



Real Estate Legal Update

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Bleak News for Retail

The latest news from the retail sector is bleak. Arcadia is on the brink of collapse having gone into administration and it appears that their demise means that the rescue deal put forward for Debenhams has failed. Commentators have blamed the lack of agility of these retailers to move online with COVID-19 being the catalyst, accelerating a dramatic, and perhaps irreversible, change for the high street.



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The use of Property Guardianship Schemes

Are property guardianship schemes an effective way to mitigate a property owners liability to pay business rates? A recent Court of Appeal decision has held that the decisive factor in establishing who is in rateable occupation of a building was that of “general control”. In this case the contractual relationship between the building owner and the property guardians made it clear that the building owner had not given up possession or control of the building and as a result the building owner was liable to pay millions of pounds in business rates to Southwark BC.

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Further Changes to the General Permitted Development Order Come into Force

Further changes to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the Order”) came into force on the 3rd December. The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 will require homes delivered through permitted development rights to meet nationally described space standards, and will extend some of the temporary relaxations permitted at the start of the COVID-19 outbreak.

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Government Consults on New Permitted Development Rights to allow Town Centre Uses to Convert to Residential

The Government has issued a consultation paper seeking views on a proposed new permitted development right for the change of use from the new Class E (Commercial, Business and Service) use class to residential in an effort to “support economic recovery, housing delivery and the regeneration of our high streets and town centres”. The paper also discusses measures to support public service infrastructure through the planning system, and the approach to simplifying and consolidating existing permitted development rights following the recent changes to the Use Classes Order. The consultation will run from 3 December 2020 to 28 January 2021.

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Court of Appeal Considers the Position in relation to Overlapping Planning Permissions

It is not uncommon for a development site to benefit from more than one planning permission, which can give rise to questions as to the extent to which the different developments can be carried out. The Court of Appeal has recently grappled with this issue in the case of *Hillside Parks Ltd v Snowdonia National Park Authority* [2020] EWCA Civ 1440 and has found in favour of the local authority so as to prevent a development authorised by a planning permission granted in 1967 being carried out on the basis that it was materially inconsistent with the development approved and carried out subsequently.

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Developer hit with record fine for destroying breeding site for bats

In what should be a salient lesson to all developers carrying out works near breeding sites of protected species, on 8 December at Woolwich Crown Court, Bellway Homes was fined £600,000 after they admitted to damaging or destroying a breeding site or resting place for bats at a construction site in Greenwich.

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Permitted development rights lost when building works are unlawful – even if carried out after prior approval

Permitted development rights do not apply to unlawful building works and uses. The recent case of *RSBS Developments Ltd v SSHCLG* [2020] clarifies that such rights will be lost even if the unlawful works are carried out after prior approval.

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Business eviction ban extended until end of March 2021

The government announced last week that business owners affected by the pandemic will be protected from eviction until the end of March 2021. Further guidance to support negotiations between landlord and tenant will be published by them shortly. Tenants who are able to pay any or all of their rent are told to do so. As more parts of the country including London head into tier 3 restrictions (with the associated closure of bars and restaurants), this concession will be some (if limited) comfort.



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