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BEYOND TAX

# Property Law Developments That Matter

## Ten consequential decisions with practical implications for property owners, investors, developers, landlords and advisers

**Issue 2 of our series looking beyond tax at legal developments that can materially affect the property transactions, structures and assets of our clients.**

These decisions are deliberately non-tax, but they sit alongside the same property lifecycle on which our tax advice depends: title, planning, leases, development, management, occupation, evidence and exit.

Taken together, they reinforce a simple point: a technically sound structure can still be undermined by defective documents, an overlooked private right, a procedural misstep or an untested valuation assumption.


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# Contents

This second briefing brings together ten wider property-law decisions selected for their practical relevance to property clients. Page numbers refer to this draft.

# Why these decisions matter beyond tax

**CLASSIFICATION** Property law intelligence | **DATE** 13 August 2026 | **SOURCE** Bell Howley Perrotton

Property decisions rarely exist in a tax vacuum. Title constraints, planning and infrastructure liabilities, lease machinery, valuation assumptions and regulatory powers can determine whether a transaction proceeds, how an asset is priced and where risk ultimately sits.

This issue selects ten recent decisions for their practical effect on development, due diligence, drafting, ownership and occupation. The focus is the point a property client, transaction team or asset manager can act on now.

The authorities span joint Building Safety Act proceedings, CIL, repeat planning applications, restrictive covenants, break compensation, service charges, telecoms holding over, banning orders and competing land uses. Holdings are distinguished from obiter observations and unresolved issues.

> KEY TAKEAWAY **The recurring theme is simple: property value depends on the documents, the procedural route, the evidence and the commercial plan pointing in the same direction.**

The result is a concise working guide rather than a comprehensive case digest. Each article identifies the decision, the immediate practical response and the limits that should remain on the watch list.

PART 1 DEVELOPMENT, SAFETY AND PLANNING

# 1 One building, two jurisdictions: joint management under the BSA

### Wallace Estates Ltd v Durkan Estates Ltd & Anor [2026] EWHC 2133 (TCC)

High Court, Technology and Construction Court | 10 August 2026 | Building Safety Act / remediation contribution orders / procedure

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|---|---|
| **Court** | High Court, Technology and Construction Court |
| **Issue** | Overlapping FTT and TCC proceedings concerning the same building |
| **Outcome** | Joint case management and a single joint hearing ordered |
| **Client focus** | Building owners, developers, contractors, funders and litigators |

## Background and context

Building-safety disputes can engage different statutory powers in different forums. Wallace Estates is the first published example applying the new TCC Guide to coordinated proceedings in the Technology and Construction Court and the First-tier Tribunal.

The FTT was dealing with an application for a remediation contribution order. The TCC claim concerned alleged unlawful termination and repudiation of the underlying agreement, together with declarations and damages relevant if an RCO were made. The parties and factual evidence substantially overlapped.

## What happened

The court and tribunal endorsed joint case management and a single hearing. The proceedings remain legally separate, but disclosure, witness statements and expert evidence will be prepared once and used in both. The order also adopts a joint judicial composition for the PTR and trial.

The judgment is procedural guidance, not a decision on whether an RCO should be made or on the contractual merits. It expressly leaves open whether the FTT could or should determine the termination issues if they became relevant to the RCO.

## Decision

The directions address practical differences between the regimes. TCC disclosure standards govern the common exercise; witness and expert evidence comply with the more prescriptive CPR requirements; and permission allows materials from either proceeding to be deployed in both.

Costs remain distinct. The parties must code work as FTT-only, TCC-only or common because the FTT is ordinarily a no-costs jurisdiction while normal costs rules apply in the TCC. Separate appeal routes also remain, creating a potential future complication.

## Practical implications

- Identify every FTT, TCC and contractual proceeding concerning the same building before issue.
- Use the TCC Guide questionnaire and propose coordinated directions and a single evidence plan.
- Preserve separate pleadings, cost codes and advice on the different appeal routes.
- Agree how disclosure, witness statements and expert evidence may be used across both proceedings.

| WHY IT MATTERS | **Parallel Building Safety Act and contractual claims can multiply evidence, cost and inconsistent findings. Early procedural coordination is now a core part of dispute strategy.** |
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## Limitations and watch points

Joint management is fact-sensitive and does not merge jurisdictions. The judgment gives an operational model, not a rule that every overlapping BSA dispute must be heard together.

KEY TAKEAWAY **Map every live BSA and contractual proceeding at the outset; procedural architecture can be as important as the merits.**

# 2 CIL: assuming nil liability can remove the right to challenge

**R (Herod Property Ltd) v Westminster City Council [2026] EWHC 2122 (Admin)**

High Court, Administrative Court | 11 August 2026 | Community Infrastructure Levy / commencement / due diligence

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|---|---|
| **Court** | High Court, Administrative Court |
| **Issue** | Consequences of commencing after treating a conversion as zero-rated |
| **Outcome** | Judicial review dismissed; CIL demand and surcharges stood |
| **Client focus** | Developers, owners, funders, purchasers and planning advisers |

## Background and context

Herod converted offices into five flats under permitted development rights. It treated the existing lawful floorspace deduction as reducing CIL to nil and commenced without a commencement notice. Westminster later assessed liability of about £295,000, followed by surcharges and interest.

The High Court dismissed the judicial review. A developer is not legally compelled to assume liability or submit notices where it believes the statutory exception applies, but it takes the risk that the collecting authority will reach a different view.

## What happened

Once development commenced, the statutory liability crystallised. The omission of the normal notices meant the developer had lost review and appeal opportunities that would otherwise have tested the calculation before the position became irreversible.

The authority was not required to investigate proactively to rescue a developer that had remained silent. The statutory scheme places responsibility on those controlling commencement to engage with the CIL machinery.

## Decision

Ownership also mattered. Where no person has assumed liability, the owner at commencement becomes liable. The liability did not migrate to later flat purchasers merely because units were sold after the chargeable development began.

A notice referring to the wrong Greater London charging body was not invalid where the recipient understood the substance and suffered no prejudice. That conclusion was tied to the particular notices and does not excuse careless administration.

## Practical implications

- Treat CIL as a condition-precedent workstream before any material operation begins.
- Verify lawful-use evidence, deductions and reliefs; do not rely on an internal nil-liability calculation alone.
- Identify the owner at commencement and serve assumption and commencement notices on time.
- For acquisitions and funding, check both the assessment and the procedural history that preserves review rights.

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| **WHY IT MATTERS** | **A developer may calculate that no CIL is payable, but commencement can crystallise liability and close the statutory review route if the authority disagrees.** |

### Limitations and watch points

This is a first-instance English decision. Its strongest lesson is procedural: do not commence on an untested nil-return position where the economic consequence of disagreement is material.

> KEY TAKEAWAY **A zero-CIL assumption is not a substitute for notices, confirmation and a protected appeal route.**

# 3 Repeat planning applications: policy change is not an automatic reset

### R (Baker) v Reigate and Banstead Borough Council [2026] EWHC 2124 (Admin)

High Court, Administrative Court | 11 August 2026 | Planning enforcement / section 70C / repeat applications

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|---|---|
| **Court** | High Court, Administrative Court |
| **Issue** | Refusal to determine a repeat retrospective application |
| **Outcome** | Challenge dismissed; section 70C discretion lawfully exercised |
| **Client focus** | Landowners, developers, occupiers and planning advisers |

## Background and context

The claimant sought retrospective permission for a Gypsy and Traveller site while enforcement notices remained in force. The council relied on section 70C of the Town and Country Planning Act 1990 and declined to determine the repeat application.

The claimant argued that intervening national policy on grey-belt land and traveller sites materially changed the position. The High Court held that those merits changes did not automatically require the authority to accept another application.

## What happened

Section 70C confers a broad discretion designed to prevent repeated applications frustrating enforcement. Existing authority establishes that a planning authority may have regard to whether the substance has already been considered and whether the enforcement route supplies an adequate appeal mechanism.

The court rejected the proposition that a policy change was necessarily an obviously material consideration demanding a fresh determination. The lawfulness question was whether the council understood and rationally exercised its statutory discretion.

## Decision

An Article 8 proportionality challenge also failed on the facts. That does not remove the need to consider occupiers and personal circumstances in other enforcement cases; it reflects the record and reasoning before the court.

For acquisitions and funding, a current planning search is not enough. Review refused and withdrawn applications, enforcement notices, appeals, injunctions and compliance history. A proposed scheme may inherit a procedural problem even where policy has become more favourable.

## Practical implications

- Review the full planning and enforcement history, not merely the current application and search result.
- Test whether an outstanding notice or repeat-application power constrains the preferred planning route.
- Where commercially realistic, consider compliance followed by a genuinely prospective application.
- Record policy changes, occupier circumstances and proportionality evidence even though they may not compel redetermination.

| WHY IT MATTERS | A new policy landscape does not necessarily reopen development merits while an enforcement notice remains outstanding. |
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## Limitations and watch points

The case is fact-sensitive and concerns England. Policy change may still be relevant to enforcement discretion or appeal merits; the holding is that it does not, without more, displace section 70C.

KEY TAKEAWAY **Enforcement history travels with the site; a policy change alone may not create a fresh merits determination.**

# 4 Planning consent does not dismantle a private development structure

### Bladon v Polls Yard MC Ltd & Ors [2026] UKUT 298 (LC)

Upper Tribunal (Lands Chamber) | 11 August 2026 | Restrictive covenants / section 84 / management companies

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|---|---|
| **Court** | Upper Tribunal (Lands Chamber) |
| **Issue** | Application to convert ancillary space into a fifth dwelling |
| **Outcome** | Modification refused despite planning and listed-building consent |
| **Client focus** | Developers, residents, management companies and conveyancers |

## Background and context

The applicants wished to convert a barn and garage within a four-home courtyard into a fifth dwelling. Planning permission and listed-building consent had been obtained, but the title restricted the property to use as a single private dwelling.

The Upper Tribunal accepted that the proposed use was reasonable. It nevertheless refused modification under section 84 because the restriction secured practical benefits of substantial advantage to the objectors.

## What happened

Those benefits included maintaining the intensity of a four-household courtyard, with associated effects on parking, outlook and amenity. More unusually, the covenant also sat within a deliberately integrated management arrangement.

The company's articles, share structure, service-charge provisions and interlocking covenants had been designed around four houses. A fifth home would require restructuring that the Tribunal considered likely to be costly and disputatious.

## Decision

The decision illustrates that the protected benefit need not be limited to preventing physical harm. Stability and workability of a collective ownership and management structure may carry substantial practical value.

The Tribunal did not determine every consent issue and its conclusion is intensely fact-specific. Nor does a planning permission weigh in the same way as the private bargain when the statutory section 84 tests are applied.

## Practical implications

- Read the covenant together with transfers, leases, articles, share rights and service-charge provisions.
- Model the consents and document changes required to add a unit before acquisition or redesign.
- Keep planning permission and private-rights clearance as separate conditions in the development programme.
- Do not assume compensation or insurance will be available where modification destabilises the estate structure.

| WHY IT MATTERS | A covenant can protect not only amenity but an integrated ownership and management bargain. Planning permission does not answer that private-law question. |
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## Limitations and watch points

Do not assume compensation will solve the problem. Where modification would destabilise an estate-management structure, refusal may be the commercially decisive risk.

**KEY TAKEAWAY** **Read the covenant with the company documents and service-charge structure, not as an isolated title entry.**

PART 2 LEASES, VALUATION AND PROPERTY MANAGEMENT

# 5 Break compensation: the valuation assumptions control the price

### Royal Free London NHS Foundation Trust v Newlon Housing Trust [2026] EWHC 2085 (Ch)

High Court, Chancery Division | 11 August 2026 | Lease breaks / market value / special purchasers

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|---|---|
| **Court** | High Court, Chancery Division |
| **Issue** | Construction of a bespoke break-compensation valuation clause |
| **Outcome** | Four preliminary valuation issues determined; amount remains open |
| **Client focus** | Institutional landlords, housing providers, valuers and transactional lawyers |

## Background and context

A 99-year lease of former hospital accommodation was supported by a nomination arrangement for staff and social housing. The landlord's break compensation was the lower of an accounting formula and 80 per cent of Market Value.

The High Court decided four preliminary construction issues. It did not determine the final market value or compensation, which remain evidence-led valuation questions.

## What happened

First, the parties were not bound by an earlier expert determination that excluded a special purchaser. Secondly, the lease did not contractually exclude a bid from a purchaser with a special interest in the asset.

Thirdly, a hypothetical ordinary purchaser could contend for hope value based on a possible onward sale to that special purchaser. Whether the evidence supported such value was left to the valuation process.

## Decision

Fourthly, an assumption of vacant possession and freedom from the nomination agreement did not require the valuer to assume that no affordable-housing reprovision would be required. The planning authority's likely response remained a factual issue.

The binding holdings are points of contractual construction. They do not establish that a special purchaser would bid, that hope value exists or that reprovision would in fact be required.

## Practical implications

- Define the valuation date, hypothetical seller and purchaser and the treatment of special purchasers.
- State the assumptions concerning vacant possession, nomination rights, planning and affordable-housing obligations.
- Check whether prior expert determinations are contractually final or merely evidential.
- Align the break notice, valuation procedure, expert appointment and payment timetable.

| WHY IT MATTERS | **Bespoke break payments can turn on whether the hypothetical sale admits a special purchaser, hope value and planning-related affordable-housing constraints.** |
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## Limitations and watch points

This is a first-instance preliminary judgment. The ultimate financial effect depends on valuation and planning evidence, and any appeal position should be checked before reliance.

KEY TAKEAWAY **Draft the hypothetical sale as carefully as the break right: purchaser universe, encumbrances and planning assumptions can move value materially.**

# 6 A sensible reserve fund still requires lease authority

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

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

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|---|---|
| **Court** | Upper Tribunal (Lands Chamber) |
| **Issue** | Whether repair clauses and historic practice authorised a reserve fund |
| **Outcome** | Contributions for 2018–2025 held not payable |
| **Client focus** | Freeholders, management companies, agents and leaseholders |

### Background and context

Reserve funds smooth expenditure and are often commercially sensible. Tachkani addresses the harder question: what happens where management has collected one for years but the leases contain no express reserve-fund power?

The Upper Tribunal held that broad repair obligations did not authorise advance collection for future expenditure. A term is implied into a lease only where necessary, not because it would improve the management arrangement.

### What happened

The leases could work without a reserve fund because costs could be demanded through their express service-charge machinery. That made the proposed implication convenient rather than necessary.

Historic conduct did not amount to an informal variation. A lease granted by deed cannot ordinarily be altered by an implicit agreement at meetings or by a settled administrative practice; a deed or statutory variation route is required.

### Decision

The Tribunal also rejected estoppel on the evidence for the disputed years. That does not mean estoppel can never affect historic service charges, but acquiescence alone will not safely cure defective drafting.

Acquisition and management due diligence should separate the cash balance from the legal right to demand future contributions. Check trust arrangements, accounting, consultation history and the destination of money if the charging power is absent.

### Practical implications

- Audit the exact service-charge wording before acquiring or managing a block with a reserve fund.
- Separate the cash balance from the legal right to demand further contributions.
- Where the drafting is defective, consider formal variation and the necessary lender or leaseholder consents.
- For new leases, state permitted uses, investment, accounting and repayment or transfer treatment expressly.

| WHY IT MATTERS | **Good estate management does not create a charging power. The lease must authorise money collected for future expenditure.** |
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## Limitations and watch points

The outcome turns on this lease wording and evidence. It is not a general prohibition on reserve funds; it is a warning that authority must be found in the documents.

> KEY TAKEAWAY **Audit the charging machinery before treating a long-running reserve fund as legally collectible.**

# 7 Decant costs may be recoverable when they facilitate repairs

### Southern Land Securities Ltd v Rettie & Anor [2026] UKUT 308 (LC)

Upper Tribunal (Lands Chamber) | 10 August 2026 | Service charges / repairs / temporary accommodation

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|---|---|
| **Court** | Upper Tribunal (Lands Chamber) |
| **Issue** | Recovery of removal, storage and temporary accommodation costs |
| **Outcome** | Landlord's appeal allowed; costs within the lease wording |
| **Client focus** | Landlords, leaseholders, managing agents and surveyors |

## Background and context

Damp-proofing works to basement flats led the landlord to pay removal, storage and temporary-accommodation costs for the occupiers. The dispute was whether those sums could be recovered through the service charge.

The Upper Tribunal held that the broad clauses covered the expenditure as ancillary to repair and for the general benefit of the building. The landlord's appeal was allowed.

## What happened

The occupiers did not have to leave at their own expense because relocation was not strictly essential. But the landlord could reasonably decide that paying for a temporary move would allow the work to proceed more quickly and effectively.

The distinction is useful: absence of a tenant obligation to vacate does not necessarily prevent the landlord from incurring and recovering a reasonable facilitating cost under sufficiently broad wording.

## Decision

Recovery still depends on contractual scope and statutory reasonableness. A different lease, an extravagant relocation package or weak evidence connecting the expense to the works could produce a different result.

Major-works planning should identify access, possessions, storage, safeguarding and temporary accommodation early. Record alternatives, programme impact, quotes and why the chosen approach was reasonable.

## Practical implications

- Plan access, possessions, storage and temporary accommodation alongside the repair specification.
- Record the alternatives, programme impact, quotes and reasonableness of the selected decant arrangement.
- Test every enabling cost against the service-charge schedule and any express decant clause.
- Avoid treating the decision as a general power to recover relocation expenditure under narrower wording.

| WHY IT MATTERS | **The cost of enabling works can fall within a service charge even where residents were not legally compelled to leave, if the lease wording and reasonableness evidence support it.** |
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### Limitations and watch points

The decision is fact- and drafting-sensitive. It should not be read as a general power to pass every tenant-relocation cost through the service charge.

**KEY TAKEAWAY** **Scope the enabling and decant plan at the same time as the repair—and test each cost against the lease.**

# 8 Holding over: rent frequency is not the whole answer

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

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

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|---|---|
| **Court** | Upper Tribunal (Lands Chamber) |
| **Issue** | Status after expiry of a contracted-out rooftop lease |
| **Outcome** | Tenancy at will; Code reference allowed to proceed |
| **Client focus** | Landlords, operators, asset managers and telecoms advisers |

### Background and context

The operators remained on a rooftop after a contracted-out lease expired. Rent continued to be demanded and paid. The First-tier Tribunal inferred a periodic tenancy; the Upper Tribunal substituted a tenancy at will.

The objective circumstances mattered collectively. The parties had deliberately excluded 1954 Act protection and there was no evidence they later intended to recreate it. Caveated rent demands and the wider course of dealing supported holding over at will.

### What happened

Quarterly payment was therefore neutral rather than decisive. The judgment reinforces the high threshold before a protected periodic tenancy is inferred where the former lease was contracted out.

Because the operators were tenants at will, they could apply under Part 4 of the Electronic Communications Code and the reference could proceed.

### Decision

The Tribunal also addressed the alternative periodic-tenancy jurisdiction, but that reasoning was obiter because of the tenancy-at-will holding. It differed from earlier obiter reasoning, so advisers should not present that point as settled.

Separate but identical notices served by joint operators with a joint draft agreement were effective. Minor omissions from the prescribed form did not invalidate notices where the required information still appeared elsewhere; this was not a licence for general non-compliance.

### Practical implications

- Document the intended basis of occupation immediately after contractual expiry.
- Align rent demands, negotiations and correspondence with the intended holding-over status.
- Map the 1954 Act and Code route before serving notices or commencing a reference.
- Use prescribed forms exactly despite the Tribunal's acceptance of the particular minor omissions here.

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| **WHY IT MATTERS** | **Unmanaged holding over can alter security of tenure, Code jurisdiction and notice strategy. Continued quarterly rent is relevant but not determinative.** |

### Limitations and watch points

The core holding is fact-sensitive. Permission-to-appeal status should be checked, and prescribed forms should still be followed exactly wherever possible.

KEY TAKEAWAY **Document the basis of occupation immediately after expiry and align rent demands, negotiations and Code notices.**

PART 3 OCCUPATION AND NEIGHBOUR RISK

# 9 Banning orders must confront the position of existing tenants

### Jama Ahmed Farrah v Sheffield City Council [2026] UKUT 303 (LC)

Upper Tribunal (Lands Chamber) | 7 August 2026 | Housing enforcement / banning orders / tenant interests

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|---|---|
| **Court** | Upper Tribunal (Lands Chamber) |
| **Issue** | Five-year banning order postponed until current tenancies ended |
| **Outcome** | Order set aside and replaced with defined property-specific exceptions |
| **Client focus** | Landlords, tenants, councils, agents and housing advisers |

## Background and context

The First-tier Tribunal imposed a five-year banning order but postponed its start until current tenancies ended and directed the landlord to terminate them at the earliest opportunity.

The Upper Tribunal held that the future-event start date was irrational and the condition improper because the tenants' interests had not been expressly and carefully considered under section 16(4)(d) of the Housing and Planning Act 2016.

## What happened

It substituted an order with a definite commencement date and temporary, property-specific exceptions. That preserved regulatory effect while avoiding an unmanaged impact on existing occupiers.

The binding point is procedural and remedial: the tribunal must address the people living in the affected properties and craft an intelligible order. It cannot use uncertainty about tenancy endings as a substitute for that analysis.

## Decision

The Tribunal did not finally decide whether the FTT has power to require a landlord to evict tenants. That issue remains open and should be described as unresolved, not as part of the ratio.

The practical significance grows as possession law changes. Authorities and landlords need evidence about tenancy terms, vulnerability, rehousing options, management arrangements and the realistic route to compliance.

## Practical implications

- Put current tenancy terms and the practical effect on occupiers before the tribunal.
- Propose a dated, property-specific transition rather than an indefinite future-event commencement.
- Check the register, prohibited activities and exceptions when acquiring or managing affected property.
- Keep the unresolved question of any power to compel eviction separate from the binding holding.

| WHY IT MATTERS | A tribunal cannot protect tenants through an indefinite or irrational start date. Tenant interests must be considered expressly and translated into workable terms. |
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## Limitations and watch points

The case concerns the English statutory banning-order regime. The substituted terms reflect its facts and do not prescribe one template for every case.

KEY TAKEAWAY **Put tenant evidence and a workable transition proposal before the tribunal; do not leave commencement to an uncertain future event.**

# 10 Sensitive land uses: nuisance and negligence may diverge

### Thomas & Anor v Nicholas & Ors [2026] EWCA Civ 847

Court of Appeal (Civil Division) | 3 July 2026; newly reported 11 August 2026 | Private nuisance / negligence / competing land uses

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|---|---|
| **Court** | Court of Appeal (Civil Division) |
| **Issue** | Noise and visual disturbance affecting specialist falcon breeding |
| **Outcome** | No nuisance by majority; negligence liability upheld by a different majority |
| **Client focus** | Owners, occupiers, developers, valuers and dispute advisers |

## Background and context

Specialist falcon breeding was harmed by noise and visual activity from neighbouring land. The Court of Appeal produced divided majorities on private nuisance and negligence.

By one majority, there was no private nuisance because the law tests interference against ordinary use and ordinary sensitivity. The falcon operation's unusual sensitivity prevented recovery on that cause of action.

## What happened

By a different majority, negligence liability was upheld. Knowledge of the particular operation and a specific, foreseeable route to harm could support a duty and breach even though the objective nuisance threshold was not met.

The case therefore resists a simple proposition that nuisance and negligence always rise or fall together in neighbouring-land disputes. The legal tests and protected interests differ.

## Decision

For transactions and development, standard searches may not reveal specialist biological, industrial or technical processes nearby. Site inspection, seller enquiries and stakeholder engagement can identify vulnerabilities that affect programme, insurance and design.

Development teams should document known sensitivities and mitigation decisions. Noise, lighting, vibration, dust, access and visual screening may need to be considered even where the neighbouring use would be classed as abnormally sensitive for nuisance.

## Practical implications

- Use site inspection and enquiries to identify specialist or unusually sensitive neighbouring operations.
- Record known pathways involving noise, lighting, vibration, dust, access and visual disturbance.
- Document mitigation decisions for design, construction and ongoing operational activity.
- Assess nuisance and negligence separately while the Supreme Court appeal remains pending.

| WHY IT MATTERS | |
|---|---|
| | **An unusually sensitive use may fail the objective nuisance test yet still support negligence where a neighbour knows of a specific foreseeable risk.** |

### Limitations and watch points

Until the appeal is resolved, treat the nuisance holding and negligence holding separately, and avoid assuming that failure under one cause of action eliminates all neighbour-liability risk.

KEY TAKEAWAY **Due diligence should identify sensitive neighbouring operations and known risk pathways—not merely conventional nuisance exposure.**

# The recurring themes for property clients

Taken together, these decisions show that property risk often sits at the junction between documents, procedure and evidence. The practical response is to identify that junction before value is committed or a statutory deadline passes.

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| 1 | **Coordinate overlapping regimes early**<br>Wallace Estates and EE v Wandsworth show why jurisdiction and procedural route need to be mapped before evidence or notices are prepared. |
| 2 | **Commencement and enforcement history have long tails**<br>Herod and Baker demonstrate how a past procedural decision can narrow later options and affect saleability or funding. |
| 3 | **Documents operate as systems**<br>Bladon, Royal Free, Tachkani and Southern Land Securities require the covenant, lease, company structure, valuation assumptions and service-charge machinery to be read together. |
| 4 | **Occupiers must be part of the remedy**<br>Farrah shows that enforcement outcomes need workable, evidence-based transition arrangements for existing tenants. |
| 5 | **Known sensitivities create risk beyond familiar labels**<br>Thomas v Nicholas is a warning that negligence may remain live even where an unusually sensitive use defeats nuisance. |

Future issues will continue to select only developments with a material transactional, drafting, valuation, management or client-advice consequence. Appeal and implementation positions will be checked immediately before publication.

# Cases and primary materials referred to

- Wallace Estates Ltd v Durkan Estates Ltd & Anor [2026] EWHC 2133 (TCC) — https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/2133
- EE Ltd & Anor v Mayor and Burgesses of London Borough of Wandsworth [2026] UKUT 299 (LC) — https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/299
- Reshma Tachkani v Thornfield Hawley Management Company Ltd [2026] UKUT 295 (LC) — https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/295
- Jama Ahmed Farrah v Sheffield City Council [2026] UKUT 303 (LC) — https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/303
- Southern Land Securities Ltd v Rettie & Anor [2026] UKUT 308 (LC) — https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/308
- R (Herod Property Ltd) v Westminster City Council [2026] EWHC 2122 (Admin) — https://caselaw.nationalarchives.gov.uk/ewhc/admin/2026/2122
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- Thomas & Anor v Nicholas & Ors [2026] EWCA Civ 847 — https://www.wilberforce.co.uk/wp-content/uploads/2026/07/Final-Judgment-Thomas-Anr-v-Nicholas-Ors-2026-EWCA-Civ-847.pdf
- Royal Free London NHS Foundation Trust v Newlon Housing Trust [2026] EWHC 2085 (Ch) — https://caselaw.nationalarchives.gov.uk/ewhc/ch/2026/2085
- Bladon v Polls Yard MC Ltd & Ors [2026] UKUT 298 (LC) — https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/298

### Status note

This briefing reflects the position checked on 13 August 2026. Appeal, reporting and implementation positions may change before publication. Thomas v Nicholas has permission to appeal to the Supreme Court.

### Disclaimer