FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LRM/2024/0013**
Property	**:**	**117-132, 133-148 Oakwood Court, London W14**
Applicant	**:**	**Oakwood Court Blocks 9 10 RTM Company Limited**
Representative	**:**	**Ms E Gibbons instructed by Howard Kennedy LLP**
Respondents	**:**	**Brickfield Properties Limited**
Representative	**:**	**Ms N Muir instructed by Wallace LLP**
Type of application	**:**	**Application for determination that Applicant entitled to acquire right to manage Blocks 9 & 10, Oakwood Court, London W14**
Tribunal	**:**	**Tribunal Judge Hansen & Stephen Mason FRICS**
Date of hearing	**:**	**10-11 February 2025**

DECISION

DECISION

The Tribunal determines that on the relevant date the Applicant was entitled to acquire the right to manage Blocks 9 and 10, namely 117-132 Oakwood Court, London W14 8LA, and 133-148 Oakwood Court, London, W14 8JS.

REASONS

1. By an application dated 20 March 2024 the Applicant seeks a determination pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that on the relevant date it was entitled to acquire the right to manage 117-132 Oakwood Court, London W14 8LA ("Block 9") and 133-148 Oakwood Court, London, W14 8JS ("Block 10"). The Applicant was represented by Ms E Gibbons and the Respondent was represented by Ms N Muir. We are grateful to both for their very helpful written and oral arguments.

Introduction

2. Oakwood Court is an estate consisting of 12 blocks ("the Estate"). Blocks 1 to 6 (containing flats 1 to 84) are located on the north side of Oakwood Court and Blocks 7 to 12 (containing flats 85-188) are located on the south side of Oakwood Court. There are 188 flats in total.

3. The Applicant is a company incorporated for the purposes of acquiring the right to manage Blocks 9 and 10 under the 2002 Act. The Respondent is the sub-head-leasehold owner of flats 117 to 132 (Block 9) and 133 to 148 (Block 10) and is therefore the immediate landlord for both blocks for management purposes.

4. On 13 December 2023, the Applicant served a Claim Notice pursuant to section 79 of the Act claiming the right to manage Blocks 9 and 10 ("the Premises"). On 22 January 2024, the Respondent served a Counter Notice stating that by reason of s.72(1)(a) of the Act, the Applicant is not entitled to acquire the right to manage because the Premises are not a self-contained building or part of a building as required by the 2002 Act.

5. On 20th March 2024 the Applicant made this application for a determination pursuant to section 84 (3) of the 2002 Act that at the date it served its Claim Notice it was entitled to acquire the right to manage Blocks 9 and 10.

The Law

6. Section 72 of the 2002 the Act provides that –

> *"(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."*

7. The sole issue between the parties is whether the Premises are a self-contained part of a building within the meaning of s.72(3) of the Act, the "building" being Blocks 7 to 12 together. The parties are agreed that the Premises constitute a vertical division of the building and that the structure of the building is such that they could be redeveloped independently of the rest of the building. Consequently, the focus of this

dispute is therefore whether s.72(4) applies, namely whether the relevant services provided for occupiers of the Premises are provided independently of the relevant services provided for occupiers of the rest of the building or 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.

8. The parties relied principally on two cases to elucidate the proper approach to determining the issues that arise under s.72(4): *Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd* [2007] 1 E.G.L.R. 121 ("*Oakwood Court v Daejan*") and *St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd* [2014] UKUT 541 (LC) ("*St Stephens*"). We were also referred to a very recent decision of the Upper Tribunal, *The Courtyard RTM Co Limited, (2) The Studios RTM Co Ltd, (3) X1 The Terrace RTM Co Limited v (1) Rockwell (FC103) Limited, (2) Grey GR LP & (1) 14 Park Crescent Limited, (2) PC Investments Ltd v 14 Park Crescent RTM Co Ltd* [2025] UKUT 39 (LC), which dealt briefly with s.72(4) amongst other issues but that was very much a case on its own facts and does not add anything new on the proper approach to s.72(4).

9. *Oakwood Court v Daejan* is a County Court decision of HHJ Marshall QC which was concerned with an application seeking a declaration that the claimant had the right to purchase, by way of collective enfranchisement under Part I of the Leasehold Reform, Housing and Urban Development Act 1993, part of Oakwood Court, namely the building known as 1-14 Oakwood Court which was in fact Block 1. Section 3 of the 1993 Act, which identifies what premises are subject to the rights conferred under Part I, uses language identical in s.3(2)(b) to that used in s.72(4). The *St Stephens* case is a decision of the Upper Tribunal (Martin Rodger KC, Deputy President) in which the Upper Tribunal adopted HHJ Marshall's five-step approach for approaching the issues that arises under s.72(4)(b) and set out those steps as follows, "adapted" to the purpose in hand:

    (1) First, to identify the services provided to occupiers of the part of the building of which RTM is claimed ("the RTM part") which are in issue because they are not provided independently.

(2) Consider whether those services can be provided independently to the RTM part independently of their provision to the remainder of the building.

(3) Ascertain the works required to separate the respective parts of the services supplying the RTM part and the remainder of the building, so that such services would thereafter be supplied to each part independently of the other.

(4) Assess the interruption to the services provided to the remainder of the building which would be caused by carrying out the works.

(5) Decide whether that interruption would be "significant".

10. The UT went on to explain that the test under the 2002 Act is "a practical test", and ultimately a question of fact and degree. It is not in dispute that the burden of proof is on the Applicant to establish that the services which are not currently provided independently can be so provided without causing significant interruption to the occupiers of the remainder of the building.

11. In *Oakwood Court v Daejan* the claim was dismissed because the options canvassed for separating the hot water and heating services were likely to involve lengthy disruption requiring either the construction of a new centralized boiler house for the enfranchising part or by the installation of new individual boilers in each flat. Interestingly, it was only the hot water, central heating and cold water services that were put in issue in that case, but that does not of course preclude this Respondent from putting other services in issue.

12. The Deputy President made no criticism of *Oakwood Court v Daejan* on its facts but emphasized the fact that "*care needs to be taken to avoid substituting a different test for the one laid down by the statute*". Importantly for the purposes of this case, he criticized the LVT in *St Stephens* for rejecting the claim on the basis that the introduction of a new supply would not be the provision of the same service independently but would be a "new service". At [83] he agreed with the submission on appeal that:

> *"… the provision of new components or installations cannot be ruled out, and that the only scale of measurement which the Act provides for deciding whether work is too substantial is by reference to the degree of interruption it will inflict on occupiers of the remainder of the building. I therefore do not think that the LVT was right in this case to regard the provision of additional components as fatal. The provision of the same service, the supply of water, through adapted service installations, including new components, seems to me to be equally capable of passing the test".*

13. Finally, the parties each made passing reference to *FirstPort Property Services Ltd v Settlers Court RTM Co Ltd* [2022] 1 WLR 519. We shall return to that case in due course but we note what was said there about the purpose of the 2002 Act. In that case Lord Briggs said this at [38]:

> *"It may fairly be said that a fundamental purpose of the 2002 Act is to confer management rights and responsibilities on a body (the RTM company) which is accountable to and controlled by the very tenants who will be affected by the conduct of that management, through their right to be members of the RTM company, rather than by either the landlord or a third party manager which will have its own agenda".*

14. We consider it important not to lose sight of the wood for the trees and forget the purpose of the 2002 Act. Whilst the 2002 Act has spawned a considerable volume of litigation, the main objective of the legislation is clear and the intention was that the process should be *"as simple as possible to* reduce *the potential for challenge by an obstructive landlord"*: *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27 at [25].

15. Without distorting the law or giving the statute a meaning that the language cannot support, we consider that we should construe this part of the 2002 Act in a practical way, so as to ensure that we do not render nugatory the rights conferred by the 2002 Act.

The Services in Issue

16. The particular services in issue in this case are:

(1) Gas
(2) Water
(3) Lightening protection
(4) Telecoms
(5) Door entry (intercom) system
(6) the access control panel
(7) Fire alarm system

17. The issues that arise in relation to each of these services are:

(a) Is the relevant service provided to the Premises independently of the supply of the relevant service to the rest of the building? ("Issue 1")

(b) If not, could the relevant service be supplied independently to the Premises without carrying out works likely to result in a significant interruption in the provision of any relevant services for the occupiers of the rest of the building ("Issue 2").

18. Issue 2 involves a consideration of the 5 stages referred to above. We propose to examine Issue 1 and Issue 2 in relation to each of the relevant services but before doing so, we should set out briefly the relevant lease terms.

The Lease Terms

19. The lease structure is explained in paragraphs 6-8 of the Statement of Case. For present purposes it is sufficient note that the relevant occupational underleases are all in a similar form. The key provisions are set out in the Respondent's Statement of Case at paragraphs 16-25. The Statement of Case refers to the lease of Flat 118 (in block 9) and the lease of Flat 133 (in block 10). The lease of Flat 133 is an extended lease in materially the same terms. We shall refer here only to the lease of Flat 118 ("the Lease"). The Lease was granted by Daejan Properties Ltd (1) to Irmtraud Louise Stugard (2) on 2nd August 1978 for a term of 99 years from 24th June 1948. The Lease defines "the Buildings" as consisting of the blocks of flats known as Oakwood Court … comprising numbers 1 to 188 Oakwood Court. The flat is demised together with the rights contained in the First Schedule of the Lease. These include rights of way over the common parts of the Buildings, use of the communal gardens and:

> *"3. The free and uninterrupted passage and running of water and soil gas and electricity from and to the Flat through the sewers drains and watercourses cables pipes and wires which now are or may at any time hereafter be in under or passing through the said Buildings or any part thereof"*

20. The Second Schedule sets out the reservations which include a reservation equivalent to that set forth in paragraph 3 of the First Schedule. The lessee's obligations are set

out in Clause 2 of the Lease and include paying 0.337% of the cost of insuring and maintaining the Buildings. The service charge provisions are premised on the lessee paying a percentage of the costs referrable to the upkeep of the whole estate; there is no division of expenditure on a block by block basis. The lessor's obligations are set out in Clause 5 of the Lease. The Lessor covenants:

> *"5(1) . . . . to maintain repair redecorate and renew*
>
> *(a) the structure and in particular the main drains roofs foundations chimney stacks gutters and rainwater pipes of the said Buildings*
>
> *(b) the gas and water pipes drains and electric cables and wires in under and upon the said Buildings and enjoyed or used by the Lessee in common with the owners and lessees of the other flats*
>
> *(c) the main entrance passages landings and staircases and other parts of the said Buildings so enjoyed or used by the Lessee or the lessees of other flats in common as aforesaid and the boundary walls and fences of the said Buildings. . . .*
>
> *(4) At all times during the said term (unless prevented by fire damage by aircraft storm tempest frost or other inclement condition or causes beyond the control of the Lessor) to supply hot water by means of the boilers and heating installations serving the said Buildings to the flats for domestic purposes and also during the winter months videlicet from the first day of October to the thirtieth day of April to supply hot water for heating to any radiators fixed in the Flat (and common parts of the said Buildings) so as to maintain a reasonable and normal temperature".*

21. Having set out those provisions, we also have in mind what the UT said in *St Stephens* at [88]:

> *" … as for legal rights to effect alterations to service installations, it would be an unusual lease which permitted a leaseholder to carry out work on communal services under the control of the landlord, and it would be unheard of for such rights to be granted prospectively in favour of a third party such as an RTM company. An interpretation of s.72(4)(b) which made the possession of such a right a prerequisite of reliance on the ability to render services independent would deprive the provision of virtually all effect. In order to give the statute a sensible effect it is therefore necessary to disregard the question of entitlement to carry out the necessary work. The purpose of s.72 is to identify premises to which the Act applies, and it is appropriate to consider that question on a purely practical level, focussing on the construction and configuration of the premises, rather than on the rights of their occupiers".*

The Evidence

22. In coming to our conclusions, we have considered all the material contained in the hearing bundle together with the expert evidence (oral and written) given by the three expert witnesses, Mr Luce, Mr Arnold and Mr Shale. The written evidence of Mr Luce was contained in a Report dated 6 December 2024. The written evidence of Mr Arnold was contained in a Report also dated 6 December 2025. The written evidence of Mr Shale was contained in a Report dated 13 September 2024.

23. Given the differences between the experts, our assessment of the experts is important. We found Mr Luce an entirely straightforward and reliable witness. He was the only expert with specific expertise on lightning protection systems and we accept his evidence. Mr Arnold was a somewhat problematic witness. On the one hand, he was clearly an expert with very considerable expertise and much of the oral evidence he gave us is evidence we can accept, based, as it was, on his considerable experience and expertise and grounded in common sense. We also accept that he was an independent witness doing his best to assist the tribunal. On the other hand, he made a number of significant factual errors, in particular in relation to the configuration of the existing services. These mistakes shook our confidence to a degree in the reliability of some of his evidence, in particular that contained in his Report. However, he had recently returned to the site and made a number of corrections to his written report before adopting that report as his evidence. Further, his oral evidence was measured and reasonable and we accept he had relevant expertise in relation to the issues.

24. Mr Shale's evidence was also problematic but for entirely different reasons. The Respondent is a member of the Freshwater group of companies. In cross-examination Mr Shale accepted that Freshwater was a client of his firm, but he did not volunteer this fact in his expert report. When the Tribunal pre-read his report, we both assumed that he was an independent expert and were surprised to discover when he was cross-examined that he had an undisclosed connection to the Respondent. The Property Chamber Rules 2013 say this at paragraph 19:

> ***Expert evidence***
> ***19.****—(1) It is the duty of an expert to help the Tribunal on matters within the expert's expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.*

(2) No party may adduce expert evidence without the permission of the Tribunal.

(3) Expert evidence is to be given in a written report unless the Tribunal directs otherwise.

(4) Subject to paragraph (6), each party must provide a copy of the written report of any expert witness to the Tribunal and each other party at least 7 days before—

(a) the date of the hearing; or

(b) the date notified upon which the issue to which the expert evidence relates will be determined without a hearing.

(5) A written report of an expert must—

(a) contain a statement that the expert understands the duty in paragraph (1) and has complied with it;

(b) contain the words "I believe that the facts stated in this report are true and that the opinions expressed are correct";

(c) be addressed to the Tribunal;

(d) include details of the expert's qualifications and relevant experience;

(e) contain a summary of the instructions the expert has received for the making of the report; and

(f) be signed by the expert.

25. Mr Shale's report contains a statement that he understands and has complied with the duty contained in paragraph 19(1). Paragraph 19(1) reflects the established common law principle that experts owe an overriding duty to the Court. They discharge that duty by providing objective, unbiased opinions on matters within their expertise whilst ensuring that their evidence is the independent product of the expert uninfluenced by the pressures of litigation. Their duty is to assist the court, and they should not assume the role of an advocate.

26. Mr Shale's report on its face demonstrates his awareness and adherence to the duty in paragraph 19(1) of the applicable procedural rules. However, it is important that experts are familiar with the duties and responsibilities imposed on them at common law as well as under the applicable procedural rules: see e.g. White Book at 35.2.3 and the cases there referred to. Experts must ensure that their evidence is independent, impartial and objective. They cannot be an advocate for a party and should not regard themselves as part of a litigant's 'team' with their role being to support or defeat the claim (as the case may be): White Book, 35.3.4.

27. The overriding duty of the expert owed to the tribunal includes an obligation to disclose to the Tribunal the existence of any conflict, or potential conflict, of interest and/or any relevant connection to the party by whom he is instructed at as early a stage in the proceedings as possible: see White Book at 35.3.5 and the case there referred to, in particular *Toth v Jarman* [2006] EWCA Civ 1028 at [119]-[120]. Mr Shale did not comply with this duty. That is a cause of real concern. However, the existence of a potential conflict of interest or a relevant connection to one of the parties does not disqualify an expert from acting as such and Ms Gibbons did not invite us to disregard his evidence on this account. However, she submitted that it went to the weight to be attached to his evidence and might lead us to conclude that he was not a truly independent expert.

28. What ultimately matters is the cogency of his evidence. Without doubting his expertise, our assessment of his evidence, when considered in the round, was to this effect: firstly, we concluded that he had, at times, assumed the role of an advocate and adopted a "kitchen-sink" approach to the case so as to put as many hurdles in the Applicant's path as possible, and, secondly and more importantly, we concluded that he was prone to exaggerate or overstate to a significant degree the extent of any interruptions to services likely to arise from attempts to procure an independent supply of the relevant service. We have therefore given significantly less weight to his evidence to reflect these findings.

29. Given these conclusions, and our reservations about some parts of Mr Arnold's evidence, the tribunal has been left in a less than optimal position, particularly where there was a conflict of evidence between the experts. We have tested the evidence with each expert, by asking our own questions, and have ultimately reached our conclusions on the totality of the evidence before us, supplemented by our own general (not specific) knowledge and experience as an expert tribunal and bearing in mind that the burden of proof is on the Applicant. There was no inequality of arms between the parties, and we consider that our approach was fair to both sides and consistent with the overriding objective of dealing with cases fairly and justly.

Findings and Conclusions

30. *Gas*. Under the terms of the leases, the Lessor is under an obligation to supply hot water by means of the boilers and heating installations serving the Estate to the flats. There are two gas distribution systems on the Estate. One of these distributes to and serves the individual flats directly with each flat having its own gas meter. No problem arises with this system. The second gas distribution system feeds the 3 boiler houses serving the blocks on the south side of the Estate from a single meter at the Addison Road end of the Estate. A dedicated gas fired boiler plant is located within boiler house 4 ("BH4") at the rear of Block 10 which provides heating and hot water to Blocks 9 and 10. This is one of 3 boiler houses serving Blocks 7-12 and Blocks 7-8 and 11-12 each have their own boiler house. The heating and hot water systems are, therefore, independent in so far as the pipework distribution from BH 4 serves only Blocks 9 and 10 and does not serve other blocks. However, the gas supply to the boiler houses is from the single gas meter referred to above. A gas utility meter is installed on Back Lane close to the junction with Addison Road. This distributes gas via a common pipe which serves boiler houses 3, 4 and 5 which serve the whole of Blocks 7-12. Each boiler room is provided with a landlord gas check meter which is used for boiler house gas consumption monitoring purposes.

31. Issue 1. Based on this configuration, Ms Muir submitted that BH 4 (which serves Blocks 9 and 10) does not have a dedicated gas utility supply and it would be necessary for such a supply to be provided to this boiler house, if the gas was to be provided independently from the other Blocks. Ms Gibbons submitted that the gas supply to Blocks 9 and 10 becomes independent at the point where a connection off the common pipe is made into BH 4. In this connection she referred us to [86] in *St Stephens* where the Deputy President said this:

> *"I do not consider the use of a shared pipe from the water main to the pump-house to be significant. It is in the nature of many services provided by means of pipes, cables or fixed installations that mains conduits are subdivided at a point close to the point of delivery to the consumer; until that point is reached the supply to any individual customer or group of customers is not independent of the supply to any other group. That fact cannot prevent the relevant service from being supplied independently for the purpose of s.72(4) . A sensible line has to be drawn. Mr Bates suggested that it should be at the point where the supply to the two buildings is taken from the water main, but it seems to me equally consistent with the statutory scheme to examine the supply from the point at which it first emerges above*

ground in the pump house, since that is the point at which equipment under the control of the parties first begins to operate on it".

32. The parties differed as to how that principle should be applied on the present facts. The last part of [86] suggests and Ms Muir submitted that one should examine the nature of the supply as from the gas utility meter installed on Back Lane close to the junction with Addison Road. At that point it is a common supply, not an independent supply. However, Ms Gibbons submitted that the first three sentences of [86] tended to suggest that one should test the nature of the supply after it hits BH 4, at which point it becomes independent. Having regard to the statutory scheme, and the configuration of this service, we prefer Ms Muir's submissions on this point. On that basis, the relevant gas supply to Blocks 9 and 10 is not independent of the supply to Blocks 7-8 and 11-12.

33. *Issue 2*. Based on the expert evidence we heard on behalf of the Applicant and Respondent there would appear to be two options to separate the supply serving BH4:

    1) Install a new 65mm diameter pipe to connect to the existing underground gas main on Oakwood Court in front of Blocks 9 and 10 and run that supply through Blocks 9 and 10 to connect with the boilers in BH4.

    2) Install a new 65mm diameter connection from the gas main on Addison Road to connect with the boilers in BH4.

34. In both of these options the existing gas supply to BH4 will need to be terminated and the Applicant's expert, Mr Arnold, was of the opinion that this could be effected by closing the gas valve inside BH4, disconnecting the supply pipe and then capping this off. Whatever other work might be necessary to make these connections, the focus of s.72(4) is on interruptions to the services provided to other parts of building. This procedure would result in a brief interruption to the supply of gas to BH3 and BH5 whilst this change-over occurred but we are of the opinion that any interruption to the supply to the other boiler houses and hence the occupiers of other parts of the building would not exceed 8 hours. The Respondent's expert, Mr Shale, was of the opinion that the section of the gas main serving BH4 would need to be completely removed back to the common external main and the works required to achieve this

would shut down the gas supply to BH3 and BH5 as well as BH4 for between 2 and 3 days, with the loss of heating and hot water to Blocks 7, 8, 9, 10, 11 and 12. Having reflected carefully on the rival evidence on this topic, we prefer the evidence of Mr Arnold. We consider Mr Arnold's methodology to be safe and acceptable and this would result in only a short-lived interruption in the service to other blocks. In any event, we were unpersuaded by Mr Shale's timings which seemed overblown to us. We believe any interruption using his methodology would not be longer than 8 hours which, in this context and on the particular facts of this case, is not significant.

35. Water. The current position is as follows. Block 9 does not have a cold-water mains utility supply. The cold-water mains supply to Block 9 is served via the supply into Block 8. A cold-water supply enters Block 8 within the lower ground floor area beneath the entrance steps then serves the cold water main supplies throughout Block 8 and the cold water down service break tanks at roof level. The supply then distributes from the Block 8 lift motor room plant area externally at roof level to serve three tanks located across both the Block 8 and the Block 9 roof. Two tanks are in block 9 and one tank is in Block 8. The cold-water mains service is not therefore dedicated to Block 9. Block 9 would require a dedicated supply if it was to be independent of the rest of the Estate. Block 10 is provided with cold water mains utility supply from the main road (Oakwood Court). The cold-water mains service is not dedicated to Block 10; it is interconnected with the supply to Block 11 which is not involved in this claim. The supply pipework enters Block 10 within the lower ground floor area beneath the entrance steps and connects into existing pipework within the electrical intake room. The service then splits into two supplies and exits the plant area to serve the cold water main supplies through Block 10 and cold water down service break tanks at roof level. The supply then distributes from the Block 10 lift motor room plant area externally at roof level to serve the three tanks across both Blocks 10 and 11. Two tanks are on Block 10 and the other one is on Block 11. One of the Block 10 tanks then serves the cold-water down service to the domestic hot water plant within boiler house 4.

36. Issue 1. Currently there is no independent supply of water to Blocks 9 and 10.

37. Issue 2. Block 9 is served by the cold water mains supply from Block 8. For separation of this service either a new cold water mains supply will need to be brought into Block 9 from Oakwood Court and connected to the existing mains down

service, providing mains water to the flats of Block 9 and also connecting to the roof-top cold water storage tanks; alternatively the cold water mains supply serving Block 10 will need to be connected into Block 9 at roof level. The latter course of action would be dependent on the adequacy of the cold water mains supply serving Block 10 and whether there is sufficient capacity to serve Block 9 as well.

38. On the basis that the roof-top cold water storage tanks would maintain the cold water down service to the sanitary and bathroom fittings in Blocks 8 and 9, the loss of service in terms of the cold water mains supply would be to the kitchen sinks and other mains connected fittings. The respondent's expert, Mr Shale, has advised that the disruption to the cold water mains supply in this scenario would be approximately 8 hours. We believe this is an overestimate. With appropriate planning, we consider that any interruption would be limited to about half that time, say 4 hours.

39. Block 10 is provided with its own cold water main supply from Oakwood Court and this serves the flats in Block 10 and the two tanks on its roof as well as the roof-top tank serving Block 11. For the separation of the cold water main supply to Block 10 it will be necessary to either connect the cold water mains supply serving the roof-top tank(s) on Block 12 to the tank on Block 11 or for a new cold water mains supply to be brought into Block 11 from Oakwood Court and run up the outside of the building to connect to the roof-top cold water storage tank.

40. Mr Shale again estimated that the disruption to the water supply of Block 11 would also be approximately 8 hours with the emptying of the roof-top cold water storage tank probably occurring. We do not accept that this is likely. We believe that the change-over of the mains supply to the cold water storage tank on roof of Block 11 will result in a minimal interruption of the cold water mains supply and no loss of a cold water down service as the roof-top tank would not empty completely if these change over works were completed within 4 hours, which we consider is a reasonable time period to allow. Nor do we see any reason why the various works in relation to the cold water mains supply could not be coordinated so that the cumulative period of interruption was 4 hours. However, we do not regard either 4 hours or 8 hours as significant.

41. Lightning Protection System ("LPS"). The only expert with specific expertise in this field was Mr Luce. For the reasons we have already given, we accept his evidence, as per his conclusions at paragraph 5 of his Report:

> *(a) I understand that the Respondent asserts that the LPS is one complete system, provided to protect the entire Building. This is inaccurate and atypical given the configuration of the blocks forming the Building. The Respondent's report describes the Building's LPS as traditional, this nomenclature is vague and possibly misleading. Further whilst their report asserts that the LPS is a complete system, it does not specify how this is achieved and, which, if true, would require reliance (electrically) on neighbouring apartment block grounding infrastructure.*
>
> *(b) The LPS is already provided to property (apartment block) Blocks 9 & 10 independently of the provision of the same service to the remainder of the Building.*
>
> *(c) No LPS works are required as the system is autonomous to each block - as previously described.*
>
> *(d) No LPS works are required, therefore no disruption or interruption is considered in this report.*

42. Issue 1. We conclude that the LPS serving Blocks 9 and 10 is independent.

43. Issue 2. If we are wrong, we find that it can easily be separated. The Respondent's Statement of Case accepted that it could be separated but made the point that, so separated, it would be "a new type of system". We do not accept this but even if this is true, there is no objection to this in principle for the reasons given in *St Stephens*.

44. Telecoms. The Respondent's Statement of Case was somewhat opaque as to the position in relation to telecoms: see e.g. paragraphs 37-38 thereof. Subsequently Mr Shale has confirmed and we accept there is a single main telecoms distribution point in the basement of Block 10 which distributes to serve Blocks 7, 8 and 9. On this basis Mr Shale's evidence was that "*extensive works would be required to re-organise the telecoms services such as to separate Blocks 9 and 10, and to provide new incoming telecoms services to the remaining blocks*", resulting in "*disruption and downtime to the telecoms services for the adjoining blocks*". He estimated that the "*disruption*" would be 4 weeks.

45. Issues 1 & 2. We propose to deal with these issues together for this item. Ms Muir made a number of points in her written and oral arguments. Firstly, she submitted that the Applicant has not addressed the question of how the services could be separated. Insofar as the Applicant's expert suggested that a new set of telephone lines could be installed for the Premises or that a new system altogether could be installed, she maintained section 72 is not concerned with provision of a wholly different service but rather with separation or adaptation of the existing service to make it independent of the other blocks. She made the point that "*adding a new telephone line would not make the Premises independent if the services for other blocks run through them*". On this basis, adopting the report of Mr Shale, she submitted that separation works would be required and would result in disruption and downtime in Blocks 7 to 12 by restricting their use of the telecoms system (including landlines and broadband internet connection) for intermittent and uncontrolled periods estimated to last 4 weeks.

46. It seems to us that the position is not nearly as complicated as the Respondent suggests. Mr Shale described a number of telecoms cables entering a distribution point in Block 10 from an underground cable duct directly beneath it. This telecoms distribution point (within Block 10) then distributes to serve Blocks 7, 8 & 9. Mr Shale said that, following a survey by a telecoms specialist, telecoms cables within these blocks had been traced and tested back to the distribution point (within Block 10). Ultimately, however, no one has suggested that there is anything other than a series of twisted pair telephone lines running out from the distribution point in Block 10 to serve *individual* lessees in Blocks 7 and 8 and 9 and 10. On that basis, as a matter of substance, the service for Blocks 9 and 10 is already independent and we are not persuaded that the distribution point alters the substance of the provision. We repeat what the Deputy President said in *St Stephens* at [86] (see above). This is not a case of a common service like the communal gas supply described above. Insofar as these lines serve individuals living in Blocks 7 and 8, we do not see why these have to be disturbed and do not regard the fact that they run across the Premises as fatal, as Ms Muir appeared to suggest. That does not mean that the telecoms service enjoyed by occupiers of Blocks 9 and 10 is not independent. We are not persuaded that the decision in *Settlers Court* compels a different conclusion, concerned as it was with a different problem which had emerged *after* the right to manage had been successfully exercised. At this prior stage, as the Deputy President explained in *St Stephens*, "*the purpose of s.72 is to identify premises to which the Act applies, and it is appropriate to consider that question on a purely practical level,*

focussing on the construction and configuration of the premises, rather than on the rights of their occupiers".

47. Further or alternatively, insofar as there needs to be a telecoms service for the Premises which is physically separate and distinct from the service provided to the other blocks, that can be provided, as Mr Arnold said, with no interruption to the service to the other blocks. Where an existing service is provided via a different route or by means of a new service installation, it does not thereby become a new and different service which somehow does not count for the purposes of s.72(4). And insofar as work is required to identify and separate out the telephone wires serving Blocks 7 and 8, we were entirely unpersuaded by Mr Shale's evidence that "*extensive works would be required to reorganise the telecoms service so as to separate Blocks 9 and 10*"; we see no reason why this should be a complicated process or cause any significant interruption to the service to those Blocks. Lines can be traced and tested without interruption to the service and/or individual phone lines.

48. Door entry (intercom) system. Blocks 9 and 10 are *individually* provided with an audio/video door entry system. On that basis, it might be thought obvious that the service is independent. However, the individual installation serving each block is connected to the Estate Porter's Office, so that the Estate Porter can engage in two-way communication with a visitor to the block entrance. This is done via the external door entry system call station, which features a call button for "Supervisor" and which calls through to a dedicated video monitor with the Estate Porter's Office. However, the porter service is not a relevant service for the purposes of the 2002 Act and we do not regard this feature as undermining what is otherwise an independent service. In any event, we are satisfied that that feature can simply and readily be disabled for Blocks 9 and 10 with no interruption to other blocks. Alternatively, any interruption would be minimal. Even Mr Shale described the "disruption" as "minor", although his estimate as to the duration of any disruption (2 days) was clearly exorbitant and entirely unrealistic. If there were any interruption at all, as to which we are highly sceptical, it would likely be for 2 hours. On this issue we agree with section 5 of Mr Arnold's report and consider Mr Shale's evidence to be entirely overblown.

49. Access Control System. We propose to deal with Issues 1 and 2 together. We can deal with this item very briefly because we regard the position as straightforward and presenting no risk of any significant interruption. This was another “minor” item according to Mr Shale but he then estimated the period of “disruption” at 14 days which hardly sounds minor. It is, we find, another example of an exorbitant estimate which bears no resemblance to reality. Blocks 9 and 10 are *individually* afforded electronic access control at both the relevant block’s main and rear entrances. Access is achieved via presentation of a key fob. The associated equipment is located within the basement area of the relevant block. Again, it might be thought the position is straightforward and the service is independent. However, the Respondent makes the point that this is a "site-wide" networked system, which is connected to and managed by a head-end computer sited within the Estate Porter's Office. On this basis, it is said that the access control system is not a stand-alone system and that there would therefore have to be a new system dedicated to Blocks 9 and 10 and related separation works. Mr Shale said in his Report that: “These works are considered minor and are not expected to cause any significant disruption to the remaining Estate” but then suggested a period of disruption of 14 days. It is not clear what he means by disruption and the 2002 Act is concerned with whether there “*a significant interruption in the provision of any relevant services for occupiers of the rest of the building* “significant interruption”. We were entirely unpersuaded by Mr Shale’s evidence about the extent of any interruption. We prefer Mr Arnold’s evidence at paragraph 6.5 of his Report where he said this: “*If it is required to separate the systems further, then in my opinion all that is necessary is to isolate the remote access control at the computer and in the Estate Porter’s office. I do not expect disconnection to affect other blocks in the Building*”. We think this would take no more than 2 hours.

50. Fire Alarm System. We propose to deal with Issues 1 and 2 together. We can deal with this item very briefly because we regard the position as straightforward and presenting no risk of any significant interruption. Mr Shale’s evidence was that the fire alarm system is a site-wide landlord's system which provides coverage to the entire Estate, with a local fire alarm panel within each block as well as a fire alarm panel within the Estate Porter's Office. He said the system is programmed such as to provide a "single alarm" throughout the estate. He said a new system would have to be installed to Blocks 9 & 10 as it is not feasible to separate the existing system to create a stand-alone system. He also said that separation works causing disruption will be required to disconnect Blocks 9 and 10 from the rest of the estate wide

existing fire alarm system. These works would include programme adjustments to the existing landlord's system, which would cause intermittent and uncontrolled periods of disruption to the rest of the Oakwood Court Estate. He said the disruption would last for a period of approximately 2 weeks. Again, we regard this evidence as entirely overblown. We prefer Mr Arnold's evidence at section 8 of his Report. He said it should be possible to disconnect the landlord's system to Blocks 9 & 10 without disruption to the other blocks in the Building. We agree. He also said that the installation of a separate system would not cause any interruption to the service on the remainder of the estate. We agree. Mr Arnold also fundamentally disagreed with Mr Shale's grim prognosis about the interruption or disruption caused by disconnecting Blocks 9 and 10. He said this:

> *"I have worked on very many partial refurbishments and redevelopment of buildings and have never experienced any significant issues isolating single floors of buildings from building wide alarm systems. It would be as simple as isolating Blocks 9 & 10 on the panel shown at figure 8 and excluding them from the estate wide system. If it was necessary to physically remove the disconnected equipment from Blocks 9 & 10 this would not cause any disruption to the other blocks in the Building as this equipment would have already been isolated".*

51. We agree with this assessment. We find that there would be no significant interruption in the service to other occupiers.

Conclusions

52. Insofar as the statutory scheme requires us to apply the test cumulatively and consider interruption across the range of services potentially affected, we have done so but that does not alter our conclusion. We are satisfied that any interruption to services could be kept to a minimum by programming and coordinating the required works across the affected services in such a way that any and all preparatory work could be done without disconnecting the existing supply of any relevant service until strictly necessary; that way any actual interruption in the provision of any relevant services for occupiers of the rest of the building could be kept to a minimum: see e.g. *St Stephens* at [65]. We also think it reasonable to test whether any period of interruption is significant by cross-checking it against the level of interruption occasioned by routine but necessary maintenance of the service in question. So tested, and recalling that it is ultimately a matter of fact and degree in each case, we were not persuaded that there would be any significant interruption to services for the occupiers in other blocks. The fact that HHJ Marshall considered 8 hours to be a

significant interruption in *Oakwood Court v Daejan* does not compel the same conclusion in this case. We would also emphasise the point made by Ms Gibbons that the focus of the statute is on "significant interruption", not on "disruption" and whether the disruption is "minor", "moderate" or "major", as Mr Shale seemed to think. This is another reason for treating Mr Shale's evidence with caution, directed as it was to a different test. In any event, even if we treat disruption as a synonym for interruption, and major as a synonym for significant, Mr Shale ultimately concluded that the "disruption" to services was only "major" in relation to gas and telecoms and we have given our reasons above for concluding otherwise.

53. For all those reasons we determine that the Applicant is entitled to acquire the right to manage Blocks 9 and 10, namely 117-132 Oakwood Court, London W14 8LA, and 133-148 Oakwood Court, London, W14 8JS.

Name: Judge W Hansen **Date:** 5 March 2025