FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LRM/2024/0018** **LON/00BJ/LRM/2024/0020**
Properties	**:**	**Chelsea Bridge Wharf, Queenstown Road, London, SW11**
Applicant	**:**	**Chelsea Bridge Wharf RTM Company Limited**
Representative	**:**	**Greg Lazarev (Solicitor Advocate), Lazarev Cleaver LLP**
1st Respondent	**:**	**Berkeley Homes (Central London) Limited** **Berkeley Seventy-Seven Limited** **Berkeley Forty-Two Limited**
Representative	**:**	**Lorenzo Leoni (Counsel) instructed by Forsters LLP Solicitors**
2nd Respondent	**:**	**Fairhold Artemis Limited**
Representative	**:**	**Ellodie Gibbons (Counsel) instructed by JB Leitch**
Type of application	**:**	**Right to Manage**
Tribunal	**:**	**Judge Robert Latham** **Stephen Mason FRICS**
Date and Venue of Hearing	**:**	**23 and 24 January 2025 at 10 Alfred Place, WC1E 7LR**
Date of Decision	**:**	**28 January 2025**

DECISION

Decision of the Tribunal

On 17 June 2024, the Applicant was entitled to acquire the right to manage the development known as Chelsea Bridge Wharf, London, SW11 pursuant to section 84(5)(a) of the Act, and the Applicant will acquire this right three months after this determination becomes final.

The Applications

1. The Tribunal has received two applications, dated 9 May 2024, under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for decisions that, on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage ("RTM") the development known as Chelsea Bridge Wharf, London, SW11 ("the Premises"). The First Respondent is the freeholder of the premises. The Second Respondent is the head lessee of part of the Premises comprising Centurion Building, Howard Building, Oswald Building, Eustace Building and Horace Building.

2. The Applicant has provided a Bundle of 940 pages to which reference is made in this decision.

3. The Premises in respect of which the RTM is claimed are a large modern purpose built mixed use development comprising ten blocks, including a hotel and carpark. There are 1,200 flats. The Premises were constructed in five phases between 2001 and July 2011. The ten blocks are of different heights and areas and are known as (i) Centurion Building, (ii) Howard Building, (iii) Oswald Building, (iv) Eustace Building, (v) Horace Building, (vi) Warwick Building (Block E and Block E4), (vii) Pestana Hotel, (viii) Lanson Building, (ix) Burnelli Building and (x) Hawker Building.

4. On 8 February 2024, the Applicant served Claim Notices claiming the RTM on 17 June 2024 on each of the Respondents. By separate Counter-Notices, 13 March 2024, the Respondents resisted the claims.

   (i) The First Respondent raised four grounds: (a) the estate was not a self-contained building or self-contained part of a building; (b) the non-residential parts exceeded 25 per cent of the total internal floor area; (c) the total number of flats held by qualifying tenants was less than two-thirds of the total number of flats contained in the Premises; and (d) the Applicant had failed to give an invitation notice to each person who at the time was not a member of the Applicant company. In respect of the question of self-contained building, the First Respondent suggested that the development consisted of two structurally detached "buildings": (a) Howard Building, Warwick Building, Centurion Building, Oswald Building, Eustace Building and the underground

carpark which underlies them ("Phase 1"); and (b) Lanson Building, Hawker Building, Burnelli Building, the Pestana Chelsea Bridge Hotel and Spa and the underground areas which underly them ("Phase 2").

(iii) The Respondent raised a single ground, namely that the Premises do not consist of a self-contained building nor a self-contained part of a building.

5. On 2 July 2024, the Tribunal held a Case Management Hearing (CMH) and gave Directions which were amended on 13 August and 17 September 2024. The single issue to be decided was identified as being whether on the date on which the Claim Notice was given, the Applicant was entitled to acquire the RTM the premises specified in the notice. The Directions required the parties to identify the scope of any disclosure that was required. On 6 August (at p.876), the Applicant notified the Respondents that it required copies of all the construction plans relevant to the development. On 23 and 27 July, the Respondents disclosed a number of documents (at p.599-764).

6. On 3 September 2024 (at p.912), the First Respondents clarified their position. They do not object to the Applicant acquiring the RTM over the Premises provided that the Tribunal determines that it qualifies to do so. They consider that it is essential that the Tribunal determines the issue of entitlement to ensure that the accountable person and principal accountable person are conclusively identified for the purposes of sections 72 and 73 of the Building Safety Act 2022. It is not necessary for this Tribunal to consider the impact of the 2022 Act. If we are satisfied that the Applicant is entitled to acquire the RTM, the 2022 Act identifies who will be the "accountable" and the "principal accountable" persons.

7. The Applicant has served four reports:

(i) An export structural appraisal report, dated 20 November 2024, from James Ham MEng (Hons) (at p.784-842);

(ii) An expert report on architectural matters, dated 12 November 2024, from Seb Kouyoumjian BA (Hons) DipArch MA ARB RIBA (at p.765-783);

(iii) A survey of fire protection, dated 25 November 2024, prepared by Garry McMillan (at p.843-862);

(iv) a survey report by Tom Theakstone, dated 19 December 2024, to determine the percentage of the estate that is allocated exclusively to commercial use (at p.863-869).

8. Neither Respondent has served any evidence. The Second Respondent's Statement of Case, dated 6 December 2024, is at p.19-25. The Applicant's Statement of Case, dated 20 December 2024, is at p.26-38. The First Respondent has not served a Statement of Case.

The Hearing

9. The Applicant was represented by Mr Greg Lazarev, a Solicitor Advocate with Lazarev Cleaver LLP. He was accompanied by Mr Paul Cleaver, from Urang Property Management. Mr Lazarev adduced evidence from Mr James Ham and Mr Seb Kouyoumjian.

10. The First Respondent was represented by Mr Lorenzo Leoni (Counsel) instructed by Forsters LLP Solicitors. He took a passive role in the proceedings and put the Applicant to proof that the Premises consisted of a single building. In adopting this position, the First Respondent is mindful of the decision of the Deputy President, Martin Rodger KC in *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd [2014] UKUT 6 (LC)*. If a Claim Notice is invalid because it relates to premises which do not constitute a single self-contained building, the RTM provisions can have no application and it would be a nullity. It is for this Tribunal to determine whether there the statutory criteria are satisfied.

11. The Second Respondent was represented by Ms Ellodie Gibbons (Counsel) instructed by JB Leitch. She was accompanied by Mr Phil Parkinson, from her Solicitors. Ms Gibbins adduced no evidence. She put the Applicant to proof that the Premises consisted of a single self-contained building. She put a number of questions to Mr Ham. She had no questions for Mr Kouyoumjian.

12. A number of the lessees and representatives of the parties attended either in person or remotely.

13. The parties agreed that the sole issue which the Tribunal is required to determine is whether the Premises consist of a single self-contained building as defined by the Act. Any RTM deprives the landlord of their right to manage their properties. It is therefore for the Applicant to prove, on the balance of probabilities, that the statutory criteria are satisfied.

14. The positions adopted by the First and Second Respondents were quite different. The First Respondent, the developer of Chelsea Bridge Wharf, took a neutral position. The Second Respondent, the landlord of part of the Premises who had had no involvement in the construction of the development, took a more partisan position. Ms Gibbons sought to persuade the Tribunal that we should dismiss the application by

highlighting the flaws in the Respondent's evidence. She did not seek to advance any alternative case.

15. Had the Tribunal decided this case on the burden of proof, it would have left the parties in an invidious position. The tenants would have needed to consider a range of options for the future management of their homes. Should they seek to address any weaknesses in their case; should they rather pursue separate RTM applications in respect of Phases 1 and Phase 2; or should they seek to exercise the RTM in respect of one or more of the nine blocks on the basis that these are "self-contained parts of a Building" (section 72(3) of the Act)? The statutory provisions are complicated by the decision in *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2015] EWCA Civ 282, in which the Court of Appeal held that it is not open to a RTM Company to acquire the RTM in respect of more than one self-contained building.

16. We have concluded that that there is clear and cogent evidence that the Premises constitute a single self-contained building.

The Witnesses

17. Mr Ham was the key witness on whether the Premises consist of a single self-contained building. Ms Gibbons noted that his report had not been prepared in accordance with Rule 19 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In particular, it did not include the statement that Mr Ham understood that his duty as an expert to help the Tribunal on matters within his expertise and that this duty overrides any obligation to the person from whom he had received instructions and by whom he was paid. The report rather included the following statement:

> "This report is intended for the use of our client, Chelsea Bridge Wharf RTM Company Limited, and no liability can be accepted for use by any third party. Furthermore, whilst this investigation has been taken far enough to satisfy the requirements of the brief, it has, of necessity, not been exhaustive. The findings cannot therefore be warranted to apply to areas of the building not inspected or investigated."

18. This was a matter of considerable concern to the Tribunal. The Civil Procedure Rules 1998 established a fundamental change in the approach that any expert should adopt in presenting their evidence to any court or tribunal. Ms Gibbons did not object to the Tribunal receiving evidence from Mr Ham. She rather suggested that this breach of the Tribunal Rules should rather reflect on the weight that we should attach to his evidence.

19. We are satisfied that this serious error was that of the Applicant's Solicitor who had failed to ensure that the report was prepared in the proper form. Mr Ham satisfied us that he understood his duty to the Tribunal. Although he stated that this was the first time that he had given evidence to a tribunal or court, he has an impressive CV. He was subjected to probing questions from both Ms Gibbons and the Tribunal. We were impressed by his evidence and have no hesitation in accepting his expert opinion, as an experienced structural engineer, that the Premises consist of a single self-contained building.

20. Ms Gibbons had no questions for Mr Kouyoumjian. Neither did the Tribunal. His evidence had limited relevance in addressing the critical issue as to whether Phases 1 and 2 of the development are structurally attached.

21. The two further reports adduced by the Applicant did little to advance their case. Mr McMillan addresses the fire protection measures. This has limited relevance to the issue of structural attachment. Mr Theakstone computed the percentage of the Premises that are allocated exclusively to commercial use. This is no longer a "live" issue.

The Inspection

22. The Tribunal inspected the Estate on the morning of the second day. We had heard all the evidence and closing submissions on the first day. The purpose of the inspection was to help us better understand the uncontradicted evidence that we had heard from Mr Ham. We closed our ears to any new submissions that the parties sought to make.

23. The following were present at the Inspection: (i) Mr Lazarev, Mr Cleaver and Mr Ham for the Applicant; (ii) Mr Ingram (In-House Counsel) and Mr Chitroda (Head of Estates) for the First Respondent; and (iii) Ms Gibbons and Mr Osborn (Business Development) for the Second Respondent.

24. There is a layout plan of Chelsea Bridge Wharf at p.867. The Tribunal started the inspection on the podium in front of the Pestana Hotel. We saw the movement joint shown in the drawing at p.805. The Tribunal then went down a staircase to the basement area below Phase 2 and saw the conference centre which is part of the hotel. We noted that the concrete columns and the block built wall did not coincide with the line of this movement joint. We were taken along the passage that leads to the carpark. We were shown a door which opens onto the corridor which would lead both users of the hotel and tenants from the residential blocks in Phase 1 into the carpark at basement level. We were not able to go into this corridor as building works are in progress converting some of the office units into additional flats.

25. The Tribunal was then taken to the area where the hotel abuts the Burnelli Building which is one of the residential blocks. This Building is structurally attached to the Pestana Hotel as there is a section where the lower two floors are part of the hotel, whilst the upper floors are part of the residential block. We were then taken to the lift and staircase whereby the residential tenants in Phase 2 are able to go down to the corridor which leads to the carpark.

26. The Tribunal was then taken to the carpark. Before Phase 2 was completed, access could only be gained from an entrance from the service road at the north of the site. We were shown this entrance. There is now a new carpark entrance from the Phase 2 podium. The carpark is on two levels, ground floor and basement. In the lower level, we were shown the two rows of concrete columns marking the area between Phases 1 and 2. This was marked in the drawing at p.800. The carpark now extends under Phase 2 to include parking bays numbered 406-408. We were shown the area where the Warwick building abuts the Pestana Hotel. There was no structural attachment at this point. This is illustrated in photograph 4 at p.794.

The Law

27. Chapter 1 of Part 2 of the Act provides for a RTM company to acquire the right to manage premises to which the Chapter applies if the following conditions are satisfied

(i) The premises must be a self-contained building or part of a building, with or without appurtenant property, which contains two or more flats held by qualifying tenants (section 72).

(ii) The RTM company must be a company limited by guarantee whose objects include the acquisition and exercise of the right to manage the premises in question (section 73(2)).

(iii) At the date of service of the claim notice the members of the RTM company must be at least two in number and must be qualifying tenants of at least half of the flats in the premises (section 79(4)-(5)).

(iv) At least 14 days before serving the claim notice the RTM company must have served a notice of invitation to participate on all qualifying tenants who are not members of the RTM company and have not agreed to become a member (section 78(1)).

(v) A claim notice must be served on the landlord under a lease of the whole or part of the premises, any third party to such a lease, and any appointed manager (section 79(6)).

(vi) By section 84(1), a person who receives a claim notice may give a counter notice disputing the RTM company's entitlement to acquire the right to manage the premises.

28. Section 72 specifies the qualifying rules in respect of premises to which the RTM applies (emphasis added):

"(1) This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,

(b) they contain two or more flats held by qualifying tenants, and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2) A building is a self-contained building if it is structurally detached.

(3) A part of a building is a self-contained part of the building if—

(a) it constitutes a vertical division of the building,

(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and

(c) subsection (4) applies in relation to it.

(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—

(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5) Relevant services are services provided by means of pipes, cables or other fixed installations.

(6) Schedule 6 (premises excepted from this Chapter) has effect."

29. The parties have referred us to the following authorities on the issue as to whether Phases 1 and 2 are structurally attached:

(i) *No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC) ("*Deansgate*")

(ii) *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2015] EWCA Civ 282; [2016] 1 WLR 275 ("Triplerose") ;

(iii) *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd [2014] UKUT 6 (LC)* ("Albion Riverside")

(iv) *CQN RTM Co Ltd v Broad Quay North Block Freehold* Ltd [2018] UKUT 183 (LC); [2019] HLR 9 ("*CQN*")

(v) *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co Ltd* [2020] EWHC 920 (Ch); [2020] 2 P&CR 13 ("*Palgrave Gardens*")

(vi) *Assethold Ltd v Eveline Road RTM Co Ltd* [2023] UKUT 26 (LC); [2023] HLR 739 ("*Eveline Road*") which was upheld by the Court of Appeal in *Eveline Road RTM Co Ltd v Assethold Ltd* [2024] EWCA 187; [2024] Ch 204

30. In *Triplerose,* the Court of Appeal held that it is not open to a RTM Company to acquire the right to manage more than one self-contained building (per Gloster LJ at [62]). This decision was founded on the conclusion that the words "the premises" must have the same meaning wherever they are used in the Act. The issue in the current case is whether this application should fail because Phases 1 and 2 are two separate self-contained buildings in that they are structurally detached.

31. In *CQN*, HHJ Hodge KC gave guidance on the approach to be adopted in applying the statutory criteria (at [54]) (emphasis added):

> "From the authorities, I derive the following propositions:
>
> (1) The expressions "building" and "structurally detached" are not defined in the 2002 Act and <u>should be given their ordinary and natural meaning.</u>
>
> (2) The statutory language speaks for itself and it is neither necessary nor helpful for a tribunal which is considering whether premises are "structurally detached" to reframe the question in different terms. Thus, it <u>is not helpful to substitute a test</u> of

"structurally independent" or "having no load-bearing connection" for that of "structurally detached".

(3) Nevertheless, some explanation of when a building can properly be characterized as "structurally detached" is clearly called for.

(4) What is required is that there should be no "structural" attachment (as opposed to non-structural attachment) between the building and some other structure. The word "structurally" qualifies the word "attached" in some significant manner.

(5) Thus, a building may be "structurally detached" even though it touches, or is attached to, another building, provided the attachment is not structural".

(6) "Structural" in this context should be taken as meaning "appertaining or relating to the essential or core fabric of the building".

(7) A building will not be "structurally detached" from another building if the latter bears part of the load of the former building or there is some other structural inter-dependence between them.

(8) So long as a building is "structurally detached", it does not matter what shape it is or whether part of it overhangs an access road serving some other building.

(9) A building can be "structurally detached" even though it cannot function independently.

(10) Adjoining buildings may be "structurally detached" even though a decorative façade runs across the frontage of both buildings.

(11) The question whether or not premises in respect of which a right to manage is claimed comprises a self-contained building is an issue of fact and degree which depends on the nature and degree of attachment between the subject building and any other adjoining structures.

(12) In determining whether a building is "structurally detached", it is first necessary (a) to identify the premises to which the claim relates, then (b) to identify which parts of those premises are attached to some other building, and finally (c) to decide whether, having regard to the nature and degree of that attachment, the premises are "structurally detached".

> (13) If a structural part of the premises is attached to a structural part of another building, the premises are unlikely to be "structurally detached".

32. *CQN* involved a development, where the existing buildings on the site were demolished save for the Tower Block, which was refurbished and converted into a hotel. The applicant sought to acquire the RTM in respect Central Quay North, a block of flats which abutted the Tower Block. Although the two blocks had been built at different times and from different materials, they were joined together. Although there was no visible gap between the blocks, they did not share any load-bearing elements. The freeholder contended that Central Quay North was not structurally detached from the Tower Block so that the RTM company was not entitled to acquire management of it. The FTT held that the two buildings were not structurally detached because there was an "integrated connection" between the two buildings. This decision was upheld by the Upper Tribunal. Mr Lazarev referred us to [62] of the decision which analysed the approach adopted by the FTT. The FTT rejected the need for there to be any load-bearing connection between the two buildings. The FTT had rather found that the carpark ceiling and its floor, or base, constituted a single composite structure upon which both buildings had been constructed.

33. In *Deansgate,* two buildings were built separately, but very close to each other, with a narrow gap in between which was covered by weathering features to prevent water ingress. The RTM claim was made in respect of one of the buildings and it was held there could be some attachment to another structure as long as the attachment was non-structural. On the facts, the building was held to be structurally detached, notwithstanding the weathering features, because the "attachment" was non-structural. Mr Lazarev highlights the following passage of the judgement of HHJ Huckinson at [30]:

> "I accept Mr Dray's argument that to construe "structurally detached" as requiring the absence of any attachment or touching between the subject building and some other structure is to construe section 72(2) as though it said "detached" or "wholly detached" rather than "structurally detached". What is required is that there should be no structural attachment (as opposed to non-structural attachment) between the building and some other structure."

34. *Albion Riverside* concerned a "structurally complex modern building" in the Albion Riverside development which consisted of a mixed commercial and residential building which was above an underground carpark. The applicant sought to exercise the RTM in respect of the Main Building. The Upper Tribunal found that the claim could not succeed because the Main Building was not structurally detached from another building, Building 1. The evidence was that the basement carpark and plant rooms were constructed as a single "box" with a

waterproof perimeter wall which was propped by the basement and ground floor slabs. The buoyancy effect which would occur due to ground water pressures was countered by the self-weight of the superstructure to the two buildings that lie above it. It was noted that there were no vertical or horizontal movement joints in the area of the basement between Main Building and Building 1 which would suggest any form of structural interdependence between them. Access to the basement by vehicles was from a single ramp below Building 1; pedestrian access is by four separate cores providing lifts and staircases together with lateral support to the structures above. Mr Lazarev highlighted [30] of the judgment in which the Deputy President noted that the statutory language speaks for itself. It is neither necessary nor helpful for a tribunal to reframe the question in different terms. The Deputy President noted (at [25]) that it had been no part of the RTM's case that the Main Building was "part of a building" as defined by Section 72(3) of the Act.

35. In *Palgrave Gardens,* Falk J considered the identical statutory test in the Leasehold Reform, Housing and Urban Development Act 1993. The case concerned five blocks built at one time, as part of a single development, which appeared from the outside to form one large and continuous, although irregularly shaped, structure. Whilst there were gaps between the blocks to allow movement, it was found that the gaps were an integral part of the design and that the fillers used to infill the gaps were not simply a weathering detail of the kind considered in *Deansgate* but, again, part of the design. There was also a basement carpark running underneath and extending beyond the ground-level footprint of the locks. Falk J held that the Recorder at first instance had been entitled to find that there was a single, coherent structure which was built as part of a single development with a common carpark.

36. This decision postdates the decision in *CQN*, and Counsel highlighted the following guidance from the judgment of Falk j:

(i) "The question of whether a building is "structurally detached" is clearly a mixed one of fact and law" ([102]);

(ii) "In *Albion Riverside* the Upper Tribunal held that a block from ground level up was not structurally detached in circumstances where it formed part of a development of two buildings (including the block in question) with a basement carpark. The block was therefore not a self-contained building. The carpark, which extended far beyond the footprint of the buildings, was found to be a single structure which was structurally and functionally integrated with the buildings above it (decision at [14], [21] and [35]). In that case there was a structural interdependence between the buildings on the one hand and the carpark on the other, with the carpark supporting the buildings and the buildings also acting as a counterweight to the carpark" ([105]).

(iii) Two blocks can be structurally attached even if there is no load-bearing connection between them. The critical issue in *CQN* had been the underground carpark which was situated under part of the development, with its ramp partly under the North Block ([106]).

(iv) "Structural detachment does not necessarily require structural independence in the engineering sense of an absence of structural support. Rather, I prefer the approach of HHJ Huskinson in *Deansgate*, which posits the question simply in terms of whether there is structural attachment, as opposed to non-structural attachment. Overall I found this more helpful than HHJ Hodge KC's suggestion at proposition (6) in *CQN* which refers to the "essential or core fabric" of the building, which (while it is intended to capture a distinction between structural features and others such as the merely decorative) may risk too much of a gloss on the statutory language."([121]).

(v) "Once the correct legal test is identified and understood, the question becomes one of fact and degree" (at [124]).

37. In reaching his conclusion that the blocks comprised a single building which included the carpark, Falk J had regard to the following factors:

"116. The Blocks are clearly not structurally detached at basement level. There is a continuous slab that forms the floor of the carpark. There are no walls or other obstructions to prevent passage between the areas under the Blocks and other parts of the carpark. The Blocks are not simply properties in adjacent sub-soil. A single built structure extends under each one. Furthermore, there is direct lift and stair access between that structure and each Block.

117. As a matter of common sense, the development is constructed as a single unit. The carpark serves all the Blocks, and as just mentioned there is direct access to and from the Blocks. If the basement carpark was at ground level, with the Blocks above it from the first floor upwards, it is hard to see that there would be any dispute about the issue.

118. Turning to the position above ground level, the gaps between the Blocks were described by the structural engineers for the original development as a "50mm wide cavity with no ties to allow movement between buildings". It is clear from this that the gaps were an integral part of the design, therefore: they had a specific function of allowing movement. That is why the gaps are there. The appellant's expert referred to interfaces between adjacent buildings which do not derive structural support from each other as being joints that are "usually infilled with soft or compressible fillers which allow for … differential movement". It was not disputed that fillers had been used. This was not simply a weathering detail of the kind considered in Deansgate. It was, again, part of the design.

119. In contrast, the appellant's expert confirmed that the basement slab is "effectively continuous throughout". It was cast using "induced" joints which are created by weakening lines of the concrete slab to encourage cracking to occur in a controlled manner, accommodating a small amount of horizontal movement to allow for shrinkage and thermal effects. So, a form of joint was used that allowed some movement, but presumably it was not necessary to allow for as great a range of movement as it was for the movement joints between the Blocks.

120. As I see it, the logical consequence of Mr Jefferies' submissions is that the Blocks would have been structurally detached even if there had been no 50mm gap, provided that they did not derive structural support from each other. So, for example, even a slab of concrete with induced joints of the kind used in the basement slab would not necessarily amount to structural attachment. That would, it seems to me, be a highly surprising conclusion, and one not consistent with an ordinary and natural meaning of "structurally detached".

....

122. I would also add that I consider that design and function play some part in determining whether structural detachment exists. So in this case it is not irrelevant that the Blocks were designed to be constructed together, not as discrete individual buildings but as part of a single development connected by a common basement which functions as the carpark for all the Blocks and which is accessible directly to and from each of them. It is also not irrelevant that the 50mm movement joints were deliberately included to allow movement between the Blocks. These were not simple gaps between buildings that were covered by weathering features to protect them from the elements: they had a specific function in the design of the Blocks".

38. Mr Lazarev referred the Tribunal to *Eveline Road* in support of a submission that it is possible for a self-contained building to include a number of self-contained parts.

Do the Premises constitute a single self-contained building?

39. The single issue for the Tribunal to determine is whether the Premises consist of a single self-contained building. The Respondents suggest that Chelsea Bridge Wharf was built in a number of phases and that there is no structural attachment between the buildings in the final phase ("Phase 2") and those in the former phases ("Phase 1"). The suggestion is rather that the development consists of two sperate self-contained buildings and that it is not open to the Applicant to acquire the RTM of more than one self-contained building (see *Triplerose*).

40. The Applicants claim the RTM for the whole development ("the Premises") which consists of ten blocks are of different heights and

areas and are known as (i) Centurion Building, (ii) Howard Building, (iii) Oswald Building, (iv) Eustace Building, (v) Horace Building, (vi) Warwick Building (Block E and Block E4), (vii) Pestana Hotel, including a basement conference centre) (viii) Lanson Building, (ix) Burnelli Building and (x) Hawker Building.

41. The First Phase consisted of (i) Centurion Building, (ii) Howard Building, (iii) Oswald Building, (iv) Eustace Building, (v) Horace Building, (vi) Warwick Building (Block E and Block E4). The Second Phase consisted of (i) Pestana Hotel, including a basement conference centre) (ii) Lanson Building, (iii) Burnelli Building and (iv) Hawker Building.

42. The issue for the Tribunal is whether there is any structural attachment between buildings in the two Phases, or whether the buildings in the two Phases are structurally detached. This is legal test which the Act requires us to consider. The expressions "building" and "structurally detached" are not defined in the Act and must be given their ordinary and natural meaning. Having identified the correct legal test, the question becomes one of fact and degree depending on the nature and degree of attachment between the buildings in Phase 1 and Phase 2. This is a mixed question of fact and law. The authorities above merely offer guidance on how the statutory criteria should be applied, having regard to the specific facts of each case. The issue is whether there is "structural attachment" as opposed to "non-structural" attachment. Design and function may play some part in determining whether such structural detachment exists.

43. Mr Ham exhibits to his report (at p.810-842), a set of power point slides prepared by Whitbybird, the structural engineers for the Chelsea Bridge Wharf Project. The Premises, with the ten discrete buildings, were designed to be constructed together as a single development connected by a common basement in which all the users would have access to the carpark on the ground floor and basement levels. This presentation refers to five phases, the first four phases consisting of the six buildings included in Phase 1. These were constructed between 2001 and 2007. When Phase 1 was completed, the majority of the carpark had been constructed. However, at this stage, access could only be gained from the service road at the north end of the site.

44. The plan at p.820 might suggest that Phase 2 was quite separate from Phase 1. This gives a misleading impression. Phase 2 was constructed between 2006 to 2011. A new entrance to the carpark was built on the Phase 2 podium. This replaced the entrance from the service road. This is illustrated in the drawing at p.867. The basement of the carpark was extended under the podium. On our inspection, we were shown the two rows of concrete columns marking the area between Phases 1 and 2. This was marked in the drawing at p.800. We were shown where the carpark now extends under Phase 2 to include parking bays numbered

406-408. To the south of this, is the basement conference centre which is linked to the hotel.

45. The carpark is shared by all the lessees of the Premises. The residents from the Phase 2 buildings, including the hotel, are able to access the carpark from lifts and staircases which lead along a basement passageway. When Phase 2 was completed, the concierge and building management team were relocated from a temporary structure on the service road to a management suite located within Eustace Building.

46. The Tribunal has no hesitation in accepting the opinion of Mr Ham that all the blocks in the development are structurally connected to each other. His report is at p.748-842. He had been instructed to consider the structural independence of the ten blocks on the development ([2.6] of his report). He reached this conclusion having regard to the following factors:

(i) An apparent common foundation system;

(ii) The continuous basement structure extending across the entire development;

(iii) The podium slab extending across the ground level of the development;

(iv) Movement joints in the podium slab and ground level structure which appear to show structural connectivity;

(v) The canopy and supporting columns connecting Block H (the hotel) and the podium slab; and

(vi) the single storey structure covering the access stairs from Block H to the basement below the podium slab where the conference centre is located.

47. In his evidence, Mr Ham stated that an important factor to his finding was the movement joint shown in the drawing at p.805. This was marked "Slab to attach to existing edge using shear connectors. Existing connectors are DSD Q 500 &@ 500mm centres". This joint was thus intended to transfer load across this movement joint. On our inspection, we saw the line of this joint which runs east/west from the hotel to the flank wall of Lanson Building and south/north in front of the hotel. The drawing at p.805 shows this movement joint in the basement area. This is in the corridor between the conference centre and the car park. In his evidence, Mr Ham noted that the columns and the block built wall did not coincide with the line of this movement joint.

48. Mr Ham was also satisfied that there is a common foundation system to all blocks which was designed holistically. At [6.3] of his report, he states that the foundations are thought to be piled throughout the development. He would expect this for buildings of this age, type and height. The design of the foundations would have been carried out coherently for the residential blocks and the hotel. There is a limit on the proximity of two adjacent piles for them to remain effective. One archive drawing indicated hotel piles inset from the edge with a cantilevering pile cap.

49. Ms Gibbons was critical of the fact that when Mr Ham had prepared his report, he had not been asked to consider the letter from the First Respondent's Solicitor, dated 18 April 2024 (at p.870). In this letter, the First Respondent sought to set out why it did not consider that the development constituted a single self-contained building. In his evidence, Mr Ham considered the letter. It did not cause him to change his opinion. Neither Respondent sought to adduce expert evidence to support this contrary view.

50. The architectural report from Mr Kouyoumjian (at p.765-783) confirms that Chelsea Bridge Wharf had been designed and constructed as a single coherent unit. All the buildings shared a common carpark to which access was obtained via a series of corridors. A common drainage system runs across the development. The hotel and the nine residential blocks are interdependent in terms of access/escape, fire strategy and services. Mr McMillan, in his fire protection survey (at p.843-862), identifies the need for a fire emergency excavation plan that encompasses the entire development due to the shared carpark and escape routes.

51. In *Palgrave Gardens* (at [122]), Falk J considered that design and function play some part in determining whether structural detachment exists. In so far as these are relevant factors, the reports of Mr Kouyoumjian and Mr McMillan support the conclusion that we have reached.

52. However, we prefer to focus on the wording on the statute and the structural attachment between buildings in Phases 1 and 2. On the basis of the uncontradicted opinion of Mr Ham, we are satisfied the Premises constitute a single self-contained building. We accept his evidence without hesitation. His findings were confirmed by our inspection.

53. The Tribunal is therefore satisfied that on 17 June 2024, the Applicant was entitled to acquire the right to manage the development known as Chelsea Bridge Wharf, London, SW11 pursuant to section 84(5)(a) of the Act, and the Applicant will acquire this right three months after this determination becomes final.

Judge Robert Latham,
28 January 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).