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Overage payments may be triggered even when developments are not viable

A case brought before the Court of Appeal last year centred upon whether or not overage was payable in respect of a property which was to be developed into residential units. The parties agreed that the grant of planning permission for change of use within the defined overage period would trigger the payment.

By the time planning permission was granted, the buyer had discovered that its planned residential units would contravene building regulations. The buyer therefore, argued that the overage payment was contingent upon the 'commercially valuable benefit' of the planning permission, rather than the planning permission itself. Without the ability to build commercially viable units, the buyer argued that it was not liable to provide payment.

The court disagreed with this, finding instead that the trigger for payment between the parties was the grant of planning permission for change of use, irrespective of commercial viability or building regulations approval of a development. The buyer was therefore required to provide full payment of the overage sum, although it was not able to develop the land in accordance with its purpose. For further details contact Ceri Riddell on 01223 532753 or view the full article below.

[Read full article here](#)



Consultation on Minimum Energy Efficiency Standard ("MEES") Target for 2030

The Government has released a new consultation as to what MEES target non-domestic property should achieve by 2030. The government preference is that all non-domestic PR properties should achieve a minimum Energy Performance Certificate (EPC) rating of B by 1 April 2030, (if cost effective) the alternative is that properties should achieve a C rating.

The consultation then requests views on whether the new target should be implemented incrementally (ie over the next decade) or on a single implementation date. Views are also sought on the effectiveness of the current exemptions.

The government accepts that not all buildings will be able to cost effectively meet the higher rating requirement which means that the registration of exemptions is likely to increase. Considering the current level of MEES is an E rating the targets have been set ambitiously in order to enable the UK to meet its desire to achieve at least a 20% reduction in business energy use by 2030 and net zero emissions by 2050.

The consultation indicates that a further consultation on MEES in domestic property will be issued in 2019/2020. The consultation is open until the 7th January 2020 and to take part [click here](#). For further information contact Maria Herne on 01223 447445 or [click here](#) to email Maria.



Email Chain is legally binding

In a recent case a court held that an email chain "signed" by a solicitors automated signature could be legally binding. Under section 2 of the Law of Property (Miscellaneous Provisions) 1989 Act) in order for a contract for land to be legally binding it must be in writing, incorporate all the terms that the parties have expressly agreed and be signed by or on behalf of each party.

In this case it was agreed in an email exchange that specified property was to be sold. What was in dispute was whether the automated email signature was sufficient to "sign" the agreement. In its judgment the court referred to the recently published Law Commission consultation document on electronic execution of documents. The consultation document stated (in a provisional view supported by case law) that an electronic signature is capable of meeting a statutory requirement for a signature if an 'authenticating intention' can be demonstrated.

Whilst this case dealt with an email exchange between solicitors, the judgement could also apply to our clients or agents. For further information please contact Katie Wall on 01604 463136 or [click here](#) to email Katie.



Residential Property Tax Changes

Eric Wardle in his article *Changes to the taxation of residential property* discusses tax changes due to come into effect in April 2020. These include changes to:

- tax relief for interest and finance costs incurred in connection with a residential property business
- time periods for reporting capital gains on a disposal
- principal private residence relief

- letting relief

To read more click the button below or contact Eric Wardle on 01604 463110 or email Eric by [clicking here](#).

[Read full article here](#)



Challenge to Expert Decision

When “experts” are appointed it is agreed between the parties that their decision will be final and binding. Parties will sometimes prefer to appoint an “expert” rather than an “arbitrator” as this can be a quicker and therefore less costly way of resolving a dispute.

In a recent case an expert valuer was appointed to assess a property’s value. The parties agreed by way of a ‘statement of agreed facts’ that the date of valuation would be the valuation date. Subsequently, a dispute arose as to the right date of valuation which on a correct legal interpretation of the contract should have been the earlier date of “the challenge expiry date”. Could the expert determine which date?

The Court of Appeal found that the expert’s decision was not final and binding in relation to his jurisdiction. The “statement of agreed facts” was not binding as it did not comply with an express clause in the contract that outlined how the parties were to lawfully effect any variation to it.

This case is interesting as it reminds us that an “experts” remit of appointment is based on the wording of the contract, and subject to that wording the court retains power to determine the expert’s jurisdiction. It also reminds us of the significant impact a none-variation clause can have in a contract. This though, may not be the last we hear of this case as the Court of Appeal has left it open to the landowner to ask the High Court to consider a further argument based on estoppel.

For advice on any landlord and tenant matters please contact Julian Bishop on 020 7400 6583 or [click here](#) to email Julian.

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