

Practical And Professional Commercial Property Comment
From The Culshaw Partnership

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High Street Shops Still A Good Investment

The high street still dominates the commercial auction sector and comprises around 70% of stock sold over the past 12 months, as it has done for many years. Buyers have always liked the lot size, lack of obsolescence and adaptability offered by high street shops. A shop is also an easy asset to understand. Buyers drop in, work out how busy it is and consider if its selling something that people will want. Finally, there is always the queue test - how long is the queue at the till at peak periods and how many hours a day?

The driver for our investors is of course, yield, and the yield paid is as strong an indicator as any of the demand for an asset. Retail yields have changed since 2000, grade-A and grade-B, yields traded perilously close in the mid noughties - at one point in early 2008 within 100 basic points of each other. The shocks of 2008 delivered a correction, with the margins between the best and poorest stock more than doubling very quickly, and rising again following the Brexit vote. It is this ever-changing measure that shows buyers' greater understanding now of risk and their perception of growth potential. While there have been retail failures and changes in shopping habits,

the market has also seen many success stories. People like going out, meeting each other and shopping. If you are brave enough to drop into a high street McDonald's on a Saturday, you will see how this is also embedded in the next generation too.

While the likes of Comet and Rumbelows have been replaced by charity shops and discount stores, coffee shop chains are flourishing. Costa has more than 2,200 outlets across the UK and trades alongside a myriad of independent outlets and high street stalwarts including Clarks, H Samuel, Boots and Greggs.

Latterly, the passion for property ownership in this country has delivered real profits from residential holdings. Regular tax changes along with negligible returns on cash have encouraged those investors to look at the commercial sector.

Investment decisions

High street banks represent one of the biggest pools of assets sold at auction, and provide a widespread of lot size, geography and lease length, along with their own challenge from online banking.

The spread of yields in our sales typically ranges from 4% to 11%, which is almost a factor of three. Simply put,

this pricing suggests that buyers think that the risk of a secondary bank on a weak high street delivering income for a long time is a third as likely as the best assets. To illustrate this, a short lease to Lloyds Bank with tremendous alternative use value achieved a 4.7% yield, selling for £1.1m, which may seem appropriate for a picture postcard bank in the wealthy Cotswold town of Stow-on-the-Wold. Thirty miles south, on Regent Street in Swindon, a bank generating similar rent but sublet at less to a retailer, commanded only 11.3%. These investors understand the risk and are voting with their cheque books. Only time will tell if our 200,000 investors are correct in trusting their instinctive feel for the high street to generate income. However, with their many years of investing experience and plenty of reasons not to, the very fact that they are still keen makes me think that they will be proved right.
George Walker, Allsop

Estates Gazette - 23rd Sept 2017

C.P. Comment :

At The Culshaw Partnership we tend to agree. Investors continue to have to be discerning but we do believe the High Street has a future.

Requests For Consent

There is a great volume of case law dealing with how a court will go about assessing the reasonableness of a party's refusal of consent in the world of landlord and tenant.

Two of the key distinctions are: 1) the burden of proof in making out the reasonableness (or unreasonableness) of the refusal; and 2) the requirement to give reasons when refusing consent to a request.

In applications for consent to dispose of a lease, section 1(6) of the Landlord and Tenant Act 1988 (the 1988 Act) puts the onus on a landlord, rather than a tenant, to

show that any refusal of consent was reasonable. A landlord only has to show that its conduct in refusing consent was reasonable and not that it was right or justifiable. The genuineness and reasonableness of its reasons for doing so will be a question of fact that will need to be determined by a court, should the matter ever be disputed. In contrast, in most other property scenarios where a request for consent is made, the burden of proving unreasonableness will be on the party alleging it.

Estates Gazette - 23rd September 2017

C.P. Comment:

Interestingly a recent case (*No 1 West India Quay Residential Ltd v East Tower Apartments Ltd*) shows that any landlord must give careful consideration to the reasons for refusal and the manner in which these are communicated. In this case the landlords reasonableness reasons for refusing consent were held to be vitiated by a sole bad reason and it was held that consent thereby was unreasonably withheld.

Right of Way Issues

It is notoriously difficult to show that an easement has come to an end. But what is the position if the title to a property appears to be burdened by an easement that cannot be exercised owing to a change in the layout of the land? *Shortland v Hill* concerned land that was affected by a "right of way at all times and for all purposes with or without vehicles over and along that part of the property hereby transferred shown hatched green on the said plan for sole purpose of access to the garage forming part of the retained property". Had the right of way been lost when the garage was demolished and grassed over? The owner of the servient land had claimed that the easement had been lost because the right had been reserved solely for the benefit of the garage. And, if this were wrong, they pointed to a covenant in the transfer that required them to concrete a sufficiently wide area of the yard to enable vehicles to obtain access to the garage and tried to persuade the court that this governed the interpretation of

the easement. Therefore, so their argument went, the right of way must be restricted to such part of the yard as was necessary to enable the owners of the dominant land to obtain access to the garage by the straightest route possible. The county court judge accepted that there can be cases in which, as a matter of construction of the grant or reservation, easements are limited. But the factual matrix in this case was clear. The transferor had carried on business as an antique dealer and had advertised his premises and workshop for sale separately. The workshop had sold first and he had reserved as many rights as possible over the land that went with it to facilitate the continued use of the shop premises - even though this had reduced the price paid for the workshop. It was clear, therefore, that the easement had been reserved to benefit the retained land as a whole, as opposed to being simply for benefit of the garage.

Consequently, the easement had survived the demolition of the

garage and had not been suspended or abandoned.

Further more, the transferor had reserved a right of way at all times, for all purposes, with or without vehicles, over every part of the yard. The right was not purely vehicular. It was designed to facilitate pedestrian access too - and such access can be over surfaces that are impassable to vehicles. The reservation and the covenant were separate provisions that were independent of each other.

Estates Gazette - 23rd September 2017

C.P. Comment :

This demonstrates how important it is to consider very carefully the wording used to describe an easement or covenant. As often the devil is in the detail.

Money Laundering

The Money Laundering Regulations 2017 were implemented at the end of June, just four days after passing through parliament.

The regulations have been published, and they are highly complex. The RICS is trying to get clarification from the treasury and HMRC, which is overseeing introduction of the regulations, on how they should be implemented.

Background checks

The Money Laundering Regulations state that: "For the purposes of these regulations, an estate agent is to be treated as entering into a business relationship with a purchaser (as well as a seller), at the point when the purchaser's

offer is accepted by the seller."

Customer due diligence means:

- * identifying all sellers and all buyers and verifying their identity;
 - * identifying all beneficial owners, where applicable, and verifying their identity;
 - * obtaining information on the purpose and intended nature of the business relationship.
- The type of information needed may include:
- * details of customers business or employment;
 - * the source and origin of funds that your customer will be using in the relationship and
 - * copies of recent and current financial statements.

Estates Gazette - 7th October 2017

C. P. Comment :

Included with the freehold disposition of property interests by Estate Agents is any leasehold disposition which can be held to have a value either by reason of the level of rent, the length of term or both. Quite how that requirement is to be assessed in these times is open to interpretation.

Presumably any lease with a ground rent that may be capitalised ?

What about a lease that attracts a premium at assignment ?

Tenant Insolvency

Learning that your tenant has gone into administration is not, on the face of it, going to be good news for a landlord. However, this article considers how a landlord can best protect its position in these circumstances. If the administrator continues to use the property for the purposes of the administration, then the landlord is at an advantage to most other creditors as rent will be payable as an expense of the administration during the period of occupation.

If the lease remains in existence and the property continues to be occupied by the business in admini-

stration, the administrator (as opposed to the landlord) will remain liable to rates.

If the administrator vacates the property and the lease is not brought to an end, then no rates are payable by the landlord while the administration continues.

If the administrator will not or cannot co-operate then formal steps can be taken (or threatened) including correspondence and possibly court action to recover unpaid rent or possession of the property.

In the context of administration, such action is subject to restrictions

during a moratorium which arises under paragraph 43 of Schedule B1 to the Insolvency Act 1986 immediately on the administrator's appointment. This prevents a landlord suing for rent, seizing goods or forfeiting the lease without permission.

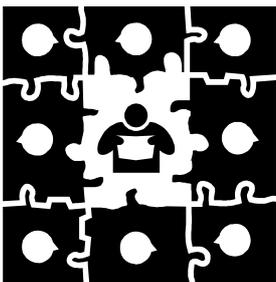
Estates Gazette - 9th September 2017

C.P. Comment :

In practical terms this is seldom a beneficial process for a

(Continued on page 4)

How We Can Help You



The Culshaw Partnership
one company for all your
property needs

Property Management

Rent Reviews/Lease Renewals

Investments ~ Sales & Lettings

Dilapidations ~ Rating

Planning ~ Survey & Valuation

Landlord & Tenant Disputes

The services we offer are listed here please contact us to see if we can be of assistance with any property issues you may have. See page 4 for all our contact details .

Wishing you a Merry Christmas

And a

Happy New Year

From

THE CULSHAW PARTNERSHIP



Tenants Insolvency - continued

(Continued from page 3)

landlord. He will come at the bottom of the pile as far as compensation is concerned and it is often the case that the

Administrator will keep control of the property, whilst not ostensibly "occupying" it in order to securely and cheaply store stuff until such time as it can realise value or

ultimately just leave it for the landlord.

In practice most landlords just want their property back to re-let.

Market Indicators

The commercial property investment market remains strong.

Demand for good quality retail stock remains and we have seen yields harden for small industrial units for which there is generally steady occupational demand.

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