



April 2024

## **Q&A on UK High Street Rental Auctions**

### **Introduction**

The Levelling-up and Regeneration Act 2023 (LURA), which became law on 26 October 2023, makes various changes to local government and planning legislation with the objective, amongst others, of helping to “revitalise the high street”.

LURA introduced the concept of high street rental auctions to address this objective.

### **What is a high street rental auction?**

Under Part 10 of LURA, local authorities have a discretionary power to mandate auctions of certain empty high street premises such that a landlord would be obliged to grant a tenancy to a successful bidder.

### **What types of premises will this impact?**

Broadly, LURA applies to any premises the local authority considers “suitable” for high street use and situated on a high street or within a town centre designated by the local authority as important to the local economy because of a concentration of high street uses.

This includes premises currently used as shops, offices, restaurants, bars and other eating and drinking establishments; premises for public entertainment, recreation, or the provision of services and communal

halls. Premises used as warehouses are also included but only if such use is reasonably proximate or compatible with any of the preceding uses.

The scope of the provisions extends even further because, in considering whether premises are suitable, a local authority must also factor in any works it expects a successful bidder will carry out on premises not currently considered suitable for high street use, which could include a change of use.

### **Are there any other conditions that need to be satisfied?**

Yes. The premises must have been unoccupied for either the whole of the immediately preceding 12 months or for more than 12 months over the last two preceding years. However, the local authority is not required to take account of the fact that landlords may already be in the process of actively marketing the premises themselves.

The local authority must also consider whether occupation of the premises for a suitable high street use would be “beneficial to the local economy, society, or environment”. This is wholly within the local authority’s discretion and there is no guidance yet regarding what may be classed as beneficial in this context.

### **What happens once these conditions are satisfied?**

The local authority can serve an “initial letting notice” giving the landlord 10 weeks to let, agree to let, or otherwise permit occupation of the premises with the local authority’s consent which must not be unreasonably delayed.

### **In what circumstances must the local authority consent?**

The local authority must consent if the letting or occupation is for a high street use and the term or period of occupation is at least 12 months. The 12-month period must begin within eight weeks from the date of the initial letting notice.

### **What happens if the landlord fails to let or otherwise permit occupation of the premises during this period?**

If the premises have not been let within eight weeks from the date of the initial letting notice, the local authority can serve a “final letting notice” prior to the expiry of the initial letting notice. This gives the landlord 14 weeks to let, agree to let, or otherwise permit occupation of the premises with the local authority’s consent, which again must not be unreasonably delayed.

In addition, the landlord will be prohibited from carrying out any works to the premises except urgent repairs or works necessary to fulfil a landlord obligation. This would arise where the empty premises are part of a building with multiple tenants and the landlord has ongoing responsibilities to the other occupants.

If the local authority does not serve a final letting notice, then the initial letting notice (assuming not withdrawn) will expire after 10 weeks leaving the landlord free to let its premises.

### **Can the landlord appeal?**

Yes. Following receipt of the final letting notice, the landlord has 14 days to serve a counter-notice on the local authority stating its intent to appeal.

The counter-notice must specify the statutory ground of appeal the landlord intends to rely upon. These include, amongst others, an intention by the landlord to carry out substantial works to the premises or occupy the premises either as its residence or for the purpose of its own business.

If the local authority does not withdraw the final letting notice, the landlord has 28 days from service of its counter-notice to issue an appeal at the County Court where the final letting notice will either be revoked or confirmed.

### **When can the local authority begin the auction process?**

The local authority can begin the auction process if no appeal is issued by the landlord and the final letting notice is not revoked during the 14-week period set out in the final letting notice, or if an appeal is issued by the landlord but the final letting notice is confirmed by the County Court.

LURA also includes additional wide-ranging powers enabling the local authority to obtain information about premises; powers to access in order to survey the premises and to require a landlord or anyone who appears to have an interest in the premises to provide information as to who is in occupation, all interests in the premises, and any other matters affecting the premises.

### **How will the auction process work?**

The government intends to pass secondary legislation to provide further detail around the auction process, including how the successful bidder will be identified and how much consideration will be payable for the premises.

In 2023, the Department for Levelling Up, Housing and Communities (DLUHC) sought views on high street rental auctions via a consultation (the Consultation) which pre-dated LURA coming into force. The Consultation proposed a sealed-bid auction process whereby bidders state the rent they are willing to pay and their proposed use of the premises. The Consultation also envisaged that a standard precedent contract to let and tenancy agreement will be produced to save time and suggests the landlord should then be able to choose the successful bidder for whatever reason they prefer, but in the event the landlord does not engage in the process, the local authority would be obliged to go with the highest rental bidder. There is currently no requirement to reserve a minimum rent which may impact the market if tenants in nearby premises use what might be a reduced market rent as comparable evidence in statutory lease renewals.

It may be difficult for local authorities to absorb the cost of running an auction process (including consequential legal, surveyors, search fees) given they already face budget cuts and limited capacity.

### **What happens once a successful bidder is chosen?**

The local authority's power to let the premises and bind the landlord arises where the final letting notice is in force and at least 42 days have elapsed since it took effect; there has been a rental auction, and the premises have not been let.

Once these conditions are met, the local authority would enter into a contract (effectively an agreement for lease) with the successful bidder pursuant to which the landlord would be bound to grant the tenancy or licence to occupy.

The contract would also include a provision for any pre-tenancy landlord or tenant fit-out works to be carried out. Landlords may face a financial burden if required to make repairs on premises which are dilapidated, but exceptions may be forthcoming. While LURA does not directly mention exempting minimum Energy Performance Certificate (EPC) rating requirements (it only refers to disapplying certain laws generally related to tenancies), the Consultation proposed an exemption which would allow premises rated at EPC levels F or G to be let.

### **What happens if the landlord fails to grant the tenancy or occupation?**

The local authority may step in and grant the tenancy and the tenancy will take effect as if the landlord granted it.

### **What terms will be included in the tenancy?**

If the successful bidder indicates a rent or premium payable, the tenancy must, unless the landlord agrees otherwise, be for that amount and the high street use must be the one the local authority identifies ahead of the auction.

While LURA sets out some specific terms to be included in the tenancy (term of at least one year but not more than five years, tenant obligations relating to alterations, repair, insurance, and alienation, as well as the provision of a rent deposit and landlord obligations regarding maintenance and supply of services), further regulations may be needed to elaborate on the specifics. It will be necessary to strike a balance between avoiding drawn-out negotiations and flexibility in terms of issues such as break clauses and service charge where a harmonised regime across a multi-let building will need to be maintained.

### **Will the tenancies have security of tenure?**

No. Any tenancy granted pursuant to these provisions will be automatically excluded from the security of tenure provisions of the Landlord & Tenant Act 1954.

### **Are third-party consents required?**

Any tenancies granted pursuant to these provisions will be deemed to have been entered into with the express consent of any mortgagee and/or superior landlord irrespective of the terms of any loan agreements and/or superior leases.

This may cause issues from a lender perspective particularly where the income potential for the premises is decreased. Future loan agreements may address the potential future risk of high street premises becoming vacant and susceptible to the auction process.

Where the premises are subject to a superior lease, the implications are unclear for the landlord if the tenancy granted violates the terms of the superior lease in some manner. It is also uncertain whether the landlord would be shielded from any action taken by the superior landlord and if the local authority would be implicated in some way.

### Is there any compensation available to landlords?

The only compensation available to landlords under LURA relates to any damage caused in the exercise of the local authority's power to enter and survey. Otherwise, LURA specifically states that no compensation is payable to the landlord in respect of the exercise of the local authority's powers.

### Is the legislation in force?

LURA became law on 26 October 2023 but Part 10 of LURA which contains the provisions relating to high street rental auctions, is not yet fully in force. The Levelling-up and Regeneration Act 2023 (Commencement No. 3 and Transitional and Savings Provision) Regulations 2024 (SI 2024/389) brought some provisions under Part 10 of LURA into force as of 31 March 2024 for the purposes of making regulations on various aspects of the auction process. These regulations, by way of secondary legislation, would be required before Part 10 can be brought fully into force. Progress on this is expected before the summer parliamentary recess this year once the DLUHC has finished reviewing responses from the Consultation.

### Conclusion

The strategy behind high street rental auctions indicates an effort to compel landlords to relinquish control over the letting of their premises in order to prevent premises from sitting vacant. Whilst the objective is to enable local authorities to regenerate the high street, this approach overlooks other underlying economic and legal factors affecting the high street such as high business rates and shifting consumer habits. Instead of enticing investment into the high street, this strategy may deter investors.

Until the promised secondary legislation provides detail on the provisions, it remains uncertain whether the regulations would place an unmanageable burden on local authorities who may struggle to actively monitor occupancy levels, issue notices, and initiate the auction process.

## Authors

This GT Alert was prepared by:

- [Matthew Priday](#) | +44 (0) 203.349.8751 | [Matthew.Priday@gtlaw.com](mailto:Matthew.Priday@gtlaw.com)
- [Sue Wilson](#) | +44 (0) 203.349.8851 | [Sue.Wilson@gtlaw.com](mailto:Sue.Wilson@gtlaw.com)
- [Rachel Whittaker](#) | +44 (0) 203.349.8863 | [Rachel.Whittaker@gtlaw.com](mailto:Rachel.Whittaker@gtlaw.com)
- [Emily Chen](#) <sup>~</sup> | Paralegal | London

<sup>~</sup> Not admitted to the practice of law.

Albany. Amsterdam. Atlanta. Austin. Berlin.<sup>7</sup> Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.<sup>6</sup> Las Vegas. London.<sup>8</sup> Long Island. Los Angeles. Mexico City.<sup>5</sup> Miami. Milan.<sup>9</sup> Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.<sup>10</sup> Shanghai. Silicon Valley. Singapore.<sup>11</sup> Tallahassee. Tampa. Tel Aviv.<sup>12</sup> Tokyo.<sup>13</sup> United Arab Emirates.<sup>14</sup> Warsaw.<sup>15</sup> Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about*

*the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. «Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ~Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.*