

# SUPREME COURT RULES ON HOW TO ASSESS "INTENTION" FOR THE PURPOSES OF GROUND (F) OF THE 1954 ACT

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The Supreme Court has allowed the appeal in the case of *S Franses Limited v Cavendish Hotel (London) Limited*. Previously, the landlord's underlying motive for undertaking redevelopment works was irrelevant when assessing whether it had an intention to carry out those works. The Supreme Court has clarified the law in this area: the acid test is whether or not the landlord would carry out the works if the tenant had left voluntarily. On the face of things this might appear to be a major change but the circumstances of the case are highly unusual and so the impact of the decision may be more subtle.

## Background

The Landlord and Tenant Act 1954 gives business tenants the security of knowing that, when the contractual term of their lease expires, they are entitled to request a new lease. Whilst the landlord is entitled to oppose that request, there are only seven grounds upon which he can do so. One of those grounds, set out in section 30(1)(f) of the 1954 Act, covers a situation where the landlord wishes to redevelop the subject property, and that redevelopment cannot be carried out with the tenant in situ.

Ground (f) is simple in principle, but there are some very tricky rules about the nature and extent of the works necessary for the landlord to be successful. Until now, though, it has been said that a well-advised landlord wishing to oppose the grant of a new lease ought to be able to put in place a programme of works which satisfies those rules. The key evidential point was whether the landlord had the requisite intention to undertake those works, and his motive for doing so was largely irrelevant. In particular, a scheme of works whose sole purpose was to satisfy Ground (f) but was otherwise unattractive to the landlord was sufficient to satisfy this ground.

## ***S Frances v Cavendish***

The appeal in this case concerns a tenant (S Frances Ltd) which 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) is a hotel which occupies the remainder of the building.

The tenant served notice back in March 2015 to renew its lease. The landlord served a counter-notice opposing the grant of a new lease under ground (f) of the 1954 Act.

The works upon which the landlord sought to rely went through a number of iterations, ostensibly (it seems) to avoid the need to avoid having to apply for planning permission for change of use which the landlord appears to have anticipated would have been refused. By the time of the original trial, those works included (i) the artificial lowering of part of the basement floor slab, (ii) the repositioning of smoke vents for no reason and (iii) the demolition of an internal wall followed by its immediate replacement with a similar wall in the same place. 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 had said that the scheme had been designed "purely for the purpose of satisfying ground (f)".

In the County Court the Judge had held that - motive notwithstanding - the landlord did have the necessary intention to carry out the works (which fell within the category of works necessary to make out ground (f)) and therefore ordered that the tenancy should end. That decision was upheld by the High Court but permission was granted to allow the tenant to appeal direct to the Supreme Court (leap-frogging the Court of Appeal).

The Supreme Court disagreed. Giving the leading judgment, Lord Sumption 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. In the Court's view, the landlord's intention to demolish or reconstruct the premises must exist independently of the tenant's claim to a new tenancy - and 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) requires.

# Comment

This is an important case for both landlords and tenants, but it should be remembered that it comes out of a very strange set of circumstances - 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.

One of the points highlighted by the Court is that this decision is likely to have an impact upon situations where the landlord intends to redevelop but some of the intended works are not strictly necessary but are included only to meet the test in ground (f). We expect to see further cases developing this area in future.

In our view this judgment is likely to lead to protracted contested lease renewals as early settlement of key premises for tenants will be less common.

Whilst the decision will most likely be good news for tenants it remains the case that a landlord who puts forward a well thought out (and objectively justifiable) redevelopment scheme - with the requisite intention to see that scheme through - ought still to make out ground (f).

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