

Home Information Packs To be or not to be... that is the question

In a follow up to our November review of Home Information Packs (HIPs) we look at the continuing controversy surrounding HIPs and the building speculation as to their future following the forthcoming general election. HIPs were introduced in August 2007 following a decade of strenuous debate which has continued throughout the first years of their implementation. Since our last issue and with a general election imminent there has been a spate of press articles and political statements both for and against HIPs and leaving property sellers uncertain in terms of planning future sales.



What are the main opinions about HIPs at present?

The Positive

There is a general perception that it is productive to have documents in order before selling a property and that this will help to speed up the process from offer to exchange of contracts. In measurable terms a recent study suggested the average sale took approximately one week less than prior to HIPs.

Supporters of HIPs maintain that an "exchange ready pack" is a realistic goal and this would further reduce the timescale.

As we tentatively begin recovery from recession there is much less of a tendency to link HIPs to the state of the property market. HIPs are beginning to be viewed as a much more neutral aspect of selling and are seen as neither helping nor hindering market forces.

The Negative

Many negative comments on HIPs stem from the wide variation in costs of preparation ranging from £180 per pack to a staggering £550.

A recent estate agency survey concluded that out of 1000 HIPs prepared, only 18 of these were actually requested by potential buyers.

There have been complaints that marketing is often delayed as a result of the rule that a property cannot be marketed at all without a HIP.

Will HIPs survive?

Amongst the most vociferous arguments against HIPs are those expressed by the Conservative Party who last year vowed to scrap them within weeks of taking office in the event they win the general election. Energy Performance Certificates would however remain as part of the selling and renting process. More recent statements from the Conservatives have maintained their position.

If HIPs are abolished is there an alternative?

It is unclear from the Conservative Party statements whether there would be any alternative form of pre sale information. The Shadow Housing Minister has stated HIPs would remain voluntary and has suggested the property industry may develop a workable alternative.

In general there is support for the provision of some "up front" information as an advantage towards a quicker sale although there is a caution that this should not hold up the marketing process. Additionally in light of the number of buyers who have ended up carrying out their own Local and Drainage searches there is also a suggestion by many that these items should not be required components of the HIP.

What have we gained from the HIPs experience?

As we move towards an age of e-conveyancing then the concept of "information management" on a property becomes more and more pertinent. Having all relevant details on a property in readiness for the transaction in a format transferrable or accessible to all interested parties such as lenders, agents, the Land Registry and solicitors will be one of the key aspects of e-conveyancing and if HIPs has achieved nothing else it has at least directed us to the idea of organisation of information.

We are currently offering a free 1 hour consultation to all social housing providers on the subject of HIPs. For further information or advice please contact Jan Waddington, a solicitor in the Social Housing team at Brabners Chaffe Street on 0151 600 3328 or jan.waddington@brabnerscs.com

To grit or not to grit that is the question?



This was a topical issue during this winter's cold snaps. It was also the subject of controversy after the Telegraph and the Mail claimed that the Institute of Occupational Health & Safety (IOSH) had issued guidance indicating that clearing snow and ice outside the boundaries of a property under your control could leave you open to legal action if someone slips and is injured in the area that you have cleared.

So.....should you or shouldn't you?

The first thing to determine is whether the area that you are considering gritting or clearing is occupied by you. Occupation is not the same as ownership. An obvious example of an area occupied by you is a pavement or pathway owned by you around your offices. It is also possible that you occupy communal pavements or pathways in schemes owned by you. Whether or not you occupy (as opposed to merely own) an area will be determined on the facts of each individual case.

Under the Occupier's Liability Act 1957, an occupier has a duty to take reasonable care to ensure that a visitor would be reasonably safe using the premises. In similar circumstances, a similar duty is owed to trespassers under the Occupier's Liability Act 1984. Therefore, landlords are under a duty to grit areas that they occupy if those areas would otherwise be unsafe.

What about areas outside your occupation?

Could you be exposing yourself to legal action by being a good neighbour or good landlord and clearing or gritting such areas?

IOSH issued a press release claiming that its guidance was misrepresented by the Telegraph and the Mail in an irresponsible way. It said:

"Deciding whether to grit beyond the boundaries of their property needs to be carefully considered... If access to the premises is covered in ice, companies may choose to grit the access to help

their staff and visitors arrive and leave safely, even though it is not their property. However, in this instance, if they fail to grit the surface properly and someone had an accident as a result then they could incur some liability"

Is there any case law?

Most case law concerning accidents caused by icy pavements involves local authorities, which have specific statutory duties that do not apply to housing associations. It shows that local authorities will not be liable if they have acted reasonably. For example, the courts will take into consideration a local authority's use of limited resources. In one case it was held that a local authority was not liable when it directed its resources to clearing roads before it gritted paths following the onset of wintery conditions.

The 1995 Court of Appeal case of Marsh v Kirwen is more relevant. In this case it was held that the occupier of a house was not liable to a visitor who slipped on ice on the pathway. This is because (1) it was not reasonable to impose a duty of care in respect of ice that had only been there for a short period of time and (2) even if there had been a duty of care it was unlikely that the defendant in this case, who is a busy mother and housewife, had been negligent by failing to grit the pathway.

What practical steps should you take?

This will depend on the individual circumstances of each case. Here are some general points:

- Pavements and pathways in areas that you occupy should be gritted
- Whether or not a particular area is occupied by you (as opposed to merely owned) is a question of fact in each case
- If you choose to grit or clear areas that you do not occupy then you should make sure that it is done properly. Otherwise, you could be liable if someone is injured after relying on the fact that the pavement or pathway appeared to have been cleared
- You should inform your tenants and other residents (perhaps in newsletters) that whilst you have gritted certain paths and pathways that you are not legally responsible for, this should not be taken as an indication that you will do so in the future
- If in doubt, check the position with your Public Liability Insurers, who are likely to deal with any claims if anyone is injured.

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A review of current Fire Safety Legislation

The Camberwell fire in July 2009 claimed the lives of six people and injured a further 16, highlighting the issue of fire safety in a shocking way.

The most significant piece of fire safety legislation is the Regulatory Reform (Fire Safety) Order 2005 which put fire safety in line with other health and safety legislation. The main change was greater emphasis on fire prevention in all non-domestic premises, including the common parts of blocks of flats or houses in multiple occupations. The Order places obligations on the 'responsible person' who is the person who owns or controls the premises. It is this person who has the obligation to carry out, implement and maintain a fire safety risk assessment.

The fire risk assessment must focus on safety in case of fire of all 'relevant persons' with particular attention being paid to those at special risk such as the disabled or elderly. For example a tenant with a hearing impairment may not be able to hear a standard smoke alarm, or a person with restricted mobility could have difficulties getting out in time even though an evacuation plan is in place. Other factors to think about when preparing the assessment include ignition sources (for example naked flames or heaters), any flammable materials present, smoke detection, fire fighting equipment, fire and smoke resisting doors or partitions, escape routes/evacuation procedures and maintenance of fire protection measures. The responsible person must record the hazards, identify those especially at risk and record what steps they took.

The risk assessment should identify risks that can be removed or reduced and determine the nature and extent of the general fire precautions that need to be taken to protect people against the fire risks that remain. An emergency plan must be prepared which is specific to the premises, including the fire evacuation procedure, taking care of fire protection measures and how to report defects or concerns. Action to be taken in the event of a fire and this should be publicised by the relevant notices so all tenants and visitors to the premises are aware of them.

During the assessment the responsible person must ensure that fire protection measures such as smoke detectors, sprinklers, fire doors etc are not obstructed or damaged. These matters should be

explicitly covered in tenancy agreements and reflected in all the Landlord's related policies and procedures.

With regard to high rise buildings, the Tenant Services Authority (TSA) recently gave guidance on specific issues to be addressed to ensure fire safety risk assessments are adequate. These include:

1. Paying particular attention to the potential surface spread of flame and the fire resistance of wall and ceiling linings and structures within the means of escape
2. Considering the ability of fire to enter or develop in voids such as ducting, risers and false ceilings
3. Making residents in blocks of flats aware of the appropriate action to take in the case of fire (determined by the fire risk assessment) and the means of escape available to them
4. Providing fire safety information for residents, maintenance staff and visitors
5. Ensuring that, having undertaken the risk assessment, the responsible person takes "such general fire precautions as may reasonably be required to ensure the premises are safe".

Local housing Authorities also have responsibility under the Housing Act 2004 for fire safety in houses in multiple occupation where special rules apply. Whilst the requirement for HMO's to be licensed does not apply to registered social landlords, HMO's must still provide such means of escape from fire and other fire precautions as the Council considers necessary after consultation with the Fire Authority.

If an RSL fails to comply with the requirements of the Order or the Housing Act the local Fire Authority or Council may take enforcement action and this is becoming much more frequent. The Authority can serve Notices requiring alterations or specific steps to be taken, and in the most serious of cases can serve a prohibition notice preventing use of the property until certain steps have been taken to make them safe from fire. Failure to comply with these Notices is a criminal offence punishable by a fine or up to two years imprisonment.

A fire risk assessment should be viewed as a working document which requires constant updating and review, and is

revised to take account of changes to the layout, use or occupation of the premises. For example, if there are to be alterations to the premises such as refurbishments or extensions, the 'responsible person' must review and apply the outcomes of the revised risk assessment and ensure any changes required are implemented.

As many fires are due to faulty gas and electrical appliances it is worth reminding ourselves of obligations in this respect. The Gas Safety (Installation and Use) Regulations 1998 requires gas fittings and flues to be maintained in a safe condition, which includes gas appliance servicing and an annual safety check. There are similar requirements in relation to electrical equipment supplied by a Landlord under the Electrical Equipment (Safety) Regulations 1994.

So what should RSL's do to comply with the laws on fire safety?

Well the starting point is obviously to identify a person with responsibility for ensuring compliance with the fire safety legislation. Obviously this person should have specialist training or knowledge and if this is not available in-house should be obtained from an appropriate external consultant. You should ensure that the risk assessment undertaken is comprehensive, and particularly that it considers vulnerable residents and gives adequate consideration to possible measures such as smoke alarms or sprinkler systems. The risk assessment and the information provided to Tenants and visitors should be constantly updated and it is good practice to put safety information into all tenancy packs or handbooks.

Particularly in blocks of flats or maisonettes, ensure all residents know the appropriate action to be taken in the event of fire – but be aware that fire safety information needs to be accessible to all, including those whose first language is not English. The information needs to be clear and understandable for all.

Fire safety legislation is a complex area and needs constant monitoring.

If you require help or advice with anything discussed in the above article, please contact Julie Goulbourne, an Associate in the Environment team on 01772 229 830 or julie.goulbourne@brabnerscs.com

Riverside Group Ltd V Mercer

When anti-social behaviour leads to eviction

We recently acted for the Riverside Group Ltd for a claim for possession against Janette Mercer, the mother of Sean Mercer.

Sean Mercer shot dead schoolboy Rhys Jones in Liverpool in August 2007 whilst Rhys was walking home from football training. Rhys was not the intended target and sadly was caught up in the cross-fire of gang warfare between the Norris Green based "Strand Gang" and Croxteth's "Croxteth Crew".

Following her son's murder conviction in December 2008, Janette Mercer was convicted in April 2009 of attempting to pervert the course of justice by failing to assist the Police in their enquires against her son and she was herself sentenced to a custodial sentence.

When we first looked at this case in December 2008 it was initially thought that the claim for possession was very narrow – the murder conviction. However by taking time to investigate the family's history, Sean Mercer's involvement in gang culture, and bringing together multiple complaints throughout the tenancy, Riverside was able to rely on allegations against the whole household.

Our evidence showed the family were still coming to the attention to the Police in January 2009; nine months after Sean Mercer had been charged and remanded in youth detention.

Following a five-day trial at Liverpool County Court in October 2009 which involved 24 witnesses, including 19 police officers, Riverside obtained an immediate

possession order, sending out an extremely strong message to residents.

How can we deal effectively with anti-social behaviour in a way which sends out a strong message to other residents?

The first instinct is to act quickly, but social landlords must be cautious when issuing possession proceedings on a "knee jerk" reaction. Landlords must look at the bigger picture and deal with the behaviour of the tenant and the household as a whole.

Time must be taken to investigate the family and liaise with partner agencies. Complaints against the Mercer family were not always directed to the landlord and most complaints were of a Police nature. The Police intelligence was very important and painted a picture of the reality of this family and their criminality.

In anti-social behaviour cases, the court not only needs to be satisfied that a ground for possession has been made out but also that it is reasonable to make a possession order. Key considerations include the impact of the anti-social behaviour on the wider community. In this case the effect on the wider community, and arguably the city of Liverpool, had been devastating. The Court will always look at whether conditions could be given to the tenant to keep them in their tenancy, as eviction from a property is an order of last resort, but in this case the Court felt that the community had suffered enough at the hands of the Defendant and her household and in the words of His Honour Judge Platts who heard the case, "enough is enough"

What can other social landlords take from this case?

1. Plan your approach: Don't be rushed into a quick solution – work with a legal team as soon as you can to make a full and frank assessment of your objectives
2. Establish partnerships early: By working in conjunction with organisations such as the police, you may be able to build up a much stronger case by producing evidence relating to convictions
3. Ensure your grounds for possession are as rigorous as possible: Consider all the grounds available to you in your claim for possession – check how many can be relied upon to strengthen the case
4. Consider your communication: These types of cases will often generate publicity from local and national press, which can demonstrate that a social landlord is taking a zero-tolerance approach to all anti-social tenants. It may also be appropriate to use this in your tenant communications – either in web updates or newsletters.



For further information or advice regarding anti-social behaviour please contact
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