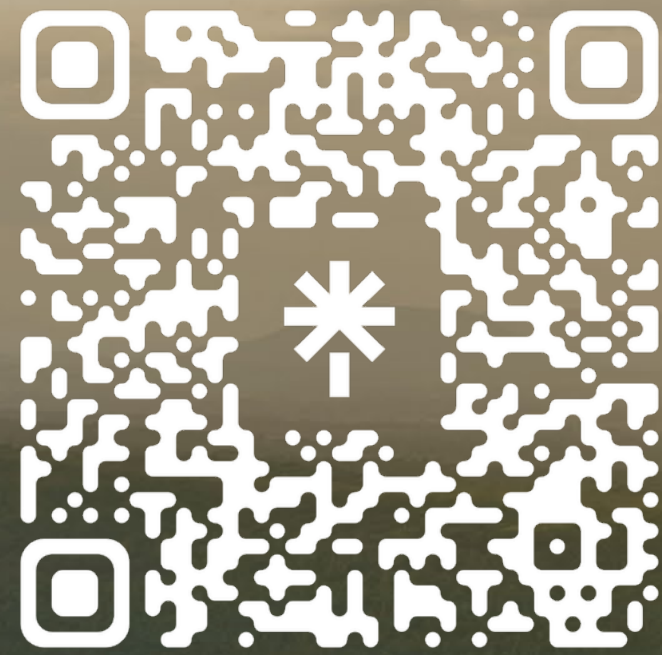




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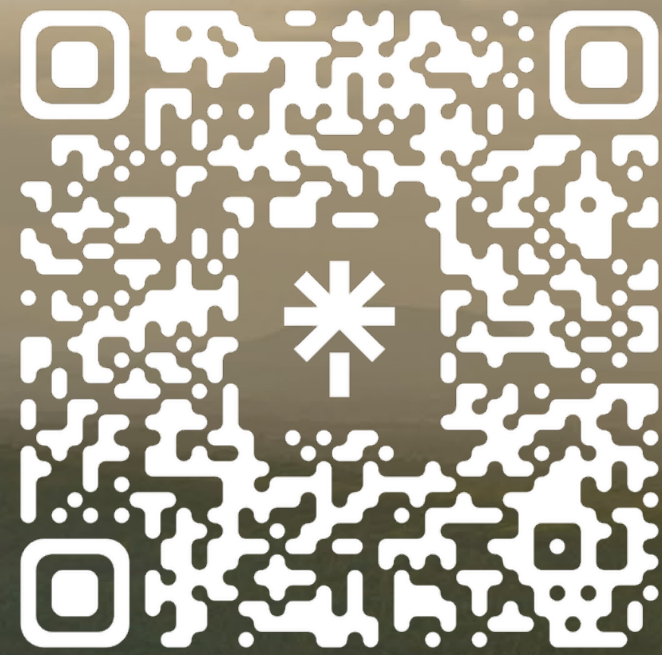
Property Seminar 2026

9.15am – 12.30pm • Wednesday 4 March



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Kerry Bretherton KC



David Sawtell

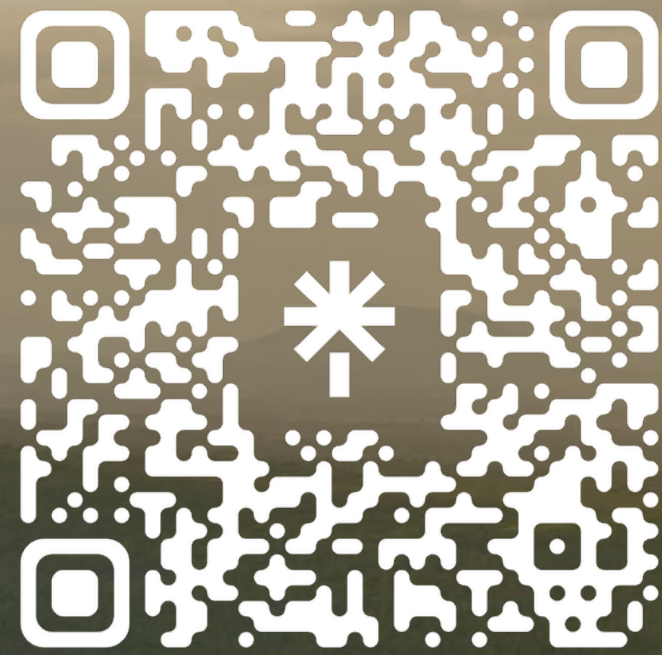


Opening Remarks



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David Hopkins



Remediation Orders and Remediation Contribution Orders

**REMEDICATION ORDERS AND REMEDIATION
CONTRIBUTION ORDERS:
PRACTICAL LESSONS FROM THE FIRST (NEARLY) 3
YEARS IN THE TRIBUNAL**

4 March 2026

David Hopkins

(1) IF THE PRE-CONDITIONS IN S 123 ARE SATISFIED, THE TRIBUNAL WILL (LIKELY) MAKE AN RO

- No test of fairness, equity, or justice in s 123 or Reg 2(2) of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (SI 2022/859)
- “The wording of this Part of the BSA is in deliberately broad terms, to enable the Tribunal to find the best and most practical, outcomes-focused solutions”: *Waite & Ors v Kedai Ltd* (2023) 210 ConLR 166 (“**Waite**”) at [77]
- The focus is “not on providing redress for non-compliance [...] but on remediation of life-threatening building safety defects in tall residential buildings. [...] if the pre-qualification criteria set out in s 123 apply and there are relevant defects we consider that it is likely that the tribunal will make an order”: *SSLUHC v Grey GR LP* (2024) 216 ConLR 1 (“**Vista Tower RO**”) at [121]
- “The Act is *solution* focussed rather than blame focussed, it is concerned with the *building* not with the parties to the application”: *Zampetti & Ors v Fairhold Athena Ltd* (2025) 221 ConLR 160 (“**Empire Square**”) at [85]

(2) LEVEL OF DETAIL NEEDED FOR AN RO IS LESS THAN MIGHT BE EXPECTED

- *Waite* at [69]: “the Act must work and be made to work for leaseholders in a straightforward way”
- In practice, the granularity of specification of relevant defects in an RO is perhaps less than might be expected, especially by practitioners used to particularising defects in TCC cases

(3) SELF-REMEDICATION TERMS AND THE BUILDING SAFETY FUND DO NOT DISPLACE THE RO AND RCO REGIME

- The “fact a developer has entered into the SRTs and has expressed willingness to remediate is no fetter to our discretion”: *Empire Square* at [89]
- The Building Safety “Fund is to be characterised as a last resort. It does not take its place in the hierarchy of those whom the Act contemplates as potential funders of the costs which the leaseholders are relieved from meeting: it stands outside the Act (and in fact pre-dates it)”: *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846; [2026] 1 All ER 574 (“*Triathlon*”) at [88]

(4) AN RTM CO DISPLACES A FREEHOLDER FROM BEING A RELEVANT LANDLORD

Mirchandani v Java Properties International Ltd (Thanet Lodge) (unrep., 18 Feb 2025)
Case Ref LON/00AE/BSA/2024/0007

- Sections 96–97 of the Commonhold and Leasehold Reform Act 2002 “put into abeyance a landlord’s ability to carry out any maintenance functions in the lease, and of course from enforcing any correlating service charge covenant, for so long as the right to manage endures”: *Thanet Lodge* at [9]
- A relevant landlord “is a landlord under a lease of the building who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect”: s 123(3)
- Section 123(3) “is plainly aimed at enforcing the obligations of those with the repairing covenants under the lease or statutory maintenance obligations, who are failing to exercise them (for whatever reason)”: *Thanet Lodge* at [72]

(5) TRIBUNAL CAN BE FLEXIBLE AND PRAGMATIC ...

- Case management directions
 - In one case in which I was instructed, Tribunal was prepared to stay proceedings for 1 month to allow a pensions company (non-party) to set out its position in writing
 - In another, the Tribunal is case managing two sets of proceedings together. In the first, an RTM Co seeks an RCO against the landlord and developer. In the second, the landlord seeks an RCO against the developer (effectively a “Part 20” claim)
- Substantive orders: for example, in *Empire Square*, the Tribunal suspended the effect of the RO and RCO made against Berkeley, on terms requiring regular updates and commencing the remedial works in accordance with the specified timetable

(6) ... UP TO A POINT

- Tribunal granted a variation of the RO made in *Waite* last week
- But variation was refused in another case:
 - RO made on 4 Jan 2024, with a deadline of 31 May 2025
 - Landlord entered into a remedial works agreement with original developer in Jul 2024
 - As of May 2025, the developer had not commenced remedial works
 - Landlord applied to vary the RO, extending the deadline. That application was refused by the Tribunal

(7) RCOS CAN BE MADE IN RESPECT OF COSTS INCURRED BEFORE 28 JUN 2022 [?]

- Ground 2 of appeal in *Triathlon*. See [137]–[155] and [160]–[167] of the CA's judgment
- **But**, permission to appeal to the Supreme Court granted on 6 Nov 2025

(8) LEGAL COSTS ARE AVAILABLE IN AN RCO [?]

- Section 124(2A):

“The following descriptions of costs, among others, fall within subsection (2)–

(a) costs incurred or to be incurred in taking relevant steps in relation to a relevant defect in the relevant building; [...]”

- “It does not seem to us offensive to the provisions to interpret enforcement of Fairhold and Berkeley’s obligations in the Act through the Tribunal, with the consequent expenditure of litigation costs, as relevant steps”: *Empire Square* at [180]

(9) BE PREPARED TO PROVIDE DETAILED FACTUAL INFORMATION EVEN AT PROCEDURAL HEARINGS

- Personal experience has shown that at least some Tribunal judges will expect a landlord to be able to provide detailed factual information even at procedural hearings, such as CMHs
- For example:
 - Steps taken by the landlord to date
 - Ownership of adjoining buildings
 - Number of tenants

(10) THE TRIBUNAL CAN RAISE POINTS THAT THE PARTIES HAVE NOT RAISED BUT IF IT DOES SO IT MUST FOLLOW A FAIR PROCEDURE

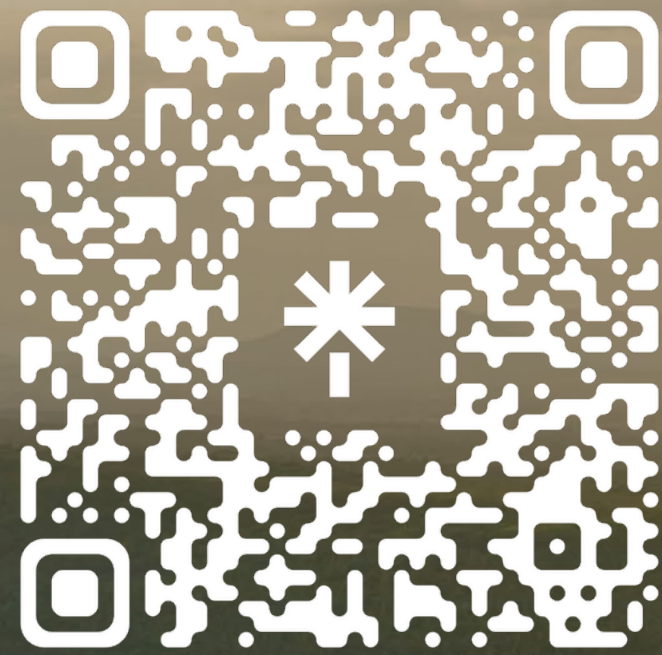
- *Blomfield & Ors v Monier Road Ltd (Smoke House)* [2025] UKUT 157 (LC); [2025] 1 WLR 3837
- At the hearing of an application for an RO, the FtT of its own initiative identified additional items of concern. It adjourned and directed the landlord to provide a further fire safety report. The further report did not agree the additional items were relevant defects
- The FtT nonetheless made an RO including works to remedy these items plus two further items which had not been mentioned in its earlier directions
- On appeal, the UT found, among other things, the procedure adopted was unfair and its decision was taken contrary to the evidence

(11) THE SECURITY STAFF AT 10 ALFRED PLACE ARE *VERY*
THOROUGH



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Thomas Horton



Conway v Conway
[2025] EWHC 33314 (Ch)

CONWAY V CONWAY [2025] EWHC 33314 (CH)

ADDRESSING THE ISSUE OF THE TYPE OF RELIEF THAT CAN BE
GRANTED WHEN A PROPRIETARY ESTOPPEL CLAIM IS ESTABLISHED
WHILST ALSO COMPLYING WITH S. 2 OF THE LAW OF PROPERTY
(MISCELLANEOUS PROVISIONS) ACT 1989

Thomas Horton

LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1989, S. 2

'(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or where contracts are exchanged in each.

(2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

(3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

[...]

(5) Nothing in this section affects the creation or operation of resulting, implied or constructive trusts'.

LPMPA 1989, S. 2 AND PROPRIETARY ESTOPPEL

LPMPA 1989, s. 2:

- Contracts for the sale or other disposition of an interest in land must be in writing, albeit there is a carve-out provision in respect of resulting, implied or constructive trusts.

Proprietary estoppel:

- An equitable remedy that prevents a landowner from reneging on a promise or assurance in respect of an interest and/or disposal of an interest in land made to someone who has reasonably relied on that promise or assurance to their detriment, and it would be unconscionable for the promisor to not comply with the promise or assurance (see *Thorner v Major* [2009] 1 WLR 776 at [29]).

LPMPA 1989, S. 2 AND PROPRIETARY ESTOPPEL

Prima facie there is friction between LPMPA 1989, s. 2 and the doctrine of proprietary estoppel: can there be a sale or other disposition of an interest in land founded in proprietary estoppel where the proprietary estoppel involves an unwritten agreement?

In principle, yes, there can be, but issues arise where the relief granted is tantamount to enforcing and/or ordering specific performance of an unwritten contract and/or a contract otherwise rendered void under LPMPA 1989, s. 2.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Facts

- Appellant is the freeholder owner of a property.
- Discussions in relation to the Respondent's purchase of the property and for its renovation.
- Parties did not enter a written contract.
- The Appellant argued that the verbally agreed terms were:
 - £150,000 to be paid, below market value but reflected planned renovation.
 - The payment of £150,000 would be deferred while the renovation works were completed.
 - There would be an option exercisable by the Appellant to buy back the property from the Respondents, which if exercised would require the Appellant to pay market value for the property plus an additional 10% ("**the Buy-Back Option**").

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Facts

- Respondents disagreed on inclusion of the Buy-Back Option.
- Respondents relied upon the agreement and commenced works, spending £231,685.20.
- The parties' relationship broke down during the parties' solicitors attempts to formalise the oral agreement, the issue being whether the Buy-Back Option should be included.
- Consequently, the Respondents did not pay the £150,000 purchase price of the property.
- Appellant demanded that the Respondents cease works until matters were resolved.
- Appellant sought a declaration that the Respondents were not entitled to enter the Property and an injunction preventing their access.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Facts

- The Respondents defended the claim and brought a counterclaim in proprietary estoppel (but not constructive trust or unjust enrichment) seeking orders that the Property be transferred to the Respondents and injunctive relief enabling their access to the Property.
 - However, the Respondents had pleaded an alternative of '*An order that the claimant take all such steps as are necessary to satisfy the equity which has arisen in favour of the defendants*' and '*further or other relief*'.

Judgment at first instance (Nuneaton County Court, 31.5.2024 HHJ Mithani KC)

- The judge at first instance found in the Respondents' favour and dismissed the Appellant's claim and ordered, *inter alia*, the Respondents to pay £150,000 to the Appellant to be held to order until such time as the Appellant provided a signed transfer of the property.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

The appeal

- The Appellant appealed, relying upon, *inter alia*, LPMPA 1989, s. 2: the relief granted was specific performance of a contract that is otherwise void by application of s. 2.

Judgment

- In his review of the relevant authorities, Michael Green J referred to Lord Scott's decision in *Cobbe v Yeoman's Row Management Limited* [2008] UKHL 55:

CONWAY V CONWAY [2025] EWHC 33314 (CH)

'29. Section 2 of the 1989 Act declares to be void any agreement for the acquisition of an interest in land that does not comply with the requisite formalities prescribed by the section. Subsection (5) expressly makes an exception for resulting, implied or constructive trusts. These may validly come into existence without compliance with the prescribed formalities. Proprietary estoppel does not have the benefit of this exception. The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the s.2 prescribed formalities, but would be specifically enforceable if it did, can become enforceable via the route of proprietary estoppel [...] My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of the section is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

- Michael Green J also referred to *Howe v Gossop* [2021] EWHC 637 (Ch), Snowden J held:

'48. [...] Section 2 is aimed at problems in the formation of contracts for sale of land, whereas the purpose of an estoppel is to remedy unconscionability in the assertion of strict legal rights. Accordingly, there is considerable doubt that section 2 is intended to affect the operation of proprietary estoppel at all, but even if it did, s.2 could only operate as a bar to the grant of equitable relief if and to the extent that such relief had the effect of enforcing, or otherwise giving effect to, the terms of a contract for the sale or other disposition of an interest in land that the statute renders invalid and unenforceable'

CONWAY V CONWAY [2025] EWHC 33314 (CH)

'49. So, for example, in Cobbe the claimant was in effect attempting to use proprietary estoppel to obtain an order enforcing the terms of an unwritten contract under which he would acquire an interest in the land owned by the defendant. That was why, in paragraph [29] of his speech, Lord Scott focused directly on the question of whether a claimant could use an estoppel as a means of enforcing such a contract notwithstanding the clear statutory policy invalidating it.

50. Where, however, the alleged proprietary estoppel is not raised in order to enforce the terms of a contract for sale or other disposition of an interest in land, there is no equivalent reason why s.2 should operate as a bar to the grant of equitable relief [...]'.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Following his review of the relevant authorities, Michael Green J held:

'47. [...] It seems to me that the position that has been reached on the authorities is to confine the reach of s. 2 in relation to proprietary estoppel claims where the relief sought to satisfy the equity is the enforcement of the oral contract that is otherwise void because of s. 2. In other words, s. 2 has a role to play in determining the appropriate relief to be granted where all elements of proprietary estoppel are established'.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Michael Green J continued:

'48. [...] the court's task is to find the "minimum equity to do justice" that is necessary to satisfy the claimant's equitable rights that have been established by way of proprietary estoppel. But if that is effectively specific performance of the void contract, then that is barred by s.2. The Judge carefully went through the authorities and accepted along the way that "there is some basis for contending that proprietary estoppel is not available to a party where that party seeks to enforce a contract which is void for want of complying with the requirements of s.2" [...] But he went on to do precisely that'.

CONWAY V CONWAY [2025] EWHC 33314 (CH)

Outcome

Order for the matter to be reconsidered based on unjust enrichment for the amount spent by the Respondents on the renovation works.

The Respondents were saved, just, by their Defence and Counterclaim pleading an alternative of 'An order that the claimant take all such steps as are necessary to satisfy the equity which has arisen in favour of the defendants' and 'further or other relief'.

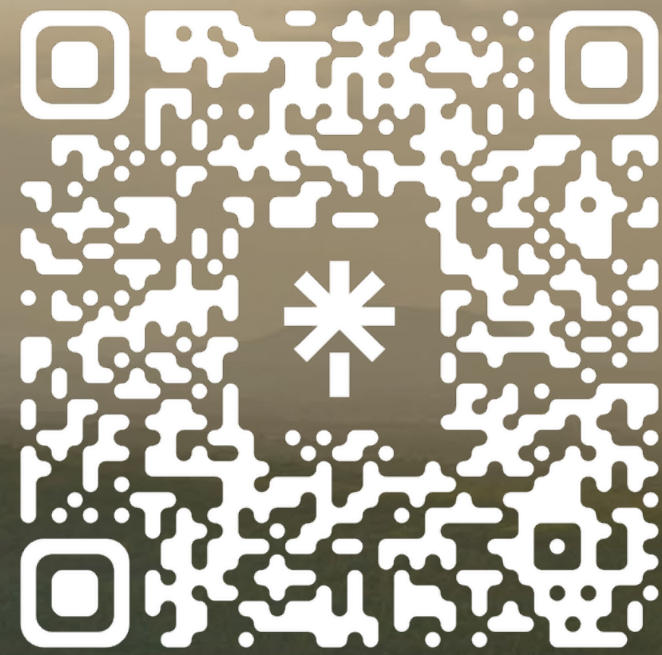
Takeaway point

Be careful how the claim is pleaded. If the claim is a contract-based one, then it risks being caught by LPMPA 1989, s. 2, and alternative claims should be pleaded based on a constructive trust and/or unjust enrichment.



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Niraj Modha



Santosh Carvalho



The Modification and Discharge of Restrictive Covenants

THE MODIFICATION AND DISCHARGE OF RESTRICTIVE COVENANTS

4 March 2026

Niraj Modha
Santosh Carvalho

THE MODIFICATION AND DISCHARGE OF RESTRICTIVE COVENANTS

- Jurisdiction
- The grounds to modify or discharge
- Ground (aa)
- Caselaw and proving/disproving “*practical benefits of substantial value*”
- Strategies

JURISDICTION

- Section 84 Law of Property Act 1925
- Freehold land (or leaseholds > 40 yrs, where at least 25 yrs expired): s84(12)
- Evaluation & discretion; limited ability to challenge in the CoA

GROUNDS TO DISCHARGE OR MODIFY

- The restriction is obsolete due to changes in the character of the neighbourhood – Ground (a)
- It impedes reasonable use of the land – Ground (aa).
- The beneficiaries have agreed (expressly or impliedly) to discharge or modify it – Ground (b).
- No injury would be caused to those entitled to benefit from the restriction – Ground (c).

GROUND (AA)

- Section 84(1)(aa) and s84(1A) & (1B)
 - 1) Impedes reasonable use
 - 2) Does not secure any **practical benefit of substantial value** or is contrary to the **public interest**
 - 3) Any loss or disadvantage can be compensated adequately in money
- “Practical benefit” – widely defined (e.g. a view, spaciousness, peace and quiet, light; but not bargaining power or the mere ability to enforce)
- “Substantial value” – considerable and valuable
- Public interest – difficult to satisfy this part of the test
- *Bass's Application* (1973) P&CR 156

RECENT CASE 1: *DAVIES V JONES* [2026] UKUT 51 (LC)

- A sought to implement planning permission to extend their house.
- The RC prevented any development:
 - on A's land which was a nuisance or annoyance to R;
 - within 6 feet of the boundary with R's land; and
 - to commence works without R's approval.
- A sought modification of the third RC pursuant to grounds (aa) and (c) of s84 because R refused approval. Accepted that ground (c) was parasitic on (aa).
- RC modified by the UT and granted compensation to R.

RECENT CASE 2: *CROSSLAND V FRITCHLEY* [2026] UKUT 22 (LC)

- A sought to implement planning permission to extend the house pursuant to ground (aa).
- Building works prevented by RC. A sought a discharge, but by the time of the hearing, a modification.
- RC modified by UT and granted compensation to R.

RECENT CASE 3: *FARRELL V HUGH GARFORTH-BLES* [2025] UKUT 00429 (LC)

- A sought a modification of a RC, to use the property for commercial purposes such as a café and other shops pursuant to grounds (aa), (b) and (c). By statement of case alone, raised an argument under ground (a).
- Ground floor of A's property had been let to an estate agency and first floor to residential tenants.
- Objectors were a long leaseholder of a neighbouring flat situated in a large block, and the freeholder and management company of the block of flats.
- RC modification refused.

STRATEGIES

- Proving/disproving “*some reasonable user*”: plans, permission, and oral evidence
- Public benefit: cogent evidence as to public need
- Monetary compensation: expert evidence on valuation
- Consider modification as a fallback or agreeing conditions (s84(1C))
- Consider alternative arguments: waiver/acquiescence; Court proceedings
- Negotiation: express release; payment/overage

QUESTIONS

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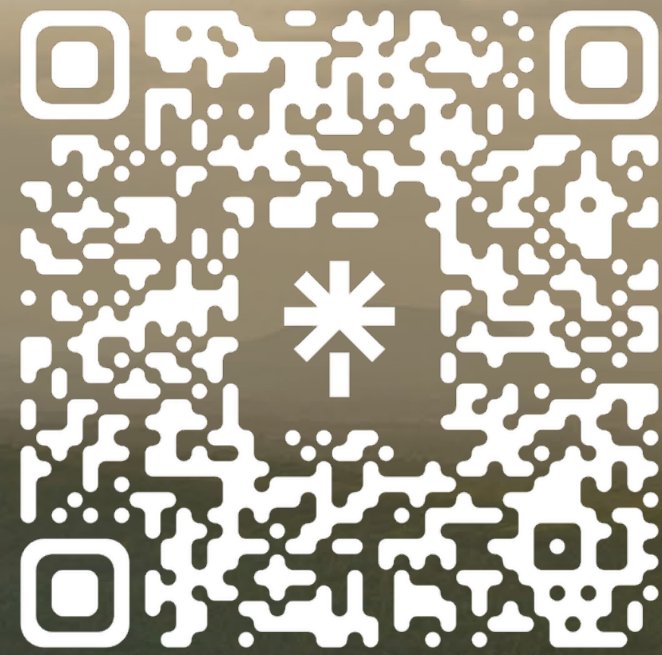
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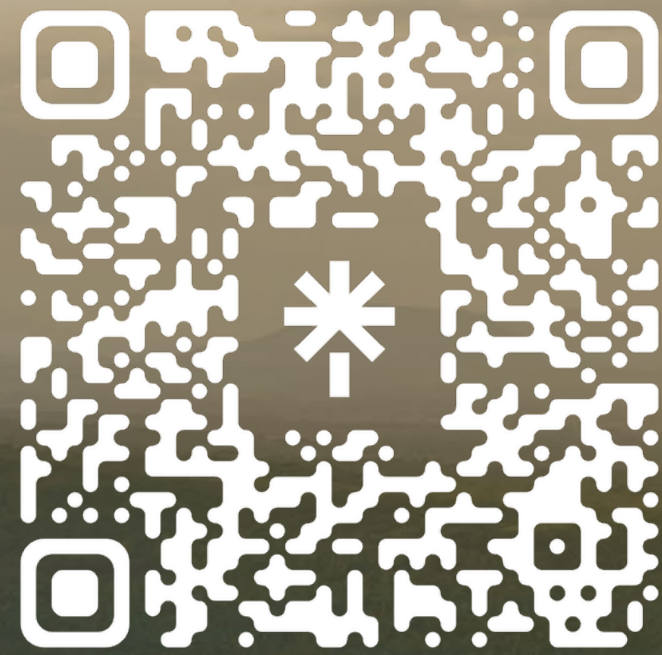


Panel Discussion



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