

S FRANCES LTD V THE CAVENDISH HOTEL (LONDON) LTD

Landlord's intention to redevelop: Supreme Court decision bolsters tenant rights

Contrived landlord's development scheme does not defeat tenant's lease renewal. A greater obstacle for landlords to overcome when recovering possession?

The Supreme Court has allowed the appeal in the case of *S Franes Limited v Cavendish House (London) Limited* and decided in favour of the tenant. The judgment can be found [here](#).

Summary

The ruling means that landlords' ability to oppose lease renewals on redevelopment grounds has been significantly lessened. The decision is good news for tenants and has come as a surprise to some. The days of landlords fabricating extensive schemes of works, solely to recover possession of their properties, now appear to be over. However, tenants must not become complacent- the circumstances of the case are unusual. One of the questions landlords will now have to address is: would you intend to do the same works, even if the tenant left of its own accord? A landlord seeking to oppose the grant of a new tenancy on the basis of redevelopment must now demonstrate that its intention to undertake works is independent of the tenant's right to a new tenancy. In other words, the intention to demolish or reconstruct the premises must exist independently of the tenant's claim to a statutory new tenancy.

Background

The case concerned lease renewal proceedings under the Landlord and Tenant Act 1954 (**1954 Act**).

- ▶ The 1954 Act gives certain business tenants in occupation (provided that the protection of the 1954 Act has not been contracted-out of the lease) the security of knowing that, when the contractual term of their lease expires, they are entitled to request a new lease.
- ▶ The 1954 Act also allows a landlord to oppose the grant of a new tenancy to such a business tenant where it intends, on the termination of the current tenancy, to undertake works of demolition, reconstruction or construction to the premises or a substantial part of them (Ground (f)). It covers a situation where the landlord wishes to redevelop the subject property, and that redevelopment cannot be carried out with the tenant in situ. According to Ground (f) of the 1954 Act, a landlord can refuse a tenant's new lease if they intend on reconstruction or demolition works that they "could not reasonably do so without obtaining possession of the holding."

Case facts

The tenant (S Franes Ltd), operated a textile dealership from the ground floor and basement of a building on Jermyn Street in London. Its landlord (The Cavendish Hotel (London) Limited) occupied the remainder of the building as a hotel. The tenant accused the landlord of performing remedial works in its building with the sole aim of using the 1954 Act to refuse the retailer a new lease.

The tenant served notice to renew its lease in March 2015. The landlord served a counter-notice opposing the grant of a new lease pursuant to Ground (f). The works upon which the landlord sought to rely changed to avoid the need for having to apply for planning permission. Unusually, the landlord accepted that the works had no practical utility and said that the works would not be undertaken if the tenant left voluntarily. The landlord's principal witness said that the scheme had been designed "purely for the purpose of satisfying Ground (f)".

Until now, it has been considered that a well-advised landlord wishing to oppose the grant of new lease ought to be able to put in place a programme of works to satisfy the tricky rules about the nature and extent of the works necessary for the landlord to be successful. The key evidential point was whether the landlord had the requisite intention to undertake the works, and his

motive for doing so was largely irrelevant. A scheme of works whose sole purpose was to satisfy Ground (f) was sufficient to satisfy this ground.

The Supreme Court was keen to stress that whilst motive in and of itself remained irrelevant to Ground (f), it is in some circumstances useful evidence of the landlord's underlying intention. It was the Court's view that the landlord's intention to demolish or reconstruct the premises must exist independently of the tenant's claim to a new tenancy: **therefore the landlord's intention to carry out the works cannot be conditional upon whether the tenant chooses to seek a new tenancy**. The acid test in such cases is whether the landlord would intend to do the works if the tenant left voluntarily. If not, the landlord's intention was conditional and therefore not the fixed and settled intention that Ground (f).

What is the impact?

On the face of it, the case is an important decision for both landlords and tenants. However the circumstances of the case are highly unusual. Bear in mind that the landlord admitted that the works were designed to meet the test in Ground (f) and would not be undertaken if the tenant left voluntarily. There was no other benefit in the works. The impact of the decision may be less subtle.

The decision is likely to have an impact upon situations where the landlord intends to redevelop and some of the intended works are not strictly necessary but are included only to meet the test in Ground (f). This was one of the points highlighted by the court. No doubt we have not seen the end of further cases developing this area in the future. Whilst it is a welcome decision for tenants, the case may still remain that a well-advised landlord could devise a well thought-out and justifiable development coupled with the intention to see the scheme through to meet Ground (f). Time will tell.

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