

A yellow tracked bulldozer is shown in a construction site, pushing a pile of rubble and dirt. The bulldozer is positioned on the left side of the frame, with its large metal blade angled towards the right. The background shows a deep excavation pit with some pink surveying markers on the ground.

IT'S THE LAW: Infill sites: Mind the gap

What gap?

As Registered Providers and other landowners continue to reassess their existing portfolios to help overcome the UK's housing shortage, infill development is on the rise.

Whilst by no means a new feature of development, in light of the recent Housing Whitepaper, Councils and Registered Providers are being encouraged like never before to unlock the potential of their existing housing developments and estates. The Government's message is clear – this housing crisis cannot be solved by the Government alone! Everyone needs to do their bit. Building an additional two units on a redundant garage site or seven houses on the edge of an existing estate all adds up.

What is an infill?

This is the development of vacant or underutilised sites within existing developments.

Infill sites do not usually require the demolition of existing homes however there may be infrastructure that needs to be relocated as part of the development, such as

garages or disused community buildings. London is already densely populated and as a result these sites are often small. They are sometimes referred to as "gap sites".

Benefits of infill sites

- No land costs - In most cases you will already own the land. If working in collaboration with a Local Authority, deals are often struck between Registered Providers and the Council's Housing team whereby land is transferred at a reduced or nominal value in exchange for the Registered Provider giving the Council 100% nomination rights.
- Existing infrastructure – There should already be services in place for the existing housing, which will save you the expense of having to bring in new services from the highways.
- SME – Infill sites give you the opportunity to engage small to medium sized developers, contractors and other professionals who often find themselves outbid on large scale regeneration projects.



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The “nasties”

As with any development project, regardless of size, it's important to do your homework before you embark on it. Even if you already own the land upon which the development is going to take place, you should commission a Report on Title to discover whether there are legal impediments which may block your plans.

- Restrictive covenants – These are restrictions contained in deeds and conveyances which prevent the land from being used in a certain way. Common examples include not to erect any buildings or structures on the land or to use the land to run a business without the express permission of the person with the benefit of the covenant. If a restrictive covenant does exist, sometimes a way around the problem is to seek indemnity insurance or a deed of release. Ignoring a restrictive covenant is a risky business. You could potentially face a claim in damages for the breach or an injunction.
- Third party rights – Developers need to be aware of any existing third party rights of way or prescriptive easements affecting the land, which cannot simply be ignored. When purchasing Council-owned sites, you may be able to benefit from the Council's powers to “appropriate” land for planning purposes and then override third party rights to allow a development to proceed (subject to payment of compensation). This can be particularly useful where there are third party rights in existence which could hinder or prevent the development. In some circumstances, a Council may also be willing to acquire and then resell land to a developer to facilitate the above.
- Underground infrastructure – Searches will reveal whether the land is affected by underground pipes or service media. The cost of moving these can be prohibitive and build over agreements are notoriously time consuming and onerous. There may well be a very good reason why that gap is there.
- Rights of light – If a new building restricts the amount of light coming in through a window in a neighbouring property and the level of light falls below the accepted level, this may constitute an obstruction. Your neighbours may have a case for compensation against you or ask you to make changes to your development. They may have the legal power to stop your development altogether. If you do find yourself in a dispute over rights to light,

come and speak to us. Even better, commission a Rights to Light survey when you are drawing up your plans to see if this is likely to be a problem.

- Planning and section 106 Agreements – As with all development work, obtaining a satisfactory planning permission is an essential part of the process. Section 106 Agreements are not usually required for small developments (i.e. those with ten units or less). For larger scale developments, they are a normal part of the planning process, usually ancillary to the planning permission sought by a developer. Section 106 Agreements are used by local planning authorities to mitigate the negative impacts of a development by imposing obligations or restrictions, such as financial contributions, public realm works or affordable housing to name a few.

All doom and gloom?

The above concentrates on the negatives. What else would you expect from solicitors! But many of these issues can be resolved as long as they are tackled head on at an early stage. The trick is not to jump into infill development without being prepared.

The future

Whilst some might argue the increasing number of such developments is reducing the already sparse areas of open space left within our housing estates, there is no question that infill development is a fundamental part of the solution to the UK's housing crisis.

The tiny print

This is one of a series of leaflets published by Devonshires Real Estate & Projects Department aimed at our property owning clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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