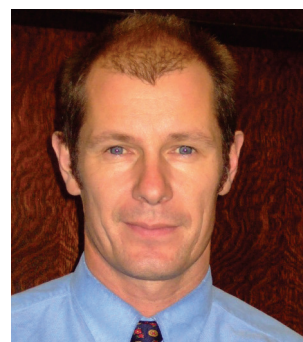


Business Focus

Should I stay or should I go?

David Parker, of David Parker Consulting Ltd, and Jeremy Licence and Nick Austen of Vertex Law look at the commercial and legal considerations when a lease comes up for renewal



Arguably the most important asset of any pharmacy business is the premises, or, to be more precise, the location of its premises. However, times change and what was a prime location 10 or 15 years ago may well not be such a great spot in 2008.

Before even thinking of committing to a new lease, you should take a very serious look at your trading position. A good starting point for this is to plot all the local pharmacies and surgeries, along with their patient list sizes and prescribing figures on a map. A Google-Earth map can often add another dimension with respect to the number of chimney pots your business can rely upon.

As well as the above desktop exercise, we would always suggest that you physically explore your competitive environment. Try to view this from a customer's point of view and make the journeys that they make. Imagine leaving each of the important surgeries with a prescription in your hand. What would be the most convenient pharmacy for you? Simple issues such as being on the left hand side of the road rather than the right when leaving the surgery, and having obvious and easy parking nearby become far clearer if you actually make the journey.

Although proximity to surgeries is of great value, this may soon be diluted somewhat by electronic transmission of prescriptions. Be mindful also of the fact that approximately 75 per cent of prescriptions are repeat rather than acute and do not, as such, demand a visit to the surgery.

Populations

When reviewing a location try also to envisage, or even plot, the resident populations that you would naturally expect to gravitate to a pharmacy there. In some instances, it might be appropriate to survey local residents at random to establish which pharmacy they used and why. And we would suggest that it would always be appropriate to speak to each of the major surgeries to ask whether they had any plans that might affect your decision to sign a new lease.

You must of course be realistic and review your options within the parameters of the relocation consent that is likely to be forthcoming. Relocation of a contract to a different neighbourhood is a long shot, whilst a relocation of less than 500 metres within the same neighbourhood is virtually assured.

Assuming that, after a complete review of your location, you decide you are happy to stay

put, there remain some important considerations to bear in mind.

For instance, you should consider the terms of your occupancy under your existing lease. In many cases, the landlord will be obliged to grant a new lease to you, but this is not always the case, either because your right to renew was excluded when the lease was granted, or because the landlord can prove that he wishes to redevelop the property or even occupy it for his own business.

If you are unsure about this, then it is sensible to take advice before spending significant sums of money on improving the fixtures and fittings.

Approach

If, on the other hand, you have decided that you can improve on your location, it is then necessary to identify a particular site or property. An approach will need to be made to the current occupier of any such property to find out if they own the premises or if they are a tenant on an existing business lease.

If the current occupier owns the premises, then it should be relatively straightforward for you or your agent to negotiate the terms of a new lease. Taking on an existing lease, however, can be more complicated and needs more careful consideration.

The biggest concern is likely to be the length of the term remaining on the lease. If the premises are not presently trading as a pharmacy (or even if they are), you will inevitably have to commit a capital sum for new fitting out works. If a lease only has a few years left to run but the premises is commercially irresistible, it may be possible to involve the landlord in negotiations to make sure the lease term will be extended, or you can sometimes take an option to buy the freehold when the lease runs out.

Planning

Planning is often an issue when dealing with pharmacies in established shopping areas. Common problems are that there is no planning permission, or a permission or use which is inconsistent with retail pharmacy. Some types of use, for example, professional services or restaurant use, can be changed without too much effort, but you will need to know the position.

Having no planning permission is not necessarily a problem provided the seller can prove there is an established use because it is possible to get the use ratified by a certificate.

Quite aside from the planning status, the

lease will contain a permitted user clause. This is not necessarily the same as the planning designation. If, for example, the lease provides that the premises may only be used for a shoe shop, then despite the planning position, you will still need to obtain the landlord's consent to change the use to a pharmacy.

The lease may provide that the landlord cannot withhold consent unreasonably and the law gives some comfort to a tenant wishing to change the use, but this should still be checked out as early on in the process as possible.

Most leases contain covenants by tenants to keep the property in good condition. There may also be decorating covenants. You should inspect the premises as carefully as you can and compare them to any schedule of condition in the lease. This is because the repairing covenants transfer to the person purchasing the lease from the tenant, so you could be walking into a fight with the landlord over the condition of the property as soon as you complete the purchase.

Existing terms

Finally, in legal terms, you should ask the seller to confirm the position concerning the existing lease as soon as possible. Surprisingly often, the lease has run out and the seller remains in occupation while the new lease terms are being negotiated. This can continue for months or even years. It is preferable to be involved in the negotiations, otherwise you will have to take or leave the lease in whatever form the tenant and the landlord have negotiated. Clearly, a tenant who knows they will be leaving the property does not have a great incentive to get the best terms possible. Any problems concerning the permitted use, or alterations you wish to make to the property can also be resolved at this point. The message is clear — try to obtain as much information as you can, both in terms of the location and the legal position before you agree the headline terms for any relocation with the occupier of your perfect property.

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