The Government’s new strategy combines fiscal and practical measures which are aimed at unlocking stalled sites and accelerating build rates on sites that are already consented. The Government will encourage alternative more ‘fleet of foot’ models of housing delivery through the new £3 billion Home Building Fund to provide loans for SME builders, custom builders, offsite construction and essential infrastructure.

The Accelerated Construction Programme will bring forward public land and £2 billion of investment to encourage new developers and different models of construction to double the build rate of ‘traditional’ house builders.

Helping our clients mitigate risks

The key to the successful development of public land is early analysis and management of risk and regulatory requirements as there are multiple areas of development, planning and commercial law which can often hinder or even derail a brownfield development without astute legal advice. These risks are further exacerbated when considering the multiple disciplines, industries and environments that converge during brownfield development projects. Our Real Estate team has the experience and expertise to help clients plan and mitigate against these risks.

With our help development obstructions can be quickly identified and addressed/managed. This will give you certainty going forward and will be invaluable when securing development finance.

Tackling the housing shortage

The accelerated construction programme

Communities Secretary Sajid Javid, and the Chancellor, Philip Hammond, have announced a new “unprecedented” plan to “open up the market” which will address the national shortage of new homes. The ambition is to deliver more than 25,000 new homes this Parliament and up to 225,000 in the longer term.

Flexibility, timing & delivery

Risks to client:
- Delay & cost due to need to replace, re-engineer or significantly amend planning permission and risk of viability gaps, non-delivery and expiry.
- Substantial liabilities or tax payments on exit and purchasing in an inappropriate vehicle.
- Poorly defined delivery models that don’t realise early returns to support essential infrastructure provision.
- Incorrect land draw down and vacant possession strategy can delay project deliverability, impact on profitability of scheme, prevent certain disposals and lending arrangements, impact on exit strategy and cash flow, and may lead to termination of pre-let and funding arrangements.

How we help:
We ensure flexibility is built into every stage of a project from its structure and planning permission to the establishment of tax efficient entities, section 5 strategies, vacant possession strategies, pre-development disposals and the phasing or packaging up of developments. We do this to achieve the most cost effective scheme as quickly as possible, maximise value and lead to the best possible funding and exit strategy.
Sustainable development

Risks to client:
- Statutory penalties (including severe financial penalties) for failure to comply with residential service charge legislation.
- Reduction in investment value due to failure to manage caps, implement and manage communal utilities correctly.
- Burdening development with complex and expensive infrastructure requirements that frustrate delivery.
- Inherent management and maintenance issues and increased work costs.

How we help:
- Complete solutions for mixed-use service charge regimes, communal utility provision so as to allow implementation across mixed uses and management company structuring so as to mitigate impact on the scheme.
- Provision of structured infrastructure programmes that are built around occupier engagement and security of future use and provision.
- Assist in negotiating affordable housing delivery and communal utility requirements in planning permissions.

Residential rights & requirements

Risks to client:
- Statutory penalties (including large fines and criminal sanctions) for failure to comply with residential legislation.
- Inability to follow most profitable exit strategy and delays in disposal due to failure to mitigate residential rights, voids in NHBC cover and incorrectly executed parent company guarantees.

How we help:
- Experience of providing blended solutions for mixed use developments meeting both commercial and residential requirements – including structuring advice that preserves investment value and exit strategy without infringing residential rights, section 5 and pre-planning requirements whilst ensuring rights are limited so as not to impact whole development.
- Full NHBC application and registration across a mixed use scheme, advising on requirements of residential deposit schemes and mitigating liability.

Funding

Risks to client:
- Different investors or lenders have different tax profiles which can impact on the position of the borrower.
- Changes in law may reduce available deductions.

How we help:
- We provide advice relating to equity or debt funding with joint venture parties or other solutions, as well as emerging new options.
- We have an established development finance team who can help mitigate issues with funding in the investment phase, as well as advice on refinancing at different stages of the development. We help clients ensure that borrowing costs are all deductible and available reliefs will be available when expected.

Planning

Risks to client:
- Possible delays in the delivery of urban regeneration site due to entrenched landowners or unknown ownership issues.
- Balancing the delivery of a sustainable and quality scheme with scheme viability and marketability.
- Risk of rigid planning consents that don't provide the flexibility to meet changing market demands.
- Failure to build in flexibility can result in commercial units standing empty with no viable tenant prospects.
- Costs of marketing apartments in what was originally billed as (and budgeted to be) an exclusive and sustainable development.

How we help:
- We can offer an established skill set in the delivery of bespoke planning permissions and associated s106 provisions to secure scheme flexibility and resilience to changing market demands.
- Advice surrounding planning permission use, planning obligations, development and purchase vehicles so as to maximise value.
- Timing, user and occupational constraints are a common tool of planning consents to ensure the delivery of planning obligations – we help arrange flexible planning obligations for a future development programme to ensure that the multitude of economic cycles that can arise from mixed-use projects are not missed.
Tax structuring

**Risks to client:**
- Unexpected tax costs, reducing the return and the attractiveness of the development to investors.
- The complex nature of sites gives rise to a multitude of tax issues that need to be properly resolved. These include: the treatment of disposal proceeds; grants of leases; VAT recovery; SDLT charges and reliefs and the availability of capital allowances.
- The tax environment is constantly changing with more challenges anticipated.

**How we help:**
- Keeping up with these and the increasingly complex compliance burden is essential to avoid unnecessary tax costs and penalties.
- We provide clients with upfront tax structuring advice, structure charts and implementation steps for the project.
- We advise on suitable holding vehicles, financing, letting structures and flexible exit options. Each structure is tailored to the potential use of the site and identity of the investors.
- We help clients anticipate and navigate the changes in the tax environment and we advise on new taxes, such as diverted profits tax, non-resident CGT and annual tax on enveloped dwellings, as well as compliance measures, to ensure that the relevant exemptions are claimed and only the appropriate tax rate is paid.

Rights to Light

**Risks to client:**
- Rights to light present a real risk for developers as there is a currently a degree of uncertainty in this area of law.
- Injunctions can obviously cause major delays.
- Substantial damages can turn a profitable scheme unprofitable.

**How we help:**
- We have true experts in the area to advise on the acquisition of rights and how to deal with adjoining owners.
- We know all the major rights to light surveyors well and understand the technical side such as contours and EFZ tables.
- We give strategic and sensible advice to deal with troublemakers and defeat their claims.
- We also have substantial experience in compulsory compensation, if all else fails.

Next steps

We are at the forefront of the real estate sector, delivering expertise and creative thinking, within agreed budgets, that will deliver your future ambitions. We work seamlessly across sectors integrating our specialist, deal-hardened planning, parliamentary, tax, construction and environmental teams as you need them, and are able to tailor our advice to the specific needs of clients in the industry.

For more information on our Mixed Use Development expertise please follow this link.

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