Neutral Citation Number: [2020] EWHC 920 (Ch)

Case No: CH-2019-000101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 23/04/2020

Before:

MRS JUSTICE FALK

- -

Between:

CONSENSUS BUSINESS GROUP (GROUND RENTS) LTD	**Appellant/ Defendant**
- and -	
PALGRAVE GARDENS FREEHOLD COMPANY LTD	**Respondent/ Claimant**

- -
- -

Thomas Jefferies (instructed by **Mills & Reeve LLP**) for the **Appellant**
Philip Rainey QC & Jonathan Upton (instructed by **William Sturges LLP**) for the **Respondent**

Hearing date: 19 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 am on Thursday 23 April 2020.

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MRS JUSTICE FALK

Mrs Justice Falk:

1. This is an appeal relating to a claim for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 (the "1993 Act") in respect of a residential development in London known as Palgrave Gardens. The Respondent is a nominee purchaser appointed by the relevant tenants to acquire the freehold on their behalf, and the Appellant is the freeholder. The Appellant appeals against an order made by Recorder Eaton Turner in the Central London County Court on 18 February 2019 (following a hearing on 16 and 17 April 2018). That order permitted the Respondent to amend the initial notice it had served and declared that the tenants named in the notice were entitled to exercise the right to collective enfranchisement.

The statutory scheme

2. The most relevant statutory provisions are set out in the Appendix to this decision. Unless otherwise indicated, statutory references are to provisions of the 1993 Act.

3. In very broad outline, the 1993 Act gives "qualifying tenants" of flats in "relevant premises" the right to have the freehold of those premises acquired on their behalf by a nominee purchaser. Qualifying tenants are, essentially, tenants under long leases (excluding business leases).

4. Section 1(1) contains the basic right to acquire the relevant premises, which is typically the building containing the flats but may in some cases be part of a building (as set out in s 3). In addition, under s 1(2)(a) qualifying tenants are entitled to acquire the freehold of other property falling within s 1(3), namely appurtenant property demised by a lease held by a qualifying tenant (s 1(3)(a)), or property which any such tenant is entitled to use in common with other occupiers (s 1(3)(b)). Where s 1(3)(b) applies, the freeholder can instead of conveying the freehold grant permanent rights in lieu or convey alternative property (s 1(4)).

5. In addition, under s 1(2)(b), qualifying tenants who exercise the right to enfranchise under s 1 are required or entitled to acquire leasehold interests as provided for in s 2. Superior leases of flats must be acquired (s 2(1)(a) and (2)) and leases of common parts, or of property within s 1(2)(a) which the tenants are opting to acquire, may be acquired (s 2(1)(b) and (3)).

6. The right to collective enfranchisement is exercised by qualifying tenants of at least one half of the flats in the building giving an initial notice pursuant to s 13. The notice must comply with s 13(3), and for the purposes of the legislation the "specified premises" are those specified in the initial notice under s 13(3)(a)(i) (see s 13(12)).

7. The reversioner (in this case the freeholder) must respond to the notice by giving a counter-notice under s 21, stating whether or not the right to collective enfranchisement of the specified premises is admitted. Disputes over whether or not tenants are entitled to acquire the specified premises are dealt with by the court under s 22, whereas disputes over the terms of the acquisition are determined by the First-tier Tribunal (Property Chamber) under ss 24 and 91.

8. Paragraph 15(1) of Schedule 3 provides that an initial notice shall not be invalidated by any inaccuracy in the particulars required by s 13(3) or by any misdescription of any

property to which the claim extends, and paragraph 15(2) allows a notice to be amended with leave of the court to exclude property not "liable to acquisition" under ss 1 or 2, or to include property which is so liable. Paragraph 15 is considered further below.

Factual and procedural background

9. Palgrave Gardens is a development constructed in the late 1990s on the site of the former depot of the St Marylebone Railway. It is built on a long, relatively thin, plot adjacent to the railway lines. It comprises five residential blocks of varying heights (the "Blocks"). Looked at externally, each Block appears to be attached to the adjacent Block or Blocks. The development also includes a single-storey construction containing commercial units and a single-storey leisure centre, which similarly appears to be attached to one of the Blocks. I will generally not refer separately to this construction in this judgment.

10. There is a single basement car park that runs underneath all of the Blocks and, importantly for the purposes of the dispute, extends underground beyond the ground level footprint of the Blocks, covering most but not all of the remainder of the site.

11. At ground level, the area not covered by the Blocks and other above ground development comprises gardens, an access way leading from the sole entrance to the development over the entire length of the plot and down a ramp to the car park, and a turning circle. There is no internal access at ground level or above between the Blocks. However, there is direct lift and stair access to each of the Blocks from the car park. The basement also includes some plant rooms and refuse areas.

12. Each Block is, in structural engineering terms, an independent self-supporting structure supported on its own piled foundations. It sits on columns (and to some extent walls) that go through the car park and rest on large pile caps at basement level. There is a "podium slab" at ground level around the Blocks and above the car park, and a basement slab that runs the full length of the car park, including under the Blocks. That basement slab is generally ground bearing, although small parts of it are supported by the large pile caps which support the Blocks. There are movement joints filling what would otherwise be small gaps (usually 50mm in width) between the Blocks where they meet above ground, between the podium slab and the ground floors of the Blocks, and around the pile caps at basement level.

13. There are 288 flats in total in the Blocks, all let on long leases in similar form. The sample lease I saw demised the relevant flat and granted the right to exclusive use of a specific parking space in the basement car park. The freehold is also subject to separate superior leases of each of the Blocks, and the commercial unit, from ground level up.

14. The right to manage Palgrave Gardens as a whole has previously been acquired pursuant to Part 2 of the Commonhold and Leasehold Reform Act 2002.

15. On or around 22 December 2016, 182 of the tenants of Palgrave Gardens sought to exercise the right of collective enfranchisement by serving a notice pursuant to s 13 (the "Notice"). The Appellant served a counter notice pursuant to s 21 by which it did not admit that the tenants were entitled to exercise that right, on the basis that the premises specified in the notice did not consist of a self-contained building or part of a building.

16. The Respondent commenced proceedings for a declaration under s 22 on 3 May 2017. In its defence and counterclaim the Appellant alleged that the Notice was invalid, claiming that there were a number of defects including that it had failed to make clear whether the specified premises included or excluded the basement car park. In March 2018 the Respondent was given permission to amend its claim form to rely on an amended notice. On 10 April 2018, in the light of disclosure received, the Respondent applied again to re-amend its claim form to rely upon a re-amended notice (the "Re-Amended Notice").

17. At the hearing there was no oral evidence, but the Recorder did benefit from a site visit and from expert reports by structural engineers for both parties. The experts produced a joint report, described as a Joint Memoranda. Where relevant to my decision, and insofar as they are not apparent from the Recorder's decision or from the Joint Memoranda, I have relied on factual details contained in the report of the Appellant's expert.

The Notice and Re-Amended Notice

18. The Notice and Re-Amended Notice both used a pre-printed Oyez form. The disputed part of the Notice reads as follows:

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

[1] The coloured edging referred to here surrounds, and extends beyond, the entire site, and does not intrude into it.

> (ii) the whole of the gardens and amenity land at the Specified Premises"

19. The single plan accompanying the Notice showed the ground floor footprint of the Blocks edged in blue. It showed the rest of the site surrounding the Blocks and outside that footprint (that is, the part of the site not built above ground level) as shaded in blue.

20. The equivalent part of the Re-Amended Notice reads as follows:

> "**1. The Specified Premises**
>
> The premises of which the freehold is proposed to be acquired by virtue of section 1(1) of the Act are shown edged blue on the accompanying plans and known as Palgrave Gardens, London NW1 9AX)
>
> For the avoidance of doubt, the specified premises comprise the full extent of the footprint of the underground car park shown edged blue on Plan 1 and the blocks shown edged blue on Plan 2 which together includes:
>
> (i) the underground car park;
>
> (ii) the parts of the building which are built above ground; and
>
> (iii) the ground and airspace above the car park which is within the footprint of the underground car park but outside the envelope of the parts of the building which are above ground.
>
> **2. Additional Freeholds**
>
> The property of which the freehold is proposed to be acquired by virtue of section 1(2)(a) of the Act are shown coloured in orange on the accompanying plans known as: land and gardens at Palgrave Gardens which are not part of the building."

21. As the description indicates, Plan 1 had blue edging around the entire footprint of the basement car park (which included the Blocks within it). Plan 2 separately showed the ground floor footprint of the Blocks edged in blue. The orange coloured areas on the plans were the parts of the site outside the perimeter of the car park, comprising the turning circle and some areas immediately adjacent to the boundary with the railway.

The Recorder's decision

22. The Recorder decided "on balance" that the natural and objective meaning of the Notice was that the claim under s 1(1) was restricted only to the ground floor outline of the Blocks (judgment at [45]). The Recorder also decided that, on that basis, the Respondent had failed to include part of the relevant premises, namely the car park, and that permission to amend should be given in accordance with the Re-Amended Notice (judgment at [46] and [47]).

23. The Recorder went on to consider whether the Re-Amended Notice related to a self-contained building for the purposes of s 3, concluding that the Blocks comprised a single building which included the car park (judgment at [105], [108] and [109]).

24. The order made by Recorder Eaton Turner accordingly permitted an amendment to the claim and Notice in accordance with the application made on 10 April 2018 and the Re-Amended Notice, and granted the declaration sought.

The issues on appeal

25. Permission to appeal was granted by the Recorder. The issues on the appeal are as follows:

    i) whether the Notice was invalid for failure to comply with s 13(3)(a);

    ii) if the Notice did so comply, whether the Recorder had jurisdiction to grant permission to amend the Notice in the manner sought; and

    iii) whether the Recorder was right to grant a declaration that the relevant tenants were entitled to exercise the right to collective enfranchisement in relation to the premises specified in the Re-Amended Notice.

Construction of the 1993 Act

26. The policy behind Part I of the 1993 Act was identified by Baroness Hale in *Majorstake Ltd v Curtis* [2008] 1 AC 787 at [21] and [23] as follows:

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

27. The general approach to interpretation of the 1993 Act was explained by Millett LJ in *Cadogan v McGirk* [1996] 4 All ER 643 at 648b:

> "It would, in my opinion, be wrong to disregard the fact that, while the 1993 Act may to some extent be regarded as expropriatory of the landlord's interest, nevertheless it was

> passed for the benefit of tenants. It is the duty of the court to construe the 1993 Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy."

28. Millett LJ's comment in *Cadogan v McGirk* was referred to by Lord Carnwath in *Hosebay v Day* [2012] 1 WLR 2884 at [6], where he added:

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

29. As discussed further below, Millett LJ's comment has also been referred to in the very recent Court of Appeal decision in *LM Homes Ltd v Queen Court Freehold Co Ltd* [2020] EWCA Civ 3711 ("*LM Homes*"), a case handed down a few days before the hearing of this appeal.

30. It is also worth noting the comment of Roth J in *Panagopoulos v Earl Cadogan* [2011] Ch. 177 at [19]:

> "The 1993 Act sets out a complex statutory regime designed to operate in a field where the interests at stake are often very significant for the parties and where property values can change during the enfranchisement process. Therefore, in interpreting the statute, considerations of practicality and convenience are important."

Validity of a notice under s 13

31. As Mr Rainey pointed out, some care is needed when referring to the validity or otherwise of a notice under s 13. As explained in *Poets Chase Freehold Co Ltd v Sinclair Gardens Investments Kensington Ltd* [2008] 1 W.L.R. 768 at [58] to [61], a notice which does not comply with the mandatory requirements of s 13 as to form or content is ineffective: it does not constitute a notice under that provision at all. Alternatively, a notice may formally comply with the requirements of s 13 but constitute a claim that the relevant tenants are not entitled to make, for example because the premises specified are not of a kind that can be acquired under the legislation.

32. I will refer to the first category as "formal" invalidity and the second as "substantive" invalidity. The distinction is material for a number of reasons. For example, there is no requirement for a landlord to serve a counter notice under s 21 where the notice is in the first category, and the normal rule in s 13(9) that prevents a fresh notice from being served within a 12 month period of the withdrawal of an earlier notice is also not engaged.

33. In contrast, s 22 is concerned with the substantive invalidity of a notice, and as discussed below paragraph 15(2) of Schedule 3 can be used to "cure" substantive invalidity. A (formally) valid notice under s 13 will also have a number of important consequences, for example in starting a strict timetable under the legislation, restricting transactions by the freeholder under s 97 and setting the date (the "relevant date") by reference to which conditions in the legislation must be met. If an acquisition is

ultimately made pursuant to a (formally) valid initial notice, the price also will be determined by reference to market value at the date of that notice.

34. It was common ground between the parties that a failure to comply with s 13(3)(a) would invalidate the Notice in the formal sense. That is consistent with *Natt v Osman* [2015] 1 WLR 1536, which related to an admitted failure to comply with s 13(3)(e). The Chancellor reviewed the authorities and held at [31] that in the case of statutory requirements to serve a notice as part of the process for a private person to acquire property:

> "…the court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid…"

The Chancellor went on to conclude that the failure to comply with s 13(3)(e) rendered the notice invalid.

The approach to construction of the Notice

35. There was no dispute that the question whether the Notice was formally invalid depends on the construction of the Notice. The leading authority on the approach to adopt in construing a notice is the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 ("*Mannai*"). That case related to break notices served by a tenant in respect of two leases. The notices incorrectly specified a date of 12 January when, by reference to the leases, it was clear that 13 January was intended. Lord Steyn said at 767G:

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

36. *Mannai* effectively brought the approach to construing notices into line with that for contractual construction. Lord Steyn noted at 771A that in both cases the law "generally favours a commercially sensible construction" as being "more likely to give effect to the intention of the parties". Lord Hoffmann made a similar point at 779 to 780, concluding that there should be no difference in approach, and that factual background should be taken into account.

37. Both Lord Steyn (at 772C) and Lord Hoffmann (at 780D-G) expressly approved the question posed by Goulding J in *Carradine Properties Ltd v Aslam* [1976] 1 WLR 442 ("*Carradine*") at 444:

> "Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?"

38. The test is therefore an objective one, but the factual context is relevant. In *Mannai* that included the terms of the leases. In this case it would include familiarity with the Palgrave Gardens development.

39. Mr Jefferies submitted that the test I should apply is whether a reasonable recipient would be left "in no reasonable doubt" as to what the notice meant, referring to *Barclays Bank v Bee* [2002] 1 WLR 332 as well as to passages in *Mannai*. *Barclays Bank v Bee* was a case where the landlords' solicitors wrote purporting to serve notice to terminate a lease under s 25 of the Landlord and Tenant Act 1954, but enclosed two inconsistent notices, one stating that the landlords would oppose an application for a new tenancy but not stating on what grounds (document A) and the other stating that they would not oppose such an application (document B). The Court of Appeal found that document A was not effective since no grounds of opposition were stated. Document B, when considered with the covering letter and document A, left a reasonable recipient in doubt and therefore it was invalid as well.

40. I do not consider that the Court of Appeal was laying down any different test to that established in *Mannai*. Aldous LJ expressly applied Lord Steyn's statement in *Mannai* at 767, referred to above, and the test as expressed in *Carradine*, at [29] to [35]. Similarly, Arden LJ made clear at [43] that the position is as established by *Mannai*, and also referred to *Carradine*.

41. In particular, neither *Barclays Bank v Bee* nor *Mannai* establishes that the test is a simple one of "no reasonable doubt" regarding the text of the notice. Lord Steyn's judgment in *Mannai* at 768F does refer to notices containing errors being valid if they are:

> "sufficiently clear and unambiguous to leave a reasonable recipient in no reasonable doubt as to how and when they are intended to operate"[2].

42. However, it is important to note the reference in this passage to "sufficiently" clear and unambiguous, and the fact that the reference to "no reasonable doubt" relates to what was intended, rather than to an absence of any possible doubt about the text of the notice.

43. This is consistent with the point made by Lord Steyn in the preceding paragraph, at 768E, that the purpose of a notice is relevant to its construction and validity. He added there that, prima facie, one would expect that if a notice "unambiguously conveys a decision to determine" then a court may ignore immaterial errors which would not have misled a reasonable recipient. Lord Steyn made a similar point at 772H when he said that the real question is "does the notice construed against its contextual setting unambiguously inform a reasonable recipient how and when the notice is to operate under the right reserved". Similarly, at 776C Lord Hoffmann described the notice given in that case as having "clearly and unambiguously communicated the required message". Lord Clyde specifically referred at 782C to the test as not being one of

[2] citing *Delta Vale Properties Ltd v Mills* [1990] 1 WL R 445 at 454E-G, in the context of the exercise of contractual rights.

"absolute clarity or an absolute absence of any possible ambiguity", and that "evident intention" should not be rejected "in preference for a technical precision".

44. The approach taken in *Barclays Bank v Bee* is consistent with this. Aldous LJ posed a question at [33] as to whether the tenant bank was left in any reasonable doubt as to whether a new tenancy would be opposed, in other words the question asked was whether a recipient would be left in reasonable doubt about what the landlords intended. In answering the question in the affirmative on the facts of that case, he commented that "a reasonable recipient would have been", in other words applying Lord Steyn's test set out at [35] above. The focus was on the communication of the landlord's intention. Both Arden LJ and Wilson J agreed with the judgment of Aldous LJ.

45. In referring to the test as enunciated by Goulding J in *Carradine* Arden LJ re-expressed it at [43] as being that the notice "must be plain so that the tenant is left in no doubt…or, in other words, if there is a doubt it is resolved in favour of the conclusion that the notice is ineffective", but I do not read the passage as indicating that there was any intention to modify the test. She also explained that the notice must be "reasonably clear to a reasonable person in the position of the recipient", and that he should not have to take legal advice to find out if the notice is valid or not ([45] and [47]). This of course reflects the significance of providing certainty, a point specifically recognised by the Chancellor in the context of s 13 notices in *Natt v Osman* at [32], where he referred to the "policy of providing certainty in relation to the existence, acquisition and transfer of property interests".

Was the Notice formally invalid?

46. Section 13(3)(a) required the Notice to "specify and be accompanied by a plan showing" (i) the premises proposed to be acquired by virtue of s 1(1), and (ii) any property proposed to be acquired by virtue of s 1(2)(a).

47. Mr Jefferies criticised the Recorder's decision for failing to apply the correct legal test, or alternatively applying it incorrectly to the facts. He submitted that the Recorder failed to recognise that the Notice did not make sufficiently clear what was being claimed under each of a ss 1(1) and 1(2)(a), and instead simply determined what he thought section 1 of the Notice covered "on balance". He pointed out that the Recorder did not obviously distinguish between formal and substantive invalidity.

48. The Recorder was clearly referred to the decision in *Mannai*, and he set out Lord Steyn's formulation of the test at [23]. He also recorded the parties' submissions on the issue in some detail, including Mr Jefferies' submissions about the importance of clarity. Having said that, the Recorder's reasons are expressed somewhat briefly at [45] and [46], and in a manner which I have not found entirely clear. I also accept that at [42] the Recorder appears incorrectly to have taken a lack of prejudice into account in determining the validity of the Notice.[3] I have therefore considered the question of formal validity afresh in order to determine whether there was an error in the Recorder's conclusion.

[3] Compare *Natt v Osman* at [32], where prejudice is listed as one of the factors not to be taken into account. It is worth noting, however, that whilst actual prejudice on the facts of the case is not relevant, prejudice in a generic sense is not necessarily irrelevant: see *Elim Court RTM Co Ltd v Avon Freeholds* Ltd [2018] QB 571 at [56].

49. Looking at the terms of the Notice as a whole I have concluded that it would have been sufficiently (or "quite") clear to a reasonable recipient that what was being claimed under section 1 of the Notice, and therefore under s 1(1), was the land "edged in blue", and that the rest of the site, being the land "shaded in blue", was being claimed under s 1(2)(a). In other words, and as found by the Recorder, what was claimed under s 1(1) was limited to the ground floor footprint of the Blocks. My reasons are as follows.

50. First, I accept Mr Rainey's submission that the way in which the draftsman has chosen to identify the relevant property is first and foremost by means of a plan. The plan is clear. The additional text is subsidiary to, and largely intended to be descriptive of, the property specified by the plan. Section13(3)(a) requires the notice to "specify and be accompanied by a plan showing" the premises and property to be acquired by virtue of s 1(1) and s 1(2)(a) respectively. Here the primary specification was by reference to the accompanying plan. In the case of section 1 of the Notice what was specified was the area "edged in blue", and in the case of section 2 what was specified was the area "shaded in blue".

51. Secondly, it is important to bear in mind the two types of validity, formal and substantive. We are concerned here with formal validity. The fact that a claim limited to the ground floor outline of the Blocks fails the test for substantive validity (as I conclude below that it does) and that the car park area could not be claimed under s 1(2) does not mean that the Notice failed to meet the formal requirements of s 13(3). So the fact that, to a lawyer, a claim under s 1(1) that ignores the extent of the underground car park may not make sense, and that the reference to "above ground footprint only" might accordingly be read by a lawyer as intending to convey the meaning that the entire extent of the built development above and below ground is being included even though it is not shown on the plan, must not be allowed to influence the question of construction of the Notice. Neither should the fact that a lawyer would know that flying freeholds are possible (albeit unusual), so that it might conceivably be possible to claim the part of the car park under the area shaded blue at basement level only as part of the building under s 1(1) rather than under s 1(2)(a). After all, as Arden LJ pointed out in *Barclays Bank v Bee*, recipients of notices are not supposed to have to get legal advice. The role of the court is to interpret the Notice from the point of view of the reasonable recipient landlord. The reasonable landlord would, it seems to me, focus on the plan.

52. Thirdly, paragraph 15(1) of Schedule 3 is relevant. That provides that an initial notice is not to be invalidated by any "misdescription" of any property to which the claim extends. It seems to me that to give this provision proper effect it must be relevant to the question of formal validity, rather than only to the question of substantive validity. In my view paragraph 15(1) is relevant to the descriptive text in section 2 of the Notice in particular. In relation to section 2, quite apart from the fact that a reasonable recipient with knowledge of the site would be well aware that the area shaded blue did not include (for example) landings, staircases or lift shafts, or indeed the leisure centre or gymnasium, those references can fairly be described as misdescriptions of the property. Similarly, the reference in section 1 to the premises being known as "Palgrave Gardens,

London NW1 9AX" is more apt as a description of the whole site rather than only the area of the above-ground development.[4]

53. Fourthly, it is important not to lose sight of the purpose of a notice in construing its validity, and the fact that any question of reasonable doubt relates to whether a reasonable recipient would be left in reasonable doubt as to what the provider intended to achieve (see [43] and [44] above).

54. The Notice made it perfectly clear that the relevant tenants were seeking to acquire the whole site. This is apparent from the plan as well as the description. The reasonable landlord would not be left in any possible doubt about that. The subdivision between the areas claimed under s 1(1) and s 1(2)(a) is also perfectly clear by reference to the plan alone. The question is whether the text of the Notice, in what was no doubt a well-intended attempt to ensure that nothing "fell between two stools", means that the intended subdivision of property between that claimed under s 1(1) and s 1(2)(a) is made insufficiently clear, notwithstanding the plan.

55. I accept that s 13(3)(a) requires the freeholds claimed under s 1(1) and s 1(2)(a) to be specified separately. Mr Jefferies submitted that the descriptive text meant that the Notice did not achieve that because it did not make sufficiently clear what was being claimed under each of s 1(1) and s 1(2)(a). He referred in particular to the way that the text in section 2 of the Notice purported to claim anything that could not be acquired under s 1(1).

56. Mr Jefferies relied on *Byrnlea Property Investments Ltd v Ramsay* [1969] 2 QB 253. In that case a tenant served an enfranchisement notice in a pre-printed form in which he had failed to make the appropriate deletion in the phrase "I…desire to have the freehold or an extended lease". It was held that the claim was a nullity because he could not claim both.

57. I do not think this case assists the Appellant. It is correct that s 1(1) and s 1(2)(a) are mutually exclusive. They give the right to acquire the freehold of different areas. It is also the case that s 13 requires the freeholds claimed under each of those provisions to be separately specified. However, the Notice was not actually making claims in the alternative in the way that the notice did in *Byrnlea*, that is, a double claim. The Notice claimed the entire "Specified Premises" under s 1(1) in section 1 of the Notice, defined by reference to the area edged in blue. It claimed the rest of the site, defined by reference to the area shaded blue, in section 2. There was certainly no double claim by reference to the primary means of specification, namely the plan. To the extent that the text in section 2 of the Notice purported to claim the Specified Premises, that claim extended only to any part that could not be acquired under s 1(1) (see the reference to "may not be acquired"). There was no double claim by reference to the text of the Notice. The text was not making equal claims to the same property under both sections of the Notice, but purporting to say that the tenants wanted to acquire under section 2 anything that they could not acquire under section 1. Section 1 clearly contained the primary claim,

[4] It may be worth noting here that I have not considered whether the errors could alternatively be described as inaccuracies in particulars under paragraph 15(1), noting that in *Cadogan v Morris* [1999] 1 EGLR 59 and *Free Grammar School of John Lyon v Secchi* [1999] 3 EGLR 49, albeit in the context of provisions in respect of a s 42 notice seeking a new lease, the Court of Appeal held that that concept referred only to those contents of the notice referred to as "particulars" in the legislation, which as *Hague on Leasehold Enfranchisement*, 6th ed. says at 25-19, would confine it to s 13(3)(e).

in contrast to the notice in *Byrnlea* which simply posed two (apparently equal) alternatives.

58. On that basis I consider that, even placing full weight on the text of the Notice rather than treating the plan as determinative, the Notice communicated what the tenants were seeking to achieve in a way that would not mislead a reasonable landlord about what was claimed: such a landlord would be left in no reasonable doubt about what was intended. Section 1 of the Notice was the primary claim and covered everything within the ground floor footprint of the Blocks. Section 2 of the Notice picked up everything else, with additional text suggesting that it also covered anything that for whatever reason was not covered by section 1.

59. An important point to bear in mind is that it is not necessary to decide whether that additional text purporting to claim any part of the Specified Premises not falling within section 1 of the Notice was sufficiently clear to be a (formally) valid claim to that part of the premises under section 2 of the Notice. Rather, the question is whether the text affected the clarity of the Notice to such an extent as to render the Notice invalid. In my view it did not.

60. Mr Jefferies submitted that the distinction between s 1(1) and s 1(2)(a) was important because of the ability of the landlord to offer the alternative of permanent rights under s 1(4), and that was relevant to the approach to be taken in determining whether the Notice was sufficiently clear.

61. I do not consider that this point makes a material difference to the approach to be taken, bearing in mind that it was not disputed that property must be separately claimed under s 1(1) and s 1(2)(a). However, it is worth pointing out that Mr Jefferies' point is in any event undermined by the fact that the alternative provided for by s 1(4) is only available in respect of property within s 1(3)(b), and nothing requires a notice to specify separately what part of any property claimed under s 1(2)(a) falls within s 1(3)(a) and what part falls within s 1(3)(b). The landlord is left to work that out and, if he wishes to do so, to make proposals under s 21(3)(b).

62. It is also the case that the tenants must specify separate prices for the premises and property claimed under s 1(1) and 1(2)(a) respectively (see s 13(3)(d)), and the distinction might be considered to be important for that reason. However, again no subdivision is required between s 1(3)(a) and (b). In any event the freeholder is not bound by the amounts specified and can make counter proposals as to price, as well being able to challenge – as the freeholder has in this case – whether the tenants are in fact entitled to acquire all or part of the property claimed under either provision.

63. I accept that the text in the nota bene in section 1 of the Notice was not as clear as it might be, and indeed that it used the term "Specified Premises" in a rather circular way, given that section 1 of the Notice was intended to define the Specified Premises. However, in my view it did not materially detract from the clarity of the plan, which precisely delineated the area claimed under s 1(1).

64. Similarly, I consider that a reasonable recipient would understand that much of paragraph (i) of the descriptive text in section 2 of the Notice was in reality unnecessary verbiage, or simply an incorrect description of the area claimed under s 1(2)(a). It could also be said that it made doubtful sense because it purported to claim parts "of" the

Specified Premises, being the premises already claimed under section 1 of the Notice. In contrast, the text in paragraph (ii) ("the whole of the gardens and amenity land *at* the Specified Premises") is a fair description of parts of the area shaded blue at ground level, albeit that it is not a complete description of the whole area, which includes the access road, turning circle and ramp. But in any event, the effect of paragraph 15(1) of Schedule 3 is that misdescriptions of the property do not invalidate a notice under s 13.

65. The important point is that the text on which the Appellant relies does not prevent what is intended to be achieved by the Notice as a whole being sufficiently clearly conveyed. Bearing in mind the clarity of the plan, a reasonable landlord could not be misled either as to the overall claim, or what was claimed under each section of the Notice.

66. In summary, I have concluded that the Notice was a formally valid notice under s 13, claiming the area edged in blue on the accompanying plan under s 1(1) and the area shaded blue under s 1(2)(a).

Whether the Notice could be amended

67. As already mentioned, paragraph 15(2) Schedule 3 allows a notice to be amended with leave of the court. It provides:

> "(2) Where the initial notice—
>
> (a) specifies any property or interest which was not liable to acquisition under or by virtue of section 1 or 2, or
>
> (b) fails to specify any property or interest which is so liable to acquisition,
>
> the notice may, with the leave of the court and on such terms as the court may think fit, be amended so as to exclude or include the property or interest in question."

68. The text of paragraph 15 is similar to paragraph 6(3) of Schedule 3 to the Leasehold Reform Act 1967 (the "1967 Act"), which was considered by Neuberger J in *Malekshad v Howard de Walden Estates Ltd (No 2)* [2004] 1 WLR 862 ("*Malekshad (No. 2)*"). Paragraph 6(3), which is part of legislation dealing with the enfranchisement of leasehold houses, provides:

> "The notice shall not be invalidated by any inaccuracy in the particulars required by this paragraph or any misdescription of the property to which the claim extends; and where the claim extends to property not properly included in the house and premises, or does not extend to property that ought to be so included, the notice may with the leave of the court, and on such terms as the court may seek fit to impose, be amended so as to exclude or include that property."

69. In that case a notice served by Mr Malekshad in 1997 had sought to enfranchise a substantial house together with an associated mews house. The House of Lords held in *Malekshad v Howard de Walden Estates Ltd* [2003] 1 AC 1013 that the mews house

could not be validly claimed under the then existing law. In connection with a later claim to the mews house after the law changed to abolish a residency requirement, Neuberger J had to decide whether the 1997 notice required amendment to be valid, and if so whether the court should grant leave to amend. He said this at [38] to [41]:

> "38. In my judgment, in this connection, the natural and sensible reading of paragraph 6(3) as a whole is as follows. The paragraph distinguishes between "any inaccuracy in the particulars" and "any misdescription of the property", on the one hand, and, on the other hand, the exclusion (or inclusion) of property which ought (or ought not) to be included as part of the relevant house and premises. The former types of error are of a nature which will not invalidate the notice: that is what the first part of paragraph 6(3) provides. The second type of error will, unless the notice is appropriately amended, invalidate the notice: that is implicit.
>
> 39. It seems to me that the way in which paragraph 6(3) is worded effectively drives one to this conclusion. If the wrongful inclusion or exclusion of property constitutes an "inaccuracy" or "misdescription", then it would not invalidate the notice, and I cannot see any sensible reason why the notice would need to be amended. Mr Morgan suggests that it might be a sensible tidying up, or that it would be required if the tenant applied to the court for a declaration that he was entitled to acquire the relevant house and premises and the landlord did not attend. I am unpersuaded by that. Either the parties will agree the extent of the house and premises, in which case amendment of the notice is pointless, or the court will declare the extent of the house and premises, in which case an amendment is also pointless, unless of course an amendment is necessary to validate the notice.
>
> 40. Quite apart from this, it does not seem to me that, as a matter of ordinary language, the inclusion of the mews house in the 1997 notice constituted an "inaccuracy in the particulars" or "misdescription of the property", as those terms are commonly used. The reference in the notice to the mews house as well as the main house "accurately" "described" the property to which the tenant intended his claim to extend: there was therefore neither an "inaccuracy" nor a "misdescription". What the claim under the 1997 notice undoubtedly did was to "extend… to property not properly included in the house or premises".
>
> 41. It is true that there is nothing in the second part of paragraph 6(3) which provides that, if a notice of claim extends to property not properly included in the house or premises, or does not extend to property that ought to be so included, it will be invalid in the absence of an appropriate amendment. However, it appears to me that it is effectively implicit in the second part of paragraph 6(3) that, unless a notice of claim which claims too

> much or not enough, is amended appropriately, it will be invalid."

70. At [49] to [55] Neuberger J considered the principles upon which an amendment should be permitted, and concluded that unless the landlord can establish prejudice the court should normally exercise its discretion to permit an amendment without conditions.

71. There has been no suggestion that the Recorder incorrectly exercised his discretion in this case. Rather, the Appellant's position is that the court did not have the power to amend the Notice under paragraph 15(2).

72. The grounds of appeal in this case asserted that:

    i) the car park was not liable to acquisition within the meaning of paragraph 15(2)(a), so the court had no jurisdiction to allow an amendment to include it under section 1 of the Notice; and/or

    ii) on the findings of the Recorder as to what the Notice meant, the car park was specified as proposed to be acquired under s 1, and the court had no jurisdiction to allow the amendment; and/or

    iii) the car park was not liable to acquisition under s 1(1) insofar as it extended beyond the footprint of the Blocks.

73. Mr Jefferies submitted in support of the first and third of these grounds that Neuberger J's reasoning at [38] to [41] of *Malekshad (No. 2)* applies equally to paragraph 15(2). That provision therefore applies only if a notice under s 13 would otherwise be invalid. That would be the case if the property affected by the amendment was property that the tenants were required to acquire under s 1 or s 2, but paragraph 15(2) would be of no assistance in relation to property in relation to which the tenants have an element of choice ("optional" property), being property within s 1(2)(a) and leasehold interests within s 2(1)(b). Mr Jefferies submitted that the distinction was clear from s 2(1), which uses the phrase "there shall be acquired" in s 2(1)(a), in contrast to "shall be entitled to have acquired" in s 2(1)(b). In this case the tenants were not required to claim the car park, at least insofar as it extended beyond the footprint of the Blocks, and the Recorder wrongly allowed the amendment to allow them to do so.

74. I do not strictly need to decide this point because of the conclusion I reach below as to the extent of the specified premises, but I should record that I do not accept the submission. Paragraph 15(2) straightforwardly covers any property or interest that the tenants either are or are not entitled to acquire under ss 1 or 2. The words "property or interest…liable to acquisition" refer to property or an interest that is liable to be acquired if a notice is served in the appropriate form. The natural meaning encompasses property that "may" be acquired, or that the tenants are entitled to acquire, and not simply property that "must" be acquired if the tenants choose to serve a notice. From the freeholder's perspective all such property is property that is "liable" to be acquired. No distinction is drawn between the freehold interest that must be acquired under s 1(1) if a notice is served (namely the "relevant premises", or in s 13 terms the "specified premises"), and the freehold of additional property referred to in s 1(2)(a), or between leaseholds that must be acquired under s 2(1)(a) and those that may be acquired under

s 2(1)(b). The landlord is exposed to the acquisition of all such property.[5] The cross-reference in paragraph 15(2) is to ss 1 and 2 as a whole, and not only to parts of those provisions.

75. As Mr Rainey pointed out, it must be right that paragraph 15(2)(a) covers what might otherwise be "optional" property, because that paragraph deals with notices that claim property, of whatever nature, that simply cannot be acquired under the legislation. It makes sense for the court to be able to permit such property to be excluded, and no sense to try to distinguish between the mandatory and optional parts of ss 1 and 2 for that purpose. The reference to "*so* liable to acquisition" in paragraph (b) indicates that the same interpretation applies in that paragraph. It must follow that it is open to the court to allow a notice to be amended to include "optional" property that was omitted, in the same way as it is open to the court to amend a notice to include property over which there was no element of choice.

76. I can see no rationale for restricting the scope of paragraph 15(2) as Mr Jefferies suggests. It would mean, for example, that an incorrect plan of land surrounding flats could not be amended to include an area that was omitted, but an incorrect plan of the building that does not show its full extent could be. Parliament clearly intended the court to have the ability to grant permission to amend notices in a way that either removes property or adds to what was previously claimed. Any question of prejudice to the landlord is a matter for the court to consider in deciding whether and how to exercise its discretion.

77. It does follow from this that it will not always be the case that a notice has to be invalid in order to be amended under paragraph 15(2). For example, an enfranchisement claim that in error omitted property falling within s 1(2)(a) would still be valid, and could potentially be amended to include it. However, that does not mean that I am taking a different view to Neuberger J when he said in *Malekshad (No. 2)* that the second type of error in paragraph 6(3) of Schedule 3 to the 1967 Act would invalidate the notice. The legislation that he was considering does not include the same provision for "optional" property. What the leaseholder is entitled to acquire under that legislation is the "house and premises", and that is what the leaseholder must claim in the notice. Both "house" and "premises" are specifically defined in s 2 of the 1967 Act. Paragraph 6(3) deals with property either "not properly included in the house and premises", or property that "ought to be so included": there is no element of optionality. (Although there is some scope to exclude part of the premises or include further property under s 2(4) and (5) of the 1967 Act if the landlord so demands, that is dealt with by a process following the notice.) In the context of the 1967 Act a conclusion that the notice would (always) be invalid unless amended is hardly surprising.

78. Mr Jefferies also submitted in support of the second of the grounds referred to at [72] above that the power to amend only arose where property was not claimed under s 1 at all. In this case the Recorder appeared to have decided that the car park was claimed under s 1(2), and therefore he could not permit an amendment to include it in a claim under s 1(1).

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[5] Mr Rainey drew an analogy with the phrase "liable to prosecution", which although not entirely apt is of some help as an illustration. Drivers who exceed a speed limit are liable to prosecution, but whether they are actually prosecuted depends not only on whether they are caught speeding but on whether the police choose to prosecute.

79. I disagree. The court has power to permit amendments that either add property to a notice or remove it from a notice. Moving property from one section of a notice to another involves removing it from one section and adding it to the other. If Mr Jefferies were correct, that process could be undertaken in two stages, presumably by two separate orders, but not as a single exercise. There is no good reason for such a restrictive interpretation. As Mr Rainey said, it would favour tenants who omitted property entirely over those who took care to include it but put it in the wrong section of the form. I also agree with Mr Rainey that the County Court decision in *Oakwood Court (Holland Park) Limited v Daejan Properties Ltd* [2007] 1 EGLR 121 at [19] to [25] does not indicate otherwise. What HHJ Hazel Marshall QC decided in those paragraphs of her judgment was that paragraph 15(2) only permitted property to be removed if it was property to which the notifying tenants were not entitled under the legislation, rather than property to which they were entitled but had second thoughts about acquiring, because only the former property was property "not liable to acquisition". The judge went on to decide at [26] to [37] that, on the facts, the tenants were not entitled to the relevant property, so the amendment could be made.

80. The judge's reasoning at [19] to [25] of the decision is not inconsistent with my conclusion on this point. The judge was not faced with a situation where she had concluded that the property was claimed under the incorrect provision, in other words where it was not "liable to acquisition" under one provision of ss 1 or 2, but was so liable under another.

81. My conclusion that the Recorder did have jurisdiction under the 1993 Act to permit the Notice to be amended also derives some general support from the Court of Appeal decision in *LM Homes*. *LM Homes* is discussed in more detail below but it is worth noting that Lindblom LJ, in agreeing with the leading judgment of Lewison LJ, said the following at [78]:

> "In my view, the conclusions reached by Lewison L.J. on the issues before us are consistent with the general considerations on the statutory scheme identified in Hague on Leasehold Enfranchisement (sixth edition, 2014, at paragraph 1-62), and also with the three basic points to which the Upper Tribunal (Lands Chamber) referred in *Barrie House*[6] (at paragraph 51): first, that the statutory scheme is self-contained and comprehensive, and, though complex, ought to be regarded as "coherent and complete"; secondly, in the interests of both landlord and tenant, that the scheme should be interpreted and applied to provide a clear and certain outcome; and thirdly, in the words of Millett L.J., as he then was, in *Cadogan v McGirk* [1996] 4 All E.R. 643 (at p.648B), that "[it] is the duty of the court to construe the 1993 Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy"."

82. All three principles are relevant to this issue, and although the third principle should be read with the cautionary words added by Lord Carnwath in *Hosebay v Day* set out at

[6] *Merie Bin Co (UK) Ltd v Barrie House (Freehold) Ltd* [2015] 1 L & TR 21

[28] above, I do not think that they detract from the force of the principle on the facts of this case.

83. I therefore conclude that the Recorder was entitled to permit the Respondent to amend the Notice in the form of the Re-Amended Notice.

Did the Re-Amended Notice correctly specify a self-contained building?

84. The grounds of appeal maintained that the Recorder erred in law in holding that the participating tenants were entitled to exercise the right to collective enfranchisement in relation to the premises specified in the Re-Amended Notice for a number of reasons. These included taking the wrong approach to construction of the 1993 Act, failing to consider whether Palgrave Gardens constituted a single detached building or applying an incorrect test of what was a building when the only conclusion open on the evidence was that it comprised more than one detached building, and wrongly deciding that the whole of it could be claimed in a single notice, whereas a claim could not be made for more than one self-contained building. In any event, even if the Blocks comprised a single self-contained building, the car park could not be claimed under s 1(1) beyond the footprint of the Blocks.

85. The Appellant's position before the Recorder and this court was that the Blocks do not comprise a single building for the purposes of the 1993 Act, but rather a series of independent, structurally detached buildings, and that it is not possible to serve a single notice in respect of more than one building.

86. Section 3 defines "premises" for the purposes of the legislation. So far as relevant, premises must consist of a "self-contained building", and s 3(2) provides:

> "a building is a self-contained building if it is structurally detached".

The question whether a building is self-contained is therefore determined by reference to whether it is structurally detached. That is the statutory test that must be applied.

87. Section 3 also provides that self-contained parts of buildings may constitute premises, and s 3(2) sets out certain requirements that must be met for a part of a building to be treated as self-contained.

88. The Recorder decided at [105] that the Blocks comprise a single building and at [107] to [111] that the entirety of the Blocks, underground car park and airspace above them could be claimed under s 1(1).

89. For the reasons set out below I have concluded that the Recorder's decision that the Blocks comprise a single building was not wrong as a result of an error of law, and that he was fully entitled to reach that conclusion on the evidence. Indeed, it was the correct conclusion on the evidence. On the basis that there was a single building, the question of whether a single notice can cover more than one building does not arise, and I make no comment on those parts of the Recorder's judgment that relate to that question.

Respondent's notice

90. I first need to address an argument by Mr Jefferies that Mr Rainey was seeking to introduce additional arguments in support of the Recorder's decision on the meaning of the term "building". Mr Jefferies submitted that those arguments should have been included in a respondent's notice, and because they had not been they were not available to him.

91. CPR 52.13(2) requires a respondent's notice where the respondent to an appeal is either (a) seeking permission to appeal, or (b) wishes to ask the appeal court to uphold the decision of the lower court for different or additional reasons to those given by the lower court. It is paragraph (b) that is potentially relevant in this case. Whilst a respondent's notice was filed it was limited to a point that was not ultimately relied upon.

92. This decision is not the appropriate occasion to discuss the precise extent of CPR 52.13(2)(b), particularly since the point was not addressed in any detail before me and no case law was cited. The court has power under CPR 52.21(5) to rely on a matter not contained in a party's appeal notice, and I prefer to deal with the point in terms of the overriding objective and fairness between the parties.

93. In short, I do not consider that the point has real merit. Mr Rainey based his submissions on the reasons given by the Recorder. Additional points he made largely elaborated on those reasons rather than falling into the category of different or additional reasons. He did place additional emphasis on the relevance and nature of the basement car park, but that was largely in the light of the very recently decided *LM Homes* case. The submissions were also in line with the Recorder's decision, in particular at [109] (discussed further at [131] below). The evidence relied on was that of the Appellant's expert, which was before the Recorder and which had not been challenged by any cross-examination.

94. There is no indication of prejudice to the Appellant. There is no suggestion that any further relevant evidence could have been adduced if the precise arguments had been anticipated. The Respondent's submissions were clear from Mr Rainey's skeleton argument, and from an addendum to it dealing with *LM Homes* that was filed promptly after the release of that decision and in advance of the hearing. Mr Jefferies had a full opportunity to address the arguments raised.

Whether each Block is a self-contained building: the meaning of structurally detached

95. The Appellant's position is that each Block comprises a self-contained building. In contrast, the Respondent's position (as reflected in the Re-Amended Notice) is that the Blocks and car park together are a single self-contained building.

96. As explained in *Albion Residential Ltd v Albion Riverside Residents RTM Company Ltd* [2014] UKUT 006 ("*Albion Riverside*") at [31], [33] and [38], the first step is to identify the premises said to constitute a building (or part of a building), and the next step is to identify whether they are self-contained. The following paragraphs address the Appellant's submission that each Block is a building for these purposes.

97. An initial point to make is that *LM Homes* makes it clear that flying freeholds are not contemplated by the 1993 Act. As Lewison LJ said at [28]:

> "…for the purposes of the 1993 Act, the airspace and the sub-soil form part of the "premises" to the freehold of which the qualifying tenants are entitled."

98. The issue in *LM Homes* was whether tenants seeking enfranchisement of a block of flats, Queen Court, under the 1993 Act were entitled to acquire leasehold interests in respect of the airspace above Queen Court, part of the basement and the subsoil underlying the block. The Court of Appeal confirmed that they were. This involved construing the term "building" for the purposes of s 3 to include those areas, applying a broader meaning of the term than simply a built structure (judgment at [29] to [38]). (The subsoil lease in fact extended beyond the footprint of the building in that case.)

99. It follows from *LM Homes* that, even if it was structurally detached, any enfranchisement of a Block would as a minimum include the airspace above it and the subsoil below it. It would therefore include the area of the car park below the Block.

100. The Joint Memoranda of the experts said this:

> "6. The Development was constructed in or around 1999, and generally consists of reinforced concrete structures. The Development comprises the following:-
>
> [a description follows of the Blocks, including the commercial units and leisure facility]
>
> 7. The buildings, and the surrounding landscaped areas at ground floor level (the podium), are all located above a single-storey basement car park, which extends over much of the Development.
>
> **Structures within the Development**
>
> 8. We describe the Development in purely structural engineering terms. We do not comment on the use of the space within the Development.
>
> 9. The structures described in Clauses 6 and 7 above generally separated by movement joints. They are thus, in purely structural engineering terms, independent self-supporting structures, insofar as they do not rely on support from, or provide support to, any other structure within the Development.
>
> 10. The floors of the car park and ramps are supported directly on the ground, and are structurally independent from the other elements of the Development."

101. Mr Jefferies submitted that the only answer open to the Recorder on this evidence was that each Block was structurally detached, and was therefore a separate building.

102. The question of whether a building is "structurally detached" is clearly a mixed one of fact and law. The concept has been considered in three Upper Tribunal decisions in the context of the near identical provisions in s 72 of the Commonhold and Leasehold Reform 2002 Act, *No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Company Ltd* [2013] UKUT 580 ("*Deansgate*"), *Albion Riverside* (referred to at [96] above) and most recently *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd* [2018] L&TR 26 (UT) ("*CQN*") (a case decided after the hearing before the Recorder).

103. *Deansgate* concerned a building constructed as a stand-alone building. Weathering features were added to bridge the gap between the building and neighbouring structures. HHJ Huskinson held that these features were insufficient to prevent structural detachment, holding at [30] that:

> "What is required is that there should be no structural attachment (as opposed to non-structural attachment) between the building and some other structure."

104. The judge also referred at [31] to the Oxford English Dictionary, noting the definition of the word "structurally" as meaning "in structural respects; with regard to structure".

105. In *Albion Riverside* the Upper Tribunal held that a block from ground level up was not structurally detached in circumstances where it formed part of a development of two buildings (including the block in question) with a basement car park. The block was therefore not a self-contained building. The car park, which extended far beyond the footprint of the buildings, was found to be a single structure which was structurally and functionally integrated with the buildings above it (decision at [14], [21] and [35]). In that case there was a structural interdependence between the buildings on the one hand and the car park on the other, with the car park supporting the buildings and the buildings also acting as a counterweight to the car park.

106. *CQN* related to a new building, the North Building, which was constructed to the north of an existing building called the Tower Block. An underground car park was situated under part of the development, with its ramp partly under the North Block. There was no load-bearing connection between the two blocks. The Upper Tribunal dismissed an appeal against a decision that the two blocks were not structurally detached.

107. At [54] HHJ Hodge QC set out a series of propositions about the meaning of structurally detached. These included in particular that it was not helpful to substitute a test of "structurally independent" or "having no load-bearing connection" (proposition (2)), that "structural" should be taken as meaning "appertaining or relating to the essential or core fabric of the building" (proposition (6)), that there would be no structural detachment if one building bears part of the load of another or there is some other structural interdependence between them (proposition (7)), and that the question is one of fact and degree depending on the nature and degree of attachment (proposition (11)).

108. Mr Jefferies criticises propositions (2), (6) and (11) in particular as wrong in law insofar as they suggest that the test does not depend on structural dependence or load-bearing connection. He submitted that, in the case of complex modern buildings, the question of structural detachment should be as capable of objective ascertainment as possible, there being a clear interest in certainty. He submitted that it was primarily a matter for the expert evidence of structural engineers, who in this case both agreed that the test of

structural attachment was concerned with structural dependence and load-bearing connection. In contrast, the test suggested in *CQN* was a recipe for uncertainty.

109. In this case the Recorder found at [105] that:

> "…the gaps inherent in the movement joints are invisible to an observer, and do not detract from its appearance as a coherent structure. All the Blocks within Palgrave Gardens were built at one time, as part of a single development. In my judgment, as a matter of common sense, in the specific factual context of the present case, the Blocks at Palgrave Gardens comprise a single building for the purposes of the 1993 Act."

110. Mr Jefferies criticises the Recorder's findings on the basis that the test was not based on whether the premises claimed were built at the same time, nor on visibility of any detachment. There were no grounds for distinguishing the case from *Deansgate* because, like the weathering details in that case, the movement joints in Palgrave Gardens, which filled a 50mm gap between the Blocks, served no structural function. He submitted that what the Recorder had done was simply imported a definition of building proposed by the Respondent's expert, which he set out at [90].

111. I do not agree with the submission that the question of structural detachment is simply one for structural engineers, and dependent solely on the existence or otherwise of structural interdependence or load-bearing connection. That is not the statutory test. Whilst it is hard to see that structural detachment could exist if there is structural interdependence (as reflected in HHJ Hodge QC's proposition (7)) that does not mean that structural dependence is essential.

112. I do agree that the fact that the Blocks were constructed at the same time and the fact that there is no visible gap between them are not by themselves sufficient. Nevertheless, I consider that the Recorder's conclusion that the Blocks were not separate buildings was correct. In reaching this conclusion I take particular account of the existence, nature and extent of the basement car park, as well as the position above ground.

113. Following *LM Homes*, it is clear that the area of a building is not limited to the built structure above ground level. It includes all parts immediately below each Block, which must include the floor slab of the Block at podium level, the area of the basement car park immediately below the Block, the relevant part of the (continuous) basement car park floor slab and the subsoil beneath each Block.

114. It follows that if Mr Jefferies' submissions were correct then it would be possible for residents of each Block to enfranchise in a way that included the area of the car park below their Block, but no other parts of the car park. The conclusion that the Blocks are structurally detached would also necessarily mean that each of them would be a "self-contained" building for the purposes of the legislation, even though part of each one, namely the basement area, is patently not self-contained.

115. Such a conclusion offends common sense. It would also be highly artificial, and in my view it would not be consistent with the principles referred to by Lindblom LJ in *LM Homes* at [78]. As Lord Millett said in *R (Edison First Power Ltd) v Central Valuation Officer* [2003] UKHL 20 at [116]:

> "The Courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless."

116. The Blocks are clearly not structurally detached at basement level. There is a continuous slab that forms the floor of the car park. There are no walls or other obstructions to prevent passage between the areas under the Blocks and other parts of the car park. The Blocks are not simply properties in adjacent sub-soil. A single built structure extends under each one. Furthermore, there is direct lift and stair access between that structure and each Block.

117. As a matter of common sense, the development is constructed as a single unit. The car park serves all the Blocks, and as just mentioned there is direct access to and from the Blocks. If the basement car park was at ground level, with the Blocks above it from the first floor upwards, it is hard to see that there would be any dispute about the issue.

118. Turning to the position above ground level, the gaps between the Blocks were described by the structural engineers for the original development as a "50mm wide cavity with no ties to allow movement between buildings". It is clear from this that the gaps were an integral part of the design, therefore: they had a specific function of allowing movement. That is why the gaps are there. The Appellant's expert referred to interfaces between adjacent buildings which do not derive structural support from each other as being joints that are "usually infilled with soft or compressible fillers which allow for… differential movement". It was not disputed that fillers had been used. This was not simply a weathering detail of the kind considered in *Deansgate*. It was, again, part of the design.

119. In contrast, the Appellant's expert confirmed that the basement slab is "effectively continuous throughout". It was cast using "induced" joints which are created by weakening lines of the concrete slab to encourage cracking to occur in a controlled manner, accommodating a small amount of horizontal movement to allow for shrinkage and thermal effects. So, a form of joint was used that allowed some movement, but presumably it was not necessary to allow for as great a range of movement as it was for the movement joints between the Blocks.

120. As I see it, the logical consequence of Mr Jefferies' submissions is that the Blocks would have been structurally detached even if there had been no 50mm gap, provided that they did not derive structural support from each other. So, for example, even a slab of concrete with induced joints of the kind used in the basement slab would not necessarily amount to structural attachment. That would, it seems to me, be a highly surprising conclusion, and one not consistent with an ordinary and natural meaning of "structurally detached".

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

others such as the merely decorative) may risk too much of a gloss on the statutory language.

122. I would also add that I consider that design and function play some part in determining whether structural detachment exists. So in this case it is not irrelevant that the Blocks were designed to be constructed together, not as discrete individual buildings but as part of a single development connected by a common basement which functions as the car park for all the Blocks and which is accessible directly to and from each of them. It is also not irrelevant that the 50mm movement joints were deliberately included to allow movement between the Blocks. These were not simple gaps between buildings that were covered by weathering features to protect them from the elements: they had a specific function in the design of the Blocks.

123. It is also relevant that the definition of "self-contained part of a building" in s 3(2) requires not only an ability to divide the building into the relevant part vertically but also that "the structure of the building is such that that part could be redeveloped independently of the remainder of the building". This obviously contemplates that it may be possible for part of a single building to be redeveloped. *Hague on Leasehold Enfranchisement*, 6th ed. at 21-03 suggests that it means "capable of being demolished and/or rebuilt without causing damage to the structure of the neighbouring part". That is not obviously consistent with a definition of "structurally detached" as meaning structurally independent or self-supporting. There must be some correlation between whether parts of a structure are structurally independent and the ability to redevelop them independently. If Mr Jefferies' submission is correct then any "part" of a building which could be redeveloped independently would, it seems to me, often be a separate building for the purposes of the legislation. Section 3(2) provides an indication that that is not what Parliament intended.

124. Once the correct legal test is identified and understood, the question becomes one of fact and degree. Although the Recorder did not express himself very fully at [105], he had previously recorded his impressions of Palgrave Gardens as follows at [59]:

> "59…To a layman's eye, the residential blocks appear from the outside to form one large and continuous, although irregularly shaped, structure. The Blocks appear to flow into, and be joined to, each other, and no gaps between the Blocks are visible in the locations where the plans reveal the movement joints to be located. Internally, however, the Blocks are not interconnected at ground level or above. Each Block has its own separate entrance at ground level, and another from the basement car park.
>
> 60. The basement car park appears, to a visitor, to be one very large space. It is not obvious when walking through it at what stage one is moving from walking underneath, say, Block B to walking under Block C. All users of the car park, wherever their flat and their parking space are located, will in practice use the entire length of the car park, as to access it they must drive from the Rossmore Road entrance along the access way to the far end of the development and then descend the ramp into the basement car park."

125. He also said this at [101]:

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

126. The Recorder's conclusion at [105] needs to be understood in the light of these findings as well as in the light of the expert evidence. He found as a matter of fact that there was a single, coherent, structure which was built as part of a single development, with a common car park which was used to its full extent by residents of all the Blocks. This was not a case of buildings that were separately designed and built to function independently. The facts are different from *Deansgate* and closer to *CQN* and *Albion Riverside*.

Did the building include the whole car park?

127. The Respondent contended in the alternative that even if the freehold of the Blocks could be claimed as a single self-contained building, the freehold of the underground car park beyond the footprint of the Blocks could not be claimed under s 1(1). In support of this Mr Jefferies relied on a comment in *Albion Riverside* at [33] where the Upper Tribunal is recorded as agreeing with Mr Rainey's submission that:

> "…the car park itself would not ordinarily be regarded as part of the Building (although that part of it which lies beneath the structure of the Building would probably be)".

128. Mr Jefferies also submitted that land outside the ground floor footprint falls within s 1(2)(a), therefore it cannot also fall within s 1(1) because the provisions are mutually exclusive. The landlord may not be deprived of its right under s 1(4) to offer alternative rights in lieu.

129. I reject these submissions. The second one can be addressed very shortly. It begs the question. The premises to which s 1(1) applies (the relevant premises) must be identified first. Section 1(2)(a) on its terms applies only to property "which is not comprised in the relevant premises".

130. As regards the first submission, it is important to read the comment that Mr Jefferies highlights in *Albion Riverside* in its context. Whilst the Upper Tribunal did agree with the submission on which he relies, they added that that was not the issue. The issue was whether the building that was claimed to be a self-contained building was structurally detached from the car park. The Upper Tribunal concluded that it was not. At [34] the Upper Tribunal also specifically disagreed with Mr Rainey's submission in that case that, as a matter of ordinary language, a building comprises only that part of a built structure that is visible above ground level, excluding any basement.

131. I agree with Mr Rainey's submission in this case that an ordinary householder whose basement extends beyond the footprint of the building above ground would consider the whole basement to be part of the building. I also agree with the analogy referred to by the Recorder at [109] of his decision, namely that there would be no difficulty in holding that a ground floor single-storey entrance vestibule attached to a block of flats could be claimed, together with the air space above it (and I would add the subsoil beneath) as part of the specified premises under s 1(1). There is no difference in principle between that situation and a situation where a basement car park extends beyond the footprint of the block. In each case the question is whether or not the structure in question is structurally detached from the premises that is claimed to constitute the relevant premises. If the relevant structure is not structurally detached then it is part of the building, and the right to acquire the specified premises includes it together with the airspace and subsoil above and below it.

Concluding remarks

132. Finally, I return to the second and third points made by Lindblom LJ in *LM Homes*, namely that the statutory scheme should be interpreted and applied to provide a clear and certain outcome, and that it is the duty of the court to construe the 1993 Act fairly, and if possible with a view to making it effective to confer on tenants the advantages that Parliament must have intended them to enjoy. This is consistent with the policy explained by Baroness Hale in *Majorstake Ltd v Curtis*. I also remind myself of the comments of Roth J in *Panagopoulos v Earl Cadogan* referred to at [30] above and those of Lord Millett in *R (Edison First Power Ltd) v Central Valuation Officer* referred to at [115] above.

133. The conclusion that the Blocks constitute a single self-contained building makes them capable of enfranchisement in a practical and relatively straightforward manner, conferring the advantages that Parliament intended, and produces a clear and workable result. In contrast, the approach proposed by the Appellant would, even if workable, create complexity. On the face of it, the part of the car park under a Block would be required to be enfranchised with that Block. Areas not under any Block could potentially be acquired under s 1(2) not only by tenants of that Block, but in turn also by tenants of each other Block as and when they sought to enfranchise, as property used in common within s 1(3)(b) (subject to the alternative of permanent rights being offered). Whether the tenants of a Block could also enfranchise, or secure permanent rights over, an area under another Block would appear to depend on whether a flying freehold could be contemplated under s 1(2). Whatever the result there would, as a minimum, be material complexity.

134. I note the Recorder's observation at [72] of his decision that it may be the case that Palgrave Gardens could be divided into self-contained parts of a single building for the purposes of s 3, in which case the complexity just referred to might arise in any event. However, that does not mean that the tenants should be required to enfranchise on such a complex basis.

Conclusions

135. I therefore conclude that:

i) the Notice was not invalid for failure to comply with s 13(3)(a);

ii) the Recorder had jurisdiction to grant permission to amend the Notice in the form of the Re-Amended Notice; and

iii) the Recorder was right to grant a declaration that the relevant tenants were entitled to exercise the right to collective enfranchisement in relation to the premises specified in the Re-Amended Notice.

136. Accordingly, the appeal is dismissed.

Appendix: extracts from the 1993 Act

1. The right to collective enfranchisement.

(1) This Chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf—

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as "the right to collective enfranchisement".

(2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises") —

(a) the qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either—

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(4) The right of acquisition in respect of the freehold of any such property as is mentioned in subsection (3)(b) shall, however, be taken to be satisfied with respect to that property if, on the acquisition of the relevant premises in pursuance of this Chapter, either—

(a) there are granted by the person who owns the freehold of that property —

(i) over that property, or

(ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease; or

(b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.

(5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies 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 that right.

(6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if—

(a) the owner of the interest requires the minerals to be excepted, and

(b) proper provision is made for the support of the property as it is enjoyed on the relevant date.

(7) In this section—

"appurtenant property" , in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat;

"the relevant premises" means any such premises as are referred to in subsection (2).

(8) In this Chapter "the relevant date" , in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

2. Acquisition of leasehold interests.

(1) Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ("the relevant premises"), then, subject to and in accordance with this Chapter—

(a) there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which this paragraph applies by virtue of subsection (2); and

(b) those tenants shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3);

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1(1).

(2) Paragraph (a) of subsection (1) above applies to the interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of a flat contained in the relevant premises.

(3) Paragraph (b) of subsection (1) above applies to the interest of the tenant under any lease (not falling within subsection (2) above) under which the demised premises consist of or include—

(a) any common parts of the relevant premises, or

(b) any property falling within section 1(2)(a) which is to be acquired by virtue of that provision,

where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts, or (as the case may be) that property, on behalf of the tenants by whom the right to collective enfranchisement is exercised.

3. Premises to which this Chapter applies

(1) Subject to section 4, this Chapter applies to any premises if—

(a) they consist of a self-contained building or part of a building;

(b) they contain two or more flats held by qualifying tenants; and

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

(2) For the purposes of this section a building is a self-contained building if it is structurally detached, and a part of a building is a self-contained part of a building if—

(a) it constitutes a vertical division of the building and the structure of the building is such that that part could be redeveloped independently of the remainder of the building; and

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

(i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or

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

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

13. Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section.

(2) A notice given under this section ("the initial notice")—

(a) …

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which—

(ii) is not less than one-half of the total number of flats so contained;

…

(3) The initial notice must—

(a) specify and be accompanied by a plan showing—

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);

(b) contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises to which this Chapter applies;

(c) specify—

(i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and

…

(d) specify the proposed purchase price for each of the following, namely—

(i) the freehold interest in the specified premises …

(ii) the freehold interest in any property specified under paragraph (a)(ii), and

(iii) any leasehold interest specified under paragraph (c)(i);

(e) state the full names of all the qualifying tenants of flats contained in the specified premises and the addresses of their flats, and contain in relation to each of those tenants—

(i) such particulars of his lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,

...

(f) state the full name or names of the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and

(g) specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21.

(12) In this Chapter "the specified premises" , in relation to a claim made under this Chapter, means —

(a) the premises specified in the initial notice under subsection (3)(a)(i), or…

21. Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely—

(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;

(b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;

(c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that an application for an order under subsection (1) of section 23 is to be made by such appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition—

(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify—

(i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal…

(b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b)) any such counter-proposal relates to the grant of rights or the disposal of any freehold interest in pursuance of section 1(4), specify—

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest,

as the case may be;

…

22. Proceedings relating to validity of initial notice

(1) Where—

(a) the reversioner in respect of the specified premises has given the nominee purchaser a counter-notice under section 21 which (whether it complies with the requirement set out in subsection (2)(b) or (c) of that section) contains such a statement as is mentioned in subsection (2)(b) of that section, but

(b) the court is satisfied, on an application made by the nominee purchaser, that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises,

the court shall by order make a declaration to that effect.

(2) Any application for an order under subsection (1) must be made not later than the end of the period of two months beginning with the date of the giving of the counter-notice to the nominee purchaser.

(3) If on any such application the court makes an order under subsection (1), then (subject to subsection (4)) the court shall make an order—

(a) declaring that the reversioner's counter-notice shall be of no effect, and

(b) requiring the reversioner to give a further counter-notice to the nominee purchaser by such date as is specified in the order.

…

Schedule 3, paragraph 15

15.—

(1) The initial notice shall not be invalidated by any inaccuracy in any of the particulars required by section 13(3) or by any misdescription of any of the property to which the claim extends.

(2) Where the initial notice—

(a) specifies any property or interest which was not liable to acquisition under or by virtue of section 1 or 2, or

(b) fails to specify any property or interest which is so liable to acquisition,

the notice may, with the leave of the court and on such terms as the court may think fit, be amended so as to exclude or include the property or interest in question.

(3) Where the initial notice is so amended as to exclude any property or interest, references to the property or interests specified in the notice under any provision of section 13(3) shall be construed accordingly; and, where it is so amended as to include any property or interest, the property or interest shall be treated as if it had been specified under the provision of that section under which it would have fallen to be specified if its acquisition had been proposed at the relevant date.