

The logo for Ashfords, consisting of the word "ashfords" in a white, lowercase, sans-serif font, positioned in the upper right corner of the slide. The background of the slide is a complex geometric pattern of overlapping triangles and polygons in various shades of teal and blue, creating a modern, abstract design.

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Real Estate & Planning update

June 2025

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Real Estate

Commonhold White Paper

[Click to read our article - 'Commonhold reform – the beginning of the end?'](#)

What to know

The government has announced what it termed the 'beginning of the end' for the leasehold system in England and Wales. Releasing a new white paper proposing the adoption of an updated and reformed commonhold model for residential flats, the government has also indicated its intention to eventually ban the traditional leasehold model.

Whilst the government seems committed to banning the sale of new flats on a leasehold basis, it has accepted a recommendation from the Law Commission to carve out an exception for shared ownership.

Changes proposed in the Commonhold White paper include:

- New rules that will enable commonhold to work for all types of developments, including mixed-use buildings and allowing shared ownership homes within a commonhold.
- Greater flexibility over development rights, helping developers build with confidence and maintaining safeguards for the consumer.
- Giving mortgage lenders greater assurance with new measures to protect their stake in buildings and protect the solvency of commonholds – such as mandatory public liability insurance and

reserve funds and greater oversight by commonhold unit owners to keep costs affordable.

- Strengthening the management of commonholds, with new rules around appointing directors, clear standards for repairs, and mandating use of reserve funds; and
- Providing an enhanced offer for homeowners – including requiring greater opportunities for democracy in agreeing the annual budget, clarifying how owners may change “local rules” over how a building is run and new protections for when things go wrong.

A new Code of Practice will set out how costs should be apportioned in commonhold, aimed at providing consumers with transparency and clarity, and the Government is committed to strengthening regulation of managing agents. The government will also launch a consultation to ban new leasehold flats later this year to explore the best way forward.

What to consider

You will need to monitor the proposals closely, as these reforms may well become law during the lifecycle of current schemes. There may also be implications for the management of estates, as well as the potential conversion of existing estates, which will require consideration. [Click to view the Commonhold White Paper.](#)

Case law – can a party rely on its own breach to terminate a property contract?

What to know

The recent case of [Weston Homes PLC v Henley Developments 211 Ltd & Anor \[2024\] EWHC 3286 \(Ch\)](#) considers whether a party can rely on its own breach in order to terminate a land contract.

In this case, a contract was conditional upon planning. The buyer failed to obtain planning in the required period and sought to terminate the contract and recover their deposit.

The seller alleged the buyer failed to use reasonable endeavours to diligently pursue the planning application and relied on the '**Breach of Contract Principle**' (that a party to a contract should not be entitled to rely upon its own breach of contract in order to bring the contract to an end, or to otherwise secure a benefit).

The court found in favour of the buyer as the **Breach of Contract Principle** did not apply to the termination provision.

The decision in [Sainsbury's Supermarkets Ltd v Bristol Rovers \(1883\) Ltd \[2015\] EWHC 2002 \(Ch\)](#) went the other way, which shows that relying on past decisions on similar provisions is of limited assistance.

What to consider

This case is a reminder to consider termination provisions in conditional land contracts carefully to ensure that what is intended is reflected in the contract drafting.

Spring Statement - Building Safety Levy delayed

What to know

An extra £2 billion has been pledged to the Affordable Homes Programme, with a target of 18,000 new homes by 2029.

From 1 October 2026 (subject to certain exemptions) a Building Safety Levy will be charged on most new residential buildings to raise revenue for building safety. The levy will not be charged on social/affordable housing, developments of fewer than 10 dwellings, homes built by not-for-profit RPs, care homes and supported housing.

The intention is that a levy will be paid by developers on new residential buildings, to cover the cost of 'building safety expenditure'. It will be charged on a sq.m basis, with different rates for different local authority areas and a reduction for development on brown field sites.

The proposed consequence of non-payment is to include withholding the building control completion certificate. Responsibility for paying the levy will rest with the Client = 'the person for whom a construction project is carried out'.

What to consider

Developing RPs will benefit from this large cash injection to the Affordable Homes Programme.

This levy will mean an additional cost for developers in addition to CIL and s106 contributions.

NHBC reinstates deposit cover for registered providers – policy update from 1 April 2025

What to know

Effective from 1 April 2025, NHBC has amended its Buildmark Choice policy wording to once again provide protection for deposits paid by Registered Providers (RPs) in the event of builder insolvency. This decision to restore deposit protection is aimed at enhancing financial security and operational efficiency within the social housing sector.

Since 2022, RPs have been required to seek enhanced cover on a discretionary basis, often resulting in legal uncertainty and reliance on alternative risk mitigation. The updated policy now affords deposit protection by default, simplifying transactional structures and reducing exposure at exchange.

The policy also now includes a new section in respect of shared ownership confirming that the RP will no longer be an owner for the purposes of the policy once the shared owner has staircased out.

Key legal points

- Deposits paid by RPs are now protected under the revised Buildmark Choice wording.
- The change removes the need for separate applications or bespoke contract drafting to mitigate insolvency risk (although side letters will still be relevant for those sites registered prior to 1 April).

This is a welcome clarification and a pragmatic response to sector-wide concerns, rebalancing contractual risk and enhancing certainty for affordable housing transactions.

Planning & Infrastructure Consenting

Reform of the planning system – Planning and Infrastructure Bill has been published

What to know

The much-heralded Planning and Infrastructure Bill 2025 was published on 11 March 2025, aiming to create the biggest building boom in a generation.

The main focus is to 'speed up and streamline the delivery of new homes and critical infrastructure, supporting delivery of the government's Plan for Change milestones of building 1.5 million safe and decent homes in England and fast-tracking 150 planning decisions on major economic infrastructure projects by the end of this Parliament'.

The bill also seeks to materialise the governments' Clean Power target ensuring that clean energy projects are built as quickly as possible.

The bill is informed by a series of working papers published by the Ministry of Housing, Communities and Local Government on streamlining planning decisions and includes:

- introduction of a national scheme of delegation for planning committees;
- proposals for the Secretary of State to introduce regulations authorising or requiring local planning authorities (and the Mayor of London) to set their own fees for planning applications;

- proposals to require mandatory training for elected members undertaking planning functions and a certification system;
- changes to judicial review to remove the paper permission stage for challenges against NSIPs and Development Consent Orders and removing the right to appeal for cases deemed totally without merit at the oral permission hearing;
- re-introduction of spatial planning; and
- reform of Compulsory Purchaser powers including the removal of hope value and delegation of decision-making to Inspectors, Mayors or Council.

The re-introduction of spatial planning has already been welcomed by the housing sector.

These measures will be developed alongside plans for the proposed re-organisation of local government.

A guide to the bill is available [here](#).

What to consider

The reforms are intended to speed up and streamline the delivery of new homes, so keep an eye on what is coming once more details are available.

Nutrient Neutrality/discharge of conditions

C G Fry & Son Limited (Appellant) v Secretary of State for Housing, Communities and Local Government (formerly known as Secretary of State for Levelling Up, Housing and Communities) and another (Respondents) UKSC/2024/0108

What to know

The case decided that appropriate assessment for the purposes of nutrient neutrality can be required at the discharge of conditions stage of a planning permission. The scope of the appropriate assessment should also be the implications of the project as a whole, rather than merely the subject matter of the condition. It was also decided that Ramsar sites have the same protection under the NPPF as sites designated under the habitats regulations.

Developers will need to be aware that (potentially costly) appropriate assessments will be required when applying to discharge conditions – even if no such assessment was carried out prior to the grant of the permission.

The decision of the Court of Appeal was appealed to the Supreme Court and the hearing was held on 17th February 2025. Judgment is awaited and may change the outcome of the above decided issues although we consider it unlikely.

What to consider

To note – decision is currently awaited.

Relationship between PPG (Planning Practice Guidance) and NPPF (National Planning Policy Framework) in context of flooding

Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government & Anor [2025] EWCACiv32

What to know

The case concerned challenges by developers for refused planning permission where the Council considered they had failed to satisfy the flood risk sequential test in the NPPF and PPG.

The court found that PPG had not, in this instance, amended the NPPF with regards to the sequential test. However, the court found there was no legal obstacle to PPG amending the NPPF if drafted as such.

What to consider

Those seeking new planning permissions should be aware of the equal status of both the NPPF and PPG when considering flood risk as a material consideration.

Variations under section 73 of the Town and Country Planning Act 1990 (as amended)

Test Valley Borough Council v Chala Fiske [2024] EWCA Civ1541

What to know

The case concerned a judicial review of a s73 permission (minor material amendment), and set out in further detail the limits of varying a permission under section 73.

It was decided that changes to conditions under section 73 cannot alter the operative parts of an existing permission (with reference to the description of the planning permission see the decision in *Finney v Welsh Ministers* (2019)) without going beyond the powers of section 73.

However, amendments can be substantial or significant provided there is no material inconsistency with the operative part of the planning permission.

The LPA have also applied to the Supreme Court in this instance, so this issue may also be revisited.

What to consider

For developers / applicants, it is thus more important to carefully consider the description of a planning permission in order to maximise the flexibility of any future s73 applications.

Implications of Hillside for phased outline planning permission

R(Dennis) v London Borough of Southwark

What to know

This case related to the proposed Aylesbury Estate redevelopment in Southwark.

The Local Authority sought to avoid the implications of the Pilkington principle in light of the decision in Hillside (i.e. whereby development on a land area approved under one planning permission makes it physically impossible to carry out development approved under another permission) by making a drop-in application for phase 2B with a slightly higher tower severable from the original outline permission by way of a non-material amendment application (s96A). This application added the word 'severable' into the description of the development.

The Planning Court decided that it is not possible to make this change by way of s96A. Altering the "bundle of rights" which make up a planning permission is almost certain to be a material change.

What to consider

This is potentially very problematic for developers with outline permission for large scale multi-phased developments that they now want or need to change. It is very difficult to retrospectively make severable a permission which was not intended to be severable.

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