

Guidance on redevelopment grounds to oppose a new business lease



The recent appeal decision in the case of *Man Limited –v- Back Inn Time Diner Limited* provides useful guidance on the requirements of section 30(1) (f) of the LTA 1954, opposing a new lease on the ground that the landlord wants to redevelop the premises. It was held that the “realistic prospect” test applies to the likelihood of being able to secure funding for the redevelopment in the same way as it does to planning requirements.

Ground f

Ground f provides that a landlord can oppose a tenant’s application for a new business lease if the landlord intends to demolish or reconstruct the premises. This has previously been interpreted to mean that the landlord must show that it has a real, as opposed to fanciful, prospect of being able to carry out the works within a reasonable period.

The tenant in this case, an American style diner, sought a new tenancy which was opposed by the landlord on the basis that it wished to redevelop the premises (ground f). The landlord wished to develop the premises into a multi-storey mixed-use development. Planning permission had been refused. The landlord appealed and was still awaiting the outcome of the appeal at the date of the court hearing.

The judge at first instance held that ground f was not satisfied as (1) planning permission had not been obtained and there was a lack of any real prospect of obtaining planning permission and (2) that the landlord had failed to provide evidence to show it could fund the proposed redevelopment.

The grounds of appeal

The landlord appealed on a number of grounds.

An obstacle for the landlord in this case was that the bank statements showing clear evidence of funding were only disclosed at trial. No real explanation was provided for this very last minute disclosure. The judge at first instance refused to admit the bank statements into evidence as there was no good reason for the delay. An appeal on this ground was dismissed. The appeal judge stressed the difficulties in appealing an exercise of discretion. It was held that the first instance judge had properly considered the Denton stages and had been justified in refusing to allow the bank statements.

The case also provides useful guidance for cases where a landlord is relying on its ownership of other properties in support of the case for redevelopment. Another ground of appeal was that the first instance judge had failed to properly deal with evidence of other properties owned by the Landlord which were to be used for funding. On appeal it was held that there was a difference between ownership of other properties and the availability of those properties for security. The burden is on the landlord to show not just ownership of other properties, but the ability to obtain security over the other properties for the purpose of obtaining funding. It was held that the other property had not been identified in the landlord's witness statement as being available for funding the development and this ground of appeal also failed.

The landlord also appealed on the ground that the judge at first instance had set the threshold too high with regards to the evidence required in relation to funding. For ground f the landlord needs to show that it has a realistic prospect of being able to proceed with the redevelopment. Previous caselaw provides that "realistic prospect" in relation to planning permission means a real chance, not merely fanciful. In this case it was held on appeal that the same test should apply to the landlord proving the ability to fund the development. This ground of appeal was dismissed on the basis that the judge at first instance had not set the threshold too high.

All grounds of appeal were dismissed and the landlord's opposition to the new tenancy under ground f was unsuccessful.

What can we learn from this case

This case shows that the "real prospect of success" test in respect of intention applies to the likelihood of being able to fund the proposed redevelopment, and not just planning hurdles, which is where it usually arises. This case also serves as a good reminder to submit evidence in a timely manner.

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