

## Redevelopment break clauses: The balancing act between landlord and tenant interests

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The recent appeal judgment in the case of *B&M Retail Limited v HSBC Bank Pension Trust (UK) Limited* upholds the decision from earlier this year. The case highlights the balancing exercise that the court needs to undertake when deciding whether to allow a break option on a renewal of a business tenancy and, if so, on what terms, under the Landlord and Tenant Act 1954.

Essentially, the Act provides business tenants with security of tenure, allowing tenants the right to renew their leases upon expiry, subject to certain conditions. Landlords are entitled to oppose lease renewal on certain specified grounds.

In this case, B&M Retail Limited, appealed against the county court's decision granting a renewal lease with a landlord's rolling redevelopment break option.

### The background

Following expiry of the contractual term of its lease, B&M continued to occupy the premises as its tenancy continued under section 24 of the Act. The tenant served a section 26 request on HSBC, applying for a new tenancy. Due to an error in the postroom during the Covid 19 lockdown, the tenant's notice only came to the landlord's attention when HSBC later served its own notice under section 25 purporting to terminate the lease. Accordingly, the landlord failed to serve counter-notice within the statutory time limit. It contended that it would have opposed the new tenancy on ground (f) under section 30(1) of the Act (namely redevelopment) had the landlord received the tenant's section 26 request.



Without knowing about the tenant's section 26 request for a new lease, the landlord had entered into an agreement for lease with Aldi Stores Limited, which required Aldi to undertake substantial redevelopment works. The proposed lease with Aldi was for a longer term, a higher rent, and contained a landlord's redevelopment break clause, exercisable on the 15th anniversary of the term date. Following the agreement for lease with Aldi, the landlord attempted by a section 25 notice, to terminate the tenancy. This was of course ineffective due to the tenant's earlier section 26 request.

At trial, the landlord therefore sought an 18 month term with a landlord redevelopment break option, operable at any time from commencement of the lease immediately on six months' notice. The tenant claimed the grant of a new tenancy with a 10 year term and a landlord break option on the fifth anniversary.

The county court considered the authorities and heard expert evidence as to whether there was a real possibility of the landlord obtaining planning permission for the redevelopment works to proceed. The landlord contended it would suffer prejudice if the new tenancy did not contain a redevelopment break. The court held that the new lease should be for a five year term and allowed the landlord's request for a rolling break. The tenant appealed this decision on the basis that the court was wrong to grant a rolling break that could be operated so flexibly, including by notice served immediately at the start of the term.

## The appeal decision

The tenant argued that the rolling redevelopment clause, exercisable on six months' notice, defeated the main purpose of the Act: to give tenants a reasonable degree of security of tenure. The appeal judge, relying on legal authorities, had to balance the importance of the landlord's redevelopment plans against the tenant's right to security of tenure.

The appeal judge dismissed the appeal, considering that *'although it might, in some circumstances, be reasonable to delay the operation of the break clause, it would not be appropriate to do so if the delay might operate to frustrate the redevelopment'*. He found that previous case law *'shows that there are cases where an immediately exercisable break clause may be appropriate – so it cannot be said that the very notion of such a clause is inconsistent with the underlying policy of the Act.'*

## Our thinking

The case highlights that rights of a landlord to pursue future redevelopment plans may, if circumstances allow, outweigh a tenant's right to security of tenure. When considering a tenant's right to renew under the Act, a balancing exercise is to be performed by the court in weighing up the landlord's ability to redevelop and the tenant's need to continue its business. Allowing a redevelopment break clause under which notice can be served as soon as the renewal term starts is not in itself inconsistent with the purpose of the Act in giving a tenant security of tenure. In circumstances such as in this case it may be the appropriate balance between the landlord's and tenant's interests.

In order to break the renewal lease, the landlord will of course still have to make out its redevelopment ground, and defeat any challenge from the tenant, so it could have to go through the whole process again. In that regard, the initial postroom error could still prove costly for the landlord and should be taken as a reminder for landlords and tenants alike to have proper procedures in place in relation to receipt and inspection of post.

## Our help

We can provide landlords and tenants alike with strategic advice in relation to lease renewals under the Act, whether you are a landlord wanting to redevelop, or a tenant resisting an unwanted landlord's option to break.



The Law Commission's ongoing review of the Landlord and Tenant Act 1954 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.

For more guidance [contact our expert real estate team](#).



[Anna Toynton](#)

Senior Associate



[Luke Barnes](#)

Associate