

**CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE**

**Minutes of a meeting held on 28 January 2015 at Hogan Lovells, Atlantic House, 50 Holborn Viaduct, London EC1A 2FG**

<b>In attendance</b>	<b>Jackie Newstead (Chair)</b> <b>Warren Gordon (Secretary)</b> <b>Nick Brent</b> <b>Jeremy Brooks</b> <b>Jayne Elkins</b> <b>David Hawkins</b> <b>Laurie Heller</b> <b>Pranai Karia</b> <b>Daniel McKimm</b> <b>John Nevin</b> <b>Peter Taylor</b> <b>Nicholas Vergette</b> <b>Ian Waring</b> <b>Mathew Ditchburn (external visitor for item 2 on Protocol for applying for consents to assign/sublet)</b>
<b>Apologies</b>	<b>James Barnes</b> <b>William Boss</b> <b>Jamie Chapman</b> <b>James Crookes</b> <b>Mike Edwards</b> <b>Martin Elliott</b> <b>Alison Gowman</b> <b>Alison Hardy</b> <b>Charles Horsfield</b> <b>Nick Jones</b> <b>Anthony Judge</b> <b>Emma Kendall</b> <b>Jon Pike</b>

**1. WELCOME**

The Committee welcomed Mathew Ditchburn of Hogan Lovells, who will present on the item on the Protocol for applying for consents to assign/sublet.

## 2. **MINUTES**

The minutes of the November 2014 Committee meeting were approved and are on the Land Law committee webpage.

## 3. **PROTOCOL FOR APPLYING FOR CONSENTS TO ASSIGN/SUB-LET** [HTTP://WWW.PROPERTYPROTOCOLS.CO.UK/](http://www.propertyprotocols.co.uk/)

Mathew Ditchburn of Hogan Lovells helpfully explained the background to and detail of the Protocol for applying for consents to assign/sub-let. There was a lengthy discussion about the Protocol and Committee members had a number of suggestions for future iterations of the Protocol.

Comments included – having more detail on what is a reasonable level of undertaking; what is a legitimate disbursement? internal management costs should be mentioned; there is no reference to mortgagees, whose consent may be required; there should be a linkage to applications for consent for alterations and/or change of use; there should be more commentary on the VAT implications for the tenant and how the tenant can recover VAT on the landlord's costs; there was no mention of the need for overseas counsel's opinion for overseas entities.

The authors hoped that the Protocol would make the process for applying for consent to assign or sub-let more efficient. The Protocol emphasised the use of Alternative Dispute Resolution as a first port of call. The Protocol is intended to provide guidelines, not to be enshrined in law.

The Protocol is a good checklist and aide memoire, although it will not necessarily fit every situation, which may lead to reservations about referring to it in leases (a desire of the authors of the Protocol).

The Committee endorsed the Protocol as a reflection of the current legal position and good practice in relation to applications for consents to assign/sub-let. Going forward, there should be monitoring of whether practice reflects the Protocol.

The Protocol has been endorsed by the British Property Federation and the authors are likely to approach the British Retail Consortium. The Protocol is also being considered by the Property Litigation Association.

There will in the future be an equivalent Protocol for applying for consents for alterations.

## 4. **NEW DRAFT ELECTRONIC COMMUNICATIONS CODE – LATEST POSITION. UPDATE ON WAYLEAVE PROJECT.**

The Committee noted the draft new Code that had been introduced into and then quickly pulled from the Infrastructure Bill. The Committee will keep a close eye on whether the Code is re-introduced and, if so, with what changes. The Committee's wayleave project will be deferred until there is further clarity with the status and content of the new Code.

**5. DEVELOPMENT MANAGEMENT AND ASSET/PROPERTY MANAGEMENT AGREEMENTS – A SUB-GROUP PROJECT?**

Having considered the possibility of projects on development management agreements, asset management agreements or project management agreements, the Committee decided to establish a sub-group to consider producing a standard development management agreement. The nature of such agreement will be one of the issues for the relevant sub-group to consider. Volunteers are requested for this project.

**6. MORTGAGEE PROTECTION PROVISIONS**

Following a discussion on the necessity or otherwise for mortgagee protection provisions in long leases, the consensus at the meeting was that the absence of mortgagee protection provisions would not in principle impact on the fundability of the lease. This was in part a reflection of the lack of mortgagee protection provisions in many leases in the market. Forfeiture based on insolvency is of course a much more critical problem. Such mortgagee protection provisions are, generally, acceptable to landlords.

**7. NEW LAW SOCIETY PRACTICE NOTE ON CONTAMINATED LAND**  
[HTTP://WWW.LAWSOCIETY.ORG.UK/SUPPORT-SERVICES/ADVICE/PRACTICE-NOTES/CONTAMINATED-LAND/](http://www.lawsociety.org.uk/support-services/advice/practice-notes/contaminated-land/)

Peter Taylor highlighted to the Committee the Law Society's comparatively new Practice note on Contaminated land and, in particular, its statement that, if it appears that contamination is an issue, full searches should be made of any public registers regarding not only the site but also adjacent land.

**8. CHANGE IN LAND REGISTRY APPROACH TO LEASE PLANS.**

The Committee noted with some concern and surprise the change in the Land Registry's treatment of the title plan for leasehold titles. For leases of part of a building, the plan will edge the entire building in red and the official copies will state that the lease falls within the edging (or words to that effect). While the Committee understood that the lease plan itself should be the main plan relied on and that it is difficult to achieve the same level of accuracy on the title plan, the Committee was surprised that the Land Registry is prepared to edge the particular demises in blue on the plan for the landlord's reversionary title. If it can be done for the landlord's title plan, then why not for the tenant's title plan?

**9. RECENT CASE ON GUARANTORS AND THE LANDLORD AND TENANT (COVENANTS) ACT 1995**

There was a brief discussion of the guarantor/Landlord and Tenant (Covenants) Act 1995 case, *UK Leasing v Zinc Cobham* [16 January 2015]. The decision appears to be one confined to its own particular facts, although the court's decision to approve the validity of a fresh guarantee for a tenant's liability seems to run counter to the *Good Harvest* and *KS Victoria* decisions that, on an assignment, an outgoing tenant's guarantor cannot guarantee the assignee. It is a little reassuring to note that Morgan J obiter cast doubt (as

“somewhat tentative”) over KS Victoria’s obiter comments that a tenant assigning the lease to its guarantor is, apparently, invalid.

10. **CPD - 1.5 HOURS NB: CPD REFERENCE IS CRI/CLLS.**
11. **2015 COMMITTEE MEETING DATES - 25 MARCH, 20 MAY, 8 JULY, 30 SEPTEMBER AND 25 NOVEMBER. ALL AT 12.30PM AT HOGAN LOVELLS LLP, ATLANTIC HOUSE, HOLBORN VIADUCT, LONDON EC1A 2FG.**