



Due diligence for tenants

This fact sheet is designed to summarise the key information that would be revealed by different aspects of the standard due diligence process and lease negotiations. It is, however, a summary only and should not be treated as an exhaustive list of what would be revealed in any particular transaction.

Lease report

This is a summary of the main terms of the lease paying particular attention to areas which may be of concern to you and highlighting any issues we feel should be taken into consideration by you. This will include advice on whether the lease includes the terms you may have agreed with the landlord e.g. level of rent, break clauses etc.

If you have asked us not to report to you on the lease please be aware that the report would set out important information about the tenant's rights and obligations. We would always recommend that you read through the lease thoroughly to familiarise yourself with its terms.

Lease negotiations/further enquiries

The draft lease supplied by the landlord's solicitors is likely to be drafted so that it is more favourable to a landlord than a tenant. By negotiating the detailed terms we would hope to be able to agree a lease that is more favourable to a tenant than the initial draft. Further it may be necessary to demand changes to the lease to rectify any discrepancies with any pre-agreed terms with the landlord. If you have asked us not to negotiate the lease please be aware that the lease may not be on the most favourable

terms we could have achieved if we had conducted a full negotiation.

Searches

Each search will incur a fee payable to the relevant authority. As a minimum we would strongly advise a Local Authority Search is carried out. We will provide you with a report on the relevant search results.

Local authority search

The information revealed by this search will assist a tenant to build up a complete picture of the property and will reveal information such as:

- whether roads are maintained at public expense;
- planning applications made, granted and refused;
- planning enforcement and stop notices served and proposed tree preservation orders, restrictions on development and compulsory purchase orders; and
- notices in relation to contaminated land.

Highways search

This will confirm the exact location of any adopted roads and footpaths and more importantly highlight any areas which may not be adopted and over which you may not have access. These "ransom strips" can sometimes lead to land being landlocked with no means of accessing it.

Water and drainage

This search will show whether the property is connected to mains water and whether there is foul drainage and surface water drainage

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into the public sewer. The search result will also reveal the location of public water and sewage pipes.

Environmental

This will indicate whether there is a risk of contamination on the property. A tenant, as an occupant of the property, could face potential liability for the cost of cleaning up the land if there is contamination. This search result will also reveal whether the property is located on a flood plain.

Chancel repair

This search will reveal whether the property is subject to a liability to repair a chancel, i.e. part of a church. This is now seen as an important search following a case decided by the House of Lords in 2007 in which a couple were held to have a liability of £200,000.

Report on title

This involves a review the freehold title and, in the case of an underlease, the landlord's own leasehold title to the property. We will then provide you with a report and bring any particular issues to your attention. Examples of issues that may affect a tenant are:

- Restrictions on the title that would prevent the lease from being registered (if necessary).
- Covenants placing a tenant under an obligation to do something.
- Covenants restricting the use of the property.
- The landlord may not itself have the right to grant all the rights to be granted by the

lease.

- Rights of third parties over the land.

Enquiries of the landlord

Replies to Standard Commercial Property Enquiries reveal information that may not otherwise be revealed, for example:

- Information about the physical condition of the property, both past and present.
- Insurance and any service charge information.
- Planning and building regulations information.
- Whether there are fire certificates, a health and safety file or an energy performance certificate.
- Responsibility for boundaries or other a third party rights over the property.

Mortgages

If you require a mortgage over the lease all the above steps will be required by your lender.

Land Registry and Revenue and Customs notification and registration

All leases for more than seven year terms must be registered at the Land Registry. Leases less than seven years but more than three years which have rights over other land should also be registered. Failure to do so will affect your interest in the property. Further all leases must also be notified to Revenue and Customs for Stamp Duty Land Tax purposes unless they are for a term of less than seven years where the annual rent is less than £1,000 and the premium (if any) is less than £40,000.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.



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“They seem very competent and have a broad range of sometimes very complex work. My overall impression has been very good and I enjoyed working with them.”

Chambers UK

Meet the team



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