

IMPORTANCE OF LEASE LENGTH AT RENT REVIEW

The length of the lease can have a huge effect on the rental value of a property. This is perhaps more prevalent in today's market than ever as we see agents using "rent menus" in a bid to attract tenants to commit to longer terms at lower rents.

Likewise, at a rent review, the length of term to be valued under the hypothetical rent review provisions of the lease can have a great effect on the rent to be paid.

Both Landlords and Tenants should seek good advice in relation to the length of term to be valued at review as a mistake in the interpretation of the term to be valued could lead to an incorrectly high or low rent being set. It is often not immediately clear from the wording of a lease what the lease is directing the parties to assume. This is despite fact that recent case law has set a precedent in relation to many of the clauses commonly used in lease drafting.

In the case of Canary Wharf v Telegraph Group, the hypothetical term to be valued at rent review came into dispute. It was determined that the term to be valued should be the original lease length of 25 years rather than the 15 years which actually remained on the lease. The differential in rent between the valuations of the property based on the 25 year term compared to the 15 year term has been reported to have been in the region of £500,000 per annum.

Notwithstanding the above case and the particular details of the rent review provisions included in the lease, the Courts have generally determined that in the case of ambiguity, the "presumption of reality" must prevail. Hence the above case is somewhat unusual in that the term of 25 years was valued as opposed to the remainder of the term, being 15 years. The specific wording of the lease is therefore all important.

Whatever the drafting of the lease or the interpretation put on the term to be valued, market conditions will always dictate the differential in value between a long and a short lease. Again, it is therefore very important when negotiating rent reviews to know what is going on in the market.

The advice to landlords and tenants alike is therefore to seek professional advice in relation to the hypothetical rent review provisions of the lease. It is important to do this not only at the time of the rent review but at the commencement of the lease and at lease renewal. As the Canary Wharf case shows, the terms drafted in a lease are not always as clear as they might seem and often can have a dramatic impact upon the rent.

**For further information, please contact Desmond Hirsch,
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