FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LRM/2025/0022**
Property	:	**Canary Riverside Estate, Westferry Circus, London E14**
Applicant	:	**Canary Riverside RTM Company Limited**
Respondents	:	**(1) Octagon Overseas Limited** **(2) Canary Riverside Estate Management Limited** **(3) Riverside CREM 3 Limited** **(4) Yianis Hotels Limited** **(5) Solomon Unsdorfer (Tribunal Appointed Manager)** **(6) Circus Apartments Limited**
Represented by	:	**Freeths LLP for Octagon, CREM, Riverside** **RACR for the leaseholder Applicants** **Norton Rose Fulbright LLP for Circus Apartments Limited** **Wallace LLP for Mr Unsdorfer**
Tribunal		**(1) Judge Vance** **(2) Judge Rushton KC** **(3) Mrs Ratcliff MRICS**

Date of Inspection	**:**	**21 October 2025**
Date of Hearing		**20, 22 and 23 October 2025**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**12 December 2025**

DECISION

NB: References in square brackets and in bold below refer to pages in the hearing bundle prepared by Circus Apartments Ltd (3060 pages). Where preceded by the letter "S" they refer to pages in the Supplemental Bundle (803 pages) provided by the Landlords (the first, second and third Respondents).

Decision

1. The Tribunal determines, pursuant to s.84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Applicant RTM Company ("the RTM Co") Act was, on the relevant date, entitled to acquire the right to manage the development known as Canary Riverside situated on Westferry Circus London E14 excluding Westferry 1 (WF1).

Background and Preliminary Decisions

2. As all parties are familiar with the background to this application, it is only necessary to provide a brief summary. We draw this, in part, from the skeleton argument of Mr Upton, counsel for the RTM Co. The Canary Riverside Estate ("the Estate") is a mixed-use development ("the Development") comprising both residential and commercial buildings situated at Canary Wharf, London. The site was completed in 2000 and comprises 325 residential apartments, a hotel, a Virgin gym, a swimming pool, and various commercial units, including several restaurants.

3. Octagon Overseas Ltd ("Octagon") is the freehold owner of the Estate. Canary Riverside Estate Management Ltd ("CREM") is the long leaseholder of various parts of the Estate and is a party to the occupational leases of the residential flats. In 2018, CREM assigned several leasehold interests on the Estate to Riverside CREM 3 Ltd ("Riverside") as part of a restructuring of the group of companies of which CREM, Octagon and Riverside are all members. Circus Apartments Limited ("CAL") is the long leaseholder of the rear part of Eaton House, one of the residential towers within the Estate, (known as "Circus Apartments"), and holds that interest

pursuant to a 999-year underlease dated 26 July 2000 ("CAL's Lease"). The premises demised by CAL's Lease include a ground floor reception area, 45 residential flats on the floors above and 20 parking spaces. Yianis Hotels is the leaseholder of the hotel under a 999-year lease dated 12 December 2000.

4. In August 2016, the Tribunal appointed a manager to manage the Estate pursuant to the provisions of s.24 Landlord and Tenant Act 1987 ("the 1987 Act"). That management order has since been extended and varied on several occasions. In September 2019, the original manager, Mr Alan Coates was replaced by Mr Sol Unsdorfer, the current manager. There are currently multiple ongoing applications to vary the management order, all of which have been stayed pending the determination of this application.

5. Every qualifying tenant ("QT") of a flat contained in the premises is entitled to become a member of the RTM Co. Section 75 of the 2002 Act contains a definition as to who constitutes a QT, and s.78 provides that before making a claim to acquire the right to manage any premises, a RTM company must give notice to every QT who is not already a member of the RTM Company, or had agreed to become a member. By notice dated 24 April 2025 **[2]**, the RTM Co sent a notice inviting participation ("NIP") in the RTM process to the tenants it considered to be QTs.

6. On 12 May 2025, the RTM Co served a claim notice **[23]** claiming the right to manage over the Estate, pursuant to the provisions of Part 2, Chapter 1, of the 2002 Act. The claim notice was sent to the First to Fifth Respondents. It was stated in the claim notice that the RTM Co was claiming the right to manage "the development known as Canary Riverside situated on Westferry Circus London E14 excluding Westferry 1 (WF1) (WF1 includes the separate building known as 28 to 30 Westferry Circus) ("the Premises")".

7. Octagon, CREM, Riverside, (collectively "the Landlords"), together with the Fourth Respondent, served a counternotice on 13 June 2025, disputing that the RTM Company was entitled to acquire the right to manage **[51]**. In summary, their reasons were:

   (a) the Premises did not qualify because it did not comprise a self-contained building or part of a building, as is required by s.72 of the 2002 Act);

   (b) the internal floor area of the non-residential parts exceeds 50% of the internal floor area of the Premises, contrary to the requirements of para. 1 of Sch. 6 to the 2002 Act). In particular, they considered that Circus Apartments was not occupied for residential purposes;

   (c) CAL was not a QT; alternatively, CAL was a single QT and not multiple QTs;

   (d) no copy of the claim notice was given to the Tribunal (a requirement where a manager has been appointed under the provisions of the 1987

Act) (s.79(9)). This was incorrect because a copy had been provided to the Tribunal, and once pointed out by the Tribunal, the point was not pursued further;

(e) the claim notice was not in the prescribed form;

(f) it was not admitted that every flat had "received" a NIP; and

(g) it was not admitted that "all applications for membership were successful".

8. On 13 June 2025, the RTM Company applied to the Tribunal **[61]** pursuant to s.84(3) for a determination that it was on the relevant date entitled to acquire the right to manage the Premises. The Tribunal issued directions on 16 June 2025 (amended 29 August 2025) **[78]** in which CAL was joined as an interested party to the application to respond on the issues identified at paragraphs (b) and (c) of the previous paragraph. The parties were also given permission to rely at the final hearing on oral evidence from: (a) a structural engineer on whether the premises consist of a structurally detached building; and (b) from a surveyor on whether the internal floor area of any non-residential part of the Premises exceeds 50% of the internal floor area of the premises (meaning that the Premises would be excluded from the RTM).

9. The application was heard over three days, commencing on 20 October 2025, and concluding on 23 October, with the Tribunal carrying out a site visit on 21 October. Present at the hearing were: Mr Upton for the RTM Company; Mr Bates KC and Ms Gibson, counsel for the Landlords; and Mr Rainey KC for Circus Apartments Ltd ("CAL"). We heard expert evidence from two civil and structural engineers: (a) Mr James Ham, MEng (Hons) for the RTM Co, whose report appears at **[2716]**; and (b) Mr Edwin Bergbaum MA(Cantab) CEng FICE FIStructE MCIArb SAAE, instructed by the Landlords, whose report dated 6 October 2025 appears at **[2802]**. Prior to preparation of their respective reports, the experts had met, over Microsoft Teams, on 22 August 2025, and had produced a joint statement setting out their areas of agreement and disagreement **[2714]**. Also included in the hearing bundle is an expert report obtained by the RTM Co from a building surveyor, Mr Theakstone **[2860]** addressing the issue of the internal floor area of non-residential parts of the Premises. However, as the Landlords decided not to continue to pursue that point (see next paragraph), Mr Theakstone did not attend the hearing.

10. In advance of the hearing, Mr Bates had circulated a helpful note which identified the issues his clients were no longer pursuing, as well as matters on which the Tribunal was required to make procedural decisions before the substantive RTM application could proceed. The Landlords had decided not to pursue the argument that the Premises were excluded by reason of the non-residential parts exception in para. 1 of Sch. 6. Nor did they wish to argue that there had been unsuccessful membership applications. As to the question of whether CAL was a QT, and, if so,

whether it was a QT of one flat or 45 flats, the Landlords no longer wished to pursue the argument. They accepted that the analysis set out at paras. 68, 89 and 90 of Mr Upton's skeleton argument was correct, and that even if CAL was not a QT, or only a tenant of one flat and not 45, they could not defeat the RTM claim on this basis. However, Mr Rainey, supported by Mr Upton argued that we should still decide the question, regardless of the Landlords' revised position. We concurred, for the reasons set out below.

11. We gave oral summary reasons for our decisions on the six preliminary procedural determinations we were required to make at the hearing. Our full reasons are as follows:

Issue 1 - should the Landlords be permitted to argue that the Premises as a whole are not structurally detached?

12. This issue was raised for the first time in Mr Bergbaum's report where, at para. 8.3 **[2810]** he concluded that "for a significant length of the perimeter of Canary Riverside..... there is a retaining wall which provides support to the ground outside the Premises". It was his evidence that without support from structures inside the Premises, certain areas outside the Premises would collapse (para 1.2 **[2803]**). This issue was not advanced in the Landlords' statement of case and nor was it discussed by the experts at their joint meeting. Nor had any application to amend their Statement of Case been made by the Landlords. As such, Mr Upton argued that they should not be allowed to take the point. If we disagreed, then we should, he said, give the RTM Co permission to rely upon a short addendum report prepared by Mr Ham dated 13 October 2025.

13. Mr Bates disputed that the Landlords' pleadings were inadequate. He relied upon *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd* [2014] UKUT 6 (LC), at [44], arguing that the onus was on the RTM Company to establish that all the qualifying conditions necessary to acquire the RTM were met. In his submission, it had simply not proved that the Premises were ones to which the Act applied. He also contended that when the Landlords' solicitors stated in the covering letter **[51]** that accompanied the counternotice that the Premises were not a self-contained building, the RTM Co should have realised that it had to prove that it was structurally detached. This is because it follows from the definition in s.72(2) that a building that is not self-contained cannot be structurally detached. Mr Bates also said that it was not until the Landlords received Mr Ham's report of 11th September 2025 that they knew what case to meet, and that is why the issue was not discussed at the joint meeting of experts.

14. We decided to permit the Landlords to argue the point but also agreed that the RTM Co should be permitted to rely upon Mr Ham's addendum report in order to respond to it. We accepted that the question had been put in issue by the Landlords at para 7 of their Statement of Case **[85]** when they said that what was claimed in the claim form was not a single, structurally detached building. It is therefore incumbent on the RTM Co (in order to meet the s.72 requirement that the Premises be a self-contained building)

to establish that it is structurally detached. We recognised that this point was not made explicit in the Landlords' counternotice and statement of case which focused on the argument that the Premises consist of multiple buildings that were not self-contained. However, any prejudice to the RTM Co from the issue not having been specifically identified as a discrete issue could, in our determination, be addressed by allowing them to rely on Mr Ham's addendum of 13 October 2025. The addendum report is short and Mr Bergbaum would, in our view, have adequate opportunity to consider its contents before giving oral evidence, which was not to take place until the final day of the hearing. We therefore gave permission to the RTM Co to rely upon Mr Ham's addendum report.

Issue 2 - should the Landlords be permitted to argue that the QTs for Flats 131 and 212 Berkley Tower were not served with a NIP

15. Mr Bates sought to argue that the evidence adduced by the RTM Co showed that the tenants of these two flats had not been served with a NIP. He conceded that this point occurred to him during the preparation of his skeleton argument, and that it had not previously been taken by the Landlords. It was his case, as articulated at para. 71 of his skeleton argument, that unless the RTM Co can demonstrate that it served all necessary QTs with an NIP at least 14 days before the date of the Claim notice, the Claim notice will be invalid. This would be the consequence resulting from of the Court of Appeal decision in *Avon Freeholds Ltd v Cresta Court E RTM Co Ltd* [2025] EWCA Civ 1016, in which it was held that a failure to comply with s.78(1) invalidates any subsequently served claim notice.

16. The RTM Co's evidence regarding service on the QTs of these two flats is set out in two witness statements, firstly from Ronnie McCarthy, dated 4 August 2025 **[1424]**, who has been the onsite Estate Manager of the Estate since October 2019. In relation to Flat 131, he said that the leaseholder had failed to collect their post, leading to an "overflowing mailbox" and "multiple large bags of deliveries held uncollected". He said that the concierge still accepts post and deliveries for the leaseholder but that the leaseholder had been informed that if not collected within seven days of an email notification, letters/parcels may be returned. As to Flat 212, he said that the mailbox was broken and that the mailbox was sealed pending repairs. The second witness statement is from Allasana Djalo, a concierge at Berkley Tower, who acknowledged receiving four letters from lawyers acting on behalf of the RTM Co in respect of Flats 131, 171, 163, and 212. She stated that the owners of Flats 171 and 163 had expressly asked for their mailboxes to be sealed to prevent them overflowing as they live abroad, and that they had asked for the concierge to hold on to their post. As to Flat 131, she said that the mailbox had been sealed because the owners had failed to collect their post for several years and had not responded to repeated attempts at communication. She confirmed that all post accepted by the concierge is kept safe until collected.

17. Mr Upton's position was that the RTM Co had received no advance warning that service of NIPs on these two tenants was in issue. It served

its evidence on 4 August 2025, and Mr Upton said that he had tried to get a list of issues in dispute from Mr Bates on 7 October. He said he did not receive one for a week and that, when he did, this issue was not identified. The Landlords sought to argue a new point, namely whether the NIPs were in the correct form, but did not argue that the QTs of these two flats had not been properly served. There was, said Mr Upton, a legitimate argument that the concierge had apparent or ostensible authority to accept mail for these tenants, and to allow the Landlords to argue the point on such short notice would, he said, be procedurally unfair. It would also be completely inappropriate, in his submission, for him to be expected to research authorities on ostensible authority mid-trial.

18. We refused permission for the Landlords to argue this issue. As Mr Bates acknowledged, he only identified it when he was preparing his skeleton argument. In our determination, it was raised far too late for the RTM Company to be able to fairly respond to it. The RTM Company served its evidence, including regarding the attempts made to give notice to the QTs of these two flats, on 4 August 2025. It was its position that delivering the NIPs to the concierge amounted, in the circumstances, to good service on the QTs. That there had improper service on the tenants of Flats 131 and 212 was not argued by the Landlords at any point until it was mentioned in Mr Bates' skeleton argument. As he accepted, it could, and should, have been raised earlier, and properly pleaded in the Landlords' statement of case. He also accepted, and we agree, that given her status, it was arguable that the concierge had apparent or ostensible authority to accept mail for these two tenants. That being the case, it would clearly be unfair to allow the Landlords to argue the point at this hearing. If the challenge had been raised earlier, the RTM Co may have sought to adduce further evidence regarding the efforts made to communicate with the tenants, and why the concierge had authority to accept mail on their behalf. The issue could then have been properly and fairly addressed both in the parties' statements of case and in their evidence.

19. We were not persuaded by Mr Bates' argument that it is the RTM Co's own evidence that shows that the QTs for Flats 131 and 212 Berkley Tower were not served, and that we should therefore proceed to decide whether the RTM claim fails because they did not receive a NIP. We accept that we need to be satisfied, on the evidence, that the RTM Co gave a NIP to all persons who were entitled to receive one. However, if the Landlords, who have been legally represented throughout this RTM claim, wished to argue that a particular tenant or tenants who should have received a NIP did not in fact receive one, then it was incumbent upon them to say so in their statement of case. It cannot be fair for them to raise it for the first time a few days before trial when, if raised earlier, the RTM Co could potentially have responded to their challenges through additional evidence and/or legal submissions.

Issue 3 - are the NIPs invalid as addressed to "the Qualifying Tenant" not named individuals?

20. Again, Mr Bates acknowledged that this issue was only identified when preparing his skeleton argument. His argument was that the NIPs are invalid for failing to be in the form prescribed by Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825 ("the 2010 Regulations").

21. Regulation 8(1) of those regulations states that a NIP "shall be in the form set out in Schedule 1 to these Regulations." That form provides that the notice should start with the name of the recipient and reads as follows:

    "To [name and address] (See Note 1 Below)"

22. Mr Bates acknowledged that s.78(7) of the 2002 Act contains a specific saving provision that a NIP is not invalidated by any inaccuracy in any of the particulars required by s.78 to be provided. However, his position was that failure to use a prescribed form is not an inaccuracy in a particular. He argued that a recipient of a notice addressed to "the Qualifying Tenant" is not going to consider for themselves the complicated legal question of whether they are a "qualifying tenant" within the meaning of s.75, 2002 Act, thereby defeating the purpose of the NIP.

23. As with the previous issue this challenge was raised too late for the RTM Co to be able to address it. We were told that copies of the NIPs were given to the Landlords' solicitors on 10 June 2025, before the Landlords' counternotice was served, and long before service of their Statement of Case. Mr Bates did not dispute this. As such, the Landlords could, and should, have raised the issue much earlier than in Mr Bates skeleton argument, exchanged a few days before the final hearing. This was not a pleaded issue, and it would be unfair to the RTM Co to grant permission to the Landlords to allow them to argue the point.

    Issue 4 – should we determine whether CAL was a QT on the relevant date, and if it is, whether it was a single QT rather than one QT per flat?

24. It was the Landlords' case, as identified in its counternotice, and at paras. 13 – 16 of its statement of case **[87]** that CAL was not a QT. They argued that CAL occupies the land demised under its Lease for the purposes of a business, namely the provision of serviced apartments for profit, meaning that its Lease was therefore a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applied. It followed that CAL could not be a QT by reason of the exception in s.75(3). They also argued that if, contrary to that submission, CAL was a QT then the Fourth Respondent, Yianis Hotels, was also a QT and it was not served with the necessary NIP. In addition, if CAL was a QT, then the Landlords argued that it was a single QT, rather than a QT of each of the 45 flats in its demise.

25. The RTM Co responded to these arguments at paras. 14 – 18 of its statement of case **[93]** and both parties addressed it in their witness

evidence. The Landlords' challenge was also maintained. in full, in Mr Bates' skeleton argument. It was not until the morning of the hearing before us that the challenge was dropped, Mr Bates accepting that Mr Upton's analysis at paras. 68 and 89-90 of his skeleton argument was correct. This was that the requirement in s.72(1)(c), that the total number of flats held by QTs is not less than two-thirds of the total number of flats in the Premises, was satisfied regardless of whether CAL was a QT or not. This was because even if CAL's 45 flats were excluded, the remaining QTs constituted more than two-thirds of the total number of flats in the Premises. As such, the Landlords could not defeat the RTM claim on this basis.

26. Importantly, Mr Bates made clear that the Landlords were not conceding that CAL was a QT, only that whether it was or not made no difference to the outcome of the RTM application. Nor were they conceding that CAL's Lease was a residential lease, as opposed to a business lease that was subject to the 1954 Act.

27. Mr Rainey, for CAL, with whom Mr Upton agreed, argued that he was fully prepared to argue whether CAL was a QT, and had brought along Mr Jonathan Smith, solicitor and in-house counsel for Residential Land, who manage Circus Apartments on behalf of CAL. He said that Mr Smith was ready to be cross-examined on his evidence that CAL was a QT. Mr Rainey submitted that we should be extremely cautious about not determining the point given that there has already been one occasion in the Canary Riverside litigation when an appeal was pursued before the Upper Tribunal on different grounds to that argued before the FTT (the 'Virgin gym' appeal - *Riverside CREM 3 Ltd v Unsdorfer & Ors* [2022] UKUT 98 (LC)). Mr Rainey's concern was that if the FTT dd not decide the issue, the Landlords may try and run it on appeal.

28. Mr Rainey also submitted that if CAL was not a QT because it holds a business lease, then Riverside, as its head landlord and lessee of a superior lease, may itself have been a QT. If Riverside was a QT, then the RTM Co's failure to serve it with a NIP would, he said, be fatal to the RTM claim. It was therefore important, he said, that we determine CAL's status, including whether the Landlords' argument that the internal floor area of the non-residential parts exceeded 50% of the internal floor area of the Premises was correct. Mr Rainey argued that the two issues were interlinked, and the evidence on both overlapped.

29. Mr Rainey also contended that Mr Bates should be put to an election. Either he should concede that CAL was a QT because they are not a business tenant, or he should argue the Landlords' case to the contrary. The point, said Mr Rainey, would inevitably arise again if the RTM claim succeeded, either before this Tribunal or the Companies Court, possibly in a dispute over voting rights. This was a factual dispute that was, he said, for us to determine, and this was the obvious time to determine it.

30. In reply, Mr Bates argued that this was simply not an issue for the Tribunal to determine. Our role, as a matter of jurisdiction, was to determine if the

RTM Co was entitled to acquire the RTM. Given the Landlords' concession, there was no need for us to determine CAL's status in order to answer that statutory question. He accepted that Mr Rainey's analysis was correct, and that Riverside could arguably have been a QT if CAL was not. However, after seeking instructions, he confirmed that this was not a point that Riverside wished to advance. It did not, he said, wish to argue it should have received a NIP and that the RTM claim was invalid because it did not receive one. Mr Bates also submitted that he could not be compelled to argue whether CAL was a QT, and nor would he be doing so, whatever we decided.

31. We decided to determine the question of whether CAL was a QT. We accepted that the starting point was, as Mr Bates submitted, the statutory question posed in s.84(3), namely whether, on the relevant date the RTM Co was entitled to acquire the right to manage the Premises. However, to decide that question we first need to be satisfied that the provisions of s.78(1) are met. That requires us to identify whether before making its claim to acquire the right to manage, the RTM Co gave a NIP to all persons who at the time the notice was given were a QT of a flat contained in the Premises, but who were not, nor had agreed to become a member of the RTM Co.

32. Where, as in this case, the parties who served a counternotice are legally represented it is not, in our view, necessary or us to carry out a detailed forensic exercise in order to be satisfied that all tenants who should have received a NIP, did in fact receive one. If, as is the case here, the RTM Co tenders evidence that the requirement was met, our task is to weigh that evidence against any evidence tendered to the contrary by those parties that served a counternotice arguing that the RTM has not been acquired.

33. Given that both Mr Rainey and Mr Bates agreed that if CAL was not a QT, then Riverside (as head landlord) may be a QT, we considered it necessary for us to determine whether CAL was, or was not, a QT. This is because until we determine that question, we cannot be satisfied that s.78(1) is met as potentially either CAL or Riverside might be a QT. And if Riverside was a QT, then this RTM claim must fail as, unlike CAL, it did not receive a NIP.

34. We did not consider it necessary, or appropriate, to identify the internal floor area of Circus Apartments to determine whether the non-residential floor area exception in Sch.6, para. 1 of the 2002 Act applied. In his skeleton argument, Mr Bates made it clear that the Landlords were no longer arguing that the exception applied. The need for us to determine whether CAL was a QT arose solely because we needed to identify if the requirements of s.78(1) were met regarding provision of a NIP. The floor area of Circus Apartments is irrelevant to that question.

35. On that basis, and on our confirmation that it was for the RTM Co to prove that CAL was a QT, Mr Bates informed us that the Landlords had decided not to advance any positive case in relation to whether CAL was a QT. As such, he had been instructed not to cross examine Mr Smith on his

evidence, nor to call the Landlords' witnesses, Mr Christou and Mr Jones. Nor did Mr Bates choose to address us on whether Yianis was a QT.

Issue 5 – should we exclude from evidence parts of Mr Smith's witness statement and the exhibited Planning Report?

36. The Landlords' position was that paras. 9 and 10 of the Mr Smith's witness statement **[1431]** and the exhibited expert report of a planning expert, Mr Paul Burley (the "Planning Report"), referred to in those two paragraphs should be disregarded. At paras 9 and 10, Mr Smith refers to a breach of covenant claim brought by the Landlords against CAL in the High Court in 2016, in which the parties were given permission to adduce expert evidence about the planning permission of Circus Apartments. CAL subsequently relied upon Mr Burley's report as its expert evidence, and according to Mr Smith, the Landlords did not adduce any planning evidence in response. Mr Smith's evidence is that the Planning Report shows that Circus Apartments, along with the other residential blocks, enjoys flexible planning use of the residential accommodation, including both long and short-term residential lettings.

37. Mr Bates argued that the Tribunal had given no permission for the parties to rely upon expert planning evidence and that the exhibiting of an expert report to a factual witness statement is a classic example of seeking to adduce expert evidence 'through the backdoor', circumventing the Tribunal's rules. He referred to the White Book 2025 at 35.4.2 in which it is said that the requirement to obtain the court's permission to adduce expert evidence cannot be circumvented by seeking to adduce expert evidence within, or as an annex to, a witness statement.

38. Mr Bates pointed out that it was only on 1 October 2025 that CAL confirmed **[S803]** that it was only seeking to rely on paras. 9 and 10 as hearsay, and not expert evidence. As to reliance on the Planning Report as hearsay evidence he referred us to the judgment in *Rogers v Hoyle* [2014] EWCA Civ 257 where the Court of Appeal considered whether an Air Accidents Investigation Branch report was admissible as hearsay evidence. It held at [31] that insofar as the report consisted of statements or reported statements of fact, it was *prima facie* admissible. Insofar as it consisted of expert opinion, the question was whether, pursuant to CPR Pt 35.4(1), permission was required from the court for it to be relied on. At [62], Christopher Clarke LJ said that the purpose of CPR 35 is to regulate the evidence of experts instructed by the parties, and that as the AAIB report had not obtained on the instruction of either of the parties it did not fall within CPR 35.

39. In summary, evidence by an expert who was not instructed by one of the parties to the proceedings in which it is sought to be adduced, or was not instructed for the purpose of those proceedings, does not fall within CPR Part 35, and permission to adduce it is not required (see *Illumina v TDL Genetics* [2019] FSR 35 at [18]). At [27] in that decision Henry Carr J said that, even though *prima facie* admissible, the court retains a discretion to exclude it under CPR 32.1(2), which permits a court to exclude evidence

that would otherwise be admissible. He suggested that a court may decide to exclude its admission where to do so would give rise to disproportionate cost.

40. In Mr Bates' submission, CAL needed permission from the Tribunal to rely upon the Planning Report because Mr Burley was giving evidence on expert, not factual matters and because he had been instructed by one of the parties to these proceedings, meaning that the rule in CPR 35 applied. He also argued that it would not be fair, and would lead to disproportionate cost, to permit CAL to rely upon it. He pointed out that the Landlords were the only party in these proceedings who were also preparing for a hearing the following week in proceedings brought by the Secretary of State for a Remediation Order and Remediation Contribution Order under the Building Safety Act 2022 ("BSA 2022"). He also suggested that there was no possibility of producing evidence in response at this stage and that the Report had such little evidential weight, given that Mr Burley would not be giving evidence, and could not be cross-examined, that it should not be admitted in evidence.

41. We did not agree that CAL required our permission to rely upon the Planning Report. Firstly, as Mr Rainey pointed out, CAL is seeking to rely upon the report as hearsay, not expert evidence. In this Tribunal, unlike in court proceedings where s.4 of the Civil Evidence Act 1995 applies, there is no requirement for a party to serve a hearsay notice before doing so. CAL is entitled to seek to rely upon it as hearsay evidence and we reject the suggestion that in doing so it is seeking to smuggle in expert evidence by the back door. It is not expert evidence, but hearsay.

42. We were not persuaded by Mr Bates' arguments that we should exclude the report from evidence. We have the power to do so under Rule 18 (6)(b)(iii) where it would otherwise be unfair to admit the evidence. However, we rejected the submission that to do so would result in disproportionate cost. The report is short, comprising a little over 10 pages in length. We recognised that the Landlords were also preparing for a BSA 2022 hearing the following week, but both this application and the BSA 2022 applications were listed for final hearing on 16 June 2025. Mr Bates has the support of junior counsel, Ms Gibson, and both are instructed by experienced commercial solicitors. As the very long-running litigation concerning the Estate has established, resources should not be an issue for the Landlords. Mr Bates appears to be correct in that it was only on 1 October 2025 that CAL definitively confirmed that it was only seeking to rely on the Planning Report as hearsay evidence. However, on 18 September 2025, Mr Stevens wrote to Mr Marsden, the Landlords' solicitor, citing the authorities we refer to above, arguing that CAL was in any event entitled to rely on the Planning Report as hearsay evidence, **[795]**. Possible reliance on it as hearsay had therefore been flagged up as long ago as 18 September.

43. We accepted that the Planning Report was likely to be of limited probative value and will therefore attract little evidential weight. However, we did not consider this to be so low as to justify its exclusion from evidence. We

accepted that the planning status of CAL's 45 flats is likely to be of significant value to the issue of whether CAL is a QT, which we had concluded we needed to determine. The Landlords have been in possession of the Report for years. Mr Stevens' statement was served on 8 August 2025. The Landlords knew on 18 September 2025 that CAL was potentially going to be relied upon as hearsay evidence, and Mr Bates and Ms Gibson had, in our view, sufficient time to formulate their submissions to us as what weight it should carry as hearsay evidence. The onus was on the Landlords to persuade us that the evidence should be excluded, and we did not consider it would accord with the Tribunal's overriding objective to do so in the circumstances of this case.

Issue 6 – should we give the Landlords permission to rely upon documents included in their supplementary hearing bundle?

44. The RTM Co raised no objection to reliance upon the documents at tabs 1-16, which almost exclusively comprised copy HMLR title register entries and plans. Nor did it object to the correspondence included at tabs 25 – 50. The documents Mr Upton said should be excluded from evidence were those at tabs 17 – 24, the objection being that these had not been served with the Landlords' statement of case and there had been no application to rely upon the material in evidence. He also argued that the material was irrelevant. Mr Bates disputed that the material was irrelevant. He accepted that some of it may carry limited weight, but that was not a reason to exclude it.

45. We gave permission to the Landlords to rely upon the disputed documents contained in the additional hearing bundle at tabs 19 – 24. The documents comprised: a copy of the Secretary of State's amended statement of case in the BSA 2022 proceedings; an extract from the Government's Register of High-Rise Buildings; a certificate of completeness under the Building Safety Act 1984 for parts if the Estate; Mr Unsdorfer's witness statement dated 22 December 2021 and its exhibit; and some CAD drawings.

46. We accepted that these documents were potentially relevant to the Landlords' case that the Premises comprise several buildings rather than a single self-contained building for the purposes of s.72(1). We accepted that they had been provided late but that all parties were familiar with Mr Unsdorfer's witness statement dated 22 December 2021 and its exhibit. The statement is fairly short and only extremely limited parts of the exhibit are likely to be relevant to the issues being determined. The Secretary of State's amended statement of case in the BSA 2022 applications is also short, comprising 19 paragraphs. The extract from the Register; the certificate of completion; and the CAD drawings are all brief documents, and in our determination, there was sufficient time for counsel for the RTM Company and CAL to consider these documents and respond to them, given that the fifth day of the trial had been reserved as an overflow day. On balance, we considered it would accord with the Tribunal's overriding objective to allow the Landlords to rely on the documents. We did not give permission for them to rely on the documents at tabs 17-18 (a witness Statement of Olabimpe Dalemo dated 7 May 2025

and its exhibit). This is a statement from a local authority's Environmental Health Officer, and its only relevance appears to be the fact that the EHO referred to the Estate as consisting of four buildings. That statement is of such low probative value as to not warrant its admission as late evidence.

The Substantive Issues

47. After having determined these preliminary issues, the Tribunal was left with the following substantive decisions to decide:

    (a) do the Premises consist of a self-contained building for the purposes of s.72?

    (b) was CAL a QT on the relevant date, and, if so, was it a QT of one flat or 45 flats? This requires us to determine whether Circus Apartments is occupied for residential or business purposes;

    (c) is the Tribunal satisfied that all QTs received a NIP as required by s.79(2)?

    (d) was the claim form in the prescribed form and, if not, was it invalid?

Summary of Expert Evidence

48. Before turning to those substantive issues, it is helpful to summarise the evidence of the two experts. We start with the description of the Premises in Mr Ham's report, which is not controversial:

> "2.1 Canary Riverside is a large development on the north side of the Thames to the west of the main Canary Wharf development area. The development is bound by the Limehouse link to the north, Westferry Road to the east and Westferry Circus to the south. The development comprises a two storey basement car park beneath a podium slab. Various blocks stand over the podium slab, occupied by mostly residential space but also accommodating some commercial space. Construction is thought to have taken place during the period 1997-1999.
>
> 2.2 The basement levels and the podium slab comprise a reinforced concrete (RC) structure. The superstructure blocks are generally also RC frames, though there are some parts locally formed with steel frames. The blocks are enclosed upon by various forms of non-structural cladding systems."

49. In their joint statement **[2709]**, the experts agreed that:

    (a) above podium level the blocks are structurally independent of each other;

(b) a lower basement slab is present (at 'P2 level') "which is continuous across the site and appears to be designed as a suspended slab";

(c) movement joints are present between parts of the structures, in multiple locations; and that

(d) Berkeley Tower has "a raft foundation which supports the tower and the adjacent line of columns supporting part of the external podium area and Hanover House".

50. Given the absence of any physical division in the basement car park, both Mr Bates and Mr Upton agreed that none of the residential towers are themselves a self-contained part of a building.

51. The experts disagree about whether the foundations of the blocks are independent of each other. Mr Bergbaum concludes that the buildings above ground continue down to the foundation level, with the foundations of each building being independent of each other. He also suggests that parts of the Premises could be redeveloped independently "by separating the slab from the surrounding slab by cutting using a concrete saw."

52. Mr Ham, on the other hand, considers that the buildings are structurally connected at podium slab level and below. He concludes his report **[2723]** by stating that:

> "9.1 In my opinion all the blocks in the development are structurally connected to each other. The structural connections include:
>
> - A common foundation system;
> - A single continuous foundation slab across the site without joints.
> - The continuous two storey basement structure extending across the entire development;
> - The podium slab extending across the ground level of the development;
> - Movement joints in the upper parking and podium slabs which show structural connectivity".

53. Mr Bates comments that although Mr Ham concluded that "the building is structurally detached" he did not explain why, and did not expressly address whether the Premises are structurally detached from the surrounding area, rather than the component parts of the Premises being structurally detached. That question, he said was addressed in Mr Bergbaum's report where, at para. 1.2 **[2798],** he stated that certain areas outside the Premises rely upon support from the structures inside the Premises, and that without it those areas would collapse. At paras 1.6 and 1.7 he described the perimeter wall as being a retaining wall, of varying height, the removal of which would cause damage to areas outside the

Premises, namely the public realm and the highway, and disrupt paving to the public realm, as well as removing the support to the ground outside.

54. Mr Ham addressed the question of whether the Premises are structurally detached from the surrounding area in his addendum report of 13 October 2025. He concludes that the only known interfaces with adjacent structures are those with Westferry Circus, which is a free-standing structure which does not rely upon Canary Riverside for support. He recognised that at various points around the perimeter of the Premises, "paving finishes of the surrounding public realm are dressed up to the perimeter elevations of the development" and that in some places this requires the finishes to overlap the concrete structure. However, in his opinion, the limited overlap of the paving finishes within the Premises is not a structural connection.

55. Mr Ham also recognised that, in places, the perimeter of the Premises is formed of retaining walls where the lower parking level is below the level of the surrounding land. Nevertheless, his opinion is that whilst the surrounding land is retained by the structure of the Canary Riverside development, there is no structural attachment to adjacent buildings and no evidence of any hard structure beneath the paving. In his view, what is below the paving finishes is likely to be formed of aggregate build-up.

The tribunal's request for additional written submissions

56. On 13 November 2025 the Tribunal wrote to the RTM Co and the Landlords stating that we required additional written submissions ("Additional Submissions") before we could finalise this decision. The parties were asked to respond to the following questions:

    (a) does the impact of the exception in s.96(6) of the 2002 Act mean that if the RTM Co acquires the right to manage the Premises, it will not acquire management functions over commercial units located within the Premises that are not held under a lease held by a Qualifying Tenant?

    (b) if so, what are the commercial units in question? Does it include the hotel, the gym, the underground car park, and the swimming pool?

    (c) if the RTM Co does not acquire management functions over commercial units, will it nevertheless acquire functions in relation to the provision of shared services to the commercial units, such as the car park, electricity, and water supplies because these are not functions that solely concern the commercial units (s.96(6)(a))?

    (d) if management of shared services would be split following acquisition of the RTM, addressing the decision of LJ Briggs in *Settlers Court* and the Deputy President in *The Courtyard,* would it be impractical for management of the shared services to be divided between the RTM Co and the Landlords (or any other third party with existing management functions)? If so why?

57. The RTM Co provided their answers on 18 November 2025. The Landlords responded on 26 November 2025, and the RTM Co replied on 1 December 2025. We address their responses below, in our decision on Issue 1.

Issue 1: Do the Premises consist of a self-contained building?

58. Section 72(1)(a) provides that the RTM provisions in Chapter 1 of the 2022 Act only apply to premises that consist of a self-contained building or part of a building, with or without appurtenant property. There is no suggestion that the Premises comprise part of a building, and the sole issue is therefore whether the Premises claimed is a self-contained building. As both Mr Upton and Mr Bates agreed, that breaks down into three questions:

    (a) is it a single building, or as argued by Mr Bates, multiple buildings?

    (b) if it is a single building, is it a self-contained building?

    (c) is it structurally detached (given that s.72(2) provides that a "a building is a self-contained building if it is structurally detached)"?

59. It is the Landlords' case that the Premises do not meet the requirements of s.72 because: (a) they are not one building, but at least four; (b) the buildings are not structurally detached because Mr Bergbaum's evidence is that parts of the surrounding area rely upon the Premises for structural support; and (c) the Premises are not self-contained.

<u>Are the Premises a single building or multiple buildings?</u>

60. What constitutes a "Building" is not defined in the 2002 Act. In his skeleton argument, at para. 48, Mr Bates explains that the Oxford English Dictionary definition of a "building" is:

> " a thing which is built or constructed; esp. a large, permanently standing structure with a roof and walls which enclose an interior space that may be entered and used for a particular purpose, for example as a dwelling, a workplace, a school, etc"

61. He referred us to paras 3.39 - 3.47 of the Law Commission's January 2019 report into the exercise of the right to manage in which it was said that the judicial meaning given to the definition of a "building" in the 2002 Act is one of "common sense" and "objective judgment" (a reference to comments made by Mann LJ in *R v Swansea City Council (ex parte Elitestone Ltd)* (1993) 66 PCR 422. In Mr Bates' submission, it is self-evident from simply looking at the Premises that they constitute more than one "building". He described them as comprising multiple buildings, each with different names, with vast open areas between them. It would, he said, be absurd to conclude they comprised a single building.

62. That conclusion, he said, was supported by the evidence given by both experts, Mr Bergbaum and Mr Ham, regarding the physical composition of the Estate. Both agreed that: it comprises seven superstructure blocks at ground level, with movement joints at both podium and P1 levels, resulting in six identifiable zones; the piles and/or the pile caps, which form part of the foundations, vary in depth, as do the lift pits; and the buildings have their own individual cores, with no shared cores.

63. Mr Bates also suggested that the evidence indicates that the outside world treats the Premises as multiple buildings, namely:

    (a) the Premises are treated as separate buildings for the purposes of the BSA 2022, with Berkeley Tower, Eaton House, Belgrave Court, Hanover House each comprising a 'relevant building' under s.117 BSA 2022. In his skeleton argument Mr Bates had sought to argue that it was the obvious intention of Parliament for there to be similar, if not identical, qualifying criteria across different property statutes applying to the same buildings. As explained below, he departed from that position in his closing arguments;

    (b) when the Residents' Association of Canary Riverside initially applied to appoint a s.24 manager in 2016, they described the Estate as comprising: "Four residential buildings with some ground/first floor commercial premises; a serviced apartment block adjoining one of the residential buildings; a hotel building; a health club with pool/spa; enclosed gardens for residential and hotel use; underground car park (on two levels, mixed private and commercial/public use)";

    (c) Mr Steven Unsdorfer, Senior Property Manager at Parkgate Aspen Limited, and Mr Sol Unsdorfer's managing agents for the Premises, had, in a witness statement dated 22 December 2021 **[S686],** referred, at para 9, to "all 4 buildings" having identical cladding, a reference to Hanover House, Berkeley Tower, Belgrave Court and Eaton House".

64. Mr Bates also contended that the buildings were designed and built as separate buildings, and that where buildings are built separately, identified separately, and look separate, they cannot become a single building simply because they are attached at P2 level.

65. When construing the meaning of "building" in s.72, Mr Bates submitted that it was important to have regard to the context of the 2022 Act as a whole. He referred to the decision of the Court of Appeal in *Triplerose v Ninety Broomfield Road RTM Co* [2015] EWCA Civ 282 in which it was held that a right to manage company cannot acquire the right to manage more than one self-contained building or part of a building. At [55] Gloster LJ had regard to the consultation paper which preceded the passing of the Act, as an aid to construction. That consultation paper, the Commonhold and Leasehold Reform, Draft Bill and Consultation Paper (August 2000)

(Cm 4843) (the "Consultation Paper"), referred at paras. 9 and 10 to the Government's intention behind the right to manage regime as being to allow leaseholders to take over responsibility for the day-to-day management of the block in which they live. At para. 22 it said that the right will apply to leaseholders of flats on a "block by block basis", which Mr Bates suggests is synonymous with building by building.

66. Mr Bates emphasised that the importance of the Consultation Paper was recognised by the Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27; [2025] A.C. 1075, where Lord Briggs and Lord Sales JJSC said at [25] that it is legitimate to have regard to what was said at paragraph 10 of Section 3 of the Consultation Paper as a general statement of the purpose of the 2002 Act and that the consultation paper was functionally equivalent to a government white paper.

67. At para. 56 of his skeleton argument Mr Bates argued that the purpose of the right to manage regime is to give residents the right to manage their own building, and not, as in this case, the right to manage a separate gym or a hotel, particularly in circumstances where the Landlords will have to remain involved in management given banking covenants they have already entered into. To do so would, he suggested, run counter to the purpose of the right to manage, as described in *FirstPort Property Services Ltd v Settlers Court RTM Co Ltd* [2022] UKSC 1; [2022] 1 W.L.R. 519 where Lord Briggs JSC said at [38] and [40] that a fundamental purpose of the 2002 Act is to confer management rights and responsibilities on a RTM company which is accountable to, and controlled by, the very tenants who will be affected by the conduct of that management. Lord Briggs said that whilst that works perfectly well if the right to manage is confined to the relevant building, it produces the opposite effect if the RTM company's rights extend to the management of estate facilities used by tenants who are complete strangers to the RTM company.

68. In Mr Bates' submission, the RTM Co's claim, if successful, would improperly confer upon it rights to manage estate facilities used by strangers, such as users of the Virgin gym, the swimming pool, and the hotel. It would also mean that the RTM Co would control the water supply to the Estate, including provision of water to persons who are strangers to the RTM company. All of which, in his submission, would be contrary to the policy of the Act, meaning that this was a building that did not qualify for the right to manage.

69. Mr Bates also argued that the presence of the lower basement slab at P2 level was not relevant to the question of whether the Premises constituted a single building. Its presence was relevant to the next questions the Tribunal had to address, whether the Premises are structurally detached and self-contained.

70. Mr Upton's starting point was to identify what the RTM Co had claimed in its claim notice. This was the right to manage the development known

as Canary Riverside situated on Westferry Circus London E14 excluding Westferry 1. Although the RTM Co had attached a plan to its statement of case which showed an area edged with a pink line, it was, he said, made clear at para. 3.4 of the statement of case that this edging was for the purposes of identification only. In his submission, we did not need to decide where the pink line should be drawn. Our role was to decide whether the Premises satisfied the requirements of s.72, and the RTM Co's case was the building over which the right to manage was being claimed was that described at para 3.2 of its statement of case, where it was said that:

> "3.2 The self-contained building comprises Berkeley Tower, Hanover House, Eaton House, Belgrave Court, the hotel, the gym, the swimming pool and the underground car park. It is the built envelope of those parts of the development, including all land and structures above the footprint of the car park."

71. Following the Tribunal's site visit, an issue arose as to whether what was being claimed by the RTM Co included the tennis court and garden located in the north-east corner of the Estate. This was potentially relevant because Mr Bergbaum's evidence, at paras 8.1.2.2 and 8.2.2 of his report **[2809, 2811]** was that the tennis court and garden were enclosed by a wall that acted as a retaining wall for the ground outside. In his view, the wall provided "support to the public realm outside the façade to the buildings". The question was therefore relevant to the issue of whether the Premises were structurally detached for the purposes of s.72(2).

72. Mr Upton's primary position is the building claimed did not include the tennis court and garden areas. Relying on the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] A.C. 749 he submitted that looking objectively and in context, this would have been sufficiently clear to a reasonable recipient of the claim notice. He referred us to the decision of the Deputy President, Martin Rodger KC in *Courtyard RTM Co Ltd v Rockwell Ltd* [2025] UKUT 39 (LC) where at [19] it was said that the extent of the premises over which the right to manage was claimed was not clearly defined in the claim notice, which referred to the blocks simply by their postal addresses. Mr Upton suggests that the Deputy President did not criticise the FTT's approach of treating the premises to which the claim related as an open question until after its identification of whether the requirements of s.72(3) and (4) were met.

73. Mr Upton's fallback position, if we consider his primary position to be incorrect, is that it is nevertheless open to us to decide that the building over which the right to manage is being claimed includes the tennis court and garden areas. This alternative submission was expressly provided for at para. 3.7 of the RTM Co's statement of case where it said that:

> "3.7 If, contrary to the Applicant's primary case, on the proper construction of "building" in s.72 of the 2002 Act, the building as determined by the tribunal is different to that identified above,

the Applicant claims the right to manage the building as so determined."

74. As to the meaning of a "building", Mr Upton relied on the decision of the House of Lords in *Malekshad v Howard de Walden Estates Ltd* [2003] 1 AC 1013, a case on the Leasehold Reform Act 1967, where Lord Millet at [47] held that a "building" is "merely a built structure" which "may form part of a larger whole, and at the same time may itself be a composite whole formed by separate units." A structure, can, said Mr Upton comprise a single building or several buildings. *Malekshad*, he said, was followed in *LM Homes Ltd v Queen Court Freehold Co Ltd* [2020] Q.B. 890 where Lewison LJ said at [30] that "One meaning of "building" is "merely a built structure"; but the word is not used with any degree of precision".

75. Mr Upton also drew our attention to the decision of Falk J in *Palgrave Gardens Freehold Co Ltd* [2020] EWHC 920 (Ch), a collective enfranchisement claim brought under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), in which it was held that five blocks of flats connected by a single basement car park which extended beyond the above ground footprint of the blocks constituted a single building for the purposes of the 1993 Act. The landlord's argument that the blocks were structurally detached from each other or from the car park was rejected as "offending common sense" and as being "highly artificial" [H8]. Following *LM Homes*, the enfranchisement of the blocks included the air space above them and the sub-soil beneath them, therefore including "all parts immediately below each block, which must include the floor slab of the block at podium level, the area of the basement car park immediately below the block, the relevant part of the (continuous) basement car park floor slab and the subsoil beneath each block".

76. In Mr Upton's submission the word "building" in s.72 has the same meaning as in s.3 of the 1993 Act, namely a built structure including the sub-soil beneath it and the airspace above it. That interpretation is, he said, consistent with the context in which "building" is used in s.72 and the purpose of the 2002 Act as a whole. The primary purpose of the "building" requirement in s.72 was, he argued to restrict the right to manage to residential premises within a built or erected structure with a significant degree of permanence, excluding residential accommodation such as caravans or houseboats. But "building" must be given a meaning that entitles an RTM company to enter the airspace to repair the roof and to disturb the sub-soil for the purpose of repairing the foundations.

77. Mr Upton agreed with Mr Bates that when construing the meaning of "building" in s.72, it was important to have regard to the context of the 2022 Act as a whole. However, he argued that the RTM Co's interpretation of a "building" as meaning a built structure was entirely consistent with the context of the Act as a whole and its policy as identified in *Settlers Court*. The Landlords' interpretation could not, in his submission, be correct because it would defeat the fundamental purpose of the 2002 Act

as each residential tower does not (separately) satisfy the test in s.72. It cannot, in his submission, have been Parliament's intention that leaseholders at developments such as Canary Riverside should be deprived of acquiring the right to manage.

78. Mr Upton disagreed with Mr Bates' characterisation of users of the commercial premises on the Estate as "strangers" to the RTM Co. In his submission, they were occupants of commercial premises rather than strangers. It was, he said, inherent in the statutory scheme that the exercise of the right to manage can extend to commercial as well as residential areas, including shared services. This, he pointed out, was expressly identified in para. 42 of *Settlers Court* where, referencing s.97(2) Lord Briggs JSC said that it:

> " sensibly contemplates latitude for the RTM company to allow the landlord or third party manager to continue to perform some management function within the building (or the other facilities used exclusively by the tenants of the relevant building) in place of the RTM company. An example might be a tenants' car park where only some of the spaces were reserved for tenants of the relevant building.

79. As to the emphasis placed by the Landlords on the Consultation Paper referring to the right to manage applying on a "block-by-block basis", Mr Upton argued that the paper was a secondary aid to interpretation, which did not displace the meaning conveyed by the words in s.72. He pointed out that the word "block" is not used anywhere in the legislation. All references are to a "building". In his submission, references to "blocks" in the Consultation Paper are in the context of a block which is a self-contained building, with no reference made to the type of composite structure in this case. He considered the paper provided extremely limited assistance to the facts of this case.

80. Mr Upton also relied upon the decision of Henderson J *in Craftrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd* [2010] EWHC 1230 (Ch); [2010] 1 W.L.R. 2046 (affirmed on appeal: [2011] EWCA Civ 185) at [27], which concerned the requirement in s.13(2) of the 1993 Act, that at least 50% of the flats in the building, who are qualifying tenants, participate in collective enfranchisement. Henderson J concluded at [27] that "majority rule" was an inherent part of the statutory scheme, and that Parliament must be taken to have intended that the wishes of individual tenants should be capable of being overridden in the interests of providing workable machinery to implement the wider statutory purpose. Mr Upton submits that Lewison LJ made the same point slightly differently in *Eveline Road RTM Co Ltd v Assethold Ltd* [2024] EWCA Civ 187 at [33] where he said:

> " it is inherent in the requirements that an RTM company must fulfil before serving a claim notice that there may be a substantial minority of qualifying tenants who do not wish to acquire the RTM. Even if that is the case, the RTM company will be

> accountable to the qualifying tenants of the relevant premises (including the dissentients); and the management functions of the RTM company will be confined to those premises. There is no question of the RTM company in this case having to share management with anyone else."

81. At para. 45 of his skeleton argument Mr Upton asserts that Landlords' reliance on *TripleRose* is misplaced because in that case the blocks were two structurally detached buildings and the decision is authority for the proposition that the right to manage cannot be exercised in respect of more than one self-contained building. It is not relevant to the present case, where there are blocks and/or structures connected by a common podium, basement car park, and/or foundation slab.

82. Finally, at para. 46 onwards of his skeleton argument Mr Upton referred to several of cases where a structure consisting of a number of blocks above a basement car park was held to be a single building (*Palgrave Gardens*; *Guv Harborough & Saltley House RTM Company Limited v Adriatic Land 3 Limited* [2024] UKUT 109 (LC) and *Chelsea Bridge Wharf*, Queenstown Road, London, SW11, LON/00BJ/LRM/2024/0018, 28 January 2025 (unreported); and *Courtyard*.

Decision and Reasons - single building or multiple buildings?

83. We do not find the Oxford English Dictionary definition of a "building" to be helpful. We agree that a building is a thing which is built or constructed, but it is not as narrow as suggested in the example given in the definition. It is unlikely that a building has to be a permanent structure, and there are examples of ancient temples that were built without a roof that would nevertheless constitute buildings.

84. We agree that the meaning to be given to the definition of a "building" in s.72 should be approached objectively, and using common sense, but we reject Mr Bates' submission that, in doing so, it is obvious from looking at the Premises that it constitutes more than one "building". It is not obvious from a visual inspection at ground level because one does not know how the blocks are constructed below ground level, and as Mr Bergbaum said at para. 8.2 of his report **[2720]**, below the podium slab the footprint of the blocks is difficult to discern. We are not satisfied on the evidence that the buildings were designed and built as separate buildings rather than as a composite development, and nor in our view is it material that the blocks have different names, or that the towers were described as four separate buildings in the s.24 proceedings or in Mr Unsdorfer's witness statement.

85. We agree with Mr Upton that *Malekshad* establishes that a "building" is merely a built structure which can include a composite whole consisting of separate units. A terrace of houses can be a single building, even though each house is also a building; it is not a binary question. In our determination the whole of the Premises as claimed constitutes a "building" for the purposes of s.72. We also find that each of the towers are also buildings, albeit that they are not separate self-contained

buildings for the purposes of s.72 because they all sit on the podium, with columns which go down through the car parking levels and to the continuous slab at P2 level. We find therefore that the Premises do comprise a single building.

86. We do not agree with Mr Bates that the expert evidence supports his submission that the Premises comprise multiple buildings and not a single building. We have considerable doubt that the presence of movement joints assists us in identifying whether this is a single building because movement joints do not necessarily delineate boundaries between buildings. In any event, both experts agree **[2709]** that at P2 level, the lower basement slab is continuous across the site. That, in our view, strongly supports the conclusion that the Premises comprise a single building. The fact that the piles and/or pile caps and lift pits vary in depth and that each building has its own core does not prevent the Premises from being a single building. As we conclude above, each of the towers can constitute a building, as can the whole of the Premises, and the fact that each tower has a different name is irrelevant.

87. Also irrelevant, in our determination, is the fact that each of the towers is regarded as a 'relevant building' for the purposes of s.117 BSA 2022, and has been accepted by such by the Landlords, the Secretary of State and all other all parties in the Canary Riverside litigation. The fact that each is treated as a relevant building under s.117 does not prevent the Premises from constituting a single building under s.72. Mr Bates' position is that neither the Premises, nor the individual blocks can acquire the right to manage. This is because, in his submission, neither the Premises, nor the blocks, are self-contained as they are not structurally detached. Nor, he says, can either constitute self-contained parts of a building because the presence of the open plan underground car park means they fail the vertical division requirement in s.72(3).

88. However, the Landlords have accepted in the BSA 2022 proceedings in which the Secretary of State is seeking a Remediation Contribution Order and/or a Remediation Order, that the individual towers are relevant buildings under s.117. To be a relevant building, they each need to be a self-contained building because none can be a self-contained part of a building. It is for this reason that Mr Bates did a *volte face* from the position he advanced in his skeleton argument, namely that both s.72 and s.117 should be applied consistently. Instead, in closing, he argued that s.117 cannot assist in interpreting s.72, and that each statutory provision needing to be construed in its particular context. We accept that his revised position is correct and that our focus should be on construing s.72 in the context of the 2022 Act as a whole.

89. In that regard, we do not consider the decision in *Triplerose* assists Mr Bates. Firstly, we agree with Mr Upton that the Consultation Paper is a secondary aid to interpretation, albeit one that the Supreme Court in *A1 Properties* found to be useful as a general statement of the purpose of the 2002 Act.

90. Secondly, and in any event, we do not consider the Consultation Paper has the gloss that Mr Bates sought to attribute to it. It supports the contention that where you have a number of separate self-contained blocks, with common facilities, a right to manage company will only become responsible for managing the block over which the right to manage has been acquired, and not over other blocks. However, that is not the scenario we are concerned with. In addition, as Mr Upton pointed out, the reference in s.72 is not to a "block", but to a "building". We agree with his submission, that references to "blocks" in the Consultation Paper highly likely refers to blocks that comprise self-contained buildings. It is therefore of no use in interpreting what is meant by a "building" in this case, where what is being considered are the Premises as a whole.

91. Thirdly, we agree with Mr Upton that the decision in *Triplerose* is not on point. As he states at para. 45 of his skeleton argument, the case is authority for the proposition that the right to manage cannot be exercised in respect of more than one self-contained building. In *Triplerose* the blocks were separate structurally detached buildings. We are concerned with blocks connected by a common podium, basement car park and foundation slab.

92. Turning to the decision in *Settlers Court*, in that case, the Supreme Court was concerned with two separate residential blocks where the right to manage had been acquired over only one of the blocks. The question was whether the RTM company could provide estate services and seek a contribution from lessees of the other block towards the costs incurred. This is distinct from our situation, where the right to manage is being sought over the whole of the Premises. Nor are we considering two sets of residential leaseholders in separate blocks, where one set are strangers to the RTM Company. We do not consider the commercial lessees, including the hotel, the gym, and the restaurants, are "strangers" of the type referred to by Lord Briggs.

93. In our determination it is the description at paragraph 1 of the Claim Form that defines the extent of the premises over which the RTM Co is seeking to acquire the exercise of rights of management under Chapter 1 of the 2002 Act. In this case, the "building", for the purposes of s.72 is the Premises defined as "the development known as Canary Riverside situated on Westferry Circus London E14 excluding Westferry 1". As specified, WF1 includes the separate building known as 28 to 30 Westferry Circus. This is precisely what the RTM Co stated in the first line of para. 3 of its Statement of Case **[89]** and it is the building that is the subject of its claim.

94. Although, at para 3.2 of its statement of case, the RTM Co said that the building comprises the four towers, the hotel, gym, swimming pool and the underground car park, that paragraph does not, in our view, define the extent of the "building"," for the purposes of s.72. Subparagraphs 3.1-3.7 are expressly stated to be "without prejudice" to the general words used in the first line of para. 3, which define the Premises claimed as that specified in para. 1 of the claim notice. In our determination, it is the description at para. 1 that is definitive.

95. Nor do we agree with Mr Bates' submission that the building over which the RTM Co is seeking to acquire the right to manage is that shown edged pink on the plan attached to its statement of case. The RTM Co expressly stated at para 3.4 of its statement of case that the plan was for the purposes of identification only.

96. It is true that the RTM Co stated, at para 3.5, that the tennis court and garden areas were regarded as appurtenant property within the meaning of s.112(1) of the 2002 Act. However, at 3.7 it stated that

> "If, contrary to the Applicant's primary case, on the proper construction of "building" in s.72 of the 2002 Act, the building as determined by the tribunal is different to that identified above, the Applicant claims the right to manage the building as so determined."

97. We reject Mr Upton's primary position but accept that his fallback position is correct. In our determination, the tennis court, adjacent garden and wall form part of the Canary Riverside development and were included within the scope of the Premises as claimed in para. 1 of the Claim Form. We also find that the Premises comprises a single building.

Are the Premises a self-contained building?

98. As identified in *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd* [2014] UKUT 6 (Albion Riverside) at [31], [33] and [38], the first step in answering this question is to identify the premises said to constitute a building (or part of a building). The next step is to identify whether they are self-contained, including whether they are "structurally detached". As to whether the Premises are "structurally detached" both Mr Upton and Mr Bates agree that:

    (a) the question of whether a building is "structurally detached" is a mixed one of fact and law (see *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co Ltd* [2020] EWHC 920 (Ch); [2020] 2 P&CR 13 at [102];

    (b) what is required is that there should be no structural attachment (as opposed to non-structural attachment) between the building and some other structure (see *No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Co Ltd* at [30]. In that case, HHJ Huskinson held that a building having weathering features added to bridge the gap between the building and neighbouring structures was insufficient to prevent structural detachment.

99. In *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd* [2018] L. & T.R. 26 (UT) at [52-54 HHJ Hodge QC set out a series of propositions about the meaning of "structurally detached". He interpreted "structural" as meaning "appertaining or relating to the essential or core fabric of the building". A building would not be "structurally detached" from another if

the latter bore part of the load of the former building, or if there was some other structural interdependence between them.

100. However, in *Palgrave Gardens* Falk J took a slightly different approach to that of HHJ Hodge QC, saying at [121]:

> "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."

101. We respectfully concur. What we consider we are required to determine is whether there is attachment between the Premises and some other structure and, if so, does that constitute structural attachment as opposed to non-structural attachment.

102. Mr Bergbaum's evidence was that in certain areas the perimeter retaining wall of the Premises provides structural support to the surrounding area. This, he said was true in: (a) the north-east corner (para. 8.1.2.3) **[2804**]; (b) along the west elevation, which runs alongside the river (paras. 8.1.3.4, 8.2.4) **[2805-6]**; and (c) on the south-west elevation which provides support to the ground outside the Premises which forms part of WF1 (para 8.1.4.2, 8.2.5) **[2805-6]**. This, submitted Mr Bates, means that the Premises are not structurally detached for the purposes of s.72(2). He suggested that if the Premises were sliced out of Canary Wharf, and removed, at least part of the area surrounding it would collapse into the hole left by the Premises and/or otherwise be incapable of supporting itself.

103. In support of his argument that the retaining walls were attached to a structure, he relied upon the decision in *Savoye and another v Spicers Ltd* [2014] EWHC 4195 (TCC) in which at [17] of Akenhead J said the word "structure" meant something "which has been placed, built, arranged or prepared; in common parlance, it has a connotation as having a function of supporting or servicing something else; thus, steelwork for a building is structural and a structure. A house or office building is a structure; Nelson's Column is a structure."

104. Mr Bates also argued that the Premises cannot be a structurally detached building because the area over which the RTM was claimed, as defined by the pink line on the plan at **[97]**, omitted the tennis court, adjacent garden area and surrounding wall. He pointed out that Mr Ham's evidence was that this wall is situated on a beam that sits on top of piles, which are part of the same piling scheme as the main development, and that the beam

runs into the development, underneath Circus Apartments and Eaton House at one end, and Belgrave Court at the other. Mr Ham was uncertain as to exactly the level that the beam ran into the development but thought it might be just above P2.

Decision and Reasons - are the Premises structurally detached?

105. We start by recording that it was, in our view, highly unsatisfactory for Mr Bergbaum not to have discussed his views regarding the perimeter wall providing structural support to surrounding areas with Mr Ham, either before or after the preparation of their joint report. It had not been identified in the Respondents' statement of case and nor was it discussed between the experts. In cross-examination, Mr Bergbaum confirmed that he had not considered the point until after preparation of the joint experts' report, and after he had circulated an initial draft of his own report to the Respondents. He was asked by the Respondents' surveyor, Mr Joseph Tzouvanni to consider the question of the perimeter wall providing structural support. Mr Bergbaum then conducted a second site visit, this time accompanied by Mr Tzouvanni, after which Mr Bergbaum amended his report. We recognise that, by this point, the two experts had signed their joint statement, but it would have been of far greater assistance to the Tribunal if Mr Bergbaum had discussed the question with Mr Ham and then sought to revise their joint statement. It would, if nothing else, have meant that the Tribunal could have determined the RTM Co's application to rely upon Mr Ham's addendum report in advance of the final hearing.

106. As recorded in para. [55] above, in the final paragraph of his addendum report Mr Ham agrees with Mr Bergbaum that in places, the perimeter of the Premises comprises retaining walls where the lower parking level is below the level of the surrounding land. We are nevertheless persuaded by Mr Ham's evidence that whilst this means that the wall *retains* the surrounding land and paving, this does not mean that the surrounding land is *structurally attached* to the development.

107. Mr Bergbaum, in cross-examination, did not disagree with Mr Ham's evidence, in the final sentence of his addendum report, that what is below the paving finishes is likely to be formed of aggregate build-up. He considered it likely to consist of layers of a mixture of aggregate materials. He did not believe it consisted of concrete. In his opinion, the aggregate build-up is structural in function. We do not agree. There is no evidence of any hard structure beneath the paving, and in our assessment the aggregate simply amounts to ground material, which is not structurally attached to the Development.

108. Mr Upton accepted, and we concur, that it is possible for a structure to be made of earth. He agreed that Mr Bates' example of a dam was a good one. Mr Rainey suggested an iron-age hill fort. However, those were the only examples that the counsel before us were able to identify. We agree with Mr Upton that just because a dam or a hillfort can constitute a structure, it does not follow that the same is true of either the aggregate material

located below the paving, or of the paving itself. We do not accept that the likely below ground aggregate surrounding the Estate is structural in nature. It is just ground material.

109. Mr Bergbaum agreed in cross-examination that pavement finishes were just finishes, but he later suggested that these could be structural in nature, because they were designed. We agree with Mr Upton, that just because something has been designed, or specified, does not mean that it is a structure. The pavement finishes that run alongside the Development were designed, but to interpret those as amounting to a structure would result a severe and unjustifiable curtailment of the ability of leaseholders to exercise the Right to Manage, as virtually all buildings are surrounded by pavement finishes. That cannot have been Parliament's intention.

110. We therefore find that whilst, in multiple places, surrounding land is retained by the perimeter wall of the Development, this does not constitute a structural attachment. We accept Mr Bates' submission that if the Development were to disappear, the surrounding land would fall into the gap left behind, but that is no different from any other large development.

111. Nor, in our view are the Premises structurally attached to any other adjacent building or structure. We are not satisfied, on the evidence before us, that the wall that surrounds the tennis court and garden is structurally attached to the remainder of the development. We accept, as did Mr Upton, that it is attached, but mere attachment to a boundary wall does not alone amount to structural attachment. In our assessment, the available evidence is insufficient to establish structural attachment. This was not an issue that had been identified by the Respondents in their statement of case, or by Mr Bergbaum in his report. It arose during the Tribunal's site inspection and in Mr Ham's cross-examination by Mr Bates.

112. In that cross-examination, Mr Ham's evidence was that he believed the wall surrounding the tennis court rested upon a beam, which in turn rested on piles which were part of the piling scheme for the Development. He also said that the beam that the wall rested on ran into or near the foundation slab (P2) of the Development. He was not certain where precisely the beam met the Development but thought it might be a little above the P2 foundation slab. Mr Ham's evidence in this respect is supported by several of the architectural plans included in the bundle at **[11]** and we accept it is as correct.

113. However, we are not satisfied, on the balance of probabilities, that there is sufficient evidence for us to conclude that the beam is structurally attached to the rest of the Development. Mr Bates did not ask Mr Ham that question, and we were not taken to any evidence that would support such a conclusion. Mr Bergbaum did not address the issue in his evidence, and as it did not feature in the Landlords' statement of case the RTM Co did not have the opportunity to respond to the suggestion until the day of the hearing. There is no evidence before us as to exactly where, and, if so,

how, the beam joins the foundation slab, or any other part of the Development, and we cannot therefore properly conclude that this constitutes a structural attachment.

114. When Mr Bates asked Mr Ham whether the wall around the tennis court shares the same foundations as the rest of the Development, Mr Ham's reply was that it rested on piles which were part of the piling scheme. We do not interpret that response as meaning that the piles are all structurally connected. It is perfectly possible for the piles to be independent of each other. In our assessment, Mr Ham's evidence that the piles were part of the same scheme is likely to be a reference to the same *scheme of works*, rather than to an integrated, connected, piling system. The piles were, more likely than not, constructed at around the same time, according to a scheme of works, but there is no evidence to suggest a single unified and structurally attached piling system.

115. In our assessment, for the wall to be structurally attached to the remainder of the Development there needs to be some degree of dependency between the two. There is no evidence to suggest that the structural integrity of the main Development is dependent on the support provided by that section of the perimeter wall, and this appears highly unlikely. Similarly, there is no evidence to suggest that the perimeter wall is dependent on the rest of the main Development, and that too appears unlikely. It may be, but we heard no evidence that would justify such a finding. In addition, whilst both experts agreed that the wall rested on piles, and is therefore supported by those piles, there is no evidence to support a finding that this constitutes a structural attachment to the main Development.

116. If our conclusion is incorrect, and the perimeter wall is, in fact, structurally attached to the remainder of the development, it, nevertheless, makes no difference to the question of whether the Premises as a whole are structurally detached. That is because, as determined above, the Premises as claimed in the Claim Form included the tennis court and garden areas, which includes the perimeter wall that surrounds both areas. As such, if the wall is structurally attached, then it is, nevertheless, part of the Premises. We consider the wall (and the tennis court and garden it encloses) is part of the Premises, whether or not it is structurally attached to the rest of the Development.

Do ss. 96 and 97 prevent this being a self-contained building?

117. In his Additional Written Submissions, Mr Bates submitted that there is a point of fundamental difference between him and Mr Upton regarding ss.96 and 97 of the 2002 Act and their relationship to s.72. Section 96 is entitled "Management functions under leases" and, in so far as is relevant, provides as follows:

> "(1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.

(2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.

(3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.

(4) Accordingly, any provisions of the lease making provision about the relationship of—

(a) a person who is landlord under the lease, and

(b) person who is party to the lease otherwise than as landlord or tenant,

in relation to such functions do not have effect.

(5) "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management.

(6) But this section does not apply in relation to—

(a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or

(b) functions relating to re-entry or forfeiture."

118. Section 97 is entitled Management functions: supplementary" and provides as follows:

"(1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.

(2) A person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except

in accordance with an agreement made by him and the RTM company.

(3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.

(4) So far as any function of a tenant under a lease of the whole or any part of the premises—

(a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and

(b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,

it is instead exercisable in relation to the RTM company."

119. The starting point, therefore, is that on acquisition of the right to manage, management functions enjoyed by a landlord become functions of the RTM company by reason of ss.96(2) and (3), subject to the exceptions in ss.96(6). A landlord is not entitled to do anything the RTM company is required or empowered to do (except for insuring the building) unless under an agreement made with the RTM company (ss.96(4) and 97(2)).

120. Both Mr Bates and Mr Upton agreed that the effect of s.96(6)(a) is that, if the RTM Co acquired the right to manage the Premises, it would acquire management functions under all the leases within the Premises, both residential and commercial, but not functions that concern *only* a non-qualifying unit, such as a commercial unit. This may include commercial units such as the hotel, the café and restaurants, as well as others. Mr Bates also agreed with Mr Upton that it is not possible to identify which management functions fall within the s.96(6)(a) exception without inspecting all of the relevant leases. It was common ground that, where a management function within the Premises relates to both commercial and residential parts, this function would transfer to the RTM Co and be exercisable by the RTM Co alone. That, said Mr Bates, gives rise to the problem in this case.

121. Mr Bates relies on the decision in *Settlers Court* where, at [35] – [40] it was said that the effect of s.97, namely the exclusion of a landlord, third party manager or even a Tribunal-appointed manager from carrying out any management functions, other than in relation to insurance, is a very powerful pointer to a construction which confines the right to manage to that which the RTM company can manage on its own. That is the structure and facilities within the building, or part of it, constituting the relevant premises and, where they exist, those facilities outside it which are exclusively used by the occupants of the relevant premises. It would, said the Court, lead to insuperable problems if those functions were construed to include management of shared estate facilities outside the RTM

company's allotted single block. Tenants outside that block will have the right under their leases to insist that the landlord or third party manager performs those functions, and may have no wish to acquiesce in the management of estate facilities by an RTM company with whom they have no privity of contract or estate and over which they cannot exert any influence on how management is conducted. Nor does the 2002 Act provide for the RTM company to owe any obligation to those tenants regarding the management of shared facilities.

122. At [38] the Court said that it may fairly be said that a fundamental purpose of the 2002 Act is to confer management rights and responsibilities on a 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. That works perfectly well if the right to manage is confined to the relevant building which contains the flats occupied by those tenants, together with any facilities which they use exclusively. But it produces the opposite effect if the RTM company's rights extend to the management of estate facilities used by tenants who are complete strangers to the RTM company."

123. At [39] it said that a consideration the whole of Chapter 1 "reveals numerous signposts, all pointing to the need for a very close connection, sufficient to confine the right to manage to functions which the (necessarily) single-building RTM company can properly perform on its own, for the benefit and under the supervision of those tenants who will be directly affected by that performance.

124. At [40] the Court referred to the requirement in s.72 for the premises to be self-contained, which, it said, pointed "strongly towards confining the right to manage to separate premises within which the quality of the management provided by the RTM company affects only the occupants of that building or part of it."

125. In Mr Bates' submission *Settlers Court* is authority that a RTM company is only supposed to provide management services to a single premises and that if third parties are impacted that is a very powerful pointer towards the conclusion that what is claimed are not "premises" to which the 2002 Act applies. Central to his argument is his submission that self-containment, for the purposes of s.72, is not limited to purely physical questions but includes identifying whether the *management* is self-contained, which must ensure that responsibilities post-acquisition are clear cut and function on a practical level.

126. This, he said is clear from the decision of the Deputy President in *Courtyard* where he held (by reference to *Settlers Court*) that division of management of a car park between the building owner and a RTM company was impractical and not contemplated by the statutory regime ([74]).

127. In Mr Bates' submission, two issues concerning shared services arise on the facts in this case. Firstly, the RTM Co excluded WF1 from "the Premises" as claimed, but WF1 shares certain facilities with the Premises as claimed. He referred to Mr Ham's report **[2791]** which, he said indicates the presence of a shared electricity supply to the whole Estate – i.e. the Premises, and WF1. In addition, Estate Services, including security, are provided across the whole Estate – not just the Premises. If the RTM claim were to succeed over "the Premises", then it will be responsible for the provision of both electricity and other estate services to WF1 (because these would not be excluded by s.96, as they do not relate exclusively to WF1). That, in Mr Bates' submission would be exactly the problem criticised by the Supreme Court in *Settlers Court*.

128. The second issue is said to be evidenced by a diagram exhibited to Mr Ham's report **[2791]** which, in Mr Bates' submission, shows that there are complex services within the Premises, even ignoring those services shared with WF1. This includes plant rooms and related infrastructure (e.g. pipes, wires, panels) some of which serve only the residential towers and Circus Apartments, whereas others serve only non-qualifying units alone (such as the gym), with some serving all areas. Mr Bates submits that this the sharing of services with commercial units within "the Premises" supports his contention that what is claimed cannot be premises to which the Act applies. He made a similar point in his closing submissions about the staircase outside the gym, which was that if the steps up to gym fall into disrepair, that only affects the gym and those tenants using the gym. There is, he said, no reason for the RTM Co to have any responsibility for its repair.

129. In his Additional Submissions, Mr Upton argues that the meaning and effect of s.96(6) has no bearing on whether the Premises satisfy the conditions in s.72. In his submission, the Tribunal's jurisdiction under s.84(3) is simply to determine whether the RTM Co was on the relevant date entitled to acquire the right to manage the Premises. This, he says, does not extend to determining whether, having regard to ss.96 and 97, the RTM Co or the Landlords would be responsible for managing any specific part of the Premises upon the acquisition of the right to manage.

130. Mr Upton disagreed with Mr Bates' interpretation of the decision in *Settlers Court*. In his submission, the issue in that case was whether an RTM company acquires the right to manage shared services and facilities outside the relevant building where there is more than one building on an estate and where the acquisition of the right to manage over one separate set of premises cannot displace the obligations/functions of landlords in neighbouring separate premises over the shared estate facilities. The difficulties addressed in *Settlers Court* simply do not arise in this case, says Mr Upton, because WF1 is *outside* the Premises and the RTM Co would not acquire any of the landlord's functions (including those in relation to the provision of electricity) in the WF1 Headlease. Nor, he said, do any problems arise from Mr Bates' second issue because these are all services *within* the building claimed by the RTM Co. No question of shared or overlapping functions of the type addressed in *Settlers* Court

arises because anything "shared" between QTs and anyone else is the RTM Co's function alone because the s.96(6) exception does not apply.

Decision and Reasons - Are the Premises a self-contained building?

131. We find that the whole of the Premises as claimed (as identified at para. [97] above) consist of a self-contained building. We do not agree with Mr Bates that when considering if a building is self-contained the Tribunal should identify whether management will be self-contained. This is for two reasons. Firstly, it contradicts what the Court of Appeal said at [36] in *Eveline Road* where it said that "whether premises satisfy the definition of a self-contained building or part of a building is a purely physical test. The definition is concerned only with the structure of the built envelope, its internal structure, and the separability of services." Secondly, as Mr Upton points out in his Additional Submissions, it conflates two distinct and separate issues, namely: (a) whether the premises consist of a self-contained building for the purposes of s.72; and (b) what management functions the RTM company is entitled to exercise upon acquisition of the right to manage.

132. Nor do we agree with Mr Bates' submission that on the facts of this case, acquisition of the right to manage by the RTM Co would result in an impermissible split of management of shared services and functions which, applying *Settlers Court* and *Courtyard*, is fatal to the right to manage claim because what has been claimed does not satisfy s.72.

133. As we say in para [92] above, in *Settlers Court* the Supreme Court was concerned with two separate residential blocks where the right to manage had been acquired over only one of the blocks. We agree with Mr Upton that no question of shared or overlapping services arises in relation to this claim because unlike in *Settlers Court* the RTM Co is not claiming the right to manage shared services and facilities *outside* the Premises as claimed. As Mr Upton identifies, the car park serving the Estate is shared with persons outside the Premises. However, that is not a problem as the car park itself is located *inside* the Premises. This is precisely the example given at [42] in *Settlers Court* when Briggs LJ discussed how s.97(2) of the 2002 Act provides latitude for a RTM company to allow a landlord to continue to perform some management functions *within a building* in place of the RTM Co.

134. The Deputy President reached the same conclusion regarding what was said in *Settlers Court* at para. [8] of his decision in *Courtyard* where he said that the Supreme Court concluded that the right to manage does not extend to shared estate facilities, used in common by the members of the RTM company and tenants of other blocks on the same estate, but is instead confined to premises which the RTM company can manage on its own. In this case, the RTM Co is seeking to manage a single building, and no such sharing of services or management functions arises.

135. We also agree with Mr Upton that WF1 is not relevant to the question of whether the Premises is self-contained for the purposes of s.72. WF1 is

outside the Premises and there is no question of the RTM Co acquiring any management functions in relation to it.

136. In our view, Mr Upton was correct to say that our jurisdiction under s.84(3) is limited to determining whether the RTM Co was on the relevant date entitled to acquire the right to manage the Premises. The question of whether the RTM Co or the Landlords will be responsible for carrying out management functions in respect of specific non-qualifying units falls outside that jurisdiction.

Issue 2: Was CAL a QT on the relevant date, and, if so, was it a QT of one flat or 45 flats?

137. As stated above, the Landlords decided not to advance any positive case on these issues. Nor did Mr Bates cross-examine Mr Smith on his evidence or call the Landlords' witnesses. Mr Smith's evidence was therefore unchallenged.

138. Section 75(2) of the 2002 Act provides that, subject to exceptions, a person is a QT of a flat for the purposes of Chapter 1, if they are a tenant of a flat under a long lease. Subsection (3) provides an exception where the lease is a business tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies. Subsection (5) provides that no flat can have more than one QT at any one time and subsection 6) provides that where a flat is let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the QT of the flat.

139. For us to be satisfied that CAL was a QT on the relevant date, we therefore need to be satisfied that: (a) CAL's lease is a long lease; (b) the demised premises, Circus Apartments, includes at least one flat; and (c) CAL's long lease is not a business tenancy. We are satisfied that each of these requirements are met and that CAL is a QT.

140. There is no dispute that CAL's lease is for a 999-year term and therefore is a long lease as defined in s.76(2). What constitutes a flat is included amongst the definitions in s.112(1):

> *"dwelling"* means a building or part of a building occupied or intended to be occupied as a separate dwelling,
>
> *"flat"* means a separate set of premises (whether or not on the same floor) -
>
> (a) which forms part of a building,
>
> (b) which is constructed or adapted for use for the purposes of a dwelling, and
>
> (c) either the whole or a material part of which lies above or below some other part of the building.

141. We find that the 45 apartments that make up Circus Apartments are each individual flats. We had the opportunity to view three of them on our inspection and are satisfied from that inspection, and from the upper floor plans provided **[2125-2134]**, that each apartment is a physically self-contained flat. They are each separate premises, spread over multiple floors, that together form Circus Apartments, which is itself physically located in the rear half of Eaton House. The presence of communal facilities on the ground floor, namely a day space with private terrace, a TV room, and a lounge, made available for the users of Circus Apartments does not detract from that conclusion.

142. We agree with Mr Rainey's submission that the decision of Fancourt J, Chamber President, in *Q Studios (Stoke) RTM Co v Premier Ground Rents No.6 Ltd* [2020] UKUT 197 [2021] L&TR 9 [70] is authority for the proposition that a property does not have to be a "home" to be a "dwelling", and that whether a unit is a "flat" for the purposes of entitlement to the "right to manage" under 2002 Act Part 2 depends on what it was constructed or adapted for, not on whether it is occupied or intended to be occupied as a home. As the Chamber President said, this is a question of the physical characteristics of the premises in question, not a question of whether it is the occupier's home.

143. We also accept Mr Rainey's submission that the 45 flats were originally built and marketed no differently from the other residential flats in Eaton House. There is no evidence before us to suggest that in terms of its construction, there was any difference between the construction of the 45 Circus residential flats and the other residential flats on the Estate. Mr Smith's unchallenged evidence at para. 11 of his statement was that the whole of Eaton House, including what is now Circus Apartments, was originally marketed for sale as individual residential flats. This is corroborated by the original marketing particulars for Eaton House **[2047 - 2062]**.

144. Our finding that the 45 flats are individual dwellings is also supported by the grant of C3 residential planning consent for the Development in 1991, (T/91/126) **[1999]** which approved use of "up to 47,000 sq m of residential development comprising up to 600 dwellings". It is also supported by the confirmation from the Head of Development Control at LB Tower Hamlets on 16 July 1998 **[1964]** that the consent allowed for sleeping accommodation as part of residential use, with no restriction on the length of stay. Mr Burley, in his report, confirms that assessment. We accept Mr Smith's unchallenged evidence at para. 10 of his witness statement that Circus Apartments, as with the other residential blocks, benefits from flexible planning use as residential accommodation, which includes use for short-term lets.

145. Section 75(3) of the 2002 Act provides that a tenant of a flat under a long lease is not a qualifying tenant "where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (business tenancies) applies."

146. Section 23 of the Landlord and Tenant Act 1954 is headed "Tenancies to which Part II applies" and provides that:

> "(1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes."

147. It follows, as submitted by Mr Rainey in his skeleton argument, para 33, that it is a key concept underpinning s.23(1) and the operation of Part 2 of the 1954 Act that premises must be *occupied by the tenant* and that *that occupation* is for the purposes of a business carried on by him.

148. We agree with Mr Rainey that whilst CAL, just as any other property investor or buy-to-let landlord is, in a loose sense, "in business", in the sense of deriving income from a residential letting, it does not occupy the premises in question. In the case of Circus Apartments, it is the individual residents of the serviced apartments who are in occupation and who occupy it for their purposes.

149. Mr Rainey drew our attention to the leading textbook authority on Part 2 of the 1954 Act, *Reynolds & Clark: Renewal of Business Tenancies* (6th ed.) in which, at 1-074, the authors say that case law suggests that a tenant will not be "occupying" premises if they are sub-let (rather than licensed) to a sub-tenant who is himself a business tenant protected by the Act, and save in very exceptional circumstances (see *Graysim Holdings v P&O Property Holdings* [1996] AC 329 (HL) where it was held that where a tenant's business consists of sub-letting, and he had sub-let the whole of the premises (or all except the common parts) his tenancy would cease to be protected by the 1954 Act.

150. Nor will the tenant be occupying premises if he has sub-let rather than licensed them for residential purposes (see *Bassairi Ltd v Camden LBC* [1999] L&TR 45 (CA). As such, the authors conclude that it seems to follow that wherever a tenant has sub-let premises he cannot ordinarily be said as a matter of law to be "occupying" the sub-let premises. Whether a tenant "occupies" the premises is, they say, a matter of fact and degree in each case. The question is not "is there a high degree of management" but "does that high degree of management involve or require some degree of occupation or control of the relevant property whether affecting exclusivity of possession or otherwise?"

151. We agree with Mr Rainey, that the closest case on the facts is the reported county court case of *Smith v Titanate* [2005] 2 EGLR 63 (HHJ Roger Cooke), where a landlord unsuccessfully attempted to defeat an enfranchisement claim by arguing that a lessee which was providing serviced accommodation was a business tenant. The building in question was sub-let into six flats which were sublet under Assured Shorthold Tenancies ("ASTs") or very short lettings of several weeks or a few months. The flats were let furnished, with telephones, TVs, heating and lighting

and hot water. Services provided included tea and coffee, together with a change of linen twice a week and a daily change of towels. The lessee had an office in the building which was attended during working hours by a manager who supervised the services and cleaning. The Judge nevertheless held that the lessee was not in occupation for the purposes of a business within the meaning of s.23 of the 1954 Act.

152. We find that when CAL sub-lets one of its flats it grants exclusive possession of residential accommodation to the occupier and that CAL cannot be considered to be in occupation of the flat. We also find as follows:

(a) we are satisfied from our inspection, and consideration of upper floor plans **[2125-2134**] and photographs **[2135-2140]** that, physically, the 45 flats are each self-contained residential flats, with living rooms, bedrooms, kitchens, and bathrooms;

(b) as found above, in terms of construction for the purposes of a dwelling, and in the marketing of Circus Apartments, there is no evidence of any material difference between CAL's 45 flats and any of the other 325 residential flats;

(c) CAL sub-lets its flats, as fully furnished accommodation, to residential sub-tenants on ASTs **[2142- 2173]**, with an occasional company let. We accept Mr Smith's evidence in that regard, as set out in his witness statement, para. 36 **[1435]** (regarding the letting of Flat 11) and para. 44 (regarding lettings of fully furnished ASTs). We also find, as stated by Mr Smith, that deposits for the ASTs are protected in a Tenancy Deposit Scheme (para. 43) as evidenced by a letter dated 29 July 2025 from MyDeposits **[2179]**;

(d) whilst CAL does provide some services to the occupiers of its flats, these are limited in scope. We accept as true, Mr Smith's evidence at paras. 44-45 of his witness statement that whilst clean bed linen, towels, and kitchen utensils etc are provided, cleaning and laundry during the tenancy is the tenant's responsibility, with no meals provided, and the reception not staffed for 24/7;

(e) all 45 flats are registered for Council Tax as residential flats, as stated by Mr Smith at para. 52 **[1437]** and as corroborated by copy council tax records at **[2180-2197]**;

(f) the mere provision of a part-time concierge, common parts cleaning, and a few communal rooms does not support a conclusion that CAL is in occupation of any of the 45-flats. When sub-let, it is the residential occupiers that are in occupation.

153. In all the circumstances, we determine that CAL does not occupy the 45 flats for the purposes of carrying out a business. As such, it is not a business tenant.

154. As Mr Rainey points out there are previous decisions by this Tribunal, and by the High Court which have characterised the occupation or use of Circus Apartments. However, in the absence of the Landlords declining to advance a positive case, these do not need to be addressed.

155. As to whether CAL is a single QT or a QT of each of its 45 flats, we are bound to determine that it is a QT of each the flats by reason of the binding authority of *Avon Ground Rents v Canary Gateway (Block A) RTM Co* [2020] UKUT 358 (LC). Mr Bates agrees, but reserves the right to challenge its correctness, in the event of an appeal against this decision.

Issue 3: Did all QTs received a NIP as required by s.79(2)?

156. The RTM Co's evidence regarding service of NIPs on the QTs is contained in the witness statements of three solicitors, Danielle Green **[117]**, James Compton **[447]** and Sarah-Louise Jennings **[778]** each of whom state that they put NIPs through the letterboxes of relevant flats and then completed a "tick sheet" exhibited to their statement. Mr Bates did not seek to challenge their evidence and similarly, did not challenge the factual evidence of Leticia Lulini **[1420]**, Alassana Djalo **[1421]**, Muhammed Midlaj **[1422]**, three concierges who gave evidence regarding accepting envelopes addressed to residents. Nor did he dispute the evidence of Mr Ronnie McCarthy **[1423]**, the Estate manager of Canary Riverside, explaining how post and parcels are delivered to occupants on the Estate.

157. We accept as accurate the RTM Co's unchallenged evidence regarding service of NIPs on all of the QTs. As stated above, we refused the Landlords permission to argue that the QTs for Flats 131 and 212 Berkley Tower were not served with a NIP. We therefore find that all QTs were served with a NIP.

Issue 4: Was the Claim Form in the prescribed form and, if not, was it invalid?

158. Section 80 of the 2022 Act sets out the requirements regarding the contents of a claim notice, with subsection (9) providing that the notice must also contain such other particulars as may be required to be contained in claim notices by regulations made by the appropriate national authority. Such regulations have made, namely the 2010 Regulations.

159. Paragraph 8(2) of the 2010 Regulations provides that "claim notices shall be in the form set out in Schedule 2 to these Regulations." The Landlords contend that the Claim notice served by the RTM Co in this case **[26]** is not in the prescribed form set out at Schedule 2. This is because Note 1 of the notes to the Claim notice **[49]** include the words "leasehold valuation tribunal", which was the original wording used when the Regulations were originally enacted. Note 1 was subsequently amended by Schedule 2 to the Transfer of Tribunal Functions Order 2013 ("the 2013 Order") which at para. 43, omits the words "leasehold valuation", leaving "tribunal",

thereby reflecting the renaming, in England, of the Leasehold Valuation Tribunal to the First-tier Tribunal (Property Chamber).

160. Mr Bates submits that different regulations and different prescribed forms are in use in Wales and that the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011/2684 are less prescriptive than the English Regulation in that a form of notice "to the like effect" to the prescribed form is specifically permitted (reg.8). This failure, he submits, is fatal to the claim.

161. In response, Mr Upton argues that the difference in wording does not mean that the claim form is not in the prescribed form. Alternatively, if that is wrong, he argues that the claim notice is not invalidated by reason of the omission. He relies upon the decision in *18 Langdale Road RTM Co Ltd v Assethold Ltd* [2022] UKUT 215 (LC) which, he submitted, remains good following the decision in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27.

162. We find that the Claim Notice was in the prescribed form. Section 81(1) of the 2002 Act provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80. Mr Bates conceded that the notes to the prescribed form constitute particulars. In our determination, the incorrect reference to the Leasehold Valuation Tribunal is an inaccuracy that is saved by s.81(1). We reject Mr Bates' argument that the error was the omission of a required particulars, rather than an inaccuracy. As Mr Upton pointed out, it cannot realistically be said to constitute an omission when the error made was to include two additional words.

Conclusion

163. We therefore answer the substantive questions as follows:

    (a) the Premises consist of a self-contained building for the purposes of s.72;

    (b) CAL was a QT on the relevant date, and was a QT of 45 flats;

    (c) all QTs received a NIP as required by s.79(2); and

    (d) the claim form was in the prescribed form and was valid.

164. It follows that the RTM Co has established that it was, on the relevant date, entitled to acquire the right to manage the Premises as defined in the Claim form.

Amran Vance

12 December 2025

RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.