

Real estate quarterly update - October to December 2019

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

06 January 2020

Cases

Great Dunmow Estates Ltd v Crest Nicholson Operations Ltd and others [2019] EWCA Civ 1683

An expert appointed to determine market value did not have jurisdiction to determine the correct valuation date under an agreement.

[Read our case update](#)

Sequent Nominees Ltd (formerly Rotrust Nominees Ltd) v Hautford Ltd [2019] UKSC 47

A landlord did not act unreasonably by withholding consent to a tenant's request to make a planning application because of the increased risk of enfranchisement.

[Read our case update](#)

Bella Italia Restaurants Ltd v Stane Park Ltd and others [2019] EWHC 2747 (Ch)

The obligation in an agreement for lease to complete the lease was not personal to the original landlord.

[Read our case update](#)

Cornerstone Telecommunications Infrastructure Ltd v Ashloch Ltd and another [2019] UKUT 338 (LC)

The Upper Tribunal (Lands Chamber) could not impose rights under the Electronic Communications Code 2017 where the operator's expired lease was protected by Part II of the Landlord and Tenant Act 1954.

[Read our case update](#)

University of London v Cornerstone Telecommunications Infrastructure Ltd [2019] EWCA Civ 2075

An agreement permitting an operator access to carry out a survey can be imposed on an occupier under the Electronic Communications Code 2017.

[Read our case update](#)

R (on the application of Lancashire CC) v Secretary of State for the Environment, Food and Rural Affairs; R (on the application of NHS Property Services Ltd) v Surrey CC [2019] UKSC 58

Two areas of land held by public authorities for statutory purposes could not be registered as town or village greens due to statutory incompatibility.

[Read our case update](#)

Legislation and consultation

The Telecommunications Infrastructure (Leasehold Property) Bill 2019-20

This Bill will amend the Electronic Communications Code 2017 (the Code) to make it easier for operators to install broadband infrastructure in blocks of flats and apartments where landlords ignore repeated requests for access.

Operators will be able to apply to the Upper Tribunal (Lands Chamber) (UT) for interim code rights in respect of multiple dwelling buildings (or other premises to be specified in regulations) where a tenant in that building has made a service request to the operator and the landlord has repeatedly failed to respond to the operator's formal notices requesting access.

Any interim code rights granted will be for a maximum period of 18 months (or such shorter period as is specified in regulations).

If the operator wants the code rights to continue beyond the interim period, it will need either to reach agreement with the landlord or apply to the UT using the existing provisions in Part 4 of the Code.

Non-domestic Private Rented Sector minimum energy efficiency standards: future trajectory to 2030

The Department for Business, Energy and Industrial Strategy has launched this consultation which seeks views on amending the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the MEES Regulations).

Amongst other things, the government seeks views on the following issues:

1. Whether the minimum energy performance certificate (EPC) rating for non-domestic properties should be increased to a 'B' rating (the government's preferred option) or to a 'C' rating by 1 April 2030. The government proposes to stick with the current seven year payback test to determine the cost effectiveness of measures and proposes that where it is not 'cost effective' to bring a property up to the minimum standard, a landlord will be required to bring a property up to the highest level that is 'cost effective'.
2. Whether the new target should be introduced on a single implementation date or through incremental milestones (i.e. gradual stepped increases over the next ten years).
3. How to address the challenges experienced by landlords (particularly in the retail sector) where tenants prefer to install heating, lighting and ventilation equipment themselves (meaning that, to avoid the EPC rating being too low at the date a lease is granted, a landlord may need to install measures that its tenant may want to immediately remove).
4. How the government could most effectively improve the enforcement of the MEES Regulations.

The government also intends to consult in 2020 on introducing mandatory in-use energy performance ratings for non-domestic buildings in the private sector (as an EPC is not a tool that can reflect or value improvements in operational performance).

The consultation runs until 7 January 2020 and a copy can be viewed from [here](#).

In addition, the government is still analysing the feedback on a separate consultation launched in July 2018 on the effectiveness of EPCs.

Searches and enquiries

CPSE.6 - Supplemental pre-contract enquiries for property subject to residential tenancies

A new version (version 1.3) has been published. A new enquiry (19) has been added which asks whether the living arrangements require a licence under the Housing Act 2004. If so, the seller is asked to provide a copy, as well as confirmation that the seller is not aware of any breaches of the licence or any disputes or complaints.

Land Registry

Pre-submission Enquiry Service and Application Management Service

These two new free services have been launched by the Land Registry following a successful trial. Both are limited to where a conveyancer is acting in what the Land Registry describes as a complex commercial transaction or an infrastructure development.

The Pre-submission Enquiry Service provides initial guidance for technical or procedural queries prior to submission (e.g. issues not addressed by the Practice Guides or queries on whether plans and documents are likely to be acceptable). The Application Management Service means that one experienced Land Registry caseworker manages and deals with all aspects of a complex registration application (or series of applications) from the initial discussion prior to lodgement through to post-completion support.

More detail on the two new services (including how to apply for them) is available from [here](#). That link has guidance on the sort of transactions that may be eligible for these services and on when the services cannot be used (e.g. enquiries that can be dealt with by Customer Support Services, enquiries that can be answered from the Practice Guides and all residential transactions).

Although both services aim to reduce the number of requisitions raised, the Land Registry will not guarantee in advance that an application will be completed, what class of title (if any) will be granted or whether there will be any further enquiries.

Practice guide 64: prescribed clauses leases

Section 5.4 of this guide has been amended to make it clear that prescribed clause LR4 (about the Property) must include details of any corporeal or incorporeal property excluded from the land demised (although it can cross refer to the relevant provision in the lease itself). Corporeal property includes, for example, mines and minerals or the structure of a building in an internal demise. Incorporeal property includes, for example, an easement benefitting the landlord's title not being passed on to the tenant.

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

Miscellaneous

RICS professional statement - Home survey standard

This new professional statement has been published by the Royal Institution of Chartered Surveyors (RICS) and takes effect from 1 June 2020. It will replace current RICS guidance, practice notes and professional statements relating to the Condition Report, the HomeBuyer's Report and the Building Survey.

The Home survey standard aims to protect residential buyers and sellers by ensuring that they fully understand the importance of a survey and the available options. The survey process and language have been simplified, with the available surveys standardised into the following three levels.

Survey Level 1

This includes a visual inspection but no testing of the building fabric or services. The report is succinct and does not include advice on repairs or ongoing maintenance. It is usually better suited for “*conventionally built, modern dwellings in satisfactory condition*”. It broadly equates to the current Condition Report.

Survey Level 2

This includes a more extensive visual inspection but no testing of the building fabric or services. The report is concise but does include advice on repairs and maintenance. This level of service is unlikely to suit complex buildings, unique or older historic properties or properties in neglected condition. It broadly equates to the current HomeBuyer's Report.

Survey Level 3

This includes a detailed assessment. Concealed areas (e.g. roof spaces, basements and cellars) are inspected if possible. Services are observed in normal operation. The report should also cover matters such as the scope, priority and timescale of any repairs (and the consequences of non-repair) and may indicate the likely repair costs. It broadly equates to the current Building Survey.

RICS members must ensure that their service is clearly ‘benchmarked’ against one of the three defined levels and must clearly state the benchmarked level in their report.

A copy of the Home survey standard can be viewed from [here](#).

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Related expertise