

10 tips to securing a new pub or bar lease

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It's a fact. The majority of pub and bar operators are spending more than they can afford on rent and rates, says John Deane a partner at Gannons Solicitors.

In its latest report, leisure and property agent Cedar Green Group states hospitality operators are seeing turnover hit by an average of 21% just on rent – an increase of 16 percentage points on the previous year.

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The group says, historically, 12% of turnover is the maximum rent businesses can afford. However, latest figures show publicans suffering rent hikes of 70% over the past five years and 140% over the preceding decade.

Has hospitality reached breaking point with commercial landlords? What can pub and bar operators do to secure sustainable leases in such a precarious landscape?

Here are 10 key tips for operators looking to renegotiate their rent in a difficult climate:

Early doors

1 - Often a pub or bar lease has been inherited from the previous occupant of the premises, which means the terms have already been agreed with the landlord. If a new lease is being offered by a landlord, it presents an opportunity to negotiate. Leases for 20 years or more were commonplace in the 1980s when rent reviews were usually every five years. Today, operators prefer flexibility and are less willing to be tied into leases for 20 years, which means shorter leases are more common. Five-year rent reviews are also still common but with lease terms generally getting shorter, we sometimes see reviews arranged for every three years. Ideally, an operator should try to negotiate a five-year lease with no review of rent.

2 - Operators should aim to negotiate a rent-free period and a tenant's break-clause – the latter enables a rental contract to be broken early and, ideally, should be actionable, for example, halfway through a five-year lease. If the landlord requires a 10-year lease, operators might request two break-clauses for the period. It's fairly common for break-clauses to be linked to rent review dates so that if an operator is unhappy with the rent payable as a result of the review, they may exercise the break-clause and end the lease. It's about establishing as much flexibility as possible to contain future liability.

3 - When negotiating conditions, operators should ensure the lease contains the appropriate type of rent review, the procedure for operating the review and final determination if no agreement can be reached. While upwards-only rent reviews are popular with landlords, they are potentially unfair to tenants if the market falls. Upwards-only reviews are slowly becoming less common so remember, as an operator, you have the right to request terms that state rents can, on review, be decreased as well as increased – a useful tool for protecting against unknown events in the future.

4 - A tenant in financial difficulties might look to let all or part of their premises at a rate under the market value to minimise losses. However, many leases contain provisions that prevent under-letting of part of the premises and also state the rent on an under-lease of the whole of the premises cannot be less than either the market rent or the rent currently payable under the lease – whichever is higher. Where the market value of the property has dropped below the current rent, it will be almost impossible to find someone willing to take an under-lease, which means that as a tenant, the operator would be paying the whole of a rent that no longer reflects the market value of the premises. It is worth trying to negotiate a relaxation of such restrictions so that if financial difficulties arise, under-letting is a viable option.

Location, location, location

5 - Flat Iron recently closed its Notting Hill, London, branch, citing not only a rent increase but also the impact of poor transport links to the location. There are many other premises that will have their own pain-points but if a site appeals to a pub or bar operator in every other way, it shouldn't immediately be ruled out on one sticking point. If a property might be difficult to let because of a transport issue there are legitimate grounds for a new operator to use any negative factors in the negotiation process. Perhaps the poor transport links could be offset by a decrease in rent to cover the reduced footfall. All the aspects of regular due diligence should be in play, and a prospective leaseholder should attempt to speak to the present or previous incumbent of the lease to establish any fundamental issues.

A private matter

6 - It's important for pub and bar operators to look out for their own interests when negotiating a lease. There doesn't appear to be any kind of regulatory reform on the horizon that could help to contain commercial rents and, indeed, this is not somewhere a Government would generally attempt to enforce control, given the general view that, in the private sector, market conditions should prevail. It's therefore up to the operator to ensure they get a fair deal.

7 - Some industry commentators believe tenant security is diminishing as many landlords seek to bypass the security of the 1954 Landlord & Tenant Act. The act gives business tenants a degree of security by giving them the right to renew their lease based on the same terms as the original (except for rent) unless the landlord intends to occupy or redevelop the premises. A landlord may also stipulate that a lease is excluded from the protection of the act with many landlords now marketing leases on the basis that it is excluded. More than a quarter now fall outside this protection.

The finer details

8 - In addition to speaking to the landlord about a new contract, pub and bar operators buying an established business with an ongoing lease should look closely at how they can sustain or improve turnover in that location. Apart from the customer base and the accounts, a potential buyer should consider website traction, any presence and reputation on service providers such as OpenTable and TripAdvisor, and its social media accounts. It might not always be a case of: can the new operator improve on those metrics, but at first, can they even maintain the standard that has made the business so attractive in the first place?

9 - It goes without saying that pub and bar operators should take the advice of agents on commercial terms, a solicitor on legal conditions and a surveyor on the state of the building repair. It's also wise to consider obtaining professional quotes for the cost of any refurbishment or fit-out the operator will need to do before trading as this can help to negotiate lease costs.

10 - A surveyor's input is useful when drawing up the terms for exit. Operators must establish at the outset what the landlord expects at the end of the lease and the condition in which the building must be left. The surveyor can prepare a schedule of condition as part of the negotiation process, which could be attached to the lease as evidence of the state of the premises when the lease was granted, for referencing compliance with the operator's repairing obligations when leaving.