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Insights

ON YOUR RADAR? 10 REAL ESTATE RISK AREAS TO WATCH IN 2025

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SUMMARY

As we look ahead to 2025, several key areas within the real estate sector are poised to see an uptick in disputes. This report outlines ten pressing issues that property owners, occupiers, developers and investors should be aware of.

RIGHTS OF LIGHT

While the number of claims issued is up and we expect this to continue in 2025, the same cannot be said about claims actually proceeding to trial. Of the rights of light claims issued in the High Court since 2020, none have proceeded to a full trial, although the big cases have settled on the steps of Court. So although the likelihood of reaching a negotiated settlement with a neighbour remains high, cases with enough at stake are fighting.

One dispute, currently listed for a 15 day trial in Spring 2025, relates to Native Land's Bankside Yards development in Southwark. If it goes to trial, we expect the court to provide clarity on long debated matters such as the appropriate measure of light loss. The Waldram method remains the starting point for surveyors although, increasingly, radiance and climate-based daylight modelling are used to provide a more realistic indication of the level of light likely to be experienced following development.

With an increase in development activity expected in 2025, rights of light will continue to be a major development constraint that requires a robust risk mitigation strategy, often incorporating insurance cover. Despite a very low number of insurers in the market, insurance generally remains available but continues to be expensive and so should be accounted for carefully in development appraisals.

BUILDING SAFETY ACT

The Building Safety Act 2022 continues to keep the courts busy.

In 2025, the Supreme Court is expected to give judgment in the appeal in *URS v BDW.* In the hearing in December 2024, the Court was asked to consider whether Section 1(1) of the Defective Premises Act 1972 applies to commercial developers; whether the 30-year limitation period for DPA claims applies to claims brought before Section 135 came into force; and whether BDW can bring a contribution claim against URS.

In March, the Court of Appeal is due to hear two appeals concerning the retrospective effect of the Act:

1. *Triathlon* concerning whether remediation contribution orders can cover costs incurred prior to 28 June 2022.

2. *Adriatic Land* concerning whether the Act's service charge protections cover professional costs associated with an application to dispense with the consultation requirements in relation to cladding works.

The Court of Appeal is also due to hear the appeal of *Unsdorfer v Octagon Overseas Ltd*, concerning whether a Tribunal-appointed manager is an "accountable person" under the Act, who is subject to extensive obligations to monitor higher-risk buildings. The Upper Tribunal will also grapple with the meaning of cladding remediation in a case we are acting on.

Finally, the First-Tier Tribunal is due to release its decision in *Grey GR v Edgewater (Stevenage) and others*. Vista Tower was the subject of the first case in which the government obtained a remediation order against the owner of a major high-rise building. In this case, the owner is seeking a contribution to the remedial costs from the original developer and over ninety associated parties.

The BSA is still an evolving piece of legislation. The Leasehold and Freehold Reform Act 2024 introduced further amendments, including clarifying that the leaseholder protections apply to "relevant steps" to prevent or reduce building safety risks, such as installing sprinklers or a waking watch. The recommendations of the Grenfell Inquiry Phase 2 Report will also be significant, including a review of how higher-risk buildings are defined. The government is currently considering the report and we expect to hear further in 2025.

INSOLVENCY IN THE CONSTRUCTION SECTOR

Insolvency continues to be rife in the construction sector, with statistics from the Insolvency Service showing that the construction industry accounted for 17% of insolvencies in the 12 months to September 2024. The collapse of ISG in September 2024 into administration continued the trend of high-profile contractor insolvencies and was one of the biggest collapses in the UK construction industry since Carillion's liquidation in 2018.

Even developers who do not have a direct contractual relationship with ISG will be impacted, due to a domino effect down supply chains and across the industry as a whole. Sub-contractors and

businesses in the supply chain will become unsecured creditors who are unlikely to recover more than pence in the pound from ISG's administrators (at best), which may put untenable strain on their own businesses and lead to further insolvencies. The bond market (already under strain due to increased costs) has further tightened, meaning that the cost of procuring performance bonds (a form of security that can pay out in the event of a contractor insolvency) continues to rise, with developers largely meeting the cost of these.

For those developers who are impacted by a direct contractor insolvency, they will be faced with complex options for completing an affected project, including how best to procure the works required to finish the build. Any delay could be costly in terms of increased material costs and loss of rental income, or even loss of a pre-let tenant should the delay drag on past any contractual long stop dates. Gaps in the legal framework of protection due to an insolvent contractor could impact the longer term value of a building.

It seems likely that the trend of insolvency in the construction sector will continue into 2025.

MINES AND MINERALS

We expect to continue to see a rise in mines and minerals related claims in 2025. With some describing mines and minerals as the "new rights of light", we are seeing an increase in threats of injunction proceedings, with certain businesses being known to actively purchase the benefit of mines and minerals reservations to hold developers to ransom. As a result, insurers are assessing the risk more carefully and adding excesses and, in some cases, agreed conduct requirements to their policies.

As well as developers, well-advised third parties such as funders and pre-let tenants are increasingly concerned about the impact mines and minerals claims might have on their own interests, so it is important that any insurance policy also includes bespoke drafting to cover the specific loss scenarios relevant to those third parties.

While the vast majority of these claims tend to settle, where a settlement cannot be reached, we may start seeing developers attempt to neutralise the injunction threat by asking their local authority to step in and engage either CPO powers or section 203 of the Housing and Planning Act 2016 (depending on the nature of the relevant interest).

HIGH-END RESIDENTIAL PROPERTY DISPUTES

With a number of prime and super prime schemes coming to the market, we have seen a proliferation of sale and purchase disputes. Difficult market conditions have led to defaults and the inevitable disputes concerning forfeiture of deposits and/or stage payments. It has been 10 years now since the Supreme Court looked at the issue of unlawful penalties and our caseload suggests it

is only a matter of time before the issue is revisited to bring clarity for all sides given the sums involved in these high-stakes disputes.

BUSINESS RATES

Repeated increases in business rates in line with inflation have made the high street retail business model unprofitable and unviable, leading to vacancies, job losses and a general demise of the high street.

The government has developed a multipronged strategy to address this, including introducing draft legislation in Parliament to introduce lower multipliers for qualifying retail, hospitality and leisure properties from 2026.

However, there may be some backlash. Cutting business rates to support the high street will cause a fiscal deficit that needs to be funded elsewhere, so a new higher multiplier will be introduced for the most valuable properties (such as large distribution warehouses used by online giants like Amazon). This should go some way to levelling the playing field between high street retail business and their online competitors, but there will no doubt be unintended consequences of making “online giants” the scapegoats.

The threshold liability for the new higher multiplier is those properties with a rateable value of at least £500,000, so there may be SME businesses who operate using out of town warehouses, who may be caught in the crossfire.

In the meantime, many retail, hospitality and leisure businesses who are eligible for the current 75% relief scheme will feel the sting of the new interim (significantly reduced) 40% relief pending the implementation of the full cut. This, combined with the rise in employers' National Insurance Contributions and the minimum wage, is likely to tip many retail, hospitality and leisure businesses and SMEs into the red and drive up prices.

PROTEST INJUNCTIONS

In 2023, the Supreme Court confirmed the availability of a new form of injunction – that against Persons Unknown, whose definition may include newcomers (i.e. those not known at the time of the order), which is neither a traditional interim nor final order. The wide-ranging power of these injunctions must be balanced by regular review hearings and generous liberty for potential Defendants to apply to vary or discharge the order. Since that case, numerous such injunctions have been sought and granted in particular against activists aiming to cause substantial disruption to, for example, airports and other infrastructure. As well as against environmental activists, injunctions have also been granted in relation to the “Boycott, Divestment and Sanctions” movement, antisocial behaviour (“street cruising”) and urban explorers. Protection of property against a backdrop of increasing activism is likely to be a key theme going into 2025.

We expect cases in 2025 offering clarity on how, if at all, the traditional duty to prosecute an interim injunction to finality sits against the regular review hearing regime. At a recent hearing to join named Defendants to an injunction against environmental activists, the Judge confirmed that the authorities remain clear that a Claimant is under a duty to join Defendants by name once known. Expect further clarity and evolution of the guidance on how to approach this process, particularly as many of these injunctions come up to their review hearings during 2025.

HEAT NETWORK ZONING

In Autumn 2024, the Government selected six towns and cities across England to be the first heat network zones. Designation of an area as a heat network zone will increase investor confidence in the heating network sector by mandating (in certain circumstances) the connection of heat sources and off-takers to heat networks, providing both heat source and off-take certainty for heat network developers.

In 2025 the Government is likely to issue statutory instruments setting out the detailed legal regime for the designation and implementation of heat network zones across the UK.

For the first time, residential and commercial developers will be required to plan their projects against a background of a regulated heat sector.

Buildings which will be required to connect are:

- New buildings;
- Non-domestic buildings above an agreed size and energy use threshold;
- Buildings that are already communally heated.

There will be some exemptions, for example where it would not be cost-effective to connect to a heat network or where a better low carbon solution exists, and some flexibility around the timing of connections.

Developers planning projects in zones will need to assess:

- Whether their projects will have to build in – both financially and physically – a requirement to connect to a network in the zone;
- If they are required, the impact on their procurement, planning, construction and property disposal strategy – for example negotiating terms with the heat network operator, ensuring buildings can physically connect, and requirements opposite tenants.

REFORM OF THE LANDLORD AND TENANT ACT 1954

In 2024, the Law Commission published its first consultation paper on potential reform of the Landlord and Tenant Act 1954.

The Law Commission has proposed four different models of security of tenure, ranging from mandatory security of tenure to abolishing it entirely, and the middle ground of a contracting in or out regime. It is also canvassing views on the scope of the application of the Act and whether it would be more suitable for certain types or sizes of businesses, properties or tenancies.

We doubt that the Law Commission will recommend abolishing security of tenure entirely, but it could benefit from amendments to address issues such as:

- The contracting out process is unduly burdensome, creating fertile ground for litigation.
- The interim rent regime is complex.
- Disregarding the tenant's occupation when determining the "market rent" under the renewal lease arguably creates a windfall for sitting tenants by the arbitrary inclusion of a fitting-out rent-free period - although tenants would argue that the landlord is in no worse position that an open market letting situation.
- The strict statutory notice provisions create registration gap problems and traps for the unwary, and facilitate a gaming of the system.
- The Act could provide flexibility for developments in the law such as minimum energy efficiency standards, where existing lease terms often do not help landlords fulfil their statutory obligations.

After the Law Commission has analysed the responses to this consultation, it expects to publish a second consultation paper, so the question of reform is unlikely to be answered in the short-term.

RESIDENTIAL REFORM

The Renters' Rights Bill is expected to become law in 2025. The proposed reforms aim to enable the supply of good-quality rental housing and improve the rental market for tenants through measures such as the abolition of "no fault" evictions and recasting the grounds of possession available to landlords.

One unintended consequence of the reforms may be that landlords, particularly individuals or smaller lettings companies, become more selective in their tenant choices, increase rents to offset potential risks or even decide to exit the market altogether.

The reforms could also affect the availability and affordability of student accommodation. PBSA landlords (who are expected to be exempt from the changes proposed by the Bill) may benefit if the

supply of privately rented housing decreases. This could limit the accommodation available to students and lead to higher rents if demand outstrips supply.

In the BTR sector, landlords will only be able to increase the rent once a year to market rent. If tenants challenge above-market increases via the Tribunal, any increase will only take effect once the new rent is determined. This means tenants may be incentivised to challenge new rents to delay increases, and may limit the ability of BTR operators to adjust rents in response to market changes. BTR developers may also face higher operational costs due to new tenant protections and standards on maintenance and repair obligations.

As with all new legislation, this will be a ripe area for disputes. Whether the already stretched County Court system has the capacity to deal with the litigation remains to be seen.

RELATED PRACTICE AREAS

- Real Estate Disputes
- Litigation & Dispute Resolution
- Real Estate

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