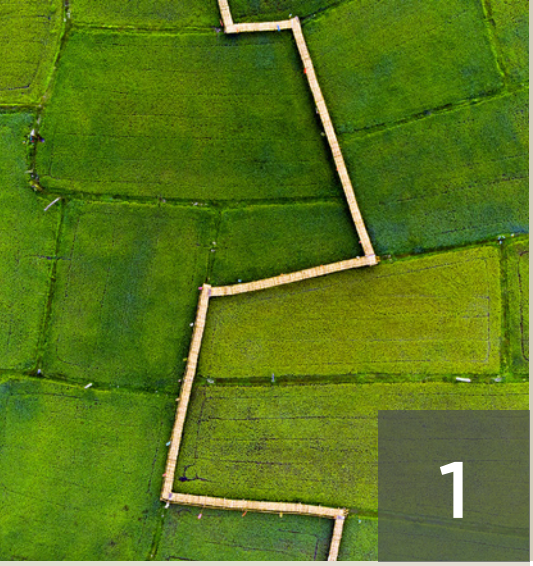
Quarterly Real Estate Disputes Update

BRIEFCASE

June 2025

BCLP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Case 1: Brown v Ridley and another

The Supreme Court has clarified that a reasonable belief of ownership for any 10 year period is sufficient to claim adverse possession.

What was it about?

- Does the 10 year period of 'reasonable belief of ownership of land', required to claim adverse possession under para 5(4)(c) of the Schedule 6 of the Land Registration 2002 ('**the LRA 2002**'), have to be the 10 years immediately prior to the date of the application; or can it be any 10 year period within the applicant's period of adverse possession?
- Mr Brown and Mr and Mrs Ridley are registered owners of adjoining parcels of land in County Durham. A previous owner of the Ridleys' land had erected a fence and planted a hedge on what it understood to be the boundary line with Mr Brown's land. However, the fence actually enclosed part of Mr Brown's registered land.
- The Ridleys used the 'disputed land' as part of their garden and also planned to build a new house across part of it. When the Ridleys' submitted a planning application for the proposed development in February 2018, Mr Brown objected and asserted ownership of the disputed land. Some 21 months later, in December 2019, the Ridleys applied to HM Land Registry claiming they had been in adverse possession of the disputed land for in excess of 10 years. Did the 21 month 'gap' in submitting the formal application mean that the Ridleys had failed to satisfy the 10 year reasonable belief rule under 5(4)(c) of the LRA 2002?

What did the court say?

- The Supreme Court said that the requirement for an applicant to have "reasonably believed" they owned the disputed land for at least 10 years means any 10 year period of reasonable belief. It does not need to be the 10 years immediately preceding the date of the application.
- The Court stated that such a narrow interpretation of para 5(4)(c) was unrealistic and unattractive. It would place undue pressure on applicants to commence a formal process, that often leads to expensive litigation, rather than try to seek a negotiated settlement of such a dispute. It would also render it impossible in most cases for an applicant ever to be able to satisfy the conditions required to claim adverse possession.

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Why is it important?

- The decision has provided clarity on the '10-year rule' which is often a root cause of adverse possession disputes. The reality is that most people are only going to contemplate making an adverse possession application once they no longer reasonably believe that they own the land.
- The judgment also provides a useful reminder that parties should seek to resolve adverse possession claims more cost effectively and formal litigation should be a last resort. Appointing an independent expert to determine the boundary or seeking a boundary determination under section 60 of the 2002 Act are alternative solutions that could potentially save time and substantial legal costs. The court's decision allows parties more time to explore settlement options without the time pressure of having to issue a formal adverse possession application, which can often make matters more contentious and difficult to resolve.

The structure of the adverse possession part of the 2002 Act expressly leaves applicants free to choose between applying for registration; or waiting to see if he is evicted; or waiting to see whether his neighbour sues him for possession. Those are real choices to make in the real world, which Parliament must be assumed also to inhabit, and to have deliberately made available for good reason.

[2025] UKSC 7 [Lord Briggs, para 29]

Case 2: Great Jackson St Estates Ltd v Council of the City of Manchester

Great Jackson unsuccessfully sought to modify various restrictive covenants in its long lease with Manchester City Council, even though the Council had already granted planning permission for the proposed development.

What was it about?

- Great Jackson was the long leaseholder of a redundant warehouse site in Manchester. It had obtained planning permission from the Council of the City of Manchester to build over 1,000 homes, at a cost of around £350m. However, Great Jackson's lease with the Council contained various restrictive covenants that prevented it from carrying out the proposed development. Negotiations for a new lease broke down as the Council sought to impose conditions that could lead to forfeiture if milestones were not met.
- Great Jackson sought to modify these covenants through section 84 of the Law of Property Act 1925, arguing that the covenants did not secure a practical benefit of substantial value or advantage to the Council. The Upper Tribunal refused to modify the covenants, finding in favour of the Council. Having now entered into a Section 106 agreement with the Council, Great Jackson appealed the decision to the Court of Appeal.

What did the court say?

- The Court of Appeal refused to modify the restrictive covenants. The Council had a legitimate strategy of influencing the use of land to secure its orderly development and the restrictive covenants secured this practical benefit. The Council is able to exercise its powers as a private landlord in accordance with its wider public duties.

Why is it important?

- Authorities often wear two hats in the development context: (i) as the local planning authority and (ii) as a private landowner. Just because a local authority has been supportive through planning does not mean the authority will not assert its private rights that can scupper development plans.
- The case highlights more generally how developers can face difficulties in modifying leasehold restrictive covenants. Developers need to develop a holistic strategy to cover planning and other constraints.

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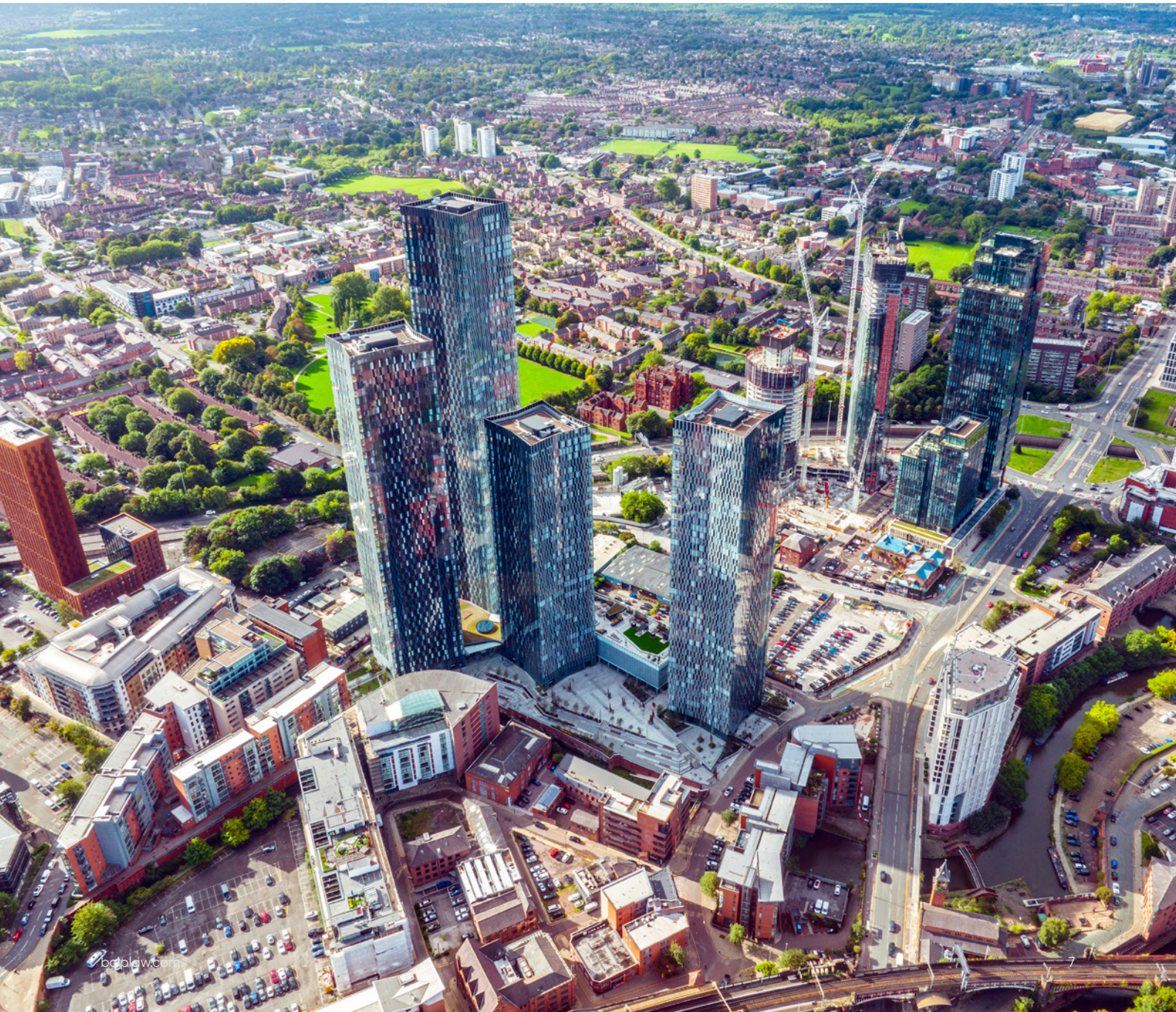
The Council has a legitimate strategy in continuing to influence the use the land on the fringe of the city centre and to secure its orderly and appropriate development.

[2025] EWCA Civ 652 [48]



Case 3: Mohammed Ahmed Bakhaty (1) and Marie-Anne Goodlad Bakhaty (2) v Hampshire County Council

A school had to pay £1000 to a neighbour after school footballs repeatedly falling into their garden was held to be a nuisance, although the court refused to grant an injunction to stop the school using the play area.

What was it about?

- Owners of a residential home in Winchester claimed that their neighbouring school's play area caused nuisance through noisy children, the crossing of 170 footballs over the fence and weekend events.
- The Claimants purchased their home in 1994 and later purchased an additional strip of land between their property and the school in 2018. In 2021, the school constructed a new outdoor play area.
- The Claimants sought injunctive relief to prohibit the use of the play area on three grounds: (1) the noise and footballs escaping from the play area constituted a common law nuisance (2) the construction of the play area was a derogation from grant of the strip of land conveyed in 2018 and (3) the Defendants had infringed the Claimants' right to privacy pursuant to Article 8 of the European Convention on Human Rights ('**ECHR**').

What did the court say?

- The Court refused to grant an injunction to stop the play area from being used entirely, but ruled that weekend use of the play area and the frequent projection of footballs over the boundary was a nuisance which equated to £1,000 in damages. However, the school's mitigation measures, which included i) the erection of a net and ii) the restriction of the use of the play area to school days only and until 16.15 were sufficient to prevent further actionable nuisance.
- The neighbours failed to prove the play area itself rendered use of their strip of land bought in 2018 'unfit or materially less fit as garden land'. At the time of the conveyance, they were well aware of the neighbouring school. The Judge ruled that "*derogation from grant does not create a liability in this case where nuisance does not*."
- The Court found that the test for common law nuisance accommodated the balancing exercise required by the ECHR.

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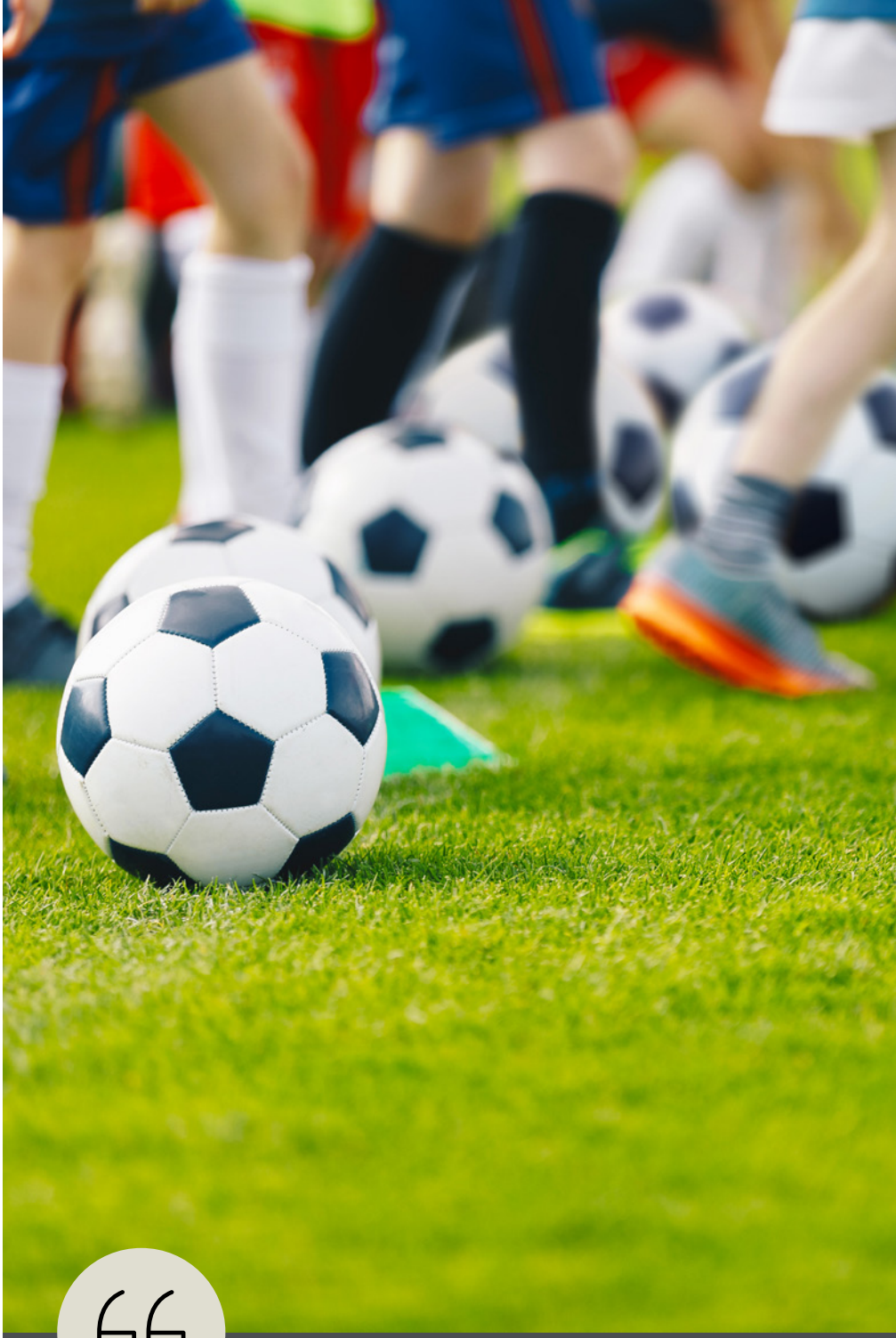
Why is it important?

- Following the case of *Fearn v Board of Trustees of the Tate Gallery* [2023] UKSC, (where visual intrusion from the Tate's public viewing platform was held to be a nuisance) we expected more claims for nuisance in a wider variety of scenarios. This case shows how the law of nuisance can be applied to different situations and is a flexible legal remedy.
- Nevertheless, the court still took pragmatic approach. Even though it held the activity was a nuisance, it did not award significant damages or an injunction, and the school's mitigation steps were sufficient to prevent an ongoing nuisance.
- The case demonstrates that even an ordinary use of land must be done in a 'convenient' manner with proper consideration for the interests of any neighbours, having regard to the need for neighbourly give and take.



> **The requirement to act conveniently does not equate to a requirement to take every possible step to minimise the possible impact on neighbouring occupiers. It requires only that reasonable steps are taken to achieve that aim having regard to all the circumstances.**
>
> [2025] EWHC 1175 [79]

Case 4: URS Corporation Ltd v BDW Trading Ltd

The Building Safety Act's amendments to limitation periods enabled a developer to claim remedial costs of 'voluntary' works to fix historic defects from structural engineers.

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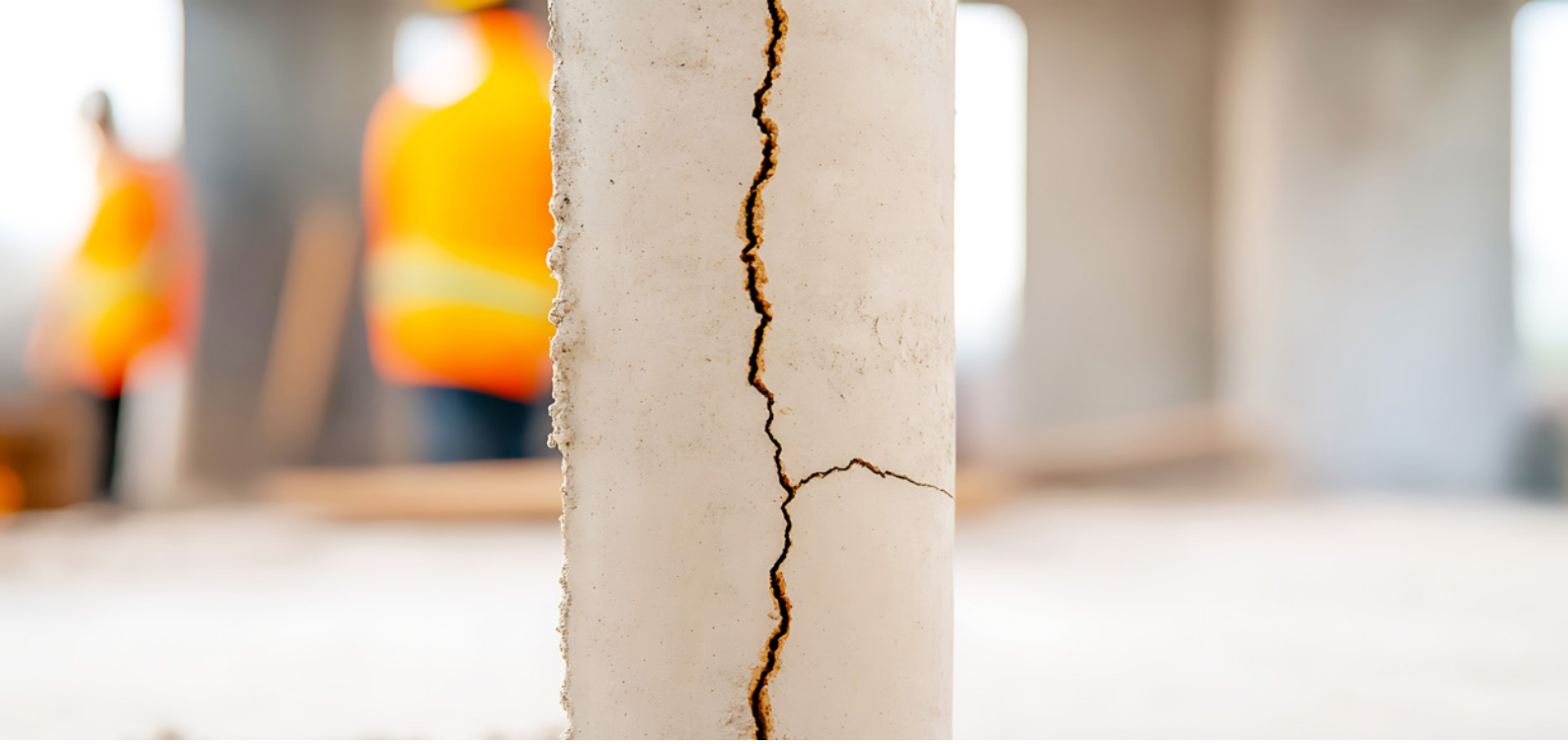
What was it about?

- BDW developed two high-rise residential buildings and URS was appointed as the structural engineering consultant. The developments completed were completed by 2008. The defects were discovered in 2019.
- BDW carried out repairs to remedy the defects in 2020 and 2021. By this time, BDW had sold all of the flats to third parties and transferred its interest under a head lease. BDW therefore did not have any remaining proprietary interest in the developments.
- BDW brought a negligence claim against URS, seeking to recover the costs of the remedial works.
- Section 135 of the Building Safety Act 2022 ("**BSA**") came into force in June 2022 and retrospectively extended the limitation period for accrued claims under Section 1 of Defective Premises Act 1972 ("**DPA**") to 30 years. BDW amended its claim against URS to include claims under the DPA and the Civil Liability (Contribution) Act 1978 (the "**Contribution Act**"). The Contribution Act gives a party liable for damage a right to recover a contribution from anyone else also liable.
- The Supreme Court considered four issues:
  1. whether the loss suffered by BDW was outside of URS' duty of care and/or too remote because BDW undertook the works 'voluntarily';
  2. whether Section 135 of the BSA applied so that the limitation period was retrospectively extended for BDW's negligence and contribution claims, which were dependent on the time-bar applicable to claims under the DPA;
  3. whether URS owed a duty to BDW under s1(1)(a) of the DPA; and
  4. whether BDW could bring a claim under the Contribution Act if there had been no judgment or settlement between BDW and any third party and no third party had asserted a claim against BDW?



What did the court say?

The Court dismissed URS' appeal on all four grounds:

1. The cost of the remedial works was not too remote or outside of URS' duty of care. The Court held there was no general principle of 'voluntariness' preventing BDW from recovering its costs. Voluntariness might be relevant to legal causation or mitigation but there was no 'bright-line' rule of law that means that the 'voluntary' costs of the type incurred by BDW were irrecoverable.

   In any event, BDW did not carry out the remedial works on a truly voluntary basis: it had no realistic alternative considering the risks to the physical wellbeing of the homeowners and potential reputational damage if it did not carry out the repairs.
2. Section 135 of the BSA applied in this case to extend the limitation period for the negligence and contribution claims. This was consistent with the BSA's policy objective: if it did not apply, BDW would have been penalised for proactively remedying building safety defects.
3. URS owed a duty under Section 1 of the DPA to BDW, since BDW ordered the provision of URS' services. The fact that BDW owed the same duty to the homeowners did not affect this.
4. BDW could make a contribution claim against URS, despite there being no claim, judgment or settlement between BDW and the homeowners. It is sufficient that BDW made a payment in kind, by performing the remedial works.

Why is it important?

- The judgment is positive news for developers. BDW was entitled to pursue its claim to recover the costs of remedial works for historic defects due to the combined effect of Section 135 of the BSA, the DPA and the Contribution Act.
- The court's finding that there is no general principle of 'voluntariness' is helpful for developers that want to proactively investigate and address building safety risks, without waiting to be sued.
- The court's view that the developer was not, in any true sense, acting voluntarily in carrying out building safety defect repairs, means that arguments that the developer's works of its own volition breaks the chain of legal causation, or amounts to a failure to mitigate, will be more difficult to run.

> **...the policy of the law favours incentivising a claimant in BDW's position to carry out the repairs so as to ensure that any danger to homeowners is removed.**
>
> [2025] UKSC 21 [69]

Case 5: MVL Properties (2017) Limited v The Leadmill Limited

The Leadmill's landlord successfully opposed the renewal of its business lease where it intends to run its own music venue at the iconic premises.

What was it about?

- The Leadmill was a renowned music venue in Sheffield. Its lease was protected by the Landlord and Tenant Act 1954.
- The landlord, MVL Properties (2017) Limited ('**MVL**'), opposed renewal of the lease pursuant to ground (g) (the own occupation ground) as it intended to open a new music venue from the property.
- The Leadmill argued that MVL would be appropriating the goodwill attached to the premises by opening "essentially the same business", and that this was in contravention of the tenant's right to property under the European Convention of Human Rights ('**ECHR**').
- The tenant also suggested that the landlord could not intend to occupy within a reasonable period of termination where it needed to carry out substantial works first.

What did the court say?

- MVL could evidence that it had a firm and settled intention to occupy, within a reasonable time of termination, and had the funds to do so. It intended to take possession straight away to start the relevant works. This was sufficient business occupation.
- The landlord could carry out the same type of business. The court rejected the argument that this meant it was acquiring The Leadmill's goodwill without adequate compensation in breach of the tenant's ECHR rights. The right to renew was only a contingent one and that contingency had arisen here where the own occupation ground was satisfied. Substantive refurbishment would be carried out and a new brand would be created, with a new target audience, so the court did not consider it was 'essentially the same business' in any event.

Why is it important?

- This case highlights that a landlord's refusal to renew a lease on a ground specified in the 1954 Act does not infringe on a tenant's property rights – "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions*" - as protected by the ECHR.

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I would hold that Leadmill never had an unqualified right to continue to exploit "adherent goodwill." Under the 1954 Act it might be unable so to do … because the landlord wished to occupy the property … (as here) for the purpose of his own business. That was the nature of the right which Leadmill obtained under the transaction it entered in 2003, and the present case is simply an instance of one of those qualifications being enforced against it.

[2025] EWHC 349 (Ch) [52]

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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