

RUSSELL-COOKE SOLICITORS

**CONTENTIOUS
PROPERTY
DEPARTMENT**

**ROOM FOR
IMPROVEMENT?**

WHEN A TENANT CAN
CARRY OUT
ALTERATIONS

What can a tenant do if it wants to alter premises that it has leased, but the lease says it needs the landlord's consent, and that consent is being withheld? Or, conversely, how can a landlord have any control over what a tenant does to premises once it is in occupation?

A constant source of tension between landlords and tenants is the degree of control that a landlord retains over the property. The usual way of trying to regulate the rights and responsibilities of the parties is to insert lease clauses that provide that a tenant can carry out certain steps only with the consent of the landlord. Sometimes there is a further qualification that where a landlord's consent is required, it shall not be unreasonably withheld. Such a clause is designed to strike a balance between a landlord, who will wish to protect its investment, and a tenant who wants to maximise the potential of the property for the purposes of its business.

The most common example of these disputes is when a tenant wants to assign its lease, and the landlord objects to the identity of the proposed new assignee tenant. There is a great deal of case law, and legislation, on what a landlord can and cannot take into account when deciding whether to give its consent.

There is surprisingly little guidance from the courts on the issues that should concern a landlord (and a tenant) when a tenant makes a request to carry out alterations which require a landlord's consent. When can consent be withheld?

The landlord's commercial interests

Two recent cases have shed some light on the question. In *Sargeant and Sargeant -v- Macepark (Whittlebury) Limited* (2004) the Chancery Division was asked whether in principle a landlord, when asked for consent, could take into account the effect upon its own business interests of proposed alterations. The facts concerned alterations to premises which, the landlord feared, would lead the tenant to be in direct competition with it. The landlord therefore sought to impose conditions on what the tenant could use the premises for, as a term of giving consent to the alterations. The court held that in principle a landlord could take into account its own business interests as a term of giving

consent but, interestingly, in this case the court actually held that the terms required by the landlord went too far, and were not reasonable.

Also, in the Sargeant case the court indicated that it would look at the effect of refusing consent to alterations on the tenant's business.

Structural concerns

In *Iqbal -v- Thakrar* (2004), the tenant put forward a plan of proposed works to its ground floor premises which included the removal of certain walls. The tenant did not realise at the time that some of the relevant walls were structural, but his architect had indicated on the plan that all walls would be checked on site. The tenant had planning consent and building regulations approval for the alterations.

The Court of Appeal held that it was reasonable for a landlord to withhold consent to alterations where the landlord had concerns over the structural effect of such works. This would be the case even where the landlord did not have concrete evidence for his concerns, or where the tenant had indicated that 'investigations' would be carried out on site. The Court of Appeal suggested that a tenant in that situation should tell the landlord what it intended to do if problems were encountered during works.

Summary

The advice must be for tenants to ensure that any applications are as full as possible, and that they should even relate to the relevance of the alterations to their business. Landlords must continue to make reasoned responses, but can probably require a tenant to show that its proposals have been thought through.

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