

Legal alert

November 2016

Adverse effect of break clause on rent

Britel Fund Trustees Limited v B&Q plc

This unreported county court case from earlier this year is notable because of the stark contrast it draws between the market rental value of a lease containing a landlord's break clause and an identical lease without the break.

B&Q is one of Britel's tenants at the Tottenham Hale Retail Park. In 2015, Britel and B&Q negotiated the terms of the renewal of B&Q's lease under the Landlord and Tenant Act 1954. They agreed that the renewal lease would be for a term of ten years with a rolling break permitting both landlord and tenant to bring the lease to an end at any time on six months' notice after 30th June 2018.

All the terms were agreed except for the rent. At £776,139 (£21 psf) per annum, everyone accepted that the old lease was over-rented. But for the renewal lease, Britel argued for a yearly rent of £698,500 (£18.90 psf) whereas B&Q proposed a mere £281,000 (£7.60 psf).

The approach taken by the judge was first to ascertain the market rental value on the basis that the renewal lease contained no break clause. This the judge held to be £16.30 psf (i.e. £602,500). However in the current case, with the rolling mutual break clause, he was of the view that the only potential tenant for such a renewal lease would be a "discounter" i.e. a cut-price retailer who would be willing to trade for a short term after carrying out a "quick, cheap and dirty" fit-out. This would mean a discount in the rent (for a lease with a rolling break clause) of 22.55%, giving a figure of £12.62 psf.

The judge then further discounted this figure to take account of the specific terms and circumstances of the actual break clause. Britel was likely to exercise the break in 2018 because its plans to redevelop the site (for which it had already obtained outline planning permission) were already sufficiently far advanced. A prudent prospective tenant would therefore approach the rent negotiation on the basis that, after fitting out, it would have less than 2½ years trading in the premises. The judge found that the appropriate discount for this was 20%, giving a rental figure of £10.10 psf (i.e. £373,700 per annum).

The overall effect of the break clause, therefore, was to diminish the market rental value of £16.30 psf by 38%.

(As a side issue, the judgment in this case contains a useful reminder of the hierarchy that exists when using evidence of comparable transactions to calculate rent. Open market transactions are the best evidence, followed (in descending order of importance) by:

- agreed rents for 1954 Act renewals;
- agreed rents under rent review clauses;
- determinations by experts and arbitrators;
- decisions by the courts.)