



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AT/BSB/2025/0608**

**Property** : **Pieris House, High Street, Feltham  
TW13 4GD**

**Applicants** : **A2Dominion South Limited**

**Representative** : **Mr James Frampton (counsel)**  
Instructed by A2 Dominion Legal Services (Mr  
Christopher Last)

**Respondent** : **BDW Trading Limited**

**Representative** : **Mr Robert Bowker (counsel)**  
Instructed by Osbourne Clarke (Mr Daniel  
Wilkins)

**Type of application** : **Application for Remediation  
Contribution Order** section 124 Building  
Safety Act 2022

**Tribunal  
member(s)** : **Deputy Regional Judge Nikki Carr  
Regional Surveyor Mrs Elizabeth  
Ratcliff MRICS  
Mr Andrew Gee RIBA**

**Date of decision** : **2 April 2026**

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**PRELIMINARY ISSUE DECISION**

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**Decision**

1. Flats 29 – 40 Pieris House, High Street, Feltham TW13 4GD form part of the “relevant building” at 1 – 40 Pieris House, High Street, Feltham TW13 4GD in respect of which a remediation contribution order may be made.

**Reasons**

- (1) This decision is concerned with whether the premises in which Flats 29 – 40 Pieris House, High Street, Feltham TW13 4GD are situated is a separate building, or separate part of a building. If the answer is yes, the Applicant may not recover a contribution from the Respondent in respect of Flats 29 – 40 because they do not form part of a ‘relevant building’ for part 5 of the Building Safety Act 2022.

### Background

- (2) By application dated 18 June 2025, the Applicant seeks a remediation contribution order (‘RCO’) in respect of a number of alleged relevant defects in the Flats at 29 – 40 Pieris House, High Street, Feltham TW13 4 GD (‘Flats 29-40’). It is the Applicant’s case that Flats 29 – 40 form part of the wider building at 1-40 Pieris House (‘the wider building’), in reliance on section 117(2)(a) of the Building Safety Act 2022 (‘the 2022 Act’). The Respondent’s case is that Flats 29 – 40 do not qualify as a ‘relevant building’ under section 177 of the 2022 Act as they are within a structurally detached building, or alternatively a separate part of the wider building.
- (3) In light of the absence of any previous consideration of the issue regarding ‘separate structure’, and the interplay between parts 4 and 5 of the Act and Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 (‘the Regs’) at a Case Management Hearing (‘CMH’) on 6 August 2025, I set the question down for preliminary issue determination, it appearing to be the most proportionate approach taking into consideration the substantial expert evidence that may be required on the question of relevant defects (which might be rendered unnecessary by the conclusion on the relevant building question).

### Expert evidence

#### Structural configuration

- (4) The wider building was redeveloped by the Respondent (formerly known as Barratt Homes Limited) between approximately 2000 and 2005. It is located on the west side of Feltham High Street, opposite Feltham Green Park and Duck Pond on the east side. We inspected the wider building on 7th January 2026, in the company of the representatives for the parties, Ms Jessica Ward (Head of Building Projects, A2Dominion South Limited (‘A2D’)), Ms Kaitlyn Gibbons (Resident Liaison Officer A2D) and Mr Mohammed Mahbub (Project Manager A2D), and the parties’ structural engineering and services engineering experts.
- (5) Situated in the southern end of the wider building are Flats 1 – 28 Pieris House (‘Flats 1 – 28’) which, together with ground floor commercial units, comprise seven stories (together ‘the higher rise part’). It is common ground that the higher rise part meets the requirements of part 5 of the

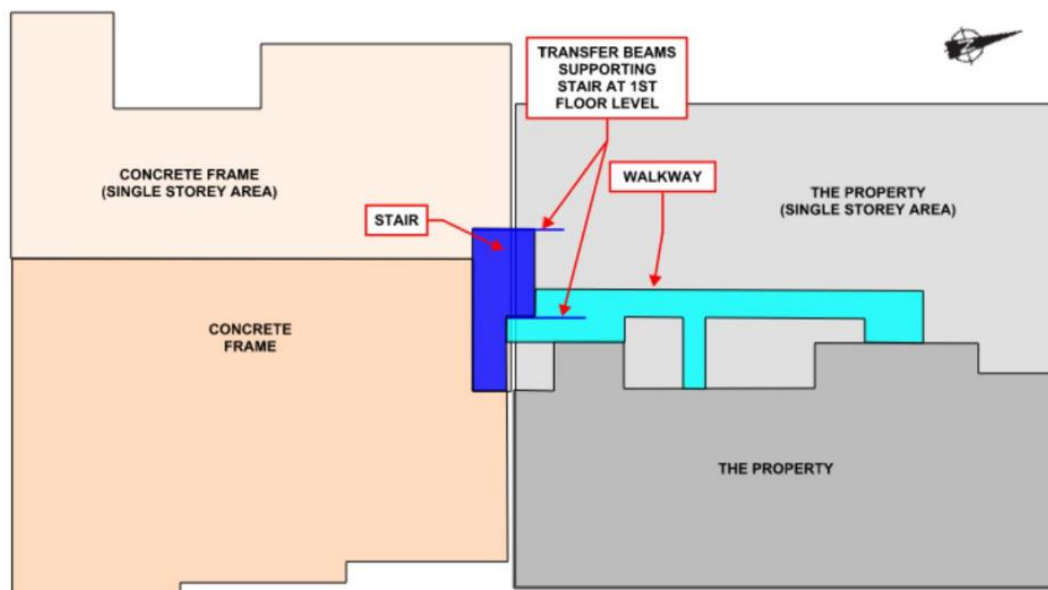
2022 Act. At its highest, the higher rise part rises circa 21 metres from ground level.

- (6) Flats 29 – 40 are situated at the northern end of the wider building, and comprise 12 flats over three stories (1<sup>st</sup> – 3<sup>rd</sup>). They were redeveloped from an existing terraced building, and are situated over the remains of the pre-existing commercial premises at ground floor (together ‘the lower rise premises’). During the construction, the previous terraced building was truncated at both ends to reduce its footprint. It is agreed that this part of 1 – 40 Pieris House is not at least 11 metres high, and has insufficient storeys to qualify in its own right as a relevant building for the Part 5 protections.
- (7) The ground floor (sole) entrance to 1-40 Pieris House is within eastern end of the higher rise part, giving access to a primary stair core (‘stair A’) and lift (which is also the sole fire-fighting lift). Each serve the entirety of the wider building. To get to Flats 29 – 40 one must use the sole entrance and either take stair A or the lift to one of the other storeys, and walk through the corridor to a second stair core (‘stair B’), through which one accesses external unenclosed steel-framed walkways at each storey first to third.
- (8) Stair B is an enclosed steel-framed construction, positioned at the North-west extremity of the taller South building. It is affixed to the reinforced concrete frame of the taller building and relies on it for vertical and lateral support. It runs full height to the sixth residential floor and serves not just as access to Flats 29-40, but as a fire escape for all flats 1 - 40. Each floor is accessible by all tenants of the wider building.
- (9) To the enclosed stair B tower are affixed external unenclosed steel-framed walkways at each storey first to third, overflying the ground floor commercial properties in the lower rise part. Those are the only means of access to and between the three stories on which Flats 29-40 are located. There is no access to Flats 29 - 40 other than via stair B besides the external steel walkways, and no fire-escape or exit from the wider building other than via stairs A and/or B.
- (10) The commercial units at ground floor in the lower rise part have a more extensive footprint than the residential stories above, with flat roofs and masonry parapet walls extending in some cases most of the way back from the rear wall of Flats 29-40 to a boundary wall at the wider development.

### ***Expert Evidence***

- (11) The structural surveyors Mr Mark Moppett BSc CEng FStructE (for the Respondent) and Mr William Davies MEng CEng MICE (for the Applicant) agree that the external steel walkways are structurally connected with stair B in ten locations, and that they are given vertical and lateral support by the structural frame of stair B, without which the walkways would collapse. The experts therefore agree that Flats 29 – 40 are not structurally detached from stair B.

- (12) Mr Davies and Mr Moppett also agreed that, in addition to that structural connection, while there is no *direct* structural connection between the four storey and seven storey sections of 1-40 Pieris House, Flats 29 – 40 are *indirectly* structurally connected to Flats 1-28 by stair B.
- (13) The indirect structural connection arises from the fact that stair B is directly supported, both vertically and horizontally, by both the reinforced concrete frame of the higher part of the construction at the south end of 1 – 40 Pieris House incorporating Flats 1 – 28, and by steel transfer beams spanning across the flat-roofed rear extensions of commercial units 5 and 6, and bearing upon the masonry walls enclosing those units at ground floor level directly below Flats 29-40 Pieris House. It was Mr Moppett's evidence and experience that it is highly unusual to support part of such a structure on top of apparently 70-80 years old, single storey, brickwork walls on original shallow foundations via transfer beams.
- (14) In their joint statement the experts illustrated the arrangement as below, though by the hearing (after further viewing the site at the inspection) they agreed that the westernmost transfer beam (at the top blue line of the depiction) extended further than illustrated and extended equally with the easternmost transfer beam (at the lower blue line), and that the latter was structurally incorporated into the walkway at first floor level.



- (15) This complex arrangement appears to have been designed to avoid taking two columns of Stair B's steel structure (on its north-east and north-west corners) down through the pre-existing ground floor commercial space. Part of the overall structural load of stair B, including (for its full height) its steel frame, glazed envelope and the stairs and landings, is therefore transferred across to bear onto single storey masonry walls positioned several metres away horizontally north from the stair tower, rather than directly and vertically down to foundations through columns. The transfer

beam carrying the north-east columns also forms part of the walkway structure at first floor level.

- (16) On that basis, from a structural engineering perspective, the experts agree that the high-rise south part of 1-40 Pieris House incorporating Flats 1 – 28 is not structurally detached from the low-rise, north part incorporating Flats 29 – 40.
- (17) The experts also largely agree in respect of two matters: whether the seven stories comprising Flats 1-28 and four stories comprising Flats 29 - 40 are vertically divisible, so that they could each be considered separate parts of a building; and whether any such part could be independently redeveloped. They differ only slightly.
- (18) Mr Moppett’s evidence is that there could be a vertical division either at the site of the external door onto the external walkways from stair B at each level, or (as a secondary case) hypothetically through the middle of stair B itself. In terms of redevelopment, provided stair B was closed for safety and new elements of structure were added to it to replace the current structural reliance on the transfer beams to ensure stair B’s structural stability (for the benefit of the south part of the building only), independent redevelopment would be workable. He opines that “*some work is always required when two buildings or two parts of a building are separated and one is redeveloped*”. He relied on an analogy of waterproofing, insulating and temporarily propping/strengthening a neighbouring wall adjoining a demolished terraced house while redevelopment was carried out, to provide protection from elemental forces.
- (19) Mr Davies could not identify a point of vertical division that would leave the structures stable on both sides, unless the second stair core and/or walkway structures were removed. The work would require temporary then permanent structural reconfiguration of elements, outside of the four stories including Flats 29 – 40 to be redeveloped. They therefore could not be independently redeveloped.

## **Services supply and separation**

### ***Expert Evidence***

- (20) The building services engineers instructed by the parties, Mr Neil McDonald BEng CEng MCIBSE (for the Respondent) and Mr Andrew Dellow BEng CEng FCIBSE (for the Applicant), are also largely in agreement.
- (21) The experts agreed that the list of relevant services to be considered is:
  - a) Electricity supplies

- b) Water supplies
  - c) Telecommunications
  - d) Access control
  - e) TV aerial
  - f) Foul and waste drainage
  - g) Communal area lighting, which includes lighting to the walkways allowing access to the Property.
  - h) Communal area fire safety systems associated with the Development, which include fire detection and alarm, smoke ventilators, dry riser and
- (22) Save for identifying that the power supply for them is from the North Services Riser and Central Services Riser, and that there are dry risers on each floor of the high-rise part of the building, it is noted that the building services engineers each said they did not have sufficient expertise in fire safety systems to opine on them. Neither party requested permission to rely on expert evidence in that regard, or provided any evidence on the degree of integration or inter-reliance of the fire safety systems or strategies for the wider building or how they might be separated.
- (23) Electricity for the wider building is provided by electricity utility distribution boards ('EUDB') in the higher rise part. For Flats 29 – 40's internal supply, the EUDB is located in the North Services Riser cupboard, itself found on the second floor within the south concrete frame wall to which stair B is structurally attached. The cutouts and meters for Flats 29-40 are located individually within hallway cupboards in each flat.
- (24) Cables are passed from the EUDB vertically and through horizontal voids in the high-rise, and beneath and above the steel walkways outside Flats 29 – 40, with supply cables entering the first and second storey flats above, and third storey flats below, their entrance doors. The communal supply is located in the wider building entrance lobby, by stair A.
- (25) Fire safety systems run via the central electrical services riser on the ground floor by stair A, to a first floor EUDB located next to (flat number) in the higher rise part. There is an external electricity sub-station adjacent to the end of the boundary wall of the lower rise part.
- (26) A water tank and booster pump are located in a cupboard, accessed via the bin-store, at ground floor at the southern-most rear western corner beneath the higher rise part, adjacent a party wall with the next development. Water pipes pass through a vertical service shaft, with those pipes serving Flats 29-40 branching off in common corridor service cupboards before passing through horizontal ceiling voids at first and second floors within the high-rise and then on beneath the steel walkways, the supply entering Flats 29-40 at the same point as the electricity supply.

- (27) Telecommunication cables for Flats 29 – 40 also originate in the North Services Riser within stair B, and utilise voids in the floor and ceiling to make their way to the walkways, gaining access to the flats via the same inlets as the electrics and water supply.
- (28) Access to Flats in the wider building is via voice-only entry door phone, the electrics for which are behind the wider building entrance door leading to stair A. The wiring is routed via the service risers, gaining entry to Flats 29 – 40 by the same means as the electrics, water and telecoms.
- (29) The television aerial for the wider building is located on the roof of the higher rise part, the wiring for which routes through the Central and North Services Risers to Flats 29 – 40 similarly to above. The antenna and distribution equipment are in the Central Electrical Service Riser within the higher rise part.
- (30) Flats 29 – 40 are served by soil vent pipes, bypassing the commercial units at ground floor to connect to the sewer network below.
- (31) The power source for general lighting and emergency lighting for the lobby, corridors and stairwells in the higher rise part and for the lighting above the walkways to Flats 29 – 40 is at the first floor of the higher rise part via the Central Services Riser. Isolation switches for the walkway lighting are found in the North Services Riser.
- (32) The experts agreed that only the sewerage is currently provided separately. They further agreed that it would be possible to separate the services. Broadly speaking the written evidence was limited to what could be done to disconnect Flats 1 – 28, rather than to reinstate/reconnect services to Flats 29 – 40.
- (33) Mr McDonald's oral evidence was that a minimum of four days interruption to the supply throughout the wider building would be required for the necessary separation of the water supply, factoring in the essential testing and flushing of systems. Electrical supplies would need to be disconnected for around 24 hours. Telecom, access control, TV and lighting separation would take up to half a day each, though a carefully planned and executed set of works could result in all of these measures being carried out simultaneously.
- (34) He conceded that these time estimates could well be affected by an inability to gain access to any one flat in the course of execution of the works, and that such a scenario was not uncommon.

## **Law**

### ***Statutory interpretation***

- (35) When tasked to construe a statute, the starting point is the plain and ordinary meaning of the wording of the provision, both of itself and within the scheme of the statute, informed by external material as an aid to construction (e.g. explanatory notes) if necessary. In ***R (The Good Law Project) v Electoral Commission*** [2018] EWHC 2414 (Admin), giving the judgment of the court, Lord Justice Leggatt sets out the following:

#### Statutory interpretation

33. Save for one point, there is no dispute about the principles of statutory interpretation. The basic principles are that the words of the statute should be interpreted in the sense which best reflects their ordinary and natural meaning and accords with the purposes of the legislation. It is generally reasonable to assume that language has been used consistently by the legislature so that the same phrase when used in different places in a statute will bear the same meaning on each occasion – all the more so where the phrase has been expressly defined.

34. It is also generally reasonable to assume that Parliament intended to observe what *Bennion on Statutory Interpretation* (7th Edn, 2017) in section 27.1 calls the “principle against doubtful penalisation”. This is the principle that a person should not be subjected to a penalty – particularly a criminal penalty – except on the basis of clear law. As noted earlier, incurring referendum expenses in excess of the prescribed limit and, in the case of a permitted participant, failing to report referendum expenses correctly are potentially criminal offences. In these circumstances counsel for the Electoral Commission and Vote Leave both submitted that the definition of “referendum expenses” should be construed strictly and any ambiguity or doubt about its meaning resolved in favour of the narrower interpretation so as to avoid doubtful penalisation.

35. In response, counsel for the claimant cited *R (Junttan Oy) v Bristol Magistrates’ Court* [2003] UKHL 55; [2003] ICR 1475, para 84, where Lord Steyn described this principle of statutory interpretation as one of last resort. Other authorities confirm, however, that that description of the principle understates its continued vitality: see e.g. *R v Dowds* [2012] EWCA Crim 281; [2012] 1 WLR 2576, paras 37-38. We think the position was fairly stated by Sales J in *Bogdanic v Secretary of State for the Home Department* [2014] EWHC 2872 (QB), para 48, when he said:

“The principle of strict interpretation of penal legislation is one among many indicators of the meaning to be given to a legislative provision. It is capable of being outweighed by other objective indications of legislative intention, albeit it is itself an indicator of great weight.”

- (36) ***R (on the application of O (a minor, by her litigation friend AO)) et ors v Secretary of State for the Home***

**Department** [2022] UKSC 3 sets out at paragraphs 29 – 32 the weight to be given to external aids to construction, and the primacy to be given to the words of a statute themselves. Lord Hodge set out the judgment (with which the other Supreme Court Lord- and Ladyships agreed):

28. Having regard to the way in which both parties presented their cases, it is opportune to say something about the process of statutory interpretation.
29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.”

(*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, 397:

“Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.”

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do

not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole.

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme*, 396, in an important passage stated:

“The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. ... Thus, when courts say that such-and-such a meaning ‘cannot be what Parliament intended’, they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.”

- (37) It is only if, having undertaken that task, giving the words their natural meaning would lead to ambiguity or obscurity, or result in absurdity, the Tribunal might be permitted to go to *Hansard* (***Pepper v Hart*** [1993] AC 593). Neither party invited us to do so.

### ***The 2022 Act, 2023 Regs, explanatory notes and caselaw on/for construction***

- (38) The Building Safety Act 2022 (**‘the 2022 Act’**) **section 117** sets out the meaning of a “relevant building” for the purposes of **Part 5** of the 2022 Act:

#### **117 Meaning of “relevant building”**

(1) This section applies for the purposes of sections 119 to [\[F1124\]](#) and [Schedule 8](#).

(2) “Relevant building” means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—

(a) is at least 11 metres high, or

(b) has at least 5 storeys.

This is subject to subsection (3).

(3) “Relevant building” does not include a self-contained building or self-contained part of a building—

(a) in relation to which a right under Part 1 of the Landlord and Tenant Act 1987 (tenants’ right of first refusal) or Part 3 of that Act (compulsory acquisition by tenants of landlord’s interest) has been exercised,

(b) in relation to which the right to collective enfranchisement (within the meaning of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993) has been exercised,

(c) if the freehold estate in the building or part of the building is leaseholder owned (within the meaning of regulations made by the Secretary of State), or

(d) which is on commonhold land.

(4) For the purposes of this section a building is “self-contained” if it is structurally detached.

(5) For the purposes of this section a part of a building is “self-contained” if—

(a) the part constitutes a vertical division of the building,

(b) the structure of the building is such that the part could be redeveloped independently of the remainder of the building, and

(c) the relevant services provided for occupiers of that part—

(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.

(6) In subsection (5) “relevant services” means services provided by means of pipes, cables or other fixed installations.

(39) The parties provided the **Explanatory Note** to section 117. So far as material to the Preliminary Issue, the Explanatory Note states as follows:

**Section 117 — Meaning of "relevant building"**

## **Effect**

919. This section defines a "relevant building" for the purposes of section 119 to 125 and Schedule 8; it defines the types of building to which the leaseholder protections apply.

920. A "relevant building" is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11 metres in height, or which has at least five storeys.

921. Subsection (3) sets out that leaseholder-owned buildings are not included in the definition of "relevant building" . Those types of buildings that are not included in the definition are those in which the building has undergone collective enfranchisement, or which are on commonhold land.

922. Subsections (3)(a) and (3)(b) capture the statutory routes by which a building can undergo collective enfranchisement. These are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. Subsection (3)(c) provides a power for the Secretary of State to specify, by regulations, other routes by which a building can become leaseholder owned, and which will also not be included in the definition of "relevant building" . Subsection (3)(d) captures buildings which are on commonhold land, which has the same meaning as in the Commonhold and Leasehold Reform Act 2002.

923. Subsections (4), (5), and (6) set out the meaning of "self-contained". A building is self contained if one part of it could be redeveloped independently of the rest of the building.

## **Background**

924. The problems associated with historical building safety defects in multi-occupied residential buildings are concentrated in medium-and high-rise buildings. There is a greater risk to life in taller buildings when fire does spread, and so defects in taller buildings are more likely to need to be remediated, and it is leaseholders in those buildings that have found themselves more likely to face significant remediation costs. Section 117 defines a relevant building (one that is within scope of the protections) as a building containing at least two or more dwellings and which is at least 11 metres in height or has at least five storeys.

925. Buildings which are below 11 metres in height, and which have fewer than five storeys are not within the scope of the leaseholder protections as evidence shows that there is no systemic issue with historical fire safety defects in these buildings. Costly remediation is unlikely to be needed, and there are likely to be more proportionate mitigations, such as the installation of fire alarms. It is not, therefore, necessary for low-rise buildings to be included within the definition of relevant building.

926. The ownership structures of multi-occupied residential buildings are discussed in the explanatory note for section 116 and set out that (in simple terms) in most cases the building and the land on which it sits is owned by the freeholder, and the long leases of the individual dwellings are owned by the leaseholders. The freeholder (that is, the owner of the freehold) can be, for example, a private company, an individual, a local authority, or a charity.

927. It is also possible for some or all of the leaseholders to purchase their building's freehold; this is known as collective enfranchisement. Where enfranchisement occurs, the leaseholders become the owner of the freehold. There are several statutory routes to collective enfranchisement. The statutory routes are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. It is also possible for leaseholders to purchase the freehold of their building through non-statutory means.

928. An alternative to the leasehold model of ownership of multi-occupied residential buildings is commonhold. When a building is on commonhold land, each unit-holder (owner of a dwelling) within the building also owns the freehold of the unit. Commonhold is a different model of ownership to leasehold, but commonhold buildings are similar to those which have collectively enfranchised in the sense that the building, and the land which the building is on, are collectively owned by 928. An alternative to the leasehold the owners of the dwellings contained within the building in both circumstances. The legal framework which governs commonhold is the Commonhold and Leasehold Reform Act 2002. There are far fewer commonhold buildings in England than multi-occupied leasehold buildings.

929. The leaseholder protections measures work at a fundamental level by limiting or preventing the costs that can be passed through the service charge to leaseholders by the freeholder. When costs cannot be passed on through the service charge, the freeholder, who is responsible for undertaking works to maintain the building, becomes liable for these costs. In situations where the building is collectively owned by the leaseholders, there is no separate entity to bear the costs – the leaseholders are the freeholder. Consequently, the definition of "relevant building" does not include leaseholder-owned buildings.

### **Proposed use of power**

930. The power at subsection (6)(c) will be used to make regulations setting out other circumstances (other than those set out in subsections (6)(a) and (6)(b)) where a building can be leaseholder owned.

- (40) The definition of “Relevant Building” was introduced as a Lords Amendment before the 2022 Act was passed; the **Lords Explanatory Note** for amendment 94 says no more than:

69 Lords Amendment 94 inserts a new clause that defines “relevant building” as a self-contained building (or self-contained part of a building) in England containing at least two dwellings.

(41) The Respondent also relies on *Adriatic Land 5 Limited v Long Leaseholders of Hippersley Point* [2025] EWCA Civ 856 for what is said to be the principle that Part 5 of the 2022 Act is concerned with money, *i.e.* who is liable to pay for relevant defects. Though we were not taken to a particular passage. Given that *Hippersley Point* was concerned with the effect of the ‘waterfall’ in schedule 8 on recoverability of incurred service charges pre-dating the coming into force of the 2022 Act, that is no doubt correct so far as the case goes.

(42) **Section 65** of the 2022 Act sets out what is a “higher risk building” for the purposes of **Part 4** of the 2022 Act:

### **65 Meaning of “higher-risk building” etc**

(1) In [this Part](#) “higher-risk building” means a building in England that—

(a) is at least 18 metres in height or has at least 7 storeys, and

(b) contains at least 2 residential units.

(2) The Secretary of State may by regulations make provision supplementing this section.

(3) The regulations may in particular—

(a) define “building” or “storey” for the purposes of this section;

(b) make provision about how the height of a building is to be determined for those purposes;

(c) provide that “higher-risk building” does not include a building of a prescribed description.

(4) Regulations made by virtue of [subsection \(3\)\(a\)](#) may in particular define “building” so as to provide that it includes—

(a) any other structure or erection of any kind (whether temporary or permanent);

(b) any vehicle, vessel or other movable object of any kind, in such circumstances as may be prescribed.

(5) The Secretary of State may by regulations amend this section (other than [subsection \(2\)](#) or [this subsection](#)).

(6) For the meaning of “residential unit” see section 115.

(43) So far as material to section 65, the Explanatory Note states as follows:

## **Meaning of "higher-risk building"**

Section 65: Meaning of "higher-risk building" etc and Section 66: Regulations under section 65: procedure and Section 67: Regulations under section 65: additional procedure in certain cases

### **Effect**

578. The new regulatory regime will regulate building safety risks in "higher-risk buildings" in England. Section 65 defines the "higher-risk buildings", which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example student accommodation where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

579. Section 65 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides that the definition of "building" in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

580. Section 65 also gives the Secretary of State the power (used in the way described in (3) (c), by regulations, to exclude classifications of building from the definition of "higher-risk building". This means a building may be caught by the definition in this section but then excluded through regulations made under this power and therefore not defined as a "higher-risk building". Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

581. Section 65 gives the Secretary of State the power to amend section 65, apart from subsections (2) and (5). This power could be used to amend the definition of "higher-risk building". Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

582. When making regulations to amend the definition of "higher-risk building", this can be done by reference to a building's size, design, use, purpose or other characteristic (section 166).

583. Section 66 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. It also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice. This includes when the

Secretary of State proposes to make regulations to remove a category of building from the definition of higher-risk building.

584. Section 67 further stipulates the requirements at when the Secretary of State must meet when they proposes to make regulations which would result in a description of building being added to the definition of "higher-risk building" , and therefore subject to the new occupation regulatory regime., They must have received a recommendation from the Regulator (section 69) or request advice from the Regulator (section 70) and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this

### **Proposed use of power**

585. At the start of the new regulatory regime, it is proposed to supplement the definition of "higher risk building"

- (44) The Explanatory Note to the 2022 Act was written after the 2022 Act was passed into law. We observe, as stated in *Hippersley Point*, that for the notes to both Parts 4 and 5, there is distinction to be drawn between explanatory notes that were available when the legislation was making its passage through the legislative process, and those that came into existence sometime later:

66. ... A passage from the judgment of Lord Sales (with whom Lords Reed, Leggatt and Stephens agreed) in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, [2023] 1 WLR 2594 (“PACCAR”) is relevant in this context. Lord Sales said in paragraph 42:

“It is legitimate to refer to Explanatory Notes *which accompanied a Bill in its passage through Parliament* and which, under current practice, are reproduced for ease of reference when the Act is promulgated; but external aids to interpretation such as these play a secondary role, as it is the words of the provision itself read in the context of the section as a whole and in the wider context of a group of sections of which it forms part and of the statute as a whole which are the primary means by which Parliament's meaning is to be ascertained ... Reference to the Explanatory Notes may inform the assessment of the overall purpose of the legislation and may also provide assistance to resolve any specific ambiguity in the words used in a provision in that legislation. Whether and to what extent they do so very much depends on the circumstances and the nature of the issue of interpretation which has arisen” (emphasis added).

67. Where explanatory notes have “accompanied a Bill in its passage through Parliament”, there is sense in regarding them as capable of shedding light on what Parliament intended. Where, on the other hand, explanatory notes in respect of a statute did not exist when it was being passed, there is less reason to see them as a guide to Parliament’s intentions. They may, of course, show what the Department which

promoted the Act understands it to mean, and possibly what it wished it to mean, but the materials plainly cannot have informed Parliamentary decision-making.

68. It is to be remembered in this context that, as Lord Reed said in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 (“SC”), at paragraph 166, “the Government is separate from Parliament, notwithstanding the many connections between the two institutions”. Thus, “[t]he reasons which the Government gives for promoting legislation cannot ... be treated as necessarily explaining why Parliament chose to enact it”: see SC, at paragraph 166, per Lord Reed.

69. In *Chief Constable of Cumbria v Wright* [2006] EWHC 3574 (Admin), [2007] 1 WLR 1407, Lloyd Jones J, with whom Keene LJ agreed, said in paragraph 17:

“It is, of course, for the courts and not the executive to interpret legislation. However, in general, official statements by government departments administering an Act, or by any other authority concerned with an Act, may be taken into account as persuasive authority on the legal meaning of its provisions .... In the present case we are concerned with guidance published by the Home Office, which is the government department which had responsibility for the enactment and operation of the legislation in question. In any given case, it may be helpful for a court to refer to the guidance in the interpretation of the legislation. It may be of some persuasive authority. However, to my mind that is the limit of its influence. It does not differ in that regard from a statement by an academic author in a textbook or an article. It does not enjoy any particular legal status. There seems to me to be no satisfactory basis for the submission that it gives rise to a presumption that the views it contains are correct and should be rejected only for good reason.”

70. In my view, the position is similar where explanatory notes have been published only after a statute has already been enacted. The notes may be of persuasive authority, but they do not enjoy any particular legal status and can be compared with academic writings.

71. *Bennion* says this in section 24.14 about explanatory notes:

“The rationale for using explanatory notes in the way discussed above appears to be that they form part of the background material available to the legislature at the time at which legislation is passed and may therefore help to inform its interpretation in the same way as other pre-enactment materials. It seems to follow that only the explanatory notes published during the Bill’s passage through the legislature can be used in this way.

The explanatory notes for the Act itself post-date its enactment and therefore cannot be viewed as part of the context against which it is enacted. Those notes should be given no more weight than other

post-enactment expressions of opinion by the government as to the meaning of legislation .... In other words, the weight to be given to them should depend on the cogency of any reasoning contained in them.

... It should be acknowledged that, in practice, it will not always make a difference since changes between different versions of the notes are often relatively minor ....”

72. I agree with those observations.

(45) The Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 (**the 2023 Regs**) further define “building” for the purposes of section 65:

#### **4. Meaning of “building”**

(1) Subject to paragraph (2), where a structure is not attached to any other structure, that structure is a “building”.

(2) Subject to paragraph (5), where a structure that is not attached to any other structure contains one or more independent sections, each independent section is a “building”.

(3) Subject to paragraph (4), where two or more structures are attached, that set of structures are a “building”.

(4) Subject to paragraph (5), where two or more structures that are attached contains one or more independent sections, each independent section is a “building”.

(5) Paragraphs (2) and (4) do not apply while a building is being constructed or proposed to be constructed.

(6) An “independent section” is a section that—

(a) has access, which can be reached from anywhere in the section, for persons to enter and exit the wider building; and

(b) either—

(i) has no access to any other section of the wider building;  
or

(ii) only has access to another section of the wider building which does not contain a residential unit.

(7) “Access” means a doorway, archway or similar opening but does not include a doorway, archway or similar opening intended for exceptional use including emergency use or use for the purpose of maintenance.

(8) The “wider building” means—

(a) in relation to a section of a structure that is not attached to any other structure, that structure;

(b) in relation to a section within two or more structures that are attached, that set of structures.

(9) Where a section is a “building” pursuant to paragraphs (2) or (4), any plant room containing equipment for the provision of services to that section is to be considered as part of that building.

(10) The rule in paragraph (9) does not apply to the reference to “building” in sub-paragraphs (i) and (ii) of section 73(1) of the 2022 Act and in section 73(2) of that Act.

(46) The Explanatory Note accompanying the 2023 Regs regulation 4 says as follows:

Regulation 4 defines “*building*”. It sets out the circumstances in which structures that are joined will be considered one “building” and also the circumstances in which a section of a wider structure or set of structures will be considered a “building” for the purpose of the new regime.

***Caselaw – the meaning of ‘structural detachment’, ‘self-contained part’ and separation of services etc***

(47) The parties cited a number of authorities in what they submitted are the analogous jurisdictions relating to enfranchisement (under the Leasehold and Freehold Reform Act 1967 (‘the 1967 Act’) and Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’)) and right to manage (pursuant to the Commonhold and Leasehold Reform Act 2002 (‘the 2002 Act’)). Although there are some minor (though, particularly regarding the 1967 Act, in some ways significant) differences in the two enfranchisement jurisdictions, it is right to say that section 117(4) – (6) is, saving some editorial choices, identical to the test set out in section 72(2) – (5) of the 2002 Act. We set out the relevant principles to be derived from each chronologically so that one can see the evolutionary process of the principles.

(48) In ***Oakwood Court (Holland Park) Limited v Daejan Properties Limited*** (2026) Central London Civil Justice Centre 18 December 2006, Her Honour Judge Hazell Marshall QC was concerned with a dispute in which the separation of services was key to the determination of whether there was a separate part of a building over which the right to collectively enfranchise arose:

81. In my judgment, the [1993] Act is looking, not at the possibility of the supply of independent relevant services in the abstract, but at the possibility of the separation of the existing relevant services as “provided to the occupiers of that part” from those “provided to the occupiers of the remainder of the building” with minimal disruption to the latter. The works in the present case do not fall within that concept...

...

84. ... in my judgment it is not sufficient for the Claimant to say that could be done in principle; the Claimant would at least have to demonstrate that it could, in fact, be done. At present the evidence is purely theoretical and speculative, and in my judgment insufficient to satisfy subs 3(2)(b)(i).

....

94. The burden of proof is on the Claimant to prove positively that the relevant services can be provided independently to Nos 1 – 14 without the necessary works being likely to cause significant interruption to the services to the remainder of the building...

...

96. ... I find ... that the separation of the water services could only be effected with resulting periods of disturbance to water supplies to the flats, totalling 42 hours.

...

117. The test of “significant” is a matter of fact and degree... I am satisfied that the availability of central heating [the experts agreed a disruption of 8 hours] of mains cold water and of domestic cold water [48 hours] to Nos 15-30 would each individually be subject to a “significant” interruption... if the test is applied cumulatively, the conclusion is even stronger. It is also fortified by the fact that the test in the [1993] Act is not even that the services “would” be so subject, but only whether they would be “likely” to be so subject....

118. I would add that I would have reached this conclusion in relation to the interruption [agreed 8 hours] to the central heating system alone, and, in respect of the water systems even if I had concluded that the fitting of back flow devices was not necessary, as the difference made by this would not materially affect the degree of interruption.

(49) In ***Re: Holding and Management (Solitaire) Limited*** [2008] EG 158, [2008] L&TR 16, the President of the (then) Lands Chamber George Barlett QC considered the meaning of “vertical division” in a right to manage claim under the 2002 Act, in order to establish whether there was

a self-contained part of a building. In upholding the Landlord's appeal, he found as follows:

8. ... The requirement that, to be a self-contained part of a building, a part of a building must constitute "a vertical division of the building" is unqualified. Deviations from the vertical that are de minimis could no doubt be ignored for this purpose. The LVT concluded that the area within the deviation, as it put it, was approximately 2 per cent of the floor area subject to the notice of claim, that this seemed minimal in the context of the notice and was not material for the purpose of the Act. The question, however, it seems to me, is, not whether the area outside of a line drawn vertically through the building is minimal in the context of the notice, or very small in relation to the total floor area, but whether, including the area in question, the part of the building was, physically, a vertical division of the building. Moreover, in importing a test of materiality by reference to the provisions of the 1967 Act, the LVT was in my judgment in error....

9. ... no such qualification appears in s.72 of the 2002 Act (or in the provision that is effectively in the same terms in s.3 of [the 1993 Act]), and the proper conclusion from this is that no such qualification, which could have been included but was not, is to be implied. The LVT was in error, therefore, in asking itself whether deviation from the vertical was material and basing its decision on the conclusion that it was not material.

(50) In ***No.1 Deansgate (Residential) Limited v No.1 Deansgate RTM Company Limited*** [2013] UKUT 0580 (LC), His Honour Judge Huskisson was concerned with the meaning of "self contained" building and structural attachment. In upholding the Landlord's appeal against the (then) LVT's decision, he found as follows:

28. I accept that the two sentences in Lord Wilberforce's judgment [in *Parsons v Gage (Trustees of Henry Smith's Charity)* [1974] 1 WLR 435, itself a case concerning the 1967 Act] upon which Mr Bates particularly relies, if they are to be applied literally and in all circumstances, could be taken to indicate that a building is only structurally detached if it does not touch and is in no way attached to any other structure. The two sentences are these:

"As a matter of ordinary English, I should regard the meaning as reasonably plain. "Structurally detached" means detached from any other structure."

However I am unable to accept that Lord Wilberforce was intending to lay down the words "structurally detached" should always be construed in precisely this manner in all statutes irrespective of the subject matter and intent of the statute and the context in which the words are used... The meaning of the words "structurally detached" in the 1967 Act as

construed by Lord Wilberforce cannot be determinative of the meaning of those words in section 72(2) of the 2002 Act.

29. I agree with the LVT's observation... that the purpose of this part of the 2002 Act is to permit a RTM company to manage premises which are self-contained and which are in consequence susceptible to being managed as a discrete unit. Section 72(2), which provides that a building is a self-contained building if it is structurally detached, should be construed in that context.

30. I accept Mr Dray's argument that to construe "structurally detached" as requiring the absence of any attachment or touching between the subject building and some other structure is to construe section 72(2) as though it said "detached" or "wholly detached" rather than "structurally detached". What is required is that there should be no structural attachment (as opposed to non-structural attachment) between the building and some other structure.

31. I consider the extracts from the Oxford English Dictionary to be helpful. In particular I note the definition of the word "structurally" as meaning: in structural respects; with regard to the structure. It is attachment of this sort which prevents a building being structurally detached.

...

33. I accept Mr Dray's argument that if Mr Bates' arguments are correct then there would indeed be absurd results such as those Mr Dray gave by way of example. It may be that the example of the string of bunting or the washing line could be accommodated (supposing Mr Bates's arguments were correct) on the basis the attachment there was *de minimis*. However, a more substantial connection such as the hypothetical triumphal metalwork arch connecting two otherwise entirely self-standing and separate buildings could not, so I would have thought, be dealt with on a *de minimis* basis. If such an attachment meant... that neither building was structurally detached, the result would be that neither building would be a self-contained building within section 72(2)...

...

35. ...the LVT examined the correct question, namely whether there was any attachment of a structural nature.

(51) In ***Albion Residential Limited & Ors v Albion Riverside Residents RTM Company Limited*** [2014] UKUT 0006 (LC), another case involving a claim for the right to manage, Martin Rodger KC, Deputy President of the Upper Tribunal Lands Chamber, further examined the question of self-containment. Agreeing with Judge Huskinson regarding

the inapplicability of Lord Wilberforce's dictum in *Parsons*, he analysed the appeal as follows:

38. For premises to come within the right to manage provisions of the 2002 Act they must consist of a self-contained building or part of a building with or without appurtenant property. In most cases the application of the statutory condition is likely to produce an obvious answer, but in cases involving complex or unusual buildings ... the issue may require systematic consideration which begins by identifying the premises which are said to constitute the building or part of a building to which the claim relates, before considering whether those premises are self-contained in the sense that they are structurally detached....

(52) Deputy President Rodger KC was further seized of the question of whether a building was a "self-contained part of a building" for the purposes of the claim to a right to manage **in *St Stephens Mansions RTM Company Limited v (1) Fairhold NW Management and (2) OM Property Management Limited*** [2014] UKUT 0541 (LC), and in particular by reference to the provision of separate services. Doubting the Landlord's criticism of Judge Marshall's approach in *Oakwood Court*, but observing the necessity of ensuring careful attention to the statutory wording, Judge Rodger KC identified the following approach:

83. Section 72(4)(b) contemplates "the carrying out of works" to render the supply of services independently to the different parts of the building. Satisfaction of that test cannot therefore be restricted to situations in which separate service provision can be achieved simply by closing isolation valves or flicking switches. I agree with Mr Howells' submission that the provision of new components or installations cannot be ruled out, and that the only scale of measurement the [2002] Act provides for deciding whether work is too substantial is by reference to the degree of interruption it will inflict on occupiers of the remainder of the building.

...

88. ...In order to give the statute a sensible effect it is ... necessary to disregard the question of entitlement to carry out the necessary work. The purpose of section 72 is to identify premises to which the Act applies, and it is appropriate to consider that question on a purely practical level, focussing on the construction and configuration of the premises, rather than on the rights of their occupiers.

(53) In ***West End Investments (Cowell Group) Limited v Birchlea*** [2015] EWHC 3381 (Ch), Mr Justice Henry Carr considered the effect of ownership of a party wall on the structural division question for the 1967 Act section 2(2). He found, on the basis of consideration of *Parsons*, *Malekshad v Howard De Walden Estates Limited* [2002] UKHL 49, and

*Hosebay Limited v Day* [2012] UKSC 41, that where there was a ‘dog leg’ or ‘kink’ in a vertical division, such as an overhang or under-hang, that would exclude a house from enfranchisement unless such a deviation was only trivial or *de minimis*.

(54) In ***CQN RTM CO Limited v Broad Quay North Block Freehold Limited*** [2018] UKUT 183 (LC), His Honour Judge Hodge KC determined that whether or not premises comprise of a self-contained building for the purposes of section 72 of the 2002 is a question of fact and degree that depends on the nature and degree of attachment between the building and adjoining structures. Judge Hodge KC followed the decision in *No1 Deansgate* and subsequent Upper Tribunal authorities, and suggested a series of propositions:

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

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

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

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

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

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

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

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

(9) A building can be 'structurally detached' even though it cannot function independently.

(10) Adjoining buildings may be 'structurally detached' even though a decorative façade runs across the frontage of both buildings.

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

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

(13) If a structural part of the premises is attached to a structural part of another building, the premises are unlikely to be 'structurally detached'.

(55) At paragraph 62 he decided as follows:

... The FTT clearly regarded the car park ceiling and its floor, or base, as doing more than merely touching. Reading the decision as a whole, it is clear the FTT regarded them as a single and indivisible structure which straddled both buildings and meant that they could not properly be regarded as “structurally detached”. It is implicit in the FTT’s decision that they rejected the need for there to be any load-bearing connection between the two buildings..., but in my judgment they were right to do so; while mutual structural reliance, or interdependency, may indicate structural attachment, its absence does not, in my judgment, necessarily connote structural detachment, provided some part of the essential core fabric of the subject premises is attached to some part of the essential or core fabric of another building.

(56) In ***Consensus Business Group (Ground Rents) Limited v Palgrave Gardens Freehold Co Ltd*** [2020] EWHC 920 (Ch), Mr Justice Falk was called on to consider the issue of structural detachment for the purposes of a 1993 Act enfranchisement claim, in which he determined that multiple blocks of flats connected by a single basement carpark constituted a single building (which building included the carpark even though it extended beyond the footprint of the ground level of the blocks above). In so doing, he found:

111. I do not agree with the submission that the question of structural detachment is simply one for structural engineers, and dependent solely on the existence or otherwise of structural interdependence or load bearing connection. That is not the statutory test. While it is hard to see that structural detachment could exist if there is no structural interdependence... that does not mean that structural dependence is essential.

...

121. As already indicated, structural detachment does not necessarily require structural independence in the engineering sense of an absence of structural support. Rather, I prefer the approach of HHJ Huskinson in *Deansgate*, which posits the question simply in terms of whether there is a structural attachment, as opposed to non-structural attachment. Overall I found this more helpful than Judge Hodge KC's suggestion at proposition (6) in CQN which refers to the "essential or core fabric" of the building, which (while it is intended to capture a distinction between structural features and others such as the merely decorative) may risk too much of a gloss on the statutory language.

122. I would also add that design and function play some part in determining whether structural detachment exists. So in this case it is not irrelevant that the blocks were designed to be constructed together, not as discrete individual buildings but as part of a single development connected by a common basement which functions as the car park for all the blocks and which is accessible directly to and from each of them...

(57) In its decision in *Eveline Road RTM Co Limited v Assethold Limited* [2024] EWCA Civ 187, in the context of consideration of whether an RTM company was confined to asserting its claim to the smallest possible part of a wider building, their lordships held (paragraph 36) that the question of whether premises satisfy the definition of a self-contained building or self-contained part of a building is a purely physical test, "concerned only with the structure of the built envelope, its internal structure, and the separability of services."

(58) Deputy President Rodger KC further considered the question of self-containment after the *Eveline Road* decision, in *Courtyard RTM Co Ltd v Rockwell Ltd* [2025] UKUT 39 (LC). Much of the above caselaw was addressed in his decision. Observing that the question was one of physical possibility, not contractual or legal permissibility (paragraph 9), he addressed the self-containment question thus:

### **Vertical division – discussion**

41. I begin with two preliminary points.

42. 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."

43. Secondly, in *Crafrule [Limited v 41-60 Albert Palace Mansions (Freehold) Limited]* [2011] L&TR 13], 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.

44. 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.

45. 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 Act](#) s. 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.

46. 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. ... 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.

...

60. 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.

...

71. ... 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.

...

### **Boundaries deviating from a straight line**

76. 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° 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.

77. 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.

78. 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.

79. 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.

80. 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.

(59) In terms of the separation of services, Judge Rodger KC confirmed (para 15) a marginally adapted approach to that taken by Judge Marshall QC on Oakwood Court:

(1) First, .. 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".

(60) He further found as follows:

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.

(61) The parties provided the following other decisions in the authorities bundle, which do not require separate consideration given the material derived from the above:

*Stamford Hill Mansions RTM Company Limited v Daejan Properties Limited* LON/00AM/LRM/2007/007

*23 Cannon Place RTM Company Limited v Ambrose*  
LON/00AG/LRM/2019/0007

*LM Homes Ltd v Queen Court Freehold Company Limited* [2020]  
EWCA Civ 371

*Re: 77 Newbridge Road RTM Co Ltd* (missing landlord)  
CHI/00HA/LOA/2021/0001

*Settlers Court RTM Co Ltd & Ors v FirstPort Property Services Ltd*  
[2022] UKSC 1

*29 – 67 Carpathia Drive RTM Co Ltd v Trinity (Estates) Property Management Ltd* CHI/00MS/LRM/2023/0002

*GUV Harborough & Saltley House RTM Co Ltd v Adriatic Land 3 Ltd & Ors* [2024] UKUT 109 (LC)

*14 Park Crescent RTM Co Ltd v 14 Park Crescent and Others* LON/00BK/LRM/2023/0022

## **Discussion**

### ***Is the “relevant building” with which Part 5 concerned different from the “building” with which Part 4 is concerned?***

- (62) The Applicant’s reliance on the Part 4 and (particularly) regulation 4 of the 2023 Regs was reframed at the hearing, inasmuch as Mr Frampton relied on Part 4 and the 2023 Regs only as an additional lens through which section 117 should be construed.
- (63) Neither party therefore dwelt on the question of whether the wider building met the definition in regulation 4, though it would appear on at least an initial view that it would be a “higher risk building” for the purposes of part 4 because it appears not to be an ‘independent section’ for regulation 4 of the 2023 Regs.
- (64) That is consistent with the wider building’s single registration with the Building Safety Regulator, though nothing much turns on that fact since registration is in accordance with the Applicant’s assessment.
- (65) We are satisfied that this is not now a case in which we consider that the outcome for the Respondent would turn on the construction of section 117 through the lens of the 2023 Regs, given our findings below. We have had no cause to consider whether the ‘independent section’ test in the 2023 Regs would necessarily impact on the ‘self-contained part’ test in section 117, or the reference to archways and access in the former’s impact on the latter in particular. We will therefore only deal with the matter briefly.
- (66) Our starting position is that where, as in this case, Parliament has seen fit to incorporate into a new statute a set of words in identical terms (save for some, it seems to us inconsequential, editorial choices) to a pre-existing statutory provision which has itself been tried and tested (albeit, as can be seen from the law section above, not entirely satisfactorily resolved), the most likely inference to be drawn is that the words themselves should bear the same meaning. Where, as here, in another part of a statute (or regulations thereunder) a different definitive choice has been made, the natural starting point is that is because there is something different with which that part/regulation is concerned.

- (67) While that may occasionally result in a direct and irresolvable conflict between the two, so that the statute becomes inoperable on its natural construction, a purposive approach to the offending passages might be permitted.
- (68) One must never lose sight, however, of the *context* of the Act in which those words are used. Here, the context of the 2022 Act (broadly) is the safety of people in and about buildings, and in particular in and about higher-risk buildings. We consider that words used must be viewed through that broad lens.
- (69) We must also view the words used through a separate, narrower lens, and that is what each of the Parts of the 2022 Act seek to do to achieve the safety of people in and about buildings, particularly higher-risk buildings.
- (70) We were taken to the particular wording of section 116 of the 2022 Act, which says this as an introduction to Part 5:
- (1) Section 117 to 124 and schedule 8 make provision in connection with the remediation of relevant defects in relevant buildings
  - (2) In those sections -
    - (a) Sections 117 to 121 define “relevant building”, “qualifying lease”, “the qualifying time”, “relevant defect” and “associate”...
- (71) We were taken to the particular wording of section 117, in which it is stated:
- (1) This section applies for the purposes of section 119 to 124 and schedule 8...
- (72) We were taken to the wording of section 61, in which the overview of Part 4 indicates:
- (1) This Part contains provisions about the management of building safety risks as regards higher-risk buildings.
  - (2) In this Part –
    - (a) Sections 62 to 64 define “building safety risk” and make related provision;
    - (b) Sections 65 – 70 define “higher risk building, make related provision, and confer power to modify this Part as it applies in relation to any description of higher-risk building
- (73) We were taken to section 65, in which the wording is:
- (1) In this Part, “higher risk building” means...

(74) Finally, we were referred to the introduction to the 2023 Regs in which it is stated “The Secretary of State makes these Regulations in exercise of the powers conferred by sections... 65(2) and (3)...”, and regulation 3 which states:

3. Regulations 4, 5 and 6 apply for the purposes of ... section 65 of the 2022 Act.

(75) All of those passages are indicators that the definitions in the separate Parts are to be confined to those Parts rather than to be “read across” the Parts.

(76) Is doing so consistent with the purposes of the separate Parts?

(77) Though we disagree with Mr Bowker that the *sole* purpose behind Part 5 is the question of payment for remediation of relevant defects (a remediation order under section 123 is remedy of those defects directly by a responsible person, by quasi-injunction, which goes directly to the safety of the building), we accept that the dominant construction of the wider Part is about who pays to make a building safe (whether through direct action or indirectly by financial contribution). That construction is supported by the Explanatory Note paragraphs 924 – 926 and 929, albeit that they are *ex post facto* and post-rationalisation.

(78) We agree, also, that Part 4 and the 2023 Regs are about safety, especially in higher-risk buildings. That is substantially supported in the Explanatory Note paragraphs. It is therefore surprising that a separate way to assess what a higher-risk building has been set in Part 4 to that which has been provided in Part 5, which could leave one treating one part of a building as a low-risk building for the purposes of remediation but a higher-risk building for the purposes of management.

(79) Many of the submissions in the hearing asked us to approach this case as if we were thinking about an RTM claim. In effect Mr Bowker’s submission was that we would be on dangerous ground were we to consider the lower rise part was not a self-contained part that was prone to the exercise of the right to manage.

(80) We must bear in mind that the two Acts are made for very different purposes: as the Supreme Court found in ***A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd*** [2024] UKSC 27 (paragraph 25), the general statement of the purpose of the 2002 Act was stated in the Consultation Paper (at section 3.10):

“The main objective is to grant residential long leaseholders of flats the right to take over the management of their building collectively without having either to prove fault on the part of the landlord or to pay any compensation. The procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. The allocation of responsibilities should be clear-cut, and the body through which the leaseholders take on management responsibility should enjoy all

necessary powers to properly discharge its functions. At the same time, the legitimate interest of the landlord in the property should be properly recognised and safeguarded.”

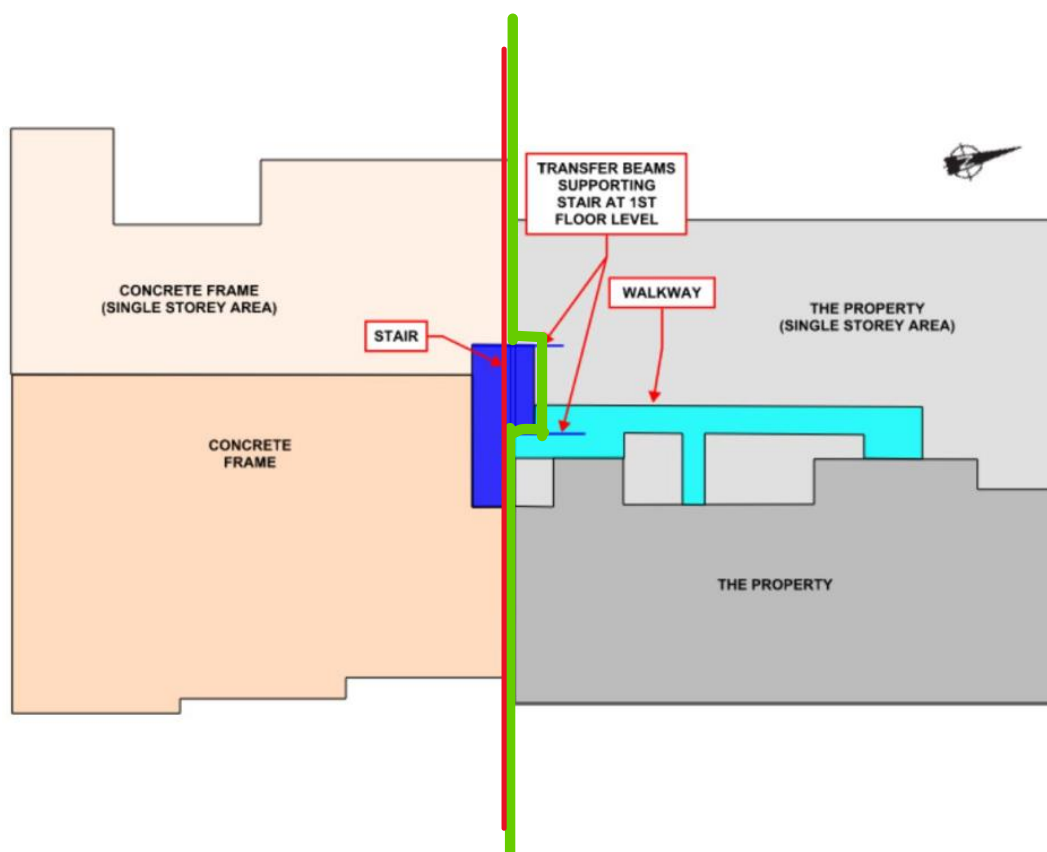
Construction of the 2002 should give effect to that aim.

- (81) It is important specifically to avoid construction of the Part 5 of the 2022 Act as in some way part of that regime. It must be construed within the legislation of which it is part.
- (82) In section 1 of the 2022 Act, the overall objective is that it is “intended to secure the safety of people in or about buildings and to improve the standard of buildings”, consistently with the preamble to the Act (“to make provision about the safety of people in or about buildings and the standard of buildings”). Safety is central to the construction of the provisions.
- (83) There is nevertheless some force in Mr Bowker’s submission that Parliament has enacted the legislation in Part 5 with only the question of the costs of remediation (whether direct or indirect) in mind for that part, and so has chosen to impose a rule (arbitrary or otherwise) for reasons it was entitled to consider.
- (84) We think that the tension is only likely to arise in circumstances in which the subject property is a ‘self-contained part’ but not an ‘independent section’. That is not the case here, as we find below. It may be that the tension is resolved by the consideration of the provision of the building safety services at the building. As Judge Rodger KC has already observed in *Courtyard v Rockwell*, those services already form part of the question of self-containment for an RTM claim (as they must to section 117).
- (85) On balance, on the facts of this case and doing our best with the arguments made, we find that the ‘relevant building’ for Part 5 purposes and ‘independent section’ with which Part 4 is concerned are two separate tests to be considered separately on the plain wording of the statute. In the particular circumstances of this case, however, that does not result in a conflicting outcome and so we need not go further.

### ***What is “the building”?***

- (86) It is the Respondent’s primary case that there are two buildings, and that for the purposes of section 116 and 117 of the 2022 Act, the lower rise part (ending at the external north-face of stair B, where the external steel-framed unenclosed walkways are attached to stair B), is structurally detached and not a ‘relevant building’. Drawing the line there, Mr Bowker submits, results a minimal deviation in the line one would draw to separate the two buildings, stepping in and back out again to circumnavigate stair B.

- (87) In the alternative, it is the Respondent's case that the division would bisect stair B.
- (88) Depicted on the experts' image contained in their joint report, we indicate the Respondent's primary and secondary cases in green and red respectively below (hereafter 'the green line division' and 'the red line division' respectively):



- (89) The same divisions are relied on for 'part of a building' in the alternative.

***Is the lower rise part structurally detached from the higher rise part?***

- (90) We find as a fact that the lower rise part is not structurally detached from the higher rise part of the wider building. It is not self-contained for that reason.
- (91) We empathise with Mr Moppett's unfortunate position; we were told the Respondent provided him with copies of section 117 of the 2022 Act, *Oakwood Court, St Stephens Mansions v Fairhold, Courtyard v Rockwell*, and an extract from *Service Charges and Management: Tanfield Chambers* (5<sup>th</sup> Edn, December 2021, Sweet and Maxwell paras 23-01 – 23-15) (it appears Mr McDonald was provided with the same material). That material that ought not to have been provided to him in

the course of the simple question of his expert opinion as a structural engineer, it being outside of his role to interpret the legislation and caselaw. As can be seen at in the Law section of this decision, certainly there is more nuance to interpretation of the test that as is contained in the three decisions with which Mr Moppett was provided.

- (92) He had also not initially been provided with plans and drawings that Mr Davies had access to, and therefore appears initially to have been unaware of the peculiarities of the construction until a joint site-visit was undertaken and the drawings shared.
- (93) It is therefore unsurprising that in his initial report he sought to provide his opinion on his reading of the caselaw as opposed to as a matter of his expertise, and on the basis of a misunderstanding of the interpretation to be derived from that caselaw. In an addendum report, he changed his expert opinion as to structural connection and opined that the lower rise part is not structurally detached from the higher rise part, in agreement with Mr Davies.
- (94) At the hearing, he conceded that his reading of the caselaw had influenced his initial opinion. In the hearing his confusion persisted until we asked him to give his simple opinion as a structural engineer as regards the structural attachments or lack of them. He confirmed his opinion as a structural engineer was that Flats 29-40 were structurally attached directly to stair B, and indirectly to the concrete frame of the higher rise part via the transfer beams. The walkways would collapse without that attachment. The transfer beams were designed to take the load of the stair, and were attached to both the flat-roofs of the commercial premises beneath Flats 29 – 40 and to the concrete frame of the higher rise part. Removal of the transfer beams would have a direct impact on stair B, and an indirect impact on lateral and vertical loads on both the lower rise and higher rise parts. He confirmed that the building was not, in his opinion, structurally detached. In this he agreed with Mr Davies.
- (95) Mr Bowker's submission was that, although he was not treating Mr Moppett as a hostile witness, we should be very careful before accepting his evidence. The question of structural detachment was not a purely expert question (no doubt relying on *Consensus v Palgrave*). He asked us to envisage a tightrope between two buildings, which be 'attached' to the buildings but not structurally, at one end of the spectrum. He posited that a wall between two buildings, that touched each building at each end separated by some kind of movement joint or filler, would be further up the spectrum but would still result in structural detachment. He conjured an image of a carpark with two cores, joined by a pedestrian access bridge. He maintained that although the buildings would be attached to and by the bridge, that attachment would not be structural attachment – even though the two buildings would no doubt exercise some forces on each other as a consequence of that attachment and therefore would 'feel' the removal of the bridge.

- (96) We note that in *No 1 Deansgate*, *CQN v Broad Quay*, and *Palgrave Gardens*, each of the Judges agreed that there does not need to be structural interdependence in order for there to be structural attachment; the question is one simply of structural attachment as opposed to non-structural attachment. In each case the question is one of fact and degree.
- (97) We find that in respect of the higher and lower rise parts, there is structural interdependence.
- (98) Firstly, the structural experts agree that the lower-rise part is not structurally detached from stair B. The external walkways take their full support from that steel construction and would otherwise collapse. Stair B also takes part of its support from the transfer beams, without which it would collapse, leaving one of the two fire-exits unusable.
- (99) We are satisfied that that direct structural attachment is sufficient. We do not accept Mr Bowker's submission that this is directly comparable to the carpark pedestrian bridge. That fundamentally diminishes the importance of stair B, reducing it to nothing more than an extractable part in the complicated construction that was developed by the Respondent. Its wider significance within the wider building is, we find, reflected in the fact that the Respondent did not propose a third alternative by which the stair would form part of the lower rise part.
- (100) We are satisfied that, additionally, the indirect structural attachment between the higher rise concrete frame and the commercial premises' rooftops in the lower rise are sufficient to amount to a 'structural connection' for the purposes of the test. The attachment to both the higher and lower rise parts serves a structural function for the benefit of stair B, upon which's structural integrity the external walkways rely, regardless of whether it is termed direct or indirect. It is not, in Mr Bowker's words, a 'mere connection'. It is not a tightrope, or a privacy wall, or a pedestrian bridge (which type of attachment, we observe, may in fact be structurally attached or not, depending on the particular arrangement of the particular construction). It is not alike the rainscreen cladding in *No 1 Deansgate*, or putty cushioning movement between two separate structures (*Palgrave*).
- (101) We reject Mr Bowker's submission, tantamount to 'it's not that much load going through the indirect connections', as irrelevant to the point. Firstly, we did not have comprehensive evidence on the loads save for a comment in evidence from Mr Moppett that 16% of the vertical load of stair B was likely carried by the transfer beams. That calculation appears, however, to have been made on the basis of there being a shorter north-western transfer beam (as depicted in the sketch), which we identified at the inspection was not in fact the physical layout – the transfer beams were coextensive.
- (102) Secondly, and regardless, as the caselaw makes clear, structural interdependence is not fundamental to the test. Where, as here, there is structural interdependence we find that is a clear indicator that there is

not structural detachment, regardless of how major or minor the forces exerted on or by that interdependence might be.

***Is the lower rise part a ‘self-contained part’ of the wider building?***

(a) *Vertical division*

(103) We deal with the Respondent’s alternative (red line) vertical division first, it being relatively easily disposed of. We are satisfied that the red line division would not result in a ‘self-contained part’ of the wider building. Each of the higher and lower rise parts would have unseparated use (and need) of stair B. As in *Courtyard v Rockwell*, bringing in part of stair B would result in the lower rise ceasing to be a self-contained part of the wider building.

(104) The Respondent’s green line division is more complex.

(105) Drawing together the thread from the caselaw, we derive the following development of the meaning of “vertical division”:

- (a) For the 2002 Act, “[t]he question... is, not whether the area outside of a line drawn vertically through the building is minimal in the context of the notice, or very small in relation to the total floor area, but whether, including the area in question, the part of the building was, physically, a vertical division of the building.” There is no materiality qualification in the 2002 Act and therefore whether such a deviation would make little difference is not a relevant consideration (the Lands Chamber President George Barlett QC in  *Holding and Management (Solitaire)*);
- (b) For the 1967 Act, a ‘dog leg’ or ‘kink’ in a vertical division, such as an overhang or under-hang, would exclude a house from enfranchisement unless such a deviation was only trivial or *de minimis* (Mr Justice Carr in  *West End Investments v Birchlea*);
- (c) whether premises satisfy the definition of a self-contained building or self-contained part of a building for the 2002 Act is a purely physical test, “concerned only with the structure of the built envelope, its internal structure, and the separability of services” (Court of Appeal,  *Eveline Road*)
- (d) the question is one of physical possibility, not contractual or legal permissibility (Deputy President Rodger KC,  *Courtyard v Rockwell*);
- (e) each of the conditions in [section 72\(3\)](#) describes a different aspect of the self-containment; they collectively describe a single thing ( *ibid*);
- (f) a vertical division of a building is a slice of a building, “with substance and dimensions, rather than to a line of no thickness drawn through a

building”. “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.” (ibid);

- (g) “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.” (ibid);
- (h) “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.” (ibid)
- (i) “what [section 72\(3\)\(a\)](#) 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.... 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.... [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.”

(106)The parties did not agree what the ‘part’ concerned is. Mr Frampton’s submission is that the part is only the three residential storeys, and that therefore the Respondent’s argument falls at the first hurdle. Mr Bowker’s submission was that it was far from unusual for an RTM company to include commercial premises in an RTM claim, on grounds otherwise those claims would automatically fail.

(107)We consider that it is the physical building that dictates the part concerned. Flats 29 – 40 are part of the lower rise building – they are not structurally independent of the commercial storey. We find that what we must look at is the whole of the lower rise part over the four storeys concerned.

(108) Nevertheless, we are satisfied that the lower rise part is not a vertical division of the wider building.

- (109) Stair B, as identified in the experts' sketch, overhangs the commercial storey of the lower rise building, and is connected to the lower rise building both by the connections with the external walkways, and by the transfer beams. The stair is therefore connected at both north east and north west corners. That is no doubt why the Applicant draws the line with a "notch". From above, that is reflected in the plan relied on by the structural experts (which accords with the as-built drawings which may be seen at page 395 of the bundle).
- (110) Beneath that notch lies part of the commercial premises of the lower rise building, as acknowledged by the Respondent. Mr Moppett's evidence was that it amounted to only a very small percentage of the total and Mr Bowker therefore argues that it is *de minimis*. However, we find that *Holding and Management (Solitaire)* is of persuasive force for the 2022 Act, given that the legislation is framed in the same way as the 2002 Act save for inconsequential editorial choices, and not (as it could have been) as is the equivalent provision in the 1967 Act. Based on Judge Bartlett QC's judgment, we do not consider the question is one of whether the overlap is *de minimis*.
- (111) That is not, however, where the consideration ends. We have carefully considered Deputy President Rodger KC's recent consideration of the issue in *Courtyard v Rockwell* at paragraph 102(d) – (i) above.
- (112) Firstly, were one thinking in terms of an RTM, we would be satisfied that the notch would have no impact on the internal management of the configuration of the lower rise building.
- (113) Through the vertical plane from above, we do not see why in principle the line has to be straight. As long as one could cut the cake down a vertical plane, we do not think it would matter if the knife were shaped otherwise than straight.
- (114) The difficulty is that the knife would meet, on the horizontal plane, the commercial premises of the lower rise building three layers into the four-layer delicacy. Dropping the line vertically would take part of the Applicant's slice of cake. It is not possible to form a knife that will deviate back through a horizontal plane beneath the vertical to bring that part back into the slice.
- (115) Does it matter? Standing back and thinking practically, as we believe is Judge Rodger KC's main guiding principle, we do not believe there would be any degree of confusion simply by the fact that stair B overhangs the lower rise building. No-one would be in any doubt that the lower rise building also incorporated the commercial storey. So far as Judge Rodger's KC reasoning in (g) above, so arguable the Respondent's case.
- (116) However, Judge Rodger KC's reasoning did not stop there. In (i) above, when Mr Bates KC posited the rhetorical question "if multiple vertical lines, dog legs etc are permissible, then what properties are excluded?", Judge Rodger KC reasoned that "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.... [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.”

(117) We find that the external configuration, i.e. the positioning of stair B directly above the commercial premises on the ground floor of the lower rise part, is an example of the ‘impermissible overhang’ (or in this case, under-hang) with which the latter paragraph is concerned.

(118) That is not just because of the under-hang, but further because of the transfer beams horizontally connecting what the Respondent says are the two divided parts. The hypothetical vertical ‘cut’ would be straight through the transfer beams. The southern boundary of it is not easily identifiable, but even if it is at the external face of the north west corner of stair B, at the beam’s northerly end, it terminates much further north than the stair, well onto the flat roof of the commercial units. It, and stair B, are positioned directly on, and reliant on, the structure of the lower rise part.

(119) We therefore do not accept that there can be vertical division where the Respondent places its green line division.

(120) Looking at it from the perspective of who the obligation would fall on for maintenance (as one would if this were an RTM claim):

(a) If the transfer beams lie on both sides of the figurative green line (i.e. do not terminate at the external north face of stair B, as is understood to be the case) they would be ‘common parts’ subject to indivisible responsibility for the maintenance and repair of a fundamental structural element;

(b) Alternatively, if the transfer beams do terminate at the external north corners of stair B, they nevertheless are part of and for the sole benefit of the higher-rise part (i.e. the stair the Respondent seeks to exclude from the vertical division), and their existence results in a further impermissible under-hang by the commercial premises of the lower rise part to whose flat roofs they are directly attached.

(121) On either case, we find that this would result in an equivalent want of vertical separation as in the undivided car park exemplar (albeit through a physical element rather than a void). The result would be separate management responsibilities for overlapping parts of the same building. The existence of the transfer beams means that the external face of stair B is not the boundary between the higher rise part and the lower rise part.

(122) We therefore find that the lower rise part is not vertically divided from the higher rise part of the wider building.

(123) However, even if we are wrong in that, the Respondent fails on the remainder of the necessary elements of the test.

(b) Independent redevelopment

(124) Mr Moppett opined that the lower rise part could be independently redeveloped of the higher rise part, on the basis that there is always that “*some work is always required when two buildings or two parts of a building are separated and one is redeveloped*”.

(125) While we do not disagree with that proposition, the question is one of fact and degree.

(126) Mr Moppett put forward a number of structural solutions by which the problem of stair B’s fundamental support might be addressed, including installing new raking props at an angle so as to be placed on the higher-rise part’s footprint, or (it seemed preferably) re-siting the support on the lower rise part once that part had been redeveloped. Mr Davies broadly agreed that there were such solutions as proposed by Mr Moppett, but that they were of a nature and degree as to be more than merely temporary, and fundamentally would require the higher rise part (including stair B) to be redeveloped. Until it was, stair B would have to be put out of use for safety. Therefore, the lower rise part could not be independently redeveloped.

(127) We prefer Mr Davies’ evidence that, although there may be a number of solutions to disentangle stair B from the construction identified above, more than mere propping would be required. A permanent solution that would require closure of stair B for an undefined period, and which would require stair B to be structurally redeveloped in order to be safe and operational, we find, is so substantial that the natural conclusion is that the lower rise part cannot be independently redeveloped.

(128) In other words, the only way in which the lower rise building could be redeveloped is if there was a redevelopment of the higher rise part, in particular stair B.

(129) We would add that from a functional point of view, leaving the higher rise part without one of the two essential fire escapes, and no doubt potentially therefore resulting in the need for a new fire strategy and potentially a move to simultaneous evacuation with or without a waking watch, seems to us to be an indicator of itself that independent redevelopment is not possible.

(c) Independent provision of relevant services

(130) Insofar as the M&E experts have addressed what the relevant services are, they are fully in agreement. The only one provided independently as the wider building currently stands is the sewerage to Flats 29 – 40. All other services will require separation.

- (131) The M&E experts have stated in their joint report that fire safety services are a relevant service to be considered, and that is supported by Judge Rodger's findings in *Courtyard v Rockwell*.
- (132) Each of the M&E experts has made it clear they do not have the relevant expertise to opine on the safety services.
- (133) We have not been provided with any evidence about provision of the safety services (in particular fire safety and smoke ventilation). We do not know whether they are provided independently or not. Considering that we must address the test in section 117 of the 2022 Act within the broader context of the Act – i.e. to ensure the safety of people in and about buildings, particularly higher risk buildings – and in the context of the section itself being about relevant defects arising from the risk of the spread of fire, we consider that is a fundamental evidential gap.
- (134) There was a disagreement between the parties in respect of who had the burden of proof in that respect. It being the Respondent's case that the services could be so separated, and that as a consequence the lower rise part is not part of the 'relevant building'; for the purposes of Part 5, it seems to us the evidential burden was on the Respondent.
- (135) Doing the best with the evidence that we were provided with, the wider building is registered with the BSR as a single building. As a single building, it is more likely than not that it is required to have a single fire strategy. It is more likely than not that strategy would be reliant on a single service provision covering the wider building, particularly given that the evidence establishes that all other services in the building (save for sewerage) are not undivided (including entry comms, TV aerials etc).
- (136) We find it is permissible to draw the inference from that evidence that the fire safety services are not currently separate. This is supported by (and is the only force in) the submission later made by Mr Bowker that fire safety services are a simple matter of electrical services (with which we disagree). The electrical services, through which the fire safety services are likely operated, are not separated, and are found in the North Electrical Service Riser and Central Electrical Service Riser.
- (137) The next question is therefore whether the services that are not provided independently could be separated.
- (138) We had some difficulty with the evidence in this regard.
- (139) The Respondent wholly failed to address the safety systems regarding fire and smoke. We do not accept Mr Bowker's submission that this is a pure and simple question of turning the electricity back on once it has been cut off for the electricity services to be separated out for the higher rise and lower rise parts. Our experience as a Tribunal is that systems are designed with zoning, differing required coverage, and differing sensitivity between areas in a building. We have no evidence that the wider building is any different. We have been provided no evidence of what needs to happen to address those issues, and whether it can be done and with what level of

interference with the quiet enjoyment of the occupants of the higher rise part of the building. Given that lacuna, we cannot be satisfied that the services can be separated, or separated without substantial disruption to the occupants of the higher rise part. The Respondent fails at this point.

- (140) In case we are wrong in that, we move to consider the other services.
- (141) There was a paucity of evidence of how the services the M&E Experts were able to opine on could be separated and reinstated, and the evidence had not realistically addressed the question beyond a theoretical. However, the M&E experts agreed that the services could be separated in each case. We therefore accept that evidence, scant though the details, and move on to the third part of the question.
- (142) The third part of the question is whether the services that have been identified as being capable of separate provision 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”. The remainder of the building in this case is the higher rise part (incorporating stair B).
- (143) From the caselaw we derive the following principles:
- (a) “significant interruption” is a question of fact and degree (Judge Marshall QC in *Oakwood*);
  - (b) The test of whether the works are “likely” to result in a significant interruption is a lower threshold than “would” so result (*ibid*);
  - (c) 8 hours might, in an appropriate case, be a significant interruption (*ibid*);
  - (d) The likely interruption can be assessed individually or cumulatively (*ibid*);
  - (e) A systematic approach is required (Judge Rodger KC, *Courtyard v Rockwell*).
- (144) The experts agreed that the water supply serving Flats 29 – 40 originates in the tank room at the most south western corner of the wider development, passes through a vertical service shaft in the higher rise part and on through horizontal voids at ceiling level until exiting through horizontal voids at ceiling level below the second and third floor external walkways outside of Flats 29 – 40 before dividing off for individual supply to each flat. The water supply for Flats 1 – 28 was fed from the same tank and pipe system.
- (145) Mr McDonald opined in his written report that “significant interruption” to the services would result if works resulted in (a) a breach of building regulations/other health and safety guidance, or (b) an “unnecessarily long” period of interruption to normal service. In the same way as Mr Moppett had, he appeared to have incorrectly thought he was being asked to opine on the legal test because the Respondent had provided him with the caselaw.

(146) In his report, Mr McDonald said this regarding the separation of the water supply:

#### WATER SUPPLIES

3.4.4 The water supplies to the Property and the Development are more integrated than any other 'relevant service'. It will not be possible to perform the work to separate the water supply system without causing disruption to the occupants of the Development.

3.4.5 Work must be performed in the Mains Water Service Risers at second and third floors of the Development. Because there are no isolation valves fitted to the main water supply pipes to the Property, it will be necessary to isolate and drain the boosted water system which serves the Property and the Development. Once the pipes are drained, the pipes serving the Property should be disconnected and the 'headers' made good in a manner that does not leave any pockets where stagnant water can collect.

3.4.6 When returning the boosted water system to service, the guidance relative to maintenance, modification and disinfection of cold water pipe systems given in Sections 9 and 8.5 of British Standard publication PD 855468:2015, should be followed. I estimate that work may up to 48 Hours, with careful planning and execution and without unplanned incident during the work. The works should be planned and performed by the Developments incumbent water hygiene contractor. I assume that such a contractor is in place so as to comply with the Health and Safety Executive water hygiene guidance.

(147) Mr McDonald estimated that electricity disconnection, separation and reconnection would take one day. For telecoms it would take half a day, as it would for access control, the TV aerial, and separation of the walkway lighting. If properly planned and ideally executed, all of these could be undertaken simultaneously. Mr Dellow and he agreed these timings in their joint report.

(148) At the hearing, Mr McDonald was cross examined in respect of the separation of the water supply in particular, it being stated in his report to be the most integrated of the systems. He clarified that 48 hours meant 4 working days, and accepted that was a minimum estimate and dependent on, for example, the lab results testing the reconnected supply coming back timeously and free from any identified problem. He accepted, when it was put to him by Mr Frampton, that it could take as long as a week, and accepted (quite properly) that the timetable could be disrupted by any issues with gaining access to any individual flat.

(149) We are satisfied that the work needed to separate the water supply alone would be likely to result in significant interruption to the occupants of the higher rise part, even on the experts' lowest estimate. Regardless of the working hours required, the lowest estimate is 96 hours without a water

supply in either part of the building (though the only relevant part is the higher rise part, for the purposes of the test).

(150) It is perhaps unfortunate for the Respondent that at the same time as the hearing was taking place, the government declared an emergency in respect of 30,000 people being left without water in Kent and Sussex, at that stage for three days (though estimates were that the emergency would endure for five days).

(151) We nevertheless consider, regardless of the press coverage, four days interruption in people's ability to use their own facilities for bathing, drinking, washing or any other of the day to day basic functions of peoples' lives requiring a water supply would be a significant interruption, even if it could be "carefully planned and executed", hitch-free. That single interruption is decisive of the third part of the test, which we find is answered in the negative.

(152) We are also satisfied that a 1 day (whether that be 24 hours, or 8 working hours) interruption to the electrical supply in the higher rise part, again even if "carefully planned and executed" without a hitch, would on its own be a significant interruption to the higher rise part, in particular to people requiring the use of the lift service due to disability (of whom Ms Ward's evidence was there is at least one individual), working in home-based remote roles, or simply trying to cook, wash or clean going about their daily lives.

(153) Cumulatively we find that that the separation of services would, on the balance of probabilities, likely result in a significant interruption.

(154) We do not agree that compliance with building regulations/health and safety codes is part of that consideration separately; though that compliance is essential and must be factored into the time estimate for the necessary interruption for the separation of services.

### **Conclusion**

(155) For all of the reasons set out above, we find that the lower rise part is not structurally detached, or a self-contained part of the wider building at 1 – 40 Pieris House. It is therefore part of the wider building and to be considered as comprised in the "relevant building" for section 117 of the 2022 Act.

**Name:**

Judge N Carr

**Date:**

2 April 2026