

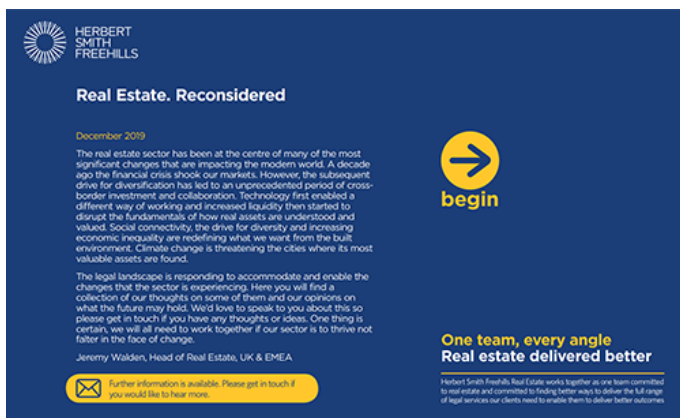
REAL ESTATE. RECONSIDERED

11 December 2019 | London
Legal Briefings

The real estate sector has been at the centre of many of the most significant changes that are impacting the modern world. A decade ago the financial crisis shook our markets. However, the subsequent drive for diversification has led to an unprecedented period of cross-border investment and collaboration. Technology first enabled a different way of working and increased liquidity then started to disrupt the fundamentals of how real assets are understood and valued. Social connectivity, the drive for diversity and increasing economic inequality are redefining what we want from the built environment. Climate change is threatening the cities where its most valuable assets are found.

The legal landscape is responding to accommodate and enable the changes that the sector is experiencing. This is a collection of our thoughts on some of them and our opinions on what the future may hold. We'd love to speak to you about this so please get in touch if you have any thoughts or ideas.

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Real Estate. Reconsidered

December 2019

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Jeremy Walden, Head of Real Estate, UK & EMEA

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Real estate delivered better

Herbert Smith Freehills Real Estate works together as one team committed to real estate and committed to finding better ways to deliver the full range of legal services our clients need to enable them to deliver better outcomes.

Further information is available. Please get in touch if you would like to hear more.

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INVEST LIVE BUILD PLAY WORK

SMART GREEN

Data Planning Offices Overseas investors
 Cities Construction Retail Climate change
 Tax Insolvency Landlord and tenants Propotech
 Design Housing Development Mixed use

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INVEST

The commercial real estate market in the UK has, in the recent past, been regarded as a market with strength and stability, with London maintaining its reputation as a popular destination for cross-border investment. As we edge closer to the post-Brexit era with little visibility as to what that era is going to look like, it remains to be seen whether the UK market can retain this position in the short to mid-term future. Brexit is one of a number of challenges that the market faces. An increasing scrutiny around the ownership of property in the UK, the growing focus on the social responsibility of investors to improve the sustainability of their assets, together with a greater degree of control over how data is used and shared will doubtless have an impact on the market, and the parties that choose to invest in it.

However, a negative for some represents a positive for others, and the decline in the traditional retail market (as detailed in **Play** below) means opportunities for investors in the distribution and logistics market, already an area that investors have shown an interest in. Similarly, whilst investors from Europe might feel the impact of Brexit, investors from the Asian and North American markets have shown a strong interest in investing in high value assets in the UK, particularly in London, over the past year, which perhaps indicates that despite the uncertainties that the UK faces, its reputation as a safe place in which to invest in property, with a strong chance of making a good return on one's investment, remains intact.

The following materials provide a flavour of some of the factors that will influence investors over the coming year.

[**Investing in the UK - Legal aspects for overseas investors**](#)

[**Taxation of UK real estate**](#)

[**Discussing the registration of overseas entities**](#)

[**Last mile logistics**](#)

[**HSF Impact Investment team**](#)

[**HSF European private equity review, summer 2019**](#)

[**Finance Bill 2018 - Impact on REITs**](#)

[**In brief - PropTech**](#)

[**Co-living in the UK - Market and Legal Issues**](#)

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Brexit - the real estate section of our Brexit legal guide can be found [here](#). Our firmwide [Brexit hub](#) is very comprehensive and regularly updated and contains useful information answering many of the key questions of concern.

LIVE

The increased provision of housing in the UK, and especially affordable housing, has been a political priority for a number of years now.

More recently the housing crisis has become a dominant theme for commercial developers and investors - many of whom are newcomers to the residential sector. Interest in "build-to-rent" or multifamily housing has been growing rapidly with investment volumes growing exponentially over recent years. Furthermore, urban regeneration has seen the opportunity presented by mixed-use schemes, with a profitable residential component. In circumstances where the retail sector, and particularly the high street, is under pressure, this has been viewed as an attractive alternative.

In this section we consider potential reforms to the residential leasehold regime which are widely anticipated regardless of the future political environment, as well as the potential for Assured Shorthold tenants to have new, significant, rights of security of tenure. We consider the role that national planning policy has to play in tackling the housing crisis. We also take a look at the commercial and legal issues facing co-living in the UK. Finally we seek to demystify some of the complexities of residential tenants' rights of first refusal and enfranchisement - which can create significant challenges for developers and investors when dealing with residential and mixed use properties.

[A tenant's right of first refusal on disposals by a landlord](#)

[Potential reform of the residential leasehold system](#)

[Labour Party land use and planning proposals, October 2019](#)

[Residential leasehold reform - The only thing Parliament can agree on?](#)

[Planning for housing: Tackling the housing crisis](#)

[Co-living in the UK: Market and legal issues](#)

[Changes to section 21 notices for ASTs](#)

[Statutory rights of leaseholders enfranchisement and lease extension](#)

[Types of residential tenancies](#)

[HSF global legal briefing - Cities of the future](#)

[Beauty is more than skin deep - The interim report of the Building Better, Building Beautiful Commission](#)

[Changes to permitted development rights affecting high streets and housing](#)

[Minimum energy efficiency standards - Where are we now?](#)

BUILD

Our construction sector reaches the four corners of our society: providing the homes we live in, the hospitals we are treated in, the schools, colleges and universities we are educated in, the offices and factories we work in and the infrastructure that enables commerce and industry to thrive. It also provides employment for large numbers of both skilled and unskilled workers and is fundamental to our economy, involving building, manufacturing and professional services.

The last few years have been less than kind to the sector, which has suffered a number of body blows. The insolvency of the major contractor, Carillion, at the beginning of 2018 was as devastating for the sector as it was for the 18,000 people employed by the company. Six months before Carillion went bust, in June 2017, there was the tragedy of the Grenfell Tower disaster, with the loss of 72 lives, which threw the sector's entire focus onto the inadequacies of the system of regulating buildings in the UK. Against this background, the sector continues to grapple with long standing afflictions, such as VAT fraud and poor payment practices. Add to this the construction skills shortage, a long standing problem brought to prominence by Brexit which may be exacerbated by the post Brexit immigration landscape.

The good news?

The government and the construction sector have responded to the emergence of the new digital age. The government's 2025 vision, includes investing in smart construction and digital design, promoting sustainability through green construction and low carbon emissions and transforming what we build, what we build with and how we build. The government and the construction sector has adopted BIM (Building Information Modelling) and BIM level 2 (which involves collaborative working) is a principal objective of The Government's Construction Strategy 2016-2020.

Finally, the government and the sector have also endorsed modern methods of construction, particularly modular building. The ministries of justice and defence, and the departments for transport, education, health and social care declared an intention to use modern methods on their projects by 2019, where it represented value for money; and the construction industry, particularly in the area of residential development is undertaking works in factories before transporting them to site for assembly.

[Collaborative contracting for major infrastructure projects](#)

[Site investigations and the importance of assignments](#)

[HSF development checklist](#)

[Development obligations: Squaring triangles?](#)

[Better late than never - Reaction to triple point](#)

[Bleak Choses, trusting in equity](#)

[Deducting delay liquidated damages](#)

[Managing contractor insolvency](#)

[Construction arbitration podcast series](#)

[Mind your language](#)

[Planning for the future of energy storage](#)

[Changes to permitted development rights affecting high streets and housing](#)

[Electric vehicle charging infrastructure](#)

[HSF global legal briefing - Cities of the future](#)

[In brief - PropTech](#)

[The Compulsory Purchase Regime in England podcast series](#)

[Changes to CIL Regulations - In force 1 September 2019](#)

[Risky business: Building on a flood plain](#)

[Plastics](#)

[Beauty is more than skin deep - The interim report of the Building Better, Building Beautiful Commission](#)

PLAY

2019, so far, has been a year of evolution for the retail sector. Years of expansion, high rents (particularly in the case of long leases with upwards only rent review provisions) and increases in the cost of supplies and employment have doubtless had a negative impact on many retailers.

They are also still feeling the effects of the 2017 business rates revaluation, the increase in online shopping, a reduction in consumer demand and spending generally, and the corresponding drop in footfall around the country. Given this culture, retailers are increasingly looking to rationalise and reshape their portfolios, using formal insolvency processes and informal restructuring. For a second year, the headlines continue to focus on the record number of Company Voluntary Arrangements, with famous high street names in restaurants, leisure and retail making many store closures. There is no doubt that the retail landscape will continue to change in 2020, as landlords face the challenge of higher numbers of empty units and the possibility of tenants struggling to pay rents.

Given these very real difficulties, landlords are seeing the benefits of offering varying concessions and flexibility in new leases to attract new tenants and increase footfall for the benefit of existing occupiers. Retailers are aiming to combine their high street and shopping centre physical footprint with more of a fulfilling leisure experience for customers, where goods and services are showcased, rather than sold, in order to support their growing online offering. Shopping centre owners are well placed to support this, with the mix of retail, restaurant and leisure that they can offer, combined with the ability to use technology and gather data to optimise and tailor the use of space. They are also conscious of the need to draw consumers in with an experience that cannot be obtained simply online or at home. Landlords and retailers will achieve the most success if they work together in this rapidly changing market.

Landlords are also looking to repurpose their retail offering, by considering incorporating residential elements into their schemes, a strategy which is supported by the government's amendments to the permitted development rights to allow for a change of use from retail to residential use without the need for planning permission. Furthermore, the interplay between retail, leisure and logistics is becoming more pronounced as technology advances and the markets evolve.

The following materials provide some further detail on the factors that will influence investors and developers over the coming year.

[Current trends in retail lettings](#)

[CVAs: How landlords can protect themselves from retail insolvency](#)

[Last mile logistics](#)

[Changes to permitted development rights affecting high streets and housing](#)

[Landlords' remedies for tenant/guarantor insolvency \(a short case study\)](#)

[Beauty is more than skin deep - the interim report of the Building Better, Building Beautiful Commission](#)

[Anti-competitive land restrictions](#)

[Space as a service - the evolution of leases and management agreements](#)

[HSF global legal briefing - Cities of the future](#)

[Co-living in the UK - Market and legal issues](#)

[Insolvency of a corporate tenant - availability of landlord's remedies](#)

[RICS professional statement: Service charges in commercial property](#)

[The code for leasing business premises \(2007 and \(draft\) 2019 editions\)](#)

[Disruption in the leasing market - the move to flex...](#)

[Minimum energy efficiency standards - Where are we now?](#)

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WORK

"Disruption" seems to be the buzz word for the UK in 2019 and whether that means change for the good or bad for many sectors/markets is a matter for debate (although the answer is almost certainly "both"!).

The UK's occupier/office market (the world of "Work") is no exception to this trend and "disruption" is something to be both wary of but also to look towards as something presenting new opportunities.

2019 and beyond continues to see the increase of “flex” in the occupier/office market. Driven by occupiers (now most certainly “customers”), but responded to by those seeking a competitive edge, the market continues to develop at a pace. A key development is the increase in contractual structures available to occupiers to take on space. The range of products is dizzying with work/live, co-working, membership, serviced offices, short term leases and traditional FRI leases. Those options are complimented by more imaginative leasing structures which build in flex to office portfolios – call options, rights of first refusal (ROFRs), rights of first offer (ROFOs) and expansion and contraction options pre-delivery. All of these are becoming increasingly common in the leasing market and all are a response to customer demand. Some of these developments are not without risk and we are seeing some new and not so new providers of flexible space struggle financially. That of itself presents a disruption risk to the market and owners and lenders will need to consider and analyse their responses to any bumps along the road.

Even in the more sedate waters of property management and leasing changes are afoot. 2019 saw the introduction of the new RICS Professional Statement on Service Charges for Commercial Property and The Code for Leasing Business Premises in England and Wales 2007 (the Lease Code) saw a new draft circulated for consultation before implementation.

And those are just developments within the “Work” sector... a December 2019 General Election and Brexit remain external threats and opportunities for the sector. The following materials provide some further detail on some of these issues (and more) and we hope you find them interesting and informative.

[Rights of first offer - ROFOs - The devil is in the details](#)

[Disruption in the leasing market - The move to flex...](#)

[RICS professional statement: Service charges in commercial property](#)

[Insolvency of a corporate tenant - Availability of landlord's remedies](#)

[The Code for Leasing Business Premises \(2007 and \(draft\) 2019 Editions\)](#)

[Development obligations: Squaring triangles?](#)

[Anti-competitive land restrictions](#)

[The new world of work](#)

[Landlords' remedies for tenant/guarantor insolvency - A short case study](#)

[HSF global legal briefing - Cities of the future](#)

[Changes to permitted development rights affecting high streets and housing](#)

[Discussing the registration of overseas entities](#)

[Last mile logistics](#)

[Minimum energy efficiency standards - Where are we now?](#)

[Space as a service - The evolution of leases and management agreements](#)

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SMART

Real estate has traditionally been considered a sector slow to embrace innovation and technology. There are signs that this is changing and that opportunities may abound in the years ahead for those willing to engage in PropTech and the exciting solutions it offers.

There has already been much focus on intelligent transport, smart buildings, artificial intelligence, modular construction and energy saving and the transformative effect developments in these areas could have.

Technology based platforms facilitating the operation and management of real estate assets are playing a role, as are platforms facilitating the design and construction of buildings and infrastructure. There is also significant activity in response to market developments in the co-working and flexible workspace arena.

Efficiency and foresight in the collection and use of data, of which there is little shortage in the real estate world, also seem destined to bring rewards to those who take the opportunity to invest in the future. Disruption often leads to change and opportunity and disruptive technologies will doubtless change the way the entire real estate transaction is managed as the industry embraces new ideas. Real estate is a sector ripe for transformation.

[Smart Cities and cyber security](#)

[Smart Legal Contracts in real estate](#)

[Smart Legal Contracts: developing the next level of contracting](#)

[HSF Global Legal Briefing - Data Assets: protecting and driving value in a digital age](#)

[Facial recognition in real estate](#)

[Autonomous Vehicles in real estate](#)

[HSF Global Legal Briefing - Connected and Autonomous Vehicles: navigating the future](#)

[HSF Global Legal Briefing - Cities of the Future](#)

[In Brief - PropTech](#)

[Disruption in the leasing market - the move to flex...](#)

[The new world of work](#)

[Last mile logistics](#)

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GREEN

Environmental issues have risen to the top of the public and corporate world's consciousness and are having a clear and unavoidable impact on real estate and planning. This is an ever changing and expanding field with many facets. ESG - Environmental and Social Governance (all encompassing, integrated and often value creating) has ousted CSR - corporate social responsibility - (a philanthropic and detachable cost) and investors and lenders are keen to engage with their customers' management of sustainability risks and opportunities.

The Climate Emergency is clearly of paramount concern, driving wide-ranging initiatives to reduce carbon emissions. The move away from carbon intensive modes of transport will impact the built environment through changing national and local infrastructure requirements and the re-focusing of investment. Airport development and growth, particularly in the south east, continues to be the subject of debate. Demand for electric vehicles brings the need for charging infrastructure of adequate quality and scale in residential and non-residential settings. The increasingly tangible effects of climate change, such as flooding, require developers and landowners to consider how best to mitigate against the risks.

However, climate change is not the only environmental issue of concern. Air quality remains high on the agenda. Reducing the use of plastics is a challenge for all industries, including construction. Maintaining, and if possible improving, biodiversity through mandatory net gain requirements has been the subject of recent policy changes. The long awaited Environment Bill, recently introduced to Parliament but abandoned due to the General Election, attempted to tackle many of these issues and more. Whilst this Bill may not have made it past its Second Reading, we can expect it to return in the next Parliament in one form or another as climate and environmental concerns remain at the forefront of local, national and global awareness.

[**Air Quality**](#)

[**Mandatory biodiversity net gain**](#)

[**Risky business: building on a flood plain**](#)

[**Electric Vehicle charging infrastructure**](#)

[**Restricting aviation and airport growth: the latest advice from the Committee for Climate Change**](#)

[**Impact of net-zero by 2050 on aviation and airport development**](#)

[**HSF Global Guide - Climate Change: succeed in a lower-carbon future**](#)

[**HSF European private equity review, summer 2019**](#)

[**Planning for the future of energy storage**](#)

[**Minimum Energy Efficiency Standards - Where are we now?**](#)

[**Plastics**](#)

[The Environment Bill](#)

[Last mile logistics](#)

[HSF global legal briefing - Cities of the future](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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