

## EXAMPLE OF INSTRUCTIONS AND STEPS TAKEN

### COMMERCIAL LEASE

This is based on the Council being the freehold owner of the building and there being no restrictions against the land such as covenants.

The process will take approximately four months for a straightforward commercial lease.

- Using the plan provided by the instructing officer, submit a Search of the Index Map (“SIM Search”) on HM Land Registry. This may be required for both the ‘Estate’ and the property that is being leased.
- SIM Search returned - check all of the titles set out therein and each historical document referred to in that title (eg conveyances/leases/easements), reviewing each one to check that we own the land we are trying to lease and grant rights over, and that we will not incur any liability in doing so. Inform instructing officer of any issues, and possible options (eg deeds of release/indemnity insurance).
- Carry out a highways search
- Review the Heads of Terms provided by the instructing officer and ask any questions/raise any concerns (eg. open space/best value/subsidy control).
- Draft the forms required to exclude security of tenure (a warning notice, a simple declaration, and a statutory declaration)
- Draft the lease, any licence for works, any power purchase agreement, any surrenders, the rent deposit form, the direct debit form
- Work with property services in producing replies to requisitions
- Issue draft documents to the potential leaseholder once instructing officer approval is received.
- Liaise with the instructing officer to respond to any further enquiries raised by the potential leaseholder
- Negotiate any lease amends with the potential leaseholder – liaise with instructing officer where required
- Once lease (and other documents) in agreed form issue final lease agreement and forms used to exclude security of tenure.
- Check the completion statement and issue to the leaseholder
- Answer requisitions on title if received by the leaseholder
- Arrange for execution of the documents
- Check completion monies are in, all required documents are properly executed, and once instructing officer has agreed, contact the leaseholder to complete the lease
- Send the lease and any other lease documents executed by the Council to the Leaseholder
- Allocate any monies where required
- Complete a lease completion memo and advise the instructing officer.

## **PRE-ACTION PROTOCOL (PAP) LETTER FOR JUDICIAL REVIEW**

- PAP letter received setting out grounds for seeking an application for Judicial Review of a planning application – the Council has 14 days in which to respond
- Inform the planning team and work with planning officers to analyse the grounds for the application.

If it is determined that the grounds are such that there is very little prospect of success should an application be made (eg due to a decision being made which did not accord with planning process):

- Respond to the PAP letter at this early stage confirming that the Council will concede the claim to try and reduce further costs.
- A claim is filed with the High Court and legal enters into a negotiation with the applicant to agree a Consent Order.

Conceding at this stage can significantly reduce costs payable by the Council to the applicant.

If a view is formed that the grounds of the application are without merit and/or the Council will be successful in defending the claim then a response to the PAP is sent to the applicant setting out the Council's position. This will often lead to no further action being taken by the applicant.

If the grounds for seeking an application are finely balanced Counsel are instructed and a lead officer within the team will work closely with Counsel to gather evidence to support the defence, liaise between Counsel and the instructing officer and attend the High Court. Counsel will assist in drafting grounds of defence.

Planning judicial reviews are a complex process due to planning decisions being finely balanced. They are also costly as applicants will instruct either solicitors or planning agents and Counsel to support them. Whilst applicants may seek reimbursement of all their costs if they are successful the Council may not and its costs are capped at £10,000.

## **CRIMINAL PROSECUTION**

A straightforward prosecution with a guilty plea will take approximately 3-4 months from initial instructions whereas a not-guilty plea will take significantly longer.

- Instruction received and a brief summary of case provided by the investigating officer.
- Offences alleged (eg Food Safety and Hygiene (England) Regulations 2013 in respect of rats on the premises of a food store, inadequate procedures to prevent pests, inadequate toilet and drainage facilities and failure to protect food for sale from contamination).
- Work with instructing officer to prepare a full prosecution file.
- A formal decision to prosecute is made.

- Further work with the investigating officer to finalise evidential requirements and witness statements. Draft pleadings and informations in respect of each charge are laid at the appropriate Magistrates Court.
- Summonses served on the defendant.
- Hearing takes place on plea or adjourn basis. If Defendant pleads guilty the hearing may also be adjourned to enable a district judge to hear the case as they have authority to impose a higher fine depending on the sentencing guidelines.
- Hearing takes place – an application for costs is sought.