

## Issue 08 - May 2005 : IN THIS ISSUE

- Takeaways are being taken away!
- What is the Code of Practice for Commercial Leases all about?

Imagine our delight at the recent coverage of Luton in the Estates Gazette which highlighted the ongoing regeneration and changing face of Luton.

Here in the Commercial Property Department at Taylor Walton we are only too aware of this given the many and various projects we have undertaken for our clients in and around the Luton area over the last few years. These include developments at the airport, Parkland Square, Park Square Chambers and at Power Court (which is due to be developed into a retail centre) to name but a few. We have also been heavily involved with community development projects sponsored by multi-million pound EU regeneration funding.

Not only is the town and surrounding area going from strength to strength but so are we! Things have never looked brighter and we have never been busier.

We would be delighted to help you too so for professional and commercial advice call any one of our thirteen Commercial Property specialists on 01582 731161.

Dermot Carey, Managing Partner

## Takeaways are being taken away!

The long anticipated changes to the planning Use Classes Order aim to clarify new uses, whilst regularising pubs, takeaways and licensed premises.

- Class A1 will include internet cafés but exclude warehouse clubs (to be given a category of their own).
- Planning consent will be needed to change from a car showroom to another retail activity.
- Takeaways will be put into a new class A5.
- Pubs/bars will also be moved from Class A3 into a new class A4.
- Classes A4 and A5 will be permitted to change to A1, A2 or A3 without planning consent, but there will be no reciprocal benefit i.e. a restaurant in Class A3 cannot become a takeaway without obtaining planning consent.

Councils will have greater control under the new Order. Those of you currently in the restaurant trade considering a change should perhaps do this sooner rather than later since,



*For further advice on planning matters contact Helen O'Callaghan on 01582 731161 or email her at [helen.ocallaghan@taylorwalton.co.uk](mailto:helen.ocallaghan@taylorwalton.co.uk)*

once the Order is effective, it may not be easy to obtain planning permission to make the change.

There is concern that there may be problems with definitions - at what point does an A3 restaurant become an A5 takeaway? Will an establishment be an A3 or A4 use if it is a restaurant by day and a bar by night?

The new Order comes into effect from 21 April 2005. However, there is currently no guidance on how transitional arrangements will be dealt with. Rest assured that we will let you know once it materialises.



bulletin  
commercial property



taylorwalton  
ESTABLISHED 1972

# What is the Code of Practice for Commercial Leases all about?

The Code of Practice for Commercial Leases ("Code") is a voluntary document prepared by industry working groups. The first edition failed to make any real impact and the second edition was published in 2002. The intention is that landlords, tenants and advisors voluntarily implement the Code creating a more flexible and fair relationship between landlords and tenants without legislative intervention.

## Recommendations

The Code contains 23 recommendations. During lease negotiations, the main ones are:-

- Parties negotiate openly and constructively.
- Landlords offer a choice of lease terms, break clauses and prices for different options.
- Rent reviews should generally be to open market. Landlords offer alternatives to upwards only rent reviews ("UORR").
- Repair obligations and service charges reflect the length of the lease and the condition of the property.
- Landlords do not impose unreasonable restrictions on assigning, subletting, alterations or changes of use.

Other recommendations govern the landlord and tenant relationship.

Examples include:-

- Dealing with each other constructively, openly and honestly.
- Supplying full information when seeking landlord's consent and the landlord not delaying consent.
- Observing the guide to good practice on service charges.
- Taking early professional advice on the Landlord and Tenant Act 1954.

## UORR

The key recommendation causing a stir is the objection to UORR. UORR is important to an investment market dependant on guaranteed rental income. However, the concern for tenants is that, despite a more flexible property market with shorter lease terms, more break options and rent free periods, nearly all review clauses contain UORR. The government and retailers in particular perceive this as unfair and inflexible.

The government's legislative options are:-

- Do nothing
- Ban UORR
- Ban UORR other than threshold rent (initial rent floor)

- Introduce automatic breaks if rent is above market rate.
- Limit the length of leases
- Require landlords to give tenants priced options.

## Carrot or Stick?

The University of Reading has studied the Code in practice. It found that the number of leases without a rent review is increasing in a more flexible property market but, where there is a review, it is almost always an UORR. The market has not voluntarily adjusted and landlords are not offering alternatives. Tenants invariably accept UORR as being industry standard.

As the market has not embraced alternatives to UORR, the government is increasingly likely to legislate. However, should the government interfere in an otherwise open market?

The University of Reading has recently published its final report. I will summarise its findings in the next bulletin.



*For advice when negotiating lease terms contact Shashi Chambers on 01582 731161 or email at [shashi.chambers@taylorwalton.co.uk](mailto:shashi.chambers@taylorwalton.co.uk)*

## Where to find us

Luton  
28-44 Alma Street  
Luton  
Beds, LU1 2PL  
tel 01582 731161  
fax 01582 457900

Harpenden  
65 High Street  
Harpenden  
Herts, AL5 2SW  
tel 01582 765111  
fax 01582 769089

St Albans  
10 Bricket Road  
St Albans  
Herts, AL1 3JA  
tel 01727 845245  
fax 01727 864970

e-mail us at [commercialproperty@taylorwalton.co.uk](mailto:commercialproperty@taylorwalton.co.uk)

visit our website [www.taylorwalton.co.uk](http://www.taylorwalton.co.uk)

The information given in this newsletter was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.