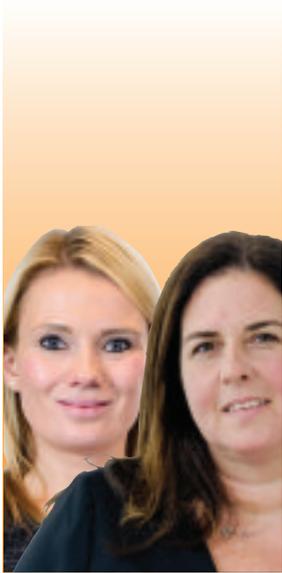


Comment

LEGAL VIEW Victoria Dacie-Lombardo and Joanna Lampert

Protected business tenancies may not be so secure after all



In *S Franses Ltd v The Cavendish Hotel (London) Ltd*, the High Court held that a landlord is entitled to refuse the grant of a protected business tenancy on redevelopment grounds even where the redevelopment is devised solely for the purpose of evicting the tenant and confers no other benefit on the landlord.

The premises in question comprised part of the ground floor and basement of the Cavendish Hotel on Jermyn Street, London. The landlord opposed the tenant's request for a new tenancy of the premises on the basis that it intended to redevelop the site.

The tenant, which had occupied the premises for more than 25 years, issued proceedings seeking the grant of a new tenancy. Following a trial, the judge found in the landlord's favour and the tenant appealed to the High Court. The key questions related to the genuineness of the landlord's intention to execute its stated works and the extent to which the landlord was able to do so with the tenant in situ.

The landlord had contemplated various redevelopment schemes but had not obtained planning permission for any of them. The scheme the landlord ultimately opted for was only finalised on the final day of the trial. The landlord did not require planning

permission to implement the works but would have required permission to put the reconfigured premises to any practical use.

The tenant argued that the landlord did not have the required intention to redevelop the premises where it only intended to do so in order to regain possession. On that basis, the tenant said, the landlord's intention was conditional upon the termination of the tenancy and not "firm and settled" as it needed to be.

The court rejected this argument, making clear that motive in such cases is irrelevant. The landlord had provided an undertaking to the court to carry out the works and this, together with the landlord's factual evidence, was sufficient to meet the relevant test.

The tenant also argued that the landlord could carry out most of the planned works pursuant to its existing rights under the lease and that the lease could be varied to allow additional rights if necessary. The court held that if the landlord were to act in this manner it would render the premises substantially unfit for the purposes for which they were let, putting the landlord in breach of its implied covenant not to derogate from grant.

This will be worrying news for tenants who find themselves increasingly under threat from landlords trying to maximise investment value. For landlords, this decision provides some indication that protected tenancies may not be so secure after all.

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PROFESSIONAL COMMENT Zoe Bignell

Well-designed public realm should be used to enhance urban areas



Placemaking has long been the buzzword of the real estate world but, aside from the anecdotal benefits, it has often been hard to measure the tangible advantages. Until now.

Looking at 11 global placemaking initiatives in the UK, Australia, the US, Italy, Denmark, Germany, France and South Korea, CBRE together with Gehl Architects examined the ways in which public spaces contribute to the human experience of urban areas and create long-term real estate value, both before and after the public realm intervention has taken place.

In London, Granary Square in King's Cross formed part of the study. The results in this location are of particular interest, with the standout performers being retail and residential. While average house prices in prime central London rose by 48% between 2011 and 2016, average prices in King's Cross have increased by 61%. There has also been a marked improvement in retail quality with strong brands attracted to the location.

The report concludes that this is a function of the quality of the public realm adding to the human experience, combined with the fact it offers both good connectivity and a community feel. Without the introduction of high-quality design of the public

realm, this vast new area of development would struggle, or at least would not be as successful, in establishing a reputation in the market as a desirable location.

It is no coincidence that good placemaking can, in turn, realise positive incremental effects on real estate values. As a business, we recognise the importance of taking a holistic approach to identifying, creating and delivering development opportunities and how this can drive demand and create value longevity. This is a combination of evolving innovative occupational solutions internally as much as enhancing the experience through complementary amenities, wellbeing and placemaking.

Creativity is key. For planners, it means designing for an enhanced human experience of urban areas. This means maintaining any good-quality public space that exists through using innovative and up-to-date measures and embarking on a mission to make more of it available. It also means that proposed new developments should be judged on their ability to enhance public life alongside any employment, housing and infrastructure benefits.

For developers and investors, value resilience depends on the success of the place. Not all developments will have the ability to create an outdoor public realm that is free to use, but some will. Where there is opportunity to enhance the brand of a building and location using well-designed public realm, it should be taken.

Zoe Bignell is managing director, UK development, at CBRE