Hurst Warne

COVID – 19 and its impact on Commercial Property Leases

The outbreak of COVID-19 continues to expand daily with confirmed cases and deaths rising, albeit hopefully now flattening. Governments have already launched unprecedented economic and public health responses amidst the affect that COVID-19 has had on businesses and the economy.

The property market has already begun to feel the impact of Coronavirus. Residential deals have been put on hold and commercial deals are being put under increasing pressure.

Market Outlook

The investment market is expected to see the amount of new deals dampened due to lack of price uncertainty and the practical challenges that come with purchasing a property. We do however expect most under offer deals to go through in the coming weeks with a low number of deals expected to be lost due to Coronavirus (albeit immediate pricing may well change).

The occupational markets are experiencing immediate affects due to Coronavirus and usually follow the economic cycle. Occupiers are delaying the start dates of their leases due to lockdown rules and some companies are pulling out of deals entirely. Airline and Hotel companies have seen the biggest loss of business through Covid-19 with the likes of Flybe going into administration and others expected to follow.

We expect some retailers and weaker serviced offices to be the next businesses that will struggle to survive in the coming months. However, we expect office demand to remain stable in low vacancy locations and logistics demand to increase. Indeed, Savills recently reported that on the week starting 16th March they have received 3 million sq. ft of new warehouse requirements, mostly by online retailers, supermarkets chains and pharmaceutical companies

Local expertise Regional presence

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Impact on leases

Commercial property owners are concerned to what extent commercial leases will be affected by the pandemic. Landlords have experienced tenants asking for rent cuts and rent holidays. Landlords nationwide have reported a reduction in rent collections from previous years. Indeed, a major industrial REIT revealed it had received 71% of rent due, down from 96% last year. Furthermore, a large estate landlord in central London also revealed that it received 62.9% of quarterly rent due, down from 99% a year ago.

In normal circumstances, any tenant would need to pay rent to avoid the landlord having the right to bring the lease to an end. However, the government have enforced protective measures to ensure that no business will be forced out of their premises if rent payment is missed in the next three months. Landlords therefore will not be able to exercise any right to forfeiture on the tenant. Although, it is expected that this will only delay the landlords right and after the three-month law ends, the landlord could still forfeit the lease. Its worth saying that at the time of writing other options such as CRAR/Winding Up Orders were potentially still available to Landlords.

Completing Leases

However, when trying to complete a deal, there is a more practical challenge. The vast majority of the industry are now working from home and normal processes that would have been done in person are now being delayed. It is becoming increasingly hard to complete leases when there are social distancing laws in place.

Both Land Registry registration and the Law of Property (Miscellaneous Provisions) Act 1989 states that signatures must be in 'writing' and be 'signed' and 'executed'. 'Writing' can be displayed in visual form on a screen and can be signed electronically. However, for leases and property transfers to be legally binding it must be registered at HM Land registry and these documents require wet ink signatures and require witnesses.

Currently, signatures must be witnessed physically and cannot be witnessed virtually via a video link. Therefore, executing a deed in these times may prove to be an issue with people self-isolating and social distancing laws in place. Although the Law commission has recommended that this law has changed, the current legal position is still the same and wet signatures and physically signatures are required. It is expected that the industry will lobby together to push the government into digitising the process if this pandemic is to continue.

Surveyors and Valuations

COVID-19 will also affect the work carried out by RICS regulated Members. Property Valuers inspecting a property for the intentions of a valuation may find it difficult. RICS advise to adhere to the latest government, regulatory and public health policies when undertaking inspections. Members should also take into consideration local advice, their firm's own internal procedures and occupants' approval to grant access.

This undoubtedly changes the way surveyors can proceed with valuations. If they choose to take on instructions for a client, any changes in the processes would need to be agreed with the client and recorded and stated in the valuation report. Furthermore, if a valuer is unable to do an inspection, they must have access to enough information to proceed with the valuation assignment. If the regulated member considers there is not enough information available, they should decline the instruction.

When producing valuations in these times, it is more likely that 'material uncertainty' may need to be declared when producing a valuation. RICS have added statements that can included in RICS members valuations reports, one of the statements is shown below:

Our valuation(s) is / are therefore reported on the basis of 'material valuation uncertainty' as per VPS 3 and VPGA 10 of the RICS Red Book Global. Consequently, less certainty – and a higher degree of caution – should be attached to our valuation than would normally be the case. Given the unknown future impact that COVID-19 might have on the real estate market, we recommend that you keep the valuation of [this property] under frequent review.

The extent to which the COVID-19 outbreak will have on the property market is unknown, but it is likely to affect the ability for RICS members to carry out valuations. The reliability of valuations will be impacted due to disruptions in inspections and the less freely available evidential data. Additionally, mortgage lenders will have to manage their own approach on property valuations and would need to take a view on the transactions they are financing.

Please note that all views and statements in this article are the personal views of Hurt Warne & Partners Surveyors Ltd and as the situation progresses no doubt our views and the views of the market will change.

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