

A practical guide to ground (f)

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Careful consideration is needed when redevelopment is on the cards and tenants request a lease renewal

The Landlord and Tenant Act 1954 offers protection to tenants occupying premises for the purpose of their business and restricts the circumstances in which a landlord can take back possession of its property. Unless a commercial lease is 'contracted out' of the 1954 Act, the tenant will have a statutory right to renew their tenancy, subject to meeting certain criteria set out in the legislation. In circumstances where the landlord does not wish to renew the tenancy, it can oppose the renewal on certain limited grounds 'grounds (a) to (g)' set out in the 1954 Act. Ground (f) may help a landlord planning to redevelop, and is often referred to as the 'redevelopment ground', although the wording of ground (f) does not actually mention 'redevelopment'.

The landlord must serve an opposed section 25 notice and specify the grounds on which it relies. The timing of this notice needs to be carefully considered: the landlord must give between 6 and 12 months' notice to the tenant, expiring no earlier than the contractual expiry date. As there is always a risk that the tenant will vacate on the date in the notice, the landlord will need to balance obtaining vacant possession with protecting its income stream, particularly where there are multiple tenants. If the tenant serves a section 26 notice requesting a new lease, the landlord can serve a counternotice specifying the grounds.

If the tenant does not want to vacate, it must issue proceedings for a new lease before the termination date stipulated in the notice. Failure to do so will result in the tenant losing its protection and the right to a new lease under the 1954 Act. It is also open to the landlord to issue termination proceedings, which it can do as soon as the section 25 notice has been served. Section 30(1)(f) of the 1954 Act states that a landlord can oppose a lease renewal if 'on 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 it] could not reasonably do so without obtaining possession of the holding'.

The landlord must consider all the elements of ground (f). First, it must ensure the works come within the ground (f) requirements, so are one of the following:

1. demolition;
2. substantial work of construction; or
3. reconstruction.

There is obviously a range of works going from refurbishment to demolition, and the nearer the work is to the latter, the more likely a landlord is to meet the works element of ground (f).

'Substantial work of construction' can be difficult to identify, however. Each case depends on its own facts, but the courts have held that works such as moving a staircase, removing structural walls and interference with floor slabs will be sufficient, whereas putting in wooden

partitions, new toilets or the installation of pipework will not.

A landlord should consider the requirements of ground (f) when putting together its proposals, and it is advisable to seek legal advice at an early stage to ensure the best chance of satisfying these. However, there is always litigation risk, as the two Global Grange Limited cases of 2003 made clear. These involved two adjoining hotels and essentially the same or very similar scheme of works, but are difficult to reconcile. The landlord was successful in one case and not the other, proving that, on a different day with a different judge, a different outcome is not impossible.

The works must be being carried out to the individual holding, which is the part the tenant occupies for the purposes of its business. This is particularly relevant for a large site with multiple holdings, as each one needs to be considered individually.

Getting hold of the holding

The landlord must also show that it could not reasonably carry out the proposed works without obtaining possession of the holding. The lease provisions need to be checked as to whether the work could reasonably be carried out with the tenant in situ. A clause that allows the landlord to enter the property to make improvements to it can be sufficient to enable significant works. A tenant may not be able to rely on such a reservation in the lease if it entitles the landlord to enter premises to carry out works but requires it to make good all damage. The proposed works may mean it is impossible to make good: for example, if walls are to be knocked down and not replaced or a unit is to be split into two.

The court will also consider the disruption caused to the tenant's business during the works. Each case is considered on its facts, but as a rule of thumb, works that will exclude the tenant from the premises for more than 12 weeks will disrupt their business sufficiently to require legal possession for the work. If the works will result in the premises becoming entirely different to those currently occupied by the tenant and not fit for their business, then the landlord will also require legal possession.

Unless a commercial lease is 'contracted out' of the 1954 Act, the tenant will have a statutory right to renew their tenancy

The relevant date for the landlord to prove its intention to carry out the works is the date of the hearing. It must show not only that it has a firm and settled intention to carry out the works – the subjective part of the test – but also that it has a realistic prospect of implementing that intention – the objective part.

If the landlord is an individual, the first part can be done by way of witness statement; if a company, the necessary resolution will need to have been passed.

Whether the landlord can demonstrate that it has a realistic prospect of implementing the intention will depend on the steps it has taken in respect of the proposed development. The following should all be considered.

- **Plans:** without plans it may be said that the landlord is still considering the options, since these are necessary to obtain accurate costings.
- **Planning permission:** this is not a prerequisite, but it saves significantly on legal costs if planning permission has already been obtained by the time of the trial;

otherwise, expert evidence on the likelihood of obtaining planning permission will be required.

- **Third-party consents:** consents may be required to enable the works to be carried out, such as those relating to rights of light or superior landlord consent.
- **Finance:** the landlord needs to show that it has sufficient funds to carry out the works and also what they will cost.
- **Vacant possession:** if the landlord requires possession of other properties to carry out a development, then it will need to show that it will be able to obtain vacant possession.

The further along the landlord is with all of the above and other elements such as building contracts and procurement, the more likely it is that it will be able to prove its intention to carry out the works and therefore be successful in proving ground (f).

Actions a landlord can take to have the best chances of satisfying the ground (f) requirements include:

- drawing up initial plans and discussing the proposed works to the holding with its solicitor;
- serving all of the section 25 notices; and
- getting as many practical elements necessary for carrying out those works in place by the time of the trial.

In general, it is also strategically sensible for the landlord to disclose as much information as early as possible to prove its intention as an incentive for the tenant to settle as early as possible and save costs.

If the landlord does all the above, subject to litigation risk, it should usually satisfy ground (f) if it has a genuine and settled intention to carry out those works; if the intention is genuine, motive is irrelevant.

While this is the current position, we will have to wait and see whether the Supreme Court's decision in *S Franes Limited v Cavendish Hotel (London) Ltd* [2017] UKSC 2017/0151 changes this once it has considered the matter.

Where a tenant does not want to leave the property or wishes to remain as long as possible they can cause considerable delay, and in some cases frustrate the proposed development altogether. For example, at the planning stage, the tenant can object to the proposed works and has the option of drumming up support in this regard. It may be that the objection succeeds in ensuring that the landlord does not obtain planning permission, or at least manages to delay the matter so that it has to amend the plans and resubmit the application.

The tenant may also argue that they will permit the landlord to carry out the works while they remain in situ, although whether this is possible will greatly depend on the extent of the works and also the provisions in the lease.

The tenant can put the landlord to proof and take the matter all the way to trial, which is costly and time-consuming. The onus is on the landlord to prove its intention, and therefore the major costs will fall to the landlord in proving its case under ground (f).

The *Cavendish Hotel* case highlighted that motive is irrelevant provided that the landlord has a genuine and settled intention to proceed with the proposed works. It does not matter

that it may have contrived those works just to get rid of its tenant, or that the works made little commercial or practical sense: as long as it can demonstrate that it intends to carry out those works regardless. This case is being appealed and is still due to be heard at the time of writing.

Until the Supreme Court rules on this point, it makes sense for landlords wanting to redevelop their property to design their proposed scheme of works to ensure, to the best of their ability, that they meet the requirements of ground (f).

Nikki Yates is an associate and Kellie Jones a senior associate in the property litigation team at [Boodle Hatfield](#)

Further information

- At the time of writing, the Supreme Court was still deliberating the S Franses Limited v Cavendish Hotel (London) Ltd decision. The Court has since [handed down a judgment](#), ruling in favour of the tenant.
- Related competencies include: [Landlord and tenant](#)
- This feature was taken from the [RICS Property Journal](#) (January/February 2019)
- Related categories include: [Lease renewal](#)