



# Property Law Conference

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**What is a flat and what is a  
building?**

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## Property Law Conference

### The topics

- What counts as a flat
  - Lease extensions
  - Mixed use
- What is a building
  - One building?
  - When is it detached?
  - The test for a self-contained part

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# What is a “flat”?

## Landlord and Tenant Act 1987 s60(1)

- “Flat” means a separate set of premises (whether or not on the same floor) which—
  - (a) forms part of a building, and
  - (b) is divided horizontally from some other part of the building, and
  - (c) is constructed or adapted for use for the purposes of a dwelling.
- “Dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling....

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# What is a “flat”?

## Leasehold Reform, Housing etc Act 1993 s101

## Commonhold and Leasehold Reform Act 2002 s112

- “Flat” means a separate set of premises (whether or not on the same floor)—
  - (a) Which forms part of a building, and
  - (b) Which is constructed or adapted for use for the purposes of a dwelling, and
  - (c) Either the whole or a material part of which lies above or below some other part of the building
- “Dwelling” means any building or part of a building occupied or intended to be occupied as a separate dwelling

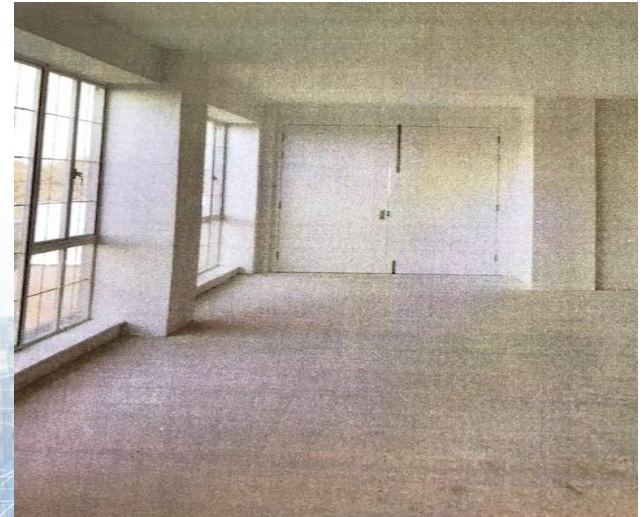
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# *Aldford House Freehold Ltd v (1) Grosvenor (2) K Group Holding Inc [2019] EWCA Civ 1848*



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# Aldford House

- Fancourt J decided
  - All that was required was that a separate set of premises had been constructed
  - Which were intended to be occupied as a dwelling
  - The presence of connecting doors did not prevent the premises being separate
  - They were intended to be dwellings
  - They did not have to be habitable


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### CA: Separate set of premises

- the relevant question is whether there was or was not physical separation between the various spaces.
- use or intended use not relevant.
- must be an objectively recognisable physical space, rather than simply a red line drawn on a plan.
- sufficient separation on the facts notwithstanding ability to reverse it.


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### CA: What is a flat

- a flat must be constructed "for use for the purposes of a dwelling"
- it must be in a state in which it is suitable for use as a dwelling.
- An interpretation of "for" as meaning "suitable for" is a commonplace in the law of patents.
- also coincides with the interpretation that Lord Carnwath put on "adapted" in *Hosebay* ("made suitable"); and would therefore achieve consistency in the definition
- Application for permission to appeal to Supreme Court outstanding

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### AirBnb uses

- *Smith v Jafton Properties* [2013] 2 EGLR 104
  - Were serviced apartments operated via a centralised booking system flats?
  - Current user not determinative (contrast *Day v Hosebay* [2012] UKSC 41)
  - Doesn't need to be a '*main or only residence*' or '*some kind of home*' but more than simply staying for a time
  - Physical characteristics and intended (actual) use must be capable of accommodating more than simply a transient population


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### Smith v Jafton (2)

- Finely balanced decision not a flat because:
  - i) centralised booking system which allowed for preference but no guarantee of specific choice and
  - ii) lack of tenancy agreements made it more akin to a hotel
- Difficult judgment, largely open question whether premises used for transient population but capable and intended for more permanent use are a “flat”
- May depend upon whether AirBnb use is combined with tenancies and the mechanics of the booking system?


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### Live/Work units

- *The Bishopsgate Foundation v Curtis* [2004] 3 EGLR 57 (CLCC)
  - User clause was live and/or work so purely residential use not a breach
  - No use in fact required - failure to carry on a business not a breach
  - Principle that a T cannot rely on his own wrong did not apply to 1993 Act
- Interesting issues arise where covenant does require both live and work
- 1967 Act expressly contemplates mixed use s.2(1) the 1993 Act does not
- Principle that T cannot rely on his own wrong does apply to the 1967 Act: *Henley v Cohen* [2013] EWCA Civ 840:

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# Leasehold Reform Act etc 1993 s3 Commonhold and Leasehold Reform Act 2002 s72

3(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....

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### ....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.

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# “the premises consist of a self-contained building”

## What is a building?

- S72, Commonhold and Leasehold Reform Act 2002
  - *Ninety Broomfield Road RTM Co Ltd v Triplerose* [2011] 1 WLR 275
    - One building not two for the purposes of an RTM. “It would be surprising if words fell to be construed differently from those in the 1993 Act”
- Landlord and Tenant Act 1987
  - *Long Acre Securities Limited v Karet* [2005] Ch 61
    - Building can include buildings
- Leasehold Reform Act 1967
  - *Malekshad v Howard de Walden Estates Limited* [2003] 1 AC 1013
    - “A terrace of houses may [be] a building even though each house also [is]”

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# What can be claimed as a self contained part of a building?



- *41-60 Albert Palace Mansions v Crafrule Ltd* [2011] 1 WLR 2425
- Terrace of 8 pairs of flats
- Claim for 1 pair of 20 flats
- Half of each pair self-contained part
- Held: Claim not limited to smallest possible self contained part

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**“a building is a self-contained building if it is structurally detached....**



- *No 1 Deansgate RTM* [2013] UKUT 0580
- No structural support to or from adjoining buildings
- Connected by weathering features
- Held, by UT
  - No structural attachment
  - So structurally detached

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# *Albion Riverside RTM [2014] UKUT 0006*



- Functionally integral structure comprising
  - C shaped block of flats
  - Building 1 (to right)
  - Car park beneath
- Held
  - The C shaped building was not a self-contained building

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# *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd [2018] UKUT 183*



- Premises built around tower
- Part of ramp to car park under premises
- Premises supported by pillars from kerb to ramp
- Expert evidence that most of premises structurally detached
- No consideration of car park floor

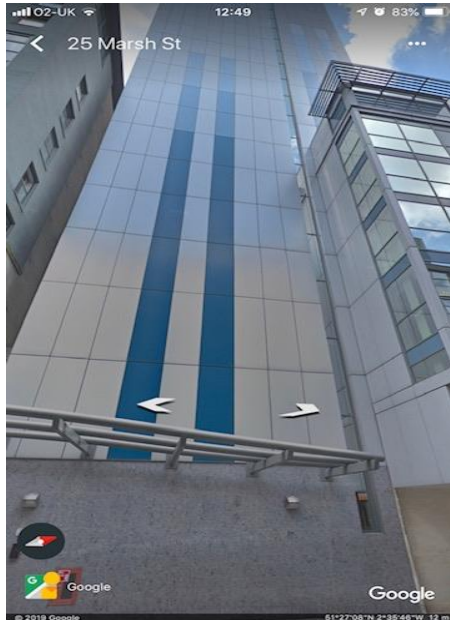
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## Property Law Conference

# *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd [2018] UKUT 183*



- Issue was whether premises were “structurally detached”.
- Expert evidence only from tenant’s expert.
- FTT decided the premises were not detached after site visit
- Appeal by review only
- Confusion as to state of evidence
- Appeal dismissed – expert evidence did not directly address construction of car park floor


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# CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd

- (1) The expressions 'building' and 'structurally detached' are not defined in the 2002 Act and should be given their ordinary and natural meaning.
- (2) The statutory language speaks for itself and it is neither necessary nor helpful for a tribunal which is considering whether premises are 'structurally detached' to reframe the question in different terms. Thus, it is not helpful to substitute a test of 'structurally independent' or 'having no load-bearing connection' for that of 'structurally detached'.
- (3) Nevertheless, some explanation of when a building can properly be characterized as 'structurally detached' is clearly called for.
- (4) What is required is that there should be no 'structural' attachment (as opposed to non-structural attachment) between the building and some other structure. The word 'structurally' qualifies the word 'attached' in some significant manner.

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- (5) Thus, a building may be 'structurally detached' even though it touches, or is attached to, another building, provided the attachment is not 'structural'.
- (6) 'Structural' in this context should be taken as meaning 'appertaining or relating to the essential or core fabric of the building'.
- (7) A building will not be 'structurally detached' from another building if the latter bears part of the load of the former building or there is some other structural inter- dependence between them.
- (8) So long as a building is 'structurally detached', it does not matter what shape it is or whether part of it overhangs an access road serving some other building.
- (9) A building can be 'structurally detached' even though it cannot function independently.

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- (10) Adjoining buildings may be 'structurally detached' even though a decorative façade runs across the frontage of both buildings.
- (11) The question whether or not premises in respect of which a right to manage is claimed comprises a self-contained building is an issue of fact and degree which depends on the nature and degree of attachment between the subject building and any other adjoining structures.
- (12) In determining whether a building is 'structurally detached', it is first necessary (a) to identify the premises to which the claim relates, then (b) to identify which parts of those premises are attached to some other building, and finally (c) to decide whether, having regard to the nature and degree of that attachment, the premises are 'structurally detached'.
- (13) If a structural part of the premises is attached to a structural part of another building, the premises are unlikely to be 'structurally detached'.

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# *Palgrave Gardens Freehold Co Ltd v Consensus Business Group (Ground Rents) Ltd [2019] CLCC*



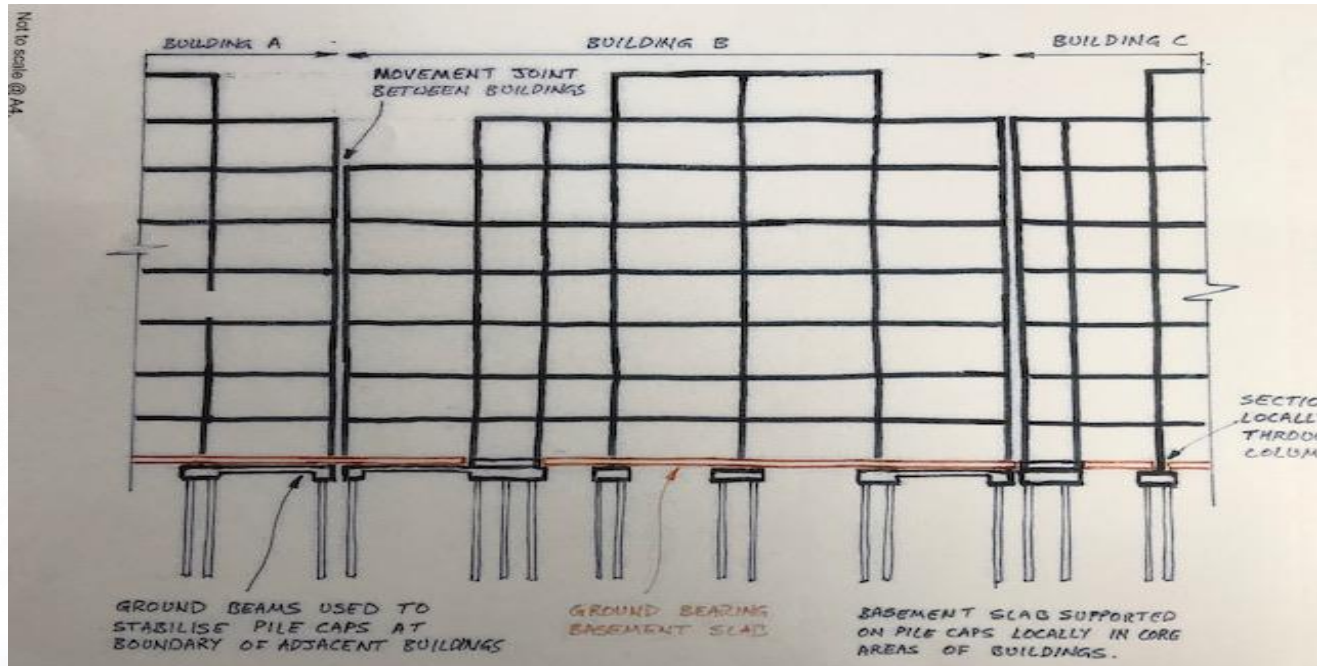
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# Palgrave construction




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### Palgrave Gardens

- Single notice claiming four blocks of flats, one mixed use building, and underground car park under buildings grounds and drives
- Experts agreed

“9. The structures described in Clauses 6 and 7 above are 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.”

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# Palgrave Gardens Freehold Co Ltd v Consensus Business Group (Ground Rents) Ltd

Held:

- The development as a whole, including all residential blocks and the basement car park, could be regarded as a building
- This is regardless of whether individual blocks of the development could themselves be regarded as self contained buildings.

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# Palgrave Gardens Freehold Co Ltd v Consensus Business Group (Ground Rents) Ltd

- Palgrave Gardens, to the eye of a non-engineer, is a single albeit very large and irregularly shaped building;
- All the blocks on Palgrave were built at one time and as a matter of common sense they comprise a single building;
- The premises do not need to be the smallest self-contained unit it is possible to identify: *Malekshad v Howard de Walden; 41-60 Albert Palace Mansions (Freehold) Ltd v Crafrule Ltd*.
- *Deansgate* distinguishable as adjoining buildings constructed later.
- Appeal pending

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# Self-contained part of a building


1. Vertical division

2. Structure of building is such that the part could be redeveloped independently

3. Relevant services either:

Are provided independently; or

Could be provided independently without works likely to result in a significant interruption in services for remainder of the building

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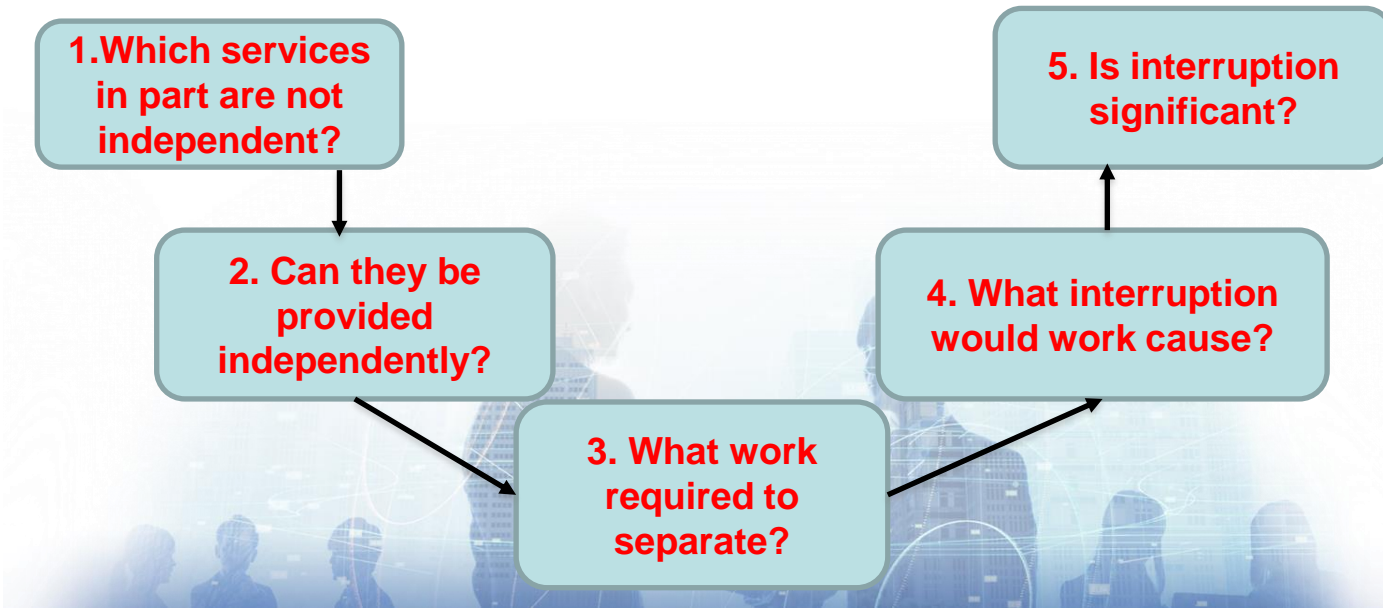
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# Can services be provided independently?


- In *Oakwood Court (Holland Park) v Daejan* [2007] 1 EGLR 121, the County Court proposed five step test:



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# *St Stephen's Mansions RTM Co Ltd v Fairhold NW Ltd [2014]* **UKUT 541**

- Common water supply, shared pump and tanks
- Two solutions, neither causing significant disruption
  - Two sub-meters
  - Separate water tanks and pumps
- Held, UT
  - Meter solution insufficient
  - Second solution sufficed notwithstanding
    - Shared pipe to pump room
    - Lack of legal right to alter services on estate

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# Any questions



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