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Cyhoeddus

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Landlord and Tenant update

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- Break Clauses – a practical refresher, points of caution and recent case law
- Recent Landlord and Tenant Cases including:
 - Service Charges – LL certification and contract interpretation
 - Relief from Forfeiture – Option agreements
 - Lease Renewals:
 - Pandemic clauses
 - Redevelopment break clauses
 - Electronic Communications Code 2017
 - Restrictive Covenants – modification and discharge under s.84 LPA 1925
 - MEES

Function of a Break Clause

- Allows Landlord or Tenant to terminate fixed term lease early.
- Can also be relevant in context of wider agreements (AFLs with break conditions subject to satisfaction of planning conditions or fit out works by longstop date)
- Can arise on one or more specified dates or be exercised any time during term
- A simple contractual right?
- Why so much case law?

Content of a Standard Break Clause

- Who is entitled to exercise the right to break
 - Original parties or successors
 - Generally included where leases are contracted out of the 1954 Act (although can be used e.g. LL redevelopment break)
- The Break Date
 - Time will be of the essence (*United Scientific Holdings Ltd v Burnley Borough Council [1978] AC 904*)
- Notice provisions
- Conditions
- Two stages
 - i) Exercising the Break Clause/Serving the break notice
 - ii) Compliance with conditions at time serve notice or more usually, prior to the break date after the notice served
- Technicalities matter!

- Draft for certainty
- Heads of Terms
- Code for Leasing Business Premises, England and Wales 1st edition, February 2020
 - Unless the parties have agreed stricter conditions in the heads of terms, T's break should be conditional only on:-
 - T paying the basic rent up to the break date
 - Giving up occupation and leaving no subtenants or other occupiers
 - No requirement for VP and disputes about the state of the premises, or what has been removed or left behind, should be settled after the break right has been exercised
 - Leases should provide for LL to reimburse the tenant for any rent, service charge or insurance rent paid in advance for any period after the break (see [Marks and Spencer Plc v BNP Paribas Securities Services Trust Co \(Jersey\) Ltd \[2015\] UKSC 72](#))

Exercising the Break Clause – The Court's Approach (1)

- The basic rule – any contractual requirements for service must be strictly complied with
- However, *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] UKHL 19
 - T right to break the lease by "**serving not less than six months' notice in writing... to expire on the third anniversary of the term commencement date**". The notice served by the tenant stated that the termination date was 12 January 1995. The third anniversary **date that should have been stated, however, was 13 January 1995** and there was no other possible break date.
 - A minor defect in a contractual notice will not necessarily invalidate the notice if the reasonable recipient, with full knowledge of the factual and contextual background, would not be perplexed by the error
 - An objective test and a question of fact.
 - Issue is how a reasonable recipient would have understood the notice.

Exercising the Break Clause – The Court’s Approach (2)

- Limitation of *Mannai*
 - Break clause in question didn’t require the notice itself to specify the correct termination date i.e. by "serving not less than six months' notice in writing... to expire on the third anniversary of the term commencement date".
 - Lord Hoffman “if the [notice] clause had said that the notice had to be on blue paper, it would have been no good serving notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease”
- Whilst *Mannai* can operate in certain circumstances to save defective notices, the position remains that any express contractual requirements for service must be complied with.

Exercising the Break Clause – The Court's Approach (3)

- Two stage test for determining if notice is valid;
 - What is the true meaning of the notice?
 - Does the notice comply with the relevant requirements as to the notice in the relevant contract?
- COA held Mannai principles only apply in relation to the first stage of the test (*Trafford Metropolitan Borough Council v Total Fitness UK Ltd [2002] EWCA Civ 1513*).
- If the notice unambiguously conveys a decision to determine the tenancy in accordance with the lease, the court may ignore immaterial errors that would not have misled a reasonable landlord receiving the notice.
 - *Pease v Carter [2020] EWCA Civ 175*
 - LL s.8 notice to terminate AST valid even though date of terminate contained typo (2017 instead of 2018). Still gave sufficient 2 weeks' notice.
- But beware if don't comply with express requirements of contract!

Exercising the Break Clause – Common Pitfalls and Recent Cases (1)

1) Get the parties right

- Generally a notice served by the wrong person or on the wrong person will be invalid (*Lemmerbell Ltd and others v Britannia LAS Direct Ltd [1998] EWCA Civ 1506*)
 - *Proctor and Gamble Technical Centres Ltd v Brixton Estates plc [2002] EWHC 2835 (Ch)*.
 - A break notice wrongly contained reference to original tenant. The notice was ambiguous and therefore invalid.
 - *Standard Life Investments Property Holdings v W & J Linney Ltd [2010] EWHC 480 (Ch)*.
 - landlord disposed of reversion (by way of overriding lease) and tenant served notice on original landlord. Held invalid.
 - *Sackville v Robertson Taylor [2018] EWHC 122 (Ch)*
 - Be careful of the registration gap. Break notice invalid when served by assignee before lease registered
- Carry out thorough investigations
- If any doubt as to who to serve, serve everyone.

Exercising the Break Clause – Common Pitfalls and Recent Cases (2)

2) Who should send the notice

- Joint landlords/tenants (*Hounslow LBC v Pilling [1993] 2EGLR 59*)
 - If joint landlords or tenants, break clause must be exercised by all of them unless one of them has the authority of all to exercise on their behalf
- Service by agent
 - *Hexstone Holdings Ltd v AHC Westlink Ltd [2010] EWHC 1280 (ch)*.
 - If notice is served by an agent, agent must have clear authority to serve notice on behalf of the tenant and that it must be disclosed to the landlord that the giver of the notice is acting as agent

Exercising the Break Clause – Common Pitfalls and Recent Cases (3)

3) When can or does the notice have to be given

- Must read terms of the lease in full and not just break clause.
 - Is often a matter of construction of the “term” under the lease.
 - Always specify a date if possible
- [GKN Aerospace v Duncan \[2020\] EWHC 3719](#)
 - Further extension of lease agreed.
 - Clause 2 of the addendum contained a break option, which provided that the *"tenant may for this addendum only serve notice at one point, being three months prior to the anniversary of the first year"*.
 - LL claimed had to give notice on specific date (24 July 2018). T gave notice prior to this, CC held invalid
 - High Court held no commercial purpose and parties could not have intended a strict requirement for notice to be given within a 24 hour window. Notice valid.

Exercising the Break Clause – Common Pitfalls and Recent Cases (4)

- *Wigan BC v Scullindale Global Ltd [2021] EWHC 779 (Ch)*
 - 999 year lease of listed building to a T for redevelopment into a hotel
 - LL right to break "at any time" following an "Event of Default" (failure to complete the development in accordance with planning permission which required completion of refurbishment by 23 May 2018)
 - LL served break 16 months after that date. T challenged and argued notice must be served "within a reasonable time"
 - Court rejected as would contradict express language.
 - Did however require a "temporal limitation" on right
 - Implied term that could exercise right "at any time whilst an Event of Default persisted".
- Parties need to make sure drafting reflects what they agreed

Exercising the Break Clause – Common Pitfalls and Recent Cases (5)

- *Vistra Trust Corp (UK) Ltd (as trustee for the Property Income Trust for Charities) v CDS (Superstores International) Ltd [2022] EWHC 3382 (Ch)*
 - *Lease retail store granted 2008 for 21 years expiring 2029.*
 - *Break notice served by T on 10 December 2018 to expire on 11 February 2023*
 - *26 November 2020, lease assigned. T acquired in full knowledge break notice had been served.*
 - *30 June 2022, T made a s.26 request for a new tenancy.*
 - *LL applied for declaration in Part 8 proceedings that s.26 notice not valid and lease will expire on break date. Also applied for summary judgment.*
 - *Unusually T trying to show break wasn't valid. Tried lots of arguments*
 - *Solicitors who served did not have authority*
 - *Absence of signed acknowledgment could cast doubt on if notice received*
 - *Description of tenant as "B&Q plc" rather than "B & Q plc"*
 - *No credible evidence break notice not served. No requirement for break notice to be given a reasonable time before the break date.*
 - *Court gave summary judgment for the LL the lease validly terminated by T break*

Exercising the Break Clause – Common Pitfalls and Recent Cases (6)

4) How should the notice be given?

- At common law notice must actually be physically received.
- Statutory provisions relating to service of contractual notices are important due to deemed service provisions (see section 196 of the LPA 1925) – usually hand delivery and/or recorded delivery
- BUT – always check what lease says.
 - *Capital Land Holdings Ltd v Secretary of State for the Environment [1996] SCLR 75*
 - Notice sent to one of LL's places of business and not registered office - invalid
 - *Hotgroup v Royal Bank of Scotland [2010] EWHC 1241 (Ch)*
 - Lease specified Break Notice served on the LL and on further company who managed portfolio. Failure to serve on other company invalidated break.
- If mandatory method of service, must be followed otherwise notice is invalid even if did come to the attention of the landlord

Compliance with Conditions – The Court's Approach (1)

- Timing for compliance with conditions
 - i.e. at the break date or at the time of service
- A break clause will be strictly construed and conditions to a right to break must be strictly performed (*Reed Personnel Services plc v American Express Ltd [1997] 1 EGLR 229*).

- **Absolute Conditions**

- e.g. that the tenant has paid the rent and performed and observed its covenants and conditions.
- Will prevent the tenant from exercising the break clause if there is a subsisting breach of covenant or condition at the relevant time, no matter how trivial.
- *Bairstow Eves (Securities) Ltd v Ripley [1992] 2 EGLR 4*
 - lease required property to be repainted in last year. Was repainted just before beginning of the last year. No practical difference but CoA held condition requiring compliance with covenants had not been satisfied.

Compliance with Conditions – The Court’s Approach (3)

- **Qualified Conditions**

- Lease may require that tenant has “materially”, “substantially” or “reasonably” complied with its obligations.
- COA in *Fitzroy House Epworth Street (No1) Ltd v Financial Times Ltd [2006] EWCA Civ 329*:
 - ‘materially’ and ‘substantially’ are interchangeable depending on context and that materiality is to be assessed by reference to the ability of the landlord to re-let or sell the property without delay or additional expenditure.
 - Is an objective test.
 - It was therefore irrelevant that T had taken all reasonable steps to put and keep premises in repair expending considerable money or that T had tried to agree with the LL what works needed to be done and the LL unreasonably declined to involve itself in discussions.
 - However court ultimately found in T’s favour as not many outstanding defects and were not substantial, did not affect ability to sell or re-let property without delay and damage to reversion was negligible

Compliance with Conditions – Common Problems (1)

1) Calculation of Payments Due under the Lease

- If it is a condition that the tenant makes all payments due under the lease by the break date, it is vital that all monies conceivably due are calculated and paid
 - *Avocet Industrial Estates LLP v Merol Ltd and another [2011] EWHC 3422 (Ch)* –
 - Tenant's failure to pay default interest (even though not demanded) in sum of £130 meant break not validly exercised
 - *PCE Investors Ltd v Cancer Research UK [2012] EWHC 884* –
 - rent up to the break date, rather than the full quarter's rent. The break clause required the tenant to give vacant possession and pay "the rents reserved and demanded by this Lease up to the Termination Date".
 - The court held that the tenant should have paid the full quarter's rent to validly terminate the lease
- Payment of rent in advance
 - *Marks and Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2015] UKSC 72*
- Payment is Tenant's responsibility

Compliance with Conditions – Common Problems (2)

2) Condition Requiring Vacant Possession

- Three key elements:-
 - Empty of people
 - Empty of chattels
 - Landlord must be able to enjoy immediate and exclusive possession, occupation and control of the property;
- [*John Laing Construction Ltd v Amber Pass Ltd \[2005\] L. & T.R. 12*](#)
 - Some security arrangements left on site ok given security issues at property
- CF [*NYK Logistics \(UK\) Ltd v Ibrend Estates BV \[2011\] EWCA Civ 683*](#),
 - two workmen T had employed to carry out some works remained in the property following the break date, to finish off the outstanding repairs and security guard on site. Break not valid
- [*Riverside Park Ltd v NHS Property Services Ltd \[2016\] EWHC 1313*](#)
 - Internal non-structural partitions left behind. Held were chattels and break invalid.

Compliance with Conditions – Common Problems (2)

- *Capitol Park v Global Radio [2021] EWCA Civ 995*
 - Right to break on giving VP
 - T removed essential fixtures and fittings with a view to replacing before vacating. Paused works whilst tried to negotiate settlement and didn't replace before vacating
 - High Court held T hadn't given VP. It was an empty shell and couldn't be occupied by the T. Break therefore invalid.
 - COA – overturned. Held that a condition for vacant possession requires the tenant to return the property to the landlord free from people, chattels and legal interests, rather than being concerned with the physical condition of the property.
- Condition for VP can therefore cause significant problems. More usual requirement to 'give up occupation'

3) Condition Requiring Property in Repair

- Absolute condition requiring in repair can therefore be extremely onerous. (see [Baristow Eves \(Securities\) Ltd v Ripley \[1992\] 2 EGLR 4](#) – *failure to paint in final year of term*)
- Check when it is required and to what standard.
- If necessary obtain expert advice as to any disrepair and as to the works necessary to ensure compliance to standard required by break clause.

Checklist/Practical Points (1)

Drafting Break Notices

- Clear HOT and drafting is key to pre-emptively avoid disputes
 - Draft for certainty
 - Specify actual date (e.g. 23 March 2023)
 - Clear notice provisions
 - Clear conditions (NB Code for Leasing Business Premises, unless stricter terms agreed in HOT, recommends conditions should only be limited to T paying basic rent up to break date and Lease code not recommends should be limited to payment of principal rent and Giving up occupation and leaving no subtenants or other occupiers)
 - Ensure Break Date does not coincide with Rent Review Date
 - Peer review/checklists

Checklist/Practical Points (2)

Exercising Break Notices

- When exercising a break:
 - Get house in order as soon as possible – Diarise break date well in advance!
 - Consider terms of break clause and lease as a whole and in detail to ascertain what needs to be done to serve valid notice.
 - Carry out Company Searches and Land Registry searches and keep them up to date. Monitor correspondence to ensure no changes of address.
 - Keep evidence of the method of posting or delivery of the notice. If any doubt, serve everyone!
 - Disclose the existence of any agency and the agent's authority, where the notice is being served by an agent.
 - If break is subject to conditions, check when compliance is required (i.e. at date serve notice or at break date) and to what standard.
 - If necessary obtain expert advice as to any disrepair.
 - Pay any outstanding sums due in cleared funds, even if these are in dispute.
 - Make sure allow sufficient time to carry out any works required and hand back premises with vacant possession in time.

- [Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd \[2023\] UKSC 2](#)
 - Service Charge Clause provided that the landlord should provide a certificate “as to the amount of the total cost and the sum payable by the tenant” and that “in the absence of *manifest or mathematical error of fraud* such certificate shall be conclusive”
 - Service charge certificate issued by LL for 2017/2018 and 2018/2019 circa £460k. T refused to pay claiming that it was excessive and included unnecessary items and expenses that were not properly payable under the terms of the lease.
 - LL sought summary judgment on basis of the certificate issued.
 - LL's position: the LL's certification of the sum payable was conclusive subjective only to any “*manifest or mathematical error of fraud*” – 'pay now, argue never'
 - T's position: The certification was conclusive as to the amount of costs incurred by the LL but not as to the T's service charge liability 'argue now, pay later'

Recent Cases

Service Charges – certification and interpretation (2)

- Master at first instance and High Court held in favour of T.
 - Unlikely parties would have intended LL should be "judge in his own cause"
- Court of Appeal allowed the appeal in favour of LL.
 - In the absence of express words or necessary implication to the contrary, certificate was conclusive of amount of total costs and sum payable.
- Supreme Court: Allowed Appeal but rejected both parties' submissions on meaning of clause. Held certificate is conclusive as to T's liability to pay service charges but only at the time it is issued.
 - Rules of contractual interpretation summarised para 29.
 - 1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.
 - 2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.
 - (3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated.

– SC's interpretation

- agreed natural and ordinary meaning of certification provisions supported LL's case;
 - saw weight in argument that allowing T to challenge SC undermines commercial purpose of allowing LL to recover expenses incurred without delay and preserving cashflow.
 - However, SC recognised substance in T's contention that LL's interpretation was inconsistent with other provisions in the lease (e.g. expert determination in relation to dispute over proportion of SC T liable to pay, inspection rights of receipts etc).
 - In addition, it would be surprising for parties to agree that LL could determine all arguable issues (including in relation to out-of-scope and excluded costs) conclusively without representation or recourse from T, including where LL is negligent.
- *Lord Hamblen: "57. In summary, the certification provision should be interpreted as being conclusive as to the service charge "sum payable by the tenant" but not as to the underlying liability for the service charge. The tenant is entitled to bring a claim seeking repayment of a cost which it is contended had been improperly charged. It is a form of "pay now, argue later" provision, a contractual arrangement which is commonly found. Adopting an iterative approach, this interpretation is consistent with the contractual wording, it enables all the provisions of the leases to fit and work together satisfactorily and it avoids surprising implications and uncommercial consequences."*

Recent Cases

Service Charges – certification and interpretation (4)

- Practical Implications
 - Lease will be interpreted as any other commercial agreement
 - Text of the contract is starting point, but wider context is admissible
 - Context of a clause can override narrow reading of text
 - Lord Briggs dissenting - *"My difficulty with the "pay now, argue later" solution which Lord Hamblen proposes (and with which my other colleagues agree) is that I can discern no warrant for it at all in the lease. Furthermore it is a solution which, if desired by the parties, they could so easily have provided in clear terms."*
 - Case is not definitive as question of interpretation is based on interpretation of the wording of the particular wording and context of lease
 - Interesting to see if T seek to use case as authority to raise challenges where certificates raised.
 - Demonstrates difficulty with interpretation – clear drafting is key.
 - 10 judges, 3 different constructions.

- **Relief from forfeiture – Option Agreements**
 - [Hush Brasseries Ltd v RLUKREF Nominees \(UK\) One Ltd \[2022\] EWHC 3018 \(Ch\)](#)
 - T occupied premises under lease due to expire 2024.
 - LL granted T an option to renew.
 - Option included provision for LL to terminate option if T in arrears of rent
 - T arrears under the lease, LL terminated option but did not forfeit lease.
 - Settlement agreement in relation to arrears. T applied for relief forfeiture of the termination of the option agreement
 - The parties agreed that, in order for the court to grant relief from forfeiture, T needed to satisfy two pre-conditions. Held that:
 - T had a sufficient, proprietary interest in the premises.
 - The operative termination provision in the option secured the performance of the tenant covenants in the lease.
 - Still subject to court's discretion (here relief granted)

Recent Cases

Lease Renewal (1)

- **1954 Act renewals**
 - leading authority - [O'May v City of London Real Property Co Ltd \[1983\] 2 AC 726](#)
 - When court determines terms under s.35 LTA 1954
 - Starting point is the terms of current tenancy
 - Consider terms of new lease according to justice and fairness, having regard to all the relevant circumstances
 - Party proposing variation must show good reason for doing so based on essential fairness between the parties
- **1) Pandemic Clauses**
 - Rent suspension or reduction due to government or other restrictions
 - County Court decisions – non binding
 - [WH Smith Retail Holdings Limited v Commerz Real Investmentgesellschaft mbH \(unreported\), 25 March 2021 \(County Court\)](#).
 - [Poundland Ltd v Toplain Ltd \(unreported\), 7 April 2021, \(County Court\)](#)

Recent Cases

Lease Renewal (2)

- **2) Redevelopment Break Clause**

- Established case law

- [National Car Parks Ltd v The Paternoster Consortium Ltd \[1990\] 1 EGLR 99](#)

- Not the policy of the 1954 Act to inhibit redevelopment or reconstruction of commercial property.

- If LL can demonstrate is real possibility redevelopment will take place during term of the new lease, the court is likely to include a redevelopment clause or grant a shorter term

- [Adams v Green \[1978\] 2 EGLR 46](#)

- Landlord does not have to show in proving that there is a real possibility of redevelopment that the development is imminent or that it is the LL that will be carrying it out.

Recent Cases

Lease Renewal (3)

- **2) Redevelopment Break Clause**

- **B&M Retail Ltd v HSBC Bank Pension Trust (UK) Ltd (Central London CC March 2023)**
 - LL missed time to serve counter notice following 26 Notice served by T.
 - LL would otherwise have opposed the request for a lease renewal but missed the deadline due to post-room issue during lockdown
 - In lease renewal, LL sought redevelopment clause operable at first conceivable moment. T opposed, main issue being whether potential difficulties in obtaining planning should prevent inclusion of redevelopment clause
 - Court held:
 - Redevelopment clause allowed – wrong for court to pre-judge outcome of planning application
 - will only upset a LL's redevelopment ambitions if there is a major factor which points the other way
 - Court should reject any terms which would either prevent or unduly delay redevelopment

Recent Cases

Lease Renewal (4)

- **3) Electronic Communications Code 2017**

- **Cornerstone Telecommunications Infrastructure Limited v Ashloch Ltd and AP Wireless II (UK) Limited [2022] UKSC 18**

- Operator with an existing agreement which fell within Part 2 of the 1954 Act when the New Code came into force (28 December 2017) cannot seek code rights under Part 4 of the New Code but must instead seek a new tenancy under the 1954 Act.
- Operator should not get the retrospective benefit of the new Code.
 - NB therefore operator required to use 1954 Act notwithstanding disadvantages (including determination of rent under s.34 of the 1954 Act based on open market rather than valuation assumptions under para 24 of the Code (including no network assumption))
- Once granted, the new tenancy would however be regarded as a new code agreement.

Recent Cases

Restrictive Covenants (1)

- [S.84 LPA 1925](#) – right to apply to Upper Tribunal to modify or discharge restrictive covenant where the
 - Covenant is obsolete (s.84(a)(a))
 - The covenant impedes some reasonable use of the land (s. 84(1)(aa) and in doing so
 - Does not secure any practical benefit of substantial value or advantage or is contrary to public interest (s.84(1A)(a) and (ab)); and
 - Money would be adequate compensation to anyone suffering loss or disadvantage from the discharge or modification
 - Agreement (s. 84(1)(b))
 - No injury will be caused (s. 84(1)(c))

Recent Cases

Restrictive Covenants (2)

- *Quantum (Barrowsfield) Ltd v Bell and others [2023] UKUT 2 (LC)*
 - Covenants prevented construction of more than one dwelling house on plot and the occupation by more than one household on two plots
 - Applicant sought modification under s.84(1)(aa) and (c) to enable implementation of planning permission for block of flats up to 5 stories containing 33 self-contained flats
 - UT found proposed development was a reasonable use. However buildings would be overbearing and obstruct outlook from 2 properties. As a result, covenants conferred a practical benefit of substantial advantage on those properties.
 - UT held there had no discretion to modify the covenants
- *Sutton v Baines [2022] UKUT 342 (LC), [2022] All ER (D) 64 (Dec)*
 - Covenant prevented construction of more than one house. Prevented applicant from building second property on her side garden.
 - Neighbours objected due to effect it would have on their home.
 - UT held proposed use was reasonable. Difficulty was applicant had applied for blanket discharge and experts agreed that made it difficult to assess the effect on neighbour's property.
 - No current planning permission and if restriction removed, neighbour be exposed to whatever planning permission they or successor could obtain.
 - Applicant had not proved covenant 'Does not secure any practical benefit of substantial value'

Recent Cases

Restrictive Covenants (3)

- [Johnson, Re \[2022\] UKUT 294 \(LC\)](#)
 - Restrictive covenant required use of detached 2 storey house as a private dwelling house
 - Applicant wanted to modify to use as a childminding business
 - Did not require planning permission as would be within C3 use provided no more than 6 children at any time. UT therefore carried out own investigation of likely effect of proposed change of use.
 - UT held use was reasonable and agreed to modify to allow childminding business of any size.
 - Were confident any enlargement of the business beyond 6 would receive sufficient scrutiny as part of the planning process
 - NB Were limited scope for external objections as couldn't identify beneficiary of covenant. Cf Sutton v Baines

Minimum Energy Efficiency Standards (MEES)

- Since 1 April 2018, a landlord must not grant a new lease (including a renewal lease or lease extension) of a sub-standard commercial property (i.e. where the building does not have a valid EPC with an energy efficiency rating of E and above (unless an exemption applies))
- From 1 April 2023, MEES requirements will extend to all commercial leases, even where there is no change in arrangements.
 - LL cannot therefore continue to let a property with an EPC rating below E unless an exemption applies
- Local authorities responsible for enforcing regulations through compliance notices and fines
 - Breach less than 3 months – fine greater of £5,000 or 10% property RV up to £50,000
 - Longer breaches - £10,000 or 20% of RV of the property up to maximum of £150,000

Minimum Energy Efficiency Standards (MEES)

- Exceptions and Exemptions
 - Long leases (99 years plus)
 - Short leases (6 months or less)
 - Temporary buildings with planned life of 2 years or less
 - Properties that do not use energy to condition the indoor climate (e.g. industrial buildings)
 - Listed buildings (where compliance would unacceptably alter character or appearance)
 - All Improvements Made
 - Seven Year payback (cost of work would not pay for themselves in expected energy savings over 7 year period)
 - Consent
 - Devaluation (reduce market value by more than 5%)
 - New Landlord



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Next event for the
diary:

April 2023 –
Procurement update



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