**ORIGINAL ARTICLE SUBMISSION**

**“From the lease’s point of view”:**

**The role of tied leases in shaping the UK pub sector**

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| **Abstract**Much like their residential counterparts, commercial leases have a reputation problem. Although often derided as painfully dull and mundane documents, residential leases have begun to be interrogated by socio-legal scholarship with renewed interest. This paper continues this line of work in the commercial context through a detailed examination of a widespread form of leasehold in the pub sector: the “tied lease”. Drawing on interviews with publicans and archival research, I argue that the lease is a decisive factor in determining the balance of power between publicans and pub-owning companies and shapes the physical environment of pubs in the UK. My broader agenda is to argue that socio-legal scholars’ renewed interest in leases should not be confined to the residential context: commercial leases warrant far greater socio-legal scholarly attention. |

# INTRODUCTION

Although often discussed with misty-eyed nostalgia, public houses are longstanding legal battlegrounds.[[1]](#footnote-1) The Blue Bell in York, UK – one of the city’s oldest pubs, having welcomed its first patrons in 1798 – is famed not just for its 1903 interior or award-winning real ale, but also for a dispute over its lease.[[2]](#footnote-2) In common with much of the pub sector, the landlord John Plybus does not own the building outright. Instead he leases it off a large pub-owning company (PubCo) – here, Punch Taverns. This is a “tied lease” arrangement: Plybus pays less than the market rate on rent (the “dry rent”), but the terms of his lease bind him to buying his beer, and often wines, sprits and other products, through the PubCo at a marked-up price (the “wet rent”). In 2019, he sought to use new statutory powers under the Pubs Code to negotiate a “market rent only” lease, where he would break free of the tie but would pay a full market rent. In response, Punch Taverns issued a section 25 notice under the Landlord & Tenant Act 1954 to evict Plybus from the premises and replace him with a salaried manager appointed by them.

Over 6,500 outraged local residents signed a petition calling on Punch Taverns to:

…withdraw the Section 25 (lease termination and eviction) notice which was served on licensee John Pybus at the Blue Bell in response to his attempt to exercise his legal right to an improved deal under the Pubs Code.

We call on Punch to negotiate a new agreement with John, with terms which will allow him to continue his excellent work at this much loved and iconic pub on sustainable terms.[[3]](#footnote-3)

In the face of this public backlash, Punch Taverns rescinded the notice and negotiated a new market rent only lease with Plybus for a 5-year term. The Blue Bell has been saved for now.

The Blue Bell’s story – reflected in many other pubs throughout the country[[4]](#footnote-4) – illustrates two things. First, the importance of leases to the pub sector. The reality for many thousands of UK publicans (and for many hundreds of thousands of other small businesses, particularly in hospitality and retail) is that the longevity of their business is in part dependent on negotiations over the lease for their premises This can be challenging for small operators, such as in the pub sector. As Plybus puts it, pub landlords “aren’t great at legal battles; we’re not trained for that”, instead they are “trained for good banter on a Friday night and a decent Sunday roast”.[[5]](#footnote-5) Second, the local community cared about the legal form of the pub’s operation – whether it was run with a live-in lessee landlord, or via an appointed manager on a salary – because this was seen as central to both the pub’s sustainability and the reality of its day-to-day operation. The petition’s signatories were concerned that changing its legal form would change its physical form.

This paper is a detailed interrogation of this “tied pub” lease: an arrangement common across many Western countries, where large pub-owning companies use lease clauses to enforce contractual arrangements of exclusive supply with their tied tenants.[[6]](#footnote-6) This focus on a seemingly “dull and formal piece of paper”[[7]](#footnote-7) is part of a new-found examination of the “understudied” lease in socio-legal studies.[[8]](#footnote-8) Catalysed by Hunter’s work on the lease as a “socio-legal object”,[[9]](#footnote-9) socio-legal scholars have begun to draw on actor-network theory informed approaches to explore how leases can shape both the social and the physical world.[[10]](#footnote-10) This paper follows in this line of work by demonstrating how the UK pub sector – from the importance power dynamics and risk sharing between the pub-owning companies and their tenants, through to the physical fluid that comes out of the taps on the bar – is shaped by the lease.

The paper also has a broader agenda to highlight the importance of commercial leasehold. Much like their residential counterpart, commercial leases have a reputation problem. As described by Jacobs, they are easily dismissed as a “50 or 60 page monster which thuds on the desk with monotonous regularity.”[[11]](#footnote-11) However, these under interrogated documents are central to the operation of many hundreds of thousands of small businesses. Carroll’s work on the negotiations between commercial tenants and landlords illustrates the importance and value of exploring commercial leases.[[12]](#footnote-12) Indeed, for many such businesses – particularly small-scale retailers and pub operators – the lease is more important to their day-to-day operation and longevity than any area of company law. The “tied lease” is one particularly acute example, but this paper’s arguments extend to commercial leases more generally – even if the power imbalances at play are often very different.

The argument is in two sections. First, in the same spirit as Cowan, Carr and Wallace’s detailed analysis of how the lease came to be used as the vehicle for “shared ownership”,[[13]](#footnote-13) I focus on the appeal of the lease as a legal technique for brewers seeking to secure a route-to-market for their beer. After exploring the importance of the tied lease in the pub sector, I briefly examine four functions that the lease serves for brewers and large PubCos: (i) an ability to capture the “entrepreneurial spirit” of the publican, (ii) providing a mechanism to combine controls over business practices with the use of the commercial property, (iii) managing the temporality of the business relationship, and (iv) functioning as an asset class that can be securitised in its own right

The second section draws on fourteen interviews with tied tenants to explore the role of the tied lease in shaping “physical space and social relations”[[14]](#footnote-14) in the pub sector. After a *precis* on thesample, drawing on Hunter, I argue that an analysis of the tied lease as a “socio-legal object” reveals the impact the lease can have on physical space and social relations across three domains: constraining business practices (here, through the tie), through constraining time (here through lease length), and through the often complex construction of rent (and in turn the viability of the business).

# Pubs, leases and “the tie”: The appeal of the lease as a legal technique

As early as the 18th century, brewers were being criticised – or as Sidney and Webb put it in 1903, “energetically complained of”[[15]](#footnote-15) – by publicans and campaigners for the widespread practice of purchasing swathes of pubs, then renting them to brewers on the condition they serve (almost always, exclusively) their beer. In his influential treatise *Observations and Facts Relative to Public Houses* in 1795, the magistrate Patrick Colquhoun lamented this as an “evil of great magnitude in the correction of which many prominent abuses, as well as many heavy losses to the oppressed victualler…are to be prevented.”[[16]](#footnote-16) It is not difficult to find quotations criticising the “mischievous features” of this practice, which came to be known as the “tied house system”.[[17]](#footnote-17) Metaphors adopted in front of the Royal Commission on Licensing for England and Wales from 1929-1931 – a time when around 90% of public houses were tied[[18]](#footnote-18) – includes brewers and tied-tenants as akin to “a tyrannical master and a very helpless servant”[[19]](#footnote-19) or the “brewer as an ‘octopus squeezing the life out of the licensee.”[[20]](#footnote-20) The concern was both the monopolising effect of tied arrangements, and the impact they had on the “character and conduct” of the establishments.[[21]](#footnote-21)

Despite their controversy, tied leases are a simple proposition: a publican agrees to an exclusive supply arrangement and in return gets a lower-than-market rent. This lower base rent in the lease is known as the “dry rent”, and the mark-up on the tied products under the exclusive supply agreement – even though it is not “rent” at all – is known as the “wet rent”. In practice, lease terms require the tied tenant to buy beer and often wines, spirits, soft drinks or other supplies, from a list of products specified by the PubCo at above-market prices.[[22]](#footnote-22) As is the practice for licensed establishments more generally, rent for public houses is calculated in line with the estimated turnover a competent publican can fashion, known as the “fair maintainable trade”.[[23]](#footnote-23) This rent reflects a division of estimated profits – as the so-called “divisible balance” – ordinarily in the region of a 60/40 split between the pub-owning company and the tied tenant, but this varies according to the appeal of the property.[[24]](#footnote-24)

Notionally, this is a “win-win” arrangement. The pub-owning company gets a guaranteed route-to-market for their products and makes a higher margin on their sale. The tied tenant gets a lower rent and benefits from commercial advice from the pub-owning company. In practice, the tied lease has been subject to sustained criticism from trade organisations and – given its clear potential to restrict trade – interrogation by competition authorities.[[25]](#footnote-25)

As in Cowan, Carr and Wallace’s work on the use of the lease as a vehicle for shared ownership, the widespread tied lease was not inevitable.[[26]](#footnote-26) Instead, the tied lease emerged as an appealing solution for two problems faced by brewers seeking to secure a route-to-market for their beer. First, for much of the 16th century onwards, alcohol licences for establishments have been difficult to obtain, unpredictable in number and difficult to scale-up quickly.[[27]](#footnote-27) This led to the so-called “monopoly value” of public houses: the long-standing fact that a licensed public house is worth more than a similar premises without a licence to sell alcohol.[[28]](#footnote-28) This “stringency in licensing”[[29]](#footnote-29), combined with a reluctance to engage in the sector from other institutional investors, has put pressure on brewers themselves to secure a route-to-market by gaining control over existing licensed premises; the so-called “Brewers Wars”.[[30]](#footnote-30) A brewer who fails to secure outlets for their beer, risks being crowded out of the trade if other breweries beat them to it.

This premium on pubs leads to the second problem: that cost of entry into the sector increases far beyond what the class of prospective publicans can afford.[[31]](#footnote-31) Overinflated capital values of pubs, a reluctance to invest by traditional credit providers, coupled with an historical concern by licensing authorities that the premises are suitable for its proposed use, leads to very significant upfront capital requirements for prospective publicans.[[32]](#footnote-32) Investing in the significant costs associated with purchase and development of a pub provides a strong economic incentive for brewers to contract for exclusivity of supply with their tenants.[[33]](#footnote-33) If the tenant was free to buy beer from other breweries, the brewery’s investment in the pub may be solely to the benefit of their competitors.

The tied lease, therefore, emerges from a commercial environment in which brewers have had a longstanding, pressing need to secure a route-to-market through the ownership of pubs, and prospective publicans could ill-afford to enter the market independently. However, it is not inevitable that the solution to these problems would be a tied lease. Other options have historically been used by brewers to secure their route-to-market and realise the business benefits that vertical integration can bring.

Many of the early cases disputing tied arrangements deal with mortgages, rather than leases. This was the legal technique of choice for brewers throughout much of the 19th century.[[34]](#footnote-34) Here, the publican takes out a mortgage with a brewer to purchase a pub, and covenants under the mortgage deed tie the publican to an exclusive supply arrangement for the beer and other products. These so-called “collateral advantages” are lawful, providing they are not oppressive or unconscionable.[[35]](#footnote-35) However, the brewer faces a problem on redemption of the mortgage. As the House of Lords held in *Noakes v Rice[[36]](#footnote-36)*, a brewer cannot enforce a tie upon redemption, even if the publican has agreed otherwise. This is a fetter, clog, or “whatever figurative word may be used”,[[37]](#footnote-37) on the longstanding equitable principle of the right of redemption: once a mortgager has paid their debt, they are entitled to have their “estate back again unfettered and unclogged.”[[38]](#footnote-38) Mortgages therefore come with a built-in sunset clause; a significant problem for a brewer seeking to secure a permanent route-to-market.

The second option is to agree ancillary exclusive supply arrangements with publicans. This would save the brewer the significant up-front costs of buying or leasing large pub estates.. This approach has dominated garage forecourts. Although the brewing industry was the pioneer of the tie, since the 1950s tied arrangements with oil companies command the retail sale of fuel. By 1965, 95% of all petrol retail outlets had a single delivery agreement (so-called “SOLUS” agreements) with a particular oil company.[[39]](#footnote-39) Although some are tied to mortgages or leases, many are independent of any land transaction.[[40]](#footnote-40) In order to bind future operators, an “essential feature” of these SOLUS agreements are “continuity covenants”, where – as part of the agreement – a retailer undertakes on the sale of their business to procure a purchaser who will roll over the identical SOLUS obligations.[[41]](#footnote-41) However, these SOLUS agreements that exist independently of a land transaction are subject to greater oversight by the courts than those that form part of a lease or mortgage.[[42]](#footnote-42) When reached ancillary to an interest in land, the courts have been quick to apply the doctrine of the “restraint of trade” to these contracts – for instance, in *Petrofina (GT. Britain) Ltd. v Martin,* a 12 year tie and broad-ranging “continuity covenant” were held to be void as unnecessary restraints on trade.[[43]](#footnote-43) The position for a retailer taking on a lease with tying obligations is different. As Lord Denning put it in *Cleveland Petroleum Co. Ltd. v Dartstone Ltd*:[[44]](#footnote-44)

We should hold that when a person takes possession of premises under a lease, not having been in possession previously, and on taking possession, enters into a restrictive covenant tying him to take all his supplies from the lessor, prima facie the tie is valid. It is not an unreasonable restraint of trade.[[45]](#footnote-45)

Finally, the PubCo could buy a premises and appoint a salaried manager. Indeed, this is a model that is used routinely in much of the sector and dominates the largest pub-chains in the UK, such as *Wetherspoons*.[[46]](#footnote-46) There are varieties of salaried management, going from fixed annual salaries, to more complex arrangements where the pub manager can receive a share of the establishment’s turnover.[[47]](#footnote-47) Although owning the establishment outright and appointing staff provides a secure tie, it comes with very significant obligations – a brewer seeking a route-to-market instead finds themselves running a large pub chain. Staff turnover, a lack of supply of good quality management staff, the significant obligations of an employer, lack of risk sharing, and problems of disinterested publican managers are all pressing problems in the management of large pub estates.[[48]](#footnote-48)

The lease has characteristics that make it particularly appealing as a legal technique for resolving these problems. In the context of the pub sector, leases combine four functions: fostering the “entrepreneurial spirit” of a publican, tying occupation of the property to the practices of the occupying business, managing the temporality of the relationship, and leveraging finance via securitisation. This section deals with each in turn.

**2.1. *Fostering the “entrepreneurial spirit” of the publican***

First, leases allow the owners of pubs to tackle the key “moral hazard” of the disinterested publican.[[49]](#footnote-49) Pub landlords are central both to the effective running of pubs and their appeal, especially to regular customers. Being a publican is an all-consuming role, with heavy demands of both physical and “emotional labour,”[[50]](#footnote-50) and many also live within the same property (as one participant put it to Saniford and Seymour, this means “my personal problems are also my work problems”).[[51]](#footnote-51) Smith’s detailed interrogation of the demands of life as a publican underscore that the “pervasiveness” of the life of a tenant, who is financially invested in the pub’s performance, “contrasts sharply” with that of a salaried manager.[[52]](#footnote-52) The former is more likely to work longer hours, integrate more fully with patrons, and face a “pervasive” blurring between “pub life and family life”.[[53]](#footnote-53) As Smith argues, the important issue is not the “economic-legal element of the tie” but instead how it impacts on the “role-style adopted by tenants particularly in relation to…the leisure side of the pub”.[[54]](#footnote-54) This distinction is why temperance campaigners often preferred the use of disinterested salaried managers in establishments – known as the “Gothenburg system” – as it was seen to reduce the incentive to push the sale of alcohol and develop patronage with customers.[[55]](#footnote-55) As Pratten argues, the “logic” of breweries adopting leases was both to foster this more entrepreneurial spirit from publicans and to attract “more entrepreneurial” prospective publicans in the first place.[[56]](#footnote-56) By providing a clear incentive to increase profits, terms of the lease can in turn foster an arrangement between the pub-owning company that maximises the profitability of the pub.[[57]](#footnote-57)

Of course, this fostering of the “entrepreneurial spirit” brings with it the opportunity to shift significant amounts of risk and responsibility onto the tied-tenant. In the pub sector, this power-imbalance between the parties is a core component to tied leases, with an often “David and Goliath” dynamic between the largest PubCos (often with considerable resources) and the tied-tenants, most of whom operate only one establishment.[[58]](#footnote-58) This is a common theme in Cowan et al’s study of shared ownership, where the transfer of responsibilities (particularly for repairs) is a core function of the lease.[[59]](#footnote-59) This in mirrored in the pub sector via the widespread use of “full repairing and insurance” leases , even where the term of occupation is relatively short (e.g. five years).[[60]](#footnote-60) Here, the tenant is responsible for all repairs in the property – an issue of particular significance given the considerable repair issues facing much of the UK’s aging pub stock.[[61]](#footnote-61) As Chapman and Edwards have observed, tenants taking on “a full repairing lease without proper investigation of the property” can discover they are the “'proud' occupants of a listed building which will require tens of thousands of pounds of expenditure”.[[62]](#footnote-62)

**2.2. *Tying the operation of a business to occupation of a property***

Second, the lease provides a flexible way to tie the operation of a business to the occupation of a property. Traditionally, commercial leasing in the UK has been dominated by a prevalence of “standard institutional leases”, generally with long periods of occupation and with industry standard terms (such as on building repairs).[[63]](#footnote-63) However the lease offers far more flexibility to both commercial tenant and landlord than a passive vehicle for rental income. As Harris underscores, the leases’ “the landlord-tenant relationship” enable “the attaching of conditions not attachable to a freehold”.[[64]](#footnote-64) In the context of commercial leases, this is perhaps best illustrated by Orr et al’s work on the increasing practice of so-called “turnover rents”, where the tenant pays a proportion of their turnover (or sometimes a combination of turnover and a lowered fixed rent) instead of simply a market rent.[[65]](#footnote-65) Here, the lease is achieving a risk sharing function: a retailer tenant can minimise their exposure to fixed overheads when the market downturns, but are obliged to share the fruits of upturns with their landlord. Likewise, where landlords also own adjacent properties (such as in shopping centres) so-called “adjacency clauses” allow tenants control over the space around the property, such as blocking the leasing of neighbouring units to particular competitor or undesirable companies.[[66]](#footnote-66)

The longstanding appeal of tying aspects of the business to the occupation of the property means that leasehold is often used where landowners want to exercise significant arms-length control. Perhaps the area with the most scholarly attention is farming. The role of the lease in shaping farming practices across the eighteenth and nineteenth centuries is an ongoing debate between agricultural historians. Landowners used lease terms to shape farming practices and “risk management” in the agricultural sector in a way that Martins and Williamson argue reflects the “changing balance of power between landlord and tenant”.[[67]](#footnote-67) Much like its appeal to agricultural property owners, this flexibility in exercising control over aspects of lessees’ business makes the lease appealing to brewers seeking to retain vertical integration of their businesses.

**2.3. *Controls the temporality of the relationship***

Third, leases provide a well-established mechanism for handling periods of occupancy. The length of term is a fundamental component in any commercial lease negotiation. For the lessor, locking tenants into agreements for longer periods provides the “backbone of property investment”,[[68]](#footnote-68) with well-trodden mechanisms for rent review.[[69]](#footnote-69) For the tenant, they may seek an “escape route” and flexibility to adjust to market conditions – especially for activities where businesses may wish to downsize or upscale their access to space (such as retailing or the use of office space).[[70]](#footnote-70) Lease length is a key component in the “the risk pendulum”[[71]](#footnote-71) between tenants and landlords, with a move in recent years towards shorter lease periods across the commercial sector to better meet “the needs of occupiers functioning in a rapidly changing economic environment.”[[72]](#footnote-72)

In the tied-pub sector, the lease providing this flexibility is particularly important given “dry rents” are generally based on the calculation of “Fair Maintainable Trade” (i.e. the turnover a “reasonably efficient operator” could hypothetically fashion from the pub).[[73]](#footnote-73) This is important in an industry that is a bellwether of market forces, particularly changes in discretionary spending, societal changes ­such as the decreasing trend in levels of alcohol consumption (especially among younger households),[[74]](#footnote-74) and regulatory interventions such as the “smoking ban”.[[75]](#footnote-75) Lease lengths vary across the sector, with most new leases lasting 3-5 years, but some PubCos and breweries (in some circumstances) offer longer leases for 10 years or more.

**2.4. *The lease as a financial product***

Finally, for the largest pub-owning companies, leases offer greater leverage in securitisation financing.[[76]](#footnote-76) The lease has suffered from the same “financialization” as other property rights, becoming “financialized interests divorced from the land” to be “securitized, sold, and resold”.[[77]](#footnote-77) Tied leases are therefore not just important in terms of their construction of the relationship between the pub-owning company and the tied tenant, but also for the ability of the former to leverage their pub estate to draw on finance. As Cox has argued, pubs with appointed managers have historically been viewed as being more volatile, “both operationally and in profitability” than leased pubs.[[78]](#footnote-78) A more stable rental income stream and the operational risk sitting with the tied tenant makes them easier to securitise and offers greater financial leverage. Pub owning companies are able to raise around 7.5 to 8 times the annual earnings for a tied pub, versus around 6 times annual earnings for a managed pub.[[79]](#footnote-79) This allows companies owning large tied-estates to raise highly rated long-term debt to facilitate expansion or other shorter-term financial objectives more easily.[[80]](#footnote-80)

The historical commercial pressures facing brewers, coupled with these four appealing characteristics of the lease, make a “tied lease” an attractive proposition for the brewers seeking to secure their route to market. Tied-leases are invested with the “fears” and “anxieties” [[81]](#footnote-81) of the brewers of losing access to market in an unpredictable industry on the hand; and the hope of the far less powerful publicans seeking to fashion a career and control their small, generally one-pub business on the other. The following section turns to how these leases work in practice, drawing on interview data with tied publicans.

# The Method: publican interviews

Having established that the lease is an appealing solution for brewers vying to secure their route to market, this section outlines the data underpinning this study. The analysis that follows draws on fourteen anonymous semi-structured interviews with tenants of the largest pub owning companies in England: the so-called “big six”.[[82]](#footnote-82) The interviews formed part of a broader project interrogating the Pubs Code Regulations 2016 (SI/790) – a statutory intervention in tied-lease negotiations, that (among other things) provides tied-tenants of these largest pub-owning companies a statutory right to receive a free-of-tie lease proposal in response to specific trigger events.

This paper does not deal directly with these Pubs Code regulations as there would be room for little else. A detailed critique of their history, design and operation – drawing on these same interviews – is available elsewhere.[[83]](#footnote-83) However, what emerged in these semi-structured interviews was a broader concern not just with the Pubs Code processes, but also with the tied lease more generally. Participants were asked about their current pub(s), their lease, and their experiences in dealing with the PubCo. The analysis that follows draws on their responses to these questions. The specific content of participants’ leases is commercially sensitive information and could, given variations in the exact product ties, discounts, penalties, and so on, identify the participant. The analysis below does not use illustrative terms from these leases. Instead, to provide examples of common terms and variations, extracts are used from a publicly available sample tied lease, published for prospective future tenants by one of the largest PubCos – Star Pubs and Bars.[[84]](#footnote-84)

Participants were recruited via stakeholders who provide advice on the exercise of Pubs Code rights in the pub sector. Each interview was conducted via Zoom during May and June 2021, and the audio subsequently transcribed and analysed. The study received ethical permission from the University of York. Each participant has been assigned a pseudonym, based on the fourteen most common pub names in the UK. Table One details the pseudonyms and a short outline of the nature of their pub businesses. In two interviews, two participants – in both cases, a married couple operating the premises – were present. Different speakers are indicated in quoted excerpts below via the use of italics.

**[TABLE ONE]**

Before turning to the data, it is important to underscore a key limitation of this approach: only publicans were interviewed, not the PubCos themselves. The data that follows is, therefore, rooted in the experience of the lessees and not the lessors. PubCos were not contacted for interview for this study for two main reasons. Firstly, the analysis that follows does not seek to draw conclusions about the Pubs Code Regulations, make policy recommendations about the regulation of the pub sector more broadly, or analyse the competition law status of the tie.[[85]](#footnote-85) Given the commercial sensitivity of their agreements with individual publicans (and sometimes the terms of their employment), it is difficult for those employed by the lessors to comment on the operation of individual establishments – which is the focus of this paper. Interviews with PubCo representatives are therefore better-suited to addressing these policy-level considerations. Second, the project had limited resources and interviews with a broader range of lessees occupying the pubs were prioritised, so to ensure a larger range of establishments were covered.

Examining the Role of the Tied Lease in Structuring RelationsHIPS and Physical Space

Current research on commercial leases underscores that the relationship between landlord and tenant is often an adversarial one, and that changes in lease terms can affect elements of the physical space of the property (such as its environmental efficiency).[[86]](#footnote-86) Drawing on the interview data, this section draws on Hunter’s prior work examining residential leases to identify how the tied lease: shapes business practices (here, through the tie), constrains time (here, through lease length), and affects the viability of the business (through the construction of rent). Each will be dealt with in turn.

Before turning to this analysis, it is important to underscore a few key elements of Hunter’s prior work on residential leases as “socio-legal objects”. Her study provides a framework for analysing the more far-reaching potential of the lease in shaping social relations and physical reality. As Hunter’s argument is rooted firmly in ”actor network theory” (ANT), it important to highlight two key features of this literature. First, as Mant argues, “actor-network *theory*”is perhaps a deceptive phrase, as it is best understood as an “analytical method” rather than an explanatory theory.[[87]](#footnote-87) As Cowan and Carr warn, there is “considerable naval gazing” over the meaning of the term, which is no doubt “frustrating to some”.[[88]](#footnote-88) However, for the purposes of this paper, the key “tenet” of an approach rooted in ANT is acknowledging the role non-human actors (such as documents or other objects) play in the complexity of the world. As Cloatre puts it, proponents of ANT argue that by having “privileged humans in their analysis, social scientists have missed a trick.”[[89]](#footnote-89)

Second, although far from confined to documents like leases, a long-line of ANT scholarship has called for “closer attention to documents.”[[90]](#footnote-90) In the recent *Routledge Handbook of Law and Society,* Barrera and Latorre each reflect on how ANT-informed approaches facilitated their analysis of two documents: files in the Argentine Supreme Court and land title deeds in Columbia.[[91]](#footnote-91) Drawing on Riles’ work,[[92]](#footnote-92) they demonstrate how an ANT approach takes materials that are “usually taken for granted by both legal actors and scholars” – such as “documents, forms, files, leases, deeds, patents” – and treats them as “distinct objects of analysis.”[[93]](#footnote-93)

It is in this line of work that Hunter’s arguments on the lease as a “socio-legal object” sit. Drawing on ANT scholarship (and Cloatre in particular),[[94]](#footnote-94) Hunter argues that leases – though often neglected – are important documents to analyse in their own right. This is because leases are important actors in influencing both social relations – between landlords, tenants, neighbours, businesses, and so on – and the physical world – the environment of the property itself.

On the former, Hunter argues that leases are an important component in managing conflicts between landlords and tenants, but also (drawing on Blandy)[[95]](#footnote-95) neighbours and others with interests in the leased property.[[96]](#footnote-96) In the residential context, Hunter concludes that the lease was an important influence in these relationships, but was not an “everyday presence.”[[97]](#footnote-97) Instead it only “came into play” at particular points of conflict. A similar point is made in the context of retail leases by Patrick and Bright, where the lease “seemed largely irrelevant for day to day issues”, with one participant even referring, dismissively, to the “lease in the cupboard”.[[98]](#footnote-98) The analysis that follows demonstrates that for tied tenants, the lease is not confined to being invoked to deal with rare conflicts. Instead, the lease has an important role in generating a commercial power imbalance between the tied tenant and the pub-owning company that impacts on the day-to-day running of the tied establishment. In common with some other forms of commercial leasehold, the lease is a therefore a core component in the functioning and ongoing viability of the occupying tenant’s business.

On the latter, Hunter argues that the lease shapes physical space. Her example focuses on the installation of solar panels in leased residential property, demonstrating that the way in which the lease permits or constrains the use of leased property in turn affects its physical form. Hunter argues that the lease is, at least in part, “constitutive of the socio-material reality of the city.”[[99]](#footnote-99) For tied leases – where the operation of the business is heavily incorporated into the commercial lease terms – the lease shapes the physical space of the UK public house, right down to the fluid that comes out of the taps. Drawing on Hunter’s approach, this section now turns to the role of the lease in shaping business practices, time, and business viability. Each will be dealt with in turn.

## 4..1 The tied terms: SHAPING business practices

Although the very definition of a “tied lease” is that there is a contractual arrangement of exclusive supply built-in, the parameters of these vary by pub and are subject to negotiation by the tied publican. In all cases beer is tied – either partially or in full – and in many instances, keg ciders or “WSM” (wines, spirits and minerals – the latter being soft drinks and mixers) are too. Standard terms in tied leases enforce the tie in a number of ways. Figure One details an annotated excerpt from the sample lease.

**[FIGURE ONE]**

Here, the lease obliges the publican to promote the sale of tied drinks and undertake their “best endeavours” to develop the business, stock tied drinks, and remain open during all trading hours. These terms work together to ensure the availability and promotion of tied drinks in the pub for the PubCo. Given the margin they make on the sale of these products, this is an important function of the lease. However, standard terms in tied leases also provide broader reaching influence over the tied publican’s business. Figure Two provides a further excerpt from the standard lease.

**[FIGURE TWO]**

These lease terms extend influence by the PubCo to other elements of the operation of a tied pub. Standard prices and promotion terms prevent a publican from artificially inflating the cost of tied relative to non-tied products, and requires them to effect the sale of tied drinks. The business plan terms secure the PubCo influence on other aspects of the business – particularly barrelage (the volume and type of beer sold) and the provision of food, etc.

In order to enforce the tie, these leases almost always contain separate terms dealing with fines. These are ordinarily calculated to compensate the PubCo for their lost earnings. Figure Three details the relevant excerpt from the sample lease.

**[FIGURE THREE]**

The use of these enforcement terms arose in the sample. For instance, The King’s Arms faced enforcement action after misinterpreting a tied term in their lease and “buying out” (i.e. buying beer not sanctioned by the tied terms in the lease), leading to a visit from what they referred to as the “Beer Police”:

I was buying beer from a wholesale supplier, which I genuinely believed I could under the terms of the lease and it turned out I couldn’t…my [contact at the PubCo] brought along the, we call them the Beer Police…the Beer Standards Policy…they looked at the cellar and saw the product there and then promptly came into the pub, sat down, wrote out a report and said, there’s your £3,000 fine, how do you want to pay? (*The Kings Arms)*.

Importantly, the extent of these broader tied terms has serious implications on the earnings potential of the tied publican. As noted above, the mark-up on tied product prices is the “central mechanism” through which PubCos “extract the surplus of the pub” via the lease because the tied products are sold at a higher-than-market rate.[[100]](#footnote-100) Examples from our interview sample demonstrate the extent of this differential. The Queen’s Head provides an illustrative example of a leading lager brand, Birra Moretti – a sentiment echoed by The Royal Oak:

… I know how much a keg costs and I know how much a keg can cost… just for things like Moretti, that’s over £200 a keg. That’s pretty insane. I can get the same keg for 50% [outside of the tie], so we’re absolutely penalised *(The Queen’s Head)*.

…

Well I know I'm being massively overcharged for my beer, I already know that because I've got several friends, very close to me, that are buying their beer locally and get charged so much less *(The Royal Oak)*.

Similar sentiments were widespread in the sample. The White Hart being the most acute, stating that they were paying “three times the normal price of a barrel” – over a year’s sales, “70 or 80 grand” above market rates. As they put it, when they looked at the market rates “I’m thinking, oh my god we can buy a barrel of Fosters for £65!”. Indeed, the IPPR suggested the extent of this mark-up on tied products may be a key reason why tied publicans earn so much less than independent publicans: 46 per cent of tied publicans earn less than £15,000 per year, in contrast to only 22 per cent of non-tied publicans.[[101]](#footnote-101) This is broadly in line with the earnings of publicans (particularly those just running one establishment) in our sample. As the White Horse puts it:

So if you’re tied on beer, you know, you’re pretty well – almost break even… Whilst we did pretty well in terms of sales we were finding ourselves in a position where we weren’t making any money to speak of…[we] took twelve-grand a year out of the business and that’s it…it’s not as glamorous as it sounds (laughs) *(The White Horse)*.

What is apparent from the interviews is that the tied terms shaped not just their bottom line, but also the business practices of the publicans and in turn the physical environment of the pub. For instance, The Railway Tavern notes how they shifted their pub “dynamic” in order to escape the far-reaching beer tie in their lease:

I have taken steps over the previous 20-odd years to minimise my exposure to the tie anyway, you know. We’d changed the way our pubs worked. We weren’t tied on wines and spirits and minerals anywhere, so we changed the dynamic of those pubs and we specialised in spirits to increase our margin…And it’s something now that others are doing… *(The Railway Tavern)*.

Here, the publican’s attempts to circumnavigate the PubCo’s attempt to create a stable tie in the lease, led to the nature of the pub itself changing. In industry and scholarship, is known as the “pub concept” or “pubscape”: the particular environment and product offering.[[102]](#footnote-102) The publican’s PubCo contact was trying to push them back to a more beer-led pub environment - a suggestion that The Railway Tavern did not take well:

He’s probably incentivised on barrelage [the amount of beer sold]. He wants me to sell more beer. That’s my lowest-margin product. Why do I want to sell more beer? I don’t want to sell more beer; I want to sell *less* beer. How is he helping my business? He’s not. He’s hindering my business and I’m paying for the privilege of him hindering my business *(The Railway Tavern)*.

Others felt the tie limited them from running the sort of pub they wanted to. Especially being able to stock beers and develop relationships with smaller independent local breweries. As The Queen’s Head put it:

There are lots of breweries just around me, all small, little independent breweries, and we want to use their stock and do interesting things and not have to – you know, just be free to go and buy from suppliers we want to buy from, really… *(The Queen’s Head)*.

The White Hart’s lease did not provide access to cask beer – a staple of the UK pub.[[103]](#footnote-103) They had tried to negotiate a change to their arrangement and expand the product list, but were not able to do so:

And variety of products; [the PubCo] have been very stuck in the mud about; they’ve not helped us at all. I put an order in; it’ll be two years January now, for new products, and we’re still waiting for that to be signed off by the [PubCo]. So they’ve just not helped us in any way and we need a variety, we’ve got no cask ales, you know, we’ve got – they just haven’t been…

*Yeah, we don’t have a hand pull* [a cask beer line]*.*

We’ve got no hand pull, so yeah that’s what we want to be doing, it’s what we need to be doing.” *(The White Hart).*

The tied lease terms not only have an impact on the physical pub environment, but also the social relations between the PubCo and the tied tenant. The entrepreneurial hopes of the tied publican to “be your own boss”, clashed with the reality of the lease terms imposed by the PubCo:

…when pub companies advertise this, be your own boss, live the dream, blah, blah, blah, blah, it’s all bull basically isn’t it, people should be warned when you’re stepping into the pub, you’re going to be shafted left, right and centre, you’re going to fork out thousands of pounds out of your own pocket for everything under the Sun, and the pub companies are just going to stand there and go, take it all off you as much as they can…

*That’s only if you’re on, that’s only if you’re on our lease.*

Yeah, that’s what I would say to anybody coming into the pub business, that’s what we’ve learnt that, if anything, we’re learnt that we will be shafted until we get a free of tie, that’s the only option of making the pub succeed” *(The White Hart).*

Similar sentiments were echoed elsewhere in the sample. The White Hart felt that on signing their lease, they would be working as “partners” with the PubCo, but this wasn’t reflected in the day-to-day running of the establishment that the lease terms necessitated:

We stupidly thought that when we work with [the PubCo], we were working with them as partners and that’s not been the case at all, it just feels like working for them. We’ve done all the work here, we do all the work here, and all we do, it just feels like we open the till and hand them all our money and then they still talk to us like we’re dirt, that’s what it’s felt like for me over the last few years *(The White Hart).*

Indeed, for some participants, perceived power imbalances in their dealings with PubCos led to heightened levels of distrust in their business relationship. For The Swan, this culminated in them covertly recording meetings with their PubCo contact:

…so every time we had any communication with them they wanted to keep it verbal and they put nothing in writing. And all verbal conversations were positive… it was then rowed back on or claimed it didn’t exist because of course it wasn’t in writing. And it was so bad that we went to the point of recording – filming and recording [meetings with our PubCo contact] *(The Swan)*.

What emerges from the interviews is that the tied lease terms shape both the physical environment of the pub and the social relations between the PubCo and tied pub tenant. The reality of the operation of the tied lease is that for publicans in the sample, they were constrained from realising their ambitions for the pub they wanted to run, and the relationship with their PubCo landlord was strained as a result. The lease was central in shaping the power imbalance between the tied tenant and the PubCo.

**4.2. Lease length: Temporal controls**

A key theme throughout the interviews was how the lease constructed a time frame – a kind of sunset clause – for the business activities of the pub. In most cases, tied leases are protected under the Landlord and Tenant Act 1954. At the point of renewal, the Act provides the tenant (after satisfying a series of procedural steps) a right to a new tenancy, unless the landlord can establish one or more specific grounds of opposition.[[104]](#footnote-104) In the context of pub tenancies, contested renewals often take the form of the PubCo seeking to appoint a salaried manager of the premises themselves[[105]](#footnote-105) – a ground of opposition protected under s.30(1)(g), to allow the landlord to “occupy the holding for the purposes…of a business to be carried on by him therein”.[[106]](#footnote-106)The appeal of the s.30(1)(g) ground is unusual: for most commercial leases – across both the retail and hospitality sectors – there is little scope (or enthusiasm) for the landlord to take over and run the business themselves. For a vertically integrated sector – where the breweries and PubCos are well-placed to run establishments themselves if they wish – there is a fundamental shift in the power-imbalance that this ground generates. lAs a result, lease lengths created moments of risk on the horizon for tied-tenants by reducing their security. For a sector where successful businesses can take years to develop and have little fungibility (it is easier to move the location of your shop than it is to move the location of your pub), shorter lease periods bring with them the risk that investment of time and money may be rendered futile if a lease renewal is successfully contested.

Within the literature on commercial leasehold more generally, the move has been towards far shorter lease periods – now, generally five to ten years for your average high street premises, but the trend is downwards.[[107]](#footnote-107) This has been driven by commercial tenants seeking greater flexibility and “exit routes” and (in many areas) a saturated market of landlords has been keen to respond.[[108]](#footnote-108) However, these same pressures do not exist in the same way for tied publicans because there is a well-established secondary market for buying pub leases. A lease with a large number of years remaining is an attractive proposition to sell onto another prospective publican; one with few years remaining is not. In the sample lease, the term specified is for five years; a common lease period for new tied leases.

 **[FIGURE FOUR]**

The time period for the lease is an important component in the relationship between the tied-tenants and the PubCos. Blandy, Bright and Nield have underscored how lease lengths in commercial leases often neglect the more “relational” norms between a lessee and a lessor that might be expected from a long-term relationship rooted with building a business over time.[[109]](#footnote-109) Instead, commercial lease lengths are almost always “as if discrete” contracts: a fixed number of years, such as the “5 year” rolling term in the sample lease. Given publicans also often live in the same premises, interviews reflected many of the same sentiments as work on tenancy lengths in the residential private rented sector.[[110]](#footnote-110) As Rolfe et al have argued, longer-term tenancies can help to foster “the development of trust and encourage both parties to maintain relationships and resolve difficulties”.[[111]](#footnote-111) Whereas shorter tenancies can fray “tenants’ connections with their local communities” and jeopardise practices of “home-making”.[[112]](#footnote-112) In much the same way, interviewed publicans noted the importance of lease length to their ability to create a sustainable long-term pub business rooted in the community.

The Crown contrasted the demands of creating a successful pub environment with the strict temporal window created from “lease’s point of view”. They underscore the importance and considerable burden of emotional labour facing pub landlords over longer periods than that envisaged in the lease:

I don’t believe there’s such a thing as a good pub, there might be pretty pubs, there might be clean pubs, big pubs, small pubs; but the thing that brings people back into a pub is the landlord, the landlady, the staff, that’s what makes a pub. Not a beautiful building, or an old building, it’s the people that are in there. If the landlord – my wife and I are in the bar almost every single night, we’re not just serving, we’re going, we’re introducing ourselves to the customers… pub companies have got to understand that and they don’t” (*The Crown)*.

This long-term social effort of the publican is contrasted by The Crown against a reduction in his lease length on renewal of the agreement from 10 years to 5 years:

Purely from the lease part of it, the lease’s point of view, they are now saying that they might take the lease back in five years, therefore my lease, which should be agreed on a 10 year lease, they’re allowed to cut to a 5 year lease *(The Crown)*.

The Crown notes the “huge difference” this change of term makes, both because he does not intend to leave the business, and its impact on his ability to sell the lease onwards should circumstances mean he is unable to continue running the pub:

A 5 year, having a 5 year lease as opposed to a 10 year lease makes a huge difference, it’s a huge difference because while we’ve no intentions of leaving, if, and I’ve already had cancer, if something comes along that prevents us or means that in the future we won’t be able to run the pub, a 5 year lease we are not going to be able to sell on the same as we would sell on a 10 year lease. That’s a huge, huge difference in them halving that lease from 10 to 5 years and I think that’s something, I don’t see how they can get away with doing that (*The Crown*).

Points of renewal along the lease were a source of stress for publicans in the sample. As The Swan outlined, there was the hanging threat of a lease renewal being contested, and the publican therefore losing their security of tenure (and in many cases, their home). This was, in their view, part of the power imbalance between the two sides:

Because obviously if you are a tenant you’re not in an arm’s length position because you are a tenant. So your negotiating power is weakened and the power goes to the pub companies, because you’re in there and you don’t want to lose your security of tenure. You’re almost – what’s the word? You’re being held to ransom in many ways *(The Swan)*.

The perceived power imbalance was such that, when The White Hart’s lease was terminated by his PubCo, he did not see the point in contesting it under s.25 Landlord & Tenant Act 1954:

Then, as it got close to the date of the expiration of my lease they put in the section whatever it is, you know, section 30-something, to say that they’re not renewing it. Now I can challenge that, but you don’t win apparently. Yeah, I’d stopped then, no point then is there... I asked loads of people… I don’t think anyone has won it, that case, you know what I mean, stopping them taking the lease back. Nobody that I know of… *(The White Hart)*.

These data suggest that terms in the lease managing of overall term length and opportunities to contest renewal were central to the publican’s business. The apparent preferences for shorter lease lengths or multiple “exit routes” elsewhere in the commercial leasehold sector give way to a preference for longer, more secure leases in the pub sector. For tied-tenants, a largely non-fungible business rooted in the community (which for many publicans is also their home) suffers from a lack of security in the lease.

**4.3 Rent and business viability**

Rent is – as almost goes without saying – a fundamental component of any commercial lease and is often the “the most criticised issue” by landlords and tenants alike.[[113]](#footnote-113) It is not just the headline figure that matters, but also the broader “rental structure” within the lease terms: the review mechanisms and processes for how rents are calculated.[[114]](#footnote-114) Ordinarily, rents for commercial properties are calculated with reference to square footage (with some leases stipulating a percentage of turnover as well).[[115]](#footnote-115) As noted above, pubs leases are relatively unusual in that rents are calculated by calculating the “fair maintainable trade” a competent publican could fashion, then dividing estimated profits between the PubCo and the tied publican; normally a 60/40 split respectively.[[116]](#footnote-116) Generally – though not always – the rent payment, rent review and repairing obligations are more favorable in a tied lease than a non-tied lease (in part, to help make tied arrangements more enticing to a prospective publican).Variations are shown in a side-by-side table in the sample lease, detailed in Figure Five. Here, the tied tenants get a more regular rent payment schedule, fewer repairing obligations, and avoid so-called “upward only” rent reviews (which is rare in tied leases), with the ability to refer to a cost-capped dispute resolution service.[[117]](#footnote-117)

**[FIGURE FIVE]**

Across the sample tied tenants were critical of the way their rent was calculated. In particular, they argued that the hypothetical competent publican rarely reflected the reality of the pub’s operation – particularly given that estimated turnover in a tied lease is highly sensitive not just to the volume, but also the *type* of drinks being sold. As The Swan put it:

…for the purpose of a rent review, all these sort of estimates, etc, and you can argue whether that’s right or wrong, all the assessments are as per the lease terms of a willing tenant, a willing, prudent, knowledgable tenant, brand spanking new pub with no dilapidations, etc. So of course they were going to produce a [rent proposal] based on that rather than what we were actually doing... They’ve known that it’s always been a cask ale pub since I’ve run it, but of course want to use a [gross profit] that reflects keg sales in a sports orientated boozer with a lot of England fans in it, that kind of thing (laughs) *(The Swan).*

This approach also leads to a problem where a publican who generates higher than expected sales, in turn faces the prospect of their rent increasing when it is next subject to review. The PubCo benefits from the premium on tied products as the beer barrelage is higher and is paid at tied prices, and, given the increase in turnover, can argue that the “dry rent” should be higher too. As The Railway Tavern puts it:

You’re saying I’m going to, ‘well done, you. I’m getting extra [wet] rent for you selling more barrels, and because you’re giving me that extra [wet] rent, I’m going to penalise you as well’…Now, that’s a classic having your cake and eating it argument and you shouldn’t be allowed to do it, but they do. They go, ‘barrelage is up here. Must have got the rent wrong.’ No, it’s a bloody good operator and you’re getting more [wet] rent already. So, you know, I get really angry about that one, as you can probably tell. Drives me mad *(The Railway Tavern)*.

Put another way, the landlord gets a double-benefit from increased sales: a return on the “dry rent” and increased sales via the “wet rent”. This is significantly different from other retail contexts, such as turnover rents in shopping centres, as the landlord rarely also supplies stock to the tenant. The same issue was highlighted by The Plough, who underscored that this perceived “penalty for success”[[118]](#footnote-118) was a “systematic” problem in tied leases:

I think that increasing trade that a really, really good tenant does is all passed on in rent and it’s never left with the tenant, and that’s systematically a problem *(The Plough).*

These problems with the calculation of rent are exasperated by the widespread presence of so-called “upward only rent reviews”.[[119]](#footnote-119) Lease clauses which mandate that rents can only increase across the lease term are widespread in commercial leases and this is also the case for the pub sector (so much so, there is sustained campaigning for a legislative ban).[[120]](#footnote-120) For the tied publicans in the sample, these clauses did not reflect the reality of their trading conditions. As The Railway Tavern underscored, upward only rent clauses contrast with the declining levels of beer consumption in the UK detailed in British Beer and Pub Association (BBPA) figures:

…Because you know, you only have to go to the BBPA’s stats and see what’s happened to beer sales to know that your barrelage, if you’re a reasonably efficient operator, would go down because a reasonably efficient operator would be the kind of average pub operator – so if national beer sales are falling, the reasonably efficient – it would be a sensible, fair argument to say that the reasonably efficient operators’ beer sales would also be falling *(The Railway Tavern)*.

Shouldering the risk for changes in market conditions is particularly acute for publicans, as fluctuations in business conditions are baked into their rent calculation. The White Horse draws a contrast between shops and pubs in this regard:

The idea of upward only rent reviews initially was because they just assumed rents would always go up and therefore by doing it in annual stages it was better than giving the tenant a shock in the fifth year of some massive increase. But of course times change and especially with pubs where they’re valued on profitability not on public demand, it’s not quite the same, it’s not like shops that are valued on square foot or zoned or whatever it is *(The White Horse)*.

The Red Lion’s story of how their pub came to be completely unprofitable underscores that the “upward only rent” clause did not marry with the worsening market conditions they were facing – in this instance, a declining high street and increases to their running costs:

So that business did well, and just through a combination of upward only rent reviews and obviously increase in cost base, and its location was in a town that was in fairly big decline because it was a high street, commercially, something had to change on that lease in order for it to be sustainable going forward (*The Red Lion*).

Rent, therefore, is more than just a headline figure. It is in many respects a proxy for the power-imbalances between tenants and landlords (which can, in areas with low demand for commercial property, cut the other way). The broader “rent processes”, covering both the determination of the initial rent, rent reviews, and so-called “upward only” clauses, in part dictate the viability of the lessee’s business.

# Conclusion

This paper has been a detailed exploration of the much maligned “tied lease” in the UK pub sector. It was by no means inevitable that the lease would be the vehicle brewers chose for vertically integrating their businesses, but – much like Cowan, Carr and Wallace’s work on shared ownership – the lease can be a flexible tool. For the largest pub owning companies, the lease allows the operation of the business (including the beer offered on the taps) to be tied closely to the occupation of the property, all while offering controls over long-term rent, time of occupancy and providing an asset class to be leveraged via securitisation in its own right.

More fundamentally, the data illustrates that the lease is central to the day-to-day operation of tied pubs in the UK. In contrast to Hunter’s work on residential leases – where the lease was invoked rarely, only at points of conflict – in the pub sector, navigating tied clauses, constraints over lease time periods, and lease terms managing the rent (and in turn the viability of the business) where central to the operation of the pubs themselves. In the pub sector, this reveals dynamics of power and resistance. The data illustrates a fundamental tension between the visions of the “good pub” held by the PubCo landlords versus their tied-tenants. For PubCos, the lease is a mechanism to maximise control, secure vertical integration and extract financial value, evidenced by highly restrictive product ties and approaches to rent calculations. For tied-tenants, their vision of a “good pub” centres on providing a tailored pub environment that fulfils their community and customers - goals that can clash with the confines of the tied lease.

The findings suggest that the voluminous literature on consumer behaviour and venue management in the pub sector should recognise that the details of the lease are central to constitution of pub houses. A turn in consumer preferences to craft products and/or regional beers are only under the control of premises if their lease permits: the environment can otherwise be as much as product of the tie as of the publican. Studies that focus on how “context and environment” influence beer choice and consumption (on which there is a voluminous literature in its own right)[[121]](#footnote-121) should therefore recognise that the lease is a central factor in shaping the UK pub sector.

More broadly, the findings suggest that Hunter’s analysis of how residential leases affect both “both physical space and social relations” also bite on commercial leases and the pub sector specifically. As in the example of the Blue Bell at the start of this paper, the lease can become an important actor in shaping the power-balance in the business-to-business relationship and can define the ongoing viability of a business. This is not always in the landlord’s favour – in areas with low-demand for commercial property (particularly after the COVID-19 crisis), the balance may shift the other way. At a time of significant changes to our high streets and continuing extreme pressures on small businesses, commercial leases warrant far greater socio-legal scholarly attention.

1. The term “public house” (shortened to “pub”) is used to describe a particular kind of retail outlet for on-sales of alcohol in the UK and in some other western countries. Although definition of the term is contested, pubs serve draught drinks (particularly beer and cider), operate bar service, and have at least some indoor space solely for the consumption of drink, rather than food. For a more detailed discussion, see: J. Pratten, ‘The development of the modern UK public house: Part 1: The traditional British public house of the twentieth century’ (2007) 19(4) *International Journal of Contemporary Hospitality Management* 335. [↑](#footnote-ref-1)
2. R. Davies, ‘Tied up: pub landlords battle law that was meant to help them’ (*The Guardian* 2019) <<https://www.theguardian.com/business/2019/may/31/tied-up-pub-landlords-battle-law-that-was-meant-to-help-them>> [↑](#footnote-ref-2)
3. York CAMRA, ‘We call on Punch Taverns to offer John Pybus at The Blue Bell,York a new tenancy agreement’ (*Change.org* 2018) <<https://www.change.org/p/punch-taverns-we-call-on-punch-taverns-to-offer-john-pybus-at-the-bluebell-york-a-new-tenancy-agreement>> [↑](#footnote-ref-3)
4. For a (at the time of writing) ongoing example of an almost identical case, see the petition to save The Britons Protection pub in Manchester: A. Hudd, ‘Save our pub: The Britons Protection’ (*Change.org* 2022) <<https://www.change.org/p/save-our-pub-the-britons-protection>> [↑](#footnote-ref-4)
5. Davies (n 2). [↑](#footnote-ref-5)
6. Deconinck and Swinnen identify the importance of tied pubs in Belgium, Germany, France, the Netherlands, and Mexico, in particular. K. Deconinck and J. Swinnen, ‘Tied Houses: Why they are so common and why breweries charge them high prices for their beer’ in *Brewing, Beer and Pubs:*

*A Global Perspective,* ed. I. Cabras, D. Higgins and D. Preece (2016)231. [↑](#footnote-ref-6)
7. C. Hunter, ‘Solar Panels, ‘Homeowners and Leases: The Lease as a Socio-Legal Object’ in *Exploring the 'Legal' in Socio-Legal Studies,* ed. D. Cowan and D. Wincott (2015) 137. [↑](#footnote-ref-7)
8. D. Hoffman and A. Strezhnev, ‘Leases as Forms’ (2022) 19(1) *Journal of Empirical Legal Studies* 90. [↑](#footnote-ref-8)
9. Ibid 137. [↑](#footnote-ref-9)
10. See D. Cowan, H. Carr, and A. Wallace, *Ownership, Narrative, Things* (2018) 74; and H. Ronan, *The socio-spatial composition of property relationships*. PhD thesis (Birkbeck, University of London, 2022). [↑](#footnote-ref-10)
11. N. Jacobs, ‘The Concept of the Commercial Lease’ (1984) 9(4) *Int'l Legal Prac.* 128-131, 128. [↑](#footnote-ref-11)
12. See E. Carroll, ‘Raising the Rent Acts: Market Disruption & The Landlord and Tenant Act 1954’ (SLSA, University of York, 7th April 2022). [↑](#footnote-ref-12)
13. Cowan et al (n 10) 73-97. [↑](#footnote-ref-13)
14. Hunter (n 7) 141. [↑](#footnote-ref-14)
15. S. Webb and B. Webb, *History of liquor licensing in England principally from 1700 to 1830* (1903) 88-89. [↑](#footnote-ref-15)
16. J Nicholls, *The Politics of Alcohol* (2009) p 85. [↑](#footnote-ref-16)
17. J. Rowntree and A. Sherwell, *The temperance problem and social reform* (1900) 538-539. [↑](#footnote-ref-17)
18. Royal Commission on Licensing for England and Wales (1929-1931) (HO 73/125) 4. [↑](#footnote-ref-18)
19. Ibid 25. [↑](#footnote-ref-19)
20. Ibid 26. [↑](#footnote-ref-20)
21. Rowntree and Sherwell (n 17) 538-539. [↑](#footnote-ref-21)
22. The Office for Fair Trading estimates in the UK the price of beer is on average 30% higher under a tie (with other organisations arguing the differential is far higher). See Office of Fair Trading ‘CAMRA super-complaint – OFT final decision’ (2010) <https://tinyurl.com/y8hvuwqg> 120. [↑](#footnote-ref-22)
23. For a detailed overview of the methodology used by surveyors to calculate pub rents, see: The Royal Institute of Chartered Surveyors, ‘The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales’ (2010) at: <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/valuation/capital-and-rental-valuation-of-public-houses-bars-restaurants-and-nightclubs-in-england-and-wales-1st-edition-rics.pdf> [accessed 8th August 2022].This approach is not just used for pubs, but is also found in rent assessments for other commercial leisure properties. See C. Osmond, ‘Retail Properties’ in *Valuation: Principles into Practice,* ed. R. Hayward (2008) 123-136. [↑](#footnote-ref-23)
24. H. Day and R. Kelton, ‘The valuation of licensed premises’ (2007) 25(3) *Journal of Property Investment & Finance* 306, 313. [↑](#footnote-ref-24)
25. J. Spicer, C. Thurman, J. Walters and S. Ward, *Intervention in the Modern UK Brewing Industry* (2011) 18-30, 210-212. [↑](#footnote-ref-25)
26. Cowan et al (n 10) 73-94. [↑](#footnote-ref-26)
27. If we “except the period” of the Beerhouse Act of 1830 deregulatory experiment, see: J. Eagles, ‘The Monopoly in Alcoholic Drink’ (1919) 29(114) 154. [↑](#footnote-ref-27)
28. B. Gillham, ‘A review of the factors that affect the value of licensed premises’ (1998) 16(5) *Journal of Property Valuation and Investment* 474. [↑](#footnote-ref-28)
29. Webb and Webb (n 15) 88-89. [↑](#footnote-ref-29)
30. D. Gutzke, *Women drinking out in Britain since the early twentieth century* (2014) 14-15. [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
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