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In this issue...

- Extended Protection for Commercial Tenants
- Have Your Say - Land Control
- Guarantor Held Liable Under a GAGA for £5 Million Worth of Unpaid Rent and Service Charges
- Supreme Court Upholds Enforcement of Shopping Centre Restrictive Covenant
- Are pop-up shops the future for the high street?
- Planning Update September 2020
- Real Estate Elevenses - UK Town Centres Webinar



Extended Protection for Commercial Tenants

The government has announced that it will be extending protection for commercial tenants, namely:

- the protection from forfeiture of business tenancies for non-payment of rent under s82 of Coronavirus Act 2020 (due to expire on 30 September) will be extended to 31 December in England – matching the extension already announced for Wales.
- the restrictions on the exercise of Commercial Rent Arrears Recovery (CRAR) will be extended similarly (extending the number of days' rent that must be outstanding to 276 days' rent where the notice of enforcement is given on or before 24th December 2020 and 366 days' rent where the notice of enforcement is given on or after 25th December 2020).
- an extension of the restriction on presenting statutory demands/winding-up petitions until the 31 December 2020.

As the country prepares for the second wave of the pandemic, it is yet to be seen whether these measures will be sufficient to achieve the government's objective of protecting jobs, incomes and businesses. Whereas the extension to protections will be welcomed by struggling tenants, many of the remedies available to commercial landlords if their tenants default are again

postponed. If you are a landlord or a tenant and require assistance on any commercial property matters please contact Patricia Kempson on 01604 463352 or [click here](#) to email her.



Have Your Say - Land Control

The Ministry of Housing Communities & Local Government has issued a consultation on increasing the transparency of land data. The proposal is that there is an open register which holds information as to which developers, promoters or others have an interest in land and what that interest is. The idea is that this transparency (as to who holds options, rights of pre-emption and conditional contracts over registered land) will allow easier identification of land that may be available for development and therefore assist with bringing that land to market.

The proposal is that the public will see the length of the interest whether the interest is assignable and the land it affects but it does not require financial disclosure. Arguably the current proposals will do little to help bring sites to market, dispense with commercial confidentiality, and increase the administrative burden on developers.

It is not lack of information that prevents sites being developed (those in the market will know of potential development sites). The barriers to developing smaller infill sites tend to be the cost of site assembly, finance, planning application and other compliance measures. It appears that this proposal is aimed at unlocking land for the housing market, but as currently drawn would not achieve its objective and have a much wider impact. The consultation is open until 30th October 2020 and all developers, agents, owners and promoters are encouraged to respond [click here](#).

For assistance on any development matters please contact Claire Howard-Amos on 01604 463323 or [click here](#) to email her.



Guarantor Held Liable Under a GAGA for £5 Million Worth of Unpaid Rent and Service Charges

The introduction of the Landlord and Tenants (Covenants) Act 1995 did away with “original” tenant liability for the duration of a lease and instead introduced the concept of authorised guarantee agreements (“AGA”). This means that it is now common on assignment of a commercial lease for the original tenant to guarantee the performance of its assignee under an AGA. Under the legislation a direct guarantee of the assignee by the original guarantor would be unenforceable (a problem on company reorganisations) so it is also common practice for the original guarantor to guarantee the AGA given by the original tenant by way of a GAGA. This structure was challenged in a recent High Court case however, the guarantee was found to be enforceable. This nevertheless, may not be the end of the litigation as it is understood that there may be an appeal. To read more [click here](#).



Supreme Court Upholds Enforcement of Shopping Centre Restrictive Covenant

In the early 1980s a shopping centre was built on land in Londonderry. The lease to the anchor tenant contained a restrictive covenant that any development on the remaining land would not contain a large unit for the sale of food or textiles. In 2010 the then landlord of the shopping centre issued proceedings for, amongst other matters, a declaration that the restrictive covenant was unenforceable as an unreasonable restraint of trade.

The case was heard at the Northern Ireland High Court and Northern Ireland Court of Appeal. At first instance it was held that the doctrine of restraint of trade ceased to apply on assignment

of the freehold reversion but the Court of Appeal held that there was no public policy reason for the doctrine to cease to apply. This meant that the restrictive covenant would be unenforceable. The tenant appealed to the Supreme Court.

The Supreme Court held that it has long been accepted and normal for the grant of a lease in part of a shopping centre to include a restrictive covenant on the part of the landlord in relation to the use of other parts of the centre. The covenant did not (on public policy grounds) engage the doctrine of restraint of trade and the covenant was enforceable. The landlord could however seek to modify the covenant under the Northern Irish equivalent to application to the Lands Tribunal. The case is a reminder that any novel covenants that are wider than what is considered the “norm” could be challenged as restraint on trade or as uncompetitive under Competition Law.

For further information on this or assistance on commercial property matters please contact Julian Bishop on 020 7400 6583 or [click here](#) to email Julian.



Are pop-up shops the future for the high street?

Alexandra Meesham an Associate Solicitor in our London office considers whether part of the answer to the challenges arising in the retail sector of the pandemic is more short term flexible lettings. As another quarter day passes and further restrictions on our freedoms are imposed it is apparent that both landlords and tenants will need to be creative and flexible in their approach to ride out the storm. Recent research undertaken demonstrates that two-thirds of millennials still shop in store on a weekly basis and then purchase in a ‘channel-agnostic’ way. This seems to demonstrate that there is still place in the market for shop premises but adapting the traditional long lease arrangements will be key. To read more [click here](#).

For assistance on commercial property matters contact Alexandra Meesham on 020 7400 5026 or [click here](#) to email Alexandra.



Planning Update September 2020

The planning arena has been busy over the last couple of months.

In August the government published a Planning White Paper called “Planning for the Future”, setting out proposals for “*radical reform unlike anything we have seen since the Second World War*”. To read more [click here](#).

An environmental campaign group is challenging the extended permitted development rights and classes order legislation that came in on the 1st September. The judicial review hearing is due to be heard in October. [Click here](#) to read more.



The Court of Appeal has provided helpful guidance on the correct interpretation of the term “out of date” in the National Planning Policy Framework and also on how to apply out of date policies contained in local plans to current issues of housing supply. [See here](#).

A recent case has held that unless a s106 agreement or unilateral undertaking has been expressly drafted to refer to the relevant s73 planning permission, the development permitted by that permission will be free of planning obligations. This could have beneficial implications for developers including the ability to claim a refund of previously made financial contributions. [Click here](#) to read more.

We also [report](#) on a new scheme that has come to Cambridgeshire designed to protect the Great Crested Newt.

For assistance on issues raised above or other planning matters contact Gemma Dudley by [clicking here](#) or Brendon Lee by [clicking here](#).



Elevenes with the Real Estate team

On 20th October, from 11.00am to 11.45am, our commercial real estate team will be hosting a coffee break and livestreaming 'Elevenes' to discuss 'UK town centres – Reflecting on the changing nature of lettings and the effect of recent changes to the Planning Use Classes Order and permitted development rights'.

Patricia Kempson will be hosting the event alongside Legal Director Gemma Dudley, Associate Katie Wall and Solicitor Alexandra Messham, who will all be speaking about:

- The changing landscape of the retail market and where there may be a glimmer of hope for landlord's and tenants alike in the form of shorter term, more flexible style lettings.
- Recent changes to the Use Classes Order and the implications this will have for UK high streets and town centres, together with recent changes to permitted development rights.

The livestream will last no more than 40 minutes and will be taking place online via Zoom. Should you wish to register to attend this seminar please [click here](#) to contact our Events team.

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