



DMH Stallard

May 2021

What's happening in the world of Property & Planning

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Is commercial rent payable in a pandemic?

Emily Wood and Jonathan Crook

The story so far...

- Landlord's remedies against commercial tenants for rent arrears curtailed
 - Forfeiture
 - Insolvency
 - CRAR

BUT arrears not written off
- Debt proceedings have remained an option
- Code of Practice for Commercial Property Relationships (Updated)

Landlords win in the Courts

- Two cases
 - *Commerz Real Investmentgesellschaft mbH -v- TFS Stores Limited*
 - *Bank of New York Mellon (International) Limited and AEW UK Reit PLC -v- (1) Cine-UK (2) Mecca Bingo Limited (3) Sportsdirect.com Retail Limited*
- Tenants had to close premises / not commercially feasible to open
- Tenants failed to defend landlord's claim for arrears
 - No Rent Cesser
 - Insurance not the answer
 - Code of practice voluntary
 - No frustration or failure of consideration

What now...

- Moratoriums under The Debt Respite Scheme (breathing space)
- Outcome of the Government's Call for Evidence
 - Just allow the restrictions to simply expire on 30 June 2021?
 - Allow some to lapse but extend others?
 - Help certain businesses but not others?
 - Encourage mediation / adjudication between landlords and tenants?
- Prepare leases for a future pandemic...

Pandemic-related clauses in new leases

- New leases and renewal leases
- New territory for all of us
- Government measure meaning tenant cannot use property
- Covid-19 (and other diseases?)
- Percentage of suspension
- Rent and service charge?

Pandemic-related clauses in new leases (2)

- Not where closure caused by tenant's default
- Long stop date and termination
- How often does suspension apply?
- Subsidies
- Beware tenant's heads of terms!
- Potential effect on sales and lenders – advice from surveyors

WH Smith vs Commerz Real Investment

- Large shop in Westfield Centre, Shepherd's Bush
- Tenant served section 26 notice
- Landlord did not oppose lease
- Most terms agreed between parties
- Principle of rent suspension agreed (50%)
- Tenant account to landlord for government assistance
- Terms of lease
- Party proposing change to justify it (O'May vs City of London 1983)
- Question was trigger for pandemic rent suspension in renewal lease

WH Smith vs Commerz Real Investment (2)

▪ Tenant

- Closure of non-essential retailers
- It had been required to stay open (Post Office)
- No furlough support
- Footfall in Centre reduced dramatically and sales dropped 90%
- Tenant deprived of virtually whole benefit of occupation

▪ Landlord

- The actual tenant was required to close the property
- Tenant had competitive advantage

WH Smith vs Commerz Real Investment (3)

- County Court decision
- Any benefit to tenant of being open in deserted shopping centre more notional than real
- Trigger should be closure of non-essential retailers
- Even if parties had not agreed inclusion of clause essential fairness would demand inclusion of clause

WH Smith vs Commerz Real Investment (4)

- No uplift in rent
- “something that all tenants want, and that the market has now priced it in”
- Not binding on future cases but interesting example
- Might have been different if shop in High Street as more chance for passing trade
- Shows that clauses becoming mainstream

The abolition of forfeiture?

Lawrence Morley

Forfeiture – The current position

The current position

Where a tenant is in default on its obligations under a lease, forfeiture enables a landlord to terminate the lease by

- Issuing proceedings or
- Peaceable re-entry

Bearing in mind – a tenant can apply for relief!

Is change afoot?

The Law Commission has sent out a survey that proposes to abolish the current law of forfeiture, and replace it with a statutory termination scheme.

The Abolition of Forfeiture – the proposals

Replace forfeiture with two forms of statutory termination

1. The standard procedure (a court based termination claim)
 - The landlord serves a “default notice” on the tenant, requiring them to remedy the breach
 - If the tenant does not comply, the landlord can apply for a “termination order”
2. The summary procedure (replacing peaceable re-entry)
 - The landlord serves a “summary termination notice” on the tenant, bringing the tenancy to an end in one month, unless the tenant applies to court to discharge the notice

An insight into the world of football that most fans never see

Peter Rainier MRTPI
Principal Director of Planning

Brighton and Hove Albion Football Club



- 100/1
- Withdean

Brighton and Hove Albion Football Club – Stadium



- Jonathan Clay / Tony Allen
- Martin Perry
- Dick Knight
- Four public inquiries
- Judicial Review
- Sustainable

Brighton and Hove Albion Football Club – Training Ground



- State of the art training facility
- Used by the academy to the first team
- Women and girls facilities
- An extension is currently under construction

Brighton and Hove Albion Football Club – Hotel proposal



- 150-bed hotel
- Casting vote



Brighton and Hove Albion Football Club – IKEA & 600 homes



- IKEA, 600 houses and a Country Park
- Drainage / Flooding / Highways / Visual Impact
- South Downs National Park

Brighton and Hove Albion Football Club



- Players' houses
- Ongoing schemes
- 100/1

Questions



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