

# Opposing the grant of a new tenancy on ground (g)

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## Ground (g)



“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”

## Five years ownership required- s30(2)



“The landlord shall not be entitled to oppose ..on ground .. (g) ..if the interest of the landlord, or an interest which has merged in that interest [eg sub lease] and but for the merger would be the interest of the landlord [ie competent landlord at time of s25 notice], was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy [specified in the s25/26 notice], and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in subsection (1) of section 23 of this Act.”

# Intends



Intention has two aspects

- A firm and settled intention
  - Subjective
- A reasonable prospect of carrying it out
  - Objective

Cunliffe v Goodman [1950] 2 KB 237

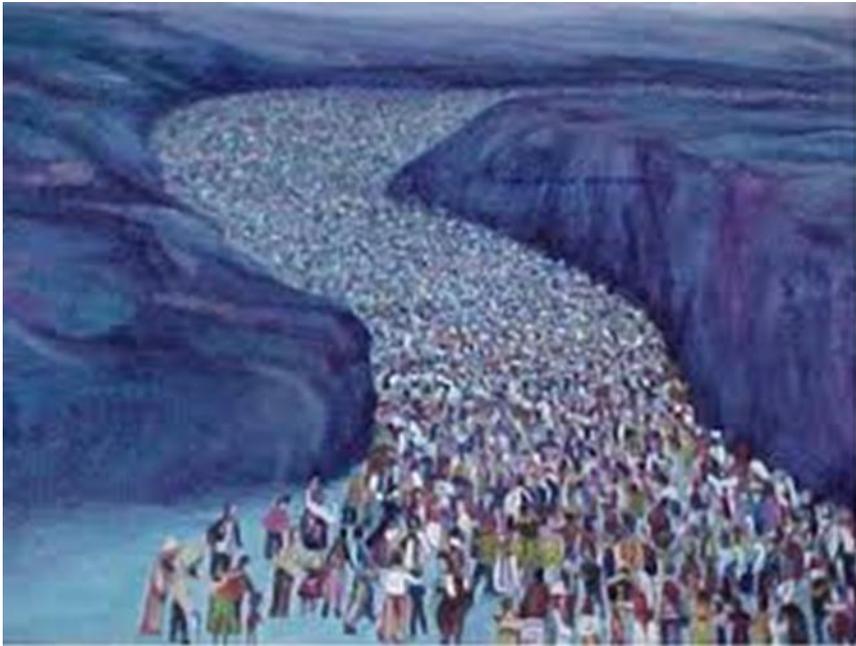
## The first aspect. Has the landlord moved from here?



“Time is but the stream I go a-fishing in. Its thin current slides away, but eternity remains.”

to here?

L  
C



Multitudes, multitudes .. for the day of the LORD is near in the ..  
Joel 3:14

## Cunliffe v Goodman [1950] 2 KB 237



- 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
- It is mere contemplation until the materials necessary to a decision on the commercial merits are available and have resulted in such a decision

## Whose intention?

- The landlord or
- Where the landlord has a controlling interest in a company
  - that company: s30 (1A)
- Where the landlord is a company
  - A person who has a controlling interest in it: s30(1B)  
unless
    - The controlling interest was acquired in the last 5 years:  
s30(2A)

# Timing



- Intention to occupy within reasonable time after termination of tenancy (ie 3 months 21 days after final decision)
- Intention of “the landlord” judged at the date of the hearing
- Fresh evidence can be admitted on appeal if
  - Ladd v Marshall rules apply to past events or
  - events occurring since the trial
- If fresh evidence is admitted on appeal, intention judged at time of appeal. Davy’s v City of London [2004] EWHC 2224

# For how long must the landlord intend to occupy?<sup>L</sup><sub>C</sub>

- Must not be fleeting or illusory
- Must be more than short term, which depends on facts
- If Landlord has formed intention to sell within 5 years, treated as not intending to occupy
  - Willis v Association of Universities [1965] 1 QB 140
- Likelihood of sale is a factor relevant to whether landlord genuinely intends to occupy
  - Paton v Keles [2010] Ch 332, CA
- Intention to occupy for up to two years must be sufficient
  - The Gulf Agencies Ltd v Ahmed [2016] EWCA Civ 44

## When and how to prove the first aspect

- Board resolution desirable but not essential
- Witness evidence
- Undertaking can be compelling evidence of intention
  - More compelling from substantial company
  - Equivalent to injunction
- Espresso Coffee Machine Co v Guardian Assurance [1959]
  - U/T to take up occupation put the matter beyond doubt
- Lightcliffe Cricket and Tennis Club v Walton [1978]
  - U/T does not create a presumption that intention is genuine

# Chez Gerard v Greene [1983]

- 5 Charlotte Street let to Chez Gerard
- Landlord shipping company
- Undertaking offered to take advice and open restaurant
- Landlord succeeded



Today  
8 Charlotte Street  
Chez Gerard

## Enforceability of undertakings for ground (g)



- Injunction will not be ordered if
  - too uncertain or
  - requires constant supervision
  - Eg keep open covenant (Co-Op v Argyll [1998] AC 1)
- Reynolds & Clark suggest undertaking not to use save for purposes of business carried on by landlord for [X] years

## Patel v Keles [2010] Ch 332

- Lease of newsagents in Tudor Street
- Judge found that the landlord
  - Was 61 and had no need to run the business
  - Had been involved in but given up businesses nearby at 60
  - Offered at trial an undertaking “not to use the premises for 2 years for any purpose other than newsagents carried on by” the landlord.
- Held
  - Likely to sell, and no intention to occupy
  - Undertaking cast doubt on intention

## The second aspect

$\frac{L}{C}$

- “it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition.”
  - Cunliffe v Goodman [1950] 2 KB 237

## The second aspect.

### A reasonable prospect of carrying it out.



- What hurdles need to be overcome
- Evidence required
  - Ongoing disclosure
  - Factual evidence as to what is proposed
  - Expert evidence as to prospects, costs and timing
- Typical issues
  - Planning
  - Viability
  - Motive

## Planning



“ A reasonable prospect in this context accordingly means a real chance, a prospect that is strong enough to be acted on by a reasonable landlord minded to go ahead with plans which require permission as opposed to a prospect that should be treated as merely fanciful or as one that should sensibly be ignored by a reasonable landlord. A reasonable prospect does not entail that it is more likely than not that permission will be obtained.”

Cadogan v McCarthy & Stone Developments [1996] CA

## Viability



- Evidence of viability supports proof of intention
- Proof of viability is not necessary
- Function is to determine the reality of the intention, not the probability of the landlord achieving success
  - Dolgellau

# Dolgellau Golf Club v Hett (1998) 76 P&CR 526



# Humber Oil terminals v Associated British Ports [2011] EWHC 2043



- Lease of Jetty at Immingham Oil Terminal
- Tenant entitled to remove pipes and equipment which would cost £60m to replace
- Landlord resolved to reject rental offer, take over operation, and if necessary replace equipment
- Judge rejected arguments that
  - Tenant could frustrate intention by removing equipment
    - Likely that deal would be done
  - Opposition was just tactic to get better terms
  - Deal would be for tenant to carry on managing jetty

# Intention to occupy holding



Intention to occupy new building is not intention to occupy the building comprising the holding

Nursey v Currie  
[1959] 1 WLR 273  
CA.



# Intention to occupy the holding



Intention to occupy  
new building erected  
on bare site  
is intention to occupy  
holding.

Cam Gears v  
Cunningham

[1981] 1 WLR 1001

