DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

June 06, 2026

Essendi UK Hotels 2 Ltd v London Property Company Ltd [2026] EWHC 1354 (TCC): When “Good Condition” Means Removing the Combustible Elephant from the Façade

Essendi UK Hotels 2 Ltd v London Property Company Ltd

[2026] EWHC 1354 (TCC)

Technology and Construction Court
HHJ Stephen Davies sitting as a High Court Judge, 5 June 2026

Key Words

Category 3 ACM cladding, fire safety, commercial lease interpretation, good condition covenant, legal obligations covenant, Regulatory Reform (Fire Safety) Order 2005 (FSO), specific performance, mitigation of loss, building remediation, derogation from grant, hotel closure, commercial landlord and tenant law.

1. Headnote

In Essendi UK Hotels 2 Ltd v London Property Company Ltd [2026] EWHC 1354 (TCC), HHJ Stephen Davies held that the landlord of the 16-storey Ibis London Wembley hotel was obliged under the current lease to remove and replace Category 3 ACM cladding from the exterior of the building. [1]-[3], [12(i)]

The court also held that the tenant’s closure of the hotel on 29 July 2025 had been caused by the landlord’s breaches and had constituted a reasonable response to the fire safety position then prevailing. [7]-[8], [12(iv)], [149], [216]-[255]

The decision was significant because it treated the landlord’s covenant to put and keep the building in “good and substantial condition” as extending beyond conventional physical disrepair and as requiring remediation of an inherent fire safety defect where that defect rendered the building not reasonably fit for its intended hotel use. [304]-[339], [358]-[366]

The case also illustrates that, on the wording of this lease, the legal obligations provisions made the landlord’s duties under the Regulatory Reform (Fire Safety) Order 2005 contractually enforceable as between landlord and tenant. [340]-[357], [390]-[446]

2. Facts

The hotel had originally been developed by Essendi, and after defects emerged in the original façade Essendi entered into a 2005 design and build contract for replacement cladding using Reynobond ACM panels. [50]-[57]

The evidence did not establish that, at that time, Essendi had appreciated the specific fire safety risks later associated with PE core ACM panels in the form understood after the Grenfell Tower fire. [56], [61]-[66], [69]-[70]

In 2007, Essendi entered into a sale and leaseback transaction under an original lease containing bespoke cladding provisions which drew a line at 22 May 2017, before which Essendi assumed responsibility for certain cladding defects and after which the landlord was responsible for repairs required to the cladding. [71]-[80], [282]-[286], [297]-[303]

Following Grenfell, investigations were undertaken into the composition of the façade, but Essendi was positively reassured by landlord-side material indicating that the panels were solid aluminium rather than ACM. [100]-[109]

LPC acquired the freehold in 2018, and the current lease was entered into on 11 March 2019 without carrying forward the bespoke cladding carve-out provisions from the original lease. [94]-[97], [274]-[289]

By late 2024, Essendi's invasive investigations established that the cladding comprised ACM panels, and subsequent fire engineering evidence confirmed that the cladding was Category 3 ACM and required removal and replacement. [112]-[115]

Both fire safety experts later agreed that the Category 3 ACM cladding presented an "intolerable" fire risk and that removal and replacement were required, although they differed as to timing and as to the extent to which interim mitigation might permit continued occupation for a period. [45], [158], [163]-[170], [171]-[173], [213]-[214]

Essendi notified LPC, MHCLG, and the London Fire Brigade, but LPC denied liability and did not accept responsibility for remediation, and the London Fire Brigade later issued a Fire Safety Deficiencies Notification identifying remediation of the cladding as required action. [115]-[117], [126]-[129]

Essendi obtained advice from Mr Hourqueig and then from Mr Bullock, and after receiving firm advice from Mr Bullock that the hotel should close until the ACM cladding was removed, Essendi closed the hotel on 29 July 2025. [118]-[124], [131]-[149]

3. Decision

The court held that LPC was in breach of the good condition covenant because, on the proper interpretation of the current lease in its post-Grenfell context, that covenant required removal and replacement of the dangerous cladding. [12(i)], [325]-[339], [358]-[366]

The court also held that LPC was independently in breach of the legal obligations covenant by reference to its obligations under the Fire Safety Order. [12(ii)], [390]-[446]

The court rejected LPC's defence based on the original lease and the cut-off date because the evidence did not establish that before 22 May 2017 Essendi knew, or ought to have known, that the hotel was clad in Category 3 ACM creating the relevant fire safety risk. [70], [81]-[93], [296]-[301]

The court further held that Essendi's decision to close the hotel on 29 July 2025 had been caused by LPC's breaches and had been a reasonable step in mitigation. [12(iv)], [216]-[255], [263]-[267]

The alternative claim for derogation from grant failed. [12(iii)], [447]-[464]

The court granted specific performance requiring LPC to remove the Category 3 ACM cladding within 6 months and to replace it with suitable alternative cladding within an overall period of 18 months, with damages to be assessed later if not agreed. [12(v)]-[12(vi)], [469]-[480]

4. Reasoning

4.1 Good condition and the scope of the landlord's covenant

The central lease issue was whether the landlord's covenant to "put and keep" the building, including the cladding, in "good and substantial condition" was confined to ordinary notions of repair and disrepair, or whether it extended to an inherent fire safety defect which had not yet manifested in conventional physical deterioration. [275], [304]-[323]

The judge accepted that the cladding was not in "disrepair" in the narrow sense, but held that the good condition obligation was broader and had to be interpreted in light of the post-Grenfell context, the nature of the building as a tall hotel used for sleeping accommodation, the lease history, and the parties' objective understanding at the date of the current lease. [304]-[339]

On that footing, the court held that the covenant required the landlord to put and keep the building in a condition reasonably fit for hotel use as regards fire safety risks, and that this obligation included removal and replacement of dangerous cladding which created a significant fire safety risk. [325]-[339], [358]-[366]

The judge expressly treated that conclusion as one rooted in the circumstances of this case, including the post-Grenfell context and the character of the property as a multi-storey hotel building used for sleeping accommodation. [337]-[339]

4.2 The Fire Safety Order and contractual enforcement

The second pillar of the decision rested on the legal obligations provisions in the lease and the Fire Safety Order. [340]-[357], [382]-[446]

The court held that LPC had control of the structure and exterior, including the cladding, in connection with its business and was therefore the "responsible person" under the Fire Safety Order for those retained parts. [390]-[401]

The court further held that the Category 3 ACM cladding constituted a "dangerous substance" because of its physico-chemical properties and the risk created by the way it was present in or on the premises. [411]-[417]

Articles 8 and 12 of the Fire Safety Order required LPC, so far as reasonably practicable, to eliminate or reduce the relevant fire risk, and on the evidence the only realistic long-term means of doing so was replacement of the cladding panels. [402]-[425], [427]-[432]

The court rejected LPC's contention that the Fire Safety Order could not be enforced through the lease, holding that the contractual language was sufficiently clear to render those statutory duties actionable in contract between the parties. [343]-[357], [433]-[446]

4.3 The original lease defence

LPC's principal defence relied on the original lease and the 22 May 2017 cut-off date, on the basis that Essendi had installed the cladding and had assumed responsibility for relevant defects appearing

before that date. [5]-[6], [76]-[80], [282]-[303]

That defence failed because the evidence did not establish that before the cut-off date Essendi knew, or ought to have known, that the hotel was clad in Category 3 ACM creating the relevant fire safety risk. [70], [81]-[93], [296]-[301]

The judge held that the reality was that it was only after Grenfell that the need to investigate the cladding in that way became apparent, and the evidential material relied upon by LPC did not justify a finding of earlier actual or constructive knowledge on Essendi's part. [81]-[93], [301]

5. Closure and mitigation

The court then considered whether Essendi's closure decision had been caused by LPC's breaches and whether it had constituted a reasonable step in mitigation. [216]-[233]

The judge found that Essendi had not wished to close the hotel, had sought and tested expert advice, and had taken that step only after receiving clear advice from Mr Bullock, considered alongside the views of Mr Hourqueig and the surrounding circumstances then prevailing. [242]-[250]

The closure decision was held to have been reasonable because it responded to a serious and continuing life-safety risk, the absence of any realistic prospect of prompt remediation by the landlord, the risk of criminal prosecution, and the risk of reputational damage in the event of a fire. [236]-[255], [263]-[267]

The court rejected LPC's allegations that the closure decision had been unreasonable, in bad faith, or motivated by unrelated commercial considerations such as lift works. [150]-[152], [258]-[270]

6. Derogation from grant and remedy

The alternative claim for derogation from grant failed because there had been no relevant change in the physical state of the building since the grant, the lease expressly disclaimed any implication or warranty that the premises might be used for the permitted use, and the overall lease structure did not justify implying the wider duty for which Essendi contended. [276], [447]-[464]

Specific performance was granted because the fire safety risk was continuing, LPC had shown no sufficient willingness to undertake the works absent an order, and the required result could be stated with sufficient clarity to support an enforceable order. [465]-[480]

7. Comment

Essendi v LPC is not merely a cladding case. It is a brisk judicial reminder that commercial lease drafting does not exist in a hermetically sealed cupboard marked "pre-Grenfell assumptions". Where a landlord retains the structure and exterior of a tall hotel, and that exterior is wrapped in Category 3 ACM cladding representing an intolerable fire risk, the court is unlikely to applaud a finely polished argument that the panels are physically still attached and therefore all is basically splendid. [1]-[3], [45], [158], [304]-[339]

HHJ Stephen Davies treated the landlord's "good and substantial condition" covenant as doing real work. Not decorative work. Not estate-agent-brochure work. Actual legal work. The covenant required LPC to put and keep the building in a condition reasonably fit for its intended hotel use, and a 16-storey sleeping-risk building clad in dangerous ACM was, in that important respect, not in good condition at all. [304]-[339], [358]-[366]

The judgment also makes clear that the Fire Safety Order can bite through a lease's legal obligations

covenant, turning statutory fire safety duties into enforceable contractual obligations between landlord and tenant where the contractual language is sufficiently clear. [340]-[357], [390]-[446]

LPC's attempt to push responsibility back onto Essendi because Essendi had procured the 2005 recladding failed for the obvious but legally decisive reason: the evidence did not show that Essendi knew, or ought to have known before the 2017 cut-off date, that the building carried the relevant Category 3 ACM risk. [5]-[6], [56], [61]-[66], [69]-[70], [81]-[93], [296]-[301]

The closure of the hotel was also held to be reasonable. Essendi had not shut the building for sport, leverage, lift works, or commercial theatre. It had done so after receiving serious expert advice, against a background of continuing fire risk, regulatory exposure, reputational peril, and LPC's refusal to accept responsibility for prompt remediation. [118]-[124], [131]-[152], [236]-[255], [263]-[270]

The result is a judgment with potential significance beyond hotels, beyond cladding, and beyond the Building Safety Act. It shows that ordinary-looking commercial lease covenants may carry extraordinary consequences where modern building safety risks are present. Landlords who retain control of dangerous structural or external elements cannot necessarily hide behind narrow repair arguments, especially where the lease language is broad enough to impose a condition-based or statutory-compliance obligation. [3], [304]-[339], [340]-[357], [390]-[446]

In plain terms: arguments about who originally procured the cladding may not prevail where the current lease allocates responsibility differently and the evidence does not establish prior knowledge before the relevant cut-off date. [71]-[80], [94]-[97], [274]-[303]

The order for specific performance was therefore unsurprising. LPC was required to remove the Category 3 ACM panels within six months and replace them with suitable alternative cladding within eighteen months, with damages to follow if not agreed. The court did not merely identify the problem. It required the party responsible to fix it. [12(v)]-[12(vi)], [465]-[480]

For commercial landlords, tenants, and those drafting leases in the post-Grenfell era, the message is satisfyingly severe: safety obligations are not ornamental, "good condition" is not a museum label, and combustible cladding is not improved by litigation posture. [304]-[339], [340]-[357], [382]-[446], [465]-[480]

#FireSafety #ACMCladding #BuildingSafety #CommercialLease #PropertyLaw #LandlordAndTenantLaw #SpecificPerformance #BuildingRemediation #HotelManagement #LeaseInterpretation #RegulatoryReformOrder #MitigationOfLoss #ConstructionLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Interpretation of repair, condition and latent defect covenants

1. ***Credit Suisse v Beegas Nominees Ltd*** **[1994] 4 All ER 803** — ***Judgment refs:*** *[305]-[310].* ***Status:*** *Important authority considered.* ***Point relied on:*** *A covenant to keep premises in "good and tenantable condition" could require premises to be put into that condition even if they had never previously been in it, judged by reference to the requirements of a hypothetical reasonably minded tenant. The court treated it as important support for the proposition that a "good condition" covenant could extend beyond narrow repair concepts, while noting LPC's distinction that* ***Beegas*** *involved physical consequences and loss of amenity.*
2. ***Post Office v Aquarius Properties Ltd*** **[1987] 1 All ER 1055** — ***Judgment refs:*** *[293],

*[304], [308]. **Status:** Principal authority applied in part. **Point relied on:** "Disrepair" connoted deterioration from a previous physical condition, and clear words were ordinarily required before a party would be taken to have assumed an obligation to remedy original construction defects before physical damage occurred. The court accepted that narrow repair analysis but held that the separate covenant to keep the building in "good and substantial condition" was wider on the language and facts of this case.*

3. ***Welsh v Greenwich LBC* [2000] 3 EGLR 41 — *Judgment refs:** [312]-[316]. **Status:** Important Court of Appeal authority considered. **Point relied on:** "Good condition" could add a distinct obligation beyond repair, so that a condition covenant might require works addressing defects such as condensation and mould caused by lack of insulation. The court treated it as supporting Essendi's broader construction argument, while noting that **Welsh** still involved physical manifestations of the defect.*
4. ***Alker v Collingwood Housing Association* [2007] EWCA Civ 343; [2007] 1 WLR 2230 — *Judgment refs:** [317]-[320]. **Status:** Important authority considered. **Point relied on:** A duty to maintain, repair, or keep premises in good condition did not, without more, amount to a duty to make safe something that was not in disrepair. The court treated **Alker** as supporting a general presumption but held that the presumption was displaced by the language, factual context, and lease structure in the present case.*
5. ***Lee v Leeds City Council* [2002] 1 WLR 1488 — *Judgment ref:** [320]. **Status:** Background authority cited. **Point relied on:** Part of the background reasoning supporting the proposition, later reflected in **Alker**, that obligations of maintenance and repair were not ordinarily to be equated with a duty to make safe.*
6. ***Fluor Daniel Properties Ltd v Shortlands* [2001] 2 EGLR 103 — *Judgment refs:** [321]-[322]. **Status:** Background authority cited through textbook commentary. **Point relied on:** Supported the general presumption that an obligation to keep premises in good condition, where included within a wider repairing covenant, ordinarily presupposed some physical defect, damage, or deterioration.*
7. ***Mason v Totalfinaelf UK Ltd* [2003] 3 EGLR 91 — *Judgment refs:** [321]-[322]. **Status:** Background authority cited with **Fluor Daniel**. **Point relied on:** Supported the general proposition that a threshold requirement of disrepair or deterioration might ordinarily apply even to a covenant to keep premises in good condition.*
8. ***Barrett v Lounova (1982) Ltd* [1988] EWCA Civ 9; [1989] 1 All ER 351 — *Judgment ref:** [335]. **Status:** Supporting authority cited. **Point relied on:** An inconsistency or lacuna in the lease structure could assist contractual interpretation. The court referred to it when considering Essendi's argument that, without its construction, the lease would create an uncommercial stalemate as to responsibility for dangerous cladding.*
9. ***Westcott v Hahn* [1918] 1 KB 495 — *Judgment ref:** [313]. **Status:** General interpretative authority cited. **Point relied on:** Repairing covenant cases were highly language- and context-specific, so prior cases should not be treated as mechanically determinative of differently worded clauses in different leases.*
10. ***Norwich Union Life Insurance Society v British Railways Board* [1987] 2 EGLR 137; (1987) 283 EG 846 — *Judgment ref:** [313]. **Status:** General interpretative authority cited without full citation in the judgment. **Point relied on:** Hoffmann J's observation, referred to in **Welsh**, that contractual construction was often a matter of impression and not always readily susceptible of precise explanation.*

Contractual enforcement of statutory obligations and exclusion of private rights

1. ***Pullman Foods v The Welsh Ministers* [2010] EWHC 2521 (TCC) — *Judgment refs:** [353]-[356]. **Status:** Considered and distinguished. **Point relied on:** Absent sufficiently explicit*

language, a contractual obligation to comply with the law did not necessarily convert statutory duties into private duties actionable by another contracting party. The court accepted that principle, but distinguished ***Pullman Foods*** *because the lease wording here was sufficiently clear to make the Fire Safety Order obligations contractually enforceable between landlord and tenant.*

2. ***Marcic v Thames Water Utilities Ltd*** **[2004] 2 AC 42** *—* ***Judgment refs:*** *[441]-[442].* ***Status:*** *Considered and distinguished.* ***Point relied on:*** *An elaborate statutory regulatory scheme could, in some circumstances, make a parallel private law cause of action inconsistent with the statutory framework. The court distinguished* ***Marcic****, holding that the Fire Safety Order enforcement structure was materially different and did not prevent the parties from giving contractual effect to statutory duties through the lease.*

Causation, remoteness, mitigation and effective cause

1. ***Recovery Partners GP Ltd v Rukhadze*** **[2025] UKSC 10, [2025] 2 WLR 529** *—* ***Judgment refs:*** *[218]-[219].* ***Status:*** *Applied.* ***Point relied on:*** *The orthodox "but for" test in contractual causation, namely whether the alleged loss would have been suffered if the contract had been performed rather than broken.*
2. ***URS Corporation Ltd v BDW Trading Ltd*** **[2025] UKSC 21; [2024] 2 WLR 1095** *—* ***Judgment refs:*** *[220]-[223].* ***Status:*** *Applied.* ***Point relied on:*** *The contractual remoteness test, namely whether the type of loss suffered was reasonably contemplated by the defendant at the time of contracting as a serious possibility. The court applied that formulation in concluding that hotel closure for fire safety reasons was at least a serious possibility if dangerous Category 3 ACM cladding was discovered.*
3. ***British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd*** **[1912] AC 673** *—* ***Judgment ref:*** *[222].* ***Status:*** *Applied via* ***URS****.* ***Point relied on:*** *The mitigation question was whether the claimant's response was one that a reasonable and prudent person could be expected to take in the ordinary course of business. That standard underpinned the court's analysis of whether Essendi's closure decision was reasonable.*
4. ***Martlet Homes Ltd v Mulalley & Co Ltd*** **[2022] EWHC 1813 (TCC)** *—* ***Judgment refs:*** *[69], [224]-[225], [270].* ***Status:*** *Considered and applied by analogy.* ***Point relied on:*** *First, observations in* ***Martlet*** *about Building Regulations non-compliance did not assist LPC in fixing Essendi with responsibility for the 2005-2006 use of Category 3 ACM. Second,* ***Martlet*** *supported the centrality of reasonableness in mitigation and caution against over-criticising a claimant forced to choose between imperfect options under time pressure. Third, the court used* ***Martlet*** *by analogy on the "effective cause" point when rejecting LPC's argument that alleged issues with vents or cavity barriers displaced the causal significance of the Category 3 ACM cladding.*
5. ***McGlinn v Waltham Contractors*** **[2007] EWHC 149 (TCC)** *—* ***Judgment refs:*** *[226]-[228].* ***Status:*** *Applied.* ***Point relied on:*** *Reliance on apparently competent expert advice was a powerful factor supporting the reasonableness of a claimant's response in mitigation, though not automatically conclusive in every case.*

Specific performance and mandatory remedial relief

1. ***Blue Manchester Ltd v North West Ground Rents Ltd*** **[2019] EWHC 142 (TCC)** *—* ***Judgment refs:*** *[474]-[476].* ***Status:*** *Applied as principal authority.* ***Point relied on:*** *Specific performance was discretionary, required caution, could in an appropriate case enforce a landlord's repairing covenant, and could take the form of an order to achieve a specified result if stated with sufficient precision.*

Derogation from grant

1. ***Platt v London Underground Ltd*** **[2001] 2 EGLR 121** — ***Judgment refs:*** *[452]-[453].* ***Status:*** *Considered.* ***Point relied on:*** *An omission to act could in principle amount to derogation from grant, and the court should identify what obligations were necessarily implicit in the transaction and whether the act or omission made the premises unfit or substantially less fit for the purpose for which they were let. The court referred to those principles but ultimately rejected the derogation claim on the facts and lease structure.*
2. ***William Old International Ltd v Arya & Anor*** **[2009] EWHC 599 (Ch); [2009] 2 P&CR 20** — ***Judgment ref:*** *[452].* ***Status:*** *Briefly cited in submissions.* ***Point relied on:*** *Mentioned in the course of setting out the parties' competing submissions on whether an omission could amount to derogation from grant, but not central to the court's ultimate reasoning.*

Constructive knowledge, notice and analogy with professional negligence authorities

1. ***Baxall Securities Ltd v Sheard Walshaw Partnership*** **[2002] EWCA Civ 9; [2002] BLR 100** — ***Judgment ref:*** *[300].* ***Status:*** *Cited but treated as not materially helpful.* ***Point relied on:*** *Concerned a different issue, namely the type of constructive knowledge that might break the chain of causation in professional negligence and did not provide real assistance in construing the original lease clause concerning when a defect "appeared" in the cladding.*
2. ***Pearson Education Ltd v Charter Partnership Ltd*** **[2007] BLR 324** — ***Judgment ref:*** *[300].* ***Status:*** *Cited but treated as not materially helpful.* ***Point relied on:*** *Cited with* ***Baxall Securities*** *for the same limited analogy, which the court regarded as not materially assisting the lease interpretation issue before it.*

Fact-finding, documentary primacy and witness reliability

1. ***Jaffe v Greybull Capital LLP*** **[2024] EWHC 2534 (Comm)** — ***Judgment ref:*** *[18].* ***Status:*** *Applied as immediate authority.* ***Point relied on:*** *Summarised the modern Business and Property Courts approach to fact-finding, including the weight generally given to contemporaneous documents and the need for caution where witness recollection diverged from the documentary record.*
2. ***Gestmin SGPS SA v Credit Suisse (UK) Limited*** **[2013] EWHC 3560 (Comm)** — ***Judgment ref:*** *[18].* ***Status:*** *Cited through* ***Jaffe****.* ***Point relied on:*** *Part of the established authority on the fallibility of witness memory and the importance of contemporaneous documents in commercial fact-finding.*
3. ***Simetra Global Assets Ltd v Ikon Finance Ltd*** **[2019] EWCA Civ 1413; [2019] 4 WLR 112** — ***Judgment ref:*** *[18].* ***Status:*** *Cited through* ***Jaffe****.* ***Point relied on:*** *Part of the same body of authority concerning witness reliability, memory, and documentary primacy in commercial fact-finding.*

Legislation:

Fire safety regime and contractual enforcement

1. ***Regulatory Reform (Fire Safety) Order 2005*** — ***Judgment refs:*** *[3], [12(ii)], [340]-[446].* ***Status:*** *Central instrument applied.* ***Point relied on:*** *This was the principal statutory instrument in the court's reasoning on the legal obligations covenant. The court held that LPC was the "responsible person" for the structure and exterior, including the cladding, that the Category 3 ACM cladding was a "dangerous substance" for the purposes of the Fire Safety Order, and that arts. 8 and 12 required LPC, so far as reasonably practicable, to eliminate or*

reduce the relevant fire risk, with replacement of the cladding being the only realistic long-term solution on the evidence. The court also held that, on the wording of this lease, those Fire Safety Order obligations were contractually enforceable between landlord and tenant.

2. ***Fire Safety Act 2021*** *— **Judgment refs:** [392]-[393]. **Status:** Background statutory context. **Point relied on:** The court referred to this Act as the measure which amended art. 6 of the Fire Safety Order so as expressly to extend its application to the structure, external walls, common parts, and certain doors of buildings containing two or more sets of domestic premises. It was used as part of the statutory background to the scope of the Fire Safety Order, although the court held that, even before that amendment, the Fire Safety Order would still have applied to the hotel building in this case.*
3. ***Regulatory Reform Act 2001*** *— **Judgment refs:** [385]-[388]. **Status:** Enabling legislation considered. **Point relied on:** The court referred to this Act as the enabling legislation under which the Fire Safety Order was made. It rejected LPC's submission that the Fire Safety Order could not impose new burdens, holding that s. 1 of the 2001 Act expressly permitted new provision imposing burdens, provided that the burden was proportionate to the expected benefit.*

Building safety and building control framework

1. ***Building Regulations 2000*** *— **Judgment refs:** [55], [69], [359]. **Status:** Substantive regulatory framework considered. **Point relied on:** The court referred to these Regulations in the historical account of the 2005 recladding and recorded the evidence that the cladding system had apparently been treated as compliant at the time of specification and approval. The court also noted that it was now known that the ACM panels' polyethylene core provided a medium for fire spread, contrary to the fire-spread requirements reflected in Approved Document B, and it rejected LPC's attempt to use alleged historic non-compliance as a basis for fixing Essendi with responsibility for the use of Category 3 ACM in 2005-2006. The court ultimately held that, as at the date of the current lease, the cladding did not comply with the relevant Building Regulations requirements as understood and applied at that date.*
2. ***Building Regulations 2010*** *— **Judgment ref:** [359]. **Status:** Substantive regulatory framework considered. **Point relied on:** The court held that, as at the date of the current lease, the cladding did not comply with the relevant provisions of the Building Regulations 2010. It noted that the 2010 Regulations reproduced the earlier Building Regulations 2000 position in material respects, which supported the conclusion that the cladding was not in the condition required for safe hotel use.*
3. ***Building Safety Act 2022*** *— **Judgment refs:** [3], [337]-[338]. **Status:** Background statutory context. **Point relied on:** The court referred to this Act as part of the post-Grenfell statutory landscape. At the outset, it noted that Essendi's claim was novel because it relied on landlord covenants in a commercial lease to obtain what was, in substance, a building safety remediation order in circumstances where the Building Safety Act 2022 did not apply to certain categories of buildings, including hotels. Later, the court treated the Act as exemplifying the particular recognition of fire safety risks post-Grenfell, forming part of the context for interpreting the good condition covenant in this case. The court did not treat the Building Safety Act 2022 as directly applicable to the hotel, but as part of the wider post-Grenfell context.*
4. ***Building Act 1984*** *— **Judgment ref:** [467]. **Status:** Remedial framework reference. **Point relied on:** This Act was referred to in the formulation of the specific performance relief sought. The remedial order sought completion of the necessary works in accordance with Part I of the Building Act 1984, so the Act appeared as part of the remedial framework rather than as a central source of substantive reasoning.*

Ancillary statutory and regulatory references arising in cited authorities or comparative analysis

1. ***Defective Premises Act 1972*** — ***Judgment ref:*** *[317].* ***Status:*** *Mentioned in cited authority only.* ***Point relied on:*** *The court referred to this Act when discussing* ***Alker v Collingwood Housing Association*** **[2007] EWCA Civ 343; [2007] 1 WLR 2230***. In that authority, it had been held that the landlord's obligation to maintain or repair and keep the property in good condition did not extend to making safe something that was not in disrepair, so that the glass panel in that case was not a "relevant defect" for the purposes of s. 4(1) of the 1972 Act. The Act therefore appeared only as part of the reasoning in a cited authority on repair and condition obligations.*
2. ***Control of Asbestos Regulations 2012*** — ***Judgment ref:*** *[354].* ***Status:*** *Mentioned in cited authority only.* ***Point relied on:*** *The court referred to these Regulations when summarising* ***Pullman Foods v The Welsh Ministers*** **[2010] EWHC 2521** ***(TCC)***. *In that case, the licensor had alleged breaches of those Regulations and sought to recover remediation costs. The Regulations were mentioned only to explain the context of the contractual-enforcement principle discussed in* ***Pullman Foods*** *and played no direct role in the substantive reasoning in this case.*

Legal Texts & Commentary:

Contractual interpretation and dilapidations texts

1. ***The Interpretation of Contracts*** *(8th ed., 2024) by Sir Kim Lewison —* ***Judgment ref:*** *[290].* ***Status:*** *Standard legal text cited.* ***Point relied on:*** *The court referred to this text as summarising the basic principles of contractual interpretation and used it as the starting point for construing the original lease and the current lease.*
2. ***Dowding & Reynolds on Dilapidations: The Modern Law and Practice*** *(7th ed.) —* ***Judgment refs:*** *[321]-[323].* ***Status:*** *Leading textbook commentary considered.* ***Point relied on:*** *The court referred to this text for the commentary that, absent special circumstances, an obligation to keep premises in good condition, when included within a wider repairing covenant, would ordinarily be interpreted as requiring some physical damage or deterioration before works were required. The judge accepted that this reflected the general weight of authority but held that the present case fell outside that general presumption because of its particular context.*

Fire safety and building safety technical guidance and official reports

1. ***PAS 9980:2022*** — ***Judgment refs:*** *[136], [158]-[161], [174].* ***Status:*** *Important technical guidance considered.* ***Point relied on:*** *The court referred to PAS 9980 as the code of practice whose principles could be applied, by analogy if appropriate, to assess the fire safety risks of the hotel building, even though it was directed primarily to multi-storey residential buildings. The court also referred to PAS 9980 for the proposition that proportionality and cost-benefit considerations formed part of the assessment of whether remedial action, including cladding replacement, was risk-proportionate.*
2. ***Grenfell Tower Inquiry, Phase Two Report*** — ***Judgment refs:*** *[62], [65], [81], [86].* ***Status:*** *Official report referred to.* ***Point relied on:*** *The court referred to the Phase Two Report, and to evidence and findings recorded in it, when considering the state of knowledge in the construction sector concerning ACM cladding, the different Arconic products, and the broader development of knowledge about the dangers posed by combustible materials and PE core ACM panels before Grenfell. The report was referred to both in the historical analysis of Essendi's knowledge and in assessing whether the relevant fire risks ought to have been appreciated earlier.*
3. ***Grenfell Tower Inquiry, Phase One Report*** — ***Judgment refs:*** *[184], [415].* ***Status:*** *Official*

report referred to. ***Point relied on:*** *The court referred to the Phase One Report for its explanation of the fire behaviour of PE core ACM panels, including the importance of polyethylene as a fuel source and the mechanisms by which fire spread rapidly. It was also referred to in connection with the risks of fire entering through windows and the broader consequences of façade fire spread.*

4. ***British Standards Institution Guidance PD 7974-6:2019*****, "Application of fire safety engineering principles to the design of buildings" — Judgment refs:** *[203]-[204].* ***Status:*** *Technical guidance considered.* ***Point relied on:*** *The court referred to this BSI guidance in analysing pre-movement times in sleeping-risk occupancies and in assessing the reliability of ASET/RSET assumptions for hotel guests, especially at night and where some occupants might be intoxicated, unfamiliar with the building, or slow to respond.*
5. ***CWCT Standard for Ventilated Facades*** *(July 1998 version) —* ***Judgment refs:*** *[58]-[59], [66].* ***Status:*** *Technical standard considered.* ***Point relied on:*** *The court referred to this standard in the historical account of the recladding works, particularly in relation to requirements for the fire performance of composite materials. It formed part of the evidence showing what was represented about the cladding system at the time and why Essendi was not fixed with knowledge of the later-appreciated fire safety risk.*
6. ***Home Office Guidance (September 2023)*** *—* ***Judgment ref:*** *[128].* ***Status:*** *Official guidance considered.* ***Point relied on:*** *The court referred to this guidance when addressing the significance of a Fire Safety Deficiencies Notification, noting that such notifications might be issued where breaches were significant but unlikely to place occupants of the building at serious risk. It was used to explain, but not to eliminate, the significance of the London Fire Brigade's notification identifying remediation of the cladding as required action.*
7. ***Information Note 1 issued by DCLG, dated 11 December 2017*** *—* ***Judgment refs:*** *[101]-[102].* ***Status:*** *Official guidance considered.* ***Point relied on:*** *The court referred to this note as guidance directed to those responsible for buildings over 18 metres with ACM cladding. It recommended notification of the fire authority, fire engineering advice, and a plan for review and remediation. It was used as part of the historical account of how the issue was understood after Grenfell.*

Evidential and judicial commentary on fact-finding

1. ***Sir Andrew Popplewell, COMBAR lecture (2023), "Judging Truth from Memory"*** *—* ***Judgment ref:*** *[18].* ***Status:*** *Judicial commentary noted.* ***Point relied on:*** *The court referred to this lecture as part of the body of material illustrating the modern approach to fact-finding, particularly the need for caution about the reliability of witness memory when tested against contemporaneous documents.*

Academic commentary on nuisance and remedial responsibility

1. ***Evans and Gardner, "Defective Buildings Are a Nuisance", Oxford Journal of Legal Studies 2026, Vol. 00, No. 0, pp. 1–26*** *—* ***Judgment refs:*** *[454], [463].* ***Status:*** *Academic commentary considered but not adopted.* ***Point relied on:*** *The court referred to this article when setting out Essendi's argument that LPC's failure to remove the dangerous cladding might amount to a nuisance and thus support the derogation from grant claim. The judge noted the argument but declined, as a first-instance judge, to extend the law in the way suggested by the article.*

Statutory explanatory and background materials

1. ***Explanatory Notes to the Regulatory Reform Act 2001*** *—* ***Judgment ref:*** *[387].* ***Status:***

Statutory explanatory material considered. ***Point relied on:*** *The court referred to the Explanatory Notes to show that the power under the 2001 Act was expressly envisaged as capable of being used to simplify and replace fragmented fire safety legislation by an order such as the Fire Safety Order. The notes were used to reinforce the rejection of LPC's argument that the Fire Safety Order could not lawfully impose burdens of the relevant kind.*

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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