

INSPIRATION



# AN INTRODUCTION TO JERSEY COMMERCIAL PROPERTY FOR SMALL BUSINESSES



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Paul Ellison has over 25 years' experience in the commercial property market in Jersey and Guernsey in both the private and corporate sector.

Paul was Property Strategy Manager for RBSI where he was responsible for merging the RBS and NatWest operational portfolio across Jersey, Guernsey, Alderney, Isle of Man and Gibraltar. In 2008 Paul left RBSI to join Sandpiper CI Ltd. As Property Manager, he was responsible for the sale of five Checkers supermarkets to Waitrose and acquisition of retail space for new franchises including Iceland, Costa Coffee, Pasty Presto, Hotel Chocolate, M&S Home Store and Jack Wills.

Paul is now Managing Director of Paul Ellison and Company. Clients include Waitrose, Parish of St Helier, Jersey Business and Morgan Stanley. In addition, he is Managing Director of Cronus II Limited which is developing Enderby Wharf, Greenwich, London a mixed use £200M scheme including cruise liner terminal, hotel, residential and commercial uses.

Paul has been a visiting lecturer at Highlands College construction faculty since 2013 delivering modules in project management and construction economics.



# INTRODUCTION

This property guide is designed to help small business owners find the right solutions to their property needs. Decisions about premises, buying, leasing, maintaining or extending, can be daunting for business entrepreneurs whose main energies are focused on making a success of the business itself. Finding the right solutions to your property needs and dealing effectively with the many issues that can occur while you are in occupation is integral to running a successful business.

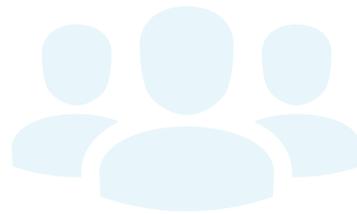
This guide provides information to support you with the more common decisions and actions that you may need to take. Many of the topics included here can be highly complex and a guide such as this can only provide an outline of the key points.

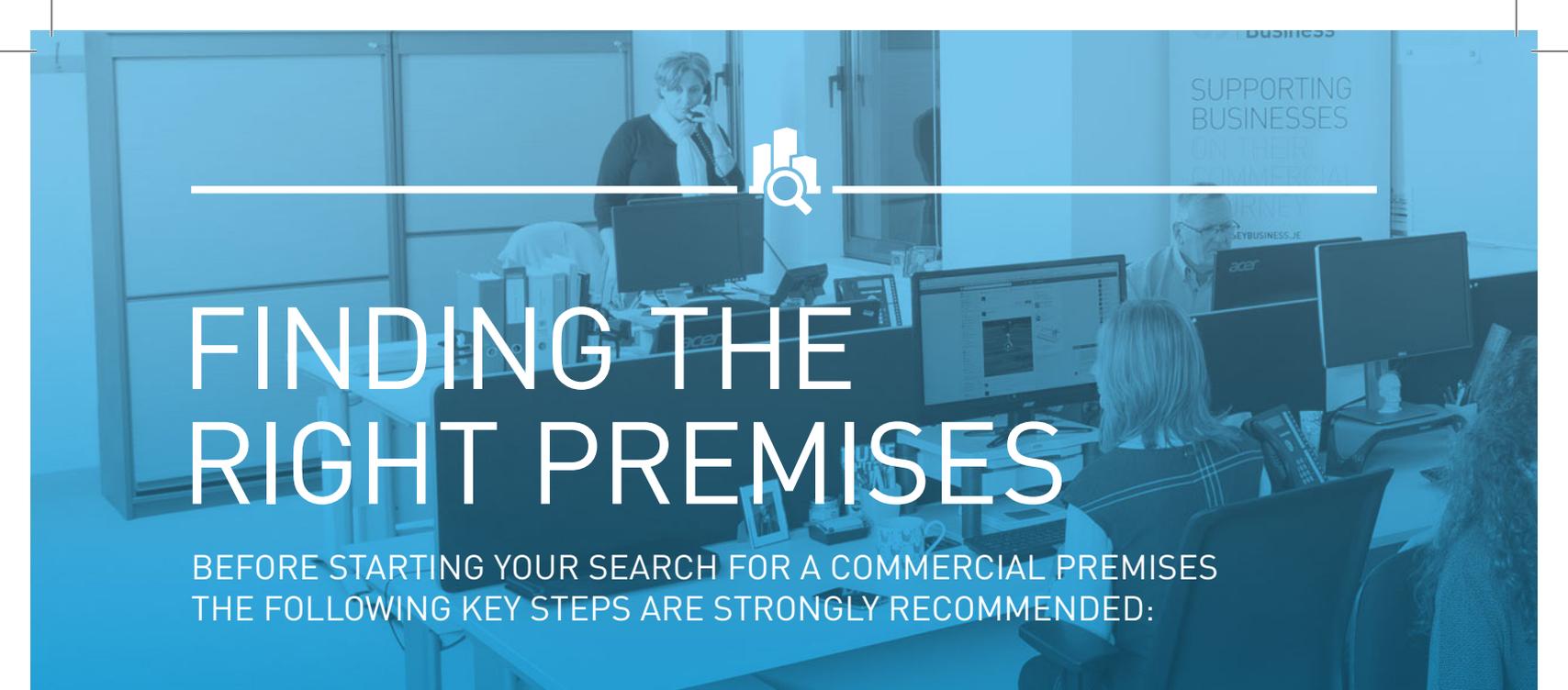
It is not a substitute for the depth of knowledge and experience that a professional surveyor – working with your lawyer and financial adviser – can provide.

It should, however, help you to understand when you need to call in the professionals. It should also give you the necessary background so that you know what to ask your professional adviser and understand more fully the information and advice that you are given.

Good luck and remember, we are here to provide advice and support wherever you are on your commercial journey. Pop in or give us a call if there is anything we can do to help.

## The Jersey Business Team





# FINDING THE RIGHT PREMISES

BEFORE STARTING YOUR SEARCH FOR A COMMERCIAL PREMISES THE FOLLOWING KEY STEPS ARE STRONGLY RECOMMENDED:

## 1. Preparation

- Consult with Jersey Business or a business adviser to help you think through your options.
- Prepare a Business plan through which you can determine the budget for your property ensuring it fits with your wider business objectives.
- Determine the type of business structure you should have for your business: sole trader, partnership or Limited Liability Company.
- Decide who will be the professional advisers you need to support you including surveyor, accountant, lawyer and banker.
- Register a business name which is necessary unless you are trading under your own name.
- Ensure you have an open business bank account.
- Collate trade and professional references as these will be required by most landlords.
- Get your company accounts up to date. If you are an existing company three years accounts may be required by a landlord.
- Ensure you have a trading licence and any specific licences that are relevant to your particular type of business.
- If you are entering a franchise agreement do not underestimate the time to complete an agreement. If you are proposing to operate a franchise you should ascertain if they have a design guide for fit out.
- Draw up a list of requirements for your property including type, size, location and budget. It will help you avoid wasting time spent looking at unsuitable premises.

**Your property requirements should align with your business plan in respect of location, nature, cost and future plans. You should aim to meet your current and foreseeable business needs.**

## 2. Finding a suitable location

- Think about the location that will work best for where your core business activities take place.
- Look for how accessible the location is for staff and visitors, including customers and suppliers.
- Consider possible access restrictions such as delivery times and parking restrictions.
- Do you need a location that can attract passing trade, which may be key if you are a retailer or in the hospitality sector?
- Do you need to be located close to your key suppliers, customers or associated businesses?
- Consider the reputation of the localities you look at as this can impact on the way clients and prospective employees see your business.
- Find out who your neighbours are. Are they competitors, a nightclub or residential for example? Will they or you be affected by potential noise or traffic?
- Think what social infrastructure such as cafes, shops, access to open space, you would like near to the property.
- Find out if there are any large scale construction or other projects that could impact on your business.

## 3. Nature of the property

- Does the building need to be customer facing or are you unlikely to get visitors?
- What is the first impression you want to portray when a visitor arrives at your property?
- What type of property and appearance will enhance or detract from your company's core values?
- What signage do you require both externally and internally to indicate that you are in occupation?



#### 4. Your property requirements

- Look at the size of property that you need. As a rough guide you should allocate the workspaces outlined below for office space, but you should also factor in the growth requirements of the business.
  - Standard use: 7+sqm per person
  - Generous use: 10+sqm per person
  - Manager's office: 10+sqm
  - Meeting room for eight people: 13sqm
  - Kitchenette: 10sq m
- What is the most suitable layout?
- How many people (be that staff or visitors) will you need to accommodate now and in the future?
- What storage space will you need for stock, paperwork, equipment etc.?
- What facilities will you need to provide? Kitchens, bathrooms, car parking etc.
- Think long term, what room do you need for growth and expansion?
- What load factors do you need for machinery and stores?
- Do you need to operate on one floor or can you utilise different space at different levels?
- Do you want open plan or cellular fit-out?
- What natural daylight, heating, ventilation and air conditioning do you want?
- Consider the flexibility you might need for changing layout.

#### 5. Condition

- Decide how flexible you are about the condition of premises. Are you willing to adapt or improve space, or is this an expense you don't want?
- Will you need to make specific security arrangements?
- Do not underestimate the cost and time for fit out.

#### 6. Change of Use

- Understand whether the property will require consent for change of use to enable your business activity to take place.
- If the property does need change of use, understand the implications of achieving consent on timescale, costs and on your fit out requirements.

#### 7. How to find the space

- Start your search for space ideally six to nine months prior to the time you need to move in to allow for time for negotiation and completion of agreements.
- Consult local experts such as commercial agents. Give them your list of requirements and ask them to put you on their mailing list so that you are first to hear about suitable new premises when they come onto the market.
- Check local newspaper and property websites.
- Consider appointing a Commercial Surveyor to represent you. An agent can search the market confidentially on your behalf and make direct approaches for "off market" property.
- Find a project manager to ensure the preferred space is capable of delivering the working environment required and that there are no services or building condition issues likely to impair the building.

**Make a shortlist of suitable properties and view as many as you can. Score them against your list of requirements.**



## BUY OR LEASE?

The choice between leasehold and freehold property for a business is primarily down to use of capital. For most companies, the first priority for any capital is to direct it into the business. Renting on a leasehold basis is normal in the majority of cases as it requires less use of capital.

Consider the advantages of each approach:

### Renting advantages

- Less initial capital outlay than buying which saves on cash flow that may be needed elsewhere in your business.
- Easier to relocate should you need more or less space, as you are not tied into ownership (however this will be determined by your length of lease).
- Flexible or short term leases of less than three years may be available.

### Buying advantages

- Buying a property means there is no lease period and therefore no risk of losing the premises once a lease has expired.
- As the property will be under your ownership you have more flexibility over what use the property is put to for example renting, selling or used for your own business.
- Over a period of time the property could rise in value ensuring a return on your investment.
- The premises can be altered as you see fit (subject of course to planning and statutory consents).

## LANDLORD AND AGENT

- A tenant's point of contact for a lease of a commercial property will normally be the Landlord's agent. The agent will act for the Landlord and is required to pass any offers or material matters to the Landlord.
- Agents that are Chartered Surveyors are regulated by the Royal Institution of Chartered Surveyors.

## MANAGING AGENT

- The Landlord will normally be responsible for maintaining, cleaning, securing and operating the common areas in a multi occupied building. Common areas include, reception, the stairwell, fire escapes, lifts and external areas.
- The Landlord will normally outsource the management of the common areas to a third party, a managing agent.
- It is normal for the cost of the services for the common areas, including the managing agent's fee, to be recoverable from the occupiers of the building by way of a service charge. The service charge is normally apportioned between the occupiers based upon the floor area occupied.
- The mechanism for collection of service charge will be set out in the lease, but is normally as follows:
  - Service charge amounts collected quarterly in advance along with the rental.
  - A reconciliation of service charge collected verses the actual costs paid will be calculated at service charge year end and a credit or debit made to occupiers depending on the balance.
  - The managing agent will normally calculate an annual service charge budget in advance in order to determine the quarterly amount to be charged.
- It should be noted that the service charge is normally treated in the same way as rental charges with the same remedies, such as interest and forfeiture of lease, available for non-payment. Service charge amounts can add in the order of 20% to rental costs.
- In negotiating a new lease:



- Check what services the Landlord will provide (Landlord's covenants) and recover from the tenant by way of the service charge.
  - Check the annual service charge budget and the quarterly amount to be charged.
  - Check the proportion allocation and the mechanism for collection.
  - Check the previous annual service charge accounts.
  - Check whether an amount is collected for a sinking fund for one off costs such as redecoration and roof recovering. A sinking fund should spread the cost of major works over the life of the building so check the balance held in the sinking fund.
  - Depending on the nature and scale of the service charge, the lease may allow for third party service charge auditing. This will be an additional annual cost to the service charge.
- In the event of a dispute in respect of the service charge the lease will normally allow the matter to be referred to a third party (an expert/arbitrator) for resolution. There is a cost to this and resolution by agreement is therefore recommended.

## TAKING A LEASE

There is no such thing as a standard commercial lease in Jersey!

### Heads of Terms

Any proposed transaction should begin with drafting a document, which clearly states the primary terms that both parties have agreed to, the 'Heads of Terms' (HOTS). This is normally drafted by the Lessor.

In negotiating HOTS all communication should be on a subject to contract basis which means nothing is binding until the final agreement is completed. When both parties agree the HOTS, the legal work can begin. The HOTS can reduce legal costs and give more certainty to material terms agreed. The seller's or your own agent can draft the HOTS for mutual approval.

The HOTS would normally cover the following:

### 1. The Parties

- The name of the Landlord and tenant. If you lease a property in your own name you are responsible for all the obligations of that lease including rental, repairs and utilities and insurance until termination of the lease. For this reason many tenants prefer to take a lease in the name of a Limited Liability Company.

### 2. Guarantor

- A Landlord will want to know that the tenant is a good covenant able to meet the obligations of the lease and may request references, accounts and sight of a business plan. It is common for a Landlord to request a personal Guarantor. A lease may specify that a guarantor is released if certain conditions are met or after a certain amount of time has passed.

### 3. Terms

- Leases for a term of more than nine years are known as 'Contract leases' and those for a term of nine years or less are commonly known as 'Paper leases'. Contract leases have to be passed before the Royal Court in Jersey and then registered in the Public Registry and are public documents, whereas Paper leases are not. A Contract lease attracts stamp duty, which is calculated on the basis of the annual rental and the term of the lease.
- The legal costs for contract leases are generally higher than paper leases.
- Flexibility in lease terms is very important because property needs change over time, especially if the tenant is either expanding rapidly or going through a period of consolidation.
- Having a long lease creates a liability that can constrain growth and limit options. However a short lease can create a tension and an unstable environment. The ideal, therefore, is to have a reasonable length lease, say nine years, but with a break clause at year three or five, rolling forward until the lease ends. Consider also the possibility of a one-way break clause.
- It should be noted that depreciation on fit out costs is normally calculated over the term of the lease. If you have a short lease, depreciation on fit out costs could be high so speak to your financial adviser to align your lease terms with your business needs.



#### 4. Incentives

- The landlord may be willing provide a lengthy rent-free period and / or capital contribution towards fit-out costs.

#### 5. Rental

- Terms will specify the date from when rental is payable and the frequency of payment. In commercial leases rental is normally paid quarterly in advance.

#### 6. Rent reviews

- If the lease contains a rent review, then you will need to know how often this operates; whether or not it is 'upwards-only'; the type of review (for example open market or Retail Price Index) and the mechanism for starting the review process.
- In addition, the Lease should state what will happen in the event that the parties cannot agree the rent - will the matter be referred to an expert or an arbitrator for example.

#### 7. Assignment and subletting

- Normally a tenant is permitted to sublet or assign the whole of the premises and landlord's consent is not to be unreasonably withheld. Assignments to group companies should be permitted where the group company is of at least equivalent financial standing. However, subletting of part of the property may be prohibited.

#### 8. Service charge

- If a property is multi occupied a service charge may be payable for services and the costs of common areas including external repairs, cleaning, utilities, lift maintenance and a management fee. The service charge is normally based on a percentage of costs calculated in accordance with floor area occupied.

#### 9. Repair

- The tenants repairing obligation may be full for exterior and interior, or internal only but whichever they are the repairing obligations should be appropriate for the term of the lease and the existing condition of the premises.
- It is strongly recommended that repairing obligations are limited to putting the property into no better condition than at the commencement of the lease by reference to a schedule of condition

including photographs of the property at the time of entry.

- In taking on a full repairing lease a tenant should ensure they have a full structural survey and understand the liability they are exposed to. The repairing and decorating obligations should be specified and it may be agreed that the landlord carries out any necessary repairs.

#### 10. Alterations and use

- This will cover, where appropriate, any right to make non-structural alterations without landlord's consent and structural alterations with the consent of the Landlord (which cannot be unreasonably withheld). It will also cover any right to change the permitted use of the premises.

#### 11. Insurance

- The liability for the cost and responsibility for building insurance should be specified in the lease. Rent suspension conditions may apply in the event that the property cannot be occupied as a result of insured or uninsured damage.
- There should be specific details as to what is to happen in the event of the destruction of the building by an insured/uninsured risk.

**It is highly recommended that you seek a professional advice from a solicitor who specialises in commercial property law. Remember a lawyer will offer advice on property law and a commercial surveyor can advise on commercial terms and market value.**

## BUILDING SURVEYS

For the reasons discussed above, building surveys should be considered if buying a property or taking a full repairing lease. A schedule of condition can be prepared by a building surveyor for attaching to a new lease at its commencement and specialist surveys are available to cover asbestos.

## VALUATIONS

- A valuation is a professional opinion (provided by a Chartered Surveyor) on the value of a property based on a range of physical, legal and financial



information about the property and the market in which it sits. It includes measurements and locational details of the property.

- The valuation depends on having:
  - A clear understanding of what is being valued, for example, are plant and fixtures to be included?
  - Clarity on the purpose of the valuation, for example, for sale or insurance.
  - What leases, if any, are involved?
- A valuation is not a building survey. The valuer will take account of what he sees of the general condition of the building, but will not undertake a detailed investigation for defects.
- A valuation is produced for a specific client, and is based on specific assumptions.
- You will need to agree with your valuer at the outset how the report is to be used.

## PROPERTY INSURANCE

- A tenant should check that adequate insurance is in place to cover:
  - The building
  - Fixtures fittings and contents
  - Public liability insurance
- The responsibility for arranging building insurance and paying premiums will normally be set out in a lease.

## RATES

- You must pay rates if you are an owner or occupier of 'land' ('land' includes any house, building, structure or land).
- If you occupy 'land' but don't own it, then you will be liable for the occupier's rates.
- If you own 'land' and let it out to someone else, then you may be liable for owner rates known as foncier rates. The liability for foncier rates is often passed to a tenant under a commercial lease.
- If you own or occupy 'land' on the 1 January, then you're liable for the rates for that 'land' for the whole year, even if you move later in the year.
- If the premises are altered or improved the rating assessment may be revised.
- Rates are administered by the Parishes who can advise on the rateable value and rate payable for each property.

## RENT REVIEWS

- In recent years there has been an increasing tendency for short term leases, but the traditional commercial lease for a lease length of, say of nine years or more, typically incorporates upwards only rent reviews every three years.
- Rent reviews may be assessed to open market rental value or to the increase in the Jersey Retail Price index.
- In assessing open market rental value it is normally assumed the premises is vacant and available to let in the open market at the rent review date. Typically, the rent to be assessed is the net effective rent after reflecting incentives such as rent free periods and / or capital contributions.
- In preparation for negotiations, there should be a detailed review of the occupational lease and relevant planning documentation. The hypothetical terms to be assumed will be set out in the relevant rent review clause, together with any specific timing requirements such as serving of Notices to activate the review procedure. But regard should also be given to wider provisions within the lease, such as user provisions and the ability to assign or underlet the premises.
- It is normal for a landlord and tenant to appoint their own chartered surveyor to act on their behalf. It is unlikely a tenant will have the knowledge or comparable information to successfully represent themselves.
- Open market lettings on similar space provide the primary comparable evidence for rent reviews with other evidence including lease renewals, rent reviews, and third party Awards or Determinations. Comparison on a like for like basis will require adjustments that reflect the specific characteristics of the comparable evidence.
- In the event that agreement cannot be reached between the parties, the lease will direct whether the matter is to be referred to an arbitrator or independent expert. You should consider the costs and risks of proceeding this way. Arbitration proceedings can be handled either by way of written reports or by way of an oral hearing, the latter requiring the appointment of an appropriate legal team as required.



## RENEWING A LEASE

- When approaching the end of contractual lease expiry, it is advisable for both landlords and tenants to use professional advisers to help navigate the legal requirements and ensure respective positions are protected.
- Expiries provide an opportunity for both parties to consider not just the rent, but also longer term strategies.
- There is an increasing trend towards flexibility as lease lengths become shorter and break clauses more prevalent. Although landlords typically prefer to maximise secure income, it may be that mutually flexible terms will allow the landlord to consider alternatives, such as redevelopment.

**It is strongly recommended that tenants approach their Landlord at least six months to a year prior the date of lease expiry to give time for negotiation and seek alternative premises, if necessary.**

## TAX ALLOWANCES ON PROPERTY

- You may want to investigate whether there are any capital allowances available for you to claim. You can reclaim expenditure on your commercial property and offset this against your overall tax liability.
- Certain types of expenditure on commercial property may be eligible for capital allowances including expenditure on features integral to commercial properties such as electrical systems, lifts, escalators, air conditioning and cold water systems etc.
- This is not a definitive list. There may be other criteria qualifying for each allowance and you should seek a professional tax advice on this subject.

## PLANNING PROPERTY CASH FLOW

- Property costs are an important part of operating expenses for most businesses, whether you own or lease your premises. It is therefore vital to have a clear view of the outgoings relating to your property and when the major items of expense will occur.
- If you are a tenant, there will also be points in the lease calendar that require action on your part. These include the dates of
  - Possible break clauses
  - Rent reviews
  - Repair and decoration requirements
  - Lease expiry
- In preparing a cash flow forecast for a property budget the follow items should be considered:
  - Rent
  - Rates: Foncier and occupiers
  - Utilities: water, electricity, telephone
  - External decoration and repairs
  - Internal decoration and repairs
  - Insurance: building, contents, public liability
  - Service charge
  - Fees: Chartered Surveyor, Solicitor, Accountant
  - Fit out costs
  - Other





## KEEPING GOOD PROPERTY RECORDS

- You should keep originals of leases, licenses and improvements you make to a property.
- Improvements approved by the Landlord may be disregarded for rent review purposes if assessment is to open market rental value.
- You may also need to refer to your property records when your statutory accounts are audited.
- If you have records of floor area, business performance can be measured by metrics, on a per square metre basis, or per workstation or sales per square metre if a retail property.

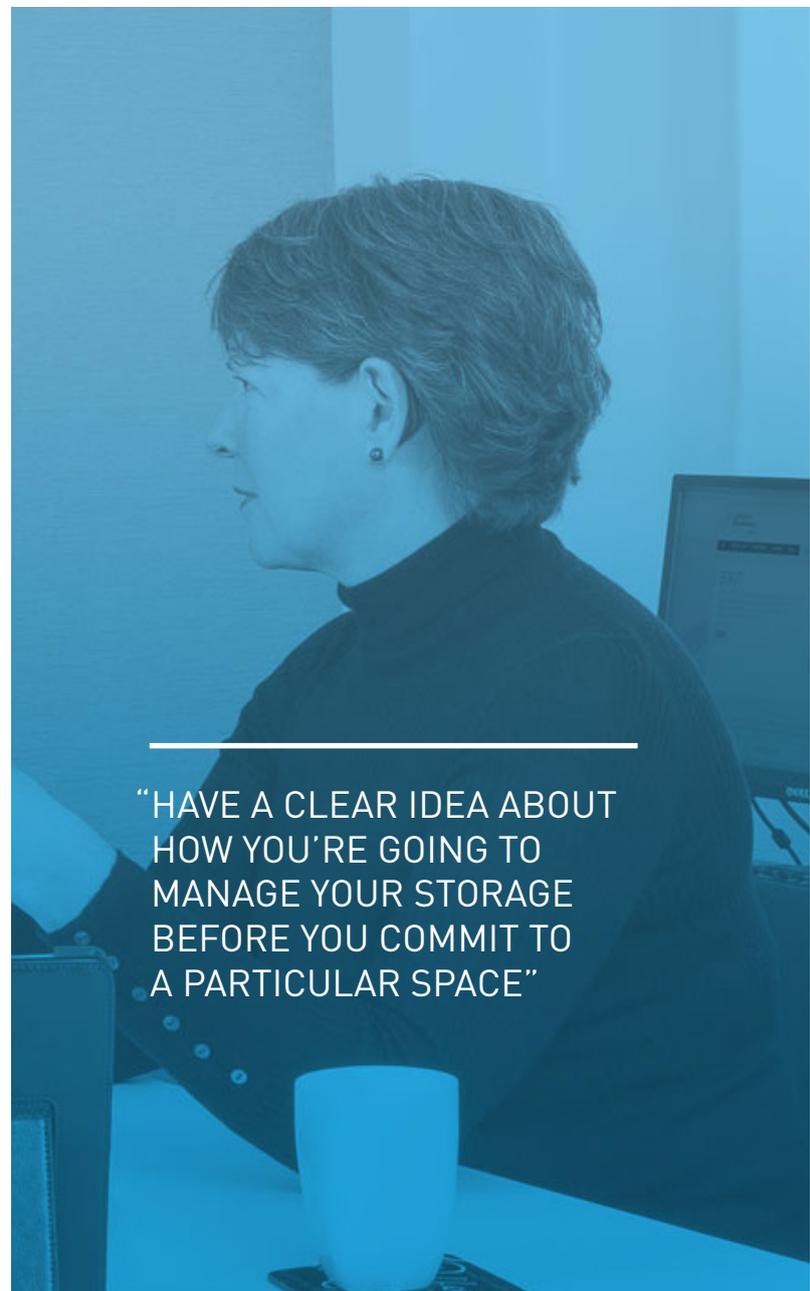
## MAKING THE MOST OF SPACE

- Measuring space is important for maximising your property holdings. You can set a space allocation per person and apply it across the organisation. This should help you identify premises where space can be sub-let or growth can occur.
- Consider how much space is actually usable. The shape of a building, where the lifts and stairs are and the amount of circulation space all make a difference.
- If you want to minimise the amount of space you need you can consider adopting flexible working practices such as working from home, desk booking and hot desking if your staff are only in the office at certain times during the day or week.
- Have a clear idea about how you're going to manage your storage before you commit to a particular space. Can paper can be stored digitally or moved to cheaper storage facilities?
- Do you need meeting rooms? If so, do they need to be used as a meeting room 100% of the time? Consider using meeting rooms as break out space and offices when not in use.

**Space is expensive!**

## IMPROVEMENTS AND ALTERATIONS

- If you are carrying out alterations and improvements to your premises you may require Landlord consent. A licence may be required to document the approval.
- Alterations and improvements including external signage may require statutory approval in respect of Planning and Building regulation.



“HAVE A CLEAR IDEA ABOUT HOW YOU’RE GOING TO MANAGE YOUR STORAGE BEFORE YOU COMMIT TO A PARTICULAR SPACE”



“YOU ARE RECOMMENDED TO INSTRUCT A SPECIALIST DILAPIDATIONS SURVEYOR TO ADVISE ON YOUR POSITION AND NEGOTIATE WITH THE LANDLORD”

## PLANNING PERMISSION

- Planning permission is not necessary for minor changes to building interiors. More significant alterations are likely to require planning permission, so check with the Planning Department first.
- Major work must conform to Building Regulations.
- Check that the property has planning permission for your use and that there are no restrictions on your ability to run your business, (e.g. a limitation on working hours or noise emissions).
- Be aware that you may be expected to return the property to its condition at the start of the lease even if that means removing what you see as improvements.
- If you need to obtain planning permission for your use, remember to allow eight to twelve weeks (and sometimes a lot longer) for the application to be processed.

## SALES, ASSIGNMENTS AND SUB-LETTINGS

- A systematic approach to disposing of property can minimise disruption and save time and money. Ensure you have all records such as lease, licenses and confirmation all financial and other obligations are complied with.

- Ensure you seek Landlords consent to subletting and assignment and instruct a lawyer to document any changes.

## DILAPIDATIONS

- You may have repairing liability under the terms of your lease. This might be limited to internal repairing only or full repairing.
- At the end of your lease, expect to be served with a Schedule of Dilapidations by your landlord. This sets out breaches by you of the covenant in your lease to keep the property in good repair (and of other similar covenants such as decoration obligations).
- Where there are allegations of disrepair, the landlord will expect damages for breach of covenant as well as the cost of carrying out the repairs.
- You are recommended to instruct a specialist dilapidations surveyor to advise on your position and negotiate with the landlord.
- Account for your potential exposure to dilapidations during the term of the lease and if possible have a fund set aside for any costs.



## USEFUL LINKS

Association of Jersey Architects:  
[www.jerseyarchitects.com](http://www.jerseyarchitects.com)

British Institute of Facilities Management (BIFM):  
[www.bifm.org.uk](http://www.bifm.org.uk)

Jersey Business:  
[www.jerseybusiness.je](http://www.jerseybusiness.je)

Jersey Chamber of Commerce:  
[www.jerseychamber.com](http://www.jerseychamber.com)

Jersey Construction Council:  
[www.jerseyconstruction.org](http://www.jerseyconstruction.org)

Jersey Legal Information Board:  
[www.jerseylaw.je](http://www.jerseylaw.je)

Jersey Society of Chartered and Certified Accountants:  
[www.jscca.org](http://www.jscca.org)

Law Society of Jersey:  
[www.jerseylawsociety.je](http://www.jerseylawsociety.je)

Royal Institute of British Architects (RIBA):  
[www.architecture.com](http://www.architecture.com)

Royal Institute of Chartered Surveyors (RICS):  
[www.rics.org/uk](http://www.rics.org/uk)

States of Jersey:  
[www.gov.je](http://www.gov.je)



WHETHER YOU ARE THINKING OF STARTING A COMPANY, WANT TO IMPROVE OR GROW YOUR EXISTING BUSINESS OR NEED TO MANAGE YOUR EXIT PLAN, JERSEY BUSINESS IS HERE TO HELP YOU ACHIEVE YOUR GOALS.



# Jersey Business

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