

27 March 2020

Scottish Property Federation oversight of key issues for real estate sector in relation to the Covid-19 Crisis

Background

The Covid-19 crisis has created an unprecedented challenge for the government, the health services and the economy. This note follows a round-up of issues, incentives and suggestions from our industry members in relation to the Coronavirus. We have welcomed both the UK and Scottish Government's strong measures and coordination of the public health and consequent economic emergency interventions. The points below relate to both priorities.

Our industry and its members support the government priority of addressing this public health crisis, including use of premises where appropriate. We are encouraging our landlord members to support tenants and residents to the best of their ability during this crisis. We note however that landlords as with other business suppliers will also be subject to cash flow and financial challenges during this crisis.

We support and provide commentary below on the consequences for the economy of the public health emergency. We intend to support the government's objective to preserve jobs and businesses through the crisis, in order to support economic recovery once the immediate public health measures can be reduced.

Support for public health emergency

Property management and safety/maintenance

- Shopping centres will include food stores which need to stay Open and many stores which are required to be closed. Issue of some landlords closing whole centre on grounds of safety.
Landlords need to understand if food stores and other essential businesses can stay open and be assured that any support needed to ensure such premises remain open are allowable
- List of essential services required for building maintenance and safety
E.g. Gas, electrical safety, plumbing, where necessary building repairs required. Ongoing maintenance and upkeep to ensure buildings do not unduly suffer from a prolonged period of lockdown. Important that landlords know they can ask staff to do this
- Extension of Permitted Development rights to enable adaptation of buildings or speedy installation of urgent infrastructure (telecoms etc) – **this may need regulatory consideration and may be needed to be enabled by coronavirus legislation.**

Return of properties to owners and occupiers

- Use of commercial/student premises during lockdown (if feasible) or as use for key workers and public health priorities – **will investors and landlords have premises returned as provided? Not immediate priority but would welcome some reassurance if possible.**

Measures to support economic emergency consequential to public health needs

Business resilience and fairness

- Registers of Scotland and applications – risk of homebuyers and commercial purchasers ending up between properties
This is an urgent issue to address. Sudden closure of RoS has caught many transactions, including larger commercial transactions and measures need to be taken to ensure a minimal application process can be maintained. It would be helpful to extend period for Advance Notices to be in date during the crisis as this is an important process for the purpose of lenders and applicants
- Security of tenure for commercial tenants coming to the end of their leases – perhaps to 30 June?
Developers have suggested that tenants on the point of exiting a lease but now no longer able to enter a new property would benefit from temporary protection. Also, some members with tenant representatives would welcome measures to protect against any landlord who seeks redress
- Irritancy – protections against eviction on grounds of rent arrears
We would welcome guidance on this and recognise that tenants should receive protection against eviction at this time. This needs to be considered in the context of the Landlord's liabilities to ensure that they are not unduly disadvantaged.
- LBTT and lease reassessments/Revenue Scotland penalties for late submissions for transactions
We would welcome time extensions for purposes of expected transaction submissions and relief from three-yearly commercial lease reassessment requests in current circumstances
- Landlords have expressed concerns that in offering rent holidays and rent-free periods they may face penalties from their insurers – **Government should seek rent deferral and not pursue rent-free or rent holidays. Further we would welcome government clarity that insurers should not penalise landlords for seeking to support tenants in current emergency, a form of moratorium on negative insurer provisions for landlords offering rent support would be welcome.**

Cash-flow and liquidity

- Vacant property rates in a situation where there is no market
There is no effective market and landlords cannot re-let vacant premises. It would appear unfair to charge vacant rates while they are being asked (and in most cases are) doing what they can to support tenants -essentially landlords feel they are being asked to be supportive and they wish to be so, but do not wish to be also punished for circumstances beyond their control with increasing vacancies. Could there be a moratorium on vacant rates during the crisis?
- Rate relief – question of Rateable Value temporary reduction and of course implications for 2022 revaluation (is 1 April tone date still realistic?)
- Exposure to council tax for residential and PBSA landlords with vacant properties?
As with empty property rates there is no effective market and therefore, we feel a moratorium of CT vacant rates should be applied

- Cash flow pressures for landlords across all tenures – need for banks to provide assurance regarding covenant breaches
It is crucial that banks do not trigger procedures for debt recovery or covenant breaches on landlords, while landlords are being asked to support their tenants – can Scottish government use their influence with UK/Bank of England to achieve covenant waivers.

Planning and Building Control

- Pre-app requirements for planning particularly for public engagement requirements – **need for test of reasonableness re any future challenges**
- Planning decision-making (schemes of delegation) – **we need authorities to utilise to the maximum their powers of discretion**
- Planning appeals - **making use of written submissions**
- Planning permission expiries – **needs to be a temporary extension to [at least] 30 June as the country re-jigs its procedures**
- Building warrants – All should be done to clear any backlog and innovative ways of working could be utilised to permit self-certification backed with video evidence.
- Planning conditions and inability to dispose of these requirements – **this must not be used by authorities as a reason for loss of planning permission. Again, a temporary extension would be welcome**

Contractual Issues

- Building site closures and force majeure in terms of construction contracts – **there is uncertainty in this area and clear Government direction could help for purposes of any future dispute resolution**
- Strength of ‘government action’ as a means for arguing inability to carry out construction contract obligations – **again clear government direction would support any uncertainty with contract positions.**

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