

CHANGE OF USE APPLICATIONS

Leases will normally restrict the permitted use of the property. This will be particularly important in the case of a shopping centre or shopping arcade whether it was a mix of different uses.

Planning and building control and other legislation will also specify what type of uses of property can be used for. There may also be an obligation in the Landlords head Lease restricted to particular uses which requires consent of the Head Landlord to any change of use.

The permitted use under a lease will usually be relevant on the rent review because the rent will be reviewed on the basis of the terms of the existing Lease. Therefore, a narrow permitted use clause can reduce the market rent on future rent review because it narrows the categories of potential lessees.

The Landlord will also want to maintain the value of the property by avoiding damage to its reputation by undesirable uses. The Landlord may own adjoining premises (as in the case of a shopping centre) and would generally wish to retain a good tenant mix. From the Landlord's perspective there is a balance between the protection of these interests and the rent review issues that may arise from a narrow permitted use. The Tenant will generally want a wider use clause.

It is a matter for agreement between the Landlord and Tenant on the grant of the lease as to how broadly or narrowly the use is defined. At the minimum, it would be provided by the Planning Permission. There will usually be restrictions on the Tenant applying for Planning Permission to change in the use.

Uses can be defined very broadly or narrowly. A Use could be specified as offices, retail, industrial etc. These would be quite open. Other uses could be specific to particular types of business e.g. (estate agency, shoe shop etc.) The approach commonly undertaken in England is to refer to the use classes under Planning Legislation. Planning legislation lays down certain categories of use and it is

presumed that changes within this use category do not require Planning Permission. Changes between Uses are generally presumed to require Planning Permission.

It is possible to provide an absolute restriction on the change of use in a lease which would mean that the Landlord's consent would be required to any variation. It is more usual that the lease allows a tenant to change use with the landlords consent. Most leases also provide that the landlord's consent is not to be "unreasonably" withheld or delayed. If the Clause provides that the landlords consent is required but does not state it is not to be "unreasonably withheld" then unlike the case in Ireland, there is no overriding law which says that the Landlord must act reasonably. The tenant will be at the mercy of the landlord who may decline the request for whatever reason he wants.

If the landlord refuses consent, the tenant can apply for a Court Declaration that the landlord's withholding of consent is unreasonable. The tenant could proceed with the change of use if it was completely confident of the position. Unlike the position on assignment, the landlord is not obliged to give a reason for withholding consent and there is no remedy for any loss suffered as a consequence of a unreasonable refusal.

Sometimes leases provide that the Tenant must use the premises for a particular purpose i.e. that the tenant must trade. This would be common in shopping centres. In these circumstances, the tenant could not stop trading at the property without breaching the lease. The Tenant would usually resist such a covenant.

There are usually additional obligations requiring the tenant to comply with Planning legislation. Generally it is not permitted to apply for Planning Permission without the Landlords Consent.

Alterations and Works

Leases usually restrict the Tenants ability to undertake works. This is in order to protect the Landlord's interest in his property.

Provided no structural alterations are involved, the Landlord is not allowed to demand money as a condition of consent. However, the Landlord may, as a condition of his

consent, insist upon reasonable compensation in respect of damage or diminution in the value of the premises or any adjoining property and may require reimbursement of expenses incurred in the consent application, including legal and surveyors fees.

Over and above the Lease, there are restrictions and conditions arising from Planning Legislation, Building Regulations, superior titles and common law obligations which may be relevant to proposed building works.

The Landlord will want to ensure alterations to comply with legislation, to ensure that the property is not substantially different to that originally let and to maintain the character, appearance and reputation of its building and its rental value and the value of the adjoining premises.

In the cases of short term lettings, the landlord will want to exercise very tight control. In the case of longer lettings a lease would not be attractive to a tenant if there were severe restrictions on the ability to make alterations.

A Lease may contain an absolute restriction on making alterations at any time. This would give the Landlord complete control. A tenant will need a Landlord's consent to any changes. There is legislation which allows a tenant to obtain a Court Order to vary this provision in the case of critical matters such as Fire, Health and Safety Legislation.

Commonly, external alterations may be absolutely prohibited but internal non structural alterations may be undertaken with the Landlords Consent.

The Landlord and Tenant Act implies a condition into a lease that that Landlords consent is not to be unreasonably withheld to works which are an improvement . The Landlord and Tenant Act only applies in relation to works which are an improvement. What is or is not an improvement is looked at from the tenant's perspective. It must be an alternation which has the effect of increasing the value or use of the premises from the Tenants perspective. It will generally be easier for a Tenant to show that the works improve the premises from his perspective. However, the Landlord can as a condition of our payment by the Tenant by reasonable compensation in respect of diminution, value of the premises or the payment of any legal or other expenses.

The Landlord will only be deemed to act reasonably where his reasons for refusal relate to the relationship of Landlord and Tenant and the property. The Landlord can be compensated for a reduction in value. Therefore, a Landlord could be deemed to be acting unreasonably if he refused consent on the basis of a reduction in value of his property.

If, in the tenant's opinion, the Landlord unreasonably withholds consent to improvements, the Tenant may seek a Court Declaration that the Landlord is acting reasonably. Alternatively, if the Tenant is confident that the Landlord is unreasonably withholding consent, he can undertake the works and wait for the Landlord to take legal action. If the Tenant was in fact right in his contention, the Landlord's legal action to constrain the alleged breach of obligation would not succeed.

Compensation for Tenant's Improvements

A Tenant may claim compensation from the Landlord for improvements upon termination of his Lease. Under the Landlord and Tenant Act, a Tenant of a business premises is entitled to compensation upon quitting the premises at the end of his Lease no matter how it is ended, in respect of certain improvements.

The improvements which add to the letting value of the premises must be reasonable and suitable and must not diminish the value of any adjoining premises belonging to the Landlord. They must not be pursuant to say an original obligation to under the Lease e.g. works required by a Statutory Obligation such as Fire Safety, Health and Safety at work.

The Tenant must serve Notice of Intention to make improvements. The Landlord has three months from the receipt of specifications to serve his Notice of Objections. If the Landlord does not object the improvements are treated to be authorised and will attract compensation. If the Landlord does object, the Tenant may apply to Court for an Improvement Certificate if the improvement is a proper one to make. The Courts will grant a Certificate if it is satisfied that the improvements qualify as an improvement as set out above. If the Tenant receives no objection he can carry out the improvements notwithstanding anything else in the Lease.

The amount of compensation is not to exceed the net addition to the value of the premises resulting for the improvement costs or the reasonable costs of carrying out the improvements, if the improvements do not add to the value of the premises then no compensation will be payable.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.