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Key UK Real Estate Concerns: Alarm bells sound clear warning to landlords over consequences of tenant planning breaches

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This article explores a recent decision impacting landlords with property in the UK. In the case, the Proceeds of Crime Act 2002 ("**POCA**") was utilised to confiscate rent monies collected from a tenant which had failed to comply with a planning enforcement notice.

The case

T&M Property Investment Limited ("**TMPIL**") let café premises on Wilmslow Road in Manchester to a tenant. During the course of the lease, in or around September 2018, the tenant made changes to the shop frontage and operated beyond the unit's lawful use, becoming a shisha bar. No planning applications were made to authorise the works or approve a change in use, as are required by the Town and Country Planning Act 1990 (the "**Act**").

Manchester City Council therefore issued an enforcement notice, requiring reinstatement of the premises and cessation of unlawful use. This notice was ignored by the tenant and TMPIL.

The consequences

While unlawful development carried out by a tenant is not a criminal offence, failing to adhere to the terms of an enforcement notice does carry criminal liability. Given that enforcement notices attach to the land upon which the planning breach has occurred, inaction of the tenant is consequently the responsibility of the landlord. A landlord cannot simply point the finger at a tenant, no matter what the lease says.

In this instance, the city council prosecuted TMPIL for non-compliance with the enforcement notice – this being a criminal offence under section 179 of the Act – leading to conviction and a fine of £18,750. Additionally, an application was made under section 6 of the POCA, requesting that gains made from the criminal activity be recovered. Rents collected amounting to £174,074 were considered such gains and therefore confiscated.

Lessons to learn

This decision and related consequences should give landlords pause for thought.

Whilst a landlord that does “everything he could be expected to do to secure compliance with the notice” has a defence to criminal prosecution for non-compliance with an enforcement notice under section 179(3) of the Act, simply relying upon the presence of a statutory compliance provision in a lease will be insufficient.

Prudent landlords should therefore actively monitor their estates for planning compliance to get ahead of enforcement action by a local authority, which may include site visits and monitoring of news channels. Where there is an identified breach that has moved into the ambit of local authority action, landlords should take steps to enforce the statutory compliance provisions in the lease. Where compliance is not forthcoming from the tenant, a landlord should consider exercising forfeiture rights where available.

Failure to enforce planning compliance risks sleepwalking into the financial consequences and negative exposure arising from enforcement and the criminal liability that accompanies it.

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