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Insights

THE HIGH STREET IS FEELING THE LOVE… OR IS IT?

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SUMMARY

It's "Love your High Street Week"! So, what better way to start the week than to consider two significant legal reforms announced by the government last week, that are intended to boost and revitalise the High Street:

1. Legislation was introduced to Parliament that will, for the first time, **permanently cut business rates** for qualifying retail, hospitality and leisure (RHL) properties from 2026 (and in the meantime, 250,000 RHL properties will receive 40% relief off business rates bills up to £110,000 per business to help smooth the transition to the new system); and
2. **High Street Rental Auctions powers** will come into force on 2 December following the laying of secondary legislation last week, that will give businesses and community groups a 'right to rent' long-neglected town-centre commercial properties.

The above measures form part of the government's wider commitment to support high streets and communities and are intended to "breathe new life" back into our high streets.

CUTTING BUSINESS RATES

Repeated increases in business rates in line with inflation have made the high street retail business model unprofitable and unviable, leading to vacancies, job losses, and a general demise of the high street. The government has developed a multipronged strategy to address this by introducing and laying the above legislation in Parliament in conjunction with other new measures announced in the Budget, including:

- Freezing the small business multiplier, protecting 90% of properties from inflationary increases in business rate liabilities.
- Providing access to finance – committing £250m in 2025-26 for the British Business Bank's small business loans programmes.

- Increasing the Employment Allowance from £5,000 to £10,500 and removing the £100,000 threshold, expanding this to all eligible employers.

But there may be some backlash.

Cutting business rates to support the high street will cause a fiscal deficit that needs to be funded elsewhere, so the top one percent of high-value properties, such as large distribution warehouses used by online giants like Amazon, will be asked to pay more. This should go some way to levelling the playing field between high street retail business and their online competitors, but there will no doubt be unintended consequences of making "online giants" the scapegoats. The threshold liability for new higher business rates is a blanket £500,000 rateable value, so there may be SME business who operate using out of town warehouses, who may be caught in the crossfire. And in the meantime, many RHL businesses who are eligible for the current 75% relief scheme will feel the sting of the new interim (significantly reduced) 40% relief pending the implementation of the full cut. This, combined with the rise in employers' National Insurance Contributions and the minimum wage is likely to tip many RHL businesses and SMEs into the red and drive up prices.

HIGH STREET RENTAL AUCTIONS

High street rental auctions, which will apply to England only, are part of the Levelling-up and Regeneration Act 2023 which will enable local authorities to require landlords to let their empty high street shops in pre-designated areas (discoverable through a review of the local land charges register) through an auction process, achieving a lease of between one and five years for a suitable high street use. Detailed regulations set out the process a local authority will need to follow to impose a lease on an absent and/or inactive landlord, including a series of notices served on the landlord and a survey to highlight any repair works the landlord needs to carry out (at its own cost). Whilst this might look achievable on paper, there are some elements that may prove a fly in the ointment:

- Most high street landlords own their property to create an income – where there is a vacant unit there is likely to be a reason for that – and it won't always be because the landlord is holding out for an unrealistically high rent; in some cases they will be better plugged into the local letting market than the local authority in terms of tenant demand.

- Given that these lettings will fall within the scope of the Minimum Energy Efficiency Standards (despite lobbying for them to be exempt), properties with EPC asset ratings of F or G will, on grant of the lease, put the landlord in breach unless they carry out upgrade works which they may not be able to afford or achieve within the timeframe, if they can't claim an exemption. Given it is for local authorities to enforce MEES breaches the likelihood of a penalty where no action is taken would appear to be high although anecdotally we know they are very rare – will they join the dots here?

- The timings throughout the process are very prescriptive and very tight, particularly for a public sector entity with very little knowledge of the premises.

- An auction pack will be produced by the local authority, with assistance from the landlord on title matters, the cost of which will largely be borne by the successful bidder but what happens if there are no bidders?

- There will be limited opportunity for the local authority or landlord to assess the covenant strength of any bidders due to the timing restrictions and the limited information required to be provided as part of the bid.

- Any party bidding for the lease will need to include in their bid both a suggested annual rent and a signed Agreement for Lease which will, perhaps most controversially, be signed in turn by the local authority on behalf of the landlord, seemingly the rent being the only variable controlled by the bidder. It won't necessarily be the highest bidder that wins, if the local authority doubts their ability to proceed, but there is not defined method for assessing covenant strength.

- Where a landlord fails to engage through the whole process the local authority can enter into the lease on its behalf too. By this stage the landlord may have committed multiple offences under both the Act and MEES which could make them vulnerable to a number of fines and penalties but whilst they remain AWOL it will be the local authority who suffers financially through the process, even if their high street vacancy has been filled.

In conclusion, although the above measures are well-intended, designed to boost and revitalise the high street, a little interrogation of the consequences of this new legislation and how it will likely impact businesses and landlords suggests a certain commercial naivety.

RELATED PRACTICE AREAS

- Real Estate Disputes

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