

In the recent case of *B&M Retail Limited v HSBC Bank Pension Trust (UK) Limited*, the county court considered the circumstances in which the inclusion of a redevelopment break in a renewal lease would be appropriate.

The Facts

HSBC Bank Pension Trust (UK) Limited (HSBC) had already entered into an agreement for lease (AFL) with Aldi to enter a new lease of the premises located in Willesden, London. The AFL was conditional on vacant possession being obtained and conditions in respect of planning being satisfied.

However, as a result of staff working at home during the pandemic, HSBC missed the section 26 request for a new tenancy from the existing tenant, B&M Retail Limited (B&M), under the Landlord and Tenant Act 1954 (the Act). HSBC had, therefore, failed to oppose the renewal within the requisite two-month period from service of the section 26 request and was out of time to oppose the grant of the renewal. It was agreed by the parties that B&M was entitled to a new lease of the premises.

First, the issue for the court was whether a redevelopment break for HSBC should be included in the new lease. The court acknowledged that much would depend upon whether there is a real possibility that HSBC will obtain planning permission in relation to the premises. The second point was the length of the term. The court acknowledged that this was less of a concern in practical terms because HSBC would exercise the redevelopment break at the earliest opportunity, if granted.

B&M gave evidence that if its tenancy were brought to an end, it would lose customers and there were very few opportunities for B&M to relocate to a store of the same size in the highly populous area of London.

HSBC advised that the deal to Aldi would be worth millions of pounds. The works (to be carried out by Aldi) in accordance with the AFL were substantial and included creating two separate units.

The Decision

The court held that the Act should not be used as an instrument to defeat development and stated that, “the court will only upset a landlord’s redevelopment ambitions if there is a major factor which points the other way.” While the court accepted B&M’s argument that a balancing exercise had to be undertaken, it held that this would be trumped to a large extent if a landlord wished to redevelop.

The court accepted that the inclusion of the break clause would be harsh on B&M, and that it would inevitably suffer some financial loss. However, this was not the overriding consideration for the court. In particular, there was a real possibility that planning permission would be successful. Under the circumstances, the court held that it was appropriate to include a redevelopment break within the renewal lease, exercisable on six months’ written notice.

In determining the length of the term of the lease, the question for the court was what term was reasonable. The court held that a five-year term would give B&M some security and an ability to onward plan while also giving HSBC some protection in relation to a reducing asset and the need to offset its liabilities by maintaining income from the premises.

Takeaways

- This case acts as a reminder to landlords and tenants to respond to notices served under the Act on time and to ensure that there are procedures in place to guarantee that the post is not missed.
- The case is welcome news to landlords and serves as a reminder that while the Act is there to protect tenants in business occupation, this does not prevent the inclusion of a redevelopment break clause on a renewal where there is a real possibility that the landlord’s redevelopment plans shall be implemented.
- It appears that, where landlords can demonstrate a real possibility of redevelopment backed by planning permission (or at least planning permission with a real prospect of success), the courts would likely grant the inclusion of a redevelopment break on a renewal, despite the financial loss and disturbance caused to tenants in having to vacate.

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