SLAUGHTER AND MAY/

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REAL ESTATE NEWSLETTER

NEWS

Roll with it

Review of security of tenure

The Law Commission will be undertaking a review of Part 2 of the Landlord and Tenant Act 1954. The legislation is nearly 70 years old and the property industry is concerned that it no longer reflects the commercial landlord and tenant relationship. In addition to issues regarding the application of security of tenure to business premises, there has also been some confusion as to the contracting-out procedure, particularly in relation to leases entered into pursuant to the original tenancy. As the term of business leases has become shorter it has become increasingly common for tenancies to be contracted out, thereby reducing the protection available to the businesses the Act was meant to protect. There are also concerns that lease renewals conducted through the courts are time-consuming and costly.

A house is not a home

Reform of residential tenancies

Following the proposals set out in last year's white paper, the Renters (Reform) Bill has been published. The Bill sets out a number of changes to the residential tenancy regime. These include the promised abolition of 'no fault' terminations under S21 of the Housing Act 1988 and the end of fixed term tenancies. It will no longer be possible to grant a residential tenancy for a fixed term and all tenancies will operate as a rolling monthly periodic tenancy. The tenant will need to give two months' notice to leave the premises and there will be a new suite of possession grounds for landlords. These include where the landlord wishes to sell or occupy the property, where there are significant rent arrears or if there has been anti-social behaviour by the tenant. There will be a new ombudsman to deal with landlord and tenant disputes and a new Private Rented Sector Database. Landlords will have to register all the residential properties they let out. There are also provisions in relation to rent increases, which cannot be above market rents and landlords will not be able to unreasonably withhold consent to the tenant having a pet at the premises. A number of other provisions are expected including the proposed Decent Homes Standard and a ban on landlords excluding tenants on benefits.

Safe from harm

The requirements of the Building Safety Act

Following the Grenfell Tower tragedy, the Building Safety Act 2022 was enacted to introduce a fundamental reform of the law relating to the safety of buildings. The Act seeks to secure the safety of people in or about buildings and also to improve the standard of buildings. There is a particular focus on "higher-risk buildings", which are those of at least 18 metres in height or seven storeys high, and which contain at least two residential units. All existing occupied higher-risk buildings must be registered with the new Building Safety Regulator by 1 October 2023. The Act introduces new duty holder roles in respect of the fire and structural safety of higher-risk buildings. A person who is in possession of, or otherwise responsible for, the repair of the structure and exterior of the building is an "accountable person" and, where there is more than one, a principal accountable person is identified. It is the principal accountable person who is responsible for registering the building and providing details of the building and the accountable persons. The accountable person is also under ongoing obligations in relation to the identification and management of safety risks in occupied buildings and in connection with the design and construction phases of new developments, to

ensure that building regulations are complied with. The Act introduces a wide range of other building safety measures including limitations on the recovery of the costs of carrying out remediation works relating to the safety of the building, the retention of the "golden thread" of information in relation to the building and the issue of landlord certificates providing tenants with relevant information. The Act also extends the limitation period under the Defective Premises Act 1972 to 15 years in respect of buildings constructed after the Act came into force and 30 years in respect of pre-existing buildings.

I'll be there

New edition of CLLS certificate of title

A new edition of the certificate has been published by the land law committee of the City of London Law Society. The eighth edition follows the format of its predecessor and the updating reflects changes in law and practice. For example, there is no longer a requirement for the final draft to be provided to valuers and, for the first time, the certificate includes a cap on liability. There are new statements excluding climate change risks and the application of the National Security and Investment Act 2021 from the scope of the certificate. The certificate focuses on title issues and separate reports in respect of specialist areas such as planning, construction, licensing, insurance and environment may also be required as appropriate. There are also new statements in relation to the updating requirements under the Economic Crime (Transparency and Enforcement) Act 2022, where the property is owned by an overseas entity, and the statutory regimes that may apply if all or part of the property is used for residential purposes, including enfranchisement and the right of first refusal.

CASES ROUND UP

Park life

Land owned by Council held on statutory trust

R (on the application of Day) v Shropshire Council: [2023] UKSC 8

This Supreme Court decision confirms that, aside from title matters and planning, the legal owner of land may not be free to do what it wants with it. The Council held the land in question on a statutory trust as open space or recreational land for the benefit of the public. Statutory trusts arise where the local authority exercised its powers under the Public Health Act 1875 or the Open Spaces Act 1906 to acquire land for the purposes of recreation. Land acquired on a statutory trust for recreational purposes cannot be disposed of unless the local authority satisfies the conditions set out in S123 of the Local Government Act 1972. In particular, the authority must advertise any proposed disposition and consider any objections raised. The Council had sold part of the site to a developer. The Council did not realise that the land was subject to a statutory trust and did not comply with the statutory conditions. The developer obtained planning permission to develop the site. A local resident opposed the development and discovered that the land was held on a statutory trust for recreational purposes for the public benefit. He also challenged the grant of planning permission on the basis that the statutory trust should have been a material factor when considering the planning application.

The Court of Appeal had decided that the land had been sold free of the statutory trust because the developer did not have actual knowledge of it. The Supreme Court found that a simple transfer into private ownership was not sufficient to extinguish the trust. The statutory trust was analogous to a town or village green. The rights of the public to use the land could only be extinguished if the Council complied with the relevant statutory requirements. Accordingly, those rights had not been overridden by the sale and remained enforceable against the developer. The Supreme Court also ruled that the planning permission should be quashed. It was highly likely that the outcome of the planning application would have been substantially different if the statutory trust had not been overlooked. Local authorities need to establish on what basis they acquired land and whether their ability to deal with it is limited.

We can work it out

Meaning of "Live/Work"

AHGR Ltd v Kane-Laverack and another: [2023] All ER (D) 40

The landlord owned a mixed-use office and residential building that also included a "Live/Work" unit. The permitted use in the lease was as "Live/Work" premises and the issue was what this meant. Did the tenant have to live and work at the premises or could the tenant live and/or work there? In 1999, Southwark Council had granted planning permission for a "Live/Work" development in Bermondsey Street at "Bickels Yard". At first instance, the judge held that the phrase meant "Live and/or Work". The landlord contended that the phrase had to be interpreted in the light of the Council's planning guidance. In the particular circumstances of the case, the Court of Appeal agreed that "Live/Work" meant "Live and/or Work". The planning consent did

not specifically identify the unit as a live or work area. If it was intended that the tenant should live and work at the unit then clear and unambiguous language could have been used.

You've lost that lovin' feelin'

Settlement agreement and relief from forfeiture

Chug v Dhaliwal: [2023] EWHC 804 (Ch)

This case confirms that if a landlord and tenant reach a settlement agreement under which the tenant accepts that the lease has been forfeited then the tenant cannot subsequently challenge the forfeiture or claim relief. The lease was of retail premises in Hounslow which were operated as a hardware store by a Mr Chug. Mr Chug sold the business to a third party, although no formal assignment of the lease was completed and the landlord's consent was not obtained. The landlord discovered the unlawful occupation and issued forfeiture proceedings for breach of the alienation provisions and arrears of rent. The landlord served a S146 notice and proceeded to peaceably re-enter the premises. Mr Chug contacted the landlord and agreed that in return for accepting the forfeiture, the landlord would not pursue a claim for dilapidations. The landlord proceeded to negotiate with the third-party owner of the business regarding the grant of a new lease but an agreement could not be reached. The landlord obtained possession on the basis that the original lease no longer existed and the business was in occupation under a tenancy at will or a personal licence during the negotiations for a new lease.

Mr Chug and the third-party business owner sought relief from forfeiture of the original lease and also argued that the re-entry had been unlawful. The court decided that any complaint about the lawfulness of the forfeiture had been settled by the agreement made after the initial peaceable re-entry. The tenant had lost the right to claim relief from forfeiture and the right to challenge the S146 notice. It was worth noting that the unlawful sharing of occupation is an ongoing breach and the landlord had not waived the right to forfeit by accepting rent.

We don't talk anymore

Residential service charge consultation

Grey GR Ltd Partnership v The Leaseholders

This case concerned the landlord's statutory duty to consult with tenants of residential long leases in connection with service charge costs. A landlord must comply with the consultation regime imposed under S20 of the Landlord and Tenant Act 1985. Failure to do so means that the landlord can only recover £250 from each tenant. However, the landlord can apply to the First-tier Tribunal for dispensation from complying with some or all of the consultation requirements. The landlord owns a block of flats in Stevenage. Following concerns about fire safety in tall buildings, the landlord planned to carry out work to replace the cladding at a cost of more than £10 million. The landlord sought dispensation from the requirement to consult with the tenants of the 73 flats. The application referred to the uncertainty regarding the extent of the required work and the landlord's application for a contribution to the costs from the Building Safety Fund. The mechanics of the statutory consultation process did not tie in with the landlord's intended procurement route. Although the tenants did not object to the dispensation, they were concerned about the conditions that should be imposed and had issues about the quality and scope of the proposed cladding replacement works.

The First-tier Tribunal had to decide whether it was reasonable to dispense with the consultation requirements and, if so, on what terms. It was in the best interests of all the parties to secure the government funding for the work. Accordingly, pressing ahead with the works and the application to the Fund was more important than the statutory consultation process. To address the tenants' concerns about the scope of the works, the dispensation was granted subject to a number of conditions, including funding for the tenants to take advice on future works and an informal consultation with the tenants in relation to the information provided to the Fund by the landlord.

Get it right next time

Statutory notice and mistake

Mooney v Whiteland: [2023] EWCA Civ 67

This case related to a notice served on the tenant of a residential property. The tenant had a weekly periodic assured tenancy. Under S13 of the Housing Act 1988, the landlord can serve a notice proposing a new rent. In the absence of agreement, the revised rent is referred to the First-tier Tribunal for determination. The S13 notice must specify "a new rent to take effect at the beginning of a new period of the tenancy specified in the notice." The rent fell due on a Monday, as the first day of each period of the tenancy, but the landlord's S13 notice expired on a Friday. The tenant considered the notice to be invalid and continued to pay the existing rent. The landlord believed that the notice was correct and issued

a claim for possession. At first instance, the judge applied *Mannai Investment v Eagle Star Life Assurance* and found that it would have been reasonably clear to the reasonable recipient that the new rent was payable on a Monday and not a Friday. On appeal, the court agreed with the first instance decision but on the ground that the tenant would have understood that Friday 7 December was a mistake and that Monday 10 December had been intended.

The Court of Appeal allowed the tenant's appeal. The Act clearly set out the prescribed information that had to be contained in a S13 notice. The notice had to specify the start of a period. Accordingly, the tenant was entitled to treat the notice as invalid and did not have to consider whether the landlord had made a mistake.

Wild horses

SDLT and mixed use property

Suterwalla and another v HMRC: [2023] UKFTT 450 (TC)

This case related to the purchase of a residential property together with an adjoining paddock. The issue was whether non-residential SDLT rates applied to the paddock or whether the whole transaction was subject to the higher residential rates. The paddock was separated from the house and garden by a hedge and was not visible from the house or garden. On completion, the buyer let the paddock to a third party for grazing horses. The First-tier Tribunal decided that mixed rates did apply. The paddock had a separate title and was physically separate from the house and gardens.

The paddock could also be accessed without entering the gardens. In addition, the grazing lease was a commercial arrangement for an annual rent and the taxpayer only bought the paddock because it was included with the sale of the house and garden. For SDLT purposes, a residential property includes the garden or grounds of the dwelling. In this case, the grant of the grazing lease on commercial terms backed the case for non-residential use. HMRC will also consider historical as well as current use, the layout of the land and buildings, geographical features and constraints on use.

OUR RECENT TRANSACTIONS

We are advising Dentons on its new London office at One Liverpool Street.

We advised the MOD on its successful defence of claims made by Annington Homes in relation to statutory enfranchisement rights and military service family accommodation.

AND FINALLY

Selfie harm

An Indian government official has been fined after draining more than two million litres of water from a reservoir to retrieve his phone. The official had dropped the phone while trying to take a selfie.

It wasn't me

A drunk driver in Colorado attempted to switch places with his dog after being pulled over for speeding.




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