

Yielding up and zero rates

4 October 2013

Our panel of property experts Shanna Davison and Eleanor Marsh offer advice on industry issues

Y is for yielding up

My lease is due to expire in a week and the yield up clause requires me to "remove all alterations or additions made during the term and reinstate the premises to their prior state and condition if reasonably required by the landlord". I have just received such notice from the landlord, but there is no time to carry out the works before lease expiry. Do I still have to comply with this obligation?

As long as the landlord gives notice before the lease expires, it will trigger the reinstatement obligation even if it is served on the final day of the lease. This was the decision reached by the Court in *Scottish Mutual Assurance Society Ltd v British Telecommunications plc* [unreported decision given on 18 March 1994]. As the tenant did not have enough time to complete the works before the end of the term, the court in that case suggested that the landlord must grant a licence to the tenant to carry out the works after the expiry of the lease. However, the decision has been criticised for leading to uncertainty: What should the terms of the licence be? Should rent be payable? What if the landlord already has a new tenant lined up?

The alternative argument, which has not yet come before the court, is that there is an implied term that notice must be served within a reasonable period before the end of the lease. The Code for Leasing Business Premises suggests that notices should be served at least 6 months before expiry. However, until the court considers the issue afresh, tenants would be well advised to check their landlord's requirements early enough to enable them to carry out the works before expiry.

Shanna Davison, Associate, [Hogan Lovells International LLP](#)

Z is for zero rates

I own some industrial premises and am hoping to take advantage of a rates mitigation scheme to minimise my liability for non-domestic property rates. The premises have been empty for most of the past year but I have now agreed that a company can install telecommunications equipment in one small area. Can I still benefit from rates relief after the tenant's occupation ends?

Probably. The owner of empty commercial property is liable for payment of non-domestic rates. However, under the current system, vacant industrial premises receive the benefit of 6 months' rates relief (3 for other types of properties) following the last period of 'rateable occupation', before the owner's liability to pay empty property rates kicks in.

The definition of rateable occupation is, therefore, central to determining whether landlords can take advantage of rates mitigation schemes to minimise liability for non-domestic property rates.

There are 4 essential criteria:

1. there must be actual occupation,
2. the occupation must be exclusive to the occupier,
3. it must be of some benefit to the occupier,
4. it must not be for too transient a period.

In your situation, the key question appears to be whether the company is in 'actual occupation'. Fortunately, it has been confirmed that the tenant need not occupy more than a small fraction of the premises in order for there to be actual occupation. Further, even if the nature of a tenant's occupation is limited to installing telecoms equipment, this can be sufficient for rating purposes to mean that they 'occupy' the premises. This will be the case even if the company does not use the premises for the purpose identified in the ratings list.

Therefore, the fact that the company has only installed equipment on a small part of the premises is unlikely to prevent the occupation from being rateable as long as the other essential criteria are met, e.g. the company has been granted exclusive occupation for a definite period (this need not be more than a few weeks) and there is some clear benefit derived by the company. On this last point, even if the rent is nominal, a benefit can be demonstrated by other means. If the tenant has accepted liability for rates during its period of occupation, this will usually suffice.

Eleanor Marsh, Associate, [Hogan Lovells International LLP](#)

Further information

[Sunderland City Council v Stirling Investment Properties LLP \[2013\] EWHC 1413 \(Admin\)](#)