# Under the hammer: Can councils truly transform high streets with new auction powers?



The Levelling Up and Regeneration Act 2023 ("**LURA**") introduced a framework for new powers to be provided to local authorities to conduct compulsory rental auctions of vacant commercial properties in designated high streets or town centres. The plan? To give local authorities power to "*deliver the change their communities need*" and empower local leaders and communities to "*take control over the look and feel of their area*". We first wrote about this in January 2024, and, ever since then, the market has been awaiting the promised detail. Regulations have now been published and are in force (the "**Regulations**"), providing long-awaited substance to the proposals which we explore below.

## Exploring the new regulations

The Regulations are detailed and prescriptive and include:

- **a timetable of the 12 week rental auction process** which prescribes a week-by-week process within which local authorities must, amongst other things, engage with the landlord, instruct a survey, carry out searches and market the property – further detail on the allocation of costs is set out at question three below;
- **prescribed forms for the various notices** that need to be served on the landlord and standard forms of the agreement for lease and lease to be entered into – notably, the lease will be for a term of between one and five years, contracted out of the Landlord and Tenant Act 1954, for the permitted use and rent specified in the bid and repair obligations will be qualified by reference to a schedule of condition. Importantly, there is no minimum level of rent and the permitted use must be within the "suitable high-street uses" specified in the marketing brochure for the premises produced by the local authority; and
- **a new permitted development right as a new Class "DB"** to permit changes of use for qualifying high-street premises to a suitable high street use.

The Government has also released non-statutory guidance (the "**Guidance**") to accompany the Regulations which elaborates on the auction process and sets out the Government's expectations on how local authorities should deploy their new powers. Combined, the Regulations and the Guidance are intended to answer certain key questions raised by LURA, including those which we've set out below:

## 1. When will this regime be appropriate?

The Government has made it clear that the auction regime will not be appropriate for all premises – they encourage local authorities to consider properties that have been persistently vacant, or premises where it would be beneficial to the landlord for the local authority to step in, such as premises where lender or superior landlord consent requirements would otherwise restrict or delay a tenancy from being entered into (since a tenancy entered into pursuant to this regime is deemed to have lender and superior landlord consent – see further question four below).

Examples from the Guidance of where the regime might be considered inappropriate include former department stores which are subject to long-term redevelopment plans and properties with serious repair issues. The Guidance does, however, mention compulsory purchase powers as an alternative to the auction scheme – an even more draconian outcome, which the Government acknowledges may be more appropriate where the premises are affected by significant issues such as dangerous structures or combustible cladding.

A query remains, however, as to whether local authorities are any more likely to find willing tenants for vacant premises than the landlords themselves. It appears that the Regulations are principally targeted at both landlords who are not proactive, and landlords who are proactive but have been unsuccessful in finding a tenant – perhaps because the premises do not meet an acceptable occupancy standard (see more on this at question three below).

## 2. How will a successful bidder be chosen?

Landlords will be given the power to decide the successful bidder - welcome news given that it had previously been feared that all decision-making power would be given to the local authority (which could ultimately result in the landlord being lumbered with a tenant which, for example, does not complement its desired tenant mix). However the landlord must make this decision within a tight window of two working days - failing which, the local authority may decide the successful bidder on the basis of the highest rental value. If it is not reasonably practicable to enter into an agreement with the highest bidder, local authorities are

also given the discretion to choose an alternative bidder or forgo choosing a bidder at all. It is unclear why such a short period of two working days has been given to landlords for this important decision. What's more, if the landlord fails to grant the tenancy as required at the end of the process, the local authority is given powers to grant the tenancy itself (with such tenancy having the same effect as if it were granted by the landlord) – this is a remarkable departure from the ordinary principles of property ownership, and it will be interesting to see how frequently local authorities resort to using these powers.

## 3. Who will bear the various costs of the new regime?

**Bidder/Tenant?** The Regulations allow local authorities to recover the costs of certain searches and surveys undertaken prior to the auction process and any legal fees incurred in connection with preparing the auction pack (including the agreement for lease and lease) from the successful bidder – it remains to be seen whether these additional costs will put prospective tenants off from bidding in the auction if there are other suitable premises in the area which would not attract these additional costs, or if tenants will simply take these costs into account in their bids.

**Local Authority?** Most other costs (including marketing costs) – with one key exception (see below) – are to be borne by the local authority, but the Government is making funding available to local authorities in the form of the "New Burdens Payment" (up to a maximum of £5,223 per property) which local authorities can apply for to help to cover the remaining auction costs. This funding will, however, only be available during a three-year transition period up to 14 January 2028.

**Landlord?** The exception referred to above is the cost of bringing the premises up to the "minimum standard" (meaning a condition which is safe and secure and where any significant occupational risks are removed or managed): this is the landlord's responsibility. Questions remain regarding the feasibility and proportionality of this, particularly for smaller landlords whose income is likely to be significantly depleted where the premises have been vacant and more so when the rent payable by the incoming tenant may not be substantial (bearing in mind there is no minimum rent requirement).

## 4. What place will landlords, superior landlords and lenders have in the process?

It seems clear that the Government's expectation is that local authorities should collaborate with landlords when it comes to implementing this process: indeed, landlords will have a right to object to a proposed auction by serving a counter-notice on the local authority and bringing an appeal. Landlords may also make representations on the proposed agreement for lease and lease.

However, this call for partnership should not be overemphasised given that, ultimately, it is the local authorities who will be driving the auction and negotiation process and landlords have been relegated to the backseat of a process they would typically dominate. In particular, it's worth noting that, once a local authority initiates the auction process by issuing an initial letting notice, landlords are restricted from letting the premises in question without obtaining written consent from the relevant local authority – and such consent is only required to be given where the proposed tenancy is for "high street use", for a term of at least one year and commences within eight weeks of the initial notice.

Another controversial aspect of the regime is that tenancies are deemed to have both lender and superior landlord consent – displacing some key stakeholders from the letting process. This ability to encroach on a landlord's pre-existing contractual obligations is another way in which local authorities are granted a great deal of power and discretion.

It remains to be seen whether this ability to circumvent the lender approval process may end up hindering as opposed to assisting the Government's aim of rejuvenating the high streets. Might this, in fact, cause lenders to reconsider lending against high street properties for fear that any contractually negotiated consent provisions may be overridden?

## 5. Final thoughts – what might the future hold?

Given the widespread consensus that many high streets and local centres are in decline, it is perhaps not surprising that the Government has introduced legislation intended to stimulate growth in town centres.

But the question is – will the new auction process succeed in attracting new tenants to formerly vacant space, or might it simply deter investors and lenders from this sector as a whole due to concerns about local authority intervention? The new regime has been criticised (including by the British Property Federation) for not addressing the root causes of vacant premises which are widely believed to be a result of the rise of online shopping, the cost of living crisis limiting disposable income and rising occupational costs and, for that reason, it is unclear how frequently the regime will be used in practice. The reality of implementing the rental auctions might also be a threat to the regime's success as, whilst some avenues have been prescribed to enable local authorities to pass on certain costs to tenants and landlords, the administrative burden of conducting and co-ordinating the process remains with the local authorities – which may be a challenge where resources are already stretched.

Ultimately, while the Regulations and the Guidance have shed some welcome light on the initial uncertainty surrounding the high street auctions regime, the question of how effective this regime will be still looms large and will only be answered in time.

If you wish to discuss any of the issues discussed in this article, please do not hesitate to reach out to your usual Linklaters contact.

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**March 2025**



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CD616_F/08.26