

Can a business tenant shrink the area it occupies to defeat a landlord's redevelopment challenge to its lease renewal?



In a recent High Court case Sainsbury's defeated their landlord's ground (f) opposition to a renewal lease by vacating the part of the premises that was going to be affected by the proposed redevelopment works.

The background

The case concerned a Sainsbury's Local store on Kentish Town Road in London. The landlord, Medley Assets, opposed the grant of a renewal lease to Sainsbury's on ground (f) of section 30(1) of the Landlord and Tenant Act 1954.

Ground (f) requires that the landlord intends to demolish or reconstruct the holding or a substantial part of it or to carry out substantial work of construction on the holding which cannot reasonably be done without obtaining possession of the holding.

Although the lease premises included the upper floors and basement in the building, Sainsbury's had already consolidated its occupation into only the ground floor.

Medley's original plan was to redevelop the upper floors into flats. However they presented a revised plan to the court involving the lowering of the basement floor and widening of the staircase from the ground floor to the upper floors, with a view to converting the upper floors into office space at a later date.



The proposed works were only going to affect a relatively small part of the ground floor which was being used for storing stock and was not part of the shop. In the week before the initial (or preliminary) court hearing Sainsbury's vacated that area of the ground floor.

What is the 'holding'?

At the initial hearing, held to decide whether the landlord's opposition to renewal would succeed, the court was required to make a ruling on the meaning of the 'holding' for the purpose of ground (f).

The 1954 Act defines the holding as the property comprised in the tenancy, excluding any part of the property that the tenant is not occupying for the purpose of its business. Under the Act a tenant only has an automatic right to a renewal lease of the holding. If it has ceased to occupy parts of the let premises the landlord can decline to include those parts in the renewal lease.

However the Act allows a landlord to alternatively require the tenant to take a renewal of the whole of the premises currently let, thereby avoiding being left with a difficult to re-let portion of a buildings. In this case Medley had already elected to require Sainsbury's to take a renewal lease of all of the floors.

Medley argued that, in a situation in which the landlord requires a renewal of the whole of the premises, section 32(2) of the Act provides that the holding is deemed to be the whole of the property in the current tenancy, and not just the holding if smaller.

Sainsbury's counter-argued that the deeming provision in section 32(2) only applies to the subsequent sections of the Act, relating to the terms of the renewal lease, and not to the preceding sections of the Act such as a section 30 opposition to renewal.

The decision

The Judge agreed with Sainsbury's interpretation of the Act. As a result Medley's works were not going to be done to the holding, as defined as at the date of the hearing, and they could not make out their ground (f) opposition to renewal.

As it happens, the Judge found that Medley's opposition to renewal would have failed in any event for other reasons, including the lack of a genuine settled intention on the landlord's part to carry out the proposed works and the nature and extent of the works not being sufficiently significant to constitute ground (f) works.

Cripps' comment

This is the latest of a number of decisions on opposed lease renewals that have swung in the tenant's favour, leaving landlords who wish to oppose renewal with more thinking and planning to do than they might have done five or more years ago.

The ruling on the extent of 'the holding' leaves it open to a tenant to analyse the landlord's proposed works and then, if possible, reduce the area of the premises that it is occupying in order to avoid any substantial impact of the works on the holding and thereby defeat the landlord's ground of opposition to renewal at the initial court hearing. It seems that it could then nonetheless re-occupy that area in order to have it included in the holding for the purpose of the renewal lease that will be granted at a final hearing.

This tactic will not be feasible in every case, but landlords will need to be alive to it as a possibility and will want to make their redevelopment works as comprehensive and as premises-wide as possible, whilst still being able to demonstrate a genuine settled intention to do the works.



At Cripps we are always ready to advise either a landlord or a tenant on the best way of approaching a challenge to a lease renewal. We will also be keeping our eye on further case law developments and any further news about the possible reform of the 1954 Act.



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