



RPC



A guide to buying and selling English residential property

November 2020

Introduction

With the advent of COVID-19, Brexit and global market volatility, the mature, fast-moving English real estate sector faces unprecedented challenges. However, history has shown the English residential property market to be particularly resilient and many consider this a time of unique opportunity.

Top 10 cities of the world for property investment

Each city was measured on the three impact scores:



Environmental score



Innovation score



Economic score

RANK	CITY	COUNTRY	SCORE
01	Los Angeles	United States	8.23
02	London	United Kingdom	8.19
03	Hong Kong	Hong Kong	8.15
04	Boston	United States	8.06
05	Seattle	United States	7.98
06	San Francisco	United States	7.97
07	Sydney	Australia	7.96
08	Chicago	United States	7.96
09	New York	United States	7.95
10	San Jose	United States	7.94

Source: The Schroders Global Cities Index ranking of the strongest city economies around the world

“Be fearful when others are greedy and greedy when others are fearful.”

Warren Buffet



Overview

There is much to think about when buying, holding, and selling English¹ residential property. Our real estate, tax and finance specialists can help guide you through the process using their vast experience and understanding of the current property market, as well as their legal expertise. High-value residential property often calls for multi-disciplinary advice.

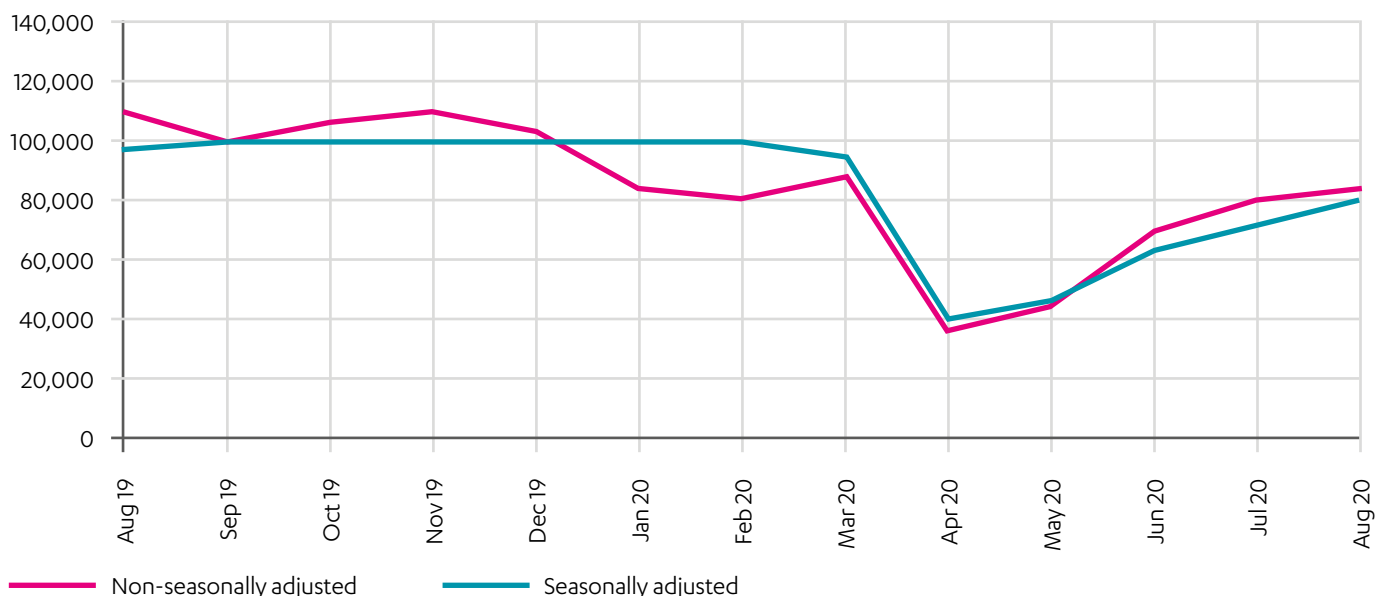
Whether acting for individuals in respect of family homes or investment properties, or corporate entities looking to obtain a revenue stream from residential property, our experts work hard to help clients maximise the property's potential, providing funding and tax advice on the most efficient current holding structures.

Our real estate lawyers will guide you through the steps required to purchase, finance or sell a high-value residential property. This may be off-plan, in a new development, leasehold, freehold or a combination of these and there are different considerations for each. Where relevant, we utilise planning, construction, enfranchisement, environmental and other expertise to deliver complete solutions.

Our real estate lawyers have helped clients acquire and sell some of the most prestigious properties in London in 2020. We are noted in the leading legal directories for our responsive client service and pragmatic and commercial advice.

The English residential property market has experienced something of a mini-boom since the initial COVID-19 lockdowns were eased, fuelled in part by pent up demand, stamp duty land tax cuts and a desire for bigger, leafier properties. International buyers in particular are very active. The pound has experienced volatility, its fortunes tied closely to the Brexit negotiations. If there is no trade deal, many expect a slump, making UK property cheaper and potentially even more attractive for foreign investors.

Total UK residential property transactions by month



Source: HM Revenue & Customs, 22 September 2020

1. Please note that there are important differences between property law in England and Scotland. Also, different property transaction tax regimes exist in Scotland and Wales (as compared with England and Northern Ireland). In this note we therefore focus on English residential property.

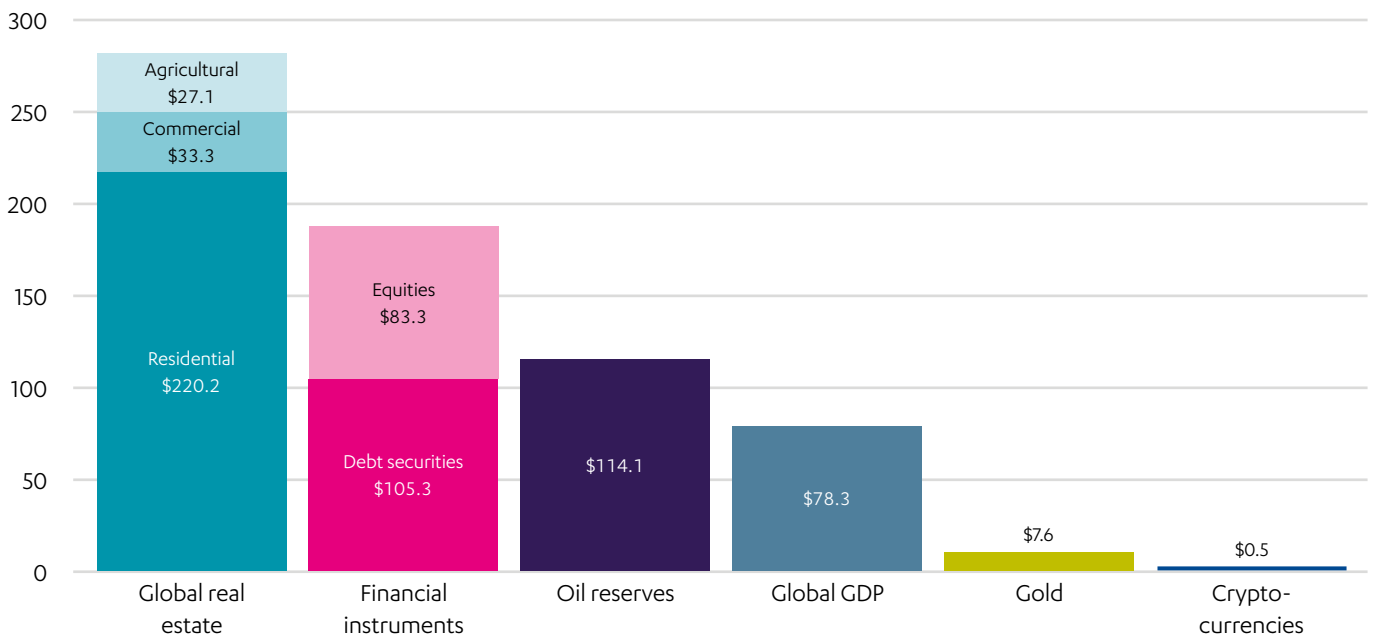
Overview (cont)

Our tax specialists can help you identify the most tax-efficient structure for buying and holding English residential property (including advising on the tax treatment of “de-enveloping” residential property held in corporate structures). They will advise as to the availability of any applicable tax reliefs and keep you abreast of the latest UK tax changes affecting residential property.

Our finance team work closely with a range of finance providers, including high street and international banks, real estate finance specialists and alternative funding providers. We are experienced in negotiating finance for residential property, including high-value properties and portfolios, and arranging appropriate security packages to meet funders’ requirements.

Global Real Estate wealth in comparison

All figures represent USD (trillions).



Source: Savills World Research



The buying process

Once a property has been selected, we will investigate the title by reviewing the deeds, carrying out searches and raising enquiries to identify any defects which may affect marketability or value. We will also assist with choosing a surveyor to report on the physical condition of the property. We will raise any necessary additional enquiries, working to resolve any issues that arise.

We will provide a detailed report for you and any financiers to consider, detailing our findings and highlighting any issues or points of note.

Assuming that you wish to proceed with the purchase, all terms of commercial agreement will be captured in the purchase contract,

any consents will be obtained, and we will move to exchange. It is at this point that a deposit of 10% is usually paid.

Finally, any completion conditions are dealt with and the transfer of the property is signed by the parties. When the transfer is completed, the purchase monies will be sent to the seller and we will deal with the registration of the transfer at HM Land Registry and the payment of any property transaction tax.

The selling process

We can and do help clients from an early stage in preparing their property for the most advantageous sale. This can involve working closely with the agent on the marketing, managing a data room for a complex title and preparing the sales pack.

The sales pack typically includes the title deeds, any management and insurance information, replies to enquiries and various forms detailing what will be included and excluded from the sale.

Again, all terms of commercial agreement will be captured in the sale contract, any consents will be obtained, and we will

move to exchange. It is at this point that a deposit of 10% is usually received.

Finally, any completion conditions are dealt with and the transfer of the property is signed by the parties. When the transfer is completed, the purchase monies will be received from the seller.

Tax

There have been numerous changes to the UK tax rules affecting residential property over recent years. The result of these incremental changes is a tax regime that can appear quite confused. Our tax lawyers provide expert advice on the latest position regarding applicable taxes, any likely future developments, and the pros and cons of various structures, including with regard to:

SDLT

Stamp duty land tax (SDLT) is currently charged on non-rent consideration for purchases of English² residential property at rates of up to 15%. A number of important considerations determine the applicable SDLT rates and rules. These include:

- whether the property is to be bought by an individual buyer, or by a corporate (or other “non-natural”) buyer
- whether the buyer already owns, or is deemed to already to own, other property(ies)
- whether more than one identifiable property is being bought at the same time. This can affect whether the purchase is (for SDLT purposes) treated as residential or non-residential (and therefore the applicable tax rates). It can also result in the availability of an SDLT relief for purchases of multiple residences.

There is currently an SDLT “holiday” for residential property purchases. Until 31 March 2021, the SDLT threshold has been raised to £500,000. During this time no SDLT will be payable on purchases below this figure by individuals unless they already own a property that is not being replaced. Purchases of more valuable properties will attract a lower SDLT charge during this time.

The “bad” news is that there is also due to be introduced, from April 2021, a further SDLT “surcharge” of 2% for non-resident buyers of English residential property.

ATED

Another tax measure designed to discourage the acquisition of UK residential property through companies and other vehicles, the annual tax on enveloped dwellings (ATED) applies to residential property valued at over £500,000. The amount of ATED payable per year depends on the value of the property but (currently) ranges from £3,700 to £236,250, for properties valued at over £20m. Various ATED reliefs are available, where the property is being acquired for genuine commercial purposes. Our tax experts can advise on the detailed conditions attached to such reliefs.

CGT

Disposals of UK residential property, by UK residents and non-UK residents alike, will be subject to UK capital gains tax (CGT) to the extent a gain is realised. The main exemption, or relief, is known as the private residence relief (PRR) and is available to fully, or partially, exempt from tax gains arising on sales of main residences.

IHT

Inheritance tax (IHT), as well as being a charge levied upon an individual’s estate on death, also arises on certain lifetime gifts. Further, ongoing IHT charges can also arise under rules applicable to certain types of trust. In contrast to other UK taxes, the territorial scope of IHT depends upon an individual’s domicile status. Whilst a UK-domiciled individual will be subject to IHT on their worldwide estate, a non-domiciled individual will be subject to IHT only on their UK estate. Foreign owners of UK residential property are therefore brought within the scope of IHT, but only in respect of their UK property.

For many years it was advantageous from an IHT perspective for a non-domiciled person to hold UK residential property through a non-UK company. Various changes to the UK tax rules applicable to residential property have all but removed this one-time advantage. Again, our tax experts can fully explain these complex rules and the pros and cons of different structures. Our tax experts can advise on the IHT consequences of acquiring UK residential property, whether any nil-rate bands, allowances, exemptions or reliefs might apply, and whether any IHT-efficient structures may be suitable.

Income tax

Any income from rental of UK residential property is subject to UK tax. Special rules apply where the landlord is non-UK resident, which may require the landlord to apply to HMRC for approval to have the rental income paid to it without deduction of UK tax. Our tax experts can also assist in the filing of any necessary UK tax returns in connection with residential property.

2. Acquisitions of residential property in Scotland and Wales are no longer subject to SDLT. Instead, equivalent taxes devolved to the Scottish and Welsh governments (respectively) apply. SDLT applies only to acquisitions of English and Northern Irish property.

Funding

Where external funding is used to acquire/re-finance a property, we can assist in negotiating the commercial terms of the funding, and in drafting any relevant loan documentation. Our finance specialists will advise on the terms of the loan, any security required over the property or other assets, and any ranking agreements required between lenders.

We will also assist with the preparation of the deliverables required by the funder as conditions to the loan, co-ordinating the creation and delivery of the relevant documents to enable funds to flow on time.

Ownership

Many UK property investors wish to keep their identity confidential. As HM Land Registry is open to the public, it has been common for investors to acquire their residential property through an offshore company, often with the shares held within a trust structure. For many years this carried with it the added benefit of favourable UK tax treatment (though see **Tax** above).

From 2021, however, offshore companies and other vehicles holding UK residential property may be required to disclose their beneficial owners (the person(s) who ultimately owns, controls and benefits from an asset) on a public register.

Recent transactions

High-value residential family property – value: circa £30m

We acted for a high net worth, international investor purchasing a large residential property in Central London as a main residence for his family and as a long-term investment for his young children. To add to the complexity, the property was part way through a multi-million-pound refurbishment. We considered a number of potential acquisition and holding structures and worked with the client to select the most tax-efficient (both in the short and long-term, and bearing in mind recent and proposed changes to the tax treatment of UK properties acquired by non-residents) whilst ensuring that the chosen structure was fit-for-purpose, given the client's intended plans for the property.

High-value residential property – value: circa £34m

Acting for the Hasib Holding Company Establishment in the acquisition and development of a high value residential property in Palace Green, London which involved extensive negotiations with The Crown Estates, dealing with the professional team during the construction phase and implementing a circa £34m development finance facility with Europe Arab Bank.



Contacts



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Elizabeth is head of real estate and advises corporate investors and occupiers, funds, property companies, and financial institutions on a wide range of real estate matters. Her expertise covers developments, acquisitions and disposals, sales and leasebacks, portfolio management, joint ventures, corporate support, cross-border transactions, and real estate financing. Elizabeth's transactional experience spans a broad range of investment property and industry sectors, from retail to children's nurseries and residential care homes, hotels to food technology.



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An all-round banking lawyer, Sukh Ahark has wide and detailed range of finance experience acting for all types of clients both in the UK and abroad. Sukh specialises in real estate finance work both investment grade and development funding. He's also carved out a practice acting on acquisition and leverage finance transactions and general corporate funding and refinancing work. He regularly helps corporate borrowers, developers, private equity providers and financial institutions on both domestic and cross border transactions.



Ben Roberts

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Ben advises clients on all aspects of corporate tax matters, including mergers and acquisitions and corporate reorganisations. Ben also advises on real estate, banking, employment and incentives tax issues. He regularly advises on VAT, stamp duty and stamp duty land tax. He also advises high net worth individuals on the UK tax treatment of their investments. He has particular experience in the real estate, banking, insurance and investment funds sectors. Prior to joining RPC, he trained, qualified and spent eight years at Herbert Smith.

“They are very talented, can see a broad range of views and can adapt to the different requirements of the clients.”

Chambers & Partners 2020



Snapshot of RPC

RPC is a modern, progressive and commercially-focused law firm, headquartered in London with offices in Bristol, Singapore and Hong Kong.

Our lawyers are market leaders, our clients are often household names and together we achieve award-winning results which have seen RPC regularly voted amongst the best for commercial advice. We are consistently ranked highly by both Legal 500 and Chambers & Partners. RPC has around 720 people – including 81 partners and 334 other lawyers – which means we are big enough to handle the most complex matters, but small enough to adapt quickly to our clients’ changing needs.

“It’s rare to see true commercial contracts experience that also combines in-depth knowledge of associated areas”

Legal 500 2020

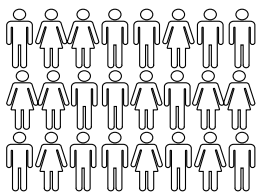
Specialists



80+ partners



700+ staff

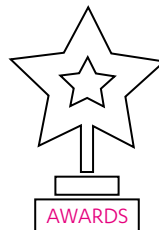


300+ lawyers

Global reach

Access to
19,000
lawyers worldwide
through the TerraLex
network

4
RPC offices London,
Bristol, Hong Kong and
Singapore



Award winning

WINNER
Luxury Deal
of the Year
Luxury Law Awards 2020

HOT
OFF THE
PRESS

WINNER
Best use of technology/
innovation 2018
Legal Education and
Training Group

WINNER
TMT Team of the Year
Legal Business Awards 2020

HOT
OFF THE
PRESS

WINNER
Best Legal Adviser
2017-2018
Legal Week



Our real estate experience

With the advent of COVID-19, Brexit and global market volatility, the mature, fast-moving UK real estate sector faces unprecedented challenges. While it remains one of the most lucrative real estate markets in the world, investors require seasoned experts to help them navigate a complex legal and financial landscape.

We are one of the leading City real estate practices. We take a strong commercial approach to resolving issues and delivering transactions, while providing excellent legal advice.

We provide practical, commercial solutions to avoid rather than create legal obstacles. And if a solution isn't practical, we'll say so. After all, we're here to work for you and help you achieve your goals.

We are able to deploy a collaborative cross-departmental team on structured real estate transactions – real estate, corporate, tax, finance and regulatory.

“Always professional, helpful and commercially minded.”

Chambers UK 2019
(Real Estate)

“The firm is strong and provided excellent performance [and] good value for money.”

Chambers UK 2018
(Real Estate)

Real estate services

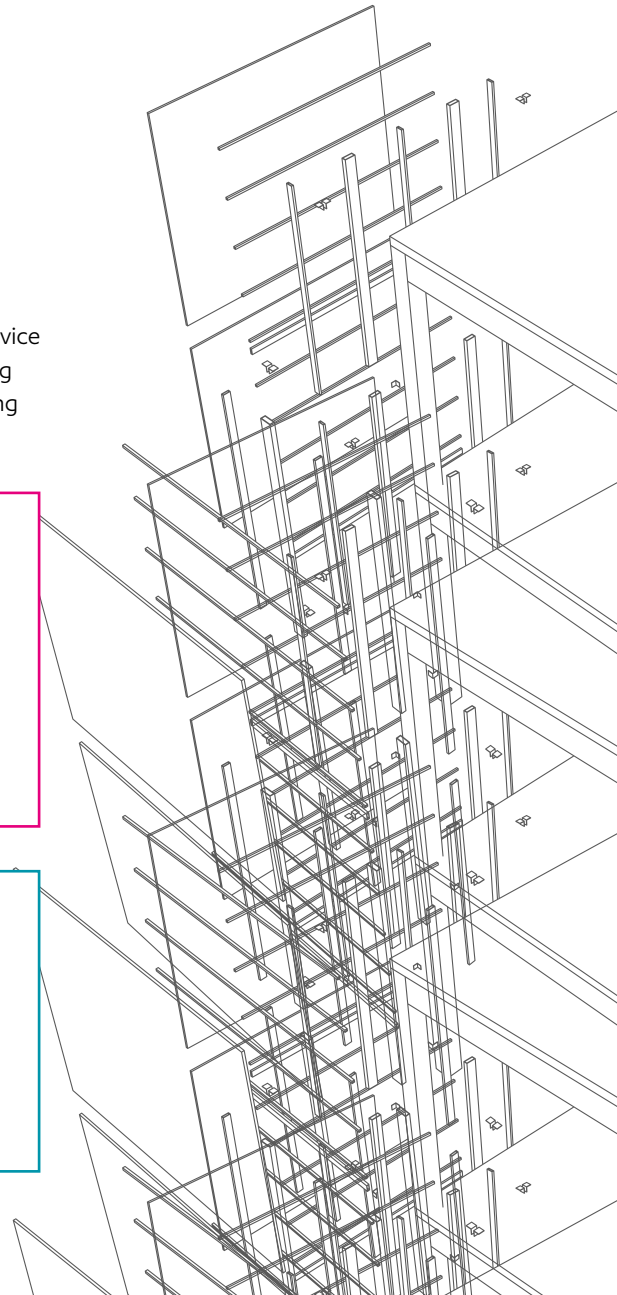
Working on both contentious and non-contentious matters, we provide a full legal service to a range of clients encompassing institutional investors, large multinationals, growing corporates, financial institutions, developers and other professional practices, including many household names.

ACQUISITION

- Due diligence
- Acquisition finance
- Option agreements and conditional contracts
- Site assembly and acquisition
- Investment in development projects, including joint ventures
- Corporate acquisitions
- Structuring and joint ventures

DISPOSAL

- Advising on disposal strategies, including auction transactions
- Sale documentation and overage agreements
- Advising on tax efficient sale structures
- Capital allowances on the transfers of assets
- Enforcement and realisation of real estate security for lenders, receivers and administrators



Some of our clients

- Adderstone Group
- Adient
- Aviva
- Bonhams
- DAKS
- Dialog Semiconductor
- Downing
- Essity
- Fenwick
- Flying Tiger
- Frasers Group
- Hasib Holding Company Establishment
- Kout Food Group
- Lockguard Limited
- NASUWT
- Triumph

“Very client-oriented – their advice is never overly complicated but rather pragmatic and tailored to the relevant needs”

Chambers UK 2019
(Real Estate)

“Very attentive and very thorough.”

Chambers UK 2018
(Real Estate)

MANAGEMENT

- Lease restructuring and ancillary documentation
- Construction advice on refurbishment and reconfiguration
- Property disputes
- Green leasing and sustainable practices
- Advising on rent review
- Landlord and tenant disputes

DEVELOPMENT

- Lending on development projects
- Planning, s106 and infrastructure agreements
- Construction documentation
- Rights to light
- Planning disputes and judicial reviews
- Construction dispute resolution and litigation
- Development agreements
- Rent share leases

