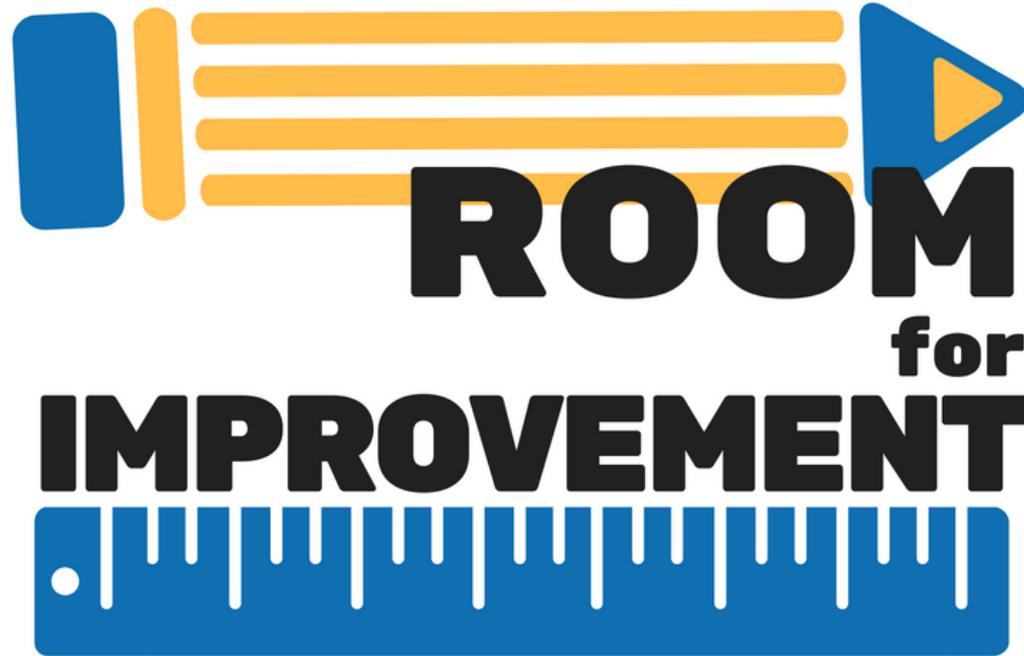




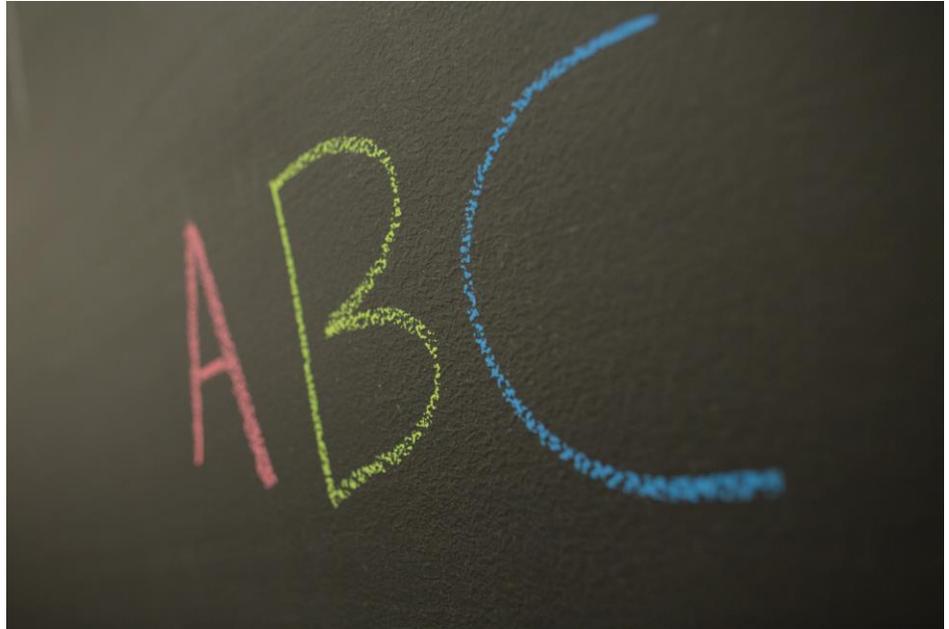
Landlord and Tenant Act 1954  
***The Judge, Hotelier and Carpet Maker***

Paul Tomkins  
Partner, Freeths LLP  
12 October 2017



## Back To Basics

- Tenants of business premises enjoy a statutory right to a new tenancy on the expiry of their tenancy.
- Landlords can oppose the grant of new tenancies, but only on limited grounds.



## Grounds of Opposition

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- a) Failure to repair
- b) Persistent arrears
- c) Other reasons or breaches
  - *Horne & Meredith Properties v Cox and Billingsley*
- d) Suitable alternative accommodation
- e) Uneconomic sub-letting
- f) Redevelopment
- g) Own occupation
  - *5 year rule*

## Ground (f)

- “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 works of construction** on the holding or part thereof and that **he could not reasonably do so without obtaining possession** of the holding.”



## Intention

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1. Does the landlord have a genuine fixed and settled intention to carry out the proposed works?
2. Is there a realistic prospect of the landlord implementing its intention?



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**Answers not options...**

## Intention

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- It is established law that the landlord's motive in wishing to carry out the works is irrelevant provided the landlord has a genuine intention.



# Landlord's Proposed Works

- Demolition
  - *“The physical act of destruction”*
  
- Reconstruction
  - *“It would be difficult to reconstruct something unless first of all there was a construction which was wholly or partially demolished”*



# Landlord's Proposed Works

➤ Substantial works of construction

| YES  | NO                                     |
|--|--|
| Sealing up openings in structural walls      | Installation of fittings and equipment |
| Installation of new staircases               | Installing wooden partitions           |
| Interference with the floor slab/floorboards | Fitting of fire lobbies                |

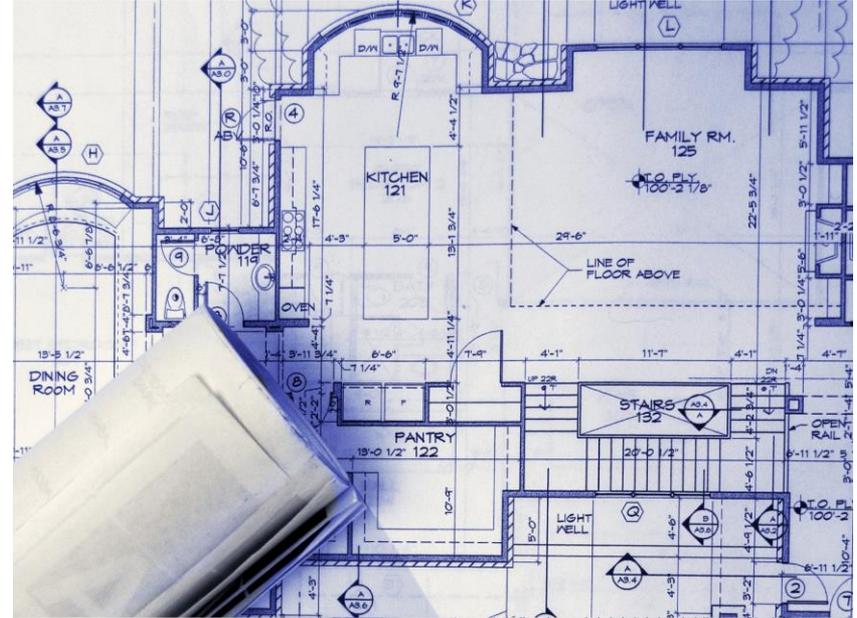


Answers not options...

## Landlord must require possession

# FREETHS

- Landlord must establish that “*he could not reasonably [carry out the proposed works] without obtaining possession of the holding*”
- Rights of entry
  - Derogation from grant?
  - Could tenant occupy new premises?



Answers not options...

Name that property.....

**FREETHS**



**Answers** not options...

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**



**Answers not options...**

Mr J Jay

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**Answers not options...**

**FREETHS**

Not to be confused with....

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**Answers** not options...

## Mr Justice Jay

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## *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- 
- T is a textile dealership and consultancy specialising in antique tapestries and textile art. It occupies premises on the ground floor and basement of 80 Jermyn Street as a retail art gallery, showroom and archive.
  - The remainder of the building is occupied by L as a luxury hotel with retail outlets and underground parking.
  - T occupies pursuant to two leases, the contractual terms of which expired on 2 January 2016.
  - On 16 March 2015, T served notices under s26 in relation to both leases requesting new tenancies commencing on 3 January 2016. L served counter-notices on 15 May 2015 opposing new tenancies on the ground at s30(1)(f) of the 1954 Act

## *S Frances Limited v The Cavendish Hotel (London) Limited*

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**FREETHS**

- Both leases include the following right for the landlord:
  - “*At all reasonable times during the daytime (or forthwith in the case of emergency) **to permit the Landlord** or its Surveyor or Agents or any person authorised by it with or without workmen or contractors **to enter the demised premises** for the purpose examining the state of repair and condition thereof and also for the purpose of **executing any improvement** it may wish to execute or for the purpose of repairing, maintaining, cleansing, rebuilding, **altering** or examining **the demised premises** or any adjoining or neighbouring premises or the remainder of the said building...*”
- 

**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- L's proposed works changed on a number of occasions.
- Scheme 1 - Incorporating the former bar of the hotel into the ground floor of the premises to create an enlarged single retail unit.
- Scheme 2 - Subdivision of the premises into two new retail units, incorporating part of the hotel, and related external works.



**Answers** not options...

# *S Frances Limited v The Cavendish Hotel (London) Limited*

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**FREETHS**

- Scheme 3 - Removed the external works and “beefed up” the internal works to include the demolition of a single staircase, the creation of two new staircases/lift shafts, the building of a wall dividing the two new units, the removal and rebuilding of a wall to incorporate part of the premises into the hotel’s car park.



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**Answers** not options...

# ***S Frances Limited v The Cavendish Hotel (London) Limited***

**FREETHS**

- 
- T claimed that “*some aspects of the intended works have been contrived only for the purpose of ground (f)*”.
  - The artificial lowering of part of the basement floor slab and the repositioning of smoke vents;
  - The demolition of an internal wall at ground floor level and immediate replacement with a similar wall; and
  - A new central wall dividing the two units stopping 2 metres short of the shopfront at ground floor level to avoid the need for planning permission and such that there would be no lawful access to Unit 2 from the street other than through Unit 1.

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**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- L's witness admitted that if T left voluntarily, the works would not be carried out.
- L did give an undertaking to carry out the entirety of the works if vacant possession was ordered on ground (f) "*as soon as vacant possession...has been obtained*".



**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

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**FREETHS**

- In the County Court, the judge found in favour of L; namely that it intended to carry out works of substantial construction and would not be able to carry them out without obtaining possession of the premises.
- L's motives were irrelevant.
- Although L benefitted from right of entry, if it carried out the works in reliance on right, there would be a derogation from grant.



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**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- T appealed on a number of grounds including:
1. L's intention to carry out the works was conditional on the works being necessary to satisfy ground (f) and this was not a sufficient intention under the Act; and
  2. In considering whether L's works fell within the scope of ground (f), the judge should have excluded the works that L could have carried out under L's right of entry.



**Answers** not options...

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- T's position was that L's intention to carry out the works was conditional on it being necessary for it do so to satisfy ground (f) under the Act (i.e. its motive for carrying out the works was solely to comply with the Act). T said that the question of intention should be assessed "*in an Act-free world*" as if the 1954 Act had not been enacted.



**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- L's stance was that the court is not concerned with the wisdom or long-term viability of a landlord's project or choice of works or with questions as to a landlord's underlying motive.
- By the date of the hearing, L had decided that it was essential for it to carry out the works as there was no other way of securing vacant possession.



**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- 
- Whilst the judge found that L was only doing the works as it understood it was necessary to establish ground (f), the 1954 Act did not include any anti-avoidance provisions and questions of motive were irrelevant:
  - *“In my judgment, ground (f) mandates an examination of what the Landlord intends to do and whether he intends to do it, not of why he may intend to do it.”*
  - The judge did state that the question of motive may be highly relevant as it can illuminate the issue of intention - i.e. the more commercially unviable the project, the closer the court will wish to examine the genuineness of the landlord’s intention. An undertaking from a landlord can significantly allay scepticism.

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**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

**FREETHS**

- T submitted that L's works needed to be divided into two categories:
  1. Works which could be carried out under the right of entry; and
  2. Works that could not be.
- Works that could be carried out under the right of entry fell outside ground (f).
- The judge should then consider whether the remaining works satisfy ground (f).



**Answers not options...**

# *S Frances Limited v The Cavendish Hotel (London) Limited*

FREETHS

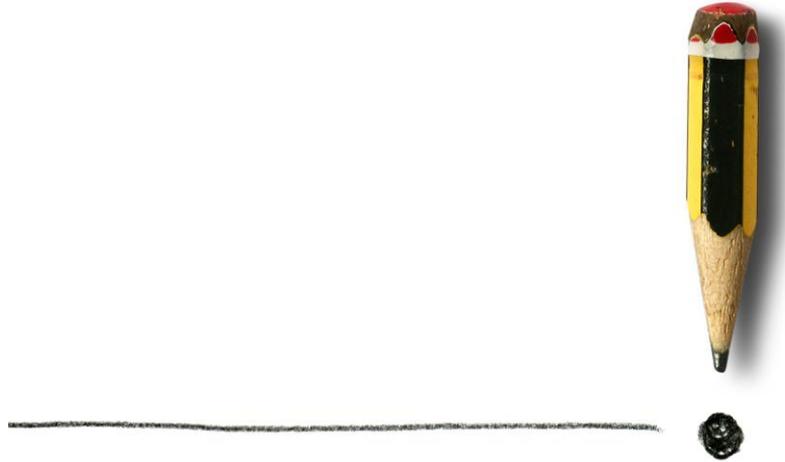
- Judge agreed with T's approach and found for T on this issue.
- The court should have reviewed each individual item of work rather than package as a whole.
- Judge said this issue should be re-considered in the County Court.



**Answers** not options...

Is this the end of the story?

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Answers not options...

## A Landlord's Motive

- The position remains that a landlord's motive is irrelevant.
- If the landlord truly intends to carry out the works and has a realistic prospect of doing so, that should be sufficient.



## A Landlord's Motive

- Mr J Jay granted a 'leapfrog' appeal to the Supreme Court as he considered this point was of sufficient public importance.
- T now seeking to overturn *Betty's Cafés Ltd v Phillips Furnishing Stores Ltd (No 1)*. Permission for appeal unlikely to be heard before the end of the year.



# Substantial Works of Construction/Rights of Entry

**FREETHS**

- Can some or all of L's works be carried out under a right of entry?
- If yes, those works are to be disregarded.
- Does L need possession to carry out remaining works that do fall within ground (f)?
- L is appealing on this point.



**Answers** not options...

## Key Points

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- L's motives for carrying out the works are immaterial.
- A L's undertaking remains powerful.
- A T should follow Mr J Jay's approach as it will likely reduce the works L can rely on.
- Ls should resist Mr J Jay's approach and ask the court to consider the works as a whole.



# FREETHS

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**Answers** not options...