

## What is an improvement?

### Introduction

A tenant of a commercial property will often undertake fitting out and other works at the beginning of or during the term of the lease. It is important to establish whether these works are classified as “improvements” in order to establish whether they will be taken into account when revising the rent on a rent review or when negotiating the terms of a lease renewal.

### Definition of “Improvement”

There is no statutory definition of “Improvement” but in *Woolworth & Co Ltd v Lambert* 1937 the court held that an improvement is an alteration to a property which improves the property from the tenant’s point of view even if this actually reduces the value of the landlord’s own interest.

### Fitting out works

Fitting out works are usually carried out before the lease is completed and the tenant may be allowed an initial rent concession to reflect the value of those works. It is important therefore that the landlord and tenant agree at the outset whether the value of these works will be disregarded when the rent is reviewed.

### Rent review clauses

Most rent review clauses provide that any value attaching to improvements carried out by a tenant at its own cost will be disregarded unless they are carried out under an obligation to the landlord. For example improvements which a tenant must carry out under a statutory obligation would generally not be disregarded but

improvements carried out under a tenant’s licence to make alterations normally would be.

### Improvements carried out by a third party

Landlords and tenants need to be careful where improvements are to be carried out by someone other than the tenant so that any value attaching to them is disregarded where appropriate. There are commonly three situations when this could arise:

- By a prospective tenant under an agreement for lease. As the lease has not yet been completed the person carrying out the work is not yet the tenant and it is wise to have specific agreement on how the works are to be treated;
- Improvement work carried out by an agent for the tenant, e.g. the landlord’s contractors. If these works are requested and paid for by the tenant it is likely that they will be disregarded on review;
- Work carried out by a sub-tenant or licensee (a person without a formal lease of the property). Works carried out by a formal sub-tenant are likely to be disregarded but not those by a licensee.

### Improvements outside the demise

Similarly, where a tenant is given consent to carry out works outside its demise (for example bringing in Ethernet cabling or installing plant on a communal roof) it needs to be agreed whether the value of these improvements will be disregarded. They are unlikely to be disregarded without specific wording being included in either the lease or a licence for alterations.

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### Renewal Lease

Where a tenant is renewing a lease of its premises clear provisions are needed if improvements carried out during the previous lease are to continue to be disregarded under the new lease.

### Reinstatement

On a more practical note, whilst addressing the treatment of any improvement works upon a rent review or renewal it would also be wise to consider how the works are to be treated upon the determination of the term. Normally the tenant will be obliged to reinstate the premises. Generally this will mean that they should remove what they have installed, make good any damage and put back what was there before. If this is not what is intended, clear provisions will be required.

### Conclusion

Before undertaking significant works to a property, tenants and landlords should agree clearly whether the works are intended to be taken into account on rent review and how they are to be dealt with at the end of the term.

### Further information

This information sheet has been prepared to highlight key issues relating to tenants improvements. It is not intended as a substitute for obtaining specific advice and is for general guidance only. It is based on our understanding of the legal position as at March 2019 and may be affected by subsequent changes in the law.

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