

Real estate quarterly update - July to September 2020

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

 02 October 2020

Cases

Arqiva Services Ltd v AP Wireless II (UK) Ltd [2020] UKUT 195 (LC)

An operator whose contracted out lease expired prior to the Electronic Communications Code 2017 coming into force had no means of obtaining rights under that Code.

[Read our case update](#)

Vodafone Ltd v Hanover Capital Ltd [2020] EW Misc 18 (CC)

The first reported case on how a court determines rent on the renewal of a lease of a telecommunications mast site under the Landlord and Tenant Act 1954 following the Electronic Communications Code 2017 coming into force.

[Read our case update](#)

ARC Aggregates Ltd v Branston Properties Ltd [2020] EWHC 1976 (Ch)

The court construes the meaning of an exception and reservation in transfers relating to mines and minerals.

[Read our case update](#)

EMI Group Ltd v The Prudential Assurance Company Ltd [2020] EWHC 2061 (Ch)

The court interprets the guarantee provisions in a lease to uphold their validity under the Landlord and Tenant (Covenants) Act 1995.

[Read our case update](#)

Peninsula Securities Ltd v Dunnes Stores

(Bangor) Ltd [2020] UKSC 36

An exclusivity covenant given by a landlord of a shopping centre to an anchor tenant was not declared unenforceable under the common law doctrine of restraint of trade.

[Read our case update](#)

Legislation

The Stamp Duty Land Tax (Temporary Relief) Act 2020

In order to boost the housing market following the pandemic, the SDLT nil rate band for residential property purchases has been increased from £125,000 to £500,000 for transactions with an effective date between 8 July 2020 and 31 March 2021 (inclusive). This change applies whether or not a buyer has owned a home before and replaces first time buyers' relief for that period.

This change will also benefit buyers who pay the 3% surcharge on the purchase of additional dwellings and means that they will only be taxed at £3% on the slice of the purchase price up to £500,000.

All the temporary reduced rates can be viewed from [here](#).

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

These regulations amended the Town and Country Planning (Use Classes) Order 1987 (in England) and came into effect on 1 September 2020. They aim to better reflect the increasingly diverse range of uses found on high streets and in town centres and to allow businesses the flexibility to adapt and diversify to meet changing demands.

The main changes are as follows:

1. A new use class E has been created covering commercial, business and service uses. This includes the previous use classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (offices, research and development and light industrial use). It also includes other uses such as gyms, nurseries, creches and health centres which previously fell within use classes D1 (non-residential institutions) and D2 (assembly and leisure).
2. A new use class F1 has been created covering learning and non-residential institutions. This includes uses such as schools, libraries, museums, exhibition halls, places of worship and law courts which previously fell within use class D1 (non-residential institutions).

3. A new use class F2 has been created covering local community uses. This includes uses such as community halls, swimming pools, skating rinks and areas for outdoor sports which previously fell within use class D2 (assembly and leisure). It also includes shops mostly selling essential goods (including food) which are no larger than 280 square metres and in locations where there is no other such facility within a 1,000 metre radius of the shop's location (such shops are excluded from use class E).
4. The previous use classes A4 (drinking establishments) and A5 (hot food takeaways) have been removed and those uses made sui generis, along with cinemas, concert halls, bingo halls and dance halls, which previously fell within use class D2 (assembly and leisure).

For the period covering 1 September 2020 to 31 July 2021, the use classes in force up to and including 31 August 2020 still apply (amongst other things) for determining whether a change of use is covered by a permitted development right.

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020

These regulations extend the protection given to residential tenants by Schedule 29 of the Coronavirus Act 2020. Protection started on 26 March 2020 and was due to end on 30 September 2020, but this has now been pushed back (in England) until 31 March 2021.

In addition, the regulations extend (subject to some exceptions) the notice period that must be given of a landlord's intention to seek possession of premises let under a residential tenancy (including an assured tenancy and an assured shorthold tenancy) from three months to six months. One important exception is where possession is sought on grounds of anti-social behaviour or domestic violence (where the notice period that applied before 26 March 2020 will again apply).

Restrictions on forfeiture, use of Commercial Rent Arrears Recovery (CRAR) and winding-up companies

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 until 31 December 2020 (from 30 September 2020). 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 similarly extended.

In addition, the temporary restriction on the use by a landlord of CRAR has also been extended

until 31 December 2020 (from 30 September 2020), with the minimum net unpaid rent that must be outstanding before CRAR may take place (under the Taking Control of Goods Regulations 2013) being increased from 189 days to 276 days (where CRAR takes place on or before 24 December 2020) and to 366 days (where CRAR takes place on or after 25 December 2020) (in normal circumstances, this is only 7 days).

Consultation and guidance

Law Commission reports on Leasehold home ownership: buying your freehold or extending your lease; Leasehold home ownership: exercising the right to manage; and Reinvigorating commonhold: the alternative to leasehold ownership

These three reports were all published by the Law Commission on the same day as a package of measures which, if implemented, will radically transform the future of home ownership in England and Wales.

Enfranchisement report

Some of the key recommendations are as follows:

1. Buildings with up to 50% non-residential space should qualify for enfranchisement, rather than 25% as is currently the case.
2. Leaseholders should be able to make a claim for enfranchisement straightaway, rather than having to wait for two years.
3. The price to purchase a block should be reduced by allowing leaseholders to compel landlords to take leasebacks of flats let to leaseholders not participating in the enfranchisement process.
4. Leaseholders should be able to buy the freehold of multiple buildings at once (e.g. several buildings on an estate) rather than having to do it block-by-block.
5. A right to a lease extension for both houses and flats should be for a term of 990 years, rather

than for 50 or 90 years as is currently the case. No ongoing ground rent should be payable under an extended lease and leaseholders who already have a very long lease should be able to buy out the ground rent without extending their lease.

6. Leaseholders should be protected from procedural traps to ensure they cannot be forced to accept new obligations to make unnecessary or unreasonable ongoing payments.
7. Leaseholders' liability to pay their landlords' costs should be eliminated or controlled.

Right to Manage (RTM) Report

Some of the key recommendations are as follows:

1. The existing obligation on leaseholders to pay the landlord's costs of the RTM process should be removed to give leaseholders more control over costs and to make the process more affordable and predictable.
2. The qualifying criteria should be relaxed, so that leasehold houses and buildings with up to 50% non-residential space can qualify for the RTM and so that leaseholders can claim the RTM over more than one building at a time (e.g. several buildings on an estate).
3. The RTM claims process should be made easier by reducing the number of notices that leaseholders must serve and by giving the First-tier Tribunal (Property Chamber) the power to waive minor procedural mistakes in the process.
4. The information and training available to RTM companies and their directors should be improved, so that leaseholders can make more informed decisions about the RTM and prepare for an effective and efficient handover of management responsibilities.

Commonhold Report

Some of the key recommendations are as follows:

1. It should be much simpler, quicker and cheaper for existing leaseholders to convert from leasehold to commonhold. In particular, leaseholders should be placed in control of the conversion process and conversion to commonhold should be able to proceed without the unanimous agreement of leaseholders and others with particular interests in the building (with appropriate safeguards put in place to protect those who have not agreed).
2. Flexibility should be introduced into the way commonholds can be built and managed, enabling their use for developments of all types and sizes and moving away from a 'one size fits all'

approach that makes the current scheme too inflexible for many developments (e.g. complex mixed-use developments).

3. A robust regime for financing commonholds should be created which gives owners a greater say on setting the commonhold costs, requires a fund for future repairs (to enable major works to be budgeted for) and provides greater certainty to lenders that their interests will be protected (e.g. in the unlikely event of a commonhold association's insolvency).
4. The day-to-day operation of commonholds should be improved by enhancing the experience of the homeowners living within them (e.g. ensuring that commonholds are kept in good repair and are properly insured).
5. Shared ownership leases should be capable of being granted in commonholds.

The Law Commission acknowledges that its recommendations provide the blueprint for a workable commonhold regime, but that they cannot on their own lead to its widespread adoption and that it is now for the government to decide whether commonhold should be compulsory (in all or some circumstances), incentivised or left optional.

Copies of the reports (as well as other supporting documents) can be downloaded from [here](#).

Transparency and Competition: A call for evidence on data on land control

This consultation has been published by the Ministry of Housing, Communities & Local Government and runs until 30 October 2020. It was launched at the same time as the government's consultation on changing the planning system (the White Paper: Planning for the Future). The government wishes to increase the transparency of contractual arrangements used to exercise control over the buying or selling of land. It believes that this will improve the ability of local communities to play an informed role in the development of their neighbourhoods and will support the government's efforts to encourage more companies to enter the house building market.

The government's proposal envisages the creation of a publicly available dataset showing who holds options, rights of pre-emption and conditional contracts over registered land. It would do this by providing that the interests concerned could only be protected by registering an agreed notice (rather than a unilateral notice) and by requiring the applicant to provide additional data about these interests to the Land Registry before an agreed notice could be registered.

Statutory rights, testamentary notices and rights of pre-emption and options held by individuals

Statutory rights, testamentary options and rights of pre-emption and options held by individuals relating to the purchase or lease of residential property for use as a domestic residence (and which are not dependent on the fulfilment of a planning permission condition) would be exempted from the requirements.

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

Code for Leasing Business Premises (1st edition)

This came into force on 1 September. For the first time, it has been published as an RICS professional statement. This means that the sections which use the words 'must' lay down requirements from which RICS members must not depart. By contrast, the sections which use the word 'should' constitute areas of good practice and the RICS recognises that there may be exceptional circumstances when it is appropriate to depart from them.

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

Land Registry

Electronic signatures

The Land Registry has announced that, from 27 July 2020, it will (until further notice) accept for registration transfers and certain other deeds that have been electronically signed provided that the requirements set out in paragraph 13.3 of Practice Guide 8 have been complied with.

Crucially, this includes a requirement for a personal certificate from the conveyancer lodging the application as follows:

"I certify that, to the best of my knowledge and belief, the requirements set out in practice guide 8 for the execution of deeds using electronic signatures have been satisfied."

In the light of this, it would seem sensible for that conveyancer to manage the signing process using their own electronic signing platform.

The Land Registry also advises conveyancers to retain with their file a copy of the completion certificate or audit report produced by the electronic signature platform at the end of the signing process. Such a certificate or report should give an audit trail of the signing process and act as evidence that the Land Registry's requirements have been complied with (e.g. the time and date of the signatures, the email addresses the document was sent to, the one-time password method used, the fields that were completed and the IP addresses of the devices that were used).

Where a signature needs a witness (e.g. an individual executing a deed), the law still requires the

witness to be physically present. As a result, the Land Registry suggests that conveyancers drafting a deed that might be electronically signed may wish to add a statement as follows next to or beneath where the witness is to sign:

“I confirm that I was physically present when [name of signatory] signed this deed.”

Paragraph 13.4 of Practice Guide 8 lists the documents which the Land Registry accepts can be signed electronically. Appendix 3 contains an example of an acceptable conveyancer’s certificate.

A copy of Practice Guide 8 can be viewed from [here](#).

Certificates or consents under restrictions

The Land Registry has rewritten the part of Practice Guide 19 dealing with this (paragraph 3.1.5).

The key points to note are as follows:

1. The default position is that any certificate or consent must be signed in wet ink.
2. A certificate or consent (other than for a restriction in standard Form LL) given by a conveyancer can either be signed by an individual conveyancer in their own name or in the name of their firm.
3. If signed by an individual conveyancer, the certificate or consent should state the full name of the individual and the capacity in which they are signing. Alternatively, a certificate or consent can also be signed by the firm’s name being typed or stamped at the end, but the individual completing the certificate or consent must also provide their full name and status in the firm.
4. A certificate or consent given by a conveyancer can be given in an email. Similarly, a certificate or consent given by an individual (on their own behalf or on behalf of a corporation aggregate) can be given in an email to their conveyancer. However, that email must not be forwarded or sent to the Land Registry by a further email. Instead, a copy of the email containing the consent or certificate should be lodged by uploading it via the portal.

A copy of Practice Guide 19 can be viewed from [here](#).

Practice Guide 80: coronavirus (COVID-19): useful information for conveyancers (PG80)

The Land Registry has published this new Practice Guide to bring together in one place

The Land Registry has published the new Practice Guide to bring together in one place information about pre-existing and new practice of particular relevance in the current circumstances

A copy of Practice Guide 80 can be viewed from [here](#).

Contact

David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

Related expertise