

High street rental auctions are coming!



The Levelling Up and Regeneration Act 2023 received Royal Assent on 26 October 2023. As flagged by Miles Paffard in his article on the Bill in May this year, Part 10 of the Act will give local authorities powers to put vacant high street properties into rental auctions; the aim being to reinvigorate town centres.

The basics

The Act empowers a local authority to designate an area as a town centre, or a street as high street, if it considers it to be important to the local economy because of a concentration of high street uses there.

High street uses include uses as shops, offices, food and drink establishments, compatible small industry or manufacturing, leisure and entertainment venues, and communal meeting places, but not warehousing or residential.

Premises considered by the council to be suitable for a high street use that would benefit the local economy, society or environment will be capable of qualifying for the high street auction process if they are vacant and have been unoccupied for more than one of the previous two years.

In that scenario the council will be able to serve on the landlord of the property an initial notice of intention to conduct a rental auction, which will prevent the landlord from agreeing a tenancy or licence for the property without the local authority's consent. That said, consent will have to be given if the landlord finds a tenant who will take an agreement to start within 8 weeks of the notice, with a use that will attract the regular presence of people and which will have a term of at least one year.

If the landlord does not take this opportunity, then after the 8 weeks the council may put the property under a

final 14 week notice, during which the landlord may appeal against the property entering an auction process. There are limited specified grounds on which an appeal may be made, including that the landlord intends to develop the property, or occupy it itself, that the property is not suitable for a high street use or that such use would not benefit the local economy, society or environment.

Failing a successful appeal however, the local authority will be able to put the property into an auction process and then let the property, under a lease excluded from the protection of the Landlord and Tenant Act 1954, to the highest bidder for a term of at least one year and up to 5 years. The consent of any superior landlord or any mortgagee of the premises will be deemed to have been given.

Questions yet to be answered

Further detail about the process is still awaited however. The questions listed below are not answered by the Act, which instead provides for regulations to be made to supplement its provisions:

- How will the winning bid be identified? Will it just be the highest rent offered? Could other factors come into it, such as an offer by the bidder to also put the premises into repair?
- Will there be a minimum bid level? The government consultation that ran in the summer proposed there should not be.
- What will the other terms of the lease be? The consultation anticipated that standardised agreements for lease and lease documentation will be used but we have no further detail on this as yet.
- How will getting the property into repair and ready for letting be dealt with? The Act provides that the local authority may make provision for the landlord or the tenant to carry-out pre-tenancy works but further detail ought to be forthcoming in the regulations, including the extent of any obligation on the landlord relating to the safeness and secureness of the premises and compliance with Minimum Energy Efficiency Standards.
- Who will bear the costs of the auction and letting process, including legal, surveying and search fees?
- Local authorities are not blessed with resource so will they be allowed to outsource the process? This could be crucial in determining the impact of the Act and the Consultation proposed that they should be able to outsource.

What next?

So there is still a lot of detail to come, including the date on which Part 10 of the Act will come into force.

The Act provides that when making the supplemental regulations the Secretary of State must give regard to typical commercial tenancy terms. Councils will also be required consider representations made by the landlord of the premises as to the proposed letting terms.

Nonetheless landlords will undoubtedly be concerned that ultimately such lettings will be outside of their full control, could impinge on their freedom to deal with their properties as they wish, including locking them into unfavourable terms and denying them the ability of take advantage of any improvement in the letting market. There could also be other unwanted consequences for landlords, such as the creation of unfavourable comparables for rent review across their portfolios, or potential difficulties with holes in a service charge regime.

Given the period of assessment of vacancy will extend back two years, landlords with vacant units that might become at risk of becoming a qualifying property may wish to start thinking about mitigating that risk.

For businesses with high street uses, the high street auction process may very well present opportunities to take tenancies of premises on terms that might not have otherwise been available, or indeed with landlords who might otherwise have rejected them, either in that location or in any location.



We will report further on this topic once regulations have been made. Do contact [Miles Paffard](#) or [Nilly Safari](#) if you would like any advice at this stage or in the lead up to the implementation of the new high street auction regime.



[Miles Paffard](#)

Partner



[Nilly Safari](#)

Associate