



Meanwhile Use: Process Note

A tenant's guide to entering into Meanwhile Use leases and granting sub occupations

Whilst the process largely remains the same whether you are tenant or landlord, the landlord will carry out different steps in the process and will approach each step from a different perspective to the tenant, i.e. they would draft the lease, they would not need to carry out the same level of due diligence, they would serve the LTA 1954 notice and would not need to pay the completion monies. In that sense, whilst this Process Note is designed for tenants, it will of course be useful for landlord members to see the process and the advice given to tenants.

1 – Find a Property

Once you have decided that you would like to enter into a Meanwhile Use lease to further the activities of your enterprise or project, the first step is to find a suitable property to occupy. You may wish to try one of the following when searching for a property:

- Approach local letting agents (they are usually interested in commercial agreements but may be willing to make an introduction)
- Speak to neighbouring property owners
- Use HM Land Registry to help find the address of the owner of a property
- Attend networking events for landowners with property portfolios

Most commercial property lawyers and commercial landlords will not have encountered a Meanwhile Use lease before and the overall concept of Meanwhile Use will be unfamiliar to them. As a result, they may request that you enter into a standard commercial lease for the property. Commercial property leases are often more onerous than the Meanwhile Use lease and may include provisions which are not appropriate for a Meanwhile Use arrangement, or which open you up to additional costs and liabilities. You should request that the relevant Meanwhile Use documents are used rather than any standard commercial documents which the landlord may suggest.

The Meanwhile Foundation toolkit will help you to navigate the overall process by explaining the relevant legal steps and considerations in detail. That said, we recommend that you seek further professional guidance and legal support where necessary.

Any landlord who is seeking to let out a property will need to ensure that they have the capacity to grant a lease, i.e. there are no restrictions in their constitution (if they are a company or charity) and no restrictions in the title to the property which would prevent a lease being granted.

2 – Heads of Terms (HOTs)

Once you have found a suitable property, you and the landlord will need to begin by preparing the preliminary document which sets out the agreed commercial terms. These are called Heads Of Terms ('HOTs'). The parties can prepare the heads of terms unassisted, or they may wish to instruct a surveyor to assist. This is a vitally important stage as it sets out the terms of the commercial deal agreed between the parties mitigating the risk of proceeding further without a full picture of the terms on offer. It will form the basis on which the lease will be drafted. It provides a helpful tool to structure initial conversations and ensure all parties are on the same page.

Please refer to the precedent HOTs. You should request that these HOTs be used rather than any 'usual' terms the landlord or their letting agent may want to issue, as per above. The Guidance Note will also assist you when agreeing the HOTs as it runs through each provision in the Meanwhile Use lease – the core terms of the lease are reflected in these precedent HOTs, so this note will help you to understand each provision.

The parties should consider at this stage whether or not they are in a position to grant/take on a lease – they will need to understand the obligations, liabilities and restrictions that they will be subject to by taking the lease and whether, in the case of companies and charities, they are legally able to enter into the proposed transaction (i.e. their governing document permits them to do so).

The landlord will need to instruct their surveyor or solicitor to prepare a suitable plan to be used in the lease. The lease plan is essentially a drawing that identifies a leasehold demise within a property - or in other words, a scaled metric drawing depicting the area of land included in the lease.

A Schedule of Condition will also need to be prepared which will subsequently be annexed to the completed lease. The Schedule of Condition is a factual record of the condition of a property which is usually evidenced through a series of photographs. Both parties will need to agree that the Schedule is a fair reflection of the condition of the property when it is prepared.

3 – Instruct Solicitors

Once HOTs have been agreed, you may wish to instruct solicitors in order to benefit from their expertise in safeguarding your interests throughout the legal process. You will be able to find a list of local solicitors and solicitors firms here:

<https://solicitors.lawsociety.org.uk/> by using the search function. Most local firms will offer services to include property and lease work. You will need to agree the terms of your engagement with them.

Once your solicitor has received the HOTs and has taken instructions from you (you will need to formally engage them), they will make contact with the landlord's solicitors and will begin to progress the matter. They will likely start by ordering title documents for the property from HM Land Registry and request some basic due diligence documents.

If you decide not to appoint a solicitor then the landlord / landlord's solicitor will issue the draft lease directly to you. You will need to check that the draft lease reflects the agreed HOTs. The landlord / landlord's solicitors may have included other provisions which could be onerous or disadvantageous to you. We do therefore recommend that you consult a solicitor to review the lease on your behalf.

If you do not instruct a solicitor at this stage, you would still be able at any stage prior to the lease completing but bear in mind that late changes could mean that both parties incur additional costs.

4 – Due Diligence

You or your solicitors will need to carry out due diligence exercises in respect of the landlord and the property. This will include:

- Investigating the landlord's title to ensure that they are the owner of the property and are entitled to grant a lease to you;
- Checking that there are no discrepancies between the extent of the property as described in the HOTs and shown on the proposed plan and title documents;
- Carrying out any relevant searches or legal due diligence in relation to the property, if you require;
- Requesting any statutory compliance documentation, including the following (so far as they may be applicable):
 - Service Charge budget/accounts;
 - Building Insurance policy;
 - Asbestos Register;
 - Health & Safety File;
 - Energy Performance Certificate (EPC);
 - NICEIC Electrical Safety Certificate;
 - Fire Risk Assessment;
 - Gas Safety Certificates;
 - Legionella Certificate;
 - Emergency Light Commissioning Certificate and 6-Monthly Test Certificate; and
 - Lift Insurance Certificate.
- Carrying out a Companies House check if the landlord is a registered company; and
- Raising enquiries with the landlord/landlord's solicitors about the property, as

necessary.

You should also inspect the property and, if appropriate, carry out any surveys to ensure that you are happy with the condition of the property before entering into the lease.

If you do not appoint a solicitor, you should ask that the landlord or their agent provide you with the statutory compliance documents listed above.

5 – Draft the lease and ancillary documents

The landlord's solicitors will draft the lease and any ancillary documents required, i.e. the Landlord and Tenant Act 1954 notice and statutory declaration (see step 7).

If the landlord has not instructed solicitors, they will draft the lease and ancillary documents themselves. They should be encouraged to use the precedent Meanwhile documents but, as landlord, ultimately it is their prerogative as to the type of lease which will be issued. Therefore, early discussion and agreement of HOTs (ideally using the precedents provided) is strongly advised.

6 – Negotiate the lease

Once the draft lease and documents have been issued, the parties and/or parties' solicitors will likely negotiate the terms of the documents and will agree upon a final form of the documents. Hopefully any negotiations (and therefore costs) will be minimal if the lease has been drafted on the basis of the agreed HOTs (and the precedent Meanwhile Use lease is used) but you and/or your solicitors will need to ensure that this is the case.

7 – Landlord and Tenant Act 1954 Formalities

A tenant has a statutory right to remain in occupation of a property at the end of the term if it occupies that property for the purposes of its business. The landlord will likely 'contract out' of these provisions of the Landlord and Tenant Act 1954 (LTA 1954) to ensure that the tenant does not have the benefit of the statutory right to remain in occupation once the lease expires. In layman's terms, once your lease expires you must vacate the property. This is usual practice and will be agreed at HOTs stage.

In order to contract out of the LTA 1954, the landlord will need to serve notice on the tenant in the prescribed form (see precedent notice) prior to the date of the lease.

The tenant will then need to swear a statutory declaration (see precedent statutory declaration) in the presence of an independent solicitor or commissioner of oaths prior to the date of the lease. You will be able to find a solicitor to witness this here: <https://solicitors.lawsociety.org.uk/>. The solicitor will charge you a set fee fixed by the Law Society which currently is £5 which you will pay in cash.

Technically, if the tenant has been served notice at least 14 days prior to the start date of the lease, they are able to sign a simple declaration which will not need to be sworn in the

presence of an independent solicitor or commissioner of oaths. However, it is usual that a statutory declaration is used regardless of when the notice was served. This is because the landlord will not be able to issue the notice until the lease is in an agreed format, so it may cause unnecessary delays if the parties then have to wait 14 days before signing the lease. In considering the above, it is recommended that tenants swear a statutory declaration.

Further guidance on the Landlord and Tenant Act 1954 can be found in the 'LTA Sheet for Unrepresented Tenants' which is available as part of the Meanwhile Foundation Toolkit.

8 – Sign engrossment documents

Once the form of the lease and ancillary documents have been agreed, the landlord's solicitors will provide engrossment copies (i.e. final copies to be signed by the parties) for execution.

The signature version will include the plans and the Schedule of Condition. The documents can either be executed in counterpart (each party signs a separate copy of the lease and the leases are swapped following completion) or in duplicate (both parties sign both copies of the lease). Once signed (including the plans and Schedule of Condition (as directed) you must send the lease (undated) and the sworn statutory declaration to your solicitor or direct to the landlord / landlord's solicitor if you are unrepresented.

9 – Completion Monies

The landlord's solicitors should provide you with a completion statement setting out the amounts due to the landlord on completion, which may include the first rent payment, service charge, insurance rent and any rent deposit monies. These payments will need to be made to the landlord or their solicitor prior to completion.

10 – Landlord/Tenant Works

If you have agreed with the landlord that they will carry out any works to the property, you will need to ensure that these are carried out before the matter proceeds to completion and that you are satisfied with the same.

11 – Completion

At this stage, completion can take place. In practical terms, this means that the lease and any other ancillary documents will be dated. Once completion has taken place, the landlord will release the keys to the property to you.

12 – Post-Completion Formalities

Following completion, if the lease granted is for a term of 7 years or more, you will need to apply to register the new leasehold interest with the land registry.

A Stamp Duty Land Tax ('SDLT') Return may also need to be submitted and any SDLT applicable to the transaction paid.

You will need to instruct solicitors if the lease is 'registerable' (if the lease granted is for a term of 7 years or more) and they will be able to advise further on any SDLT liability.

If you have agreed with the landlord that you can carry out any works to the property, you will need to ensure that these are carried out. The landlord will likely want to ensure that any agreed works you carry out are completed to the standard to which they have provided consent.

13 – Administration

Once all of the post-completion formalities have been dealt with, the documents will need to be retained and stored for safe-keeping.

The parties should also diarise any relevant dates, i.e. any break date and the date of expiry of the lease.

At the end of the lease, the tenant must return the property to the landlord in accordance with the lease, i.e. the property should be handed back in the condition as evidenced in the Schedule of Condition and all personal belongings and chattels removed.

14 – Granting sub-occupations of the property during the term of the lease

Sub-lease	Licence	Hire Agreement
<p>If you would like to grant a sub-lease of the property to a third party, please refer to the section on Sub-leases in the separate Guidance Note.</p> <p>A sub-lease is likely the most appropriate option if:</p> <ul style="list-style-type: none"> - The sub-tenant will occupy the property 	<p>If you would like to grant an occupational licence to a third party, please refer to the section on Licences in the separate Guidance Note.</p> <p>Licences are suitable for use where:</p> <ul style="list-style-type: none"> - the property be occupied for less than 6 months; or - where the space is 	<p>If you would like hire out the property, please refer to the section on Hire Agreements in the separate Guidance Note.</p> <p>Hire agreements are appropriate for situations where:</p> <ul style="list-style-type: none"> - the property will be hired for a very short term; or - the property will be hired for a one-off event.

<p>for 6 months or more;</p> <ul style="list-style-type: none"> - You wish to grant the sub-tenant exclusive possession of all or part of the property; or - You wish for the tenant to have a higher degree of control over the Property. <p>You will need to ensure that you are permitted to grant a sub-lease under your head-lease and when agreeing HOTs you must ensure that they do not exceed those in the headlease. Please note that you will likely need to obtain consent from the superior landlord to sub-let the property, as per the condition in your lease.</p> <p>You should also prepare a lease plan and Schedule of Condition for your sub tenant that is relevant to their demised area for inclusion in the sub lease.</p> <p>The LTA 1954 process will need to be followed. This time you will be the landlord so will need to follow the 'contracting out' procedure (step 7). You will need to issue a notice and statutory</p>	<p>shared, and the tenant does not enjoy exclusive use and a specific demise not allocated.</p> <p>You will need to ensure that you are permitted to grant a licence under your head-lease and when agreeing HOTs you must ensure that these do not exceed those in the headlease.</p> <p>You will also need to notify the landlord of your intention to grant a licence, as per the terms of your lease.</p>	<p>You will need to ensure that you are permitted to hire out the property under your head-lease.</p>
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<p>declaration. We would recommend that you appoint a solicitor to ensure that this process is carried out properly.</p>		
<p>The sub-occupant may want to see the due diligence you have undertaken (e.g. those items listed in section 4) to the extent that they are required given the term and circumstances of the occupation.</p> <p>In terms of any due diligence which you should carry out, you may wish to obtain commercial documents to satisfy yourself as to the sub-occupant's identity and ability to meet the rental payments (e.g. bank statements and references).</p> <p>In all cases, you will need to diarise any relevant dates, i.e. expiry dates, and ensure that all keys are handed back to you once the sub-lease/licence/hire agreement has expired.</p> <p>You will also need to liaise with the third party who has been in occupation at the property to ensure that if they have damaged the property, repairs are carried out to remedy the damage before the expiry of the term. You are ultimately responsible for the repair of the property under the lease and so it is crucial that all repairs are carried out so that the property is kept in the condition required under your lease.</p>		