SLAUGHTER AND MAY/

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REAL ESTATE NEWSLETTER

NEWS

I'm still standing

Changes to planning enforcement rules

The current law provides that development becomes lawful after 4 years and change of use becomes lawful after 10 years. The period will be extended to 10 years for all development carried out without planning permission. Under transitional provisions, any development where 4 years have already passed will be lawful but a development less than 4 years old will only become lawful after 10 years. The amendment is contained in S115 of the Levelling Up and Regeneration Act 2023. The new 10-year time limit for building operations also applies to change of use to a single dwelling house. Accordingly, where there is not a planning permission in place, it will become important to check that the development was carried out at least ten years ago. There is no time limit for enforcement in the case of listed buildings.

Ain't nothin' goin' on but the rent

Residential leasehold reform and ground rents

Following the abolition of ground rents in new leases under the Leasehold Reform (Ground Rent) Act 2022, the government is proposing changes in relation to ground rents in existing residential leases. The Leasehold and Freehold Bill contains a number of proposed reforms in relation to residential leases. These include making the standard lease extension 990 years, changes to the calculation of the premium payable for a lease extension to make it less complex and less expensive for tenants, the removal of the two-year qualifying period before a tenant can apply for a lease extension or apply to acquire the freehold of a house, the introduction of a more accessible process for resolving disputes and provisions to simplify collective enfranchisement, including increasing the non-residential threshold from 25% to 50%. Provisions in the Bill also enable tenants of qualifying leases to buy out the ground rent in their leases. In return for the payment of a premium, the ground rent will reduce to a peppercorn. As currently drafted, the right only applies to leases with an unexpired term of more than 150 years. However, the Bill will be subject to further changes. In particular, the government has consulted on the future of ground rents in existing residential leases. The consultation on capping existing ground rents put forward five options ranging from capping all ground rents at a peppercorn to freezing ground rents at current levels.

Any legislation which seeks to restrict, cap, or otherwise alter ground rent structures in existing leases will be significant, not just for landlords and tenants but also for investors and the wider property market. Ground rents have been an established part of the UK property market for a very long time and form the basis of a range of investment and financing structures that have proved attractive to pension funds, insurance companies and local authorities. It is generally accepted that measures to deal with egregious abuses of ground rents are appropriate, such as ground rents doubling every ten years. These structures result in absurd and unfair amounts becoming due which affect the homeowners' ability to deal with their property. However, a blanket ban or restriction would not be popular with the property industry and may be subject to challenge as incompatible with the right to property under the European Convention on Human Rights.

Are friends electric?

Property transactions - going digital

The Law Society has produced a draft new code for signing and exchanging contracts for the disposition of an interest in land, including sale agreements and agreements for lease. The new code reflects the increased use of technology as part of the conveyancing process for both commercial and residential transactions. The existing formulae that apply to the exchange of contracts were last reviewed in 1996 and technology has had a significant effect on how property practitioners do business since then. Exchange is the key point on a property transaction when the parties commit to their respective obligations to sell and buy the property. Under S2 of

the Law of Property Miscellaneous Provisions Act 1989, the agreement must be in writing, incorporate all the terms in a single document and be signed by or on behalf of the parties. Typically, the solicitors exchange their clients' respective signed contracts. The Law Society's Conveyancing and Land Law Committee wants to create greater certainty regarding the transaction, including the electronic exchange of contracts, the final text of the contract, the methods of signing and the handling of deposits. A binding contract will not arise until exchange of contracts is affected under a proposed immediate exchange protocol or, in the case of a chain of transactions, under a proposed release of contracts protocol. A consultation has been launched on the new proposals. HM Land Registry is still working towards a digital conveyancing system for the commercial and residential property markets in England and Wales.

CASES ROUND UP

Our house

Property guardians were tenants

Global 100 Ltd v Carlos Jimenez and others: [2023] EWCA Civ 1243

The Court of Appeal has held that the multiple occupancy of a building arranged by a property guardian company created a house in multiple occupation (HMO). HMOs are subject to licensing requirements if they are occupied by five or more occupiers forming two or more households. In this case, a NHS trust had appointed Global 100 to provide property guardians at a vacant hospital building. Hounslow, the local authority, claimed that the hospital had acquired HMO status and required an HMO licence. The guardian company argued that the building was not an HMO because the occupation by the guardians was for two uses. They were both residents and property guardians.

The Court of Appeal distinguished between the use of the property and the purpose of the use. The Court of Appeal also considered whether the agreement with the NHS trust was a tenancy or a licence. The guardian company argued that the agreement was a service agreement and that it was merely a licence to occupy and not a tenancy. The Court of Appeal ruled that the company had a tenancy of the property. It was in exclusive possession and paid a rent. Accordingly, the building was subject to HMO licencing.

Take me out

Building Safety Act decision

Adriatic Land 5 Limited v Leaseholders of Hippersley Point: [2023] UKUT 271 (LC)

This is the first Upper Tribunal decision on the Building Safety Act 2022. The landlord had applied to the First-tier Tribunal for dispensation from the need to consult with the tenants (in accordance with the service charge consultation regime) in respect of major building safety works at the building, Hippersley Point. Although the FtT granted the dispensation, it was subject to conditions. These included a condition that the landlord could not recover its costs of the application for dispensation through the service charge. Under S20 ZA of the Landlord and Tenant Act 1985, an application can be made to dispense with all or any of the service charge consultation requirements. The issue before the Upper Tribunal was whether the costs recovery condition was correct and also whether paragraph 9 of Schedule 8 of the Building Safety Act would, in any event, prevent the recovery of those costs from tenants with qualifying leases for the purposes of that Act.

The Building Safety Act provides a number of tenant protections in relation to the recovery of costs relating to building safety works. The Upper Tribunal held that although the costs condition was not correct, the effect of the Building Safety Act coming into force on 28 June 2022 was to render the costs no longer payable by the qualifying tenants. The costs related to a relevant defect and the qualifying tenants were protected from paying costs arising from that defect. The Act gave rise to a self-contained code which gave the FtT the flexibility to make decisions free from the effect of other legislation. Accordingly, Schedule 8 of the Building Safety Act applies to an application for dispensation from the service charge consultation requirements in respect of relevant defects under the Landlord and Tenant Act 1985.

This land is your land

Newcomer injunctions for Gypsies and Travellers

Wolverhampton City Council and others v London Gypsies and Travellers and others: [2023] UKSC 47

The Supreme Court has considered the award of injunctions against unknown persons to prevent Gypsies and Travellers from setting up camp on land owned by local authorities without permission. A number of interim and final injunctions have been granted and addressed to "persons unknown". In each case, the newcomers had not camped on the land nor had they threatened to do so. Accordingly, the unknown persons had not been represented and copies of the injunctions were displayed at the relevant sites to deter entry. The High Court had discharged an injunction granted in favour of Wolverhampton in 2018. It was held that final injunctions could not apply against newcomers who had not been party to the proceedings. The Court of Appeal reinstated the injunction.

The Supreme Court was required to determine whether the courts had the power to grant injunctions against persons who were unknown and not identified at the date of the hearing. The Supreme Court decided that such a power existed. However, it could only be exercised where there was a compelling need

to protect any rights or enforce public law that was not already met by other remedies. As the newcomers were not notified of the injunction, steps should be taken to allow those affected to make representations. This should involve advertising the proposed application and, once granted, the ability for those affected to apply to court for it to be varied or set aside. In addition, newcomer injunctions should not be for a disproportionately long time or cover a wide area. Local authorities should also disclose to the court any matters that a newcomer might raise if represented at the hearing.

I'm free

Heads of terms and binding contract

Pretoria Energy Company (Chittering) Ltd v Blankney Estates Ltd: [2023] EWCA Civ 482

The Court of Appeal has considered the status of signed heads of terms in the context of a proposed renewable energy project in Lincolnshire. Pretoria operates anaerobic digestion facilities which produce renewable gas and electricity. It had been in discussions with Blankney, the owner of the relevant farming land. The discussions resulted in a set of signed heads of terms which included details about the lease of the land, including the term and the rent, as well as other provisions in connection with the proposed facility. In relation to the proposed lease, the heads of terms stated that suitable arrangements would need to be included in the lease for rolling forward or decommissioning the facility at the end of the term. The heads of terms also included an exclusivity period. Negotiations between the parties broke down before a formal lease or agreement for lease was entered into. Although the parties accepted that the exclusivity period had been binding and that the practical provisions in relation to the operation of the site were not, Pretoria argued that the signed heads of terms gave rise to a binding agreement for lease. At first instance, it was held that the heads of terms were not binding because the parties did not have an intention to be bound by them.

The Court of Appeal decided that the heads of terms were not binding. The wording of the heads of terms indicated that a separate formal agreement would be required. For example, the lease was to include arrangements for decommissioning or rolling forward which still needed to be agreed. The inclusion of an exclusivity period was not consistent with an intention to be bound by the heads of terms and a number of provisions that would be expected in a lease of a renewable energy facility were not dealt with. In addition, the lease was to be contracted-out of the Landlord and Tenant Act 1954 and the contracting-out procedure would have to be completed before the heads of terms were signed if they were intended to create a binding agreement for lease. There was also no certainty as to when the term of the lease was to start.

OUR RECENT TRANSACTIONS

We are advising Reed Smith on the completion of the leases of its new London offices at Blossom Yard & Studios.

We are advising a leading retailer on the sale and leaseback of 11 stores.

AND FINALLY

Naked landlord does not justify lower rent

A German court has ruled that a landlord sunbathing naked in the courtyard of his building was not a reason for his tenants to reduce their rental payments.




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