

Temporary increase in the threshold for empty rates relief

In April 2008 the Government changed the level at which rates were charged on most vacant non-domestic properties. Industrial and warehouse premises had 100% business rates relief for the first six months of vacancy, whilst most other commercial properties had only 3 months of 100% rates relief. After the initial period of vacation full business rates were then payable as if the property was occupied rather than the previous indefinite exemption. This change in legislation has been widely criticised as an additional strain on businesses at a time of economic difficulty.

The Government has now announced with effect from April 2009 it will temporarily increase the threshold for empty properties with a rateable value of less than £15,000. The Government estimates this change will exempt 70% of empty properties from business rates. However, as the proposal currently stands this relief will only be available for a year and there are no current plans to permanently reverse the position.

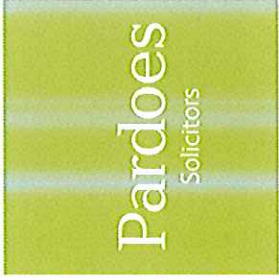
Green Leases

Following from the imposition of Energy Performance Certificates, 'Green Leases' appear to be the next step in the Government's agenda designed to address environmental issues in the commercial property sector. A Green Lease is a commercial lease with additional environmental clauses. These clauses impose obligations on the parties designed to improve the energy efficiency of the building and use. This may be achieved by - requiring that tenant works meet energy efficient standards, requiring landlords to keep plant and machinery in good and efficient working order and to replace it when necessary with energy efficient replacements, requiring building maintenance, waste disposal and caretaking services to be energy efficient. The obvious drawback of such measures is that the benefits accrue to the tenant whereas the costs of the improvements lie with the landlord. This conflict could be resolved by passing on the costs through the service charge.

A Couple of Recent Cases

When considering repairing obligations under a lease it has been held by the Court of Appeal in the case of Fitzroy House Epworth Street (No.1) Ltd v The Financial Times Ltd that there is no general principle of fairness and reasonableness that can be applied. Rather the test of whether a tenant has complied with its obligations is objective and is a question of whether a landlord can let or sell the property in question without delay or additional expense. Each case will be determined on its own facts.

On the issue of service charges landlords and agents ignore procedures set out in leases at their peril. In the case of Leonora Investment Company Ltd v Mott MacDonald Ltd the failure by an agent to comply with the procedural provisions of the service charge meant the sums invoiced were not payable by the tenants – although this case cannot be used by tenants to defeat service charges in minor technical breaches.



Commercial Property Team

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