Neutral Citation Number: [2025] UKUT 39 (LC)

Case Nos: LC-2024-490
and LC-2024-685

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

APPEALS AGAINST DECISIONS OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER

FTT Refs: MAN/00BY/LRM/2022/0007 and LON/00BK/LRM/2023/0022

Royal Court of Justice,
Strand, London WC2A 2LL
7 February 2025

LANDLORD AND TENANT – RIGHT TO MANAGE – qualifying rules – self-contained part of a building – vertical division – capable of independent redevelopment – independent services – s.72(3)-(4), Commonhold and Leasehold Reform Act 2002

BETWEEN (LC-2024-490):

THE COURTYARD RTM CO LIMITED (1)
THE STUDIOS RTM CO LIMITED (2)
X1 THE TERRACE RTM CO LIMITED (3)

Appellants

-and-

ROCKWELL (FC103) LIMITED (1)
GREY GR LP (2)

Respondent

AND BETWEEN (LC-2024-685):

14 PARK CRESCENT LIMITED (1)
PC INVESTMENTS LIMITED (2)

Appellants

-and-

14 PARK CRESCENT RTM CO LIMITED

Respondent

Martin Rodger KC, Deputy Chamber President

14-15 January 2025

Plaza Boulevard, Liverpool L8 (LC-2024-490) and
14 Park Crescent and 8 Park Crescent Mews, London W1 (LC-2024-685)

Winston Jacob, instructed by public access, for the appellants in LC-2024-490
Sonia Rai, instructed by JB Leitch Ltd, for the first respondent in LC-2024-490
Simon Allison, instructed by JB Leitch Ltd, for the second respondent in LC-2024-490
Justin Bates KC, instructed by Northover LLP, for the appellants in LC-2024-685
James Fieldsend, instructed by Wallace LLP, for the respondent in LC-2024-685

The following cases are referred to in this decision:

Assethold Ltd v Eveline Road RTM Company Ltd [2024] EWCA Civ 187, [2024] Ch 204

Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101

Craftrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd [2011] EWCA Civ 185, [2011] 1 WLR 2425

FirstPort Property Services Ltd v Settlers Court RTM Co Ltd [2022] UKSC 1, [2022] 1 WLR 519

L M Homes Ltd v Queen Court Freehold Co Ltd [2020] EWCA Civ 371, [2020] QB 890

Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd [2015] EWCA Civ 282; [2016] 1 WLR 275

Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd [2007] 1 EGLR 121

Re Holding and Management (Solitaire) Ltd [2008] L & TR 16

St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd [2014] UKUT 541 (LC)

Introduction

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 provides a statutory right for a leaseholder-owned RTM company to manage premises to which the Chapter applies. These appeals are concerned with the qualifying rule that the statutory right is available only in respect of premises which consist of a "self-contained building or part of a building".

2. The two appeals are from separate decisions of the First-tier Tribunal, Property Chamber, (the FTT) and they are concerned with four quite different premises. One appeal is about a group of modern, purpose built residential blocks in a new development in Liverpool. The other is about part of a Regency terrace and its associated mews in central London, recently restored to residential use following a major redevelopment. The timing of the two appeals is coincidental, but as they raise similar issues they have been heard together.

3. The first appeal concerns "The Courtyard", "The Studios", and "The Terrace", three separate blocks forming part of the Plaza Boulevard development on the southern fringe of Liverpool city centre. It is no longer suggested that any of the blocks is a self-contained building in its own right, but each is said by the RTM company which bears its name to be a self-contained part of a building. By a decision published on 2 May 2024 the FTT disagreed and ruled that none of the blocks is eligible to acquire the right to manage because none is self-contained in the sense required by section 72(3) of the 2002 Act. The RTM companies are the appellants in the first appeal.

4. The second appeal concerns 14 Park Crescent and 8 Park Crescent Mews East in central London, which formerly housed the Bloomsbury and Marylebone County Court. For convenience I will refer to it simply as "No.14". In 2023 14 Park Crescent RTM Co Ltd claimed the right to manage No. 14 (including the mews) on the basis that it comprises a self-contained part of a building. In a decision handed down on 18 July 2024, the FTT agreed and dismissed the objections of the immediate landlord and its superior, who are now the appellants in the second appeal.

5. In the first appeal the RTM companies were represented by Mr Winston Jacob, the first respondent (landlord of The Courtyard and The Studios) was represented by Ms Sonia Rai, and the second respondent (landlord of The Terrace) was represented by Mr Simon Allison. In the second appeal Mr Justin Bates KC represented both landlords and Mr James Fieldsend represented all three RTM companies. I am grateful to them all.

The statutory provisions

6. Sections 72 to 77 of the 2002 Act explain the circumstances in which the right to manage can be acquired and exercised. These qualifying rules, as they are described in the cross heading to that group of sections, begin by identifying the premises to which the right applies in section 72. The whole section provides:

> "**Premises to which this 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.

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

7. Section 72(1)-(5) closely mirror section 3(1)-(2), of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act), which identify the premises to which the right of collective enfranchisement applies. Substantially the same language is also found in section 117(5), Building Safety Act 2022 (but with the clarification that "it" in section 72(3)(b) is a reference to "the part"). Each statutory regime therefore applies to a self-contained building, meaning one which is structurally detached, and to a self-contained part of a building, meaning one which satisfies the conditions in section 72(3) and (4).

8. The right to manage provisions in the 2002 Act have been considered in two important decision of the Court of Appeal and the Supreme Court. In *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2015] EWCA Civ 282 the Court of Appeal determined that an RTM company may only manage one building. In *FirstPort Property Services Ltd v Settlers Court RTM Co Ltd* [2022] UKSC 1 the Supreme Court concluded that the right to manage does not extend to shared estate facilities used in common by the members of the RTM company and tenants of other blocks on the same estate but is confined to premises which the RTM company can manage on its own. To permit management of shared facilities would be counter to a fundamental purpose of the 2002 Act, namely, "to confer management rights and responsibilities on a body (the RTM company) which is accountable to and controlled by the very tenants who will be affected by the conduct of that management, through their right to be members of the RTM company, rather than by

either the landlord or a third party manager which will have its own agenda." I will return to *Settlers Court* later in this decision.

Previous cases on self-containment

9. A useful general statement of principle which should be kept in mind when considering the issue of self-containment can be found in *Assethold v Eveline Road RTM Co Ltd*, [2024] EWCA Civ 187, a case under section 72 of the 2002 Act in which the issue was whether premises could qualify as a self-contained part of a building even if they were capable of being subdivided into smaller parts. Lewison LJ explained, at [36], that:

> "Whether premises satisfy the definition of 'self-contained building or part of a building' is a purely physical test. The definition is concerned only with the structure of the built envelope, its internal structure, and the separability of services."

In emphasising that this is a "purely physical test" Lewison LJ was ruling out any need to consider the entitlement of any person to carry out works to redevelop the building, in whole or in part, or separate the services provided to it. The same point had previously been made in *Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd* [2007] 1 EGLR 121 (a 1993 Act case) and in *St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd* [2014] UKUT 0541 (LC), at [88], but on each occasion in relation to the third condition alone. It can now be seen that the same focus on what is physically achievable, whether or not it is legally or contractually permissible, should be applied generally to each limb of the test of self-containment.

10. The requirement that, to be a self-contained part of a building, premises must constitute "a vertical division of the building" (section 72(3)(a)), has been considered only once at this level, by the Lands Tribunal in *Re Holding and Management (Solitaire) Ltd* [2008] L & TR 16. The premises in that case comprised a block of flats which formed part of a terrace, beneath which was an underground carpark. Access to the car park from the premises passed under the neighbouring building in the terrace, and two of the parking spaces allocated to the premises were also under the neighbour. The proportion of the premises which lay below the adjoining premises was only 2% of the whole by area. The leasehold valuation tribunal had decided that this layout did not prevent the premises from being a vertical division of the terrace as a whole, but the Lands Tribunal (George Bartlett QC, President) disagreed and held that while a *de minimis* departure from a vertical plane through the building could no doubt be ignored, the requirement of vertical division was otherwise unqualified. In particular, section 72(3)(a) did not invite consideration of the materiality of any overlapping parts of the building (unlike the corresponding provision of the Leasehold Reform Act 1967) and none should be imported.

11. The only other consideration of vertical division to which I was referred was an aside by Smith LJ in a case under the 1993 Act, *Craftrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd* [2011] EWCA Civ 185, in which the Court of Appeal determined that premises can qualify as a self-contained part of a building even if capable of being subdivided into smaller parts, each of which also satisfied the test of being self-contained in section 3, 1993 Act. In the course of her judgment in *Craftrule*, Smith LJ observed:

> "… I interpose to say that, in my view, the expression 'vertical division' is rather odd. A division is a line of no thickness. It seems to me that what section 3(2)(a) means is that the premises must be a vertical slice of the building."

12. The second aspect of self-containment, in section 72(3)(b), is that the structure of the building must be such that the part of the building which is said to be self-contained could be redeveloped independently of the rest of the building. This requirement has not previously been the subject of consideration on an appeal. In the only case at first instance to which I was referred (*Stamford Hill Mansions RTM Co Ltd v Daejan Properties Ltd*, a 2007 decision of a leasehold valuation tribunal) it was suggested that the concept of redevelopment as used in the 1993 Act need not mean total redevelopment but could also include the demolition or reconstruction of, or carrying out substantial works of construction to, the whole or a substantial part of the premises (each of which is an operation identified in section 23(2), 1993 Act, as sufficient to defeat a tenants' claim to enfranchise). The LVT adopted the same approach and determined that a building which could be redeveloped internally, without disturbing the exterior structure, satisfied the requirement of section 72(3)(b).

13. The third requirement of self-containment, namely the ability to provide services to the relevant part of the building independently, without significant interruption to the services provided to the remainder of the building, has been considered more often. Each case has turned on its own facts, and only general guidance on how the issues should be approached has been suggested.

14. The *St Stephens Mansions* appeal in this Tribunal concerned separate RTM claims in respect of connected blocks of flats. These were served by a single metered mains water supply pipe which ran underground to a pump house housing shared water tanks and pumps from which water was distributed through separate outflow pipes. In agreement with the leasehold valuation tribunal, it was held that the storage of water in shared tanks and its distribution through shared pumps meant that the water provided to one part of the building was not provided independently of the water provided to the remainder of the building. The availability of the right to manage therefore turned on the separation of the relevant services and whether water could be supplied independently to the subject premises "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" (section 72(4)(b)).

15. In addressing that issue I adopted, with slight adaptation, the five step approach suggested by HHJ Hazel Marshall QC in the *Oakwood Court* case (a decision of the County Court under the 1993 Act). Those steps are:

> (1) First, to identify the services provided to occupiers of the part of the building of which RTM is claimed ("the RTM part") which are in issue because they are not provided independently.
>
> (2) Consider whether those services can be provided independently to the RTM part independently of their provision to the remainder of the building.

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

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

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

Plaza Boulevard

16. The Courtyard, The Studios and The Terrace are parts of the Plaza Boulevard complex of five blocks which I will refer to as "the Estate". The Estate was developed in phases, and although the individual blocks are separated from each other, each successive phase is structurally attached to a central podium which spans the area between them and to an underground car park beneath the podium which serves them all. It was originally suggested that each block is a self-contained building, but that argument was not pursued before the FTT.

17. The Estate stands on rising ground, so that the ground level at one end is approximately two floors above ground level at the other end. A single large underground car park lies beneath the Estate and is overlapped by each of the three blocks. The area of the car park beneath each block is not reserved for the exclusive use of the occupants of the block which sits on top of it. Parking spaces are let to tenants of different blocks, and to the public, and tenants of flats in the building have rights of access over the whole car park. It is not clear from the leases of each building how much, if any, of the basement level is demised to the respondents and whether it includes any part of the car park, but I was told that at least some of the leases of spaces in the car park have been registered against the freehold title to the Estate, rather than against the head-leasehold titles of the respondents.

18. Before the FTT it was common ground that the three blocks were not self-contained buildings and did not satisfy the first limb of section 72(1)(a). They were said to be self-contained parts of a building within the second limb. The unstated assumption is that "the building" of which each block is part comprises either the whole of the Estate or at least those built elements adjacent to each building including the underground car park and the podium deck which connects the buildings at ground floor level.

19. The extent of the premises over which the right to manage is claimed was not clearly defined in the claim notices which refer to the blocks simply by their postal addresses. The argument before the FTT therefore took an unusual course. Rather than the RTM company identifying the premises over which it claimed rights, the premises to which each claim related was treated as an open question which was to be answered by considering which, if any, premises could be identified which both included the individual blocks and satisfied the requirements of section 72(3) and (4).

20. Three alternative configurations were considered by the FTT. The first treated the premises as comprising only the building above ground level. There appears to have been very little argument about that possibility which was dismissed by the FTT and has not been revived on appeal. Another option assumed that the premises comprise the whole of

each block, both above ground and down to basement level, and that at basement level they extend beyond the footprint of the block to take in an undefined area of the car park. This was rejected by the FTT because it was not a vertical division and included common areas the use of which was shared between different blocks, contrary to the decision of the Supreme Court in *Settlers Court*.

21. The FTT therefore considered a third option, namely that in each case the premises comprised the area enclosed within the block's steel frame which runs from the basement to the top floor. At ground level and above each block cladding panels are fixed to the front face of the columns and beams of the steel frame. But at basement level only part of the area within the steel frame is enclosed by block walls while the rest is open and forms part of the shared car park. The extent of the open areas within the steel frame at basement level is different for each building. The FTT said the area was "relatively small", which is a fair comment if the comparison is with the car park as a whole. By my own very rough estimate, at basement level, only about 5% of the area defined by the steel frame of The Courtyard is included within the car park, but about a quarter or a third of the corresponding area beneath The Terrace and The Studios is within the car park.

22. At basement level a largely continuous concrete floor slab extends well beyond the footprint of the individual buildings. But in one place (beneath The Studios) an expansion joint in the concrete slab follows the line of steel columns which support the building. There are similar columns throughout the car park, which support the buildings above as well as the podium deck and road at ground level between them.

23. The FTT noted that "the drawing of a vertical line from the outmost edge of the steel structure of each of the Premises to basement level must at some point(s) bisect the basement slab where there is no division in reality". It regarded that absence of a physical division through the basement slab as fatal to the requirement that the claimed premises must constitute a vertical division of the building.

24. No other part of the structure of The Studios or The Courtyard gave rise to any difficulty in relation to the requirement of vertical division, but in the case of The Terrace the FTT considered whether the test was failed for a further reason. One side of The Terrace fronts Sefton Street. That facade features what the FTT referred to as "balconies". These are continuous bays which project from first to fifth floor level, extending beyond the steel frame of the building and overhanging the public highway. The RTM companies argued that the requirement of vertical division has no application to any part of the block which is not structurally connected to the remainder of the Estate, but the FTT rejected that argument. It nevertheless considered that although these balconies are "a deviation from the vertical line that runs down the steel frame wall" this deviation was *de minimis* (too trivial to matter). It justified that conclusion by saying that the projections featured on part only of one wall of the building and that it would be capricious or absurd to distinguish between The Terrace, which had such features, and the other buildings which did not.

25. Because of the importance the FTT attributed to the undivided floor slab, it did not have to consider two other features of The Terrace which are relied on by the landlords. These are a large parapet on the flank wall which overhangs the podium, and an entrance porch which projects beyond the face of the block on the podium side.

26. The FTT received evidence from two witnesses who had been involved in the design and construction of the Estate. It found that each of the blocks had been erected separately and that each could be redeveloped independently of the remainder of the Estate. It acknowledged that the podium deck which sits above the car park and spans the space between the individual blocks is supported on beams attached to the steel building frames. If the steel frames were removed in their entirety the podium deck would collapse unless it was supported. Similarly, a staircase between Sefton Street and the podium deck, which is supported on one side by the flank wall of The Terrace, would require alternative support if The Terrace was to be entirely redeveloped.

27. For the most part, each of the blocks on the Estate has its own independent services. Each was originally provided with its own independent fire alarm system including a separate control panel. After the Grenfell Tower fire, these fire alarm systems were linked but by the FTT hearing The Courtyard and The Terrace were no longer linked. The only continuing connection was between the fire alarm systems serving The Tower and The Studios.. The evidence on this was sparse, but the FTT concluded that any connection could be decommissioned and independent service to each of the two blocks could be reinstated without significant interruption.

Park Crescent

28. Park Crescent was designed by John Nash and completed in 1820 as a terrace of grand houses, each sharing a solid party wall with its neighbours on either side. It suffered substantial bomb damage during the second world war and in the 1960s it was redeveloped as offices with a restored façade after the original design supported by new steel and concrete frames. The County Court was at the western end, incorporating No. 14 and its mews, and it was closed eleven years ago as Park Crescent was redeveloped and restored to residential use.

29. The freehold of Park Crescent is held by the Crown, which does not object to the acquisition of the right to manage. The freehold is subject to two separate headleases, one of which is held by the second appellant, PC Investments Ltd. Part of that title, comprising No.14 and the mews behind it, is subject to an underlease held by the first appellant, 14 Park Crescent Ltd.

30. The redevelopment of No.14 created six new apartments in the main building and a further three in the mews. Each of these apartments has been let on a new long lease. The mews and the main building are connected by internal corridors and staircases and jointly comprise the premises for which the right to manage is claimed.

31. No.14 lies between 12 Park Crescent on one side and 98 Portland Place on the other. The whole Crescent was redeveloped between 2012 and 2018 as one project, but in stages, so that No.12 was completed and occupied before work began on No.14. No.14 underwent almost total demolition except for the front façade and its 1960s steel and concrete frame which were retained. In the course of the work the original foundations of the party walls were excavated, and new deeper and more substantial foundations were inserted below them, in effect underpinning the party walls. A new basement level was added, and a new residential mews building was created in place of former mews offices.

32. A number of features of the building are relied on by the appellants in support of their case that No.14 is not a self-contained part of a building, either because it does not constitute a vertical division of the building or because it could not be redeveloped independently of the rest of the Crescent.

33. There are movement joints on the façade of No.14 which do not align with the party wall behind. The movement joints are located in the gaps between the steel frame which supports the façade of No.14 and the frames supporting the facades of the adjoining buildings. In that location the façade is supported by the party wall. It was the view of the appellant's expert witness, Mr Ilsley, that if No.14 was to be removed in its entirety along the inside face of the party wall, the section of the front elevation in front of the party wall, up to the movement joint, would be unsupported and would collapse. There are similar movement joints in the vicinity of the party wall with 98 Portland Place and at the rear of the building.

34. Because the movement joints and the party wall do not align, Mr Bates KC also submitted that it is not possible to divide the Crescent vertically down the line of the movement joint and that any division which follows the party wall would leave an unsupported portion of the façade.

35. A vertical division along the line of the party wall would also encounter the new foundations, the whole of which are said by the appellants to "belong" to No.14 and to be part of the premises over which the right to manage is claimed. A vertical division of No.14 would therefore have to deviate around the foundations in order to include them in the managed premises. Additionally, the new foundations could not be removed as part of a redevelopment of No.14 without destabilising the party wall and causing it to collapse. The same is said to be true of the mews.

36. Despite the various points made about the structure of the building and the support which No.14 provides to and receives from its neighbours on either side, it was agreed by Mr Ilsley that, by using temporary supports and restraints it would be possible to redevelop No.14 without redeveloping its neighbours.

37. At the rear of No.14, where it abuts the rear of 98 Portland Place, a balcony on the neighbouring premises projects across a straight line drawn through the centre of the party wall separating the two buildings. This was said to prevent a vertical division of No.14 from its neighbour because it would create a "dog leg" rather than a perfectly straight line. At the front of the mews, a step, which is said to be part of the claim premises, projects beyond a vertical line drawn down the face of the building. This was said by the appellants to be critical to satisfying the vertical division requirement as a vertical line drawn through the step would leave part of the premises on the wrong side, while a line which followed the surface of the step would not be completely vertical.

Vertical division – the issues

38. The requirement of vertical division gives rise to a number of distinct grounds of appeal and cross appeal in both proceedings.

39. It is convenient to identify the issues of principle and to consider the facts of the individual appeals as illustrations of points of general application. The issues are all related to the question whether to satisfy the requirement of section 72(3)(a) it is necessary for there to be a physical division through the building, "from the earth to the sky", as Mr Bates put it, and what any such division must comprise. This gives rise to the following sub issues:

    1. Is it necessary to consider each face of the building, or is the test of vertical division concerned only with the connection between the premises and the rest of the building?

    2. If the focus is only on the area where the premises abut the remainder of the building, does it matter if part of the premises overhangs airspace above the rest of the building?

    3. Does it matter if a notional line dividing the premises from its neighbour intersects with a solid building component, such as a basement slab or foundation?

    4. Is it necessary that the division of the premises from the rest of the building be a perfectly straight line passing laterally from the front of the building to the back?

    5. Can the premises constitute a "vertical division of the building" if part of the premises is undivided from the remainder of the building?

42. Other issues may arise in the Plaza Boulevard appeal, depending on how these issues of principle are resolved. They include: the extent to which a deviation from the requirement of a vertical division can be regarded as *de minimis* and of no consequence; the significance of the movement joint in the basement slab beneath The Studio; and the consequences of treating the outer face of the steel frame as the limit of the premises, leaving the cladding affixed to the steel frame on the wrong side of the boundary line.

Vertical division – discussion

43. I begin with two preliminary points.

44. First, each of the conditions in section 72(3) describes a different aspect of the self-containment required for premises to be a self-contained part of a building. The few cases in which the definition has been considered have tended to focus on one or other of the conditions, but in interpreting each of them it is relevant to keep in mind that they are collectively intended to describe a single thing, "a self-contained part of a building". The label which the statute applies to that thing is an important point of reference when trying to understand what the individual conditions mean. As Lord Hoffmann explained in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 (although there speaking of a contractual rather than a statutory label):

> "The words used as labels are seldom arbitrary. They are usually chosen as a distillation of the meaning or purpose of a concept intended to be more precisely stated in the definition. In such cases the language of the defined expression may help to elucidate ambiguities in the definition or other parts of the agreement."

45. Secondly, in *Craftrule*, Smith LJ commented on the 'rather odd' expression 'vertical division' and implied that the natural meaning of 'division' was 'a line of no thickness'. While that is one meaning of 'division', the word has a number of related meanings. A division is also one of the parts into which an object can be divided; a portion, or section. It can therefore refer both to the plane through which something is divided, and to the segments produced by the act of dividing it. Smith LJ explained that in this context the expression means that "the premises must be a vertical slice of the building". But "slice" has the same dual meaning as "division"; it can be either a cut, or, the piece which is cut from something larger. In section 72(3)(a) the sentence as a whole indicates that the word "division" is there being used to refer to a part of a building, with substance and dimensions, rather than to a line of no thickness drawn through a building: it is the whole slice of cake, not just the line along which the cake is cut.

46. Although section 72(3)(a) might appear rather odd, its purpose and effect are clear. A self-contained part of a building must be a part of the building divided vertically, not horizontally. The effect is to limit the acquisition of the right to manage (or collective enfranchisement in the case of the 1993 Act) to premises which do not overlap or underlap the remainder of the building of which they form part.

47. In the case of the 1993 Act the requirement of vertical division has been said by the Law Commission to be important to prevent the creation of flying freeholds (Law Commission, Leasehold home ownership: exercising the right to manage, No 243, January 2019 at paragraph 2.74). The particular vice of flying freeholds is that they give rise to practical problems in relation to maintenance and support, which cannot be dealt with by covenant since the burden of a positive covenant does not run with freehold land. Under the right to manage, no ownership passes so the specific issues which may have been a concern to the drafters of the 1993 Act do not arise directly. Nevertheless, the statutory context and language are so closely aligned that it seems unlikely, though not impossible, that the test of self-containment should be different as between the 1993 and 2002 Acts. For the purpose of the 2002 Act it must have been considered important to avoid the creation of separate management responsibilities for overlapping parts of the same building.

48. Taken together, these preliminary points lead to a general observation about how the issue of vertical division might usefully be approached. In the course of argument in the appeals, and in the decisions of the FTT, attention was focussed exclusively on the location and features of one or more notional lines drawn through the relevant building either where it abutted its neighbour or on each of its sides. In Mr Bates KC's submission these lines had to be straight and had to be capable of being drawn 'from the earth to the sky". I do not disagree that the boundaries between the premises and the rest of the building must be considered carefully, but the statutory language identifies a single wider question. That is, whether the premises as a whole are a vertical division of the larger building of which they are part, which I take to mean a vertical division rather than a horizontal division or any other configuration. That is the question to be determined, not whether a particular boundary line deviates from the vertical plane.

49. I can now address the issues concerning vertical division in both appeals.

Parts of the premises unconnected to the rest of the building

50. First, in the Plaza Boulevard case the FTT accepted that it was necessary that no part of the premises should overlap any other land (unless the extent of the overlap was *de minimis*). It was "not persuaded … that it is sufficient for the test in s.72(3)(a) to be satisfied that there is established a vertical division in respect of one face only of the building in question". It therefore had to address the four bays, or blocks of balconies, which projected over the public highway from the Sefton Street elevation of the Terrace and constituted a "deviation from the vertical line which runs down the steel frame wall". These features are unconnected to any part of the Estate which is not itself included in the claim and they do not project over the podium or the car park.

51. Mr Allison, for the second respondent, did not seek to uphold the FTT's reasoning on this point, and he was clearly right not to do so. There is no requirement that, to constitute a self-contained part of a building, premises must not overhang land which is not part of the larger building of which the premises form part. There is no requirement that the facades of the premises be free of projections, or bays or overhangs; what is required is that the part of the building over which the right to manage is claimed must "constitute a vertical division *of the building*". The only boundaries of the premises which are relevant to this requirement are those which are connected to the rest of the building.

52. That much is obvious, and no contrary argument has been presented. It disposes of one of the FTT's reasons for rejecting the claim in relation to The Terrace and makes it unnecessary to consider whether it was entitled to treat the projecting balconies as a *de minimis* deviation from the vertical face of the building. It also disposes of the step projecting from the vertical plane of the mews building at Park Crescent, which is not connected to the remainder of the building.

Balconies and projections into airspace over the rest of the building

53. The second and trickier issue is whether the requirement of vertical division applies not only to those building elements which are physically connected to the rest of the building, but also to parts of the premises which are unconnected to the rest of the building but which project into airspace lying above it. The Terrace is structurally attached to the rest of the Estate (i.e. to the podium and the car park) at ground floor and basement levels only. Above the podium there is only airspace. The flank walls and the rear wall of the Terrace abut that airspace, with no further connection of any kind to the rest of the Estate. But at the very top of the flank walls and the rear façade, a parapet projects out into the airspace. The parapet is eight storeys above the podium, but Mr Allison submitted that it prevents the Terrace from constituting a vertical division of the Estate as a whole.

54. I do not accept that submission. It is not supported by the language of section 72(3)(a), which requires only that the premises constitute a vertical division "of the building". There is no division between The Terrace and the remainder of the building at the level of the parapet, and The Terrace is not prevented from being self-contained, as that expression would ordinarily be understood, by the projection of the parapet. Nor is Mr Allison's submission supported by consideration of the assumed purpose of restricting the right to manage to premises which comprise a vertical division of a building. No difficulty arises in relation to the enforcement of rights of support or maintenance part of the premises is not connected to the remainder of the building. The parapet derives no support from the podium or car park and will not be prejudiced by their general state of repair.

55. It is true that, as a general principle of law, ownership of the freehold or leasehold of a building carries with it the airspace above the built structure. That principle led the Court of Appeal in *L M Homes Ltd v Queen Court Freehold Company Ltd* [2020] EWCA Civ 371 to conclude that, in a collective enfranchisement claim under the 1993 Act, the nominee purchaser was entitled to acquire not only the freehold of the building itself, but also the airspace above it. Under section 1(1), 1993 Act, the qualifying tenants were entitled to acquire the "premises" which comprised "the building". As Lewison LJ explained, although the primary meaning of a "building" may well be a built structure, the context may require a broader meaning. A "building" is not necessarily confined to bricks and mortar and in the 1993 Act its meaning can extend to the airspace immediately above the building necessary to enable maintenance to be carried out. But for the purpose of the 2002 Act, when the issue is whether part of a building constitutes a vertical division of the building as a whole, I do not consider that anything said in *L M Homes* compels a negative answer simply because part of the premises extends a short distance into the airspace eight storeys above the remainder of the building.

56. If I am wrong in that conclusion, and the presence of the parapet in the airspace over the podium is a relevant consideration, it would be necessary to consider whether the degree to which the premises did not constitute a vertical division of the building was *de minimis.* The extent of the projection, the practical consequences of its presence in the airspace, the rights and responsibilities which the RTM company would have in relation to it would all need to be considered before a judgment could be formed on that question. On the other hand, the entrance porch which projects beyond the face of the block on the podium side and which is presumably connected to the podium itself, is an example of a feature which if necessary I would have no hesitation in treating as *de minimis*.

57. I am therefore satisfied that neither The Terrace's projecting bays or balconies, nor its projecting parapet, prevent it from being a self-contained part of a building.

Obstructions perpendicular to the line of division

58. Thirdly, the FTT also decided that each of the Plaza Boulevard blocks failed the test of self-containment because a vertical line drawn down the face of the building to reach basement level would hit the concrete basement floor slab (it would also pass through the podium, unless the line was drawn tightly to the steel frame which would leave the cladding attached to it outside the premises). In contrast, the FTT which determined the Park Crescent application was untroubled by the fact that a vertical line drawn down the internal face of the party wall of No.14 would pass through the solid foundation supporting the wall. It dismissed the landlord's objection saying: "there is nothing objectionable about running the dividing line through a shared part of the building". So the question is, does it matter if a notional line dividing the premises from its neighbour intersects a solid building component running perpendicular to the line?

59. For the Plaza Boulevard RTM companies, Mr Jacob argued that for the purpose of the test of self-containment the division of the building is notional rather than physical and that it did not matter if the notional division passed through the basement floor slab. The contrary case was argued in different ways by each of the three counsel for the landlords.

60. In the Plaza Boulevard case Ms Rai, who was concerned only with The Courtyard and the Studios, conceded that it was not necessary for there to be "an identifiable physical division through the entire building in a vertical line" but nevertheless supported the FTT's approach on the basis that "due to the nature of the continuous slab, the building cannot be divided". Mr Allison could find relatively little to say in support of the FTT's approach. He too accepted that there was no need for physical separation along the line of a vertical division, but he stressed the importance of certainty over where the management responsibilities of the RTM company were to begin and end. He assembled a collection of building components which he said had not been properly considered by the FTT and where the location of the notional dividing line was unclear. He also relied on the fact that the basement slab served the whole of the development, and many parties who were not leaseholders in The Terrace had rights over it. As the Supreme Court's decision in *Settler's Court* demonstrated, it was not part of the policy of the Act for an RTM company to have management of areas which were used in common with third parties. I will come to that point later.

61. In the case of a conventional terrace the boundary between one building and the next is likely to be a notional one running down the midline of the party wall, which will usually, or often, be a solid structure. The self-contained part of the terrace which the Court of Appeal considered in *Eveline Road* shared a party wall with the remainder of the terrace (paragraph [13]) but it was not suggested that that was a problem. It is difficult to see why it should be thought to create a problem, whether the building is a conventional terrace or a more elaborate structure. The law has no difficulty in coping with the repair of party structures, or protecting the rights of owners on one side or the other when work has to be done to in the vicinity of a party wall. There is no practical problem between adjoining owners and no reason why there should be between an owner and an RTM company.

62. Standing back and considering whether the premises as a whole constitute a vertical division of the building as a whole, the precise route of the notional dividing line between the premises and the rest of the building risks becoming a distraction and should not be taken to the extremes that have featured in these cases. In my judgment the FTT which decided the Park Crescent case was correct on this issue and the fact that a notional dividing line between the premises and the remainder of the building (wherever precisely it may be drawn) would have to pass through a solid structure running perpendicular to that line is no obstacle to the premises constituting a vertical division of the building. That is because the line is a notional one.

63. The FTT was therefore wrong to conclude that none of the Plaza Boulevard blocks could pass the test of self-containment because they shared an undivided basement slab. It follows that the issue raised in the cross appeal concerning the significance of the movement joint in the basement slab beneath The Studio does not arise.

64. The point was argued differently by Mr Bates KC in the Park Crescent appeal. He referred to the evidence about the way in which the foundations of the party walls between No.14 and its neighbours had been created: Mr Ilsley had explained that "the new foundations of No.14 now span under and in the voided areas of the neighbouring properties". The whole of these new foundations served and belonged to No.14 and, Mr Bates KC suggested, they were all part of the premises over which the right to manage was claimed. There was no difficulty in drawing a notional line through the solid

foundations, but that would leave part of No.14's foundations on the wrong side of that line.

65. I do not accept that submission. There is no relevant sense in which the foundations on one side of a party wall "belong to" the building on the other side. Each building has rights of support from the foundations, but the foundations themselves are not jointly owned, let alone owned by one owner to the exclusion of the other. Each owner owns up to the midpoint of the party wall and the foundations beneath it. To put it another way, the foundations on the No.12 side of the party wall are not part of the premises over which the right to manage is claimed and it is therefore unnecessary to consider whether they prevent No.14 from constituting a vertical division of the Crescent.

66. Although Mr Bates KC did not have difficulty with the notion that a building might notionally be divided through a solid wall or foundation, he still relied on the off centre movements joints on the front and rear elevations as creating a problem for the RTM company. I do not see why. The movement joints do not define the boundaries of the premises, which conventionally run through the midpoint of the party walls. They are therefore of no more relevance to the vertical division requirement than the common foundations.

Undivided spaces

67. The next issue arises only in the Plaza Boulevard cases. It is related to the debate over whether it is necessary for there to be a physical division through the building. The FTT had focussed on the absence of a division through the undivided floor slab, but the respondents also argue that the undivided basement car park extending beneath each of the blocks in the complex means that none of those blocks is a self-contained part of a larger building.

68. At basement level there is no real difficulty in identifying the area over which the right to manage is claimed for The Terrace, The Studios and The Courtyard. In most locations it is marked by solid walls enclosing the basement storerooms or service areas beneath the individual blocks. In other areas it is delineated by the lines of steel columns which support the blocks. But in those locations one can easily step or drive between the columns and across the expansion joint, where it is present, and so pass unimpeded from the area of the basement for which the right to manage is claimed to the remainder of the Estate over which it is not claimed.

69. Third parties, without any interest in any of the blocks, have rights to park in the parking spaces immediately under the blocks; in some instances tenants of flats in one block may also been leased parking spaces under a different block.

70. These features of Plaza Boulevard, which are typical of many substantial modern developments, pose the question whether the requirement that the premises must constitute a "vertical division of the building" can be satisfied where part of the premises over which the right to manage is claimed is undivided from the remainder of the building.

71. Mr Jacob submitted that the purpose of requiring that the premises be a vertical division of the building was to enable the right to manage premises to be clearly identified and to prevent horizontal layers of management. Neither of these considerations was undermined by permitting the premises to contain an area undivided from the rest of the building. A notional dividing line could be drawn in an obvious location leaving the area beneath each block lying within the RTM premises and leaving management of the remainder of the car park with the landlords.

72. Mr Jacob acknowledged that the consequence of extending the right to manage to only part of the car park would be that responsibility for practical matters such as cleaning, lighting, signage and road markings would be divided between the landlords who would manage most of the car park and the three RTM companies which would each manage the portion of the car park lying immediately beneath their own block.

73. I do not accept Mr Jacob's submission. At basement level the car park beneath the individual blocks is not part of self-contained premises in the ordinary sense; it is open-plan and undivided. It is only by drawing a notional line on a plan that a division is achieved, but this is an instance where focussing on a notional dividing line is liable to distract from the real question. To achieve a vertical division the premises must incorporate part of the car park because otherwise the footprint of the buildings at basement level would be smaller than at higher levels, creating an impermissible overhang. But by bringing in part of the car park the premises cease to be a division of the building. There is no division at that point. It does not seem to me to be an apt description of the part of the car park beneath the individual blocks to say that they each form part of a vertical division of the building otherwise consisting of the block above them.

74. Additionally, it seems to me to be unlikely to have been intended that the management of what in practice is an undivided space would be divided between the building owner and an RTM company. Such a division of responsibility is impractical, and is not contemplated by the RTM regime, as Lord Briggs JSC explained in *Settlers Court*, at [35]:

> "[…] the RTM company has the right to perform its allotted functions itself, to the exclusion of any participation by the landlord, third party manager or even a manager appointed under the 1987 Act, save to the extent that the RTM company agrees otherwise. That is a very powerful pointer to a construction which confines the right to manage to that which the RTM company can manage on its own, namely the structure and facilities within the building or part of it constituting the relevant premises and, where they exist, those facilities outside it which are exclusively used by the occupants of the relevant premises."

75. One difficulty which the RTM company would face is that others who are not tenants of the block have been granted rights, including in some cases leases, of parking spaces within the area over which it claims the exclusive right to manage. Lord Briggs anticipated the sort of problems that might arise, at [36]:

> "The apparently unconstrained right of the RTM company to perform its management functions on its own runs into insuperable problems if those

> functions are construed to include management of shared estate facilities. This is because the landlord or third party manager will have the right and obligation to manage those facilities under the potentially very large number of leases of flats outside the RTM company's allotted single block. All those tenants will have the right under their leases to insist that the landlord or third party manager (and no-one else) performs those functions, and it would be a very strong thing to read section 97(2) as taking that right away from them."

76. I appreciate that the issue determined by the Supreme Court in *Settlers Court* was not concerned with the definition of "the premises" in the 2002 Act, but rather with the extent to which an RTM company was entitled to manage "appurtenant property", as defined in section 112(1), where that appurtenant property was used in common by the tenants of all blocks on an estate. But the problems of managing appurtenant property used in common cannot be overcome simply by designating it as part of the premises, which is effectively what the RTM companies at Plaza Boulevard are forced to propose in order to bring their blocks within section 72(3)(a). Parts of a complex estate which have been left physically undivided from the remainder despite occupying the same footprint are often designed for joint use and call for common management of the sort which the RTM regime is not intended to provide. That consideration points strongly away from construing section 72(3)(a) as including such undivided spaces within the vertical division of the building to which the right is confined.

77. Although this was not the basis on which the FTT found against the RTM companies, it did consider that, because of *Settlers Court*, the premises could not extend beyond the footprint of each block because it would incorporate part of the basement car park. It did not apply the same logic to the area of car park within the footprint of each block, but, in agreement with Mr Allison and Ms Rai, I am satisfied that the presence of the undivided car park beneath each of the three blocks, means that individually the blocks do not constitute a vertical division of the Estate as a whole. That is fatal to the RTM claims at Plaza Boulevard.

Boundaries deviating from a straight line

78. The remaining vertical division issue in the Park Crescent appeal arises out of the configuration of the boundaries of No.14. A notional vertical division between No.14 and its neighbours would not be a completely straight line but would deviate in places, particularly at the rear, turning 90^{o} to the left or the right, to go round the projecting balcony of No.98. These dog-legs were said by Mr Bates KC to be fatal to the vertical division of the premises. He advanced a number of reasons why that was so, none of which I found convincing.

79. First, he submitted that the requirement is for "a" vertical division between the premises and its neighbour, and that there is no reference to "dog legs" in the Act. But that is not what section 72(3)(a) requires; what it requires is that the premises constitute a vertical division of the building. That division will usually have four walls, with those at the front and back usually being at right angles to the party walls separating the premises from its immediate neighbours. Nothing in that configuration prevents the premises from constituting a vertical division of the building and I can see no reason why twists and turns in the party walls themselves should do so.

80. Secondly, Mr Bates KC suggested that "multiple vertical divisions" would create uncertainty about the extent of the RTM company's repairing responsibilities. I do not see why that should be, as those multiple vertical divisions do not create any uncertainty about where No.14 ends and its neighbours begin.

81. Thirdly, Mr Bates KC argued that the vertical division test must have been intended to exclude some properties from the right to manage and he asked rhetorically, if multiple vertical lines, dog legs etc are permissible, then what properties are excluded? The answer is simply that premises which do not constitute a vertical division of the building because they lie immediately above or below a part of the building which is not included in the claim are excluded.

82. In summary, section 72(3)(a) says nothing about the need for a perfectly straight boundary between the premises and its neighbour and no such requirement can be read into it.

Independent redevelopment

83. In the Park Crescent appeal the landlords contend that the FTT misinterpreted section 72(3)(b), 2002 Act and that had it directed itself properly it would have concluded that the structure of No.14 could not be redeveloped independently of the remainder of the building. By cross appeal, the respondents in the Plaza Boulevard appeal challenge the FTT's determination that each of the three blocks could be redeveloped independently.

Park Crescent

84. Mr Bates KC introduced his submissions on this part of the appeal by referring to the decision of the Supreme Court in *Settlers Court* and drawing attention to the importance placed by the Supreme Court on limiting the right to manage to property which the RTM company would be able to manage on its own. Lord Briggs JSC had found support for that limitation in section 72 itself, as he described at [40]:

> "The starting point lies in section 72, which imposes a much tighter qualification requirement in relation to premises than the equivalent provision in the 1987 Act. The premises must be self-contained. If they constitute a whole building it must be structurally detached. If part of a building that part must be divided vertically from the rest of the building, be capable of being independently redeveloped and have services which either are or could without interruption to the rest of the building be made independent. All these requirements point strongly towards confining the right to manage to separate premises within which the quality of the management provided by the RTM company affects only the occupants of that building or part of it."

85. This passage provided the foundation for Mr Bates' submission that, when section 72(3)(b) refers to the structure of the building being such that the part of the building "could be redeveloped independently of the rest of the building", it meant that it must be possible to redevelop the RTM premises without needing the consent, agreement or support of the owners of any neighbouring premises and without impacting on their property.

86. The whole Crescent was redeveloped behind its original façade between 2012 and 2018, with the work to No.14 coming towards the end of that period after the adjoining No.12 had been completed and occupied. Before the FTT the expert witnesses on both sides also agreed that by the use of appropriate temporary restraints and supports it would be possible to demolish and redevelop the whole of No.14, including its façade, without causing the collapse of the neighbouring buildings. In the Park Crescent appeal the issue is whether the degree of cooperation or consent which would be required for such a redevelopment would be such that it could be described as having been undertaken "independently".

87. Mr Bates KC stressed the structural dependence of No.14 on its neighbours, with which it shared party walls and foundations. The degree of support for No.12 which had been required during the redevelopment of No.14 demonstrated that the structure of the Crescent was not such that No.14 could be redeveloped independently of the remainder of the Crescent. He suggested that the independence requirement in section 72(3)(b) must mean something more than simply that redevelopment was possible, no matter what resources or elaborate engineering solutions were required.

88. The FTT did not accept Mr Bates submission. It was satisfied that "redeveloped independently" simply meant that the RTM premises must be capable of being redeveloped while the remainder of the building was not.

89. In my judgment the FTT was right. The starting point is that the conditions in section 72(3) and (4) are purely physical tests, as the Court of Appeal has confirmed in *Eveline Road*. They do not invite consideration of the legal obstacles which may stand in the way of a redevelopment or of the entitlement of the RTM company to embark on the sort of project the conditions describe. The RTM company will have no right to redevelop the premises, but section 72(3)(b) is not about the RTM company's rights or intentions. It is one part of a description of the physical characteristics, amounting to self-containment, which part of a building must possess before the right to manage provisions will apply to it.

90. There is a substantial overlap between the three aspects of self-containment identified in section 72(3) and (4). Part of a building which is not a vertical division is likely to be more difficult or perhaps impossible to redevelop independently as may premises where services shared with a neighbour cannot be separated without significant interruption. These conditions overlap and interrelate, and I see no need to identify rigid boundaries between them in order to find a distinct meaning for "redeveloped independently".

91. Mr Bates KC attributed to the word "independently" connotations of exclusivity, freedom of action and absence of cooperation but resisted any consideration of the opportunity a building owner has, through the Party Wall Act 1996 or the Access to Neighbouring Land Act 1992, to obtain consent to works through a judicial or arbitral procedure where the necessary consent of a neighbouring owner is being refused. His preferred meaning would be liable to exclude most, or perhaps all, terraced buildings from access to the right to manage. That extreme interpretation would limit the statutory regime to an extent which cannot have been intended and which has certainly not previously been recognised (including by the Court of Appeal in *Eveline Road*).

92. I am satisfied that the FTT came to the right conclusion on this issue, and that the agreed expert evidence was conclusive. What matters for the purpose of section 72(3)(b) is the structure of the building and whether it lends itself to redevelopment at a time when the remainder of the building is not being redeveloped. On that understanding this ground of appeal must be dismissed.

Plaza Boulevard

93. In the Plaza Boulevard case the FTT directed itself that the sort of redevelopment with which section 72(3)(b) was concerned was not limited to a redevelopment of the interior of the premises, such as had taken place in the recent past. On the other hand, it did not accept that a need to provide support for other parts of the building meant that the condition could not be met. The experts had described each block on the Estate as an independent, self-supporting structure on its own piled foundations and the FTT was satisfied that the structure of the Estate as a whole was such that each block could be redeveloped comprehensively but independently of the rest.

94. For the respondents, Ms Rai and Mr Allison supported the FTT's approach to redevelopment, understanding it as referring to a comprehensive or complete redevelopment which removed every component of the original structure, including the steel frames which performed the dual function of forming the skeleton of the individual blocks while supporting the podium and estate roads. If the steel frame was removed in its entirety, as would be necessary for a complete redevelopment, the podium would collapse unless it was supported. Neither counsel was prepared to accept that some form of support could be provided during redevelopment to avoid the catastrophe which they described. Mr Allison emphasised that the redevelopment had to be independent, and so could not depend on arrangements with the owner of the rest of the building.

95. I do not see any reason to interpret "redeveloped" as referring to building operations so comprehensive that nothing of the original premises remains. No sensible person would dispute that No.14 had been redeveloped in the years before the RTM claim, although the front and rear facades, and the party walls, had remained in place. In the *Stamford Hill* case the LVT had drawn support from section 23(2)(b) of the 1993 Act, which refers to redevelopment involving demolition or reconstruction of the premises or carrying out substantial works of construction on the premises and is reminiscent of section 30(1)(f) of the Landlord and Tenant Act 1954. The actions described in these different statutory provisions would be recognised as examples of redevelopment, notwithstanding that they may result in parts of the original structure surviving and being incorporated into the new. Whether sufficient work is involved in a particular scheme to merit the description redevelopment would obviously be a matter of degree, but something well short of complete demolition is likely to suffice.

96. I also reject the suggestion that a scheme of redevelopment which depends on support being provided to adjoining structures is not capable of satisfying section 72(3)(b). That was effectively Mr Bates KC's argument which I have already dismissed.

97. I am therefore satisfied that the FTT was entitled to conclude that the three Plaza Boulevard blocks could each be redeveloped independently of the remainder of the Estate.

Independent services

98. The last issue concerns section 73(3)(c) and (4). By cross appeal, the first respondent in the Plaza Boulevard appeal contends that there was insufficient evidence to support the FTT's conclusion that the fire alarm service shared between The Studios and The Tower could be provided independently without a significant interuption.

99. It was common ground between the parties that it had been for the RTM company to prove that the final condition was satisfied. Ms Rai submitted that the company had led no evidence before the FTT on that issue and had failed to show that the fire alarm system could be "de-linked", as she put it. It should therefore have dismissed the application on that additional ground as well.

100. There was very little evidence before the FTT of exactly what the fire alarm system comprised, but it was satisfied that a fire alarm was a "relevant service" within the meaning of section 72(5). There has been no challenge to that starting point, which is clearly correct; warning residents of a fire by means of a fire alarm, however it is connected or powered, is a service provided by means of a fixed installation.

101. The evidence which the FTT had comprised a very brief statement from the specialist maintenance engineers who had been maintaining the fire alarm systems at Plaza Boulevard since 2018. It also had some correspondence and a fire risk assessment prepared in 2021 when work was being carried out to replace cladding on the exterior of The Terrace. The engineer explained that independent fire alarms with their own autonomous fire control panels had originally been installed and commissioned for each of the five blocks, but these had later been networked together for monitoring. The network arrangement could easily be removed if required so that the system for each building operated independently again. The fire risk assessment suggested that the fire alarm system for The Terrace might not be required once the cladding issues had been resolved.

102. The engineer's statement did not describe the extent of the works which might be required to make the systems independent, nor did it consider the extent of any interruption to the service which might be caused by those works. I assume it was for that reason that the FTT was not prepared to accept the statement as conclusive of the issue under section 72(4). But there was no evidence that the separation which had already occurred at three of the blocks had caused any interruption in the service. Having regard to the original design of the systems and the retention of the independent fire control panels, the temporary nature of the linkage, the absence of any evidence of disruption, and the engineer's evidence that the interlinking could be "easily removed", the FTT nevertheless concluded that the section 72(4) condition was satisfied in respect of The Studios.

103. The landlords tendered no evidence of their own on this issue and I have no doubt that the FTT was entitled to reach the conclusion it did on the basis of the evidence before it. I therefore dismiss the cross appeal on this issue.

Conclusion

104. For the reasons I have given:

(a) The FTT was correct to find that the three Plaza Boulevard blocks are not self-contained parts of the Estate and that the right to manage provisions do not apply to them. Although I have allowed the RTM companies' challenge to the FTT's reasoning on the issue of vertical division, I am nevertheless satisfied that the blocks do not constitute vertical divisions of the building because they each include parts of the undivided basement car park. The RTM companies' appeals are therefore dismissed.

(b) The FTT was correct to find that No.14 is a self-contained part of a building and that 14 Park Crescent RTM Co Ltd is entitled to acquire the right to manage it. The landlords' appeal is dismissed.

Martin Rodger KC,

Deputy Chamber President

7 February 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.