure that you will receive the best quote available in the market. Our independent, comprehensive approach means that we satisfy the SRA requirements for insurance mediation as well as the Insurance Distribution Directive (IDD).

We provide a Demands and Needs statement meaning that our clients can help remove the risk to them of inappropriate insurance selection.

We only get paid (by the insurer) if and when a quote is taken up - so our service has to be (and is) first class. We often get asked whether it is more expensive using a broker. It isn't! It is at least the same price, and often cheaper – with the certainty that you are doing the best for your client by LawSure reviewing the market on your behalf, saving you time and money. And all for free.

# CONTACT US

If you would like to speak to us to see how we can help or to request a quote, please call our broking team on **01293 880 700** or email us at enquiries@lawsureinsurance.co.uk

**OUTCOME FOCUSED TRAINING INFORMATION**

**Lecture is aimed at:** Property professionals and fee earners involved in both contentious and non-contentious property work

**Learning Outcome:** To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

**Satisfying Competency Statement Section:** B – Technical Legal Practice

For further information please see http://www.sra.org.uk/competence

****Disclaimer****

This presentation including answers given in any question and answer session and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matter covered. Nothing said in this presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or accompanying paper. Richard Snape and LawSure Insurance will not accept responsibility for any loss suffered in consequence of reliance on information contained in the presentation or paper.

**CONTENTS**

**PLANNING PERMISSION ENFORCEMENT**

**Planning Enforcement and Deceit**

Time limits for enforcement of planning breach

Planning enforcement periods are

- Four Years:
    - for unauthorised building, engineering, mining or other operations in, on, over or under land (TCPA 1990, s171B (1)); and
    - for unauthorised change of use of any building to use as a single dwelling house (section 171B(2), TCPA 1990). This includes breach of a planning condition relating to use as a single dwelling house: First Secretary of State v Arun District Council and Another [2006] EWCA Civ 1172
- Ten years for any other breach (section 171B (3), TCPA 1990)

In **Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15** the Supreme Court held that where a structure that looks like a barn but was in fact containing a three-bedroom house, after four years enforcement could still occur as there had been a deliberate concealment of the breach.

In **Fidler v Secretary of State for Communities and Local Government [2010] EWHC 143** a fifteen-room castle was built behind straw and after four years the straw was removed. It was held that removal of the bales of straw amounted to building work and the enforcement period still ran. Likewise, in **Sage v Secretary of State for Environment, Transport and the Regions [2003] UKHL22**) doing finishing work and placing in doors and windows still amounted to development.

Note: As of 15 January 2012, the Localism Act 2011 makes clear that if there is at least partial deliberate concealment of breaches then the enforcement action can be taken within six months of the local authority becoming aware. The concealment must be deliberate and possible enquiry may be made of any breaches; however, insurance may often be required by purchasers. As of 6 April 2012, the local authority has a discretion not to regularise breaches after an enforcement notice has been served. The above provisions are retrospective.

**PLANNING PERMISSION AND PROCEEDS OF CRIME**

With the exception of demolishing in a conservation area, breaching planning permission is not a criminal offence. Breaching and enforcement notice and also not obtaining listed building consent is a criminal offence. In the case of **R v Del Basso [2010] EWCA Crim 1119** the Court of Appeal accepted that where a park and ride scheme did not have planning permission and the owner ignored enforcement notices then a confiscation order would be available based on profits under the **Proceeds of Crime Act 2002**. Local Authorities are increasingly using the Act in relation to breaches of enforcement notices and listed building status as they get to keep 37.5% of any compensation. In 2017 Southwark Borough Council obtained £1.2 million when the owner of three flats near London Bridge converted them into 20 bedsits and subsequently breached an enforcement notice. The compensation was based on the rental profits that had been made. Confiscation orders have also been available where home owners have made a profit from breaching Tree Preservation Orders.

**Wokingham Borough Council v Scott [2019] EWCA Crim 205.** In this case the Court of Appeal held that a local authority could not bring a prosecution merely because it intended to gain financially.

**SECTION 106 AGREEMENTS AND PLANNING CONDITIONS**

Section 106 Agreements will bind the purchaser and give rise to joint and several liability unless they make clear otherwise. If an S.106 Agreement gives rise to joint and several liability, then it is suggested that the mortgage company should be notified, as it will bind them on possession and will also affect value. UK Finance Handbook states that you should refer to Part II to see if they wish to know about onerous S.106 Agreements. It is also suggested that if a development contains social housing this should be notified to the purchaser. S.106 agreements have no limitation period in relation to enforcement.

Note: Subject to showing on local authority searches, subsequent purchasers may also be jointly and severally liable. To bind third parties then any monetary payment must be registered as a local land charge. One problem is that such local land charges will not be subsequently removed. Enforcement is without limitation. However, as many obligations do not need to be complied with until after the development has ceased, problems may arise for some years in the future.

As of 1 April 2021 in England, the Government intends that affordable housing requiring shared ownership lease should be a New Model Shared Ownership Lease. There will be a minimum 10% share and staircasing can be at 1% tranches.

**Planning Conditions**

As we have seen above, planning conditions can be enforced for ten years from the breach unless there has been a deliberate concealment. Amongst the most important planning conditions for conveyancers are those that ban Permitted Development, or e.g. prevent a garage being used as living accommodation. The date of the breach is relevant and not the date the condition was imposed. The 2011 Conveyancing Protocol stated that if the seller commissioned the work then they should obtain planning consent, if a buyer wishes to obtain consents more than 20 years previously it is at their expense. This has not been repeated in the 2019 Protocol. The other important conditions are those which should be satisfied before the purchaser can go into occupation.

From 1975 planning conditions should be noted on local land charges as should S.106 agreements if any monetary payment is to bind a subsequent purchaser.

Be careful in particular of pre-occupancy and pre-commencement conditions. If the latter are breached this will vitiate the planning permission and enforcement action can occur. A new planning application would have to be made.

**Pre-Commencement Planning Conditions**

The case of **Whitley v Secretary of State for Wales (1992) 64 P&CR 296** it was held that if a condition precedent to commencing the development was breached then there would be no planning permission at all. To be such a condition it must be phrased negatively, e.g. “no development will commence”. The judge stated "the permission is controlled by and subject to the conditions. If the operations contravene the conditions they cannot be properly described as commencing the development authorised by the permission. If they do not comply with the permission, they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful."

In **R (Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 Admin**, involving agreeing restoration of land after quarrying activity had ceased, the judge held that the condition must go to the core of the activity.

In **Greyfort Properties v Secretary of State for Communities and Local Government [2011] EWCA Civ 908,** this was disputed. The case involved a condition requiring the ground floor plan to be determined prior to development commencing. The court decided that non-compliance meant that there would be no planning permission and therefore a refusal to grant a Certificate of Lawful Use was valid 20 years later.

The court stated:

- The Whitley principle, noted above, is approved such that if an operation contravenes a condition it cannot be properly described as commencing the development authorised by the permission. The Court of Appeal here appears to favour the more general approach taken in Whitley in respect of the wording of conditions. Hart appeared to restrict Whitley by requiring Planning Authorities to be explicit with the wording of their planning conditions.
- Hart is generally approved in that the condition must be one which goes to the heart of the planning permission. Breaches of pre-commencement conditions dealing with more trivial matters are less likely to be caught.

Previously, the National Planning Policy in England states that planning conditions should not be imposed unless necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in other respects. The **Neighbourhood Planning Act 2017** came into force on 1st October 2018. Section 7 allows the Secretary of State to introduce regulations to restrict the imposition of planning conditions upon the grant of planning permission but without the agreement of the applicant.

Pre-commencement conditions must be complied with before any operation or material change to use is begun. However, if the applicant refuses to accept an agreement which the local Planning Authority considers necessary, the authority can refuse permission. Consultation to the legislation gives examples of refusals such as on the grounds of heritage, natural environment, green space and flooding. If there is no agreement the applicant would have to appeal. These restrictions will not apply to outline planning permission.

## SOME SPECIFIC AREAS

### Satellite Dishes

There is permitted development for two satellite dishes on a building 15m or less in height. If more than 15m, there can be four satellite dishes. If in a conservation area etc, there is no permitted development if the dish is visible from a highway.

### Forecourt car parking

Since 2008 planning permission is required to change a surface of more than 5sq m between the front elevation of a building and the highway unless the change in surface is made of porous or permeable materials. Since September 2013 this also applies in Wales. Planning permission is also required in a conservation area and planning permission and turning space is required if the parking area accesses a classified road as it is illegal to reverse onto a classified road.

### Decking

Since October 2008 decking of more than 30cm height is treated in the same way as a building and planning permission is required if it and other buildings cover more than 50% of the area of the land.

### Use Classes

### The Town & Country Planning (Use Classes) (Amendment) (England) Order 2011 & The Town & Country Planning (Use Classes) (Wales) Order 2011

The provisions came into force on 6 April 2010 and introduce a new form of Use Class for Houses in Multiple Occupation, which brings it into line with Section 257 Housing Act 2004 and Houses in Multiple Occupation generally. The provisions apply to short term lettings where there is sharing of kitchen, bathroom or toilet facilities. Pre 6 April, such premises would be categorised as dwellings within Use Class C3, as long as there were no more than 6 occupants. Now, if there are three or more occupants who are not related, planning permission will be required for conversion into short term lettings. These provisions are now under review.

Note: These provisions were repealed on 1 October 2010. However, local authorities were encouraged to use Article 4 directions as an alternative, and many authorities have reduced HMOs to properties where there are three or more people sharing anyway.

### The Planning (Wales) Act 2015

Planning law in Wales is now delegated. In particular, there is a new National Planning Framework for Wales. Enforcement periods will be changed and Living Decision Notices have been introduced whereby spent planning conditions etc will be removed from searches. Village green registration has also been amended. As of 1 October 2018, a village green claim cannot be made if planning permission has been granted or if the land is development land within a development plan.

**THE TOWN AND COUNTRY PLANNING REGULATIONS 2020 (ENGLAND ONLY)**

**These provisions apply to England only.**

Part of these came to force on 1 August 2020. Purpose built blocks of flats will be able to build two additional storeys of no more than 7 meters in extent and the new building must be no more than 30 meters. This is subject to prior approval which can be refused because of flooding, external appearance, natural light, traffic and highway impact or defence assets.

From 1 September 2020 Class A1, shops, A2 financial and professional services, A3 restaurants and cafes and B1 business will all be subsumed in a new Class E. Class E will include the following:

1. the display or retail sale of goods, other than hot food, principally to visiting members of the public,

2. the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

3. the provision of the following kinds of services principally to visiting members of the public

    a. financial services,

    b. professional services (other than health or medical services), or

4. any other services which it is appropriate to provide in a commercial, business or service locality, the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner, a creche, any nursery or day centre, not including a residential use, principally to visiting members of the public, for:

    a. an office to carry out any operational or administrative functions,

    b. research and development of products or processes, or

    c. any industrial process.

IN ADDITION:

Drinking establishments, takeaways (the old use classes A4 and A5) are now added to the list of sui generis uses along with cinemas and live performance venues. A change of use involving those uses still requires planning permission.

There is a new Class F1 use class applies to residential and non-residential institutions; and

A new Class F2 use class applies to community uses.

As of 21 April 2021, the Town and Country Planning (Amendments) (England) Order will allow Class E to be converted into Class C3, dwellings without planning permission but subject to prior approval.

Note: These regulations underwent judicial review. On 18 November 2020 the High Court threw out the claim. The Court of Appeal have now given leave to appeal this.

Note: On 31 March 2021 the Government made the Town and Country Planning General Permitted Development (Amendment) (England) Order 2021 in front of Parliament. It came into force on 1 August 2021 and introduces a new Class MA (Mercantile Abode). This will allow Class E to be converted into Class C3 dwellings subject to prior approval. It will only apply to buildings

with a floor area of 1500 sq metres or less. They will have to have commercial use for at least two years and have been vacant for at least three months. The provisions will not apply to listed buildings, National Parks or World Heritage Sites. In a conservation area an impact assessment must be made if the ground floor is to developed.

This will be subject to prior approval as above and will not affect any leasehold or freehold user covenants.

**Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022**

**Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2022**

These come into force in Wales on 20 October 2022. There will be new residential use classes of C3 (primary dwellings), C5 (secondary dwellings) and C6 (short-term lettings). These uses will be interchangeable but local authorities may issue Article 4 directions which require planning permission for a change of use.

**LISTED BUILDINGS & CONSERVATION AREAS**

**Planning (Listed Buildings/Conservation Areas) Act 1990**

A **'listed building'** is defined in section 1 of the Act as a building which is for the time being included in a list compiled or approved by the Secretary of State under that section. For the purpose of the Act any object or structure fixed to the building, which, since on or before 1 July 1948, has formed part of the land and is comprised within the curtilage of the building is treated as part of the building. 'Building' is defined as including any structure or erection and any part of a building.

**Listed Building Consent** is required for the demolition or partial demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. Examples of the types of alteration or extension which would normally require listed building consent are:

a) an extension to a building whether or not it is within the permitted development limits of the Town and Country Planning General Permitted Development Order 1995;

b) alteration such as the removal and replacement of doors and windows; and

c) alterations to the interior fabric of a listed building.

**Conservation Area Consent -** The provisions of the Act relating to listed buildings are applied, with modifications, to the demolition of unlisted buildings in conservation areas. This requires conservation area consent.

**Listed Building Enforcement -** The local planning authority (LPA) may issue an enforcement notice when:

- Demolition or works for alteration or extension have been carried out to a listed building, without consent, and the works affect its character as a building of special architectural or historic interest.

- There is failure to comply with any condition attached to a listed building/conservation area consent.

**Conservation Area Enforcement -** A conservation area enforcement notice is issued by an LPA when they consider an unlisted building in a Conservation Area has been demolished without the grant of Conservation Area Consent.

Breaches in relation to listed buildings are a criminal offence and there is no time limit between the date of the offence and the issue of any enforcement notice. Even if retrospective listed building consent is obtained, there may still be prosecutions of the person committing the offence for activities committed beforehand. Bespoke insurance may be available.

**LOCAL AUTHORITIES AND PLANNING PERMISSION**

**Discharge of Restrictive Covenants**

**Graham v Easington District Council (2009) -** The Lands Tribunal allowed discharge of a restrictive covenant under section 84 of the Law of Property Act 1925 as not securing any practical benefits where the beneficiary of the covenant was a local authority whose planning department had already given planning permission for development. The land, which was the subject of the Lands Tribunal application, was situated in the north east of England. It was on the site of a former colliery in Horden in County Durham. The Local Authority, Easington District Council, had sold the land in August 2000 and had imposed restrictive covenants against use other than as a coach depot and an associated residential bungalow, which would be used in conjunction with the coach depot. The bungalow had been built but no coach depot had subsequently materialised.

Soon afterwards a planning application to build housing on the site was made. The Planning Officer objected, on the grounds that the area including the depot had been earmarked for the industrial regeneration within the locality, and, if residential housing was allowed, this would detract from the possibility of industrial development. Nevertheless, the Planning Authority gave planning permission for thirty houses.

Planning permission would, of course, be of little worth unless the covenants were discharged and the local authority Estates Department refused to do this.

This led to an application to The Lands Tribunal under S.84(1) Law of Property Act 1925.

S.84(1) provides that a covenant may be discharged on the following grounds: -

*"(a) By reason of changes in the character of the property or the neighbourhood or other circumstances the restriction ought to be deemed obsolete.*

*(aa) The restriction impedes reasonable use of the land and does not secure to the persons entitled to the benefit any practical benefits of substantial value or the restriction is contrary to public interest. It may be the case that if the owners' interest in the land is only in relation to a monetary payment there may be no practical benefit.*

*(b) The person entitled to the benefits of the restriction has agreed either expressly or by implication for the covenant to be discharged.*

*(c) The proposed discharge or modification will not injure the person entitled to the benefit."*

In the current case, the Lands Chamber accepts that a covenant might be obsolete even though, as here, it was less than eight years old. However, the ground was not applicable here.

However, ground (aa) the covenant prevents reasonable use of the land and does not secure to the person entitled any practical benefits was highly relevant. In particular, the argument was accepted that, as the local authority Planning Committee had given planning permission, and as there was a perceived need for affordable housing in the area, the District Council were preventing reasonable use of the land in failing to discharge the covenants.

Moreover, it also followed that ground (d) was also applicable in that the authority would suffer no loss or injury should the covenant be discharged.

The Lands Chamber may award compensation to the beneficiary of a restrictive covenant which has been discharged. The Local Authority wanted compensation based on **Stokes v Cambridge (1968)** principles, i.e., one third of the enhanced value of the land, which amounted to some £272,000.

However, the Tribunal accepted that, following **Stockport Borough Council v Alwiyah Developments (1983)**, this was not a valid means of assessing compensation in the present case. In the Stockport Borough Council case, compensation for the discharge of restrictive covenants which allowed the building of 42 houses on open land was assessed by reference to the reduced value of neighbouring land. This was valued at £2,250.

However, neither was compensation on this basis valid in the present case as the Local Authority had suffered no loss and would, therefore, receive no compensation. Instead, the Tribunal awarded compensation based on the difference in value of the land with and without the restrictive covenants at the time of the original purchase in August 2000. This amounted to £23,500.

**Conclusion**

This rather startling proposition that a Local Authority Planning Authority, by giving planning permission for a particular activity, most notably residential development, might tie the hands of the Estates Department in relation to the discharge of local authorities must be noted by all, both in the public and the private sector.

It might be envisaged, in particular, that a large number of covenants may be open to being questioned from covenants, as here, preventing major development down to more everyday residential covenants against, for instance, use other than as a single private dwelling only, and consent to plans and alterations covenants.

Specifically, in **R v Braintree District Council ex parte Halls (2000)**, the Court of Appeal held that a local authority could not charge the owner of a former council house purchased under the Right to Buy provisions in Schedule 6 of the Housing Act 1985 for discharge of a restrictive covenant preventing use other than as a single private dwelling. This, as an indirect form of clawback, was ultra vires the authority's powers. This has always led to something of a dilemma, in that a local authority may be tempted, therefore, not to discharge the covenant at all. The local authority may, however, claim that any building work constitutes a breach of a nuisance or annoyance covenant.

In these circumstances, **Graham v Easington District Council 2009** may, it is submitted, be effectively used and such covenants may, in the future, be of little worth.

In terms of compensation, if there is no loss suffered to the beneficiary of the covenant, then compensation will be assessed as being the reduced value of the land due to the covenants existing. However, remember that this will be assessed at the time of imposition. In the present case this was less than eight years previously and compensation was only £23,500. Some of the more antiquated covenants may be of little worth whatsoever.

If, in the future, a local authority wishes to enforce user covenants as a means of development planning on their disposals, it might be more effective to impose positive clawback, for example, on planning permission being obtained 90% of the enhanced volume of the land will be paid to the authority.

This cannot be used in relation to council house right to buy, because of the **Braintree** case above, but may be effective elsewhere.

Note: In early 2009 the Court of Appeal confirmed this decision. Obtaining planning permission is a factor in deciding whether restrictive covenants should be discharged. In addition, S.84 states that another factor is whether the land is development land and recent past history of planning permission.

**COMMUNITY INFRASTRUCTURE LEVY**

**About the Community Infrastructure Levy**

The Community Infrastructure Levy is a new planning charge, introduced by the Planning Act 2008. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. Development may be liable for a charge under the Community Infrastructure Levy (CIL), if your local planning authority has chosen to set a charge in its area.

**Who may charge the levy?**

The Community Infrastructure Levy charging authorities (charging authorities) in England will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge the levy.

In London, the boroughs will collect the Mayor's levy on behalf of the Mayor.

**What development is subject to a charge?**

Most buildings that people normally use will be liable to pay the levy. But buildings into which people do not normally go, and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay the levy. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay the levy.

Any new build – that is a new building or an extension – is only liable for the levy if it has 100 square metres, or more, of gross internal floor space, or involves the creation of one dwelling, even when that is below 100 square metres.

While any new build over this size will be subject to CIL, the gross floor space of any existing buildings on the site that are going to be demolished may be deducted from the calculation of the CIL liability. Similarly, the gross floor space arising from development to the interior of an existing building may be disregarded from the calculation of the CIL liability. The deductions in respect of demolition or change of use will only apply where the existing building has been in continuous lawful use for at least six months in the 3 years prior to the development being permitted.

**What will the charge be levied on?**

The Community Infrastructure Levy must be levied in pounds per square metre of floor space arising from any chargeable development. The charge will be applied to the gross floor space of most new buildings or extensions to existing buildings.

**How will the charge be levied?**

The trigger is commencement of development, though payment may be made in instalments if the charging authority has a payment by instalments policy.

**Relief and Exemption**

Relief from the levy is available in three specific instances.

First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for

charitable purposes. The charging authority must publish its policy for giving relief in such circumstances.

Secondly, the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing.

A social housing relief calculator has been developed that will assist you to calculate this relief.

Exceptional circumstances relief is only available where a charging authority has made it available in their area. Claims from landowners will only be considered on a case by case basis, provided the following three conditions are met.

Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development.

Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy's charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability.

An assessment of this must be carried out by an independent person with appropriate qualifications and experience. The person must be appointed by the claimant and agreed with the charging authority.

The levy will not apply to development which is wholly internal. In **Orbital Shopping Park Swindon Ltd v Swindon Borough Council [2016] EWHC 448 (Admin) (03 March 2016)** a mezzanine floor was built and separately a new shop front. The council argued that this was all part of the same development and therefore attracted the levy. The applicant successfully argued that they were separate and the mezzanine floor being wholly internal did not attract the levy.

**Oval Estates v Bath & North East Council [2020] EWHC 457**. Where the development is phased then a levy will only be payable after the commencement of each phase. On the fact this was held to be a phased development but in the future it is suggested that this is made clear in the permission.

Note: In England the Government have produced a White Paper on Planning for the Future. This intends to replace Community Infrastructure Levy and Section 106 Agreements with a developer levy which will apply to the whole of England. It is intended to be based on the value of the property and be paid on occupation. Legislation is included in the Levelling-Up and Regeneration Bill 2022-23 but with the current state of flux in Government the future of this is uncertain.

**SELFBUILD AND CUSTOM HOUSEBUILD ACT 2015**

Local authorities must maintain a register of those wishing to build properties at least 50% designed by themselves in the locality. This must be taken into account in the development plan. Such properties do not attract Community Infrastructure Levy unless they cease to be the main residence within 3 years.

In the case of **R (Shropshire County Council) v Secretary of State for Communities and Local Government (2020) 15 November**, the Court of Appeal confirmed that if a commencement notice is not served when starting work the levy will still be payable. However, since September 2019 the liability will be no more than £2,500.