

4 MARCH 2021

Post Pandemic Lease Renewals

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Question



- Who is calling the shots when it comes to post pandemic '54 Act lease renewals?
- Are “Covid clauses” suspending rents, short term leases and break clauses the new normal?

Approach



- Commercial market overview
- Specific requests:
 - Short terms
 - Break clauses
 - Covid clauses
- market forces vs law - practical implications

I. The Market



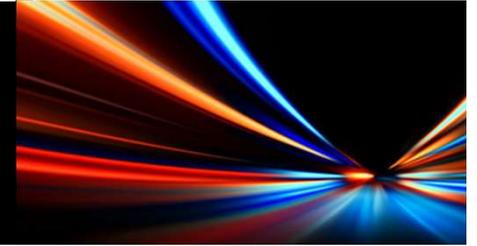
- Polarisation: quality; locations; and sector.
- The specific property
- “...almost infinitely varying circumstances of individual leases, properties, businesses and parties” (Lord Hailsham, *O'May v City of London Real Property Co Ltd* [1977])

II. Specific Clauses



- **S.32-35 LTA 1954**
- 32 - Property
- 33 - Duration
- 34 - Rent
- 35 - Other terms

II. 1 Duration



- S.33 "... the new tenancy shall be ... such a tenancy as may be determined by the court to be **reasonable in all the circumstances**, ..." *Section 33 - Duration of new tenancy.*
- Current term....starting point only (*Betty's Cafes Ltd v Phillips Furnishing Stores Ltd (No.1) [1957]*)
- Conflicting considerations: "strike a reasonable balance between conflicting considerations" (*Edwards (J.H.) & Sons v Central London Commercial Estates [1984]*)

Short terms...



- Market practice
- Short terms against Landlord's will - *Rumbelows Ltd v Tameside MBC [1994]*.
- "I do not think Vodafone's reasons for seeking greater flexibility, ...justify the resulting uncertainty and I consider [a short term] would be unfair to the landlord after the expense and disruption of these proceedings.", (Martin Rodger QC, *Vodafone Ltd v Hanover Capital Ltd [2020]*)
- Who wins?

II. 2 Breaks



- ...even better than short terms?
- S.35(1) The terms of a tenancy ... may be determined by the court; and in determining those terms the court shall have **regard to the terms of the current tenancy and to all relevant circumstances.** *Section 35*
- *Other terms*
- Current lease contains a break - “powerful reason” -*Leslie & Godwin Investments v Prudential Assurance Co. [1987]*

II. 2 Breaks (continued)



- Additional breaks
- “... the burden of persuading the court to impose a change ... against the will of either party must rest on the party proposing the change, and the change proposed must, in the circumstances of the case, be fair and reasonable...” *Lord Hailsham, O’May*
- Balance: *Dukeminster Ltd v West End Investments Ltd [2018]*
- Who wins?

II. 3 Covid clauses



- What are Covid clauses?
- Basic proposition – rent suspension.
- A proportion of rent to be suspended
- Inability to trade
- Insurance

II. 3 Covid clauses (continued)



- S.34(1) The rent payablemay be determined by the court to be that at which, having **regard to the terms of the tenancy** the holding might **reasonably be expected to be let in the open market,...**
- ... (3) ... the court may, **if it thinks fit**, further determine that the terms of the tenancy shall include... **provision for varying the rent** ... *Section 34 - Rent under new tenancy.*
- s.34 (1) – no reference to general reasonableness....

II. 3 Covid clauses (continued)



- ...BUT – differential rents permitted... (*Fawke v Viscount Chelsea* [1980] Q.B. 441, CA.)
- reviews...if the court thinks fit...(S.34(3))
- what is “appropriate and inherently fair and reasonable”
- *Dukeminster Ltd v West End Investments (Cowell Group) Ltd* [2019]
- Who wins?

III. Market Forces vs Legal Forces



- Does the '54 actually matter in the real world?
- Fall back position

Conclusion



- 1. Market shift
- 2. New Normal
- 3. It's all about the facts...

Contact



Thank you for listening.

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