Rent Review

Rent Reviews are an important feature of the commercial property lease and it is essential that professional advice is sought when faced with a forthcoming rent review.

FG Burnett

Rent reviews in commercial property leases were borne out of the need to ensure a landlord's rental income under a long term lease, kept up with inflation. Rent reviews are generally on a 5 yearly cycle and in almost all cases are upwards only in nature, where the rent may stay the same, but cannot reduce. Despite the fact that leases are now considerably shorter than the traditional 25 year term, the rent review clause remains a feature of most leases in excess of 5 years in duration, although in many cases the rent review clause has not been updated to take account of the shorter term.

Basis of Review
The rent review provisions in the lease provide the basis on which the rent is to be agreed. There are a myriad of differing methods and basis of review, such as fixed uplifts, inflationary linked increases, rents linked to different types of properties altogether but most commonly the rent review is to be reviewed to open market rental value.

Under a market rent review, the rent payable, should be the rent that would be payable for the subject property between a willing landlord and willing tenant for a hypothetical lease at the review date in question for a defined lease period and

on the same terms and conditions as the existing lease. There are also various assumptions and disregards to be considered in coming to the market rent.

Unfortunately, the words used are rarely straightforward and subject to considerable argument and differing legal interpretation. Furthermore, if the existing lease terms are overly onerous or favourable, this can permit arguments for reductions or allowances in the 'market rent' to account for these terms.

General Principle and Notices
The general principle in rent reviews, is that 'Time is not of the Essence'. This allows a Landlord to seek a review of the rent beyond the rent review date. This can however be contracted out by specific wording in the lease to the contrary, but also, where a timetable is provided for the Landlord's service of a Rent Review Notice and for the tenant's response to that Notice, the general principle is dis-applied. It is therefore extremely important that any timetable is strictly adhered to. Failure to do so may mean that the Landlord has lost their right to review the rent or conversely that a tenant is deemed to have accepted the landlord's Notice rent, which is unlikely to be understated.

The Notice provisions must also be carefully followed, relative to timings, addressee, and Notice

content as the courts have been strict in deeming errors to invalidate Notices, which may have penal consequences. We recommend that solicitors serve rent review notices.

The landlord cannot seek to arbitrarily increase the rent. It must be based on market evidence.

Failure to Agree
Most leases provide for the eventuality where a landlord and tenant cannot agree the rent. The solution is that the matter is referred to an independent 3rd party, acting either as an Independent Expert or as Arbitrator. If the parties cannot decide on this appointment, then an application can be made to the Chairman of the RICS to appoint one. This should be a matter of last resort.

FG Burnett adopts a sectorial approach to rent reviews. We have experts in each of the retail, office and industrial sectors. All of FG Burnett's rent review specialists are Executive Directors and all are either Fellows or Members of the Chartered Institute of Arbitrators.

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