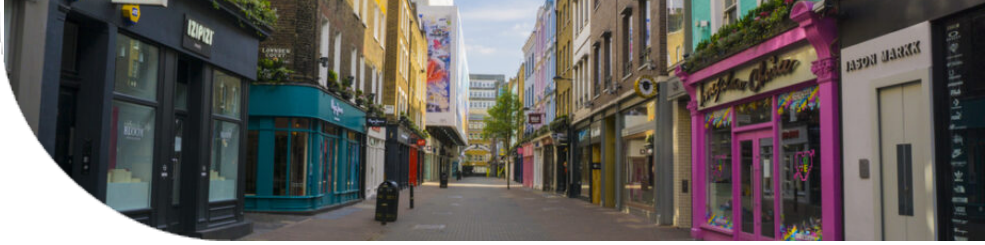

The Levelling-up and Regeneration Bill – High Street Rental Auctions

Parliament introduced 'The Levelling-up and Regeneration Bill' on 11th May 2020. Two years on and the draft Bill has finally been introduced to the House of Commons and includes the concept of High Street Rental Auctions.

What are High Street Rental Auctions?

The Government proposes that owners of vacant high street premises submit their units to rental auctions for prospective tenants, such as local businesses or community groups, to take occupation.

Local businesses or community groups will have the opportunity to bid for vacant shops and if successful will enter into a contract with the local authority for a term of at least 1 year and no longer than 5 years.

The contract will be entered into by the tenant as though it has been granted by the landlord but without the landlord's involvement. The landlord will not be required to sign the contract or negotiate terms with the prospective tenant.

This new proposal is set to equip local authorities with powers to work with landlords of commercial properties to fill empty premises with a view to regenerating towns and cities across the country.

Local Authorities will be able to designate an area within a locality which could be a high street or a town centre. Once designated, the local authorities will assess the benefit to the local area including those to the local society, the economy and the environment from revitalising the area.

High street premises are to include units that might be used as, shops, offices, restaurants, pubs, bars, cafés, community halls, entertainment or recreational spaces as well as light industrial processes (but not warehouses).

Vacant Premises

A premises will be deemed 'vacant' if it has been unoccupied for a whole year being at least 366 days in the preceding two years.

Occupation is deemed by the "regular presence of people at the premises". This is extremely subjective and it

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may prove challenging to establish what is regarded as a regular presence especially in respect of office space and light industrial premises which may not have the regular presence of people that shops or restaurants have.

It is also important to consider than although shops made be visibly vacant there may be many reasons such a vacancy including scheduled refurbishments. Furthermore a tenant may still be paying rent to the landlord so the landlord is not in control of the premises or at a stage where heads of terms are due to be agreed by already interested parties. Presumably there will be clarification on such instance in due course.

What is the procedure?

Once the local authority have established that the commercial premises is vacant they can begin the process of notices to be served before the auction takes place.

An initial notice will be served on the landlord of the premises. The landlord is deemed to be the person/entity that has possession of the premises and will include a tenant with more than one year left to their lease. The lease will be granted with the deemed consent of any mortgagee or superior landlord.

The initial notice will prevent the landlord from entering into any agreements, granting any licences or tenancy for the premises without the local authorities consent. Such notice is be effective for up to 10 week once issued. Any contracts in place prior to the initial notice being served will however be unaffected and can still complete.

In the event the local authority's consent is required, the local authority must refuse the consent or provide the consent within a reasonable time and must consent to a tenancy or licence that will start within eight weeks of the service of the initial notice, last for at least a year and it most circumstances "would lead to the occupation of the premises for activity that involves the regular presence of people at the premises".

If the premises has not been let within eight weeks the local authority will serve a final letting notice on the landlord (within 10 weeks of the initial notice being served). In this time the local authority can begin preparing for the rental auction.

The landlord again cannot enter into any agreements or grant any licences or tenancy's without the consent of the local authority.

The landlord has 14 days from the final notice being served upon them to serve a counter notice stating if the local council do not withdraw their final letting notice they will appeal. The counter notice will need to identify the ground for appeal. The landlord will now have the opportunity to dispute whether or not the premises is suitable for the authorities rental auctions and whether or not is in fact vacant. The landlord will have 28 days from serving the counter notice to appeal the letting notice within the County Court.

Following the service of the final letting notice if no counter notice or appeal has been made by the landlord and no licence or tenancy has been granted, the local authority can begin the rental auction.

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Once a successful bidder is found they will enter into a contract with the local authority to take occupation of the vacant premises. The contract must set out the terms of the agreed tenancy and in some circumstances may even include pre – tenancy works that either the prospective tenant or landlord will need to carry out to cater for the tenant.

Although this may appear repressive to landlords and unfair that a landlord may have a tenant in occupation that they would not have ordinarily considered, the contract entered into will be excluded from statutory security of the Landlord and Tenant Act 1954.

Will the new powers have a positive impact on the vitality and viability of town and city centres?

The Bill is at the very early stage of the legislative process and whilst this appears to be a promising move to rejuvenate our high streets the Bill will need to be carefully considered to ensure it is effective for all parties.

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