

COMMENTS ON MAKING AN APPLICATION TO TAKE A NEW LEASE ON A COMMERCIAL PROPERTY

If you have found a commercial property that you are looking for and have decided to make an application to take a lease, the landlord is likely to look at the following aspects of any offer received.

NAME ON THE LEASE

A landlord is naturally looking to have a financially stable person or company as the name and signatory to a lease. References are likely to be taken up (for which there is usually a charge) and any additional background information showing the status of the applicant will be helpful to the landlord when he makes a decision on whether an application is successful.

A strong applicant might, for example point to existing outlets or show that he owns his own property and does not have a mortgage.

If the lease is to be taken by a limited company, then this should be made clear at the outset. Any references will be taken up in the name of the person or company who is applying to take the lease. It follows that if a company is to take the lease, it is the company that would have to show its trading history and status.

The landlord is of course interested in the directors and shareholders who stand behind the company and this information can add considerably to the light in which an application is seen and judged. Where a lease is to be taken in the name of a limited company, the landlord will often seek director's guarantees.

On some occasions, it is possible to limit director's guarantees rather than a guarantor agreeing to take over the lease if the tenant fails, the guarantor's obligations can be limited to a fixed financial sum.

DEPOSITS

We are often asked how much deposit a landlord is likely to want on a commercial property. If the proposed tenant is of sufficient strength, then the landlord might well not require a deposit at all and the discussions on a deposit are likely to run hand in hand with the discussion concerning the strength of the tenant.

LEASE TERMS

After considering the strength of the tenant, the landlord will then be interested in the terms being offered to take his lease. Relevant factors include:

- a) The length of the lease being offered.

- b) The repairing obligations that the tenant is going to undertake. If a lease is full repairing or effectively full repairing, that means all repairs, new and old, will be the tenant's responsibility or the tenant will pay a share of the works that are undertaken. It is an onerous obligation on a tenant to take a full repairing lease but obviously if a tenant does offer to take a full repairing lease, his application is likely to look better to the landlord.

On occasions, it is possible for a tenant's obligation to be limited to exclude particular parts of the building or for obligations to be limited by reference to a Schedule of Condition. In each case, it is important that the tenant makes it clear the terms upon which he is offering to take a property and, indeed, important for a landlord to make it clear the terms upon which he is offering to rent the property.

- c) Obviously the rent being offered is fundamental to any transaction.

INSURANCE

Generally, the tenant is responsible for contents and business interruption insurance and the landlord will arrange fire insurance and re-charge the cost relating to the area let on to the tenant.

LEGAL COSTS

Often the landlord will ask a tenant to pay his legal costs for putting the lease together and it is important that a tenant makes it clear at the outset as to whether or not he is willing to meet these costs. Sometimes transactions are agreed where the tenant reimburses the landlord's legal costs and in other cases each party pays their own. Often a transaction can be agreed whereby each party pays their own costs but if the tenant seeks to negotiate this and every other term proposed, the landlord is less likely to agree a transaction.

TENANT BREAKS

Leases often include tenant breaks. You should take your solicitor's advice on the terms of any tenant break that you sign for as exercising tenant's breaks can be very difficult where the option to break is tightly worded. The timetables contained in tenant's breaks are often strict. Where a tenant seeks to break the lease early, there is sometimes a penalty payment negotiated.

USE

The landlord will want to have details of the use to which the tenant is going to put the property together with details of any alterations that are planned. A landlord is interested in any structural alterations, new partitions and changes in the arrangement. Generally speaking, the landlord is not so interested in a tenant's basic fit out, display units, fascia etc.

Illuminated signs, projecting signs and illuminated window signs are normally items for which you need to have the landlord's approval before proceeding.

PLANNING CONSENT

Planning consent is required for various uses and you should take separate professional advice before signing a lease.

In conclusion, it should be borne in mind that most landlords will not meet their tenants prior to a lease being agreed and will judge the application entirely on the paperwork supplied. Some landlords judge applications on how professional the application to take a lease looks.

PROFESSIONAL ADVICE

It is a very good idea to take professional advice from a Lawyer and a Surveyor before committing to a new lease. By taking advice when you settle the terms of a new lease you are more likely to agree a transaction which does not require re-negotiating at a later date.

This comment sheet is not intended to be a substitute for taking early and sound professional help and advice when considering taking a business lease.

FURTHER READING

We suggest the Code for Leasing Business Premises to you

<http://www.leasingbusinesspremises.co.uk/index.html>

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