IN THE COUNTY COURT AT CENTRAL LONDON

Claim No: D10CL219

BUSINESS AND PROPERTY COURTS

Before: Mr Recorder Eaton Turner

18 February 2019

BETWEEN:

PALGRAVE GARDENS FREEHOLD COMPANY LIMITED
Claimant /
Part 20 Defendant

-and-

CONSENSUS BUSINESS GROUP (GROUND RENTS) LIMITED
Defendant /
Part 20 Claimant

JUDGMENT

Jonathan Upton, instructed by **William Sturges LLP** for the Claimant

Thomas Jefferies instructed by **Mills & Reeve LLP** for the Defendant

1. The matters before the Court arise in the context of a claim for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 (the '1993 Act') in relation to all of the flats in a development known as Palgrave Gardens, London, NW1 ('Palgrave Gardens'), and are:
   a. a claim by the Claimant for a declaration pursuant to s.22(1) of the 1993 Act that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement of Palgrave Gardens, which is opposed; and
   b. The Defendant's counterclaim for a declaration that the Claimant's initial notice given under the 1993 Act is invalid.

2. The Claimant is the nominee purchaser appointed by the participating tenants of flats in Palgrave Gardens to acquire the freehold interest on their behalf.

3. The Defendant is the freehold owner of Palgrave Gardens and the reversioner for the purposes of s.9 of the 1993 Act. In addition to disputing the validity of the initial notice it seeks to prevent the tenants from exercising their statutory rights to acquire the freehold on the basis that the premises do not qualify.

4. The Claimant describes the Defendant's stance in relation to the claim as 'curious' on the basis that:
   a. the tenants have already acquired the right to manage Palgrave Gardens pursuant to the Commonhold and Leasehold Reform Act 2002 (the '2002 Act').
   b. the test as to whether the premises qualify for the right to manage under the 2002 Act is, it is submitted, indistinguishable from the test for collective enfranchisement under the 1993 Act; and
   c. the Defendant did not oppose the right to manage claim.

The issues

5. The issues have evolved during the proceedings, with some issues falling away, but are now as follows:
   a. Was the initial notice invalid for failure to comply with the requirements of section 13(3) of the 1993 Act?
   b. If so, can and should the notice be amended as sought by the Claimant?
   c. Did the participating tenants have the right to enfranchisement in relation to the specified premises as described in the notice, which requires an assessment of what amounts to the 'building' for the purposes of the claim?

The Palgrave Gardens Development

6. Palgrave Gardens is a development constructed in or around 1998 on the site of the former depot of the St Marylebone Railway. The development is built on a long, thin, roughly rectangular plot, tapering to the north-west. All access, whether on foot or by car is from Rossmore Road, at one end of the plot.

7. The building (or arguably buildings) visible above ground, comprises:
   a. four curved residential blocks (labelled A – D on many of the plans included in the evidence) each such block being between 8 to 11 storeys in height;
   b. a single lenticular plan residential block (of 7 storeys);
   c. a single storey building containing two commercial units; and
   d. a single storey leisure centre.

8. A single basement car park runs underneath all the residential blocks of Palgrave Gardens, and also – importantly in the context of the arguments advanced – extends underground beyond the footprint of those residential blocks. The area occupied by the car park is, therefore, considerably larger than the footprint of the residential blocks (the 'Blocks').

9. Immediately above the parts of the car park that fall outside the footprint of the Blocks are gardens, and an accessway which leads from the Rossmore Road entrance to the development over the entire length of the plot to the entrance ramp giving access to the underground car park. The accessway also leads to a turning circle at ground level. There is a single vehicular access to the development, and a single vehicular exit.

10. Palgrave Gardens is a relatively large development, and irregular in shape. There are 288 flats in the Blocks taken together, which are let on long leases in similar form. The initial notice was given by 182 of those tenants (the 'participating tenants'), spread, I assume, across all the residential Blocks. I have, however, heard no evidence as to the precise distribution of the participating tenants among those Blocks.

Procedural steps

11. On or around 22 December 2016 the participating tenants served on the Defendant their initial notice pursuant to s.13 of the 1993 Act.

12. On or around 7 March 2017 the Defendant served a counter-notice pursuant to s.21 of the 1993 Act by which it did not admit that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises by reason that the specified premises in the Notice do not consist of a self-contained building or part of a building.

The relevant statutory provisions

13. Chapter 1 of the 1993 Act gives to a majority of the qualifying tenants of premises to which it applies the right to acquire the freehold. Section 3 identifies the premises to which Chapter 1 applies:

> '(1) Subject to section 4, this Chapter applies to any premises if—
> (a) they consist of a self-contained building or part of a building;
> (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) For the purposes of this section a building is a self-contained building if it is structurally detached, and a part of a building is a self-contained part of a building if—
> (a) it constitutes a vertical division of the building and the structure of the building is such that that part could be redeveloped independently of the remainder of the building; and
> (b) the relevant services provided for occupiers of that part either—
> (i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or

(ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building;

and for this purpose *'relevant services'* means services provided by means of pipes, cables or other fixed installations.'

14. Premises meeting this definition are known as 'the relevant premises' (s.1(2)), and once specified in an initial notice are referred to as 'the specified premises' (s.13(12)).

15. The tenants are also entitled, by s.1(2), to acquire the freehold of any property (referred to as 'Additional Property') which is not comprised in the relevant premises if it falls within s.1(3), being either:
    a. appurtenant property demised by a lease of a qualifying tenant; or
    b. property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises.

16. Participating tenants do not have an absolute right to acquire the freehold of additional property falling within section 1(3)(b). By section 1(4) the freeholder has the ability to offer permanent rights over that property, and so long as it offers rights which satisfy the requirements of section 1(4) the tenants cannot acquire it: see *Shortdean Place (Eastbourne) Residents Association Ltd v Lynari Properties Ltd* [2003] 3 E.G.L.R. 147.

Provisions relating to the Initial Notice

17. The notice given must comply with the requirements of s.13(3) of the Act. Subsection (3), provides, so far as relevant:

'(3) The initial notice must:
(a) specify and be accompanied by a plan showing—
(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),
(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and
(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a)

...

(d) specify the proposed purchase price for each of the following, namely—
(i) the freehold interest in the specified premises or, if the freehold of the whole of the specified premises is not owned by the same person, each of the freehold interests in those premises,
(ii) the freehold interest in any property specified under paragraph (a)(ii), and...'.

18. By s.13(12) 'the specified premises' means the premises specified in the initial notice under s.13(3)(a)(i) (i.e. the building).

Schedule 3, para 15, of the 1993 Act

19. Para 15 of Schedule 3 of the 1993 Act contains a saving provision for s.13 Notices:

> '15(1) The initial notice shall not be invalidated by any inaccuracy in any of the particulars required by section 13(3) or by any misdescription of any of the property to which the claim extends.
>
> (2) Where the initial notice—
>
> (a) specifies any property or interest which was not liable to acquisition under or by virtue of section 1 or 2, or
>
> (b) fails to specify any property or interest which is so liable to acquisition,
>
> the notice may, with the leave of the court and on such terms as the court may think fit, be amended so as to exclude or include the property or interest in question.'

Interpretation of the 1993 Act, and construction of notices served pursuant to its provisions

20. On the question of interpretation of the 1993 Act, and the policy behind Part 1 of that Act, I was referred by Mr Upton, for the Claimant, to the comments of Baroness Hale in *Majorstake Ltd v Curtis* [2008] AC 787 at [21] and [23]:

> '21. … unless the lease has been granted for hundreds of years, it eventually becomes a wasting asset. The capital originally invested in it dwindles away. Eventually the lease becomes unmortgageable and unmarketable. The leaseholder therefore needs to negotiate the purchase of the freehold or a lease extension from the landlord. But, as the authors of *Hague on Leasehold Enfranchisement*, 4th ed (2003), para 1–14 observe, 'there are few comparable situations where the bargaining positions are quite so unequal'. There is also a positive disincentive to the leaseholder to spend any more money than absolutely necessary in maintaining or improving the flat.
>
> …
>
> 23. The 1993 Act was passed to *remedy the problems arising* from long leaseholds of flats by enabling leaseholders to acquire either the whole premises or a new lease at a price which the legislators thought fair.'

21. It was further submitted by Mr Upton that the general approach to interpretation of the Act is well settled, by reference to the words of Millett LJ in *Cadogan v McGirk* [1996] 4 All ER 643, where he said, at 648:

> 'It would, in my opinion, be wrong to disregard the fact that, while the 1993 Act may to some extent be regarded as expropriatory of the landlord's interest, nevertheless it was passed for the benefit of tenants. It is the duty of the court to construe the 1993 Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy.'

and to *Panagopoulos v Earl Cadogan* [2011] Ch. 177 where Roth J said at [19], that in the interpretation of the 1993 Act:

> 'considerations of practicality and convenience are important'.

22. Mr Jefferies, for the Defendant, cautioned against extending the purposive construction of the 1993 Act too far, referring me to the observations of Lord Carnwath in the Supreme Court in *Hosebay Ltd v Day* [2012] UKSC 41; [2012] 1 W.L.R. 2884, where he said, at [6]:

> 'Although the 1967 Act like the 1993 Act is in a sense expropriatory, in that it confers rights on lessees to acquire rights compulsorily from their lessors, this has been held not to give rise to any interpretative presumption in favour of the latter.'

and continued, after quoting the words of Millett LJ in *Cadogan v McGirk* set out above:

> 'By the same token, the court should avoid as far as possible an interpretation which has the effect of conferring rights going beyond those which Parliament intended.'

23. In addition, in relation to construction of the Notice, I was referred by Mr Upton to the *Mannai* principle, on the basis that:

a. In *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 at p 767G Lord Steyn said, in relation to a contractual notice served by a landlord under a lease:

> 'The question is not how the landlord understood the notices. The construction of the notices must be approached *objectively*. The issue is how a reasonable recipient would have understood the notices. And in considering this question the notices must be construed taking into account the relevant objective contextual scene.

b. In *Keepers and Governors of John Lyon Grammar School v Secchi* [2000] L. & T.R. 308 the Court of Appeal accepted that the *Mannai* principle is also applicable to notices served under the 1993 Act.

The Initial Notice served by the Claimant – the premises 'edged in blue'

24. The notice dated 22 December 2016 served by the Claimant (the 'Original Notice') provided as follows (emphasis added):

> **'1. THE SPECIFIED PREMISES**
>
> The premises of which the freehold is proposed to be acquired by virtue of section 1(1) of the Act are shown *edged* in blue on the accompanying plan and known as the land on the west side of Rossmore Road, London (otherwise known as Palgrave Gardens, London NW1 9AX)
>
> NB for the avoidance of doubt the accompanying plan shows the *above ground footprint only* of the Specified Premises. The red, green and mauve edging and numbering is to be ignored and not relevant for the purposes of this notice.
>
> **2. ADDITIONAL FREEHOLDS**
>
> The property of which the freehold is proposed to be acquired by virtue of section 1(2) of the Act are shown *shaded* in blue and on the accompanying plan and known as
>
> (i) all of the communal parts of the Specified Premises (if any) that may not be acquired by virtue of section 1(1) of the Act, including, but not limited to, all main entrances, passages, *access ways*, landings, staircases, lift shafts, means of refuse disposal, water tanks and tank rooms, plant rooms, the leisure centre, meeting rooms, gymnasium, *car park* and other areas of the Specified Premises; and
>
> (ii) the whole of the gardens and amenity land at the Specified Premises'.

25. The plan accompanying the Original Notice showed:
    a. the footprint of the blocks *edged* in blue; and
    b. the entire area within the Palgrave Gardens development *shaded* in blue, save for the blocks themselves, which sit within the larger area shaded blue.

26. Part 7 of the Original Notice specifies the proposed purchase prices as being:

> '£100 for the freehold interest in the specified premises.
> £1,000 for the property within paragraph 2 of this notice.
> For the leasehold interest(s) within para 65 of this notice: £1,275,700.00.'[1]

[1] The figure of £1,275,700.000 being apportioned between the various blocks in differing sums ranging from £342,960.00 to £85,740.00.

Was the Original Notice invalid for failure to comply with the requirements of section 13(3)?

27. The Defendant's arguments as to the Original Notice (as set out in paras 5 and 6 of its Counterclaim) are that:
    a. the Original Notice failed to make clear, and thus to specify, whether the specified premises shown edged blue on the plan included or excluded the basement car park;
    b. the Original Notice failed to specify whether the parts listed in para 2(1) of the Notice, including the car park, were claimed under s.1(1) or under s.1(2) of the Act;
    c. the Original Notice failed to specify whether the areas listed in paras 2(1) and 2(2) of the Notice each constituted the whole or part, and if so which part, of the area shown shaded blue on the plan; and
    d. insofar as the Original Notice claimed parts of the specified *parts* under s.1(2), it was invalid as such parts cannot be claimed under s.1(2).

28. The Claimant contends that:
    a. The Original Notice is clear as to what is being claimed under s.1(1) and under s.1(2) of the Act.
    b. The Defendant's argument as to invalidity can only succeed if the court finds that, on its proper construction, the extent of what is being claimed is so unclear that the Original Notice does not comply with s.13(3)(a) of the Act.
    c. If, on its proper construction, the tenants have wrongly claimed part of the premises under the wrong sub-section of the Act, it should be allowed to amend the Original Notice (pursuant to para 15(2) of Sch 3).

29. Accordingly, the Claimant seeks 'out of an abundance of caution' to amend its Original Notice pursuant to para 15(2)(b) of Sch 3 to the Act.

30. The power to amend an initial notice contained in paragraph 15(2) of Schedule 3 of the 1993 Act is in terms which are indistinguishable from paragraph 6(3) of schedule 3 of the Leasehold Reform Act 1967, which was the subject of consideration by Neuberger J in *Malekshad v Howard de Walden Estates (No 2)* [2004] 1 WLR 862, where he held that:
    a. if a notice claims too much or too little, so as to fall within paragraph 6(3), it is invalid unless amended; and
    b. amendment is not purely an administrative act. The court has a statutory discretion to exercise.

31. The same principles apply to paragraph 15(2) of Schedule 3 to the 1993 Act: see *Hague* at 25-19, fn 90. The power to amend an initial notice is only available under paragraph 15(2) if the notice claims too much or too little: *Oakwood Court (Holland Park) Limited v Daejan Properties Ltd* [2007] 1 EGLR 121 (HHJ Marshall QC) at [19] to [25].

32. Mr Upton submitted that the court has a wide and unfettered discretion whether, and if so in what terms, to permit a necessary amendment to an initial notice, and

will normally grant leave to amend a notice unconditionally unless the landlord could establish any relevant prejudice as a result of having been served with an invalid notice.

33. By an order of HHJ Monty QC made on 16 March 2018 the Claimant was given permission to amend its Claim. By amendment the Claimant pleads:

> '10. If which is denied the court determines that the Initial Notice, on its proper construction is invalid by reason of the fact that part of the Specified Premises (namely the ground and airspace above the car park which is within the footprint of the underground car park but outside the envelope of the parts of the building which are above ground) is incorrectly claimed under section 1(2)(a) of the Act rather than under section 1(1) of the Act the Claimant hereby applies to amend the Initial Notice in the form attached to the application notice dated 12 March 2018; alternatively, in the form attached hereto marked Re-Amended Notice, pursuant to paragraph 15(2) of Schedule 3 to the Act.'

The Amended Notice attached to the application dated 12 March 2018

34. The amended notice to which para 10 of the amended claim refers (the 'Amended Notice'), is accompanied by the same plan as the Original Notice, and provides as follows (slightly reformatted for clarity, and with emphasis added):

> **'1. THE SPECIFIED PREMISES**
> The premises of which the freehold is proposed to be acquired by virtue of section 1(1) of the Act are shown *coloured* blue on the accompanying plan and known as the land on the west side of Rossmore Road, London (otherwise known as Palgrave Gardens, London NW1 9AX)
>
> For the avoidance of doubt, the specified premises comprise the footprint of the underground car park *both below and above ground* and *include*:
> (i) the underground car park;
> (ii) the parts of the *building* which are *built above ground*; and
> (iii) the *ground and airspace above the car park which is within the footprint of the underground car park but outside the envelope of the parts of the building which are above ground.*
>
> **2. ADDITIONAL FREEHOLDS**
> The property of which the freehold is proposed to be acquired by virtue of section 1(2)(a) of the Act are shown on the accompanying plan and known as: *None.*'

The Re-Amended Notice: Premises edged blue, and Property coloured orange

35. The Re-Amended Notice, relied upon in the alternative in paragraph 10, provides as follows (emphasis added):

'1. THE SPECIFIED PREMISES
The premises of which the freehold is proposed to be acquired by virtue of section 1(1) of the Act are shown *edged blue* on the accompanying plans and known as the land on the west side of Rossmore Road, London (otherwise known as Palgrave Gardens, London NW1 9AX)

For the avoidance of doubt, the specified premises comprise the full extent of the footprint of the underground car park shown *edged blue* on plan 1 and the blocks shown *edged blue* on plan 2 which together includes:

(i) the *underground car park*;
(ii) the parts of the building which are *built above ground*; and
(iii) the *ground and airspace* above the car park which is within the footprint of the underground car park but outside the envelope of the parts of the building which are above ground.

2. ADDITIONAL FREEHOLDS
The property of which the freehold is proposed to be acquired by virtue of section 1(2)(a) of the Act are shown *coloured in orange* on the accompanying plans known as: Land and Gardens at Palgrave Gardens which are not part of the building.'

36. Returning to the Original Notice, the Claimant contends that where a building has a different footprint at different levels, the convention is to identify the building on the plan by using the footprint at *ground* level, so that in the case of, for example, a pyramid-shaped building it would be neither conventional nor necessary to submit 15 or more different plans showing the footprint, or outline, of each floor. The existence of such a convention is disputed on behalf of the Defendant, and no textbook commentary is cited in support of it.

37. Alternatively, the Claimant argues, if, strictly speaking, s.13(3)(a)(i) requires a notice to identify the footprint of a building at each level, the *Mannai* principle applies and its Original Notice was sufficiently clear and unambiguous such as to leave a reasonable recipient in no reasonable doubt that the underground car park *was* being claimed as part of the building.

38. The Original Notice is, at least at first glance, not easy to follow. In particular it is accepted on behalf of the Claimant that the drafting of para 2(i) of the Notice is 'unconventional'. Mr Upton argued however that:

a. An ordinary householder or flat owner would be surprised by the suggestion that the basement was not part of their building: see *Albion Residential Limited v Albion Riverside Residents RTM Company Limited* [2014] UKUT 0006 (LC) at [34].

b. Furthermore, the *nota bene* in para 1 of the Original Notice expressly states that the plan shows *only* the ground floor footprint of the building. In other

words, while the *plan* may not show the basement car park the *text* makes clear that it also is being claimed.

c. All of the parts of the property listed in para 2(i) of the Original Notice form part of the specified premises and, as such, should be – and are – claimed in para 1 of the Original Notice under s.1(1) of the 1993 Act.

39. Mr Upton submitted therefore that para 2(i) of the Original Notice is effectively meaningless, adds nothing at all, and can and should be ignored.[2] Further, as regards para 2(ii) of the Original Notice, which refers to 'the whole of the gardens and amenity land at the Specified Premises' it was argued that:

a. As the reasonable recipient of the Notice would be in no reasonable doubt that the underground car park was being claimed as part of the building under s.1(1), the reasonable recipient would therefore understand that the underground car park was *not* being claimed as the additional land.

b. Accordingly, the reasonable recipient would conclude that the gardens and amenity land which were being claimed under s.1(2)(a) were those parts shaded blue on the plan which were *not* claimed under s.1(1).

40. It was further argued that the failure adequately to describe the building as *including* the basement car park is a 'misdescription of any of the property to which the claim extends' which does not invalidate the Notice: see para 15(1) of Sch 3 to the Act. If on the other hand the proper construction of the Original Notice is that 'the specified premises' mean the building *limited* to its footprint at ground floor level (and *not* including the underground car park) the Claimant would accept that:

a. its Original Notice fails to include property which ought to have been included; and

b. such omission would not be a mere 'inaccuracy in the particulars' or 'misdescription of the property', so that the Notice is invalid unless it is amended.

41. Mr Jefferies stressed, understandably, the importance not only of an initial notice identifying exactly the premises intended to be specified, but also of it identifying what is claimed under sections 1(1) and 1(2) respectively, not least so that the Defendant knows what the proposed prices relate to.

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[2] The drafting of the Original Notice was, it was argued for the Claimant, demonstrative of a 'safety-first' approach to drafting a claim notice in expectation of the landlord taking every possible point available to it in challenging the tenants' assertion of entitlement: see the observations of the Deputy President (Martin Roger QC) in *Pineview Limited v 83 Crampton Street RTM Company Limited* [2013] UKUT 0598 (LC) [66]-[67] in the context of landlords resisting RTM claims, which should apply with equal (if not greater) force to claims to collective enfranchisement.

42. While Mr Jefferies criticised the potentially confusing nature of the Original Notice, I did not however understand him to suggest that the Defendant had in fact been prejudiced by any such confusion, or that, if I were to accede to the Claimant's application to amend the Original Notice, it should be upon any particular terms.

43. I asked Mr Jefferies to state what the Defendant contends would have been an accurate and sufficient notice to achieve (subject to the issue of the meaning of 'building') the result contended for by the Claimant. I understood him to accept that a 'perfect' notice would have incorporated a plan showing a single line around the fullest extent of the freehold claimed under sub-paragraph 1 including the underground car park and the airspace above it.

44. Mr Jefferies contended that permission to amend the Notice in the manner attached to the 12 March 2018 application notice should not be given, because it still only claimed the land *coloured* blue, which excluded the blocks themselves, and also because the claimant was not seeking to include additional property or to exclude property from the claim, so that the grounds for amendment, as explained in *Malakshad*, were not met. He questioned why the Claimant had not initially served a further notice without prejudice to the Original. He further opposed the applications to amend and to re-amend on the basis that the tenants' claim would not succeed in any event, as it is impossible to enfranchise the car park beyond the footprint of the Blocks, which falls outside s. 1(1), and that to do so would create a flying freehold.

45. I approach the question of the Original Notice as follows:

a. There is some strength in Mr Upton's contention that when construed logically, and in the manner outlined above, it is clear as a matter of common sense that the Original Notice was intended to include also the underground car park.

b. However, while Mr Upton's careful arguments as to the construction of the Original Notice are logical, they do expect the hypothetical reasonable recipient to embark upon a stage by stage process of interpretation that arguably goes beyond that ordinarily to be expected of such a recipient, and also to ignore part of the Original Notice as mere surplusage.

c. Further, the words upon which Mr Upton relies in the Original Notice:
'NB for the avoidance of doubt the accompanying plan shows the above ground footprint only of the Specified Premises'
to support the argument that the notice flagged up the fact that the plan alone did not give the complete picture, can also be relied upon to support a similarly strong argument that those words instead make clear that the Claimant was restricting its claim to the ground floor outline of the Blocks, to the exclusion of any other property.

On balance, the latter reading, which does not require disregarding part of the Original Notice as mere surplusage, is I consider the more natural and objective reading.

46. On this basis the Claimant has failed to include part of the relevant premises, namely the car park. I therefore give the Claimant permission to amend the Notice. I would have been inclined to give permission in the terms of the 12 March Amendment (even though the area *coloured* blue on the plan arguably excludes, as Mr Jefferies points out, the Blocks themselves), as the wording of the Amended Notice states:

> '... the specified premises comprise the footprint of the underground car park both below and above ground and *include:* (i) the underground car park; (ii) the parts of the *building* which are *built above ground*; ...' etc.

and the plan and the wording on the notice have to be read together and, so read, made it sufficiently clear that the Blocks were intended to be included.

47. I was reminded however by Mr Jefferies in subsequent written submissions that, like the Original Notice, the Amended Notice wrongly claimed under s.1(1) some areas (shown coloured orange on the plans attached to the Re-Amended Notice) which fall within s.1(3) rather than s.1(1). I therefore give permission to re-amend the Original Notice in the manner sought by the Re-Amended Notice.

48. I now turn to the remaining issue, namely whether the premises specified qualify for enfranchisement under the 1993 Act.

What is the 'building' for the purposes of the 1993 Act?

49. The remaining issue is whether the Original Notice, or now the Re-Amended Notice, relates to premises that are a 'self-contained building or part of a building', which the Defendant disputes.

50. The Claimant suggests, as I have said, that it is curious that the Defendant is taking this point as it did not oppose the earlier acquisition of the right to manage the whole of Palgrave Gardens by the Claimant, and the test for whether the premises qualify in the 2002 Act is identical to the relevant provision in the 1993 Act, in support of which he refers to *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2015] EWCA Civ 282; [2016] 1 W.L.R. 275.

51. The Defendant, for its part, states that it had been prepared to let go of the right to manage Palgrave Gardens but wishes to preserve the value of its investment in the ground rents. Mr Upton answers that, for what it is worth, the reason behind the tenants' claim is the issue of control, rather than the elimination of the obligation to pay ground rent to the Defendant.

52. Section 13 of the 1993 Act provides:

> '(3) For the purposes of this section a building is a self-contained building if it is structurally detached …'.

53. The Claimant's case is that the specified premises (i.e. the 'building') comprise:

a. the Blocks above ground;
b. the underground car park; and
c. the land and airspace above the car park which is within the footprint of the underground car park but outside the envelope of the Blocks above ground.

It submits that the building, so described, is a self-contained building in that it is structurally detached.

54. The Defendant argues that the Blocks are not a single 'building' for the purposes of the 1993 Act, but rather a series of independent, structurally detached buildings, and that one cannot validly serve a single notice in respect of more than one building.

Expert evidence

55. Each party instructed an expert structural engineer to report, and those experts have produced a joint statement. The experts were not called to give evidence.

56. In his report Mr Jeremiah, for the Claimant, states:

> 'the entire building development [i.e. Palgrave Gardens] is of consistent structural form with joints provided at conventional spacings to prevent damage from thermal and other movement. The operation of the building relies on the interconnection of the parking facility and redevelopment of a single structural part would be impractical, although structurally possible.'

57. In their joint statement the experts agree in relation to Palgrave Gardens that:

> 'the structures [i.e. the Blocks] … are generally separated by movement joints. They are thus, in purely structural engineering terms, independent self-supporting structures, insofar as they do not rely on support from, or provide support to, any other structure within the Development'.

58. By his skeleton argument Mr Jefferies explained that until the production of recently obtained plans, and the exchange of expert evidence, the Defendant had itself assumed that all the buildings and the car park were a single structure.

59. I had the benefit of a visit to Palgrave Gardens in the company of both counsel. To a layman's eye, the residential blocks appear from the outside to form one large and continuous, although irregularly-shaped, structure. The Blocks appear

to flow into, and be joined to, each other, and no gaps between the Blocks are visible in the locations where the plans reveal the movement joints to be located. Internally, however, the Blocks are not interconnected at ground level or above. Each Block has its own separate entrance at ground level, and another from the basement car park.

60. The basement car park appears, to a visitor, to be one very large space. It is not obvious when walking through it at what stage one is moving from walking underneath, say, Block B to walking under Block C. All users of the car park, wherever their flat and their parking space are located, will in practice use the entire length of the car park, as to access it they must drive from the Rossmore Road entrance along the accessway to the far end of the development and then descend the ramp into the basement car park.

The Leases

61. I was referred to an example of the form of Lease pursuant to which the tenants hold their flats. The Leases refer to the Palgrave Gardens development as 'the Building', to the individual block in which the relevant flat is located as 'the Block', and to the individual flat itself as 'the Dwelling'.

62. The Leases are detailed and complex documents, but they provide that the tenants are liable to pay 'Maintenance Expenses' calculated by reference to a combination of expenses attributable to the relevant individual Block, and expenses attributable to the maintenance of the common parts (the 'Maintained Property') of the Palgrave Gardens development as a whole. The Maintained Property, as defined in Schedule 2, includes the accessways, communal areas, the leisure centre which residents have the right to use, refuse storage facilities, 'all external parts of the Building', the Basement Car Park and the water supply and drainage facilities.

Textbook commentary, and authorities on the meaning of 'building'

63. The word 'building' is not defined by the 1993 Act. On behalf of the Claimant my attention was drawn to the views of the authors of *Hague on Leasehold Enfranchisement*, 6th ed, on the meaning of 'building'.

64. *Hague* comments on premises qualifying for collective enfranchisement under the 1993 Act in Chapter 21. Para 21-02 states:

> 'The word "building" is not defined by the 1993 Act but denotes some kind of permanent erection. It is considered that the definition of this word will not normally cause any problem in the context of collective enfranchisement, in view of the fact that the building must contain at least two flats. Difficulty might arise, however, if it is sought to include within the description of a building an addition or extension, such as a covered walkway leading to another building.'

The Claimant's submissions

65. I was also referred by the Claimant to para 2-03 of *Hague* where the authors state that whether relevant premises are a building is '... a test of "common sense"' or "objective judgment"'.

66. The Claimant further relies upon the authors of *Hague* when they state in para 2-03 that for the purposes of s.2 of the Leasehold Reform Act 1967 the same structure may be regarded as a single building or as several buildings, and, by reference to *Malekshad v Howard de Walden Estates* [2003] 1 AC 1013 that a terrace of houses may constitute a single building even though each house in the terrace also constitutes a building in itself.

67. It is submitted by Mr Upton that all of the above statements in *Hague* are equally relevant and correct in relation to the 1993 Act. Mr Upton further submitted, in reliance on *Cadogan v McGirk, supra*, that the court should construe the word 'building' so as to enable the tenants to exercise the statutory rights that Parliament intended to confer on them.

68. As for the expert evidence, Mr Upton emphasises that the experts are describing Palgrave Gardens 'in purely structural engineering terms', and submits that the fact that the specified premises comprise several structures which, from a purely civil engineering perspective are structurally detached (in the sense that the structures do not derive or give any structural support from or to one another), does not mean that they do not comprise a single building for the purposes of the 1993 Act. As a matter of ordinary common sense, he says, they do together comprise a single building for the purposes of that Act.

69. Such an approach is also, Mr Upton submits, supported by authority. In *41–60 Albert Palace Mansions (Freehold) Ltd v Craftrule Ltd* [2011] EWCA Civ 185; [2011] 1 W.L.R. 2425 the premises specified in the notice formed part of a terrace, but were themselves capable of vertical severance into two self-contained parts. Smith LJ described the specified premises, and their setting as follows, at [5]:

> 'The property [i.e. the specified premises] forms part of a terraced building comprising 160 flats, built in the late 19th or early 20th century. The building consists of eight "handed pairs". Each "pair" comprises 20 flats, arranged on five floors. The property comprises one such pair consisting of 20 flats, numbers 41–60, situated roughly in the middle of the terrace. Each half of the pair has a separate entrance leading to separate common parts and staircases. There is a dividing wall between each half (and the adjacent parts of the building) which is vertically continuous from the footings to roof level. Each half has its own drainage system, mains water riser, electricity supply and entry phone. Telephone and cable TV services are provided to individual flats although the cables are bundled together. There are no other communal services. Each half of the pair could be redeveloped independently of the other half of the pair

and/or of the rest of the building. All the flats in the property save for numbers 41 and 50 are demised under long residential leases for a term of more than 21 years. The service charge provisions in the leases are defined by reference to the whole property (flats 41–60).'

70. The freeholder in *Craftrule* disputed the claim on the basis that the condition in s.3 of the Act that the specified premises consist of 'a self-contained building or part of a building' was not satisfied where those premises could be further sub-divided into self-contained parts satisfying the statutory test.

71. The Court of Appeal held, dismissing an appeal against the judgment of Henderson J (as he then was), that the words 'self-contained ... part of a building' in s.3(1) included premises which were capable of further division into smaller self-contained parts; that there was no justification for putting a gloss on the clear statutory words so as to require that a self-contained part had to be the smallest possible self-contained part; and that, accordingly, the tenants were entitled to exercise the right of collective enfranchisement in respect of the whole of the specified premises.

72. It may be, the Claimant submits, that Palgrave Gardens could be further sub-divided into self-contained parts each individually satisfying the statutory test, but that does not mean that the participating tenants are not entitled to exercise the right of collective enfranchisement in respect of the whole of the premises.

73. Mr Upton further relied upon the observations of Geoffrey Vos QC (as he then was) sitting as a Deputy High Court Judge in *Long Acre Securities Ltd v Karet* [2004] EWHC 442 (Ch); [2005] Ch. 61 when considered the meaning of 'building' for the purposes of tenants' rights of first refusal under Part I of the Landlord and Tenant Act 1987 (the '1987 Act'). The landlord in that case sought to dispose of his immediate interest in a number of separate blocks of flats with appurtenant property and had served a single notice in that respect. Section 1 of the 1987 Act provides that the right to acquire applies to 'premises if...they consist of the whole or part of a building...' Having considered the whole of Part 1 of the 1987 Act, together with a number of authorities, the judge decided (at para 74) that:

> '...the 1987 Act can only make sense, if the word 'building' is construed to mean (I accept somewhat awkwardly) either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises'.

74. In the light of the above authorities Mr Upton submits that the Blocks and the car park are a 'building' for the purposes of s.3 of the 1993 Act.

The Defendant's submissions

75. Mr Jefferies says that Chapter 1 of the 1993 Act applies to two categories of premises, namely a self-contained building, or part of a building. A self-contained building is the largest permissible type of premises, and it must follow

that the 1993 Act does not apply to a claim in respect of more than one self-contained building.

76. Thus, he argues, the participating tenants cannot claim the freehold of the land edged blue on the plan (which includes all five of the Blocks) under section 1(1), as it does not contain a single self-contained building. He refers to what is said in *Hague* at para 21-02, i.e. 'that "building" should not be construed as meaning "building or buildings"', cited with apparent approval by the Court of Appeal in *Ninety Broomfield Road RTM Co Ltd v Triplerose* [2015] EWCA Civ 282; [2011] 1 WLR 275 at [59] – [60].

77. In *Triplerose*, which is a right to manage case under the 2002 Act, the landlords in each of three separate cases appealed against determinations of the Upper Tribunal that the applicant right to manage company could in each case acquire the management of more than one set of premises so long as all the qualifying conditions were met in relation to each set of premises respectively. The Court of Appeal, allowing the appeals, held that:

a. The Upper Tribunal had been wrong so to decide, and none of the applicants was entitled to succeed in its application to acquire the management of two or more blocks of flats.

b. Save where otherwise expressly provided, in section 72 of the Commonhold and Leasehold Reform Act 2002 and other relevant right to manage provisions in Chapter 1 of Part 2 of the Act, the word premises refers to a single self-contained building or part of such a building, and a right to manage company cannot acquire the right to manage more than one self-contained building or part of a building pursuant to the provisions in Chapter 1 of Part 2.

78. In *Triplerose* Gloster LJ cross-referred to the 1993 Act, stating (emphasis added):

> '59. As [leading counsel for the landlords] further submitted, some support can also be derived from the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The 1993 Act confers on long leaseholders the right to acquire the freehold of their blocks. Although there are various incidental differences between the two Acts 22 , and the provisions of the 1993 Act operate through a nominee purchaser, the qualifying conditions are otherwise identical, ie as to blocks, qualifying leaseholders, and appropriate proportion of qualifying leaseholders. In particular, the provisions in section 72 of the Act are *indistinguishable* from those in section 3 of the 1993 Act. Section 3(1), as amended, provides:
>
> > "Subject to section 4 , this Chapter applies to any premises if— (a) they consist of a self-contained building or part of a building; (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."

60. The leading textbook on Leasehold Enfranchisement, *Hague on Leasehold Enfranchisement*, 6th ed (2014), para 21-02 states: "The Act refers to 'a' building. *It has been held in the county court, correctly it is considered, that 'building' should not be construed as meaning 'building or buildings'*." Whilst the construction of the 1993 Act is not under consideration in these appeals, and the contexts are different, at first sight the analogy seems to me to be apt. If what appears to be the generally accepted view that the 1993 Act applies only to single buildings (ie one cannot enfranchise two or more blocks via one nominee purchaser under one claim notice) is correct, it would be surprising if the same words in the Act fell to be construed differently from those in the 1993 Act.'

79. In the present case, Mr Jefferies submits:

a. It is agreed by the experts that each Block is a structurally detached building. The Blocks do not become a single building just because there is some non-structural connection between them.

b. It would be wholly unsatisfactory to have some other subjective test as to what amounts to a building. There is a 50mm wide cavity[3] between each of Blocks A to D. If it is said that the gap is not large enough to render the buildings separate, why not?

c. It should not make any difference that there is a non-structural connection between the structurally independent parts. If it did, the question would arise what form of connection would be sufficient? For example, would a weathering detail, or triumphal metal arch be sufficient? He referred to the discussion in *No 1 Deansgate (Residential) Limited v No 1 Residential RTM Company Ltd* [2013] UKUT 0580 at [25] to [35].

80. He further points out that the conclusion reached by Geoffrey Vos QC (as he then was) in *Long Acre Securities Ltd v Karet* is described as 'controversial' in *Hague* at para 21-02, fn 7.

81. Mr Jefferies submits, by reference to the terms of the Leases under which the lessees hold their flats, that it is worth noting that each of the Blocks has a separate name, the Block in which each flat is contained is identified in the relevant Lease, and the lessee only has the right to use the entrance, corridors, lift and stairs in his own Block.

[3] In structural terms, although not visible to an observer.

Is Palgrave Gardens therefore unenfranchisable?

82. Mr Jefferies contends, by his skeleton argument, that as a consequence of the structurally detached nature of the Blocks:

> '... a majority of the tenants of an individual block [within Palgrave Gardens] might be able to claim the freehold of that block, but the tenants of all the blocks cannot by a single notice claim the freehold of the whole of the premises edged blue.'

83. In the course of the hearing I raised with Mr Jefferies the question of what would happen in a development such as Palgrave Gardens if the tenants of, by way of example, Blocks A and D, which do not adjoin each other, were each to serve initial notices, but the tenants of the other Blocks did not, in circumstances where the tenants of all Blocks in the development pay service charges for services provided to all tenants across the entire development, and all share the rights use the Leisure Centre, to which they also contribute under their Leases. How would the provision of, and payment for, services be disentangled, delivered and charged for in the future? Would the complications involved mean that – notwithstanding his suggestion that tenants of each Block might separately serve a notice – the rights of the tenants to do so in *theory* would be defeated in *practice* by the degree of interconnection of the services enjoyed by all the tenants of all the Blocks, so as to render a development such as Palgrave Gardens simply unenfranchisable, despite the clear intention of Parliament underlying the 1993 Act?

84. In response he referred me to s. 24 of the 1993 Act which provides for the determination of matters in dispute by a tribunal, so that a tribunal might in such a case be able to grants rights of user subject to apportionment of the maintenance liabilities between the enfranchised Blocks and the unenfranchised Blocks. I am conscious that I almost certainly do not do justice to his arguments on this point, but he encouraged me not to get too 'bogged down' in these questions, which went 'deeper than necessary', the bottom line being that Parliament has provided that the tenants of a structurally detached building should have the right to enfranchise their freehold even if it caused chaos on an estate such as Palgrave Gardens. The problems I raised were, he said, inherent in the structure of the 1993 Act.

85. Further, he said, there were two other answers to my concerns:

a. First, the tenants of all the Blocks, if driven to seek separate enfranchisement of their individual Blocks, could each put forward the same nominee purchaser, so the practical problems would fall away.

b. Second, even if the practical problems caused would mean that collective enfranchisement could not be achieved, so far as Palgrave Gardens is concerned the tenants already have the right to manage, and so should be

content with that. The Defendant would, for its part, then not lose its investment in the ground rents.

86. Subsequent to the hearing I considered further the expert reports and, noting reference to plant rooms, asked for clarification of the following points:
   a. Are the 'Service Installations' as defined in the Lease provided separately to each Block, or do they form part of an integrated installation system that serves all Blocks together, or a series of systems serving at least more than one Block?
   b. Do the basement plant rooms each serve only an individual Block, or more than one Block?
   c. If individual Notices were served by, for example, a majority of tenants in each of Blocks A and C of Palgrave Gardens, but not by the tenants of Blocks B, D and the lens-shaped Block, would it be possible, without significant disruption, to disentangle the services provided to Blocks A and C from those provided to the other Blocks, and would it be necessary, and if so, possible, to divide the plant rooms?

87. Mr Jefferies, for the Defendant, stated however that the answers to these questions fell outside the expertise of the parties' expert structural engineers, so would require the provision of further expert evidence, from different experts, to which the Defendant would object.

88. Mr Jefferies further contends that the enfranchisement of the underground car park would amount to the creation of a flying freehold.

Discussion

89. The 1993 Act is, among other things, 'An act to confer rights to collective enfranchisement and lease renewal on tenants of flats; …'. I bear in mind the guidance as to interpretation of the Act provided by the observations quoted above of Baroness Hale in *Majorstake Ltd v Curtis* [2008] AC 787 at [21] and [23], Millett LJ in *Cadogan v McGirk* [1996] 4 All ER 643, and Roth J in *Panagopoulos v Earl Cadogan* [2011] Ch. 177, but also of Lord Carnwath in *Hosebay Ltd v Day* [2012] UKSC 41.

90. Before returning to the authorities cited, it is worth referring to the view expressed by the expert engineer instructed by the Claimant. Even though the issue is one for the Court, after noting that the 1993 Act does not define 'building' he expressed the following opinions, which seem to me to accord with common sense:

> 'I would consider a building to have the following characteristics:
> To be of consistent or complementary structural form
> To be constructed on a single site
> To be separated only by structurally required joints
> To be of contemporaneous construction, except in the case of extensions

To be planned and utilised as a single entity.

...

There is, in my opinion, no doubt that [Palgrave Gardens] ... is structurally detached from any other adjacent building and as such is a self-contained building, in accordance with the definition in the Leasehold Reform, Housing and Urban Development Act 1993. Whilst the premises comprise a number of structurally self supporting units, I consider that they form part of a coherent building of consistent structural form and fabric, clearly designed as a single entity in terms of its management and servicing.'

91. As for the authorities, there is, on analysis, very little guidance directly in point on the meaning of 'building' in the context of collective enfranchisement. Commentators have therefore had to look elsewhere. Para 2-03 of *Hague*, referred to by both counsel, is a discussion not of the 1993 Act but of the meaning of 'house' in the context of s.2(1) of the Leasehold Reform Act 1967, which provides:

> 'For purposes of this Part of this Act, "house" includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was not or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes ...'.

92. I note also that the authority cited in *Hague* in support of the proposition that the meaning of 'building' is a matter of objective judgment, and common sense, *R v Swansea City Council, Ex p. Elitestone* [1993] 2 EGLR 212 (CA), is a decision on the meaning of 'building' in s. 74 of the Planning Listed Buildings and Conservation Areas) Act 1990. The issue in *Elitestone* was whether certain wooden chalets '... of varying degrees of substance ... some of them little more than sheds ... [and] all, or nearly all, of them suspended on pillars' were buildings, in which event they would be protected from demolition without consent. Mann LJ stated at p. 430:

> 'In those circumstances I cannot for my part see any conclusion as a matter of objective judgment other than that these chalets were and are structures or erections. Such a conclusion seems to me to respond to commonsense and means that these chalets are buildings for the purposes of this planning legislation.'

93. The Claimant relies upon what is said in *Craftrule*, a case under the 1993 Act decided by the Court of Appeal in 2011, but which, strictly, relates to the meaning of 'self-contained ... part of a building' as opposed to the meaning of 'self-contained building'.

94. The only authority directly in point therefore would appear to be the unreported County Court decision of Recorder Knott in *Garden Court NW8 Property Co*

Ltd v Becker Properties Ltd, 1995 Central London County Court, referred to by *Hague* at para 21-02, fn 7, of which no copy is available. *Hague* states, referring to that case:

> It has been held in the county court, correctly it is considered, that 'building' should not be construed as meaning 'building or buildings'."

95. The Defendant relies upon the endorsement of these words in *Triplerose* at [59], a case on the meaning of 'building' in the context of the right to manage provisions of the 2002 Act, decided by the Court of Appeal in 2015 (in which *Craftrule* was, incidentally, not cited). I note that the editors of *Hague* comment at 21-02 fn 6, that even though the Upper Tribunal stated in *Triplerose* that the definition of 'premises' in s. 72(1) is 'indistinguishable' from that in the 1993 Act, section 72 actually differs in that it includes appurtenant property. The Court of Appeal however, although it reversed the decision of the Upper Tribunal in a decision post-dating the current edition of *Hague*, repeated the suggestion that the two definitions are 'indistinguishable': see Gloster LJ at [59].

96. As outlined above, the question which arose in *Triplerose* was whether a RTM company could acquire the management of more than one set of premises as defined in section 72 of the 2002 Act. Paragraphs [5] – [19] of Gloster LJ's judgment provide the factual background. It is of relevance to note that the three cases related to, respectively:
    a. 'two purpose-built, structurally detached, blocks of flats' in respect of which two separate notices of claim under s. 79 had been served;
    b. 'two blocks of flats' in respect of which two separate notices of claim had been served; and
    c. 'seven self-contained blocks of residential flats' in respect of each of which an individual notice of claim had been served.

    There was no suggestion in any of those cases that the separate blocks were capable of being together regarded as a single building.

97. Of note, I consider, in relation to *Triplerose*, are the arguments that were addressed to the Court. Counsel for the landlords submitted (see Gloster LJ at [52]) that where blocks of differing sizes were managed by a single RTM company, tenants of the larger block might dominate decision making, and conflicts of interest might arise as a result of which one block might want to increase service charges where another did not, or estate rules and regulations might be varied to benefit one block at the cost of another. Considerations of this nature led to a submission on behalf of the landlords that:

> 'However attractive it might seem superficially for a smaller block to have joined in a single, estate-wide RTM, in reality this meant that the smaller block could not achieve the objective of self-management which was at the purpose [*sic*] of the provisions.'

which the Court found persuasive: see Gloster LJ at [53] – [54].

98. No such considerations it seems to me arise here, and indeed the arguments would go the other way. Construing the 1993 Act in the manner contended for by the Defendant would be likely to defeat the objective of enabling enfranchisement underlying that Act, and I do not think that I should construe the 1993 Act in a manner that would seem likely to defeat its purpose, and be likely to render estates such as Palgrave Gardens unenfranchisable, or that might lead to chaos in relation to the provision of services in the event that one Block sought enfranchisement and another, or all the others, did not.

99. The Court of Appeal also attached weight to the argument that if 'building' could be construed as 'buildings', logically an RTM company could acquire the management of multiple (geographically unrelated) properties, a concern dismissed as 'fanciful' by the Upper Tribunal.

100. Gloster LJ stated at [47] (emphasis added):

> 'When one looks at the Regulations they are wholly inconsistent with the notion that an RTM company can acquire rights of management in relation to different sets of premises, and in particular with the notion that an RTM company can acquire rights of management in relation *not merely to blocks of flats in the same estate*, but also to premises with a *wholly different geographical footprint.*'

and continued at [47] that if the applicants were right there was a risk that, for example, the majority of the 100 qualifying tenants of premises A in Liverpool, could (on the one member, one vote, principle) dictate who were appointed the directors of the RTM company, and outvote the 14 qualifying tenants of premises B in Reading, in relation to decisions that had to be taken in relation to premises B.

101. Palgrave Gardens is, to the eye of a non-engineer, a single, albeit very large, and irregularly-shaped, building. It has, expert engineering evidence reveals, been designed in such a way that it incorporates, behind a single continuous exterior, a number of self-supporting units, separated by narrow, but outwardly invisible, movement joints. The units form, however, to adopt the words of the Claimant's expert 'part of a coherent building of consistent structural form and fabric, clearly designed as a single entity'.

102. The words of s. 3 must be construed in the context of the purpose of the 1993 Act. In that context I do not accept Mr Jefferies' argument that the smallest identifiable self-contained unit is the largest premises enfranchisable under the 1993 Act. The Act does not so provide, and it would be inappropriate so to conclude in circumstances where there is:

a. in *Malekshad v Howard de Walden Estates* [2003] 1 AC 1013, House of Lords authority that a terrace of houses may in an appropriate context constitute a single building even though each house in the terrace also constitutes a building in itself.

b. in *Craftrule,* Court of Appeal authority to the effect that the words: 'self-contained ... part of a building' in s.3(1) include premises which were capable of further division into smaller self-contained parts, and that there was no justification for putting a gloss on the clear statutory words so as to require that a self-contained part had to be the smallest possible self-contained part.

103. It is necessary first to ascertain whether the premises are, as a matter of common sense, a building or part of a building. If so, the question arises whether they are self-contained. They need not, however, in my judgment, be the smallest self-contained unit it is possible to identify.

104. Mr Jefferies asks – if a 5 cm movement joint is not to be regarded as enough to constitute the structures as separate buildings – where the line would be drawn, in which context he drew attention to *No.1 Deansgate (Residential) Limited v No.1 Deansgate RTM Company Limited* [2013] UKUT 0580. There will be cases where the application of common sense to the facts will be more difficult than in the present case. The discussion in *No.1 Deansgate* needs to be seen in its particular context. It was a case where the subject building had subsequent to its construction been attached, by weathering and other non-structural details, to other nearby buildings built later. HHJ Huskinson recorded at [5] that he had been '... told that if the weathering features between the building and the neighbouring buildings were removed then there would be a gap between the buildings down which one could notionally drop a pebble so that it fell vertically to the ground between the buildings'. In that specific context it is not difficult to see why he rejected the suggestion that those largely cosmetic additions rendered what was otherwise, and had started out as, a free-standing structure, no longer within the definition of 'building' in s. 72(2) of the 2002 Act.

105. There may be cases where, on their facts, the application of common sense, and analysis, will be more difficult and such cases will have to be resolved on their specific facts. Here, however, the gaps inherent in the movement joints are invisible to an observer, and do not detract from its appearance as a coherent structure. All the Blocks within Palgrave Gardens were built at one time, as part of a single development. In my judgment, as a matter of common sense, in the specific factual context of the present case, the Blocks at Palgrave Gardens comprise a single building for the purposes of the 1993 Act.

106. If that is right, the question that arose in *Triplerose*, namely whether the meaning of 'building' encompasses 'buildings', does not arise, and nor do some of the attendant difficulties, such as whether such a construction of 'building' could be stretched to include 'geographically unrelated' buildings many miles apart.

107. Mr Jefferies also argued that even if (contrary to his contention) the Blocks together comprise a single building, the enfranchisement of the car park would amount to the creation of a flying freehold. In this context both parties referred to the decision of the Upper Tribunal in *Albion Residential Limited, v Albion*

Riverside Residents RTM Company Limited [2014] UKUT 0006 (LC) which related to the right to manage provisions of the 2002 Act. The development also had an underground car park, which extended at basement level beyond the footprint of the building in question. The Deputy President commented in that case at [33]:

> 'We agree with Mr Rainey [counsel for the Respondent] that the car park itself would not ordinarily be regarded as part of the Building (although that part of it which lies beneath the structure of the Building probably would be); but that is not the issue.'

I do not regard the observations of the Upper Tribunal in the *Albion* decision, which was not directly addressing the issues arising here, as being of assistance.

108. Mr Jefferies refers to *Malekshad* at [56] in support of the proposition that issues as to support and repair etc 'could arise in the present case if the Claimant were to acquire the freehold of the structure of the car part without the land and airspace above it'. Such issues however do not arise. The Re-Amended Notice makes clear that the intention is to acquire the land and airspace above the car park.

109. Further, Mr Upton contends that as regards the land and airspace above the car park which is within the footprint of the underground car park but outside the envelope of the Blocks above ground, there would be no difficulty in holding that a ground floor single storey entrance vestibule attached to a tower with multiple floors was part of the building or that the airspace above the vestibule could be claimed as part of the specified premises under s.1(1). There is no distinction in principle, he contends, between a single storey vestibule above ground and a car park below ground: both are part of the building and the specified premises therefore include the airspace above them. I accept his argument on this point.

110. Mr Jefferies also contended that 'the land outside the ground floor footprint of the building' which I take to mean the Blocks 'falls within section 1(2), and accordingly cannot fall within section 1(1)' the two sub-sections being mutually exclusive. In the light of my conclusion on the Defendant's 'flying freehold' argument above, I do not see any strength in this point.

111. Against that background I make the declaration sought by the Claimant.

112. I invite the parties to attempt to agree an order giving effect to my judgment. In the absence of agreement, a further hearing can be fixed.

113. I should record my gratitude to both counsel for their detailed and helpful oral and written submissions, and comprehensive citation of authority.