

# W (No.3) GP (Nominee A ) Ltd and another v J D Sports Fashion Plc (Nottingham County Court, 22 October 2021)

The County Court refuses the landlord's request to include a turnover rent in a statutory lease renewal.

01 April 2022

The County Court refuses the landlord's request to include a turnover rent in a statutory lease renewal.

## Facts

This case concerned a lease renewal of retail premises in a shopping centre in Derby under Part II of the Landlord and Tenant Act 1954 (the 1954 Act).

The landlord (W) had served a section 25 notice on the tenant (JDS) terminating its existing lease in June 2017. Under the existing lease, JDS was liable to pay an initial base rent of £175,000 and a turnover rent equivalent to the amount by which 8% of gross sales exceeded the base rent.

W wanted to include a similar turnover rent in the statutory renewal lease, whereas JDS wanted a fixed annual rent.

## Issue

1. Did section 34 of the 1954 Act (the section dealing with rent payable on a lease renewal) give the court jurisdiction to determine a turnover rent?
2. Should a turnover rent be awarded in this case?

## Decision

1. A turnover rent is tenant specific and depends on the turnover of a particular tenant and the nature of its business. It therefore sits uneasily with the concept of a willing hypothetical tenant envisaged by section 34 for the purposes of calculating an open market rent. Where the parties do not agree on a turnover rent, the court should assess (on the facts of the individual case) whether a turnover rent is appropriate. In some cases, where the nature of the business is clear, the likely turnover is discernible and the disregards in section 34 (the tenant's occupation and the goodwill attached to its business) are of little or no relevance, a turnover rent may be appropriate. An example of this might be in a lease of a car park.
2. A review of the comparable lettings in this shopping centre showed that the terms of the lettings were largely determined by the wishes of the particular tenant and that rents had decreased over recent years. A turnover rent in these circumstances was unlikely therefore to result in an open market rent (which is what section 34 requires) and was not appropriate. The court ordered a fixed rent in the renewal lease.

## Point to note/consider

Whilst in this case it was W who was arguing for a turnover rent, in recent times the situation may often be reversed. To protect itself against future pandemics, lockdowns and government restrictions, a tenant who currently pays a fixed rent may want to move on renewal to a turnover rent, so that the risk of such events happening in the future is shared with its landlord.

Whilst this is only a County Court decision (and therefore has no precedent value), this decision does seem to indicate that, at least in a retail context (where the identity of the individual tenant and its business are key), a court is unlikely to be in a position to order a turnover rent on a statutory lease renewal (unless the parties agree).

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