

Landlord's guide to understanding the legal aspects of managing an estate



Running an estate or a portfolio of properties can be difficult. Whilst the instruction of a professional managing agent may relieve the pressure of the day to day running, it is often the legal considerations and tenant applications which cause landlords the greatest headaches.

This guide aims to highlight the most common scenarios where landlords either need to carefully consider the legal effect of decisions made or would benefit from legal input:

Application for consent to a proposed assignment of the lease or a proposed sub-letting of the whole or part of the premises

Whilst at face value this appears fairly straightforward, and perhaps something a landlord is able to form a view on without legal input in terms of an initial analysis of a prospective assignee's or under-tenants financial standing from copy accounts and/or references, as the lease will require the consent of the landlord to be documented by way of a formal deed it is important (for both parties) that a formal licence to assign or licence to under-let is put in place for every proposed assignment and/or under-letting.

This will ensure the identity of the current tenant or sub-tenant(s) can be identified at any time (particularly important where there are perhaps multiple sub-lettings of different areas for example). It is also important both for the investment value of the estate (should a landlord be looking to sell or source investment) and also to ensuring no rights are unintentionally granted to or acquired by parties who take occupation without such authority.



A licence to assign and/or licence to under-let will, in short, identify the proposed assignee and/or under-tenant, impose requirements on them to provide confirmation of the date of the assignment or sub-lease (which of course the landlord will not be party to) and to provide details on to whom and where invoices should be sent. A licence to assign will often also include confirmatory provisions where additional security is required from a proposed assignee (i.e. by way of a rent deposit or similar). In addition, a licence to under-let will often include additional provisions as regards the terms of the proposed sub-lease to ensure consent only applies where terms are consistent with the head lease and the proposal does not detrimentally impact on the landlord's investment value in the estate or portfolio.

Application for consent to the charging of the lease (usually in favour of a high street lender but sometimes for more bespoke funding arrangements)

Whilst something fairly commonly dealt with outside of lawyers' hands, as the lease will more often than not require the consent of the landlord to any proposed charge (again, usually to be documented by way of a formal licence), it is important this is correctly dealt with to ensure there is evidence of exactly what has been consented to during the course of the lease.

It may, for example, be that an initial charge has been consented to and then subsequent charges have been layered on top without the consent of the landlord. As any legal charge granted will give lenders a right and interest in the property under the terms of the charge, it is important for a landlord to be aware of and comfortable with the number of charges being given and the identity of the relevant charge holders.

Applications for consent to alterations to the premises (usually prior to the works being undertaken but sometimes retrospective)

Whilst the detail of the alterations will largely be dealt with by the managing agent (where applicable), again, as the lease will more often than not provide that the consent of the landlord is obtained prior to any alterations taking place and that this is documented by way of a formal licence, it is important this is correctly dealt with.

The benefit of any such consent being documented under formal licence is that the document can expressly identify the works which are consented to so no additional or supplemental works can be "bolted on" by the tenant under an otherwise perhaps vague or non-specific consent. The licence will also include provisions regarding any measures the tenant may need to address prior to commencement of the works (e.g. obtaining planning permission / building regulations approval or obtaining the consent of the insurers), and will include provisions on how the works are undertaken (e.g. in accordance with best practice, in line with all applicable statutory requirements and using good quality and appropriate materials). The benefit of this is that where the works are not correctly undertaken this gives the landlord the ability to bring a claim to rectify the breach and ensure the works meet all applicable standards and requirements.

Importantly, the document will also then deal with reinstatement of any permitted works on expiry of the lease. It may, for example, be that the landlord is happy that the alterations are improvements to the premises and that these can (and indeed should) remain and be left by the tenant on expiry (for example, installation of air conditioning). However, where works are specific to an individual tenant's needs or preferences (and would not benefit the landlord if these were to remain), the licence can specifically provide for reinstatement of the whole (or specific parts) of the works to ensure on expiry the premises are returned to the landlord in the best possible state for reletting.



Renewals of existing leases

Whilst a managing agent will be better placed to negotiate the headline terms (namely the commercial rent, agreed deviations on practical issues such as rights required across the estate or otherwise and the length of term/break dates required etc), it is always advisable to engage a solicitor to prepare and negotiate the lease document. If not done correctly this could not only jeopardise the landlord's position with the tenant renewing but may also create issues with other tenants across an estate as a whole and/or result in additional rights or interests being unintentionally created or acquired by a tenant (including the introduction of the statutory right to renew the lease under the Landlord and Tenant Act 1954).

Granting of new leases

Whilst managing agents and/or letting agents (as the case may be) are better placed to negotiate and agree the headline terms, the actual lease documentation should always be prepared and negotiated by solicitors for the reasons stated above as regards lease renewals. In the context of estate premises and portfolio transactions, the added benefit of this is that any new leases will be updated to ensure these cater for any advances or movement in legislation and are granted on up-to-date terms and will be consistent (where possible) across the estate and/or portfolio. This will then ensure ease of management, maximise investment value and should assist in reducing negotiation delays.

Leasehold disputes and termination

The law surrounding recovery of rent arrears and enforcement of lease covenants is complex, with certain processes and procedures needing to be adhered to and/or pre-action protocols needing to be complied with. While some disputes will be dealt with by simple agreement between the landlord and the tenant, where this does not prove successful or a landlord or managing agent is not comfortable undertaking these discussions, a strong and commercially astute litigation team offers significant value in terms of the effective and full recovery of sums due, timely rectification of breaches and/or termination of the lease and recovery of the premises.

Side letters

In light of the continuing Covid-19 crisis, landlords are increasingly being asked to agree short term rent holidays, deferments, payment plans for arrears and alike. Whilst if documented correctly these can be beneficial to both landlord and tenant (i.e. assisting the tenant with cashflow pressures and ensuring the landlord is better placed to ultimately see payments continue), from a landlord's perspective it is obviously important to ensure the terms of any such agreements are clear and properly documented to avoid confusion or argument down the line and also to avoid any unintentional variations to the terms of leases agreed. For this reason, the preference is always for such agreements to be documented by way of a side letter, signed by both parties, which clearly sets out the agreed terms and confirming the same as a concession only and not a variation to the terms of the existing lease (which remain in full force and effect). Another factor for landlords to consider when being approached for such concessions is consistency of approach across the estate (i.e. ensuring, where possible, that concessions agreed are consistent to avoid ill feeling between tenants or arguments where one party is given "more" than another for example). If correctly documented and short term in nature, the grant of such concessions should not materially impact on the investment value of an estate or portfolio.

What is cost of legal support?

In terms of fees for the above (often the elephant in the room), as it is common practice for commercial leases to impose obligations on the tenant to meet all landlord fees in connection with any applications for consent and/or



fees incurred in enforcing tenant covenants. As such, the costs will usually be met by the tenants at the estate (although generally on new leases and renewals the accepted position is that each party bears their own costs).

How can we help?

We have extensive knowledge and experience in assisting clients with the management of their property portfolios and multi-let estates, and established relationships with local managing agents and letting agents across the south-east.

If you own or are looking to acquire an estate or property portfolio, we can assist both in terms of any initial acquisition and/or in connection with the continued management of the estate. Contact our [real estate team](#).



[Craig Burton](#)

Partner