

# ESTATE REGENERATION MADE EASY

(If it was easy everyone would be doing it!)





## Foreword

Local authority housing has been a core part of the UK's housing delivery for over 50 years. How we shape homes, places and open spaces for people, neighbourhoods and communities to thrive in remains key to their success. The vital role they play in addressing the housing crisis is also central.

When done well, estate regeneration has the potential to transform homes and neighbourhoods through delivering well-designed good quality homes that are affordable, whilst also delivering new and improved community facilities and training and employment opportunities for local residents.

Estate regeneration is complex in nature. There are a number of issues that local authorities face when looking to regenerate housing estates including; considering how to improve the energy efficiency of homes, thinking about how to get sufficient cash to fund the regeneration, to considering how the scheme works for its people and the local community. In this A-Z guide we unpick some of the key issues faced by local authorities when delivering estate regeneration schemes.



# A

## Appropriations

In which council account the land sits will impact the regeneration project as different rules apply for HRA and General Fund disposals, use of capital receipts and other relevant matters. Consideration will need to be given as to whether appropriation needs to take place to make sure the land sits in the “right” account at the right time. The interplay between the power to appropriate under s122 Local Government Act 1972 and s19 Housing Act 1985 will need to be considered as will the calculation of the “certified value” to be paid on the appropriation. Appropriation for planning purposes under 246(1) of the Town and Country Planning Act 1990 will often be a feature of any estate regeneration project so as to override rights and restriction on the land under s203 Housing and Planning Act 2016 to enable development and convert the rights into compensation claims.

# B

## Building lease or licence

The developer can carry out the works under a licence or building lease (or even a mixture of both), before the occupational leases and/or transfers are granted on practical completion. While some authorities may be uncomfortable with transferring land upfront, a building lease can be structured so as to limit the developer’s permitted use to the works and restrict their ability to deal with the land prior to practical completion. There are several other factors which may influence the authority’s decision. For instance where parts of the site are remaining in the authority’s ownership post development it may be more straightforward (and tax efficient) for the developer to build out under a licence. Equally, a developer may request a building lease to assist it in securing funding for the scheme. A developer may also ask for a lease where for tax reasons it wishes to dispose of the new housing under a “golden brick” arrangement – in which case it is important to cover off in the agreement what happens should the developer subsequently fail to complete the works.



## C

## CPO and other planning issues

Ownership of an estate becomes fragmented over time due to tenants exercising right to buy (and similar), and also through the use of shared ownership and other similar tenures. Just a few “hold out” third party owners on an estate can potentially frustrate an entire estate regeneration. Local authorities will often agree to make a compulsory purchase order to facilitate estate regeneration, and a registered provider meets the Council’s costs and typically runs the CPO process for the local authority. To succeed at compulsory purchase, one must demonstrate that there is a compelling case in the public interest for the scheme to go ahead. A “statement of reasons” is the key document that needs to be produced to demonstrate the compelling case in the public interest, which involves a detailed analysis of the social, economic and environmental benefits of the scheme and the steps taken to mitigate the inherent harm that arises from the interference from private property rights. It is necessary to demonstrate that the use of compulsory purchase is a last resort, that a CPO is necessary to deliver the scheme, and that there would be no impediments to the scheme going ahead if a CPO is made (for example there are no planning policy impediments, and that there are resources in place to fund and deliver the scheme). Negotiations to acquire property interests from third parties by private treaty should be pursued in tandem with the CPO process. Once a CPO is made by a local authority third parties may object to it. Where objections arise the CPO must be confirmed by the Secretary of State who will usually convene a public inquiry to examine the merits of the scheme and consider the case for the use of compulsory purchase powers. The CPO process is made up of a complex web of laws and policies that must be navigated to activate compulsory purchase powers.

## D

## Demolition and construction

What goes up must come down – and it is likely that your estate regeneration plans includes demolition and subsequent new-build and/or major refurbishment to the remaining existing buildings. The selection and appointment of the right contractor(s) for the job is essential (and see our “S” for “Selection of a Partner” below) and value, quality and safety can be driven through the contract by ensuring the early appointment of the contractor(s), a collaborative approach to the works and a process-driven approach to risk management, performance measurement and the build-up of the price. The contract you use can be standard form but must ensure that all relevant insurances, warranties and security measures are put in place from the outset and that processes to integrate the team, support continuous improvement and deliver a better, safer, faster and greener project are clearly and carefully recorded. Early consideration of the changing legislative regime will also be required – the draft Building Safety Bill introduces the new Building Safety Regulator and obliges you to maintain a golden thread of information, responsibility and liability throughout the lifetime of the project (and beyond – during the “in-use” phase).

# E

## Energy options

Improving the energy efficiency of housing should be a key driver for estate regeneration, particularly given the UK government's legally binding target for Net Zero emissions by 2050. The installation of energy efficiency measures (such as roof and cavity wall insulation, low-carbon heating sources and solar panels) is going to be necessary to keep pace with minimum energy efficiency standards, but also provides added benefits in taking tenants out of fuel poverty.

In the wider energy context, the decarbonisation of the UK's electricity grid means that the move away from fossil fuels is gathering momentum. Any estate regeneration scheme needs to address the shift to low-carbon heating, including the need to replace gas boilers and CHP with low-carbon heat sources (such as heat pumps or connections to off-site low-carbon heat networks). Decarbonisation also places increasing demands on electricity capacity (particularly with increased adoption of heat pumps and vehicle charging). That may require additional capacity, substations and grid upgrades. So the energy strategy needs to be a key part of any planned estate regeneration, with costs and challenges identified at an early stage.

# F

## Funding

Getting sufficient cash into a regeneration project is a critical success factor; but who should provide the funding, on what basis and for what purposes are questions that depend on its individual nature and the parties involved. There is no "one size fits all". Typically, funding comes in the shape of debt, equity and/or some form of public sector subsidy. The PWLB offers a source of debt funding for capital expenditure thirsty regeneration projects provided that the terms of the November 2020 guidance and requirements of the Prudential Code are observed. The potential to use PWLB funds directly, to on-lend them, to use them to support a local authority's equity contribution to a joint venture vehicle or, the potential to access longer dated money than may be available from private lenders means that PWLB funding still has a valuable role to play in this area. If the project involves a private sector partner, then the requirements of their lenders will need to be factored in and positions reached in terms of the relevant priorities of private and public sector funding. Equally, consideration of how project costs can be reduced through the use of deferred consideration and overage for public sector land assets, the application of RTB receipts as well as the potential and judicious use of the public sector covenant to hedge against contingent liabilities all form part of the funding conversation as should the return due to the local authority for its share of the project's risks where a partner is involved. If the financial model still does not stack up, can wider public financial assistance be sourced from bodies like Homes England, the GLA or a Combined Authority to support the infrastructure or housing aspects of the project? If so, those organisations need to be "in the mix" early on to ensure that their contribution can be used advantageously.

As with any local authority sponsored project, a careful (and well documented) analysis of powers, purposes, risk and subsidy control requirements is critical before and during the life of the project, particularly where innovative approaches to funding are engaged.

# G

## Governance

Regeneration schemes are, by definition, big and complicated. They always involve multiple parties whether directly or through stakeholder engagement. They also last for many years. Such complexity means that every project, therefore, needs excellent governance arrangements to ensure that every entity involved knows exactly what their role is, what value they bring and how to maintain pace and certainty of delivery. All good projects have good information governance and a clear set of terms of reference for how the project is going to be progressed, how the parties are going to work together and the ambitions and outcomes that everyone is working towards.

# H

## HRA and housing company options

The flexibilities introduced through HRA self-financing in 2012 and the release of the HRA debt cap in 2018 has opened up more possibilities for local authorities. Although there is no longer a debt cap artificially limiting the ambitions of local authorities to build and hold new dwellings in a HRA, the HRA Capital Financing Requirements and prudential borrowing requirements nonetheless act as natural constraints. The other flexibility worthy of special mention is the introduction of the general power of competence under s.1 Localism Act 2011. This power has been the catalyst for the proliferation of local housing companies providing the opportunity for local authorities to retain control of assets through a corporate vehicle, with significantly more rent and tenure flexibilities than in the HRA.



## **I** Independent Resident Advisor

The role of an Independent Resident Advisor should not be underestimated. It is often very easy for loud voices opposed to a regeneration scheme to drown out other voices who see merit in the proposals. Where a ballot is determinative of whether a regeneration project proceeds, the Independent Resident Advisor can be an extremely valuable source of independent, fair and unbiased advice to the residents, whether in respect of their legal rights to rehousing, the compensation legally required to be paid and the veracity of the options made available to leaseholders.

## **J** Joint ventures

Long term and complex, estate regeneration can be an expensive business, requiring a mix of skills and resources to unlock the project's potential for the local community and economy, whilst also maximising the use of public and assets. Joint venture (JV) options should always be considered as a means of sharing the risks of a project and complementing an authority's skill set and resources – particularly where commercially focussed development is intrinsic to project financing and delivery. Any decision to deliver a project in joint venture will require consideration of the procurement options for partner selection and the role of the local community in that; the nature of the joint venture (corporate vehicle or contractual arrangement – the 2018 judgment in *Peters v LB Haringey* gives clarity on the corporate options and the use of the general power of competence but reinforces the need for clear decision-making and analysis of the council's purposes in pursuing certain corporate options). Thought needs to be given to any equalisation of the parties contributions and returns – reward needs to be commensurate with risk and a mature and open dialogue about who is best placed to assume what risks and over what period will be central to the venture's success and longevity. To date, many JVs focussed on estate regeneration have been created between local authorities and private sector developers. The capacity for further JVs between local authorities and registered providers remains an interesting option particularly where their landholdings are geographically aligned.

## **K** Keeping stakeholders involved and informed

Every successful scheme needs “stakeholder buy in”. Why? Without it, the vacuum can quickly be filled with negative assumptions and miss information about the intentions and ambitions of the scheme. More importantly, however, your key stakeholders can bring local knowledge and vital insight into your masterplanning. This can unlock innovative solutions and key information which later contribute to the success of the regeneration. Communities' never like schemes being done to them so work with your stakeholders and keep them engaged.



## L

## Leaseholder options

The Estate Regeneration National Strategy (issued in 2016) sets out a number of models for resident home ownership including; the shared ownership model where residents buy a share of a property and pay rent on the share that they do not own, the shared equity model where residents have an opportunity to purchase a property which is of a higher value or larger than their current home and where the landlord retains a share in the property until the leaseholder or freeholder can purchase the remainder of the property or indeed sell the property. Early buy-back is another option whereby the freeholders and leaseholders are given the opportunity to purchase a property at less than the market value during the early stage of the scheme and the Home swap model allows leaseholders to receive market value for their home plus a home loss payment enabling them to move elsewhere or use the payment to buy property on the estate. The Cash-back deals model involves the residents undertaking some of the finishing touches to the home e.g. tiling in return for a reduction in the market value or rent. Each regeneration scheme is different and the viability and attractiveness of options will need to be carefully considered at the start of the project.

## M

## Meanwhile strategies

Nothing says urban failure quite like the sight of boarded up premises. Whether in a town centre or a residential estate those shuttered up buildings create issues around vandalism, infestation, antisocial behaviours and all the other negative connotations. Creating a meanwhile activity can bring a really positive temporary, interchangeable and flexible use to a space. This can be a quick win with the community by bringing life and energy to a location while the longer-term regeneration plans are being worked up. Such uses can become really popular and valuable destinations which can also bring initial revenue into the development account.

## N

## Novel viruses

The Covid-19 pandemic has been hugely consequential for estate regeneration projects. Whilst initial lockdown arrangements in early 2020 closed a huge number of industries, the construction industry quickly opened up and many construction projects (including council regeneration projects) were back on track. It has become apparent that a lasting legacy of the pandemic will be the impact on design. Access to green space, adaptability of accommodation and the overall quality (and equality) of place will be hallmarks of new estate regeneration design from now on. Change in Law and Force Majeure are legal concepts that all regeneration professional have become all too familiar with now. The pandemic has shown that it is often the stuff that can't be predicted that derails timetables and projects. The legal documents that underpin the project delivery need properly to cater for all eventualities.

# O

## Overage

Overage arrangements can assist in securing best value and can avoid embarrassment for the authority if a scheme turns out to be more profitable than originally anticipated. This can be particularly relevant for phased schemes which are to run for a number of years – it is generally prudent to include some form of overage mechanism even where the generation of overage is considered unlikely. Sales overage can secure a share in any increased sales values while planning overage can be used to capture the increase where the permission achieved is more valuable than anticipated. Overage provisions should be carefully drafted so as to avoid manipulation and protect the authority's interests. It is though equally important that an authority is able to monitor and enforce any overage provisions, particularly as this will be some time after the provisions were agreed – there is limited benefit in an overly complex overage mechanism on a smaller scheme where significant overage is not expected. For larger phased schemes where overage is calculated on a phase by phase basis it is also worth considering whether some or all of the overage should be ring-fenced to assist the viability of future phases or otherwise reinvested in the scheme.

# P

## Public subsidy

Since 1 January 2021 subsidy and subsidy control have replaced state aid in Great Britain. The new British system is evolving with a new Subsidy body and possible new Subsidy regulations likely to be introduced during 2021. Subsidy control (like state aid) is designed to prevent public sector resources effecting trade or investment between the UK and some UK trading partners and, unlike state aid, to prevent a distortion in the UK's internal market. In practical terms if a public sector body is providing land or other support to regenerate a community then a check is needed to ensure this is lawfully structured. The legal basis and processes to provide public subsidy have also changed so it is important these are followed. The good news is that subsidy, like state aid, treats support for affordable housing favourably and it also caters for public bodies making market loans and investments to support market housing.

# Q

## QS and other consultant appointments

The appointment of the professional team is one of the first tasks for a client to undertake for any estate regeneration project. Any suite of professional appointments need to ensure that each consultant's role and responsibilities are clearly stated. It is also good practice to ensure that each consultant is aware and has sight of what the other professional team members' roles are and what they are responsible for. Any discrepancies or overlaps in service provision should be identified and addressed as a team so that the client can benefit from a collaborative and cohesive advisory team. Appointments should also be underpinned by satisfactory professional indemnity insurance and provide for warranties for any likely beneficiaries, as well as a right to novate for design consultants in the event you opt for a design and build approach.

# R

## Resident engagement and community co-design

People are at the heart of every community. The success of estate regeneration can be measured by how it works for its people. The law recognises this by requiring consultation and in Greater London this might include a resident vote. Yet, engagement can contribute so much more than this. Some social landlords seek to work with their residents to co-design a better physical, social and economic blueprint for their regenerated community. Such blueprints can feed into estate masterplans and frame the outcomes which the landlord sets itself and seeks from its partners. Other landlords have appointed residents to procurement evaluation panels to underline to potential regeneration partners the importance of schemes working for the local community. We have also worked with clients to provide workshops and prepare plain language guides for residents to explain legal terms and documents. Ultimately each social landlord (and community) will decide what works best for them. After all, not every resident has the same appetite to engage. Whatever route is adopted our experience is that there tends to be greater support (and less challenge) where residents are engaged and involved in securing their new homes and communities.

# S

## Selection of partner

The selection of a regeneration partner is key to the success of the project. “Timing is everything” and any regulated procurement process will need to run alongside or with reference to the resident ballot, CPO/planning application and design development, funding time-scales and deadlines and early works requirements. A nimble and value-led approach will allow you to swiftly and intrusively investigate the bidders’ proposals and identify the best fit for your project. A competitive process will also assist with subsidy control, consents and public procurement “sign-offs” as well. You may want to “negotiate” or simply “chat” with your bidders ahead of formal submissions being submitted and it will be important for a compliant but creative approach to be taken to ensure that the procurement timetable does not extend beyond what is necessary to arrive at a solution and a price that is right. Ensuring that your procurement ends up with a deliverable solution, contractually wrapped, will minimise any post-tender negotiation and ensure that you can proceed swiftly to mobilisation and delivery. A nod should also be made to the likely amendments we are due to see in a new post-Brexit Procurement Reform Act. The Cabinet Office’s recent Green Paper made it clear that the aim of the reforms is to speed up procurement and make it less burdensome for bidders, SMEs and VCSEs alike. It is therefore likely that you will be able to take advantage of the new competitive flexible procurement procedure, or a new DPS+ or new generation framework agreement when considering your route to market.

# T

## Title and property issues

At the heart of every regeneration are the physical assets. Property due diligence and a clear understanding of the titles is often surprisingly overlooked. Many schemes have been tripped up by incorrect ownership assumptions being made and never corrected. Understanding every aspect of the title and cleaning any defects before the site is taken to market is a valuable investment in time and will save money in the long run. For example local authorities regenerating estates often use their appropriation powers or CPO to ensure a clean title delivered to the development partners will save later price chipping or worse blighting the development.

# U

## Undervalue disposals and best consideration

Undervalue disposals verses the obligations to obtain best consideration often creates a dilemma when assessing a scheme's viability. S123 of the 1972 LG Act still obliges local authorities not to dispose for less than best consideration reasonably obtained, often interpreted for shorthand as market value. The subjectivity of this can become controversial leading to debates as to whether this has been achieved. Protecting the public purse makes sense but this ignores the wider possible public and regenerative benefits which a development scheme might bring. Where those benefits can be articulated there are various consent routes to explore for undervalue disposals. These include specific Secretary of State or Welsh Minister consent, disposal under the General Consents and the Localism Act. The valuation principles for the transfer of public assets linked to regeneration remain key to successful schemes.

# V

## Viability

Viability is the key to any scheme. If it doesn't stack up financially it won't get built without the local authority propping it up financially - but only then if there is a degree of certainty around that financial input. It is critical to have confidence in the financial model and challenge assumptions to ensure that they are robust and deliverable. For smaller schemes which can be priced with a degree of certainty, authorities may look for an absolute commitment to deliver, whereas for larger phased developments a viability test, for example for subsequent phases, may be appropriate. In that case, it is important to structure phases to ensure that viability is not used further down the line to seek to avoid certain deliverables which, though perhaps less profitable, are of importance to the authority.

# W

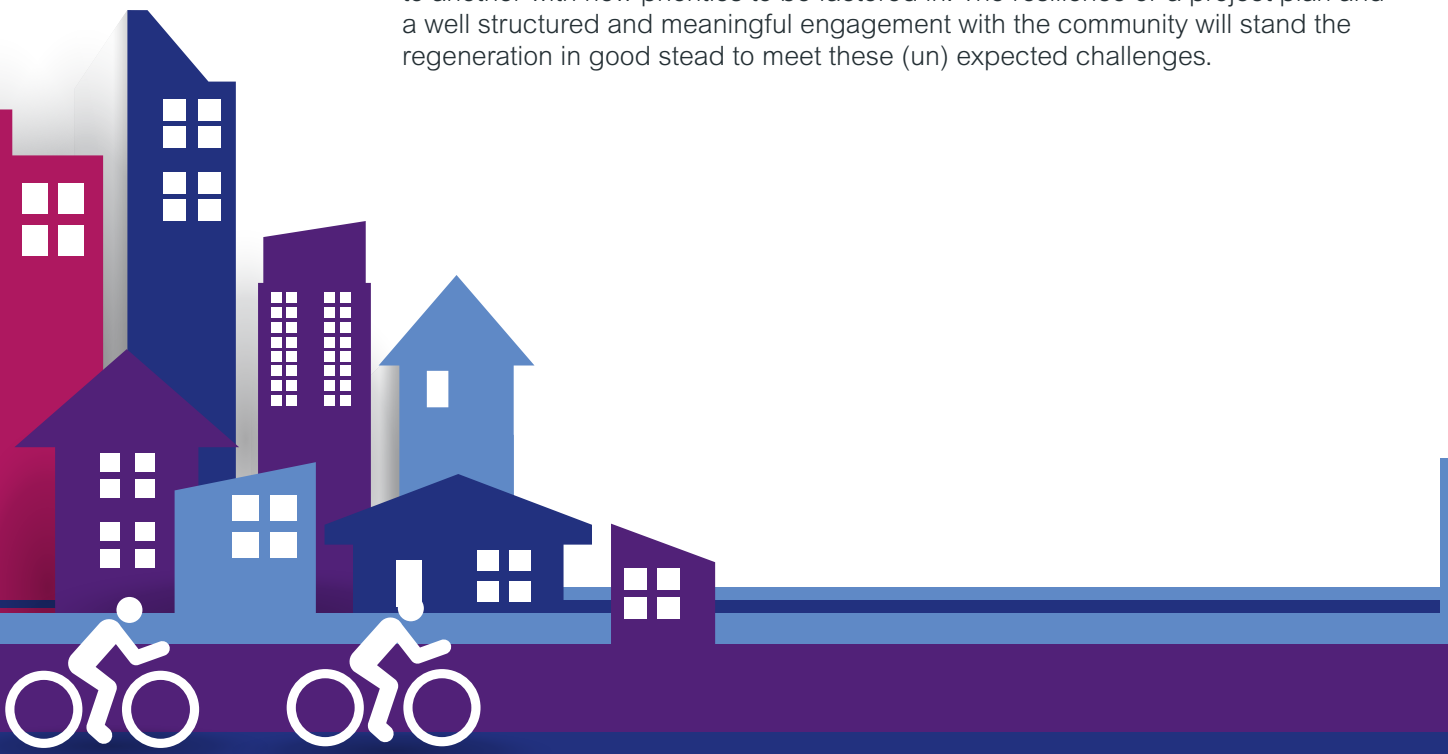
## Which delivery option to choose

The delivery option is merely a tool to secure the desired regenerated community. The selection of that option best follows the council mapping out their preferred outcomes and objectives for a renewed community together with identifying any financial or other constraints. This exercise is likely to inform decision making about which option(s) are more likely to support those outcomes as well as manage the constraints. A particular type of delivery option should never be an end in itself (even if it is currently on trend!). Available regeneration options have significantly expanded in recent years. An increasing number of local authorities are using HRA funding to support council directly delivered schemes which might include social tenure homes together with market sale and rent homes. Sometimes this is undertaken with a council subsidiary or market housing partner. Traditional JVs (whether using a regeneration agreement or corporate JV) are still available and well used. Other options have more recently emerged with pension and other funds being prepared to utilise innovative structures to invest in market rented and, increasingly, affordable homes. We are also aware of (and supported clients on) schemes which combine elements of these.

# X

## Expect the unexpected

If the Covid-19 pandemic has taught us anything it's to expect the unexpected! Whilst no one can predict the future it is hugely important for the local authority's plans in relation to the regeneration of estates to be flexible and adaptable. Resident and community needs are not set in stone and the requirement for many people to use their homes as work places during the pandemic has shown that the best plans and design are those that are the most adaptable to those changing needs. Estate regeneration schemes are usually years in the planning and years in the delivery. The political make up of a local authority can change many times during those years and what was regarded as fundamental to one administration may be secondary to another with new priorities to be factored in. The resilience of a project plan and a well structured and meaningful engagement with the community will stand the regeneration in good stead to meet these (un) expected challenges.



# Y

## Yes vote

London estate regenerations proposal involving any demolition of a social housing dwelling and the construction of 150 or more homes (where GLA funding is involved) requires a resident ballot. For the regeneration to succeed that ballot must be positive. The track record of such ballots has been (until 2020) entirely successful. The recent no vote on a Camden estate has been reported to be the result of a number of factors including a purported lack of clarity over the number of properties to be re-provided at social rent levels. Ballots are not mandatory on other estate regeneration schemes (unless it involves a transfer of the tenants from a public sector landlord) but they are becoming more common and a good way to engage the community support needed for a successful project.

# Z

## (Net) Zero

In 2019 the UK government introduced a legally binding target to reduce greenhouse gas emissions to 'Net Zero' by 2050, making the UK the first major economy in the world to legislate a net zero emissions target. This will require a 100% reduction in UK greenhouse gas emissions based on 1990 levels. The Government's approach to Net Zero means that the UK's total greenhouse gas emissions will need to be equal to or less than the emissions that are removed from the environment (through reduction in emissions or removal by offsetting).

In order to achieve this target, an unprecedented level of change is required across all sectors, but particularly in relation to buildings (which account for around 17% of the UK's greenhouse gas emissions). Improvements in energy efficiency, decarbonisation of transport and the shift to low-carbon heating are key factors to take into consideration in any estate regeneration.

For new-build, the forthcoming changes to Building Regulations (see L and F above) provide an interim step towards the Future Homes Standard (due in 2025). This will provide a step-change in how we design and construct buildings, with new-build homes to be future-proofed with low-carbon heating and very high fabric standards. Existing buildings will be caught by ever tightening minimum energy efficiency standards, which will require significant investment in retrofit insulation and low-carbon heating sources. Any estate regeneration strategy needs to consider future decarbonisation obligations, which may require further layers of investment over the lifetime of the scheme.



## Our team



**Scott Dorling**  
Partner  
+44 (0)20 7423 8391  
sdorling@trowers.com



**Tonia Secker**  
Partner  
+44 (0)20 7423 8395  
tsecker@trowers.com



**Chris Plumley**  
Partner  
+44 (0)121 214 8817  
cplumley@trowers.com



**Paul McDermott**  
Partner  
+44 (0)20 7423 8043  
pmcdermott@trowers.com



**Rebecca Rees**  
Partner  
+44 (0)20 7423 8021  
rrees@trowers.com



**Rory Stracey**  
Partner  
+44 (0)1392 612235  
rstracey@trowers.com



**Jacqueline Backhaus**  
Partner  
+44 (0)20 7423 8523  
jbackhaus@trowers.com



**Victoria Thornton**  
Senior Associate  
+44 (0)20 7423 8322  
vthornton@trowers.com



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