



Notes for clients purchasing an investment property

These notes are for general information only. They should not be relied upon in the absence of advice about a particular situation and no liability is accepted in the absence of our receiving formal instructions and providing formal advice.

The more the parties are aware of the factors which they need to take into account in their negotiations the less chance of one or other party belatedly realising something which causes a breakdown in the transaction.

1. VAT and Tax

There will be tax and VAT implications. You should consult your accountant fully. If additional information is obtained during the transaction which may have further tax and VAT implications then you must consult the accountant again.

This advice can include the question of whether you should own the property in your own names or through a property Company etc.

2. Asbestos

Under Section 4(3) of the Asbestos Regulations, to put it simply, the person responsible for a structure must ensure that an audit has been made enabling a property assessment of the asbestos risk to be completed. Work advised in that Report must be carried out.

The person responsible for the structure, or part of structure, is responsible for complying with these regulations.

In many cases the Landlord will be responsible for the main structure and common areas such as staircases with the tenant responsible for its own office or industrial unit.

For reasons mentioned below, the Landlord will want to ensure that these regulations have been observed in respect of each tenanted unit as well as complying with its own obligations.

3.

There are increasingly strict standards for air conditioning systems.

4.

From April 2008 vacant commercial premises will be subject to full rates.

5.

Under the Regulatory Reform (Fire Safety) Order 2005 commercial premises must have the benefit of a Fire Safety Risk Assessment. Any risks highlighted in the Assessment Report must be properly dealt with.

6.

The Disability Discrimination Act 2005 places obligations on “controllers” of premises. This can include the Landlord and the Landlord’s Agents. It may be necessary eg to change door knobs to door handles, to widen doors, to install ramps.

Furthermore, a controller must take such steps as are reasonable to change a practice, policy, procedure or a term of the letting that makes it impossible or unreasonably difficult, for a disabled person to enjoy the let premises or any of its facilities.

7. The Hazardous Waste (England and Wales) Regulations 2005

Hazardous waste must not be removed from premises without notification to the Environment Agency. Premises are exempt if they only produce less than 200 kilograms of hazardous waste in any twelve month period. Extensive record keeping is required. The limit relates to the premises ie if you purchase a property part way through a year you have to make an assumption about the amount disposed of by the previous occupier and how much scope you have left before exceeding the limit.

8. The Health Act 2006

The no smoking regime is fairly well known. NB that the person in control is obliged to prevent anyone smoking.

NB the cigarette in the no smoking sign has to be the right way up!

9. Energy saving

10. Electricity of Work Regulations

11. Terms of Leases

You will need to consider carefully how to divide responsibility for the various management expenses between the Landlord and the various tenants.

You will need to consider carefully how you will supervise the tenants and ensure full compliance.

12. Insurance

You will need to monitor the terms of your Insured’s cover very closely and adjust eg the amount insured, as frequently as necessary.

The fact that your Insurance Company accepts your premium does not mean that it will accept a claim.

If a tenant had failed to prepare a fire assessment then your insurer could reject a claim relating to fire damage, even if it did not result from that particular tenant's omission, or from the problem which would have been revealed if that tenant had made an assessment. You cannot actually know for certain at all times that all regulations are being observed by you yourself and all tenants. You therefore need to negotiate something with the Insurance Company which relaxes the usual regime and have this recorded in writing so that you clearly understand your position.

13. Values

All sorts of factors can affect the value of commercial property, probably rather more factors than for residential property.

The ever increasing number of requirements such as those mentioned above all involve expense.

If the Landlord is to bear that expense then he will want it covered. This can happen either by increasing the rents or by reducing the sum which he based the property at the outset. The problem with increasing the rent is that tenants may not be able to bear the necessary increase if the local economy is not vibrant.

A Landlord cannot of course reduce the purchase price later on just because new and onerous regulations are brought into effect.

Significant interest rate increases may increase your own expenses just when the tenants are finding, for the same reason, that their profits are being squeezed.

If the public at large are similarly affected by eg higher interest rates then of course the shopkeepers turnover may also reduce as spending power is lost.

Regardless of interest rates, lenders may go through phases of being less willing to lend on particular sorts of property or to particular sorts of borrowing.

An unfortunate combination of some of the above unhappy events could result in a significant collapse in the commercial property market ie property values, rent levels, availability of sound tenants.

Plastic window/FENSA Regulations have often been ignored.

Insurance premiums can fluctuate wildly as individual companies or the market generally favours a particular sector or finds that sector too expensive.

14. Energy Performance Certificate

These are about to affect all commercial properties. There may be difficulties arising out of:

- (a) A lack of persons qualified to conduct them.
- (b) The rating being lower than tenants or lenders will accept.
- (c) The cost of work to improve the rating being unexpectedly high.

15. Insurance

The usual arrangement is for the Landlord to ensure the whole building by the tenant to reimburse the Landlord the cost of the insurance for its part of the building. The Lease will usually require the Landlord to maintain the policy to the full insurable value and against all usual risks. It shall be produced to the tenant from time to time.

The Landlord will need to ensure that the tenant complies with the terms of the policy.

16. Repairing Obligations

“Keep in good repair” means put in good repair. Tenants do not always realise this.

Some sort of evidence of the condition of the premises at the beginning of the Lease will reduce the likelihood of argument at the end of the Lease.

Landlords, as well as tenants, need to observe their own obligations very carefully and, in the Landlord’s case, this is likely to include any empty units.

17.

If any special arrangements are agreed with the tenant then they should be carefully recorded in writing and the implications thought through. Eg the tenant may be given permission to carry out some improvements. The parties need to know whether this is on the basis that at the end of the Lease they must reinstate or not, whether any compensation for the improvement would be made or not, how the value of that improvement might be taken into account, if at all on a rent review.

18. Redevelopment

The usual searches will only reveal the current planning situation. If you have significant development schemes in mind then you should discuss these with the Planning Authority before committing yourself.

19. Length of Term

Long Leases to good tenants on reasonable terms can make it easy to sell the investment or to raise money against it.

Short Leases mean that you may be able to recover vacant possession earlier eg to redevelop.

20. Break Clauses

Sometimes potential tenants can be encouraged by having the right to bring the Lease to a premature end within the first short period. The disadvantage to the Landlord or course is that he does not know for certain whether the tenant is going to stay the whole length of the Lease and he may have the expense of finding a new tenant at a fairly early time. If a tenant is to be given such a right then we suggest that the tenant must pay the cost of the Lease.

21. Security of Tenure

You can exclude the tenants' usual right to renew a Lease under the Landlord and Tenant Act 1954. We need specific instructions. The process is then simple.

In any event a notice is necessary to bring a commercial Lease to an end and careful compliance with the time limits is required.

In the case of small private companies or tenants with no track record it is common for Landlords to require personal guarantees from someone of apparent standing. In some cases a rent deposit is taken.

22. Commencement of the Term

If the tenant should be allowed in before the start of the Lease then the date should be carefully noted as it has significance in the contents of some of the Landlord and Tenant legislation.

In any event care needs to be taken to prevent the tenant acquiring full Landlord and Tenant Act rights without the Lease being signed and therefore with the tenants' obligations being restricted.

Descriptions of the parts of the property being let to a tenant must be detailed and accurate and scaled plans will be required.