Commercial leasing post-pandemic: the pros and cons of flexibility

The question of how the retail and hospitality sectors will emerge from lockdown has been widely debated.

A recent survey by Barclays Corporate Banking suggests that 40% of consumers are planning on increasing their in-store (rather than online) shopping over the next 12 months. Over that time period, research carried out by retail software company Brightpearl suggests that 63% of consumers will buy from more locally-based businesses.

This is as a result of the long term flexible working patterns. High streets could see a revival after all with an anticipated 17,000 new shops to open.

The need for an alternative approach

The research findings may be music to the ears of many retail property owners. But a key to the sustained success of the high street is retaining long-term occupancy.

Over the pandemic, property owners have had to quickly embrace a highly flexible approach to negotiations with occupiers. Shorter term leases, tenant only break rights, pop-up shops and turnover based rents are far more common in this post-pandemic world.

Hannah Grievson of Sloane Stanley works closely with tenants and says that the Estate "supports tenants to invest in our community by offering short term leases, pop-ups or turnover based rents and they often consider break notices built around tenant business models."

This progressive and united approach has enabled all of the Sloane Stanley Estate restaurants, bars and cafes to re-open following the easing of hospitality restrictions, which is a win-win result.

A win-win, but at what cost?

Turnover rents increased in popularity during and following the easing of lockdown restrictions particularly in the hospitality sector. At its very basic level, a turnover rent is a rent dependent on an occupier's trading turnover. Many property owners will demand a low basic rent together with an additional top-up of turnover rent in the event that the occupier exceeds a pre-determined turnover figure.

Others will agree a pure turnover rent with no minimum base. But what are the benefits and pitfalls of agreeing a turnover rent?

Pros:

- Turnover rent based tenancies can encourage a stronger partnership between owner and occupier as both have an interest in the success of the tenant's business.
- For owners and investors, a successful tenant occupier may result in payment of a higher rent than would otherwise be payable on the open market.
- For occupiers, a struggling business will not have to make potentially unsustainable rent payments.

Cons:

- Turnover rents require regular reporting and analysis of financial information which can mean a greater administrative burden for both parties.
- For property owners, turnover rent agreements may result in fluctuating rents and may be unpalatable for their lender.
- For occupiers, the provision of financial information to the property owner requires an element of trust that may not have existed historically.

The importance of good drafting

Flexibility and partnership certainly seem to be the key features of the post-pandemic owner/occupier relationship. Turnover rent based agreements can prove successful for both parties but it is imperative that turnover rent clauses are well drafted to protect each party's interest and achieve long term successful occupancy.

How we can help

If you would like to learn more about turnover rents or for general enquiries regarding flexible landlord and tenant agreements, please contact Beth Myers or Oliver Morris in our commercial property team.

Written by