



# COVID-19– Geldards Public Sector Update

Business Emergency Advisory Team

22<sup>nd</sup> April 2020



# Executing Documents During Lockdown

Paul Hilsdon, Partner, Commercial Property

22<sup>nd</sup> April 2020

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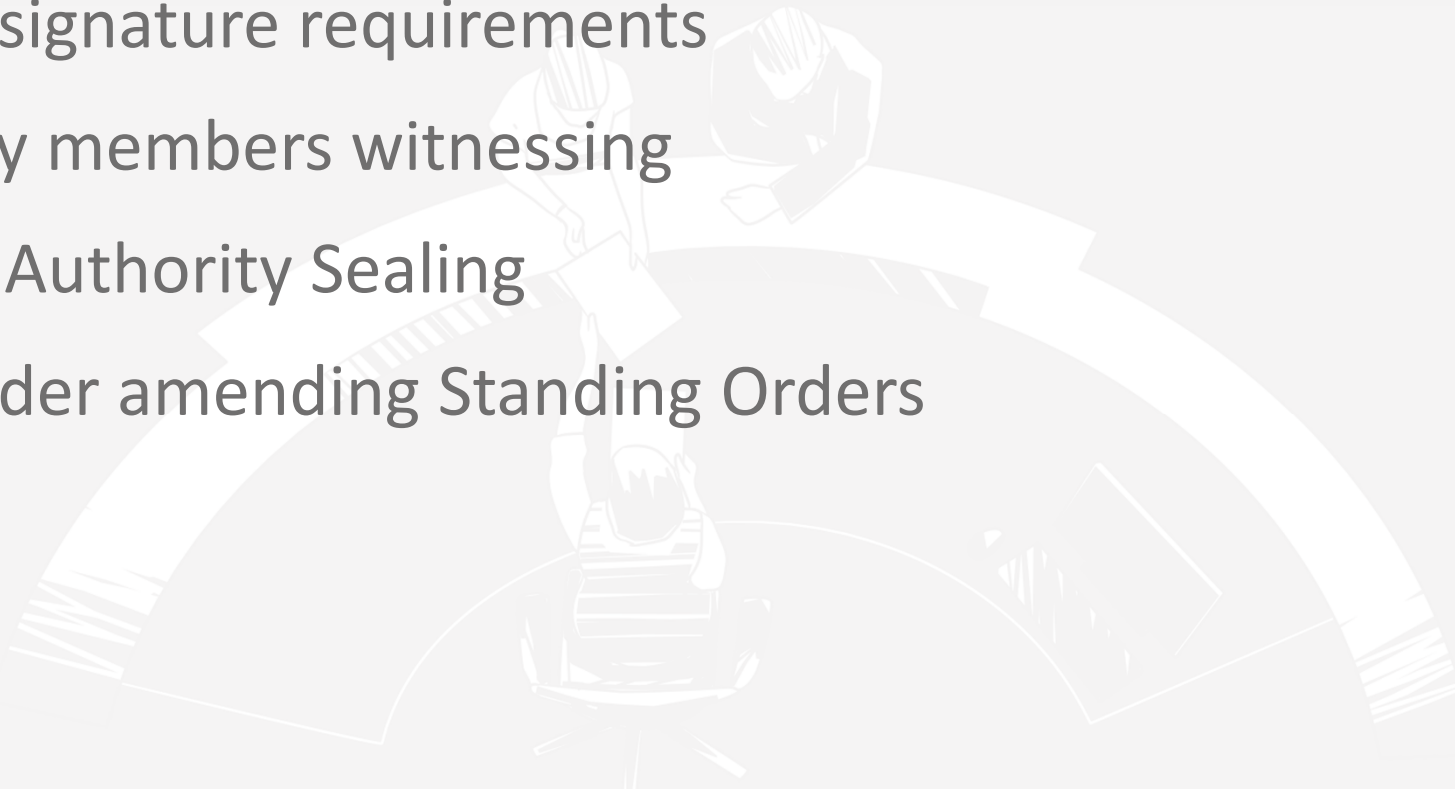
# Executing Documents During Lockdown

## Basic Rules and Proportionality

- Writing required for:
  - Contract for the sale of land
  - Guarantees/ Assents /Transfers of Shares
- Deed required for :
  - Transfer of an interest in land
  - Leases for more than 3 years /Mortgages/Powers of Attorney

# Executing Documents During Lockdown

- Valid signature requirements
- Family members witnessing
- Local Authority Sealing
- Consider amending Standing Orders



# Executing Documents During Lockdown

- Virtual Completions
- Mercury Tax Case 2008
- Cut and pasting signature page not valid
- Law Society Guidance 2009/2010
- Option 1 (may) work for property documents
- Undertakings and LR Priority Period

# Executing Documents During Lockdown

- Electronic Signatures
- Enforceability and Platforms
- Simple/Advanced/Qualified
- Not appropriate for Land Registry
- Witness must be present



# Human Rights and Equality

Tiffany Cloynes, Partner, Clare Hardy Senior Associate

22<sup>nd</sup> April 2020

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# Human Rights and Equality

- Relevant to all decision-making
- Particular focus for some service areas
- Need to consider all relevant matters even in time of emergency
- “Emergency measures may well be needed to respond to this public health emergency. But an emergency situation is not a blank check to disregard human rights obligations.” – Michelle Bachelet, UN High Commissioner for Human Rights



# Human Rights

- European Convention for the Protection of Human Rights and Fundamental Freedoms
  - Articles and protocols to protect rights and freedoms, including
  - Right to life
  - Prohibition of torture
  - Prohibition of slavery and forced labour
  - Right to liberty and security

# European Convention for the Protection of Human Rights and Fundamental Freedoms

- Right to a fair trial
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association

# Human Rights Act 1998

- Unlawful for a public authority to act in a way which is incompatible with a Convention right – Section 6
- Does not apply if:
  - Authority could not have acted differently because of requirements of primary legislation
  - Authority was acting to give effect to or enforce provisions made under primary legislation which cannot be given effect in a way which is compatible with Convention rights

# Equality Act 2010

- Public Sector Equality Duty – Section 149
- A public authority must, in the exercise of its functions, have due regard to the need to:
  - a) Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
  - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

# Practical Issues

- Consider and record the impact of decisions
- Take account of all relevant issues – Do not compartmentalise decisions
- Be proportionate and reasonable in decision-making – keep circumstances under review

# Care Act 2014

- Usual requirements
  - Duty to promote individual well-being
  - Duty to prevent needs for care and support
  - Duty to promote integration of care and support with health services
  - Duty of co-operation

# Section 18 Care Act 2014

- Duty to meet needs for care and support
- Duty to meet adult's needs for care and support if:
  - Eligibility criteria satisfied
  - Adult is ordinarily resident in authority's area or present in the area and of no settled residence
  - Accrued costs do not meet the cap on care costs
  - There is no charge for meeting the needs or specified conditions are met

# Coronavirus Act 2020

- Suspends many obligations under Care Act 2014
- Duty under section 18 to meet adult's needs for care and support applies if authority considers it is necessary to meet those needs for the purpose of avoiding a breach of the adult's Convention rights
- How does a local authority determine what is necessary?
- Would a local authority need to consider exercising a power to avoid breaching a Convention right?
  - *R (GS) v Camden London Borough Council* [2016] EWHC 1762 (Admin)



## *BP v A Council*

- Care home suspended all visits – including family members and mental capacity assessor
- BP is deaf and has Alzheimer's disease
- Suspension of visits challenged as disproportionate interference of BP's human rights
- Plan approved for effective use of remote communications and remote assessment of mental capacity

## *BP v A Council*

- “There can be no doubt that the change to BP's quality of life from 5 o'clock on Friday 20th March 2020 was seismic”
- “The spread of this insidious viral pandemic particularly, though not uniquely, threatening to the elderly with underlying comorbidity, establishes a solid foundation upon which a derogation becomes not merely justified but essential”



# Covid-19 Crisis – Impacts on Planning

Natalie Harries, Solicitor

22<sup>nd</sup> April 2020

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# Outline



Planning Applications and Appeals



Additional Permitted Development Rights



Enforcement



Keeping planning permissions alive and S106 obligations

# Planning applications

- **Chief Planner** – *“be practical, be pragmatic and let’s plan for the recovery”*
  - *“it is important that authorities continue to provide the best service possible...and prioritise decision-making”*
  - *“take an innovative approach, using all options available to you to continue your service”*
  - S.78 Coronavirus Act 2020 & Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020
  - *“where necessary agreeing extended period for making decisions”*
  - Prior approval applications – *“it remains important to prioritise these so important economic activity can continue”*

# Appeals – PINS statement 25 March 2020

- *“Until the situation changes, no site visits, hearings or inquiries will take place”*
- **Site Visits** - *“considering whether there are types of cases that can proceed without undertaking a visit”*
- **Hearings and Inquiries** - *“we are considering whether it might be feasible to utilise technological solutions to enable events to proceed whilst ensuring fairness to all parties, especially third parties, given that these are public events.”*

# Additional Permitted Development Rights

Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020



Development by or on behalf of a local authority or health service body on land owned, leased, occupied or maintained by it for the purposes of:

Preventing an emergency;

Reducing, controlling or mitigating the effects of an emergency; or

Taking other action in connection with an emergency

# Additional Permitted Development Rights

Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020

- A3 (restaurants and cafes)/A4 (drinking establishments) to provide takeaway food
- Notification requirement



# Enforcement

- Written ministerial statement – urging LPAs not to enforce against breach of delivery restrictions



# Enforcement

- Enforcement is time sensitive – four year and ten year rule (s171B TCPA 1990)
- Site visits?
- Second bite rule – Section 171B(4)(b) TCPA 1990
- Time for compliance?
- Discretion

# Planning Permissions

- Time limits for commencement of development – s91 and s92 TCPA 1990
- How to keep the permission alive?
  - Section 73 cannot be used to extend time limits (S.73(5) TCPA 1990)
  - Commence development with a “material operation”
  - Change in legislation?

# Section 106 obligations

- Developer unable to comply with s106 obligations
- Solutions?
  - Voluntary renegotiation
  - S106A TCPA 1990
- Government Guidance?

# Any questions



# Contact details



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