Falcon Chambers

Nicholas Dowding KC

Called 1979 Silk 1997



Practice Summary

Nicholas Dowding QC specialises in all aspects of property law, with particular reference to commercial property disputes. In recent years, he has appeared in the Supreme Court in two leading cases concerning implied terms in break clauses and residential service charges, and in the Court of Appeal and the High Court in cases concerning (among other things) leasehold enfranchisement, forfeiture, unreasonable withholding of consent, terminal dilapidations, business tenancies and rights of way. He is frequently instructed in large rent review matters and dilapidations claims, in both of which he has particular expertise, and he is often appointed as an arbitrator or legal assessor.

Education

- St. Catharine's College, Cambridge. BA (Cantab.) 1978 MA (Cantab.) 1982

Professional

- Winner of The Chambers Bar Awards 2005, 2009 - Real Estate Silk of the Year
- Included in The Chambers 100 UK Bar 2014
- Honorary Member of the Royal Institution of Chartered Surveyors
- Member of RICS Dilapidations Practice Forum

Recent Cases

- **Shipleys Foodservice Ltd v London Borough of Hounslow** (unreported decision of Nugee J dated 28th November 2016) (application to set aside award in rent review arbitration under s.68(2)(d) of the Arbitration Act 1996)
- **Dooba Developments Ltd v McLagan Investments Ltd** [2016] EWHC 2944 (Ch.) (construction of development agreement)
- **Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd** [2016] A.C. 742 (Supreme Court) (whether term to be implied into commercial lease requiring the landlord on repay rent and other sums paid in advance of the termination of the lease under a break clause)

- **Westbrook Dolphin Square Ltd v Friends Life Ltd** [2015] 1 W.L.R. 1713 (Mann J) (application for collective enfranchisement under the Leasehold Reform, Housing & Urban Development Act 1993)
- **Hicks v 89 Holland Park (Management) Ltd** [2014] EWHC 2962 (Ch.) (Rose J) (application for interim injunction to restrain the making of an application for planning permission)
- **Daejan Investments Ltd v Benson** [2013] UKSC 54 (Supreme Court) (principles applicable to the grant of dispensation from the consultation requirements under s. 20 of the Landlord and Tenant Act 1985)
- **Hammersmatch Properties (Welwyn) Ltd v Saint-Gobain Ceramics & Plastics Ltd** [2013] 2 P. & C. R. 13 (Ramsay J) (damages for terminal dilapidations) and [2013] 5 Costs L.R. 758 (costs)
- **Ansa Logistics Ltd v Towerbeg Ltd** [2012] EWHC 3651 (Ch.) (consent to underletting, forfeiture, waiver and relief)
- **Humber Oil Terminals Trustee Ltd v Associated British Ports** [2012] L. & T. R. 28 (Sales J.) (determination of interim rent under Pt. II of the Landlord and Tenant Act 1954 for large oil jetty and premises on the River Humber)
- **Westbrook Dolphin Square Ltd v Friends Provident Life and Pensions Ltd** [2012] 1 W.L.R. 2752 (Court of Appeal) (whether the making of a further application for collective enfranchisement following the withdrawal of an earlier one was an abuse of process)
- **Humber Oil Terminals Trustee Ltd v Associated British Ports** [2012] L. & T. R. 27 (Court of Appeal) (opposition to the grant of a new business tenancy under s.30(1)(g) of the Landlord and Tenant Act 1954)
- **London Tara Hotel Ltd v Kensington Close Hotel Ltd** [2012] 1 P. & C. R. 13 (right of way dispute)
- **Geo Networks v Bridgewater Canal Co** [2011] 1 W.L.R. 1487 (Court of Appeal) (basis of assessment of consideration payable by operator to undertaker under the linear obstacles regime of the Telecommunications Code)
- **Humber Oil Terminals Trustee Ltd v Associated British Ports** [2011] EWHC 1184 (Ch.) (Morgan J) (application for disclosure in interim rent dispute)
- **Crest Nicholson (Londinium) v Akaria Investments** [2010] EWCA Civ 1331 (whether a letter amounted to an offer for the purposes of a development agreement; principles to be applied in deciding whether a document is an offer)
- **Somerfield Stores v Spring (Sutton Coldfield) (in administration)** [2011] L. & T. R. 8 (relevant date for assessing the landlord's intention under s. 30(1)(f) of the Landlord and Tenant Act 1954 on a tenant's application for summary judgment)
- **Frazer v Brown** [2010] 1 P. & C. R. 13 (Lewison J) (dispute as to the boundaries of registered land)
- **Pierse Developments v Liberty Property Investment** [2009] EWCA Civ 1423 (Court of Appeal) (interpretation of development and sale agreement)
- **Artworld Financial Corporation v. Safaryan** [2009] L. & T. R. 20 (Court of Appeal) (whether lease surrendered by operation of law; review of relevant principles)
- **Orchard (Developments) Holdings v. Reuters** [2009] 1 P. & C. R. DG21 (Court of Appeal) (Whether break clause in commercial lease validly exercised)
- **Nailrile v. Earl Cadogan and others** [2009] 2 E.G.L.R. 151 (Lands Tribunal) (Principles to be followed when valuing intermediate leasehold interests under Schedule 13 to the Leasehold Reform etc Act 1993)
- **Cobbe v. Yeoman's Row Management** [2008] 1 W.L.R. 1752 (House of Lords) (whether an agreement in principle between a property developer and a property owner under which the developer would obtain planning permission and then enter into a formal contract to buy and develop the property gave rise to a proprietary estoppel or constructive trust in favour of the developer in circumstances where he had expended time and money in obtaining planning permission but no contract resulted)
- **Leonara Investment Co. v. Mott MacDonald** [2008] 2 P. & C. R. DG15 (Court of Appeal) (Construction of service charge provisions in commercial lease)
- **Commission for the New Towns v. Terrace Hill (Stockton)** [2007] EWHC 3094 (Ch.) (Blackburne J)

(Whether claimant estopped by convention from relying on date of commencement of an option period)

- **Secretary of State for Communities and Local Government v. Standard Securities** [2008] 1 P. & C. R 23 (Blackburne J) (Whether presumption that time is not of the essence of a time stipulation in a rent review clause rebutted by clear contra-indications in the wording of the clause)
- **Yewbelle v. London Green Developments [2008]** 1 P. & C. R. 17 (Court of Appeal) (Whether seller of development land has used all reasonable endeavours to enter into a s. 106 agreement with the local planning authority; whether sale agreement had ended)
- **Kilmartin SCI (Hulton House) Ltd v. Safeway Stores** [2006] 1 E.G.L.R. 59 (Warren J) (construction and effect of the RICS Code of Measuring Practice for the purposes of a claim for specific performance of an agreement for lease of supermarket premises)
- **Crane Road Properties LLP v. Hundalani** [2006] EWHC 2066 (Ch.) (whether servient owner's costs of works to right of way were recoverable from dominant owner; whether there had been an actionable infringement of the right of way)
- **Cadogan and another v. Escada AG** [2006] EWHC 78 (Ch.) (construction of rent review provisions in a lease of a shop in Sloane Street)
- **Department for Environment Food and Rural Affairs v. Feakins and another** [2007] B.C.C. 54 (Court of Appeal) (whether an arrangement entered into by a landowner was a transaction at undervalue for the purposes of s. 423 of the Insolvency Act 1986)
- **Hemingway Realty Ltd v. Master Wardens and Commonalty of Freemen of the Art or Mystery of Clothworkers of the City of London** [2005] 2 E.G.L.R. 36 (Patten J) (whether tenant had the right to require a rent review against the will of the landlord)
- **Riverside Property Investments Ltd v. Blackhawk Automotive** [2005] 1 E.G.L.R. 114 (Technology & Construction Court) (whether roof of an industrial building was in disrepair at the termination of a lease; extent to which various disputed fees recoverable)
- **Sargeant and another v. Macepark (Whittlebury) Ltd** [2004] 4 All E.R. 662 (Lewison J) (whether the landlord had unreasonably withheld its consent to a change of use)
- **PW & Co. v. Milton Gate Investments and others** [2004] Ch. 142 (Neuberger J) (effect on permitted sub-tenancy of termination of head tenancy; whether rule in Pennell v. Payne ousted by contract or estoppel)
- **Marklands Ltd v Virgin Retail Ltd** [2004] 2 E.G.L.R. 43 (Lewison J) (whether valuer can assume when assessing rental value that the hypothetical willing landlord has other options)
- **Mason v. TotalFinaElf** [2003] 3 E.G.L.R. 91 (Blackburne J) (construction of repairing covenant in lease of service station and assessment of damages for breach)
- **Warborough Investments v. S Robinson & Sons (Holdings)** [2003] 2 P. & C. R. 6 (Court of Appeal) (appeal under section 68 of the Arbitration Act 1996 against arbitrator's award on rent review)
- **Goldmile Properties v. Lechouritis** [2003] 2 P. & C. R. 1 (Court of Appeal) (whether landlord's covenant for quiet enjoyment broken by the carrying out of repairs pursuant to landlord's covenant to repair)
- **Westminster City Council v. HSBC** [2003] 1 E.G.L.R. 62 (whether landlord had served a valid notice to reinstate alterations; construction of covenant against alterations)
- **Maunder Taylor v. Blaquiere** [2003] 1 W.L.R. 379 (Court of Appeal) (whether tenant entitled to set-off damages for breach of landlord's repairing covenant against claim by manager appointed under Part II of the Landlord and Tenant Act 1987 for unpaid service charges)
- **Gribbon v Lutton** [2002] Q.B. 902 (Court of Appeal) (entitlement of vendor to payment of non-refundable deposit held by stakeholder; abuse of process for solicitor-stakeholder to assert in negligence proceedings that vendor was entitled to return of deposit contrary to decision in interpleader proceedings)
- **Single Horse Properties v. Surrey County Council** [2002] 1 W.L.R. 2106 (Court of Appeal) (whether business tenancy continues under Landlord and Tenant Act 1954 where tenant has applied for a new tenancy and ceased occupation prior to the contractual term date)

Publications

- Past editor of the Handbook of Rent Review
- Editor of Woodfall on Landlord and Tenant
- Joint author of `Dilapidations - The Modern Law and Practice' (fifth edition published 2013)
- General Editor of The Landlord and Tenant Reports.

Related Practice Areas

- Commercial property

Published Comments

“Remains the top-ranked silk in the Real Estate Litigation Bar. He is an expert in all areas of property law and is regularly selected to act as an arbitrator. Strengths: ‘Nick's in a league of his own.' 'He remains a firm favourite. He has an outstanding brain and an excellent client manner.' 'He is clever and an incredibly persuasive advocate, who is kind and courteous. Judges listen to him and clients trust him.’ Recent work: Handled a five-day valuation arbitration linked to a major distribution centre in Hong Kong.” *Chambers UK Guide 2017 (Real Estate Litigation)*

"Nicholas Dowding QC is seen as 'a star of the property bar'. He is particularly well versed in commercial property disputes, appearing regularly before the Supreme Court, High Court and Court of Appeal". *Who's Who Legal 2017*

"In a class of his own." *Legal 500, 2016*

Listed in Chambers 100: UK Bar, a ranking of the UK's top 100 barristers

"Nicholas Dowding QC is 'quite simply the best property QC at the Bar.' 'His knowledge is encyclopaedic, he is exceptionally user-friendly,' and 'he wins more cases than the merits warrant - the acid test of a superb advocate.' He recently acted for Daejan Investments in a landmark Supreme Court case relating to residential service charges under the Landlord and Tenant Act 1985."

"The market’s leading real estate silk, who is sought after for any significant property dispute. He advises across the full spectrum of matters in the field. Strengths: 'He is dazzlingly good, very nice and very clever. He can charm the birds out of the trees as far as judges are concerned.' 'Without doubt the leading landlord and tenant counsellor in the country by an absolute mile.' Recent work: Acted for Westbrook Dolphin Square on challenges to the leasehold and corporate structure of its recently acquired Dolphin Square freehold." *Chambers UK Guide 2016*

"He guides tribunals through difficult areas, and is truly outstanding." *Legal 500, 2015.*

"Nicholas Dowding QC is 'quite simply the best property QC at the Bar.' 'His knowledge is encyclopaedic, he is exceptionally user-friendly,' and 'he wins more cases than the merits warrant - the acid test of a superb advocate.' He recently acted for Daejan Investments in a landmark Supreme Court case relating to residential service charges under the Landlord and Tenant Act 1985." *Listed in Chambers 100: UK Bar, a ranking of the UK's top 100 barristers*

"A magisterial presence at the Real Estate Bar, and a man trusted to handle major real property disputes in any forum. He is active in all areas of property law. Expertise: 'He is the fount of all knowledge when it comes to property disputes.' 'He is engaging, innovative and hugely bright, and has a good feel for what a judge wants.' Recent work: Acted for a large corporate landlord in the Court of Appeal and before the Supreme Court. The

landlord, Daejan Investments, was seeking to recover costs incurred in a major refurbishment of the common parts of a block of flats." *Chambers UK (2015)*

"Out and away the best silk in the field." *Legal 500 (2014)*

"Nicholas Dowding QC is widely considered to be the star of the Property Litigation Bar, he specialises in all aspects of real estate law, focusing in particular on commercial property disputes, rent reviews and dilapidations claims. Expertise: 'Simply the best. Tremendous with clients and an absolute star in terms of advocacy.' 'The one you always want on your team. Unsurpassable.' Recent work: He recently acted for Daejan Investments in a landmark Supreme Court case relating to residential service charges under the Landlord and Tenant Act 1985". *Chambers UK Guide (2014)*

"Nicholas Dowding QC is 'simply the best', and is acting in the Supreme Court case Daejan Investments Limited v Benson." *The Legal 500 (2013)*

Nicholas Dowding QC is widely considered to be 'in a league of his own'. His recent caseload includes Humber Oil Terminals Trustee v Associated British Ports, considered by many to have been the most important case of the year. Sources attest that he has 'the best brain at the Property Bar and there is no better advocate for a subtle, reasoned approach that appeals to judges'." *Chambers UK Guide (2013)*

"The 'tremendous' Nicholas Dowding QC is an 'absolute star' and is 'excellent' for rent review cases". *The Legal 500 (2012)*

"Star individual Nicholas Dowding QC is revered as a 'spellbinding advocate,' and is widely considered 'the best of the best and top-notch in every regard.' Despite having gone on a well-deserved sabbatical, he has returned to practice and recently demonstrated his prowess in the Court of Appeal case Crest Nicholson (Londinium) v Akaria Investments. This matter determined whether a letter amounted to an offer for the purposes of a development agreement. He also acted on the headline High Court rights of way dispute London Tara Hotel v Kensington Close Hotel. Solicitors say: 'Dowding is head and shoulders above the rest - if your future is at stake, you go to him.' They regularly rely on his 'easy courtroom style which makes judges putty in his hands. Unbelievably skilful on his feet but makes it look effortless.'" *Chambers UK Guide (2012)*

"Nicholas Dowding QC 'is quite simply at the top of the tree, combining hard work with personality and technical brilliance' ". *Legal 500 2011*

"Star individual Nicholas Dowding QC is foremost among the set's bevy of talented specialists, he is 'a real gentleman barrister' and the best at the Property Bar in many people's eyes. A tremendous performer who displays great attention to detail and has a deep understanding of the law, he is the perfect choice for clients with big strategic problems. Solicitors particularly like him as 'he is someone you can talk things through with, such that you feel like you're dealing with a real human being'. Dowding recently showcased his skills in the Court of Appeal in Pierse Development v Liberty Property Investments, and is noted as a 'real thinker who will cover every single angle of the case'. The market agrees that his 'top-rate advocacy and extremely down-to-earth nature' mean that 'working with him is a great privilege'." *Chambers UK Guide 2011.*

"Nicholas Dowding QC remains 'simply the most impressive silk in the field' ". *Legal 500 2010*

"Nicholas Dowding QC barely needs an introduction. A regular in the major matters of the day, he recently displayed his 'consummate skills'in the keenly contested Yeoman Row's Management Limited v Cobbe in the House of Lords. 'His understated delivery, disarmingly polite manner and simply brilliant legal skills,' particularly in landlord and tenant and dilapidations matters, mean he is 'in a class of his own' ". *Chambers and Partners 2010.*

"Nicholas Dowding QC remains many solicitors' "first choice for high level property cases". *Legal 500 2009.*

"Members of distinction include the current Chairman of the Property Bar Association, Nicholas Dowding QC. "Superb on his feet" and universally respected, he is "quite simply the best", according to interviewees. Rent review, lease construction, property-related professional negligence and enforcement of covenants form just

part of the practice of a lawyer celebrated for his "exceptional legal brain" and "polite and courteous approach to clients". *Chambers and Partners 2009*

"The pre-eminent Nicholas Dowding QC remains undoubtedly the leading real estate silk". *Legal 500 2008.*

"The extremely busy Nicholas Dowding QC remains a pre-eminent authority on both dilapidations and rent reviews and has maintained a consistent and high-profile presence in the Chancery Division". *Legal 500 2007.*

"Nicholas Dowding QC is "simply a brilliant advocate". This "superstar" has continued his steady rise to the top and is now regarded by many commentators as "the best property silk at the Bar". *Chambers and Partners Guide 2008.*

"In the top tier this year is Nicholas Dowding QC, "a god amongst counsel" and "a real pleasure to work with" according to instructing solicitors, who universally regard him as a pre-eminent authority on dilapidations and rent review". *Legal 500 2006.*

"Excellent clear and articulate" Nicholas Dowding QC, a "first choice and excellent sounding board" for so many solicitors. Possessed of a "mountain of knowledge" he is one advocate for whom there are not enough superlatives". *Chambers and Partners Guide 2007*

"Nicholas Dowding QC is regarded as a leading practitioner in property disputes, particularly for dilapidation and repair matters. He is "the outstanding individual for property disputes". *Legal 500 2005.*

"Nicholas Dowding QC is "an exceptional advocate" whose knowledge on general property disputes can be matched by few. "Approachable, courteous and, best of all, unerringly accurate in his advice", he is an obvious first choice for many". *Chambers and Partners Guide 2006.*

Nicholas Dowding QC is real favourite among clients. Described as "brilliant, very hard working and very user-friendly," he also provides "clear advice and thorough preparation." *Legal 500 2004*

Nicholas Dowding QC was said to "leave no stone unturned," and to be "enormously nice, fantastic on paper and a talented and effective advocate." *Chambers and Partners Guide 2005*

"Other stars include the very able Nicholas Dowding who is outstanding for his mixture of conceptual brilliance, experience, hard work and good humour and was involved in Gribbon v Lutton in the Court of Appeal." *Legal 500 (2003).*

Nicholas Dowding is a preferred choice of many property litigation teams across the country. By "putting himself out there" he has widely impressed the market. "Not only is he an excellent advocate, but he also understands the commercial realities", said a pleased client". *Chambers and Partners Guide 2003/2004.*

"Singled out for particular praise was the user-friendly and commercial, Nicholas Dowding QC". *Legal 500 (2002)*

"Awe-inspiring Nicholas Dowding QC delivers a dream service according to peers and is praised for his ability with clients, who respond well to his meticulous preparation and approachable friendly manner". *Chambers and Partners Guide 2002/2003.*

"The set also offers the meticulous and charming Nicholas Dowding who is user-friendly with a good sense of humour" *Chambers and Partners Guide 2001/2002.*

"Clients appreciate Nicholas Dowding's powers of analysis" *Legal 500 (2001)*

"Nicholas Dowding is increasingly popular and consequently difficult to get. It appears worth the wait as he is great. An analytical mind he is useful for exploring possibilities and opportunities. *Chambers and Partners Guide 2000/2001.*

"Nicholas Dowding is one of the strong property litigators at silk level *Legal 500 (2000).*

"Wonderfully able, a really nice man": *Chambers and Partners Guide 1999/2000*

"Nicholas Dowding QC is popular and continues to impress" *Legal 500 (1999)*

"Nicholas Dowding QC, who recently appeared in the Court of Appeal case 'Maryland Estates Limited v Joseph', was singled out for particular praise. `Nick's the closest thing to David Neuberger at the Bar today .... a special combination of charm and boldness .... a superb cross-examiner .... accurately assesses your chances and outcomes'." *Chambers Guide to the Legal Profession 1998 - 1999*

"Falcon Chambers has the `expert negotiator' and `splendid' Nicholas Dowding QC." *The Lawyer 15th February 1999*

"One of the most in demand ..... is Nicholas Dowding QC who won resounding praise from his peers and solicitors. Although he only took Silk in 1997 his intellect and confident, persuasive manner makes him easy to work with, and many suggested he goes straight to the top of our table." *The Legal 500, 1998*