FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**: MAN/00BR/LRM/2024/0603**
Property	**: Adelphi Wharf, Phase 2, 9 Adelphi Street, Salford** **Adelphi Wharf Phase 3, 7 Adelphi Street, Salford**
Applicant	**: Adelphi Wharf Phases 2 &3 RTM Company Limited**
Representative	**: Mr A Dastgeer, Director of the Applicant** **Ceri Edmonds of Counsel for part**
Respondents	**: (1) M Developments Ltd** **(2) Young Village Management (NW) Ltd** **(3) Adelphi Street Ltd**
Representative	**: Tom Morris of Counsel**
Type of Application	**: Section 84 (3) Commonhold and Leasehold Reform Act 2022**
Tribunal Members	**: Judge T N Jackson** **J Fraser FRICS**
Date of hearing	**: 22 August 2025** **HMCTS Tribunal, Piccadilly Exchange, Piccadilly Plaza, Manchester M1 4AH**
Date of Decision	**: 5 January 2026**

DECISION

Decision

The Tribunal determines under section 84(5) Commonhold and Leasehold Reform Act 2022 that, on the relevant date, the Applicant was entitled to acquire the right to manage the Property.

By virtue of section 90(4) of the Commonhold and Leasehold Reform Act 2022, the acquisition date is three months after this determination becomes final.

Introduction

1. The Applicant company made an application dated 1 November 2024 for a determination under section 84(3) Commonhold and Leasehold Reform Act 2022 ('the Act') that, on the relevant date, it was entitled to acquire the right to manage the Property.

Procedural History

2. Directions were issued on 23 April 2025. We had the Respondents' Statement of Case, the Applicant's Statement of Case in Response and the Respondents' Statement in Reply to the Applicant's Response. We received a skeleton argument from the Respondents.

3. On 27 June 2025, the Applicant submitted further evidence in the form of 9 short videos of the car park under Phases 2 and 3, and 4 photographs of the access from the car park to both Phases. After giving the Respondent an opportunity to make representations, the evidence was admitted by the Tribunal on 10 July 2025.

4. On 11 July 2025, the day after being advised of the date of the hearing, the Respondents' managing agent applied for the hearing date to be changed, due to the lack of availability of Counsel who had acted throughout. On 14 July 2025, the Applicant's representative objected due to scheduling difficulties himself, which had already been compromised by the date, although advised he was available any other date in August. On 14 July 2025, the Respondents' managing agent sent further representations in response to the Applicant's response. On 14 July 2025, the parties were advised that the hearing date would not be moved due to the scheduling difficulties involved. On 16 July 2025, on application by the Respondents' managing agent for a review of that decision, the parties were advised that the decision remained the same and the hearing date was not to be moved.

5. By application received on 19 August 2025, the Applicant applied to admit evidence in relation to Grounds 6 and 7 of the counter notice. On 19 August 2025, the Respondents' managing agent, objected based on the late submission of evidence prior to the hearing and that their applications to move the hearing date had been denied. They said that if the evidence was to be admitted, the hearing date needed to be adjourned to allow the new evidence to be considered.

6. The Tribunal noted that the evidence was directly relevant to the matter before it, was sought by the Respondents and was concise. The reason given for the late submission was reasonable.

7. The Respondents' objection did not relate to the content of the late evidence submitted, its veracity or its relevance to the case. Nor did it suggest that the late submission of the evidence would require substantial time or resources to rebut. The parties were advised that the evidence would be admitted.

8. On the same date, the Tribunal received a further application from the Applicant to submit further evidence with exhibits which was described as a witness statement from Mr Dastgeer responding to queries raised by the Respondents in their Reply to the Applicant's Response.

9. The Respondents' agent objected to the late submission on the basis that it comprised a witness statement of 3 pages but exhibits of 29 pages and requested that the hearing be adjourned to allow the content to be considered.

10. The parties were advised that the application would be considered as a preliminary matter at the hearing. At the hearing, Mr Morris, Counsel for the Respondent confirmed that he did not object to the admission of the late evidence and it was therefore admitted by the Tribunal.

11. Due to lack of judicial time at the hearing, it was agreed that closing/further submissions would be provided in writing by each party and further Directions dated 1 September 2025 were issued to reflect this. The Tribunal reconvened on 11 November 2025 to carry out its deliberations in light of the Further Submissions received from each party. Whilst the Applicant had previously been unrepresented, Further Submissions in relation to Grounds 1 and 5 were drafted by Ceri Edmonds of Counsel.

Background

12. The freehold of the Property is registered at HM Land Registry with title number MAN301099.

13. The First Respondent is the freeholder of the Property; the Second Respondent is an intermediate landlord of the Property and the Third Respondent is an intermediate landlord of part of the Property at Phase 2.

14. The Applicant company was incorporated as a private company limited by guarantee on 14 February 2024 and has nine Directors, including Mr Dastgeer.

15. By a claim notice dated 6 August 2024, (the "relevant date"), served pursuant to sections 79-80 of the 2022 Act, residents at the Property claimed the right to manage the Property.

16. By various counter notices dated 4 September 2024, each of the Respondents averred that, on the relevant date, the Applicant was not entitled to acquire the right to manage the Property for the same eight reasons specified within each counter notice.

Property

17. The Property comprises Adelphi Wharf Phase 2, 9 Adelphi Street, Salford ("Phase 2") and Adelphi Wharf, Phase 3, 7 Adelphi Street, Salford ("Phase 3"). Phase 2 comprises 167 residential units, plus one commercial retail unit. 11 of these are owner-occupied units. Phase 3 comprises 229 residential units plus two commercial units. 9 of these are owner-occupied units. The Applicant says that 50% of the leaseholders of the residential units live overseas.

Inspection

18. At the conclusion of the hearing, the Tribunal inspected the Property without the parties, with the exception of an occupier who allowed the Tribunal access and egress to the car park without any discussion taking place. The Tribunal carried out an external inspection of the building and an internal inspection of the two car parking levels. The Tribunal observed that the building comprises two distinct blocks above ground, with open space at ground level between them. There are 8 above ground storeys with a car park underneath the blocks arranged over two underground storeys. The entrance to the car park is located on the northern side of the development. The site is sloped, being higher at street level than at the rear of the building, such that the level entrance to the car park, at the rear of the building is above ground.

19. The car parking levels extend underneath each above ground block and underneath the open area between them. The car park runs continuously at each level, structural support columns are evident. The exit to the car park is from the southern side. There is both stair and lift access from the underground car park to each block.

20. It was clear to the Tribunal that the car park extends continuously under the two above ground blocks and the open area between them. Whilst the Tribunal is not provided with any engineering drawings or evidence, the Respondents accept in their Reply to the Applicant's Response that, due to the configuration of the car park, the two blocks and the car park are structurally attached. The Tribunal's observations were consistent with this view.

21. The development fronts onto Adelphi Street with the River Irwell running parallel to Adelphi Street at the rear of the development. The commercial units are at ground floor level, fronting Adelphi Street and accessed directly from the street. There are a number of other flatted development situated in close proximity and the area appears to be predominately residential in nature.

Hearing

22. At the hearing, the Applicant company was represented by Ali Dastgeer, Director who was assisted by Ingebjorg Toft Næss, a leaseholder. The Respondents were represented by Tom Morris of Counsel, assisted by Farrah McWilliam from the managing agent Xenia Estates Services Ltd.

23. It was agreed at the beginning of the hearing, that for ease of the parties, Mr Morris would make his submissions in relation to one ground of appeal and Mr Dastgeer

would make his submissions in response to that ground of appeal before Mr Morris moved onto the next ground of appeal, until all grounds of appeal had been considered.

24. At the hearing, Mr Morris stated that it was accepted that, in the light of the Supreme Court's reasoning in *A1 Properties Ltd v Tudor Studios RTM Co Ltd [2024] 3 WLR 601,* ground 8 was of no consequence.

25. At the beginning of the hearing, the Tribunal watched the 9 videos of the underground car park and saw the 4 photos of the entrance doors to the car park submitted by the Applicant.

Submissions

Ground 1
Failure to comply with Section 72(1) of the Act, because the premises are not a self-contained building.

Respondents

26. The Respondents' case has changed between their original Statement of Case, and their Reply to the Applicant's Response. Originally, the Respondents submitted that the mere existence of an area that shares a footprint with the Property, namely the car park, was insufficient to make out structural detachment under s.72(2) of the Act. However, in their Reply to the Applicant's Response, they noted the Design Access Statement produced by DMS Architecture and now admit that Phases 2 and 3 are not structurally detached from each other.

27. The Respondents aver that the three-part test set out in *CQN RTM Company Limited v Broad Quay North Block Freehold Limited [2018] UKUT 183 (LC)* requires expert evidence in this case.

28. In the skeleton argument, Mr Morris continues the point citing *GUV Harborough & Saltley House RTM Company Ltd v Adriatic Land 3 Limited & Ors [2024] UKUT 109 (LC),* at [55]. In that appeal, the Deputy President observed that the Applicant had provided no evidence on the issue as to self -contained and, since the parties agreed the application should be dealt with without a hearing, the only options available to the Tribunal were to dismiss the application as unproven or to give directions for additional evidence.

29. Mr Morris says that the Applicant has adduced no expert evidence on matters on which expert evidence ought to be required, namely whether the Property is a single self-contained building. For that reason, the Respondents submit that the Applicant has not come up to proof on this point.

30. In the skeleton argument and at the hearing, Mr Morris relied on the decision of the Court of Appeal in *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd [2016] 1 WLR 275* as authority for the proposition that a RTM company can only acquire the right to manage a single block, but not multiple blocks on the same estate. The Tribunal drew his attention to the decision of the High Court in *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co Ltd [2022]*

H.L.R. 1, which post-dates *Triplerose*, and in which Falk J held that the right to collective enfranchisement extended to multiple distinct 'blocks' which were structurally attached to each other and to an underground car park, on the basis that they were "structurally detached" and therefore a "self-contained building" for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993 (the "1993 Act").

31. In the Respondents' Further Submissions, Mr Morris submitted that the Court of Appeal's decision in *Triplerose* should be followed and that the Applicant cannot therefore obtain the right to manage both Phase 2 and Phase 3 of the Adelphi Wharf development. Those two blocks, together, do not constitute a single "self-contained building" for the purposes of section 72(1) of the Act.

32. Whilst accepting that in *Triplerose,* the Court of Appeal was concerned with blocks which did not share an underground car park and which could be said to be not "structurally detached", Mr Morris submits that the decision remains authority for the following propositions:

    a) The right to manage extends only to a single block of flats on a particular estate.

    b) It follows that a "self-contained building" cannot be two distinct blocks of flats, even if they are structurally attached below ground by an underground car park.

33. Mr Morris submits that the word "premises" in the context of a "self-contained building" must be read as being limited to just a single block on a particular estate. That is consistent with the language of section 72(2) ("a building is a self-contained building if it is structurally detached"). He submits that it strains the statutory language to describe more than one distinct block of flats on a particular estate which are structurally attached below ground as a single "building". The test of structural detachment in that context is framed so as to prevent the right to manage being acquired over more than one block.

34. His submission analysed the cases of *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd [2014] UKUT 6 (LC)*; *No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Company Ltd [2013] UKUT 580; (CQN RTM CO Ltd v Broad Quay North Block Freehold Ltd [2018] L. & T.R. 26* and *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co Ltd [2022] H.L.R. 1* (decided in 2020 and which concerned the Leasehold Reform, Housing and Urban Development Act 1993 rather than the 2002 Act).

35. He concludes by submitting that the editors of Service Charges and Management (5th ed.) at paragraph 23-09 say that "*following this series of cases, it is likely most modern blocks of flats built as part of a single development over a single underground car park or service level will be held not to be structurally detached*".

36. He says that the editors do not suggest that it is likely – or even possible – in the context of the 2002 Act for such a development to be a single "self-contained building" for the purposes of section 72 over which the right to manage can be obtained by a single RTM company. That would be inconsistent with the reasoning of the Court of Appeal in *Triplerose* to the effect that the 2002 Act does not permit the right to manage to be acquired over more than one block of flats on a single

estate. He submits that as Gloster LJ explained, Parliament's intention was to confer the right to manage on a block-by-block basis. As Lord Carnwath put it in *Hosebay v Day [2012] 1 WLR 2884* at [6], "the court should avoid as far as possible an interpretation which has the effect of conferring rights going beyond those which Parliament intended".

37. Mr Morris invites the Tribunal to apply and follow the principles identified in *Triplerose,* to direct itself that phases 2 and 3 of Adelphi Wharf, along with the underground car park connecting them, are not a "self-contained building" to which the right to manage can be acquired by a single RTM company.

Applicant

38. In the Applicant's Further Submissions, Ms Edmonds, Counsel for the Applicant, notes that the Respondents admit at paragraph 4.1 of their Reply to the Applicant's Response that neither block is itself structurally detached because of the underground car park. This admission is in line with the decision of the Upper Tribunal in *Courtyard RTM Co Ltd v Rockwell Ltd [2025] UKUT 39 (LC).*

39. She submits that in the Respondents' Further Submissions, they contend that, even though neither of the blocks is in itself a self-contained building or self-contained part of a building because of the underground car-park connecting the two, nevertheless the structure as a whole does not comprise a self-contained building.

40. Ms Edmonds submits that this is illogical and is at odds with the language of the statute, the line of case law and parliamentary intention behind the Act. In *Guv Harborough and Saltley House RTM Co Ltd v Adriatic Land 3 Ltd [2024] UKUT 109 (LC)* the Upper Tribunal expressly held that blocks which are separate above ground but joined by an underground car park were capable of collectively comprising a self-contained building for the purpose of section 72 (at [34]).

41. The Respondents seek to rely on the *Triplerose Ltd* decision which she submits is authority for the proposition that an RTM company cannot acquire the right to manage more than one self-contained building. It is not authority for the proposition that a self-contained building cannot include more than one block, and this issue was not considered in the judgment. Rather, in *Triplerose*, each of the blocks was structurally detached and was itself a self-contained building. The Court of Appeal in *Triplerose* did not consider the definition of a "self-contained building" or a "self-contained part of a building", or what was meant by "structurally-detached".

42. The Applicant accepts that, if the Property comprises more than one self-contained building then, per *Triplerose,* the Applicant cannot acquire the right to manage them. However, the Applicant's position is that the Property comprises a (single) self-contained building and the question facing the court in *Triplerose* does not arise.

43. Ms Edmonds considered the cases referred to by Mr Morris as detailed at paragraph 34 above, and submits that each of these cases is at the very least consistent with the proposition that individual blocks which are connected by an

underground car park are not themselves structurally-detached and that a "building" can include more than one block.

44. The Court of Appeal in *Triplerose* did not consider the definition of a "self-contained building" and did not disapprove the decisions in *Albion* and *Deansgate.*

45. Ms Edmonds submits that the plain wording of section 72 of the Act is that a building is a self-contained building if it is structurally detached. The meaning of "structurally detached" was considered in some detail in *CQN* and at [54] HHJ Hodge QC stated as follows:

"*From the authorities, I derive the following propositions:*

i. The expressions 'building' and 'structurally detached' are not defined in the 2002 Act and should be given their ordinary and natural meaning.

ii. The statutory language speaks for itself and it is neither necessary nor helpful for a tribunal which is considering whether premises are 'structurally detached' to reframe the question in different terms. Thus, it is not helpful to substitute a test of 'structurally independent' or 'having no load-bearing connection' for that of 'structurally detached'.

iii. Nevertheless, some explanation of when a building can properly be characterized as 'structurally detached' is clearly called for.

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

v. Thus, a building may be 'structurally detached' even though it touches, or is attached to, another building, provided the attachment is not 'structural'.

vi. 'Structural' in this context should be taken as meaning 'appertaining or relating to the essential or core fabric of the building'.

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

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

ix. A building can be 'structurally detached' even though it cannot function independently.

x. *Adjoining buildings may be 'structurally detached' even though a decorative façade runs across the frontage of both buildings.*

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

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

xiii. *If a structural part of the premises is attached to a structural part of another building, the premises are unlikely to be 'structurally detached'."*

46. Applying this to the case, Ms Edmonds submits that it is clear that there is no structural attachment between Phases 2 and 3, and any other structure which would render it not 'structurally detached'. As per the passage at [paragraph 54(8)], it does not matter what the shape of the building is and whether there is an above-ground physical attachment between all above-ground sections of the building.

47. As noted by the Upper Tribunal in *Albion Riverside*, a building does not comprise "only so much of a built structure as is visible above ground level" (at [34]).

48. The Respondents' key proposition – at paragraph 6(2) of the Respondent's Further Submission – is that "a self-contained building cannot be two distinct blocks of flats, even if they are structurally attached below ground by an underground car park". Ms Edmonds says that it is unclear what is meant by "distinct". She submits that it appears that the Respondents are trying to substitute a different test for that in section 72 – i.e. that there should not be more than one block above ground. But, as per the dictum of HHJ Hodge set out above (at [54(2)]), the statutory language is clear and there is no basis on which to introduce a more restrictive test.

49. Similarly, she submits that it is clear from the decision in *Albion,* that blocks of flats which are separate above ground but joined by an underground car park are not structurally detached – i.e. they are structurally "attached" to one another, and it follows that they will (collectively) comprise a single structurally-detached building. As Martin Rodger KC stated at [38]: *"in cases involving complex or unusual buildings … the issue may require systematic consideration which begins by identifying the premises which are said to constitute the building or part of a building to which the claim relates".*

50. Ms Edmonds submits that, more fundamentally, the Respondents' proposition is at odds with the decision in *Saltley House* where the Upper Tribunal accepted that blocks which were separate above ground and joined by a car park below separate blocks above grounds were, in principle, capable of forming a self-contained

building for the purpose of a right to manage claim. At paragraph 34, Martin Rodger KC stated:

> "*If the blocks and the car park (alone) formed a single structurally detached unit then they were a self-contained building for the purpose of the Act, but the FTT did not address that question. If it considered that question and reached a conclusion against the appellant for some specific reason, it failed to state what that reason was. On either basis, its decision cannot stand.*"

51. The Upper Tribunal remitted the decision back to the FTT to determine whether the blocks did comprise a single structurally-detached building because it had not been provided with sufficient evidence (such as clear floor plans) as to the layout of the blocks and car park. The only evidence before the FTT had been the leases which did not show whether the blocks were located above the car park (see discussion at [20]). In this case, the Tribunal has been provided with the clear diagrams and plans in the DMS Design & Access Statement and it is not in dispute that the car park extends directly below both blocks. The Tribunal has also had the benefit of the videos of the concrete slabs shown during the hearing, and of a site visit.

52. In *Courtyard RTM Co Ltd v Rockwell Ltd [2025] UKUT 39 (LC)* the Upper Tribunal considered whether three blocks forming part of a development of five blocks which shared an underground carpark could, individually, be considered as a self-contained part of a building for the purposes of section 72 of the Act. Martin Rodger KC accepted that the individual blocks were not self-contained buildings and held (without the need for expert evidence) that, because of the underground car park running beneath them, they were not (individually) self-contained parts of a building, noting that:

> "*I am satisfied that the presence of the undivided car park beneath each of the three blocks, means that individually the blocks do not constitute a vertical division of the Estate as a whole" (at [75]).*

53. The obvious corollary of this is that the "self-contained building" is the entirety of the connected blocks (and the underground car park), which is consistent with the decision in Saltley House.

54. The Respondents accept at paragraph 23 of their Further Submissions that there is binding authority in *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co Ltd [2022] H.L.R.* 1 that multiple blocks connected by an underground car park are capable of forming a "self-contained building". The Respondents seek to distinguish *Palgrave Gardens* on the basis that it was made in the context of the 1993 Act. However, Ms Edmonds submits that this is plainly wrong. The provisions in section 3 Leasehold Reform, Housing and Urban Development Act 1993 are identically worded and, as the Respondents accept, in making her decision Falk J relied on the case law in relation to the provisions in the 2002 Act. In any event, the reasoning in *Palgrave Gardens* has been applied in the context of the 2002 Act by the Upper Tribunal in *Saltley House*.

55. The finding in *Saltley House* is also clearly in line with the parliamentary intention that leaseholders of flats should be able to acquire the right to manage. On the Respondents' case, the leaseholders at Adelphi Wharf would be deprived of that

right because of the design of their building. The members of the Applicant RTM Company are not, as the Respondents suggest, seeking rights that go beyond those which Parliament intended (c/*f Hosebay v Day)*; they are merely seeking to exercise the right to manage their building conferred by Chapter 1, Part 2 of the Act.

Ground 2

Failure to comply with Section 72(6) and Schedule 6, paragraph 1 of the Act, because the internal floor area of any non-residential part(s) exceeds 25%.

56. Section 72 of the Act provides:

'This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,
(b) they contain two or more flats held by qualifying tenants, and
(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

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

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

a) it constitutes a vertical division of the building,
b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
c) subsection (4) applies in relation to it.

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

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

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

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

57. Paragraph 1 of Schedule 6, headed "Buildings with substantial non-residential parts", is as follows.

This Chapter does not apply to premises falling within section 72(1) if the internal floor area –

(a) of any non-residential part, or

(b) (where there is more than one such part) of those parts (taken together), exceeds 50% of the internal floor area of the premises (taken as a whole).

(2) A part of premises is a non-residential part if it is neither –

(a) occupied, or intended to be occupied, for residential purposes, nor
(b) comprised in any common parts of the premises.

(3) Where in the case of any such premises any part of the premises (such as, for example, a garage, parking space or storage area) is used, or intended for use, in conjunction with a particular dwelling contained in the premises (and accordingly is not comprised in any common parts of the premises), it shall be taken to be occupied, or intended to be occupied, for residential purposes.

(4) For the purposes of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.'

58. At paragraph 1(b) above, 25% was substituted with 50% by the Leasehold and Freehold Reform Act 2024, on March 3 2025. At the time the claim notice was served, the stated percentage was 25%. At the hearing the parties agreed that the test was 25%, rather than 50%, for non-residential parts.

59. The Respondents' position in their Statement of Case is that the car park and commercial units alone exceed 55% of the internal floor area of the Premises. At the hearing, Mr Morris said that this was incorrect due to an arithmetical error in the car park area which they had stated to be 15,271,042m².

60. In the Respondents' Statement of Case, it was submitted that a large number of car park spaces are let to and/or available to rent by the general public and/or third parties.

61. In the Respondents' Statement of Case and skeleton argument, the residential floor area of Phase 2 is said to be 9,499.30 m² and Phase 3 is 12,115.80 m², a total of 21,615.10 m².

62. As to the car park, the Respondents' position set out in the skeleton argument is that the internal area is 9,827.48 m², including communal areas. At the hearing and in the skeleton argument, the Respondents state that even if every parking space were let to a residential tenant, by their calculation, the non-residential area was circa 25.52%. This was achieved by deducting 2,140 m² (the Applicant's stated area of the car parking spaces) from the Respondents' measurement of the internal area of the car park (9,827.48 m²), leaving a figure of 7,687.48 m². Added to the commercial units (433 m².), this gives a total of 8,120.48 m². The total internal area is therefore 31,825.48 m² (albeit on this basis the Tribunal calculates 31,875.58 m²) and the non-residential part is therefore 25.52%, therefore exceeding the 25%.

63. In the skeleton argument, Mr Morris also refers to there being a failure to jointly instruct an independent surveyor to calculate the relevant areas.

Applicant

64. The Applicant's position is set out in their statement of case. They calculate Phase 2 as being 9,797 m², and Phase 3 as 12,291 m² based on information sourced from Xenia Estates. This gives a total of 22,088 m² in residential use. They have identified 184 car park spaces, across the two levels of car parking. The total size of the spaces added together is estimated at 2,140 m². This measurement is derived from on-site measurements taken by the Applicant with hand drawn sketches provided in the hearing bundle (pages 136 and 137). The Applicant provides a sketch plan of each of the two floors of car parking with a summary that states there are 185 parking spaces (this includes motorcycle, disability, numbered and unnumbered car parking spaces). They arrive at a total number of spaces of 185 with a total floor area of 2,153.80 m².

65. A table is then provided that they say concludes from Land Registry documents that 189 car parking spaces are demised to residential flats. Accordingly, they say, that the car park spaces should be treated as residential.

66. The inconsistencies in the number of car parking spaces identified by the Applicant is highlighted by the Respondents in their skeleton argument.

67. The Applicant totals the area of the three commercial units to 433 m² and this area was not disputed by the Respondents.

68. The Applicant submits that by totalling the floor areas, and by using the smaller residential area of Phases 2 & 3 as calculated by the Respondents (the Applicant then uses a figure of 21,565 m² in comparison to the figure of 21,615.10 m² noted by the Tribunal), 433 m² for the commercial elements and 2,140 m² for the car park (yet deeming the car park to be all non-residential) would give a non-residential floor area of 10.7%.

Ground 3

Failure to comply with Section 78(1) of the Act, because the notice inviting participation, ('NIP'), was not served on all qualifying tenants.

69. Section 78(1) provides that,

'*Before making a claim to acquire the right to manage, a RTM company must give notice to each person who at the time when the notice is given is the qualifying tenant of a flat contained in the premises, but neither is nor has agreed to become a member of the RTM company*'.

70. The Respondents' Statement of Case refers to the failure by the Applicant to provide evidence that the NIPs were served on the 397 qualifying leaseholders or to the correct address in accordance with section 111(5) of the Act. Further, they claim that the Applicant has failed to adduce evidence that the prescribed notes were included and therefore the NIPs were invalid.

71. The Applicant's Response states that the NIPs were served on 397 qualifying leaseholders either in their mailboxes or at their contact addresses. The Applicant later clarified this and amended it to 396, as they had double counted one unit (page 417). They provided detailed photographic evidence of the service.

72. In their Reply to the Applicant's Response, the Respondents say that the Applicant's photographic evidence at pages 375-411 of the Applicants Response shows only 63 and 59 units in Phases 2 and 3 respectively were served and that is not clear how alternative contact addresses were given, taken, or recorded and whether the correct address for service, as defined by s.111(5) of the Act, was used and also as to service itself.

73. The Respondents further say that units 108,109, 118, 201,203, 204, 209, 212, 222, 223, 317, 423, 606, 610, 617, 623 and 701 in Phase 2 and units 201,420 and 606 in Phase 3 were served at addresses outside England and Wales and therefore do not comply with section 111(5) of the Act.

74. The Respondents' argument then shifted in the skeleton argument to the meaning of the word 'give' in section 78 (1) of the Act.

75. Mr Morris refers to the case of *Khan v D'Aubigny [2025] 2WLR*, in which in paragraph 33, Nugee LJ referred to the Supreme Court case of case of *Haywood v Newcastle upon Tyne Hospitals NHS Foundation Trust [2018] 1 WLR 2073* as authority for the premise that 'give' means must actually have been received by or come to the attention of the recipient, rather than it merely being posted.

    '*For present purposes however the significant point is that if a statutory provision simply provides that A is required to give a document to B, A does not have to physically hand the document to B, but can send it in the post. Provided that B does in fact receive it, A will thereby have "given" it to B…'*

76. Mr Morris submits that simply posting a notice into the letter box of a unit does not mean that a notice has been 'given'. For a notice to be 'given', it must come to the attention of the intended recipient – unless some other presumption deems it to have come to the recipient's attention some other way. A notice is 'given' if the person entitled to give it causes it to be received by or come to the attention of the recipient or their properly authorised agent: see *Property Notices: validity and service (3rd ed.), by Tom Weekes KC, at 5.1.*

77. There is a long-standing common law presumption that a letter, duly addressed, pre-paid and posted which is not returned to the sender has in fact been received by the addressee, unless he can establish to the contrary: see the summary in *Property Notices at 5.17-5.19.*

    A notice can also be given if the recipient has been authorised to receive it by the intended recipient: *Property Notices at 5.21.* However, an implied authority to accept service of a notice is not inferred merely from the fact that the agent is subject to a duty to pass on the notice to the recipient: *Von Essen Hotels 5 Ltd v Vaughan [2007] EWCA Civ 1349 at [44].*

78. In case of a notice to be given by a RTM company, Mr Morris submits that contractual provisions about service in a lease do not apply, since the RTM company is not a party to the lease.

79. Mr Morris refers to the Applicant's Statement of Case in Response in which it explains that it served NIPs: (i) using "the addresses listed in the respective leases"; (ii) using updated contact addresses provided by leaseholders; and, (iii) where no alternative was provided, by leaving the notices in the mailboxes at the Premises. The Applicant contends that those methods were "fully compliant with section 111(5)" of the 2002 Act, which provides:

'*A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.*'

80. Mr Morris submits that the Applicant's position is not strictly correct. The section permits a RTM company to 'give' a notice at a flat in the premises unless it has been notified of a different address at which a qualifying tenant wishes to be 'given' a notice.

81. He submits that where a lease – to which the RTM company is not a party – states a different address, that does not amount to a notification given to the RTM company that the qualifying tenant wishes to be given a notice at a different address in England and Wales. Nor is the Applicant correct to contend that the section permits service to the address provided in the lease or the last known address. It permits the notice to be given only at the flat in the premises or a different address of which there has been actual notification.

82. Mr Morris submits that it is critical to note that the section does not deem a notice to have been 'given' if it is left at the flat. The section simply provides that a notice may be given to a qualifying tenant at the flat. That still requires the notice to be actually received by the qualifying tenant or for it to come to their attention, in line with the principles explained in *Khan v D'Aubigny*.

83. Mr Morris submits that following propositions can be distilled from those authorities.

a) If a qualifying tenant has not responded to a notice inviting participation, there is no evidence that it was in fact given to them.

b) If the notice was sent to the flat in the premises by first class post or another address in England and Wales at which the tenant has notified the Applicant that they wish to accept service, then the Applicant has the benefit of the common law presumption.

c) If the notice was simply left in the mailbox of the flat in question, but the qualifying tenant did not respond, the Applicant has not established that the notice was 'given'.

d) Giving the notice to the tenant of a qualifying tenant does not mean that the notice was given to their agent, unless the qualifying tenant had been expressly authorised their tenant to receive notices.

e) The common law presumption as to service will not avail the Applicant where it posted the notice to some other address, unless it can show that the qualifying tenant actually lived at that address.

84. Mr Morris says that the Applicant has adduced evidence of the service of NIPs on 63 units in Phase 2, and 59 units in Phase 3. That falls short of demonstrating what it had to demonstrate. In any event, many of the addresses are overseas and do not therefore fall within section 111(5) as permissible addresses for the giving of notices. The common law presumption as to service will be engaged only if the Applicant can show that the qualifying tenant in fact lived at the address to which the notice was sent.

85. Mr Morris submits that in any event, the common law presumption as to service by post does not apply where a letter is posted in a letter box which is out of the jurisdiction to an address which is out of the jurisdiction.

86. Mr Morris suggests that several units appear to have been served by email and/or LinkedIn and/or Facebook messenger. That is not valid service unless it is shown that the notice came to their attention of the qualifying tenant.

87. Where the Applicant has served at an alternative address (other than the address of the relevant flat), that can only be valid service if the qualifying tenant notified the Applicant that they wished to be given notice at that address. The Applicant has not shown that and, Mr Morris says that it appears in Mr Dastgeer's witness statement that they had not been so notified.

88. Mr Morris asserts that Annex 1 to the latest witness statement establishes non-service of NIPs in respect of numerous flats. Where there was no response to the NIP, it cannot be shown that a notice actually came to the attention of the qualifying leaseholder. Wherever a notice was simply left in the mailbox at the Property, but was not sent in the post, the notices will not have been validly given see e.g. unit 112 in Phase 2, unit 218, unit 305, 306, 320, 408, 414 as examples.

89. Mr Morris refers to *A1 Properties Ltd v Tudor Studios RTM Co Ltd [2024] 3 WLR 601,* where Lord Briggs made clear that "*section 79(2) imposes a clear consequence of failure in good time to give participation notices: no valid claim notice can be given to anyone".* It follows for the reasons set out above that the Applicant's claim notice was not valid. However, Lords Briggs and Sales carried on as follows.

'*For present purposes we leave aside the difficult question whether this has the further consequence that, if a document purporting to be a claim notice is nonetheless given to another stakeholder, such as a landlord, the landlord could rely upon the failure to give a participation notice to a qualifying tenant in order to object to the validity of the purported transfer of the right to manage which followed, even though that tenant might not in fact have any objection to the scheme which is being promoted which they wish to maintain. We were referred to a decision of the Lands Tribunal in Sinclair Gardens Investments (Kensington) Ltd*

v Oak Investments RTM Co Ltd [2005] RVR 426 and a decision of the Upper Tribunal in Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] L & TR 23 which discussed the consequences of a breach of the procedural requirement in section 79(2) and held in each case that such a breach did not in the circumstances invalidate the transfer of the right to manage which followed, and it was not suggested that they should be overruled; but this was a peripheral part of the debate before us and we prefer to reserve our opinion on whether they were correctly decided.'

90. Mr Morris refers to the recent Court of Appeal case in *Avon Freeholds Ltd v Cresta Court E RTM Company Ltd [2025] EWCA Civ 1016*. He submits that in section 79(2) of the Act, Parliament has stipulated a consequence of failing to comply with the statutory requirement to give a NIP under section 78(1): the consequence is that the claim notice may not be given. He submits that this is a case of Parliament establishing a "bright line rule" as it was framed in *A1 Properties* at [62]. Accordingly, the failure to serve just a single NIP is fatal to the ability to serve a valid notice of claim and to the ability to bring a claim for the right to manage.

91. Mr Morris submits that if we are not with him on his submission that section 111(5) does not constitute a 'deemed service provision', then as a NIP was not hand delivered to the mailbox of unit 722 in Phase 3, but rather, according to Annex 1 of Mr Dastgeer's statement, was hand delivered to unit 712 which was owned by the same qualifying tenant, then the Applicant has failed to comply with section 111(5) of the Act as it was not given 'at the flat'.

92. He concludes that as the Applicant has failed to demonstrate valid service of a NIP on all 396 qualifying leaseholders, the Applicant was not entitled to give a claim notice under 79(2).

Applicant

93. The Applicant's evidence was that since only 20 of the 396 units are owner-occupied, it was very difficult for the Applicant to get in touch with the leaseholders as many live overseas or let their units out through letting agents so that the occupants do not communicate with their landlords directly. The Applicant says that sending NIPs to addresses listed at the Land Registry also presented complications, since the contact details on the Land Registry can be outdated, and leaseholders, especially those residing overseas, viewed NIPs suspiciously and assumed a scam. In addition, many addresses in the UK were actually addresses of leaseholders' accountants, lawyers or agents.

94. Mr Dastgeer's oral evidence supported by Annex 1 to his statement was that, with the exception of Flat 722 in Phase 3, (which had been hand delivered with the NIP to unit 712 as it was the same owner), a NIP was hand delivered to all mail boxes or placed under the door of a flat irrespective of any other attempts at service through the mail.

95. In the Statement in Response and in his oral evidence, Mr Dastgeer explained the efforts to which the Applicant had gone to obtain the addresses of qualifying tenants who lived outside England and Wales, for example by email, Linked In and other

methods to allow NIPs to be sent by post. This was successful as a significant number of the consent forms included in the evidence are from addresses overseas.

96. Mr Dastgeer's evidence was that he had complied with the requirements of section 78 (1). He said that in circumstances such as this building where only 20 units were owner occupied and over 50% of qualifying tenants lived overseas, a requirement to ensure that all qualifying tenants, wherever based, had to be shown to have physically received a NIP sent by post or for it to have come to their attention, would prevent any RTM application from being able to be made.

97. Mr Dastgeer's evidence was that all NIPs included the prescribed statutory notes and that, on 7 April 2024, solicitors for the Applicant had confirmed that all forms used were compliant.

Ground 4

Failure to comply with Section 79(2) of the Act, because 14 days did not elapse after the notice given pursuant to section 78 before the claim notice was served.

98. Section 79(2) requires that a valid claim notice may not be given unless the NIPs have been given at least 14 days before. The claim notice was served on 6 August 2024.

99. In the latest witness statement, the Applicant says that the last 3 NIPs, namely unit 305 in Phase 2 and Units G05 and G10 in Phase 3 were hand delivered to the unit's mailboxes and this was the date of service. The Respondents say that is not correct as the date on which the last three notices were 'given' would be the date on which they actually came to the attention of the qualifying tenant, for the reasons set out in Ground 3 above. Therefore, 14 days did not elapse between the giving of the NIPs and the giving of the claim notice.

Ground 5

Failure to comply with Section 79(5) of the Act, because the RTM company did not, on the relevant date, include a number of qualifying tenants of flats contained in the premises which was not less than one-half of the total number of flats.

100. Section 79(5) provides that:

"*The membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained*".

101. Section 80 provides as follows:

Contents of claim notice

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both—

a) the qualifying tenant of a flat contained in the premises, and

b) a member of the RTM company,

and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(b) the date on which it was entered into,

(c) the term for which it was granted, and

(d) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

82 Claim notice: supplementary

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.'

102. In the Respondents' Statement of Case, the Respondents note that there are 167 residential units in Phase 2, with 79 participants in the right to manage claim.

There are 229 residential units in Phase 3, with 140 participants in the right to manage claim.

103. As a result, they say that there are fewer than 50% of the qualifying tenants participating in the claim in relation to Phase 2. Depending on the Tribunal's view of Ground 1, the Respondents argue that Phase 2 falls to be disqualified.

104. Further, the Respondents note discrepancies in relation to 21 of the units at Phase 2 and 25 units at Phase 3 as they say that the names held by the Respondent as qualifying tenants are different to those named on the claim notice. They say that of 167 residential units in Phase 2, only 58 are valid participants in the right to manage claim -34.7%. Of the 229 residential units in Phase 3, only 115 are valid participants in the claim- 50.2%. The total participation of 173 participants from a potential 396, makes 43.7% participation which is below the 50% required and the claim falls to be dismissed.

105. In the Applicant's Statement of Case in Response, the Applicant adduced evidence in response to the alleged defects which related to the anglicisation of names and the use of a company director's name rather than the name of the company.

106. In the Respondent's Reply, the Respondent attached a schedule of 28 further discrepancies between the name of the qualifying tenant in accordance with the Land Registry and the name in the claim notice.

107. The Respondent further alleged that due to admitted confusion by the Applicant between the tenants of Unit 319 of Phase 2 and Unit 319 of Phase 3, they had not served a NIP on this tenant and therefore the claim notice was invalid.

108. In the skeleton argument, Mr Morris says that the Respondents have identified various discrepancies in the names given on the claim notice. If the parties named in the claim notice were not the qualifying tenant, then they fall to be ignored for the purposes of considering whether section 79(5) is satisfied. Only if the claim notice stated enough members who were in fact qualifying tenants can the claim notice survive.

109. With the permission of the Tribunal, and no objection from Mr Morris, at the hearing Mr Dastgeer provided a witness statement with Annexes A to C to rebut the concerns raised regarding the identified deficiencies and confirmed that Annex A, which comprised a database, incorporated the Applicant's register of members.

110. Whilst the Respondents had received a copy of the witness statement and Annexes when it was sent to the Tribunal on 19 August 2025, it was not admitted until the day of the hearing. The Tribunal therefore directed that the Respondents could make a further written submission once they had had the opportunity to consider the documentation with the Applicant's having a right to respond to any submission.

111. In the Respondents' Further Submission, Mr Morris says that the Respondents in the Schedule to their Reply identified 28 discrepancies when comparing the name of the qualifying tenant on the title as against the claim notice. One category involves where the Applicant has specified in the claim notice only one of multiple joint

tenant qualifying leaseholders, and a second category where the Applicant has specified the director of a corporate qualifying tenant. He submits that in neither of those cases can the claim notice be said to comply with the requirement that it states the full name of the qualifying tenant.

Section 75(7) makes clear that,

"*Where a flat is being let to joint tenants under a long lease, the joint tenant shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat*".

112. He submits that the failure to name the correct qualifying tenant in the claim notice invalidates the claim notice, unless it is saved by section 81.

113. Mr Morris submits that the "particulars required by" section 80 are set out in section 80(4) and (5), but not section 80(3). He submits that section 81(1) cannot operate to save the notice from the errors in the naming of the qualifying tenants.

Section 81(2) provides as follows.

'Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date'.

114. Accordingly, the claim notice will be saved if the persons specified in error in the claim notice were nonetheless members of the Applicant RTM company, if not actually the qualifying tenant, so long as the Applicant company had a sufficient number of members.

115. The Respondents have analysed the register of members provided in Mr Dastgeer's witness statement and accept that that document records the names of a sufficient number of members of the RTM company for the purposes of section 81(2). However, that is not enough to save the notice, for either of the following two reasons.

116. First, a number of persons named in the claim notice were not members of the RTM company or qualifying tenants of flats in the Premises.

In Phase 2:

(1) The qualifying tenant of Unit 508 and the member of the Applicant is CMG UK Properties Limited, but the name on the claim notice is Paul Adams.
(2) The qualifying tenant of Unit 319 and the member of the Applicant is Ngan Ling Pamela Poon, but the name on the claim notice is Chi Hung Yen.

In Phase 3:

(3) The qualifying tenant of Unit G04 and member of the Applicant is Dr Mburu Limited, but the name on the claim notice is Nam Mburu.
(4) The qualifying tenant Unit G09 and member of the Applicant is Bripat Limited, but the name on the claim notice is Brian Shepherd.
(5) The member of the Applicant in respect of Unit 518 is CHP Properties Ltd, but the name on the claim notice is Paul Victor Handy.
(6) The qualifying tenant of Unit 504 and member of the Applicant is CHP Properties Ltd, but the name on the claim notice is Paul Victor Handy.
(7) The qualifying tenant of Unit 322 and member of the Applicant is Latchmore Alpette Limited, but the name on the claim notice is Tim Davies.
(8) The qualifying tenant of Unit 319 and member of the Applicant is Michael's 88 Fastfood Ltd, but the name on the claim notice is Ngan Ling Pamela Poon.
(9) The qualifying tenant of Unit 202 and member of the Applicant is Dr Mburu Limited, but the name on the claim notice is Nam Mburu.

117. Those 9 errors are not cured by section 81(2) and, for that reason, the claim form is invalidated for failing to comply with section 80(3): it fails to state the full name of each person who is both the qualifying tenant of a flat contained in the premises and a member of the Applicant. The names given in the claim notice are not members of the Applicant.

118. Secondly, the claim notice is invalid for a further reason. The Applicant has failed to disclose documents sufficient to prove that a number of qualifying tenants were members of the Applicant on the relevant date. What is said in the 'register of members' is not borne out by the material disclosed.

119. It is submitted that in respect of phase 2, there are no consent forms provided in the Applicant's evidence in respect of the qualifying tenants of 24 units. The qualifying tenants of units 101, 311, 406, 416, 501, 512, 513, 516, 517, 704, 707, 708, 709, 710, G03, G10 are all said to have agreed to become a member of the Applicant, but no consent forms are provided. The qualifying tenants of units 317, 404, 407 and 617 are all said to have agreed to become members and allegedly to have sent back their membership forms, but no consent forms are provided. The qualifying tenants of units 522, 623, G06 and G09 are said to have agreed to become members "TBC", but no consent forms are disclosed.

120. In respect of phase 3, there are no consent forms provided in the Applicant's evidence in respect of qualifying tenants of 21 units. The qualifying tenants of units 430, 504, 509, 518 and G16 are all said to have agreed to become a member of the Applicant, but no consent forms are provided. The qualifying tenants of units 107, 112, 114, 117, 118, 229, 309, 314, 403, 501, 505, 513, 525, 615 and 710 are all said to have agreed to become members and allegedly to have sent back their membership

forms, but no consent forms are provided. The qualifying tenant of unit 110 is said to have agreed to become a member "TBC", but no consent forms are disclosed.

121. Section 112(2) of the Companies Act 2006 provides that "*every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company*". There are thus two requirements: (i) the individual in question must have agreed to become a member of the company; and, (ii) their name must be entered into the register of members.

122. Accepting that Annex 1 to Mr Dastgeer's witness statement is the Applicant's register of members, Mr Morris says that the second limb is satisfied in respect of all of them. However, it is submitted that the Applicant has failed to prove that the 45 qualifying leaseholders of the units identified above have agreed to become members. The Applicant has not disclosed or adduced the consent forms by which those members were required to indicate their consent to becoming members. The Applicant cannot come up to proof on this point and could not in any event satisfy the saving provision in 81(2).

Applicant

123. Mr Dastgeer's evidence, in the bundle and at the hearing was that the Applicant sought to exercise the right to obtain information from the Respondents, via their managing agent under section 82 of the Act in order to ascertain the 'particulars required' to be included in a claim notice. The Respondents' managing agent did not provide the information despite it being sought on 4 occasions and, as a result, were taken to the Ombudsman regarding that failure which determined that there were significant service shortcomings.

124. He said that where names have been shortened, the anglicised version of first names only have been put on the claim form although the consent form had the full Chinese name. Where the leaseholder is a company, the company director has been listed. The Applicant says that the leaseholders of Unit 319 Phase 2 and Unit 401 Phase 2 provided statements authorising their spouses to act on their behalf as evidenced in Annex C to Mr Dastgeer's witness statement. He accepts that there was confusion over Units 319 in Phases 2 and 3 and therefore the entries against Unit 319 in Phase 3 should be removed and taken from any calculation.

125. In the Applicant's Further Submission, Ms Edmonds says that it appears from paragraph 36 of the Respondents' Further Submissions, that this ground is not being pursued. She says that the Respondents do not suggest that the register is inaccurate.

126. Ms Edmonds notes that in their Further Submissions, the Respondents make submissions about the inaccuracy of the names in the claim notice and state that the claim notice is defective. However, this is not part of their objection in Ground 5 as set out in their Statement of Case at 11-13 and the Respondents do not have permission to make further submissions on this point. Nevertheless, in order to assist the Tribunal, Ms Edmonds makes the points as set out below.

127. Section 81(1) of the Act expressly provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by section 80. These include the

information required at section 80(3), i.e. the names and addresses of the qualifying tenants who are members of the RTM Company. The Respondents assert at paragraph 33 of their Further Submissions that this is limited to the information in sections 80(4) and (5) of the Act. However, Ms Edmonds submits that there is no basis for any such assertion, or for implying any restriction into the saving provision in s.81(1). Limiting the scope of section 81(1) would be at odds with the plain wording of the Act. Parliament could have referred at section 81(1) to "any of the particulars required by or by virtue of section 80(4) and 80(5)" but it did not. There is also no logical basis for asserting that the "particulars required by section 80" include the information required by section 80(5) (the name and registered office of the RTM Company) but not section 80(3) (the full name of the qualifying tenants who are members of the RTM Company).

128. This is reinforced by the further saving provision in section 81(2). It would be entirely illogical for the Act to provide, at section 81(2), that a notice will not be invalidated by including the names of persons who were not in fact qualifying tenants on the relevant date, but will be invalidated by spelling mistakes in the names of those who were.

129. The Supreme Court has further confirmed in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd [2024] UKSC 27* that defects in the claim notice will not generally be fatal to an RTM claim unless they have caused real prejudice to the landlords. Such defects do not necessarily prevent the acquisition of the right to manage but render the process voidable unless and until the Tribunal approves the transfer of the right to manage (Lord Briggs and Lord Sales at [87]). In the instant case, none of the purported defects have caused prejudice to the Respondents, and Ms Edmonds says that the Tribunal should approve the transfer.

130. The Respondents assert at paragraphs 37-38 of their Further Submissions that the notice included the details of 9 persons who were not in fact members of the RTM Company. These issues were raised previously in the Respondents' Reply dated 14 July 2025 which included an Annex containing a "Table of Further Discrepancies". Each of these were explained and addressed in the Applicant's Statement of Case and further in the witness statement of Mr Dastgeer dated 19 August 2025 on behalf of the Applicant.

131. For 7 of the 9 cases, i.e. those mentioned in sub-paragraphs 37(1) and 38(1) to (5) and (6), of the Respondents' Further Submissions, the qualifying tenant and member of the RTM company is a company. The person named in the claim notice is a director of that company. These cases correspond to rows 1, 6, 9, 10, 13, 14, and 25 of the Table of Further Discrepancies annexed to the Respondents' Reply, and are explained at paragraph 8.3.1 (e) of Mr Dastgeer's witness statement. Mr Dastgeer's evidence is that in 4 of those cases, the director is the sole owner of the company. In 4 of the cases, the company is listed in the consent forms.

132. The case referred to at paragraph 37(2) of the Respondents' Further Submissions corresponds to Row 19 in the Table of Further Discrepancies and is addressed at paragraph (f) of Mr Dastgeer's witness statement. This explains that the qualifying tenant, Ms Poon, authorised her husband to sign the claim notice on her behalf. A signed letter from Ms Poon, confirming this, is at Annex C to the witness statement.

133. The case referred to at paragraph 38(6) of the Respondents' Further Submissions corresponds to Row 5 in the Table of Further Discrepancies and is addressed at paragraph 8.3.1 (g) of Mr Dastgeer's witness statement. The Applicant has accepted that the incorrect person was listed in the claim notice and should be removed from the list of qualifying tenants.

134. None of these inaccuracies invalidate the claim notice for the reasons set out above. Moreover, Ms Edmonds submits that where the qualifying tenant is a company, the consent form for participation will fall to be signed by a director of that company. The details of a company's directors are readily verifiable online on the Companies House register. The Applicant does not consider that including the name of the company director rather than the company itself is a breach of the requirements in section 80(3). But if it is, then even if it is not cured by the saving provision in s.81(1), it causes no prejudice to the Respondents and so does not invalidate the claim notice (*A1 Properties)*.

135. At paragraph 40 of the Respondents' Further Submissions, the Respondents raise a number of issues with the register of members exhibited to the witness statement of Mr Dastgeer, and contend that the Applicant "has failed to disclose documents sufficient to provide that a number of qualifying tenants were members of the Applicant on the relevant date". However, Ms Edmonds says that the Respondents appear to misunderstand the document at Annex A1 of the Witness Statement. As is clear from its face, the document sets out the status of the qualifying tenants of each of the 396 residential units in the Property, including whether the leaseholder has agreed to become a member of the Applicant and the date on which the membership form was received. It shows that, at present, 258 of the 396 qualifying tenants are currently members of the RTM Company. However, the Applicant fully accepts that not all of these were members of the RTM Company on the date on which the claim notice was given. As can be seen in the list at Annex A1 of the witness statement, a number of these members confirmed their membership after the claim notice was given.

136. There are 396 residential units in the Premises. The claim was made on the basis that, at the relevant date, the qualifying tenants of 219 units – i.e. more than half - were members of the RTM Company. The Schedule to the claim notice lists these 219 qualifying tenants who were members of the RTM Company at that time, but does not include the names of those who joined later [20-28]. Similarly, the Applicant included in the bundle 212 consent forms (at 412-468) but did not include the consent forms from those who became members after the claim notice had been given because its claim did not rely on those members. The Applicant has therefore clearly shown that, at the relevant date, more than half of the qualifying tenants were members of the RTM Company such that the requirement in section 79(5) is satisfied.

137. For the sake of completeness, the Applicant points out that the qualifying tenants of 5 of the units are directors of the RTM Company and so had already consented to become a member of the RTM Company such that there was no obligation to send them a NIP, per section 78(1)(b). These are units 101, 704, and G10 in Adelphi Wharf 2, and units 430 and 509 in Adelphi Wharf 3. Similarly, two of the consent forms covered two properties each. These are the forms for units 501 and 524 (at 428) and units 504 and 518 (at 452). This is why, although there were 219 qualifying

tenants who were members of the RTM Company on the relevant date, there are only 212 consent forms in the bundle.

138. The Applicant notes that the Respondents suggest at paragraph 40(2) of their Further Submissions that there is no consent form for unit G16 Adelphi Wharf 3 in the bundle. This unit was previously known as unit G09A and renamed by the Respondents in 2024. The consent form is at 434.

139. The Respondents accept at paragraph 42 that the Annex to Mr Dastgeer's witness statement shows the register of members. However, they assert that the Applicant has failed to prove that all of them had agreed to become members. The Applicant notes that in order to meet the minimum 50% threshold required by section 79(5) of the Act, its membership must have included the qualifying tenants of at least 198 of the flats in the Premises. The Applicant has included 212 consent forms covering 214 of the flats, and explained that the qualifying tenants of a further 5 had already consented to become members as they were directors of the RTM Company. Even if all of the 9 names which the Respondents consider are incorrect are removed, the Applicant has still shown that more than half of the qualifying tenants were, at the relevant date, members of the RTM Company.

Ground 6

Failure to comply with Section 79(6)(a) of the Act because the claim notice was not given to each person who on the relevant date was landlord under a lease of the whole or any part of the premises.

140. The Respondents say that in the Applicant's Response, it is averred that "copies were hand-posted with video recording made of the events" but that the Respondents have not seen such video recordings. In the skeleton argument, Mr Morris says that whilst it appears that section 79(6)(a) of the Act has been complied with, the Respondents have not received any evidence of this.

141. As part of the late evidence submitted on 19 August 2025, Mr Dastgeer produced a certificate of posting dated 6 August 2024 of the claim notice to each of the Respondents and Xenia Estates. He included a photo taken at the Post Office on the day. An email with a copy of the claim notice was sent to the Respondents on 9 August 2024. Copies were also hand delivered to the Respondents. Each of the Respondents served a counter-notice, which evidences that they received the claim notice.

Ground 7

Failure to comply with Section 79(6)(b) of the Act, because the claim notice was not given to each person who, on the relevant date was party to a lease of the whole or any part of the premises otherwise than as landlord or tenant.

142. The Respondents submit that whilst the Applicant says that it has given a claim notice to the landlord's managing agent, and it appears that this is the case, they have not received evidence of this.

143. As part of the late evidence submitted on 19 August 2025, Mr Dastgeer produced a certificate of posting dated 6 August 2024 of the claim notice to Xenia Estates which was signed for on 7 August 2024.

Ground 8

Failure to comply with Section 79(8) of the Act, because a copy of the claim notice was not given to each person who on the relevant date was the qualifying tenant of a flat contained in the premises.

144. In the skeleton argument, Mr Morris says that it appears that the Applicant has complied with section 79(8) of the Act and has given a copy of the claim notice to each person who, on the relevant date, was a qualifying tenant. In view of the decision in *A1 Properties Ltd v Tudor Studios RTM Co Ltd [2024] 3 WLR 601,* he accepts that nothing turns on this ground and did not wish to pursue it further.

Deliberations

Ground 1

145. We do not accept that the Applicant's case fails solely due to the fact that they have not provided expert evidence. We have reviewed *CQN RTM Company Limited v Broad Quay North Block Freehold Limited* and do not find the case to be authority for requiring expert evidence to be provided by an RTM company in such an application. It is entirely a matter for the parties as to whether they wish to adduce such evidence and a Tribunal's decision is made on the evidence before it, whether it be adequate or inadequate.

146. Regarding the question of expert evidence, we considered Mr Morris's reference to paragraph 55 of *GUV Harborough & Saltley House RTM Company Ltd v Adriatic Land 3 Limited & Ors* and do not find it to assist matters. The paragraph is clear that the '*first and most basic question was whether the applicant had demonstrated that the premises over which it sought to acquire the right to manage were premises to which Chapter 1 of the Part 2 of the 2002 Act applied. It provided no evidence on that issue.'* There had not been a hearing and *'there was no obligation on a Tribunal to conduct an inspection of its own to obtain evidence which the parties had neglected to provide (nor is there any such obligation on this Tribunal).'* The case is not authority for saying that there has to be expert evidence, but rather, that, as one would expect, it is for the Applicant to adduce evidence to support its claim that the premises fall within the requirements of section 72 of the Act.

147. The Applicant has provided evidence in the form of the DMS Access and Design Statement, videos, photographs and non-expert witness evidence. Indeed, it is on the basis of the DMS Access and Design Statement, that the Respondent conceded, in its Reply to the Applicant's Response, that Phases 2 and 3 with the car park underneath were, indeed, 'structurally detached'.

148. We then went onto consider Mr Morris's submission in his skeleton argument that whilst the Respondent conceded that Phases 2 and 3 were structurally detached, they were not 'self-contained'. We thank both Counsel for the submissions set out in

Further Submissions on this point. Having read all the authorities referred to in both submissions, we prefer the Applicant's legal submissions which rely on the ordinary meaning of the test we have to apply as set out in section 72(2) of the Act and the more recent caselaw after *Triplerose*, particularly *Palgrave* and *Saltley*.

149. We note Mr Morris's reference in paragraph 28 of his Further Submissions to paragraph 23-09 of Tanfield Chambers 'Service Charges and Management' (5th ed.) of which we were not provided with a copy. However, we note that the 5th edition was published in December 2021 and therefore before the cases of *Guv Harborough and Saltley House RTM Co Ltd v Adriatic Land 3 Ltd [2024]* and *Courtyard RTM Co Ltd v Rockwell Ltd [2025]*.

150. As set out in paragraph 86 of Palgrave, '*The question whether a building is self-contained is determined by whether it is structurally detached. That is the statutory test that must be applied*. The Respondents have conceded that Phases 2 and 3 together with the underground car park under both phases are 'structurally detached'. Therefore, considering the ordinary meaning of the statutory test in section 72 (2) of the Act, together they comprise a 'self-contained building' and there is no need to explore the matter further. The Respondents have not argued that the Phases 2 or 3 comprise self-contained parts of a building under section 72(3) parts of blocks and the matter therefore falls to be determined under the test in section 72(2) as detailed above.

151. The *Triplerose* case considered the position where each distinct block of flats was self- contained i.e. structurally detached. That is not the case here and the case can therefore be distinguished.

Ground 2

152. When asked by the Tribunal, Mr Morris accepted that circulation areas in the car park were to be discounted from the calculation as they were common parts. This is the approach the Tribunal considers to be correct and the one it has taken. However, this contrasted with the position advanced in the Respondents' skeleton argument where the 25.52% figure had been reached by utilising the area claimed by the Applicant to be the entire internal area of the car park, including circulation areas.

153. On the basis of the parties' submissions, the combined area of Phases 2 & 3 is 21,615.10 m² (Respondents) or 22,088 m² (Applicant). The commercial area is 433 m² and is not in dispute. The car park figures are not agreed. However, the parties agree that any area used in conjunction with a dwelling is to be deemed residential, that at least some of the car parking spaces are used in conjunction with dwellings, and that circulation areas in the car park would be common parts and therefore excluded from the calculation. On the basis of the Land Registry records, we find that car parking spaces were demised to at least 185 of the units and are therefore considered as residential.

154. If we take the lower of the two areas for Phases 2 & 3 as being 21,615.10 m² and the commercial area of 433 m², we note that the total area of car parking spaces not used in conjunction with dwellings would need to be at least 6,771 m²

(21,615.10+433+6,771 = 28,819.10). 21,615.10 m² (residential area), divided by the total area of 28,819.10 m² is 75%.)

155. At 185 car parking spaces, the floor area of each car parking space would need to be 36.6m² or at 189, 35.83 m². We have not measured the spaces but would expect a typical car parking space to be in the region of 12.5 m². We inspected the car park and the car parking spaces, whilst not measured, were clearly not almost triple the size of a standard space. Further, this assumes that every space is deemed to be in non-residential use. (The Applicant states that 12 of the 185 spaces are motorcycle spaces which they measure as being smaller.) Even allowing for this, the car parking spaces would need to be exceptionally large for the non-residential floor area to exceed 25%.

156. We note Mr Morris's reference to there being a failure to jointly instruct an independent surveyor to calculate the relevant areas. The Respondents did not adduce any such evidence on their part. However, based on our inspection of the site and the DMS Access and Design Statement, we did not consider that an independent expert report was required.

157. Despite the lack of agreed measurements for the car parking area and due to the substantial residential area of Phases 2 & 3, combined with the small commercial element of 433 m², and the categorisation as residential of the car parking spaces demised to at least 185 of the units, we are able to determine that the non-residential area does not exceed 25% and that the RTM claim does not fail on this ground.

Ground 3

158. We are clear that, as over 50% of the qualifying tenant's lived overseas and only 20 out of the 396 units were owner occupied that the Applicant had a difficult task regarding giving NIPs to all qualifying tenants.

159. At first blush, Mr Morris's submission regarding the interpretation of 'give' a notice is attractive. However, we disagree with his submission.

160. His reference to *Property Notices: validity and service (3rd ed.), by Tom Weekes KC, at 5.1.* omits the start of the sentence, namely '*In the absence of any contractual or statutory provision regulating service, a notice is 'served' or 'given' if the person entitled to give it causes it to be received by or come to the attention of the recipient or their properly authorised agent.'* We find that Section 111(5) of the Act does include provisions for service by expressly allowing notices to be given to a qualifying tenant 'at the flat' and therefore his argument fails.

161. We note Mr Morris's submissions on service under common law and under the provisions of the Interpretation Act 1978, in relation to notices served by post. However, as held in *Khan v D'Aubigny*, the 'deemed service' provisions of section 7 of the Interpretation Act 1978 only apply if the statutory provisions concerned specifically requires service by post. Section 111(1) of the Act does not require notices to be served by post- it only says they may be served by post. The Applicant has provided evidence that all units, with the exception of unit 722 in Phase 3, received a NIP by hand delivery to their mailbox, (in addition to other methods).

162. We had regard to *Avon Freeholds Limited v Regent Court RTM Co Ltd [2013] UKUT 0213 (LC)*. The Upper Tribunal refers, in paragraph 42, to section 111(5) as a '*provision for the deemed giving of notice [which] provides a RTM company with a means of achieving valid service on a non- participating tenant. This will be so even if the tenant is not living in his flat in the premises and the RTM company does not know where he is'.*

163. In Paragraph 48, the Upper Tribunal continues:

In section 111(5) of the 2002 Act, Parliament embraced the concept of a deemed giving of notice. A qualifying tenant can be treated as having been validly given a notice of participation even when he has not had actual notice of it. Inherent in the statutory provisions for giving such notices is the possibility that one or more of the qualifying tenants will not know that a right to manage process has begun Even if notice is given at another address notified by the tenant, this in itself is no guarantee of his becoming aware of the process.'

164. At the hearing, Mr Morris submitted that section 111(5) was not a deeming provision. However, having regard to the above which to us is clear, we disagree with him. Neither do we accept that the comments were obiter as, in our view, the case was concerned with how NIPs are validly served and whether or not the requirement to give a NIP is directory or mandatory. Neither do we agree that the case was overturned by *Cresta Court* (see below). We note Mr Morris's references to paragraphs 24.31 and 24.33 of Service Charges and Management 5th Edition Tanfield Chambers which support the view that section 111(5) is a deeming provision and if a NIP is hand delivered to the letter box of a flat, it will be served on the day of delivery.

165. We also considered the Act's provisions as a whole. We note that section 79(1) of the Act provides '*… and in this Chapter the 'relevant date', in relation to any claim to acquire the right to manage, means the date on which the notice of claim is given'.*

166. Taking Mr Morris's argument, 'the relevant date' of any claim notice could theoretically be 396 different dates depending on when the qualifying tenant actually received it. This would depend on the vagaries of people's lives. What would happen if a tenant was working away for several weeks or months and had not made arrangements to forward any mail hand delivered to the address as allowed by section 111(5) - is the whole claim then on hold?

167. At the hearing, Mr Morris suggested that where there was no evidence of engagement following the hand delivery of the NIP, there was no evidence that it had been received. This is incorrect. A NIP may well have been received and the qualifying tenant decide not to engage with the process for their own reasons.

168. We note paragraph 98 of *A1 Properties v Tudor Studios RTM Company Ltd:*

'First the purpose of the legislative scheme as explained in the Consultation Paper includes the objective that opportunities for obstructive landlords to thwart the transfer of the right to manage should be kept to a minimum. The procedural

requirements have not been included to create traps for the unwary, nor to afford unwarranted opportunities for obstruction on the part of objecting landlords who have not themselves been significantly affected by any particular omission.'

169. The purpose of a NIP under section 78 (2) is to inform the qualifying tenant of the intention of the RTM company to acquire the right to manage and to invite the recipient to become a member of the RTM company. If the tenant does not receive the NIP, how are they prejudiced? If they do not wish to become a member of the RTM company, there is no prejudice, as the RTM company can proceed with a notice of claim if it has not less than one half of the qualifying tenants on board. The provisions explicitly do not require every qualifying tenant to be on board. A qualifying tenant cannot 'object' to an RTM's intention to acquire the right to manage other than by choosing not to become a member of the RTM company. If the qualifying tenant does wish to become a member, they can become one at any time, and they are not prejudiced by the fact that they are not part of the cohort of not less than one half of the qualifying tenants required to give a claim notice. Further, how are the Respondents prejudiced by any failure by the Applicant to comply with section 78 (2), as the Respondents can rely on the protection under section 79 (5) of the Act, namely that the membership of the RTM company must, on the relevant date, include a number of qualifying tenants which is not less than 50% of the total number of flats.

170. At the hearing, we asked Mr Morris how, in his opinion, in circumstances such as this Property where the majority of qualifying tenants are out of the country, a RTM company could ensure that it complies with rules regarding the service of notices, to which his response was to post through a postal service all notices due to the 'deemed service' provisions. However, those provisions are rebuttable and, the RTM knows, before sending the notices by post, in circumstances such as these, that they are extremely unlikely to be received by the qualifying tenant at that address.

171. We had regard to the very recent case of *Avon Freeholds v Cresta Court*. The case concerned premises Flats 7 to 26 where, due to the lack of registration of the lease of a flat, no NIP had been given to one qualifying tenant of one flat as the RTM company were unaware of her interest in the flat.

172. The question considered in *Cresta Court* was whether a failure to serve a NIP on a qualifying tenant invalidates a claim notice and it was held that it did. We accept that section 79 (2) of the Act expressly sets out the consequence of failure to comply with section 78(1), namely that a claim notice cannot be given and that in those circumstances an analysis as set out in *R v Soneji [2006)]*,(as to whether it was a purpose of the legislature that an act done in breach of the relevant provisions should be invalid), is inappropriate. However, in our view, the case does not apply in the present case. For the reasons set out above regarding the interpretation of 'given', we have found that, with the exception of unit 722 in Phase 3, (see below), a NIP was given to each qualifying tenant by hand delivery to the mailbox at each unit under the deemed service provisions of section 111(5) of the Act and therefore section 79(2) is not relevant.

173. Annex 1 evidences that the NIPs for Units 712 ,722, and 816 in Phase 3 were hand delivered to the mailbox of unit 712 as it was the same qualifying tenant, Mr Power. Therefore, the NIPs for units 722 and 816 cannot rely on the deemed service

provisions of section 111(5) of the Act. On being questioned by Mr Morris on this point, in his oral evidence, Mr Dastgeer said that he had had a discussion with Mr Power regarding the NIPs and Mr Power had told him that he would go with what the majority wanted but that he would not complete the consent forms. It is unfortunate that this was only raised at the hearing, as this prevented Mr Dastgeer from providing evidence to corroborate this. The Respondent did not produce any evidence from Mr Power that he was not aware of the NIPs in relation to any of his units. We note that Mr Power did not submit a consent form in relation to any of his units and this is consistent with Mr Dastgeer's oral evidence. Mr Power also owns units 616, 624 in Phase 2 and unit 816 in Phase 3 which were hand delivered to each unit and consent forms have not been returned in relation to any of the units he owns. Throughout the hearing, we found Mr Dastgeer to be a credible witness and we have no evidence to suggest that he did not have such a conversation with Mr Power. Therefore, on the balance of probability, we find that such a conversation did take place and that the NIPs in relation to units 722 and 816 came to the attention of Mr Power through that conversation.

174. Therefore, as all qualifying tenants were given a NIP by hand delivery at their respective unit, with the exception of Mr Power in relation to unit 722 with whom Mr Dastgeer had had a conversation and therefore brought it to his attention, we find that the Applicant has met the requirements of section 78(1) of the Act.

175. Further, based on the Applicant's evidence, and the lack of any evidence from the Respondent to the contrary, we are satisfied that the NIPs included the prescribed statutory notes.

Ground 4

176. As we have found that the NIPs were 'given' when they were hand delivered to the mailboxes of each flat, based on the Applicant's evidence, we find that the last NIPs were given on 22 July 2024. This was more than 14 days before the claim notice was given on 6 August 2024 and we find that the Applicant has met the requirements of section 79(2) of the Act.

Ground 5

177. We note Ms Edmonds refers to the Respondents' Further Submissions regarding the inaccuracy of the names in the claim notice, a submission that the claim notice is defective and that this was not part of their objection in Ground 5. However, the issue of inaccurate names was referred to in the paragraphs below the heading and has been a consistent theme, as it is also referred to in the Respondent's Reply. We therefore considered it appropriate to consider the point.

178. It is clear from the Applicant's evidence that they sought to exercise the right to obtain information from the Respondents managing agent under section 82 of the Act in order to ascertain the 'particulars required' to be included in a claim notice. The Respondents managing agent did not provide the information and were taken to the Ombudsman regarding that failure and, we understand, were found wanting. Errors in names in the claim notice may have been avoided if the information had been provided as required.

179. On a plain reading of the section, we do not accept Mr Morris's submission that 'particulars required' under section 80(2) relate only to the information contained within section 80(4) of the Act and not the 'full name' as required under section 80(3) of the Act. We suggest the use of the word 'and' and the phrase 'each such person' in section 80(4) necessarily ties in and requires the full name of the person to allow the information to be provided in section 80(4) of the Act to be of any use. We therefore find that section 81(1) applies where there may be an inaccuracy in the claim notice and the claim notice is not invalid as a result of the anglicised names. We prefer Ms Edmonds legal submissions on this point. We find that no prejudice was caused to the Respondents, particularly within the context of the Respondent's managing agent having failed to provide information under section 82 despite numerous requests.

180. Under the provisions of section 75 of the Act, joint tenants are regarded as jointly being the qualifying tenant. A review of the relevant consent forms and company register of members shows that the names of the joint tenants are listed, although we accept that on the claim notice, in several instances, only one name of the 'qualifying joint tenant' has been included. This relates to Phase 2 Units 116, 213, 224, 324, 419, 506, 514 and Phase 3 Units 212, 220, 330 and 416.We had regard to section 81(1) of the Act, and for the reason set out at paragraph 179 above, do not consider that the claim notice is invalid where only one of the joint tenants was named. We also had regard to the provisions of section 81(2) of the Act. We do not read section 81(2) as restricting the 'sufficient number' to relate only to those qualifying tenants named in the claim notice. If that was the intention, we suggest that Parliament would have phrased the provision accordingly. The fact that joint tenants completed the relevant consent forms accurately and that in the above cases are each named on the company's register of interest before the relevant date reflects their interest in the Applicant company seeking the right to manage. In our view, having completed the consent form naming each joint tenant, it would be contrary to the spirit of the legislation if a failure to include the names of all joint tenants on a claim notice would invalidate it. Further, we do not see how the Respondents have been prejudiced by the alleged failure as they have access to the correct information as to the qualifying tenants which their agent did not supply to the Applicant under section 82 of the Act. We therefore do not agree with Mr Morris's submission.

181. In relation to the number of qualifying tenants who were members on the relevant date, we have noted both Counsel's submissions. We have reviewed the register of members at Annex 1 of Mr Dastgeer's statement and the consent forms included in the Applicant's Statement of Case and find that there are some inconsistencies. We have therefore only had regard to where the register gives a date under the column headed 'date membership form received' which is before the relevant date and where there is a consent form. This approach may exclude people who at the relevant date were actually members, as we note that there are consent forms dated well before the relevant date, but for some reason there is no date entered under the 'date membership form received' column. We have therefore ignored the entries in relation to units 311, 317, 404, 406, 407, 416, 512, 513, 516, 517,522, 617, 623, 707, 708, 709, G03, G06 and G09 in Phase 2. Mr Morris is in error in relation to Unit 501 in Phase 2 as there is a consent form at A425.

182. In relation to Phase 3, we have ignored units 107, 112, 114, 117, 118, 229, 309, 314,403, 501, 505, 513, 525, 615, 710 and G16. Mr Morris is in error as a consent form for Units 504 and 518 is included at A454.

183. There are consent forms for addresses not included within the claim notice, which we have ignored.

184. In total, when comparing, in relation to each qualifying tenant, the consent form, claim notice and register of members, we find 72 and 136 consent forms for Phases 2 and 3 respectively, totalling 208 in relation to names of qualifying tenants on the claim notice who have agreed to become members of the Applicant company and are on the register of members.

185. We have not included in the above total unit 216 in Phase 2 as there is an error on the consent form (A 417). In the main body of the consent form, it refers to unit 220, but in the paragraph relating to joint leaseholder it refers to Unit 216. We note that there is a consent form for unit 220 in a different name. We therefore consider it prudent to exclude this consent form.

186. We have also excluded from the above total unit 319 in Phase 3 as agreed by the Applicant due to the error previously referred to.

187. Units 101, 704 and G10 in Phase 2 and Units 430 and 509 in Phase 3, all of which are included in the claim notice, do not have consent forms. However, the qualifying tenants of these units are directors of the company as evidenced by the certificate of incorporation. Under the provisions of section 112(1) of the Companies Act 2006, as subscribers to the Applicant company's memorandum of association, they are deemed to have agreed to become members and a NIP/ consent form is not required and therefore they are to be added to the total, resulting in 213.

188. In relation to the qualifying tenant of Unit 319 of Phase 2, we note the 'letter of authorisation' dated 1 July 2025 in Annex C of Mr Dastgeer's statement of 19 August 2025 in which the leaseholder says she authorised her husband, who resided at the address and was appointed a director of the RTM on 16 February 2024, to deal with matters including the NIP and claim notice as she was out of the country. However, it is unclear whether this is intended to be a retrospective authorisation or a witness statement. If the latter, there is no statement of truth. We therefore attach little weight to it and find that her husband's name on the claim notice was not that of the qualifying tenant and exclude it.

189. In relation to Unit 401 of Phase 2, Annex C has a letter dated 21 July 2025 headed 'to whom it may concern' which appears to be a witness statement in an incorrect format and with no statement of truth stating that the qualifying tenant had authorised Ms Li Man Chi, a director of the Applicant company, to deal with all matters relating to the Applicant. For the same reason as above, we attach little weight to it and find that her Ms Li Man Chi's name on the claim notice was not that of the qualifying tenant and exclude it resulting in a total of 211.

190. In relation to the 7 instances referred to in paragraph 116 above, where the qualifying tenant is the name of a company but the claim notice has the name of an individual, we have reviewed the relevant consent forms and are persuaded by the

arguments submitted by Applicant's Counsel referred to at paragraph 134 above, but only where there is a clear reference in the consent form to the company as the qualifying tenant. The consent forms for Phase 3 units G04 and 202 name the qualifying tenant as Dr Mburu Limited and are signed by Nya Mbura in their capacity as a Director. The consent form for Phase 3 unit 322 names the qualifying tenant as Tim Davies, Director of Latchmore-Alpette Ltd and is signed by Mr Davies in his capacity as Director.

191. The consent form for Phase 2 unit 508, in Phase 3 names the qualifying tenant as Paul Adams (CMG Properties Limited) and is signed by Paul Adams. This also applies to units 404,414,421 and 630 in Phase 3 which are included on the same consent form, although these units have not been specifically raised by Mr Morris. We consider that whilst the company is named in the consent form, it is not explicit that Paul Adams is signing in his capacity as Director and therefore, giving the benefit of doubt to the Respondent, we exclude this consent form in relation to the 5 named units leading to a total of 206.

192. The consent forms for Phase 3 Units 504 ,518 and G09 have not been completed correctly as they do not refer to a company name at all and are signed in a personal capacity without any reference to being signed in the capacity of a Director. We therefore exclude those units. This leads to a total of 203 which is above the 198 required.

193. Even if we are wrong on this point, a deduction of 11 in relation to the units referred to in paragraphs 190 to 192 above would only reduce the total to 200, which is still above the 198 required.

194. In conclusion, we find that the Applicant has met the requirements of section 79 (5) of the Act.

Ground 6

195. From the Applicant's evidence of the certificate of posting dated 6 August 2024, we find that the Applicant met the condition set out in section 79(6)(a). Further, each Respondents issued a counter-notice which suggests that they had received a copy of the claim notice. We did not consider it necessary to see any 'video recordings' of posting.

Ground 7

196. From the Applicant's evidence of the recorded signed delivery dated 6 August 2024 and evidenced as signed for on 7 August 2024, we find that the Applicant met the condition set out in section 79(6)(b).

Ground 8

197. As Mr Morris did not wish to pursue this ground, we did not deliberate or make any determination.

Conclusion

198. The Tribunal determines under section 84(5) of the Act that, on the relevant date, the Applicant was entitled to acquire the right to manage the Property.

199. By virtue of section 90(4) of the Act, the acquisition date is three months after this determination becomes final. Section 84(7) of the Act defines when a determination becomes final, which is determined by whether or not an appeal against this determination is brought.

Costs

200. In Further Submissions, the Applicant refers to the Respondents having repeatedly raised unmeritorious arguments, even after the Applicant has explained how and why it has satisfied the various statutory requirements. This has been continued in the Respondents' approach to the Further Submissions. As its application has been successful, the Applicant wishes to apply for an award of its costs under Rule 13 of the Tribunal Procedure Rules.

201. Rule 13 only allows us to award costs in limited circumstances. Rule 13(1) as to wasted costs does not apply. We have therefore considered whether Rule 13(2) applies, namely whether the Respondent has acted unreasonably in defending or conducting proceedings. The Respondent cannot be criticised for putting the Applicant to strict proof in relation to its claim to acquire the right to manage. We accept that the matter has been made more complicated by the number of residential units and the fact that so many of the qualifying tenants live overseas. However, it is for the Applicant to satisfy that the legislative requirements have been met and the Respondents have required them to do that in relation to each aspect of the process. Neither do we categorise the Respondents legal submissions as raising unmeritorious arguments. The caselaw in right to manage cases is still being developed, as reflected in the submission of two authorities decided this year.

202. We find that the Respondents have not acted unreasonably in defending or the conduct of the proceedings. Matters would have been greatly assisted if the Respondents or their agent had provided the information requested by the Applicant under section 82 of the Act, and also by 'fleshing out' their grounds for objection in the counter-notices but those actions were before the commencement of these proceedings. We therefore do not award costs.

Appeal

203. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson