

Real estate quarterly update - April to June 2021

Read more about our latest real estate update aimed at in house lawyers (and other professionals) practising in the property and real estate sector.

07 July 2021

Cases

Commerz Real Investmentgesellschaft mbh v TFS Stores Ltd [2021] EWHC 863 (Ch)

The first reported case where a landlord obtained summary judgement to recover arrears of rent and service charge which had accrued since the start of the pandemic.

[Read our case update](#)

Bank of New York Mellon (International) Ltd v Cine-UK Ltd; AEW UK REIT Plc v Mecca Bingo Ltd; AEW UK REIT Plc v SportsDirect.com Retail Ltd [2021] EWHC 1013 (QB)

The second reported case where landlords obtained summary judgement to recover arrears of rent which had accrued since the start of the pandemic.

[Read our case update](#)

WH Smith Retail Holdings Ltd v Commerz Real Investmentgesellschaft mbh [Winchester County Court, 25 March 2021]

The first reported case to consider a pandemic rent suspension clause on a non-contested lease renewal.

[Read our case update](#)

Rittson-Thomas and others v Oxfordshire County Council [2021] UKSC 13

A reverter is not triggered when a school is closed prior to its sale if there is an intention to use the sale proceeds to pay off the cost of new school premises.

[Read our case update](#)

TFS Stores Ltd v The Designer Retail Outlet Centres (Mansfield) Ltd and others [2021] EWCA Civ 688

The wording used in statutory declarations to describe when lease terms commenced did not invalidate the contracting out process for those leases.

[Read our case update](#)

Legislation

The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021

This makes various changes to permitted development rights in England. In particular, it permits development from a use falling within use class E (commercial, business and service) to a use falling within use class C3 (dwellinghouses).

Prior approval must be obtained from the local planning authority in relation to (amongst other things) flooding, contamination, transport and safe site access, the impact of noise from surrounding commercial premises, the provision of adequate natural light to all habitable rooms and (in conservation areas only) the impact of the loss of the ground floor class E use. An application for prior approval cannot be made until 1 August 2021.

To use this permitted development right, a building must have been vacant for a continuous period of at least three months immediately prior to the date of the prior approval application. In addition, the use of the building must have fallen within what is now use class E for a continuous period of at least two years prior to the date of the prior approval application and the cumulative floor space of the building changing use cannot exceed 1,500 square metres.

Fire Safety Act 2021

This Act amends the Regulatory Reform (Fire Safety) Order 2005 (the Order) so that where a building contains two or more sets of domestic premises, the Order now applies to the building's structure and external walls (including doors, windows and balconies) and any common parts of the building (including the doors between domestic premises and common areas).

However, the Act is more notable for what it does not contain. It makes no mention of who is to bear the cost of potential remediation works to buildings, since the House of Commons rejected proposed amendments to the Act from the House of Lords which would have prohibited passing fire risk remediation costs on to leaseholders. Focus now switches to the much longer Building Safety Bill currently working its way through parliament to see what that ultimately has to say on the same subject.

Restrictions on forfeiture, use of Commercial Rent Arrears Recovery (CRAR) and winding-up companies and ring-fencing Covid-19 rent arrears

The temporary restriction on a landlord forfeiting a business tenancy for non-payment of rent or any other sum due under a lease (in section 82 of the Coronavirus Act 2020) has been extended again until 25 March 2022. The temporary restrictions on serving a statutory demand and presenting a winding-up petition in the Corporate Insolvency and Governance Act 2020 have also been extended until 30 September 2021.

In addition, the temporary restriction on the use by a landlord of CRAR has also been extended again until 25 March 2022, with the minimum net unpaid rent that must be outstanding before CRAR may take place (under the Taking Control of Goods Regulations 2013) remaining at 554 days (in normal circumstances, this is only 7 days).

In April, the government launched a call for evidence seeking views on six possible options for when the restrictions on landlords' remedies expire. Following on from that, the government has announced that legislation will be brought in to give extra protection to those businesses that had to close during the pandemic (the current restrictions apply to all tenants). Rent arrears built up during that time will be ring-fenced and the government expects landlords to make allowances for these ring-fenced arrears and to share the financial impact

with their tenants (e.g. waiving some of the rent due or agreeing a longer-term repayment plan). Where the parties cannot reach agreement on this, they will have to submit to a legally binding arbitration process to resolve the conflict. This will be settled by a private arbitrator in accordance with guidelines to be set out in the legislation.

Notice period for seeking possession under a residential tenancy and restrictions on residential evictions

The requirement generally for six months' notice to be given when seeking possession of property in England let under a residential tenancy agreement (in Schedule 29 of the Coronavirus Act 2020) ended on 31 May 2021. Subject to certain exceptions, four months' notice instead has to be given from 1 June 2021 (the current intention being that the notice periods will revert to pre-pandemic levels from 1 October 2021).

Special rules apply where a landlord relies on rent arrears to seek possession. For tenants whose rent is four or more months in arrears, four weeks' notice only must be given. From 1 August 2021, for tenants whose rent is less than four months in arrears, two months' notice must be given.

The ban on bailiff-enforced evictions also ended on 31 May 2021.

Leasehold Reform (Ground Rent) Bill

The draft of this long-awaited Bill to ban the sale of residential leasehold properties with ground rents has finally been introduced into parliament.

Some of the key points to note at this stage are as follows:

1. The Bill restricts ground rents on new long residential leases (leases granted for a term certain exceeding 21 years) to one peppercorn per year (and also prohibits the charging of administration charges in relation to those peppercorn rents). At present, it is unclear if the Bill also intends to prevent other lease payments (e.g. insurance and service charge) being reserved as rent.
2. Subject to some exceptions, the restrictions will apply to leases of dwellings granted on or after commencement of the relevant provision of the Bill.
3. Business leases, statutory lease extensions of houses and flats, community led housing and home finance plan leases are all excepted from the restrictions. Special rules will also apply to shared ownership leases.
4. A breach of the restrictions will be a civil offence with a financial penalty of between £500 and £5,000. Trading standards authorities in England and Wales will enforce the restrictions.
5. Leaseholders will be able to recover unlawfully charged ground rents through the First-tier Tribunal.

Consultation and guidance

Residential property developer tax: Consultation on policy design

This consultation has been launched by HM Treasury and runs until 22 July 2021.

This new tax will help finance the remediation of unsafe cladding in high-rise residential buildings (alongside a new 'Gateway 2' levy which will apply when developers seek planning permission to build certain high-rise buildings in England).

The government intends for this new tax to apply from 1 April 2022 to profits recognised in accounting periods ending on or after that date. It is intended to be time-limited and aims to raise at least £2 billion over a decade. The government proposes that the new tax will apply to the profits generated from UK residential property development, but only where the profits of a company or group exceed an annual allowance of £25 million. The rate of the tax will only be considered once the final design of the tax becomes clear.

A copy of the consultation can be viewed from [here](#).

Simplifying the VAT Land Exemption - call for evidence

This consultation has been launched by HM Revenue & Customs and runs until 3 August 2021. It looks at potential options and ideas to simplify the land and property VAT exemptions.

It seeks views on three ideas previously rejected by The Office of Tax Simplification. These are:

1. removing the option to tax and making all relevant transactions VAT exempt;
2. removing the option to tax and making all relevant transactions taxable at a reduced rate; and
3. making all relevant transactions taxable at the standard rate but with an option to exempt.

In addition, it seeks views on simplifying VAT on land by:

1. defining minor and short-term interests in land and property as subject to VAT;
2. making most supplies subject to VAT, with some exemptions (e.g. residential accommodation and charitable buildings); and
3. making VAT liability linked to interests registered at the Land Registry (e.g. interests registered are exempt and other interests are taxable by default, or the other way round).

A copy of the consultation can be viewed from [here](#).

Land Registry

More evidence required for extensions of time to reply to requests for information (requisitions)

The Land Registry has announced that, from 17 May 2021, customers will be asked to supply written evidence to show they have taken steps to resolve a requisition before an extension of time to reply to that requisition will be granted.

This change of policy is covered in section 3 of Practice Guide 50. This explains that other than in relation to discharges of charges (for which different rules apply), an extension of time will usually be granted where the delay in replying to a requisition is explained in writing, provided the request is reasonable, the Land Registry is satisfied that the matter is being actively pursued and there is a realistic prospect of resolving the problem within a reasonable period. A request for an extension of time should not be made more than 10 working days before cancellation of an application is due.

Section 3 goes on to list what must be contained in a request for an extension of time (for example, documentary evidence that shows the matter has been actively pursued when the delay is with a third party) and states that, where granted, an extension will normally be for another 10 working days.

Practice Guide 50 can be viewed from [here](#).

Original deeds and documents submitted with first registration applications

The Land Registry has updated Practice Guide 1 to explain that, from 14 June 2021, it will scan deeds and documents submitted with first registration applications and then return the originals, rather than waiting for the application to be completed (although the originals must still be retained by the practitioner until the application is completed). When the application is completed, the official copy of the title plan and register will be issued electronically through the portal if possible.

This change of policy will not apply to deeds and documents that are not suitable for scanning (e.g. fragile or very large documents).

Practice Guide 1 can be viewed from [here](#).

Signatures accepted by HM Land Registry

The Land Registry has published guidance which brings together in one place the types of signature it will accept for application forms, dispositions and dealings, restriction consents and certificates and other miscellaneous matters.

The guidance can be viewed from [here](#). For the purposes of the guidance, a “Witnessed electronic signature” is one that meets the Land Registry’s requirements in section 13 of Practice Guide 8. An “Electronic signature” is any other form of electronic signature.

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