



## WELCOME

I hope your Christmas was a peaceful and enjoyable one and the effects of the New Year celebrations have now fully worn off!

As always at this time of year our attention is drawn towards what the New Year has in store and when many of us start to plan for those jobs that we have been putting off during the year that has now passed. It is also often a time

of change and, in keeping with this theme, this Newsletter seeks to touch upon some of the proposals now emerging from the Coalition Government that are likely to affect us all, particularly with the recent emergence of the new Localism Bill, the provisions of which are likely to have a fundamental effect on the planning system, which invariably will be

relevant to all of our clients.

These and other topical issues of interest are outlined in this Newsletter, which I hope you will find informative and dare I say enjoyable! ■



MARTIN RANNER

# Power to the People

## THE COMMUNITY RIGHT TO BUILD AND NEIGHBOURHOOD PLANS

The world of strategic planning is poised on the edge of the brave new world of localism. Under the proposals unveiled in the Localism Bill in December, not only will it be up to Local Authorities to set their own housing numbers but Parishes will also have the right to establish a 'Neighbourhood Plan' covering their area. The Bill also sets out more detail on the much vaunted 'Community Right to Build'.

However, many of the details are absent from the Bill (they will be covered in later regulations) and as a result it is difficult to accurately predict how the system will work in practice. Moreover, the Bill must first pass through Parliament before becoming law, during which time many of the proposals contained within it could see significant change.

The Community Right to Build could revolutionise development in villages, particularly smaller villages, in rural areas. In recent decades development has been severely restricted in any settlements other than towns and larger villages, in an attempt to reduce reliance on the private car. However, the Localism Bill now proposes that if 50% of the community support a proposal (in a referendum) then the community can build the scheme without seeking planning consent. It is up to

communities to identify suitable land, sources of finance and secure support for their proposals. The explicit aim of this scheme is to tackle the lack of development coming forward in rural areas where Local Authorities have been resistant to development.

The Community Right to Build could provide a key opportunity for landowners with sites adjacent to smaller villages, the development potential of which has been stifled in recent years. This is particularly true if there is an active community which has specific needs which could be met by the site, possibly through cross-subsidy from the sale of market housing. However, any land promotion on this basis would need to be a strongly collaborative approach with the community in order to achieve the 50% support required.

Neighbourhood Plans are a separate initiative to the Community Right to Build, and will provide an opportunity to

establish 'Neighbourhood Development Orders' permitting certain types of development to take place without a planning application being submitted. However there is no indication that Parishes will be given the ability to determine planning applications. The Neighbourhood Plan will form part of the 'Development Plan' alongside the Local Authority's Local Development Framework, and, as such, will need to be taken into account when planning decisions are made; however a Neighbourhood Plan must conform with the LDF and national planning policy.

As a result, if the Local Authority decide that a settlement should take a certain number of houses then the Parish cannot then conclude they will not build these houses. However, they can decide where these houses should be built, through their Neighbourhood Plan. As a result, for those landowners promoting land for development, the views of the Parish are increasingly important. ■



**ANGUS HUDSON**  
BSc (Agric) MRICS FAAV



**CLARE HUTCHINSON**  
BSc (Hons) MA MRICS



**MARTIN RANNER**  
BA (Hons) PGDip MRTPI



**RICHARD COULING**  
BSc (Hons) MRICS



**JAMES WATCHORN**  
BSc (Hons) MRICS

## Land Market

We have taken several parcels of land, between 2.5 and 160 acres to the market through the course of the summer in addition to negotiating several "off market" sales. The level of interest in all the land marketed from agricultural buyers for the larger blocks to amenity buyers and

neighbouring residential property owners for smaller areas remains strong with some pleasing results negotiated.

If you are considering selling land in the New Year we would be pleased to discuss those sales with you & take sales forward into the hopefully rising market in the spring. ■



## Solar Panels

Feed in tariffs have generated a great deal of interest in farm-based photovoltaic panels to take advantage of another source of renewable energy. Historically PV was quite unattractive, due to the extended pay return period compared to wind turbines, for example.

Installing these panels is an attractive scheme with often quoted rates of return of between 6% and 10% dependent on the particulars of individual situations. The apparent simplicity of PV electricity

generation makes it easy to forget that there are potential difficulties which may affect a proposed scheme. Planning, building features, design and location, agreements with third parties, financing/rate of return and National Grid connections can all present difficulties. It is quite possible to overcome these difficulties but preparation in advance is required.

We would be pleased to discuss any potential sites you may have for photovoltaic panels. ■

## Exam Success

We are delighted to announce that Mark Forbes has successfully passed his final exams and now holds a BSc (Hons) degree in Estate Management from the College of Estate Management.

Mark joined Sworders in Spring 2007 and undertook his Postal Diploma in Estate Management while working for the company. He is now enrolled on the Assessment of Professional Competence to become a Chartered Surveyor. ■

## New Joiner

Stefania Louise Estacchini is a member of the Royal Institute of British Architects and joined Sworders in October 2010 following a Masters Degree in Sustainable Architecture. She has worked extensively in the construction industry, her two most complex buildings being the design and construction of an Olympic Stadium (see below) and assisting in the construction of the Student Union building for Warwick University. ■



## Commercial Update

It seems obvious for me to say that one of the most important aspects of letting a building is matching the tenant to the building; however this is not always easy. It is therefore important to remain as flexible as possible when discussing opportunities with new tenants as a deal could stack up.

We have seen a strengthening in the number of enquires over the last month or so with a good proportion of new tenants

signing up. However, in many cases, the building has required some improvements or amendments. We therefore consider proposed works carefully in order to future-proof the building. It is also important to structure the agreement so the "tenant specific" works are paid for by the tenant or removed and made good at the end of the agreement.

We currently have tenants looking for their ideal building so, if you have a building available or would consider looking at a pre-let agreement, then please contact us to discuss your options. ■



**RACHEL PADFIELD**  
BSc (Hons), MA, MRICS



**LYNSEY MALOY**  
BA (Hons)



**HEIDI VENN**  
BSc (Hons), MSc



**CHARLOTTE KING**  
BA (Hons)



**MARK FORBES**  
BSc (Hons)



**STEFANIA ESTACCHINI**  
Dip.Arch (Mack), RIBA, ARB, MSc

# The Conservative Guide

There are many reasons to use a conservative guide when selling property and in countless cases it has yielded extraordinary results.

Many agents use an asking price which helps them gain the instruction, however this risks creating a ceiling upon the price obtained.

With a stagnant or softening market, the asking price can also often scare people away from a property, particularly when using the search criteria on property websites, as the high asking price may mean the property falls out of people's budget range. The result of this is that often the asking price will need to be reduced in order to attract buyers. This is a clear indication to purchasers that there is little interest in a property.

A conservative guide price is pitched at a level designed to generate a significant level of interest. If more than one prospective buyer can be found, then this creates the opportunity to create some competition and marketing momentum.

With this approach, we find that people who may have been out off by a higher asking price originally, can fall in love with a property and can sometimes be persuaded

to bid well in excess of their first offer if they see others interested in the property. We have seen buyers reappraise their finances and even sell other assets or get parents-in-law to join with them in an investment to facilitate a purchase.

This principle works especially well with barns for conversion and houses with land and/or for renovation.

## **An example:-**

*College Farm was sold during the summer of 2010. The property comprised a farm yard with planning consent for 4 residential barn conversions. We set a conservative guide which was below the price we felt should be achieved. This was accompanied by a range of other marketing and resulted in a stream of enquiries. The level of interest*

*resulted in block viewings of the property which illustrated to the prospective purchasers the level of interest we had in it.*

*The first offer came in fairly quickly at guide and then snowballed into negotiations with a range of different parties. We assessed the level of interest and methods of closing the sale, which could have included negotiation, an auction or some kind of tender process. The final method comprised initial negotiations and then finally, in effect, an informal telephone auction which resulted in a result over double the initial guide price.*

*The result far exceeded our expectations.*

If you are considering a sale please give us a call so we can discuss your options. ■



# Tax Assessment – Penalty Charges

Changes caused by recent finance acts make it possible for HMRC to charge penalties for incorrect tax documents and returns. This applies to the assessment of both Capital Gains and Inheritance Tax returns (and others) where property values are submitted. It is now possible for HMRC to charge a penalty (that can be as much as 100% of the additional tax liability arising) if values submitted for properties differ

from those agreed after negotiation with the District Valuer. A difference between agreed and submitted values of as little as £20,000 could be sufficient to create a penalty charge.

This is potentially very significant for the valuation of high value properties where this difference is a very small percentage of the total. The threat of potentially severe penalties, the application of which is largely

beyond the control of the Valuer (and available even after a negotiated settlement has been agreed) seems bound to create difficulties in this area where a difference in Valuer's opinions is accepted as normal. There have been very few cases to give further insight into the practical application of this legislation and we await the same with interest. ■

# The Art of Concealment

The eagerly anticipated Localism Bill had its first reading in the House of Commons in mid-December. Whilst the national press have focused on the Local Government cuts it brings, and the Community Right to Build and Neighbourhood Plans (which we deal with elsewhere in this Newsletter), it also contains some alarming provisions which would significantly change the risks associated with breaches of planning control.

The Bill proposes to give Local Planning Authorities the power to take enforcement action after the current 4 and 10 year time limits have expired. As the law currently stands, if you can prove, on the balance of probability, that a change of use or breach of condition has been ongoing for 10 years or that a new building or residential dwelling has been in existence for 4 years, it becomes lawful and therefore immune from enforcement action. However, the Bill is introducing a further clause, stating that in cases involving "concealment", the Authority may apply to a Magistrates' Court for a Planning Enforcement Order which, if granted, would allow them to enforce. The Magistrates' Court may make the Order where they are "satisfied, on the balance of probabilities, that the actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach".

The million dollar question is what "full or partial concealment" means. Does it apply only to deliberate physical concealment, such as the case of the castle behind the straw stack or does it mean simply not telling the Planners and the Rating

Department? We believe the Government only intend for this provision to apply where people have wilfully misled, since they would otherwise have deleted the time limits altogether. However, the current drafting is wide open to interpretation. We anticipate the courts will decide from precedents set in other areas of law what concealment will be taken to mean.

It may never be 'safe' to apply for a Certificate of Lawful Use/Development since even if the Planners agree that you have demonstrated 4/10 years, they can refuse to issue a certificate on the basis that you have been concealing it and go to the Magistrates' Court for an Enforcement Order. However, this is only the first draft of the Bill and we question

whether this element will survive the debate given the implication this would have for the investment market in light of there being no absolute limit to liability. The current law gives certainty to advise buyers where there is a historic breach of planning control or where compliance with planning cannot be fully established.

The upshot is, if you are already past the 4 or 10 year mark we suggest you submit your application for a Certificate of Lawful Use/Development within the next 12 months, before the Bill becomes law. It also means that if you are intending to breach planning permission with a view to securing lawful use, be very flagrant about what you are doing to avoid a future accusation of concealment! ■



## The Cap Towards 2020

The European Commission is looking at the next round of reform to the Common Agricultural Policy (CAP) and has released an Option Paper that gives us an idea of where we may be heading. The Option Paper entitled "The CAP Towards 2020" calls for a 'strong common policy structured around two pillars'. The policy should preserve food production throughout the EU in order to protect European citizens and guarantee food security.

This statement is made in the context of a projected 70% increase in global food demand by 2050. The main principles of this paper are as follows:-

basic income support should be provided but with an upper ceiling;

payments should be linked to 'greener' measures, but with cross-compliance rules simplified;

additional support should be provided to

areas with 'specific natural constraints';

voluntary coupled support should be allowed within clearly defined limits;

support should be targeted on more clearly defined 'active farmers'.

A key feature of the reforms will be the greening of pillar one which is likely to lead to mandatory environmental stewardship coupled with a simplification of cross compliance. ■

The articles featured in this publication have been selected and prepared with a view to disseminating key information and are not intended to be comprehensive nor to provide advice. Before taking action advice should be sought for specific queries.