



Hewitsons' Real Estate LEGAL UPDATE

March 2018

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MEES comes into force on the 1st April



Stuart Simões
Partner

The Minimum Energy Efficiency Standards ("MEES") will apply to private rented commercial and domestic property from 1st April 2018. From that date landlords who grant new leases or lease renewals must ensure that their property meet the minimum energy efficiency rating (an EPC rating of E) and if they do not then they must carry out works or register an exemption.

The fact that a property may fall below the minimum standard does not affect the legal enforceability of the lease but if the property is sub-standard the landlord may face enforcement action. The penalty for none compliance on commercial properties is up to a maximum of £150 000 per occasion of breach.

The introduction of MEES has already affected the marketability of none compliant properties. The reach of MEES is also set to progress as from April 2023 MEES will apply to all commercial lettings (for which a EPC is required) as landlords will no longer be able to let none compliant properties without registering an exemption. In 2020, the working of MEES is due to be reviewed and it is widely anticipated that the minimum standard will then rise.

For further information on MEES and its implications please contact Stuart Simões on 020 7400 6574 or [click here](#) to email Stuart.

Licence held to be tenancy



Patricia Kempson
Partner

The case of *Islington BC v Green Live Ltd, t/a Green Live Estate Agents* (August 2017) shows that simply calling a document a "licence" will not necessarily mean that a true licence has been entered into.

In the case, Green Live pleaded guilty to two offences under the Consumer Protection from Unfair Trading Regulations 2008 relating to the issue of sham residential "licences to occupy" where in fact they should have been granting tenancies.

The case confirmed existing principles that a tenancy will be created if a landlord grants exclusive possession for a term in return for a payment of rent, regardless of whether the landlord has described the document as a "licence".

The case is a useful reminder that landlords can face civil penalties and criminal prosecution should they wrongly issue agreements in order to try to avoid the occupier from having security of tenure.

Patricia Kempson is a partner in our Northampton real estate team. To contact Trish call her on 01604 463352 or [click here](#) to email.

Beware fencing obligations - they can last forever



Anna Gora
Senior Solicitor

Anna Gora a senior solicitor in our real estate litigation team considers in her article [Beware fencing obligations - they can last forever](#) whether an obligation to fence can be an easement. Easements are obligations that run with land but usually don't impose any positive obligation on the owners of that land. A recent case considered that an obligation to fence did impose such an obligation and could be enforced as an easement.

For further information please see Anna's article by clicking the link above.

A Knotty Issue



Ceri Riddell
Senior Associate

Two recent court decisions have confirmed that landowners should take action to stop the spread of Japanese knotweed to neighbouring land. In February 2018, a court ruled that a defendant was liable in common law nuisance for allowing Japanese knotweed to spread onto a neighbouring property resulting in a 10% diminution in value of the neighbouring property. The defendant was ordered to pay damages and also to employ the local authority's contractor to carry out a maintenance programme to eradicate the knotweed. The ruling follows another Court decision last year in which homeowners were successful in a claim against Network Rail for the reduction in the value of their homes following the spread of the knotweed from Network Rail's land.

Ceri Riddell is a solicitor in our Cambridge commercial real estate team. For advice on this or other commercial property issues contact Ceri on 01223 532753 or to email her [click here](#).

Government publishes revised draft National Planning Policy Framework for consultation



Gemma Dudley
Senior Associate

The Government has published a revised draft National Planning Policy Framework for consultation containing the following key proposed changes:

- A requirement to meet objectively assessed needs for housing and other development unless specific policy "provides a strong reason" not to do so.
- A standardised approach to viability appraisals and a requirement that they will be publically available.
- A new standard methodology for the calculation of local housing need.
- A new housing delivery test, including a presumption in favour of sustainable development where delivery is below 75%.
- A requirement that planning authorities must examine "all other reasonable options" before releasing green belt for development and a requirement to offset the impact where they do.
- A new definition of affordable housing with much greater emphasis on home ownership, rather than supporting the rental market.

The deadline to provide consultation responses is 10 May 2018 and the Government intends to publish the final version of the revised NPPF "before the summer".

For more information contact Gemma Dudley on 01223 532747 or [click here](#) to email Gemma.

Spring Seminar Series - Real Estate



Hewitsons' Real Estate Team are pleased to present a series of practical updates on recent legislation and case law affecting the commercial property market. Topics covered will include the new Electronic Communications Code and energy efficiency regulations as well as an analysis of common lease clauses. At each event there will be an opportunity for you to share ideas and network over refreshments.

There is no charge to attend and the long standing series has been widely recognised as an ideal opportunity for education, debate and information exchange for the benefit of businesses and other organisations.

All seminars start with a light breakfast which will be served at 7:30am, followed by a legal briefing from specialist members of Hewitsons starting at 8:00am.

Northampton - 15th May 2018
Cambridge - 5th June 2018
Milton Keynes - 13th June 2018

To reserve a space please contact our events team at events@hewitsons.com

Due to venue capacity places are limited. To avoid disappointment early acceptances are recommended.



This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Real Estate Team at Hewitsons in respect of any information contained in this bulletin that affects any matter with which you may be concerned.

Hewitsons offers a full real estate service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This Bulletin will help to keep those involved in property up to date with the latest developments.

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