

ENGLAND AND WALES / JUDGMENT

Renee Wasserman v Loyalart Flat Management Company Limited

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2026] UKUT 334 (LC) IN THE UPPER TRIBUNAL (LANDS CHAMBER) AN APPEAL AGAINST A DECISION OF THE FIRST-TIER PROPERTY CHAMBER Ref: LON/00AC/LBC/2024/0052 Case No: LC-2025-749 28 August 2026 TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 LANDLORD AND TENANT – BREACH OF COVENANT – effect of landlord’s long acquiescence in a continuing breach – promissory estoppel – waiver – whether the landlord had given reasonable notice of its intention to revert to its legal rights before proceedings commenced BETWEEN: MRS RENEE WASSERMAN -and- LOYALART FLAT MANAGEMENT COMPANY LIMITED Appellant Respondent Flat 4, Brinsdale Park, Brinsdale Road, London, NW4 1TB Upper Tribunal Judge Elizabeth Cooke 26 August 2026 Mr Simon Serota of Wallace LLP for the appellant Mrs Deborah Daniel for the respondent © CROWN COPYRIGHT 2026 The following cases were referred to in this decision: AG of Hong Kong v Fairfax Limited [1996] UKPC 55 Duchess of Bedford House RTM Company Limited v Campden Hill Gate Limited [2023] EWCA Civ 1470 Faidi v Elliott Corporation [2012] EWCA Civ 287 Hepworth v Pickles [1900] 1 Ch 108 Swanston Grange (Luton) Management Limited v Langley-Essen [2007] EWLands LRX-12-

Introduction

1. This is an appeal from a decision of the First-tier Tribunal that the appellant, Mrs Wasserman, was in breach of the covenant in her lease: “not to park vehicles in any part of the Estate other than in the Garage and not to obstruct or interfere with the access to the Estate or the Buildings thereon.”
2. It was common ground that Mrs Wasserman had been parking on the forecourt of the property, rather than in her garage, for about 37 years. The FTT found that the respondent landlord, Loyalart Flat Management Company Limited, had waived the breach of covenant by decisions made in general meeting in 2013 and 2021, but that the landlord had since then given notice of revocation of the waiver, by the issuing of the proceedings in the FTT if not before, and therefore that Mrs Wasserman was in breach of covenant.

3. Mrs Wasserman appeals with permission from this Tribunal. She was represented in the appeal by Mr Simon Serota, of Wallace LLP solicitors; the landlord was represented by Mrs Deborah Daniel, who as I understand it lives near Brinsdale Park and is not a lawyer. I am grateful to them both. I am going to refer to the parties by name (and to the landlord as “Loyalart”), to avoid confusion from the fact that Mrs Wasserman was the respondent in the FTT and is now the appellant. The factual and legal background.
4. Loyalart is the freeholder of Brinsdale Park, which is a block of six flats with three garages and a forecourt with six parking spaces, four of which are demised to flats 1, 2, 3 and 6. The leases were granted in the 1980s. Mrs Wasserman is the original lessee of flat 4, under a lease granted in 1987; it demised the flat and a garage and imposed the covenant set out above (“the parking covenant”) not to park anywhere other than in the garage. Loyalart is a resident-owned company and each of the six leaseholders has a share in it.
5. That Mrs Wasserman has parked on at least two of the marked parking spaces on the forecourt over the years is not in dispute. On her account, she agreed in around 1988 with the then freeholder that she could do so. The FTT made no findings of fact about how that happened but it recorded, and did not reject, her evidence that there was such an agreement.
6. It is clear from the correspondence in the bundle that Mrs Wasserman’s parking has been the subject of dispute between the residents over the years; in 2008 the then directors of Loyalart threatened her with legal proceedings about her parking in 2008, although proceedings were not commenced. Since then Mrs Wasserman has served as a director of Loyalart for a number of years, but resigned in 2022.
7. On 10 March 2013 an annual general meeting of Loyalart was held. The minutes of that meeting, signed by Mrs Wasserman and by Rabbi Ebrahimoff as directors of the company, said this: “Parking at Brinsdale has long been a problem. There are two clear signs at the entrance to the forecourt stating ‘NO PARKING -RESIDENTS ONLY’. These were installed 25 years ago following a Meeting by all the flatowners who decided that the three Visitors Spaces designated in the Leases should in future be used by the owners of Flats 4,5 and 6 exclusively rather than by visitors. The current position is untenable in that visitors and workmen are parking wherever they wished in the forecourt and obstructing flatowners’ designated established and long spaces and also residents’ garages. Moreover, certain flatowners are deliberately asking their visitors to use Renee’s long established space. ... After discussion of the alternatives the directors agreed that it is now necessary to enforce the policy reached 25 years ago. IT WAS DECIDED to contract with a member of the British Parking Association who will be instructed to forthwith install Signs prohibiting parking by any persons not resident at Brinsdale Park. It was further decided that the appointed Company would be authorised to issue parking tickets to persons ie Visitors and Workmen who parked in the forecourt. Parking within the Forecourt would now be for residents only ~ with one space being used by each flat. Should a flatowner wish to allow their visitor to park in their space, this would be fine, provided the owner did not use any other space at the

same time.”

8. Not all the residents were content with that decision and controversy continued. An annual general meeting was held on 8 August 2021, chaired by Mrs Wasserman as director; an unsigned copy of the minutes records a discussion about parking and says: “It was accepted that the two spaces currently labelled ‘V’ should be allotted to Flats 4 and 5 (pursuant to the decision agreed at the 2013 meeting). The decision to approve the 2013 Minutes meant that these two spaces could now be marked for Flats 4 and 5 and that preparation if a Deed of Variation and Registration at Land Registry should then follow in order to action the remainder of the Resolution of 30 July 2013....”
9. The minutes refer in a number of places to the AGM of 30 July 2013, and I take it that that is a mistake and should refer to the meeting of 10 March 2013 (the date on the 2013 minutes); it is not suggested that there were two AGMs in that year.
10. In 2022 Mrs Wasserman resigned as a director of Loyalart. Controversy and correspondence about parking continued. Loyalart made an application to the FTT on 24 July 2024, signed by its director Rabbi Ebrahimoff, for an order that a breach of covenant in Mrs Wasserman’s lease had occurred. The application did not say which covenant had been breached, but in response to the FTT’s directions it was made clear that the parking covenant was referred to, together with a covenant not to use vehicles on the estate in a manner likely to cause annoyance or nuisance to the other leaseholders (“the nuisance covenant”). The application also asked the FTT to make declarations about the plans and parking spaces in several other leases; the FTT has no jurisdiction to do that, but it is worth noting that part of the controversy about parking is said to arise from the fact that the leases of the six flats are mutually inconsistent in terms of their provisions for parking.
11. The FTT’s jurisdiction to decide whether a breach of covenant has occurred arises from section 168(4) of the Commonhold and Leasehold Reform Act 2002 which says, so far as relevant: “(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
(2) This subsection is satisfied if—
 - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
 - (b) the tenant has admitted the breach, or
 - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred. ...
- (4) A landlord under a long lease of a dwelling may make an application to [the FTT] for a determination that a breach of a covenant or condition in the lease has occurred.” The proceedings and decision in the FTT

12. The FTT gave directions for Loyalart to set out its case and for Mrs Wasserman to reply. In her reply she claimed that the parking covenant “was waived by agreement reached in 1988 between the then freeholder and the Lessees of Brinsdale Park”. Her case was that the parking covenant was no longer enforceable against her. In support of that contention she relied on the following passage from Woodfall’s Law of Landlord and Tenant (paragraph 11-46 in the current edition): “It must not be supposed that mere passive acquiescence in one breach of covenant is a waiver for all future time of the right to complain of any other breach. The question, which has to be decided upon the facts of each case, is whether the conduct or omissions of the plaintiff have put him in such an altered relation to the covenantor as, makes it manifestly unjust for the court to grant him the relief he asks for. The question is not whether breaches have been overlooked in individual cases, but whether those omissions can be said to amount to a representation that the covenants are no longer enforceable. Where a covenant in a lease contained a covenant preventing the erection of buildings other than single storey villas, but high rise blocks had been erected on parts of the land over a period of over 45 years, it was held that the whole of the covenant had been abandoned, and could not be enforced by the landlord so as to prevent the erection of further high rise blocks. Likewise where a landlord granted the tenant consent to install wooden floors and underfloor heating in a flat there was a waiver of a covenant to keep the floors covered with carpets.
13. Alternatively, Mrs Wasserman submitted that she was “deemed to have been granted the right to use a forecourt parking space by her continuous use of a parking space for over 30 years”.
14. The FTT conducted a hearing in July 2025. It asked the parties to provide written submissions after the hearing about Swanston Grange (Luton) Management Limited v Langley-Essen [2007] EWLands LRX-12-2007.
15. Swanston Grange was a decision of the Tribunal (HHJ Huskinson) on an appeal from a decision of the Leasehold Valuation Tribunal on an application under section 168 of the 2002 Act. The lease in question contained covenants by the leaseholder not to underlet her flat without obtaining a deed from the underlessee making direct covenants with the freeholder, to give written notice of any underletting to the freeholder, and to transfer her shareholding in the freeholder company to the underlessee. It was agreed that the leaseholder had underlet her flat without doing any of those things. She said that the freeholder had waived the right to rely on the covenants. The Tribunal commented that the issue was not whether the freeholder had waived a right to forfeit the lease for breach of covenant, but whether it had waived the right to assert that the agreed facts constituted a breach of covenant.
16. The underlease in question was an assured shorthold tenancy, and the lessee did not think it appropriate to transfer her share in the freeholder to her tenant; she argued that the freeholder and managing agents had never before enforced the relevant covenants. Further details of the facts are not relevant, but what matters for present purposes is that the judge analysed the lessee’s argument as a claim in promissory estoppel. He said this: “18. The

nature of a promissory estoppel, if established, is helpfully summarised in Halsbury's Laws of England 4th Edition Re-issue Volume 9(1) at paragraph 1030: 1030 The High Trees doctrine. Similar to waiver is the doctrine of promissory or equitable estoppel, whereby a party who has represented that he will not insist upon his strict rights under the contract will not be allowed to resile from that position, or will be allowed to do so only upon giving reasonable notice. Also at paragraph 1035 there is this 1035 Promissory estoppel generally has effect of suspending obligation. Like waiver, a concession giving rise to the High Trees doctrine of promissory estoppel will generally only suspend the strict legal rights of the party granting it (B); and he may revert to these rights for the future upon giving reasonable notice of his intention to the other party (A).

19. These passages show that if a landlord has waived or become estopped in the foregoing sense from relying as against a tenant upon a covenant, then for so long as this waiver or estoppel operates the obligation is suspended. It is wrong to conclude that a tenant who performs acts which strictly would be a breach of the suspended covenant has breached this covenant. Accordingly in answering the question posed by section 168(2)(a) as to whether the breach has occurred the LVT needs to decide (and must consequently have jurisdiction to decide) whether at the relevant date the covenant was suspended by reason of a waiver or estoppel (in which case a breach will not have occurred) or whether at the relevant date the covenant was not suspended (in which case a breach will have occurred if the facts show non-compliance with the terms of the covenant)."
17. HHJ Huskinson went on to explain that for the lessee to succeed she would have to show "an unambiguous promise or representation" on the part of the landlord that it would no insist on its legal rights in relation to the relevant covenants, and to show that she had altered her position to her detriment in reliance on that representation. The lessee failed because she could not show that such a promise or representation had been made; past inaction by the freeholder, by itself, was not sufficient.
18. The relevance of that decision to the present case is obvious. Both parties made written submissions to the FTT about it; Mrs Wasserman's case was that the principle of waiver on which she relied (set out in Woodfall, above, and also in a similar passage in Hill and Redman's Law of Landlord and Tenant) was different from promissory estoppel. She relied on a waiver that permanently prevented the landlord from enforcing the covenant, as seen in the decision in AG of Hong Kong v Fairfax Limited [1996] UKPC 55, and she did not need to show detrimental reliance, but that she could show it if she needed to: in reliance on Loyalart's assurances Mrs Wasserman had refrained from pursuing the landlord for derogation from grant on the basis that it was difficult or impossible for her to get her car into the garage if anyone parked in the marked space on the forecourt opposite. Mr Serota also developed his alternative argument that Mrs Wasserman had been positively granted the right to park on the forecourt, to which I revert later.

19. The FTT delivered its decision in October 2025. It set out the parking covenant and the nuisance covenant, and discussed its jurisdiction under section 168 of the 2002 Act. It found that Mrs Wasserman had not breached the nuisance covenant. As to the parking covenant, it decided that Swanston could not be distinguished and that there was no distinction between acquiescence, waiver or estoppel; it rejected Mr Serota's argument about detrimental reliance; and it found that while Loyalart had refrained from enforcing the covenant until the present proceedings it had never made a clear and unequivocal representation that it would not do so in the future.
20. In conclusion the FTT said this: "59. The Tribunal finds on the evidence before it that the Applicant (and its predecessor in title) had not insisted on its legal rights under the covenant in paragraph 6 of the First Schedule of the Lease of the Property and that by the AGMs of 30 July 2013 and 8 August 2021 it was agreed that the Respondent could have sole use of a car parking space. During that period the landlord waived a breach of the covenant not to park except in the garage.
60. However since 2021 there is no evidence that the Applicant is prepared to continue to waive the breach. As acknowledged by the Respondent in submissions the breach here is the breach of a user clause and as such is a continuing breach, which would require a continuing waiver.
61. His Honour Judge Huskinson in the Swanston case quoted the following paragraph from Halsbury's Laws of England 4th Edition Re-issue Volume 9(1) at paragraph 1035, 'Like waiver, a concession giving rise to the High Trees doctrine of promissory estoppel will generally only suspend the strict legal rights of the party granting it(B); and he may revert to these rights for the future upon giving reasonable notice of his intention to the other party (A)'
62. There was no evidence before the Tribunal of the Applicant having giving formal written notice to the Respondent of its intention to revert to its strict legal rights and that is unfortunate. However the actions of the Applicant, not least in bring this application, are evidence of its intention to do so.
63. The Tribunal finds that the Applicant no longer acquiesces in/waives the breach and is not estopped from complaining of the breach, so that the Respondent is in breach of the covenant in paragraph 6 of the First Schedule of the lease.
21. Comparing that conclusion with the arguments made for Mrs Wasserman in her statement of case, it can be seen that:
 - a. The FTT rejected Mrs Wasserman's argument that Loyalart had waived the breach of covenant for ever.
 - b. The FTT did not examine Mrs Wasserman's argument that she had been granted a right to park.

- c. The FTT agreed that Loyalart had waived the breach of covenant temporarily, so as to be entitled to resume its right to enforce the covenant on giving reasonable notice of its intention to do so, and had done so by unspecified “actions” and by commencing proceedings in the FTT. The appeal
22. Mrs Wasserman appeals on three grounds:
- a. That the FTT erred in law and should have found that Loyalart had permanently abandoned its right to enforce the parking covenant.
 - b. That the FTT had failed to decide her claim to have been granted a right to park.
 - c. That (if ground 1 failed) that the FTT erred in law in deciding that Loyalart was entitled to revert to its strict legal rights after giving proper notice of its intention to do so.
23. I will look at those grounds in the order 1, 3 and 2, because 1 and 3 are closely linked.
- Ground 1 The arguments
24. The argument made for Mrs Wasserman under this ground is essentially that the FTT was wrong to regard the case as on all fours with *Swanston*. She was arguing, not that Loyalart’s right to assert that she was in breach of covenant had been suspended (and could be resumed), but that she was permanently released from the covenant as a result of Loyalart’s waiver by acquiescence, over 37 years, of the parking covenant.
25. The principle Mrs Wasserman relied on was therefore not promissory estoppel, which is suspensory in its operation. Waiver too can be temporary, but in this case the argument was that the landlord’s waiver by acquiescence went further than a temporary suspension of the landlord’s rights and actually prevented it from ever claiming that the covenant had been broken – effectively releasing her from the covenant. As Woodfall puts it (paragraph 12 above) the question is “whether the conduct or omissions of the plaintiff have put him in such an altered relation to the covenantor as, makes it manifestly unjust for the court to grant him the relief he asks for.” Similarly in *Hill and Redman* at A[3802] it is said that “The lessor does not waive the benefit of the covenant merely by permitting other premises held under a similar lease to be used for the prohibited purpose. But if by his acts he leads a reasonable person justifiably to conclude that the covenants are no longer enforced, the landlord will not be permitted to enforce the covenants. If the lessor is aware of a continuing breach and acquiesces in it for a long period - where, for instance, with full knowledge, he receives rent - it will be presumed that he has either released the covenant or granted a licence for the user.”

26. Thus in *AG of Hong Kong v Fairfax Limited* [1996] UKPC 55 the covenant in question was contained in a lease of land in Hong Kong in which the lessee covenanted to build only villas. The land concerned had been fragmented over the years and extensive high-rise development had taken place over 22 acres of land. The landlord was well aware of the development. It was held that this was a clear case where the landlord's conduct was inconsistent with the continuance of the covenant.
27. In *Faidi v Elliott Corporation* [2012] EWCA Civ 287 the covenant in question was to keep the floor of the flat covered with carpet and underlay. The landlord nevertheless gave the tenant permission to put in new, and very expensive, wooden flooring which was obviously meant not to be covered with carpet. Later the landlord sought to enforce the covenant; the Court of Appeal held that it could not do so because there had been an irrevocable waiver of the right to enforce the carpeting covenant.
28. *Hepworth v Pickles* [1900] 1 Ch 108 is a much older case, and its facts reflect the conveyancing practices of the time. The plaintiff had entered into a contract to purchase a freehold house and shop which had been sold in 1874 subject to a covenant not to use the shop for the sale of alcohol. It had been used as an off-licence ever since with no action by the covenantee. The purchaser was unaware of the covenant when he entered into the contract. When he received the abstract of title he sought to rescind the contract; he failed because it was held that by virtue of the covenantee's inaction for 24 years the covenant had been "waived or released".
29. On the same basis Mr Serota argues that the parking covenant has been released in the present case, by the long years of inaction by Loyalart, by the resolutions in 2013 and 2021, and in particular by the decisions to investigate and rectify the position on the register of title.
30. Mrs Daniel in answer accepted that the FTT at its paragraph 59 decided that Loyalart had waived its right to enforce the covenant up until 2021, but argued that Loyalart had not gone so far as to release the covenant. Mrs Wasserman's parking had always been controversial, she had never had quiet enjoyment of her right to park, and no action had ever been taken to amend her lease; all that had been resolved at the AGM was to investigate the position at HM Land Registry, and in the meantime for each flat owner to have the use of one outside space. As to the cases relied upon by Mr Serota, the actions taken by the landlord in those cases were of a wholly different order from what had happened in the present case.
Conclusion on ground 1
31. I agree with Mr Serota that the FTT failed to see that the argument he was making in reliance on *AG of Hong Kong v Fairfax* and other cases was quite different from the principles at work in *Swanston Grange*. As a result the FTT did not engage with his argument, nor with the cases and the textbook passages relied upon. I agree that the FTT erred in law in failing to understand and address the argument.

32. However, in my judgment the appeal on this point must fail.
33. What the cases summarised above have in common was the extent of what had been done as a consequence of the failure to enforce the covenant. In *AG of Hong Kong v Fairfax*, what had been done comprised 22 acres of high-rise development. In *Faidi v Elliott Corporation* it was the installation of expensive wooden flooring, intended to be visible, with the full knowledge and express consent of the landlord. In *Hepworth*, it was the running of an off-licence – with all that that entails in terms of business investment – for 24 years. The cases do not use the term “detrimental reliance”; but they all involve something perhaps even stronger than detrimental reliance. The change of position made in each case was profound and expensive.
34. There is nothing like that in the present case. Mrs Wasserman has enjoyed 37 years of parking on the forecourt. It has cost her nothing. She has not changed her position. Mr Serota’s suggestion that the inconvenience of the position of her garage means that she could have pursued the landlord for derogation from grant goes nowhere; the position of the garage, however awkward, is unchanged and the landlord has not taken anything away from her.
35. For that reason there is nothing inequitable in Loyalart choosing to revert to its right to assert that she is in breach of covenant. Furthermore, Mrs Wasserman (who is a solicitor) has been aware of the terms of her lease all along. She has not sought to have her lease varied despite her agreement with the freeholder in 1988, and so she has always known that she is parking in breach of covenant. Even when she was a director of Loyalart she did not arrange for her lease to be varied so as to delete the parking covenant, despite the decision at the AGM that each flat owner was to have one parking space on the forecourt, and so I take it that Mrs Daniel is right that that decision was intended as a temporary arrangement. Whilst it amounted to a licence for Mrs Wasserman to park on the forecourt there is no basis on which it could be regarded as an irrevocable licence.
36. Accordingly ground 1 fails; the parking covenant has not been released. Ground 3
37. I can deal with this briefly. The FTT decided that Loyalart had waived its right to enforce the covenant at the meeting in 2021. The reasoning by which it reached that conclusion is unclear but its decision at paragraph 59 is not appealed. There is some uncertainty as to what the FTT thought the position was before the AGM in 2013, but despite the ambiguous wording of paragraph 59 I understand the FTT to have decided that Loyalart cannot take action in relation to anything Mrs Wasserman did at least until 2021.
38. The FTT correctly held that Loyalart’s waiver was revocable; the argument that the waiver was permanent, although not considered by the FTT, could not succeed for the reasons I have set out. The position was therefore as described by HHJ Huskinson in *Swanston Grange*.

39. But the FTT's decision in paragraph 62 is not correct. It said: "62. There was no evidence before the Tribunal of the Applicant having giving formal written notice to the Respondent of its intention to revert to its strict legal rights and that is unfortunate. However the actions of the Applicant, not least in bring this application, are evidence of its intention to do so."
40. What "actions" the FTT referred to I do not know. The only one it has identified is the making of the application to the FTT. But an application to a court or tribunal does not of itself create a cause of action; it is made on the basis that the cause of action already exists. If Loyalart was not able to assert that Mrs Wasserman was in breach of covenant on the date of the AGM, that waiver must have continued until Loyalart gave "reasonable notice" (as HHJ Huskinson said, and as the FTT set out) that it was going to revert to its strict legal rights. Issuing proceedings on the basis that it has already done so will not do.
41. Mrs Daniel sought to refer to correspondence since 2021 which she said gave Mrs Wasserman notice that Loyalart was going to resume its rights. But that correspondence was not in evidence before the FTT and Loyalart does not have permission to rely on fresh evidence on appeal. If it had applied for such permission, it would have been refused, because it is not permissible to adduce on appeal evidence that was available and could have been produced before the FTT.
42. As a result the FTT's finding that Mrs Wasserman was in breach of covenant cannot stand; its finding that she was not in breach up to and including the date of the 2021 AGM is unappealed, and the FTT's finding that Loyalart had given reasonable notice since then that it intended to revert to its legal rights, and had so reverted, was not one that it could have reached on the evidence before it. The FTT's finding at paragraph 63 of its decision is set aside and I substitute the Tribunal's finding that up to and including the date of the FTT's decision Mrs Wasserman was not in breach of covenant. Ground 2
43. In addition, or in the alternative, to her argument that Loyalart had waived its right to enforce the parking covenant Mrs Wasserman argued that she had been granted a right to park on the forecourt.
44. Mr Serota developed this argument in written submissions made after the hearing. He relied upon an unreported decision of Megarry J from 1982, *Newman v Jones*. Mr Serota was unable to produce a copy of the decision, and told me it cannot be found (and I have not been able to find it). The extract on which Mr Serota relied was as follows: "In my opinion, where there is a block of flats, and the tenants in general regularly park their cars within the curtilage of the block, the liberty, privilege, easement, right or advantage of being allowed to do this will rapidly become regarded as being something which appertains or is reputed to appertain to each of the flats in the block, and as being reputed appurtenant to each of those flats. Accordingly, on the grant of a lease of one of the flats, I think that section 62(2) of the Law of Property Act 1925 will operate to give the lessee an easement of car parking appurtenant to his leasehold. I do not think that it matters whether the previous occupant of the particular flat did or did not park their car within the curtilage of the block, or, indeed,

whether they had any car. In all ordinary cases the reputation will be that of a right of parking which goes with each of the flats, for there will be no reason for one lessee to have greater rights than another in this respect. The question, 'can the tenants park their cars round the block?' would receive a simple yes, and not an answer which distinguished between one flat and another on the basis of whether previous occupants of the flat in question had been accustomed to park their cars round the block."

45. Mr Serota explained that that passage was approved by the Court of Appeal in *Duchess of Bedford House RTM Company Limited v Campden Hill Gate Limited* [2023] EWCA Civ 1470. He relied upon it to support his argument that longstanding acquiescence in Mrs Wasserman's parking in breach of covenant amounted to a right "reputed to appertain" to her flat and that section 62 of the Law of Property Act 1925 would convert that right to an easement.
46. The FTT did not address this argument; it stated in its paragraph 17 that it did not have jurisdiction to decide whether Mrs Wasserman had acquired ownership of or an exclusive legal right to park on the forecourt. On that point the FTT was mistaken; Mrs Wasserman was claiming she had a legal easement to park, and if she had such an easement she could not be in breach of covenant. So the point was of central relevance to the issue before the FTT.
47. But the argument that Mrs Wasserman had been granted a right to park is unsustainable. Section 62 is headed "General words implied in conveyances" and states the terms that a conveyance of land is deemed to include. Certainly a longstanding licence to park could be converted, by virtue of section 62, into an easement on the grant or assignment of a lease, and it was relied upon in that context in the *Duchess of Bedford* case. But there is no question of an assignment here; Mrs Wasserman is the original lessee. By no stretch of the imagination could section 62 operate to convert a licence or permission into a legal easement, however long the period in which the parking had been tolerated.
48. Accordingly ground 2 fails; I agree that the FTT did not address this point, but had it done so it would have made no difference to the outcome.

Conclusion

49. The appeal succeeds on ground 3 only.
50. I observe that regardless of the outcome of the appeal, the leaseholders of Brinsdale Park remain in deep disagreement about their parking arrangements. It is in no-one's interests that the present situation continue and I would urge all the leaseholders to agree to participate in mediation so that matters can be resolved and put on a stable and permanent footing. Everyone would be better off if they could compromise a little and the cost of mediation would be money well spent by all concerned. Judge Elizabeth Cooke 28 August 2026 Right of appeal Any party has a right of appeal to the Court of Appeal on any point of

law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/334>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/renee-wasserman-v-loyalart-flat-management-company-limited-2026>

Prepared on 22 October 2026 · Esheria