

**Property Law Nuts & Bolts Pt 3:
1954 Act Renewals**

Grounds of Opposition

**Matthew Dale-Harris
Landmark Chambers
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STRUCTURE OF TALK



1. Overview of s.30 grounds of opposition:
 - Fault based grounds (a)-(c)
 - Alternative accommodation (d)
 - Sub-letting (e)
 - Owner intention grounds (f)-(g)
 2. Key issues in ground (f), including the five elements to be proved
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GROUND (A): DILAPIDATIONS

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“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”



GROUND (B): PERSISTENT ARREARS

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“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): OTHER BREACHES

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“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**”



GROUND (D): SUITABLE ALTERNATIVE ACCOMMODATION

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“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”

GROUND (E): SUBLETTING

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“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”

GROUND (G): OWNER OCCUPATION

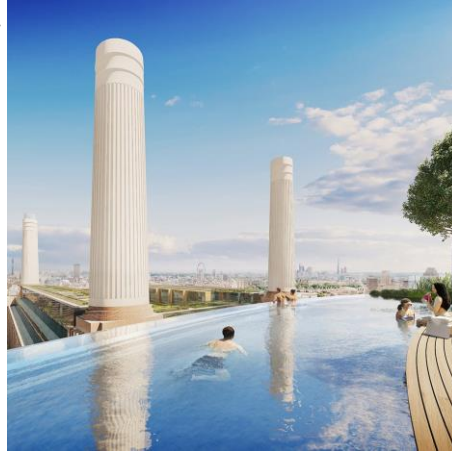
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“subject as hereinafter provided, that on the termination of the current tenancy the **landlord intends to occupy** the holding **for the purposes, or partly for the purposes,** of a business to be carried on by him therein, or as his residence.”



GROUND (F): DEMOLITION & RECONSTRUCTION $\frac{L}{C}$

“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;”



Part II: Key issues for Ground (f) $\frac{L}{C}$

- For LL, care is required in ensuring that his case can be made out at the relevant time.
- For T, deciding whether to go to trial depends on a tactical assessment of whether LL will be able to make out that case.
- Five elements:
 1. the relevant date at which the various aspects of the proposal are to be considered is on the termination of the current tenancy;
 2. the person who must have the relevant intention is the landlord;
 3. the landlord must have the necessary intention;

$\frac{L}{C}$

4. the intention must be either to-
- demolish or reconstruct the premises comprised in the holding, or
 - demolish or reconstruct ... a substantial part of those premises, or
 - to carry out substantial work of construction on the holding, or
 - to carry out substantial work of construction on ... part thereof; and
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$\frac{L}{C}$

5. the landlord could not reasonably do so without obtaining possession of the holding.
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Key Points



- **Element 1: “on the termination of the tenancy”**
 - Elements of each ground are to be proved *at date of hearing* (see *Betty’s Café v Phillips Furnishing Stores* [1959] AC 20).
 - However, at that hearing it must be proved that the Ground (f) works will be implemented “*on the termination*” of the tenancy: i.e. 3 months and disposal of claim/or date in s.25/26 notice if later.



- **Element 2: the Landlord**
 - It is the competent landlord (under s.44) who must satisfy the terms of ground (f).
 - Therefore:
 - LL cannot intend to sell on to a developer (rather than carry out redevelopment himself)
 - Issues can arise where there is a joint venture or building lease.





- **Element 3: Intention**

- More than mere contemplation, with reasonable prospect of being able to bring it about: *Cunliffe v Goodman* [1950] 2 KB 237, 253 (CA) per Asquith LJ:

“Neither project moved out of the zone of contemplation - out of the sphere of the tentative, the provisional and the exploratory - into the valley of decision.”



- Intention does not have to free of ulterior motives – it is legitimate for LL to want to redevelop so as to be rid of the T and his business: *Betty’s Café* case.
- LL may prove intention through own oral evidence, or by evidence that he acted on advice of surveyor to implement scheme. In case of company, best evidence will be resolution of company.
- In the end often difficult for a tenant to contest.



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- **Element 4: Nature of works**

- Ground (f) extends to “demolition” or “reconstruction” or substantial works of “construction”
- Defining the works can be difficult:
 - Aggregate all the works on the holding which fall within relevant categories, as well as ancillary works
- Nature and scope of works must be substantial and within the holding.
- Often courts will look for structural work but this is simply a factor to be taken into account.

$\frac{L}{C}$

- **Element 5: Can work be reasonably carried out without obtaining possession?**

- Fatal to ground (f) if lease allows for LL to enter premises and carry out works that he intends to do.
- Alternative for T is to offer to grant access for works or take a tenancy of a economically separable part under s.31A.

S.31A:

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Ground (f) not be made out if T is willing to accept:

“(a) ...inclusion in ...new tenancy of **terms giving the landlord access** and other facilities for carrying out the work intended and... the **landlord could reasonably carry out the work without obtaining possession** of the holding and **without interfering to a substantial extent or for a substantial time** with the use of the holding for the purposes of the business carried on by the tenant; or

(b) ... a tenancy of an **economically separable part** of the holding and either paragraph (a) of this section is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.”

Making your choice

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- Important to take advice at early stage. Both LL and T will want to give detailed consideration to the grounds to be raised/whether they should be opposed.
- No opportunity for LL to amend after service of notice.
- Often choice is between fault based grounds and others. No compensation payable for (a)-(d); but payable for (e)-(g). If T walks away then no opportunity to alter.
- Timing is key. If grounds (a)-(d), LL will have to have reasonable belief that ground can be made out (*Stradbroke v Mitchell* [1991] EGLR 1 CA).
- Some points more expensive to litigate.



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