K&L GATES

OVERRIDING INTEREST SUMMER 2025

Highlighting developments and issues in the European real estate industry

INSIDE THIS ISSUE:

KEY CONTACTS

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NEW JOINERS

Prudence S. Birchall

Lawyer
Sydney

Prudence Birchall joined K&L Gates' graduate program in 2024, working in real estate, asset management and investment funds, and labour, employment and workplace safety. She gained exposure to real estate and infrastructure transactions, including acquisitions and disposals, renewable energy projects, complex leasing, and advising domestic and global private fund managers on fund establishment and financial services regulatory issues.

Justin Chenevier

Special Counsel
Sydney

Justin Chenevier is a special counsel in the Real Estate practice.

Michael Daly

Senior Associate
Brisbane

Michael Daly is a senior associate in the Real Estate practice, focusing on construction and infrastructure.

Pauline Ducousso

Associate
Paris

Pauline Ducousso is an associate and a member of the Real Estate and Finance practices. Pauline advises French and international banks and investment funds on various French and cross-border real estate financing, structured finance and debt restructuring transactions. She also has experience in acquisition finance.

Amy Dugan

Lawyer
Sydney

Amy Dugan is a lawyer in the Real Estate practice, focusing on construction. Amy has experience working on complex construction and commercial litigation matters.

Thomas Ehrecke

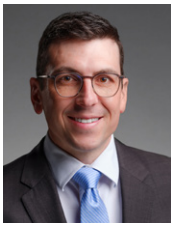
Partner
Paris

Thomas Ehrecke is a partner in the Finance practice. Prior to joining the firm, Thomas served as a partner at a major Paris law firm where he advised clients on real estate financing transactions in France and across borders. He has advised banks, investors and funds on origination, restructuring and the sale and acquisition of real estate debt. Thomas also has experience in acquisition finance and corporate finance.

Rhiannon Esau

Lawyer
Sydney

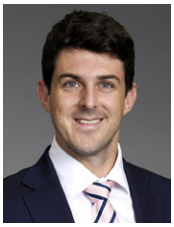
Rhiannon Esau is a lawyer in the Real Estate practice.



Paul E. Hotchkiss

Associate
Charleston

Paul Hotchkiss is an associate in the Real Estate practice. Prior to joining the firm, Paul served as an associate at a law firm in South Carolina, where he assisted clients with a variety of commercial real estate agreements, including commercial leases, purchase and sale agreements, easement agreements, assignment and assumption agreements, mortgages and promissory notes. Paul also advised clients on company formation, fund allocation and ownership structuring.



Toby Hunt

Senior Associate
Brisbane

Toby Hunt is a senior associate in the Real Estate practice. Toby has considerable experience in both commercial front-end/transactions and property-related disputes, as well as a broad general commercial law practice.

Taylor Jones

Associate
Rayleigh

Taylor Jones is an associate in the Real Estate practice. Prior to joining the firm, Taylor served as an associate at a national law firm where she represented real estate clients—including national home builders, developers, investors, and lenders—in a wide array of real estate transactions. Taylor also represented debtors and creditors in a variety of bankruptcy transactions in federal and state courts.

NEW JOINERS

Paul Lalich

Partner
Sydney

Paul Lalich is a partner in the Real Estate practice, with over 25 years' experience advising government statutory entities and state-owned corporations, publicly listed REITs, institutional investors and corporations, and private entities on major development and infrastructure projects.

Paul has acted on major commercial, retail and industrial projects; rezoning and urban land releases; commonwealth and state approvals; infrastructure agreements; and front-end and back-end advice and litigation. He also advises clients on environmental regulation, licensing and compliance, and contaminated land.

He is well versed in Australian statutory approval processes, and he has extensive experience assisting clients with litigation, regulator investigations and pollution incident responses. Paul is the current legal member of the NSW Architects Registration Board (since December 2022). He is also a speaker on environmental law at public and continuing legal education seminars.

Paul has published articles in the New Planner and the Local Government Law Journal, and he is the co-author of the "Local Government Planning and Environment Law New South Wales" loose-leaf legal service published by LexisNexis.

Albrecht Langenstein

Associate
Munich

Albrecht Langenstein is an associate in the Real Estate practice. He advises national and international corporations, project developers and investors on the structuring and negotiation of real estate transactions. A particular focus of his work consists of the design and implementation of extensive commercial leases as well as the legal guidance of asset management across all asset classes.

Stephen Mc Laughlin

Associate
London

Stephen Mc Laughlin is an associate in the Real Estate Practice. He comes to us from McCann Fitzgerald LLP (Dublin) where he worked as an Associate in their Commercial Property team. Stephen has experience in acting on a range of investment, development, finance and corporate support transactions.

Gareth McCarter

Partner
London

Gareth McCarter is a partner and a member of the Finance practice. Gareth specializes in complex and structured financings of commercial real estate investments and developments internationally. Areas of focus include the financing of international real estate assets, operational real estate assets (such as hotels, senior living and student accommodation), senior and mezzanine structures, and preferred equity lending. Gareth has extensive experience representing UK, European and US financial institutions, insurers and debt funds, as well as investors and sponsors.

Simon Moen

Partner
Perth

Simon Moen is a partner in the Real Estate practice. He has over 25 years' experience advising real estate funds, ASX-listed property owners, foreign investors, private families, property developers, government entities and mission-based organisations in all areas of real estate and land development law.

By drawing on 25 years of legal experience and deep sector engagement, Simon delivers value through his razor-sharp focus on how transactions are structured, how risks are mitigated, how the client's interests are advanced, how roadblocks are overcome and how transactions are documented and then completed in a timely manner.

Jacob J Moss

Counsel
Seattle

Jacob Moss is a counsel in the Real Estate practice. He focuses on all types of commercial real estate matters, including complex acquisitions, dispositions, joint ventures, leases, and financings and loan restructurings representing both borrowers and lenders. Jacob has counseled a broad variety of clients, including public real estate companies, private developers, institutional lenders and investors, private equity and hedge funds, institutional landlords, small business tenants, high net worth individuals, and other real estate investors in transactions across various real estate asset classes, ranging from office buildings to multifamily/residential projects, retail to hospitality, and industrial to senior housing.

Prior to joining the firm, Jacob was a real estate associate at a Seattle-based law firm and a real estate associate in the New York office of a full-service, global law firm.

Austin Rossi

Associate
Washington D.C.

Austin Rossi is an associate in theReal Estate practice. Austin represents clients across a large array of transactions including leases, developments, and obtaining economic incentives.

Giorgia Robertson

Lawyer
Brisbane

Giorgia Robertson is a lawyer in the Real Estate practice. Giorgia has a comprehensive background in property and commercial law, having worked in a New Zealand law firm prior to her relocation to Brisbane. Giorgia has experience in residential and commercial transactions, financing, trust and estate planning matters and business sale and purchases. Giorgia is also able to assist clients with due diligence reporting, leasing, and property development.

Giorgia has a strong understanding of property and commercial law, contract negotiation, and dispute resolution having acted for clients across the retail, residential, commercial and retirement living sectors. Giorgia is also an admitted Barrister and Solicitor in New Zealand.

Madeleine Ryan

Senior Associate
Sydney

Madeleine Ryan is a senior associate in the Real Estate practice.

Andrew Scully

Special Counsel
Sydney

Andrew Scully is a special counsel in the Real Estate practice specialising in environment and planning law. He has experience in advising government entities, state-owned corporations, institutional investors, publicly listed real estate investment trusts (REITs), corporations and private entities, as well as on major development and infrastructure projects.

Andrew has advised on large developments in all real estate sectors, including in relation to planning approvals, compulsory acquisition, land rezoning, contaminated land and environmental regulation, licensing and compliance. He regularly advises clients in relation to litigation in the Land and Environment Court of New South Wales (NSW) in development appeals, compulsory acquisition and administrative law proceedings.

Julius Stoltz

Associate
Berlin

Julius Stoltz is an associate in the Real Estate practice. Julius joined K&L Gates in September 2024. Prior to joining the firm, Julius worked in the notary office of a Berlin law firm. During his legal traineeship, he worked for a commercial law firm in the field of insolvency law.

Natalia Tan

Lawyer
Perth

Natalia Tan is a lawyer in the Real Estate practice.

Ella Thubron

Lawyer
Perth

Ella Thubron is a lawyer in the Real Estate practice.

Laura Trewhela

Associate
London

Laura Trewhela is an associate in the Real Estate practice. She acts for a variety of international and domestic clients and advises on all aspects of commercial real estate work, including development, acquisitions, disposals, and landlord and tenant matters. Laura's practice extends to advising on real estate aspects for corporate acquisitions and real estate finance transactions.

Tamsyn Vohradsky

Lawyer
Sydney

Tamsyn Vohradsky is a lawyer in the Real Estate practice focusing on construction and infrastructure.

Megan Wemmer

Associate
Portland

Megan Wemmer is an associate in the Real Estate practice. Prior to joining the firm, Megan was an associate at an Atlanta-based law firm where she focused her practice on real estate and retail services. Through this role she advised on the acquisition, development, redevelopment, leasing, financing, restructuring, and sale of shopping centers, malls, mixed-use projects, and other retail properties. Megan also represented financial institutions and investment banks in their roles as issuers, underwriters, and mortgage loan sellers in public and private offerings of commercial mortgage-backed securities and other structured finance products.

ARTICLES OF INTEREST

THE LAW COMMISSION CONSULTATION PAPER: BUSINESS TENANCIES AND THE RIGHT TO RENEW

On 19 November 2024, the Law Commission published its first **consultation paper** considering whether a tenant's right to renew a business tenancy (security of tenure) under Part 2 of the Landlord and Tenant Act 1954 (the LTA 1954) is still fit for purpose. This is the first of two consultations, and it looks at the fundamental question of whether business tenants should have security of tenure and, if so, how it should operate. The scope of the second consultation will depend upon the outcome of the first.

The current position allows business tenants to renew their tenancies, provided that Part 2 of the LTA 1954 is not excluded or "contracted out" of the tenancy. The paper sets out the following alternative models and considers their advantages and disadvantages:

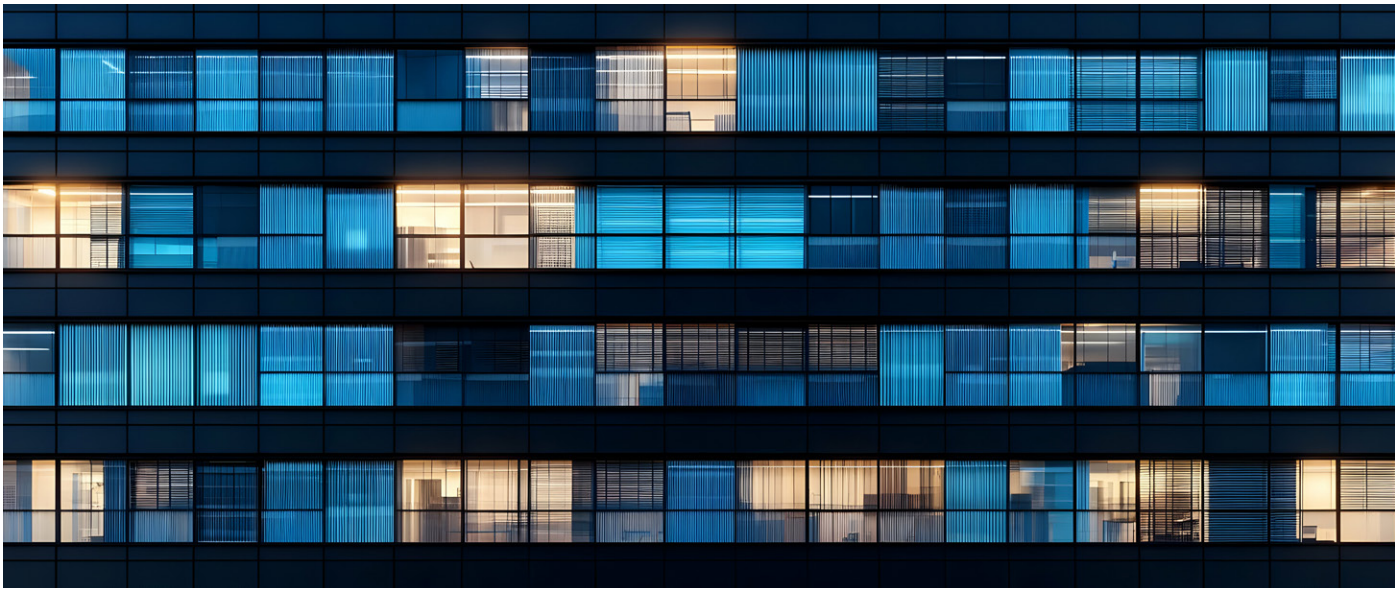
1. *No Security of Tenure*

   This model would abolish Part 2 of the LTA 1954, thereby depriving tenants of their default right to renew a tenancy. However, a landlord and tenant could still decide to contractually agree on an option for renewal. This gives landlords certainty on the tenancy's expiry date and lowers the expenses associated with the statutory security of tenure process. However, tenants receive the least protection under this model, as the market and the landlord's willingness will determine their ability to agree on a renewal option.

2. *A "Contracting in" Regime*

   As with the first alternative model, the default position under the "contracting in" regime is that tenants will not benefit from security of tenure. However, the landlord and tenant can agree to opt into Part 2 of the LTA 1954 so that a tenant has security of tenure.

   This model allows tenants and landlords to maintain the flexibility to choose whether or not to include security of tenure, as is the case under the current "contracting out" regime in the LTA 1954. However, the absence of default security of tenure provides tenants with less protection compared to the current regime. This may pose a challenge for tenants, as landlords will have more



bargaining power when negotiating whether a tenancy should be "contracted in."

3. *A "Contracting Out" Regime*

   This model would resemble the current law, so that the default position would be that the tenant would have security of tenure but the parties may contract out.

4. *Mandatory Security of Tenure*

   This model would make a tenant's entitlement to renew a tenancy a mandatory right for all business tenants. The parties would be prohibited from "contracting out."

   This provides the highest level of protection for business tenants and could simplify the process of entering into business tenancies, as parties would not have to negotiate on whether a tenant security of tenure applies. However, this model would significantly weaken the bargaining power of landlords and provide them with no certainty as to when a tenancy will come to an end.

The Law Commission is also consulting on the scope of the LTA 1954. Currently, certain types of tenancy are excluded from the scope of the LTA 1954 (such as agricultural tenancies), and most tenancies granted for six months or less are also excluded. The consultation paper suggests that it would be possible for tenancies to be excluded from the LTA 1954 based on (for example) the use made of the property, the duration of a tenancy, the existence of another regime performing a similar protective function or other characteristics of the tenancy or the property, such as the floor space, the location of the property or the rent payable. The paper indicates that the Law Commission's current view is that the most likely areas for change are where there are overlapping regimes or (presumably extending) the six-month period referred to above.

The Law Commission has not yet published its second consultation paper on the reform of Part 2 of the LTA 1954.

UK INTRODUCES NEW RIGHT TO MANAGE REGULATIONS FOR MIXED-USE BUILDINGS

In March 2025, new regulations came into effect as part of the Leasehold Reform Act 2024, which marks a significant milestone for property management in mixed-use buildings. These changes aim to clarify and extend the right to manage (RTM) principles previously applicable primarily to residential properties, thereby enhancing tenant control and improving operational transparency in buildings combining residential, commercial and retail spaces.

Under the new framework, qualifying mixed-use buildings can now benefit from a streamlined process to obtain RTM status. This empowers leaseholders to form RTM companies, enabling them to assume responsibility for managing essential services, such as maintenance, insurance and security. The rationale behind this legislative update is to level the playing field and ensure that all stakeholders—regardless of the nature of occupancy—have a fair opportunity to influence the management and upkeep of their buildings. The previous threshold, whereby the RTM could not be exercised if the internal area of any nonresidential part of a building exceeded 25% of the total floor area, was increased to 50%.

Advocates for the reform highlight the potential for increased accountability and cost efficiency, as leaseholders take an active role in governance. However, critics caution that mixed-use properties often involve more complex arrangements than purely residential buildings, which could lead to challenges in harmonising the interests of diverse occupants. In response, regulatory bodies have provided detailed guidance and support to facilitate smooth transitions and resolve potential conflicts.

Overall, the new regulations are a progressive step towards modernising property management in the United Kingdom, fostering better communication between tenants and managers, and ultimately ensuring that mixed-use buildings are run in a transparent and equitable manner—all while adapting to the evolving needs of urban environments.

THE TERRORISM (PROTECTION OF PREMISES) ACT 2025

The Terrorism (Protection of Premises) Act 2025, commonly known as Martyn's Law, received Royal Assent on 3 April 2025. This legislation mandates that certain venues and events in the United Kingdom implement measures to reduce vulnerability to terrorist attacks.

Scope and Requirements

- Applicable venues: The Terrorism (Protection of Premises) Act 2025 targets venues with a capacity of 200 or more people, including shopping centres, hotels, schools and stadiums.
- Standard duty (200–799 capacity): Responsible entities must assess terrorist risks, train staff, establish emergency procedures and inform attendees of security measures.
- Enhanced duty (800+ capacity): In addition to standard requirements, venues must implement alert mechanisms and publicly visible security plans.

Implementation Timeline

The Terrorism (Protection of Premises) Act 2025 will come into force after a 24-month implementation period, providing time for venues to comply with new obligations.

Enforcement and Penalties

Noncompliance can lead to significant fines: up to £10,000 for smaller venues and up to £18 million for larger venues.

This legislation aims to enhance public safety by ensuring venues are prepared for potential terrorist threats—reflecting lessons learned from past incidents.

GOVERNMENT PROPOSALS AIM TO TIGHTEN RULES ON EPCS AND MEES COMPLIANCE

The UK government has outlined new proposals to strengthen compliance with Energy Performance Certificates (EPCs), Energy Performance of Buildings (England and Wales) Regulations, and Minimum Energy Efficiency Standards (MEES), which target landlords of commercial properties.

Under the suggested changes, landlords will be required to submit valid EPCs and accompanying recommendation reports to a new digital compliance database upon letting or selling a property. This marks a shift toward greater enforcement and transparency, addressing concerns that EPC obligations have historically lacked robust oversight.

In parallel, proposed MEES reforms would require all nondomestic rented buildings to reach a minimum EPC rating of "B" by 2030, with interim milestones—including a proposed minimum "C" rating by 2027. The proposals include tougher penalties for noncompliance, potentially reaching £150,000, and improved data sharing between enforcement bodies.

These changes reflect the UK government's broader strategy to decarbonise the built environment and meet net-zero targets. For landlords, they signal the need for urgent investment in energy efficiency upgrades and a closer review of property portfolios.

While industry groups welcome the clarity and ambition, concerns remain around the cost and feasibility of retrofitting older stock—especially amid economic uncertainty. However, the direction of travel is clear: Sustainability is no longer optional, and regulatory momentum is building.

If implemented, these reforms will reshape commercial property strategy in the United Kingdom, placing energy efficiency at the forefront of both compliance and value preservation.

BIODIVERSITY: A GROWING REQUIREMENT FOR DEVELOPERS

INTRODUCTION

The importance of looking after our planet is a real and necessary focus in today's world. It is for this reason that the UK government made the bold move in 2024 to introduce into legislation a requirement aimed at ensuring that when new developments occur in England, the overall state of wildlife habitats is left in a measurably better condition than before. The required gain in biodiversity is known as the "Biodiversity Net Gain" (BNG).

The legislation catches almost all developments from residential, commercial, institutional, retail and, later this year, infrastructure. For developers, complying with BNG requirements presents both challenges and opportunities, contributing positively to environmental sustainability while aligning with evolving legal frameworks and making a profit while factoring in the additional cost.

This article will explore the legal dimensions of BNG compliance for developers, outlining key requirements, available options for developers and the strategies they can employ to meet these obligations.

THE LEGISLATION

The concept of BNG emerged from international commitments, such as the Convention on Biological Diversity and various national policies. In England; Schedule 14 of the Environment Act 2021 amended Schedule 7A of the Town and Country Planning Act 1990 to insert the requirements on BNG. The legislation came into force on 12 February 2024.

The biodiversity objective in the legislation is to ensure that the biodiversity value attributable to a development exceeds the predevelopment biodiversity value of the on-site habitat by at least 10%. The government reserves the right to change the percentage from time to time.

The biodiversity value is calculated in units known as "Biodiversity Units." The calculation for any development site is made by the sum of the biodiversity value: (a) on-site after the development, (b) offsite but allocated to the development, and (c) any biodiversity credits purchased from the government known as "Statutory Biodiversity Credits." This sum must represent a BNG of 10% compared to the biodiversity at the site prior to the development.

Compliance with the obligation is a pre-commencement planning obligation, meaning that no work can commence on the development until the condition is satisfied.

Exemptions do exist but are limited; these are listed on the government website as: developments with planning permission granted prior to 12 February 2024, small-scale developments (less than 25 square metres), small home extensions, and developments exclusively of dwellings of nine or less on a site which has an area no larger than 0.5 hectares.

ASSESSMENT OF THE BNG NEEDED

The development site needs to be assessed by an ecologist and an impact assessment report produced to calculate the "Biodiversity Units" (including the 10% gain) that will be needed for compliance with the planning condition.

Once a developer knows the Biodiversity Units required, a plan can be developed (the Biodiversity Gain Plan) to set out how the Biodiversity Units are to be provided. It is this document that will need to be submitted to the local planning authority (LPA) and approved before the development work can begin. The LPA has eight weeks from receipt to review the Biodiversity Gain Plan to confirm that the planning condition has been satisfied. Once the LPA confirms the approval of the Biodiversity Gain Plan and all the other pre–commencement conditions, only then can work commence on the development.

It should be noted that in Europe there are similar requirements. The EU Habitats Directive was adopted in 1992, which sets out obligations to protect species and habitats across its member states.

OPTIONS FOR DEVELOPERS TO ACHIEVE BNG COMPLIANCE

The legislation acknowledges that it is not always possible to obtain the required BNG on-site and allows the developer to purchase Biodiversity Units or Statutory Biodiversity Credits as an additional and alternative means of compliance. There are therefore the following three options for developers to comply with the BNG requirements:

- Option 1: Increase the biodiversity on the development site.
- Option 2: Increase the biodiversity through the purchase and allocation of Biodiversity Units on alternative sites.
- Option 3: Purchase Statutory Biodiversity Credits from the government.

The order is important, as it sets out the BNG hierarchy. The developer must try to satisfy the BNG through options 1 and 2 before it applies for the purchase of credits in option 3; if necessary, all three options can be combined, but the order must be followed.

Option 1: On-Site Increase in Biodiversity

Increasing on-site biodiversity is the method of compliance that the government would like to see, as this retains the biodiversity of an ecosystem in the location that the development is being built. The design of the development will be important, and the size of the site will determine how possible it is to use this option.

We anticipate seeing an increase in the use of green infrastructure: introducing green roofs, green walls and permeable surfaces to reduce habitat loss; restoring degraded habitats to enhance biodiversity; establishing wildlife corridors and green links to connect fragmented habitats; and implementing sustainable drainage systems to improve water management while enhancing biodiversity.

Cost

The cost associated with the on-site increase in biodiversity will depend on the type of habitat that needs to be developed. It is anticipated that the initial cost would be lower than the purchase of Biodiversity Units or Statutory Biodiversity Credits, but the ongoing management costs would need to be factored into the project.

Process

The developer is to include in its Biodiversity Gain Plan the details of the maintenance and management of the BNG on-site for at least 30 years from completion of the development. It is also to enter into a planning condition or legal agreement with the LPA as part of the planning process to provide a binding covenant in respect of the provision of the BNG on-site.

Unlike the process outlined in relation to option 2, where careful contracting and timing of actions taken between the developer and unit provider are required, option 1 requires less coordinating, thanks to the self-management/creation of the units, and no registration of the site or allocation of units. Option 1 could therefore be a quicker process.

Option 2: Purchasing Biodiversity Units

The sale of Biodiversity Units generates funding for those charities, organisations or individuals developing the biodiversity of land. The land being increased in biodiversity is referred to as the "Biodiversity Gain Site."

Biodiversity Units can be purchased from habitat banks (where an organisation already owns land which is being developed to increase its biodiversity, thus generating Biodiversity Units) or from bespoke projects (where an organisation tailors the Biodiversity Unit need for a development to a specific site).

The providers of the Biodiversity Units have to provide a 30-year plan for the Biodiversity Gain Site showing the creation and maintenance of the biodiversity. The land on which the biodiversity is improved, or a new habitat is created, will be subject to covenants provided to the LPA to comply with the 30-year plan.

The relationship between the developer and the habitat creator exists in respect of the agreement to purchase the Biodiversity Units and the allocation of them to the development. It can cease to exist once the Biodiversity Units have been purchased and the planning condition has been satisfied.

Cost

The cost of Biodiversity Units will be determined by the open market and are expected to fluctuate between areas and be affected by availability and nature of the biodiversity. The average price of one Biodiversity Unit is currently considered to be approximately £30,000.

The legislation uses multipliers to determine the effect of the spatial or temporal impact on the creation of the new biodiversity. For example, if the Biodiversity Gain Site and the development site are not in the same or the neighbouring LPA or National Character Area, then the number of units needed will be increased under the spatial risk multiplier. The intention is clear: Biodiversity

enhancement as close to the development location as possible should be prioritised where on-site enhancement is not achievable.

It is for this reason that we are seeing developers seek out the availability, on a national scale, of providers of Biodiversity Units and in some cases setting up relationships with them ahead of choosing specific development sites in the hope of expediting the creation and registration of Biodiversity Units once specific developments are defined. These agreements are effectively commercial contracts for the purchase of Biodiversity Units documenting the obligations on the providers in relation to the creation, registration and maintenance of Biodiversity Units, as well as their allocation to the developer accompanied by timescales and payment terms.

Process

It is helpful for a developer to understand the process needed for the owner of the Biodiversity Gain Site in order for them to sell the Biodiversity Units, as this will affect the timeline.

1. *Registration of the Site:* The Biodiversity Gain Site needs to be registered on the Biodiversity Gain Site Register held by Natural England (a public body, sponsored by the Department for Environment, Food & Rural Affairs). This requires the provider to have provided to Natural England:
    a. a conservation covenant or S.106 obligations in respect of the Biodiversity Gain Land;
    b. the metrics for the Biodiversity Gain Site (how many Biodiversity Units and of what type it will have);
    c. the 30-year habitat plan;
    d. proof of ownership; and
    e. a plan of the site.

    Assembling these required documents can take many months. The registration itself can take six weeks from submission of the application. For a developer needing a quick purchase, buying Biodiversity Units from the owner of an already-registered site will be quicker.
2. *Allocation of the Biodiversity Units:* The allocation of the Biodiversity Units also has to be registered on the Biodiversity Gain Site Register. This cannot be done until there is a planning permission decision notice for the development, as the decision notice needs to be provided to Natural England.

    The process of the registration of the allocation can also take six weeks. It is the allocation confirmation that is needed by the developer to be included in the Biodiversity Gain Plan to be submitted to the LPA.
3. *Payment for the Biodiversity Units: O*nce the cost of the Biodiversity Units has been agreed, the timing of the payment will need to be negotiated. There are competing demands and risks here: The developer may not want to pay for the Biodiversity Units until the allocation has been registered in case the provider does not fulfil its obligations or it changes its mind on the development. The provider will want to be paid for the Biodiversity Units as soon as possible; it may want to be paid before the application to register the Biodiversity Site or before the application for the allocation is submitted. We are currently seeing deposit payments being negotiated into contracts to split the payment and, therefore, the risk between the parties.

Option 3: Purchasing Statutory Biodiversity Credits

If there are no other viable options for the developer, as a last resort, a developer can purchase Statutory Biodiversity Credits.

Cost

To deter developers from using this as an easy way to comply with the requirements, the government has applied a spatial multiplier to the price of the Statutory Biodiversity Credits, so that for every Biodiversity Unit needed, a developer has to buy two Statutory Biodiversity Credits.

The price of one Statutory Biodiversity Credit varies depending on the type of habitat loss that needs to be replaced; it starts at £42,000 for low distinctive habitats, such as grassland, and increases for replacement of specific distinct habitats, with the replacement of peat lakes being the highest cost at £650,000. It is possible to buy part of a Statutory Biodiversity Credit if a full Biodiversity Unit is not needed. The government plans to review the table of prices at six-month intervals.

Process

There is a Government Gateway website in which the developer needs to register an account. The developer then makes an application for the purchase of the Statutory Biodiversity Credits. It needs to provide evidence of why it has not been possible to satisfy the BNG requirement through options 1 and 2. It can take up to eight weeks to approve this application.

If the application is approved, the developer will receive an invoice on the Government Gateway website for the total price of Statutory Biodiversity Credits. The developer then pays the invoice. Once they have been purchased, the developer can submit proof of purchase with the Biodiversity Gain Plan to the LPA.

CONCLUSION

The intentions behind the legislation are clear: The preservation and enhancement of local biodiversity is the priority. The biodiversity gain hierarchy clearly illustrates this.

Compliance with BNG regulations is therefore something that developers need to approach in a deliberate and meaningful manner. The BNG requirement is going to need developers to engage at an early stage of development with how the biodiversity is to be replaced and increased by 10%. It is not something that can be left to the last minute.

On-site solutions may be the best outcome if they can be designed into the development. However, we anticipate that the purchase of off-site Biodiversity Units is likely to be the most sought-after solution to satisfy the requirement. If this is the case, then a search of local providers and developing and documenting relationships with those providers will be important for securing Biodiversity Units specific for a development. The negotiation of allocation timings and payment terms with providers of Biodiversity Units will develop as more are bought in the market.

The last resort of buying Statutory Biodiversity Credits will be costly, and therefore, it is likely that developers will not want to use these due to the impact on the profitability of a development.

CONTACT

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EVENTS

UPCOMING 16 SEPTEMBER 2025 – REAL ESTATE BREAKFAST SEMINAR

Our annual Real Estate Breakfast Seminar, an in-person event, will be hosted in our London office near St Paul's Cathedral. We hope you will be able to join us—please find the relevant information and registration on the next page.

PROPERTY RACE DAY – 11 JULY 2025

On 11 July, the London Real Estate practice team will be attending the Property Race Day at Ascot. The Property Race Day is an established key date on the property calendar, and the principal aim is to raise funds for selected charities. It is the perfect opportunity for networking within the sector while enjoying a day at one of the finest racecourses in the world.

For more information, please contact:

Christian Major
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EXPO REAL CONFERENCE OCTOBER 2025

On 6–8 October, members of the European Real Estate practice team will attend the EXPO REAL conference in Munich, Germany. The conference is Europe's largest real estate and investment trade fair and provides an opportunity to meet with key players in the real estate market in Europe and discuss current trends within the sector. A team of European lawyers from K&L Gates will attend.

For more information, please contact:

Dr. Anja Rösch
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ANNUAL REAL ESTATE BREAKFAST SEMINAR

Global Real Estate Trends and Opportunities for 2025/2026

We hope you will be able to join us for our Annual Real Estate Breakfast Seminar this September, where our panel will discuss Real Estate trends and opportunities during 2025 and looking forward to 2026.

Panelists:

- **Sabina Reeves**, Chief Economist, CBRE Investment Management
- **Matthew Richardson**, Co-founder and CEO at Income Analytics Ltd

RSVP ONLINE

Please register your interest so that we can provide further detail on this September seminar and future seminars and newsletters. Your name, title and organisation will be printed on a guest list, which will be provided at the seminar, unless you notify us in advance that you do not wish to be listed.

Tuesday, 16 September 2025

8:30 AM BST: Registration and breakfast
9:30 AM BST: Seminar commences
10:30 AM BST: Seminar concludes followed by coffee and networking

Location

K&L Gates LLP
One New Change
London
EC4M 9AF
Map

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CASE STUDIES

DERWENT LODGE ESTATES LTD -V- SIGNATURE LIVING HOTEL LTD & 54 OTHERS [2025] 3 WLUK 402

Summary

Tenants of residential units in a mixed-use building applied for relief from forfeiture. The county court found in favour of the landlord, as granting relief from forfeiture would have placed the landlord in a more onerous position than it would have been in before the breach and forfeiture occurred.

Facts

The property was a building in Liverpool with mixed commercial and residential use. The whole building was subject to a headlease, with subleases for the various commercial and residential units. The tenant of the headlease became insolvent and could not pay rent, so the headlease was forfeited in September 2022, leading to the subleases being terminated. The tenants of the residential subleases applied for relief from forfeiture under Section 146(4) of the Law of Property Act 1925, seeking relief for only the residential units. The landlord opposed this, as it would have imposed additional safety and maintenance obligations on the landlord under the Building Safety Act 2022 by making the landlord an "accountable person." This would have made the landlord responsible for managing safety risks, such as risks arising from structural failure or fire.

Decision

In the first instance, the court found in favour of the landlord, holding that the residential tenants should be entitled to relief, but only through the grant of a new lease that mirrored the previous headlease of the entire building. This would mean that the residential tenants would become the landlords of the commercial units in the building and would be responsible for all repairing obligations and paying the headlease rent. The court considered that forfeiture should only be granted where the landlord can be put in the same position as before both the breach and the forfeiture occurred. The residential tenants appealed. The appeal was dismissed, and the court upheld the decision in favour of the landlord.

Comment

This decision reinforced a key principle that the courts will consider when granting relief from forfeiture: that the right to forfeit is a security for the landlord for the performance of the tenant's covenants. The landlord must therefore not be placed in a worse position than it would have been in before the breach and forfeiture occurred. This case also serves as a reminder of the safety obligations imposed by the Building Safety Act 2022 and the role of the accountable person.

PATARKATSISHVILI V WOODWARD-FISHER [2025] EWHC 265 (CH)

Summary

The High Court found that the seller's failure to disclose an infestation of moths to the buyer in replies to the pre-contract enquiries amounted to fraudulent misrepresentation, entitling the buyer to rescind the contract.

Facts

The buyers purchased a £32.5 million property in London from the seller. Soon after moving in, the buyers noticed moths in the property and later realised that there was an infestation of moths in

the insulation. The buyers found that the seller had previously employed a pest control company, and this company issued reports to the seller's wife indicating a moth infestation in the property's insulation. The buyers were not made aware of this when they purchased the property, as the seller replied to the pre-contract enquiries saying that he did not know of any "vermin infestation" in the property, he had not received any reports on vermin infestation, and he did not know of any hidden defect in the property. The buyers issued a claim for rescission and damages for fraudulent misrepresentation.

Decision

The court found that the seller made false statements knowingly or recklessly in response to the pre-contract enquiries and the buyers relied on these false replies when deciding to purchase the property. The court also found that the term "vermin" includes insects such as moths. The court also concluded that the moth infestation of the insulation was a material defect and could be considered a "defect not apparent on inspection of the property." The court ordered recission of the contract, repayment of the purchase price (minus £6 million for the buyer's period of occupation), and damages, including stamp duty land tax, costs paid by the buyers when purchasing the property and pest-removal costs.

Comment

This case reinforces the notion that, while the principle of "caveat emptor" applies and buyers should properly inspect the property, sellers must ensure that their replies to pre-contract enquiries are accurate and do not conceal any latent defects to the property.

SGL 1 LTD V FSV FREEHOLDERS LTD & OTHERS [2025] EWHC 3 (CH)

Summary

This High Court case considered what the definition of a "building" is in the context of serving notices on tenants offering the right of first refusal pursuant to Section 5 of the Landlord and Tenant Act 1987.

Facts

The landlord owned a residential development in Everton consisting of five blocks. The landlord's administrators served two Section 5 notices, one covering one block and the other covering three blocks (with the remaining block not being subject to rights of first refusal). The blocks in the development were sold to a purchaser in November 2020. The tenants challenged the validity of the Section 5 notices on the grounds that the blocks should be considered as a single building and only one notice should have been served.

Decision

The court considered various factors when determining what constituted a "building," such as plans of the structures, tenants' rights to use appurtenant premises and how the structures are managed. The most important factor the court considered in this instance was the shared access road used for accessing car parking. Due to this, the court considered the blocks to be one "building" and therefore concluded that only one notice should have been served covering the four blocks. The two Section 5 notices were therefore deemed to be invalid.

CASE STUDIES

Comment

This case has provided guidance on the factors to consider when defining a "building" for the purpose of serving Section 5 notices under the Landlord and Tenant Act 1987. Landlords looking to sell properties composed of multiple structures should consider these factors in cases where tenants have right of first refusal in order to ensure the correct service of notices and avoid similar litigation.

HANDSTON INVESTMENTS LTD V ABRI GROUP LTD [2024]

Summary

In a dispute over a property development which would affect the neighbouring owner's right to light, the High Court decided against granting an interim injunction to halt construction of the development.

Facts

Handston Investments Ltd (Handston) owned a commercial office building in Poole, Dorset, which had acquired a right to light by prescription through 20 years of uninterrupted use. Abri Group Ltd (Abri) purchased neighbouring land in 2023 and obtained planning permission to build 33 flats to be used as affordable housing on that land. This planned development would affect Handston's right to light, so Abri offered compensation for the loss of light. Handston applied for an interim injunction to pause construction of the development.

Decision

The court first decided that there was a serious issue to be tried, as the development would give rise to a likely and lasting infringement on Handston's right to light. The court ultimately decided not to grant an interim injunction, as it found that damages would be an adequate remedy. The key reasoning for this was that Handston owned the building as an investment property for the purpose of making a profit, so any decrease in value that may arise as a result of the diminished light could be adequately compensated in damages. The court also considered that the tenant of Handston's building had not raised any complaints about the development beyond its initial objection to the planning permission and that Handston would continue to receive the rent from the tenant. The court further took into consideration the fact that the development was in the public interest for the purpose of providing social housing.

Comment

This case serves as a reminder to developers to assess impacts on neighbours' rights to light early on and negotiate where necessary in order to minimise future risk of disputes. While developers will likely welcome the outcome of this case, which highlights the difficulty of obtaining an interim injunction, the courts will assess whether to grant an interim injunction on a case-by-case basis. Developers should therefore be mindful of the risk that the courts may grant such an order.

KHAN V D'AUBIGNY [2025] EWCA CIV 11

Summary

This Court of Appeal case provides guidance on the service of notices in respect of claims for possession under Section 21 of the Housing Act 1988, clarifying how landlords can serve such notices.

Facts

When serving a Section 21 notice, landlords must also serve documents, including an EPC, a gas safety

record and the How to Rent guide. The landlords in this case sent these documents to the tenant via recorded first-class post and provided evidence of this to their lawyer. The tenant denied having received these documents, but she did not dispute that she had received the Section 21 notice. The tenancy agreement permitted service of "notices" via first-class post. The tenant argued that the documents could not be considered "notices."

Decision

The court found that the term "notices" applied to the documents, and therefore, the landlords had served these documents in accordance with the requirements of the tenancy agreement. The court also found that the tenant did not provide sufficient evidence that she had not received the documents and therefore found in favour of the landlords, and the possession claim was upheld.

Comment

This outcome reflects the importance of clarity in tenancy agreements on notice requirements. Landlords should ensure that notice provisions in tenancy agreements are unambiguous and should ensure that they follow the notice requirements as prescribed in the tenancy agreement. This case also serves as a reminder to landlords to retain any evidence proving notice has been served correctly.

BROWN V RIDLEY [2025] UKSC 7

Summary

The Supreme Court ruled on the requirement for the period of ownership that the applicant must satisfy for a successful adverse possession claim under Schedule 6 of the Land Registration Act 2002.

Facts

The respondent was the registered owner of a plot of land in Country Durham, purchased in 2002. The appellants were the registered owners of a neighbouring plot of land, purchased in 2004. The previous owner of the appellants' land put up a fence and planted a hedge on the boundary of the plots of land, which enclosed part of the respondent's land. In 2019, the appellants applied to the Land Registry to be registered owners of the enclosed land, highlighting paragraph 5(4)(c) of Schedule 6 to the Land Registration Act 2002 requiring the applicant to reasonably believe that the land belongs to them for at least 10 years, ending on the date of the application. The respondent objected to this application.

Decision

The court found in favour of the appellants. The issue before the court was whether paragraph 5(4)(c) of Schedule 6 to the Land Registration Act 2002 required the period of reasonable belief of ownership of the land to be 10 years immediately preceding the date of application. The court ultimately found that the requirement was any 10-year period within the period of adverse possession.

Comment

The outcome of this case has the potential to cause an increase in claims for adverse possession, given that the 10-year requirement has been broadly interpreted. This case also serves as a reminder of the importance of defining boundaries early on, which can help landowners avoid future adverse possession disputes.

PRO BONO

We actively encourage our lawyers around the world to make significant contributions to pro bono matters and to participate in other charitable, community, educational, cultural and professional activities. Together, our lawyers handle hundreds of pro bono matters a year, totalling more than 40,606 hours in 2024. For example, firm lawyers litigate civil rights cases, establish and advise nonprofit organizations, participate in legal clinics and represent the indigent in consumer, landlord-tenant, domestic violence and immigration matters. We also provide legal counsel and public policy advocacy to help organizations advance their public service programs, work to advance the rule of law around the world and accept court appointments to provide pro bono counsel.

Here are some examples of pro bono work we have recently carried out for real estate clients.

1ST LOWER EARLEY SCOUT GROUP

This year we advised the **1st Lower Earley Scout Group** located in the Lower Earley area. The Scout Group is a youth organisation that provides recreational, sporting and scouting activities for its members aged between 6 and 14.

The organisation was initially set up to meet the demand for scouting groups in the Lower Earley area and currently supports over 160 young members. We advised the scout group on an agreement for the use of a nearby storage unit. We were able to help through the drafting of a licence and other legal and commercial advice.

RYBURGH MEMORIAL CHARITY

Our real estate department has also provided nontransactional property advice to smaller UK charities, such as the **Ryburgh Memorial Hall & Playing Field charity**.

The organisation has been a long-standing part of the Great Ryburgh community for over 50 years, providing sporting and recreational activities at its playing field and the Ryburgh Memorial Hall. The charity is also committed to promoting a sense of community in the area through the hosting of social events, such as quiz nights, Christmas parties and shows.

We advised the charity on the status of its ownership of the Ryburgh Memorial Hall, a historical building which has served the community since before World War I, and provided guidance on applying for first registration of the hall alongside the playing field.

SANDWELL SCOUT DISTRICT

The **Sandwell Scout District** is one of the United Kingdom's largest mixed-youth organisations, providing scouting activities to those aged from 4 to 25 years old. The organisation helps children and young adults develop teamwork, cultural awareness and communication skills, amongst others.

This year, we provided the organisation with legal advice on a complex matter concerning the ownership of one of its properties and the process of applying to the courts for an order granting the transfer of the property.

WEIR LINK

The **Weir Link** is a community-led organisation located in south London. The charity provides sustainable community services for those from a low-income background in the local area. Since 2003, the organisation has focused on providing education and training, health workshops, creative activities and youth clubs for the community. The organisation also provides much-needed after-school provision for local children and opportunities for the community to come together—for example, for film screenings and community "Fun Days," fostering a sense of local community.

We provided advice to Weir Link on its rights as a tenant and are providing ongoing advice in respect of the council's community asset programme.

BRIGHTON TABLE TENNIS CLUB

Brighton Table Tennis Club (BTTC) has a strong belief that table tennis can be used as a powerful tool in engaging people of all ages and transforming lives. A registered charity, the club has its own full-time centre with 10 tables in Kemptown and runs over 200 tables across the city in parks, squares, schools, sheltered housing schemes, a centre for homeless people, sports centres and a psychiatric hospital. It also works in three prisons outside the city. We acted for BTTC on its lease of new community space premises at Moulsecoomb Road, Brighton, from the Roman Catholic Church.

PAUSE CREATING SPACE FOR CHANGE

Pause is a charity that works to improve the lives of women who have had—or are at risk of having—more than one child removed from their care, as well as the services and systems that affect them. We acted for them on their lease of new office premises.

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