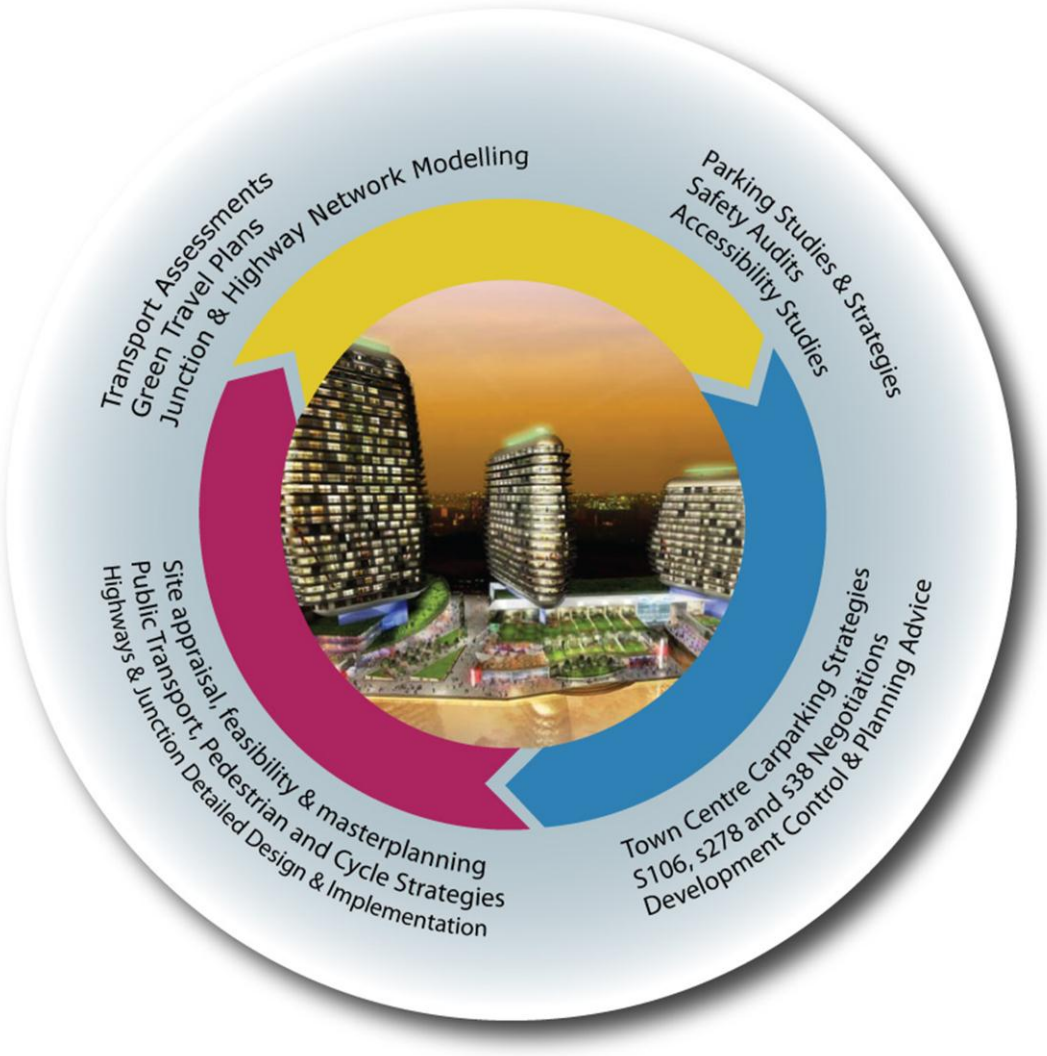

Intelligent Transport Planning *Solutions*

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Wayleaves

The supply and placement of utilities is a crucial part of any successful development. It is vital to the build programme and, ultimately, to the occupation of the units.

Among these, the electricity infrastructure is critical to success, but the law and practice in this area is based on an archaic structure - wayleaves.

The concept of wayleave dates back to the Victorian era and beyond, but the agreements needed in today's market have to facilitate development in the 21st century. It is hardly surprising that this is a complex area that few practitioners fully understand.

In essence, a wayleave falls short of an easement and is akin to a contractual licence.

Traditionally they were granted privately between a landowner and a third party undertaking, but privatisation of the electricity industry and its accompanying statutory framework has given licence holders a right to call for wayleaves over privately owned land.

Wayleave agreements are not registerable or binding on successors in title. They can be created expressly or by implication - such as where payment is made and accepted by a successor in title to the land over which the wayleave was granted. A developer not wanting to be bound by a wayleave in place when it purchased land should be careful not to accept payment for it to avoid creating a new wayleave by implication.

Terminating a wayleave necessitates the observance of various formalities and developers need to be aware that a notice to remove the equipment does not necessarily oblige the licence holder to remove it. A notice to remove has to be served on the utility provider and if, within three months of it being served, the licence holder has not applied for a 'necessary wayleave' under the statutory framework, the wayleave comes to an end and the equipment must be removed.

If the licence holder does apply for a 'necessary wayleave', the notice to remove will be suspended until the outcome of the wayleave application has been decided.

The statutory framework provides the right for a landowner to seek compensation if a necessary wayleave is granted and it confers powers of compulsory acquisition on the licence holder which might be used where agreement has proved impossible. Compulsory acquisition, however, need not be of the land itself, but could be used to acquire an easement or other rights in relation to it.

In practical terms, wayleave negotiations are likely to be an essential part of establishing the electricity infrastructure which is to serve a development. The statutory framework attempts to strike a balance between the regulated licence holders and private landowners and there is usually scope for negotiation.

However, a proper understanding of the complexities in this area can be vital to achieving a successful solution.

Sewers and lateral drains: adoption changes

On 1 October 2011 the biggest change in responsibility for sewerage services in England and Wales since 1937 is due to take place.

The Government is proposing that all private sewers and lateral drains in existence on 1 April 2011 that drain to the public network will transfer overnight to the ownership of the water and sewerage companies on 1 October 2011. The proposals also affect new sewers and lateral drains.

To be classed as a 'sewer' a pipe must serve more than one property whereas a drain serves only one property. A 'lateral drain' is the part of a drain that extends beyond the property boundary to the point where it meets the sewer to which it links.

The problems that the changes are designed to address are:

- difficulties arising from householders being unaware that they are responsible for the repair and maintenance of their private sewers
- disparate ownership of the sewerage network causing complications for long term planning, which is important in adapting to the effects of climate change and housing growth

The Government is also proposing that any new sewers and lateral drains connecting with the public network must be adopted in order to stem the proliferation of new private sewers, which would replicate the same problems in the future.

There has already been a consultation on draft regulations for the transfer and subject to Parliamentary/National Assembly of Wales approval, it is proposed that they come into force on 1 April this year.

If any sewers or lateral drains are the subject of an adoption agreement in place before 1 April 2011, the agreement will be treated as terminating immediately before those sewers and drains are vested in the water company. The water companies will be able to use the financial/bond provisions to recover expenditure they incur on work carried out to the sewers and drains before the vesting date. However, the date of vesting is uncertain in the draft regulations so expect further guidance to be issued in respect of this.

Sewers and lateral drains within plot boundaries are not generally included in adoption agreements. However, under the proposed new regime if any private sewers or lateral drains are to connect to the public network, they must be built to a minimum national standard and the developer must first enter into an adoption agreement with the water company before the connection can be made.

As a result, there will be a lot more colouring on the plans attached to s104 agreements as they will need to include for adoption the sewers and lateral drains within plots. It will be essential to start negotiations early on the adoption agreement, as a request for connection will prompt the water company to check whether the agreement is in place. There will be transitional provisions for developments underway where building regulation approval has been given for the sewers and drains.

Work is progressing on harmonising adoption standards for sewers and drains between the various water companies. The Government consultation on the new build standard was issued in February.

As to the transfer of existing sewers in October, pumping stations and associated pressurised or rising mains on the transferred systems will transfer to the water companies five years later, on 1 October 2016. Current industry estimates indicate that there might be up to 33,000 sewage pumping stations eligible for transfer.

The cost of the transfer will be met by an increase in the sewerage element of bills across the water companies. Should owners not want their sewer or lateral drain to transfer, an appeals procedure will be available.

Only surface water sewers that drain directly to the public sewerage system are included in the transfer. So, for example, surface water sewers that drain direct to watercourses are not included. Private sewers and lateral drains under Crown land or owned by a railway undertaker are also not included.

There are a number of aspects of these proposals that are currently unclear, including their effect on existing adoption agreements. The Government has advised that they are developing guidance which should clarify areas of uncertainty.

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