

Chambers



GLOBAL PRACTICE GUIDES

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Real Estate

UK

Colin Rodrigues, Harminder Sandhu and Davinder Sanghera
Hawkins Hatton Corporate Lawyers Ltd

practiceguides.chambers.com

2021

Law and Practice

Contributed by:

*Colin Rodrigues, Harminder Sandhu and Davinder Sanghera
Hawkins Hatton Corporate Lawyers Ltd see p.22*



CONTENTS

1. General	p.4	4. Planning and Zoning	p.13
1.1 Main Sources of Law	p.4	4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning	p.13
1.2 Main Market Trends and Deals	p.4	4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction	p.13
1.3 Impact of Disruptive Technologies	p.4	4.3 Regulatory Authorities	p.13
1.4 Proposals for Reform	p.5	4.4 Obtaining Entitlements to Develop a New Project	p.13
2. Sale and Purchase	p.6	4.5 Right of Appeal Against an Authority's Decision	p.14
2.1 Categories of Property Rights	p.6	4.6 Agreements with Local or Governmental Authorities	p.14
2.2 Laws Applicable to Transfer of Title	p.6	4.7 Enforcement of Restrictions on Development and Designated Use	p.14
2.3 Effecting Lawful and Proper Transfer of Title	p.6	5. Investment Vehicles	p.14
2.4 Real Estate Due Diligence	p.6	5.1 Types of Entities Available to Investors to Hold Real Estate Assets	p.14
2.5 Typical Representations and Warranties	p.7	5.2 Main Features of the Constitution of Each Type of Entity	p.14
2.6 Important Areas of Law for Investors	p.7	5.3 Minimum Capital Requirement	p.15
2.7 Soil Pollution or Environmental Contamination	p.7	5.4 Applicable Governance Requirements	p.15
2.8 Permitted Uses of Real Estate under Zoning or Planning Law	p.7	5.5 Annual Entity Maintenance and Accounting Compliance	p.15
2.9 Condemnation, Expropriation or Compulsory Purchase	p.8	6. Commercial Leases	p.15
2.10 Taxes Applicable to a Transaction	p.8	6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time	p.15
2.11 Legal Restrictions on Foreign Investors	p.11	6.2 Types of Commercial Leases	p.15
3. Real Estate Finance	p.11	6.3 Regulation of Rents or Lease Terms	p.15
3.1 Financing Acquisitions of Commercial Real Estate	p.11	6.4 Typical Terms of a Lease	p.15
3.2 Typical Security Created by Commercial Investors	p.11	6.5 Rent Variation	p.16
3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders	p.11	6.6 Determination of New Rent	p.16
3.4 Taxes or Fees Relating to the Granting and Enforcement of Security	p.11	6.7 Payment of VAT	p.16
3.5 Legal Requirements Before an Entity Can Give Valid Security	p.11	6.8 Costs Payable by a Tenant at the Start of a Lease	p.16
3.6 Formalities When a Borrower Is in Default	p.12	6.9 Payment of Maintenance and Repair	p.16
3.7 Subordinating Existing Debt to Newly Created Debt	p.12	6.10 Payment of Utilities and Telecommunications	p.16
3.8 Lenders' Liability under Environmental Laws	p.12	6.11 Insuring the Real Estate That Is Subject to the Lease	p.16
3.9 Effects of a Borrower Becoming Insolvent	p.12		
3.10 Consequences of LIBOR Index Expiry	p.12		

6.12	Restrictions on the Use of Real Estate	p.16	8. Tax	p.20
6.13	Tenant's Ability to Alter and Improve Real Estate	p.17	8.1	VAT p.20
6.14	Specific Regulations	p.17	8.2	Mitigation of Tax Liability p.20
6.15	Effect of the Tenant's Insolvency	p.17	8.3	Municipal Taxes p.21
6.16	Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations	p.17	8.4	Income Tax Withholding for Foreign Investors p.21
6.17	Right to Occupy after Termination or Expiry of a Lease	p.17	8.5	Tax Benefits p.21
6.18	Right to Assign a Leasehold Interest	p.17		
6.19	Right to Terminate a Lease	p.18		
6.20	Registration Requirements	p.18		
6.21	Forced Eviction	p.18		
6.22	Termination by a Third Party	p.18		
7. Construction		p.18		
7.1	Common Structures Used to Price Construction Projects	p.18		
7.2	Assigning Responsibility for the Design and Construction of a Project	p.19		
7.3	Management of Construction Risk	p.19		
7.4	Management of Schedule-Related Risk	p.19		
7.5	Additional Forms of Security to Guarantee a Contractor's Performance	p.19		
7.6	Liens or Encumbrances in the Event of Non-payment	p.20		
7.7	Requirements Before Use or Inhabitation	p.20		

1. GENERAL

1.1 Main Sources of Law

UK real estate law is derived from common law and statutory legislation. In relation to the latter, the primary legislation comprises:

- the Law of Property Act 1925, which reduced the number of legal estates to two and streamlined the transfer of interests in land for purchasers;
- the Land Charges Act 1972, which updated the process for registering charges against unregistered land; and
- the Land Registration Act 2002, which updated the law of land registration and stipulated the registration of shorter leases.

1.2 Main Market Trends and Deals

The COVID-19 pandemic did not entirely dampen investors' appetite in the real estate market, although transactions were lower in volume in certain sectors such as hotels. Savills reported that hotel investment to September 2020 reached GBP1.63 billion, down by 54.4% compared to the same period in 2019. Colliers International recorded investment in the office sector of up to GBP700 million by September 2020, which included Quadrant Estates' purchase of Nine Elms Park for GBP150 million. This was despite the fallout from commercial leases and a skyline of abandoned and/or empty offices. Retail investment, in comparison, reached around GBP550 million, as the decline of the high street continued, exacerbated by the pandemic (cf Property Funds World). Investment in retail parks or out-of-town outlets remained consistent. The pattern emerging in the UK is typical of global trends, as large sections of the real estate sector are trying to decide what the new landscape will be like, in terms of the use and purpose of buildings (whether offices, shopping centres or high street retail units), as shopping habits change and more flexible working

arrangements become a reality. This leads to a balancing act of protecting the interests of owners/investors on the one hand and occupiers on the other, in the light of the continuing uncertainty and need for flexibility.

1.3 Impact of Disruptive Technologies

Real estate investors, developers and lenders have started to increase investment in technology to keep abreast of technological advancements in real estate, whether proptech, blockchain or decentralised finance ("DeFi"). Even those slow to change were forced by the pandemic to quickly adopt technology, and these new technologies were put to the test when large workforces suddenly had to start working remotely, operate virtual tours, communicate on new channels, and manage their day-to-day operations solely through technology.

There was therefore a significant increase in the number of companies investing in the Cloud and this can only further advance digitisation in 2021. Blockchain technology and smart contract platforms also re-emerged in 2020 to deal with the processing of payments, transfer of property deeds, etc. It is likely the use of blockchain technology will expand in 2021 through smart contract platforms, which are a transparent, authentic and secure means to manage a transaction.

A proportion of the real estate sector is reported to have uncovered weaknesses in their company's digital capabilities and areas for improvement. There are also increased concerns regarding cybersecurity and data privacy. More investment and collaboration is required for these technologies to be fine-tuned and to be used to their full potential in an integrated manner. It will be some time before disruptive technologies replace convention in the real estate market in the UK, although the COVID-19 pandemic has taught us all how important it is to invest in technological advancement, and

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

the growth of 5G in 2021 will improve that connectivity. Property investors need to make their spaces more attractive to occupiers as we move to considering not only the functionality of buildings but also their digital offerings.

1.4 Proposals for Reform

Recent Changes/Reforms

New legislation

From April 2020, new legislation has meant that a landlord will only be allowed a 20% tax credit for mortgage interest paid. This has two main implications for landlords:

- if the landlord is a higher-rate tax payer, only a 20% tax refund will be given (not the higher rate of tax paid); and
- it may force landlords into a higher tax bracket, as they will have to declare the monies paid on the tax return.

This change is impacting on investment by landlords in buy-to-let properties.

New Code for Leasing Business Premises

The new Code for Leasing Business Premises came into force in September 2020 and is aimed at assisting negotiations to produce comprehensive heads of terms to make the legal drafting process more effective.

Amendment to Town and Country Planning Regulations

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 introduced substantial changes to the Town and Country Planning (Use Classes) Order 1987. These changes came into force from 1 September 2020.

The keys changes are:

- Classes A, B1 and D1, applicable to retail, office and non-residential institutions, and

assembly and leisure have been removed and replaced with a new Class E;

- there is also a new Class F.1 and F.2 relevant to education, learning and non-residential local community institutions; and
- some uses, such as a public house, cinema and bingo hall, which used to have their own class, have now moved into the sui generis category.

The above changes are subject to transitional arrangements.

Wider planning reforms

The above marks the beginning of wider planning reforms which are set out in a White Paper currently in consultation, with the expectation that these wider reforms will make the planning system dating back to the Town and Country Planning Act 1947, a much easier, simpler, fairer and quicker system. The reforms are clearly targeted at meeting the demands for housing with an inevitable impact on other sectors such as the office, commercial and energy sectors, yet there is little reference to these sectors. Sweeping changes of this nature will require the government to commit resources and skills. It is now a waiting game to see the extent of the planning reforms and whether these are progressive or regressive. The reforms include:

- growth zones – land that is suitable for “substantial development”;
- renewal – land that is suitable for “development” (smaller scale);
- stripped-back local plans – local authorities will be granted 30 months to produce local plans; and
- abolition of Section 106 agreements and a change to the existing Community Infrastructure Levy.

Replacement of LIBOR

The London Inter-Bank Offered Rate (LIBOR) is to be replaced by the end of 2021 with “a more reliable alternative” according to the head of the Financial Conduct Authority. See **3.10 Consequences of LIBOR Index Expiry**.

Property law reforms

The UK government has announced the most significant property law reforms in 40 years in its attempt to redress the imbalance in home ownership across the country. The reforms to the leasehold property market will mean that leaseholders of houses or flats can now extend their leases for 990 years with no ground rent. Elderly leasehold homeowners of retirement homes will also benefit from zero ground rents and a system of commonhold ownership will be introduced. McCarthy & Stone, the UK’s largest retirement home builders, consider the reforms will inevitably increase the price of houses in this sector.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

The Law of Property Act 1925 creates two categories of property rights within England and Wales:

- freehold rights, where a proprietor has absolute control of a property and any dealings with it as they own it in its entirety; and
- leasehold rights, where a proprietor does not own the property but is granted exclusive use of it subject to terms (including period of occupation) agreed to in the lease.

2.2 Laws Applicable to Transfer of Title

Title to real estate is transferred by virtue of what is called a sale contract and transfer. There are no special laws which apply to the transfer of any specific types of real estate.

2.3 Effecting Lawful and Proper Transfer of Title

A lawful and proper transfer of title is effected by submitting a duly executed transfer deed to HM Land Registry under cover of an AP1 form. This transfers the legal interest in the property from the seller to the purchaser. On receipt of the deed, the Land Registry will register the legal interest of the new proprietor and generate an electronic register of the property showing the purchaser as the new owner of the property. This registration process is stipulated by the Land Registration Act 2002.

It is possible to obtain title insurance. However, this is not common, as the expectation is that a purchaser will fully interrogate and investigate title.

2.4 Real Estate Due Diligence

Real estate due diligence is carried out at all stages of a transaction. This is usually undertaken as follows:

The purchaser’s conveyancer will interrogate the title to the property being purchased and raise enquiries of the seller in order to:

- understand what rights the property has the benefit of and is subject to;
- identify any covenants or restrictive covenants to which the property is subject that may affect use of the property (eg, it would not be advisable to complete the sale of a property which has a total restriction on the property being used as an office, if it is the client’s intention to make this use of the property); and
- highlight any security registered against the property which will need to be discharged prior to completion of the transaction.

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

The purchaser's conveyancer also undertakes searches against the property, namely:

- a contaminated land search to identify any contamination issues;
- a drainage and water search to identify if the property is connected to the mains water and drainage system;
- a coal and mining search to identify if the property is located on or close to a mining area;
- a chancel repair search to identify any chancel repair liability; and
- a local authority search to identify any planning permissions or building regulation approvals/issues.

The purchaser's conveyancer also raises standard enquiries in respect of the property for the seller to reply to (see **2.5 Typical Representations and Warranties**).

Apart from an added layer of delay, eg, in obtaining search results, the standard due diligence process did not change during the pandemic.

2.5 Typical Representations and Warranties

In commercial property transactions, the seller is asked to provide replies to commercial property standard enquiries (CPSEs). These raise, by way of example, questions regarding:

- boundary disputes and maintenance;
- compliance with statutory obligations and planning permissions;
- environmental issues;
- VAT position; and
- capital allowances.

The answers provided in the replies to CPSEs constitute warranties provided by the seller to the buyer.

The buyer's remedies for misrepresentation are rescission and/or damages, depending on whether the misrepresentation was fraudulent, negligent or innocent.

2.6 Important Areas of Law for Investors

As detailed in **1.4 Proposals for Reform**, an investor must consider proposed changes in legislation (including tax) which may impact the financial viability of the transaction, given that an investor's objective is to derive capital growth and/or secure income.

2.7 Soil Pollution or Environmental Contamination

Land is considered to be contaminated where substances are either causing or could cause:

- significant harm to people, property or protected species;
- significant pollution of surface waters or groundwater; or
- harm to people as a result of radioactivity.

Generally, the person who caused or allowed the contamination to occur is liable for it unless they cannot be identified or the local council/environmental agency considers them exempt. The council may decide that the landowner or the person who occupies the land is liable for the contamination. Owners or occupiers who cause contamination remain liable after the disposition of the land, whereas an owner/occupier who is not a polluter has no liability when their ownership or occupation of the property ceases.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

A local authority search will identify the permitted use of a parcel of land and whether this use has planning permission.

Where the property does not have planning permission for the permitted use, the seller/occupier of a commercial property can obtain a lawful development certificate for an existing use or development, provided it can be shown that the property has been used for that purpose for a continuous period of ten years or more. No enforcement action can be taken by a local authority once ten years have elapsed from the date of the breach (ie, the date on which the unlawful use of the property started).

An indemnity policy is usually readily available to provide cover to protect against the risk of any enforcement action.

In relation to a building that was completed more than four years ago, where the building has been used as a dwelling for more than four years, a lawful development certificate can be obtained.

It is possible to obtain authorisation from the local authority in respect of change of use and it is always recommended that, prior to any development work, clients obtain the relevant planning permission from the local authority. This planning permission will include the permission required to undertake the planned works and use the property following completion of those works.

2.9 Condemnation, Expropriation or Compulsory Purchase

A compulsory purchase order (CPO) of property enables councils, central government, utility companies, etc, to purchase land if it is in the public interest to do so. "Public interest" could include:

- town-centre regeneration;
- housing developments;
- road-building projects;
- rail-building projects; and
- airport expansions.

If a CPO is granted, the landowner is paid compensation for the loss of the property.

Notice is served on the landowner of a proposed CPO and approval from the government/parliament is then obtained. This notice will set a time limit for the landowner to lodge any objections. These are considered by the relevant authority, which then decides whether the CPO should be granted.

If a CPO is granted, then the purchase will proceed and the landowner will be compensated. The compensation is usually equivalent to the market value of the property together with reasonable moving costs, stamp duty land tax for buying an equivalent home, and reasonable legal and lender's fees.

2.10 Taxes Applicable to a Transaction

Stamp Duty Land Tax (SDLT) is payable by the buyer on all property transactions in the UK. The rates of SDLT are determined by the price of the property and the designated use of the property (ie, whether it is commercial or residential).

Residential Property Rates

SDLT is usually payable on property prices above GBP125,000. However, as a result of the pandemic, the UK government announced that homeowners would not pay stamp duty on homes worth up to GBP500,000 for a nine-month period, since extended for a further three months.

The rates that apply until 30 June 2021 are:

- GBP0–500,000 – 0%
- GBP500,001–925,000 – 5%
- GBP925,001–1.5 million – 10%
- >GBP1.5 million – 12%

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

From 1 July 2021 until 30 September 2021, the SDLT rates will be:

- GBP0–250,000 – 0%
- GBP250,001–925,000 – 5%
- GBP925,001–1.5 million – 10%
- >GBP1.5 million – 12%

From 1 October 2021 the SDLT rates will revert to the pre-pandemic rates:

- GBP0–125,000 – 0%
- GBP125,001–250,000 – 2%
- GBP250,001–925,000 – 5%
- GBP925,001–1.5 million – 10%
- >GBP1.5 million – 12%

Relief for First-Time Buyers

Prior to the pandemic, no SDLT was paid by first-time buyers on properties worth up to GBP300,000 and only 5% SDLT was paid on the portion of the purchase price between GBP300,001 and GBP500,000. However, the above changes meant that no SDLT was payable on properties up to GBP500,000 until 30 June 2021. Any purchase above GBP500,000 attracted the rates detailed above. After 1 July 2021, the pre-July 2020 rates will once again apply.

Residential Leasehold Sales and Transfers

If a new residential leasehold property is purchased, then SDLT is payable on the purchase price of the lease. Until July 2020, in the event the total rent of the lease was GBP125,000 over the duration of the lease, then SDLT at a rate of 1% was payable on the amount over GBP125,000. This threshold was increased to 1% being payable on the amount over GBP500,000 until 30 June 2021 due to the pandemic. From 1 July 2021 until 30 September 2021 SDLT is payable at a rate of 1% on the amount above GBP250,000 and from 1 October 2021 the rate will be 1% above GBP125,000.

Higher Rates of SDLT

A 3% penal rate of SDLT applies on top of the standard rate for each subsequent purchase by a purchaser who owns one or more dwellings. SDLT is also payable where non-residential or mixed-use land is purchased for more than GBP150,000.

Non-residential property includes:

- commercial property, eg, shops or offices;
- agricultural land;
- forests;
- any other land or property which is not used as a residence; and
- six or more residential properties bought in a single transaction.

A “mixed use” property is one that has both a residential and non-residential element (such as a flat above a shop).

SDLT rates on non-residential and mixed-use land are:

- GBP0–150,000 – 0%
- GBP150,001–250,000 – 2%
- >GBP250,001 – 5%

Non-residential Leasehold Sales and Transfers

If a new non-residential leasehold property is purchased, in the event that the total rent of the lease over the duration of the lease is GBP150,000, then SDLT at a rate of 1% is payable above GBP150,000.

- GBP0–150,000 – 0%
- GBP150,001–5 million – 1%
- >GBP5 million – 2%

SDLT Reliefs and Exemptions

Reliefs

The following reliefs can be applied for:

- first-time buyers;
- multiple dwellings;
- a building company buying an individual's home;
- employers buying an employee's house;
- local authorities making compulsory purchases;
- property developers providing amenities to communities;
- companies transferring property to another company;
- charities;
- right-to-buy properties; and
- registered social landlords.

Exemptions

SDLT is not payable and no SDLT return needs to be filed if:

- no money or other payment changes hands for a land or property transfer;
- property is left in a will;
- property is transferred because of divorce or dissolution of a civil partnership;
- freehold property is purchased for less than GBP40,000;
- a new lease of more than seven years is purchased or assigned, provided the premium is less than GBP40,000 and the annual rent is less than GBP1,000;
- a new lease of less than seven years is bought or assigned, provided that the amount paid is less than the residential or non-residential SDLT threshold; and/or
- an alternative property financial arrangement is used.

SDLT on Residential Property Owned by a Corporate Vehicle

SDLT is charged at 15% on residential properties costing more than GBP500,000 bought by certain corporate entities. However, the 15% rate does not apply to property bought by a com-

pany that is acting as a trustee of a settlement or property bought by a company to be used for:

- a property rental business;
- property developers and traders;
- property made available to the public;
- financial institutions acquiring property in the course of lending;
- property occupied by employees;
- farmhouses; and
- a qualifying housing co-operative.

In addition, there is a 3% surcharge on residential properties bought by companies.

SDLT on Shares in a Company

SDLT is payable at a rate of 0.5% of the entire transaction. SDLT will be payable on transactions including a change of control of a company if shares are sold.

Value Added Tax (VAT)

The sale of real estate is exempt from VAT unless the seller has opted to tax the land and buildings. Most new build commercial properties will attract standard-rate VAT at 20%. If, however, a property is acquired with a sitting tenant, the "transfer as a going concern" exemption will apply, provided both parties are VAT registered, and hence no VAT will be payable on the purchase price. This exemption only applies where the buyer opts to tax the property before transfer.

Capital Gains Tax (CGT)

CGT is payable by an individual on the disposal of residential real estate in the UK (other than the individual's main residence) in respect of the gain (profit) made at a rate of 28% for a higher-rate tax payer or a lower rate for a basic-rate tax payer. A 20% CGT rate applies for commercial property.

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

A UK-based company will pay corporation tax at a rate of 19% on the investment gain (subject to any indexation allowance, which now only accrues up to 31 December 2017) on the disposal of a commercial or residential property.

The CGT exemption for non-resident investors in respect of non-residential property was removed from April 2019, albeit with exemptions.

“Non-resident” CGT (NRCGT) is payable at 28% on any post-April 2015 gains made on UK residential property by individuals who are non-resident for tax purposes.

From 6 April 2019, NRCGT was extended to post-April 2019 gains in respect of commercial property, albeit with certain exemptions.

2.11 Legal Restrictions on Foreign Investors

There are currently no restrictions on foreign investors acquiring property in the UK.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial property are generally financed by borrowing from institutional banks/lenders. However, many companies are also able to purchase property from their own available resources without the need for any finance.

There are also a number of private companies that offer finance to developers in order to assist with projects and development opportunities.

3.2 Typical Security Created by Commercial Investors

A lender will require a first legal charge to be registered against the property as security for the loan which is advanced.

If the purchaser of a property is a company, then the lender will also usually require a debenture over the company’s assets. If a holding company (ie, a company which does not trade) purchases a property, then a lender will usually require a lease between the holding company and its trading company so that the monthly repayments under the mortgage can be secured.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

The UK does not currently have a domestic legal framework that specifically governs inward foreign direct investment (FDI).

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

A modest fee is payable to register a security over a property or a company. This fee is payable to either the Land Registry in respect of a legal charge/mortgage, or Companies House in relation to a debenture or charge over shares. In addition, enforcement of security would attract court fees and legal fees.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Before an entity can give valid security over its real estate assets, a private company director will need to have regard to their director’s duties and whether any transaction is for the company’s benefit. They also need to confirm that the company is solvent in accordance with the Companies Act 2006. If corporate benefit to giving security cannot be established, a director could be in breach of their duties to the company. Directors are encouraged to record the basis of their decisions in board minutes and to identify

the corporate benefit. It is also advisable to ask the company's auditor to confirm the company's solvency.

3.6 Formalities When a Borrower Is in Default

Provided the lender has secured its mortgage through registration of a legal charge against the property asset with the Land Registry, there are usually no obstacles to enforcing its security in the case of a default. A lender will usually enforce the security by the appointment of a local planning authority (LPA) receiver who will manage the disposal of the property asset and repayment of the debt (together with cost of realisation) from the sale proceeds.

At the point of enforcement, no further steps can be taken to give priority to the lender's security above that of other creditors. Priority of security is a matter to be addressed at the time of making the loan, by virtue of a deed of priority.

3.7 Subordinating Existing Debt to Newly Created Debt

The rules governing the priority between two different security interests over the same asset vary for different types of assets.

In order for a particular security interest to take priority over an earlier security interest, one or a combination of the following circumstances must usually apply:

- the later security is a "better" type of security (legal rather than equitable; fixed rather than floating);
- the holder of the later security was not aware or is deemed to have been unaware of the earlier security; and/or
- the later security has been better perfected, or was perfected first.

Secured creditors will usually agree priority of their respective secured interests contractually by virtue of a deed of priority, which will rank the priority of the secured interests on enforcement.

3.8 Lenders' Liability under Environmental Laws

A lender cannot generally be liable for environmental damage unless it is responsible for the cause or knowingly permits the damage. A lender does, however, need to be mindful that if it takes possession of the property at enforcement of its security, it may then have a liability relating to any environmental issues as an owner of the contaminated land or a knowing permitter.

3.9 Effects of a Borrower Becoming Insolvent

The secured interests of a lender are not affected by the insolvency of a borrower. However, during an administration a lender may not start or continue legal proceedings against the company and/or enforce security without leave of the court.

3.10 Consequences of LIBOR Index Expiry

LIBOR is to be replaced by the end of 2021 with "a more reliable alternative" according to the head of the Financial Conduct Authority. Movement away from this deep-rooted mechanism is likely to cause disturbance to a broad range of individuals and companies around the world that base their finances on LIBOR. Current contracts may maintain LIBOR in the short term, while it seems that new contracts will adopt the Sterling Overnight Index Average (SONIA).

Borrowers must start to consider the effects new benchmark rates could have on their property portfolios/investments to secure a smooth transition from LIBOR. The landscape is somewhat uncertain at this stage but as the deadline

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

approaches, borrowers will be better equipped to manage the risks.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

Government plans and development aspirations are contained in policy statements, including in the National Planning Policy Framework (NPPF), which applies only to England. This provides the programme for generating local plans for housing and other development. It is against the background of these local plans that applications for planning permission are determined.

LPAs are also motivated to prepare a local plan which sets planning policies in a local authority area. If there is no local plan, LPAs will be deemed to adopt a “presumption in favour of sustainable development”. See **1.4 Proposals for Reform**.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

The LPA will decide if a proposed development of a property should be permitted.

The developer seeking to obtain planning permission will submit plans and specifications of the intended work to be undertaken to the relevant LPA.

Planning permission is required for most new buildings, major alterations to existing buildings, and significant changes to the use of a building or piece of land. When planning permission is granted, it is usually subject to strict conditions with which a developer must comply.

Building Regulations Approval

Building regulations are minimum standards for design, construction and alterations to almost every building. A landowner applies to its local authority building control department for building regulations approval. Examples of where building regulations approval is likely to be required include:

- erecting a new building;
- extending or altering an existing building; and
- providing services and/or fittings in a building such as washing and sanitary facilities, hot water cylinders, foul water and rainwater drainage, replacement windows and fuel-burning appliances of any type.

When the work is carried out it must meet the relevant technical requirements in the building regulations. In addition, the work must not make other fabric, services and fittings less compliant or dangerous than they were before.

4.3 Regulatory Authorities

The local authorities for regional areas regulate the use of individual parcels of real estate, subject to prevailing primary and secondary legislation.

4.4 Obtaining Entitlements to Develop a New Project

It is usual for LPAs to notify any neighbouring properties of a new development project or major refurbishment. Notices are displayed and the parish, town or community council is usually also notified. This enables third parties to provide their comments on the proposed planning permission.

The LPA will then consider any minor changes to the planning permission in light of these comments. Third parties have the right to apply for judicial review of an LPA decision if they have

reason to believe that a decision has been reached unlawfully.

4.5 Right of Appeal Against an Authority's Decision

If the LPA refuses permission or imposes conditions, it must give written reasons. Appeals must be submitted within six months of the date of the application decision letter.

4.6 Agreements with Local or Governmental Authorities

It can be necessary to enter into agreements with local or government authorities or agencies, or utility suppliers, to facilitate a development project. These agreements range from the developer committing to payments towards local infrastructure improvement projects or the provision of new highways or drainage systems. The objective of such agreements is to mitigate the effects of development.

4.7 Enforcement of Restrictions on Development and Designated Use

If the LPA considers that planning has been carried out in breach of the terms of the planning permission then an enforcement notice will be issued. This notice will identify the breach and stipulate what steps the LPA intends to take. Failure to comply with an enforcement notice could result in a fine. Alternatively, a breach of condition notice can be given as an alternative to an enforcement notice, in which case, the developer is required to remedy the breach of condition.

During the course of the development, the LPA will undertake site visits to inspect compliance with building regulations. Failure to comply can result in enforcement action in the form of either prosecution and/or an enforcement notice requiring the alteration or removal of work which contravenes the regulations. If the owner does not comply with the notice, the local authority

has the power to undertake the work itself and recover the costs from the owner.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Entities available to investors to hold real estate assets include limited liability partnerships, private limited companies and public limited companies.

5.2 Main Features of the Constitution of Each Type of Entity

Limited Liability Partnerships

Limited liability partnerships (LLPs) are comprised of members who are in partnership with limited liability. The relationship between the members is usually governed by a members' agreement. An LLP is taxed in the same way as a partnership.

Private Limited Companies

Private limited companies are comprised of shareholders who own share capital of the company proportionate to their individual levels of capital investment. Directors (who may or may not include shareholders) are appointed to run the company. The shareholders have personal liability protection, and their relationship is governed by a shareholders' agreement. This entity is liable for corporation tax and shareholders only pay tax on dividends.

Public Limited Companies

A public limited company is a limited liability company the shares of which may be sold and traded to the public and listed on a stock exchange. It can therefore raise money by the sale of shares to the general public.

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

5.3 Minimum Capital Requirement

In the case of limited liability partnerships and private limited companies, no minimum capital requirement applies. A public limited company must have a minimum issued share capital of GBP50,000, with at least 25% (GBP12,500) of this being paid up in full.

5.4 Applicable Governance Requirements

Limited liability partnerships are governed by UK company law, but differ from limited companies in that members of an LLP can manage their own interests without forming a board.

Private limited companies are governed by the Companies Act 2006 and have a constitution (articles of association) to assist the shareholders and directors to regulate their relationship with the company and each other.

Unlike private limited companies, public limited companies require at least two directors and a company secretary. They are otherwise governed by UK company law. If a public limited company is trading on a stock exchange it will also be subject to the regulations of that exchange.

5.5 Annual Entity Maintenance and Accounting Compliance

The costs of annual entity maintenance and accounting compliance vary, subject to the extent of the portfolio of properties owned by each entity.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

The law recognises the following arrangements which allow a person, company or other organi-

sation to occupy and use real estate for a limited period of time without buying it outright:

- a lease, which grants exclusive occupation of the property for an agreed period of time; and
- a licence, which grants occupation of a property without exclusive possession of it.

6.2 Types of Commercial Leases

There are no specific different types of commercial leases. The nature of any lease, in terms of its duration, rental, break clause, etc, is a matter of negotiation and agreement between the parties.

6.3 Regulation of Rents or Lease Terms

The new Code for Leasing Business Premises provides a code of practice to govern the negotiation of leases between landlords and tenants. The UK government announced on 23 March 2020 that commercial landlords cannot pursue forfeiture of a commercial lease for non-payment of rent pursuant to Section 82 of the Coronavirus Act 2020. This prohibition remained in force until 31 March 2021.

6.4 Typical Terms of a Lease

There is no typical length of a lease.

A tenant will generally covenant to maintain and repair the property in a long lease. A tenant will limit its liability by recording the state of repair of the property at the commencement of the lease with a schedule of condition.

It is usual for lease rents to be paid quarterly, namely on 25 March, 24 June, 29 September and 25 December.

Following the COVID-19 pandemic, the parties to a commercial lease will give consideration to more flexible arrangements, such as rent-free periods, break clauses and/or rental based on turnover or performance criteria.

6.5 Rent Variation

The rent payable under a lease will remain the same for the duration of the lease term unless there is a rent review clause.

6.6 Determination of New Rent

New rent under an existing lease will be determined in accordance with the rent review clause, if such a clause exists. It is usual for the rent review clause to be “upwards only”. The revised rent will be the greater of the rent payable at the time of the rent review and the market rent determined by a surveyor.

Less common rent review clauses provide that the rent will be reviewed in line with inflation.

6.7 Payment of VAT

VAT is only payable on rent at the current rate of 20% if the landlord has opted to tax the property.

6.8 Costs Payable by a Tenant at the Start of a Lease

A deposit may be payable under a rent deposit deed at the start of a lease. In addition, a tenant will be responsible for registration of the lease (if it is for more than seven years), as well as payment of the modest registration fee. SDLT is also payable for a commercial lease as detailed in **2.10 Taxes Applicable to a Transaction**. Subject to negotiation, insurance rent and service charge may also be payable at the outset.

6.9 Payment of Maintenance and Repair

The landlord is responsible for the maintenance and repair of the common areas used by tenants. The landlord will usually undertake to provide these services on the estate and recoup the cost from tenants via a service charge.

6.10 Payment of Utilities and Telecommunications

A tenant will be responsible for the utilities it consumes and these will be apportioned according

to the space occupied by the tenant, unless the supply is segregated.

6.11 Insuring the Real Estate That Is Subject to the Lease

The landlord usually insures the property and passes this cost on to the tenant.

The typical risks insured against include:

- fire;
- explosion;
- lightning;
- earthquake;
- storm;
- flood;
- bursting and overflowing of water tanks, apparatus or pipes;
- impact by aircraft and articles dropped from them;
- impact by vehicles;
- subsidence;
- ground slip;
- heave;
- riot; and
- civil commotion.

6.12 Restrictions on the Use of Real Estate

The tenant is under an obligation to use the property in accordance with the legal permitted use. See **1.4 Proposals for Reform** on the new classes of use. In addition, a lease will usually specify that a tenant cannot use the property for any illegal or immoral purpose. Further restrictions on use can be agreed as part of the lease negotiations. A landlord is also able to restrict the use of the property by agreement with the tenant. For example, if one tenant on an estate has entered into an exclusivity agreement for a specific type of use of a property (eg, an Indian restaurant) then the landlord will be able to restrict the use of other properties on the estate

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

within this area to enable the exclusivity agreement to be complied with.

6.13 Tenant's Ability to Alter and Improve Real Estate

A lease will prohibit the tenant from undertaking any external or internal structural work to the property without the landlord's consent. Even internal, non-structural alterations to the property usually require the landlord's consent in the form of a licence to alter.

6.14 Specific Regulations

One of the key statutory regulations which applies to commercial leases is the Landlord and Tenant Act 1954. This legislation provides business tenants with security of tenure unless the statutory provisions are formally contracted out.

The UK government announced on 23 March 2020 that commercial landlords cannot pursue forfeiture of a commercial lease for non-payment of rent pursuant to Section 82 of the Coronavirus Act 2020. This prohibition remains in force until 30 June 2021.

As for residential leases and agricultural tenancies, an abundance of statutory regulation applies, on which specific advice should always be sought.

6.15 Effect of the Tenant's Insolvency

A lease usually provides that the landlord can end the lease (forfeit) and regain the property in the event the tenant becomes insolvent. In the event a tenant goes into administration, the moratorium imposed would mean that any forfeiture action would be placed on hold. The Corporate Insolvency and Governance Act prohibited winding-up proceedings until 31 March 2021 unless it could be demonstrated that the pandemic had not impacted on the debtor's (tenant's) ability to pay the debt.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

If a landlord is concerned about a tenant's ability to meet its obligations under a lease, it can require a rent deposit for particular rental payments. This usually comprises the payment of up to three months' rent upfront, which can be used in the event of default. The landlord can also insist on a personal guarantor.

6.17 Right to Occupy after Termination or Expiry of a Lease

A business tenant is able to remain in occupation after the expiry of the term of a lease if the lease is not contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

If the lease is protected, then the landlord is only able to bring the lease to an end on the expiry date by providing the tenant with formal notice (of not less than six months and not more than 12 months) that one of the following is applicable to the property:

- the tenant has breached a repairing covenant;
- the tenant has persistently delayed paying the rent;
- the tenant has breached other obligations;
- the landlord has offered the tenant the availability of alternative accommodation;
- a sub-tenant is in place at the property and possession is required for letting or disposing of the whole property;
- the landlord intends to demolish or reconstruct the property; and/or
- the landlord intends to occupy the building for its own business.

6.18 Right to Assign a Leasehold Interest

Most commercial leases include the right for a tenant to assign its interest or to sublease. This is subject to obtaining the landlord's consent by

virtue of a licence to assign/sublease. A landlord will permit an assignment subject to conditions, including the new tenant (Assignee) providing a rent deposit to the landlord (pursuant to a rent deposit deed) as security for performance of the obligations under the lease and an Authorised Guarantee Agreement (AGA) whereby the tenant (Assignor) will guarantee the performance by the Assignee of the obligations under the lease.

With regards to a sublease, this is a contract between the tenant and a new tenant (Subtenant) whereby the Subtenant takes over the rented premises and pays rental directly to the first tenant, and the first tenant remains directly liable to the landlord. The landlord's consent to the sublease should be obtained with the usual condition for consent being that the subtenant can only use the property for the purposes that have been approved by the landlord in the lease and subject to the sublease terms mirroring those of the head lease.

6.19 Right to Terminate a Lease

The landlord is typically able to forfeit the lease if one of the following events occurs:

- any rent is unpaid 14 days after becoming payable, whether it has been formally demanded or not;
- any breach of any condition or tenant covenant in the lease; and/or
- the tenant becomes insolvent.

Additionally, both parties may have a contractual right to break the lease or negotiate a surrender of the lease.

6.20 Registration Requirements

Commercial leases granted for a period of more than seven years are required to be registered at the Land Registry and registration needs to be completed within two months of the completion of the lease. The responsibility for registration

lies with the tenant, as it protects the tenant if the property should change ownership.

A lease for seven years or less can be noted on the landlord's title. Any Land Registry fees are to be paid by the tenant and, prior to registration, any SDLT which is payable (see **2.10 Taxes Applicable to a Transaction**) will need to be paid and a certificate obtained for filing at the Land Registry.

6.21 Forced Eviction

A landlord can commence forfeiture proceedings to end the lease prior to the expiry date on the grounds of the tenant's default. How long the process takes is dependent upon various factors, including whether the tenant seeks relief from forfeiture. However, the UK government announced on 23 March 2020 that commercial landlords could not pursue forfeiture of a commercial lease for non-payment of rent pursuant to Section 82 of the Coronavirus Act 2020. This prohibition remained in force until 31 March 2021.

6.22 Termination by a Third Party

It is possible that a lease could be terminated by a third party, eg, the government, if the public interest so required. For such a process to take place, the requisite public law requirements/criteria would need to be met and, where relevant, compensation would be payable.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

Lump-sum or fixed-price contracts comprise a total fixed price for all construction work. They are the most commonly used form of contract.

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

Cost-plus contracts comprise payment of the actual costs, consumptions or other expenses relating directly to the construction work.

Measured contracts define the buildings that will be covered by the work, the period over which work may be required and an estimate of the likely total value of the work.

7.2 Assigning Responsibility for the Design and Construction of a Project

The “traditional” procurement method, often referred to as “design bid build” is the most commonly used method of procuring construction work. This is where design consultants are appointed to design the project in detail and the contractors are invited to tender for the construction of the designed project. The design consultants are responsible for design and the contractor is responsible for the construction work.

The “design and build” procurement method, as its name suggests, is where the contractor is appointed to design and construct, as opposed to a traditional contract where the client appoints design consultants to design the development and then a contractor is appointed to construct the project.

7.3 Management of Construction Risk

This is where a percentage (often 5%) of the amount certified as due to the contractor on an interim certificate is deducted from the amount due and retained by the client. The reason for the retention is to encourage the contractor to discharge its duties fully under the contract.

Limitations and Exclusion of Liability

The three most common methods of limiting liability are:

- caps on liability, where the amount payable in the event of a breach is capped;

- net contribution clauses, where a claimant must pursue a claim against all parties responsible for damage to seek full recovery of loss; and
- exclusion clauses which, if agreed and upheld, would negate any liability for loss or damage (liability for death or personal injury cannot be excluded).

Collateral Warranties

Collateral warranties are agreements which are related to another “primary” contract. They extend the duty of care by one of the contracting parties to a third party who is not party to the primary contract. By way of example, an architect of a new development owes a duty of care to an occupier of the development despite the fact there is no contractual relationship between the architect and the occupier.

7.4 Management of Schedule-Related Risk

Schedule-related risk is the risk that construction work may take longer than scheduled. Delay can lead to cost risk, hence this is usually managed by the contract, including a clause to pay liquidated and ascertained damages (LADs) to the client in the event that the contract is delayed. LADs are not penalties; they are damages predetermined at the outset of the contract based on a genuine calculation of the actual loss the client is likely to incur if the completion date is delayed.

7.5 Additional Forms of Security to Guarantee a Contractor’s Performance Performance Bonds

A performance bond is used in relation to construction projects as a means of insuring a client against the risk of a contractor defaulting on the contract obligations. A performance bond is provided by a third party up to an agreed amount.

Parent Company Guarantees

A parent company guarantee (PCG) is also a form of protective security in the event of default on a contract by a contractor that is controlled by a parent company (or holding company). These are particularly helpful when a small contractor is retained who is part of a more financially viable parent company.

Escrow Accounts

Escrow accounts are also used as holding accounts for construction project funds. They are usually set up by a solicitor acting on behalf of one of the parties. The terms of the agreement will specify that the payments must be protected, so as to provide security should a party default on payment.

7.6 Liens or Encumbrances in the Event of Non-payment

Contractors and/or designers are permitted, subject to an express agreement, to exercise a lien or otherwise encumber a property in the event of non-payment and this can only be removed upon payment of the outstanding fees.

7.7 Requirements Before Use or Inhabitation

At the commencement of a construction project, a number of consents and approvals are required, whether in relation to planning or building regulations. During the course of the work, various inspections are undertaken to ensure compliance with the requisite consents/approvals prior to obtaining a completion certificate from the local authority, and also in relation to health and safety in accordance with the Construction (Design and Management) (CDM) Regulations 2015. The requisite insurance policies must also be in place prior to inhabitation.

8. TAX

8.1 VAT

Sale of real estate is exempt from VAT unless the seller has opted to tax the land and buildings. Most new-build commercial properties will attract standard-rate VAT at 20%.

If, however, a property is acquired with a sitting tenant, the “transfer as a going concern” exception will apply, provided both parties are VAT registered, and hence no VAT will be payable on the purchase price. However, this exemption only applies where the buyer opts to tax the property before transfer. See **6.7 Payment of VAT**.

8.2 Mitigation of Tax Liability

Mitigation of tax liabilities (such as SDLT or CGT) arising from the transfer of property requires specialist tax input and is specific to circumstances. However, investors need to be mindful that the manner in which the legal title to the property is held, whether as an individual or as a corporate entity, will affect the tax rates applicable, reliefs available and options to mitigate any liability. For example, if a property is owned by a company, then rather than transfer the property, shares could be sold which would attract no SDLT, or for example, if property assets are transferred within a corporate group structure where SDLT relief is available or if assets are held in a partnership between connected parties and the partnership is then incorporated, SDLT can be avoided. Relief is also available if purchasing a property where the transaction includes a block of flats or other residential property comprising multiple occupations, such as student accommodation let by the room. See **2.10 Taxes Applicable to a Transaction**. Enterprise investment schemes are a popular choice to mitigate CGT liability, but again require careful tax advice.

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

8.3 Municipal Taxes

Business rates will be payable on the occupation of a business premises, eg:

- shops;
- offices;
- pubs;
- warehouses;
- factories; and
- holiday rental homes or guest houses.

The domestic rates will be payable to the local council in March of each year in respect of the amount required in the following tax year.

The following reliefs from business rates are available:

- small business rate relief;
- rural rate relief;
- charitable rate relief;
- enterprise zone relief;
- hardship relief;
- exempted buildings and empty buildings relief;
- transitional relief if your rates change by more than a certain amount at revaluation; and
- relief for pubs.

The UK government also announced business rates relief for the hospitality, tourism and nursery sectors in March 2020 due to the pandemic.

8.4 Income Tax Withholding for Foreign Investors

The Non-resident Landlord Scheme

A landlord who resides abroad for more than six months of the year must pay tax on any rental income received from a property in the UK. If the landlord is a company or trustee, the rules relating to their usual place of abode apply. The tax is collected using the Non-resident Landlord (NRL) Scheme. The tax can be paid by either the letting agent or tenant.

Capital Gains Tax

CGT is payable by an individual on the disposal of residential real estate in the UK (other than an individual's main residence) in respect of the gain (profit) made at a rate of 28% for a higher-rate tax payer, or a lower rate for a basic-rate tax payer. A 20% CGT rate applies for commercial property.

A UK-based company will pay corporation tax at a rate of 19% on the investment gain (subject to any indexation allowance, which now only accrues up to 31 December 2017) on the disposal of a commercial or residential property.

Individuals pay non-resident CGT (NRCGT) at 28% on any post-April 2015 gains made on UK residential property if they are non-resident for tax purposes.

From 6 April 2019, NRCGT was extended to post-April 2019 gains in respect of commercial property, albeit with certain exemptions.

8.5 Tax Benefits

There are tax benefits to owning real estate, but these require specialist tax advice/input.

*Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera,
Hawkins Hatton Corporate Lawyers Ltd*

Hawkins Hatton Corporate Lawyers Ltd is a niche corporate law firm formed in December 2005 and based in London and Dudley, dealing primarily with corporate and commercial work together with commercial property and litigation. Its client base includes European and Anglo-US companies, national and regional clients as well as individuals. The firm's real estate department is best known for secured lending work on behalf of HSBC Bank PLC, Natwest Bank PLC and RBS, as well as all aspects of commercial property work on behalf of its SME

client base, which spans a number of key industry sectors, including pharmaceutical and healthcare, manufacturing, engineering, IT, hospitality and leisure. It advises on a wide range of property-related matters, including commercial acquisitions and disposals, commercial leases, secured lending and corporate support. Hawkins Hatton also offers advice on a broad range of specialist areas, such as property investment and finance, development schemes, compulsory purchase issues and construction.

AUTHORS



Colin Rodrigues is head of real estate at Hawkins Hatton, with partner-level experience of commercial property work spanning over 25 years. He not only founded the firm but also

single-handedly developed its real estate department, winning panel membership with four mainstream lenders, namely RBS, Lloyds Bank, NatWest and HSBC. Colin's main focus is secured lending in relation to multimillion-pound loans. He also manages the department on a day-to-day basis and is responsible for business development. In addition to banking, Colin undertakes corporate support and all aspects of commercial property work for the firm's SME client base. He regularly contributes commentary pieces to the local and legal press.



Harminder Sandhu is the managing director of Hawkins Hatton and heads its dispute resolution department. Her experience of real estate is in the context of handling disputes

arising out of a range of issues, including forfeiture of leases, Landlord and Tenant Act 1954 disputes, dilapidations claims, Land Tribunal claims relating to rights of way, breach of covenants and beneficial interests and construction. Harminder has over 20 years of experience in conducting high-value and complex litigation claims. She adopts a commercial and pragmatic approach to dispute resolution, seeking out innovative solutions for clients rather than following a set process. Harminder is also a keen advocate of mediation.

*Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera,
Hawkins Hatton Corporate Lawyers Ltd*



Davinder Sanghera is an associate partner of the firm. Having worked as a solicitor for over ten years, including in managerial and business development positions,

Davinder brings a wealth of skills and experience to her current role in the real estate department at Hawkins Hatton. She is involved in a variety of transactions, including the acquisitions and disposals of commercial property, drafting of commercial leases and corporate support. Davinder makes commerciality the focus of her transparent and comprehensive advice to business clients.

Hawkins Hatton Corporate Lawyers Ltd

Unit 3 Castle Court 2
Castlegate Way
Dudley
West Midlands
DY1 4RH
UK

Tel: 01384 216840
Fax: 01384 216841
Email: jcox@hawkinshatton.co.uk
Web: www.hawkinshatton.co.uk

HawkinsHatton
—CORPORATE LAWYERS—

Trends and Developments

Contributed by:

*Colin Rodrigues, Harminder Sandhu and Davinder Sanghera
Hawkins Hatton Corporate Lawyers Ltd see p.29*

Twelve months ago the expectation was that Brexit would overshadow the UK economy in 2020, including its real estate sector. No one could have predicted that the UK together with the rest of the world would face the unprecedented economic downturn it has due to the COVID-19 pandemic. The impact of the pandemic has not only crippled the UK economy in the short term, it is likely to reshape the real estate sector on a permanent basis. Homes have been turned into schools and offices and even places of exercise and entertainment. This new norm will significantly impact what use we make of the properties available to us and that use will differ from location to location.

Property Deals in 2020

Despite the disruption caused by the pandemic, BNP Paribas Real Estate reported that investors continued to demonstrate confidence in London. Investors and business owners seized opportunities to acquire office space in the capital which, despite Brexit fears, retains its popularity worldwide as an investment hub. BNP reported the following as some of the larger office transactions in 2020.

- Land Securities revealed a GBP552 million deal to sell office buildings 1 & 2 New Ludgate to Singapore-based investment firm Sun Venture.
- Brookfield Properties completed the GBP480 million sale of One London Wall Place to AGC Equity Partners.
- Singapore Company Suntec Reit entered into an agreement to acquire a 50% interest in two Grade A office buildings in Victoria for GBP430.6 million.

Colliers International also recorded investment in the office sector of up to GBP700 million by September 2020, which included Quadrant Estates' purchase of Nine Elms Park for GBP150 million.

Retail investment in comparison reached around GBP550 million (Property Funds World). There has been a continuing theme of less transactional activity in shopping centres, whereas investment in retail parks or out-of-town outlets has remained consistent.

Colliers International also reported that The Private Rented Sector saw investment worth GBP3.8 billion with its largest deal being the GBP250 million investment in the Morello II Scheme in Croydon (Property Funds World).

As expected, Savills reported a decline in hotel transaction numbers in 2020. Savills reported that hotel investment to September 2020 reached GBP1.63 billion, down by 54.4% compared to the same period in 2019.

Turning to residential properties, Knight Frank reported that more money was spent acquiring properties worth GBP10 million and over in 2020 than 2019, including Belgravia Gate, a townhouse on Grosvenor Crescent which sold for GBP45 million.

Trends for 2021

As for the future and what that will hold for real estate, 2021 is likely to remain primarily in the strong grip of the pandemic and this will mean a balancing act between occupiers of property (in particular, office space) reviewing their needs, against investors reaching decisions about what

property assets they want to continue owning. Given the foregoing discussion, one would expect different sectors to have differing needs in terms of property assets, with some being in high demand and others in strong surplus. These factors will influence property prices in 2021, together with lenders' inconstant appetite to finance acquisitions given the uncertainty of valuations (lenders will only support transactions if the property valuation allows it and, in the current uncertain economic circumstances, the property market and valuations are very unpredictable), and the desirability of property.

Real estate specialist advisers are also predicting an increase in public-private property partnerships in the UK over the course of the next few years. This collaborative approach is expected to better address the challenges faced (such as climate change and COVID-19) in order to satisfy the increased demand for housing.

We also have to factor in the fallout in April 2021 from the rental market once the measures put in place by the UK government under the Coronavirus Act 2020 expired and landlords were permitted to evict business tenants for non-payment of rent and/or pursue insolvency proceedings. These business tenants could potentially face large rent arrears claims (with interest), which are not covered by rental deposits or guarantees, and inevitably some tenants will be forced into administration, with the end result being that landlords may not recover full rentals and will be left with empty units. These scenarios will have a significant impact on the rental market in 2021 across a diverse industry sector.

Travel, hospitality and leisure

There is little doubt that the travel, hospitality and leisure sectors have been hit the hardest by the pandemic and repeated lockdowns. However, what is also not in doubt is the high demand for these sectors. The UK population having

been starved of its normal intake of travel, fine dining and leisure pursuits, is raring to go in 2021 and it is expected investors will quickly seize the opportunity to invest in restaurants, bars, hotels, holiday parks, outdoor activity centres, gyms, etc to assist in their bounce-back. Investors will see this investment as a safe bet knowing these sectors will have strong long-term growth in comparison to other real estate sectors.

Office space

There was a fear in the spring of 2020 that the office sector was facing a similar fortune to high street retail. Working from home, use of Zoom and Teams, and abandoned office space became the backdrop in April 2020. Large City players such as Slater Gordon solicitors announced they would be vacating City offices and replacing these with long-term remote working, painting a bleak picture for the office sector. In addition, a large proportion of the UK workforce reported the many advantages of working remotely included the time saved on a daily commute, more time with friends/family and time to exercise. Morgan Stanley reported that only 18% of European office workers wanted to return to the office five days a week. Large-scale reduction in office use would have an inevitable knock-on effect on towns/cities and retail due to the drop in footfall. However, during the second half of 2020, fatigue set in and there was increasingly a desire on the part of office workers to be back in the office and for businesses to reinvigorate their cultures. This is especially the case with younger professionals who crave the physical interaction to learn, innovate and develop networks. One of the lasting consequences of COVID-19 will, however, be an increased mix of flexible working, with time spent working from home and the office. Offices are likely to be used as a centre for training, collaboration or creativity rather than simply a place of regular work. It is predicted therefore that this could mean more demand for offices in the core/prime space rather than

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

in local support locations. That said, making greater use of satellite offices would avoid staff commuting issues while COVID-19 remains a real threat. There is also the question of a larger office space being needed to facilitate social distancing, despite fewer staff in the office. People need to be around people, as this is the inspiration for ideas, work fulfilment and reaching personal/business goals. The future of offices is therefore different but not obsolete.

Cushman & Wakefield expect the long-term future to be bright for office space, as jobs created by the global recovery will require collaboration and knowledge-sharing, such as in technology and life science. This will drive pricing up and office space will continue to remain an important sector for investors. What will be an important consideration is the likely level of sustainable rental value for office space once the lockdowns are a distant memory.

Logistics and storage

E-commerce has enjoyed accelerated growth during the pandemic and is one sector that has come out a winner. This, in turn, has elevated the number and value of deals in the logistics sector. The year 2020 recorded in excess of EUR30 million in transactions. The sector will become increasingly attractive to investors, especially those outside the core real estate sector. Cushman & Wakefield reported that “for every USD1 billion of additional e-commerce sales, the market must provide an additional 1.25 million sq ft of logistics space.” The potential growth in this sector for real estate investors during 2021 is therefore obvious.

Retail

The year-on-year demise of the retail sector was exacerbated by the pandemic. In 2021, retailers will need to consider the future of physical stores and perhaps adapt these for in-store fulfilment of online shopping orders, which was a strategy

adopted by large retailers in the wake of the pandemic due to record numbers of online shoppers. In-store fulfilment, while more costly than Amazon’s warehouse fulfilment, has the advantage of making orders available to the customer more quickly.

In retail, given pricing has fallen so dramatically, there is an expectation that investors at the lower end will move in. Deal volumes for 2020 in November of that year stood at EUR22.7 billion (Cushman & Wakefield, London).

The longer-term objective of many retail park landlords is to rebalance retail assets into mixed use. The planning reforms introduced in September 2020 will assist this process. Leisure and restaurant outlets will be the most likely targets and with longer opening hours. Investec reported that retailer John Lewis is seeking to turn its closed stores into housing and its storage spaces into gyms. It was also reported that the Boardwalk Shopping Centre in Edgware, North London, was acquired for redevelopment as mixed-use housing, shops and businesses.

Investment in retail parks or out-of-town outlets will continue to be strong, as these offer larger space and parking, enabling them to cater for online demands. These could even become 24/7 operations, given the levels of online shopping.

An additional challenge for retail may be the potential disruption to supply chains due to Brexit, although to date this has not crystallised in the manner retailers feared.

Leases

The pandemic has placed the rigidity of leases in the spotlight, resulting in occupiers seeking more flexibility while investors want to manage risk. To balance the risk between owner and occupier there is likely to be a shift towards turnover-only leases, whereby leases will include performance

*Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera,
Hawkins Hatton Corporate Lawyers Ltd*

criteria. Shorter lease terms and break clauses will also be dominant features in business leases in 2021. By being flexible and sharing information, landlords and tenants can create leases which are sustainable and affordable.

UK TRENDS AND DEVELOPMENTS

Contributed by: Colin Rodrigues, Harminder Sandhu and Davinder Sanghera, Hawkins Hatton Corporate Lawyers Ltd

Hawkins Hatton Corporate Lawyers Ltd is a niche corporate law firm formed in December 2005 and based in London and Dudley, dealing primarily with corporate and commercial work together with commercial property and litigation. Its client base includes European and Anglo-US companies, national and regional clients as well as individuals. The firm's real estate department is best known for secured lending work on behalf of HSBC Bank PLC, Natwest Bank PLC and RBS, as well as all aspects of commercial property work on behalf of its SME

client base, which spans a number of key industry sectors, including pharmaceutical and healthcare, manufacturing, engineering, IT, hospitality and leisure. It advises on a wide range of property-related matters, including commercial acquisitions and disposals, commercial leases, secured lending and corporate support. Hawkins Hatton also offers advice on a broad range of specialist areas, such as property investment and finance, development schemes, compulsory purchase issues and construction.

AUTHORS



Colin Rodrigues is head of real estate at Hawkins Hatton, with partner-level experience of commercial property work spanning over 25 years. He not only founded the firm but also

single-handedly developed its real estate department, winning panel membership with four mainstream lenders, namely RBS, Lloyds Bank, Natwest and HSBC. Colin's main focus is secured lending in relation to multimillion-pound loans. He also manages the department on a day-to-day basis and is responsible for business development. In addition to banking, Colin undertakes corporate support and all aspects of commercial property work for the firm's SME client base. He regularly contributes commentary pieces to the local and legal press.



Harminder Sandhu is the managing director of Hawkins Hatton and heads its dispute resolution department. Her experience of real estate is in the context of handling disputes

arising out of a range of issues, including forfeiture of leases, Landlord and Tenant Act 1954 disputes, dilapidations claims, Land Tribunal claims relating to rights of way, breach of covenants and beneficial interests and construction. Harminder has over 20 years of experience in conducting high-value and complex litigation claims. She adopts a commercial and pragmatic approach to dispute resolution, seeking out innovative solutions for clients rather than following a set process. Harminder is also a keen advocate of mediation.



Davinder Sanghera is an associate partner of the firm. Having worked as a solicitor for over ten years, including in managerial and business development positions,

Davinder brings a wealth of skills and experience to her current role in the real estate department at Hawkins Hatton. She is involved in a variety of transactions, including the acquisitions and disposals of commercial property, drafting of commercial leases and corporate support. Davinder makes commerciality the focus of her transparent and comprehensive advice to business clients.

Hawkins Hatton Corporate Lawyers Ltd

Unit 3 Castle Court 2
Castlegate Way
Dudley
West Midlands
DY1 4RH
UK

Tel: 01384 216840
Fax: 01384 216841
Email: jcox@hawkinshatton.co.uk
Web: www.hawkinshatton.co.uk

HawkinsHatton
—CORPORATE LAWYERS—