

The return of the opposed lease renewal?

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Some very brief context... (1)

- The Act - what it does and how
- The last few years
- More recently

Some very brief context... (2)

- The grounds of opposition
 - (a) Repair and maintenance
 - (b) Persistent delay in paying rent
 - (c) Other breach or other reason
 - (d) Alternative accommodation
 - (e) Sub-letting of part/letting of whole
 - (f) Redevelopment
 - (g) Own occupation

Batting order

- Ground (f) (redevelopment) - Wayne
- Some other grounds - Jason

Redevelopment – Ground (f)

- Qualifying works:
 - Demolition
 - Reconstruction
 - Construction
- Does not include:
 - Repair
 - Things tenant entitled to remove
 - e.g. Tenant's fixtures
 - Work outside “holding”
 - e.g. where part sub-let

Formulation of the scheme (1)

- Timing
 - Affects tactics re service
 - Affects tactics re issue of proceedings
 - Triggers compensation payment even if change of mind
- Part of greater scheme---be sure to concentrate on holding
- Absence of or difficulty in obtaining planning—demolition in any event
- Concerned only with L's intended work
- Timescale and program for development

Formulation of the scheme (2)

Boiler plate for appointments/initiatives

- Planning:
 1. Identify relevant current policies
 2. Planning brief summarising main planning factors governing site
 3. Heritage issues (conservation area, listed buildings)
 4. Design brief to assist architect and other team members (identifies background factors, bulk, massing and uses)
 5. Architectural practices with good track record in relevant authority

- Consideration of timing and programme (fall back is redevelopment break clause)

Formulation of the scheme (3)

Boiler plate for appointments/initiatives

- Title issues
 - Summary of title
 - Leases (break clauses and lease expiry)
 - Other rights or licences (eg electronic communications)
 - Rights of light constraints
 - Adjoining titles
 - Identify broad brush non injutable envelope
 - Consider potential compensation pot

Formulation of the scheme (4)

Boiler plate for appointments/initiatives

- Survey
 - Boundary
 - External elevations
 - Accurate floor plans for all buildings on site
 - Service routes (including utilities)
 - Photographic

Tenant's resistance (1)

- Procedural
 - Delay in service of proceedings which have been issued
 - Limited extensions for compliance with directions
 - Seeking specific disclosure
 - Resisting disclosing its hand on s.31A until late in the day
 - Overestimating time estimate
 - Landlord seeks summary judgment and loses

Tenant's resistance (2)

- Arguing work is insufficient
 - Rarely succeeds but has known to
 - Landlord's motive irrelevant
 - Demolition is ordinarily conclusive

- Proposing terms for entry to enable the landlord to do the work: S.31A(1)(a)

- Limiting new tenancy to smaller part of existing holding (referred to in 1954 Act as economically separate part):s.31A(1)(b) and (2)

Tenant's resistance (3)

Granting terms of access

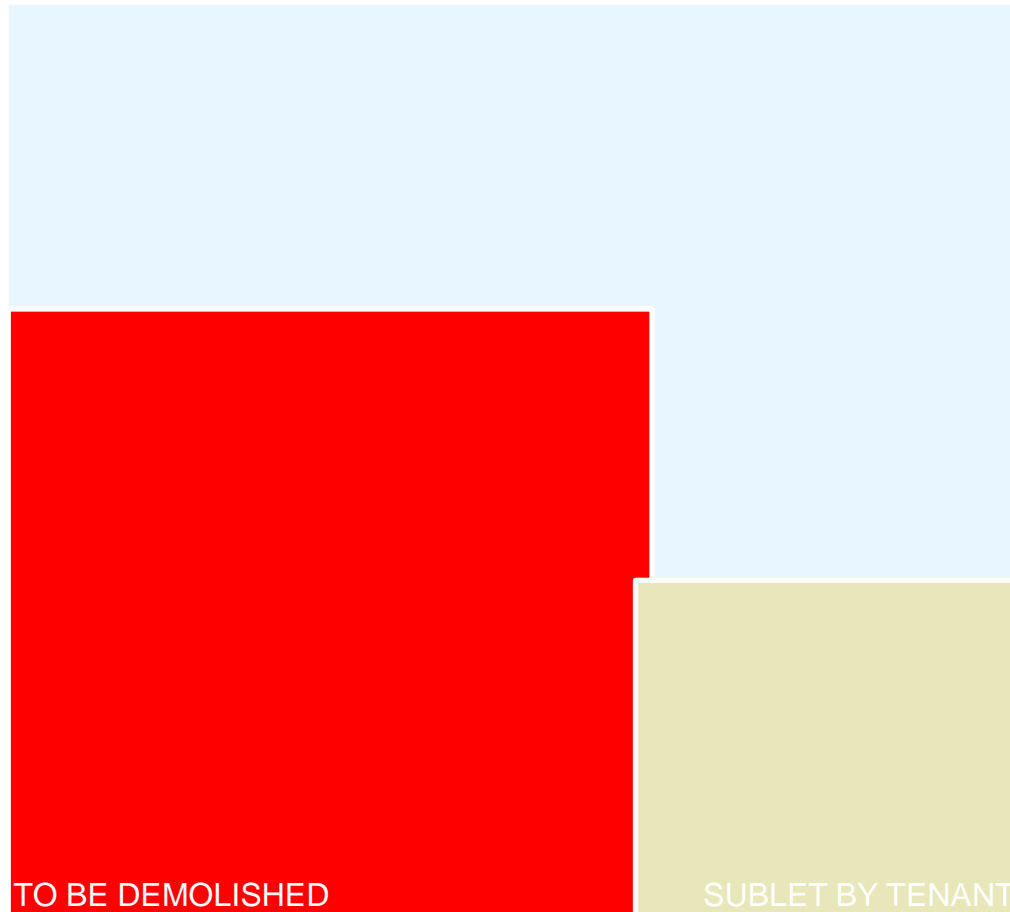
- Only in respect of holding
 - Cannot request rights eg of way over parts not previously demised
- Terms of access must allow landlord reasonably to carry out work
 - “Reasonably” requires court to consider impact on L’s programme and costs implications
- Terms of access must not result in interference with business for substantial time AND extent
 - 8 weeks possession is on authority too much
 - Less than 4 weeks may be ok for T

Tenant's resistance (4)

T seeks smaller part (s.31A(1)(b) and (2))

- Complicated provisions
- No clear judicial guidance
- Normally only available if large demise and L's works are limited to part rather than affecting entirely

For example...



For example...again

- BASEMENT FLOOR

- AREA OF EXCAVATION

Possession

- Success under ground (f) is not an order for possession
- Old tenancy continues for 3 months and 21 days
- If T does not vacate L must issue possession claim
- L needs to factor this in to programme

Landlord's fallback position - redevelopment break clause (1)

- Test is one of possibility of redevelopment not probability

- Issues are:
 - Should it go in
 - How long before it can be operated---how imminent is development

Landlord's fallback position - redevelopment break clause (2)

- Issues cont'd:
 - Length of notice to be given by Landlord
 - Should there be mutual right
 - Terms for operation
 - T may seek to replicate 1954 Act. This should be avoided by Landlord
 - T may seek additional conditions. Do not know of case but no reason why T should not argue for them eg planning should be obtained.

Other grounds of interest

- Why?
 - Want some of the holding back, but not all
 - No longer put up with poor tenant
 - Want to avoid compensation if can

Alternative accommodation (1)

- Key points
 - L offered...
 - By when
 - Changes to the offer?
 - Offer what...
 - Alternative accommodation
 - Capable of acceptance by T
 - Watch out for “STC”
 - Something suitable
 - Cater for goodwill?

Alternative accommodation (2)

- Key points (cont'd)
 - Reasonable
 - Compare with current terms
 - Fitting out costs?
 - “Usual” concessions?
 - When available
 - Goodwill
 - Suitable (again)
 - Nature and class of T’s business
 - Situation and extent of the holding and the facilities afforded by the holding

Alternative accommodation (3)

- Key problems
 - What if L succeeds?
 - T could just go – fit with L’s objectives?
 - L may not be bound to see it through
 - Query misrep (inc under s.37A)
 - Reduced control to L over outcome of case
 - Exploitable by T, either to defeat ground, or to get better terms

Breach or other reason

- Grounds (a), (b) and (c)

- Some quick points
 - Has L tolerated the breach?
 - Easier for T to defeat?

- Not just about breach of lease
 - A recent case
 - *Horne & Meredith Properties v Cox & Billingsley*
(19.03.14)

QUESTIONS?

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Annex – the grounds of opposition in full

- Ground (a)

“where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations”

Annex – the grounds of opposition in full

- Ground (b)

“that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due”

- Ground (c)

“that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding”

Annex – the grounds of opposition in full

- Ground (d)

“that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding”

Annex – the grounds of opposition in full

- Ground (e)

“where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy”

Annex – the grounds of opposition in full

- Ground (f)

“that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding”

- Ground (g)

“subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence”