

Coronavirus – Property Note 6 –6 months on (and another quarter day fast approaching!)

Whilst Coronavirus's impact on the real estate sector is undoubtedly severe, it is also now clear that the long-lasting impact is going to vary both in terms of sectors and location.

This note briefly summaries the position as at 25 September for commercial property in England, it does not take into account any localised lockdowns which might have been imposed.

Rents

It would be fair to say that in March a number of Landlords acted aggressively believing their Tenants had the money to pay the March quarter's rent. Most Landlords then agreed to rent being paid **monthly** and then fairly quickly the mood of aggression began to move towards one of acceptance so that many Landlords agreed that the rent (or a portion of it) could be **deferred**. In some instances, especially if the Tenant was willing to commit to a longer period or to "lose" a break, Landlords gave some form of rent **reduction**. Other large Landlords granted reductions to "small" Tenants especially in the retail and hospitality sectors.

But it is also important to remember that Landlords are suffering from the effects of Coronavirus too and that often their hands are tied by their **Lenders** as to what they can or cannot do. Loan to value ratios in many instances are being severely tested.

What can a Landlord do at present if the Tenant has not paid its rent?

Generally, Landlords have insisted that **service charges** are paid in full (arguing that they are still incurring costs) but most have accepted monthly payments. Some Landlords have pushed back planned capital projects to reduce the amounts their Tenants have to pay.

- **Statutory demands/winding up.** A route some Landlords went down which was "banned" by new legislation if the Tenant could show that the reason for non-payment is Covid related. This Tenant protection now ends 31 December 2020.
- In the real world, not many Landlords are going to want to **forfeit** (end) a lease unless the Landlord has a third party who will take the space immediately. In any event, there is now a ban on forfeiting for non-payment of rent until 31 December 2020.
- Draw upon a **rent deposit**. Some Landlords can and are now beginning to do this in order to receive cash, even though they know it is unlikely the deposit will be immediately "topped up".
- Almost certainly by now Landlords will have pursued **parent company guarantors** and **guarantors** under an AGA.
- Charge **interest**, but if the Tenant is not paying the rent this currently is a "theoretical" claim.
- **Sue** for non-payment, but what will that lead to?

Loss of rent insurance which we mentioned previously was uncommon and the insurers have generally refused to pay out. However, a test case bought by the FCA in relation to some insurance claims has proved generally favourable for the insured. So maybe there will be some pay outs?

Other Government action

In June the Government published the "**Code** of Practice for Commercial Property relationships during the Covid-19 pandemic" which it hopes Landlords and Tenants will follow. The Code encourages dialogue and transparency. All of this is very sensible, and few would argue with the sentiment. We expect Landlords (and their Lenders) will want to see detailed business plans from their Tenants which will show the loans, grants, etc. the Tenant has obtained before the Landlord agrees to any form of concession. Tenants may argue they do not want to take on further debt but why should the Landlord suffer? The Government has stated it "is clear that where businesses can pay rent they should do so". The Code though is voluntary.

The Government has also relaxed **planning** legislation to make it easier for pubs/restaurants to accommodate more customers outside and to make it easier to use properties for a different planning use. Steps have been taken already to encourage development and the White Paper "Planning for the Future" hopes to lead to a streamlining and modernising of the planning system.

What are we seeing in the market?

Some large institutional Landlords/those with broad shoulders are holding out for near pre-Covid Lease deals whilst other smaller/leveraged Landlords are much keener to secure income. Again, sector and locations are important. Certainly, the fact that no business rates are payable on retail, hospitality and leisure properties until 31st March 2021 has affected how some Landlords react.

We are completing new Leases and Lease renewals in all sectors. Some are "standstill arrangements" for 3/6 months, others have been much more conventional. Whilst talked about a lot we have not (yet) an increase in the use of turnover rents on new lettings but are beginning to see "Covid" clauses. Of course, some new lettings remain "on hold" or fell by the wayside.

Many office Tenants are talking about downsizing (many by around 50%) and we have already acted for Tenants who have moved within a building in order to take smaller space following a negotiation with their Landlord. We think there will be a very large number of re-gears over the coming months. We have served a number of break notices, but it is worth bearing in mind that it is absolutely standard for a break to be conditional on the annual rent being paid up to date so Tenants who have not paid rent for 2, coming up to 3, quarters may have to find a considerable amount to exit from premises they no longer need.

There does seem more dialogue between Landlords and Tenants. It is clear though that (a) Landlords are prioritising which properties they want to "sort out" first and (b) Landlords who have mortgages will require their Lender's consent and Lenders too are prioritising which transactions to sanction/consider.

Marriott Harrison Real Estate Key Contacts

Mark Lavers – mark.lavers@marriottharrison.co.uk – 07803969035

Guy Hitchin – guy.hitchin@marriottharrison.co.uk – 07747038295

Nick Smith – nick.smith@marriottharrison.co.uk – 07748986478

Stephen Whittaker – stephen.whittaker@marriottharrison.co.uk - 07912540230