Insight report

The growth of the UK's restaurant market

IN ASSOCIATION WITH

TLT

THE CATERER

Welcome

What an exciting place the restaurant industry in the UK is at the moment. There has been a veritable explosion of creativity in the sector. New concepts abound, driven in part by a vibrant street food scene, and consumer choice is greater than it has ever been.

The sheer diversity of UK restaurants and the food they offer is growing all the time, and while London and the South East continue to generate a wealth of new ideas and businesses, innovation is by no means limited to the capital. Leeds, Manchester, Bristol, Liverpool, Edinburgh and Glasgow are just a few of the many UK cities that have their own thriving independent restaurant scene.

So, a rosy picture as far as the consumer is concerned. But what about the operator? Growth is a wonderful thing, but what about some of the challenges it presents?

The Caterer teamed up with law firm TLT to ask operators what their perception of growth in the restaurant business is, and what it means for the way in which they do business. The results of that research can be found on pages 4-7. Some findings – such as the fact that the sector is undeniably in growth – are as you might expect. Others, such as the fact that the opportunity for outside seating is one of the chief factors considered in choosing a restaurant location, are more surprising.

Thanks to TLT, we also offer some key advice on how to make sure you are set to take advantage of this growth, whether that is through guidelines on how to prepare for trade sales and buy-outs, key points to consider when it comes to food hygiene and how to protect your brand.

And not simply content with presenting the findings of our survey, we drew together some of the foremost experts in the field of restaurants to discuss what they all mean (pages 8-11).

We hope you find it all of use. Long may the growth continue!

Neil Gerrard, associate editor, *The Caterer*

Contents

4 The state of the nation
What to expect in the next 12 months

7 Restaurants round table: taking the industry's pulse
Industry leaders discuss

12 Appetite for investment
Smoothing restaurant buy-outs

13 Brand aid
Invest now for the future

14 Do you have a licence for café culture?
Take your business outside

15 Food hygiene comes under scrutiny with higher and more frequent fines
Hygiene penalties are on the rise

Get ready for growth

The leisure sector has undergone radical change since 2008, witnessed no more so than in the eating out market. Customers have never had it so good. The range of offers on our high street (and online) has evolved rapidly through the downturn in terms of range, value and quality. Competition for the leisure pound has never been greater and successful restaurant operators are adapting to the new environment they find themselves in.

Market changes are driven in part by a change in the dynamic of diners. With an increasingly inquisitive palate and a demand for quality in provenance and service, the patrons who frequent restaurants know what they want and how they want it. What's more, if they don't get it they have the ability to tell the world before they even leave the premises.

The need to innovate has permeated not only the food and beverage offer but also mid and back office. This comes with a short-term cost and puts pressure on the business model. In addition, an increasingly well trained and professionalised workforce may expect more than the minimum wage to retain and engage them. Likewise, suppliers faced with increased wage bills and higher compliance costs may seek to pass these on. For the unwary, margins will continue to be squeezed.

The arrival of disrupters, both technological and in the offers we see, means that to grow and thrive restaurant operators must innovate and continue to evolve their brands and how they deliver them. While this brings challenges, it also brings opportunity – who in the UK had heard of crowdfunding 10 years ago? If it had been thought of, there certainly weren't the technologies to deliver it in the manner we are now seeing.

Restaurants face other challenges too, but of the traditional type that have come round with the economic cycle, premium payments from tenants for entry into leases of prime locations are back, business rates are under review, red tape mounts and compliance costs grow.

On the back of these changes and in the context of a more confident economic environment, TLT have partnered with *The Caterer* to produce this insight report looking at growth in the UK restaurant sector.

As an adviser to restaurants across the UK, we wanted to examine the prospects and challenges for the sector in the year ahead. Drawing on a survey of restaurateurs' views, direct conversations with restaurant owners via an industry round table and our own insights, we are confident this report will be a valuable tool for those looking to succeed and grow in the year ahead.

Contact
Julian Mant, leisure sector team, TLT, julian.mant@TLTsolicitors.com

"The arrival of disrupters, both technological and in the offers we see, means that to grow and thrive restaurant operators must innovate and continue to evolve their brands and how they deliver them"

The state of the nation

The Caterer and law firm TLT asked restaurateurs what the next 12 months will hold for the industry – here's what they predicted. *Neil Gerrard reports*

More than three-quarters of UK restaurateurs expect the overall number of restaurants to expand over the next 12 months, according to research conducted by *The Caterer* in partnership with law firm TLT.

A total of 77.7% of restaurateurs polled said they expected to see a small or significant increase in restaurant sites across the UK. Only 17.6% expected there to be no overall change, with a tiny 4.6% of those surveyed expecting a small or significant decrease.

And it was casual-dining and fast-casual businesses that were the most likely to increase the number of their restaurant sites.

Nonetheless, the results also pointed to some of the significant challenges to achieving growth. Principle among them was finding a suitable site, which 66% rated as the most significant, ahead of recruiting suitable staff (53%) and the expense of acquiring the site (38%).

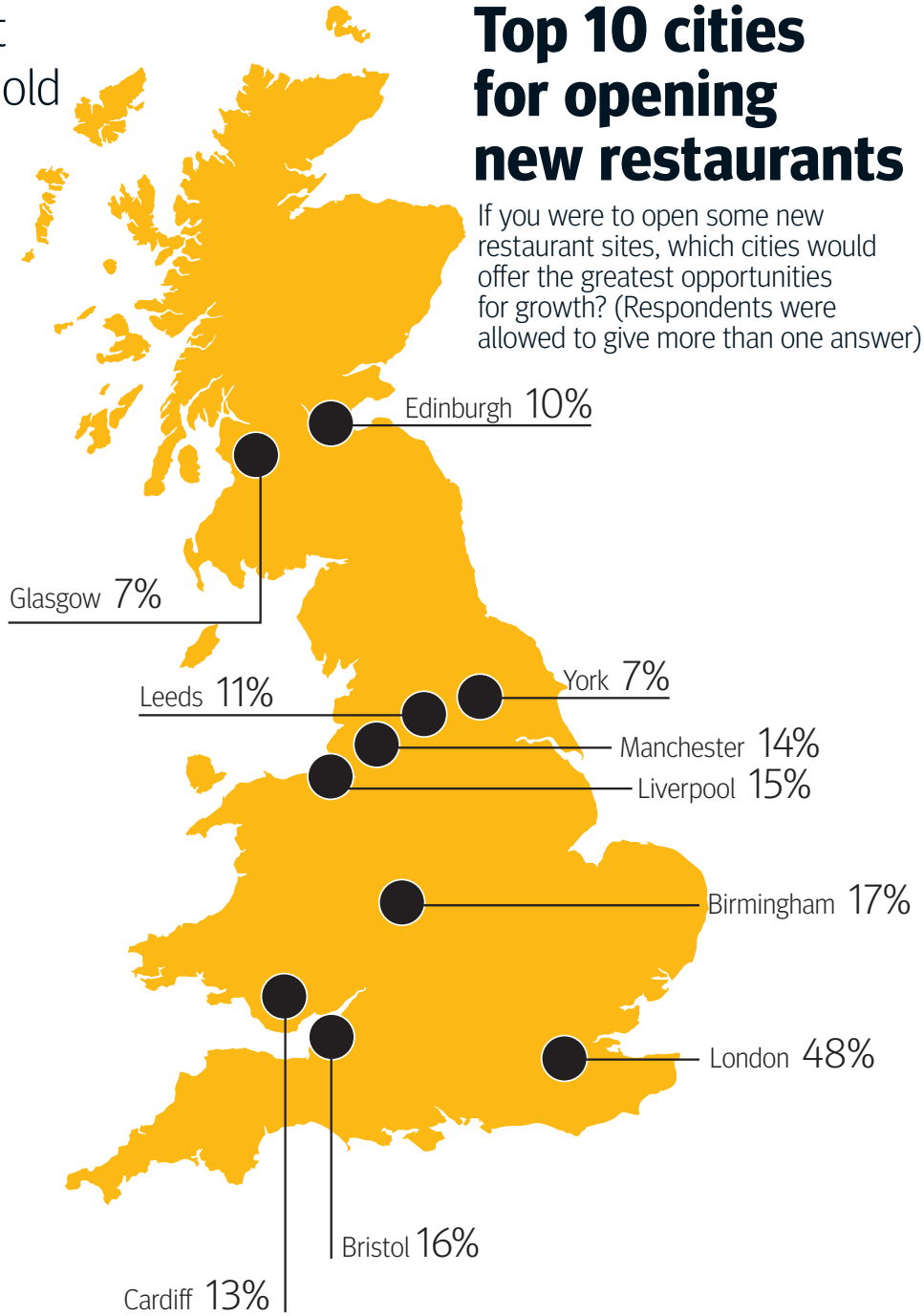
London was seen as the city offering the greatest opportunity for growth (48% of respondents), followed by Birmingham (17%) and Bristol (16%). And when it came to the type of location restaurateurs were after, 49% said they wanted to be on a town or suburb high street, while 40% favoured a prime city centre location.

Acquiring a leasehold site was the most popular method of increasing the number of restaurants in a business, followed by freehold. The key factor when it came to acquiring a leasehold properly was the duration of the lease (chosen by 68% of respondents), followed by the basis of rent reviews (56%), and the obligation to maintain and repair (46%).

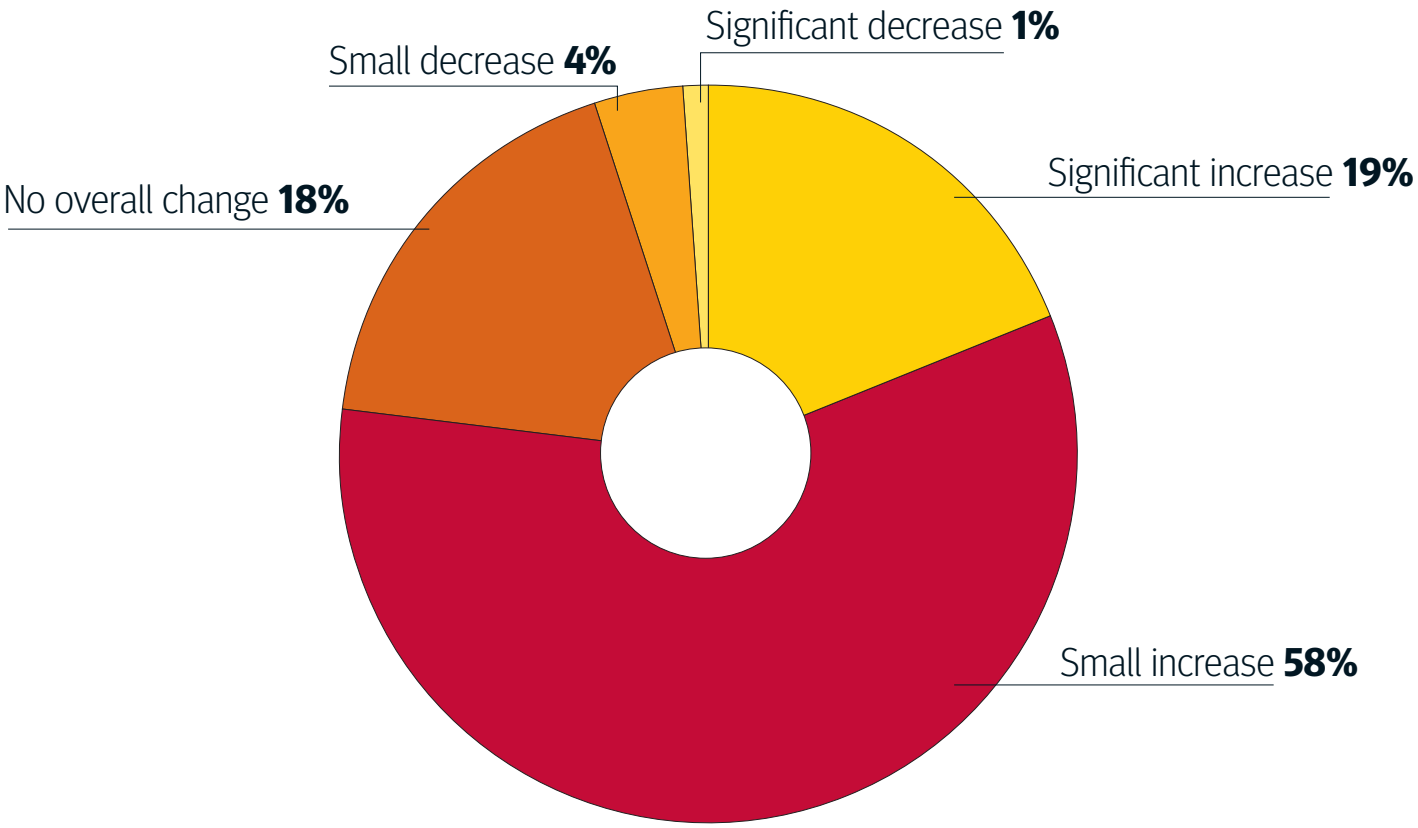
● **The results of *The Caterer* and TLT's research were discussed by a panel of top casual-dining and fast-casual restaurateurs. To discover their thoughts on the findings, see the round table feature on page 8.**

Top 10 cities for opening new restaurants

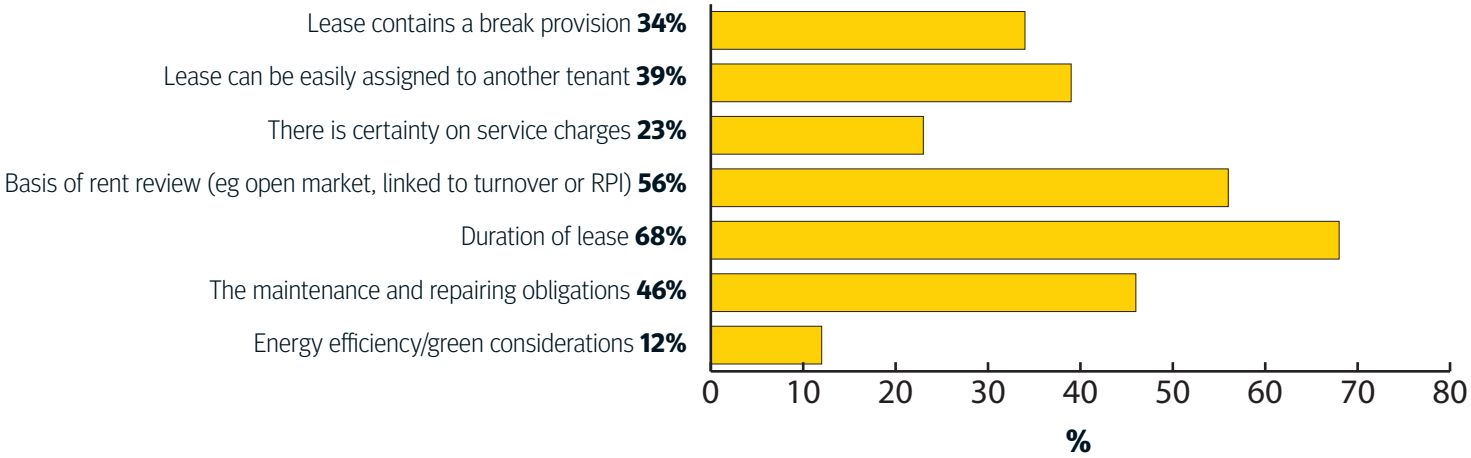
If you were to open some new restaurant sites, which cities would offer the greatest opportunities for growth? (Respondents were allowed to give more than one answer)



Thinking about the overall number of restaurant sites in the UK, how do you expect this to change over the next 12 months?



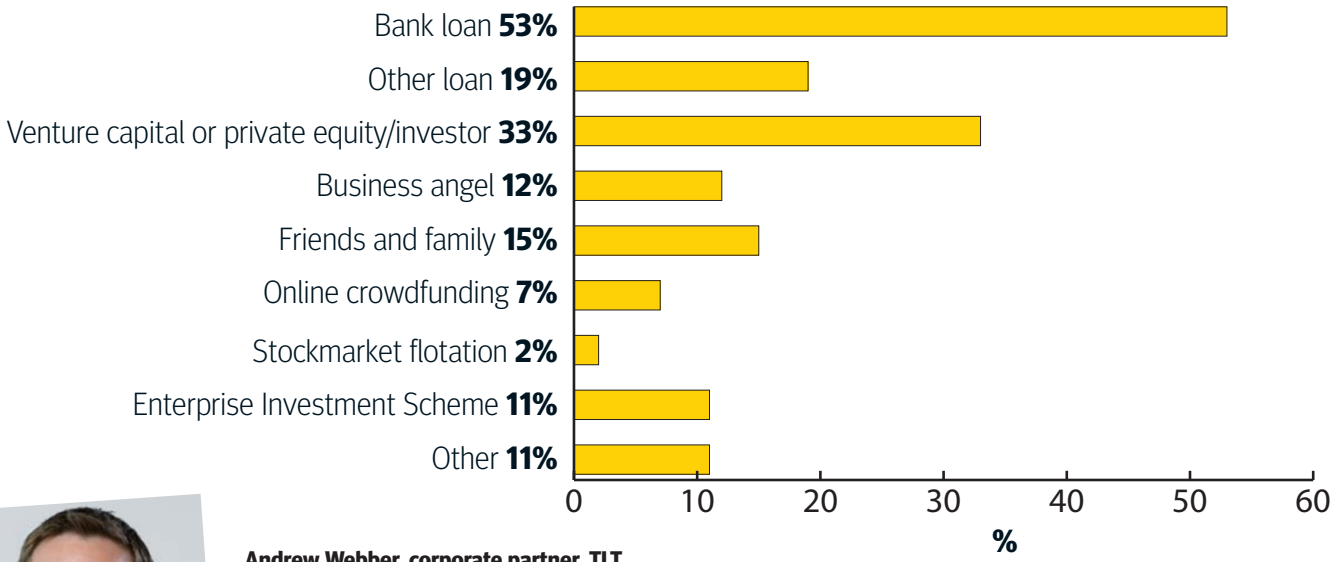
If you were acquiring a leasehold property, what are the most important considerations? (Select all that apply)



Julian Mant, real estate partner, TLT
"Acquiring leasehold property remains the most usual way for operators to take new restaurant space. Increased competition for suitable locations, particularly in London, driven in part by renewed investor appetite for the sector, is pushing up rents.

"For the first time in some years, tenant premiums payable on entry are now being asked for in prime locations. This can have the knock-on effect of pushing up rents at review for established restaurants in the locality."

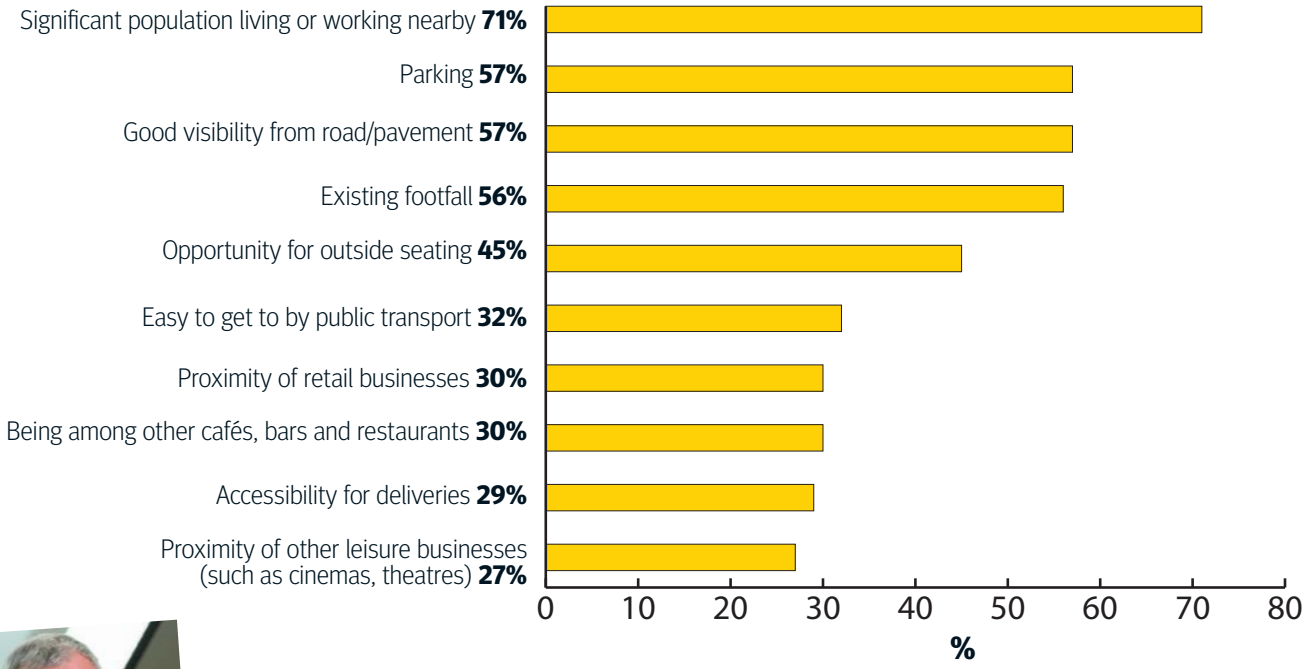
When looking to expand your business, what preferred funding routes would you would consider? (Select all that apply)



Andrew Webber, corporate partner, TLT
"Venture capital and private equity investors remain particularly active in this sector. They are looking for opportunities to back early-stage brands with a perceived leading edge for fast growth, as well as proven management teams leading a new roll-out.

"There is a large appetite for debt and equity funding, and this is likely to remain the case as consumers continue to drive growth and the market for exits through mergers and acquisitions remains busy. Tax incentives and access to increased board support also mean that angel investors are often available to help early-stage ventures develop scale and brand."

What are the 10 most important factors in choosing a restaurant location?



Matthew Phipps, partner and head of licensing, TLT
"The ability to use any available outside areas to extend restaurant space is clearly a very important consideration when taking new premises, be it private space or public highway. Not only do such areas give scope to increase covers in the summer months, but they can also showcase the restaurants' offer to potential customers.

"As the process for gaining permission to use the public highway varies considerably between the different local authorities, a flexible approach is required for multi-site operators with restaurants in different locations. You also need to consider whether conditions on your premises licence restrict the use of outside space in a way that could harm your business."

Why do you think the restaurant sector is shrinking, growing or staying the same?

KEY

- − Shrinking
- + Growing
- +/− Staying the same

THE NORTH

− "There are not enough diners in the out-of-city restaurants." (NE)

+ "Pan-Asian continues to be a new trend and burgers seem to continue to grow and get 'dirtier'. The market will continue to be deal-led as restaurants fight for business against the growing trend of apps and social media deals." (NW)

+ "You read in the catering news on a weekly basis of new ventures or existing businesses expanding – it doesn't seem to be slowing down." (NW)

+ "The economy is getting stronger." (NW)

+ "There seems to exist a continued interest in new restaurant concepts and, with a growing economy, the industry is likely to expand." (Yorks/Humb)

+/− "We are already seeing new restaurants popping up, but pubs/restaurants keep closing, especially rural ones." (Yorks/Humb)

SCOTLAND

+ "We have added additional bedrooms, so restaurant covers are increasing slightly."

+ "There is confidence in the market."

NORTHERN IRELAND

+/− "It is already increasing, which is great, so hopefully more restaurants will follow. The only drawback is there is a serious lack of chefs in Northern Ireland."

EAST ANGLIA

+ "The market still isn't easy. There are still a lot of operators that underestimate the need to run as a business and for the amount of investment required. There is, however, a growing need for quality, casual and flexible dining experiences."

LONDON

+ "Expansion of chains will increase the available outlets, though independents may suffer as a result."

+ "Single-unit operators can't compete with multi-sites. For the obvious reasons of ordering power/stock-price reductions/sharing costs/centralising costs. You must expand to survive."

+ "There's a growing market, new trends and diverse, cosmopolitan audiences – younger with high disposable incomes and a propensity to experiment."

+ "Restaurants remain an attractive investment opportunity, but there could be difficulty getting good, affordable sites – cost, competition, etc."

+ "Banks are providing funds more easily as we crawl out of yet another recession."

MIDLANDS

+ "I forecast the economy to grow by a very small amount as consumer confidence grows."

+ "In our area it seems every business that closes [retail] converts to catering. But there are only so many slices in a cake."

+ "People are spending money again."

WALES

− "I feel customers are still very price-sensitive for the fine-dining experience."

+ "Hopefully, planning constraints will not saturate our towns with restaurants, so those that are there can thrive and survive."

+ "Public demand expects ever-changing concepts, which improves growth. Listening to the consumer and not standing still will make growth increase."

+/− "New restaurant sites are becoming available all the time, which is why I think there may be a small increase in numbers. I think the trend for pop-up restaurants and street food will continue to rise."

+/− "It will take time for the confidence in the economy to take root."

SOUTH WEST

− "The new minimum wage will have a big negative impact."

+ "I expect to see a few more restaurants open, some new fashionable chains, some independents – and all will take a few of our potential customers. So although maybe more and more people eat out, the choice is huge, so we have to work hard to keep our market share."

+ "As retail moves away from the high street to the internet, and landlords lower ridiculously high rents, the gaps will be filled by food-led businesses."

+/− "People are still very financially aware and carefully select when they eat out."

SOUTH EAST

(excluding London)

+ "More street-food venues and casual dining."

+/− "England is still coming out of recession, so the uncertainty of the income from restaurants still make them a risky business and therefore not too tempting for people to start up."

+/− "If you are a restaurant and do not survive due to the competition, another one will take your place. So no increase, but a change of ownership on the same premises."

+/− "I don't think it will increase as much as it has in the past. People are getting more lazy, so online food deliveries and takeaways will increase."

+/− "The industry is at a stage it seems where existing businesses are investing in renovating their brands and adapting to meet the emerging needs of consumers. The opening of new establishments, certainly in the South East, has slowed down compared to last year."

Round table participants

Mark Derry, director, Brasserie Bar Co

Tony Kitous, founder, Levant Restaurant Group

Steve Richards, chief executive, Casual Dining Group

Brandon Stephens, founder, Tortilla

Jon Yantin, commercial director, the One Group

Julian Mant, partner, TLT

Matthew Phipps, partner, TLT

Chair: **Neil Gerrard**, associate editor, *The Caterer*

Restaurants round table: taking the industry's pulse

More than three-quarters of UK restaurateurs polled by *The Caterer* in a survey with law firm TLT believe the number of restaurants will rise over the next 12 months. But operators still face challenges, as our round table discussion between movers and shakers proved. *Rosalind Mullen* reports

What is the operator's perspective of the restaurant industry at the moment?

Steve Richards (SR): It's mixed. Some restaurant businesses seem to be sluggish. For instance, business is tough for Wetherspoon, so that tells us the high street is struggling – or maybe people are trading up because the economy is okay. Other bits are doing well; for instance, London is solid.

And there is change on the high street. There are more bespoke retailers, artisan breadmakers and so on, who live above the shop. There are eateries bringing life into our town centres again, as well as the other phenomenon of people moving to leisure parks.

Mark Derry (MD): In terms of choice, consumers have never had it so good. But operators are piling into locations and so their cake is being cut thinner. There is some interesting stuff going into country towns though.

Jon Yantin (JY): The One Group operates in London and internationally. When Americans come to see us in the UK, they are amazed by the offer and innovation on our high street and say we are ahead of the US. I agree consumers have never had it so good in terms of all the touchpoints, but is it sustainable?

I think London is getting smaller. Five years ago, Notting Hill was thriving and now it is not. The heart of the action is now in Zone 1, the City and the edges of Camden – and it is getting tighter. The footprint is shrinking.

Tony Kitous (TK): London is very different from the rest of the country. Customers are well travelled and understand the different cuisines. We only have a few sites outside London because the demographic is so different. I was in Manchester the other day and was trying hard to find London brands, but I was struggling. It's not as obvious as in London – for instance, around the Strand you have several Pret A Mangers.

Julian Mant (JM): Tim Bacon has secured a lot of the premium space in Manchester for Living Ventures. He has shown a skill in developing brands outside London and then moving them to London.

SR: Our operations at Casual Dining Group are in premium-mass areas, so our pricing in terms of customer aspirations and spending power is the same. But there are bits of London – residential areas – where you can't make money because the consumer is handing it over to their mortgage companies.

What are your thoughts on discounting?
SR: It is back in the market and it feels as if it has increased. PizzaExpress is offering 40% off between Monday and Friday.

TK: Isn't discounting a disease?

SR: It's everywhere, but some outlets offer discounting using different mechanics. Fixed-price menus, for instance.

JY: Yes, it is at the perceived top end as well. It is being done without using the phrase "discounting". You expect discounts only two or three times a year when business is slack and then there are the boom times such as Christmas and New Year, so business blends out.

MD: Fixed-price menus go back hundreds of years. Happy hours also stimulate business and mean restaurants hit the ground running. The problem is with an overt 50% off.

SR: We track it. Ed's Diner is giving 50% off from Monday to Friday. I have not seen that level of discounting outside of January. However, August was a bad trading month because of the weather and the train strikes and so on.

TK: TopTable [now OpenTable] has cheapened and changed the industry. It charges for administration and then gets more per booking. We don't use it any more.

> **"If we can create extra footfall to change the atmosphere for the people paying full price, it improves the experience for them"**
> **Jon Yantin**

Matthew Phipps (MP): But restaurants using it must feel they are getting empty seats filled.

JY: The core of our concept is the vibe not just the food, so we need more people. If we can create extra footfall to change the atmosphere for the people paying full price, it improves the experience for them and it is padding for us.

Can you comment on the fact that some 77.7% of restaurateurs polled by *The Caterer* and law firm TLT expected to see an increase in the number of restaurants over the next 12 months?
SR: People are dining out more. There are only about 200 good high streets in Britain, but 500 branded openings every year. That is a lot of capacity.

MD: In three years, Bath has nearly trebled capacity, but the population has stayed the same.

MP: A lot of restaurants have gone into retail spaces in Bath.

TK: Location is key. Everyone was talking about Chiswick, but when established operations went there, it didn't work. It only works there at weekends.

Property is a huge consideration for restaurateurs, with 47% saying they would consider acquiring leased sites to expand and 44% preferring freehold. What are your concerns?
MD: The government has already destroyed pubs. Rates are escalating. If you can't pass it on to consumers, the consequences are huge.

SR: Yes, property is the biggest challenge for operators. It might be the death of independent restaurants. Casual dining is growing, but independents can't cope. Is that the Britain that people want?

MD: Independents don't have access to capital.

TK: The challenges are getting worse by the month – the Living Wage, and rent is going up.

What do you need to consider when looking at sites?

SR: We are investing in new-build leisure parks and retail. It is a big phenomenon in the UK.

JM: If tenants are being asked to pay a premium at the start of a lease then they have less capital to invest in their business. It is a short-term gain for landlords as you get cash up front, but you may not have a tenant in five years' time.

TK: Remember the days of 20 to 25-year leases? Now they try to give you five or seven years with so many options it's almost a licence.

MD: The nature of the market is that we pay a huge amount of rent.

TK: It is hard to compete. In some sites, if a restaurant brand comes in next door and can pay more, they put our rent up. And if you can't afford it, somebody comes along who can.

Brandon Stephens (BS): There shouldn't be a situation where one outlet determines rent.

"The headache of managing drivers means companies such as Deliveroo are making a killing out of the delivery business. As restaurateurs, we don't know how to manage drivers, insurance and so on"
Tony Kitous

JM: Are freeholds outside London out of the question?

MD: The process of using covenants means you lose flexibility. We did freeholds and then flipped to sale and leaseback. One site could make you £250,000, so if you get that in the mix it is helpful.

What about finance? Half the respondents in the research saw bank loans as the preferred route. Do you think a shift in the way restaurants raise money – such as online crowdfunding – could help?

JY: Crowdfunding is only good for certain styles of business in a certain market.

SR: Enterprise Investment Schemes are a good tool for smaller companies.

BS: Or the Seed Enterprise Investment Scheme, which offers tax-efficient benefits to investors in return for investments in small and early start-up businesses.

JM: Yes, it is off-the-shelf now and easy to access.

SR: Non-traditional banks are coming into the UK with names you have never heard of offering fixed-term amounts. You don't have to go to RBS. The demise of RBS took 30% of lending out, but that gap has been filled by these new guys. They can finance big business.

TLT

TLT is a law firm with a specialism advising the leisure sector, with offices in London, Manchester, Bristol, Belfast, Edinburgh and Glasgow. They assist some of the leading restaurants, bars, clubs, brewers, pub companies, hotels, caterers and visitor attractions to stay ahead in this highly competitive industry. Clients include Barburrito, Boston Tea Party, Byron, Las Iguanas, Living Ventures and Pizza Pilgrims.

What will be the impact of a National Living Wage?

JY: It will take a while to bottom out. We won't know the impact until quarter one of 2017. We've got bigger things to worry about at the moment. But it will probably change our view of labour. We will see it as more of a commodity and we will have to get cute and clever and make use of technologies – both in the room and back of house – without affecting the consumer. We need to get smarter before we add 20p to everything on the menu.

BS: It is a major challenge, but I hope we will attract more productive staff.

JM: Bear in mind that suppliers will have to put up costs too.

Will you welcome contactless payment methods?

JY: Four or five players are coming and they won't all survive. Apple Pay probably will. The problem for the consumer is which app to use in which restaurant, so people will probably resort to credit cards again.

MD: I personally hate the end of the evening when you can't pay your bill.

BS: Apple Pay doesn't solve that. Isn't the whole point of going out to eat and drink and get away from technology?

JY: We will get used to it. In three years' time we will be where we now are with social media. In fact, I think prepay will come in. In five years we will be asking the consumer what they want. They will say "I have got £50 to spend tonight, so who wants my business?"

BS: Well, at Alinea in Chicago we were asked to pay in advance instead of a deposit.

JY: Yes, for some restaurants if tables don't show it costs them a big percentage.

TK: We suffer from no-shows. You need to be in a position to mend it, but you can't give a guest too many conditions.

MD: We are stopping online bookings at weekends. We trialled it at one of our sites and made £2,500 a week more. We found that if people have to ring to make a booking, we can develop more of a relationship with them and they are more likely to turn up.

PizzaExpress is introducing a delivery service. Other companies use an intermediary delivery service that can charge up to 30%. Which is best?

TK: The headache of managing drivers means companies such as Deliveroo are making a killing out of the delivery business. As restaurateurs, we don't know how to manage drivers, insurance and so on.

JY: As it grows I would be interested to see what happens to the quality of food. It affects your brand if the food is not delivered in good condition. You need to research your packaging.

TK: And packaging can be expensive. Chinese, Indian, pizza cuisines are deliverable, but how can you deliver steak au poivre in a good state? If you want the packaging to do justice to your food, that could be £5 out of a bill of £30, plus paying the delivery service – so is it worth doing?

BS: We tried offering delivered food, but it didn't work as there was no critical mass. But delivery companies such as Deliveroo are here to stay – it has had funding of $100m [since its 2013 start-up]. If you can get critical mass then it could become a platform for operators that are not on a high street, but in a warehouse.

Appetite for investment

With the economy feeling more buoyant, *Jon Gill* and *Andrew Webber* advise on the options of trade sales or private equity buy-outs, and offer some top tips for maximising the potential of these transactions

Côte Restaurants and the Alchemist are recent examples of an increasing appetite by private equity to invest in the restaurant sector. Whether as a direct investment, buy-out by an investor or a trade sale to one of the larger groups, the drivers for this are clear. Consumers appear confident, the short-term economic outlook is positive and investors are keen to put their money to work.

The primary targets are entrepreneurs with an established group of restaurants; typically 20 or more. For those in this category, it is possible that investors or potential acquirers will get in touch, keen to start a dialogue. These conversations need not, of course, lead to an immediate transaction. However, they are nearly always worth exploring because they can open the door to joint ventures and other collaborations.

Before you start a dialogue, it is valuable to have a conversation with the current shareholders and executive team to clarify objectives and identify areas of alignment or perhaps misalignment that a transaction may be able to solve.

Transactions come in all types of flavours, from a "clean break" for shareholders with value being fully realised at completion, right through to a "buy-out" where the majority, if not all, of the investment is made to grow the business. In the latter scenario, existing shareholders maintain ownership, albeit alongside a third-party investor.

The opportunities are certainly out there. But it will be the clarity of purpose at the start that will help determine whether a change in the existing ownership structure of the business is really needed. This clarity will also help to ensure that any transaction is designed to deliver what the business needs.

Top tips

Think about the drivers for a transaction

Does the founder feel that running a larger group, with all the management responsibility and administration that it involves, is no longer providing fulfilment? Is there a personal desire to "de-risk" to some extent and achieve a degree of financial security, whilst continuing to be heavily involved in the business and rewarded for growing it further?

Consider the desire for future growth

What further potential does the business have; for example, geographic expansion or brand extension? Can this be exploited with current resources in terms of finance, people and expertise? What is the management's view on building the business further?

Seek the right professional advice

This is a specialist area in which entrepreneurs will be dealing with parties for whom the structuring and negotiation of transactions is their core competency. Entrepreneurs therefore need to surround themselves with legal and financial advisers who know the sector, know the counterparties and can provide the experience, resource and context to achieve the right result. This can often result in a "change point" for the business' existing advisers, who may have been well suited to "business as usual" advice, but may not be the right fit for such a critical and ultimately time-consuming project.

Get the business fit for third-party scrutiny

Deal with any disputes quickly and permanently, ensure the brand is properly protected, ensure that any real estate issues are managed professionally, and invest in the infrastructure to demonstrate the business has the capacity for further growth. These pre-emptive steps will ensure that buyers or investors focus on the future potential they are buying, rather than being distracted by legacy issues that could cause problems in the future.

Contacts

Jon Gill and Andrew Webber, corporate partners, TLT, jon.gill@TLTsolicitors.com and andrew.webber@TLTsolicitors.com

Brand aid

Failing to protect your brand at the outset of your business can have grave repercussions further down the line, so invest now in your brand to maximise its future value, write *Nick Fenner* and *Jo Pritchard*

The problem

When it comes to seeking external investment, the due diligence spotlight will inevitably focus on the assets of the business, including the rights to the trading name. Failing to take the necessary steps to protect the brand early on can have adverse consequences on valuation at a critical time for the business.

The law

A business' brand is underpinned by a range of intellectual property rights, which are protected by law. For example:

- brand/product names can be protected by registering them as trademarks in the UK and overseas;
- online presence can be protected by securing domain names and social media identity;
- original designs/logos can be registered as designs.

By obtaining these registrations early on, potential problems will be flushed out. Ownership of those registered rights will help demonstrate to investors that the business has taken the necessary steps to ringfence the value in its intangible assets. This can significantly enhance the potential for the business to expand and therefore enhance its potential future value.

Expert advice

Investors will want to know who owns the brand, what steps have been taken to protect it against competitors, any historical conflicts, and the possibility of ringfencing the brand against competitors going forward in the future. There is nothing like an announcement of an intended expansion to bring disputes out of the woodwork.

In an increasingly competitive marketplace, your brand identifies your business and values. It communicates with your customers and differentiates you from your competitors. Poorly selected or managed brands can result in a loss of identity and recognition.

Working alongside the sales, marketing and business development teams, leisure operators should consider early on the legal protection available for their brand to help maximise and preserve the future value in the brand as it grows.

To-do checklist

Some of the things to maximise the value in brands include:

- Choosing distinctive marks that don't simply describe the product or services so that the mark can be registered and protected.
- Undertaking clearance searches before proceeding with new brand or product names. You do not want to risk infringing a third-party's rights.
- Ensuring that all possible trademarks are registered, including brand names, product names, logos and even unusual or inventive menu items.
- Effectively managing your trademark portfolio or instructing someone else to do so. This will include keeping a record of dates for renewals and some monitoring of conflicting subsequent applications.
- Thinking about future expansion by considering where applications should be filed – perhaps international expansion might one day be on the cards?
- Controlling changes to the brand presentation, especially if the new design varies significantly from the old one, as it won't be protected by prior registrations. Leisure operators should then consider new applications to protect their rebrand.
- Ensuring that you own all of the artwork used, either by creating artwork yourself or if you commission a third-party to do so. You should also make sure that all rights in the artwork are assigned in writing to you. The position under UK copyright law is that the designer and not the commissioner will be the first owner of a work. A recent case involving Innocent Smoothies and an argument over the ownership of its iconic 'Dude' logo, which the court finally ruled was actually owned by Innocent, showed the importance of clearly setting out ownership of artwork at the outset.
- Protecting your brand by enforcing it where necessary.

Beware

A business' brand is one of its key assets. Businesses should make sure that they do not miss any opportunity to protect it and maximise its value wherever possible.

Contacts

Nick Fenner and Jo Pritchard, commercial partner and legal director, TLT, nick.fenner@TLTsolicitors.com and jo.pritchard@TLTsolicitors.com

Do you have a licence for café culture?

If you want to increase your capacity and offer your customers outdoor dining, you may need to pay for a premises licence, says *Piers Warne*

The problem

Café culture, the Mediterranean dream of sitting outside in the sun watching the world go by, can be as appealing in Nantwich as it is in Nantes. Unfortunately, the legal pitfalls in obtaining such permission can be off-putting. And with no set process for this, operators are often left not knowing where to turn.

The law

The Highways Act 1980 put the matter in the hands of local authorities. Originally, it was the county councils that dealt with applications, but nowadays it can be the highways, planning or licensing departments.

Such licences are referred to as 'pavement licences' or 'tables and chairs licences'. To complicate matters further, additional permissions, such as planning, premises licences or over-sailing licences may be required. For the lucky few, a small number of authorities require nothing at all.

Expert advice

The first port of call should be your council highways department. With any luck, if they don't deal with applications any more, they should be able to direct you to who does. Many council websites will provide the information; however, be prepared to spend time searching.

If a pavement licence is required, it is likely that you will have to provide:

- Detailed plans of the area to be licensed, with dimensions, pavement widths and reference to street furniture (lamp-posts, bins, bus stops, etc);
- Photos of the area, the proposed furniture and barriers, and the furniture manufacturer specifications;
- A copy of your public liability insurance; and
- The appropriate fee.

Each authority has different requirements and different fees on application, so it's always worth reading them carefully. For instance, the widths of pavement required to be kept clear differs between authorities and some fees can be quite high in certain city centres.

A pavement licence is granted for a set period, usually between six months and four years, and will require renewal prior to it expiring. There is no set time for councils to determine applications and it can take a very long time (three to four months) if objections are received, so apply early to ensure your licence is in place for spring.

Other licences that may be required include:

"It can take a very long time (three to four months) if objections are received, so apply early to ensure your licence is in place for spring"

Planning permission

This is to allow a change of use of the adopted highway. Most permissions are for a set period, usually a year or two, but can be permanent. If planning is required, it is often necessary to get it before the pavement licence.

Premises licence variation

It is worth checking your premises licence to ensure no restrictions are on it that would prevent you using the pavement licence. Some authorities require off-sales for alcohol to be permitted before customers can take alcoholic drinks outside; others require the area to be shown on the plans. Often it is a simple minor variation to make the required change.

Over-sailing licences

These regulate awnings or other materials overhanging the highway. Again, some authorities require them, although this is rare. You will need to have planning permission for any awnings.

To-do checklist

Unless you are lucky and don't require a licence, you will need to:

- Establish which council department deals with the process;
- Establish which licences/permissions will be required and what fees are payable;
- Ensure that the area to be licensed leaves the specified width for pedestrians on the pavement;
- Ensure the application has all the information required to avoid delay; and
- Make a note of the renewal dates and ensure renewals are submitted in good time.

Beware

There are costly penalties for placing furniture on the highway without permission. Most authorities will offer a warning, but prosecutions can be brought.

Contact

Piers Warne, real estate associate, TLT, piers.warne@TLTsolicitors.com

Food hygiene comes under scrutiny with higher and more frequent fines

New rules will mean that companies can face penalties linked to their turnover for even minor food hygiene offences, says *Duncan Reed*

The problem

Mass catering comes with risks. One large leisure operator was recently fined £1.5m for serving food unfit for human consumption, resulting in one death and 33 falling ill. The severity of the fine sends a clear message: ensure your food hygiene procedures are water-tight or face the consequences.

The law

The prosecuting authority accepted that had the leisure operator's food safety procedures been properly followed, the incident could have been avoided. But the mere presence of these procedures was insufficient to protect them from prosecution and a significant fine.

In this instance, the leisure operator argued that the incident was attributable to the poor conduct of the individuals concerned. The pub manager and chef were in fact imprisoned for perverting the course of justice after it emerged they had tried to destroy and falsify evidence. The jury took the view that the leisure operator should have taken active steps to ensure that members of staff were adequately trained and aware of the risks.

Expert advice

If an organisation does place food on the market that is unfit for consumption, the burden is on them to prove that the internal food hygiene procedures are sufficient. In other words, the company would have to prove that there was nothing more it could have reasonably done to prevent the incident from happening. As you can imagine, this can be very difficult to prove.

Large-scale caterers therefore need to think carefully about how their food hygiene procedures work in practice. Having strict hygiene rules in place is a good start, but this will count for nothing if it appears to a local authority that the company has not checked that its procedures are being complied with at kitchen level. For example, are regular health and safety audits carried out? Does the organisation take a 'zero-tolerance' approach to poor hygiene and discipline members of staff who fail to comply with the company's policies?

Last year's annual report on food law enforcement by local authorities revealed that 411,077 interventions were carried out in respect of food hygiene in 2013/2014. Although only a small number of these actually led to prosecutions, organisations should be aware that local authorities are proactive about food safety and hygiene laws.

"The new guidelines are likely to result in higher fines across the board, but will particularly increase fines for organisations with high annual turnovers"

Organisations involved in the sale of food to consumers should be aware that the Ministry of Justice's Sentencing Council has published new sentencing guidelines for food safety and hygiene offences. The new guidelines will be introduced in 2016 and will result in higher fines across the board, but will particularly increase fines for organisations with high annual turnovers.

To-do checklist

Organisations must put in place food safety management procedures and keep up-to-date records relating to these procedures. It is also vital that members of staff who handle food are supervised, instructed and trained in food hygiene. The Food Standards agency outlines that the four main things to remember for good hygiene are cleaning, cooking, chilling and cross-contamination.

Beware

Under the proposed guidelines, fines will be pegged to the offending company's annual turnover, meaning that higher-grossing companies will pay more. The highest possible fine band under the proposed guidelines for food safety and hygiene offences is between £500,000 and £3m, which would apply to organisations with an annual turnover of above £50m.

Importantly, large and medium-sized companies will also face higher fines for minor technical breaches under the new guidelines. This makes complying with food safety and hygiene law more important than ever.

Contact

Duncan Reed, regulatory associate, TLT, duncan.reed@TLTsolicitors.com

THE CATERER

tltsolicitors.com/contact
BELFAST • BRISTOL • EDINBURGH • GLASGOW • LONDON • MANCHESTER