

What does the legal landscape look like for the commercial real estate sector in 2022?



Only a week or so ago it seemed that 2022 was likely to see further improvement in the commercial real estate market as the economy continued to recover from Covid-19.

The emergence of the new Omicron variant in late November 2021 however has served as a stark reminder that the threat of new waves of infection continues to loom. Quite what this recovery will now look like is uncertain and there is the inevitable concern that 2022 may look more like “2020 too”.

What is certain however is that the legal agenda for 2022 is shaping up to make for a busy year and the changing legal landscape will form an important backdrop to transactional activity in the year ahead. Here we highlight some of the most important themes and legal issues which we think will influence what 2022 has in store for the commercial real estate sector.

The owner-occupier relationship

In terms of what lies ahead for landlords and tenants, the extension of the moratorium on forfeiture for non-payment of rent to March 2022 alongside restrictions on the landlord’s ability to petition for a company to be wound up based on non-payment of rent will continue to challenge the balance of power between landlords and tenants.

Commercial Rent (Coronavirus) Bill

In November 2021, the Government laid the groundwork for the ring-fencing legislation by introducing the



Commercial Rent (Coronavirus) Bill. This legislation is expected to be enacted by March 2022 and will effect a legally-binding arbitration process for commercial landlords and tenants to resolve arrears disputes relating to periods of enforced closure due to the pandemic. The ring-fencing rules (which crucially do not just apply to arrears of principal rent but also to arrears of service charge and insurance rent that have accrued during any mandated closures) will be accompanied by a mandatory arbitration regime.

Code of Practice for Commercial Property Relationships

A revised Code of Practice for Commercial Property Relationships has been published alongside the Bill. The Code sets out what the arbitration process will look like, the kind of evidence that will be considered, and the key principles of fairness, affordability, and viability that it will adhere to. Importantly although the Bill only applies to ring-fenced arrears, the Code remains relevant to all rent arrears accrued since March 2020 and makes it clear that parties should negotiate (adopting the principles of the Code) first and then only use the binding arbitration as a “last resort”.

Together, the Bill and the Code set out a clear path for both landlords and tenants to move from dispute to resolution and it is hoped that together these measures will help businesses, irrespective of size or sector, to grow and plan for a brighter future in the post-pandemic landscape.

Landlord and Tenant Act 1954

Also on the horizon is the Government’s promised and long-awaited review of the Landlord and Tenant Act 1954. The Government’s focus will be on enabling better collaboration between landlords and tenants and ensuring that the leasing process adequately reflects current economic conditions. This combined with the proposed reform of the business rates regime make for unprecedented times for corporate owners and occupiers alike.

Building and development

Moving away from the lettings sector, the Residential Property Developer Tax is a new tax that will apply from 1 April 2022. This measure will introduce a new 4% tax on annual profits from residential developments exceeding £25 million and will be used to help fund the costs of cladding remediation works in the aftermath of the Grenfell Tower disaster. HM Treasury has been clear throughout the consultation process that it sees the tax as ‘time limited’, with the goal of raising c. £2bn of revenue over a 10-year period.

We should also not forget about the Building Safety Levy (a levy on applications from building control approval in respect of higher-risk buildings which will contribute towards fixing historical fire safety defects including unsafe cladding). This levy will sit alongside the residential property developer tax and will be introduced when the Building Safety Bill (currently making its way through Parliament) is enacted. Royal Assent is not expected until 2022 with implementation of the Bill following 12-18 months later meaning that the Building Safety Levy is not likely to come into force until 2023.

Decarbonising the property sector

Across the property sector more generally, whilst in the short term the balance of power between landlords and tenants continues to be challenged by the Government’s Covid-19 initiatives, in the longer term the focus on the ESG agenda and in particular net zero targets will continue to dominate the public agenda with a key focus on the ever-growing ESG-focused legislation expected to be implemented over the coming year.



Energy Performance Certificate

Following the Government's Energy White Paper published on 14 December 2020, the focus in 2021 has been on minimum energy efficiency standards with commercial property owners expected to achieve a minimum Energy Performance Certificate rating of B by 1 April 2030. However, it seems that one of the key areas of focus for 2022 will be on electric vehicles and more importantly from the real estate perspective on the installation of electric vehicle charging points.

Transport Decarbonisation Plan

On 22 November, the Government confirmed that all new homes and buildings, as well as those undergoing major renovation, will be required to install electric vehicle (EV) chargers from next year. This was a policy first proposed by the Government in 2019, before being reaffirmed in the Transport Decarbonisation Plan, released in July this year.

Land acquisitions and investments

Finally, owners and buyers of UK land also need to be aware of the National Security and Investment Act 2021. The Act, which establishes a new, stand-alone statutory regime for Government scrutiny of, and intervention in, acquisitions and investments for the purposes of protecting national security comes into force on 4 January 2022. Unusually it has retrospective effect meaning the UK Government can look back at relevant transactions taking place since 11 November 2020.

The certainty of uncertainty

We started 2021 talking about the Covid-19 pandemic, and the impact that restrictions and lockdowns were having on the property industry, and we are now ending the year talking about the pandemic and the impact newly tightened restrictions might have. Another roller coaster of a year appears to be on the cards where the phrase "unprecedented times" will yet again take centre stage.

Whilst we continue to navigate through uncertain times we can be sure of two things – (1) there will be lots to talk about and (2) the Government's ESG and sustainability agenda will have a significant impact on the future legal landscape and in turn on the market forces at play.



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