Neutral Citation Number: [2026] EWCA Civ 267

Case No: CA 2025 000341

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE BUSINESS & PROPERTY COURTS IN LIVERPOOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)
His Honour Judge David Hodge KC
[2025] EWHC 3 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 March 2026

Before:

LORD JUSTICE LEWISON
LADY JUSTICE ASPLIN
and
LORD JUSTICE ARNOLD

- -

Between:

SGL 1 LIMITED	**Appellant**
- and -	
FSV FREEHOLDERS LIMITED	**Respondent**

- -
- -

John de Waal KC and Gemma de Cordova (instructed by **MSB Solicitors**) for the **Appellant**
Farhan Asghar and Sadia Shakir (Instructed by TSABI Limited) for the **Respondent**

Hearing date: 3 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 March 2016 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Asplin:

1. This appeal is concerned with the meaning of "building" for the purposes of Part 1 of the Landlord and Tenant Act 1987 (as amended) (the "LTA 1987") and, as a consequence, whether certain notices served under section 5 LTA 1987 were valid. Part I of the LTA 1987 confers rights of first refusal on tenants of flats where a landlord proposes to dispose of an estate or interest affecting the premises of which their flats form part. Section 5(3) provides:

> "Where a landlord proposes to effect a transaction involving the disposal of an estate or interest in more than one building (whether or not involving the same estate or interest), he shall, for the purpose of complying with this section, sever the transaction so as to deal with each building separately."

The issues with which we are concerned are: how one decides whether a disposal is a disposal of more than one building; and, if it is, how one decides on the number of buildings comprised in the disposal.

2. The issues arise in relation to the disposal of the freehold title of Blocks A - E, Fox Street, Liverpool, L3 3BQ ("Fox Street Village") and the tenants' rights of first refusal to purchase the reversion in relation to the disposal of Blocks A, B, C and E. Notices were served by the administrators of the landlord, Fox Street Village Limited ("FSV Ltd") upon qualifying tenants. FSV Freeholders Limited, which is the Respondent to this appeal ("Freeholders"), was incorporated on 14 January 2021. It was authorised by 115 of the qualifying tenants as their nominee for the purposes of acquiring the freehold reversion.

3. By an order dated 11 January 2022, District Judge Lampkin declared that FSV Ltd had complied with the provisions of section 5 LTA 1987 on its disposal of the freehold title of Blocks A, B, C and E at Fox Street Village to SGL1 Limited, the Appellant in this appeal ("SGL1"), recorded that Freeholders' response to the claim was totally without merit and made an order as to costs.

4. By an order dated 14 October 2022, Fancourt J allowed an appeal from District Judge Lampkin's order, in part. Amongst other things, he set aside that order and restored the claim for the purposes of determining whether (i) Blocks A, B, C and E form one, two, or more "buildings" within the meaning and for the purposes of Part I LTA 1987 and (ii) as a result of the answer to (i), the notices served on qualifying tenants by FSV Ltd (by its administrators) pursuant to section 5 LTA 1987 were valid.

5. In October 2024, His Honour Judge Hodge KC, sitting as a judge of the High Court, considered the issues which remained outstanding. He dismissed SGL1's application for a declaration that FSV Ltd, acting by its administrators, had complied with the provisions of section 5 LTA 1987 when disposing of the freehold title to SGL1. He held that Blocks, A, B, C and E together constituted a single "building" within the meaning of Part 1 LTA 1987 and that as a result, the two section 5 notices served by FSV Ltd in respect of Block A and Blocks B, C and E, respectively, were invalid. He came to that conclusion having applied the reasoning in *Long Acre Securities Ltd v Karet* [2005] Ch 61. As a result, he then undertook a detailed multi-factorial evaluation of the factors he

considered to be relevant when determining whether Blocks A, B, C and E are one or more buildings. The judgment is at [2025] EWHC 3 (Ch).

The legislation

6. It is important to have an overview of Part 1 LTA 1987. The introductory text to the statute states that, amongst other things, it is "An Act to confer on tenants of flats rights with respect to the acquisition by them of their landlords' reversion . . ." Part 1 LTA 1987 is headed "Tenants' Rights of First Refusal". Section 1(1) provides that a landlord shall not make a "relevant disposal" affecting any "premises" to which Part 1 applies unless (a) he has previously served a notice under section 5 with respect to the disposal on the "qualifying tenants", "being a notice by virtue of which rights of first refusal are conferred on those tenants"; and (b) the disposal is made in accordance with the requirements of sections 6 to 10.

7. Section 1(2) provides that subject to sub-sections (3) and (4), Part 1 applies to premises if: "(a) they consist of the whole or part of a building; and; (b) they contain two or more flats held by qualifying tenants; and (c) the number of flats held by such tenants exceeds 50 per cent. of the total number of flats contained in the premises." Sub-sections (3) and (4) are not relevant for these purposes.

8. Section 2 contains the definition of "landlord" for the purposes of Part 1 and section 3 defines the person who is a "qualifying tenant" of a flat.

9. A "relevant disposal" affecting any premises to which Part 1 applies is defined in section 4. Subject to some exceptions which are not relevant here, a relevant disposal is "the disposal by the landlord of any estate or interest (whether legal or equitable) in any such premises including the disposal of any such estate or interest in any common parts of any such premises. . ." One of the exceptions is "the grant of any tenancy under which the demised premises consists of a single flat (whether with or without any appurtenant premises)". Section 4(4) provides that in section 4, "appurtenant premises",

> ". . . in relation to any flat, means any yard, garden, outhouse or appurtenance (not being a common part of the building containing the flat) which belongs to, or is usually enjoyed with, the flat."

10. The expression "disposal" is defined in section 4(3):

> "In this Part "disposal" means a disposal whether by the creation or the transfer of an estate or interest and—
>
> (a) includes the surrender of a tenancy and the grant of an option or right of pre-emption, but
>
> (b) excludes a disposal under the terms of a will or under the law relating to intestacy;
>
> and references in this Part to the transferee in connection with a disposal shall be construed accordingly."

11. Section 5(1) LTA 1987 provides that where the landlord proposes to make a "relevant disposal affecting premises to which . . . Part [1] applies, he shall serve a notice under this section an ("offer notice") on the qualifying tenants of the flats contained in the premises . . ." Section 5(2) provides that an "offer notice" must comply with the requirements of whichever of sections 5A - D is applicable. In a case such as this, in which the contract was to be completed by conveyance, the offer notice is required to comply with section 5A. Section 5A(2) provides that the offer notice must contain the "principal terms" of the disposal proposed by the landlord. As I have already mentioned, section 5(3), with which we are directly concerned, provides as follows:

> "Where a landlord proposes to effect a transaction involving the disposal of an estate or interest in more than one building (whether or not involving the same estate or interest), he shall, for the purpose of complying with this section, sever the transaction so as to deal with each building separately."

Although other terms are defined in section 60, which is headed "General interpretation", there is no statutory definition of "building".

12. Service of an offer notice which complies with section 5 LTA 1987 is mandatory and failure to comply with those requirements renders it a nullity. In addition, it is important to note that a landlord commits an offence if, without reasonable excuse, he makes a disposal without complying with section 5 LTA 1987 in relation to the service of notices or in contravention of any prohibition or restriction imposed in sections 6 – 10 (section 10A LTA 1987).

13. Where an offer notice has been served, during the period specified in the notice, or such longer period as may be agreed with the requisite majority of the qualifying tenants, the landlord shall not dispose of the protected interest in the premises other than to a person or persons nominated by the tenants: section 6(1) LTA 1987. A further protected period arises if an "acceptance notice" is served: section 6(2). Section 6(3) provides that:

> "An "acceptance notice" means a notice served on the landlord by the requisite majority of qualifying tenants of the constituent flats informing him that the persons by whom it is served accept the offer contained in his notice."

The "requisite majority of qualifying tenants of the constituent flats" means qualifying tenants of constituent flats with more than 50% of the available votes: section 18A LTA 1987. Both the offer made by the landlord and the acceptance by the requisite majority of qualifying tenants are subject to contract and so no binding contract arises at the offer and acceptance stage: section 20(2).

14. Following acceptance of an offer and the nomination of a person to receive the protected interest on behalf of the tenants pursuant to section 6, the landlord may serve a notice indicating an intention no longer to proceed with the transaction, but if he does not do so, he is obliged to proceed: section 8. Unless the proposed transaction is a sale by auction, the landlord must send the nominated person a form of contract for acquisition of the interest on the terms specified by the offer notice: section 8A(2). The nominated person then has two months in which either to indicate an intention no longer to proceed with the acquisition or to "offer an exchange of contracts, that is to say sign

the contract and send it to the landlord together with the requisite deposit": section 8A(4). If section 8A is read as a whole, it seems to me that the reference to signing "the contract" must mean the contract sent by the landlord pursuant to section 8A(2).

15. If the landlord makes a relevant disposal of premises to which Part 1 applies but fails to serve a section 5 notice or the disposal was in contravention of any of the provisions in section 6 -10, the premises remain premises to which Part 1 applies and the qualifying tenants have the rights contained in sections 11A, 12A, 12B and 12C conferred upon them: section 11(2). Section 11A gives the tenants the right to information about the terms of the disposal. Section 12A gives them the right to give notice to the landlord entitling them to take over a contract. Section 12A(5) provides that:

> "Where the original disposal related to other property in addition to premises to which this Part applied at the time of the disposal—
>
> (a) a notice under this section has effect only in relation to the premises to which this Part applied at the time of the original disposal, and
>
> (b) the terms of the contract shall have effect with any necessary modifications.
>
> In such a case the notice under this section may specify the subject-matter of the disposal, and the terms on which the disposal is to be made (whether doing so expressly or by reference to the original disposal), or may provide for that estate or interest, or any such terms, to be determined by the appropriate tribunal."

16. Section 12B gives the qualifying tenants the right to serve a purchase notice on the purchaser. Section 12B(2) provides that:

> "The requisite majority of qualifying tenants of the constituent flats may serve a notice ("a purchase notice") on the purchaser requiring him to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable), to a person or persons nominated for the purposes of this section by any such majority of qualifying tenants of those flats."

Section 12B(4) mirrors section 12A(5). It provides that:

> "A purchase notice shall where the original disposal related to other property in addition to premises to which this Part applied at the time of the disposal—
>
> (a) require the purchaser only to make a disposal relating to those premises, and
>
> (b) require him to do so on the terms referred to in subsection (2) with any necessary modifications.

> In such a case the purchase notice may specify the subject-matter of the disposal, and the terms on which the disposal is to be made (whether doing so expressly or by reference to the original disposal), or may provide for those matters to be determined by the appropriate tribunal."

Section 12C gives the tenants the right to compel the grant of a new tenancy by a superior landlord and is not relevant here.

17. Both section 11A and 12B notices were served in this case. The section 12B notice was stated to be in respect of Blocks A, B, C and E.

18. Section 13 provides for the resolution of disputes by the appropriate tribunal. In England, that tribunal is the First Tier Tribunal, and in Wales it is the leasehold valuation tribunal. But for one exception which is irrelevant here, the disputes are those which arise out of notices served by the tenants under section 12A, 12B or 12C. They do not include disputes relating to notices given under section 5.

19. Lastly, if the landlord complies with its obligations under Part 1 LTA 1987, the third-party purchaser takes the interest in land free from the qualifying tenants' rights to first refusal.

The background

20. As the judge explained, Fox Street Village is a residential development to the north of Liverpool city centre. It lies to the south of Prince Edwin Street and to the east of Fox Street. It comprises five blocks of residential accommodation. Blocks E and C are adjoining new-build constructions to the north of the site containing "student clusters". To the south of them, and separated by an access road known as Back Beau Street, are Blocks A and B. They both contain studio flats. Block A, to the west of the site, fronts on to Fox Street and is a residential conversion of the former Swainbanks warehouse building. Block B is a new-build construction and stands to the east of the site, and to the south and opposite Block C. It is a similar construction to Blocks C and E. We were informed that Back Beau Street is a public highway.

21. We are not concerned with Block D. By the time of the hearing, most of Block D had been demolished, following a fire. Not surprisingly, a section 5 notice was not served in relation to it.

22. As I have already mentioned, Block A is a refurbished and redeveloped warehouse building. The redevelopment took place before the other blocks were built. It has its own utility services. It stands on its own and is separate from the other blocks. Blocks B, C and E were built as "Phase 2" of the development. They were built at around the same time. There is no physical connection between Block B and Blocks C and E. They all share a car park and access points. Blocks C and E have a single staircase and entrance which is at one end of Block E. In order to gain access to Block C from that staircase it is necessary to pass through Block E.

23. Blocks B, C and E are of a very similar design and were built to mirror each other. The same materials were used for all three blocks. They also share utilities such as electricity, gas and water. They are all serviced by one plant room in Block C. All

incoming services for all three blocks are routed through the plant room. Block B has neither a basement nor a plant room. In fact, all the services installed were for all three blocks. There is one boiler which is situated in Block C and one CCTV system. The generators, substations, and service tanks were to service all three blocks. The blocks were all painted the same colour, and have the same windows, cladding, roof tiles, and gables.

24. Some amenities and facilities are shared in common by Blocks A, B, C and E such as refuse storage bins, cycle parking facilities and the servicing arrangements. Vehicular access to all the blocks is from Fox Street via Back Beau Street, which runs between Blocks A and E.

25. All the blocks, including Block D, were registered at HM Land Registry under title number LA 303457. The various flats are held by leaseholders under long leases. As I have already mentioned, FSV Ltd, the registered proprietor, entered administration. The joint administrators negotiated with SGL1 for the sale of the whole development. On 11 February 2020, FSV Ltd, as the then landlord, served two section 5 offer notices on the qualifying tenants. One set of notices related to Block A, offering to sell the freehold reversion for £350,000. The other related to Blocks B, C and E offering to sell the freehold reversion for £1,050,000. Each notice stated that the property to which each notice related was part of the freehold property owned by the landlord. Each notice stated that:

> "The landlord proposes to enter into a contract to create or transfer an estate or interest in land, namely to sell the freehold interest in the Property edged red on the plan attached to this notice."

The judge noted that the red line on each plan extended only to the exteriors of the blocks themselves, and did not extend into the areas occupied by car parking spaces or into any of the common parts or amenity areas.

26. The requisite majority of qualifying tenants did not accept either offer, in consequence of which FSV Ltd and SGL1 entered into a contract dated 12 June 2020 for the sale of the whole development. SGL1 were registered as proprietors of the development on 25 November 2020. It appears that notices under section 11A of the Act were given to SGL1 in March 2021. The tenants served notice on SGL1 under section 12B on 10 August 2021 claiming the right to purchase Blocks A, B, C and E.

The leases

27. We have been provided with sample leases relating to units in Blocks A, B, C and E. One of the leases (relating to a unit in Block A) also contains a demise of a car parking space. Each lease contains particulars including reference to the "Property" which identifies the particular unit and block concerned. Each lease also contains definitions of the "Building", "The Car Park", "Car Parking Space", "Common Parts", "The Estate" and "Service Installations". Under each lease the lessee is granted a number of easements which are listed in Schedule 2 to each lease. They include:

    i) A right of way on foot over the Common Parts;

ii) A right to use the Service Installations comprised in the Building;

iii) A right to use the bin store designated by the landlord for the purpose of disposing of normal household rubbish;

iv) A right to enter upon the Building (other than the site of any electricity sub-station or similar installation) so far as may be necessary for the purpose of inspecting maintaining and renewing the Property and the Service Installations serving the Property; and

v) In the case where the demise includes one or more Car Parking Spaces the right to park and pass over and along those parts of the Estate with or without a vehicle as shall form the Car Park for the purpose only of obtaining access to the demised Car Parking Space.

28. Each lease also contains obligations on the part of the landlord and a service charge payable by the lessee designed (in part) to permit the landlord to recover the cost of complying with its obligations.

The authorities

29. In *Denetower Ltd v Toop & Ors* [1991] 1 WLR 945, the Court of Appeal was concerned with a number of issues. They were: (i) whether tenants were "qualifying tenants" of their flats, for the purposes of section 3 LTA 1987, and as a result, were entitled to serve notices under section 12(3) LTA 1987; (ii) if so, whether the tenants were entitled only to purchase the buildings containing the flats, to the exclusion of the gardens and garages; and (iii) whether the purchase notice dated 7 June 1989 complied with the requirements of section 12(3). It is important to bear in mind that the decision preceded the amendments to the LTA 1987 made by the Housing Act 1996.

30. As Sir Nicholas Browne-Wilkinson V-C explained at 949A, there were a pair of two storey buildings facing on to the highway. Each building contained two ground floor and two first floor flats. Each ground floor flat had two gardens, one at the front and one at the back, contiguous to the flat. Each first floor flat had a garden situated behind the rear gardens of the ground floor flats. A roadway ran between the two blocks leading to eight garages at the rear. There was also a small piece of land at the rear which was unused and over which the tenants had no rights.

31. Each of the tenants held a long lease of his or her flat and the garden which went with it. Under the leases, each tenant was granted a right of way on foot either over a pathway leading to his flat and garden or over a narrow strip of the roadway between the buildings. The garages were not included in the demise of the flats although most of the tenants held a long lease over one of the garages. All the land, buildings, gardens, garages, roadway and unused land were registered at the Land Registry in one title described as "Brookdene, 71, Holden Road".

32. The original landlord transferred the freehold title of the reversion to Denetower Ltd without complying with the LTA 1987, as it then was. As a result, the tenants served a notice upon Denetower Ltd pursuant to section 12 requiring Denetower to dispose of the interest in the freehold reversion of Brookdene to them.

33. The Court of Appeal held that the tenants were "qualifying tenants" within the meaning of section 3 LTA 1987. We are concerned with issue (ii). It turned upon section 12(3) as it then was. Section 12(3) provided that where the original disposal included property in addition to that to which Part 1 applied, the purchase notice served by the tenants should only require the landlord to dispose of the estate or interest, insofar as it related to the premises to which the Part applied. The question of whether there were one or two buildings at Brookdene did not arise.

34. The landlords contended that section 12(3) applied since the disposal to them related to property "in addition to the premises to which this Part applied at the time of disposal." It was necessary, therefore, to identify the premises to which Part 1 LTA 1987 applied which was defined in section 1(2). The landlords contended that the premises to which Part 1 applied and to which a section 12 notice could relate were only the physical structures consisting of the two blocks of flats being the only "buildings" in which the flats were contained. As a result, it was said that there was no power to give a purchase notice in relation to the gardens, garages, roadway or the unused land under section 12(3).

35. Sir Nicholas Browne-Wilkinson V-C, with whom Stocker and Beldam LJJ agreed, held at 952B-D:

> ". . . They [the tenants] submit that the word "building" is not necessarily confined to the bricks and mortar of which the building is constructed. In *Governors of St. Thomas's Hospital v. Charing Cross Railway Co.* (1861) 1 J. & H.·400 it was held that section 92 of the Lands Clauses Consolidation Act 1845 (8 & 9 Viet. c. 18) (which provided that the owner of land being compulsorily acquired could not be required to convey "a part only of any house, or other building or manufactory") required the purchase not only of the whole house but also of the gardens and appurtenances of the house.
>
> In the present case, it would be to attribute to Parliament an entirely capricious intention if we were to hold that the tenants' right to purchase did not extend to the gardens and other appurtenances of the flats which are expressly or impliedly included in the demises of the flats to the tenants. In my judgment we are not forced to adopt such an unreasonable construction since it is a perfectly legitimate meaning of the word "building" that it includes the appurtenances of the building."

36. He went on to conclude that the section 12 notice "could" have required the landlords to transfer not only the buildings but also any appurtenances to them (952H). He did so having considered the argument that under Part III LTA 1987 under which tenants can compulsorily acquire the reversion in certain circumstances, premises are defined in section 25(2) as far as relevant, in the same way as in section 1(2). Section 29(4) contains an express provision, however, that if the court thinks fit, an acquisition may "include any yard, garden, outhouse, or appurtenance, belonging to, or usually enjoyed with the premises . . ." He concluded that the point was not decisive in construing "such an ill-drafted, complicated and confused Act . . ." and that there was "no logical reason

why the tenant who acquires under section 12 of the Act should not be entitled to acquire exactly the same property as could be acquired under Part III: yet there is nothing corresponding to section 29(4) in Part 1 of the Act."

37. He stated that there was no doubt that the gardens were included in the appurtenances but that the garages were not (952H). They were held on quite separate leases, not all the tenants had a garage and the freehold of all of the garages was not vested in the landlords. Similarly, the tenants did not enjoy rights over the unused land, nor was the land used in conjunction with the flats. Accordingly, it was not an appurtenance. The roadway and paths over which the tenants had either express or prescriptive rights of way were appurtenances, however (953A-B). He added that it might well be that the rent assessment committee acting under section 13(1) might reach the conclusion that the appropriate provision should be that the tenants should be granted perpetual rights of way over them rather than acquire the freehold to the land.

38. *Kay Green v Twinsectra Ltd* [1996] 1 WLR 1587 was also concerned with a section 12 purchase notice. It concerned a complex of flats and houses, called Tudor House and Tudor Court, which was registered at the land registry under two titles. The owner of the complex sold the freeholds as one lot without giving the tenants of the flats the right of first refusal. Tudor Court consisted of four buildings. The first building contained seven flats and three terrace houses. The second building was across a courtyard from the first and consisted of two semi-detached bungalows. The third building contained two terraced houses and two bungalows. The fourth building was a purpose-built block containing five flats. All the flats and houses in Tudor Court and all the flats in Tudor House were occupied under long leases at low rents on substantially the same terms. The leases gave access to the garden, but did not include the amenity land.

39. Parr Court was a modern building consisting of about 44 flats which was built around three sides of a court with lawns and ponds. It was situated to the north-west of Tudor House and its grounds were separated from those of Tudor House by a wall. A majority of the tenants in three of the buildings containing flats subsequently served a purchase notice on the new landlord under section 12 requiring it to dispose of the freeholds to the tenants named in the notice on the terms on which the original disposal had been made. Parr Court was not included in the notice and no lessees of flats within that building joined in the notice.

40. One of the grounds on which the landlord relied in arguing that the purchase notice was defective was that it had not been served by the requisite majority of qualifying tenants. The basis of that argument was that it was not possible to sever Parr Court from the overall transaction. Section 5(5) of the LTA 1987, in its then form, provided:

> "(5) Where a landlord proposes to effect a transaction that would involve both—
>
> (a) a disposal of an estate or interest in the whole or part of a building constituting a relevant disposal affecting any premises to which this Part applies, and
>
> (b) a disposal of an estate or interest in the whole or part of another building (whether or not constituting a relevant disposal

> affecting any premises to which this Part applies) or more than one such disposal,
>
> the landlord shall, for the purpose of complying with this section in relation to any relevant disposal falling within paragraph (a) or (b) above, sever the transaction in such a way as to secure that, in the notice served by him under this section with respect to that disposal, the terms specified in pursuance of subsection (2)(a) are the terms on which he is willing to make that disposal."

41. Aldous LJ stated:

> "The word "premises" does not have a special meaning. It is a word which over the years has been applied to houses, land, shops and the like with the result that it has come to mean real property of some kind. Thus the Act states that a landlord should not make a relevant disposal affecting any real property without serving a section 5 notice, if it consists of the whole or part of a building and it contains two or more flats held by qualifying tenants and the number of those flats exceeds 50 per cent. of the total. The fact that the building is included within one or more titles is irrelevant. It follows that the question of whether a relevant disposal of premises has been made has to be considered on a building by building basis. Thus when ascertaining whether the applicants were a requisite majority, it is not appropriate to take into account Parr Court. Each building must be considered separately.
>
> In this case we are only concerned with Tudor House, and buildings 1 and 4 of Tudor Court and in each case the relevant applicants constituted the requisite majority of tenants in the building. Parr Court was a different building. If the tenants wished to purchase the freehold of that building, the question of whether they could do so would be for them to decide. Any decision they took could not affect the rights of the tenants of the other buildings. The contrary conclusion would be surprising. If the original landlord had complied with his duty under section 5, he would, under section 5(5), have had to sever each building from the others. Thus it would be surprising if the procedure laid down after transfer to a new landlord placed the tenants of Tudor House in the position of being governed by the decisions of the tenants of Parr Court."

In a concurring judgment Staughton LJ said:

> "First it is essential to decide what is meant by the provision in section 1(2): this Part applies to premises if — (a) they consist of the whole or part of a building; . . ." Although a different view seems to have been common ground before the judge, in my opinion more than one building cannot, in the ordinary way, be treated as comprised in premises for the purposes of the Act.

> There may be an exception for outhouses and the like; but in general I consider that separate buildings must be treated separately. Otherwise there is very likely to be absurdity; the judge doubted whether the Act could then be made to work."

42. *Long Acre Securities Ltd v Karet* [2004] EWHC 442 (Ch), [2005] Ch 61 which was followed by the judge in this case, was concerned with a residential estate comprising at least four separate structures. The estate also included a single appurtenant accessway at the southern end, car parking areas, a central yard or forecourt, paths, roadways, and an amenity space at the rear (the "appurtenant areas"). Those appurtenant areas had always been managed as part of the single estate, and had been used in common by the occupiers of the 55 flats. It would have been difficult to divide up the appurtenant areas so as to serve either the separate structures or the separate named blocks.

43. The claimant, Long Acre Securities Ltd, wished to dispose of part of its reversionary interest in the underlease of the estate by the grant of a sub-underlease at a public auction. It served notice on the qualifying tenants pursuant to sections 5 and 5B LTA 1987 specifying that the property to be disposed of was the entire residential estate. The defendant, one of the qualifying tenants, challenged the validity of the notice on the ground that section 5(3) required that the transaction be severed so that the respective notices each identified a separate structure as the property to be disposed of. The claimant brought an application seeking, amongst other things, a declaration that the notice satisfied the requirements of sections 5 and 5B LTA 1987 and was valid. With her acknowledgment of service, the defendant, Mrs Karet made clear that she did not contest the declaration. Thereafter, the claim for further or other relief was withdrawn. Shortly before the hearing, the landlord stated that it would not seek a costs order against Mrs Karet. Although there was substantial argument about the remaining costs issue, there was no argument as to the substance of the landlord's claim for a declaration.

44. The deputy High Court judge, Geoffrey Vos QC, as he then was, described the issue before him as whether the word "building" in Part 1 LTA 1987 can mean more than one building [1]. For the sake of clarity, he stated that he would use the term "structure" rather than "building" to mean "a single integrated structure separated from another structure by roadways, paths, gardens or other areas" [4]. The nub of the question with which he was specifically concerned, however, was whether it was right to suggest that the word "building" includes a "building scheme" "on the basis that a scheme can mean a single development of one or more buildings built at the same time" [65].

45. Long Acre Securities Ltd, the landlord, had contended that the statute must be given a purposive construction and that the word "building" should be construed to include "building scheme" by which it meant "any building or buildings built as part of a single development at the same time." It was contended that the estate was a building scheme, built at one time at some stage in the 1920s [49]. It was also contended that it would be "horrendously complex and unworkable" to require Long Acre to serve separate notices in respect of each of the four separate structures, to divide up gardens and roadways and provide for appropriate rights of way, drainage and the like [50].

46. Having considered the authorities and the structure of Part 1 LTA 1987, the deputy judge stated at [66] that when determining whether "building" includes a "building scheme" one must have regard to the purpose of the legislation which he held was as

stated in the long title to the LTA 1987 "to give tenants the right to acquire their landlord's reversion." He went on, also at [66] to state that "[I]n order to achieve that object, the legislature must be taken to have intended to create a workable procedure."

47. At [68] he stated that it seemed to him that section 5(3) "was intended to prevent landlords amalgamating separate structures or buildings into the same transaction so as to hinder qualifying tenants in achieving the necessary majority to enable them to purchase of the freehold." He went on to state that:

> ". . . [I]t was not, however, intended to require integrated developments to be split into inappropriate and unwieldy sections. Parliament cannot be taken to have intended that common yards, gardens and other appurtenant areas should have to be split into one (or even several parts) in order to satisfy section 5(3). Such a result would be absurd. I use the word advisedly."

48. When considering the relevant case law, the deputy judge referred to *30 Upperton Gardens Management Ltd v Akano* [1990] 2 EGLR 232. It concerned the Martello Estate, at Pevensey. It consisted of 84 flats in four separate blocks of flats and 62 garages, also in separate blocks. It was a single development carried out nearly 30 years earlier with generous open spaces and also parking areas in addition to the garages. The garages were behind the end blocks and the Martello Tower itself was a central feature although it did not form part of the scheme. On a sale of the estate no notice had been served under section 5. Following the sale the tenants served a single purchase notice under section 12 of the Act in respect of all four blocks. The issue for the Leasehold Valuation Tribunal was whether that notice was valid. It reasoned as follows:

> "The draftsman of section 1 had not thought of an estate such as the Martello Estate, which is quite common, because often several separated blocks of flats are built as a single development with garages and amenity land attached which are common to all the flat owners in the various blocks and they are often numbered straight through without each block having a separate name. In theory it would have been possible to satisfy the definition by a separate transfer of each of the four blocks to the nominated person, so that each transfer consisted of premises which could be described as "the whole … of a building". Then, if each building was separated, it might be argued that the four blocks of garages (the fourth of which contained only two garages) also had to be dealt with separately. Those four blocks in no way coincided with the blocks of flats and so each of the 62 individual garages would have to be allocated to one of the blocks of flats and even then there might be some four garages left over. It would then be necessary to split up the amenity land between the four blocks. This might not be impossible, but the roadways, turning areas, and the roads giving access to the garages with their turning areas could never be satisfactorily divided between the four blocks of flats. Even if those problems had been resolved, even worse problems would remain to be resolved in connection with the easements, because rights of way and cross

> rights of way, drainage and other easements would need to be spelt out in detail. First of all, these problems would have to be solved by the parties in so far as they could and then the whole problem would be passed to the Land Registry to incorporate in their system of registered titles, which might create even greater problems for them.
>
> The tribunal accordingly determined that the draftsman of the Act could not possibly have intended that a building scheme should be split up in order to comply with the provisions of the Act, and it would be wrong for the tribunal to come to a conclusion which might effectively deprive many qualifying tenants of the rights which the Act was intended to give them and so section 1(2)(a) of the Act should be construed as if it read "they consist of the whole or part of a building or building scheme"."

49. The deputy judge in *Karet*, however, rejected the argument that "building" includes "building schemes":

> "70. There is no mention in the Act of building schemes or of developments built at the same time. To construe the word "building" in the sense advocated by Long Acre, and suggested by the Leasehold Valuation Tribunal in the *30 Upperton Gardens* case [1990] 2 EGLR 232, would, in my view, be artificial. It would be crossing the boundary between construction and legislation: see Lord Diplock in *Jones v Wrotham Park Settled Estates* [1980] AC 74, 105-106. It would also give rise to difficulties of interpretation, because in many cases it would be hard to say whether a development undertaken in stages (as many such schemes are) was or was not a building scheme, within the ad hoc definition favoured by the claimants."

50. He went on to consider the meaning of the word "building", as used in the LTA 1987, in the following terms:

> "71. In my judgment, however, the term "building", as used in the Act, must have been intended by Parliament to include more than one structure in some, albeit limited, circumstances. The question arises as to what precise circumstances. For example, one could imagine that two structures with a shared access might sensibly be regarded as one building for the purposes of the Act. There is nothing in the legislation, however, which gives any hint that that might have been the intention of Parliament- just as there is no hint that "building schemes" were intended to be regarded as a single building because they were constructed at the same time.
>
> 72. There are few clues in the legislation as to how the absurdity involved in construing section 5(3) as referring strictly to a single structure can be avoided. For example, there is nothing in the Act

which explains how difficulties associated with severing a transaction can be resolved. It is this absence of provision which has led me to think that Parliament must have intended the Act to be construed so that such provision was unnecessary. It would only have been unnecessary if qualifying flats contained in structures, which had been using the same associated or appurtenant areas in common, were to be regarded as one building for the purpose of the severed transaction contemplated by section 5(3). This is the single most intractable problem identified by Long Acre in this case. It says, with some force, that it would be impossible satisfactorily to divide up the use of the yards, roadways and gardens that have been used in common by the occupiers of all qualifying flats in the estate.

73. Section 4(4) defines "appurtenant premises" as meaning "any yard, garden, outhouse or appurtenance (not being a common part of the building containing the flat) which belongs to, or is usually enjoyed with, the flat". The definition is included to assist in interpreting section 4(1), so as to make clear that the disposal of an interest in a single flat does not fall within the legislation, even if "appurtenant premises" are included with it. But this restricted usage does not seem to me to be fatal to my construction. As the Court of Appeal held in the *Denetower* case [1991] I WLR 945, 952 to which I have already referred, "the purchase notice under section 12 could have required the landlords to transfer not only the two buildings but also any appurtenances of those buildings", in the sense of yards, gardens, outhouses (but not garages) enjoyed with the qualifying flats in those buildings. In these circumstances, it seems to me that the Act cannot properly be construed as allowing the qualifying tenants in two separate structures each to acquire by separate transactions the same gardens, yards and outhouses that they have up to that time used in common.

74. Thus, the Act can only make sense, if the word "building" is construed to mean (I accept somewhat awkwardly) either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises. I have used the term "appurtenant premises" as it is used in section 4(4) of the Act for simplicity. If this is the correct construction of the Act, then it is true that many "building schemes", as Long Acre has called them, will fall within the definition I have attempted. But in my view, although there is some statutory warrant for my approach, there is none for the suggestion in the *30 Upperton Gardens case* [1990] 2 EGLR 232 that the word "building" should be construed in a formal way as including all "building schemes". There will, in practice, be some building schemes where the buildings are far removed from one another, and share no appurtenant premises. In such a case, I cannot see how section

> 5(3) can be construed as allowing a valid section 5 notice to be served in respect of a single transaction including two such buildings.
>
> 75. I have considered carefully whether my approach is at odds with the Court of Appeal's decision in *Kay Green's case* [1996] 1 WLR 1587. I am satisfied that I am not bound by *Kay Green's case* to decide that the word "building" in the Act means a single structure in all circumstances. Staughton LJ specifically qualified his view by saying, at p 1603h, that "in the ordinary way", more than one building could not be treated as comprised in premises for the purposes of the Act. I notice, however, from Aldous LJ's exposition of the facts in *Kay Green's case*, at p 1591, that there were gardens to which, at least, the qualifying tenants in two of the buildings were allowed access. The court did not, however, consider whether this made any difference to the validity of the section 12 notice. I think I must accept that my decision is inconsistent with some of the reasoning in *Kay Green's case* though I do not think it conflicts with the ratio decidendi. I am satisfied, however, that if I were to follow the reasoning in *Kay Green's case*, so as to hold that the notice in this case was invalid, I would be cutting directly across the purpose of the legislation. I would be making the Act unworkable in the kind of case epitomized in *30 Upperton Gardens* [1990] 2 EGLR 232 and in this case. For these reasons, and not without some hesitation, I have concluded that the decision I have reached as to the construction of the Act is open to me, having considered the four authorities I have referred to as a whole."

51. He concluded on the evidence that it was "reasonably clear . . . that the qualifying flats on the estate share the use of the same accessway, amenity areas or gardens, car parking areas, yards, paths, and roadways . . .". He was satisfied, therefore, that "the occupants of the qualifying flats in each of the four buildings making up the estate share the use of the same "appurtenant premises"". Accordingly, in serving the notice, Long Acre did not propose a transaction involving the disposal of an interest in "more than one building" within the proper meaning of that term, as used in section 5(3) of the Act. Likewise, the premises which were the subject of the notice consisted of the whole or part of a "building" within the proper meaning of section 1(2)(a) of the Act."

52. He concluded:

> "[81] For the reasons I have given, I have concluded that the word "building" is used in the Landlord and Tenant Act 1987 (as amended) to mean either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises. In this context, the term "appurtenant premises" is used in the same sense as in section 4 of the Act .

> [82] The Notice served by Long Acre on 31st January 2003 was, therefore, a valid notice."

53. In relation to the decision in *Karet*, Radevsky and Clark observe in *Tenants' Right of First Refusal* (4th ed) at para 2.8:

> "The assumptions by the judge here may be called into question. It may be said:
>
> (1) The underlying assumption is that each block should have the right of self-determination rather than preventing the amalgamation of several blocks into one sale. It may be that amalgamating separate buildings into one sale may be a device which s 5(3) is aimed at preventing but equally it may be said that the judge's decision may make it difficult for tenants across different blocks to co-operate and they may in fact have different interests: eg see *Kay Green v Twinsectra Ltd (No 1)* [1996] 1 WLR 1587, CA where one of the four buildings contained two flats and another 44 flats.
>
> (2) It is not necessarily the case that appurtenant property would be split in the sense that the party serving the offer notice decides which building is to have the appurtenant property sold to it as part of the sale. The acquisition of the appurtenant property will take subject to the rights of the tenants within the other blocks over that appurtenant property. If no s 5 notice is served any competing purchase notice for the appurtenant property may be the subject of resolution by the First-tier Tribunal under s 13 of the 1987 Act."

54. Much more recently, in *York House (Chelsea) Ltd v Thompson* [2020] Ch 1, amongst other things, Zacaroli J considered the meaning of "appurtenances". That was a case in which the joint tenants of the freehold of a block of flats to which the LTA 1987 applied, granted a number of leases, for no premium and at a peppercorn rent, of various parts of the block and its surrounding area to one or other of themselves, in order to preserve the development value of the block. The requisite majority of the qualifying tenants in the block served notices on each of the landlords, pursuant to section 12B LTA 1987 and ultimately, applied to the court seeking an order under section 19 that the landlords transfer the leases to the person nominated by them. The landlords successfully defended the claim on the basis that the disposal was excluded from being a "relevant disposal" by section 4(1)(b) because it was a "disposal by way of gift" within section 4(2)(e).

55. Zacaroli J went on to consider the meaning of "appurtenance" at [102] – [113]. He did so on the basis that the Court of Appeal had decided in the *Denetower* case that "building" in section 1(2) LTA 1987 includes appurtenances to it [102]. He stated that:

> "109 . . . in any event prefer the claimant's [tenants'] interpretation of the meaning of an appurtenance for the

> purposes of the 1987 Act. First, as a matter of principle, I consider that the purpose of the Act (being to enable leaseholders better to manage the whole block of which their flat forms a part) is better promoted by an interpretation which includes those parts of the premises which are enjoyed with, or are needed for, the upkeep of the building. Second, that interpretation is consistent with the weight of authority.
>
> 110. In *Denetower* itself, while Sir Nicolas Browne-Wilkinson V-C did not formulate a definition of appurtenance, his conclusion that a piece of unused land was not an appurtenance because the tenants enjoyed no rights over it, nor was it "used in conjunction with the flats" suggests a meaning that is broader than simply land over which tenants are granted rights.
>
> 111. In *Berisworth* [2008] 2 P & CR 3, para 53, Warren J noted that what is, and is not, appurtenant is very much a matter of fact and degree. Moreover, the approach he adopted, he said (at para 54), reflected the meaning given to appurtenance in section 4(4) of the 1987 Act, namely "any yard, garden, outhouse or appurtenance . . . which belongs to, or is usually enjoyed with, the flat". He held that a piece of land over which each tenant had a right to pass and repass was appurtenant to the building, "since the tenants have significant rights over it, rights which they enjoy by virtue of their tenancies" (para 64). He also held that the airspace above the roof, at least up to the height of the chimneys, was appurtenant to the building, notwithstanding that the tenants had no right of access to the roof. He reached this conclusion on the basis that the landlord required access to the roof in order to comply with his obligations to keep the structure of the main building (including the roofs and chimney stacks) in repair: "the airspace, at least the height of the chimneys . . . is an essential part of the space over which any owner of the main building with repairing obligations would need to have adequate rights of access." (Para 70.)
>
> 112. I note that in determining that separate garages were not appurtenant to the building, Warren J noted that the tenants did not, in their capacities as tenants, contribute through the service charge to the maintenance of the garage block."

56. He concluded at [113] that he was:

> ". . . broadly in agreement with the claimant that appurtenances include areas over which the tenants have rights under their leases and areas which are usually enjoyed with the building, including those to which access is required by the landlord for the purposes of complying with its obligations (owed to the tenants) to repair and maintain the building."

The decision below in more detail

57. As I have already mentioned, the judge followed the decision in *Long Acre Securities Ltd v Karet*. He considered the decision in some detail at [18] – [23] of his judgment and set out the deputy judge's conclusion in that case at [23]. He also noted that neither party had sought to challenge the *Karet* decision before him and that despite his concerns about it, it was not an appropriate occasion to revisit the question of whether it was correct and that he must follow it [32]. He had already noted that: the claim before the deputy judge had been undefended and therefore, the deputy judge had not had the benefit of contrary argument on an important point of law [28]; section 5(3) is mandatory and envisages that the transaction will be severed so as to deal with each building separately [29]; section 10A makes it a criminal offence to make a disposal without complying with section 5, without reasonable excuse, and it is an important point of statutory construction that a person should not be penalised except under clear law [30]; and that the authority had not escaped criticism [31].

58. Having considered the evidence before him including cross-examination of some of the witnesses and the submissions, the judge went on to weigh the competing factors in order to determine whether there was one or more buildings for the purposes of section 5(3). He agreed with Fancourt J in relation to the relevant factors and set them out at [79]. They were: (1) plans of the structures; (2) underlying structural support for the structures; (3) lessees' rights to use appurtenant premises; (4) connections at any levels; (5) the dates of construction of the structures; (6) how the structures are managed (whether together or separately); (7) how the service charge is operated; (8) visual impressions. As the judge pointed out, these factors mirror the considerations identified at para 2.9 of Radevsky and Clark.

59. On the basis of the evidence he had heard, he identified a further five factors of potential relevance, at [80], being: (9) means of access to the structures and appurtenant premises; (10) how the structures are serviced; (11) the sharing of common facilities and amenities; (12) the planning history of the structures and any enforcement action taken in relation to planning requirements and conditions; and (13) the requirements of housing legislation and building and other regulations and the measures considered necessary to enforce compliance with them.

60. The judge acknowledged that the list of potentially relevant factors was not exhaustive, that they may overlap, factors may point in different directions and that a multi-factorial evaluation was required [81]. He considered each of the thirteen potential factors at [82] in the following manner:

> ". . .
>
> *(1) Plans of the structures*
>
> The plans show Blocks A, B and C/E as physically separate buildings. Blocks C/E share a common entrance and central stair core. The plans tend to show that there are three, rather than one or two, separate buildings.
>
> *(2) Underlying structural support for the structures*
>
> The plans show that none of the Blocks provide any structural support for the others, save possibly for Blocks C and E. This

points to there being at least three, and possibly even four, separate buildings.

(3) Lessees' rights to use appurtenant premises

The occupational leases are poorly drafted and fail to make it clear to what extent individual leaseholders enjoy express rights over the amenities and facilities of the development outside their individual blocks. However, leaseholders of Blocks B, C and E clearly enjoy rights of access over Back Beau Street and other communal areas to access their individual blocks. Leaseholders of Block A with appurtenant car parking spaces between Blocks B, C and E clearly have express rights over Back Beau Street and the communal access ways to pass to and from their individual car parking spaces. In practice, leaseholders of all four blocks pass over communal areas to access the refuse storage bins between Blocks C and B. This points to there being only one building, enjoying access from Fox Street via Back Beau Street.

(4)Connections at any levels

The only connection between different structures is between Blocks C/E. This points to there being three separate buildings.

(5) The dates of construction of the structures

Mr Howard addresses the construction of all five structures in his evidence, which I have noted at paragraphs 36-38 above. Block A was created from an existing building and was the first to be developed. This was followed by the construction of Blocks B and C/E. However, Blocks A, B, C (and D) were all constructed pursuant to a single planning permission, with planning permission for Block E only being granted some 20 months later. This factor seems to me to be neutral.

(6) How the structures are managed (i.e., whether together or separately)

There are three separate right to manage companies for Blocks A, B and C/E, all incorporated in January 2021. However, there is a single managing agent, and a single tenants' association, for all four blocks. This factor seems to me to be neutral.

(7) How the service charge is operated

The evidence is not entirely clear on this point. Mr Asghar criticises the claimant for providing no proper evidence of how the service charges are, or were, operated; and he invites the court to draw adverse inferences from this omission. However, there are three different right to manage companies for Blocks A, B, and C/E respectively, which manage the service charges

for their respective blocks. The existence of three right to manage companies would suggest that there are three separate service charge regimes; but it is not clear to me how the costs of maintaining the external communal areas are treated. I consider that there is insufficient evidence about how the service charge is, or could be, operated to enable the court properly to weigh this particular factor fairly in the balance.

(8) Visual impressions

The photographic images show an integrated residential development comprising three separate structures (Blocks A, B and C/E) grouped around central parking spaces and communal amenity areas (including an area where refuse is stored in shared bins). These three structures all share a single combined vehicular and pedestrian access from Fox Street. This is consistent with one building rather than three.

(9) Means of access to the structures and any appurtenant premises

Mr Howard states that Blocks B, C and E were all built on shared grounds as they were one estate, and only one access point was built allowing entrance and exit to Blocks B, C and E. However that access point also adjoins Block A, and it affords access to surface car parking spaces demised to some of the leaseholders of flats within Block A. This is consistent with one building rather than three.

(10) How the structures are serviced

Blocks A, B, C and E are all serviced via Back Beau Street. This is consistent with one building rather than three.

(11) The sharing of common facilities and amenities

Mr Howard states that Block B was built without any basement or plant room. This was because the basement under Blocks C and E was built to be utilised as the plant room for all of Blocks B, C and E. All the services were installed to accommodate all three blocks. There was one boiler installed to service all three blocks; there was one CCTV system installed to service all three blocks; the generators, substations, and service tanks were installed to service all three blocks. The three blocks were all painted the same colour, and they had the same features fitted. Structurally and aesthetically, there is nothing to differentiate Blocks, B, C and E. None of this applies to Block A. All of that suggests that they comprise two separate buildings. However Block A shares a single combined vehicular and pedestrian access from Fox Street. That points to one building rather than two.

> *(12) The planning history of the structures, and any enforcement action taken in relation to planning requirements and conditions*
>
> Mr Howard's understanding was that planning permission for the construction of Blocks B, C and E was granted at the same time. In fact, planning permission for Blocks A, B, C and D was granted at the same time (on 22 April 2015), with a separate planning permission for Block E being granted (on 20 December 2016) some 20 months later. When the local planning authority took enforcement action for alleged breach of planning control, a single enforcement notice was served in relation to all five blocks. Unsurprisingly, this gave rise to a single appeal, and a single decision of the planning inspector, quashing the enforcement notice for failing to specify with sufficient clarity the alleged breach of planning control, and the steps required for compliance. Liverpool City Council have also served a single planning contravention notice, dated 30 May 2024, asserting that the development of all five residential blocks A-E was not in accordance with the relevant planning permissions and planning application. This all points to there being only one building.
>
> *(13) The requirements of housing legislation and building and other applicable regulations, and the measures considered necessary to enforce compliance with them*
>
> Liverpool City Council served a single improvement notice, dated 6 June 2024, under section 11 of the Housing Act 2004 in relation to all four blocks, founded upon the existence of a Category 1 electrical hazard in the form of an unauthorised, unmetered electrical supply to all of the flats and common parts within Blocks A, B, C and E. On the same day, the City Council also served a single electricity improvement notice for all four blocks. This points to only one building. Earlier, however, the City Council had served two separate prohibition orders, dated 29 March and 17 April 2019, on Block B and Blocks C and E. With the addition of Block A, that points to three buildings rather than one or two."

61. At [83] he stated as follows:

> "As I have foreshadowed (at [81] above), certain of these factors point in one direction whilst other factors point in another. I have tried to weigh all of them in the balance in what is essentially a multi-factorial evaluation exercise. I have acknowledged that in any individual case, a particular factor, or factors, may exert a magnetic attraction in favour of a certain conclusion. In the present case, the factor of magnetic attraction seems to me to be the shared use of Back Beau Street as the only means of access to the car parking spaces outside Blocks C and E, and possibly

> Block B, that have been demised to the leaseholders of flats in Unit A. Against that background, I can well understand the reticence on the part of the drafter of the plan attached to the section 5 offer notices in abjuring any attempt to parcel up the open spaces within the Fox Street Village development between the four different blocks."

He went on to add at [85] that:

> "I appreciate that hitherto the focus of the authorities has been upon the rights of leaseholders of structures generally to access, and to make use of, appurtenant premises. However, I see no reason why the court should not afford equal weight to the rights of particular individual leaseholders to access, and make use of, appurtenant premises in the form of individual car parking spaces that have been demised to them. When this particular factor is added in with all the other factors that point to the existence of a single 'building', within the meaning, and for the purposes, of Part 1 of the 1987 Act, in my assessment and judgment it outweighs all countervailing factors and considerations."

For those reasons, he concluded that all four blocks constituted a single "building" within the meaning and for the purposes of Part 1 LTA 1987 and that as a result, the notices which were served were invalid [86].

Submissions in outline

62. In brief summary, Mr de Waal KC, who appeared with Ms de Cordova on behalf of SGL1, submitted that the reasoning in the *Karet* case goes too far and perhaps, was driven by the focus on a building scheme in that case. He also notes, as did the judge, that: the deputy judge had not heard contrary argument on this important point of statutory construction; that section 5(3) is in mandatory terms and envisages that a notice should only deal with a single building and accordingly, that the *Karet* decision runs contrary to section 5(3) as a matter of construction; and that it is an important principle of statutory construction that a person should not be penalised except under clear law. He says that the decision in *Karet* creates unnecessary uncertainty as to whether a notice is valid in circumstances in which section 10A states that it is an offence, without reasonable excuse, to dispose of premises to which Part 1 LTA 1987 applies without first complying with section 5; and that the decision has attracted criticism on the basis that by amalgamating structures for the purposes of section 5, it may render it more difficult for qualifying tenants to exercise their rights.

63. Mr de Waal contends that a "building" is a single structure with the proviso that where, in practice, it is indivisible from another structure, or physical division is impossible, the structures are one "building". In the circumstances of this case, therefore, he says that Blocks C and E which share an entrance and a staircase and have a combined plant room are indivisible and that Block B is also indivisible from them because it is reliant upon the same plant room and has no heating or other facilities of its own.

64. He submits, therefore, that it is unnecessary to undertake the detailed consideration of the kind of factors which the judge addressed in this case. In fact, he says that it is undesirable to do so. The test should be clear and practical and it makes no difference in this case, that certain qualifying tenants in Block A have leases of car parking places outside Block B, C or E.

65. Mr de Waal says, therefore, that the judge proceeded on the wrong legal premise and that his consideration of the matter at [82] – [86] is flawed. Even if the *Karet* decision is correct, he says that the judge was wrong to conclude that Blocks A, B, C and E were one building.

66. On the other hand, Mr Ashgar, who appeared with Ms Shakir on behalf of Freeholders, supports the decision in *Karet*. He submits that: the amalgamation of structures into one building may be to the advantage of qualifying tenants in some circumstances and, therefore, cannot be contrary to the purposes of Part 1 LTA 1987 and tell against the *Karet* approach; the LTA 1987 does not deal with how appurtenances should be split which suggests that it is not required; and that the *Karet* approach is most consistent with the statutory purpose and avoids an absurd outcome. In this regard, he took us to an extract from *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed) at Chapter 13, section 13.1. It is headed "Presumption that absurd result not intended". The passage is as follows:

> "Presumption that 'absurd' result not intended
>
> (1) The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature. Here, the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.
>
> (2) The strength of the presumption against absurdity depends on the degree to which a particular construction produces an unreasonable result.
>
> (3) The presumption may of course be displaced, as the ultimate objective is to ascertain the legislative intention."

67. Mr Asghar says that the question is fact specific. In this case, if Block A were dealt with separately from Blocks B, C and E, it would produce an unwieldy and unreasonable result. Mr Asghar did not contend that in all circumstances, any split of shared facilities would produce such a result but that it would in this case. He submitted that the purpose of section 5(3) can be found in the preamble to the LTA 1987 and the deputy judge in *Karet* had considered Part 1 LTA 1987 as a whole and the relevant provisions, together with the case law, such as it is.

68. Further, he says that the judge applied the law and came to a conclusion which was open to him on the facts. If, however, *Karet* is wrongly decided, on the facts of this case, Block A is a separate building and so too are Blocks B on the one hand and Blocks C and E on the other.

Statutory interpretation

69. There is no dispute as to the principles of statutory construction which apply. The task is to find the meaning of the words used in the particular enactment. They must be considered in their context which may be the whole section in which they appear or a group of relevant sections. It involves an objective assessment of the meaning which a reasonable legislature would be seeking to convey by the words used: *R(O (A Child)) v Secertary of State of the Home Department* [2022] UKSC 2, [2023] AC 255 per Lord Hodge DPSC at [29] – [31].

70. Further, as the passage from *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed), to which we were referred, makes clear, absurdity should be avoided since this is unlikely to have been the intention of the legislature. This includes any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief. Further, every enactment must be given a purposive construction: para 12.2.

71. It seems to me that there is little doubt about the purpose of the LTA 1987. It is described succinctly in its long title which states that it is:

> "An Act to confer on tenants of flats rights with respect to the acquisition by them of their landlord's reversion."

Further, in *Denetower*, Sir Nicholas Browne-Wilkinson V-C described it at 948A in the following terms:

> "The Act was passed with a view to giving leaseholders of residential flats in a block of flats improved rights to control the upkeep and maintenance of the block as a whole. Part I of the Act confers on such tenants a right of first refusal when the landlord is proposing to dispose of his reversion. If the landlord assigns the reversion in breach of such right of first refusal, the tenants are given a right to acquire the reversion from the assignee. . ."

Section 5(3) and the decision in *Karet*

72. How is section 5(3) to be interpreted in its context and in the light of that purpose?

73. In order to clear the matter away, I should say, at the outset, that it seems to me that the deputy judge, as he then was, in *Karet*, was correct to conclude that there is nothing in Part 1 LTA 1987 and the relevant provisions to suggest that "building" can be interpreted to include a "building scheme". There is nothing to suggest that that is the case and the plain wording of section 5(3) itself militates against such a construction.

74. Can "building" include more than one structure, nevertheless? When approaching this question, I bear in mind that it is both necessary to adopt a purposive approach and to seek to avoid absurdity and uncertainty, and to view the relevant provisions in context. The context here is the circumstance in which a landlord proposes to make a "relevant disposal" affecting "any" premises to which Part 1 LTA 1987 applies. Section 1(2)(a) makes clear that the premises which are the subject of such a relevant disposal may

consist of the whole or part of a building. It is for the landlord to decide what the estate or interest is of which he wishes to dispose. It is not envisaged that the landlord must sell all of his reversionary interest at one time.

75. It follows that a landlord might decide to dispose of the freehold reversion in relation to just part of a building or block, or a building or block and not land adjoining it. In such circumstances, section 5(3) does not apply and the landlord is not required to sever the transaction. If the landlord serves a section 5 offer notice in such circumstances, the qualifying tenants do not have a right to acquire the freehold reversion to the whole building if the landlord intends to dispose of only part or, in the second example, to acquire the building and the land. If, on the other hand, the landlord chose to dispose of both the building and the land together, section 5(3) still would not apply and the landlord would not be required to separate or sever the block from the land. If a valid section 5 offer notice is served and accepted, the person nominated to act on behalf of the qualifying tenants can either withdraw or proceed to sign the contract offered by the landlord in relation to the premises which are the subject of the relevant disposal. Neither the nominee nor the qualifying tenants can demand more.

76. If the landlord fails to comply with the provisions of the LTA 1987, different provisions apply. In those circumstances, it is the tenants who can serve a section 11A notice seeking the particulars of the terms of the original disposal and, depending on the circumstances, a notice under section 12B requiring the purchaser to dispose of the estate or interest which was the subject of the original disposal, to a person nominated by them. That notice cannot include "other property" included in the original disposal to which the LTA 1987 does not apply: section 12B(4). The tenants are only entitled to require the purchaser to make a disposal to them in relation to premises to which the LTA 1987 applies. This is consistent with the purposes of the LTA 1987 to which I have referred above.

77. In the example in which the landlord disposes of the freehold reversion in both the block of flats and other land without complying with the LTA 1987, the tenants will only be entitled to serve a purchase notice pursuant to section 12 in relation to the block of flats unless the land is an "appurtenance" in the sense explained in *Denetower.* In those circumstances, they would be able to include the land in the notice, but would not be compelled to do so.

78. As I have already explained, if the initiative is with the landlord, however, he can decide what it is that he wishes to sell. He can choose to sell the freehold reversion of just the block or more than one block and if he chooses to sell adjacent land to which the LTA 1987 also applies, he may choose to include it in either parcel. It is open to him to decide. If he does not dispose of the adjacent land or includes it with a block in a different parcel, it will remain subject to the tenants' rights and easements, in any event. Section 5(3) applies where there is more than one building. It does not stipulate how a transaction must be severed, however, save that a landlord must deal with each building separately.

79. In the *Karet* decision, there was single section 5 notice in relation to the entirety of the premises. Emphasis was placed upon how "horrendously complex and unworkable" it would have been to require Long Acre to serve separate notices in respect of each of the four separate structures, to divide up gardens and roadways and provide for appropriate rights of way, drainage and the like. In reliance upon the decision in

Denetower, the deputy judge concluded at [73] that "the Act cannot properly be construed as allowing the qualifying tenants in two separate structures each to acquire by separate transactions the same gardens, yards and outhouses that they have up to that time used in common." This led him to the conclusion at [74] that "building" can be construed to mean one or more buildings where the occupants of the qualifying flats share the use of the same appurtenant premises.

80. It seems to me that in doing so, the deputy judge was looking at the issue through the lens of a section 12 notice. The absurdity or unworkability which he envisaged was based on the *Denetower* decision. That was concerned with section 12, however, and although the premises in that case included more than one building, it was not concerned with severing the transaction in accordance with section 5(3). In reaching his conclusion, the deputy judge took no account of the situation in which the initiative is with the landlord to determine what to sell and, in particular, to choose to sell only part of a building. In such circumstances, the perceived absurdity is avoided because the landlord determines what to sell and what to include in a section 5 notice in circumstances in which the transaction must be severed. Although appurtenances may be divided up, equally, they may be parcelled with one building rather than another.

81. In fact, Mr Asghar accepted that it would have been open to the landlord in this case to decide to sell just Block A with or without amenity land. In such a case section 5(3) would not have been engaged, and the offer notice would only have had to apply to Block A. The tenants would not have been able to extend its reach for the reasons already set out. Furthermore, as I have already mentioned, section 5(3) does not prescribe how a transaction must be severed (apart from the requirement that a landlord must deal with each building separately). As I have already mentioned, a landlord might decide to include some or all of shared amenity land in a notice relating to one building and none in another, or otherwise to split the amenity land.

82. As I have already mentioned in passing, such an approach does not deprive tenants of the rights they have over shared amenity areas. If they have legal easements, those rights will remain exercisable, against the new owner of the freehold reversion. The same is true where their demise extends to areas adjacent to a different block (as in the case of demised car parking spaces). Quasi-easements will also pass in the usual way.

83. It seems to me, therefore, that *Karet* was wrongly decided. That is not to say that there will not be circumstances in which separate structures may be one "building". It is difficult to formulate a single test. The central question is likely to be whether the structures are within a functionally integrated built envelope. If that yardstick is applied, the uncertainty with which Mr de Waal was concerned should not arise, nor should a lengthy consideration of a large number of factors be necessary to determine the status of a structure.

The decision on the facts

84. As I have already mentioned, when seeking to determine whether the structures at Fox Street Village constituted one or more "buildings" for the purposes of the LTA 1987, the judge in this case considered the many factors to which he was referred. He decided that the "magnetic factor" which led to his conclusion that there was a single building was the shared use of Back Beau Street as a means of access to the car parking spaces demised to the various lessees.

85. It is very well known that appellate courts should not interfere with findings of fact unless compelled to do so and that this applies not only to findings of primary fact, but also to the evaluation of those facts and inferences to be drawn from them: *Fage UK Ltd v Chobani UK Ltd* [2014] per Lewison LJ at 114. In the circumstances of this case, however, although the judge conducted an evaluation of the facts, it will be apparent from what I have already said that I consider that he adopted the wrong legal test. It is necessary to interfere, therefore, in order to correct the error of law.

86. First, if one applies the reasoning and the yardstick set out above, in my judgment, the judge was wrong to hold that Block A was part of a single building consisting of Blocks A, B, C and E. It was not part of a functionally integrated built envelope. On the contrary, it was a separate structure. It was a warehouse which had been redeveloped and had its own services and utilities. It seems to me that it was a separate "building" and in my judgment, therefore, the section 5 notice served in relation to Block A was valid.

87. What of Blocks B, C and E? It seems to me that there is little doubt that Blocks C and E should be considered to be a single building. They were built together to a very similar design using similar materials, and most importantly they share a single plant room and have a single entrance and stairwell. It is impossible to access Block C without using the entrance and staircase to Block E. They also share the plant room and utilities. They seem to me to be structures which are within a functionally integrated built envelope.

88. What of Block B? Mr de Waal submits that, if the Blocks as they are cannot function independently, then together they must amount to a single building. It seems to me that that must be true in this case, at least. In order to enable Block B to function separately from Blocks C and E, it would be necessary to install a new plant room and new plant in or under Block B. It seems to me that it cannot have been Parliament's intention, in requiring a transaction to be severed so as to deal with each building separately, that large scale works of this kind should be undertaken. Overall, it seems to me that Block B is part of the same building with C and E. As a result, the section 5 notice in relation to those blocks was valid.

89. As a result, I would allow the appeal.

Arnold LJ:

90. I agree with both judgments.

Lewison LJ:

91. I agree with Asplin LJ that the appeal should be allowed. But as we are differing from a very distinguished deputy judge in *Long Acre* I wish to add some further observations of my own.

92. As Asplin LJ has explained, when a landlord wishes to dispose of any estate or interest affecting relevant premises, the obligation to serve an offer notice arises. At that stage the initiative lies with the landlord. It is for him to choose what to include in the offer notice, subject to the obligation to comply with section 5(3). One obvious example would be where the landlord wishes to grant a lease of the roof of a block of flats (together with ancillary rights) for the purpose of development. The notice under

section 5 would relate to that grant alone, and the tenants would have no right to piggy-back on that grant in order to acquire the freehold of the whole block. It is only if the landlord fails to comply with his obligations as regards the offer notice that the initiative passes to the tenants. It is then up to them to decide what to include in the purchase notice.

93. It seems to me, therefore, that some caution is required in applying cases concerning the exercise by tenants of their right to serve a purchase notice (in which the initiative lies with them) to cases where the issue is the validity of a section 5 notice, at a time when the initiative lies with the landlord. Thus even where a built envelope has appurtenances (as in *Denetower*) it is open to the landlord to decide to sell the built envelope alone (i.e. the sale would be a sale of part of a building).

94. In *Long Acre* the landlord had served a single offer notice relating to the whole development. It was the validity of that notice that the deputy judge had to consider. What drove the decision in *Long Acre* was the deputy judge's view that Parliament could not be taken to have intended that common yards, gardens and other appurtenant areas should have to be split into one (or even several parts) in order to satisfy section 5(3). It was that that would have been absurd. In my judgment, all that *Long Acre* actually decided was that in some circumstances, the landlord could not be *compelled* to split amenity land in order to comply with section 5(3). I do not consider that that decision can be taken as establishing that the landlord is not *entitled* to do so.

95. Nor do I consider that *Long Acre* can be said to have held that there is some irreducible minimum in the context of an integrated development which the landlord is not entitled to split up. As Mr Asghar accepted in this case, it would have been open to the landlord in this case to decide to sell, say, Block A alone with or without amenity land. In such a case section 5(3) would not have been engaged, and the offer notice would only have had to encompass Block A.

96. Section 5(3) does not dictate to the landlord *how* a transaction must be severed (apart from the requirement that it must deal with each building separately). In principle, it would be open to a landlord to include some or all of shared amenity land within a notice relating to one building and some or none within a notice relating to another building. The element of compulsion to split up amenity land (and hence the perceived absurdity) does not, in my view, exist. In addition, I consider that in *Long Acre* the deputy judge did not give sufficient weight to the policy (first articulated in the Nugee Report) that tenants should be entitled to the right to buy the reversion *in their block*. That in my judgment is the main purpose underlying the requirement that the proposed transaction be severed so as to deal with each building separately. That is the point made by Aldous LJ in *Kay Green* explaining why the tenants were entitled to purchase despite the omission of the lessees of Parr Court. In my view the absurdity which Staughton LJ had in mind in *Kay Green* was the absurdity of the desire of the lessees of one block in a residential estate to acquire the freehold of their block to be deprived of their right to acquire that freehold by the lack of such desire by the lessees of a different block. Third, I consider that in view of the clear instruction that a notice must deal with each building *separately*, there is no room for reading the singular as including the plural. Fourth, where (as here) the lessees under registered leases have legal easements over the shared amenity areas those easements will remain exercisable, whoever acquires the reversion to those areas. Even where their demise extends to areas adjacent to a different block (as in the case of demised car parking spaces) the demise

will remain enforceable against the new landlord. Whether a demise of a car parking space is contained in a separate document or in the same document as a lease of a flat ought not to make a legal difference. So far as the freehold is concerned, there are a number of mechanisms available for creating any necessary easements. It is for the landlord to draw the contract in accordance with section 8A, which the nominated purchaser is free to accept or decline. In practice there may well be some form of negotiation even though the Act makes no express provision for this. In addition quasi-easements will pass to the purchaser either under section 62 of the Law of Property Act 1925 or under the rule in *Wheeldon v Burrows* (1897) 12 Ch D 31. There are also well-developed principles dealing with the acquisition of easements in the case of simultaneous dispositions of parts of land held in a single title: see Gale on Easements (22nd ed) para 3-161. Fifth, in *Kay Green* this court held (albeit obiter) that if the landlord had complied with its duty to serve a section 5 notice in respect of Tudor Court it would have had to do so on a building by building basis, even though the lessees of Tudor Court had rights over shared amenities. Sixth, in many cases shared facilities will be managed by a management company (which will also administer the service charge) so a change in the reversioner will not disturb the smooth running of the development. Seventh, the interpretation adopted by the deputy judge does not solve the problems identified by the LVT in the *30 Upperton Gardens* case. In short, I consider that to allow the meaning of "building" to encompass a number of free-standing structures as a single building because of their shared use of appurtenances it to allow the tail to wag the dog. I consider, therefore, that *Long Acre* was wrongly decided, and that HHJ Hodge KC's doubts about its reasoning were well-founded.

97. Unlike section 72 (4) of the Commonhold and Leasehold Reform Act 2002, the 1987 Act does not contemplate the possibility of carrying out works to provide independent servicing, so in deciding whether Blocks B, C and E are one building or more than one building the landlord (and hence the court) must take the facts as they are on the ground.

98. As far as the application of the principles to the facts is concerned, I agree with Asplin LJ, for the reasons that she has given that Block A was one building, and Blocks B, C and E were another.

99. Regrettably, there is no satisfactory interpretation of section 5(3) as it stands which avoids inconvenient results. Section 20(4) of the Act gives the Secretary of State power by regulations to make such modifications to any of the provisions in sections 5 to 18 as he considers appropriate. In my view the Secretary of State should give serious consideration to exercising that power at least in relation to section 5(3).