

## Watchpoints - Rent Review

- **Time of the essence**

An issue which frequently arises is whether time is of the essence i.e. is there a time limit to exercise the review, or to take any step in the review process. For a tenant it often comes as a surprise to learn that if time is not of the essence a landlord may be able to exercise a review many years after the review date and backdate any rental increase – sometimes with interest. Where a review provision is upwards and downwards and no review has been instigated this can be an issue for a landlord as well. If the review is instigated some years after the review date and decreases there may be a sizeable refund due.

- **Break clauses**

Where there is a break clause in the actual lease the break provision may or may not be imported into the hypothetical lease. Whether the hypothetical lease will contain a break clause and when, will depend upon the exact wording of the review provisions, the wording of the break clause and the date of the review. So, a break clause may be imported into the hypothetical lease at an early review, but not in a later rent review in the same lease.

- **Can time be made of the essence?**

Yes, it can usually be made of the essence in the case of most reviews by one party serving an appropriate notice. This will give a period for the review to be triggered and remove the uncertainty highlighted above.

- **Adjusting comparables**

Beware over reliance on comparables. It is vital to consider how the comparables should be adjusted to take account of the specifics of the actual property to be valued, including the terms of the hypothetical lease. A careful review of the terms of the hypothetical lease and their impact upon value should be carried out. Additionally, the circumstances of the transaction relating to each comparable should be ascertained and considered when giving weight to the relevant comparable. For example, a transaction which is not at arm's length or is a sale and leaseback may carry less weight as a comparable.

- **The vacant possession assumption**

Give sufficient consideration to the valuation implications of a vacant possession assumption. For example, in the case of a business such as a holiday park, the assumption will mean that no pitches have been occupied and any incoming hypothetical tenant would need a lengthy rent-free period while the business and occupancy rate was built. This would greatly reduce the rent on review.

- **The user clause**

Check carefully the user clause/provisions to be imported into the hypothetical use. If different from the actual user this could have a significant effect upon value. A narrow user clause could also mean that adjustments would be needed to the open market rent relative to the comparables.

- **The length of the hypothetical term**

Check the review provisions carefully. If the hypothetical term is of a different length to the actual residue of the term this could have valuation implications if the market favours a shorter or longer term.

- **The impact of improvements**

The disregard of improvements needs to be considered carefully. Improvements carried out under an earlier lease or period of occupation may not come within the disregard. Similarly, the disregard may or may not cover the works of a sub tenant or works which were not carried out with appropriate consents.

- **When is a repair an improvement which can be disregarded**

This is a complex area which is fact specific, but just because an element of work is a repair does not necessarily mean that the disregard of improvements has no impact.

- **Rent free periods and fit out**

There are various common assumptions and disregards relating to rent free periods. The exact meaning and impact of such provisions can be difficult, for example is any disregard intended for fit out only, or to cover inducements? Is an assumption about the state of the premises, such as fit for immediate occupation intended to cover the cost of fit out or only to make provision to exclude time required to fit out?