



## REAL ESTATE | Will COVID-19 Redefine UK Office Space? Commercial Office Use and Tenant Requirements Post-Lockdown

The spread of COVID-19 has forced the mass closure of workspace and the implementation of work-from-home policies in the majority of industries.

As the UK contemplates easing lockdown measures, businesses are having to consider what the world of work will look like in the “new normal”. But what does that “new normal” look like and will it ultimately mean the end of office space as we know it?

For some businesses, the “new normal” initially may mean “virus-proofing” their offices through short-term fixes, new working patterns and long-term design upgrades that put hygiene at the heart of workplace planning. Businesses with denser patterns of occupation (for example, tech companies), may even find that they require more space in order to achieve social distancing and to encourage the return to the office.

A lot of companies are going to be thinking about how they could make their office environment if not “virus proof” then at least virus resistant. Therefore they may be looking to create a better, more resilient office space by switching to a more modern and flexible working space.

Landlords may start to differentiate themselves by providing additional services and the concept of “high-end office” may no longer mean “high end” from a luxury perspective but from a content and services offered perspective. For example, any surplus space or space previously used to house desks may instead be used for supplying services to help the tenant be more productive, whether that is sustainability or wellness solutions or digital technology.

To justify its existence, the office may have to become a destination with a purpose. We may see more

“hotelisation” of office space, with workplaces importing some of the home comforts that we’ve become used to during the lockdown period. This might mean looking at furniture and other design solutions to make spaces more cosy while helping to subtly create distance between people without losing the benefits of office collaboration.

Whilst some businesses will be re-thinking how their office space may be used, for some businesses a decision may have already been made that remote working is a success and should be implemented permanently to some degree. For example, Twitter recently announced that its employees who prefer to work remotely can now do so to indefinitely. As a result, their current space could, at least in part, now be surplus to requirements and they may be looking to dispose of some of that space.

So, if you are an occupier, and want to downsize your space, what can you do?

- **Exit on lease expiry** – if your lease is coming to an end due to the expiry of the contractual term, consider what steps need to take place to exit the property. If you are no longer in occupation of the premises, consider how you will comply with reinstatement obligations in the lease. Remember that if the lease benefits from security of tenure under the Landlord and Tenant Act 1954, unless you have ceased to occupy the property for business purposes, then once the contractual term has expired you will need to bring the tenancy to an end by serving at least three months’ written notice on the landlord (Section 27 Landlord and Tenant Act 1954).
- **Exercise any break rights** – consider exercising any break option that may be coming up soon in your lease. If you are considering exercising a break option, ensure strict compliance with any conditions attached to the break clause. In particular:
  - If there is a condition that rent(s) must be paid up to the break date, depending on how the lease is drafted, this can include paying the rent for the entire payment period in which the break date falls and not just up to and including the break date. Remember to check whether the condition requires only the yearly rent to be paid up to the break date or whether any other rents (for example, service charge rent or insurance rent) also need to be paid. Check whether there is a repayment provision in the break clause. If there is no repayment right then there is no legal right to request a refund of any amount paid which relates to the period after the break date.
  - If the break option requires the property to be delivered with vacant possession, this means not only removing belongings and tenant fixtures and fittings from the premises but also leaving the premises free from any rights of occupation granted to any third parties.
  - Service of the break notice must comply with the notice clause in the lease. In light of the lockdown, it is important to consider what additional steps may be required to ensure that the notice is validly served on the landlord.
- **Assign, sublet or share** – if your lease permits, you could look to assign your lease or sublet the whole or part of your premises or (subject to social distancing requirements) share space with a group company. Any assignment is likely to take time and may involve paying a premium to an assignee to take over the premises, including any future dilapidations liability. Any subletting is also likely to take time and additionally, you may not be able to achieve the same level of rent that you pay and may need to grant a rent-free or other incentive.
- **Negotiate with the landlord** – in the absence of an early termination right or scope to assign, sublet or share occupation of the premises your only realistic option is to seek to agree a deal

with your landlord by:

- Agreeing to surrender (or surrender part) or move to a smaller space owned by the landlord. This might be difficult in the current climate and expensive as the landlord is likely to have to cover void periods and may have to agree a rent-free period for any new tenant.
- Agreeing to downsize as part of a re-gear (i.e a renegotiation or restructure) but agreeing to a longer term or a different rent.
- Negotiating a break right later in the term and agreeing not to exercise that break right in exchange for a rent free period or in exchange for a surrender of part of the premises for a reduced rent for the remainder of the term.

In these unprecedented times, it has never been more important for landlords and tenants across all sectors to work together. Therefore, if you are considering a downsize, it will be important to get your landlord on side as soon as possible. The traction surrounding COVID-19-related rent concessions suggests that tenants and landlords who are consulting and collaborating are achieving mutually acceptable results at an early stage. A similar approach to reducing space may yield similar results.

So, whilst it is unlikely that we will ever see the death of UK office space, it is likely that some businesses will require less office space in the future and a re-think as to how office space is used.

## Authors

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