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BEYOND TAX

Property Law Developments That Matter

Ten recent decisions and updates with practical implications for property owners, investors, developers, landlords and advisers

The first in a planned series looking beyond tax at legal developments that can materially affect the property transactions, structures and assets of our clients.

These developments are deliberately non-tax, but they sit alongside the same property lifecycle on which our tax advice depends: title, planning, leases, development documentation, management, evidence and exit. Each can affect value, funding, marketability, compliance or transaction timing.

Taken together, they reinforce a simple point: tax analysis does not sit in isolation. A technically sound structure can still be undermined by defective documents, overlooked private rights, procedural missteps or weak evidence.

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SPECIALIST ADVICE. | CLEAR THINKING. | BETTER OUTCOMES.

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This briefing brings together ten wider property-law developments selected for their practical relevance to our property client base. Page numbers refer to this document.

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Why we are looking beyond tax

CLASSIFICATION **Series introduction** | **DATE** **10 August 2026** | **SOURCE** **Bell Howley Perrotton**

Bell Howley Perrotton is a legal and tax advisory firm. Many of the property transactions and structures on which we advise cannot be understood through tax legislation alone. Our clients operate at the intersection of tax, title, planning, leases, development agreements, regulatory compliance and day-to-day asset management. A sound tax analysis will not rescue a transaction that is undermined by a restrictive covenant, a defective surrender agreement, an expired option or an evidential gap.

The decisions and updates collected in this briefing are therefore deliberately non-tax. They have been selected because they are directly relevant to the owners, investors, developers, landlords, tenants, freeholders, managing agents and professional advisers who make up a substantial part of our client base. Each development exposes a practical risk that can arise before acquisition, during ownership, on development, in litigation or at exit.

The aim is not to provide a comprehensive survey of every landlord-and-tenant, planning or property case. It is to identify decisions and official developments that clarify a point of wider application, question established practice, reveal a material drafting or compliance risk, or offer a useful lesson for property due diligence and transaction management.

> KEY TAKEAWAY **The recurring theme is simple: the commercial plan, the documents, the evidence and the legal machinery all need to point in the same direction.**

The ten developments considered below span restrictive covenants, strategic land options, planning prior approval, Welsh planning reform, agreements for future surrender, reserve funds, service-charge evidence, telecoms holding-over arrangements, civil-penalty appeals and historic gas-safety records. The subjects differ, but the practical messages are strikingly consistent.

PART 1 DEVELOPMENT, LAND AND PLANNING

1 Planning permission does not neutralise a restrictive covenant

Domus Living Limited v Edward VII Estates Limited [2026] UKUT 287 (LC)

Upper Tribunal (Lands Chamber) | 5 August 2026 | Restrictive covenants / section 84 LPA 1925

Court	Upper Tribunal (Lands Chamber)
Issue	Restrictive covenant affecting a completed development
Outcome	Restriction discharged; no compensation awarded
Client focus	Developers, funders, purchasers and conveyancers

Background and context

The case concerns a development risk that is easy to describe but still surprisingly easy to overlook: a planning permission answers a public-law question, whereas a restrictive covenant is a private property right. Obtaining one does not extinguish the other. A scheme can therefore be entirely acceptable to the planning authority and still be constrained by the title.

That distinction matters throughout the property lifecycle. At acquisition, a covenant may affect the feasibility or value of the proposed scheme. During development it can influence funding, insurance and negotiations with the benefiting owner. At exit it can become a marketability problem, even where the building is complete and the planning position is beyond doubt.

What happened

Domus Living acquired a development plot subject to a restrictive covenant linked to an earlier scheme. The covenant contemplated a four-bedroom house. The developer subsequently obtained planning permission for, and built, a substantially larger six-bedroom property.

The title problem came into sharp focus when the property was to be sold. An agreed disposal collapsed after the purchaser identified the breach and the owner with the benefit of the covenant would not agree a release. This chronology is commercially important: the developer ultimately succeeded before the Tribunal, but the covenant had already interrupted the exit strategy and imposed delay, cost and uncertainty.

The Tribunal’s approach

The Upper Tribunal discharged the relevant restriction under section 84 of the Law of Property Act 1925. On the facts, it found no injury or practical benefit of sufficient weight to justify the covenant continuing in its existing form. It treated the restriction as obsolete in the circumstances, rejected the suggestion that the developer’s conduct should be characterised in the same way as the deliberate and cynical breach considered in Alexander Devine, and awarded no compensation.

The result illustrates the breadth of the Tribunal’s section 84 jurisdiction, but it should not be treated as a licence to build first and deal with title later. Section 84 applications are fact-sensitive and discretionary. The nature of the benefiting land, the purpose of the covenant, the development already undertaken, planning permissions, conduct and any practical benefit retained by the objector can all matter.

Why this matters in transactions

The case reinforces the need to run planning and title due diligence in parallel. A planning report that says a scheme is permitted is not a title report saying the scheme is free from private restraint. Likewise, a restrictive covenant search cannot answer the planning question.

For lenders and purchasers, unresolved covenant exposure can affect valuation and conditions precedent. For developers, it can affect the timing of works and whether indemnity insurance remains available. Approaching a benefiting owner or commencing works can change the insurance landscape, so the strategy should be considered before any step is taken that may prejudice an available route.

Practical implications

- Identify restrictive covenants before committing to the development appraisal, not when the scheme is ready to sell.
- Decide early whether the preferred route is compliance, negotiated release, insurance or a section 84 application.
- Keep planning permission and covenant clearance as separate workstreams in transaction checklists and funding conditions.
- Consider the effect of developer conduct on discretion, compensation and the availability of insurance.

WHY IT MATTERS	**A title issue discovered at exit can destroy or delay a sale even if it is ultimately capable of being resolved. Development due diligence needs a route through both public planning control and private title restrictions.**

Limitations and watch points

The decision is fact-specific. Discharge under section 84 depends on the particular covenant, the benefiting land, the statutory ground relied upon and the evidence. A successful application after development is not equivalent to having cleared the risk before works begin.

KEY TAKEAWAY **Planning permission answers a public-law question. A restrictive covenant answers a private-law one.**

2 When "keep alive" does not mean "extend"

Hawridge Strategic Land Limited v Millen Homes Limited [2026] EWHC 1934 (Ch)

High Court (Chancery Division) | 4 August 2026 | Strategic land options / contractual construction

Court	High Court, Chancery Division
Issue	Whether a general preservation obligation required an option extension
Claim	More than £2.5m, largely alleged lost development profit
Client focus	Land promoters, developers, landowners and funders

Background and context

Strategic land arrangements often depend on long timetables and carefully sequenced rights. Option periods, extension notices, planning milestones, promotion obligations and assignment rights may operate across several agreements. Small drafting differences can therefore have very large economic consequences.

Hawridge is a useful illustration of the court's reluctance to turn a general obligation into a materially different positive obligation when the contract does not say so expressly. It also shows why extension rights need operational drafting rather than assumptions about what the parties must have intended.

What happened

The dispute concerned strategic land at East Hanningfield. A five-year option agreement entered into in 2019 could be extended for a further five years by written notice and payment of a £5,000 extension fee. A separate assignment agreement dealt with the transfer of related contractual rights. The original assignee later entered administration and those rights passed to Hawridge Strategic Land.

The initial option period expired in June 2024 without an extension notice being served. Hawridge contended that Millen Homes had been obliged to extend. It relied on language requiring Millen Homes not to bring the option arrangement to an end by act or omission and to take steps necessary to ensure it remained in force.

The Court's reasoning

The High Court rejected that construction. Expiry by the passage of the contractual term was not the same thing as terminating the option by an act or omission. More fundamentally, a general obligation not to end an agreement did not impose the materially different commercial burden of exercising an extension right for another five years.

That conclusion reflects a familiar principle of contractual construction: the court identifies what the words used mean in their documentary and commercial context; it does not rewrite the bargain to achieve an outcome that may appear commercially sensible after the event. If the parties intended one party to be responsible for extending the option, the agreement could have stated the trigger, deadline, payment obligation and consequences of default directly.

Assignment and document architecture

The case also addressed assignment. Hawridge relied on rights under the separate assignment agreement rather than a purported transfer of the option itself. The drafting of that agreement had deliberately removed a restriction that would otherwise have limited transfer, supporting the conclusion that its benefit was assignable.

This is important in layered strategic-land structures. An option, promotion agreement, collaboration agreement, assignment agreement and side letter may each have their own transfer regime. A restriction in one instrument should not be assumed automatically to control rights under another.

Practical implications

- State expressly who must serve an extension notice, by when, in what form and at whose cost.
- If an extension is commercially essential, make the obligation positive rather than relying on wording that merely prevents termination.
- Include step-in rights, notice reminders and consequences of a missed extension deadline.
- Review assignment provisions agreement by agreement in multi-document structures.

WHY IT MATTERS	**Where development value depends on an option surviving, the extension machinery should be explicit, operational and diarised. Commercial expectation is not a substitute for contractual wording.**

Limitations and watch points

Summary judgment was entered against Hawridge on the contractual extension claim, but an alternative duty-of-care claim was not struck out. The wider litigation was therefore not finally determined by this decision.

KEY TAKEAWAY **“Do not terminate” and “you must extend” are not necessarily the same obligation.**

3 A quashed prior approval does not create deemed consent

R (Di Mambro) v East Devon District Council [2026] EWHC 1961 (Admin)

Planning Court | 6 August 2026 | GPDO prior approval / deemed consent / judicial review

Court	High Court, Planning Court
Issue	Effect of quashing a timely prior-approval decision on the 56-day regime
Outcome	No deemed consent; application required redetermination
Client focus	Developers, landowners, planners and conveyancers

Background and context

Permitted development rights are often described as a route to development without a full planning application, but that shorthand can be misleading. Many rights depend on prior-approval procedures with strict conditions and deadlines. The legal route can therefore turn on chronology and on whether the authority has done the thing the legislation requires within the prescribed period.

Di Mambro examines what happens when the authority does notify a decision in time, but that decision is later quashed. The question is not merely academic: if quashing retrospectively converted the case into one where no decision had been notified, the statutory deemed-consent mechanism could produce a very different outcome.

What happened

The proposal was to change an agricultural building in Devon to a C1 guesthouse under Class R of Part 3, Schedule 2 to the General Permitted Development Order 2015. The local authority notified the developer within the statutory 56-day period that prior approval had been granted.

A judicial-review challenge later succeeded because the authority had not properly addressed whether the building satisfied the threshold requirements for Class R. The prior-approval decision was quashed and the matter remitted for redetermination.

The legal issue

The claimant argued that once the approval was quashed it should be treated as if no valid decision had ever been notified. On that analysis, the original 56-day period had expired and the developer could potentially rely on the deemed-consent limb in paragraph W(11).

The issue therefore required the court to distinguish between the legal effect of a decision and the historical fact that a decision had been notified. A quashing order removes the decision's legal effect; the question was whether it also erases the notification event for the purpose of the statutory timetable.

The Court's reasoning and result

The High Court rejected the deemed-consent argument. The authority had in fact notified a decision within the 56 days. Quashing removed the legal effect of that decision, but did not rewrite history so that the authority was treated as having failed to notify anything at all. The application therefore fell to be redetermined; deemed consent did not arise automatically.

The reasoning avoids an anomalous result in which a successful challenge to an unlawful approval could itself produce an unconditional development right. It also emphasises that paragraph W contains genuine alternative routes: a notified decision within time is different from a failure to notify within time.

Practical implications

- Build a chronology of application, validation, notification, challenge, quashing and remittal when reviewing prior-approval history.
- Do not assume that expiry of the original period after a quashing order creates deemed consent.
- Draft consent orders resolving planning litigation so that remittal and redetermination are clear.
- Treat permitted-development due diligence as a procedural as well as a planning-merits exercise.

WHY IT MATTERS	**A quashed decision loses legal effect, but the underlying procedural history does not disappear. In prior-approval cases the sequence of events can be decisive.**

Limitations and watch points

The case concerns the wording and structure of the GPDO prior-approval machinery. Its reasoning may be informative across other classes using paragraph W, but each permitted-development right must still be checked against its own conditions and procedural requirements.

KEY TAKEAWAY **A quashing order does not “airbrush” a timely notification from history.**

4 Preparing for the new Welsh planning code

Welsh Government: implementation of the Planning (Wales) Act 2026

Official implementation update | 7 August 2026 | Planning consolidation / transition / precedent management

Status	Official Welsh Government implementation material
Legislation	Planning (Wales) Act 2026 and consequential provisions
Expected framework	Substantive consolidated code expected during 2027 implementation programme
Client focus	Welsh developers, landowners, planners, conveyancers and public bodies

Why the reform matters

The Planning (Wales) Act 2026 brings the principal legislation governing town and country planning in Wales into a single bilingual statute. The project is predominantly one of consolidation and modernisation rather than wholesale policy reform, but that does not make implementation a minor administrative exercise.

Planning agreements, options, reports on title, planning opinions, local-authority procedures and internal precedents frequently contain detailed statutory references. When a consolidated code replaces a framework spread across older enactments, those references and procedural signposts have to move with it.

The implementation position

The Acts received Royal Assent in April 2026, but only limited provisions came into force immediately. The substantive consolidated regime depends on commencement orders and supporting subordinate legislation. The implementation programme envisages a staged transition, with further practitioner material and subordinate legislation to follow.

The immediate practical point is therefore simple: the 2026 Act should not be treated as though it has already displaced the operative planning legislation. Until the relevant commencement provisions take effect, current law continues to govern live applications, agreements and transactions.

A precedent-management exercise

The greatest short-term risk may be mechanical rather than doctrinal. Long-running development documentation can remain live for years. An option signed today may be exercised after the planning code changes. A development agreement may contain conditions precedent framed by reference to legislation that is later repealed and restated. Planning obligations, certificates, notices and internal guidance may all require updating.

That makes implementation a structured precedent-management project. Organisations should identify documents that use planning statutory references, map them against the new code, and decide whether drafting needs dynamic references, transitional language or both. Training will also matter because familiar concepts may appear under different section numbers and modernised terminology.

Transitional risk

Consolidation legislation usually aims to preserve legal effect, but transitional and saving provisions still need careful reading. A transaction or application straddling commencement may raise questions about which procedure applies, how existing permissions and notices are treated and whether an old statutory reference remains effective.

For property due diligence, the safest approach is to identify the date on which the relevant planning step occurred and the legislation in force at that time, rather than assuming the newest statute must govern the analysis.

Practical implications

- Continue to use the legislation actually in force until commencement provisions say otherwise.
- Identify contracts, options, development agreements and planning obligations likely to remain live through the transition.
- Create a controlled precedent-update project rather than waiting for commencement day.
- Track commencement orders, subordinate legislation, practitioner guidance and saving provisions as they are published.

WHY IT MATTERS	**The transition risk is less about learning a wholly new planning policy and more about using the correct statutory references, procedures and precedents at the correct time.**

Limitations and watch points

Implementation remains staged. Commencement timing and subordinate legislation can change, so documents should be checked against the position current at the date of the relevant transaction or planning step.

KEY TAKEAWAY **This is a precedent-management project now, not a problem to leave until commencement.**

PART 2 LEASES AND PROPERTY MANAGEMENT

5 A defective surrender can unravel the whole settlement

Euroresins UK Limited v TLC Investment Limited [2026] EWHC 2105 (Ch)

High Court (Chancery Division) | 7 August 2026 | LTA 1954 / future surrender / settlement agreements

Court	High Court, Chancery Division
Issue	Validity of an advance agreement to surrender a protected business tenancy
Outcome	Future-surrender agreement and integrated settlement held void
Client focus	Commercial landlords, tenants, litigators and property lawyers

Background and context

Commercial lease disputes are frequently resolved through settlement agreements that do more than end the litigation. They may fix a surrender date, allocate dilapidations risk, prescribe access, appoint an expert, release claims and settle costs. If the surrender mechanism is legally ineffective, the question then becomes how much of the surrounding bargain survives.

Euroresins is a particularly strong precedent-management warning because the settlement was professionally drafted and incorporated into a Tomlin order. The problem was not an exotic point of law; it was the use of an obsolete route for validating an agreement to surrender a protected tenancy on a future date.

What happened

The parties were in dispute over assignment and repairing obligations under a protected business tenancy. Their settlement agreement provided for a future surrender, required the premises to be delivered in repair and appointed an independent expert surveyor to determine the required works. The agreement also contained supporting provisions dealing with releases, costs, indemnities, inspection rights and the mechanics of settlement.

The terms were incorporated into a Tomlin order. The order purported to obtain court sanction for the future surrender using the procedure that had existed before the statutory reforms that took effect in 2004.

The statutory problem

Since 1 June 2004, the court has not had jurisdiction to validate an advance agreement for surrender in that manner. Section 38A of the Landlord and Tenant Act 1954 and the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 require the prescribed warning-notice and declaration procedure where the parties agree in advance that a protected tenancy will end on a future surrender.

Those steps had not been followed. The agreement for future surrender was therefore void. The distinction between an immediate surrender and an agreement now to surrender at a later date is central: the latter engages the statutory contracting-out machinery.

Why the rest of the settlement failed

The court then had to decide whether only the surrender provision failed or whether the defect infected the wider settlement. On the facts, the surrender date, repairing obligations and expert process were not peripheral terms. They were the core commercial bargain around which the releases, payments and other machinery had been constructed.

The entire settlement was therefore void. The severability clause could not save the arrangement because the provisions that failed were fundamental rather than detachable. The surveyor's determinations also lost their contractual foundation: his appointment and the binding effect of his conclusions depended on machinery contained in the invalid agreement.

Practical implications

- Distinguish an immediate surrender from an agreement now requiring surrender on a future date.
- Do not assume that a Tomlin or consent order replaces the section 38A warning-notice and declaration procedure.
- Audit litigation and settlement precedents, not just transactional surrender precedents.
- Draft severability with care, but do not assume it can preserve a bargain whose central mechanism is void.
- Consider whether expert determinations, payments, releases and dilapidations provisions have an independent legal foundation.

WHY IT MATTERS	**A statutory contracting-out failure can invalidate far more than the surrender clause. Where surrender is the foundation of the bargain, the entire settlement architecture may be exposed.**

Limitations and watch points

The decision turns on the integrated structure of this settlement. A different agreement may contain provisions capable of surviving independently. The statutory analysis is specifically relevant to advance agreements for future surrender of protected business tenancies.

KEY TAKEAWAY **A Tomlin order cannot rescue a defective agreement for a future surrender.**

6 A sensible reserve fund still requires lease authority

Reshma Tachkani v Thornfield Hawley Management Company Limited [2026] UKUT 295 (LC)

Upper Tribunal (Lands Chamber) | 5 August 2026 | Service charges / reserve funds / implied terms / variation

Court	Upper Tribunal (Lands Chamber)
Issue	Whether broad repair clauses or historic practice authorised a reserve fund
Outcome	Leaseholder not liable for reserve-fund contributions for 2018-2025
Client focus	Freeholders, RTM companies, managing agents and leaseholders

Background and context

Reserve and sinking funds are a standard feature of well-managed residential developments. They can smooth expenditure, reduce the shock of major works and support planned maintenance. But sensible management and contractual authority are different questions.

Tachkani addresses what happens where the management company has operated a reserve fund for years, while the leases contain broad repairing and service-charge provisions but no express power to collect contributions in advance for a reserve fund.

The arguments

The First-tier Tribunal had accepted the arrangement. It treated the reserve fund as a sensible means of managing the estate and relied in part on the history of discussions, demands and payments. The management company therefore had two possible routes: an implied contractual power, or an argument that the parties' conduct had effectively changed the leases.

The Upper Tribunal rejected both. The result is important because many blocks have long-standing practices that everyone has treated as normal without asking whether the lease actually authorises them.

Implied terms: necessity, not convenience

An implied term requires necessity, not merely desirability. The leases were capable of operating without a reserve fund: repair expenditure could be demanded when the liability arose. Advance collection might be administratively preferable and financially prudent, but that did not make it necessary to give the leases business efficacy.

The repairing obligation therefore did not carry with it an independent power to collect money for future expenditure. In service-charge cases the charging machinery matters just as much as the landlord's substantive obligation to carry out the works.

Conduct, variation and estoppel

The Tribunal also rejected the idea that the leases had been varied by an 'implicit agreement over time'. A lease granted by deed is not normally rewritten merely because the parties have followed a practice, discussed it at meetings or paid demands without immediate challenge. Formal variation by deed, or an appropriate court or tribunal order, may be required.

Estoppel remains more nuanced. Historic payments and conduct can matter in particular circumstances, especially when considering whether past demands can be reopened. But estoppel does not automatically create a continuing contractual power to levy future reserve-fund contributions that the lease never granted.

Practical implications

- Check the exact service-charge machinery before acquiring or managing a block with a reserve or sinking fund.
- Do not treat prudent estate management as a substitute for an express charging power.
- Where lease wording is defective, consider formal variation rather than long-term administrative workaround.
- In due diligence, distinguish the balance sitting in a reserve fund from the legal right to continue collecting it.
- Keep historic demands, meeting records and payment evidence, but do not assume they cure defective drafting.

WHY IT MATTERS	**For block-management and freehold due diligence, the question is not whether a reserve fund is sensible. It is whether the leases authorise the collection of it.**

Limitations and watch points

The effect of historic payments and estoppel is fact-sensitive. The decision does not mean that every reserve fund without an express label is invalid: authority may arise from properly construed service-charge wording. The lease must be read as a whole.

KEY TAKEAWAY **Good estate management cannot substitute for contractual authority.**

7 A folder of photographs is not necessarily evidence

Agincourt Investments Limited v Williams & Ors [2026] UKUT 292 (LC)

Upper Tribunal (Lands Chamber) | 3 August 2026 | Service charges / major works / evidential proof

Court	Upper Tribunal (Lands Chamber)
Issue	Evidential weight of unauthenticated photographs in a major-works dispute
Outcome	Landlord’s substantive appeal dismissed
Client focus	Landlords, managing agents, surveyors and litigators

Background and context

Property disputes generate large volumes of photographs. Phones make it easy to document works, defects and condition, but ease of capture can create a false sense of evidential security. A photograph may be perfectly genuine and still carry little weight if nobody explains what it shows, when it was taken or how it relates to the disputed issue.

Agincourt arose from major works to the structure and exterior of a five-flat residential building. Leaseholders challenged a number of service-charge items and relied on expert evidence that some works had not been completed or were not completed to an adequate standard.

The evidential problem

The landlord supplied dozens of photographs alongside a Scott Schedule. The weakness was not the number or apparent quality of the images. There was no witness statement identifying who took them, when and where they were taken, or what each photograph was intended to prove.

The problem had also been identified before the hearing. Authenticity and relevance were disputed, yet the landlord did not cure the gap with proper witness evidence. Attempting to introduce metadata or additional explanation during the hearing risked unfairness because the leaseholders had not had a proper opportunity to test it.

The Tribunal’s reasoning

The First-tier Tribunal preferred the leaseholders’ expert evidence and reduced or disallowed parts of the major-works charges. The Upper Tribunal dismissed the landlord’s substantive appeal. Although tribunal proceedings are less formal than ordinary civil litigation, the tribunal still decides cases on evidence.

Putting an image into a hearing bundle does not automatically prove its date, location, authorship or relevance. Those foundational matters may need a witness. The case therefore distinguishes between information and evidence: the former becomes useful proof only when it is properly authenticated and connected to the issue the tribunal must decide.

Designing evidence as the works progress

The practical lesson is to create a litigation-ready record while the works are happening. Photographs should be dated, mapped to locations and work items, and stored with contractor reports, invoices, certificates, schedules and surveyor sign-off. Where a managing agent or surveyor is responsible for the record, that person should be capable of explaining the system used.

This is not about preparing every project for litigation. It is about good asset management. A well-structured evidential record assists certification, cost control, insurance, future due diligence and dispute avoidance long before a tribunal claim is contemplated.

Practical implications

- Use a consistent photo log showing date, location and the work item or defect depicted.
- Identify the person who can authenticate the photographic record if it is later challenged.
- Store images with contracts, specifications, invoices, certificates and surveyor reports.
- Do not wait until a hearing to retrieve metadata or reconstruct context.
- For major works, build the evidential architecture into the project-management process.

WHY IT MATTERS	**Documentation and proof are not the same thing. A large folder of images can still be evidentially weak if it has no reliable provenance or explanation.**

Limitations and watch points

The decision does not create a new statutory test for service-charge reasonableness. Its importance is evidential and procedural. Weight remains fact-sensitive and a properly authenticated photographic record can be powerful evidence.

KEY TAKEAWAY **The photographs may be genuine. That does not necessarily make them evidence.**

8 Holding over after expiry: rent is not the whole answer

EE Limited & Anor v Mayor and Burgesses of the London Borough of Wandsworth [2026] UKUT 299 (LC)

Upper Tribunal (Lands Chamber) | 7 August 2026 | Holding over / LTA 1954 / Electronic Communications Code

Court	Upper Tribunal (Lands Chamber)
Issue	Status of operators holding over after expiry of a contracted-out lease
Outcome	Tenancy at will; paragraph 20 reference could proceed
Client focus	Commercial landlords, telecoms operators and property asset managers

Background and context

Holding over is a classic source of avoidable uncertainty. When a tenant stays after expiry and rent continues to be demanded and paid, parties can drift into a relationship whose legal status has never been documented. That status may affect security of tenure, termination rights and - in telecoms cases - the route through the Electronic Communications Code.

EE and Hutchison 3G occupied a rooftop site under a lease that had been contracted out of sections 24-28 of the Landlord and Tenant Act 1954. The lease expired in 2013, but occupation continued and quarterly rent continued to be paid.

The dispute

The operators later served paragraph 20 notices seeking a new agreement under the Electronic Communications Code. The First-tier Tribunal held that the post-expiry arrangement had become a quarterly periodic tenancy protected by the 1954 Act. On that footing, the Tribunal considered that Part 4 of the Code was not available.

The Upper Tribunal disagreed and held that the operators remained tenants at will. Periodic rent was relevant, but it was not decisive. The legal relationship had to be identified objectively from the whole context.

Why a tenancy at will was found

The parties had deliberately contracted the original lease out of statutory security of tenure. There was no evidence that, after expiry, they had changed their minds and intended to create a new protected periodic tenancy. Rent demands also continued to describe the lease as expired and the operators as holding over.

The case therefore reinforces an important commercial point: the fact that rent is calculated or paid quarterly does not automatically dictate the character of the tenancy. The parties' prior arrangements, communications and conduct can point to a tenancy at will rather than a periodic tenancy.

Code interaction and notice points

The Tribunal also considered, obiter, whether an operator under a protected periodic tenancy created before the current Code could use Part 4 to obtain a new Code agreement. Judge Elizabeth Cooke considered that it could, expressly disagreeing with earlier obiter reasoning in AP Wireless II v EE (Equipoint). That divergence remains unresolved and should be flagged in telecoms advice.

There were also practical notice findings. Joint operators could serve separate but identical paragraph 20 notices together with one joint draft agreement. A minor deletion from part of the prescribed form did not invalidate the notices because the required ADR information appeared elsewhere. That reasoning should not be treated as a general licence to depart from prescribed wording.

Practical implications

- Document the intended basis of post-expiry occupation instead of allowing it to drift.
- Do not infer a protected periodic tenancy from rent frequency alone.
- In telecoms matters, identify the interaction between holding-over status, the 1954 Act and the Code before serving notices.
- Continue to use prescribed forms carefully: de minimis tolerance is not a substitute for compliance.
- Review rent demands and correspondence because their wording may evidence the parties' objective intentions.

WHY IT MATTERS	**Leaving occupation to drift can create uncertainty about security of tenure, Code jurisdiction and the validity of later notices. Holding-over status should be addressed deliberately.**

Limitations and watch points

The Tribunal's important discussion of access to Part 4 for certain protected periodic tenancies was obiter and conflicts with earlier obiter reasoning. That specific point remains unsettled until authoritatively resolved.

KEY TAKEAWAY **Payment of rent is important, but it does not answer the holding-over question by itself.**

PART 3 RESIDENTIAL COMPLIANCE AND PROCEDURE

9 A late appeal is not decided by the excuse alone

House for Homes Limited v London Borough of Waltham Forest [2026] UKUT 296 (LC)

Upper Tribunal (Lands Chamber) | 5 August 2026 | Housing Act civil penalties / tribunal procedure / extension of time

Court	Upper Tribunal (Lands Chamber)
Issue	Whether the FTT approached a late civil-penalty appeal too narrowly
Penalty	£15,600 licensing civil penalty
Outcome	Strike-out set aside; substantive appeal admitted

Background and context

Property regulation increasingly relies on civil penalties, licensing schemes and tribunal appeals. In that environment, procedural deadlines are not secondary details: missing the correct appeal route can place a substantial liability beyond challenge before the merits have ever been heard.

House for Homes is useful because it does not dilute the importance of deadlines. Instead, it clarifies how a tribunal should exercise its discretion when an appeal is late and the appellant has nevertheless taken prompt, albeit misdirected, action.

What happened

Waltham Forest imposed a £15,600 civil penalty for operating a property without the licence required under Part 3 of the Housing Act 2004. House for Homes attempted to challenge the penalty immediately, but sent its appeal to the council rather than lodging it with the First-tier Tribunal.

By the time the appeal reached the correct forum it was approximately one month late. The FTT refused to extend time. Its reasoning concentrated heavily on whether the landlord had a satisfactory explanation for the delay.

The Upper Tribunal’s reasoning

The Upper Tribunal held that the discretion had been approached too narrowly. The explanation for lateness was relevant, but it was not the only factor. The tribunal was required to consider the circumstances in the round.

Relevant considerations included the fact that the landlord reacted immediately, the delay was relatively short, there was no obvious prejudice to the council, the penalty was substantial and there appeared to be genuine procedural confusion. The record also raised uncertainty over aspects of the statutory notice process. Taken together, those matters required a broader proportionality assessment rather than a single-question enquiry into whether the excuse was 'good enough'.

What the decision does - and does not - mean

The Upper Tribunal set aside the strike-out and admitted the appeal. It did not decide that the civil penalty was invalid. The landlord merely regained the opportunity to argue the substantive case before the FTT.

That distinction matters in client advice. Success on an extension-of-time application is procedural success, not substantive vindication. Evidence and legal arguments on the underlying licensing offence, penalty amount and statutory procedure still need to be prepared.

Practical implications

- Identify the correct appeal body and statutory deadline as soon as a civil-penalty notice is received.
- If an error occurs, preserve evidence showing what was done, when and why.
- Address length of delay, prejudice, proportionality and the seriousness of the consequence - not only the explanation for default.
- Do not present admission of a late appeal as success on the merits.
- Build escalation protocols so regulatory notices reach the correct adviser quickly.

WHY IT MATTERS	**A missed deadline remains dangerous, but a tribunal considering an extension must evaluate the whole picture. Prompt but misdirected action can be materially different from inaction.**

Limitations and watch points

The outcome is fact-sensitive and does not make deadlines optional. A materially longer delay, inactivity, prejudice or a different statutory framework could produce a different result.

KEY TAKEAWAY **Procedure matters - but so does proportionality.**

10 Historic gas-safety records reach the Supreme Court

Harker and others v Hubert and another - UKSC/2026/0067

Supreme Court appeal | Permission granted 30 July 2026; case record updated 5 August 2026 | Gas safety / legacy section 21

Court	UK Supreme Court - appeal pending
Issue	Interpretation of regulation 36(6)(b) and historic gas-safety compliance
Current position	Court of Appeal position remains operative pending appeal
Client focus	Residential landlords, agents and possession litigators

Background and context

Some compliance failures have a very long tail. Harker is a strong example because the document at the centre of the appeal relates to the beginning of a tenancy relationship, yet its absence was later relied upon to challenge possession proceedings many years afterwards.

The Supreme Court has granted permission to appeal on the interpretation of regulation 36(6)(b) of the Gas Safety (Installation and Use) Regulations 1998. The issue sits at the intersection of landlord gas-safety duties and the former section 21 possession regime.

The tenancy history and dispute

The tenants first occupied the property under an assured shorthold tenancy in 2007. Further annual tenancies followed and a statutory periodic tenancy arose in 2020. When the landlords served a section 21 notice in 2023, the tenants argued that the notice was invalid because the required pre-occupation gas-safety record had not been supplied when they first entered occupation.

The dispute therefore required the courts to consider how an historic pre-occupation duty operated once later legislation tied compliance with prescribed requirements to the ability to use section 21.

The Court of Appeal position

The Court of Appeal held that, where the prescribed-requirements regime applied, failure to provide the relevant record before occupation prevented reliance on section 21 even where the original occupation pre-dated the 2015 regime. It also rejected the suggestion that 'occupation' restarted each time a replacement tenancy was granted.

The practical difficulty was potentially permanent. If the original inspection had not taken place, or the record had been lost and could not be proved, the historic defect could not simply be recreated years later by carrying out a current inspection.

Why the Supreme Court appeal still matters

The Supreme Court will now determine whether that interpretation is correct. Until the appeal is decided, advisers dealing with affected legacy cases should work from the Court of Appeal position while monitoring the appeal.

Section 21 has been abolished for new private-sector possession notices in England, which narrows the practical field. But transitional arrangements mean legacy notices and proceedings can remain live. Regulation 36 also continues to govern landlords' gas-safety obligations independently of the old possession route. The case therefore remains a useful warning about document retention even beyond section 21.

Practical implications

- Retain gas-safety and service records for the life of the tenancy relationship and beyond.
- Audit legacy possession files for the original pre-occupation record and evidence of service.
- Separate the Supreme Court's statutory-interpretation issue from the continuing substantive duty to maintain gas safety.
- Where historic records are missing, identify the evidential position early rather than at the possession hearing.
- Continue to monitor the Supreme Court case page for listing and judgment updates.

WHY IT MATTERS	**Compliance records can remain commercially and procedurally important long after the event. A missing document at inception may become determinative years later when possession is sought.**

Limitations and watch points

The Supreme Court has not yet determined the appeal. The current discussion describes the Court of Appeal position and the issue before the Supreme Court, not the final law after the appeal.

KEY TAKEAWAY **A document from the start of a tenancy can decide possession proceedings more than a decade later.**

The recurring themes for property clients

Taken together, these developments are not a random collection of property disputes. They illustrate recurring risks at different points in the property lifecycle - acquisition, development, management, enforcement and disposal. The legal subjects differ, but the operational lessons are closely connected.

1	**Public permissions and private rights must both be cleared** Domus Living and Di Mambro show that planning status, title rights and procedural history are separate layers of risk. A favourable answer on one layer does not determine the others.
2	**Express drafting beats implication** Hawridge, Euroresins and Tachkani each demonstrate the danger of relying on commercial expectation, sensible management or general wording to perform work that the contract or statute must address expressly.
3	**Old precedents can carry current liabilities** Euroresins is the clearest example: a procedure superseded in 2004 was used in a modern settlement, with consequences for the whole bargain. Welsh planning consolidation creates a different but equally important precedent-updating exercise.
4	**Evidence needs an architecture** Agincourt shows that information becomes evidence only when it is authenticated, explained and linked to the issue being proved. House for Homes similarly shows the importance of documenting procedural steps when something goes wrong.
5	**Historic conduct and records have long tails** EE v Wandsworth, Harker and Tachkani all involve arrangements or records stretching back years. Long-standing practice may influence the analysis, but it does not necessarily create the legal right assumed by the parties.

This briefing is the first in a planned series. Future instalments will continue to identify wider property-law developments that, although not tax cases, have direct commercial relevance to the property transactions, structures and assets on which we advise.

Cases and official materials referred to

- Domus Living Limited v Edward VII Estates Limited [2026] UKUT 287 (LC)
- Hawridge Strategic Land Limited v Millen Homes Limited [2026] EWHC 1934 (Ch)
- R (Di Mambro) v East Devon District Council [2026] EWHC 1961 (Admin)
- Welsh Government: implementation of the Planning (Wales) Act 2026
- Euroresins UK Limited v TLC Investment Limited [2026] EWHC 2105 (Ch)
- Reshma Tachkani v Thornfield Hawley Management Company Limited [2026] UKUT 295 (LC)
- Agincourt Investments Limited v Williams & Ors [2026] UKUT 292 (LC)
- EE Limited & Anor v Mayor and Burgesses of the London Borough of Wandsworth [2026] UKUT 299 (LC)
- House for Homes Limited v London Borough of Waltham Forest [2026] UKUT 296 (LC)
- Harker and others v Hubert and another - UKSC/2026/0067

Status note

This briefing reflects the position as at 10 August 2026. Appeal, commencement and implementation positions may change after publication.

Disclaimer

This briefing is for general information only and does not constitute legal or tax advice. The application of any decision or statutory provision depends on the particular facts, documents and jurisdiction. Specific professional advice should be obtained before acting.