

DOUG STEVENS SEMINAR

MONDAY 19th DECEMBER 2016

08.00HRS TO 09.00HRS

VENUE : **CBRE**

'C-BAR'

Henrietta House

Henrietta Place

W1G 0NB

SUBJECT

APPRENTICE STYLE QUIZ ON RANGE OF PROPERTY ISSUES 60 MINS

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

DELIVERED AS A POWERPOINT PRESENTATION

- ▶ ONE HALF OF THE ROOM ARE ALLOCATED ROLE OF LANDLORDS
- ▶ OTHER HALF OF THE ROOM ARE ALLOCATED ROLE OF TENANTS
- ▶ QUESTIONS ARE ANSWERED USING EITHER GREEN OR RED CARDS

MEASUREMENT

- ▶ WHAT IS THE CURRENT EDITION OF RICS CODE OF MEASURING PRACTICE (COMP)
- ▶ 6TH EDITION HOLD UP **RED** or 9TH EDITION HOLD UP **GREEN**
- ▶ GIA = GROSS INTERNAL AREA NIA = NET INTERNAL AREA
- ▶ WHAT BASIS OF MEASUREMENT IS USED FOR INDUSTRIAL PROPERTIES - GIA **GREEN** - NIA **RED**
- ▶ WHAT BASIS OF MEASUREMENT IS USED FOR NEW BUILT LEISURE PROPERTIES - GIA **GREEN** - NIA **RED**
- ▶ WHAT BASIS OF MEASUREMENT IS USED FOR OFFICES - GIA **GREEN** - NIA **RED**
- ▶ WHAT % AGE TOLERANCE WILL THE COURTS ALLOW IN RELATION TO THE VALUATION OF PROPERTIES
- ▶ 5% **RED** 15% **GREEN**
- ▶ WHAT % AGE TOLERANCE WILL THE COURTS ALLOW IN RELATION TO THE MEASUREMENT OF PROPERTIES
- ▶ 1% **GREEN** 5% **RED**
- ▶ THERE ARE 2 BASIC METHODS OF VALUATION - ZONING & OVERALL (ie, a single rate per sq ft or sq m)
- ▶ ZONING IS THE MEASUREMENT BASIS USED FOR UNIT SHOPS.
- ▶ NAME 6 TYPES OF PROPERTY VALUED ON AN OVERALL BASIS
- ▶ OFFICES - INDUSTRIAL - SUPERMARKETS - LARGE STORES - LEISURE UNITS - RETAIL WAREHOUSES

LISTED BUILDINGS

- ▶ YOU ARE ASKED TO ADVISE ON THE FREEHOLD ACQUISITION OF AN INVESTMENT ON A RETAIL PROPERTY WHICH IS A Grade 1 LISTED BUILDING
- ▶ LANDLORDS TEAM - GIVE ME 3 X POSITIVE POINTS REGARDING LISTED BUILDINGS
- ▶ 1. NO EMPTY PROPERTY RATES IF VACANT - 2. NO REQUIREMENT TO COMPLY WITH DDA
3. HERITAGE
- ▶ TENANTS TEAM - GIVE ME 3 X NEGATIVE POINTS REGARDING LISTED BUILDINGS
- ▶ 1. EXPENSIVE TO MAINTAIN. 2. LIMITATION ON FITTING OUT. 3. LIMITED RE-MARKETABILITY
- ▶ There are about 540,000 listed buildings in Britain.
- ▶ 90 per cent are Grade II,
- ▶ 7 per cent are Grade II*,
- ▶ 3 per cent are Grade I

RETURN FRONTAGE



- ▶ LANDLORDS TEAM 3 X FACTORS THAT ADD VALUE
- ▶ ADDED PROMINENCE -EXTENSIVE DISPLAY OF GOODS - CUSTOMERS CAN SEE IN AND BE DRAWN IN
- ▶ TENANTS TEAM 3 X FACTORS TO ARGUE AGAINST ADDED VALUE
- ▶ CAN`T RACK OUT - HIGHER INSURANCE COSTS - WINDOW DRESSING COSTLY/TIME CONSUMING

WHAT IS DDA

- ▶ **DISABILITY DISCRIMINATION ACT 1995 (DDA)**
- ▶ INTRODUCED IN PHASES 1996, 1999 AND OCT 2004 - FROM WHEN PHYSICAL CHANGES WERE REQUIRED TO BE CARRIED OUT
- ▶ **EQUALITY ACT (EA) 2010** CONSOLIDATED/EXTENDED DDA REQUIREMENTS ON PROPERTY
- ▶ **When is requirement to comply with DDA triggered?**
- ▶ Since October 2004 any new buildings and older buildings where an alteration or change of use is made have been required to be DDA compliant.
- ▶ **Do older buildings need to comply?**
- ▶ **RED** FOR YES **GREEN** FOR NO
- ▶ NO. Listed buildings are generally exempt if the works would prejudice important features
- ▶ If no alterations are carried out to a pre-Oct 1995 property it need not comply
- ▶ **Why is this relevant to management – letting - rent review - valuation?**
- ▶ Any extension - any alteration - any change of use to a non-compliant building invokes a requirement for DDA compliance
- ▶ Does it need a ramp for access - or a lift - or a less steep staircase
- ▶ Floorspace may be lost to improve access to comply with DDA and this has rental and capital valuation implications

WHAT IS THE CURRENT USE CLASSES ORDER ?

- ▶ **TOWN & COUNTRY PLANNING (USE CLASSES) ORDER 1987**
- ▶ IT PLACED USE CLASSES INTO 4 DISTINCT CATEGORIES
- ▶ TENANTS TEAM NAME 2 X USE CLASSES
- ▶ LANDLORDS TEAM NAME 2 X USE CLASSES
- ▶ (A) Primarily for retail and catering uses
- ▶ (B) Office and industrial and warehousing uses
- ▶ (C) Residential and hotel uses
- ▶ (D) Leisure based uses
- ▶ LANDLORDS TEAM WHAT USE CLASS IS TAKE-AWAY FOOD ?
- ▶ A4 **RED** OR A5 **GREEN**
- ▶ TENANTS TEAM WHAT USE CLASS IS GYM/HEALTH & FITNESS ?
- ▶ D1 **RED** OR D2 **GREEN**

WHAT IS A CONFLICT OF INTEREST ?

1. A CONFLICT OF INTEREST IS ANYTHING THAT IMPEDES OR MIGHT BE PERCEIVED TO IMPEDE AN INDIVIDUAL'S OR FIRM'S ABILITY TO ACT IMPARTIALLY AND IN THE BEST INTEREST OF A CLIENT.

- ▶ A CONFLICT OF INTEREST MAY OCCUR WHERE YOU OR YOUR FIRM -;
 - ARE ACTING FOR ANOTHER PERSON WITH COMPETING INTERESTS AT THE SAME TIME (E.G. ADVISING BOTH THE SELLER AND BUYER (OR MORE THAN ONE BUYER) OF A SINGLE COMMERCIAL PROPERTY SIMULTANEOUSLY
- ▶ HAVE OTHER OBLIGATIONS OR PRESSURES THAT DETRACT FROM OR AFFECT YOUR RELATIONSHIP WITH THE CLIENT (E.G. ACTING AS AN EXPERT WITNESS WHERE YOU/YOUR FIRM HAS AN INTEREST IN THE OUTCOME OF THE PROCEEDINGS)
- ▶ IF YOUR FIRM FULLY DISCLOSES TO ALL THE PARTIES THE POTENTIAL CONFLICT AND HAS AN EFFECTIVE INFORMATION BARRIER IN PLACE - CAN YOU ACT FOR BOTH VENDOR AND PURCHASER ON A SALE OR FOR A LANDLORD AND TENANT ON A RENT REVIEW ?
- ▶ YES GREEN NO RED

WHAT IS AN AGA ?

- ▶ AUTHORISED GUARANTEE AGREEMENT
- ▶ UNDER WHAT ACT WAS IT INTRODUCED ?
- ▶ LANDLORD & TENANT COVENANTS ACT 1995 **RED** or
- ▶ LANDLORD & TENANT ACT 1988 **GREEN**
- ▶ ANSWER LANDLORD & TENANT COVENANTS ACT 1995
- ▶ ALL LEASES WITHIN THE L & T Act 1954 MUST PROVIDE FOR AGA's
- ▶ BY ENTERING IN TO AN AGA THE ASSIGNOR (OUTGOING TENANT) EFFECTIVELY GUARANTEES THAT THE ASSIGNEE (INCOMING TENANT) WILL PAY THE RENT, ETC BUT ONCE THAT TENANT ASSIGNS THE LEASE TO ANOTHER PARTY THE ORIGINAL ASSIGNOR HAS NO FURTHER LIABILITY.
- ▶ AGA'S SEEK TO STRIKE A BALANCE BETWEEN THE UNCERTAINTY OF LIABILITY OF A TENANT WHO ASSIGNS A LEASE

AND

THE PROTECTION OF THE LANDLORD IF THE TENANT ASSIGNS TO A PARTY WHO IS NOT PARTICULARLY ACCEPTABLE TO THE LANDLORD.

HOW MANY METHODS ARE THERE TO VALUE CONVENIENCE STORES

- ▶ HOLD UP **GREEN** FOR 3 AND **RED** FOR 6
- ▶ **ANSWER** - 6
- ▶ LANDLORDS TEAM NAME 3 METHODS ?
- ▶ TENANTS TEAM NAME THE REMAINING 3 METHODS ?
- ▶ GIA
- ▶ GIA SPLIT LEVEL
- ▶ NIA
- ▶ NIA SPLIT LEVEL
- ▶ ZONED
- ▶ SUNDAY TRADING METHOD
- ▶ WHAT IS THE MAXIMUM SIZE FOR SALES (SHOWROOM) AREA THAT A CONVENIENCE STORE CAN TRADE FROM TO FALL WITHIN THE SUNDAY TRADING ACT AND TRADE LONGER HOURS
- ▶ **ANSWER** - 280 SQ M or 3,014 SQ FT. NB ANY SIZE AREA IS ALLOWED FOR STORAGE - SO STORE CAN BE 500 SQ M BUT IF MORE THAN 280 SQ M IS ALLOCATED TO SALES THEN ON A SUNDAY THE CONVENIENCE STORE OPERATOR IS LIMITED TO TRADING ONLY 6 HOURS
- ▶ SUNDAY TRADING METHOD - 4,500 SQFT (418 SQ M) AT 100% - RESIDUE AT LOWER %

LANDLORD & TENANT ACT 1954 (Part 2)

- ▶ A LEASE INSIDE THE ACT WAS GRANTED FOR A TERM OF 10 YEARS FROM 25TH DECEMBER 2006 - AT WHAT DATE DOES THE LEASE COME TO AN END?
- ▶ **RED** 24TH DECEMBER 2016 or
- ▶ **GREEN** NEVER - UNLESS A NOTICE IS SERVED OR TENANT WALKS OUT ON 24TH DECEMBER 2016
- ▶ A LEASE OUTSIDE THE L & T ACT WAS GRANTED FOR A TERM OF 10 YEARS FROM 25TH DECEMBER 2006 - AT WHAT DATE DOES THE LEASE COME TO AN END?
- ▶ **GREEN** 24TH DECEMBER 2016 or
- ▶ **RED** NOT UNTIL A NOTICE IS SERVED
- ▶ WHAT ARE THE MAXIMUM AND MINIMUM TIME FRAMES FOR A LANDLORD TO SERVE A S.25 NOTICE TO TERMINATE A TENANTS LEASE?
- ▶ **RED** NOT MORE THAN 12 MONTHS **GREEN** NOT LESS THAN 6 MONTHS
- ▶ ANSWER BOTH ANSWERS ARE RIGHT - SAME TIME FRAME FOR TENANTS S.26 NOTICE

LANDLORD & TENANT ACT 1954 Grounds for possession at lease expiry

- ▶ HOW CAN L/L GET VACANT POSSESSION AT THE END OF A LEASE INSIDE THE ACT?
- ▶ BY SERVING `HOSTILE` S.25 NOTICE OBJECTING TO GRANT OF A NEW LEASE ?
- ▶ UNDER WHAT SECTION OF THE ACT CAN THE L/L DO THIS
- ▶ S.30.
- ▶ HOW MANY PROVISIONS IN S.30 GREEN 5 or RED 7
- ▶ THERE ARE 7 PROVISIONS (A) (B) (C) (D) (E) (F) (G) - GROUNDS OF OBJECTION
- ▶ TENANTS TEAM TO NAME 3 X BAD TENANT PROVISIONS
- ▶ 30 (a) **REPAIR** - where under the current tenancy the tenant has any obligations as respects the **repair** and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;
- ▶ 30 (b) **RENT** - that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying **rent** which has become due;
- ▶ 30 (c) **BREACH** - that the tenant ought not to be granted a new tenancy in view of other **substantial breaches** by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;
- ▶ NB Tenant can remedy each of these – so not a likely or practical route to get possession

LANDLORD & TENANT ACT 1954 Grounds for possession at lease expiry (continued)

- ▶ LANDLORD TEAM TO NAME REMAINING 4 GROUNDS OF OPPOSITION
- ▶ 30 (d) **ALTERNATIVE ACCOMMODATION** that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;
- ▶ 30 (e) **WHOLE v UNDERLETS** where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;
- ▶ 30 (f) **DEVELOPMENT** that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;
- ▶ 30 (g) **OWN OCCUPATION** subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence. NB 5 year qualifying rule.

L & T ACT 1954 S.30 (f)

- ▶ LANDLORD WISHES TO OBTAIN POSSESSION AT END OF LEASE TO CARRY OUT A SUBSTANTIAL REMODELLING OF THE PROPERTY
- ▶ WHAT CONDITIONS WOULD THE LANDLORD NEED TO FULFIL TO PERSUADE A COURT THAT HE WAS READY TO PROCEED WITH THE PROJECT?
- ▶ BONA FIDE INTENTION - BOARD APPROVAL - FINANCE AVAILABLE - PROSPECT OF PLANNING CONSENT
- ▶ WHEN DOES THE LANDLORD NEED TO HAVE HIS DUCKS IN A ROW?
- ▶ **GREEN** - DATE HE SERVES THE HOSTILE S.25 NOTICE
- ▶ **RED** - DATE OF THE COURT HEARING
- ▶ ANSWER DATE OF THE COURT HEARING -
- ▶ ***BETTY'S CAFÉS LTD. V. PHILLIPS FURNISHING STORES LTD***
- ▶ THE TEST OF INTENTION IS IN TWO PARTS : DOES THE LANDLORD HAVE THE STATED "INTENTION" AND DOES IT HAVE THE MEANS TO MAKE GOOD THAT "INTENTION"
- ▶ HAS IT BEEN DEMONSTRATED THAT THE PROJECT MOVED OUT OF THE ZONE OF CONTEMPLATION - OUT OF THE SPHERE OF THE TENTATIVE, THE PROVISIONAL AND THE EXPLORATORY - INTO THE VALLEY OF DECISION. ***CUNLIFFE V. GOODMAN***

WHAT CONSTITUTES S.30 WORKS ?

- ▶ DEMOLITION? RECONSTRUCTION? SUBSTANTIAL WORK OF CONSTRUCTION ON THE HOLDING?
- ▶ THE NATURE AND SCOPE OF THE PROPOSED WORKS IS CRITICAL
- ▶ DEMOLITION” IS SELF-EXPLANATORY.
- ▶ “CONSTRUCTION” MEANS THE ADDITION OF NEW OR ADDITIONAL STRUCTURES OR PARTS OF STRUCTURES.
- ▶ “RECONSTRUCTION” HAS BEEN HELD TO MEAN: “PHYSICAL REBUILDING FOLLOWING DEMOLITION OR PARTIAL DEMOLITION OF THE HOLDING”
- ▶ “A SUBSTANTIAL INTERFERENCE WITH THE STRUCTURE OF THE PREMISES AND THEN A REBUILDING, PROBABLY IN A DIFFERENT FORM, OF SUCH PART OF THE PREMISES AS HAD BEEN DEMOLISHED BY REASON OF THE INTERFERENCE WITH THE STRUCTURE”.

Pumpninks of Piccadilly Ltd v. Land Securities plc,

Egg-shell lease - no structural element in demise. Landlord combines 2 shop units into one

Ground (f) was satisfied by demolishing as much as could be demolished of the eggshell, and incorporating it into a wider scheme of redevelopment, which changed the nature of the holding

RESTRICTIVE USER ?

- ▶ A LEASE CONTAINS THE FOLLOWING USER CLAUSE AND RENT REVIEW CLAUSE

USER - *TO USE ONLY FOR THE SALE OF FOOTWEAR*

REVIEW - *THE PREMISES MAY BE USED FOR ANY USE WITHIN CLASS A OF THE TOWN & COUNTRY (USE CLASSES) ORDER 1987*

- ▶ CAN THE RETAILER SELL ANYTHING ELSE EXCEPT FOOTWEAR ?

- ▶ GREEN FOR YES

- ▶ RED FOR NO

- ▶ ANSWER NO

- ▶ CAN THE RETAILER GET A DISCOUNT FROM OPEN MARKET RENT BECAUSE OF THE RESTRICTIVE USER ?

- ▶ GREEN FOR YES

- ▶ RED FOR NO

- ▶ ANSWER NO - The Rent review assumptions override the restrictive user clause