Case No: B5/2014/1873

Neutral Citation Number: [2015] EWCA Civ 23
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CROYDON COUNTY COURT
His Honour Judge Ellis
3CR02800

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2015

Before :

LORD JUSTICE McCOMBE
LORD JUSTICE VOS
and
LORD JUSTICE BURNETT

- -

Between:

	RICHARD HOUGH	**Claimant/ Appellant**
	- and -	
	GREATHALL LIMITED	**Defendant/ Respondent**

- -
- -

Manjit Gill QC and Richard Alomo (instructed by **Haider Kennedy**) for the **Claimant/ Appellant**
Adrian Williamson QC (instructed by the **Direct Access Scheme**) for the **Defendant/ Respondent**

Hearing date: 11 December 2014

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Judgment **Lord Justice McCombe:**

(A) Introduction

1. This is an appeal, brought with permission granted by Rimer LJ on 11 June 2014, from the order of 29 May 2014 of His Honour Judge Ellis in the Croydon County Court, by which the learned judge dismissed the application of the Claimant/Appellant ("Mr Hough") for a new tenancy of business premises known as Units 2 and 3, Railway Buildings, Station Road, South Norwood, London SE25 ("the Property") and ordered Mr Hough to give up possession by 4 p.m. on 29 August 2014. By his order Rimer LJ stayed execution of the order for possession of the Property until after judgment on the appeal, for which he had given permission or further order in the meantime.

2. By paragraph 1 of his order Judge Ellis declared that the Defendant/Respondent

("Greathall") had the intention to demolish and reconstruct the Property on the termination of Mr Hough's then current tenancy within the meaning of section 30(1)(f) of the Landlord and Tenant Act 1954 ("the Act"). Accordingly, Mr Hough was not entitled to an order for the grant of a new tenancy.

3. The judge held that the relevant date for ascertainment of Greathall's intention, for the purposes of section 30(1)(f) was the date of the hearing before him. As indicated, he found that intention established as at that date. It was argued for Mr Hough that the relevant date was not the date of the hearing but the date of service by Greathall of its notice determining the contractual term of the current tenancy under section 25 of the Act. That date was 19 June 2013. The judge found that, at that date, Greathall did not have the requisite intention. Thus, if the submission for Mr Hough had been accepted, Greathall's opposition to the grant of a new tenancy would have failed and Mr Hough would have been entitled to an order that such a grant be made.

4. The sole ground of appeal is that the learned judge erred in law in finding that the time at which Greathall's intention had to be proved to exist was the date of the hearing, i.e. 29 May 2014.

(B) The Legislation

5. The mechanisms whereby the law affords limited security of tenure to tenants of business premises are well known and need only be recited in their salient features.

6. By section 24 of the Act it is provided that a tenancy to which that part of the Act applies (in short, business premises) shall not come to an end unless terminated in accordance with the provisions of that same part. Subject to the Act's further provisions either the tenant or the landlord may apply to the court for an order for the grant of a new tenancy if the landlord has given notice under section 25 to terminate the tenancy or if the tenant has made a request for a new tenancy under section 26.

7. Where, as in this case, the landlord wishes to determine the current tenancy, he may (not more than 12 months and not less than 6 months before the contractual termination date of the tenancy) serve a notice of termination. Section 25(6) and (7) (as amended) provide as follows:

> "(6) A notice under this section shall not have effect unless it states whether the landlord is opposed to the grant of a new tenancy to the tenant.
>
> (7) A notice under this section which states that the landlord is opposed to the grant of a new tenancy to the tenant shall not have effect unless it also specifies one or more of the grounds specified in section 30(1) of this Act as the ground or grounds for his opposition."

8. In a case where a tenant makes a request for a new tenancy, section 26(6) of the Act

provides as follows:

> "(6) Within two months of the making of a tenant's request for a new tenancy the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section thirty of this Act the landlord will oppose the application."

9. The grounds upon which a landlord may oppose an application for the grant of a new tenancy are set out in section 30 of the Act. The material parts of section 30 for present purposes provide as follows:

> "(1) The grounds on which a landlord may oppose an application under [section 24 (1) of this Act, or make an application under section 29 (2) of this Act,] of this Act are such of the following grounds as may be stated in the landlord's notice under section 25 of this Act or, as the case may be, under subsection (6) of section 26 thereof, that is to say:
>
> …….
>
> (f) that 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 work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

10. The nature of the relevant intention to be established by the landlord was defined by Asquith LJ in *Cunliffe v Goodman* [1950] KB 237, 253 as follows:

> "An 'intention' to my mind connotes a state of affairs which the party 'intending' – I will call him X – does more than merely contemplate. It connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition….Not merely is the term 'intention' unsatisfied if the person professing it has too many hurdles to overcome, or too little control of events. It is equally inappropriate if at the material date that person is in effect not deciding to proceed but feeling his way and reserving his decision until he shall be in possession of financial data sufficient to enable him to determine whether the project will be commercially worth while."

That definition was approved by the House of Lords in *Betty's Cafés Limited v Phillips Furniture Stores Limited* [1959] AC 20 ("*Betty's Cafés*").

11. Part IV of the Act provides for interim continuation of tenancies pending disposal of

applications to the court.

12. Subsections 25(6) and (7) of the Act, as quoted above, are in the form inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003/3096, paragraph 11, made by the Secretary of State pursuant to powers conferred by sections 1 and 4 of the Regulatory Reform Act 2001.

13. As originally enacted, the Act required the tenant who received a section 25 Notice terminating his tenancy to state whether or not at the termination date he would be willing to give up possession of the property comprised in the tenancy. This was achieved by requiring the landlord to state in his notice a requirement upon the tenant to notify him within two months whether or not he would be willing to give up possession and by providing that, unless the tenant did so, his application to the court for a new tenancy would not be entertained.

14. The relevant provisions were in subsections 25(5) and 29(2) of the original Act. These subsections, together with subsection 25(6) in its original form, were in the following terms:

> "25.
>
> (5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.
>
> (6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Part of this Act for the for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section thirty of this act he would do so.
>
> ……
>
> 29.
>
> (2) Where such an application is made in consequence of a notice given by the landlord under section twenty-five of this Act, it shall not be entertained unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy."

Section 26(6) has remained unaltered.

15. The requirement for the tenant's notification of unwillingness to cede possession, the tenant's "counter-notice", proved to be merely a trap for the unwary and was thought to serve little benefit to landlords. The Law Commission in a 1992 periodic review of the Act recommended the removal of the requirement. In 2001 the Government consulted further on the Law Commission's recommendations, indicating an intention to abolish

the counter-notice requirement. In 2002 the then Office of the Deputy Prime Minister laid before Parliament a proposed draft order implementing (among other things) the proposed repeal of the counter-notice requirement. The proposal was reviewed by the Regulatory Reform Committees of both Houses of Parliament. The Order implementing the changes was made on 1 December 2003, coming into force on 1 June 2004.

16. In replacing the old subsections 25 (5) and (6) with the new subsections (6) and (7), the Order simply adopts the wording originally proposed in 1992 by the Law Commission in the draft Bill appended to its review paper of that year. In the proposed explanatory notes to that draft Bill, the Commission stated:

> "The new sections 25(6) and (7) re-enact the current section 25(6) in a form appropriate to a procedure where either party may apply to the court".

No further intended change is indicated.

17. The leading case as to the date upon which a landlord's "intention" has to be established for the purposes of section 30(1)(f) of the Act is the decision of the House of Lords in *Betty's Cafés*.

18. Since the decision in that case (to which I shall return), it has been the understanding of many concerned in this field of the law that the date upon which the landlord's intention, for the purpose of section 30(1)(f) of the Act, has to be established is the date of the hearing of the court application. The following summary appears in the current edition of Woodfall on Landlord and Tenant:

> "**The material time in relation to grounds of opposition**
>
> The House of Lords by a majority decided that the time at which the landlord's intention under para.(f) must be proved to exist is the date of the hearing. The landlord's notice under s.25 or in opposition to a request under s.26 is, in so far as it states the grounds on which the landlord will oppose an application for a new tenancy, in the nature of a pleading giving notice to the tenant of the case he will have to meet at the hearing, under one or more of the paras. (a) to (g) of s.30 (1). It has been said that the landlord may prove that he has an intention within para.(f) at any stage of the hearing and while the court is still seised of the matter, and that the court is still seised of the matter right down to the time when the court divests itself of further jurisdiction by making an order allowing or dismissing the application, as the case may be. The belatedness of the intention would be highly relevant to its genuineness but, provided that the intention exists by the time the hearing is closed, it is not fatal to him in point of time."

See also Halsbury's Laws of England 5th Edn. Vol. 63 (2012) paragraph 859. Both

works rely on the decision in the *Betty's Cafés* case for their statements of the law.

19. This state of the law has also been assumed in two relatively recent cases in the High Court: *Somerfield Stores Ltd. v Spring (Sutton Coldfield) Ltd.* [2010] EWHC 2084 (Ch.) (His Honour Judge David Cooke) and *Croesco No.4 & ors. v Jolan Ltd. & ors.* [2011] EWHC 803 (Ch.) (Morgan J).

20. It is submitted for Mr Hough, however, that the general understanding of the position in law was wrong, in the case where the procedures are triggered by a landlord's termination notice under section 25 and any statement of opposition to a new tenancy under section 25(7), but not in the case where they are triggered by a tenant's request for a new tenancy under section 26 and any notice of opposition under section 26(6). It is said that this is the result of the change of wording to be found in the new section 25(6) and (7) of the Act.

21. The old section 25(6) required the landlord to state whether he "would oppose an application for the grant of a new tenancy and, if so, also…on which of the grounds mentioned in section thirty of this Act he would do so". The new provisions by contrast require the landlord's notice to state whether "the landlord *is* opposed to the grant of a new tenancy…" (emphasis added) and to specify "one or more of the grounds specified in section 30(1) of this Act as the ground or grounds for his opposition". Thus, it is argued, the new provision speaks in the present tense and not in the conditional (or implicitly, the future) tense as before. The wording of the parallel provision in the case of procedures initiated by a tenant's request for a new tenancy, section 26(6), has, of course, remained unchanged.

(C) Betty's Cafés

22. In *Betty's Cafés* the courts and their Lordships' House were concerned with a case of a tenant's request for a new tenancy under section 26 of the Act. The landlord responded by counter-notice stating that it was not willing to grant a new tenancy and said that the grounds "on which we shall oppose any application which you may make to the court for the grant of a new tenancy of the said property are that on the termination of the current tenancy we intend to reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that we could not reasonably do so without obtaining possession of the holding."

23. The tenant issued an application for a new tenancy and the judge (Danckwerts J (as he then was)) held that the landlord had to prove that, at the date of its notice of opposition, it had a firm and settled intention to carry out the relevant works. He held that it had failed to prove such an intention as at that date. The Court of Appeal (by a majority, Birkett and Romer LJJ, Lord Evershed MR dissenting) reversed that decision, holding that the relevant date was the date of the hearing of the application, and remitted the case to the judge for determination of whether the landlord had demonstrated the relevant intention as at that date. On the remitted question, Danckwerts J held that the landlord had demonstrated the intention required and dismissed the application for a new tenancy.

The case came before the House of Lords, therefore, on the question of whether the judge and the Master of the Rolls on the one hand or the majority of the Court of Appeal on the other had been correct in their respective constructions of the Act as to the relevant date at which the landlord's intention had to be demonstrated.

24. The House (also by a majority, Viscount Simonds, Lords Morton of Henryton, Somervell of Harrow and Denning, Lord Keith of Avonholme dissenting) dismissed the tenant's appeal. Of the majority, Viscount Simonds, Lord Morton and Lord Somervell held that the relevant date was the date of the hearing while Lord Denning held that the landlord must honestly and truthfully state his ground of opposition in his notice and must establish it as existing at the time of the hearing. Lord Denning did not consider the landlord's notice in that case to have been untrue and agreed that the tenant's appeal should be dismissed. In dissent, Lord Keith also considered that the landlord had to show that he had and has the necessary intention both at the date of his notice and at the date of the commencement of his opposition to an application for a new tenancy.

25. The crux of Viscount Simonds' speech can be found in the following passage (at pp. 34-35 of the report) as follows:

> "…..from the point of view of the tenant it seems to essential that the court should find the intention subsisting at the date of the hearing. As I listened to the argument for the appellants and studied their formal case, it appeared to me that they regarded the date of notice of opposition as the only relevant date. But I have not been able to understand what advantage the tenants could gain from the fact of the landlords' intention at that date or from the proof of it, if at a later stage it had been abandoned. Upon this part of the case I respectfully adopt the reasoning of Romer LJ upon which I cannot hope to improve."

26. Viscount Simonds did not consider that assistance could be derived from other grounds of landlord's opposition appearing in section 30, as had been submitted by the appellant tenant.

27. In his speech, Lord Morton (having outlined the tenant's argument) said this:

> "My Lords, the line of argument which I have tried to summarize undoubtedly has its attractions, but I have reached the conclusion that it cannot prevail, if one considers section 30 in the light of section 26 (6) and section 31 (1) already quoted. Section 26 (6) provides that the landlord's notice of opposition "shall state on which of the grounds mentioned in section thirty of this Act the landlord *will oppose* the application." The words "will oppose" must surely refer to some date after the delivery of the notice in which the landlord states the ground on which he "will oppose" the tenant's application. And, in my view, that date can only be the date when the opposition of the landlord is heard by the High Court or the county court, as the case may be.

> I now turn to section 30 (1) and I shall first consider a case where the landlord selects paragraph (*f*) as the ground on which he will oppose the tenant's application. That is the present case, and I shall for the moment disregard the other paragraphs in section 30 (1). Looking only at paragraph (*f*), and bearing in mind what the landlord is to state under section 26 (6), it would seem that when the landlord delivers his notice he is not saying: "I give you notice that I intend to reconstruct the premises." He is saying: "I give you notice that I will oppose your application on the ground that I intend to reconstruct the premises," which is a very different statement. The former is a statement that an intention to reconstruct exists at the time when the notice is given. The latter is a statement that at a future date the landlord will allege, and endeavour to prove, that an intention to reconstruct is then in existence. Later, when the hearing takes place, the landlord says to the court: "I now oppose the application of the tenant on the ground that I intend to reconstruct the premises and that I could not reasonably do so without obtaining possession of the holding." If the landlord establishes that his intention exists at that date, and that the work could not reasonably be carried out without obtaining possession of the holding, section 31 (1) forbids the court to make an order for the grant of a new tenancy."

28. Later, having referred to the tenant's arguments based upon the other grounds of landlord's objections in section 30, Lord Morton continued:

> "I feel, my Lords, that this fact lends considerable support to the views expressed by the Master of the Rolls, and Danckwerts J, and I think that the presence of paragraphs (*a*) to (*d*) inclusive in section 30 (1) throws some doubt upon the meaning of the word "intends" in paragraph (*f*). In the end, however, I have come to the conclusion that the decision of the majority of the Court of Appeal is correct. In paragraphs (*f*) and (*g*) there are no words which are plainly referable to the date of the notice of opposition and, for the reason already given, I think that the more natural interpretation of the word "intends" in paragraph (*f*) is that it is referable only to the time when the opposition of the landlord is heard by the court. If a doubt exists on the point, it is right to have regard to the practical considerations mentioned by Romer LJ in the passages in his judgment which I shall now quote: "Section 31 (1) shows, in my opinion, beyond question that the intention must exist at the hearing; for it would be *nihil ad rem* for a landlord to establish to the satisfaction of the court that he had intended some weeks or months previously to demolish or reconstruct on the termination of the tenancy if, in fact, he had abandoned that intention in the interval. But the additional requirement that an earlier intention, in the strict sense of the word, must also be established cannot be clearly derived, in my judgment, from the statutory language used which, if it imposes

> the requirement at all, does so in an equivocal and ambiguous manner. Accordingly, it is permissible to inquire whether the requirement would, on the one hand, be of advantage to the tenant and, on the other hand, would or might result in hardship or inconvenience to the landlord; for it would be a disadvantage to the landlord without securing any corresponding benefit to the tenant, it is surely a legitimate inference that the legislature did not intend to impose it.
>
> The learned Lord Justice then embarked on the inquiry just mentioned and concluded, for reasons which I accept, that a requirement that the "intention" must exist at the date of the notice of opposition was unnecessary for the protection of a tenant and would or might impose hardship on a landlord. As to the reason for the requirement, in section 26 (6), that the landlord must state, in his notice of opposition, on which of the grounds mentioned, in section 30 he intends to rely, Romer LJ said: "The matter will ultimately come before the court and it is obviously right that the tenant should know in advance what is the case that he will have to meet at the hearing. It is, in my judgment, the object of the counter-notice that the tenant should be given this information, but, in my opinion, the counter-notice has no further or other object. It is, I think, intended to be in the nature of pleading and its function, as in the case of all pleadings, is to prevent the other party to the issue from being taken by surprise when the matter comes before the judge. Why the interests of justice should further require that the landlord's intention must be shown to have been a definite and settled intention at the time when the counter-notice is served, or why the tenant should be entitled to a new tenancy unless such an intention can be established, I find, for my part, difficult to comprehend."

29. Lord Somervell agreed with Lord Simonds and added some further observations. He was of the view that the notice under section 26(6) was indeed analogous to a pleading, telling the tenant the nature of the case that he would have to meet on any court application for a new tenancy. He considered that it was for the court to consider the points raised at the conclusion of the cases on each side; the intention under paragraphs (f) and (g) of section 30 had to be established "when the order falls to be made".

(D) The Judgment in the present case

30. The judge stated that he found the argument for Mr Hough, based on the new wording of section 25(6), to be persuasive. However, he felt he could not accept it because all the works on the law of landlord and tenant seemed to proceed upon the basis that the time for establishing the relevant intention under sections 30(1)(f) was the same under section 25 and 26, i.e. the date of the hearing of the application in court. Further, he considered himself bound to follow the decision of this court in *Dogan v Semali Investments Ltd.* [2005] EWCA Civ 1036, in which the court proceeded on the basis that the relevant date under sections 25 and 26 were the same. He understood, as did both counsel then before

him, that the new statutory provisions applied at the relevant times in *Dogan's* case. The judge refused permission to appeal upon the basis that the law was settled by *Betty's Cafés* and *Dogan.* However, as pointed out by Rimer LJ in granting permission, and as is accepted by both parties before us, it had been overlooked below (neither Mr Gill QC nor Mr Williamson QC then appearing) that the section 25 notice in *Dogan* had been served prior to the coming into force of the new provisions in June 2004.

(E) The Appeal and my own conclusions

31. In support of the present appeal, Mr Gill QC (with Mr Alomo) for Mr Hough takes the short point that the wording of the legislation has changed. Section 25(6) now requires the landlord's notice to state the grounds upon which the landlord "is opposed" to the grant of a new tenancy. The old provision required him to state whether he "would oppose" and on which of the section 30 grounds "he would do so". Section 26(6) has remained constant in requiring the landlord's notice of opposition to a tenant's request for a new tenancy to state "on which of the grounds…the landlord will oppose the application".

32. Section 26(6), the provision directly applicable in *Betty's Cafés*, still uses "the language of futurity" of which Viscount Simonds spoke in that case (at p.34). On the other hand the legislature has consciously adopted the present tense in the new provision. Thus, it follows, submits Mr Gill, that the use of the present tense heralded an express intention on the part of the legislature to focus upon the date of the landlord's notice in a section 25 case.

33. Mr Gill pointed to the argument of counsel for the landlord in *Betty's Cafés* which conceded that different considerations may attach to section 25 cases on the one hand and section 26 cases on the other. At page 27 of the report, Mr Edward Milner Holland QC and Mr Widgery (as he then was) for the landlord are reported as submitting that:

> "Section 30 opens with words limiting the landlord's right to reliance on certain grounds of opposition. Section 26 (6) has referred to the grounds on which he "will oppose" the application. It would be great hardship if under that subsection the landlord had to make up his mind within only two months of a tenant's request for a new tenancy on a matter of demolition or substantial reconstruction. That consideration does not apply to section 25 where the landlord is initiating the matter in giving notice to determine a tenancy, and it may be said that in such a case the landlord must have made up his mind before he sets the ball rolling. It is different where the tenant is asking for a new tenancy on his own initiative."

34. Mr Gill also argued that the requirement that the landlord should have the requisite settled intention would afford to the tenant significant further protection enabling him to request, where desirable, pre-action disclosure under the Civil Procedure Rules, prior to initiating the application for a new tenancy, and to embark upon suitable pre-action protocol correspondence to test the landlord's true intentions prior to the inception of

proceedings.

35. For my part, I do not accept these submissions.

36. It seems to me that the change in wording in section 25 of the Act was precipitated by the abolition of the counter-notice procedure. The old subsection (6) used the conditional tense ("would oppose") for the case where the landlord was waiting to see whether or not a counter-notice would be served stating the tenant's unwillingness to give up possession. Once the counter-notice provisions fell out of play, there was no need for the conditional tense. That, in my view, was the sole purpose of the amendment. There is nothing to indicate that, beyond this, Parliament intended to revise the settled law as to the timing for the demonstration of the landlord's relevant intention for the purposes of section 30(1)(f), whether in a section 25 or a section 26 case.

37. It is, I think, also material to note that the 2003 Order effecting the amendments which we are now considering makes express reference in its preamble to the consultation with the Law Commission, the Secretary of State's formal consultation and the reports of Regulatory Reform Committees of both Houses of Parliament. While most of this material makes extensive reference to the abolition of the counter-notice procedure, we have been shown nothing in it suggesting that the previously understood position as to the date for establishing a landlord's intention under section 30(1)(f) was to change.

38. There seems to me to be nothing in the new language itself that requires the landlord to have in place at the date of the notice all the elements that will enable him to prove that his intention is *at that time* such as described by Asquith LJ in *Cunliffe v Goodman* (supra). The new language only requires the landlord to state whether he is opposed to the grant of a new tenancy and on which ground under section 30 he intends to rely. The procedure under the Act requires the landlord to make good his opposition at the date of the hearing. That is made clear by section 29 of the Act which provides for the grant of a new tenancy, on an application to court under section 24, subject to the provisions of the Act. The grounds of opposition to such an application appear in section 30 and, by subsection (1)(f), if the landlord shows at the hearing his intention at the determination of the current tenancy to demolish or reconstruct, his opposition succeeds. That intention can only realistically be shown at a subsequent hearing.

39. In my view that meaning of section 30(1)(f) is established by the decision in *Betty's Cafés* and that provision applies whether the application to the court has been triggered by a section 25 notice or a section 26 request. If, as I think is clear, section 30(1)(f) requires the landlord to prove his intention at the date of the hearing, I can see no practical reason why he should also be required to prove that he held that intention, with "a reasonable prospect of being able to bring [it] about" (per *Cunliffe v Goodman*), at the date of service of his notice under section 25. For my part, it seems that the purpose of the notice of opposition is precisely the same as that identified by Romer LJ in this court in *Betty's Cafés* and approved by the House of Lords, namely to perform the function of a pleading to inform the tenant of the case to be met at trial and to prevent him being taken by surprise as to the grounds of opposition. As Romer LJ put it,

> "Why the interests of justice should further require that the

> landlord's intention must be shown to have been a definite and settled intention at the time when the counter-notice is served, or why the tenant should be entitled to a new tenancy unless such an intention can be established, I find, for my part, difficult to comprehend." (See again [1959] AC at p. 44).

40. As Mr Williamson QC submitted, it would be an odd investigation at trial for the court to enquire as to what a landlord's intention was at the date of service of the notice, many months previously, when it is clear that it also needs to establish what that intention is at the time of the hearing.

41. I do not find it persuasive that new procedures are now available for pre-action disclosure and pre-action protocol correspondence under which a landlord might be required to produce his supporting material before the inception of proceedings. In my judgment, this flies in the face of the realities of this type of proceeding. The Act prescribes rigid time limits with which each party is to comply and an application to the court will normally be required to be launched before such niceties of civil procedure could usefully be deployed. Moreover, I do not see that the availability of such procedures could be thought to have been in the mind of the Minister or of the legislature when enacting the 2003 Order.

42. I am encouraged in the view that I take of the proper construction of these new provisions that, in his reasons for granting permission to appeal, Rimer LJ (who had unparalleled experience in this field) stated that he regarded "it as unlikely that the material time under sections 25(6) and 26(6) for proving a section 30(1)(f) ground of opposition can be different", although he recognised that the point was arguable.

(F) Proposed Result

43. For these reasons, for my part, I would dismiss this appeal.

Lord Justice Burnett:

44. I agree.

Lord Justice Vos:

45. I also agree.