

SEMINAR 23 OCTOBER 2017

▶ 08.00HRS TO 09.00HRS

VENUE : **CBRE**

'C-BAR'

Henrietta House

Henrietta Place

W1G 0NB

▶ SUBJECT

Q&A

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

DELIVERED AS A POWERPOINT PRESENTATION

NEXT SEMINAR 20TH NOVEMBER - SUBJECT - LEISURE to be given by Tony Hunter of SAVILLS

1. Q. What is a conflict of interest ?

- ▶ A. 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. **PERCEPTION OF CONFLICT**
- ▶ 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)
 - Comprehensive & robust systems for checking conflicts must be in place and efficiently applied
 - **YOU ARE A COMPANY ACTING FOR THE SELLER OF A COMMERCIAL PROPERTY AND YOU ALSO WISH TO ACT FOR THE BUYER**
 - **YOU HAVE 2 SEPARATE TEAMS AND AN INFORMATION BARRIER IN PLACE AND YOU HAVE THE INFORMED CONSENT OF BOTH PARTIES**
 - **IS ALL OK TO PROCEED ?**
 - A. NO THIS IS A QUESTION ABOUT THE NEW **RICS CONFLICTS OF INTEREST (Global) 1ST EDITION**
 - **ANNOUNCED MARCH 2017 TO TAKE EFFECT 1ST JANUARY 2018**

Q. WHAT IS AN INFORMATION BARRIER?

- ▶ A. 'INFORMATION BARRIER' MEANS: THE PHYSICAL AND/OR ELECTRONIC SEPARATION OF INDIVIDUALS (OR GROUPS OF INDIVIDUALS) WITHIN THE SAME FIRM THAT PREVENTS CONFIDENTIAL INFORMATION PASSING BETWEEN THEM.

▶ Q. WHAT IS INFORMED CONSENT?

- ▶ A. Informed Consent' means: consent given willingly by a party who may be affected by a Conflict of Interest, that party having demonstrated to the RICS member working independently or within a non-regulated firm or regulated firm concerned that the party understands:
 - ▶ (a) that there is a Conflict of Interest or a significant risk of a Conflict of Interest and
 - ▶ (b) the facts known by the RICS member (working independently or within a non-regulated firm or within a regulated firm) or the regulated firm that are material to the Conflict of Interest and
 - ▶ (c) what that Conflict of Interest is or may be and
 - ▶ (d) that a Conflict of Interest may affect the ability of the RICS member (working independently or within a nonregulated firm or within a regulated firm) or a regulated firm to advise or act fully in the interests of a client.

Q. WHAT IS DOUBLE DIPPING OR DUAL AGENCY ?

- ▶ A. DOUBLE DIPPING (A COLLOQUIAL TERM FOR DUAL AGENCY) IS USED TO DESCRIBE A SITUATION WHEREBY AN AGENCY ACTS FOR BOTH THE SELLER AND BUYER IN THE SAME DEAL.
- ▶ Section 2.3 of the new RICS Conflicts of Interest 1st Edition states that
- ▶ “The practice of dual agency within the UK commercial property investment market is not universally accepted and that there are no exception to this general rule. Consequently dual agency must not be undertaken under any circumstances”
- ▶ Section 2.4 states that
- ▶ “for the avoidance of doubt, RICS professionals working within non-RICS regulated firms are also prohibited from undertaking dual agency in the UK under any circumstances”
- ▶ Q. IS THE 1ST EDITION STATEMENT LIMITED TO INVESTMENT TRANSACTIONS ONLY ?
- ▶ A. NO The professional statement applies to valuation work. It is essential in providing a valuation that the valuer is able to act independently and objectively and there is a serious risk that acting with a Conflict of Interest would undermine the valuer's ability to do so.
- ▶ A. It refers to all professional assignments. In a professional assignment that is contentious (or has a reasonable prospect of becoming contentious), Informed Consent is unlikely to be an adequate basis on which to manage a Party Conflict. In a contentious matter, the existence of a Party Conflict will usually mean being unable to proceed with both relevant professional assignments.

Q. IS THE LANDLORD & TENANT ACT 1954 PT 2 STILL FIT FOR PURPOSE ?

- ▶ A. NO if you are a landlord (L/L)
- ▶ A. YES, probably, if you are a tenant (T)
- ▶ It is 63 yrs old - introduced post-war to protect new businesses.
- ▶ Key provisions for tenant - SECURITY OF TENURE - COMPENSATION
- ▶ Problems for L/L -: 1. L/L can't easily get vacant possession to effect development or tenant mix changes. 2. Must prove grounds of opposition to new lease. 3. Must pay statutory compensation (except on grounds S.30 a-d) . 4. After lengthy/expensive lease renewal negotiations T can still walk away giving 3 months notice.
- ▶ Benefit for T -: 1. Security of tenure - they can renew lease unless L/L has valid grounds of opposition to a new lease. 2. Compensation for loss of business & improvements 3. The rent assessment at lease renewal is upwards & downwards
- ▶ Problems for T - Court procedures are lengthy and costly.
- ▶ Q. Will L & T Act 1954 be repealed?
- ▶ A. Unlikely. Lease lengths are shorter (average 6.75 years) - there is now more use of contracted out leases on new lettings
- ▶ L/L`s prefer lease contracted out of L & T Act so they have control at lease expiry

TIME OF THE ESSENCE

▶ Q. What is Time of the Essence?

- ▶ A. The phrase 'Time of the Essence' is used in contracts, agreements and leases and if present signifies that any reference to time and dates are a vital element of the performance of the contract. Any failure to adhere to the time stated is a breach of the contract.

▶ Q. When is Time of the Essence?

- ▶ A. When it is specifically stated to be (or it is implied from other wording)

▶ Q. What is the leading case law on Time of the Essence?

▶ **A. United Scientific Holdings Ltd v Burnley Borough Council [1978]**

Held that there should be no implication that time is of the essence in respect of time limits in a rent review clause unless there are sufficient contra-indications in the express words of lease

- ▶ Words such as "but not otherwise" create a deeming provision potentially making time of the essence
- ▶ Time of the essence frequently occurred in rent review clauses for service of L/L's notice or T's counter-notice or for application to a 3rd party Arbitrator or Expert. BUT such use is now uncommon - too many people got caught out.
- ▶ Rent review clauses now specifically state that Time is NOT of the Essence

TIME OF THE ESSENCE

- ▶ Q. Aside from rent reviews where else does Time of the Essence apply?
- ▶ A. Break clauses or perhaps a covenant for tenant to fit out in a defined timeframe as a condition of the lease
- ▶ Q. What is a break clause and when is it used?
- ▶ Clause enabling party to terminate a lease on serving notice to break
- ▶ Q. What examples can you think of where leases have break clauses?
- ▶ A. Eg, a 10 year lease with tenant only break option to terminate the lease at the 5th year on giving 6 months notice
- ▶ Q. Can a landlord also have a break clause in a lease?
- ▶ A. YES if the lease is contracted out of L & T Act 1954 - mutual breaks are common
- ▶ A. NO if lease is inside the Act - but can have a re-development break clause
- ▶ Where a date is specified for a break notice it must be served by that date - if notice is late the break clause is missed. Surprisingly frequent failure to serve notice on time
- ▶ Q. Is it simply a matter of serving notice on time?
- ▶ A. NO Every qualifying condition is to be met, ie, payment of rent, service charge insurance, repair, vacant possession
- ▶ ‘Hotgroup v the Royal Bank of Scotland (2010)’. Break notice was served on time but a copy notice to be served on the property manager was late so the break was not effective.
- ▶ ‘Osborne v Britannia Life (1997)’, T to paint 2 x coats - found to have applied single coat of paint - enough to invalidate the break.
- ▶ Recent case Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2014] Held that L/L can keep overpayment of rent

**Q. YOU ARE LANDLORD (or agent for L/L) OF A PROPERTY YOU WISH TO LET.
IT HAS AN EPC RATING OF F
IS THIS OK ?**

▶ **A. NO A RATING OF `F` or `G` IS A PROBLEM**

▶ THIS IS A QUESTION ABOUT MEES - MINIMUM ENERGY EFFICIENCY STANDARDS

▶ **Q. WHAT IS AN EPC**

▶ **A. ENERGY PERFORMANCE CERTIFICATE - a calculation of how efficient a building is in terms of energy usage carbon usage, etc**

▶ Minimum Energy Efficiency Standards (MEES) Regulations make it unlawful from **1ST April 2018** to let buildings in England and Wales which do not achieve a minimum Energy Performance Certificate (EPC) rating of 'E'.

▶ MEES represents one of the most significant environmental policies to impact the sector in several years. 20% of commercial property real estate is estimated to be at risk, making it vital that agents, landlords and tenants act before the deadline.

▶ MEES require a property to be brought up to a minimum EPC rating of 'E' and any rating below this is termed "substandard".

▶ **FROM 1 APRIL 2023, THE LEGISLATION WILL BE EXTENDED TO EXISTING LEASES, REGARDLESS OF WHEN THE LEASE WAS GRANTED BUT ONLY IN THE EVENT THAT THE PROPERTY HAD AN EPC ON THE RELEVANT DATE.**

▶ MEES apply to the grant of a lease on or after 1 April 2018, including lease renewals where an EPC exists. In certain circumstances, the landlord will have six months after the lease is completed to comply with the regulations in the event that the landlord had no choice whether to grant the lease.

Q. WHAT ARE THE IMPLICATIONS OF MEES?

▶ A. MEES will have significant impacts for landlords, including:

- ▶ It will make some properties illegal to market unless they are upgraded to meet the minimum standards
- ▶ approximately 20% of non-domestic properties are in the 'F' and 'G' rating brackets.
- ▶ Valuations of such properties could be affected if their marketability is diminished.
- ▶ Rent reviews for properties in this situation could also be affected.
- ▶ Implications for dilapidations assessments may also exist

▶ Q. WHAT PROPERTIES ARE EXEMPT?

- ▶ A. Offices and warehouses which fall under 50 square metres of floor space.
- ▶ Mixed-use properties under 50 square metres of floor space (farms, petrol stations, shops).
- ▶ Unsafe or unused properties.
- ▶ Properties set to be demolished.
- ▶ Listed buildings.
- ▶ Residential buildings which are used for less than four months of the year
- ▶ Places of worship.

Q. WHAT IS A RATEABLE VALUE?

- ▶ A. A VALUE ASCRIBED TO A DOMESTIC OR COMMERCIAL BUILDING BASED ON ITS SIZE, LOCATION, AND OTHER FACTORS, USED TO DETERMINE THE RATES PAYABLE BY ITS OWNER.
- ▶ Q. HOW ARE RV's CALCULATED?
- ▶ A. The rateable value of a non-domestic hereditament is the amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions—.
- ▶ (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
- ▶ (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
- ▶ (c) the third assumption is that **the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.]**
- ▶ Open market rental value on 1 April 2015, based on an estimate by the Valuation Office Agency (VOA).
- ▶ VOA send out to each business a request for rental information about their property so they can work out its rateable value. Online - or - postal
- ▶ Basis of valuation - comparison of rental values of similar property
- ▶ IPMS INTERNATIONAL PROPERTY MEASURING STANDARDS now apply (but were not in place at 2015) for offices but RICS Measuring Code still applies for INDUSTRIAL & RETAIL
- ▶ Industrial - Leisure - Large retail stores GROSS INTERNAL AREA (GIA)
- ▶ Offices - NET INTERNAL AREA (NIA)
- ▶ Retail - NET INTERNAL AREA (NIA) - but Zoning is applied. OVERALL (GIA) for larger stores

ALLOWANCES - ADJUSTMENTS

- ▶ ALL OF THE ALLOWANCES (ADJUSTMENTS + OR -) WE USE IN RENTAL VALUATIONS ARE DERIVED FROM RATING VALUATION - - such as
 - ▶ MASKING
 - ▶ RETURN FRONTAGE
 - ▶ DISPROPORTIONATE FRONTAGE TO DEPTH
 - ▶ QUANTUM
- ▶ EACH VALUATION PRINCIPLE HAS BEEN THE SUBJECT OF A LANDS TRIBUNAL DECISION
- ▶ The LANDS TRIBUNAL - now known as Upper Tribunal (Lands Chamber) resolves a range of disputes about the value of land and buildings, and about their occupation, use or development, INCLUDING APPEALS ON RATING ASSESSMENTS. <http://www.landtribunal.gov.uk/index.htm>

Q. RATEABLE VALUE & RENTAL VALUE WHAT ARE THE DIFFERENCES

- ▶ A. Revaluation usually happens every 5 years. The most recent revaluation came into effect in England and Wales on 1 April 2017, based on rateable values from 1 April 2015.
- ▶ A. Rental valuations are carried out at specific dates – as specified in a rent review clause or in court at lease renewal. There is no requirement to value everything at the same date, ie, 1st APRIL 2015
- ▶ A. Rateable value is based on the property as it physically exists
- ▶ REBUS SIC STANTIBUS - value as it stands, ie, as is
- ▶ RATEABLE HEREDITAMENT may include plant and machinery and chattels,
- ▶ A. The rateable value takes account (and adds value for) any improvements made to a property (ie, plant such as air conditioning) – whereas no account is taken of any tenants improvements (unless the lease provides for this)
- ▶ A. Rental value may be based on an entirely hypothetical unit (as defined in the lease – EXAMPLE NIKE store at Oxford Street – assumption is a unit shop in the BhS / Reserved block x a multiplier) ie, not as it stands BUT as it is defined in the lease

CURRENT RATING ISSUES

- ▶ THE LAST RATING REVALUATION WAS 1ST APRIL 2015 WITH THE LIST COMING IN TO EFFECT ON 1ST APRIL 2017
- ▶ THE DATE ADOPTED AS THE VALUATION DATE IS THE ANTECEDENT DATE
- ▶ THE VALUATION LIST COMES IN TO EFFECT 2 YEARS LATER, ie, that is when the new level of RV's apply
- ▶ HOWEVER THE GOVERNMENT POSTPONED THE 1ST APRIL 2013 VALUATION DATE TO 1ST APRIL 2015
- ▶ SO THE NEW VALUATION LIST CAME IN TO EFFECT ON 1ST APRIL 2017
- ▶ THIS HAS CAUSED CONSTERNATION AMONGST RATEPAYERS WHO ARE PAYING RATES BASED ON VALUES AT THE HEIGHT OF THE MARKET 2008 AND WHO WANTED A REVALUATION IN THE WEAKER MARKET OF 2013 BUT NOW FACE A REVALUATION IN THE STRONGER MARKET OF 2015.
- ▶ WHERE RV'S ARE LIKELY TO FALL SIGNIFICANTLY (ie, NORTH EAST/NORTH WEST) THE RATEPAYERS WILL NOT SEE ANY CHANGE UNTIL APRIL 2017 AND EVEN THEN TRANSITIONAL RELIEF WILL MEAN ANY REDUCTION IS SPREAD OVER THE NEXT 5 YEARS

AGREEING & APPEALING RV's

- ▶ PREVIOUSLY WHEN A NEW RV WAS SET ANY RATEPAYER COULD APPEAL THAT RV (but if the result was a higher RV than the existing RV then the new higher figure would apply)
- ▶ VOA WOULD EXCHANGE COMPARABLES WITH APPELLANTS - BUT WOULD NEVER SAY WHICH SPECIFIC COMPARABLES THEY RELIED ON
- ▶ APPEALS ULTIMATELY WERE DECIDED AT LANDS TRIBUNAL
- ▶ NEW PROPOSALS LIMIT OPPORTUNITY TO APPEAL
- ▶ APPELLANT HAS TO PRODUCE FULL EXPORT WITH ALL COMPARABLES (A HIGH UPFRONT COST FOR RATEPAYERS) WHICH THE VOA WILL THEN CONSIDER BUT WITH NO GUARANTEE THAT THEY WILL AGREE TO THE APPEAL BEING PROGRESSED FURTHER

Q. HOW MANY METHODS ARE THERE TO VALUE CONVENIENCE STORES

▶ A. ANSWER - 6

▶ GIA

▶ GIA SPLIT LEVEL

▶ NIA

▶ NIA SPLIT LEVEL

▶ ZONED

▶ SUNDAY TRADING METHOD

▶ Q. 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 ?

▶ A - 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 - Value 4,500 SQFT (418 SQ M) AT 100% - then value RESIDUE AT A LOWER %