



Falcon Chambers

## **Caroline Shea KC White Paper Conferences**

### **Redevelopment under ground (f) after the Ministry of Sound**

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# Redevelopment under ground (f) after the Ministry of Sound



## Ministry of Sound v British & Foreign Wharf Co Ltd

HHJ Saggerson  
Central London County Court  
5 November 2025



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### Why Property Litigators Should Care

1. Full trial on redevelopment break clauses

Rare.

2. Detailed treatment of planning evidence

Even rarer.

3. Paragraph 72

A structured framework for future cases.

Key point

Potentially the most useful redevelopment-break judgment since *B&M Retail*.

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**Ministry of Sound occupied under protected tenancy.**

**Renewal unopposed.**

**15-year renewal sought.**

**Main dispute: should there be a redevelopment break?**

**The entire case effectively turned on that question.**

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### **Tenant**

- **Redevelopment prospects negligible.**
- **Planning obstacles insurmountable.**
- \* **Break clause would damage the business.**

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**Landlord:**

**Prime development site.**

**Years of planning work.**

**Real redevelopment opportunity.**

**Break required to avoid sterilisation.**

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## **The Planning Evidence**

**MOS: redevelopment probability negligible**

**BFW: redevelopment difficult  
but realistic**

**Judge preferred BFW throughout.**

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**Held:**

**"There are no planning or policy reasons preventing redevelopment."**

**The obstacles were:**

**transactional**

**practical**

**commercial**

**not legal.**

**That finding drives the remainder of the judgment.**

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**Agent of Change -  
Important distinction.**

**Planning policy protects:  
the use, not necessarily the current operator**

**Court repeatedly separates those concepts.**

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**Adams v Green**

**JH Edwards**

**National Car Parks**

**Davy's**

**B&M Retail**

**Common theme:**

**The Act protects tenants.**

**The Act does not prevent redevelopment.**

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## **Paragraph 72**

**The Most Important Part of the Judgment**

**HHJ Saggerson synthesises the authorities into a structured framework.**

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**72.1 The landlord must prove that there is a real possibility that the premises will be required for reconstruction during the continuance of the proposed new tenancy. The test is objective.**

**72.2 If a real possibility is proved, does the evidence reveal that there is some countervailing major factor or factors justifying a conclusion that, nonetheless, a development clause should *not* be ordered or is not justified. This engages an evaluative or balancing exercise that is inevitably fact sensitive. By way of example only, a dentist seeking a term of only 4½ years (after which he intends to retire) and who demonstrates significant financial and logistical prejudice were any development break to be included, might establish such a major factor or factors militating sufficiently strongly against a development clause. This evaluation involves balancing the landlord's interest in development and the tenant's interest in security. The older authorities refer to this as a "discretion". For ease of reference, I will call this the "*principle evaluation*".**

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**72.3 If there is no evident, countervailing major factor, focus shifts to evaluating or balancing the parties' competing interests in the context of the *content* of the development break. This “*content evaluation*” is designed to arrive at a fair and reasonable balance between the parties' competing interests with regard to what type of development break is to be considered. Sometimes, I venture to conclude, this process may yield what some would regard as the least-worst option for those concerned. Such an evaluation is so multi-factorial in all the circumstances of the case that it would be unwise to attempt a list of potential factors.**

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**72.4 Despite the foregoing, it is important not to adopt a too rigid approach. It is entirely possible that close scrutiny in the context of the content evaluation may cause the principle evaluation to be revisited in all the circumstances. The factors engaged in the balancing exercises are likely to be relevant to both.**

**72.5 The weight given to a single feature or cluster of features in a particular case will be different in each case even to the extent that in the fluid and continuous balancing process there may be cause to revisit whether there is any real possibility of reconstruction at all.**

**72.6 Neither the interests of the landlord nor the tenant “trump” the other.**

**72.7 Ultimately, the Court’s function is to strike as fair and reasonable a balance of competing interests as the circumstances allow.**

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### **Stage 1**

**Is there a real possibility?**

**Objective test.**

**Not:**

**probability, imminence, a specific scheme, planning permission,  
funding, possession.**

**Simply: a real possibility.**

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### **Stage 2**

### **Is There a Major Countervailing Factor?**

#### **Judge's examples:**

**short remaining business life; exceptional prejudice; strong tenant hardship**

#### **If yes:**

**no break clause.**

#### **If no:**

**move to content evaluation.**

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### **Stage 3**

### **Content Evaluation**

**What should the break look like?**

**The court asks:**

**What arrangement fairly balances competing interests?**

**This is where notice periods and trigger dates become important.**

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### **Stage 4**

### **Iterative Balancing**

**The balancing exercise is not linear.**

**The court may revisit earlier conclusions while assessing the clause's content.**

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**Why the Tenant Lost: Three findings**

- 1 - Existential prejudice overstated.**
- 2 - Little financial evidence.**
- 3 - Commercial concerns were ordinary business risks.**

**The court regarded the prejudice case as fundamentally exaggerated.**

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## **The Tenant Veto Point**

**Probably the strongest practical part of the judgment.**

**HHJ Saggerson held:**

**Without a break clause, MoS would effectively possess a veto over redevelopment.**

**That was unacceptable.**

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**The Break Ordered**

**Rolling redevelopment break**

**9 months' notice**

**Earliest date**

**30 June 2028**

**Judge described it as fair and proportionate.**

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### **Rent and O'May terms**

**Briefly:**

#### **Rent**

**Court ultimately adopted a 26% redevelopment discount.**

#### **O'May**

**Most tenant amendments rejected.**

**Court viewed many as renegotiation rather than essential fairness.**

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### **Takeaways**

- 1 Paragraph 72 contains the major contribution.**
- 2 Real possibility remains a relatively low threshold.**
- 3 Agent of Change is not a tenant veto.**
- 4 Planning difficulties do not defeat redevelopment prospects.**
- 5 The Act protects security of tenure. It does not sterilise development.**