

A landlord's right to develop versus a tenant's right to quiet enjoyment

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The Kilkenny Group, which houses its flagship store in Dublin City Centre's Setanta Centre, has successfully blocked plans by a Goodman family firm to construct a €100m office block development at the Centre, following an appeal to An Bord Pleanála (Irish planning authority). While the flagship store was to remain untouched during the redevelopment of the Centre, The Kilkenny Group argued that "the proposed development includes a design that is both inappropriate for the area and unacceptable for the shop ... This will have serious implications for the future viability of the shop and its ongoing operation."

This recent report mirrors the often disputed and competing rights of (i) a landlord to build or develop his property and (ii) a tenant's right to quiet enjoyment. Awareness of the competing rights has become more prevalent as Ireland's economy recovers and construction begins again.

Most commercial leases will expressly grant quiet enjoyment to a tenant whilst also reserving the right for the landlord to carry out repairs / works to leased premises or adjoining premises.

The conflicting rights were recently considered in the U.K. High Court case of *Timothy Taylor Limited v Mayfair House Corporations* [2016] in which the judge ruled that "where you have a landlord's right to carry out extensive works to a building and a landlord's covenant for quiet enjoyment, in the event of conflict, neither provision trumps the other. The lease provisions have to work together. The landlord can carry out the extensive works provided the landlord does so acting reasonably. Similarly, the tenant must accept there will be some interference with their use and enjoyment of the premises, during the course of such works."

What practical measures can landlords carry out in order to keep tenants content during construction programmes?

- Liaise with tenants when works are being planned to develop a strategy which will minimise impact on tenants;

- Incorporate a widely drafted right to carry out works / build in all commercial leases;
- Timetable works - have quiet times and noisy times (if possible);
- Ensure that any specific agreements made with tenants are passed on to the contractor;
- Schedule frequent meetings with tenants so that they have an opportunity to discuss any problems which arise; and
- Consider offering compensation / reduced rent during the works if they will have a significant impact on tenants

Extensive works to a building can be essential to a Landlord to make the best use of an asset. However, all landlords exercising rights to carry out substantial works that may impact on tenants run the risk of claims for damages and - in appropriate cases - an injunction if they do so in a way that unreasonably interferes with their tenants' rights to quiet enjoyment.

For more information on landlord and tenant law, please contact Sarah by emailing sarah.keenan@ogier.com

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