London Real Estate Practice
Quarterly Legal Update – Autumn 2024

November 2024

Welcome to the GT London Real Estate Practice's Autumn 2024 newsletter, reviewing a range of legal and practice developments affecting stakeholders within the UK real estate sector.

Autumn Budget

On 30 October 2024, Rachel Reeves delivered Labour's first budget. The main measures affecting the UK real estate sector are summarised below:

- Increase from 3% to 5% for the Stamp Duty Land Tax (SDLT) surcharge on the acquisition of additional dwellings by individuals and of the acquisition of dwellings by corporate buyers, including overseas investors. This measure took effect 31 October 2024 (where exchange took place prior to this date but completion or substantial performance took or takes place after this date, transitional rules may apply). The application of non-residential rates has been retained where the transaction involves the purchase of six or more dwellings. Also, SDLT has not been extended to the purchase of UK property rich companies and unit trusts.
- No reversal of the decision abolishing SDLT multiple dwellings relief.
- Further to July's call for evidence on the tax treatment of carried interest, the capital gains tax rate for fund carried interest will increase from 28% to 32% from 6 April 2025, with full reform of the regime within the income tax framework in April 2026, which will result in newly defined "qualifying carried interest" being subject to an effective tax rate of 34.075%.
- The main rate of capital gains tax increased from 20% to 24% (matching the rate applicable to residential property) from 30 October 2024.

- The government will proceed with the Reserved Investor Fund (Contractual Scheme) subject to the introduction of secondary legislation expected by April 2025.
- Intention to lower the business rate levels for retail, leisure, and hospitality businesses, albeit to be funded through a higher tax rate on higher value properties with rateable values of more than £500,000.
- £1 billion of investment allocated to remove dangerous cladding.
- Strategic investments and reforms across infrastructure, energy, water, and transport.

Compulsory Purchase

This blog considers the implications of a recent valuation case in the context of their Compulsory Purchase Order (CPO) practice.

Insolvency Risks for Universities & the PBSA Sector

In this GT Alert, John Houghton, Rachel Whittaker, and Nazmul Miah consider the financial challenges that some British universities are facing and the potential impact of this on the purpose-built student accommodation (PBSA) sector.

Martyn's Law

Ashia Adams & Rachel Whittaker recently examined the provisions of the Terrorism (Protection of Premises) Bill 2024, also known as Martyn's Law.

The Bill aims to improve protective security and organisational preparedness for terrorist attacks by requiring those responsible for certain premises and events to take reasonably practicable measures to mitigate the impact of a terrorist attack.

At the time of writing, the Bill is due to have its report stage and third reading on a date to be confirmed.

NPPF & Data Centres

Part of Labour's pre-election manifesto was to lower the planning barriers for data centre developments in the UK, designating major and critical data centre projects as "nationally important."

On 30 July, the Ministry of Housing, Communities and Local Government opened a consultation on plans to reform the planning system by revising the National Planning Policy Framework (NPPF) as well as seeking a series of wider national planning policy reforms. The NPPF sets out the government's planning policies for England and how these should be applied. It provides a framework within which locally prepared plans can provide for sufficient housing and other development in a sustainable manner.

The overall aim of the consultation proposals, alongside delivering 1.5 million new homes, is to reform the planning system to build the infrastructure needed to support and grow the economy.

As part of that, the government recognises the requirement for economic growth in key sectors, stating "[i]t is vital that planning policies reflect our broad economic and infrastructure priorities, including supporting rapidly advancing commercial opportunities which will be the foundation of the UK's future: data centres, gigafactories and laboratories."

According to the consultation, data centres produce an estimated £4.6 billion in revenue each year in the UK and are forecast to support a UK tech sector worth an additional £41.5 billion and 678,000 jobs by 2025.

To support these key growth industries and others, the government is proposing the following changes to the existing NPPF:

- an updated paragraph 86(b) which seeks to ensure that planning policy and local plans explicitly set criteria and identify appropriate sites to meet the needs of a modern economy, including suitable locations for data centres (as well as laboratories, gigafactories, digital infrastructure, and freight and logistics); and
- an updated paragraph 87(a) to ensure planning policies and decisions recognise the specific locational requirements of different sectors, including provision for new, expanded, or upgraded facilities and infrastructure that support the growth of knowledge and data-driven, creative, or high-technology industries (including data centres and electricity grid network connections).

To support the changes above, the government is also proposing enabling digital infrastructure projects, including data centres, to opt into the Nationally Significant Infrastructure Projects (NSIP) regime, which would result in the Secretary of State making planning decisions in respect of data centre planning applications rather than local authorities. Currently, under section 35 of the Planning Act 2008, the Secretary of State may, on request, direct a project into the NSIP consenting regime through a section 35 direction, and subject to certain conditions.

Other proposed changes that may indirectly impact the growth of the data centre sector are:

- broadening the existing definition of "brownfield land" (previously developed land no longer being used) to strengthen expectations that applications relating to brownfield land will be approved and that plans should promote an uplift in density in urban areas;
- making it clear brownfield development should be viewed positively and the default answer to such development should be yes;
- identifying grey belt land (green belt land in a state of disrepair or neglect) within the Green Belt (areas of land protected from development), to be brought forward into the planning system through both planning and decision-making to meet development needs; and
- supporting clean energy and the environment, including supporting onshore wind and renewables.

The consultation closed on 24 September, and we await further detail of the outcomes.

Together with the recent government announcement that UK data centres will be designated as "Critical National Infrastructure" (CNI) alongside energy and water systems, this consultation highlights the importance placed on facilitating data centre investment and development, particularly in light of AI growth, albeit a careful balancing act is required with planning policy and environmental concerns.

Other Updates

Business Tenancies Reform

The Law Commission is considering changes to the process of renewing business tenancies under the Landlord and Tenant Act 1954 (the 1954 Act), aiming to develop a more contemporary legal framework.

Currently, most business tenants have the right to automatically renew their leases under the 1954 Act unless they agree with their landlord to exclude this right through the "contracting out" process before the lease is granted. There is a concern that the existing legislation no longer aligns with current commercial practices. Therefore, the goal is to modernise the legislation to create a clear, user-friendly legal framework that is commonly used rather than opted out of, while still allowing parties to make their own agreements.

The Law Commission plans to release a consultation paper on 19 November 2024.

Financial Conduct Authority & Valuations

In July, the Financial Conduct Authority (FCA) began conducting a multi-firm review examining fund managers' "valuation practices for private assets, including examining the personal accountabilities for valuation practices in firms, governance of valuation committees, the information reported to boards about valuations and the oversight by relevant boards of those practices."

The FCA selected several firms for evaluation and is currently reviewing their feedback to share the outcomes with the broader sector.

The FCA's review is a timely reminder of the importance of constantly ensuring that all valuation procedures are objective and robust.

High Street Rental Auctions

The Levelling-up and Regeneration Act 2023 (LURA) introduced the concept of high street rental auctions pursuant to which local authorities have a discretionary power to mandate auctions of certain empty high street premises such that a landlord would be obliged to grant a tenancy to a successful bidder.

Part 10 of LURA, which contains the provisions relating to high street rental auctions, is not yet fully in force. The Levelling-up and Regeneration Act 2023 (Commencement No. 3 and Transitional and Savings Provision) Regulations 2024 (SI 2024/389) brought some provisions under Part 10 of LURA into force as of 31 March 2024 for the purposes of making regulations on various aspects of the auction process. These regulations, by way of secondary legislation, would be required before Part 10 can be brought fully into force.

The previous government was planning to work on the secondary legislation required to bring the relevant powers into effect by mid-2024, with the first auctions taking place by Autumn 2024. Since Labour came into power, little has been said on this topic; however, the Ministry of Housing, Communities and Local Government are hosting an event on 21 November to raise awareness of the new powers and discuss how they may be implemented.

You can read more about the concept of high street rental auctions in our April 2024 GT Alert.

Minimum Energy Efficiency Requirements

The government recently announced plans to reform both Energy Performance Certificates (EPCs) and the Minimum Energy Efficiency Standard (MEES) regulations for all privately rented, domestic properties in England and Wales. The proposal requires all such properties to hold a minimum Energy Performance Certificate (EPC) rating of C by 2030 – an increase from the current minimum rating of E – or risk being unable to let the properties.

The new proposals include financial grant offers capped between £15,000 and £30,000 to assist landlords in meeting the costs of upgrading a single property to enhance compliance, albeit such funding will only be available for properties located in "eligible postcodes" (accounting for around half of the UK). Portfolio landlords would face further challenges, being required to contribute half of the upgrade costs for additional properties.

The government will now shortly consult on these proposals.

Renters' Rights Bill

The Renters' Rights Bill will, amongst other things, abolish section 21 "no fault" evictions and fixed-term tenancies, replacing them with periodic tenancies that tenants can terminate with two-months' notice, as well as reform the grounds for landlord possession.

Although it is largely similar to the previous government's Renters' (Reform) Bill, the introduction of that legislation was postponed, citing the need for court system reforms, an issue the new government has yet to fully address in terms of how the increased demand will be handled. Additionally, there are concerns that the current draft of the Bill does not adequately address the distinct characteristics of the student housing market and ensure fairness between PBSA and private student housing.

The Bill is currently being debated at the Committee Stage, with a report due to the House of Lords by 28 November 2024. It is anticipated the Bill will become law by October 2025.

Service Charges in Commercial Property

On 29 October, the Royal Institution of Chartered Surveyors (RICS) closed a consultation on its updated professional standard on service charges in commercial property (second edition). The update targets UK commercial property managers, landlords, occupiers, and stakeholders, seeking their input to ensure the new edition reflects best practices for service charge management, promoting fairness, and transparency.

Scheduled for release in summer 2025, the standard aims to address service charge management challenges, reduce landlord-tenant disputes, and offer clearer dispute resolution guidance. It will also provide essential guidance for solicitors and property managers in lease negotiation and operation, enhancing clarity and transparency in commercial property transactions.

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