

Property and Buildings Avoiding Legal Pitfalls

James McCallum

Introduction

- Administrative crisis
- Financial problems
- Administrative review
- Change

Sources of Risk

- Constitution
- Agreement
- Statute law
- Common law
- Tax

Constitutional Issues

- Charitable Objects
- Powers
- Trading
- Charities Act 2011

Contracts

- General contracts
- Contracts that bind the building

General contracts

- Maintenance
- Hiring
- Employment
- Grants

Agreements that Bind the Building

- The Land Registry
- The Local Land Charges Registry

Land Register

- Mortgages and similar
- Options
- Restrictive covenants
- Easements
- Leases

Local Land Charges Register

- Section 106 agreements
- Section 103 agreements
- Agreements under GLC General Powers Act
- Planning permissions and listed building consents

Mortgages

- Commercial lending
- Capital (or revenue) funding
- Greater London Council (General Powers) Act 1974

Options and Rights of Pre-emption

- Options
- Rights of pre-emption

Restrictive Covenants

- Owners of neighbouring property
- Section 33 Local Government (Miscellaneous Provisions) Act
- Planning gain agreements

Easements

- Rights of way
- Rights of parking
- Rights of light

Your lease

- Use
- Alienation
- Alteration

Leases that you have granted

- Capable of alteration
- Landlords break rights
- Renewal
- Good relations

Statutory Requirements

- Security of tenure
- Health and safety and similar
- Planning and environmental

Security of Tenure

- Fairness for tenants
- Stay in the premises
- Sections 25 and 26 notices

Health and Safety at Work Act 1974

- Offences
- Director, manager, secretary or other similar officer
- Reasonable care

Fire Regulations

- Ensure safety
- Responsible person
- Duties on others
- Offences

Asbestos

- Record
- Assess the risk
- Future management

CDM and Building Regulations

- Co-ordinate management
- Health and welfare
- Health and safety file
- Building Regulations

Equality Act Issues

- Avoiding the feature
- Alternative method
- Auxiliary aid

Other requirements

- OFSTED
- Liquor and entertainment licensing

Planning and Environmental

- Authorised planning use
- Development
- Planning conditions
- Listed buildings

Tax

- Direct tax
- Business rates
- VAT

Direct Tax

- Income receipts exemption
- Primary purpose trading
- Service provided to the general public exemption
- Trading subsidiary

Business Rates

- Mandatory charitable rate relief
- Occupied by a charity
- Wholly or mainly for a charitable purpose
- Hereditaments

Value Added Tax

- Relevant charitable purposes and village hall
- Zero rated construction
- Underletting
- Desk space agreements

Practical Points in Risk Management

- Consideration of the building itself and who occupies it
- Your own documentary records
- People

Example

- Charity
- Accommodates other organisations
- Intends to establish a nursery

Contact Details

James McCallum, Partner

+44 (0)20 8394 6481

James.McCallum@russell-cooke.co.uk