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PMA Event

Tuesday 15 November 2022



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Today's speakers



Sarah Parkinson
Partner



Suki Tonks
Partner



Katie Briggs
Senior Associate



Ayesha Khalique
Senior Associate



Mark Hymers
Senior Associate



David Harris
Professional Development
Lawyer



Karen Hill
Senior Associate



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Sustainability - what are we doing?

With Suki Tonks

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Telecoms - resisting a code agreement

With Katie Briggs

Telecoms Operators on rooftops!



What is a Code Agreement

- Provides certain rights to an electronic communications operator
- Operators are registered with Ofcom and only registered operators can be granted code rights such as EE, Vodafone and Cornerstone Telecommunications Infrastructure Limited (CTIL)



What rights do operators have under the code?

These rights to the site include:-

- Installing apparatus on, under or over land;
- Inspecting, maintaining and upgrading the apparatus;
- Carrying out works in connection with installing, inspecting or maintaining the apparatus
- Connect to a power supply
- Obstruct an access to land; and
- Cutting back vegetation interfering with apparatus



The New Code was created by the Digital Economy Act 2017

- Prior to the New Code there was confusion on how old agreements were to be treated
- The Old Code was created by the Telecommunications Act 1984
- Often agreements would have protection under the Landlord and Tenant Act 1954 as well as the Old Code
- The New Code legislation has made the law and rights to operators clearer
- BUT also granted operators more favourable rights than landowners or occupiers



The New Code

- Limits grounds for terminating or removing operators from the site once there
- Reduced the rent payable by operators
- Granted rights to operators to impose a code agreement on an occupier or landowner if not voluntarily agreed unless there is a good reason not
- The Upper Tribunal has the power to impose a code agreement upon a landowner if the 'public benefit test' is met



EE Ltd v The London Borough of Islington [2019]

- EE applied to the Tribunal for a code agreement to be imposed
- The Tribunal applied the ‘no-network’ assumption i.e. what would a willing seller pay for the site assuming there was no electronic communications network
- Tribunal decided the nominal value was £50 per annum but in view of LBI’s responsibility under the lease it was decided parties would have agreed annual rent of £1,000. A considerable reduction from £21,000 under the old code agreement the parties had.



Process for Operators to request a Code agreement

- Operators will seek an agreement or order from the Tribunal to enter the land and inspect the suitability as a telecoms site. These are Multi Skilled Visits (MSV).
- This is a code right as confirmed in *The University of London v Cornerstone Telecommunications Infrastructure Limited* [2019]
- Operators will send proposed Heads of Terms after the MSV to seek an agreement for a code agreement



Continued...

- If there is no engagement with the landowner or occupier then operators will serve a Paragraph 20 Notice
- If no agreement is reached within 28 days the operator can proceed to the Tribunal to request a code agreement is imposed
- The Tribunal may not grant all terms proposed by the operator BUT a code agreement will be imposed if:-
 - Financial compensation will be sufficient; and
 - The public benefit outweighs any loss to the landowner or occupier



Resisting a Code Agreement

- The Tribunal may not impose an agreement if the landowner or occupier intends to redevelop the land where the operator intends to occupy and this could not be done if an agreement was to be imposed
- CTIL v University of Arts London [2020] - the Tribunal refused to impose an agreement on the University. CTIL needed to remove and relocate from a rooftop at a shopping centre in Elephant & Castle. Substantial redevelopment being planned for the area. The UAL accepted that it's site was suitable for relocation but would need to be on a temporary basis as their building was due to be redeveloped in the next 5 years as well. UAL had obligations to provide vacant possession as part of the redevelopment plans.



Continued...

- UAL would suffer prejudice if a code agreement was imposed upon them to CTIL. UAL were prepared to agree a 5 year interim code agreement but the Tribunal could only order this if CTIL requested this
- CTIL did not pursue a temporary agreement
- UAL could not rely on the redevelopment ground as they were not the party carrying out the redevelopment works.



Continued...

- The Upper Tribunal decided the test had not been satisfied
- The Tribunal will not consider the availability of any alternative sites available to the operator or the availability of sharing a site with another operator in assessing public benefit.
- The need for redevelopment could not be adequately compensated with money and the level of prejudice to UAL was too high to defeat the argument of public benefit here
- Further clarified, if land is sold the purchaser becomes a party to the code agreement but the seller will also remain a site provider.



Summary

- In very limited circumstances there will be grounds to refuse a code agreement
- Once an operator is on site it is difficult to terminate the agreement save for redevelopment purposes and an alternative site can be imposed
- Any objection or argument against an operator imposing an agreement runs the risk of tribunal action and costs



Any questions or issues encountered?

- Has an operator sought to undertake a Multi Skilled Visit?
- Have they proposed heads of terms and sought a code agreement?
- Do you have any existing operators on site already?



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Break

3.50 - 4.05pm

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High Street Rental Auctions

With Ayesha Khalique

Levelling-up and Regeneration Bill - Compulsory Rental Auctions

- ✓ Located in a ‘designated’ area
- ✓ Considered suitable for ‘high street use’
- ✓ Continuously vacant for more than 1 year...or at least 366 days in a 2 year period
- ✓ Benefit to local economy, society or environment if occupied

154 High-street uses and premises

- (1) For the purposes of this Part, any use of premises that falls within any of the following sub-paragraphs is a “high-street use” –
- (a) use as a shop or office;
 - (b) use for the provision of services to persons who include visiting members of the public;
 - (c) use as a restaurant, bar, public house, café or other establishment selling food or drink for immediate consumption;
 - (d) use for public entertainment or recreation;
 - (e) use as a communal hall or meeting-place;
 - (f) use for manufacturing or other industrial processes of a sort that can (in each case) reasonably be carried on in proximity to, and compatibly with, the preceding uses.



170 Deemed consent of superior lessor or mortgagee

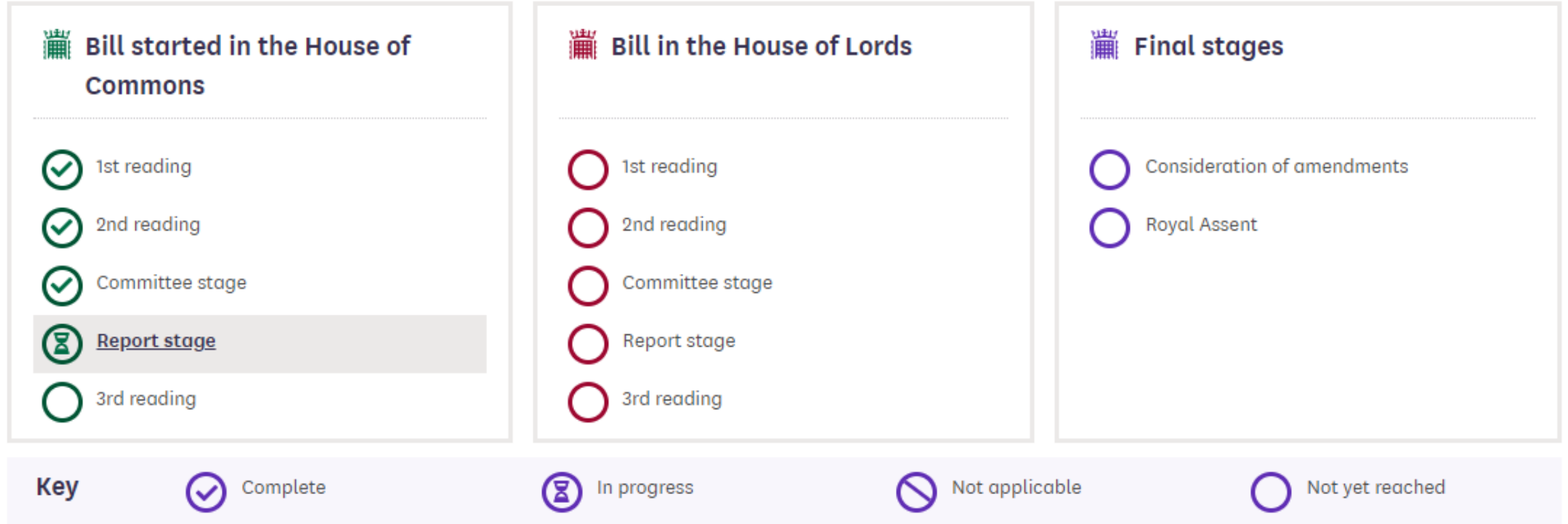
A contract entered into under section 166, and a tenancy granted further to such a contract, are deemed to have been entered into or granted with the express consent of –

- (a) any person who is (or will be when the tenancy is granted) a superior lessor of the land in which the premises in question are comprised, and
- (b) any mortgagee of that land.

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Bill passage



A “statement of levelling-up missions” is a document which sets out –

- (a) objectives which His Majesty’s Government intends to pursue to reduce geographical disparities in the United Kingdom significantly (“levelling-up missions”), within a period specified in the statement (the “mission period”), and
- (b) details of how His Majesty’s Government proposes to measure progress in delivering those levelling-up missions (the “mission progress methodology and metrics”).

3 High Street Rental Auctions are not the optimal policy response for regeneration of high streets, primarily because it is not in property owners’ interests to leave units empty unless in exceptional circumstances. Often they require rental income to fulfil legal duties.



Mission: “Levelling up”

An unnecessary intervention?



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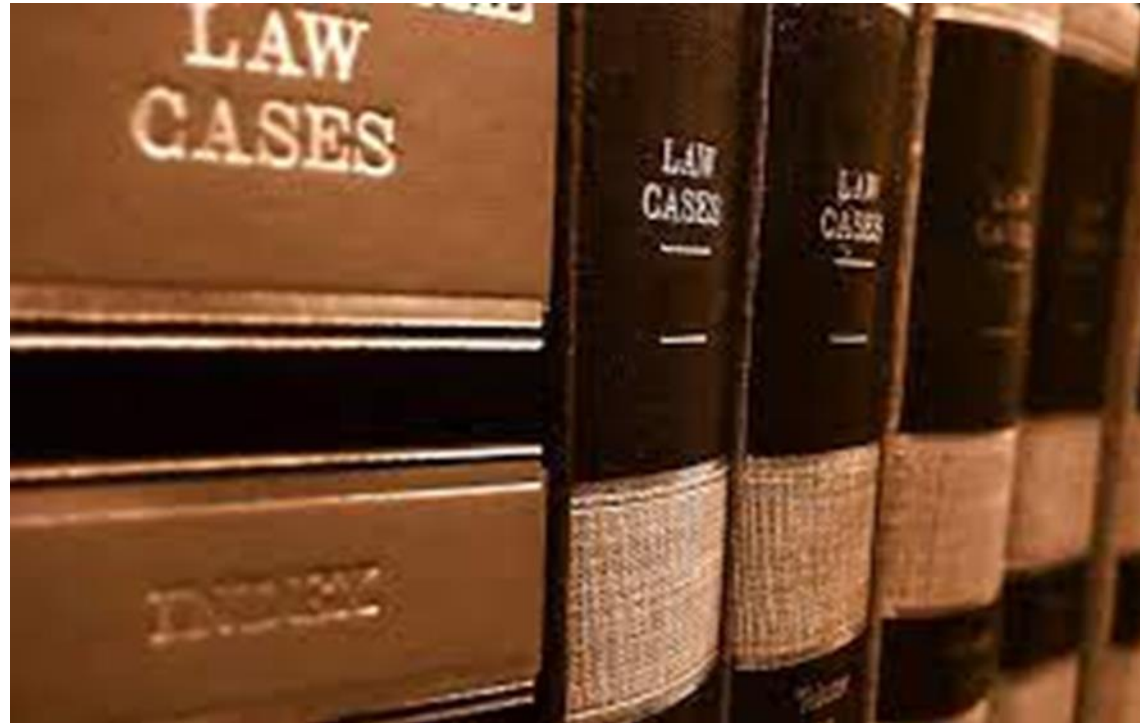
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Landlord and Tenant Update 2022

With Karen Hill, Mark Hymers and David Harris

Some important cases



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Pretoria Energy Company (Chittering) Ltd v Blankney Estates Ltd



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Pretoria Energy Company (Chittering) Ltd v Blankney Estates Ltd

- Parties had signed a document called “Heads of Terms of Proposed Agreement” (HoT) for proposed 25 year lease of an anaerobic digestion plant
- HoT only identified land, length of lease and annual rent
- HoT was not expressly headed ‘subject to contract’
- Did the HoT create a binding agreement for lease? Significance of:
 - exclusivity period
 - previous draft
 - 1954 Act exclusion
- Importance of three magic words



Brem v Murray

- B ran a salon on ground floor of building
- Flat on second floor owned by S
- S allowed B to use flat for a rent
- B allowed M (B's employee) to occupy a room in flat (with S's consent)
- S evicted M by changing locks
- Was B (as well as S) liable in damages to M?
- Significance of decision



Kensquare Ltd v Boakye

- T held 125 year lease of flat
- T paid fixed half-yearly interim service charge
- L could increase sum by notice to T not less than one month before start of financial year (1 April)
- L sent to T letter in August 2019 requesting payment of increased sums for periods running from 1 April 2018, 1 October 2018, and 1 April 2019
- Was time of the essence for L's notice?
- Comparison with rent review
- Should the matter be dealt with expressly?



Ventgrove Ltd v Kuehne + Nagel Ltd



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Ventgrove Ltd v Kuehne + Nagel Ltd

- T's break right on Scottish property required T to pay break premium “together with any VAT properly due thereon” when serving break notice
- L had opted to tax property
- T exercised break right on 23/2/21
- T did not pay VAT on the break premium
- Had T validly exercised the break right?
- In other words, was VAT ‘properly due’ on the break premium?
- The advantage of certainty



Bank of New York Mellon (International) Ltd v Cine-UK Ltd; London Trocadero (2015) LLP v Picturehouse Cinemas Ltd



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Bank of New York Mellon (International) Ltd v Cine-UK Ltd; London Trocadero (2015) LLP v Picturehouse Cinemas Ltd

- Two cases heard together by Court of Appeal
- Ts argued not liable to pay rent when forced to close cinemas during pandemic on grounds of:
 - rent suspension clause
 - implied term
 - failure of basis
- Is this now the end of the road for tenants?
- Mandatory arbitration for Covid arrears now closed
- Pandemic rent suspension clauses going forwards



W (No.3) GP (Nominee A) Ltd and another v J D Sports Fashion Plc

- 1954 Act lease renewal of retail premises in shopping centre
- T paid turnover rent under existing lease
- L wanted similar arrangement in new lease; T objected
- Did LTA 54 give the court jurisdiction to determine a turnover rent?
- If so, should a turnover rent be awarded?
- Significance of decision for lease renewals in light of pandemic



Clipper Logistics Plc v Scottish Equitable Plc

- 1954 Act lease renewal of distribution centre
- L wanted new clauses preventing T carrying out alterations which might put L in breach of MEES Regulations:
 - no alterations resulting in property having EPC rating below E
 - indemnity for L for cost of new EPC if T were to make such alterations
 - obligation on T to maintain current EPC rating
- L lost on two of the three points
- Significance of decision
- Burden of proof under 1954 Act



Davies-Gilbert v Goacher

- C held benefit of 1960 restrictive covenant
- Covenant prevented D doing works without C's consent (not to be unreasonably withheld)
- D wished to build two houses
- C refused consent for a mixture of good and bad reasons
- Did this make C's overall decision unreasonable?
- Does the same apply in a landlord and tenant context?



Valley View Health Centre v NHS Property Services Ltd



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Valley View Health Centre v NHS Property Services Ltd

- Two cases concerned how GPs occupied their properties
- Valley View - practice had occupied the property on an undocumented basis since 2007
- St Andrew - practice's contracted out lease had expired in 2019
- Were the practices periodic tenants or tenants at will?
- Why does it matter?
- How to avoid situation arising in first place



Other important developments

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BEST OF
THE REST



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Register of Overseas Entities



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Register of Overseas Entities

- Background
- What is an overseas entity?
- What is a beneficial owner?
- Significance of selling a property to an overseas entity
 - selling includes granting a lease for more than 7 years
 - ensure buyer is a “Registered Overseas Entity”
 - but is this your problem?



Register of Overseas Entities

- Significance of buying a property from an overseas entity
 - buying includes taking a lease for more than 7 years or taking a mortgage
 - restriction on seller's title to take effect on 1 February 2023
 - ensure buyer is a “Registered Overseas Entity”
- What to do when entering into a transaction with an overseas entity
 - request overseas entity ID - <https://find-and-update.company-information.service.gov.uk/advanced-search>
 - contractual clauses
- Delays likely to transactions



Changes to Private Rented Sector

- Government White Paper published in June: A Fairer Private Rented Sector
- Some of headlines include:
 - private rented homes will for the first time have to meet the Decent Homes Standard
 - no-fault evictions on two months' notice to be abolished - the end of the AST!
 - all tenancies to be periodic ones terminable by T on two months' notice
 - increases in rent only allowed once a year and no contractual rent review clauses
 - easier for Ls to evict Ts guilty of anti-social behaviour



Changes to Private Rented Sector

- Ls to have new grounds for possession where potential sale or L or close family members wish to live in property
- All private Ls to join a new Ombudsman redress scheme
- Blanket ban on renting to families with children or receiving benefits to be illegal
- Ls cannot unreasonably refuse consent to requests for a pet
- Will this actually happen?

