



Land acquisition Get it Right the First Time

Rosemary Edwards
Partner, Shulmans

Rosemary Edwards, Partner, heads the residential development team at Shulmans. She is recognised as one of the UK's leading experts in the house building sector, having over 25 years' experience in acting for house builder clients and landowners. She is described by Chambers & Partners as "rock-solid, always available" and "very commercially aware". She and her team act for some of the UK's leading house builders as well as many regionally-based clients, dealing with site acquisition and development work, including site assembly, conditional contracts, development agreements, funding, options and promotion agreements, overage agreements, joint ventures and collaboration agreements and disposals. Rosemary is often instructed to act on behalf of landowners selling land to house builders, and has particular expertise in setting up management schemes to ensure effective management of development schemes once complete. Here Rosemary looks at the things to bear in mind when acquiring land with a view to onward sales or leases.

Housing associations often buy development land or Section 106 units with the intention of "selling" off completed housing units by way of outright sale, shared ownership or similar. That means that the association's title and other estate documentation will be subject to scrutiny by the buyers, their mortgagees and advisers. Conveyancers acting on behalf of mortgage lenders have to have regard to the requirements of the CML Lenders' Handbook when reviewing the acceptability of the documentation and are obliged to comply with those requirements (where relevant). This means that much of the documentation which comes into the possession of the housing association and its advisers in the

course of the acquisition, will be reviewed by others with a critical eye and any problems could lead to delays in exchange or completion of sales or leases, which in turn could delay receipt of vital revenue streams.

So what steps can the housing association and its advisers take during the acquisition process to minimise the risk of problems and delays down the line?

PLANS AND BOUNDARIES

When buying land, the housing association should always check to ensure that the seller has title to all of the land which the housing association needs to acquire and that the legal title corresponds to the actual position

on the ground. Contract, title, survey and layout drawings should be overlaid against each other, to identify any discrepancies, so that these can then be dealt with.

When acquiring individual units from a developer, the housing association should ask the developer to produce evidence that its layout plan has been approved by Land Registry (which approval process will have confirmed that the Land Registry is happy that the developer has title to the whole of the land included in the layout).

If these steps are not followed, problems can arise later where gaps appear between the intended boundaries of an individual plot or plots. Such problems are often difficult (and

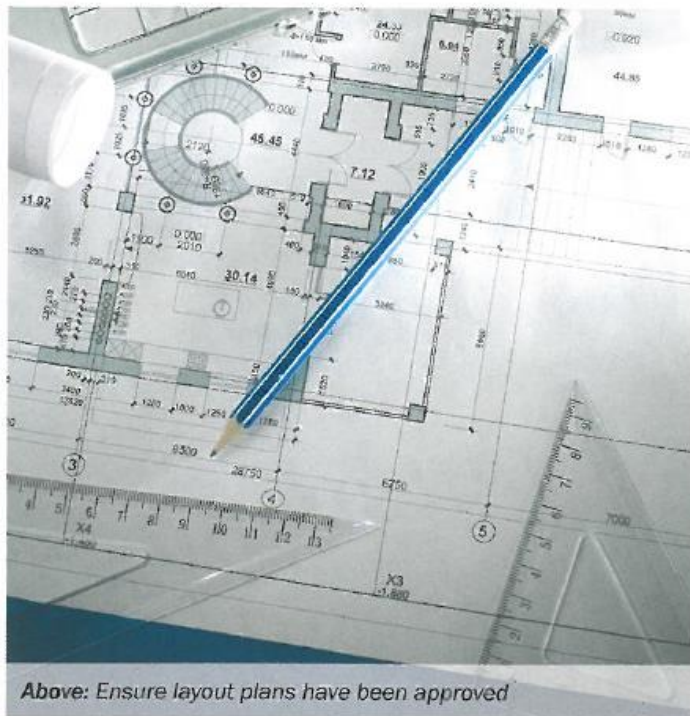
slow) to resolve, particularly if third party landowners are involved.

Where the association is acquiring units from a developer, it is worth the association placing a contractual obligation on the developer to provide Land Registry compliant plans for use in the housing association's own sale transfers or leases.

PLANNING PERMISSIONS AND COMMUNITY INFRASTRUCTURE LEVY

The housing association should maintain a full record of the planning history of the site, including copies of planning permissions, Section 106 Agreements, evidence of the discharge of planning conditions and compliance with any planning obligations. The recent introduction of Community Infrastructure Levy ("CIL") means that records should also be kept of any notices served or payments made for the purposes of the regulations.

Conveyancers acting for buyers of units will quite often ask to see evidence that planning conditions and obligations have been complied with, particularly where these relate to financial payments, liability for which could pass to the buyer. It is helpful if the housing association can make or arrange for such conditions and obligations to be complied with in a timely manner and maintain a record of when this has been done. Local planning authorities are often slow to produce discharge notices and receipts for payment, so to have these at an early opportunity, helps to avoid having to chase up paperwork when requested by buyers' conveyancers.



Above: Ensure layout plans have been approved

SERVICES

It helps to have accurate records regarding the location of existing service apparatus, the location of the nearest adopted highway and the drainage strategy for disposal of foul and surface water drainage from the site. The CML Lenders' Handbook requires that conveyancers acting for mortgage lenders are satisfied that appropriate arrangements are in place for the unit to take access from an adopted highway and to drain to the public sewerage system. Where this is not the case, the conveyancer must obtain details of appropriate adoption agreements. The housing association should ensure that appropriate adoption agreements are put in place as soon as possible. Where these are being put in place by a developer rather than the housing association itself, the association should consider placing

obligations on the developer in the contract relating to the site, requiring the developer to complete the agreements within a fixed timescale and to provide copies to the association when completed.

TITLE ISSUES

The housing association's legal adviser will advise on the marketability of the title to the site and on issues likely to be of concern to buyers' conveyancers. The association should consider taking out indemnity insurance to cover the risk of any matters likely to be of concern to buyers. The matters which most frequently crop up are missing documents, reservations of mines and minerals and restrictive covenants.

The premiums for such insurance can be hefty and will need to be factored in to any development appraisal, unless



Above: Associations should consider taking out indemnity insurance to cover risk

these are being borne by the developer. Despite the cost, obtaining insurance during the acquisition of the site is usually the best approach. Otherwise problems may arise, which could delay or prevent the sale of units.

Most buyers will wish to see that there is sufficient insurance to cover the full developed value of all units covered by the indemnity policy and for this reason, most policies will cover the full developed value of the whole site (or of those units affected by a particular title issue).

GROUND CONDITIONS

Buyers are increasingly wary of buying properties which may be affected by contamination, flooding or other environmental risks. This is particularly the case with brownfield sites.

The housing association

should consider asking its legal advisers to undertake a full set of conveyancing searches of the type which will be undertaken by conveyancers acting for buyers, so as to ensure that the association is forewarned of any issues likely to come to light.

Buyers' conveyancers sometimes ask to see copies of technical reports. These can be bulky and of a technical nature, such that the association will not usually wish to provide copies to a buyer or its conveyancer. A simpler alternative is for the association or a relevant consultant, to prepare a summary statement with regard to any issues relating to the site and details of the measures taken to remediate the site or to mitigate the associated risks. This summary can then be made available to buyers and the advisers.

MANAGEMENT/ SERVICE CHARGE ISSUES

Where a housing association is acquiring units from a developer and those units form part of a larger site in respect of which management arrangements are to be put in place (for example to manage open spaces and similar) then the association should ensure that it obtains full details of the management scheme and the likely contributions.

Such arrangements may impact upon the preparation of the transfers and shared ownership leases and therefore to have clear information available at the acquisition stage, will enable the re-sale documentation to be set up as soon as possible and will enable the housing association to provide accurate information to buyers at point of sale.