

REGENERATION & SUSTAINABILITY





*“Clients believe the only differentiating factor between Burges Salmon LLP and City firms is that “Burges Salmon LLP offers better value for money.”*

The Legal 500

*“This “forward-thinking” commercial firm offers “sound, practical, and strategic advice.”*

Chambers Guide to the UK Legal Profession

## THE CHANGING CLIMATE FOR DEVELOPMENT PROJECTS

### THE OPPORTUNITIES

#### INTRODUCTION

Recently the issues of climate change, energy efficiency and other environmental matters have moved from peripheral to fundamental importance for development projects.

There is a raft of emerging legislation and other policy initiatives from both Europe and the UK Government to force a reduction in emissions from the built environment. These cover all aspects of energy efficiency.

The sustainability and "green" issues also need to be considered to ensure that funding can be obtained and ultimately that buildings are attractive to purchasers or lessees.

How these issues should be addressed will depend upon the size and nature of any particular project, but failure to address them in the current climate will prejudice the viability of projects and the ability to win tenders.

This is a fast changing area and new challenges are frequently encountered. Developers with advisors who are at the forefront of advice in this area will be ideally placed to address the issues and exploit the opportunities that these challenges present.

#### WHAT IS THE EFFECT OF THIS?

There are a number of potential risks to a developer arising from the above. These include:

- **Delay or refusal** – Any development must be designed and planned around the regulatory requirements. Failure to do so could result in planning permission being refused but, at the very least, will mean slow progress through the planning process.
- **Difficulties with funding** – many grants and investments will depend on the environmental credentials of the development. This source of funding may be lost if the development does not meet the current standards.
- **ESCOs** – the effect of developer proposals and planning requirements relating to on-site renewable energy generation are leading to the increasing use of ESCOs (Energy Services Companies). There are a number of both legal and practical issues associated with the setting-up of ESCOs.
- **Effect on the bottom line** – The introduction of Energy Performance Certificates which make the energy efficiency of buildings transparent, the rising cost of fuel, the introduction of the Carbon Reduction Commitment and companies' CSR policies will all mean that those developments which have not addressed energy issues will fail to sell or will sell at reduced prices.

## WHAT ARE THE OPPORTUNITIES?

These important changes mean that those developers who are fastest to embrace them or, indeed, anticipate future changes will be able to benefit.

The most important factor is to make the development attractive to potential purchasers/users. There are a number of ways in which a developer can achieve this, including:

- Ensuring that the buildings themselves are energy efficient. In order to be able to prove this a developer will need to ensure that the building achieves the appropriate external accreditation, such as BREEAM rating;
- Ensuring that any communities created by the development are sustainable. This involves consideration of a number of factors and ensuring that robust documentation is in place to deliver the objectives;
- Creation of ESCOs to deliver energy to the development (and potentially to become an income generator by exporting electricity); and
- Creating a "Green Lease" for commercial buildings.

The above factors are also likely to make the development attractive to investors and funders.

## WHAT CAN BURGESS SALMON OFFER?

Burges Salmon is nationally renowned for the quality of its advice across all areas of law. In relation to development projects we can offer a unique blend of skills in depth combining our experience in planning, real estate, environmental and construction law.

Burges Salmon is one of three firms of solicitors in England who are members of the Green Building Council and, as such, we are at the forefront of these developments.

We have acted for the Carbon Trust for several years who have this to say about us:

*"We chose Burges Salmon for its commercial approach, together with an understanding of the emerging area of carbon law and emissions trading"*  
Tom Delay, Chief Executive, The Carbon Trust

This experience means that we can guide you through the legal and commercial issues involved in a development from the early stages of the planning process to final sale or lettings or managing (if appropriate) ongoing responsibilities.

In particular, we can help by:

- Piecing together the planning and acquisition process to ensure the most beneficial site assembly and that the development is sustainable;
- Using our background knowledge of the carbon agenda (gained from, for example, advising the Government on the introduction of the Carbon Reduction Commitment) to advice on current and likely future obligations;
- Advising about on-site generation including available subsidies, types of plant, agreements with suppliers of fuel and users of energy, maintenance of plant and agreements for the sale of electricity;
- Advising on environmental issues generally such as dealing with the remediation of contaminated land, the appointment of consultants and liaison with regulators;
- Drafting Green Leases to ensure that buildings are attractive to purchasers; and
- Setting up management structures for sustainable communities, including the documentation for ESCOs.

## CONCLUSION

Addressing the challenges that arise from climate change and rethinking the traditional models used by developers will ensure a successful project. This will ensure that the maximum profit can be achieved with the minimum cost to the environment.

If you would like to find out more about Burges Salmon's Regeneration and Sustainable Development Team, please contact David Gidney on 0117 902 2750, david.gidney@burges-salmon.com or Gary Soloman on 0117 902 2791, gary.soloman@burges-salmon.com.

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