

Property Newsletter

Business rates – new legislation regarding empty premises

Government legislation reducing the amount of relief awarded to empty non-domestic property came into effect on 1 April 2008.

The stated intention was to utilise land and buildings more effectively and encourage owners to bring vacant business premises back into use.

Previously owners of empty non-industrial businesses, such as shops and offices, received a 100% relief from business rates for the first three months that they were unoccupied, and then the relief reduced to 50%.

Industrial premises such as factories and warehouse received a 100% relief from the point that they become vacant.

The new regulations mean that most non-industrial premises that have been empty for three months or longer will have to pay 100% business rates. Owners of industrial premises will have to pay 100% business rates

on buildings that have been empty for six months or longer. These rises are clearly significant.

There are several exemptions to the business rate liability, and further details of these can be provided on request.

If the property is not capable of beneficial occupation, for instance if it is in poor condition and cannot be repaired, the Valuation Office Agency, which is responsible for assessing all non-domestic and business property and giving each one a rateable value, may judge that it should be taken out of the rating list altogether. However, if property is damaged in order to avoid paying rates, the Valuation Officer will be required to disregard the change in the property's state when assessing its rateable value.



Dilapidations: landlords beware

Tenant's repairing obligations are one of the most common sources of dispute between a landlord and tenant. Given the current sluggish property market, this is particularly significant where the landlord is looking to re-let the premises.

Obligations to keep and yield up premises in repair are commonly found in most tenancy agreements and so the question usually disputed is how far these obligations extend.

A recent case may not have provided the answer that landlords wanted to hear. The court distinguished between works that are required to leave the

Dilapidations: landlords beware continues on next page



In this issue

- Business rates – New legislation regarding empty premises
- Dilapidations: landlords beware
- Commercial EPC update

Commercial EPC update



currently offer more supply than demand. In addition, we are all acutely aware of our carbon footprint and by implementing this new legislation across a portfolio, clients may be able to take advantage of carbon offsetting in other areas of their business."

EPCs will not be required for the following:

- places of worship
- temporary buildings
- industrial sites, workshops and non-residential agricultural buildings with low-energy demand
- stand alone buildings of less than 50 sq m (excluding dwellings) and
- buildings that are to be demolished

EPCs will also not be required for lease renewals and surrenders. In each case conditions apply.

Energy Performance Certificates (EPCs) record the energy efficiency of buildings. They are no longer just needed for residential properties as part of a Home Information Pack.

On 1 July 2008, owners of commercial buildings became responsible for the production of EPCs for all buildings more than 2,500 sq m. On 1 October 2008, this will be extended to cover all buildings of whatever size.

An EPC will be needed in two situations:

- If a building is to be **sold** or **rented**
- If a building is **constructed** or **modified**

Keith Gould from Stratify says: "Commercial EPCs are now starting to be recognised as an opportunity for landlords to have direct input on the climate change issue. Tenants are forever looking at the expendables and these reports are an option for landlords to assist in marketing their investments in a market which

Dilapidations: landlords beware *continues*

premises in repair and works that may be required to attract an incoming tenant. The letting had come to an end and the landlord and tenant were in agreement that the roof was in disrepair. The landlord claimed that the tenant had to replace the roof in full; and backed this up by citing the incoming tenant's refusal to enter into a full repairing obligation for the roof until these works were carried out. The tenant argued that patch repairs to the roof were appropriate in the circumstances.

The obligations in the lease required the tenant to keep and yield up the premises in "good and substantial repair and condition". The court said that this obliged the tenant to "put and keep the premises in such repair as, having regard to the age, character, and locality of the property, would make it reasonably fit for the occupation of a

tenant of the class who would be likely to take it".

Whilst the court considered the incoming tenant's request for replacement works, it said that this was not based on the terms of the lease. Where there is an option between replacement and repair works, "replacement will only be required if repair is not reasonably or sensibly possible".

The court took its view from the perspective of what a reasonably minded tenant of the type likely to take a lease of the premises in question would require. Much depends on the demands of the potential incoming tenant and whether these demands are 'reasonable' in the circumstances.

If these demands are not reasonable a landlord could be forced into footing the bill for repairs beyond the scope of the outgoing tenants obligations.

Information

If you have any queries on any issues raised in this Newsletter, or any property matters in general please contact: Neil Franklin at Hull on +44 (0) 1482 337250 or Douglas Oliver at York on +44 (0) 1904 688537

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful. If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull HU1 1YJ.

The law is stated as at 1 July 2008.

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