



DMH Stallard

Real Estate

Real Estate Webinar

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# Consultation on leasehold reform – an update on progress

**Vanessa Joll**

## Step by step

- February 2017 – White Paper “Fixing Our Broken Housing Market”
- December 2017 – Government Consultation “Tackling Unfair Practices in the Leasehold Market”
- March 2019 – Housing, Communities and Local Government Select Committee Report
- July 2020 – Law Commission Reports

## Law Commission key recommendations

- Make enfranchisement more readily available to leaseholders
- Create a new uniform right for all leaseholders to extend their lease
- Introduce new rights to tackle the issue of onerous ground rents
- Create a new regime of rights for leaseholders to acquire their freehold

# January 2021 update

First stage of reforms announced

## ▪ Valuation

- Abolition of marriage value
- Cap on quantum of ground rent capitalisation at 0.1%
- Prescription of capitalisation and deferment rates
- Right to agree voluntary restrictions on development to avoid paying development value
- Online calculator

- **Lease extensions**

- Single right for all leaseholders to extend lease by 990 years
- Zero ground rent on all extended leases
- Redevelopment break for landlord at end of original term and every 90 years thereafter

- **Ground Rents**

- Leaseholder right to 'buy out' their ground rent without extending their lease.

# Timescales and future legislation

- 2021/2022 – First Stage
- 2023/2024 – Second Stage



# The lease that did not break

Emily Wood

## Break clause

- Option to bring lease to an end
- Landlord or Tenant (personal or successors)
- Fixed or rolling
- Time of the essence
- Unconditional or conditional

## Break conditions

- Is it an actual condition to the break
- Strict performance
- Timing for compliance
- Common conditions
  - Payment of rent (and other sums due)
  - Compliance with covenants (absolute or qualified)
- Vacant possession

## Vacant possession as a condition

- Legal term
- Case law on its interpretation
- Disputes when fittings / items left behind
- Capitol Park Leeds plc –v- Global Radio Services Limited [2020]
  - Removed essential fixtures and fittings
  - Court held use of property substantially impeded
  - estoppel argument failed
  - Vacant possession condition not satisfied
  - Permission to appeal granted

# Service charge update

**Jonathan Crook**

## Service charge – basics 1

- Commercial leases
- Lease of part (non-structural demise)
- Unit in shopping mall
- Office suite on one floor of building
- Ground floor shop with flats above
- Landlord carries out repairs (for example, to the structure)
- Tenant pays a proportion of the cost incurred by the landlord
- On account payments with reconciliation after the end of the service charge year
- Costs simply charged as and when they are incurred
- How to deal with overpayments and underpayments

## Service charge – basics 2

- No legislative protection for commercial leases
- Drafting of leases crucial
- Which services is landlord required to provide?
- Which costs can landlord recover if it chooses to provide services?
- Service charge cap
- Cap to increase during the term?
- What happens if cap not fully used in one year?
- Other protections for tenant: excluded costs and reasonableness
- Certificates and their conclusiveness

## Sara and Hossain Asset Holdings Limited 2020 - 1

- Retail premises in Liverpool
- Landlord to calculate in each year the total cost of the services and expenses (with certain excluded costs)
- Landlord to give "a certificate as to the amount of the total cost and the sum payable by the Tenant"
- Certificate conclusive in the absence of "manifest or mathematical error or fraud"
- The landlord certified a large sum in 2017/2018 and claimed unpaid service charge
- At first instance the Court held that the natural construction was that the certificate was conclusive as to the actual cost of the services but not as to whether the cost fell within the scope of the service charge
- The landlord appealed to the Court of Appeal



## Sara and Hossain Asset Holdings Limited 2020 - 2

- Court of Appeal
- Judge had erred in holding that the tenant's construction was correct
- Landlord's certificate was conclusive as to the amount of the total cost
- Lease did not distinguish between (a) the type of costs that could fall within the service charge and (b) the amount of those costs
- Certificate therefore conclusive as regards the single figure of the total cost (involving both elements)
- No express words to the contrary in the lease and no ground for implication of extra term
- The judge had been influenced by the fact that the landlord would be judge in its own cause

## Sara and Hossein Asset Holdings Limited - 3

- A tenant would be well advised to consider carefully before entering into a lease in this form
- However, not for the Court to save a party from an imprudent term
- The clause made sense for the landlord and would avoid protracted arguments about the level of the service charge
- The fact that there was provision for expert determination in respect of the calculation of the tenant's proportion did not affect the decision
- Tenant seeking permission to appeal to the Supreme Court
- Standard clause in many commercial leases
- Relief for landlords but disappointment for tenants

# Planning – what's new for 2021

**Katie Lamb**

## Biodiversity Net Gain and the Environment Bill

- The Environment Bill has been delayed but is expected to become legislation in Autumn/Winter 2021
- The main headline – 10% Biodiversity Net Gain (BNG) to be delivered:
  - Through on-site enhancements, or
  - Strategic sites of bio-diversity enhancement (new or existing), enabling a tariff based approach
- Includes establishing an ‘Office for Environmental Protection’
  - An interim Office for Environmental Protection will be launched in July as a non-statutory body, ahead of the Bill

## Beauty and the planning system

- Changes to the NPPF currently in consultation (ending 27 March) which, among other things, seeks to enshrine 'beauty' in the planning system
  - Development which is not well designed should be refused
- Places great importance on tree lined streets and measures that incorporate trees within proposals (such as community orchards)
- Mandates Councils to create local design codes, supported by a National Model Design Code (also out for consultation)
  - These will be visual and numerical (and not detailed policy), ie measurable
  - A new National Design Guide has been published and sets out 10 characteristics of well-designed places
- Will be overseen by a new Office for Place

## Improved building sustainability

- Government hoping to publish a 'Future Homes Standard' by 2025
- Will be incorporated into Building Regulations
- Technical specifications will be consulted on in 2023 and legislated in 2024, ultimately requiring 75% less carbon emission
- Interim measures will be brought forward towards end of 2021
  - All new homes will be required to produce 31% less carbon emissions, through building fabric, low carbon heating and PV panels
  - All non-domestic buildings will be required to produce 27% less carbon emissions

## What else to look out for

- Zonal planning – a major shake up of the current planning system
  - Proposals were set out in the White Paper and it is expected to become legislation later this year, with reference possibly being made in the Queen’s Speech in May.
- More permitted development rights
  - Commercial / business (new Class E) to residential
  - Faster approval for public service buildings (eg. hospitals and schools)
- A new model for shared ownership housing?
- Limiting the use of Article 4 directions (through amendments to the NPPF)
- From 6 April 2021 national space standards will apply to dwellings delivered through PD

# Questions



## Speakers



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