UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2023] UKUT 26 (LC) UTLC Case Numbers: LC-2022-346

Rolls Building, 7 Rolls Buildings, London EC4A 1NL

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RIGHT TO MANAGE – COMMONHOLD AND LEASEHOLD REFORM ACT 2002 - application of right to manage provisions to property comprising part of a terrace of properties – meaning of part of a building in Section 72 of the Commonhold and Leasehold Reform Act 2002

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

BETWEEN:

ASSETHOLD LIMITED

Appellant

-and-

EVELINE ROAD RTM COMPANY LIMITED

Respondent

Re: Flats A, B, C and D,
36 Eveline Road,
Mitcham,
CR4 3LE

Mr Justice Edwin Johnson, The President
Heard on 17th January 2023
Decision Date: 2nd February 2023

Justin Bates, instructed by Scott Cohen Solicitors, for the appellant
Stan Gallagher, instructed by Direct Access for the respondent

The following cases are referred to in this decision:

Ninety Broomfield Road RTM Co. Ltd v Triplerose Ltd [2015] EWCA Civ 282 [2016] 1 WLR 275
41-60 Albert Palace Mansions (Freehold) Ltd v Craftrule Ltd [2011] EWCA Civ 185 [2011] 1 WLR 2425
Settlers Court RTM Co. Ltd v FirstPort Property Services Ltd [2022] UKSC 1 [2022] 1 WLR 519

Introduction

1. This is an appeal and cross appeal against a decision of the First-tier Tribunal Property Chamber (Residential Property) dated 19th May 2022. The appeal and cross appeal concern the ability of the Respondent to acquire the right to manage the property known as 36 Eveline Road, Mitcham CR4 3LE (**"the Property"**) pursuant to the right to manage provisions in the Commonhold and Leasehold Reform Act 2002 (**"the 2002 Act"**).

2. The Property comprises four flats, known as Flat A, Flat B, Flat C and Flat D, each of which is let on a long lease. The Appellant is the freehold owner of the Property. As both parties are appealing the decision of the First-tier Tribunal (**"the FTT"**), it is convenient to refer to the Appellant simply as **"Assethold"**. The Respondent is the company formed to acquire the right to manage the Property. It is convenient to refer to the Respondent as **"the RTM Company"**, but this expression is used subject to the question, which falls to be answered in this decision, as to whether the RTM Company does qualify as an RTM company, within the meaning of the right to manage provisions in the 2002 Act, in relation to the Property.

3. By their decision (**"the FTT Decision"**) the FTT decided that the RTM Company was entitled to acquire the right to manage the Property. Assethold says that the FTT were wrong in this decision, because the Property did not qualify as premises to which the right to manage provisions in the 2002 Act applied, within the terms of Section 72 of the 2002 Act. The RTM Company does not accept that the FTT were wrong in their decision. If the FTT were wrong, the RTM Company contends, by its cross appeal, that the Property still qualified as premises to which the right to manage provisions applied.

4. As matters have developed the single point, or issue on which the appeal and cross appeal turn is a question of statutory construction. Specifically, the question is whether a part of a building can qualify as a self-contained part of a building, within the meaning of Section 72(3), if that part of the relevant building includes within it a part of the building which also qualifies as a self-contained part of the relevant building, within the meaning of Section 72(3). There appears to be no direct court or tribunal authority on this question. In any event, no such direct authority was cited to me.

5. The appeal and cross appeal are made with the permission of this Tribunal (The Deputy President – Martin Rodger KC) granted on 22nd July 2022. The Deputy President directed that the appeal and cross appeal be heard by way of a review of the Decision, with a view to a rehearing.

6. Unless otherwise indicated, all references to statutory provisions in this decision are references to the right to manage provisions in the 2002 Act. Where appropriate, I will use the initials **"RTM"** to refer to the right to manage, as the right to manage is identified and established in Chapter 1 of Part 2 of the 2002 Act. Italics have been added to quotations in this decision.

The Property

7. The Property stands at one end of a terrace of properties which front on to Eveline Road, running from west to east. The Property is the last property at the eastern end of the terrace (**"the Terrace"**). At each end of the Terrace there is a gap between the end of the Terrace and the neighbouring building, so that the Terrace, taken as a whole, is structurally detached

from the neighbouring buildings. The last property on the western end of the Terrace appears to be numbered 46.

8. The Property now comprises the four flats referred to above. There are two adjacent ground floor flats (A and C), and two first and second floor maisonettes above (B and D). Flats A and C each have an area of yard or garden immediately to their rear. Beyond that there are further areas of garden which are demised with, or at least enjoyed with, respectively, each of Flats B and D. Access to these areas of rear garden is obtained by a side gate from the path leading down the east side of the Property.

9. A photograph of the front of the Property which I have seen demonstrates that the Property has the appearance of a pair of semi-detached houses, with each house having different external decoration. This division is maintained through the remainder of the Property, in the sense that, on the western side, there is a Flat A, with Flat B above, while on the eastern side there is Flat C, with Flat D above. It is convenient to refer to these two parts of the Property, collectively, as **"the Parts"**, and to refer to the parts, individually, as the **"the Western Part"** (Flats A and B) and **the "Eastern Part"** (Flats C and D).

10. The history of the Property is not entirely clear. Planning permission was granted in September 2014 for various works, comprising the erection of a single storey rear extension, a two storey side extension including rear roof extensions, and the creation of the four Flats. Given the different appearance of the frontages of the Parts and looking at both the terms of the planning permission and the photographs of the Property which I have seen, what I infer, and find to have happened is as follows. The Property originally comprised only the Western Part, which was a single house. Pursuant to the planning permission the Eastern Part was then added, the ground floor rear extension was constructed to both Parts, the roof was extended upwards to create a second storey to the Property, and the four Flats were created within the extended envelope of the Property.

11. The freehold title to the Property is registered under three separate registered titles. The registered proprietor of each of these titles is Assethold. Assethold acquired the freehold titles to the Property in 2018, and was registered as proprietor of the freehold titles on 25th February 2019. The registered freehold titles disclose that the existing long leases of the Flats were granted in 2014/2015, with the exception of the lease of Flat A, a copy of which I have seen, which was granted on 4th March 2016. The dates of the grant of these leases are broadly consistent with the extension and conversion of the Property into flats pursuant to the planning permission granted in September 2014.

Section 72

12. In order to understand the issues in the appeal and the cross appeal, and in order to understand the proceedings in the FTT, it is necessary to have in mind the terms of Section 72, which identifies the premises to which Chapter 1 of Part 2 of the 2002 Act (the RTM provisions) applies. Section 72 is in the following terms:

> *"(1) This Chapter applies to premises if—*
>
> *(a) they consist of a self-contained building or part of a building, with or without appurtenant property,*
> *(b) they contain two or more flats held by qualifying tenants, and*

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

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

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

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

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

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

13. For present purposes it is sufficient to note that, subject to the exemptions set out in Schedule 6, the RTM provisions apply to two categories of premises, provided that the conditions in sub-paragraphs (b) and (c) of subsection (1), concerning tenants and flats, are met. The first category of premises comprises self-contained buildings, which are required, by subsection (2), to be structurally detached. The second category of premises comprises self-contained parts of buildings, which are required to meet the physical criteria set out in sub-paragraphs (a), (b) and (c) of subsection (3).

14. I will use the expression **"Qualifying Premises"** as a general form of reference to premises which satisfy the requirements of Section 72. I will refer to the specific physical criteria set out in sub-paragraphs (a), (b) and (c) of Section 72(3) as **"the Division Criteria"**.

The FTT Decision

15. The RTM Company gave notice to Assethold of its claim to acquire the right to manage the Property by claim notice dated 28th July 2021. The notice identified the premises in respect of which the claim (**"the RTM Claim"**) was made in the following terms (the bold print is in the original text):

> *"**EVELINE ROAD RTM COMPANY LIMITED** ("the company") of **Flat 5 Briar Court, 440 London Road, London, SM3 8JE** and of which the registered number is **13451494** in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") claims to acquire the right to manage **the premises known as the building or part of a building containing Flats A, B, C & D at 36 Eveline Road, Mitcham CR4 3LE** ("the premises")."*

16. Assethold responded with a counter-notice denying the right of acquisition. Paragraphs 1 and 2 of the counter-notice asserted that the RTM Company was not entitled to acquire the right to manage on the following grounds:

> *"1. I allege that, by reason of Section 72(1) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002, on 10 August 2021, Eveline Road RTM Company Limited ("the company") was not entitled to acquire the right to manage the premises specified in the claim notice because these are not premises to which the section applies.*
>
> *2. I allege that, by reasons of Section 73(2) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 on 10 August 2021, Eveline Road RTM Company Limited ("the company") was not entitled to acquire the right to manage the premises specified in the claim notice because the Company is not a RTM company as defined by that section."*

17. On 19th October 2021 the RTM Company made an application to the FTT, pursuant to Section 84(3), for a determination that it was on the relevant date (the date when the notice of claim was given) entitled to acquire the right to manage the premises. The premises were identified in the application notice as Flats A, B, C and D at the Property.

18. This application (**"the RTM Application"**) came before the FTT, for a determination on the papers. There was a bundle of documents before the FTT, but there was no evidence in the form of witness statements or expert reports. The FTT had the benefit of statements of case from the parties, setting out their cases on the RTM Application. These statements of case were as follows. The RTM Application was accompanied by a statement of case. Assethold responded with a statement of case. The RTM Company served a further statement of case in reply, to which Assethold responded with a further statement of case in response.

19. The essential issue which emerged from these statements of case can be summarised as follows:

    (1) Assethold asserted that the Property comprised two separate buildings, each of which qualified as a set of premises within the meaning of Section 72(1).

    (2) As such, so Assethold contended, the RTM Claim was not validly made, and the RTM Company was not validly constituted. Assethold relied upon the decision of the Court of Appeal in *Ninety Broomfield Road RTM Co. Ltd v Triplerose Ltd* [2015] EWCA Civ 282 [2016] 1 WLR 275 (***"Broomfield"***), as authority for the proposition that an RTM company could not make an RTM claim in respect of more than one set of Qualifying Premises, as Qualifying Premises are defined in Section 72.

    (3) In response to this case, the RTM Company contended that the Property was quite clearly a self-contained building or self-contained part of a building, within the meaning of Section 72. The RTM Company also took the point that if the Property constituted a set of Qualifying Premises, it did not matter if the Property also contained, within itself, parts of the Property which were also Qualifying Premises. The RTM Company relied upon the decision of the Court of Appeal in *41-60 Albert Palace Mansions (Freehold) Ltd v Craftrule Ltd* [2011] EWCA Civ 185 [2011] 1

WLR 2425 (***"Craftrule"***), as authority for the proposition that an RTM claim did not have to be made in relation to the smallest part of a building which constituted a set of Qualifying Premises within the relevant building, but could be made in relation to a part of a building which (i) constituted a set of Qualifying Premises but (ii) also contained, within that part, a smaller set of premises or smaller sets of premises which also constituted Qualifying Premises.

20. In the FTT Decision, as I have said, the FTT decided that the RTM Company was entitled to acquire and had acquired the right to manage the Property. The essential reasoning of the FTT can be summarised in the following terms:

    (1) The FTT determined that the Property comprised a single building for the purposes of the 2002 Act (paragraph 7).

    (2) The FTT expressed themselves satisfied that the RTM Company had complied with the statutory requirements for making a right to manage claim (paragraph 8).

    (3) The FTT then set out Section 72 (paragraph 9).

    (4) The FTT then stated that they accepted that the Property had initially comprised two terraced houses. The FTT recorded that no evidence had been provided by the parties to show the extent of the structural detachment of the Property from the adjacent properties but, since the grant of planning permission the Property had been known by the single address of 36 Eveline Road, and was therefore a single building (paragraph 10).

    (5) The FTT then made a finding that Assethold had consistently treated the Property as one building in the obtaining of insurance. Further, Assethold had treated the Property as a single building for the purpose of obtaining of services and, when making demands for the payment of service charges, at the rate of 25% per Flat, had treated the Property as a single building (paragraph 11).

    (6) The FTT found that Assethold had consistently treated the Property as a single building with a single address, and that the Property differed significantly in character from blocks of flats on an estate, which were characterised as separate buildings for the purposes of the 2002 Act (paragraph 12).

    (7) The FTT concluded by finding that the RTM Company had satisfied them that it was entitled to acquire the right to manage the Property (paragraph 13).

<u>The issues in the appeal and cross appeal</u>

21. Assethold appeals against the FTT Decision on grounds which can be summarised as follows:

    (1) The FTT were wrong to decide that the Property comprises a single building. The Property in fact comprises two sets of Qualifying Premises. Each of the Parts is a set of Qualifying Premises.

    (2) One RTM company cannot make RTM claims in respect of two sets of Qualifying Premises. The RTM company can only make a claim in respect of one set of

Qualifying Premises; see *Broomfield*. RTM claims by the same RTM company in respect of more than one set of Qualifying Premises are not possible.

(3) *Craftrule* was concerned with the definition of qualifying premises for the purposes of the collective enfranchisement provisions in the Leasehold Reform, Housing and Urban Development Act 1993 (**"the 1993 Act"**). The decision does not apply to the RTM provisions in the 2002 Act. As such, it is not possible to make an RTM claim in respect of a part of a building which itself contains a constituent part or constituent parts which are themselves Qualifying Premises within the meaning of Section 72. In such a situation an RTM Claim can only be made in respect of each such individual constituent part. In the present case therefore an RTM claim could only be made in respect of each of the Parts, and in each case by a different RTM company. An RTM claim could not be made in respect of the Property, because the Property itself contains two sets of Qualifying Premises.

22. The RTM Company cross appeals against the FTT Decision on grounds which can be summarised as follows:

(1) The FTT were right to decide that the Property comprises a single building, and thus a single set of Qualifying Premises.

(2) If however the FTT were wrong in this decision, and the Property in fact comprises two sets of Qualifying Premises, this does not invalidate the RTM Claim. The decision in *Craftrule* does apply to the RTM provisions in the 2002 Act, with the consequence that the Property is itself capable of constituting a set of Qualifying Premises, notwithstanding that the Property also contains constituent parts each of which is a set of Qualifying Premises.

23. As I have said, permission for the appeal and cross appeal were granted by the Deputy President. The Deputy President also directed that the appeal and cross appeal should be heard by way of a review of the FTT Decision, with a view to a rehearing of the RTM Application if the FTT Decision was set aside. The Deputy President also gave further directions for the hearing of the appeal and cross appeal which included permission for each party to adduce the evidence of one witness, who might, but did not need to be an expert.

24. Accordingly, the issues to be determined in the appeal and cross appeal were conveniently divided into three, as follows:

(1) The first issue is the question of whether the FTT Decision should be set aside. If the answer to this question is that the FTT Decision stands, then both the appeal and cross appeal end there. If however the FTT Decision falls to be set aside, then the RTM Application falls to be reheard. On this latter hypothesis the second and third issues arise.

(2) The second issue is a factual issue, and concerns the relationship between (i) the Property and the remainder of the Terrace, and (ii) the Western Part and the Eastern Part. The question is whether the division between the respective properties satisfies the Division Criteria in relation to (i) the Property, and (ii) each of the Parts.

(3) The third issue is the question of statutory construction which has become central to the appeal and the cross appeal. If it is assumed that the division between the Property and the remainder of the Terrace satisfies the Division Criteria in relation to the Property, and if it is also assumed that the division between the Western Part and the Eastern Part satisfies the Division Criteria in relation to each of the Parts, is it open to the RTM Company to make an RTM claim in respect of the Property as a whole, or is the RTM Company confined to making separate RTM claims in relation to each of the Parts?

25. The first and third issues remain in place, but by the time of this hearing, the second issue had effectively disappeared. The reason for this was that both parties did take advantage of the permission granted by the Deputy President to call one expert witness. The RTM Company served an expert report of Robert Heald FRICS. Assethold served an expert report of Daniel Procter, a building surveyor.

26. In what might have been an unfortunate development, each expert addressed a different question. Mr Heald concerned himself with the relationship between the Property and the remainder of the Terrace or, more specifically, the relationship between the Property and the immediately adjacent property in the Terrace on the western side, which I understand to be the property known as 38 Eveline Road (**"Number 38"**). Mr Heald concluded that the Property, in terms of its relationship with Number 38 (and thus with the remainder of the Terrace) satisfied the Division Criteria. Mr Procter, by contrast, concerned himself with the relationship between the Parts. Mr Procter concluded that each of the Parts, in terms of its relationship with the other Part, satisfied the Division Criteria.

27. At the hearing counsel on both sides sensibly conceded that the conclusions of the expert on the other side should be accepted. This effectively disposed of the second issue I have identified above. I am therefore able to proceed on the basis that each of the Property, the Western Part and the Eastern Part satisfy the Division Criteria. I should also mention that there has been and is no suggestion that any of the exceptions in Schedule 6 would apply either to the Property, or to the Western Part, or to the Eastern Part.

28. If therefore the FTT Decision does fall to be set aside, this leaves only the third issue, which is whether the Property can constitute a set of Qualifying Premises, and thus be the subject of an RTM claim, in circumstances where the Western Part and the Eastern Part also each constitute a set of Qualifying Premises. I will refer to this third issue as **"the Self-Contained Part Question"**.

29. I therefore turn to my discussion of the remaining issues in the appeal.

Should the FTT Decision be set aside?

30. I did not hear a great deal of argument on this issue. Mr Bates addressed me only briefly. Mr Gallagher, quite reasonably, did not feel able to concede that the FTT Decision should be set aside, but sensibly decided to concentrate his submissions on the Self-Contained Part Question.

31. Mr Gallagher's decision was a sensible one because, with due respect to the FTT, it seems to me that the FTT Decision does fall to be set aside. I do not think that the reasoning of the FTT can stand.

32. My reasons for this conclusion are essentially the same as those articulated by the Deputy President in his decision granting permission for the appeal and cross appeal. My reasons are as follows.

33. The essential reasoning of the FTT, by which they reached their decision on the RTM Application, is to be found in paragraphs 7-13 of the FTT Decision, the content of which I have already summarised. In paragraphs 7 and 8 the FTT stated what I take to be conclusions; namely that the Property constituted a single building for the purposes of the 2002 Act and that the RTM had complied with the statutory requirements for making an RTM claim. It therefore becomes necessary to look at the following paragraphs of the FTT Decision in order to identify the reasons for that conclusion.

34. At paragraph 9 the FTT set out Section 72, which identifies what premises, subject to the exceptions in Schedule 6, constitute Qualifying Premises.

35. In paragraphs 10 and 11 the FTT made reference to the Property having a single address, since its conversion to the four flats. The FTT also made reference to what was said to have been Assethold's consistent treatment of the Property as a single building for the purposes of insurance and services. In paragraph 12 the FTT made findings (i) that Assethold had consistently treated the Property as a single building with a single address, and (ii) that the Property differed significantly in character from blocks of flats on an estate and characterised as separate buildings for the purposes of the 2002 Act. In paragraph 13 the FTT then stated, or restated their conclusion that the RTM Company had satisfied the FTT that it was entitled to acquire the right to manage.

36. The tests which are set out in Section 72 for the two categories of Qualifying Premises, namely self-contained buildings and self-contained parts of buildings, are physical tests. They depend upon the structure of the relevant premises and, in the case of self-contained parts of buildings, upon the ability to carry out independent redevelopment of that part and upon the nature of the services provided to that part.

37. As can be seen the FTT did not apply these physical tests. Instead, the FTT made reference to the address of the Property and to what was said to have been Assethold's treatment of the Property. It seems to me that none of the matters considered by the FTT in paragraphs 10, 11 and 12 had any relevance to the matters which the FTT were required to consider, for the purposes of the test in Section 72. Put more simply, it seems to me that the FTT failed to apply to the Property the test in Section 72.

38. Beyond this, and so far as this is relevant, it is not clear what evidence there was to justify the finding that Assethold had consistently treated the Property as a single building. Assethold only acquired the Property in 2018, and was registered as proprietor of the freehold titles to the Property in 2019. There was no witness evidence, lay or expert, before the FTT. In terms of the documents which were before the FTT, I have seen some documents, which I understand to have been the same documents as were before the FTT, which relate to the management of the Property. It seems to me that these documents did

not provide any proper basis for a finding that Assethold had consistently treated the Property as a single building. It is true that the Property has and has had a single address. Although I have not seen all the leases of the Flats, it is my understanding that the service charge structure of the Flats is that the service charge costs incurred in relation to the Property are shared between the tenants of the Flats, with each tenant paying 25% of those service charge costs. It seems to me however that these matters were not a reliable basis for the finding, in paragraph 12, that Assethold had *"consistently treated the subject premises as a single building"*. It seems to me that the only finding which the FTT was in a position to make in this respect was that the Property had had a single address, since its extension and conversion into four flats pursuant to the planning permission granted in September 2014. Indeed, in this respect the FTT seem to me to have been wrong in stating, in paragraph 10, that the Property had originally comprised two terraced houses with two different addresses. My own finding is that the Property originally comprised only the Western Part, known as 36 Eveline Road, which was then extended to create what is now the Property.

39. What I have said in my previous paragraph is of course subject to the prior, and more important point that the finding made by the FTT in paragraph 12, whether right or wrong, seems to me to have been irrelevant to the test, in Section 72, which the FTT were required to apply.

40. The FTT also stated in paragraph 12 that the Property differed significantly in character from blocks of flats on an estate, which were characterised as separate buildings for the purposes of the 2002 Act. I do not understand this point. Plainly, the Property is not of the same character as a block of flats, whether on an estate comprising several blocks of flats or standing on its own. I do not however see how this statement was relevant to the application to the Property of the test in Section 72.

41. In summary, and bearing in mind that at this stage of this decision I am engaged in a review of the FTT Decision and not a rehearing, I do not think that the reasoning of the FTT can be upheld. In my judgment, and with due respect to the FTT, their reasoning was seriously flawed and cannot be upheld.

42. I therefore conclude that the FTT Decision falls to be set aside. This therefore clears the way for the rehearing of the RTM Application in this Tribunal. As I have explained, the remaining issue in the RTM Application and the issue on which the RTM Application now turns is the Self-Contained Part Question.

43. There is one other point which is conveniently made in this section of this decision, before I come to my discussion of the Self-Contained Part Question. The point is relevant to my discussion of the Self-Contained Part Question. It seems to me that one of the matters which may have contributed to the flawed reasoning of the FTT in the FTT Decision was their failure to draw an important distinction in the context of Section 72.

44. As I have already noted, Section 72 applies to two categories of Qualifying Premises, namely self-contained buildings and self-contained parts of buildings.

45. So far as the Property is concerned, it is not structurally detached from Number 38. On its western side the Property shares a party wall with Number 38. As such, the Property is not structurally detached from the remainder of the Terrace.

46. Turning to the Terrace, I have not had the opportunity to inspect the Terrace, so I do not know this for certain, but the plans and photographs which I have seen suggest two features of the Terrace, both of which one would expect to find in a terrace of properties of this kind. The first feature is that none of the other properties in the Terrace are structurally detached from each other. In the usual way, the properties within the Terrace form a line of properties, structurally attached to each other. The second feature is that the Terrace itself is structurally detached from the buildings nearest to the Terrace. By way of example, the photographs and plans I have seen show a gap between the eastern end of the Terrace and the neighbouring building. In theory, there might be a feature such as an underground car park which runs under a part of the Terrace and an adjacent property, thereby comprising a structural link between the Terrace and the adjacent property. There is however no evidence of this, and it would be surprising to find such a feature in relation to a terrace of properties of this kind. In any event it is clear on the evidence that there is no such structural feature which affects the Property or the eastern end of the Terrace.

47. Returning to the Property it is now agreed that the Division Criteria are satisfied in respect of the Property, in terms of its relationship with Number 38, and thus the remainder of the Terrace. The eastern side of the Property comprises the eastern flank wall of the Terrace, with no structural attachment to the neighbouring building, with the consequence that the Division Criteria are not relevant in relation to the eastern side of the Property.

48. In relation to the Parts it is also now agreed that the Division Criteria are satisfied in relation to each Part, in terms of their relationship with each other and, in the case of the Western Part, in terms of its relationship with Number 38 and thus the remainder of the Terrace.

49. The above analysis has the following consequences:

    (1) For the purposes of Section 72 neither the Property nor the Parts can qualify as a self-contained building, within the meaning of Section 72. Neither the Property nor the Parts are structurally detached. If there is a self-contained building in the present case, for the purposes of Section 72, it can only be the Terrace. It is convenient to assume, for the purposes of my discussion of the Self-Contained Part Question, that the Terrace is a self-contained building for the purposes of Section 72. It seems highly unlikely that it has any structural attachment to any neighbouring property which would disqualify it from constituting a self-contained building for the purposes of Section 72.

    (2) If therefore the Property falls within the terms of Section 72, it can only be as a self-contained part of a building, namely the Terrace.

    (3) The same applies to the Parts. If they each fall within the terms of Section 72, it can only be as self-contained parts of a building, namely the Terrace.

50. I have taken some time to spell out the above distinction between a self-contained building and a self-contained part of a building because a failure to maintain this distinction can lead to confusion and, as it seems to me, did operate to confuse the reasoning of the FTT in the FTT Decision.

The Self-Contained Part Question – the arguments of the parties

51. It is convenient to start with a brief summary of the rival arguments of the parties, as advanced by counsel at the hearing. I stress that this is only a brief summary. It is not a comprehensive statement of the written and oral arguments of counsel, all of which I have taken into account.

52. For Assethold, Mr Bates contended that, on its true construction, Section 72 does not include self-contained parts of buildings which themselves contain a self-contained part of the relevant building or self-contained parts of the relevant building. In such a case, an RTM claim can only be made in relation to those self-contained parts of the relevant building which are themselves indivisible; that is to say not capable of further division into a smaller self-contained part or self-contained parts.

53. If this argument is correct, it would apply in the present case to disqualify the Property from comprising a set of Qualifying Premises. This would be because the Property, although a self-contained part of the relevant building (which I am assuming to be the Terrace), is itself comprised of the Parts, each of which also comprises a self-contained part of the relevant building (the Terrace). There is no facility under the 2002 Act to amend the premises in respect of which the RTM Claim has been made. Equally, an RTM Company can only exist in respect of a set of premises which comprise Qualifying Premises. As such, the RTM Claim is invalid. The solution to this problem, so Mr Bates submitted, was for separate RTM claims to be made, in respect of each of the Parts. The tenants of the Parts could then co-operate with each other, through the two RTM companies making these claims, to achieve a unified management of the Property.

54. Mr Bates relied upon *Broomfield* as authority for the proposition that the same RTM company cannot make RTM claims in respect of multiple sets of Qualifying Premises. From this he extrapolated the point that an RTM claim could not be made in respect of a self-contained part of the building which itself contained a self-contained part or self-contained parts of the same building. Such a claim would, so he submitted, infringe the principle of an RTM company not being able to make a claim in respect of more than one set of Qualifying Premises, established in *Broomfield*.

55. In support of his case on statutory construction Mr Bates submitted that the RTM provisions in the 2002 Act had to be read as a whole, and construed in accordance with the overall scheme of these provisions. Mr Bates took me through a number of the provisions in Chapter 1 of Part 2 of the 2002 Act. Mr Bates commenced with Section 71, which provides as follows:

> *"(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).*
>
> *(2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage."*

56. Mr Bates submitted that Section 71 introduces, in Chapter 1, a self-contained complete code governing the acquisition and exercise of rights to manage. The only qualification to this is

that there are supplementary provisions in certain of the Schedules to the 2002 Act and in subordinate regulations.

57. In this context the principal point made by Mr Bates was that the scheme of the 2002 Act, in marked contrast to the 1993 Act, does not permit successive RTM claims to be made in respect of the same premises. Mr Bates took this point from Section 73(4). Section 73 specifies what is an RTM company. It is convenient to set out the whole of Section 73:

> *"(1) This section specifies what is a RTM company.*
>
> *(2) A company is a RTM company in relation to premises if—*
> *(a) it is a private company limited by guarantee, and*
> *(b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.*
>
> *(3) But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).*
>
> *(4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.*
>
> *(5) If the freehold of any premises is transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the transfer is executed."*

58. As can be seen, RTM companies exist in relation to premises. An RTM company can only be established in relation to a set of premises to which Chapter 1 applies; that is to say to a set of Qualifying Premises. Once an RTM company is established in relation to a set of premises there cannot be a further RTM company in relation to those premises. This is prohibited by Section 73(4). The prohibition extends beyond simply the same set of Qualifying Premises. The later RTM company cannot be an RTM company either in relation to the premises in relation to which there is an existing RTM company or in relation to premises containing those premises or in relation to premises contained within those premises.

59. In consequence, as Mr Bates explained, once a successful RTM claim has been made, the tenants of the relevant premises are stuck with the RTM company. A sub-group of these tenants cannot break away, even if tenants of their own self-contained part of the relevant premises, by making their own RTM claim. This, so Mr Bates submitted, was a powerful indication that Section 72 was not intended to include self-contained parts of buildings which themselves contained self-contained parts of the same buildings. This also helped to explain, so Mr Bates submitted, why it was wrong to apply the decision in *Craftrule* to the construction of Section 72. *Craftrule* was concerned with different types of rights, in a different Act, which operate in a significantly different fashion.

60. Mr Bates thus submitted that the appeal must be allowed, and the cross appeal dismissed. The Property is not a set of Qualifying Premises, the RTM Company is not therefore an RTM company, and the RTM Claim is invalid.

61. Turning to the RTM Company's case Mr Gallagher, if I can put matters this way, kept things simple. His essential argument was that the limitation which Mr Bates sought to impose upon the terms of Section 72 was not one which could be extracted from the language of the Section. Mr Gallagher pointed out that each of the Property, the Western Part and the Eastern Part fell within the definition of a self-contained part of a building in Section 72. In order to exclude the Property from this definition, words of exclusion were required in Section 72, excluding a self-contained part of a building, such as the Property, which itself contained a self-contained part or self-contained parts of the same building. There are no such exclusionary words in Section 72, so Mr Gallagher submitted, and they cannot be read into Section 72 without resorting to the illegitimate device of writing additional words into the Section. This construction of Section 72 was supported by the decision in *Craftrule*. As a matter of statutory construction therefore, so Mr Gallagher submitted, the appeal must fail and the cross appeal should be allowed.

Broomfield

62. Before I come to my discussion of the Self-Contained Part Question, it is convenient to explain what was decided in *Broomfield* and *Craftrule*. I start with *Broomfield*.

63. *Broomfield* involved three RTM claims which were heard together in the Upper Tribunal, whose decision was appealed to the Court of Appeal. A fourth case was also heard in the Upper Tribunal, but not appealed. Each of the three cases involved RTM claims in respect of multiple blocks of flats which were structurally detached from each other. In two of the cases (90 Broomfield Road and Garner Court) there were two blocks of flats, in each case on land in the same freehold ownership. In each case the two blocks, which were structurally detached from each other, were managed together by the landlord and shared facilities. In the third case (Holybrook Estate) there were seven blocks of flats on the same residential estate, in the same freehold ownership. It was claimed by the RTM company that the whole estate had been managed as one entity.

64. The question in each case was whether one RTM company could make multiple RTM claims in respect of each of the blocks of flats on the relevant land/estate. The Upper Tribunal decided that this was permitted. As long as each block qualified for the right to manage, so the Upper Tribunal reasoned, there was nothing to prevent one RTM company acquiring the management of more than one set of Qualifying Premises. The Upper Tribunal also decided that it was open to an RTM company to serve one claim notice in respect of several sets of Qualifying Premises although, as I understand the facts of the three cases, each of the relevant RTM companies had served individual claim notices for the individual blocks of flats on the relevant land/estate.

65. The Court of Appeal disagreed with the conclusions of the Upper Tribunal. The Court of Appeal decided that the references to *"the premises"*, both in Section 72 and elsewhere in the RTM provisions in the 2002 Act, meant a single self-contained building, or a single part of the building. Gloster LJ, with whose judgment Patten LJ and Sir David Keene agreed, expressed her conclusions in the following terms, at [62]:

> *"62 Accordingly in my judgment the relevant provisions of the Act, construed as a whole, in context, necessarily point to the conclusion that the words "the premises" have the same meaning wherever they are used (save where otherwise expressly*

provided). That means that the references in section 72 to "premises" are to a single self-contained building or part of the building, and that likewise references to "the premises" or "premises" or "any premises" in sections 73, 74, 78, 79 and other provisions of the Act are likewise references to a single self-contained building or part of the building. That interpretation is consistent with the provisions for model articles contained in the Regulations and is the only basis on which the machinery for acquisition of the right to manage can operate. Accordingly in my view it is not open to a RTM company to acquire the right to manage more than one self-contained building or part of a building and the Upper Tribunal was wrong to reach the decision which it did."

<u>*Craftrule*</u>

66. *Craftrule* involved a collective enfranchisement claim, made pursuant to the relevant provisions of the 1993 Act, in respect of a property which formed part of a terraced building comprising 160 flats in all. The building was divided into eight *"handed pairs"*, with each pair comprising 20 flats. Each half of each pair was vertically divided from the other half of the pair. The collective enfranchisement claim was made in respect of one of these pairs.

67. Section 3 of the 1993 Act identifies the premises to which, subject to certain exceptions, the collective enfranchisement provisions apply. As amended by the Housing Act 1996, Section 3 of the 1993 Act is in the following terms:

> *"(1) Subject to section 4, this Chapter applies to any premises if—*
> *(a) they consist of a self-contained building or part of a building;*
> *(b) they contain two or more flats held by qualifying tenants; and*
> *(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.*
>
> *(2) For the purposes of this section a building is a self-contained building if it is structurally detached, and a part of a building is a self-contained part of a building if—*
> *(a) it constitutes a vertical division of the building and the structure of the building is such that that part could be redeveloped independently of the remainder of the building; and*
> *(b) the relevant services provided for occupiers of that part either—*
> *(i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or*
> *(ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building;*
> *and for this purpose "relevant services" means services provided by means of pipes, cables or other fixed installations."*

68. It was not disputed that the property which was the subject of the collective enfranchisement claim in *Craftrule* (the relevant *"handed pair"*) satisfied the requirements of Section 3 of the 1993 Act. The point taken by the landlord was however that the property comprised two parts, namely each part of the handed pair, which themselves satisfied the requirements of Section 3. As such, the landlord contended that the collective enfranchisement claim was

invalid. A collective enfranchisement claim could only be made in respect of the smallest possible self-contained part of a building, which in *Craftrule* meant that collective enfranchisement claims, in respect of the property in dispute, could only be made in respect of each part of the handed pair.

69. The landlord's argument failed at first instance and before Henderson J (as he then was) on first appeal. The case reached the Court of Appeal by second appeal. The Court of Appeal upheld the decision of Henderson J. The Court of Appeal concluded that, in a case where a building contained a self-contained part which satisfied the requirements of Section 3 of the 1993 Act, but also contained within it a smaller self-contained part or smaller self-contained parts, Section 3 effectively gave the relevant tenants the right to choose as to whether to make a collective enfranchisement claim in respect of the larger self-contained part, or to confine the claim or claims to a smaller self-contained part or smaller self-contained parts. Provided that all of the relevant self-contained parts satisfied the requirements of Section 3, any of them could be the subject of a collective enfranchisement claim, provided that the other requirements of the 1993 Act for making a collective enfranchisement claim were satisfied.

70. In reaching this conclusion Smith LJ, with whose judgment Black LJ and Sir Andrew Morritt C agreed, considered various provisions in the 1993 Act which, as she concluded, provided powerful support for the tenants' argument that the 1993 Act did permit a choice between self-contained parts of a building and self-contained parts of the same building within those self-contained parts. Smith LJ summarised her conclusions, prior to dealing with certain subsidiary arguments of the landlord, in the following terms at [21]:

> *"21 In my judgment, sections 4(3A) and 13(8)(9)(10) taken together are conclusive of the true construction of the expression "self-contained . . . part of a building" within section 3(1). I can see no justification for putting a gloss on the clear statutory words so as to require that a self-contained part must be the smallest possible self-contained part."*

71. One of the landlord's subsidiary arguments was that the wording of Section 3 of the 1993 Act was ambiguous, with the consequence that it was permissible to have resort to Hansard. In rejecting this argument, Smith LJ said this, at [25]:

> *"25 In my judgment, on the ordinary natural meaning of the words, the expression "self-contained part of a building" in section 3 includes a self-contained part of a building which is itself capable of being divided into smaller self-contained parts of a building. The words are neither ambiguous nor obscure. Nor does such a meaning lead to absurdity. I would hold that we are not entitled to have regard to Lord Strathclyde's speech."*

<u>The Self-Contained Part Question – discussion</u>

72. The starting point is Section 72 itself. As I have already noted, Section 72 applies to two categories of Qualifying Premises; self-contained buildings and self-contained parts of buildings. A self-contained part of a building is defined in subsection (3). Premises comprise a self-contained part of a building if they satisfy the Division Criteria, which is the expression I am using as a shorthand reference to the requirements in paragraphs (a), (b) and (c) of Section 72(3).

73. As a matter of simple language I find it difficult to see any answer to Mr Gallagher's point that there is nothing to exclude from Section 72(3) a self-contained part of a building which itself contains a self-contained part or self-contained parts of the same building.

74. One can test this by considering the present case. For ease of reference, I repeat the Division Criteria, as they appear in subsections (3) and (4) of Section 72.

> *(3) A part of a building is a self-contained part of the building if—*
> *(a) it constitutes a vertical division of the building,*
> *(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and*
> *(c) subsection (4) applies in relation to it.*
>
> *(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—*
> *(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or*
> *(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.*

75. It is common ground that the Property satisfies the Division Criteria. The Property is vertically divided from the remainder of the building of which it comprises part, namely the Terrace. The Property is capable of redevelopment independently from the remainder of the Terrace. The services provided to the Property are sufficiently independent of the remainder of the Terrace to satisfy the requirements of subsection (4). It is also common ground that none of the exceptions in Schedule 6 apply to the Property. The reason why it is contended that Section 72 does not apply to the Property is because it contains the Parts, each of which also satisfies the Division Criteria and each of which is thus a self-contained part of the Terrace, within the meaning of Section 72. The obvious question which arises in relation to this contention is this. What is there, in Section 72, to exclude the Property on the basis that the Property itself contains two self-contained parts of the Terrace? The Property satisfies the Division Criteria. Where is the provision in Section 72 which imposes the additional requirement that the Property must not itself be comprised of parts of the Terrace which also satisfy the Division Criteria?

76. I agree with Mr Gallagher that there is no such exempting provision or additional requirement to be found in the language of Section 72. I agree that it is necessary, for Assethold's argument to work, to write such a provision into the language of Section 72. This is however to re-write the wording of Section 72, which is not permissible.

77. I do not think that *Broomfield* assists Mr Bates in relation to the construction of Section 72. The issue in *Broomfield* was whether one RTM company could acquire the right to manage more than one set of premises. Gloster LJ commenced her analysis at [45], where she analysed Section 72 in the following terms:

> *"45 Section 71 makes it clear that Chapter 1 of the Act makes provision for the acquisition of the right to manage only in relation to "premises to which this Chapter applies" and only by a company "which, in accordance with this Chapter may acquire*

and exercise those rights." section 72(1) makes it clear that Chapter 1 only applies to premises if they satisfy the three separate conditions set out in sub-paragraphs (a), (b) and (c) of section 72(1). Importantly for present purposes sub-paragraph (a) imposes the condition that the premises "consist of a self-contained building or part of the building", which satisfies the conditions in sub-paragraphs (b) and (c) in relation to qualifying tenants and number of flats held by qualifying tenants. This makes it clear that the acquisition and the exercise of rights to manage applies not, as Mr Woolf originally suggested, to a number of blocks or self-contained buildings in an estate, but to a single self-contained building (i e structurally detached - see section 72(2)) or part of a building."

78. As Gloster LJ went on to point out, this did not settle the question of whether one RTM company could acquire the right to manage more than one set of premises. In order to answer that question it was necessary to consider other provisions of the 2002 Act, as Gloster LJ explained at [46]:

> *"46 That in itself does not determine the question whether one RTM company can acquire the right to manage more than one set of "premises". For the provisions relating to RTM companies one has to look at sections 73 and 74 of the Act and the requirements set out in those sections and in the model articles of association contained in the Regulations."*

79. The conclusions reached by Gloster LJ, following her review of other parts of the 2002 Act and the regulations to which she made reference, were expressed in the following terms, at [51]:

> *"51 None of the detailed provisions of these sections (which require specification of the members of the RTM company) or the machinery for the acquisition of the right to manage makes sense if a RTM company is entitled to a right to manage "premises" in different geographical locations. Similar comments can be made in relation to the requirements of The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (SI 2010/825) which impose additional requirements in relation to, for example, notices of invitation to participate and contents of claims notice or counter-notice. It is impossible to see how these apply if a RTM company is permitted to apply for and exercise management in relation to different premises, whether comprised in the same estate or in different geographical locations. Similar arguments can be made in relation to other provisions of the Act."*

80. Pausing there, none of what was said by Gloster LJ is controversial in the present case. It is common ground that the RTM Company cannot, in the present case, acquire the right to manage in respect of more than one set of premises. The relevant set of premises in the present case is the Property. It can of course be said that the RTM Claim has in fact been made in respect of two sets of premises; namely the Parts. This however seems to me to beg the question. If the Property can qualify as a single set of premises for the purposes of Section 72, and it seems to me quite clear from the language of Section 72 that the Property can so qualify, it is hard to see why the Property should then be disqualified because it also comprises two sets of premises, namely the Parts, to which Section 72 also applies. This was not the situation which the Court of Appeal was considering in *Broomfield*, and it does

not seem to me that the decision of the Court of Appeal can be said to have been directed to this situation.

81. The real point made by Mr Bates in relation to *Broomfield* was however a different one. Following the conclusions stated at [51] Gloster LJ went on to consider the practical problems created if one RTM company could make RTM claims in respect of a number of blocks of flats or separate buildings within the same estate. These problems were explained in the following terms, at [52]:

> *"52 Mr Rainey also pointed to the real practical problems which would arise if the Upper Tribunal's decision was correct and the right to manage was extended to include a number of blocks or separate buildings within the same estate. He gave the following examples: (i) where two blocks of different sizes were managed by one RTM company, it was likely that the members belonging to the larger block would dominate decisions referable also (or even solely) to the smaller block; the possibility of such domination remained even if the blocks were of similar size. As he explained, although day-to-day decisions would be made by the directors (see article 8 of the model articles), there was no requirement that each block should have a director; if members wished to limit the powers of the directors, a special resolution had to be passed (see article 9); that required a majority of not less than 75%, passed by members representing not less than 75% of the total voting rights of eligible members: section 283 of the Companies Act 2006. Hence, the larger block could easily prevent the smaller block building in protection by fettering the powers of the directors. (ii) There was obvious potential for conflict of interest between the leaseholders of different blocks on a range of matters which were, in context, of considerable importance to leaseholders (particularly those who had shown the interest to exercise RTM); for example: (a) one block might want to increase service charges whereas the other might not; (b) one block might wish to grant approvals for, e g sub-letting to periodic tenants14, whereas the other might not; (c) one block might wish to undertake major works (e g at a particular time) whereas the other might not; (d) estate rules and Regulations might be varied to benefit one block at cost of another, e g allocation of parking, storage use of gardens, etc"*

82. Mr Bates stressed what was then said by Gloster LJ, at [53], where reference was made to Section 73(4); the provision which was central to Mr Bates' argument:

> *"53 He further correctly pointed out that, in the event that this sort of situation was to arise, the acquisition of the right to manage could not be exercised against an existing RTM company (see section 73(4) of the Act), so that the leaseholders in the smaller block would in practice be fixed with the choice of the RTM company for all time. The only way in practice to change the situation would be to apply to the appropriate tribunal to appoint a manager under Part 2 of the Landlord and Tenant Act 1987, which was a complex and costly process, in the case of a small block of four or five flats probably prohibitively so. However attractive it might seem superficially for a smaller block to have joined in a single, estate-wide RTM, in reality this meant that the smaller block could not achieve the objective of self-management which was at the purpose of the provisions."*

83. Gloster LJ expressed her acceptance of these points in the following terms, at [54]:

"54 I find these submissions persuasive and reject the applicants' arguments to the contrary about the possible practical difficulties of two or more blocks on the same estate being under the management of different RTM companies. For my part I consider that the provisions of the Act are adequately clear and are strongly supported by the type of practical considerations to which Mr Rainey referred. With respect I disagree with the Upper Tribunal's proposition that the "only" way to achieve the purpose of the legislation, in a situation where a number of different self-contained buildings had been managed together and share appurtenant property, was to give the statutory provisions a purposive construction, so as to enable one RTM company to exercise the right to manage in respect of multiple buildings. In my judgment there is no basis in the statutory provisions that justifies such a conclusion. Indeed, as Mr Rainey pointed out, from a practical point of view there would be nothing to prevent two or more RTM companies, which were established in relation to separate blocks on the same estate, from entering into an agreement to delegate management to one of the RTM companies, or indeed a third party manager, to act on behalf of both or all: the articles explicitly provide for delegation; RTM companies can also appoint agents. Moreover in my judgment the Upper Tribunal's conclusion (viz that a composite right to manage a number of separate premises could be acquired by a RTM company) wrongly paid no regard to the consequential dilution of the rights of members who were qualifying tenants of individual premises. Such dilution was simply not justified by the relevant provisions of the Act or the Regulations."

84. The essential point made by Mr Bates was that this reasoning is directly transferable to the present case. If the tenants within a self-contained part of a building, which itself is made up of self-contained parts of the same building, can instigate an RTM claim, the same practical problems arise as impressed Gloster LJ. There is the same risk of oppression of a minority of tenants in one of the component self-contained parts of the larger self-contained part. Most critically, there is the same inability for such a minority of tenants to break away and make their own RTM claim in respect of their own self-contained part of the relevant building. Section 73(4) prohibits such a break away claim.

85. It seems to me however that there are difficulties with this argument. I accept Mr Bates' submission that Section 71 introduces, in Chapter 1 of Part 2 of the 2002 Act, a complete and self-contained code for the exercise and operation of rights to manage (subject to the supplementary provisions to be found in the Schedules and subordinate legislation). I also accept Mr Bates' submission that it is necessary to construe Section 72 in the context of the RTM provisions as a whole, and that it is necessary to look at the purpose of the RTM legislation as a whole in order to determine whether, either by virtue of Section 72 or by virtue of some other provision or provisions or by virtue of a combination of Section 72 and some other provision or provisions, RTM claims are not permitted in relation to a self-contained part of a building which has within it a self-contained part or self-contained parts of the same building.

86. As I have pointed out however, I cannot find any such restriction in the wording of Section 72, and I do not consider it possible to write such an additional restriction into Section 72. Mr Bates was not able to direct me to any other provision of the 2002 Act which can be said, at least in express terms, to constitute such a restriction. In these circumstances, where it seems to me that the statutory language is perfectly clear in not containing such an additional restriction, I am doubtful that arguments based on the operation and effect of the RTM

provisions can supply a restriction which Parliament has not itself supplied. In the case of *Broomfield* it seems to me that the question of statutory construction was rather different, and not so straightforward. There was scope for argument as to whether the RTM provisions did permit an RTM company to make an RTM claim in respect of more than one set of premises. That required an analysis of the RTM provisions. In the present case one is essentially asking whether, anywhere in the RTM provisions, one can find the additional restriction in the case of self-contained parts of buildings which is contended for by Mr Bates. I am not able to find any such additional restriction anywhere in the RTM provisions.

87. Beyond this however, and whether or not I am right in drawing a distinction between the present case and *Broomfield*, in terms of the nature of the question of statutory construction which arises, I do not accept that the practical considerations which were identified in *Broomfield* have anything like the same force in the case of self-contained parts of buildings. In *Broomfield* Gloster LJ was considering the practical problems which could arise if one RTM claim could be made in respect of different blocks of flats. The tenants of one block of flats could find themselves saddled with an unwanted management regime, from which they could not escape by making their own RTM claim. Their only means of escape would be an application for the appointment of a manager pursuant to the provisions of Part 2 of the Landlord and Tenant Act 1987, which would be a cumbersome and expensive process.

88. In the case of self-contained parts of the same building, these objections seem to me to lose their force. As Gloster LJ explained, at [53], the purpose of the RTM provisions is to achieve the objective of self-management. In the case of a building, an RTM claim may be made which a minority of the tenants in the building may not want and cannot break away from. In the case of a self-contained part of the building an RTM claim may be made which a minority of the tenants in the self-contained part may not want and cannot break away from. Situations of this kind are an inherent risk in the way the RTM provisions operate. If however there is a self-contained part of a building, it is hard to see how the objective of the RTM provisions is achieved in the case of a self-contained part which is not further divisible into self-contained parts, but is not achieved in the case of a self-contained part which is divisible into smaller self-contained parts. In each case the RTM claim will be made in relation to a self-contained part of a building. This is quite clearly what the RTM legislation was intended to achieve. The risk of a minority of tenants having a management regime foisted on them which they do not want and cannot escape from is a risk which exists in each of the cases which I have just identified, and seems to me to be a risk which is inherent in the operation of the RTM provisions. It is one thing for the tenants of one block of flats to impose their RTM regime on a separate block of flats. It seems to me a rather different thing for the tenants of a self-contained part of a building to impose their RTM regime on all parts of their self-contained part of the building. The latter is an inherent feature of the way in which the RTM provisions work.

89. In summary, I do not think that there is anything in the scheme of the RTM provisions in the 2002 Act which supports the argument that an RTM claim cannot be made in respect of a self-contained part of a building which itself contains a self-contained part or self-contained parts of the same building. Nor do I think that *Broomfield* provides support for this argument.

90. In this context I should make brief reference to the decision of the Supreme Court in *Settlers Court RTM Co Ltd v FirstPort Property Services Ltd* [2022] UKSC 1 [2022] 1 WLR 519,

to which Mr Gallagher made reference in his submissions. The case involved a residential estate comprising ten blocks of flats, freehold houses and communal areas. A management company was responsible for the management of the estate. The tenants of one of the blocks of flats formed an RTM company and made an RTM claim in respect of their block. The issue which found its way to the Supreme Court in *Settlers Court* was whether the RTM company was entitled to share in the management of the estate services provided by the management company and whether, in the absence of agreement between the RTM company and the management company as to the terms on which the cost of providing those services was to be allocated, the tenants of the relevant block were required to pay any estate charges at all to the management company.

91. The Supreme Court allowed the appeal of the management company, which was made directly from the Upper Tribunal. Lord Briggs JSC, with whose judgment the other members of the Supreme Court agreed, decided that on the true construction of the RTM provisions in the 2002 Act the right to manage was confined to that which the RTM company could manage on its own, namely the structure and facilities within the relevant building or the relevant part thereof, and, where they existed, those facilities outside the relevant building which were used exclusively by the occupants of the relevant building or the relevant part thereof. This did not include assuming the management of shared estate facilities. The statutory scheme made no provision for an RTM company to take over such shared facilities, and such rights would be produce absurd and unworkable results.

92. Mr Gallagher sought to rely on *Settlers Court* as *"authoritative and on point"*. I understood Mr Gallagher's argument to be that in a case such as the present case, where an RTM claim is made in respect of a part of a terrace of properties, no difficulties arise of the sort which arose in *Settlers Court*. Where an RTM claim is made in respect of a part of the terrace, all of the tenants will be entitled to be members of the RTM company, and can thus control the management of their part of the terrace. The right to manage is confined to the relevant part of the terrace.

93. I do not accept this part of Mr Gallagher's argument, which seems to me to miss the point of Mr Bates' submissions. That point is that if an RTM claim can be made in respect of a self-contained part of a building which itself is comprised of smaller self-contained parts of the same building, there is a risk of a minority of tenants in one of the smaller self-contained parts of the building finding themselves subject to management by an RTM company which they cannot control, do not want and, critically, cannot escape from save by the expensive and difficult route of trying to have a manager appointed pursuant to the provisions of Part 2 of the Landlord and Tenant Act 1987. I have decided that this argument of Mr Bates is not sufficient to produce the result for which he contends, but I would accept that *Settlers Court* is not conclusive against his argument; being concerned with a different point.

94. That said, I think that the reasoning of Lord Briggs does have some relevance to the Self-Contained Part Question. In the course of his judgment Lord Briggs stressed that the rights to manage created by the 2002 Act are intended to be confined to separate sets of premises, whether buildings or parts of buildings. They are not intended to encroach into areas subject to shared management with other sets of premises. In the conclusion to his judgment, at [62], Lord Briggs summarised the position in the following terms:

> *"I consider that the right to manage scheme in Chapter 1 of Part 2 of the 2002 Act makes no provision within the statutory right to manage for management by the RTM company of shared estate facilities. It is concerned only with management of the relevant premises, that is the relevant building or part of a building, together with appurtenant property (if any) which means nearby physical property over which the occupants of the relevant building (or part) have exclusive rights. The right to manage is an exclusive right in the RTM company to manage the relevant premises, and no provision is made in Chapter 1 for any shared management of anything, save only where the RTM company chooses to agree otherwise."*

95. This seems to me to provide indirect support for a point which I have already made in the context of *Broomfield* and, in particular, in the context of what Gloster LJ said at [53] in her judgment. It is easy to see why the courts have been concerned to confine the rights to manage created by the 2002 Act to the particular premises in respect of which the right to manage has been exercised, together with appurtenant property; meaning nearby physical property over which the occupants of the relevant premises have exclusive rights. In relation to the premises in respect of which the right to manage is exercised, where one is not considering the question of how far the rights to manage extend beyond the relevant premises, the same considerations do not arise. Parliament has chosen to allow tenants, by the formation of RTM companies, to make RTM claims in respect of buildings or parts of buildings. It is simply inherent in the RTM scheme that a minority of the tenants in the relevant premises, whether a building or a self-contained part of the building, may not be supporters of the relevant RTM company taking over the management of the relevant premises. It is equally inherent in the RTM scheme that the minority will have no easy escape route from the new RTM management regime. I cannot see that the policy considerations which influenced Lord Briggs in *Settlers Court* have the same application in relation to an RTM claim in respect of a self-contained part of a building which itself contains smaller self-contained parts of the same building. As Lord Briggs explained, the "*right to manage is an exclusive right in the RTM company to manage the relevant premises"*. The relevant premises include self-contained parts of buildings, without Parliament having drawn a distinction between (i) a self-contained part of a building which itself contains a self-contained part or self-contained parts of the same building and (ii) a self-contained part of a building which cannot be so sub-divided.

96. What I have said so far is sufficient to determine the Self-Contained Part Question. The problems with Assethold's case do not however seem to me to end at this point. There is also the decision of the Court of Appeal in *Craftrule*. I find it difficult to see how this decision can be put to one side in the present case.

97. In this context I start by acknowledging the obvious point that *Craftrule* was concerned with the construction of the collective enfranchisement provisions in the 1993 Act. I accept that, in construing one Act, passed to achieve a particular purpose, it can be misleading to look to the construction of the same or similar provisions in another Act, passed to achieve a different purpose.

98. I also accept Mr Bates' point that the 1993 Act does not have the equivalent ban on successive collective enfranchisement claims which exists, by virtue of Section 73(4), in relation to RTM claims. In relation to the 1993 Act, subsections (8), (9) and (10) of Section 13 provide as follows:

"(8) Where any premises have been specified in a notice under this section, no subsequent notice which specifies the whole or part of those premises may be given under this section so long as the earlier notice continues in force.

(9) Where any premises have been specified in a notice under this section and-
(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter or under Section 74(3), or
(b) in response to that notice, an order has been applied for and obtained under section 23(1),
no subsequent notice which specifies the whole or part of those premises may be given under this section within the period of 12 months beginning with the date of withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 23(1) becomes final (as the case may be).

(10) In subsections (8) and (9) any reference to a notice which specifies the whole or part of any premises includes a reference to a notice which specifies any premises which contain the whole or part of the premises; and in those subsections "specifies" means specifies under subsection (3)(a)(i)."

99. The effect of these provisions is that only one collective enfranchisement claim can exist in relation to a set of premises at one time. For present purposes it is not necessary to go into the way these subsections define such premises. This restriction only applies however while the relevant initial notice of collective enfranchisement *"continues in force"*, as this last expression is defined in the 1993 Act. There is also a 12 month restriction which applies in the case of a withdrawal of a collective enfranchisement claim. Subject to these restrictions however, there is nothing to prevent the tenants of a set of premises making a collective enfranchisement claim in succession to a previously completed collective enfranchisement claim in respect of the same set of premises or in respect of premises containing or contained in those premises. Indeed, the result of this can be a situation where rival groups of tenants in the same block of flats engage in civil war for control of the freehold interest in the block, by the making of successive collective enfranchisement claims. There is nothing equivalent to Section 73(4) to prevent this.

100. As against this, the provisions of Section 3 of the 1993 Act, which I have set out above, are virtually identical to the provisions of Section 72. In particular, a self-contained part of a building is defined in the same way in both Sections.

101. Turning to the reasoning of Smith LJ in *Craftrule*, it is difficult to see why that reasoning is not capable of applying to the Self-Contained Part Question. As Smith LJ stated, in the first part of [10]:

> *"10 The basis of Henderson J's decision was that the statutory language of section 3 was clear and unambiguous. It permitted the enfranchisement of any self-contained part of a building (subject to the exclusions in section 4 which did not apply). There was nothing within the section which suggested that the right attached only to the smallest possible self-contained part. If Parliament had intended to oblige tenants to claim the smallest part of the building to satisfy the requirements of section 3(2) it would have said so."*

102. This analysis of Henderson J, which was upheld by the Court of Appeal, is essentially the argument advanced by Mr Gallagher in the present case, which I have already accepted. It seems to me that what was recorded by Smith LJ, at [10], applies with equal force to the statutory language of Section 72, and confirms that Mr Gallagher is right in his argument.

103. Smith LJ then went on to consider two other provisions or sets of provisions from the 1993 Act which, as she concluded, supported the tenants' argument that the right of collective enfranchisement was not confined to self-contained parts of the building which were themselves indivisible into smaller self-contained parts.

104. Smith LJ first considered subsections (8), (9) and (10) of Section 13 of the 1993 Act, which I have set out above. Her conclusion in respect of these subsections was as follows, at [15-17]:

> *"15 These provisions appear to envisage that a notice which specifies a self-contained part of the building (the whole of the relevant premises which I will call X) may be later replaced by a notice which specifies a different self-contained part of the building (which I will call Y) where Y is only a part of X. In that event, Y is necessarily a smaller part of the building than X. Therefore if notices in respect of both X and Y are potentially valid, it follows that a self-contained part of a building (for the purposes of section 3) cannot be limited to the smallest possible self-contained part.*
> *16 Mr Munro argued in response that the expression "part of those premises" in section 13(8) is intended to relate to a part of the premises such as appurtenant garages or walkways which may have been included in the "larger" self-contained part of the building but which may be hived off and excluded from the specified premises in a later notice. This, he said, is intended to give tenants the choice whether they enfranchise just the flats themselves or whether they include associated premises such as garages and walkways. The power of choice appears to derive from section 1(5) of the 1993 Act which provides that qualifying tenants may exercise their right of enfranchisement in relation to any premises despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise the right.*
> *17 I would accept that that subsection gives the tenants the choice to which Mr Munro refers. But it also enables them to choose whether to specify a larger or smaller self-contained part of a building, provided that they would be entitled to seek enfranchisement of either. The smaller part must be self-contained if it is to support a claim but the provisions plainly envisage that the claim may be made in respect of a larger self-contained part of the building, provided that there are enough qualifying tenants who agree to participate. In my judgment, Mr Munro's submission, while not incorrect in itself, does not take the argument any further. It appears to me that section 13(8)(9)(10) provides powerful support for Mr Rainey's argument."*

105. In this context it is interesting to note the terms of subsections (4) and (5) of Section 73. I have already set out subsection (4), but I set out both subsections for ease of reference:

> *"(4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.*

(5) If the freehold of any premises is transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the transfer is executed."

106. It seems to me that the reasoning of Smith LJ in [15] and [17] is also applicable to Section 73(4) and (5). The provisions of both subsections are applied not just to the premises in respect of which there is an RTM company, but also to premises containing or contained in those premises. Thus subsection (4) envisages that, but for the provisions of subsection (4), there could be a second RTM company not just in relation to the premises in respect of which the first RTM company is the RTM company, but also in relation to premises containing or contained in those premises. If the original premises comprised a self-contained part of a building, premises contained in those original premises, in respect of which a second RTM company might be constituted but for the restriction in subsection (4), would necessarily have to be a self-contained part of the original premises. To adapt what Smith LJ said in [15], if RTM companies could, but for Section 73(4), be formed in respect of both the original premises and the premises contained within the original premises, it follows that a self-contained part of a building (for the purposes of section 72) cannot be limited to the smallest possible self-contained part. The same point can be extracted from Section 73(5).

107. In this context it is also of note that, amongst the provisions of the 2002 Act to which Mr Bates drew my attention was Section 81(3), which provides as follows:

"(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
(a) the premises, or
(b) any premises containing or contained in the premises,
may be given so long as the earlier claim notice continues in force."

108. It will be noted that this provision, while much simpler in its drafting, is equivalent (albeit not precisely) in effect to the provisions of subsections (8), (9) and (10) of Section 13 of the 1993 Act. In particular, Section 81(3) has an equivalent reference, albeit achieved by simpler drafting, to *"the premises"* or *"any premises containing or contained in the premises"*. Again, this supports the point that the reasoning of Smith LJ in [15] and [17] can be applied to the construction of Section 72.

109. Smith LJ next considered Section 4(3A) of the 1993 Act, which was introduced into the 1993 Act by amendment in 1996. As Smith LJ explained, at [18]:

"18 The other statutory provision upon which Henderson J relied is section 4(3A) which was introduced into the 1993 Act by amendment in 1996. Prior to the amendment, section 3(1)(a) contained an additional requirement that the freehold of the whole of the building or self-contained part of the building should be owned by the same person. It was found that some landlords were avoiding enfranchisement by hiving off the freehold of small parts of the premises to another landlord, usually an associated company. So, in 1996, that additional requirement was repealed and (by section 107(2) of the Housing Act 1996) a new exclusion clause was inserted in section 4 as follows:

"Premises excluded from right"

> *"(3A) Where different persons own the freehold of different parts of the premises within subsection (1) of section 3, this Chapter does not apply to the premises if any of those parts is a self-contained part of a building for the purposes of that section."*

110. The point made on this subsection, which was accepted by Smith LJ, was as follows:

> *"19 Mr Rainey's submission in respect of this subsection was that this additional exclusion would have been wholly unnecessary if a valid notice could only be served in respect of an indivisible self-contained part of the building. The freehold of that indivisible self-contained part would inevitably be held by one landlord. The implication of this provision is that a self-contained part of a building may well contain two or more self-contained parts."*

111. I am bound to say that I have had some difficulty in following this submission, or why it demonstrated, by implication, that a self-contained part of a building might well contain two or more self-contained parts. Counsel were unable to assist me in this respect. I believe the point to be this. If the relevant premises referred to in Section 3(1) of the 1993 Act, in the case of a self-contained part of a relevant building, could only be a self-contained part of the building which was not capable of further sub-division into self-contained parts, a situation could not arise where such a self-contained part could engage Section 4(3A) of the 1993 Act. Such a self-contained part could not be capable of sub-division into smaller self-contained parts and as a consequence, could not engage the diversity of freehold ownership referred to in Section 4(3A). I see this point, but it remains unclear to me why this point demonstrated that Section 4(3A) would have been rendered wholly unnecessary if a self-contained part had to be incapable of sub-division into smaller self-contained parts. I do not think that my own failure entirely to comprehend this point matters. The relevant point is that there is a similar provision to Section 4(3A) of the 1993 Act which can be found in the 2002 Act. Paragraph 2 of Schedule 6 contains the following exclusion of premises from the RTM provisions:

> *"2 Where different persons own the freehold of different parts of premises falling within section 72(1), this Chapter does not apply to the premises if any of those parts is a self-contained part of a building."*

112. Again, Smith LJ's acceptance of the submission in [19] seems to me to be applicable to paragraph 2 of Schedule 6, which is in materially the same terms as Section 4(3A) of the 1993 Act. Once again, support for the conclusion that an RTM claim can be made in respect of a self-contained part of a building which itself contains a self-contained part or parts of the same building can be derived from the presence, in the 2002 Act, of a provision to the same effect as that considered by Smith LJ in *Craftrule*.

113. I have not found it necessary to rely on *Craftrule* in order to reach my conclusion on the Self-Contained Part Question. It seems to me however that the decision in *Craftrule* is not distinguishable on the basis that it was concerned with a different statute, is of direct relevance to the Self-Contained Part Question, and does provide support for the conclusion which I have already reached by concentrating on the language and purpose of the 2002 Act.

114. Drawing together all of the above discussion, I arrive at the following conclusions in answer to the Self-Contained Part Question:

(1) The reference to a self-contained part of a building in Section 72 is not confined to a self-contained part of a building which does not itself include a self-contained part or self-contained parts of the same building.

(2) A self-contained part of a building, as defined in Section 72, includes both (i) a self-contained part of that building which does not include a self-contained part or parts of the same building and (ii) a self-contained part of that building which does include a self-contained part or parts of the same building.

(3) In the case of a self-contained part of a building, the right to make an RTM claim is not confined to a self-contained part of the building which is not capable of further sub-division into self-contained parts.

(4) In the present case therefore the RTM Company was entitled to make the RTM Claim in relation to the Property, notwithstanding that the Property is comprised of two parts, namely the Parts, which are each also self-contained parts of the Terrace within the meaning of Section 72.

115. I reach these conclusions for the reasons set out in this section of this decision. In summary therefore, I reach the above conclusions on the basis of (i) a simple reading of the language of the 2002 Act and, in particular, Section 72, and (ii) a consideration of the purpose and effect of the RTM provisions and consideration of the decision in *Broomfield*, and (iii) application of the decision of the Court of Appeal in *Craftrule*. I stress that I rely on the reasons summarised in (i), (ii) and (iii) both individually and cumulatively.

The outcome of the appeal and the cross appeal

116. As I understand the position, as it was established at this hearing, Assethold does not now challenge the validity of the RTM Claim on any basis other than that the Property was disqualified from being a set of Qualifying Premises by reason of the fact that each of the Parts also comprises a set of Qualifying Premises. By my decision on the Self-Contained Part Question I have rejected this ground of challenge to the RTM Claim.

117. Given that I have decided that the FTT Decision must be set aside, it follows that the appeal falls to be dismissed, and the cross appeal falls to be allowed. So far as the RTM Application is concerned, it follows that the RTM Company is entitled to a determination that it was, on the relevant date, entitled to acquire the right to manage the Property.

118. I therefore decide that the FTT Decision falls to be set aside, and that the RTM Company is entitled to a determination that it was, on the relevant date, entitled to acquire the right to manage the Property.

Mr Justice Edwin Johnson

The President

2 February 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for

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