

Insights

LEVELLING-UP AND REGENERATION BILL – HIGH STREET RENTAL AUCTIONS

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SUMMARY

A central pillar of the Levelling Up and Regeneration Bill is the Government's intention to shift power out of Whitehall and into the hands of local authorities. Proposals to give local authorities the power to auction off vacant high street units have already made headline news – we look at how the Government proposes this may work in practice.

THE QUALIFYING CRITERIA

As set out in Parts 8 and 9 of the Bill, it is for the local authority to designate those streets and/or centres that it considers to be “important to the local economy because of a concentration of high-street uses of premises in the area”. Local authorities may then designate vacant (empty continuously for more than one year or 366 days in a two year period) commercial properties as “qualifying high-street premises” if they fall within a designated area and are suitable for a “high-street use” such as:

- a shop or office;
- the provision of services to people;
- a restaurant, bar, public house, café or other establishment selling food or drink;
- public entertainment or recreation;
- a communal hall or meeting-place; or
- manufacturing or other industrial processes if they are carried in proximity to and in compatibility with the uses referred to above.

THE AUCTION PROCESS

If a local authority considers that occupation of a currently vacant qualifying high street would be “beneficial to the local economy, society or environment”, they may serve an “initial letting notice” on the landlord. This will constitute a local land charge.

The initial notice will expire after ten weeks unless the local authority chooses to serve a final letting notice (which they may do after eight weeks). The initial notice is intended to prompt the landlord to let the premises but, somewhat counter-intuitively, during this period the landlord must apply for written consent from the local authority before they complete any such letting. The local authority must give consent within a reasonable amount of time (currently unqualified) provided that certain criteria have been met, including a minimum term of one year which starts within eight weeks of the initial notice date; and that the tenancy would be “likely to lead to the occupation of the premises for activity that involves the regular presence of people at the premises”. The consent mechanism is one of several anti-avoidance measures drafted into the Bill.

If the landlord fails to achieve this, the local authority may elect to serve a “final letting notice” which must be served before the initial notice period expires and will last for 14 weeks. Again, any proposed letting during this period will require the local authority’s consent as will any works to the premises (save for emergency works or those imposed on the Landlord). At this point a landlord is afforded a two week window to serve a counter-notice on the local authority stating one of the prescribed grounds (which include an intention to carry out substantial works, an error in the local authority’s process to date and a desire to self-occupy).

Service of the final letting notice by the local authority triggers the ability for it to arrange a rental auction of the premises. There will be further regulations providing more detail about the auction process though there is some assurance that the typical commercial terms for short term tenancies will be heeded (agreeing on those will, in itself, be a challenge) and that the local authority will need to “have regard” to a landlord’s representations. The lease term will be 1-5 years with no security of tenure, with deemed consents from superior landlords and mortgagees. However, in its current form the drafting certainly raises more questions than it answers, in particular:

- it isn’t clear on what basis a bidder may be successful – this may not be purely around the amount of rent or premium they are willing to pay;
- the local authority may allow the tenant to carry out fit out works pre-completion (with consent of the landlord a possible but not necessary condition);
- the local authority may impose an obligation on the landlord to carry out works pre-completion in contemplation of the use by the tenant (with no parameters around the cost or extent of these);
- whilst there is a brief reference to a rent deposit there is no express comfort for a landlord around a tenant’s covenant strength;

- there is provision for the local authority to enter the premises to survey and to extract information from the landlord but this is unlikely to enable the title deduction or the assurances a tenant would normally expect in the open market – in fact it is more akin to an insolvency triggered transaction.

Once the local authority has selected a winning bidder, somewhat bizarrely it (not the landlord) will enter into an agreement for lease with that tenant, the intention being that the landlord will take over the reins post exchange and then grant the tenancy itself. If the landlord fails to grant the lease then the local authority will have the power to do that too.

THE POTENTIAL IMPACT

This is a bold step by Government to fix a problem which is far more nuanced than the mainstream press would suggest. Interfering with the fundamentals of property law to impose a commercial agreement on a property owner is brave at best. The detail around the auction and tenancy terms will be difficult to settle and laborious to follow. It is hard to see how already over-stretched local authorities will find the time and resource to manage this process, when in reality they have less to gain than the landlords themselves. Some might argue that there are other factors that act as a deterrent to the high street market and largely fall outside a landlord's control, including onerous business rates, the strength of online retail, post pandemic nerves and the rise in the cost of living. History has also shown that successful high street regeneration is about co-operation rather than imposition. Is any letting, at any cost, really a good letting for the high street?

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