

The Levelling-up and Regeneration Bill 2022-23: Watch this (vacant high street) space...

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From Southampton to Sunderland (and many town centres in between), shoppers in the UK are all too familiar with the same scene: high streets that once bustled with business now lie half asleep, with every other shop unit vacant and slowly gathering dust.

With the nation embracing the convenience of online shopping and out-of-town “megastores”, as well as changing habits in response to inflation and the coronavirus pandemic, the high street – a feature that once defined the economic, social and cultural identity of any UK town or city – is in decline.

Could the Levelling-Up and Regeneration Bill 2022-23 help bring the sinking high street back to buoyancy?

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One such mission envisaged by the Bill is the grant of new powers to local authorities under which they will be able to compulsorily require landlords to put vacant high street units up for rental auction. There is a “levelling-up” angle to this; the North East of England has been hit the hardest by high street closures, with vacancy rates standing at 23.1% (against a national average rate of 15.6%).

The Bill will allow local authorities to call for a compulsory rental auction if a unit:

- is located in a high street or town centre that has been “designated” by an authority on the basis of its importance to the local economy;
- is considered suitable for high street use - the Bill specifies a list of suitable uses, which include restaurants, bars and cafes, and public entertainment/recreation space, as well as shops and offices;
- has been continuously vacant for more than one year, or for 366 days in a two year period; and
- would, if occupied, have a beneficial effect on the local economy, society or environment in which it is located.

Two sets of notice of an intended rental auction need to be served by the relevant local authority on the relevant landlord. The landlord will have the right to appeal against the authority’s decision to call an auction during the second notice period, based on a set of prescribed “permissible grounds”. These include circumstances where a landlord needs to retain possession of premises, so that it can carry out substantial works of construction, demolition or reconstruction to them.

The local authority’s involvement with the letting will continue following the selection of a winning bidder at auction, in a tripartite relationship with the landlord and selected tenant. The authority will enter into the agreement for lease documentation and will control the negotiation of the letting terms with the tenant – but will be required to “have regard to any representations made by the landlord”. Whilst the landlord will ultimately be expected to grant the new lease to the tenant, if the landlord fails to do so, the authority will have the power to “step-in” and grant it instead.

The draft Bill sets out certain parameters and assumptions around the terms of any new lease granted pursuant to this process, including:

- a requirement for any rent/premium payable by the tenant to be fixed to those sum(s) accepted at auction bid stage, unless the landlord expressly agrees otherwise;
- a requirement for the permitted use of the let unit to be restricted to the “suitable high street use” identified prior to auction by the local authority;
- limits on the length of lease terms to be granted – set at a minimum of one year and a maximum of five years;
- an automatic exclusion of the letting from any security of tenure protection under the Landlord and Tenant Act 1954; and
- a deemed consent to the letting from any superior landlord and/or mortgagee from whom consent would ordinarily need to be obtained.

Whilst some local authorities may welcome the new compulsory auction process as a means of catalysing the recovery of their high streets, there are already murmurs of discontent amongst the landlord community in response to the proposals. Concerns may also be expressed from the commercial lending community in response to the “deemed mortgagee consent” provision.

One of the primary arguments being run against the Bill is that high street landlords already have sufficient commercial incentive to do what they can to let their units. Rather than provide for local government intervention, the focus should arguably be on resolving the factors that have driven tenants away instead - for example, strategies to tackle rising business rates and overhead costs.

So, will this part of the Bill accomplish its mission to rescue the high street?

As with any piece of legislation that still needs to work its way through further Parliamentary debate, against an ever-moving economic backdrop....only time will tell. We will be keeping our eyes on the detail in the meantime.

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