DOUG STEVENS SEMINAR

MONDAY 18th JUNE 2018

08.00HRS TO 09.00HRS

VENUE : CBRE 'C-BAR'

Henrietta House

Henrietta Place

W1G 0NB

SUBJECT

1. *ASSET MANAGEMENT - SERVICE CHARGES - REPAIRS - ALTERATIONS - CHANGE OF USE*
2. *OPEN QUESTIONS*

SEMINAR BY DOUG STEVENS TO 1st & 2nD YEAR GRADUATES

DELIVERED AS A POWERPOINT PRESENTATION

NEXT SEMINAR 23rd JULY 2018

PREVIOUS SEMINARS www.douglasstevens.co.uk SEMINARS

SCENARIO

YOU ARE THE ASSET MANAGER /MANAGING AGENT OF A COVERED SHOPPING CENTRE
4 DIFFERENT ISSUES ARISE ON 4 DIFFERENT UNITS

- ISSUE 1 SERVICE CHARGE DISPUTE ON LARGE STORE
- ISSUE 2 REPAIRS DISPUTE ON SHOP UNIT
- ISSUE 3 TENANT APPLIES FOR CONSENT TO MAKE ALTERATIONS TO UNIT
- ISSUE 4 FASHION RETAILER APPLIES FOR CONSENT TO ASSIGN TO £ SHOP

L/L ISSUES DEMAND FOR SERVICE CHARGE. TENANT DISPUTES FIGURE

- TENANT WITHHOLDS PAYMENT OF SERVICE CHARGE AS THEY SAY THE FIGURE IS WRONG

- Q. WHAT RIGHTS DOES L/L HAVE TO RECOVER THE MONEY?
- A. L/L WILL TRY TO PROVE THE SUM REQUIRED IS CORRECT AND THEN CHECK WHAT THE LEASE SAYS TO RECOVER THE MONEY FROM THE T
- MANY LEASES PROVIDE THAT THE DISPUTE IS REFERRED TO ARBITRATION WITH T FIRST SERVING NOTICE ON THE L/L.
- *Universities Superannuation Scheme Ltd v Marks & Spencer Plc [1999] 1 E.G.L.R. 13*
- LARGE STORE AT TELFORD SHOPPING CENTRE. M & S PAID SERVICE CHARGE DEMANDED BY L/L BUT THEN DISCOVERED SUM WAS WRONGLY CALCULATED BY L/L WHO HAD TAKEN THE APPLICABLE RATEABLE VALUE TO BE £348,600, WHEREAS THE CORRECT RATEABLE VALUE WAS £848,600. L/L SOUGHT BALANCING SUM - BUT M & S REFUSED TO PAY, CONTENDING THAT IT WAS OBLIGED TO PAY THE SERVICE CHARGE CERTIFIED & DEMANDED AND ON PAYMENT OF THAT SUM HAD SATISFIED ITS CONTRACTUAL OBLIGATIONS.

  THIS CONTENTION SUCCEEDED AT FIRST COURT HEARING - BUT FAILED AT APPEAL COURT.
- THE COURT HELD THAT THE LEASE REQUIRED A CALCULATION BY THE L/L SO IF THE EVENTUAL CALCULATION WAS CORRECT IT WAS IRRELEVANT THAT THE FIGURE FIRST CALCULATED AND CERTIFIED BY THE L/L WAS WRONG. IT IS THE CALCULATION NOT THE CERTIFICATION WHICH PREVAILS
- Leonara Investment Co Ltd v Mott Macdonald Ltd [2008] EWCA civ 857
- IN THIS CASE L/L COULD NOT RECOVER AS SERVICE CHARGE COSTS INCURRED FOR A REFURBISHMENT OF AN OFFICE BUILDING BECAUSE THEY WERE ADDITIONAL COSTS WHICH L/L HAD NOT INCLUDED THOSE COSTS IN ANY SERVICE CHARGE BUDGET

SERVICE CHARGES

- Q WHAT IS A SERVICE CHARGE?
- A SERVICE CHARGES ENABLE AN OWNER TO RECOVER FROM THE OCCUPIERS THE COSTS OF SERVICING AND OPERATING A PROPERTY.
- Q. WHAT WILL IT COVER?
- A. IT WILL INCLUDE REASONABLE COSTS OF MAINTENANCE, REPAIR AND REPLACEMENT (USUALLY WHERE BEYOND ECONOMIC REPAIR) OF THE FABRIC, PLANT, EQUIPMENT AND MATERIALS NECESSARY FOR THE PROPERTY'S OPERATION, PLUS ANY OTHER WORKS AND SERVICES THE PARTIES AGREE ARE TO BE PROVIDED BY THE OWNER, BUT SUBJECT TO REIMBURSEMENT BY THE OCCUPIER.
- Q. WHAT DOESN'T IT INCLUDE?
- A. INITIAL COSTS (INCLUDING THE COST OF LEASING OF EQUIPMENT) INCURRED FOR THE DESIGN AND CONSTRUCTION OF THE FABRIC, PLANT OR EQUIPMENT
- SETTING UP COSTS, INCLUDING COSTS OF FITTING OUT AND EQUIPPING THE ON-SITE MANAGEMENT OFFICES THAT ARE REASONABLY CONSIDERED PART OF THE ORIGINAL DEVELOPMENT COST OF THE PROPERTY ANY IMPROVEMENT COSTS ABOVE THE COSTS OF NORMAL MAINTENANCE, REPAIR OR REPLACEMENT. FUTURE REDEVELOPMENT COSTS
- COSTS BETWEEN THE OWNER AND AN INDIVIDUAL OCCUPIER, IE,- ENFORCEMENT OF COVENANTS - COLLECTION OF RENTS – COSTS OF LETTING UNITS – CONSENTS FOR ASSIGNMENTS – SUBLETTING – ALTERATIONS – RENT REVIEWS, ETC.
- COSTS ARISING OUT OF THE FAILURE OR NEGLIGENCE OF THE MANAGER OR OWNERS

Q. ON WHICH PROPERTIES ARE SERVICE CHARGES LEVIED?

- A. SHOPS/STORES IN SHOPPING CENTRES. SHOPS IN LARGE BLOCKS
- UNITS ON RETAIL PARKS & LEISURE PARKS
- OFFICES IN MULTI-LET BUILDINGS
- RESIDENTIAL FLATS, etc
- Q. WHAT ARE THE MAIN FACTORS WHICH GOVERN SERVICE CHARGE LEVELS?
- A. THE SIZE OF THE BUILDING/CENTRE - ECONOMIES OF SCALE
- THE TYPE OF BUILDING/CONSTRUCTION – MULTI-LET – COVERED/OPEN - GLASS/BRICK
- THE LEVEL OF SERVICES – AIR CONDITIONING – LIFTS /ESCALATORS
- Q. WHAT ARE TYPICAL SERVICE CHARGE RATES PER SQ FT?
- A LARGE COVERED REGIONAL SHOPPING CENTRE – 1M sq ft + ie WESTFIELD £15 – 18 psf
- STANDARD COVERED SHOPPING CENTRE 200,000 sq ft to 500,000 sq ft - £5-£7 psf
- OPEN SHOPPING CENTRE £3- £5 psf – management ,security, cleaning – BUT less M & E as it is not an environmentally controlled environment
- RETAIL PARK £1.50 psf - management, car park landscaping

Q. HOW ARE SERVICE CHARGES CALCULATED?

- THERE ARE SEVERAL BASES ON WHICH SERVICE CHARGES ARE CALCULATED
- BY REFERENCE TO RATEABLE VALUE RELATIVE TO THE TOTAL RV OF A BUILDING OR CENTRE
- BY REFERENCE TO FLOOR AREA normally GIA AS A % AGE OF THE TOTAL GIA OF A BUILDING OR CENTRE
- "FAIR AND REASONABLE" PROPORTION, AS DETERMINED BY THE LANDLORD, ITS MANAGING AGENT OR ITS SURVEYOR (ACTING REASONABLY)

- **OCCUPIERS VIEW SERVICE CHARGE AS A COST OF OCCUPATION EQUIVALENT TO RENT**
- **WHERE THEY CAN CHALLENGE THE SERVICE CHARGE LEVEL THEY WILL DO SO**
- **SOME USE SERVICE CHARGE CONSULTANTS TO FORENSICALLY EXAMINE THE SERVICE CHARGE**
- **SERVICE CHARGES ARE BOTH A MINEFIELD AND A BATTLEFIELD FOR DISPUTES**

- **Q IS THERE A CODE TO GOVERN HOW SERVICE CHARGES ARE LEVIED / MANAGED?**
- **A YES - AN RICS CODE**

RICS Code of Practice

Service charges in commercial property (3rd edition – 2014)

- WHAT DOES IT SEEK TO DO?
- **The Code is to promote best practice in terms of service charges for commercial properties in new leases or renewed leases**
- **It sets out the best practice for every aspect of charging for the management and operation of a building, procuring services, accounting for and certifying costs, etc.**
- **BUT unless the Code is being used to help draft the service charge provisions which will go in to the lease for a newly developed building it cannot over-ride the service charge provisions in an existing lease**
- **The administration of service charges in an existing lease MUST follow the service charge provisions set out in that lease whether or not they constitute RICS best practice**
- **EVERY LEASE MAY HAVE DIFFERENT SERVICE CHARGE PROVISIONS**
- **Many clauses might be standard but variations often negotiated by tenants**
- **So each and every lease must be read to establish -;**
  - **what heads of service charge are recoverable?**
- **- how each tenants service charge is calculated?**

8 NEW MANDATORY PRINCIPLES IN RICS CODE FOR SERVICE CHARGES ON COMMERCIAL 4th EDITION - due to come in to effect 1st APRIL 2018

- 1. Owners and managers must seek to recover no more than 100% of the proper and actual costs of the provision or supply of the services unless the lease of the property gives them the explicit right to do so.
- 2. Owners and managers must ensure that service charge budgets, including appropriate explanatory commentary, are issued annually to all tenants.
- 3. Owners and managers must ensure that a signed statement showing a true and accurate record of the actual expenditure constituting the service charge is provided annually to all tenants.
- 4. Owners and managers must ensure that a service charge apportionment schedule for their property is provided annually to all tenants.
- 5. All expenditure that the owner and manager seek to recover must be in accordance with the terms of the lease.
- 6. Service charge monies (including reserve and sinking funds) must be held in one or more discrete (or virtual) bank accounts.
- 7. All interest earned on service charge accounts – or where separate accounts per property are not operated, a proper and reasonable amount of interest calculated on normal commercial rates – must be credited to the service charge account after appropriate deductions have been made. This applies, for instance, to bank charges, tax, etc.
- 8. Where acting on behalf of a tenant, RICS members must advise their clients that if a dispute exists any service charge payment withheld by the tenant should reflect only the actual sums in dispute.
- .

SCOPE FOR ARGUMENT?

- Q. SHOULD TENANT IN COVERED CENTRE IN AN EXTERNAL FACING UNIT PAY THE SAME AS MALL TENANT?
- A. NO
- Q. SHOULD AN ANCHOR STORE HAVE A CONCESSIONARY RATE?
- A YES – NORMALLY A WEIGHTED SERVICE CHARGE – ie, lower rates applied above a certain size and / or reducing rates floor by floor
- Q. DOES THE LANDLORD ALWAYS RECOVER THE FULL SERVICE CHARGE COST?
- A. NO
- Q. WHAT IS A SERVICE CHARGE SHORTFALL?
- A LANDLORD CANNOT RECOVER FULL SERVICE CHARGE COSTS - VOID UNITS – TENANT HAS CONCESSIONARY TERMS (SHORT TERM LEASE) – OR TENANT HAS NEGOTIATED FAVOURABLE VARIATIONS TO STANDARD SERVICE CHARGE PROVISION –ie, INCREASES LIMITED TO RPI (RATHER THAN ACTUAL INCREASES) OR CAPPED SERVICE CHARGE ie, IT CANNOT EXCEED A SET SUM
- THERE IS AN OPORTUNITY TO RE-NEGOTIATE AT LEASE EXPIRY ON RENEWAL BUT SUBJECT TO " O`MAY " PRINCIPLES ie, CANNOT BE MORE ONEROUS UNLESS IT IS COMPENSATED FOR

WEIGHTING OF FLOORSPACE by floor or by size

- BY FLOOR
- SIMILARLY, THE FLOOR AREA OF ANCILLARY BASEMENT AND UPPER-FLOOR ACCOMMODATION, OR OF REMOTE STORAGE, MIGHT BE DISCOUNTED TO REFLECT THE REDUCED BENEFIT DERIVED FROM CERTAIN SERVICES AS DISTINCT FROM THE GROUND-FLOOR RETAIL SPACE OR MAIN OFFICES.
- GROUND FLOOR 5,000 SQ FT @ 100% 5,000
- FIRST FLOOR 5,000 SQ FT @ 50% 2,500
- STORE OF **10,000 SQ FT** (G/F 5,000 F/F 5,000) **ON A WEIGHTED BASIS IS 7,500 SQ FT** (NOT 10,000 SQ FT)
- OR BY SIZE
- COMPARE A 1,000 SQ FT UNIT WITH A 20,000 SQ FT UNIT - ALTHOUGH 20 X LARGER IN FLOOR AREA, THE 10,000 SQ FT SHOULD NOT PAY 20 X THE SERVICE CHARGE OF THE SMALLER UNIT.
- FIRST 5,000 SQ FT @ 100% (5,000)
- THE NEXT 5,000 SQ FT @ 75% (3,750)
- EXCESS OVER 10,000 SQ FT @ 50% (5,000)
- **20,000 SQ FT** STORE UNWEIGHTED IS 20,000 SQ FT – BUT WEIGHTED IT IS **13.750 SQ FT**

DISPUTE AS TO REPAIRS IN SHOPPING CENTRE

- IN A COVERED SHOPPING CENTRE THE TENANTS SHOP (THE DEMISE) DOES NOT INCLUDE THE STRUCTURE OF THE BUILDING.
- THE TENANT COVENANTS TO KEEP THE DEMISED PREMISES IN GOOD AND SUBSTANTIAL REPAIR AND DECORATION BUT IS NOT RESPONSIBLE FOR THE STRUCTURAL ELEMENTS SUCH AS THE ROOF
- Q. WHY IS T NOT RESPONSIBLE FOR THE STRUCTURE?
- A. L/L IS RESPONSIBLE FOR THE STRUCTURAL INTEGRITY OF THE BUILDING AND CENTRE AS A WHOLE AND DOES NOT WANT THIS COMPROMISED
- SO THE L/L CARRIES OUT THE STRUCTURAL REPAIRS AND RECOVERS THE
- COST FROM THE TENANT BY WAY OF SERVICE CHARGE
- IF THERE IS ANY INTERNAL DISREPAIR THE L/L WILL SERVE NOTICE ON THE TENANT TO REPAIR THE DEFECTS AND IF THIS IS NOT DONE THE L/L MAY HAVE THE RIGHTS IN THE LEASE TO ENTER THE PREMISES TO CARRY OUT THE WORK AND THEN RECHARGE FOR IT. THERE IS CASE LAW ON THIS ISSUE
- SCENARIO - WATER PENETRATION TO SHOP UNIT FROM ROOF ABOVE. L/L DECIDES TO REPLACE THE ROOF RATHER THAN REPAIR OR PATCH IT - T SAYS IT SHOULD BE PATCHED

CASE LAW ON REPAIR V REPLACEMENT/IMPROVEMENT

- ***Q.*** ***SHOPPING CENTRE ROOF - SHOULD YOU PATCH AN OLD ROOF OR REPLACE IT?***

- ***A.*** ***POSTEL PROPERTIES LTD V BOOTS THE CHEMIST (1996)***

- **THE ISSUE WAS THE ROOF OF A MILTON KEYNES SHOPPING CENTRE. THE CENTRE WAS CONSTRUCTED IN 1975 AND THE ROOF HAD A LIFE EXPECTANCY OF 20 YEARS.**

- **WHEN REPAIRS WERE CARRIED OUT AFTER 15 YEARS, THE LANDLORD TOOK THE OPPORTUNITY TO REPLACE THE ROOF COVERING ALTOGETHER.**

- **IT WAS HELD THAT THIS WAS ACCEPTABLE AND THE COST COULD BE RECOVERED FROM TENANTS.**

- **THE REASONING WAS THAT THE WORKS WERE SUCH THAT A REASONABLY MINDED BUILDING OWNER WOULD HAVE UNDERTAKEN THEM AND THEY DID NOT AMOUNT TO GIVING THE LANDLORD SOMETHING DIFFERENT FROM WHAT HAD EXISTED BEFORE.**

- **Q. WHAT ABOUT UPGRADING AN EXISTING AIR CONDITIONING SYSTEM?**

- **IN CONTRAST, THE CASE OF FLUOR DANIEL PROPERTIES LTD V SHORTLANDS INVESTMENTS LTD (2001) ESTABLISHED THAT A LANDLORD CANNOT RECOVER IMPROVEMENTS WHEN THE PREMISES OR FACILITIES IN QUESTION ARE IN PROPER WORKING ORDER.**

- **IN THIS CASE, THE LANDLORD OF A COMMERCIAL BLOCK EQUIPPED WITH AN AIR-CONDITIONING SYSTEM FAILED TO CONVINCE THE COURT THAT ITS DEMAND FOR £2M UNDER THE SERVICE CHARGE TO RECOVER EXPENDITURE ON UPGRADING THIS SYSTEM WAS JUSTIFIED.**

SERVICE CHARGE - CASE LAW

- CHRISTMAS DECORATIONS
- Boots UK Limited v Trafford Centre [8 December 2008]
- **This case involved a challenge to commercial service charges and the interpretation of the lease provisions.**
- **The tenant objected to having to contribute towards costs the landlord had incurred in relation to entertainment, Christmas decorations, a Santa's Grotto and a Skywall**
- **It was agreed that the landlord could charge for these items under the service charge provisions, and the judge was asked to decide whether such items constituted "promotions".**
- **The tenant argued that anything that was designed to bring custom to the centre was promotion and that therefore the landlord was liable to contribute 50% of the costs.**
- **The judge actually distinguished between (i) items that were definite "promotion" and (ii) those that were merely "of benefit" to the Centre (eg attractions, facilities or amenities at the Centre).**
- **The Landlord would be liable for 50% of the former, but would have to make no contribution for the latter.**
- **On the facts it was held that the four items were merely of "benefit" to the Centre as opposed to actively promoting it.**

ALTERATIONS / IMPROVEMENTS

- SCENARIO
- TENANT MAKES AN APPLICATION FOR LICENCE FOR ALTERATIONS/IMPROVEMENTS
- T WISHES TO PUT IN A NEW FEATURE STAIRCASE BETWEEN G/F & F/F CUTTING THROUGH THE FLOOR SLAB SO THAT THEY CAN USE F/F FOR SALES
- Q. YOU ARE L/L (or L/L AGENT) DO YOU GIVE L/L's CONSENT?
- A. YOU FIRST CHECK THE LEASE TO ESTABLISH IF IT PERMITS WHAT IS A STRUCTURAL ALTERATION
- MANY LEASES IN SHOPPING CENTRES PROHIBIT STRUCTURAL ALTERATIONS – THIS ONE INVOLVES CUTTING A HOLE IN THE FLOOR SLAB BUT THIS SHOULD NOT AFFECT STRUCTURAL STABILITY AS IT WILL NOT BE LOAD BEARING FOR THE CENTRE
- YOU REQUIRE T TO PRODUCE FULL SPECIFICATION OF WORKS, DETAILED PLANS, etc
- YOU WILL CHECK IF THE WORKS ARE TO BE PROFESSIONALLY CARRIED OUT
- YOU WILL CHARGE A FEE FOR APPROVING THE WORKS WHICH WILL BE DOCUMENTED IN A
- LICENCE FOR ALTERATIONS DRAWN UP BY SOLICITORS
- THESE WORKS WILL CONSTITUTE A TENANTS IMPROVEMENT WHICH WILL BE DISREGARDED
- AT RENT REVIEW. BUT YOU WILL REQUIRE REINSTATEMENT IF REASONABLY REQUIRED AT LEASE END

ALTERATIONS / IMPROVEMENTS Continued

- THERE IS LIKELY TO BE A TENANTS HANDBOOK DRAWN UP BY THE L/L TO GOVERN HOW AND WHEN ANY WORKS ARE CARRIED OUT. L/L MUST ENSURE HEALTH AND SAFETY OF SHOPPERS DURING ANY WORKS. SHOP HOARDINGS MAY BE REQUIRED
- MOST LEASES WILL STATE THAT L/L`s CONSENT IS NOT TO BE UNREASONABLY WITHHELD
- FOR NON-STRUCTURAL ALTERATIONS AND SOME WILL ALLOW STRUCTURAL ALTERATIONS
- THE POSITION IS ALSO INFLUENCED BY STATUTE.LANDLORD & TENANT ACT 1927 S.19 (2)
- IF LEASE STATES THAT IF L/L`s CONSENT IS REQUIRED THEN THAT CONSENT CANNOT BE UNREASONABLY WITHHELD.
- HOWEVER THE L & T 1927 ACT ALLOWS THE L/L TO DO THE WORKS FOR THE TENANT AT HIS OWN EXPENSE. THEY WOULD NOT THEN BE TENANTS IMPROVEMENTS AND SO AT RENT REVIEW THE INCREASE IN RENTAL VALUE (if any) OF THE IMPROVEMENTS CAN BE VALUED
- See - LANDLORD & TENANT ACT 1927 S.3 (1)
- WHAT CONSTITUTES AN IMPROVEMENT IS DEFINED FROM THE TENANTS POINT OF VIEW – IT IS AN ALTERATION FOR THEIR BENEFIT NOT THE L/L¬s
- Case law F.W.Woolworth and Company Limited v. Lambert, [1937] Ch. 37
- NB IF A TENANT MAKES ALTERATIONS WITHOUT L/L`s CONSENT THEN L/L CAN REQUIRE REINSTATEMENT OR CHOOSE TO BENEFIT FROM THE INCREASE IN VALUE OF THE WORKS

Q. WHEN CAN A L/L REFUSE A TENANTS APPLICATION TO ASSIGN TO ANOTHER TENANT WITH A DIFFERENT USE?

- A. IF THE LEASE PROHIBITS ASSIGNMENT
- IF LEASE PROHIBITS THE NEW USE ie CURRENT USE IS RETAIL ie for CLASS A1 RETAIL USES ONLY
- AND THE PROPOSED USE IS RESTAURANT (A3) OR A2 FINANCIAL USE.
- SUCH A CHANGE OF USE WOULD IN ANY EVENT REQUIRE PLANNING CONSENT UNLESS GENERAL
- PERMITTED DEVELOPMENT RIGHTS APPLIED.
- BUT L/L COULD, ON HIS OWN TERMS AGREE TO A CHANGE OF USE & PERMIT A PLANNING APPLICATION
- Q. IN WHAT CIRCUMSTANCES COULD A L/L REFUSE CONSENT TO THE EXISTING A1 RETAIL TENANT
- ASSIGNING TO ANOTHER A1 RETAIL TENANT?
- A. IF THE LEASE RESTRICTED THE PERMITTED A1 USE TO THAT USE ONLY ie, RESTRICTIVE USER
- BY REFUSING CONSENT TO A USE WHICH IS NOT PERMITTED UNDER THE TERMS OF THE LEASE THE L/L IS NOT ACTING UNREASONABLY AND IMPORTANTLY IS NOT REQUIRED TO ACT REASONABLY
- SO L/L WILL NOT FALL FOUL OF THE LANDLORD & TENANT ACT 1988 WHICH GOVERNS ALIENATIION
- S.19 OF THE LANDLORD & TENANT ACT 1927 (with a presumption not to act unreasonably on an assignment or for alterations) DOES NOT APPLY TO A CHANGE OF USE

WHEN CAN L/L REFUSE CONSENT Continued

- A IF THE NEW USE FELL OUTSIDE THE A1 CATEGORIES IN THE EXISTING TENANTS USER CLAUSE
- NB CLASS A1 HAS 9 SUB-CLAUSES – A (1) (a) (b) (c) (d) (e) (f) (g) (h) (i)
- (a) for the retail sale of goods other than hot food
- (b) as a post office
- (c) sale of tickets or travel agency
- (d) sale of sandwiches/cold food for consumption off the premises
- (e) for hairdressing
- (f) for the direction of funerals
- (g) for display of goods for sale
- (h) for the hiring out of domestic or personal goods or articles
- (i) for reception of goods to be washed, cleaned or repaired

USE CLASS A1 defined retail uses

- A1 (a) COVERS STANDARD RETAIL USES –ie, clothes, shoes, books, etc
- IF A L/L IS HAPPY FOR ANY OF THE A1 USES THEN THE LEASE WILL SIMPLY SPECIFY CLASS A1
- IF A L/L WISHES TO CONTROL RETAIL USES IT WILL LIMIT CLASS A1 USE TO A1 (a)

- THIS WOULD PREVENT -:

- A COFFEE / SANDWICH SHOP (which requires A1 (d))
- A FUNERAL DIRECTOR (which requires A1 (f))
- A SHOWROOM USE (which requires A1 (g))
- A HIRE SHOP (which requires A1 (h))
- A DRY CLEANERS (which requires A1 (i))

- SO IF A TENANT MADE AN APPLICATION TO ASSIGN THEIR UNIT TO A COFFEE / SANDWICH SHOP AND THE LEASE DID NOT PERMIT CLASS A1 (d) USE – THEN CONSENT COULD BE REFUSED

Q. WHEN CAN L/L REFUSE CONSENT? Continued

- A. WHEN THE LEASE CONTAINS A GOOD ESTATE MANAGEMENT and /or
- TENANT MIX PROVISION
- TO MAINTAIN A HEALTHY TENANT MIX OF RETAIL TRADES A LEAEE MAY CONTAIN A FURTHER MEASURE OF CONTROL FOR THE L/L OVER WHICH RETAIL USES ARE PERMITTED.
- SCENARIO
- FASHION RETAILER APPLIES FOR L/L`s CONSENT TO ASSIGN TO A £ SHOP IN WHAT IS PRIMARILY A FASHION MALL WITHIN THE SHOPPING CENTRE
- Q. CAN THE L/L REFUSE CONSENT TO ASSIGN USING THE GOOD ESTATE MANAGEMENT / TENANT MIX PROVISIONS IN THE LEASE PURELY BECAUSE OF A DESIRE TO KEEP FASHION TYPE USES IN A MALL?
- A. YES
- **BUT** - ONLY IF L/L CAN DEMONSTRATE THAT THERE IS AN EFFECTIVE TENANT MIX
- POLICY WHICH IS IN PLACE AND WHICH HAS BEEN CONSISTENTLY ADOPTED
- CASE LAW *MOSS BROS v CSC Properties* - Metro Centre GATESHEAD
- Moss Bros wished to assign to a £ shop. L/L said NO – this was a unit in a fashion mall with
- some 50% + of fashion uses. They did not want a £ shop in this mall.
- NB In every other case where no consistent policy in place L/L has LOST - and tenant has been allowed to assign to a different A1 retail use notwithstanding the good estate management / tenant mix wording in the alienation clause.