25 YEAR LEASES, A THING OF THE PAST?

Colin Mumford, senior director within BNP Paribas Real Estate’s lease advisory team, explains why 25 year leases may not be a thing of the past:

“It seems as if the London letting market said farewell to granting 25 year leases after the early 1990’s downturn. However, the impact of this continues to be felt and will be increasingly debated by dilapidations surveyors, as many such tenancies expire in the next two to three years.

This has led to our clients asking several questions, such as whether a landlord can claim for disrepair when the building blatantly needs refurbishment or redevelopment, or whether the tenant’s liability is satisfied if it hands the building back with plant that is working but has no future life expectancy.

In response to these increasing queries, a recent High Court decision laid down helpful guidelines while emphasising that each case will turn on valuation matters rather than legal principles. Clients must therefore ensure that dilapidations advice received extends beyond technical survey and cost input to answer how the building’s value has been impacted by alleged disrepair.

Section 18(1) of the Landlord and Tenant Act 1927 states that damages shall not exceed the amount (if any) by which the value of the landlord’s reversion is diminished by the breach. It also states that no damages can be recovered if at, or shortly after the termination of the tenancy the premises are to be pulled down or structural alterations are to be made, so as to render valueless the repairs covered by the covenant.

Valuers are thereby directed to assess the value of the building in repair and in disrepair. Such value is “in the eyes of the beholder” or in this case the hypothetical purchaser. Thus, an actual landlord who does not wish to pursue a redevelopment and who simply wants to have his space back in repair to re-let is at a disadvantage. If the hypothetical purchaser would pay a price based around redevelopment, the diminution in value and resulting damages will be nominal notwithstanding whether a sale or reconstruction is the actual landlord’s intention.

Landlords are also disadvantaged in cases where it does not undertake the outstanding repairs immediately. Dilapidations cases have, in our experience, taken as many as four years to reach trial. The landlord’s claim for damages can include holding costs for the duration of necessary repair works but not the longer duration that is suffered while then landlord’s investment is frozen pending litigation.
On the other hand, tenants relying on Section 18 to negate landlord’s claims have not found legal support. This has recently been the case in respect of a 1980’s building which the landlord had stripped back to a shell and for which planning consent for substantial alterations had already been obtained.

Similarly, in the case of Sunlife Europe Properties Ltd v Tiger Aspect Holdings Ltd [2013], the judge concluded that the diminution in the value of the landlord’s interest equated to the cost of the repair works. The tenant was entitled to perform its obligations in the manner that was least onerous, but should have returned the premises in good repair.

Therefore, that standard of repair is to be judged by reference to the condition of the fittings and equipment at the time of the letting, not an up-to-date standard at the expiry of the lease as landlords would prefer. Similarly, while the tenant must deliver a plant in satisfactory working order, the landlord is given nothing more if the same plant is working but has no future life expectancy. In approximately seven legal principles, the Judge confirmed that damages would nevertheless be assessed on the facts and valuations of each case.

It is important to take into consideration that each building and each lease has individual characteristics demanding individual strategies. Such strategies are best devised by integral teams made up of the client, the building surveyor, the valuer and the lawyer.”

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