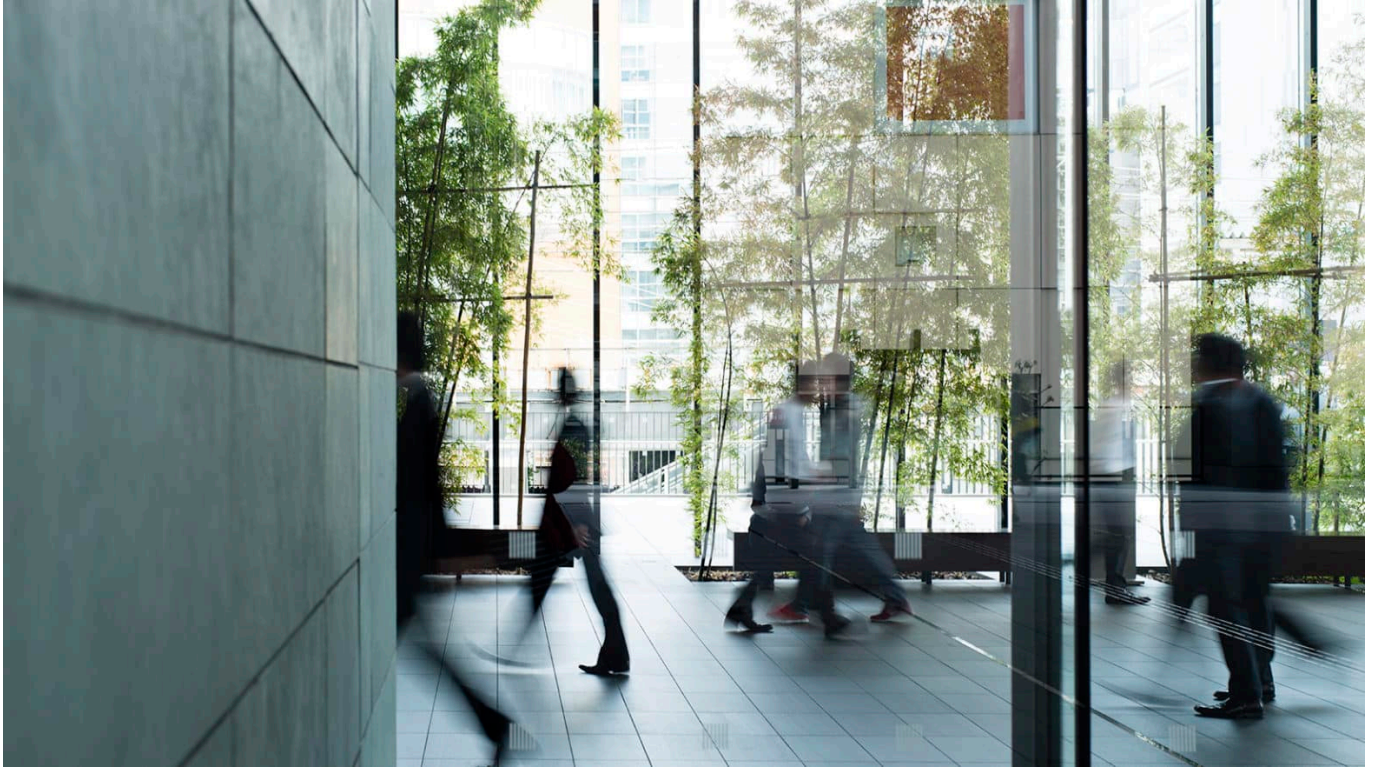


A new case on getting (or opposing) a landlord break clause on a lease renewal



Judgment in the recent case of *BMW (UK) Limited v K Group Holdings Limited* provides a useful update on the matters the court may consider when deciding whether to allow a landlord break option in a renewal lease of business premises under the Landlord and Tenant Act 1954.

In what were lease renewal proceedings of a BMW showroom on Park Lane, Mayfair, the landlord (K Group Holdings) sought the inclusion of an option to break on not less than 6 months' prior notice at any time in years 3, 4 or 5 of an agreed 10 year lease term.

Commonly, break clauses are sought by landlords on the ground that they may wish to redevelop the premises during the renewal term and should therefore be allowed the opportunity to break the lease and rely on ground (f) under section 30(1) of the Act. However in the BMW case K Group sought to demonstrate that in due course they might wish to break the renewal lease under another ground of section 30(1) – for the purpose of running their own business from the premises, under ground (g).

Legal principles

It is well-established by case law that the test for the inclusion of a landlord break clause has a considerably lower threshold than the test for opposing a lease renewal outright. There need only be a 'real possibility' (as opposed to a probability) that the landlord will require the premises for redevelopment or for own use during the renewal term. With previous cases also having found that it is not necessary for a landlord seeking a 'ground (g)' break option to demonstrate that its future business in the premises would make commercial sense, the landlord may have gone to court with a degree of confidence.



Landlord's evidence

The evidence given by the landlord in support of its case for a break clause was however underwhelming. Only one witness spoke on behalf of the landlord company and he was only able to relay relatively vague details of early-stage thoughts on the part of the landlord of running a car business itself from the premises. It was also accepted that such a business would have been a completely new departure for the landlord. Moreover no documents whatsoever were produced by the landlord in evidence of such potential intention, not even copies of any communications within the company or with third parties about the matter.

The decision

Applying other relevant authorities the judge held that, based on the evidence, he was not satisfied that the landlord's own car business was '*sufficiently on the cards*' or '*genuine and workable*' such that it amounted to '*a possibility of a bona fide [or good faith] decision to operate a break clause if one were granted*'. He also made a finding based on the evidence given by the landlord's witness that there had been an element of tactics to the landlord's request for a break clause.

The judge also relied on authorities requiring him to strike a reasonable balance between preventing the landlord from using or developing the premises (contrary to the intention of the Act) and providing a reasonable degree of security of tenure for the tenant, and to ensure that any new provision on renewal be justifiable on the ground of 'essential fairness' between the parties. The fact that the premises were part of a larger property let by K Group to BMW under three other leases was significant. The judge accepted BMW's argument that an early termination of the renewal lease of the premises would cause them practical and commercial difficulties in the context of the overall operation run from the whole property, in that it would rip out the central showroom. He found that those difficulties, and having to operate with the risk of them hanging over its head, would be more prejudicial to the tenant than any prejudice that might be caused to the landlord by not being able to break the lease.

Cripps' advice

Our advice to landlords seeking a break clause in a renewal lease, whether it be for future redevelopment or own use of the premises, is to get into a position where as a minimum you can give witness evidence of developed-thought and early-stage formulation of a plan which would be workable, and which would overcome any foreseeable obstacles. Supporting documents like company board minutes, or other records such as email communications or contemporaneous attendance notes of conversations, will also help to demonstrate a genuine intention and a real possibility of such a plan being seen through.

Our advice to tenants uncertain about a landlord's plans would be to require the landlord to produce upfront evidence that satisfies you of the genuineness of its intentions and workability of its plans before conceding an unwanted option to break.

The future

Finally, it is worth mentioning is the Law Commission's ongoing review of the 1954 Act which could lead to changes to the law on business lease renewals. We will report on the key details of the consultation paper once it is published later this year.



How we can help

Our specialist property disputes team at Cripps is very experienced and adept in dealing with the potentially contentious aspects of business lease renewals and is ready to advise and assist you. Contact us [here](#).



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