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KnowHOW

Essential reading for commercial property professionals who need to be in the know

November 2010

PROPOSED PLANNING (DEVELOPER BONDS) BILL 2010-11

Background

A Private Members Bill has been brought before Parliament for its First Reading known as the Planning (Developer Bonds) Bill. It will ultimately give Local Authorities powers to require developers to deposit funds in the form of a Bond to be used if the application site is not maintained properly by the developer during the construction period.

The Bill has been introduced following various stakeholders experience relating to the lack of maintenance by developers of unadopted areas which are still in their ownership prior to adoption.

Overview

When a new development commences, all related street scene work and costs (generally) remain the responsibility of the developer until the area is adopted by the Local Authority.

The proposal in the Bill is to extend the powers already granted to Local Authorities, through Section 38 Agreements under the Highways Act 1980. These existing powers give the Local Authority the ability at the point of adoption to ensure that the highways infrastructure is built to an appropriate standard and is not a burden on the public purse. However, this is relevant only when the developer is ready to seek adoption. A Section 38 Agreement cannot currently force a developer into action before adoption, or make the developer complete the process of adoption.

The proposed Developers Bond would amend Section 38 of the Highways Act 1980. It includes a new provision to allow Local Authorities to seek a Developers Bond for the maintenance of the street scene in unadopted areas as part of a planning application (and would allow for commuted sums to be secured through Section 106 Agreements). This is being proposed as there are no powers currently available to Local Authorities to cover the transitional period (in residential schemes) between the selling of the first house and the area being adopted. On larger schemes this can be many years.

The new arrangements would allow the Local Authority to intervene where a developer has not maintained an area to an acceptable standard. The Local Authority would then be able to recover its costs from the developer through the Bond. The responsibility in the interim period for maintaining the street scene would remain with the developer. The Bond would not tie the developer into long term contracts, because it would be released (potentially untouched) as soon as the area was adopted.

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Commentary

The introduction of the Bill in Parliament referred to residential developments but it is not known yet whether this will be extended to all types of development. It is proposed that only 'major' schemes will be affected rather than all new developments.

There are many developers who take site maintenance and appearance as an important part of their responsibilities. This Bill, if enacted, will ensure that higher standards are achieved across the board. It remains to be seen whether this will extend to other areas of open space and amenity land as well as roads and other infrastructure.

The Bill will now be published as a House of Commons Paper. It will receive its Second Reading (scheduled for June 2011) when there will be opportunity for MP's to debate the general principles and themes of the Bill before it receives Royal Assent, following which it will be applicable to schemes.

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