FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KB/LRM/2018/0006**
Premises	:	**46-130 Wheelwright House, Palgrave Road, Bedford MK42 9EX**
Applicant	:	**Wheelwright House (46-130) RTM Co Ltd**
Representative	**:**	**RTMF Services Ltd**
Respondent	**:**	**Sinclair Gardens Investments (Kensington) Ltd**
Representative	**:**	**Bolt Burdon & Mr Paul Letman of Counsel**
Date of Application	**:**	**25th September 2018 (rec'd 11th October)**
Type of Application	**:**	**For an order that the Applicant is entitled to acquire the right to manage the Premises (section84(3) Commonhold and Leasehold Reform Act 2002)**
Tribunal	**:**	**Judge J R Morris** **Mrs M Hardman IRRV (Hons) FRICS** **Mr J Francis QPM**
Date of Hearing	**:**	**14th February 2019**
Expert Reports	**:**	**7th May 2019**
Date of Decision	**:**	**23rd May 2019**

DECISION

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Decision

1. The Tribunal decides that the failure to serve on Notting Hill Genesis a Claim Notice to which it could serve a counter notice does not invalidate the Applicant's claim for the right to manage.

2. The Tribunal determines that pursuant to section 72(3) Commonhold and Leasehold Reform Act 2002, the Premises are part of one building and there is a vertical division between them and the rest of the building, and the structure of the building is such that the Premises could be redeveloped independently of the rest of the building.

3. The Tribunal determines that the services in relation to the part of the building, which are the Premises, are provided independently or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building pursuant to section 72(4) (a) and (b) Commonhold and Leasehold Reform Act 2002.

4. The Tribunal determines that the Premises comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.

5. Therefore, the decision of the Tribunal is that the Applicant was, on the relevant date, entitled to acquire the right to manage the Premises under the Commonhold and Leasehold Reform Act 2002.

Reasons

Introduction

6. By a claim Notice dated 13th July 2018 given pursuant to section 70 of the Commonhold and Leasehold Reform Act 2002 (the Act) the Applicant sought to acquire the right to manage the Premises.

7. By a Counter Notice dated 15th August 2018, the Respondent alleged that the Applicant was not entitled to acquire the right to manage the Premises. The Respondent stated that the Premises did not comply with sections 71, 72(2), 72(3) and 72(4) of the Act in that:
   a) The Premises are not structurally detached.
   b) There is a car park beneath the Premises which extends to beyond the foot print thereof, and the Premises are therefore divided in a different vertical plan in the basement.
   c) The Premises could not be redeveloped independently from the adjoining building on the Estate.
   d) The Premises comprise three self-contained buildings or parts of a building. In *Triplerose v 90 Broomfield RTM Company Limited* [2015] EWCA Civ 282 the Court of Appeal determined that the right to manage only applied to one set of premises.

8. On 11th October 2018 the Tribunal received an Application dated 25th September 2018 from the Applicant seeking a determination pursuant to section 84(3) of the Act.

9. Directions were issued on 30th October 2018. Neither party agreed to the matter being dealt with on the basis of paper submissions only and requested a hearing. A late request was made by the Respondent for an additional direction requiring expert evidence to be allowed regarding the independent development of the building. The Applicant objected to this on the basis that the relevant matters can be decided by an expert tribunal and it was concerned about the costs it would involve. The additional direction was refused by the Procedural Judge on the grounds that the application was late, the need for expert evidence had not been mentioned prior to the request and no new issues had been raised.

10. A Statement of Case was provided by the Respondent dated 16th November 2018 which further developed the objections raised in the Counter Notice that the Premises were not, as required under section 72 of the Act:
- a self-contained building (s72(2));
- nor were they a self-contained part of a building in respect of which there was
  (a) a vertical division and
  (b) which could be redeveloped independently of the rest of the building (s72(3)) and to which the relevant services of pipes cables and other fixed installations (s72(5)) were independently provided to the occupiers (s72(4)) or could be so provided without involving works likely to result in a significant interruption s72 (4)(b).

11. In the Schedule to the Counter Notice the Respondent had been under the impression that the Premises comprised three self-contained buildings and referred to *Triplerose v 90 Broomfield RTM Company Limited* [2015] EWCA Civ 282 where the Court of Appeal determined that the right to manage only applied to one set of premises. This point was not developed in the Statement of Case and at the hearing Mr Letman said that it had subsequently been appreciated that, although reference is made to the Premises comprising three Blocks, D, E and F, the blocks were in fact all part of one building, therefore he said that that issue was no longer in contention.

12. The Applicant replied on the 29th November 2018 contesting the Respondent's response and the points made are referred to further in these Reasons. The Respondent replied on 6th December 2018 re-affirming its position.

13. The parties also provided skeleton arguments which were included in the bundle. The points raised by both parties were focused on the provisions of section 72 of the Act.

14. However, the Respondent raised a preliminary issue which was that the Claim Notice may not have been properly given. It was stated that firstly, the Notice of Invitation to Participate must be served on all Leaseholders under section

79 (2) and that secondly, the Claim Notice must be served on all landlords under section 79(6)(a).

15. It was stated that Block D included in the claim is subject to a separate head lease (covering Blocks B, C and D Britannia House), to a Housing Association granting a term of 999 years from 31st May 2006. It was submitted that the Housing Association should have been given both a Notice of Invitation to Participate as a Leaseholder and a Claim Notice as a landlord to which it could serve a counter notice.

16. The Applicant confirmed that a Notice of Invitation to Participate had been served but not a separate Claim Notice as a landlord to which it could serve a counter notice.

17. The matter was dealt with as a preliminary issue.

The Law

18. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

19. Section 72 Premises to which Chapter applies

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

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

(3) A part of a building is a self-contained part of the building if—
(a) it constitutes a vertical division of the building,
(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
(c) subsection (4) applies in relation to it.

(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

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

20. Section 79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3)…

(4)…

(5)…

(6) The claim notice must be given to each person who on the relevant date is—
(a) landlord under a lease of the whole or any part of the premises,

18. Section 96 Management functions under leases

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

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

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

(4) Accordingly, any provisions of the lease making provision about the relationship of—
(a) a person who is landlord under the lease, and
(b) a person who is party to the lease otherwise than as landlord or tenant,
in relation to such functions do not have effect.

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

(6) But this section does not apply in relation to—
(a)functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
(b)functions relating to re-entry or forfeiture.

(7)…

21. Section 97 Management functions: supplementary

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

(2) *A person who is—*
   (a) *landlord under a lease of the whole or any part of the premises,*
   (b) *party to such a lease otherwise than as landlord or tenant, or*
   (c) *a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,*

   is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.

Note regarding the identification of the Premises

22. The Tribunal was provided with the Supporting Statement for the Planning Application for the Development, the Leases and attached plans. This states that the Development is 260 residential flats in 12 individual 'buildings', also referred to in the leases and the Land Registry documentation as 'blocks', arranged in an articulated 'U' form, broken into two halves which are divided by a spine access road. Each half has 6 adjoining 'buildings' or 'blocks' of differing heights from four to eight storeys.

23. Due to the 6 'buildings' or 'blocks' on each side being adjoining they are essentially, to the observer, two buildings, irrespective of the manner of their construction or structure. The building on the East side of the Development is Britannia House and that on the West side is Wheelwright House. The 6 'buildings' or 'blocks' on each side are in some documents lettered A to F from the dividing spine access road and this is the way in which they are referred to in these reasons.

24. In relation to Wheelwright House the Flats are numbered as follows:
    Block A Flats 1 – 24
    Block B Flats 25 - 37
    Block C Flats 38 - 45
    Block D Flats 46 - 58
    Block E Flats 59 - 74
    Block F Flats 75 – 130

25. The Premises comprise Blocks D to F, Flats 46 – 130.

26. The diverse manner in which the parts of the Development have been referred to appears to have caused some confusion with the Land Registry.

27. The Lease by the Developer to Paddington Churches Housing Association Limited, now understood to be Notting Hill Genesis, is number 60 in the Schedule of Notices of Leases in the Freehold Land Registry Title Number BD311453. This entry on the Register refers to the demised property as being

of Blocks B1, C1 and D1 Britannia House. The Leasehold Land Registry Title Number BD264216 for the Lease also refers to the demised property as being Blocks B1, C1 and D1 Britannia House. Both titles state that the demised property is identified on the plan as being blocks numbers 28, 29 and 30. However, these plan numbers refer to Blocks B1, C1 and D1 Wheelwright House not Britannia House. It appears from the Lease provided, that the numbered plan annexed to the Register correctly refers to the demised property, and that the entries on the Register should be amended to read Wheelwright House not Britannia House.

28. The Tribunal hereafter refers to the constituent parts of the buildings as Blocks.

Inspection

29. The Tribunal made its inspection in the presence of the Applicant's Representatives, Mr D Joiner from RTMF and Mr Paul Letman of Counsel for the Respondent.

30. As noted above, the Tribunal found that the Development comprised two buildings with an access road between them. The building on the East side of the Development is Britannia House and that on the West side is Wheelwright House. Each building comprises 6 sections (which are referred to in documentation as 'blocks' which are identified by letters A to F). The sections can be distinguished by the differing number of floors and hence roof levels and that each has its own separate entrance to a hallway, stairs and landings, off which are the flats.

31. The Tribunal noted in particular that under Blocks D, E and F there was an underground car park. It appeared to the Tribunal from its inspection of the car park that the front wall of all the Blocks, the external flank wall of Block F and the adjoining flank of Blocks D and C appeared to rest upon a linear foundation in the ground. To create the open car park the storeys above were supported on a network of concrete pillars and beams.

32. It was also noted that the flank wall of Block D rose above the roof line of Block C.

33. In the car park adjacent to the flank wall of Blocks D and C there was a plant room in which were two water tanks and three pumps. The water from the main entered the tanks which kept a reserve of water to feed the pumps. The reserve being necessary to ensure that a consistent flow was maintained to the tanks particularly at time of high demand. There was no indication as to which pumps supplied which flats of which Blocks. However, it was known that the pumps supplied the water to Blocks C, D, E and F.

34. To the side of the plant room there was an area of similar size to the plant room adjacent the flank wall of Blocks D and C.

35. The Tribunal found that externally the Blocks were modern and in generally fair to good condition. The grounds were in fair condition for the time of year

and the grass and shrubs appeared to have been cut during the previous season. The hard landscaping was in good condition as was the car park which was free of litter.

Hearing

Attendance at the Hearing

36. Those present were the Applicant's Representatives Mr D Joiner and Mr N Bignell from RTMF and Mr Paul Letman of Counsel for the Respondent.

37. Both parties submitted written Statements of Case and Skeleton Arguments.

Preliminary Issue of the Claim Notice

38. Mr Letman for the Respondent referred to a lease in the Bundle at page 287 which related to Blocks B1, C1 and D1 (Phase West), i.e. Wheelwright House. The Lease is dated 8th May 2008 and is between WN Developments Limited (the Landlord) (1) and Paddington Churches Housing Association Limited (the Tenant) (2) for a term of 999 years from 31st May 2006. It was noted that the Tenant is now Notting Hill Genesis, also a Housing Association and as stated above referred to hereafter as "the Association". As noted above it appears the Land Registry Entry incorrectly refers to Blocks B1, C1 and D1 as being part of Britannia House whereas they are part of Wheelwright House.

39. Mr Letman submitted it was obvious that as a Housing Association the Association was a landlord. It was said that the flats were clearly occupied and could be occupied on a short or long lease. He said that under the definition provisions the terms lease and tenancy were synonymous and that no distinction was made between a landlord of a short or long tenancy or lease.

40. As a Landlord, the Association should have been served with a Claim Notice and not just a Notice of Invitation to Participate as a Leaseholder.

41. Mr Letman then referred to *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA 89 in which he said that one of the issues was, as in this case, whether the claim notice was served on the intermediate landlord and, if it was not, whether service on the intermediate landlord was required and, if it was, whether the failure to serve the intermediate landlord was fatal to the whole right to manage procedure or whether the deficiencies in service could be overlooked.

42. He said that in *Elim Court* at [50] to [52], *Natt v Osman* [2014] EWCA Civ 1520 had been referred to with approval and he drew attention to paragraph 28 in which Lewison LJ stated that cases regarding compliance with statutory requirements fell into two broad categories. Mr Letman said that this case fell into the second category of "*cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question*".

43. It was recognised in *Natt v Osman* at [31] to [34] that substantial compliance in this class of case is not enough and as summarised at [52] in Elim:
The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case: see [32]. The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole: see [33]. Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid: see [34]. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation.

44. Mr Letman drew particular attention to [58]:
In this case it must also be recalled that the persons (and the only persons) entitled to object to the exercise of the right to manage are the landlord (or landlords), a party to a lease who is neither landlord nor tenant, or a court appointed manager. As Mr Jacob submitted, in the majority of cases these are persons who are likely to have management responsibilities in the sense defined in section 96(5). In the light of the general policy described in the consultation paper, the focus must be on whether Parliament intended that <u>a landlord</u> (or other person entitled to serve a counter-notice) could successfully contend that the defect in the relevant notice was fatal to its validity.

45. Also, to [59]:
*there may be a distinction to be drawn between a failure to satisfy jurisdictional or eligibility requirements on the one hand, and purely procedural requirements on the other. That was certainly part of the Government's policy as set out in the consultation paper… (*Mr Letman provided extracts of Consultation Paper No. 243 Leasehold home ownership: exercising the right to manage, January 2019.)

46. In *Elim Court* Mr Letman said that although the Court of Appeal held that a failure to serve a claim notice on the intermediate landlord of a single flat with no management responsibilities (as defined) does not invalidate the notice. However, on that reasoning, he submitted, the present case can be distinguished. This was a landlord of 13 flats and that at [69] the Court of Appeal recognised that:
Although the grounds upon which an objection can be sustained are very limited, a failure to serve an intermediate landlord deprives him of that statutory right. Absent the service of a counter-notice the RTM company automatically acquires the right to manage. This applies not only to management functions as defined in section 96 (5) but also to the right to give consents under provisions of the intermediate lease. Accordingly, even

though a particular intermediate landlord may not have management functions relating to the repair, maintenance or insurance of the block there are still potentially important rights of which it would be at least temporarily divested.

47. Mr Joiner for the Applicant replied that a Notice of Invitation to Participate had been served on all Qualifying Leaseholders, as was required by the legislation. The Land Registry Entries for both the freehold BD311453 and leasehold BD264216 identifies the Association as a Leaseholder. The Lease provided does not refer to it as being a head lease.

48. He said that the reference to "landlord" in the legislation was to one who had granted long leases because only they would have management obligations which would be taken over by the RTM Company. He said that the Association did not have any management functions in relation to the common parts for which the RTM Company had responsibility.

49. He added that it was not relevant that the Association as a long Leaseholder could itself grant long leases because it had not done so on the "relevant date" for any of the flats included in the Premises. He said there was no way of knowing about short periodic tenancies. He submitted that a Counter Notice could only be given to a landlord of a long lease because only they would show up on the Land Registry Entry.

50. Even if the Tribunal took the view that a Claim Notice should have been served, nevertheless, it was said in *Elim* that if a Claim Notice had been served on a landlord who could and did then serve a Counter Notice then the failure to serve a Claim Notice on all landlords does not invalidate the Claim Notice that was served. He said that *Elim* did not say that prejudice was irrelevant and here, the Association did not suffer prejudice.

51. Finally, Mr Joiner said that the Government's intention was that the procedures should be as simple as possible and that this had been re-iterated in a number of cases including *Elim*.

52. Following the Hearing Mr Joiner wrote to the Tribunal applying to make further representations on the issue. He felt he had not had an opportunity to fully address the point as the point had only been raised by the Respondent in the skeleton argument just prior to the hearing. The Tribunal was satisfied that both parties had made full oral submissions in respect of the issue at the hearing which were supported by cases, of which the parties' representatives showed themselves to be cognisant. The Tribunal would take account of the legislation, oral submissions and the related cases in making its decision and therefore decided no further submissions regarding the preliminary issue were to be made.

Decision Regarding the Preliminary Issue

53. First, the Tribunal considered whether the Association was a landlord upon whom the Applicant should have served a Claim Notice under section 79(6)(a).

54. The Tribunal found that the Lease dated 8th May 2008 between WN Developments Limited (1) and Paddington Churches Housing Association Limited (2) referred to Paddington Churches Housing Association Limited as "the Tenant".

55. The Tribunal also found that the Lease was almost identical to the Leases of flat 99 dated 13th December 2013 between WN Developments Limited and Maureen Maisie Emmett and flat 60 dated 11th April 2012 between WN Developments Limited and Alexander Timothy Chaple which had been provided. The main difference in the view of the Tribunal was the extent of the Demise to the Association, in that it included all the flats and the internal common parts of Block D1, except the basement parking and service area (the Excluded Part), whereas the Demise of flats 99 and 60 only included the flat and a parking space (Prescribed Clause LR4).

56. The result of this meant that the Association as a tenant had wider repairing obligations (including those under the Landlord and Tenant Act 1985) than other tenants on the Development.

57. All three Leases required the respective tenants to pay a proportion of the service charge to the Landlord (Schedule 8). All three Leases also require the tenants to ensure that an assignee or underlessee directly covenant with the landlord to comply with the terms of the Lease (paragraph 3.6 of Schedule 3).

58. The Association Lease did not make any reference to the Association being an intermediate landlord. It did not have any obligation to collect rent, insurance premiums or service charges on behalf of the Landlord or any additional rights such as to consent to assignees or leaseholders on behalf of the Landlord. Whether the flats in Block D1 were occupied or not made no difference to the obligations or payments made by the Association as Tenant to the Landlord. Apart from its Demise being more extensive, and therefore its repairing obligations as a tenant more onerous, it was in no different a position to that of the Tenants of flats 99 or 60.

59. It may have sublet its flats on short or periodic leases or tenancies in order to raise money to pay the rent, premiums or service charge under the Lease but in the absence of evidence to the contrary, it was the only long leasehold tenant and therefore Qualifying Leaseholder of the Demise at the 'relevant date'. If it had granted a long lease of a flat in the Demise, its status may have been different, but at the relevant date the Tribunal found that the Association was not a landlord.

60. Secondly, the Tribunal considered the effect of failing to serve a Claim Notice on the Association as a landlord under section 79(6) having granted short or periodic leases, notwithstanding it had not granted a long lease.

61. If the Association was an intermediate landlord by granting short or periodic leases, then the Lease which it held of Block D1 gave it no management functions as defined in section 96(5) or powers such as to consent or be consulted, which could have been taken over by the Applicant. The displacing

of the Landlord by the Applicant would have had no more effect on it than it had on any Qualifying Leaseholder. The Tribunal considered that not only, as in *Elim Court,* did the Association not have any management functions, it had no functions which the Applicant could take over. Therefore, it determined that the failure to serve a Claim Notice did not invalidate the claim.

62. A Claim Notice was served on the Landlord who did have management functions under section 95(5) who in turn did serve a Counter Notice. If prejudice is a consideration then the Tribunal is of the opinion that the Association was not disadvantaged.

63. In any event, the Tribunal was of the opinion that the landlord referred to in section 79 is the landlord of a long lease as it is only that landlord who would lose management functions and powers to the Right to Manage company.

64. Thirdly, the Tribunal considered the general basis for the Respondent's objection to the Applicant's claim. The Respondent is not objecting to the claim because it has not received a Claim Notice, because it did, but because the Association to whom it has granted a Lease did not receive the Claim Notice as a landlord to which it could serve a counter notice. The Tribunal does not find anything in the Lease which causes the failure to serve a Claim Notice on the Association to be a disadvantage to the Respondent. The Tribunal finds the objection in this instance unjustified.

65. The Tribunal therefore decides that the failure to serve a separate Claim Notice on the Association as a landlord to which it could serve a counter notice in this instance does not invalidate the Applicant's claim for the right to manage.

Issue of whether Premises Self-contained

66. The Respondent in objecting to the Applicant's claim to the right to manage submitted that the Premises were not a self-contained building which could be confirmed by a simple visual inspection. It was said that Flats 46 to 58, which are part of the Premises, are structurally attached to the building containing Flats 38 and 45 and there is no visual division. The south eastern wall of the Premises appears to constitute the north western wall of the adjacent part of the building containing Flats 38 to 45. They are therefore in the same building

67. It was further stated that it was not a self-contained part of a building in that:
    a) There does not appear to be a vertical division of the building in that the basement level comprising a car park, cycle storage and ancillary accommodation is not solely within the foot print of the Premises.
    b) The structure of the building is not such that it could be developed independently of the rest of the building. There is in effect an internal party wall in the plane that is alleged to divide the Premises from the rest of the building containing Flats 38 to 45 so there is no physical division of structural separation. This is compounded by the shared service media.
    c) The services provided to the occupiers of the Premises are not independent of the services provided to Flats 38 to 45. The service

media, pipes and cables are common throughout the building and across the estate.

68. The Applicant in its written statement of case stated that Wheelwright House is a structurally detached building containing 130 flats in a series of six and is described in the Planning Application Supporting Statement as a "series of buildings ranging in height from four to eight storeys. The Applicant said that the Development had been constructed Block by Block.

69. The Application for the Right to Manage related to Blocks D, E and F as identified on a photograph of the site provided. These blocks contain flats 46 to 58, 59 to 74 and 75 to 130 respectively. Under these three blocks there is an underground car park which incorporates a plant room, cycle storage area but, it was said, crucially, did not extend beyond these blocks or underneath adjoining block C.

70. With regard to whether the Premises were structurally detached reference was made to *CQN RTM Company Ltd v Broad Quay North Block Freehold Limited* [2018] UKUT 0183 (LC) where reference was made to *No 1 Deansgate (Residential) Ltd Company v No 1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC). In CQN the principles in Deansgate were upheld at paragraph [54] of the Decision determining that a building may be structurally detached even though it touches or is attached to another building provided the attachment is not structural, paragraph [54(5)] of the Decision. Structural meant "relating to the core fabric of the building" and that structural interdependence such as shared load bearing would signify structural attachment. At paragraph [54(12)] it said that a tribunal should have regard to the nature and degree of the attachment to determine it premises are structurally attached.

71. The Applicant submitted that in the present case Blocks C and D are clearly touching one another but that there was no evidence that the attachment was structural.

72. With regard to whether the Premises is a self-contained part of a building, it was said that the Act at section 72(3) and (4) does not require a building to have a structural or visible separation.

73. Section 72(3) requires that the self-contained part of the Building must constitute a vertical division and it was submitted that there was a vertical division between the Premises and the adjoining Block C. The car park, cycle storage and plant room underneath the Premises do not extend below adjoining Block C which contains Flats 38 to 45. It was said that the division could be seen both for a visual inspection and from the plans provided.

74. To further support this submission, it was said that a right to manage company had been established to administer Block A where a similar vertical division had existed between Blocks A and B, the Respondent having accepted that Block A was a self-contained part of the Building. It was submitted that the Respondent was now estopped from changing its position and representing that with regard to the division between Blocks C and D.

Decision whether Premises Structurally Self-contained

75. The Tribunal found that the issue with regard to whether or not the Premises comprising Blocks D, E and F were self-contained was whether Blocks C and D were, pursuant to section 72 (2), structurally detached or, pursuant to section 72(3), part of one building but that there was a vertical division between them and each could be re-developed independently.

76. The Tribunal found that Blocks C and D were not structurally detached but were part of one building. The Tribunal therefore considered whether the criteria set out in section 72(3) was met.

77. The Tribunal did find that there was a vertical division between them. The walls between Blocks C and D are resting on a linear foundation set into the ground. They do not share any area below ground such as the car park and therefore each rise from their own foundations.

78. The Tribunal then considered whether they could be re-developed separately i.e. could one or other building be demolished leaving the other unscathed.

79. The Tribunal used the knowledge and experience of its members. It found that on the balance of probabilities, Block C and Block D had separate although abutting flank walls. The flank wall of Block C rises higher than that of Block D. Taking into account the difficulty in achieving the necessary insulation requirements contained in Part L of the Building Regulations in respect of an external solid wall, the Tribunal was of the opinion that the whole flank wall would be of cavity construction i.e. two walls. Also, to meet part B of the Building Regulations in respect of the containment of fire the Tribunal was of the opinion that Blocks C and D are structurally independent.

80. In addition, the Tribunal found that from the Planning Application Supporting Statement that the Development had been constructed Block by Block which would further indicate that Blocks were structurally independent.

81. The Tribunal took account of the cases of *CQN RTM Company Ltd v Broad Quay North Block Freehold Limited* [2018] UKUT 0183 (LC) and *No 1 Deansgate (Residential) Ltd Company v No 1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC) and found that Blocks C and D were structurally independent.

82. Therefore, the Tribunal determines that pursuant to section 72(3), Blocks D, E and F are part of one building and there is a vertical division between them and the rest of the building and the structure of the building is such that it could be redeveloped independently of the rest of the building.

83. With regard to the last submission of the Applicant regarding Block A the Tribunal took the view that it should consider each claim separately. Whereas the acceptance by the Respondent that Block A was a self-contained part of the building might go to show that the same applies to Blocks D, E and F the Tribunal did not consider that an estoppel arose.

Issue whether Services Independent

84. At the hearing Mr Letman for the Respondent stated that Section 72(4)(a) requires that the services to the Premises must be provided independently of the services provided to occupiers of the rest of the building.

85. In this regard he referred the Tribunal to the case of *Oakwood v Daejan* [2007] 1 EGLR 121 in which a five-part test was promulgated to assess whether services could be provided independently; Parts 2 to 5 of that test being a matter for expert evidence. Although the case related to the collective enfranchisement provisions of the Leasehold Reform, Housing and Urban Development Act 1993 nevertheless it was held in *St Stephens Mansions RTM Company Ltd v Fairhold NW Limited* [2014] UKUT 0541 (LC) to be equally applicable to the present case.

86. Mr Letman went on to say that the burden of proof is on the Applicant to show that the services can be provided independently.

87. Mr Letman said that the Applicant had conceded that there were shared services and that works would be required to separate the supply of the Premises from the rest of the building. Mr Letman identified the water system in particular but said that other services might be involved and that overall as was seen at the inspection and from photographs produced that there is a very substantial estate wide communal pipework and service media running through and shared between blocks. He submitted that this system was complex and carefully balanced and could not be separated without significant disruption.

88. Mr Joiner for the Applicant stated that section 72(4)(a) requires that the services to the Premises must be provided independently of the services provided to occupiers of the rest of the building.

89. To this effect he said that the electricity is supplied to each flat and individually metered. The waste water is discharged into the main sewers from each flat.

90. Water is supplied via a communal storage tank from which it is pumped to individual flats. The water tank and pumps are situated within the Premises and Block C is dependent on the water from the tank in the Premises. It was argued that the service was independent within the meaning of the Act if it was not dependant on the supply from Block C even if the supply for Block C was dependent on the supply from Block D, E and F.

91. In the alternative it was stated that under section 72(4)(b) it is not necessary to provide the services independently provided they "could *be* so provided without involving the carrying out of works likely to result in a significant interruption."

92. It was accepted that some works would be required to separate the supply of services from the rest of the building (i.e. to Block C) but this could be achieved without significant interruption. A separate water tank and pumping

equipment could be installed in the space adjoining the existing installation. Once installed the switch over from one supply to another is unlikely to cause significant interruption. The Tribunal was referred to *Quaysude (Colchester) No 3 RTM Company Limited and Theowal Limite*d and *St Stephens Mansions RTM Company Ltd v Fairhold NW Limited* [2014] UKUT 0541 (LC).

93. It appeared to the Tribunal that the Applicant was submitting that the separation of the water supply had occurred in sufficient cases to warrant the tribunal basing its decision as to the feasibility of creating an independent supply based on precedent. The Tribunal was of the opinion that although there were a several cases on the point each building is different and expert evidence is required.

Expert Evidence

94. Following its inspection and on hearing the parties' respective arguments the Tribunal was of the opinion that it required expert evidence to determine whether or not the water supply could be separated. At the hearing, the Tribunal did not want either party to incur unnecessary costs and inconvenience by requiring them to instruct experts until it had made its decision with regard to the Preliminary Issue as to the Claim Notice as this would invalidate the claim *ab initio*. Having determined that the failure to serve a Claim Notice on Notting Hill Genesis to which the Association could serve a counter notice does not invalidate the Applicant's claim for the right to manage, the Tribunal gave additional Directions for expert evidence.

95. In its Directions the Tribunal required expert evidence to state:
(a) whether or not an independent supply could be provided to the other occupiers of *this* building, i.e. can it be done or is there a reason it cannot be done in this instance; and
(b) if it can be done, can it be done without causing significant disruption.

96. Each party was entitled to rely on the evidence of one expert witness whose report setting out the substance of their evidence shall be served on the other party by 5.00 p.m. on 12th April 2019. The Tribunal sought to give sufficient time to avoid a premium rate being charged for an immediate response.

97. The experts were then to discuss their reports and provide a joint statement setting out points of fact and/or opinion which are (1) agreed and (2) disputed which are relevant to the points in issue between the parties. The experts provided a joint statement on 26th April 2019.

98. The Experts were Mr T Fryer for the Applicant and Mr J Byers BSc, FRICS, ACIArb, for the Respondent. The statement addressed the particular points in issue regarding the water supply as follows:

Can an independent water supply to Blocks A, B and C be installed?

The experts agree that the flats on the ground and lower floor of the entire building are most probably served directly by a single water main metered at each flat, not by the tanks and boosted water supply.

The experts agreed that the existing plant and equipment within the water services room situated under Block D is likely to serve all the upper flats in the entire building (that is Blocks A, B, C, D E and F).

The experts agree that separation of the water supply could be achieved and an outline of the works that may be required is set out below:

a) An additional set of tank and booster pumps, with controls, will require to be installed and connected via new pipework to serve Blocks A, B and C.
b) The Experts agree there is sufficient space within the car park beneath Block D for additional tanks and pumps to be installed, adjacent to the existing services room if that is a suitable location for the new equipment. Alternative locations have not been considered.
c) An additional, separate metered electricity supply will be required to be installed to serve the new pumps and controls for Blocks A, B and C.
d) The existing incoming water main would have to be separated – either at the water meter at ground level (considered to be located outside the entrance to Block C) or within the car park under Block D. The supplies require to be separately metred.
e) New pipework will be required to connect Blocks A, B and C; and the existing pipework to Blocks D, E and F will require to be adapted to suit the new arrangement. Pressure relief valves may have to be added to the supplies to the flats of Blocks A, B and C depending on how the existing installation has been configured.
f) A new service room will have to be formed around the new equipment (serving Blocks A, B and C) with access available to the owners /mangers of those blocks.
g) The water quality in the existing tanks and pumps that would now only be serving Blocks D, E and F will require monitoring after the separation works, to check if the water quality deteriorates due to stagnation arising as a result of the reduced water capacity/number of flats drawing water. Depending on the outcome of that monitoring some further works to adapt the existing tank may be necessary.

Will the interruption in supply to Blocks A, B and C be significant?

The degree of interruption of the water supply to all the Blocks depends on how the works to separate the systems is carried out. Careful planning will be required to organise the work and a lead -in period allowed.

A contractor carrying out such works is likely to plan the work in such a way as to minimise the interruption of water supplies to one single day if possible. Mr Byers thinks the interruption could extend to 2 days in which a temporary supply could be made available.

99. The Tribunal considered that due to the clarity of the Experts' Joint Statement and the matters agreed further representations were not required.

Decision whether Services Independent

100. The Tribunal considered each of the services. In the absence of evidence to the contrary the Tribunal found as follows:

101. Under the Electricity Act 1989 the Distribution Network Operator is responsible for the electricity power supply up to and including the meter. As each flat has a metred electricity supply the Distribution Network Operator will be responsible for the supply to the flat and the Leaseholder will be responsible for the electrical installation beyond the meter.

102. The Common Parts are separately metered. If a separate meter for a Common Part needed to be installed this could and would have to be carried out by an Independent Connections Provider, Distribution Network Operator, or Independent Distribution Network Operator.

103. The Tribunal was of the opinion that the drainage would have been adopted under the Water Industry (Schemes for Adopted Sewers) Regulations 2011 No 1566 and therefore is the responsibility of the local water company.

104. The Tribunal found that the only service in issue was the water supply. Having determined the first question in the five-part test in *Oakwood v Daejan* [2007] 1 EGLR 121 the Tribunal referred to the Experts' Joint Statement and addressed the latter four questions.

105. The second question was whether the water supply can be provided to the Premises independently of the supply to the rest of the building? It was agreed that it could.

106. The third question was what works would be required? The experts agreed an additional set of tank and booster pumps, with controls connected via new pipework to serve Blocks A, B and C could be installed within the car park beneath Block D where there was sufficient space for a new service room. An additional, separate metered electricity supply will be required. The existing incoming water main would have to be separated. New pipework will be required to connect Blocks A, B and C; and the existing pipework to Blocks D, E and F will require to be adapted. Pressure relief valves may be required. The owners/managers of Blocks A, B and C would need to have access to the service room and the water quality in the existing tanks and pumps serving Blocks D, E and F will require monitoring.

107. The fourth question is what would be the interruption to the services? The experts agreed a contractor carrying out such works is likely to plan the work in such a way as to minimise the interruption of water supplies to one single day if possible; although Mr Byers thought this could extend to 2 days in which a temporary supply could be made available.

108. The fifth question is would this interruption be significant? The Tribunal found that one day would not be and two days with a temporary water supply would not be significant either.

109. The Tribunal found the Experts' Joint Statement clear and unequivocal. They both agreed from a practical point of view that an independent supply of water could be achieved without significant interruption of that supply to occupiers of the rest of the building which is not the Premises which are the subject of the Right to Manage claim.

110. Therefore the Tribunal determines that the services in relation to the part of the building, which are the Premises, are provided independently or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building pursuant to section 72(4) (a) and (b).

Conclusion

111. The Tribunal determines that the Premises comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.

112. Therefore, the decision of the Tribunal is that the Applicant was, on the relevant date, entitled to acquire the right to manage the Premises under the Commonhold and Leasehold Reform Act 2002.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

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

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

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

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

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KB/LRM/2018/0006**
Premises	:	**46-130 Wheelwright House, Palgrave Road, Bedford MK42 9EX**
Applicant	:	**Wheelwright House (46-130) RTM Co Ltd**
Representative	**:**	**RTMF Services Ltd**
Respondent	**:**	**Sinclair Gardens Investments (Kensington) Ltd**
Representative	**:**	**Bolt Burdon & Mr Paul Letman of Counsel**
Date of Application	**:**	**25th September 2018 (rec'd 11th October)**
Type of Application	**:**	**For an order that the Applicant is entitled to acquire the right to manage the Premises (section84(3) Commonhold and Leasehold Reform Act 2002)**
Tribunal	**:**	**Judge J R Morris** **Mrs M Hardman IRRV (Hons) FRICS** **Mr J Francis QPM**
Date of Hearing	**:**	**14th February 2019**
Expert Reports	**:**	**7th May 2019**
Date of Decision	**:**	**23rd May 2019**

DECISION

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Decision

1. The Tribunal decides that the failure to serve on Notting Hill Genesis a Claim Notice to which it could serve a counter notice does not invalidate the Applicant's claim for the right to manage.

2. The Tribunal determines that pursuant to section 72(3) Commonhold and Leasehold Reform Act 2002, the Premises are part of one building and there is a vertical division between them and the rest of the building, and the structure of the building is such that the Premises could be redeveloped independently of the rest of the building.

3. The Tribunal determines that the services in relation to the part of the building, which are the Premises, are provided independently or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building pursuant to section 72(4) (a) and (b) Commonhold and Leasehold Reform Act 2002.

4. The Tribunal determines that the Premises comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.

5. Therefore, the decision of the Tribunal is that the Applicant was, on the relevant date, entitled to acquire the right to manage the Premises under the Commonhold and Leasehold Reform Act 2002.

Reasons

Introduction

6. By a claim Notice dated 13th July 2018 given pursuant to section 70 of the Commonhold and Leasehold Reform Act 2002 (the Act) the Applicant sought to acquire the right to manage the Premises.

7. By a Counter Notice dated 15th August 2018, the Respondent alleged that the Applicant was not entitled to acquire the right to manage the Premises. The Respondent stated that the Premises did not comply with sections 71, 72(2), 72(3) and 72(4) of the Act in that:
   a) The Premises are not structurally detached.
   b) There is a car park beneath the Premises which extends to beyond the foot print thereof, and the Premises are therefore divided in a different vertical plan in the basement.
   c) The Premises could not be redeveloped independently from the adjoining building on the Estate.
   d) The Premises comprise three self-contained buildings or parts of a building. In *Triplerose v 90 Broomfield RTM Company Limited* [2015] EWCA Civ 282 the Court of Appeal determined that the right to manage only applied to one set of premises.

8. On 11th October 2018 the Tribunal received an Application dated 25th September 2018 from the Applicant seeking a determination pursuant to section 84(3) of the Act.

9. Directions were issued on 30th October 2018. Neither party agreed to the matter being dealt with on the basis of paper submissions only and requested a hearing. A late request was made by the Respondent for an additional direction requiring expert evidence to be allowed regarding the independent development of the building. The Applicant objected to this on the basis that the relevant matters can be decided by an expert tribunal and it was concerned about the costs it would involve. The additional direction was refused by the Procedural Judge on the grounds that the application was late, the need for expert evidence had not been mentioned prior to the request and no new issues had been raised.

10. A Statement of Case was provided by the Respondent dated 16th November 2018 which further developed the objections raised in the Counter Notice that the Premises were not, as required under section 72 of the Act:
- a self-contained building (s72(2));
- nor were they a self-contained part of a building in respect of which there was

  (a) a vertical division and

  (b) which could be redeveloped independently of the rest of the building (s72(3)) and to which the relevant services of pipes cables and other fixed installations (s72(5)) were independently provided to the occupiers (s72(4)) or could be so provided without involving works likely to result in a significant interruption s72 (4)(b).

11. In the Schedule to the Counter Notice the Respondent had been under the impression that the Premises comprised three self-contained buildings and referred to *Triplerose v 90 Broomfield RTM Company Limited* [2015] EWCA Civ 282 where the Court of Appeal determined that the right to manage only applied to one set of premises. This point was not developed in the Statement of Case and at the hearing Mr Letman said that it had subsequently been appreciated that, although reference is made to the Premises comprising three Blocks, D, E and F, the blocks were in fact all part of one building, therefore he said that that issue was no longer in contention.

12. The Applicant replied on the 29th November 2018 contesting the Respondent's response and the points made are referred to further in these Reasons. The Respondent replied on 6th December 2018 re-affirming its position.

13. The parties also provided skeleton arguments which were included in the bundle. The points raised by both parties were focused on the provisions of section 72 of the Act.

14. However, the Respondent raised a preliminary issue which was that the Claim Notice may not have been properly given. It was stated that firstly, the Notice of Invitation to Participate must be served on all Leaseholders under section

79 (2) and that secondly, the Claim Notice must be served on all landlords under section 79(6)(a).

15. It was stated that Block D included in the claim is subject to a separate head lease (covering Blocks B, C and D Britannia House), to a Housing Association granting a term of 999 years from 31st May 2006. It was submitted that the Housing Association should have been given both a Notice of Invitation to Participate as a Leaseholder and a Claim Notice as a landlord to which it could serve a counter notice.

16. The Applicant confirmed that a Notice of Invitation to Participate had been served but not a separate Claim Notice as a landlord to which it could serve a counter notice.

17. The matter was dealt with as a preliminary issue.

The Law

18. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

19. Section 72 Premises to which Chapter applies

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

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

(3) A part of a building is a self-contained part of the building if—
(a) it constitutes a vertical division of the building,
(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
(c) subsection (4) applies in relation to it.

(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

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

20. Section 79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3)...

(4)...

(5)...

(6) The claim notice must be given to each person who on the relevant date is—
(a) landlord under a lease of the whole or any part of the premises,

18. Section 96 Management functions under leases

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

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

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

(4) Accordingly, any provisions of the lease making provision about the relationship of—
(a) a person who is landlord under the lease, and
(b) a person who is party to the lease otherwise than as landlord or tenant,
in relation to such functions do not have effect.

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

(6) But this section does not apply in relation to—
(a)functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
(b)functions relating to re-entry or forfeiture.

(7)...

21. Section 97 Management functions: supplementary

> (1) *Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.*
>
> (2) *A person who is—*
> (a) *landlord under a lease of the whole or any part of the premises,*
> (b) *party to such a lease otherwise than as landlord or tenant, or*
> (c) *a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,*
>
> *is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.*

Note regarding the identification of the Premises

22. The Tribunal was provided with the Supporting Statement for the Planning Application for the Development, the Leases and attached plans. This states that the Development is 260 residential flats in 12 individual 'buildings', also referred to in the leases and the Land Registry documentation as 'blocks', arranged in an articulated 'U' form, broken into two halves which are divided by a spine access road. Each half has 6 adjoining 'buildings' or 'blocks' of differing heights from four to eight storeys.

23. Due to the 6 'buildings' or 'blocks' on each side being adjoining they are essentially, to the observer, two buildings, irrespective of the manner of their construction or structure. The building on the East side of the Development is Britannia House and that on the West side is Wheelwright House. The 6 'buildings' or 'blocks' on each side are in some documents lettered A to F from the dividing spine access road and this is the way in which they are referred to in these reasons.

24. In relation to Wheelwright House the Flats are numbered as follows:
Block A Flats 1 – 24
Block B Flats 25 - 37
Block C Flats 38 - 45
Block D Flats 46 - 58
Block E Flats 59 - 74
Block F Flats 75 – 130

25. The Premises comprise Blocks D to F, Flats 46 – 130.

26. The diverse manner in which the parts of the Development have been referred to appears to have caused some confusion with the Land Registry.

27. The Lease by the Developer to Paddington Churches Housing Association Limited, now understood to be Notting Hill Genesis, is number 60 in the Schedule of Notices of Leases in the Freehold Land Registry Title Number BD311453. This entry on the Register refers to the demised property as being

of Blocks B1, C1 and D1 Britannia House. The Leasehold Land Registry Title Number BD264216 for the Lease also refers to the demised property as being Blocks B1, C1 and D1 Britannia House. Both titles state that the demised property is identified on the plan as being blocks numbers 28, 29 and 30. However, these plan numbers refer to Blocks B1, C1 and D1 Wheelwright House not Britannia House. It appears from the Lease provided, that the numbered plan annexed to the Register correctly refers to the demised property, and that the entries on the Register should be amended to read Wheelwright House not Britannia House.

28. The Tribunal hereafter refers to the constituent parts of the buildings as Blocks.

Inspection

29. The Tribunal made its inspection in the presence of the Applicant's Representatives, Mr D Joiner from RTMF and Mr Paul Letman of Counsel for the Respondent.

30. As noted above, the Tribunal found that the Development comprised two buildings with an access road between them. The building on the East side of the Development is Britannia House and that on the West side is Wheelwright House. Each building comprises 6 sections (which are referred to in documentation as 'blocks' which are identified by letters A to F). The sections can be distinguished by the differing number of floors and hence roof levels and that each has its own separate entrance to a hallway, stairs and landings, off which are the flats.

31. The Tribunal noted in particular that under Blocks D, E and F there was an underground car park. It appeared to the Tribunal from its inspection of the car park that the front wall of all the Blocks, the external flank wall of Block F and the adjoining flank of Blocks D and C appeared to rest upon a linear foundation in the ground. To create the open car park the storeys above were supported on a network of concrete pillars and beams.

32. It was also noted that the flank wall of Block D rose above the roof line of Block C.

33. In the car park adjacent to the flank wall of Blocks D and C there was a plant room in which were two water tanks and three pumps. The water from the main entered the tanks which kept a reserve of water to feed the pumps. The reserve being necessary to ensure that a consistent flow was maintained to the tanks particularly at time of high demand. There was no indication as to which pumps supplied which flats of which Blocks. However, it was known that the pumps supplied the water to Blocks C, D, E and F.

34. To the side of the plant room there was an area of similar size to the plant room adjacent the flank wall of Blocks D and C.

35. The Tribunal found that externally the Blocks were modern and in generally fair to good condition. The grounds were in fair condition for the time of year

and the grass and shrubs appeared to have been cut during the previous season. The hard landscaping was in good condition as was the car park which was free of litter.

Hearing

Attendance at the Hearing

36. Those present were the Applicant's Representatives Mr D Joiner and Mr N Bignell from RTMF and Mr Paul Letman of Counsel for the Respondent.

37. Both parties submitted written Statements of Case and Skeleton Arguments.

Preliminary Issue of the Claim Notice

38. Mr Letman for the Respondent referred to a lease in the Bundle at page 287 which related to Blocks B1, C1 and D1 (Phase West), i.e. Wheelwright House. The Lease is dated 8th May 2008 and is between WN Developments Limited (the Landlord) (1) and Paddington Churches Housing Association Limited (the Tenant) (2) for a term of 999 years from 31st May 2006. It was noted that the Tenant is now Notting Hill Genesis, also a Housing Association and as stated above referred to hereafter as "the Association". As noted above it appears the Land Registry Entry incorrectly refers to Blocks B1, C1 and D1 as being part of Britannia House whereas they are part of Wheelwright House.

39. Mr Letman submitted it was obvious that as a Housing Association the Association was a landlord. It was said that the flats were clearly occupied and could be occupied on a short or long lease. He said that under the definition provisions the terms lease and tenancy were synonymous and that no distinction was made between a landlord of a short or long tenancy or lease.

40. As a Landlord, the Association should have been served with a Claim Notice and not just a Notice of Invitation to Participate as a Leaseholder.

41. Mr Letman then referred to *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA 89 in which he said that one of the issues was, as in this case, whether the claim notice was served on the intermediate landlord and, if it was not, whether service on the intermediate landlord was required and, if it was, whether the failure to serve the intermediate landlord was fatal to the whole right to manage procedure or whether the deficiencies in service could be overlooked.

42. He said that in *Elim Court* at [50] to [52], *Natt v Osman* [2014] EWCA Civ 1520 had been referred to with approval and he drew attention to paragraph 28 in which Lewison LJ stated that cases regarding compliance with statutory requirements fell into two broad categories. Mr Letman said that this case fell into the second category of "*cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question*".

43. It was recognised in *Natt v Osman* at [31] to [34] that substantial compliance in this class of case is not enough and as summarised at [52] in Elim:
The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case: see [32]. The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole: see [33]. Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid: see [34]. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation.

44. Mr Letman drew particular attention to [58]:
In this case it must also be recalled that the persons (and the only persons) entitled to object to the exercise of the right to manage are the landlord (or landlords), a party to a lease who is neither landlord nor tenant, or a court appointed manager. As Mr Jacob submitted, in the majority of cases these are persons who are likely to have management responsibilities in the sense defined in section 96(5). In the light of the general policy described in the consultation paper, the focus must be on whether Parliament intended that <u>a landlord</u> (or other person entitled to serve a counter-notice) could successfully contend that the defect in the relevant notice was fatal to its validity.

45. Also, to [59]:
*there may be a distinction to be drawn between a failure to satisfy jurisdictional or eligibility requirements on the one hand, and purely procedural requirements on the other. That was certainly part of the Government's policy as set out in the consultation paper… (*Mr Letman provided extracts of Consultation Paper No. 243 Leasehold home ownership: exercising the right to manage, January 2019.)

46. In *Elim Court* Mr Letman said that although the Court of Appeal held that a failure to serve a claim notice on the intermediate landlord of a single flat with no management responsibilities (as defined) does not invalidate the notice. However, on that reasoning, he submitted, the present case can be distinguished. This was a landlord of 13 flats and that at [69] the Court of Appeal recognised that:
Although the grounds upon which an objection can be sustained are very limited, a failure to serve an intermediate landlord deprives him of that statutory right. Absent the service of a counter-notice the RTM company automatically acquires the right to manage. This applies not only to management functions as defined in section 96 (5) but also to the right to give consents under provisions of the intermediate lease. Accordingly, even

though a particular intermediate landlord may not have management functions relating to the repair, maintenance or insurance of the block there are still potentially important rights of which it would be at least temporarily divested.

47. Mr Joiner for the Applicant replied that a Notice of Invitation to Participate had been served on all Qualifying Leaseholders, as was required by the legislation. The Land Registry Entries for both the freehold BD311453 and leasehold BD264216 identifies the Association as a Leaseholder. The Lease provided does not refer to it as being a head lease.

48. He said that the reference to "landlord" in the legislation was to one who had granted long leases because only they would have management obligations which would be taken over by the RTM Company. He said that the Association did not have any management functions in relation to the common parts for which the RTM Company had responsibility.

49. He added that it was not relevant that the Association as a long Leaseholder could itself grant long leases because it had not done so on the "relevant date" for any of the flats included in the Premises. He said there was no way of knowing about short periodic tenancies. He submitted that a Counter Notice could only be given to a landlord of a long lease because only they would show up on the Land Registry Entry.

50. Even if the Tribunal took the view that a Claim Notice should have been served, nevertheless, it was said in *Elim* that if a Claim Notice had been served on a landlord who could and did then serve a Counter Notice then the failure to serve a Claim Notice on all landlords does not invalidate the Claim Notice that was served. He said that *Elim* did not say that prejudice was irrelevant and here, the Association did not suffer prejudice.

51. Finally, Mr Joiner said that the Government's intention was that the procedures should be as simple as possible and that this had been re-iterated in a number of cases including *Elim*.

52. Following the Hearing Mr Joiner wrote to the Tribunal applying to make further representations on the issue. He felt he had not had an opportunity to fully address the point as the point had only been raised by the Respondent in the skeleton argument just prior to the hearing. The Tribunal was satisfied that both parties had made full oral submissions in respect of the issue at the hearing which were supported by cases, of which the parties' representatives showed themselves to be cognisant. The Tribunal would take account of the legislation, oral submissions and the related cases in making its decision and therefore decided no further submissions regarding the preliminary issue were to be made.

Decision Regarding the Preliminary Issue

53. First, the Tribunal considered whether the Association was a landlord upon whom the Applicant should have served a Claim Notice under section 79(6)(a).

54. The Tribunal found that the Lease dated 8th May 2008 between WN Developments Limited (1) and Paddington Churches Housing Association Limited (2) referred to Paddington Churches Housing Association Limited as "the Tenant".

55. The Tribunal also found that the Lease was almost identical to the Leases of flat 99 dated 13th December 2013 between WN Developments Limited and Maureen Maisie Emmett and flat 60 dated 11th April 2012 between WN Developments Limited and Alexander Timothy Chaple which had been provided. The main difference in the view of the Tribunal was the extent of the Demise to the Association, in that it included all the flats and the internal common parts of Block D1, except the basement parking and service area (the Excluded Part), whereas the Demise of flats 99 and 60 only included the flat and a parking space (Prescribed Clause LR4).

56. The result of this meant that the Association as a tenant had wider repairing obligations (including those under the Landlord and Tenant Act 1985) than other tenants on the Development.

57. All three Leases required the respective tenants to pay a proportion of the service charge to the Landlord (Schedule 8). All three Leases also require the tenants to ensure that an assignee or underlessee directly covenant with the landlord to comply with the terms of the Lease (paragraph 3.6 of Schedule 3).

58. The Association Lease did not make any reference to the Association being an intermediate landlord. It did not have any obligation to collect rent, insurance premiums or service charges on behalf of the Landlord or any additional rights such as to consent to assignees or leaseholders on behalf of the Landlord. Whether the flats in Block D1 were occupied or not made no difference to the obligations or payments made by the Association as Tenant to the Landlord. Apart from its Demise being more extensive, and therefore its repairing obligations as a tenant more onerous, it was in no different a position to that of the Tenants of flats 99 or 60.

59. It may have sublet its flats on short or periodic leases or tenancies in order to raise money to pay the rent, premiums or service charge under the Lease but in the absence of evidence to the contrary, it was the only long leasehold tenant and therefore Qualifying Leaseholder of the Demise at the 'relevant date'. If it had granted a long lease of a flat in the Demise, its status may have been different, but at the relevant date the Tribunal found that the Association was not a landlord.

60. Secondly, the Tribunal considered the effect of failing to serve a Claim Notice on the Association as a landlord under section 79(6) having granted short or periodic leases, notwithstanding it had not granted a long lease.

61. If the Association was an intermediate landlord by granting short or periodic leases, then the Lease which it held of Block D1 gave it no management functions as defined in section 96(5) or powers such as to consent or be consulted, which could have been taken over by the Applicant. The displacing

of the Landlord by the Applicant would have had no more effect on it than it had on any Qualifying Leaseholder. The Tribunal considered that not only, as in *Elim Court,* did the Association not have any management functions, it had no functions which the Applicant could take over. Therefore, it determined that the failure to serve a Claim Notice did not invalidate the claim.

62. A Claim Notice was served on the Landlord who did have management functions under section 95(5) who in turn did serve a Counter Notice. If prejudice is a consideration then the Tribunal is of the opinion that the Association was not disadvantaged.

63. In any event, the Tribunal was of the opinion that the landlord referred to in section 79 is the landlord of a long lease as it is only that landlord who would lose management functions and powers to the Right to Manage company.

64. Thirdly, the Tribunal considered the general basis for the Respondent's objection to the Applicant's claim. The Respondent is not objecting to the claim because it has not received a Claim Notice, because it did, but because the Association to whom it has granted a Lease did not receive the Claim Notice as a landlord to which it could serve a counter notice. The Tribunal does not find anything in the Lease which causes the failure to serve a Claim Notice on the Association to be a disadvantage to the Respondent. The Tribunal finds the objection in this instance unjustified.

65. The Tribunal therefore decides that the failure to serve a separate Claim Notice on the Association as a landlord to which it could serve a counter notice in this instance does not invalidate the Applicant's claim for the right to manage.

Issue of whether Premises Self-contained

66. The Respondent in objecting to the Applicant's claim to the right to manage submitted that the Premises were not a self-contained building which could be confirmed by a simple visual inspection. It was said that Flats 46 to 58, which are part of the Premises, are structurally attached to the building containing Flats 38 and 45 and there is no visual division. The south eastern wall of the Premises appears to constitute the north western wall of the adjacent part of the building containing Flats 38 to 45. They are therefore in the same building

67. It was further stated that it was not a self-contained part of a building in that:
    a) There does not appear to be a vertical division of the building in that the basement level comprising a car park, cycle storage and ancillary accommodation is not solely within the foot print of the Premises.
    b) The structure of the building is not such that it could be developed independently of the rest of the building. There is in effect an internal party wall in the plane that is alleged to divide the Premises from the rest of the building containing Flats 38 to 45 so there is no physical division of structural separation. This is compounded by the shared service media.
    c) The services provided to the occupiers of the Premises are not independent of the services provided to Flats 38 to 45. The service

media, pipes and cables are common throughout the building and across the estate.

68. The Applicant in its written statement of case stated that Wheelwright House is a structurally detached building containing 130 flats in a series of six and is described in the Planning Application Supporting Statement as a "series of buildings ranging in height from four to eight storeys. The Applicant said that the Development had been constructed Block by Block.

69. The Application for the Right to Manage related to Blocks D, E and F as identified on a photograph of the site provided. These blocks contain flats 46 to 58, 59 to 74 and 75 to 130 respectively. Under these three blocks there is an underground car park which incorporates a plant room, cycle storage area but, it was said, crucially, did not extend beyond these blocks or underneath adjoining block C.

70. With regard to whether the Premises were structurally detached reference was made to *CQN RTM Company Ltd v Broad Quay North Block Freehold Limited* [2018] UKUT 0183 (LC) where reference was made to *No 1 Deansgate (Residential) Ltd Company v No 1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC). In CQN the principles in Deansgate were upheld at paragraph [54] of the Decision determining that a building may be structurally detached even though it touches or is attached to another building provided the attachment is not structural, paragraph [54(5)] of the Decision. Structural meant "relating to the core fabric of the building" and that structural interdependence such as shared load bearing would signify structural attachment. At paragraph [54(12)] it said that a tribunal should have regard to the nature and degree of the attachment to determine it premises are structurally attached.

71. The Applicant submitted that in the present case Blocks C and D are clearly touching one another but that there was no evidence that the attachment was structural.

72. With regard to whether the Premises is a self-contained part of a building, it was said that the Act at section 72(3) and (4) does not require a building to have a structural or visible separation.

73. Section 72(3) requires that the self-contained part of the Building must constitute a vertical division and it was submitted that there was a vertical division between the Premises and the adjoining Block C. The car park, cycle storage and plant room underneath the Premises do not extend below adjoining Block C which contains Flats 38 to 45. It was said that the division could be seen both for a visual inspection and from the plans provided.

74. To further support this submission, it was said that a right to manage company had been established to administer Block A where a similar vertical division had existed between Blocks A and B, the Respondent having accepted that Block A was a self-contained part of the Building. It was submitted that the Respondent was now estopped from changing its position and representing that with regard to the division between Blocks C and D.

Decision whether Premises Structurally Self-contained

75. The Tribunal found that the issue with regard to whether or not the Premises comprising Blocks D, E and F were self-contained was whether Blocks C and D were, pursuant to section 72 (2), structurally detached or, pursuant to section 72(3), part of one building but that there was a vertical division between them and each could be re-developed independently.

76. The Tribunal found that Blocks C and D were not structurally detached but were part of one building. The Tribunal therefore considered whether the criteria set out in section 72(3) was met.

77. The Tribunal did find that there was a vertical division between them. The walls between Blocks C and D are resting on a linear foundation set into the ground. They do not share any area below ground such as the car park and therefore each rise from their own foundations.

78. The Tribunal then considered whether they could be re-developed separately i.e. could one or other building be demolished leaving the other unscathed.

79. The Tribunal used the knowledge and experience of its members. It found that on the balance of probabilities, Block C and Block D had separate although abutting flank walls. The flank wall of Block C rises higher than that of Block D. Taking into account the difficulty in achieving the necessary insulation requirements contained in Part L of the Building Regulations in respect of an external solid wall, the Tribunal was of the opinion that the whole flank wall would be of cavity construction i.e. two walls. Also, to meet part B of the Building Regulations in respect of the containment of fire the Tribunal was of the opinion that Blocks C and D are structurally independent.

80. In addition, the Tribunal found that from the Planning Application Supporting Statement that the Development had been constructed Block by Block which would further indicate that Blocks were structurally independent.

81. The Tribunal took account of the cases of *CQN RTM Company Ltd v Broad Quay North Block Freehold Limited* [2018] UKUT 0183 (LC) and *No 1 Deansgate (Residential) Ltd Company v No 1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC) and found that Blocks C and D were structurally independent.

82. Therefore, the Tribunal determines that pursuant to section 72(3), Blocks D, E and F are part of one building and there is a vertical division between them and the rest of the building and the structure of the building is such that it could be redeveloped independently of the rest of the building.

83. With regard to the last submission of the Applicant regarding Block A the Tribunal took the view that it should consider each claim separately. Whereas the acceptance by the Respondent that Block A was a self-contained part of the building might go to show that the same applies to Blocks D, E and F the Tribunal did not consider that an estoppel arose.

Issue whether Services Independent

84. At the hearing Mr Letman for the Respondent stated that Section 72(4)(a) requires that the services to the Premises must be provided independently of the services provided to occupiers of the rest of the building.

85. In this regard he referred the Tribunal to the case of *Oakwood v Daejan* [2007] 1 EGLR 121 in which a five-part test was promulgated to assess whether services could be provided independently; Parts 2 to 5 of that test being a matter for expert evidence. Although the case related to the collective enfranchisement provisions of the Leasehold Reform, Housing and Urban Development Act 1993 nevertheless it was held in *St Stephens Mansions RTM Company Ltd v Fairhold NW Limited* [2014] UKUT 0541 (LC) to be equally applicable to the present case.

86. Mr Letman went on to say that the burden of proof is on the Applicant to show that the services can be provided independently.

87. Mr Letman said that the Applicant had conceded that there were shared services and that works would be required to separate the supply of the Premises from the rest of the building. Mr Letman identified the water system in particular but said that other services might be involved and that overall as was seen at the inspection and from photographs produced that there is a very substantial estate wide communal pipework and service media running through and shared between blocks. He submitted that this system was complex and carefully balanced and could not be separated without significant disruption.

88. Mr Joiner for the Applicant stated that section 72(4)(a) requires that the services to the Premises must be provided independently of the services provided to occupiers of the rest of the building.

89. To this effect he said that the electricity is supplied to each flat and individually metered. The waste water is discharged into the main sewers from each flat.

90. Water is supplied via a communal storage tank from which it is pumped to individual flats. The water tank and pumps are situated within the Premises and Block C is dependent on the water from the tank in the Premises. It was argued that the service was independent within the meaning of the Act if it was not dependant on the supply from Block C even if the supply for Block C was dependent on the supply from Block D, E and F.

91. In the alternative it was stated that under section 72(4)(b) it is not necessary to provide the services independently provided they "could *be* so provided without involving the carrying out of works likely to result in a significant interruption."

92. It was accepted that some works would be required to separate the supply of services from the rest of the building (i.e. to Block C) but this could be achieved without significant interruption. A separate water tank and pumping

equipment could be installed in the space adjoining the existing installation. Once installed the switch over from one supply to another is unlikely to cause significant interruption. The Tribunal was referred to *Quaysude (Colchester) No 3 RTM Company Limited and Theowal Limite*d and *St Stephens Mansions RTM Company Ltd v Fairhold NW Limited* [2014] UKUT 0541 (LC).

93. It appeared to the Tribunal that the Applicant was submitting that the separation of the water supply had occurred in sufficient cases to warrant the tribunal basing its decision as to the feasibility of creating an independent supply based on precedent. The Tribunal was of the opinion that although there were a several cases on the point each building is different and expert evidence is required.

Expert Evidence

94. Following its inspection and on hearing the parties' respective arguments the Tribunal was of the opinion that it required expert evidence to determine whether or not the water supply could be separated. At the hearing, the Tribunal did not want either party to incur unnecessary costs and inconvenience by requiring them to instruct experts until it had made its decision with regard to the Preliminary Issue as to the Claim Notice as this would invalidate the claim *ab initio*. Having determined that the failure to serve a Claim Notice on Notting Hill Genesis to which the Association could serve a counter notice does not invalidate the Applicant's claim for the right to manage, the Tribunal gave additional Directions for expert evidence.

95. In its Directions the Tribunal required expert evidence to state:
(a) whether or not an independent supply could be provided to the other occupiers of *this* building, i.e. can it be done or is there a reason it cannot be done in this instance; and
(b) if it can be done, can it be done without causing significant disruption.

96. Each party was entitled to rely on the evidence of one expert witness whose report setting out the substance of their evidence shall be served on the other party by 5.00 p.m. on 12th April 2019. The Tribunal sought to give sufficient time to avoid a premium rate being charged for an immediate response.

97. The experts were then to discuss their reports and provide a joint statement setting out points of fact and/or opinion which are (1) agreed and (2) disputed which are relevant to the points in issue between the parties. The experts provided a joint statement on 26th April 2019.

98. The Experts were Mr T Fryer for the Applicant and Mr J Byers BSc, FRICS, ACIArb, for the Respondent. The statement addressed the particular points in issue regarding the water supply as follows:

Can an independent water supply to Blocks A, B and C be installed?

The experts agree that the flats on the ground and lower floor of the entire building are most probably served directly by a single water main metered at each flat, not by the tanks and boosted water supply.

The experts agreed that the existing plant and equipment within the water services room situated under Block D is likely to serve all the upper flats in the entire building (that is Blocks A, B, C, D E and F).

The experts agree that separation of the water supply could be achieved and an outline of the works that may be required is set out below:

a) An additional set of tank and booster pumps, with controls, will require to be installed and connected via new pipework to serve Blocks A, B and C.
b) The Experts agree there is sufficient space within the car park beneath Block D for additional tanks and pumps to be installed, adjacent to the existing services room if that is a suitable location for the new equipment. Alternative locations have not been considered.
c) An additional, separate metered electricity supply will be required to be installed to serve the new pumps and controls for Blocks A, B and C.
d) The existing incoming water main would have to be separated – either at the water meter at ground level (considered to be located outside the entrance to Block C) or within the car park under Block D. The supplies require to be separately metred.
e) New pipework will be required to connect Blocks A, B and C; and the existing pipework to Blocks D, E and F will require to be adapted to suit the new arrangement. Pressure relief valves may have to be added to the supplies to the flats of Blocks A, B and C depending on how the existing installation has been configured.
f) A new service room will have to be formed around the new equipment (serving Blocks A, B and C) with access available to the owners /mangers of those blocks.
g) The water quality in the existing tanks and pumps that would now only be serving Blocks D, E and F will require monitoring after the separation works, to check if the water quality deteriorates due to stagnation arising as a result of the reduced water capacity/number of flats drawing water. Depending on the outcome of that monitoring some further works to adapt the existing tank may be necessary.

Will the interruption in supply to Blocks A, B and C be significant?

The degree of interruption of the water supply to all the Blocks depends on how the works to separate the systems is carried out. Careful planning will be required to organise the work and a lead -in period allowed.

A contractor carrying out such works is likely to plan the work in such a way as to minimise the interruption of water supplies to one single day if possible. Mr Byers thinks the interruption could extend to 2 days in which a temporary supply could be made available.

99. The Tribunal considered that due to the clarity of the Experts' Joint Statement and the matters agreed further representations were not required.

Decision whether Services Independent

100. The Tribunal considered each of the services. In the absence of evidence to the contrary the Tribunal found as follows:

101. Under the Electricity Act 1989 the Distribution Network Operator is responsible for the electricity power supply up to and including the meter. As each flat has a metred electricity supply the Distribution Network Operator will be responsible for the supply to the flat and the Leaseholder will be responsible for the electrical installation beyond the meter.

102. The Common Parts are separately metered. If a separate meter for a Common Part needed to be installed this could and would have to be carried out by an Independent Connections Provider, Distribution Network Operator, or Independent Distribution Network Operator.

103. The Tribunal was of the opinion that the drainage would have been adopted under the Water Industry (Schemes for Adopted Sewers) Regulations 2011 No 1566 and therefore is the responsibility of the local water company.

104. The Tribunal found that the only service in issue was the water supply. Having determined the first question in the five-part test in *Oakwood v Daejan* [2007] 1 EGLR 121 the Tribunal referred to the Experts' Joint Statement and addressed the latter four questions.

105. The second question was whether the water supply can be provided to the Premises independently of the supply to the rest of the building? It was agreed that it could.

106. The third question was what works would be required? The experts agreed an additional set of tank and booster pumps, with controls connected via new pipework to serve Blocks A, B and C could be installed within the car park beneath Block D where there was sufficient space for a new service room. An additional, separate metered electricity supply will be required. The existing incoming water main would have to be separated. New pipework will be required to connect Blocks A, B and C; and the existing pipework to Blocks D, E and F will require to be adapted. Pressure relief valves may be required. The owners/managers of Blocks A, B and C would need to have access to the service room and the water quality in the existing tanks and pumps serving Blocks D, E and F will require monitoring.

107. The fourth question is what would be the interruption to the services? The experts agreed a contractor carrying out such works is likely to plan the work in such a way as to minimise the interruption of water supplies to one single day if possible; although Mr Byers thought this could extend to 2 days in which a temporary supply could be made available.

108. The fifth question is would this interruption be significant? The Tribunal found that one day would not be and two days with a temporary water supply would not be significant either.

109. The Tribunal found the Experts' Joint Statement clear and unequivocal. They both agreed from a practical point of view that an independent supply of water could be achieved without significant interruption of that supply to occupiers of the rest of the building which is not the Premises which are the subject of the Right to Manage claim.

110. Therefore the Tribunal determines that the services in relation to the part of the building, which are the Premises, are provided independently or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building pursuant to section 72(4) (a) and (b).

Conclusion

111. The Tribunal determines that the Premises comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.

112. Therefore, the decision of the Tribunal is that the Applicant was, on the relevant date, entitled to acquire the right to manage the Premises under the Commonhold and Leasehold Reform Act 2002.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

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

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

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

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