

COMMERCIAL LEASES – PITFALLS FOR TENANTS

There are many contrasting differences in the procedures for the letting of commercial premises between England and those of France.

We detail below some of those issues which prospective tenants of commercial property should be aware of when acquiring property within England and Wales.

The Legislation

In England and Wales the Landlord and Tenant Act 1954 as amended by the Law of Property Act 1969 and the Business Tenancies (England & Wales) Order 2003 is the principal legislation which defines the rights and obligations of landlords and tenants of business premises. This legislation provides commercial lessees with a degree of security of tenure; it sets out the basis for determining the open market rental value on lease renewals and the basis of compensation if landlords seek possession for their own use, occupation or development on lease expiry.

Privity of Contract

In England and Wales the original parties to a lease can remain liable to each other for fulfilment of the terms of the lease throughout the term of the contract – regardless of any subsequent assignment of the lease – where the lease was granted prior to the 1st January 1996. This is known as the concept of privity of contract which, does not apply in the same ways to leases granted after 1st January 1996.

By virtue of the Landlord and Tenant Act 1988 landlords cannot unreasonably delay or withhold consent to applications for either assignment or sub letting of commercial premises where such transactions are permitted under lease.

Repairs

The usual obligation requiring a lessee to keep in good and substantial repair a commercial property effectively requires a lessee to put and keep such premises in repair – this can extend to include inherent defects (i.e. defects in design or construction). It should be appreciated that much will depend on the precise wording of the lease – but depending on that wording the obligation can even extend to require a lessee to rebuild and renew a property.

Service Charges

Until relatively recently lessees could only secure a rebate in respect of service charges (where a landlord has made an incorrect charge) for the year in which the challenge to the service charge was actually made – and not for previous years. Now, following the decision

in Kleinwort Benson V Lincoln City Council lessees are able to pursue such claims under contract for up to 12 years.

