TENANT MIX POLICY FOR MARKETS

Purpose

The aim of this paper is to provide Markets Managers with an options framework for applying an appropriate tenant mix policy rather than being too prescriptive as this best reflects the different operating models in markets management.

Markets are generally occupied by virtue of a licence or lease agreement. For the purposes of this paper the terminology shall be that of referencing lease terms though it will apply equally to those operating by virtue of a licence or tenancy.

Introduction

There are numerous factors that contribute towards the success of retail markets. These could be its location, accessibility, catchment size, but one of the most critical amongst these is the wide variety of goods on sale otherwise known as the ideal Tenant Mix.

Tenant mix is broadly the term that indicates the kinds of different retailers or service providers present in the market as well as the amount of trading space and the location they are present in.

The term 'Tenant Mix' originated in the United States in the 1920s and coincided with the widespread introduction of the managed shopping mall. The main reason for its emergence as a tool of choice for the shopping mall was its ability to assist in the creation of a better shopping environment for the customers, which in turn generated better performance for the retailer in terms of profits and the landlord in terms of increasing rental levels. In such managed environments the negative effects of bringing together retailers can be more easily eliminated thereby further reinforcing the favourable interactions among tenants.

Markets are perhaps the original source of such groupings and hence the concept is fundamental in the management of markets.

For this reason, one of the most difficult tasks faced by the Markets Manager is to determine whether a market has an adequate number of a certain product or service or whether a particular product/service is under or over represented.

Markets Managers are often faced with making difficult decisions in ascertaining whether a market will 'stand' another stall or stalls selling the requested goods and often these subjective decisions can be influenced by a voracious trader citing serious impact on their business.

Such decisions can result in stalls being left vacant with not only a resultant loss of income but also preventing the opportunity for a new trader to take the first step on the retail ladder. A Markets Manager has to balance a duty to ensure that fair and reasonable retail business opportunities for the local community is maintained whilst recognising the potential detriment of vacant non-trading stalls has in the market, especially as customers may perceive an empty stall as a decline in the general viability of the market and avoid the immediate vicinity. This in turn could lead to nearby businesses becoming marginal or ceasing altogether.

A Markets Manager will wish to ensure the market has an appropriative mix of goods so it remains attractive to customers but is often faced with trying to balance the needs of the customer by offering real choice, providing local business opportunities and ensuring the market maintains a diverse retail offer. At the same time a Markets Manager will recognise the need to let vacant stall(s) whilst at the same time recognising that no tenant is provided with a direct covenant not to let other premises to a competing business to avoid a tenant occupying a monopolistic position.

A policy of restricting tenants to a specific list of products named in their occupational agreements is important to maintain a balance of trade. However, in doing so a tenant may find it difficult to react to new products demanded by customers.

This paper will also consider whether consideration should be brought to opening up of the user clauses to broader headings to allow for a wide variety of products but avoid the time spent on dealing with minor disputes between traders.

What is a good Tenant Mix?

Retail markets are faced with increasing competition from supermarkets, out-of-town centres, major discount stores and e-commerce and therefore a good tenant mix is one of the most important factors in the success of a market as it is one of the most crucial elements in establishing its image and performance.

Since each possible mixture of tenants makes a distinctive contribution to the image of a market then it requires a Market Managers to identify an 'ideal' or 'balanced' tenant mix.

This is further complicated by the fact that tenant mix is not static as the retail market, and market offer, changes over time, as do customer preferences and fashion trends. Therefore even if an 'ideal' tenant mix is achieved in one year it might not be suitable for the following year. A Markets Manager should therefore regularly review their tenant mix policy to ensure it remains relevant in the ever changing retail marketplace.

The recent dramatic sale of Electronic or E-cigarettes is a good example of a new product that has exploded into the marketplace within the last 12 months and applications to sell this product would need to be considered within the current tenant mix.

It is not surprising to find that few Market Managers have a balance of trade written policy as identifying such an ideal policy can be a puzzle for many and without such operational rules tenant mix decisions normally follow a 'rule of thumb' that the proposed commodity is already sufficiently represented or that duplication will provide additional competition choice, often cited as 'good estate management' principles. Accordingly, such decisions can be challenged by either a new applicant or an existing trader wishing to expand or vary their permitted user.

Legal Considerations

Both UK and EU competition law prohibit agreements and certain other arrangements which may prevent, restrict or distort competition. These competition rules are set out in Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU").

UK competition law mirrors the substantive provisions of EU competition law by Chapters I and II of the Competition Act ("the 1998 Act"). Section 2 of the 1998 Competition Act prohibits agreements which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK unless such agreements are exempt – commonly called the Chapter 1 prohibition.

The Chapter 1 prohibition of the Competition Act 1998 prohibits anti-competitive agreements.

When the Act was first introduced, land agreements which include contracts for sale, leases, licences and easements were specifically excluded from the Act. However, in part as a result of the land-banking and other anticompetitive practices of the large supermarkets, the legislators have had a change of heart and the Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004 was revoked in April 2011.

This means that land agreements between businesses which have the object or effect of preventing, restricting or distorting competition are now to be prohibited.

What does this mean for markets management? A Markets Manager will want to ensure that its market provides a balance of healthy competition between traders and a good variety and mix of goods for the benefit of customers. The easiest way of doing this is by imposing user restrictions in each lease. Leasehold covenants prohibiting the use of a stall for a particular product or service are now a thing of the past? The answer is "no" as restrictions on use will generally be acceptable and not

a breach of the Competition Act, especially if the market has a written policy with a clear intention to ensure an appropriate tenant mix.

The Office of Fair Trading (OFT) has recently published guidance on how the Act might be interpreted in relation to land agreements

The OFT guidance indicates that permitted user clauses (permitted uses for the land) and restricted user clauses (non-permitted uses for the land) will not generally be regarded as a breach of the Competition Act and that such provision can legitimately be used to achieve an appropriate mix of tenants within a retail development.

Critically, tenant mix and layout are aimed at making the market attractive to customers, they are not aimed at, nor do they have the effect of, creating exclusively for tenants.

That said, it could be unlawful for a Markets Manager to agree with a tenant that it will not let another stall to one of the tenant's competitors as this could be construed as granting a particular tenant sole exclusivity. This could have an impact on small markets that have less than 15/20 stalls where the Markets Manager may not want to have more than one trader selling the same products.

It can be also unlawful for a Markets Manager to refuse an application by an existing trader to vary their permitted user.

Therefore, having a written policy setting out the business rationale for such decisions is extremely important.

It is advisable for any market authority or private market operator to identify all the areas where there is a risk that the market undertaking might break competition law and set up policies, procedures and training to reduce the likelihood of such risks.

Until recently, in the case of Martin Retail Group Limited v Crawley Borough Council (Central London County Court, 24/12/13), the courts have not been asked to consider the relationship between lease user restrictions and the Competition Act.

In the absence of any reported decisions dealing with the application of the Chapter 1 prohibition to land agreements, the judgment in this case represents the first judicial application of the approach set out in the OFT guidance.

This case was brought before the Court under the Landlord and Tenant Act 1954 renewal proceedings as the parties had been unable to agree the proposed user clause in the renewal lease. The tenant wanted to extend the permitted use from the previous lease so as to include the sale of convenience goods and alcohol (as well as other uses). Although Crawley Borough Council, as landlord, was prepared to extend the previous permitted use, they wanted to expressly prohibit the sale of alcohol and convenience goods.

The premises were located within a parade of 11 shops owned by the Council all occupied by different businesses including an existing grocery business which was permitted to sell alcohol. This was one of 11 parades currently owned by the Council and in respect of which they had operated a letting scheme since the 1950s. There was no written letting scheme but an established policy. The scheme focused on ensuring that there were a range of different traders and retail outlets available to local residents on each parade with no parade dominated by a larger supermarket.

The key issues that arise from the Court's decision are:

- The Council conceded that the proposed user clause would be restrictive of competition.

- Despite the statements the OFT has made in its guidance that only a minority of land use restrictions would be caught by the Chapter 1 prohibition, the Court does not appear to have considered in detail whether the proposed user clause would have an "appreciable effect on competition" such as to fall within the scope of the Chapter 1 prohibition. There is, for example, no recognition from

the Court that the OFT guidance states that "in most cases, permitted user and restricted user clauses are unlikely to restrict competition" (at paragraph 4.11).

- The judge decided that the relevant market was, in the context of convenience goods, an area within a relatively short walking distance from the parade - the parade was unlikely to be a destination for potential customers making a weekly shop (customers would be prepared to travel a greater distance for this). There were other convenience stores within a distance of 1,000-1,500 metres from the premises but the Court determined that these were outside the market. However there appears to have been no detailed assessment of whether the proposed user clause would have an "appreciable effect" on competition on that relevant market such as to fall within the scope of the Chapter 1 prohibition.

- Having accepted the proposed user clause did on the face of it breach the Chapter 1 prohibition the Court sought to apply the tests for individual exemption under section 9 of the Competition Act. Applying the approach set out in the OFT guidance the Court considered the four accumulative exemption criteria which need to be satisfied:

  1. the agreement must contribute to improving production of distribution or to promote in technical or economic progress;
  2. it must allow consumers a fair share of the resulting benefits;
  3. it must not impose restrictions beyond those indispensable to achieving those objectives;
  4. it must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question.

When applying the exemption criteria, the Competition Act is quite clear. The onus is on the party claiming the benefit of exemption to prove its case and it is generally very difficult to argue that all four conditions are met. Here the Court felt that the landlord had not produced sufficient evidence to establish that any of these four criteria had been established. Not only had no written policy been produced to the court but there was no evidence provided by the Council or data or analysis as to the effects of the "letting scheme".

The judge was not satisfied that:

1. the distribution of goods was improved or economic progress promoted by the operation of a scheme which lead to a number of different retailers rather than a single large supermarket or a number of similar retailers.

2. The judge accepted that an increase in the range of goods available and the provision of a social hub might constitute a "fair share" for the purpose of the second criteria if evidence could be produced showing the benefits arising from restriction of competition but there was no such evidence here.

3. The Council argued that the restrictions were necessary to the letting and without them the scheme would be swept away and small retailers would not come to the parade. However no evidence was produced in relation to this.

4. When assessed in the context of the market referred to earlier, clearly the restrictions here did eliminate competition.

The Court therefore determined that the Council's proposed user restriction did breach the Competition Act and did not qualify for an individual exemption. The judge emphasised that this decision was on this pure preliminary point and in relation to the specific wording which had been proposed. If the approach adopted in this judgement is followed in other cases there is clearly a risk that many letting schemes and other arrangements involving land use restrictions will be found to fall foul of the Competition Act.

Tenant Mix Options

An ideal tenant mix may be a somewhat idealist concept. Markets change over-time as consumer need, values and demands change alongside the many facets of society in general. As such the perfect outcome may never be realised or is at best a moving beast. However, best tendencies should always be recognisable and the use of a system as with the 'rule of thumb' can only add a methodology to the problem, without which a degree of anarchy could prevail.

It is extremely difficult to present an 'ideal' tenant mix policy as some markets will have clear written policies based on local circumstances whilst other markets rely on the knowledge of their Markets Manager who will make a decision often based on either their own experience, good estate management principles or what is better known as 'gut feeling'.

As a town or city centre needs variety, so the same can be said of a market. The larger the market, the more variety it needs, the greater the variety it has, the higher the footfall and customer spend it can achieve.

The clustering of retailers can generate variety and increase the attractiveness of a market. Retail research theory has suggested that a given number of stores dealing in the same merchandise will do more business if they are located adjacent or in proximity to each other than if they are widely scattered.

This theory can been evidenced in markets where fresh foods are often clustered together which appeals to the customer, however, it can be the reverse for non food traders selling comparison products as these are generally dispersed across the market.

It is fairly simple to see that too many stalls selling as an example Ladies Clothing will have a negative effect on the market since it will create a too-competitive environment. Fewer numbers of these stalls will provide a comparative, not a too-competitive environment.

Some dispersion rather than clustering of same type traders may work best for some markets, however, finding the ideal distance between stalls of the same type has always been extremely difficult for Markets Managers to determine. Some managers may chose a distance of two or three stalls, or determine an exact measurement, whist others may exclude a trader if the goods are in the same trading aisle.

The assumption by tenants has been that any same type trader applying for a stall would mean less revenue (profits) to them. There are a growing number of requests

for protection from markets tenants which is to be expected as many businesses are under a lot of commercial pressure and need to shield themselves from competition.

In order to develop an 'ideal' tenant mix a Markets Manager will recognise the importance of seeking shopper opinions in order to gauge perceptions on their shopping experience with the aim of assisting and developing a tenant mix,

Undertaking an annual, or bi-annual, research of customer opinions is vital as this will:

1. Chart shopping behaviours, likes and dislikes of the current market offer.

2. Evaluate the current use of market and facilities including frequency, loyalty, goods purchased and awareness of existing businesses.

3. Identify main shopping purchases.

4. Evaluate reasons for using existing market.

5. Evaluate customer attitudes and opinions regarding the existing market and its facilities, including perceptions perceived, value for money, quality of goods, product displays, level of service, layout of stalls

6. Define target market

7. Evaluate most attractive merchandising mix / opening times

8. Methods to maximise opportunities to draw new customers in the Market

This research will also capture customers' postcodes for profiling in order to assist the Markets Manager in defining the current target market. The ability to undertake the research either in-house or to an external market research company will be down to the recommended quota sample of face-to-face interviews at the market. The

relevant quota size will be determined by the number of customers that use the market.

The target audience should be a mixture of users and non-users, the latter defined as those that shop infrequently at the market i.e. once a month or greater.

Interviews can be carried out at different times of the day and at weekends to ensure a broad range of customer are questioned.

Tenant Mix Options

1.   **No Tenant mix policy**

A)   Open Markets

Typically a policy for encouraging similar goods being sold are commonly found on Open Markets where the market operator is managing a specialist market offering similar products such as second hand goods, bric-a-brac, collectables, record/stamp fairs. These markets tend to operate weekly or more infrequent and do not require a trade mix policy as their uniqueness and success relies on only similar products being made available to the customer.

However, such a policy for general open markets could be counter productive in trying to promote an attractive market with a good balanced variety of goods for the customer. A 'free for all' will inhibit opportunities in attracting new traders as established traders may be able to dominate the market, preventing competition especially on smaller markets which requires such a variety of goods in order for them to be sustainable.

B)   Indoor Markets

If a 'no tenant mix' policy operated in an indoor market then it could be argued that the lack of any policy will upset the delicate balance of trade with tenants converting their business into any category of retail or commercial use. This instability could

have a negative effect with tenants regularly changing their use and selling products for which they have no experience looking for the next niche line to generate profits or adding products to an ever growing list of goods displayed on the stall.

2.   **Tenant Mix Policy – Basic**

A)   Indoor Markets

One simple approach for applying a basic tenant mix policy is to apportion the total retail sales area of the market by reference to the use classes as defined by the Town and Country Planning (Use Classes) Order 1987.

The use classes that will typically apply in an indoor market are:

A1 Shops – This will cover most of the general retail goods sold in a market and include sandwich bars (but not hot food takeaways),and well as other non retail such as hairdressers, travel and ticket agencies, pet shops, dry cleaners and internet cafes.

A2 Financial and professional services - Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices.

A3 Restaurants and cafés - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes.

A4 Drinking establishments - Public houses, wine bars or other drinking establishments.

A5 Hot food takeaways - For the sale of hot food for consumption off the premises.

As an example a market offering 50,000 sq ft may determine a broad tenant mix policy as:

- 46,000 sq ft for A1 use (92%)
- 500 sq ft for A2 use (1%)
- 1000 sq ft for A3 use (2%)
- 500 sq ft for A4 use (1%)
- 2000 sq ft for A5 use (4%)

The Markets Manager (and tenants) will need to be aware that using this model will mean that an application by a tenant for a change of permitted use within the same 'class' will not be necessary. For example a book stall could be changed to a greengrocer without permission as it falls within the same A1 use, even if it is located next to an existing greengrocer. This would be applicable to the majority of goods sold in Markets as most would fall under the A1 use.

The Markets Manager will specify the permitted user clauses in the traders' licence or lease to the relevant use clause or any other product that falls under this use rather than having to specify a detailed (and often long) product list. This often leads to a considerable amount of the Markets Manager's time in managing trader expectations on what their competitor can or cannot sell, what the legal definition of a particular product being sold is or indeed trying to address minor changes to a trader's current permitted use.

This model will therefore enable the trader to bring new products to the market much quicker and without extensive administration and debate with existing tenants.

The Markets Manager would have a limited control on the tenant mix as an application by a trader to move from one use class to another would require written approval.

In terms of tenant selection then the Markets Manager will require the usual trade and financial references and would have to be satisfied that the particular use was

appropriate for the size of the stall or whether the existing services could accommodate a particular use. This model does not change this but removes any need to limit any new application on the proposed products but relies on the use classes instead.

This use classes method is one that is used on the high street by commercial letting agents to coincide with the existing planning use for the shop or building. In many cases involving similar types of use, a change of use will not require planning permission as permission is generally only required for a material change of use.

B)   Open Markets

A basic approach for open markets has been to provide a trade protection zone defined by a certain number of stalls, typically an area of two stalls and sometimes within the same trading aisle. Goods such as fruit and vegetables can be often not afforded this protection.

For small open market of 20 stalls or less then a Markets Manager may wish to limit the number of traders selling the same products in order to provide an attractive and diverse tenant mix.

Another option for the larger open markets is to define a basic product list of no more than 20 retail/service categories such as the following.

• Fashion Women	• Fashion Children & Baby Wear	• Fruit & Vegetables	• Flowers
• Footwear	• Household Goods	• Mobile Phones	• Lingerie/Nightwear/ Hosiery
• Electrical Goods	• Leather Goods	• Jewellery & Watches	• Books/Magazines & Stationery
• Audio Visual & Music	• Toys & Games	• Gifts & Cards	• Groceries & Sweet Confectionery
• Café/Take-aways	• Speciality	• Health & Beauty	• Fashion Men

The Markets Manager can apply a maximum number of stalls permitted for each retail category which can be published annually with any stall letting policies. This may include a rider that allows the Markets Manager to let a stall which exceeds the maximum number of stalls in that retail category if there are valid reasons to do so. The tenant mix policy can also include specific exclusions for uses such as gaming/betting or imitation firearms etc.

The tenant mix policy will have the objective of informing existing traders of the Council policy when letting vacant stalls as well as providing marketing opportunities by listing products that are under represented.

The list of 20 retail categories are typical of those found on open markets and provide a guide to the Markets Manager who may wish to expand or reduce the categories according to the management of their market. It is also important for a market with considerable empty stalls for the tenant mix policy to be flexible in order to minimise the number of vacancies.

3.   **Tenant Mix Policy – Detailed**

As this paper has highlighted it is extremely difficult to define what is the optimum or ideal tenant mix policy that can relate to open or indoor markets as they are all different in size, demographics, trade catchment and shopping behaviour.

Nationally, there is an emerging trend towards fresh food and this trend has often been accompanied by an improvement in quality and diversity of the food offer as markets have sought to attract a wider customer base, especially those in higher income brackets who have a growing appetite for accessing high quality specialist foods. In addition, there is a growth of eating and drinking in a market through the clustering of individual hot food stalls in one area linked with communal seating areas to improve the attraction for customers.

Despite the instability of tenant mix there are some indices which could be used by the Markets Manager to reveal information on tenant mix variety in a market such as

the total retail sales area, average size of stalls and the number of retail/service use categories.

The indices are size-oriented variables that can provide the Markets Manager with retail use variety linked to space capacity.

Table 1 is an example of identifying a sample product mix in the market of 45 product use groups. Each retail/service group is shown by calculating the total sales floor area of a particular product as a percentage of the total sales floor area of a market. By using this model the Markets Manager may then chose to apply a weighting to each category as follows:

- **Category A** – Key anchor products that the market wishes to attract. These products may already be available. However, the Market Manager has determined that there are added benefits for the customer in increasing the availability of these products
- **Category B** – Products that are currently available and deemed to be represented.
- **Category C** – Products that are currently not represented and the floor area available for each product.
- **Category D** – Services or non-retail activity
- **Category E** - Loss of Retail floor area due to stall vacancies.

MARKET - PRODUCT MIX					
		Indoor Market - Current			Proposed Tenant Mix April 2014 - March 2015
Trade Mix:		No of Units	Floor Area sq mtr	% of Total Floor Area	Floor Area sq mtr
Category A					
Butchers/Cooked Meats		10	300	10.00%	400
Adult Clothing (Ladies/Men)		31	284	9.47%	325
General Foods		12	135	4.50%	250
Groceries/Fruit/Vegetables		11	108	3.60%	200

Fishmonger	2	37	1.23%	100
Bakers/Confectioners	3	67	2.23%	150
Florist/Flowers	0	0	0.00%	50
Footwear	2	49	1.63%	75
Beauty/Hair/Pampering	3	35	1.17%	55
Household Textiles	2	18	0.60%	30
Sweets	1	9	0.30%	30
Category B				
Café/Takeaways	16	250	8.33%	250
Haberdashery	6	97	3.23%	97
Mobile Phones	9	79	2.63%	79
Lingerie/Nightwear	8	70	2.33%	70
Childrenswear	4	60	2.00%	60
Hardwear/WorkwearTools/Incl Car	2	49	1.63%	49
Electrical/Household Goods	3	45	1.50%	45
Second Hand/Bric-a-Brac	2	36	1.20%	36
Crafts/Stationery/Cards/Gifts	4	35	1.17%	35
Pets/Pet Products	1	27	0.90%	27
Leather Goods/Luggage/Bags	3	27	0.90%	27
Clothing Repairs/Alterations	1	25	0.83%	25
Shoe Repairs/Key Cutting	1	25	0.83%	25
Smoking Accessories	1	19	0.63%	19
Jewellery	2	17	0.57%	17
Newsagents	1	16	0.53%	16
Books	1	9	0.30%	9
Category C				
Charity	0	0	0.00%	20
Chemist	0	0	0.00%	20
Computer Services	0	0	0.00%	30
Furniture/Carpets	0	0	0.00%	50
Home Entertainment	0	0	0.00%	25
Hosiery	0	0	0.00%	25
Optician	0	0	0.00%	30
Picture Framing	0	0	0.00%	25
Toys	0	0	0.00%	12
Underwear	0	0	0.00%	10
Music	0	0	0.00%	40
Photography	0	0	0.00%	20
Tattooist	0	0	0.00%	25
Category D				
Shopmobility	1	31	1.03%	31
Information Centre/Office/Toilets	3	41	1.37%	41
Employment Services	0	0	0.00%	20
Financial Services	0	0	0.00%	25
Category E				

Vacancies	25	1000	33.33%		
TOTAL	171	3000	100.00%		3000

4.   Tenant Mix Policy – Trade Clustering

There are many retailers in shopping centre or on the high street that insist on locating close to each other rather than being located farther apart to enjoy their own dedicated market area. The kinds of retailers that tend to cluster together are those such as fashion retailers, jewellers, mobile phones, shoes.

This is known as the agglomeration effect and derives from the retailers' incentive to locate close to competitors in an attempt to capture more customers as they often prefer to go to multiple shops, for example when trying out clothes, and therefore may prefer to go to concentrations of similar shops.

Agglomeration for the retailer may therefore imply higher retail profits and for the landlord the opportunity of higher rents.

In retail markets the clustering of products tends to concentrate on convenience goods with comparison goods often dispersed across the market which makes it more difficult for customers to compare prices and quality, especially for those time conscious ones.

Traders locating close to competitors can lead to greater price competition where they are selling extremely homogeneous products whereas for a retailer offering a wide array of different products the price competition is less strong.

Trade clustering is often promoted in new market developments as it would be difficult to achieve this in a piece meal approach when stalls become vacant Such clustering can involve zoning into five broad retail categories such as fresh food, lifestyle, fashion, hot foods and services. This approach is similar to that found in shopping centres and large department stores and enables the customers to navigate and purchase goods in a convenient way.

Use Clauses

Any successful tenant mix policy relies on a clear and unambiguous definition of the tenant user clause.

Historically, Councils have been keen to restrict tenants to a specific list of products named in their occupational agreement or licence. These restrictions often result in the increasing number of requests for a change of product list or permission to sell additional products.

Additionally tenants are continually adding new products as they face greater competition and sometimes such products are not permitted under the lease or licence leading to considerable amounts of time being spent by the Markets Manager on dealing with such issues.

It is appropriate to maintain a policy of restricting tenants to a specific list of products but consideration should be given to opening up the use clauses to broader retail headings. For example rather than specifying a long list of approved clothing items such as jeans, dresses, tops, skirts, cardigans, knitwear etc then this is replaced by Ladies Wear.

Recommendations

A Market Manager should consider which tenant mix model is best suited for their market and to set out a written policy that sets out the letting rationale to achieve an appropriate tenant mix thereby ensuring any refusal to let a vacant stall or request by an existing trader to change their permitted user will not lead to a breach of the Competition Act.

In order to identity whether the tenant mix is appropriate it is necessary to consult and obtain shopper opinions in order to gauge perceptions on their shopping experience with the aim of assisting and developing a tenant mix.

A tenant mix policy should be reviewed on an annual basis to ensure it remains relevant in the ever changing retail sector.

This policy can be provided to traders so there are aware of the markets letting policy as well as being used to proactively target products that customers have identified in the market research.