

The High Court decision of *S Franses Ltd v The Cavendish Hotel (London) Limited*, which was rendered at the end of June, illustrates how low the hurdle is for a landlord to show an honest intention to demolish or reconstruct its premises in order to defeat a tenant's right to a renewal tenancy.

Under Section 30(1)(f) of the Landlord and Tenant Act 1954 (the Act) (also known as Ground (f)), a landlord can oppose a lease renewal if it intends to demolish or reconstruct or carry out substantial construction work to the premises or a substantial part and could not reasonably do so without obtaining vacant possession.

It is well established that a landlord must be able prove a fixed, genuine, settled and unconditional intention to redevelop as at the date of the lease renewal hearing and that such redevelopment should start at the end of the current tenancy (usually three months and 21 days after the court's order) which provides landlords with ample opportunity to design schemes to satisfy Ground (f).

In *S Franses*, prior to hearing the landlord had put forward numerous different schemes superseding each other, ranging from the initial scheme of incorporating the former bar of the hotel (which made up the remainder of the building) into the ground floor of the premises to the final scheme of readying the premises internally for conversion into two retail units (which removed the need for planning permission unlike earlier schemes). The latter was specifically designed to meet the vacant possession requirement under Ground (f).

The landlord's witness admitted that some of the proposed works would not be undertaken if the tenant left voluntarily and the entirety of the works would only be undertaken if the court ordered vacant possession under the Act which was supported by a written undertaking from the landlord.

The fact that the tenant may leave voluntarily was found to be simply a theoretical possibility without any evidential basis and, therefore, did not make the landlord's intention conditional. Moreover, the court held that there were no anti-avoidance provisions in the Act and its policy was not to secure the most beneficial and efficient use of land. The court's examination should be of *what* the landlord intends to do and *whether* it intends to do it rather than the reasons *why*. The landlord's undertaking was, therefore, very relevant and decisive of the landlord's intention before the court.

The tenant's arguments that vacant possession was not required for the works due to the lease's very wide access right in favour of the landlord, extending to repairs, improvements, rebuilding and alterations, did not prevent the High Court from finding that the test set out in Ground (f) was met, as the landlord was prevented from derogating from its grant and was required to provide quiet enjoyment to the tenant. Nor did the court agree that section 31(2) of the Act had the effect of limiting a reasonable period in which the landlord should commence the works under Ground (f) to 12 months as the two provisions were concerned with different time periods.

Whilst the decision does not provide new law regarding establishing an intention under Ground (f), it highlights the flexibility of the Act which a landlord can use to its advantage to obtain vacant possession of its property by devising schemes which fit within the Act's requirements. This is equally something which a tenant should keep in mind when faced with opposition to a renewal tenancy under Ground (f) in order to maintain a realistic perspective on its chances of obtaining a renewal lease. We understand that this case may be appealed further, so watch this space for further updates.

## Contacts



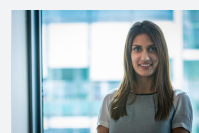
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