



fluid thinking.
clear solutions.

Social Housing Update – December 2008

Welcome to the latest issue of Social Housing Update from the Social Housing team at Penningtons. If you would like to continue receiving this email update in the New Year, please email publications@penningtons.co.uk to subscribe.

Penningtons News: *Chambers Guide to the Legal Profession 2009 Edition*

We are delighted to report that the Social Housing team at Penningtons have been ranked in *Band 2* in the latest edition of the *Chambers UK* directory for law firms in the South. To quote from the directory "*...this firm has established itself as a solid player...*"

Linda Storey, head of the Social Housing team at Penningtons has also been recognised in the directory as a '**Leading Individual**' in the RSL sector.

Energy Performance Certificates (EPC's) and the Sustainability Code

As from 1st October 2008 **ALL** homes being sold require an EPC and this includes properties that were placed on the market before the requirement for a HIP commenced.

Whilst designing and building to the Sustainability Code is voluntary, for properties in England where a new home is marketed the HIP must include reference to the Sustainability Code.

If you have any queries or would like an in-house workshop/seminar on the above, please email [Linda Storey](mailto:Linda.Storey@penningtons.co.uk).

The Planning Act 2008

The Planning Act 2008 received Royal Assent on 26 November 2008. The Communities Secretary Hazel Blears has talked about the Act leading to a "faster, fairer planning system", an aim with which few would disagree. The Act introduces a new payment on the development of land called the Community Infrastructure Charge. Local Authorities will be empowered to charge developers based on the size and nature of a particular development. The amount of the levy will be set out in a charging schedule which will be part of the Local Development Framework.

By acquiring development land, and in connection with regeneration schemes, Housing Associations will be liable for any Community Infrastructure Levy that a local authority may raise. Local planning policy on the levy should be monitored with appropriate representations being made. The charge will be used to fund infrastructure works, with the intent of opening up new land for potential development. The current proposals are that the Community Infrastructure Levy will co-exist with the current system of developer contributions and affordable housing allocations under section 106 Obligations.

The Government is currently consulting on whether policy on the use of section 106 Obligations, and the level of contributions payable under them, may need revision given the anticipated use of the Community Infrastructure Levy. Particularly in the current market, care needs to be taken that the introduction of the additional charge does not further hinder the already difficult housing market. ***For more information, please email [Tim Davies](mailto:Tim.Davies@penningtons.co.uk).***

Handling Tenant Data and Dealing with Subject Access Requests - New Guidance

All RSLs will hold and process records relating to their tenants, and will therefore be grateful for the new guidance issued by the Information Commissioner's Office. The guidance is specifically aimed at housing records held by local authorities, but is very relevant to RSLs who handle personal data of this nature. For example, information about people applying for tenancy, complaints about tenants (including comments about the tenant made by RSL staff), information regarding repairs or refurbishment of a particular property and details of evictions or prosecutions should all be treated as personal data within the meaning of the Data Protection Act 1998. This applies whether the information is held electronically or manually. The guidance focuses on how a tenant's Subject Access Request (or "SAR") should be handled. An SAR is a statutory right that a tenant has, subject to some exemptions, to see information which an organisation holds about him or her. SARs must be made in writing.

The guidance recommends that RSLs: (1) implement clear and accessible policies on dealing with SARs; (2) train staff on how to recognise and deal with SARs; (3) carefully assess what information is given in reply. For example, could a response to an SAR also involve disclosure of personal information relating to other individuals, such as other tenants and the RSLs own staff; if so, does the RSL have permission from these other individuals to disclose their personal information? Other factors to consider are if the information concerned was acquired in confidence or if disclosure may prejudice a police investigation; (4) keep records of SARs received and information given in response (including a record of reasons why any apparently relevant information was not disclosed); (5) reply within the 40-day statutory timetable.

Shared Ownership - Tax

The Rent to HomeBuy scheme (RTH) is a housing corporation product designed to help potential first time buyers who are unable to buy their homes under the HomeBuy home ownership schemes. A RTH allows a potential buyer to "try before they buy" by renting the property first. This scheme can be useful to a RSL who has constructed low cost housing but finds they cannot sell it. However, a RTH is treated differently for tax to a scheme designed for marketing under the HomeBuy home ownership scheme at the outset, and there will be VAT, SDLT and other tax implications to consider. For example, a higher SDLT charge may be avoided if the tenant makes a "market value election" under the special rules for shared ownership leases, so allowing the rental value of the shared ownership lease to be ignored for SDLT.

Construction Contracts

For contractors looking around for work in the current market the Housing Association sector is increasingly attractive. Whilst that may offer opportunities, it also presents dangers.

A contractor becoming insolvent during the course of a building contract can cause enormous difficulties and additional expense to get the building works complete. In addition to thoroughly checking out the contractor, it is prudent to consider what additional security can and should be taken to protect the Housing Association in the event of a contractor's insolvency. This is an area we are increasingly being asked to advise on.

Appropriate insurance combined with properly prepared Performance Bonds and Parent Company Guarantees offer security to an Employer. The issue of retentions is one that should also be considered. Substantial retentions pending achievement of Practical Completion and rectification of defects provide a useful fund for the Housing Association to complete works should a contractor default, and are an attractive option to clients.

Where a scheme is falling behind or a contractor is otherwise in trouble, it is also important to take appropriate steps to work with interested parties to protect a HA's investment and the works undertaken and we are able to assist with this should the need arise. ***For more information regarding construction issues, please email [Peter Massey](#).***

SUBSCRIBE NOW...to receive future updates that affect your sector

In order to comply with the changes to the Data Protection law affecting electronic communications, if you or any of your colleagues would like to continue to receive regular email updates, please reply to this email by clicking [here](#) and adding "Email Updates Opt-In" into the subject field or alternatively by visiting our [website](#). By opting in we will be able to continue to keep you up to date with legal updates/reviews or to invite you to relevant events.

If you have any queries about the contents of this update, please contact:

Linda Storey

Partner, Head of Social Housing

OR

Barbara Charalambous

Marketing & BD Manager, Commercial Property Division

t: 01256 407115

e: linda.storey@penningtons.co.uk

t: 020 7457 3048

e: barbarac@penningtons.co.uk

London

t: 020 7457 3000

f: 020 7457 3240

Basingstoke

t: 01256 407100

f: 01256 479425

Godalming

t: 01483 791800

f: 01256 479425

Please Note: Specialist advice should be obtained before taking, or refraining from taking, actions based on comments in this update which is only intended as a brief note.