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Case No: CH-2025-000197

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS LIST (ChD)

Royal Courts of Justice
The Rolls Building
Fetter Lane
LONDON
EC4A 1NL

Friday, 24 April 2026

Before :

MR JUSTICE FANCOURT

- -

BETWEEN:

PRIDEWELL PROPERTIES (LONDON) LIMITED

Appellant

- and –

SPIRIT PUB COMPANY (MANAGED) LIMITED

Respondent

- -
- -

Mr Mark Warwick KC and Ms Lina Mattsson (instructed by **Harold Benjamin Solicitors**) for the **Appellant**
Mr Nathaniel Duckworth KC (instructed by **Roythornes LLP**) for the **Respondent**

Hearing dates: 20, 23 March 2026

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APPROVED JUDGMENT

(draft provided on 20 April 2026)

This judgment was handed down via remotely at 10.00 am on 24 April 2026 by circulation to the parties or their representatives and by release to the National Archives.

Mr Justice Fancourt:

1. This is an appeal from a decision of His Honour Judge Hellman, sitting in the Mayor's and City of London Court, who held that the appellant, Pridewell Properties (London) Limited ("the Landlord") had failed to establish its ground of opposition to the grant to the respondent, Spirit Pub Company (Managed) Limited ("the Tenant"), of a new business tenancy pursuant to Part II of the Landlord and Tenant Act 1954 ("the 1954 Act").

2. The effect of that decision is that the Tenant is entitled to a new tenancy of the property in question, but that the length and terms of the new tenancy remain to be determined by the court, if not agreed.

3. The property in question is a public house known as The Railway Bell, at 87 George Lane, South Woodford, London E18 1JJ ("the Premises"), comprising a pub on the ground floor, function/storage space and staff rooms above, and residential accommodation for the licensee or their staff on the second floor, with a large beer garden outside.

4. The Tenant has been a tenant of the Premises since October 2007, and the Landlord was registered as the proprietor of the freehold in November 2014. The Judgment does not say when the Tenant's lease was due to expire, but it records that a notice pursuant to s.24 of the 1954 Act was served by the Tenant on 24 July 2023, so it must have been before 24 July 2024. The current tenancy continues, pursuant to section 64 of the 1954 Act, until after the final resolution of these proceedings.

5. The Landlord is a single purpose vehicle ("SPV") formed for the purpose of exploiting the development potential of the Premises. The Landlord intends to build three new mews houses within the beer garden area, and reconstruct and extend the existing building to provide a pub on the ground floor (with a smaller garden terrace to the rear) and six self-contained flats on the upper floors, with a slightly smaller third floor being added for that purpose ("the Scheme"). The result would be that the space available for the pub would be the ground floor (and cellar) and a smaller terrace only, rather than the whole of the existing building and a large beer garden.

6. The question for the Judge at trial was whether the Landlord had established a statutory ground of opposition to the grant of a new lease – paragraph (f) of s.30(1) of the 1954 Act ("ground (f)"), which states:

   > "… 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."

7. The issue at the trial was whether, in accordance with established case law, the Landlord had satisfied the court that it had a "reasonable prospect" of obtaining planning permission and funding for the Scheme, such that it would be able to carry out the works "on the termination of the current tenancy". This test does not require the landlord to demonstrate that on the balance of probabilities it will be able to do so, only that there is

a real chance - something more than a speculative or fanciful possibility - and that it will be able to do so when the tenancy terminates, not at a later time.

8. An unusual feature of this case is that the Landlord had not obtained planning permission for the Scheme before the trial. Indeed, it had not even applied for permission. The absence of planning permission is not necessarily an impediment to relying on the ground of opposition, but it does mean that the court has to assess not only whether there is a reasonable prospect of obtaining the permission later, by considering the relevant planning policies against the background of the development plan, the NPPF and the Planning Acts, but also whether permission can be obtained in time for the works to start "on the termination of the current tenancy".

9. Another feature in this case is that there is an unidentified restrictive covenant dating from 1870 registered against the Landlord's title to the Premises. Despite reasonable endeavours, it has not been possible to establish the content of the registered covenant, or who has the benefit of it. There is therefore a risk, perhaps a small one, that someone may emerge and seek to enforce the covenant and prevent the Scheme from being built.

10. In the event, the particular issue that decided the trial in favour of the Tenant was the failure of the Landlord to show by evidence that there was a real chance of its directors providing guarantees of sufficient value to support the SPV's borrowing to fund the Scheme. The Judge found that this was not proved. Apart from that issue, the Judge decided that the Landlord had proved that it had a real chance of obtaining planning permission and skirting any potential difficulty with the unidentified restrictive covenant (or, if necessary, obtaining a modification of it, pursuant to statute).

11. The Judge held that, although it would take between 10 and 14 months after possession of the Premises was obtained to obtain planning permission and be ready to start the building works, that was in all the circumstances a reasonable time and so was "on the termination of the current tenancy", as ground (f) requires.

12. The Landlord appeals on the one issue that was determined against it, with permission granted by Leech J.

13. The grounds of appeal are narrow and read as follows:

> "1. On the basis of his findings at [116] the Judge should have concluded that the Defendant had shown that it had a real prospect of obtaining funding for the Development and thus that the Defendant has made out the ground of opposition in section 30(1)(f) of the [1954 Act] and the Claimant is not entitled to be granted a new tenancy of [the Premises] pursuant to section 24(1) of the said Act.
>
> 2. It was not necessary for the Judge to opine upon the personal finances of directors or shareholders, and [117] onwards created a hurdle that the Defendant did not need to surmount in order to establish ground (f)."

14. This seems to me to be an argument that the Judge erred in reaching an evaluative conclusion on the facts of this case. I note that Leech J, in granting permission to appeal,

said that it might be a challenge to a finding of fact that the directors would be required to provide personal guarantees.

15. In response, the Tenant has filed a Respondent's Notice contending that the decision of the Judge should also be upheld, contrary to his conclusions, on four different grounds. In summary, these are that:

    i) The Landlord had not shown that it had a real prospect of overcoming the problem of the restrictive covenant, whether by statutory modification or otherwise;

    ii) The Landlord had not shown that it had a real prospect of obtaining funding for the Scheme for the additional reason that the existence of the restrictive covenant would prevent it from satisfying the lender's conditions;

    iii) The Landlord did not have a real prospect of obtaining planning permission; and

    iv) A delay of 10-14 months from obtaining possession was not a reasonable time within which to start the works.

16. The Landlord accepts that these grounds are validly raised by a Respondent's Notice.

The grounds of appeal

17. There is no ground of appeal that the Judge was wrong to conclude that the lender would require guarantees of substantial worth from each director. Rather, the grounds of appeal contend that the issue of guarantees was irrelevant and an unnecessary one for the Judge to address. That is on the basis that he had already decided that a lender would be satisfied with security offered by the Premises, in view of the value of the completed Scheme. Mr Warwick KC confirmed this in his argument, saying that whether the Judge made an adverse finding about the offer of guarantees or not was not to the point: the Judge did not need to consider how the funding would be raised as long as there was a reasonable prospect of obtaining it.

18. Mr Warwick KC relied on the proposition (which was not disputed) that in order to establish an intention within ground (f) the landlord has to satisfy the Court that a reasonable landlord would believe that he had a reasonable prospect of overcoming any existing hurdle, such as obtaining finance (Reynolds & Clark, Renewal of Business Tenancies (6th ed), para 7-153). He cited Griffiths LJ in DAF Motoring Centre (Gosport) Ltd v Hutfield & Wheeler Ltd [1982] 2 EGLR 59 at 60H:

    > "A reasonable prospect of raising the finance to enable the landlords to redevelop these premises, as they undoubtedly desire to do."

    It was not necessary to prove that funding would probably be obtained.

19. Mr Warwick KC submitted that para 116 of the Judgment is to be read as deciding that there is a "real" or "reasonable" prospect (which in this context mean the same thing) that a lender would only require a mortgage security to support the necessary borrowing. He submitted that it was only the absence of evidence of the means of the directors (which the Judge did not need to consider) that tipped the balance against his client. Mr Warwick

KC submitted that the flaw in the judgment is that the Judge went on to consider something that he did not need to consider, as the existence of a real prospect of obtaining finance was previously decided in para 116 and that was sufficient.

20. I am unable to accept that argument.

21. The judgment (in particular the section dealing with funding) has to be read as a whole, not chopped off at the end of para 116. As Mr Duckworth KC for the Tenant submitted, there were different components to the question of funding – the value of the security at the outset, the amount of the loan required (including rolled up interest), the loan to value ratio ("LTV"), the satisfaction of other lender conditions, the gross development value ("GDV") and whether guarantees could be provided.

22. In para 115, the Judge is mainly dealing with the GDV, having dealt with the amount of the loan and the LTV in para 113 and with guarantees in para 114.

23. The Judgment then continued as follows:

> "116. It is not fanciful to suppose that the Bank or some other lender would in principle be prepared to lend the Defendant sufficient money to carry out the Development. This would be on the basis that lender was satisfied that the Premises provided adequate security for the loan and that the Defendant took out a restrictive covenant insurance policy. A lender would not necessarily be satisfied with that level of security, but I am satisfied that there is a real prospect that it would be.
>
> 117. However, the Bank have indicated in the term sheets that they would require the directors/shareholders to provide personal guarantees. That would be standard practice and I have no doubt that any other lender would require likewise. However the Defendant adduced no evidence about the personal finances of any of the directors/shareholders. Unlike an acoustic report or restrictive covenant, this is evidence which the directors/shareholders should have been in a position to adduce. I would have expected them to do so, particularly as the Defendant has had the benefit of legal advice in these proceedings. The £2.2 million identified in the term sheets as the estimated amount of the loan is a substantial sum. I cannot simply assume that the directors/shareholders would have sufficient assets to support guarantees for that or some similar amount. The absence of evidence that they do so is a cause of real concern."

24. Para 116 is dealing with the amount of the loan, the adequacy of the mortgage security and the insurance that a lender would be likely to require. What the Judge is stating, in substance, is not that there is a real prospect that the lender would not require guarantees, but that there is a real prospect that a lender would not refuse to lend the sum required on grounds of either the value of the Premises, compared with the amount of loan required, or the existence of the restrictive covenant. A conclusion that guarantees were irrelevant would have been contrary to the evidence of the indicative term sheets, which showed that the proposed lender required guarantees, and the Judge's conclusion that any lender would so require if lending to an SPV. It would also be inconsistent with the finding about the same lender requiring guarantees for other loans to the directors' other companies.

25. Para 117 is therefore not superfluous in the way that the Landlord argued. It is not a finding on the balance of probabilities, whereas para 116 was addressing only the real prospect test: para 119 makes that clear, because the Judge twice restates the "real prospect" test. Para 117 is part of an overall assessment of whether there was proved to be a real prospect of obtaining funding. The overall conclusion was that there was not, because no evidence was given that guarantees from the directors would be of substantial value and would be considered satisfactory.

26. There is no ground of appeal that the Judge was wrong to conclude that guarantees of substantial value were required, or that he should have held that there was a real prospect that the directors' guarantees would be considered to have substantial value. Although in the course of argument both sides touched on the question of whether a guarantee would be acceptable even if it was of no substantial value (because of lack of personal assets, or other guarantees already given), the grounds of appeal are that the issue of guarantees was superfluous.

27. For the reasons that I have given, I must therefore dismiss the appeal.

The Respondent's Notice grounds

28. In those circumstances, decision on the grounds in the Respondent's Notice is unnecessary for the disposal of the appeal. However, as the points were well argued, in detail, I will summarise briefly the reasons why I would have upheld the Judge's decision in any event for a different reason, on one of the grounds. This ground (ground (iv) in para 15 above) raises an important general question on the operation of the 1954 Act, where there appears to have been a misunderstanding of the relevant test.

29. The first two grounds can be swiftly dealt with, because I do not consider that they are sustainable; the last two require more careful analysis.

30. <u>Restrictive covenant:</u> The first ground concerns the prospect of overcoming the threat to redevelopment posed by the restrictive covenant. The Appellant had to be able to prove that it had a real prospect of being able to implement its intention. The Judge considered that it was "speculative" that anyone would seek to enforce the covenant and that, in light of the local plan and the NPPF, it was not fanciful to suppose that the Upper Tribunal would find established one of the grounds for modification of a restrictive covenant, based on the reasonable proposed use of the Premises.

31. These were broad brush findings, but ones that in my judgment the Judge was entitled on the evidence to reach. The circumstances of the covenant were unusual, in that it dated from 1870 and its terms were unknown. Its existence was known about only because title deeds available upon first registration of the Premises in 1968 recorded the existence but not the terms of an unidentified restrictive covenant binding some part (or the whole) of the land. The evidence established that the covenant was not registered against other neighbouring titles. Who might have the benefit of it was unknown.

32. In these circumstances, there was self-evidently a real prospect that no one would know of the covenant or seek to enforce it (which is what the Judge must have meant by "speculative", in context). The benefit of the covenant would not normally have been noted on registered titles, and the properties in question are inherently likely to have passed through many hands since first registration. Even if anyone did know that they

had the benefit, there was a reasonable chance that a restriction of that age could be modified under s.84(1)(aa) and (1A) of the Law of Property Act 1925, on the basis that, in 2025, it no longer secured a substantial benefit to the holder of the rights. Many applications in urban areas do succeed on this basis, particularly where the modification is sought in order to provide lower value residential accommodation.

33. Funding conditions: The second ground was that the Appellant had not proved to the requisite standard that its bank, or another lender, would have accepted a restrictive covenant insurance policy to discharge its lending conditions. The indicative term sheets required, as pre-conditions to lending, a report on title from a bank appointed solicitor confirming that, among other things, "any Covenants are not being contravened". There is no clarity that the unidentified restrictive covenants were in consideration here, as distinct from any covenants at all that might affect the development.

34. The Respondent argued that there was no evidence about obtaining a restrictive covenant insurance policy, or as to the willingness of insurers to provide one or the bank or other lenders to accept it, or about the extent of the risk. The Judgment records a submission by Counsel for the Landlord at trial that "these situations are usually dealt with by way of a restrictive covenant insurance policy" and a conclusion that there was a real prospect that the bank would be satisfied by the security and such a policy.

35. Again, this was a broad brush finding, but it is really a matter of common sense, given that the Landlord only had to prove a real prospect of being able to obtain the necessary funding, not that on a balance of probabilities it would succeed in doing so. An experienced judge sitting in the County Court at Central London and in the Mayor's and City Court, as the Judge does, would have been aware of this issue from experience. This was a classic case for an indemnity policy, given the relatively low chance that anyone would enforce the unknown covenant. Whether the premium would have been higher or lower on account of the unknown content of the covenant is a different question and does not preclude there being a real prospect of a lender being satisfied by that conventional protection. The Judge was in my view entitled to reach that common sense conclusion even in the absence of evidence of a quotation for suitable cover.

36. Planning permission: The third ground was that the Judge should have concluded that there was no reasonable prospect of obtaining planning permission for the proposed redevelopment. This was on the basis that it was common ground between the expert witnesses that the local planning authority ("LPA") would require the proposed development to satisfy policies D13 and HC7 of the London Plan (2021), which formed part of the development plan for the area. Policy D13 was concerned with the need to protect pre-existing noisy or nuisance-generating activities by including mitigation measure in new development. This was particularly relevant to the new homes to be built in the beer garden and on top of the public house. Policy HC7 required LPAs to:

> "Protect public houses where they have a heritage, economic, social or cultural value to local communities, or where they contribute to wider policy objectives for town centres, nighttime economy areas, cultural quarters and creative enterprise zones...

Paragraph C of this policy states that:

> "Development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house use should be resisted."

37. The guidance in the London Plan relating to policy HC7 includes the following:

> "7.7.8 Many pubs built on more than one floor include ancillary uses such as function rooms and staff accommodation. Potential profit from development makes the conversion of upper pub floors to residential use extremely attractive to owners. Beer gardens and other outside space are also at risk of loss to residential development. The change to residential use of these areas can limit the operational flexibility of the pub, make it less attractive to customers, and prevent ancillary spaces being used by the local community. It can also threaten the viability of a pub through increased complaints about noise and other issues from new residents. Boroughs should resist proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of a public house."

38. The issue in this case arose from the facts as found that two-thirds of the beer garden, which added substantial value to the public house, would be lost, as would the space on the first and second floors used to house the manager and for storage for the business carried on below. The Judge accepted that there was a real risk that loss of the beer garden would have a significant impact on the profitability of the public house, and that the Tenant (or another operator) would have to provide the facilities currently provided by the upper floors of the Premises off site, at substantial additional cost (e.g. £2,000 per month for a flat for the manager), or otherwise use valuable space on the ground floor, both of which would further erode profits.

39. The Judge accepted that acoustic design measures could mitigate any impact that the new development would have on the operation of the public house, and that accordingly there was a real prospect of overcoming the obstacle of policy D13. He was more concerned by the impact of the development on the commercial viability of the public house, as regards impact on turnover and profits of the loss of most of the beer garden and the additional costs (or further reduction in commercial space) resulting from loss of the upper floors of the Premises. He did not explain on what basis the LPA might be satisfied that policy HC7 was satisfied, but concluded as follows:

> "93. Whereas policies D13 and H7 weight against the grant of planning permission, the Redbridge Local Plan and the National Planning Policy Framework would tend to support it. If the local authority is not on track to meet its housing delivery target, that would tend to favour granting an application to build more housing.
>
> 94. Evaluating all the circumstances, I find that a planning application would have a real prospect of success, albeit somewhat less than 50 per cent."

40. The reference here to the Redbridge Local Plan and the NPPF were to parts of those documents that the Judge had previously set out in his Judgment. These related to an ambitious target for new dwellings to be built in Redbridge during the plan period, in

particular in the local area of the Premises, and to the ability of LPAs to depart from the development plan where there were material considerations, such as using brownfield land for homes and other identified needs (paras 83-85).

41. Against that background, the Tenant contends that the Judge fell into error by conducting a balancing exercise of two identified development plan policies and the material consideration of a need for new homes, embodied in a different local plan policy, resulting in a conclusion on balance that, notwithstanding the difficulty in satisfying policy HC7, there was a real prospect of planning permission being granted. The Tenant submitted that if there was a real prospect of satisfying D13 and HC7, the residential target in the local plan would have been irrelevant to the assessment of real prospect, because no other obstacle to the grant of permission had been identified or relied upon; but the Judge apparently concluded that there was only a real prospect of success taking into account that countervailing consideration.

42. In this respect, argued the Tenant, the Judge went wrong because it was agreed in evidence that policies D13 and HC7 would need to be satisfied for planning permission to be granted. There was no evidence from the Landlord as to how policy HC7 would be satisfied, given the loss of ancillary space and the limits on the operational flexibility of the public house that would ensue.

43. The Landlord argues that the Judge did not offset a presumption in favour of residential development with policies D13 and HC7, and that he was entitled to find that it was not fanciful (i.e. there was a real prospect) that the Landlord would satisfy D13 and HC7 and obtain planning permission. The Landlord focuses on satisfaction of policy D13 and contends that the Judge rightly concluded that he could take into account evidence that was likely to be before the LPA at the relevant time, including an acoustic report as to how noise mitigation could be included in the development. The finding of loss of profitability did not amount to a finding of loss of viability, and the Judge was entitled to take into account that there could be evidence before the LPA that established continuing viability.

44. The issue for me is whether the Judge misdirected himself, not on the test being one of reasonable prospect but in relation to whether there was a reasonable prospect of satisfying both policies D13 and HC7. It was common ground that both policies needed to be satisfied before planning permission could be granted, and it was common ground that there were no material considerations that would support a grant that was not in accordance with the development plan: see para 78 of the Judgment. So it was not the case that the local shortage of residential accommodation was a material consideration that could outweigh non-compliance with those policies.

45. The key question was therefore whether there was a real prospect of satisfying policy HC7 (given that the Judge found that there was a real prospect that acoustic design could satisfy policy D13). The Judge did not address this in terms. Nor did he reach a conclusion about what evidence of viability might be put before the planning committee. One can infer that he was unimpressed by the documentary hearsay opinion evidence emanating from Edin Basic on which the Landlord sought to rely on this appeal. Instead he held that both policies tended to weigh against the grant of planning permission but only concluded that there was a real prospect of its being granted taking into account the shortage of residential accommodation.

46. I therefore agree with the Tenant that the Judge did not ask himself the question that he needed to ask (on the basis of the agreed evidence that he recorded), namely whether there was a real prospect of the Landlord satisfying policy HC7 as well as D13 on an application for planning permission. It might be inferred that, if a real prospect was only established by taking into account the residential homes benefit, the Judge would have decided the matter in the Tenant's favour had he addressed the particular question. However, had the outcome of the appeal depended on this, I would have preferred to remit the matter to the Judge for a further finding on the point, taking account of all the evidence about amenity, profitability and viability that he heard.

47. Timing of redevelopment: The fourth ground in the Respondent's Notice is whether the Judge was right to conclude that the Landlord had established that, if the redevelopment proceeded, it would be carried out "within a reasonable time" of obtaining possession of the Premises. The Judge considered that a timeline for the start of the works was between 10 and 14 months from the possession date, and that this was a reasonable time.

48. The 1954 Act does not state that demolition, reconstruction or substantial works of construction must be started within a reasonable time, or at any particular time. It states that a landlord may oppose the grant of a new tenancy on the ground that "on the termination of the current tenancy [it] intends to demolish or reconstruct the premises comprised in the holding …" The landlord must therefore intend (and have a real prospect of being able) to carry out the works at that time, not at a later time.

49. The termination of the current tenancy, where an application has been made to the County Court for (or to oppose) a new tenancy, is the expiration of a period of three months beginning with the date on which the application is finally disposed of: s.64(1) of the 1954 Act. That means that where the grant of a new tenancy is successfully opposed on ground (f) and the tenant does not appeal the decision of the County Court, the current tenancy terminates 3 months and 21 days after the date of the Court's judgment (the 21 days being the time during which the tenant could have applied to the High Court for permission to appeal).

50. Judicial exegesis, invoking the policy of the 1954 Act, has created some leeway as regards the literal requirement that the works be intended to be done at the termination of the tenancy. This was most graphically explained by Birkett LJ in Reohorn v Barry Corporation [1956] 1 WLR 845 at 852:

> "… I do not think [the statutory language in ground (f)] means that the landlords must be ready to start work immediately, the next day, or, in the rather vivid expression used in the course of argument, that 'the bulldozers would arrive the next day'. I do not think it means that; but it means, on a reasonable interpretation, that it is the settled intention to end this tenancy for this purpose and that the work will begin, not at any long delayed time, but on the termination of the tenancy".

Parker LJ pointed out that there is no discretion given by ground (f) to find the ground sufficiently proved if the landlord does not intend or is not able to start works at that time.

51. The distinction had previously been captured by Denning LJ in Fisher v Taylor's Furnishing Stores Ltd [1956] 2 QB 78 in the words "it is intended to do the works at once

and not after a time", and was later illustrated by the case of Edwards v Thompson [1990] 60 P&CR 526.

52. In that case, the landlord intended to redevelop the tenant's barn and smithy alongside, and funded by, a larger residential redevelopment to be carried out on adjoining land by an independent developer, but the landlord had not managed to agree a price with such a developer for the sale of her land. Nourse LJ explained that:

> "There was a very real possibility that an acceptable price for the remainder of the land would not be agreed within a period which would allow the conversion of the barn and the smithy to be carried out on the termination of Mr. Edwards' current tenancy. It might well have been necessary to wait a matter of months or even longer. In the circumstances, Mrs Thompson did not show that she had the means and ability, or, if you prefer, a firm and settled intention not likely to be changed, to carry out the conversion of the barn and the smithy at the necessary time."

Inability to carry out the work within a few months of the possession date was considered not to be "on the termination of the current tenancy".

53. The expression "within a reasonable time", as an approximation of the statutory requirement, first appears in a case called Method Development Ltd v Jones [1971] 1 WLR 168. This is a case under section 30(1)(g) of the 1954 Act, where the ground is that the landlord intends itself to occupy the holding "on the termination of the current tenancy" for the purposes of its own business. The landlord in that case intended immediately to possess the whole of the holding and use most of it, but not the whole, for the purpose of their own business. The Court of Appeal held that this fell within the statutory ground. Salmon LJ said at p.172B-C that he had:

> "… little doubt that paragraph (g) must cover a situation such as the present where the landlords intend at the termination of the lease - *which must mean within a reasonable time from the date of its termination* - to enter into occupation of all the holding and use a part of it for the purposes of their business. I consider that the evidence shows that these landlords intended to occupy all the holding in the sense in which the word 'occupy' is used in paragraph (g) although they would be carrying on their business only in part of it." (*emphasis added*)

Fenton Atkinson LJ said at p.173A-B that a landlord could intend to occupy the whole of a holding for the purposes of a business even though it did not intend at that time to make business use of the whole of it.

54. Since there was no dispute in that case that the landlord intended to "occupy" in this sense on the termination of the tenancy, there was no decision to be made about what precisely "on the termination of the current tenancy" meant. It was only full use for business purposes, not occupation, that was to be delayed.

55. In London Hilton Jewellers Ltd v Hilton International Hotels Ltd [1990] 1 EGLR 112 (also a ground (g) case), the Court of Appeal concluded that a delay of "a month or so"

before owner occupation would start was within the statutory tolerance. What was a reasonable time was a question of fact in each case.

56. In S Franses Ltd v Cavendish Hotel (London) Ltd [2017] EWHC 1670 (QB), Jay J had to consider what "within a reasonable time" might comprehend in the context of a ground (f) case where the landlord undertook to do works of reconstruction if the court decided the case in its favour but accepted that it would not do the work if the tenant left voluntarily. The County Court judge had concluded that a real prospect of being able to start the works within 12 months of the possession date amounted to an intention to do the works "within a reasonable time" of the termination of the tenancy. That length of time was required to resolve planning and licensing issues.

57. Jay J allowed the appeal on the basis that the judge had afforded to the landlord an unusually generous period without providing an adequate explanation of why that was a reasonable period of time, and remitted the question to the judge. In reaching that decision, Jay J described the issue in the following way:

> "… it is a more than reasonable inference that the judge considered that the Landlord would need up to 12 months to surmount the practical issues he alluded to. The judge described these issues as 'modest', but he was recognising that they were unlikely to be capable of speedy resolution. I appreciate that the question is very much fact-sensitive, but it involves consideration not just of how long is reasonably required to initiate the works, but also of what is reasonable in all the circumstances of the case in the context of these underleases. In no other case has a court been so generous to a landlord as the judge has been in the present case, and I would apply the principle that the more unusual or heterodox a finding, the greater the duty must be on the court to explain it..."

58. Having referred to this decision, the Judge in the current case directed himself that what is a reasonable time was a matter of impression and was fact sensitive, but would often be no more than a few months. A longer period would require explanation. Having accepted the expert evidence that construction would be unlikely to start for between 10 and 14 months from the possession date, the Judge observed that that was an exceptionally long period to count as a reasonable time. He asked himself why that period was needed, and emphasised that the reason for the delay was that the Landlord could not gain access to carry out an acoustic survey and intrusive investigations that were necessary to support a planning application before it obtained possession from the Tenant. He considered that that reason was relevant to considering whether "a reasonable time" should include time for such steps to be taken, and concluded that the Landlord could not be criticised for not having progressed matters, and that there was a reasonable explanation for each element of the 10-14 months period agreed by the expert witnesses.

59. On that basis, the Judge concluded:

> "In my judgment, on the particular facts of this case, works commencing within that 10-14 month period would count as works undertaken upon the determination of the tenancy".

60. The Tenant submits that the Judge was misled by his reading of Jay J's decision into asking himself the wrong question, namely whether the period required to start the works was a reasonable period (i.e. one that could be justified) in all the circumstances, rather than whether an expected 10-14 months delay in starting work meant that the Landlord did not intend to carry out the works "on the termination of the current tenancy", or within a reasonable time of its termination. It was submitted that the statutory tolerance is limited and is not intended to allow a landlord, after recovering possession, to embark on other steps necessary to be able to proceed with the works. The 1954 Act accommodates such a case in two different ways: the "near-miss" provision in section 31(2), which allows the court to defer the specified termination date by up to a year, and the ability of a landlord to contend for a short term of the new lease, or a break option for redevelopment, including if necessary a new term of the new lease giving the landlord the access that it needs to carry out surveys on the holding before the end of the new lease.

61. The Landlord submits that the Judge correctly directed himself and reached an evaluative conclusion on what, on the undisputed facts, was a reasonable time for preparing to do the work, and that he was right in principle to allow a reasonable period for planning permission to be obtained. A landlord did not have to be "ready and able" to do the work at the date of termination. It is not necessary for a landlord to have its planning permission and any other licences or consents in place by the time of the court hearing. The Judge was therefore entitled to conclude that "at the termination of the current tenancy" in this case, on these facts, encompassed a delay of 10-14 months from the possession date.

62. In my judgment, the Tenant's argument is right in principle, and I consider that the Judge addressed a subtly different question from the question that the 1954 Act requires, and that his evaluation was therefore flawed. The question is not whether the estimation of the length of the delay is reasonable, on the evidence, but whether, given that a delay of that length is likely, the Landlord could be said to intend to carry out the works "on the termination of the current tenancy", i.e. by a reasonable time after that termination.

63. The correct test is authoritatively established by the decisions of the Court of Appeal to which I have referred. The expression "within a reasonable time" is only a paraphrase of the statutory test that indicates that literal compliance is not required. "Within a reasonable time" is not, in my view, different in effect from the expressions "not at any long delayed time" and "at once and not after a time" used in the earlier authorities.

64. Mr Warwick KC submitted that I should regard myself as bound by the looser formulation of the test by Jay J in the S Franses case, unless I feel able to say that his decision was plainly wrong. I do not accept that approach for two reasons. First, both Jay J and I are bound by those Court of Appeal decisions where the issue of what is meant by "at the termination of the current tenancy" is part of the *ratio* of the decision. Second, Jay J was not, in my view, formulating a different test at all. What he indicated was that there were two matters that needed to be considered: first, what was the likely delay from the possession date to the start of the works; and second, was that length of delay "reasonable in all the circumstances of the case in the context of these underleases". The latter was not, in my view, being equated to how long it would be reasonable for the landlord to take to start the works.

65. It is clear from para 77 of his judgment that Jay J had fully in mind that what was a reasonable estimation of the likely delay could exceed a reasonable time beyond the termination date:

> "If the court were to decide that in all the circumstances of the case a reasonable time should be X weeks or months, and that the practical difficulties mentioned by the judge could not be surmounted within that period, the consequence would be that the Landlord could not prove an intention to begin the works of demolition etc "on the termination of the current tenancy", a reasonable period thereafter being included. On this hypothesis, the objection to a new lease under ground (f) would fail. Thus, it is not simply a question of my fixing a reasonable time doing the best I can on what I know."

66. Jay J was not postulating a freestanding broad test of what was reasonable in all the circumstances, but rather what (implicitly relatively short) period could be added to the possession date in the circumstances of the particular case without the works ceasing to be done "at the termination of the current tenancy". If a reasonable time for taking all necessary preparatory steps exceeded that period, the ground of opposition would fail.

67. What relatively short period can reasonably be added to the possession date will be property- (and other circumstances-) specific. It is likely to include time to recover, secure and clear out the property, depending on its size and condition, and time to mobilise contractors and take other preliminary steps, before work actually commences on site. A reasonable landlord will expect to allow a short period to achieve this before the work actually starts. The reasonable time for this is likely to be longer if the holding in question is an upper floor in a high rise building, in a densely developed urban area, or if the works are very extensive, than if it is a smaller, self-contained property in a town or village, or where the works are more limited in scope.

68. The clue to what is permissible lies in the language of the statutory test, which is concerned with what the landlord intends to do and when it intends to do it. It does not require a court in every case to predict what delay there will in fact be. If a landlord intends to set about the works on recovering possession, it intends to do them on termination of the tenancy. That does not require the works to be able to start on day one, as Birkett LJ explained. The fact that there may be some modest delay in starting the works does not affect the fact that the landlord intends to set about them on termination.

69. If, on the other hand, the landlord intends to use the property for something else, or to leave it empty for a period, or if it cannot yet set about the works because there is something else that needs to be done first, then it does not intend to do the works on termination of the tenancy within the meaning of the statute. That distinction is illustrated by the Edwards v Thompson decision, where there was something else that the landlord had to achieve first, before she could set about the works. If achieving that something else is uncertain and might take a matter of months, or even longer, then the landlord cannot say that she intends to do the works on the termination of the tenancy: she intends to do it when the obstacle presented by that something else is surmounted.

70. So, in a case where it is known that various other steps will have to be taken before the landlord can set about the works, it is unlikely that the landlord can prove its intention to

do the works on termination, if these steps will extend more than a short time beyond the possession date. The fact that the exact time to take the steps cannot accurately be stated does not matter, as long as there is a real prospect that they will not delay the works beyond a reasonably short time after the possession date.

71. That does not, in my judgment, mean that a landlord's ground of opposition will necessarily fail if it does not have planning permission in place at the date of the hearing: the question is whether there is a real prospect of obtaining it in time to start the works within a reasonably short time of termination. In an ordinary case, where the planning application has been made, that may well be realistic. But if the landlord is intending to apply for a contentious planning permission six to seven months after the possession date, as the Judge found was the case here, and the planning application was dependent on the results of prior surveys and pre-application consultations with the LPA, the Landlord does not intend to do the works at the termination of the tenancy. This was not just "after a time" but after a substantial time.

72. The Judge in my view asked a different question from that required when he asked himself, in effect, whether a delay of 10-14 months was reasonable (in the sense of "justified") in the circumstances.

73. The fact that the Landlord was unable to get further ahead with the planning process because the Tenant would not permit entry onto the Premises to carry out intrusive investigations is neither here nor there. Those were the consequences of the terms of the parties' bargain. While that difficulty explained why a reasonable estimation of the time required to be able to start the works was 10-14 months after the possession date, it did not mean that the Landlord intended to carry out the works at (or within a reasonably short time of) the termination of the tenancy.

74. The argument that it was necessary for the Judge to reach the conclusion that he did, to accommodate the problems that the Landlord faced in this case, ignores the content and structure of the 1954 Act. The fact that the Landlord could not prove its ground of opposition at the trial heard by the Judge (on a preliminary issue, namely whether the ground of opposition could be proved) does not mean that it cannot do its redevelopment (if it obtains planning permission). The policy of the Act is to facilitate redevelopment, while providing reasonable security of tenure for tenants. Thus, when the Tenant's application returns to the County Court for the terms of the new tenancy to be determined, the Landlord can argue for a 1-year (or shorter) term, and for the terms of the new tenancy to include a right to enter to carry out the necessary surveys and tests. That will no doubt have an impact on the market rent for the new tenancy, but the Landlord is not entitled to have it all ways. Alternatively, the Landlord could seek a redevelopment break option, which would permit it to terminate the new tenancy if and when it was in a position to prove ground (f).

75. Thus, at worst (working from the date of the Judge's decision on the preliminary issue), the failure to prove the ground of opposition at this stage might delay the ability to recover possession by 2 years or so, but in any event the Landlord was unable to start the works for up to 14 months after the possession date. From the Tenant's point of view, instead of the Premises being empty for up to 14 months, it is able to continue its business from them for a further time.

76. For these reasons, I consider that the Judge should also have held that the Landlord had not proved that it intended to do the proposed redevelopment works on termination of the current tenancy.

77. In any event, the Judge reached the right decision to reject the Landlord’s ground of opposition for the reason that he gave, and the appeal is therefore dismissed.