Brexit

Key issues for Real Estate

9 October 2020

Background

The UK left the EU on 31 January 2020 (**exit day**). However, this profound change has so far had limited impact on UK law and regulation. Under the agreement on the UK's withdrawal from the EU (the **Withdrawal Agreement**), the UK continues in most respects to be treated as if it were still part of the EU from exit day until 31 December 2020. The Withdrawal Agreement provided a mechanism to extend this period but it has not been used. It therefore appears that the full legal consequences of Brexit will begin to be felt from 1 January 2021.

The Withdrawal Agreement does not regulate future trade between the UK and EU, or any other area of potential future EU-UK cooperation, except to a limited extent in relation to Northern Ireland. It remains unclear if a deal on future UK-EU relations will be agreed by 31 December 2020. In some areas, there is an obvious legal fall-back framework in the absence of a deal (for example, if agreement is not reached on tariff-free trade, "WTO rules" will apply); in other areas there is not. Whatever happens, those trading between the UK and EU will face significant regulatory changes (for example, in relation to customs). It also seems likely that, if the UK and EU reach a deal in the coming weeks, it may be a fairly "thin" agreement, meaning that negotiations on some aspects of the UK-EU post-Brexit relations may continue well beyond 2020.

For more detailed background, click **here**.

Brexit and real estate: commercial rather than legal

The key impact of Brexit on UK real estate has been and will continue to be commercial rather than legal. The laws underpinning property ownership, letting and conveyancing in England, Wales and Scotland are largely domestic in origin. As such they are relatively unaffected by (a) withdrawal from the EU and (b) the question of whether any future relationship agreement is agreed with the EU.

Commercially, however, the UK property market is not insulated from Europe (or indeed the rest of the world) and is susceptible to political changes both here and abroad. It does not generally respond well to uncertainty. The 2016 EU referendum result and subsequent political wrangling did have an impact on confidence within the UK property market although some sectors, notably logistics, showed great resilience and have continued to perform well. The greater political certainty brought by the 2019 Conservative election victory instilled a sense of optimism in the market for 2020, with some predicting a Brexit bounce.

Those predictions have now been challenged by the impact of the COVID-19 pandemic.

Brexit in the context of COVID-19

Concerns around the impact of Brexit on the UK property market have now largely been subsumed by the impact of COVID-19. Both are catalysts for change, accelerating trends, such as the rise in online shopping and home working, which were already present before either COVID-19 or Brexit entered the public consciousness. The key difference is that COVID-19 is a global rather than domestic issue, meaning property markets around the world now face similar challenges around the repurposing, rethinking and redesign of space. Arguably, the key challenges presented by Brexit – namely pricing, funding, occupational trends and liquidity – have all been exacerbated by COVID-19.

For more information on the impact of COVID-19 on property, please visit our COVID-19 hub by clicking here.

Pricing

The economic and political uncertainty brought about by the 2016 EU referendum result made it difficult to price UK commercial property accurately. At the same time, the fall in sterling presented currency play opportunities that some overseas investors found hard to resist. There is now a feeling that Brexit has been priced into the market, though there will remain some sensitivity to political developments, particularly surrounding the terms of any trade deal with the EU.

Funding

The problem for lenders over the last 18 months or so has been in sourcing new transactions as a direct result of the more limited activity across the real estate market and, in addition, sponsors being reluctant to refinance away from their existing funding partners due to a general desire for stability. COVID-19 has reinforced that desire for stability and we expect this to continue in the near future.

Impact on occupational trends

While there have been some exits from the UK market due to Brexit, it has not been the exodus that many had predicted. Brexit has clearly been and will continue to be one of the factors being taken into account in commercial decisions to take on, retain or dispose of premises but it has not been and will not necessarily be the main driving force. Instead demographic and behavioural trends (such as housing shortages, internet shopping and flexible working) have had a much more pronounced impact, particularly in areas such as residential, logistics and retail. COVID-19 has fuelled those trends but has also encouraged a degree of "on-shoring", especially in connection with supply chains.

Last year there was one significant Brexit legal development relating to occupiers. In *Canary Wharf Limited v. European Medicines Agency* the High Court ruled that the EMA's lease of premises in London would not be frustrated (i.e. brought to an early end) by Brexit and the EMA's consequential relocation to Amsterdam. This has provided comfort to the market that Brexit cannot easily, if at all, be used by occupiers to terminate their letting arrangements.

Liquidity

Deals are still being done though with continuing caution. That caution is now probably less attributable to Brexit and more a consequence of COVID-19.

Conclusion

Brexit will have limited legal impact on commercial property in England, Wales and Scotland. Commercially, its effects have now largely been subsumed by the impact of the global COVID-19 pandemic, placing the UK in a similar position to other markets around the world. Going forward, the focus will be on how the UK market adjusts to the new post-COVID-19 world and, as it does, identifying when and where new opportunities are likely to arise.

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