Forsters

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First quarterly edition

Central London Estates

Newsletter

Welcome to the inaugural edition of our Central London Estates Quarterly Newsletter

We understand the constant influx of legal updates can be overwhelming, making it challenging to pinpoint what truly matters to you. That's why we've crafted this bespoke newsletter, tailored specifically for our estates' clients.

Here, you'll find only the most pertinent legal insights and updates, carefully curated to ensure you stay informed without the hassle of sifting through irrelevant content. Our goal is to provide you with the clarity and focus you need to navigate the ever-evolving legal landscape.

We look forward to bringing you the essential legal knowledge you need, every quarter.

We'd love to hear your feedback.

The Central London Estates team

Peter Selwyn
Partner

Natasha Rees
Senior Partner

Alexandra Ringrose
Senior Associate

Charlotte Ross
Senior Knowledge Development lawyer

City of London – new Sustainability supplementary planning document to be adopted

Alice Gordon-Finlayson
Senior Associate, Planning

This month the City of London has voted to adopt a new supplementary planning document (SPD) to accompany and support the City's sustainability planning policies and 2040 Net Zero target.

The new Sustainability SPD will introduce NABERS UK five-star target for new office developments and four-star target for retrofitted office development, as well as introducing embodied carbon benchmarking to align with the Greater London Authority's embodied carbon benchmarks.

The SPD covers five key areas:

1. **Retrofit and reuse** – setting out the City's aspiration to achieve sustainable development through the retrofit and reuse of the existing building first. Policy OF1 (Office Development) of the City Plan 2040 (currently going through the examination process to be adopted) prioritises the retrofitting and reuse of existing buildings over demolition;

2. **Greenhouse gas emissions and energy use** – sets out guidance on how to reduce and mitigate the carbon emissions results for the construction and use of a building over its entire life, including its demolition and disposal, including reducing operational emissions and energy use;

3. **Circular economy** – encouraging a move from a linear to more circular construction model where a long-life, loose-fit and low-energy approach is taken to all new and existing buildings and materials;

4. **Climate resilience** – provides guidance on areas such as flood risk, water resource management, building and urban overheating and infrastructure resilience; and

5. **Biodiversity** – provides guidance on urban greening and the City's aspirations to exceed the 10% statutory Biodiversity Net Gain requirements.

The City of London Corporation has said that the new SPD will offer a degree of flexibility if the upfront carbon benchmarks are missed, expecting in this case for the development to go "*above and beyond in their delivery of wider environmental sustainability measures.*" This could, for example, include the establishment or extension of local energy networks or improving sustainable travel options.

More generally, the Government is also reviewing the position on demolition vs. retrofit, particularly in light of the recent M&S case in this area, which was frustrated due to the current lack of clear policy and guidance in this area. The outcome of its recent consultation is awaited.

While we wait to see if the Government will be making any changes to strategic policy in this area, the guidance and direction provided by this new SPD looks to be strongly welcomed by the development sector and it is anticipated that other London Boroughs will soon be following suit, if not already.

For Central London Estates, redevelopment is often already more nuanced, with the constraints of listed buildings and conservation area protections meaning demolition is often not desirable or appropriate. Retrofit and reuse in the context of historical estates can be much more expensive and challenging. Improved flexibility to contribute to wider environmental sustainability measures in the vicinity of a development, where the original building is limited from a sustainability perspective, will no doubt therefore be welcomed. Saying that, tenants' ESG expectations and legislative requirements are growing, meaning capital investment in these areas is becoming increasingly important and unavoidable. New guidance in the environmental sustainability space can only be a good thing to help demystify some of the more technical sustainability areas (such as whole life carbon assessments) and provide clearer redevelopment parameters, particularly for Estates looking to redevelop and future-proof their assets.

Real Estate Disputes/Enfranchisement

An update on the human rights challenges made against LAFRA...

The Leasehold and Freehold Reform Act ("LAFRA"), passed on 24 May 2024, will reform enfranchisement and many areas of landlord and tenant law.

LAFRA aims to make it easier and cheaper for leaseholders to acquire the freehold of their homes, but its provisions have generated significant concern amongst many Estate owners. The following are, of course, amongst the most controversial:

1. The 'abolition' of marriage value

2. The cap on ground rents at 0.1% of freehold vacant possession value

3. The abolition of the landlord's right to recover costs

A number of judicial review claims have been made since LAFRA was brought into force, arguing that many of its provisions are contrary to Article 1 of Protocol 1 ("A1P1") to the European Convention on Human Rights.

A hearing took place at the Royal Courts of Justice on **30 October 2024** to decide whether these judicial review claims should be stayed until the Government made secondary legislation bringing the majority of LAFRA's provisions into force. The Court decided that all the claims should proceed.

A permission hearing, which is the next stage of the judicial review process, took place on **29 and 30 January 2025**. This was a preliminary hearing for the Court to decide whether the case was arguable and should be allowed to proceed to a full hearing. We understand that the arguments, once again, focused on whether it was possible to bring a judicial review claim challenging legislation in circumstances where not all of the provisions have been brought into force. Mr Justice Chamberlain granted permission for the claims to proceed to a full hearing.

It is important to note that the Court has not yet heard full arguments in relation to the challenge, and that the permission to proceed cannot be viewed as a predictor of the result. The substantive hearing will be held in **July 2025**, at which the High Court will decide whether these provisions should be declared incompatible with A1P1.

The proposed timetable for implementation of LAFRA (issued by Matthew Pennycook in November 2024) is set out beside. It will be interesting to see how the judicial review proceedings will impact this. Will the Government slow implementation down to see the outcome of the judicial review, or will they push ahead in the hope of success?

Caroline Wild
Counsel
Real Estate Disputes

James Carpenter
Senior Associate
Real Estate Disputes

Event	Date
LAFRA – Enfranchisement/Right to Manage	
Removal of the two-year qualification rule for freehold acquisitions and lease extensions.	January 2025
Right to Manage Reforms in LAFRA (a premises will now qualify for RTM unless the non-residential internal floor area exceeds 50% (formerly 25%) and leaseholders will no longer be liable to pay the landlord's reasonable costs)	3 March 2025
Consultation on capitalisation rate and deferment rate	Summer 2025
Primary legislation (amending errors in LAFRA) and secondary legislation to commence LAFRA (including rates)	After summer 2025 consultation (but no commitment to a date)
LAFRA – Residential Property	
Consultation on detail of LAFRA's ban on buildings insurance commissions	"Very shortly"
Consultation on estate charges	Summer 2025
LAFRA's provisions on service charges and landlord's costs of service charge proceedings	2025
Consultation on reforms to section 20 'major works' process	No date
Consultation on regulation of managing agents	2025
Consultation on private estate management arrangements	2025
Commonhold	
White paper on commonhold	Early 2025
Consultation on banning leasehold flats	2025
Draft Leasehold and Commonhold Reform Bill published (including banning ground rent and forfeiture)	Second half of 2025

Coming Up

26.02.2025 – LAFRA and Renters' Reform seminar

Join us for our seminar on 26 February where we discuss the future of real estate in light of LAFRA and Renter's Reform.

Get in touch if you would like to hear more.

Residential Property

Freddie Hunter
Senior Associate
Residential Property

Landlord's Certificate - Don't miss a trigger!

The Building Safety Act 2022 (BSA) is, of course, an important Act that Central London Estates need to comply with – but the trigger for certificates is often missed. The Act requires a landlord of a relevant building to provide the tenant with a landlord's certificate in a number of circumstances including when a demand is made for payment of a remediation service charge, within 4 weeks of being notified that a tenant is selling their property (it is assumed that this includes the managing agent being informed) or within 4 weeks of a tenant requesting the certificate.

If the landlord fails to provide a certificate in any of these circumstances there is a presumption that the landlord will be unable to recover any costs from the tenant through the service charge in connection with the relevant defect and is unable to subsequently serve a landlord's certificate to cover future costs.

One of the problems with the current wording in the legislation is that a landlord is required to provide a certificate on **each** of the above circumstances. This implies that the landlord can provide a landlord's certificate on a trigger event even if they have previously failed to comply with a separate trigger event. For example, if the landlord fails to provide a landlord's certificate within 4 weeks of a tenant's request the legislation suggests a certificate can still be provided if the same tenant subsequently informs the landlord that the property is being sold.

The government's position is that the courts will determine the legislation and, although the courts have not yet opined on the matter, it seems sensible to presume that the courts will not look favourably on landlord's who have failed to provide a certificate on the first trigger event and subsequently try to recover costs by serving a certificate when a separate trigger event arises.

For this reason, it's important that landlords adopt a pro-active approach and provide a landlord's certificate when they become aware of any event that requires a certificate to be provided.

Tax, Trusts and Estates

Trusts and the Budget

Now that the dust has settled after Rachel Reeves' October Budget, Central London Estates will be looking to review their ownership structures. Many Central London Estates hold their 'core' assets in trusts to ensure continuity of ownership and to protect them from the risk of errant beneficiaries and claims against them.

Currently, interests in trading businesses owned for two years or more qualify for 100% Business Property Relief (BPR) from inheritance tax (IHT). Agricultural assets which meet certain criteria can qualify for Agricultural Property Relief (APR). The availability of these reliefs means that there is no 20% IHT charge on transfers into trust (entry charges) or 6% charges on the value of the trust fund at each ten-year anniversary (ten-year charges).

In her Budget, Rachel Reeves announced that from 6 April 2026, the availability of BPR and APR will be restricted. BPR and APR at 100% for personally held assets will be limited to £1 million, with the balance subject to IHT at 20%. It is not yet clear precisely how these rules will apply to trusts; a Government consultation will open in Spring this year. However, we expect that there will be a 3% ten-year charge on trading and agricultural assets above each trust's available £1 million limit.

An increased tax bill for continuing to hold assets in trust will have a significant impact on Central London Estates' profitability and cashflow. It is common practice for trustees of discretionary trusts to set aside 1/10th of the ten-year charge every year. If the ten-year charge rate for trading and agricultural assets is 3%, this means 0.3% of their value will need to be set aside out of net income each year.

What will this mean for Central London Estates which are taxed under the ten-year charge regime? These changes will undoubtedly put pressure on trustees to divest themselves of low-yielding assets and re-invest in alternative asset classes, particularly if they are already servicing debt. Those Central London Estates which diversified away from London into farmland might be reversing that decision because of the loss of IHT reliefs and the difficulty (impossibility?) of turning a profit. Central London Estates facing substantial repair and refurbishment bills for residential property may decide to sell off 'non-core' parts of the Estate to raise capital. A more radical solution, perhaps, is to transfer assets out of trust into the personal ownership of one or more beneficiaries to exit the ten-year charge regime. This comes with an asset protection risk; the beneficiary could sell the asset and spend the proceeds and/or lose it on a divorce.

There is no one-size-fits-all solution; every Central London Estate has its own priorities and challenges. For now, no significant decisions should be taken until the Government's consultation has concluded and the draft legislation is published. Watch this space.

Laura Neal
Senior Associate
Private Client