Neutral Citation Number: [2023] EWCA Civ 616

Case No: CA-2022-001754

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Martin Rodger KC, Deputy Chamber President
LC-2022-199

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/05/2023

Before:

LADY JUSTICE KING
LORD JUSTICE NEWEY
and
LADY JUSTICE ELISABETH LAING

- -

Between:

AVON GROUND RENTS LIMITED	**Appellant**
- and -	
CANARY GATEWAY (BLOCK A) RTM COMPANY LTD	**Respondent**

- -
- -

Justin Bates and Katherine Traynor (instructed by **Scott Cohen Solicitors Ltd**) for the **Appellant**
Mark Loveday and James Castle (instructed by **Jobsons Solicitors Ltd**) for the **Respondent**

Hearing date: 11 May 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. The question raised by this appeal is whether a "shared ownership lease" granted for a term of more than 21 years is a "long lease" for the purposes of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") regardless of whether the tenant's share is 100%. The point turns on the construction of section 76 of the 2002 Act.

2. The appeal is nominally from a decision of Martin Rodger KC, the Deputy President of the Upper Tribunal (Lands Chamber). In practice, however, what is at issue is whether Fancourt J ("the Judge"), the then Chamber President, was right to conclude in a decision dated 26 November 2020 ([2020] UKUT 358 (LC), "the Decision") that shared ownership leases for terms exceeding 21 years were "long leases" even where the tenants had not "staircased" (i.e. increased their shares) to 100%.

3. The appellant, Avon Ground Rents Limited ("Avon"), is the freehold owner of a development known as Canary Gateway in St Anne Street, London E14. The development comprises two blocks, Blocks A and B, each of which contains a number of flats. In the case of Block A, there are 97 flats. 17 of these are the subject of a head lease in favour of a housing association, Metropolitan Housing Trust Limited ("Metropolitan"), and underlet on separate shared ownership leases for terms greater than 21 years. Five of the shared ownership tenants have staircased to 100%, but the others have not. The other 80 flats in Block A are either leased to Metropolitan and underlet to social rent tenants or leased under conventional long residential leases.

4. As its name suggests, the respondent, Canary Gateway (Block A) RTM Company Ltd ("the Company"), is an "RTM company" established with a view to acquiring the right to manage Block A pursuant to the 2002 Act. It first gave notice of such a claim in 2019, but Avon opposed it on, among others, the ground that "notice of invitation to participate" ought to have been given to Metropolitan but had not been. More specifically, Avon contended that Metropolitan should have received such a notice both because tenants with shared ownership leases who had interests of less than 100% were not "qualifying tenants" for the purposes of the 2002 Act and because Metropolitan was in any event the qualifying tenant of the flats underlet to social rent tenants.

5. The dispute came before the Judge on appeal from the First-tier Tribunal (Property Chamber) ("the FTT") and was the subject of the Decision. The Judge decided that the shared ownership tenants were "qualifying tenants" whether or not they had staircased to 100%, but he also held that Metropolitan should have been given notice of invitation to participate as the head lessee of the flats occupied by social rent tenants and that the failure to do so invalidated the Company's claim.

6. On the basis of the Decision, the Company gave notices of invitation to participate both to every tenant with a shared ownership lease and to Metropolitan and, by a claim notice dated 9 March 2021, again claimed the right to manage Block A. Once more, however, Avon has opposed the claim. One of the points it has taken has been that, contrary to the views expressed by the Judge in the Decision, tenants with shared ownership leases who had not staircased to 100% were not "qualifying tenants" with the result that, in respect of those flats, notice of invitation to participate should instead have been given to Metropolitan.

7. The Company's claim was upheld by the FTT in a decision dated 2 March 2022. Unsurprisingly, Avon accepted before the FTT that it could not succeed on the issue of whether all those with shared ownership leases were "qualifying tenants", but it reserved its position for a possible appeal. The Deputy President granted Avon permission to appeal to the Upper Tribunal (Lands Chamber), but on the footing that, having regard to the Decision, the appeal would be dismissed. That, the Deputy President pointed out, would enable Avon to seek to appeal to this Court, as it since has.

8. The sole issue raised by Avon's appeal is thus whether a shared ownership lease can be a "long lease" within the meaning of section 76 of the 2002 Act if the tenant has not acquired a 100% interest. By a respondent's notice, the Company contends that any failure to give notice of invitation to participate to Metropolitan would not in any event have invalidated its claim for the right to manage. In this respect, the Company takes issue with the Decision.

The statutory framework

9. The 2002 Act entitles leaseholders, subject to various conditions, to assume the management of their building. There had previously been an entitlement under the Landlord and Tenant Act 1987 ("the 1987 Act") to ask for management rights to be transferred to a manager, but such an appointment depended on establishing fault on the landlord's part: see section 24 of the 1987 Act. In 2000, the Government published a consultation paper, *Commonhold and Leasehold Reform, Draft Bill and Consultation Paper* (Cm 4843) ("the Consultation Paper"), in which it was proposed that people with leases of flats should be given "a new right to take over the management of their building without having to prove shortcomings on the part of the landlord and without payment of compensation": see section 2.1. The 2002 Act carried that proposal into effect.

10. The relevant provisions are to be found in chapter 1 of part 2 of the 2002 Act, comprising sections 71 to 113. Section 71 explains that the chapter makes provision for the acquisition and exercise by an "RTM company" of "rights in relation to the management of premises" which are termed "the right to manage". For the 2002 Act to apply, the premises in question must "consist of a self-contained building or part of a building" and contain two or more flats at least two-thirds of which are held by "qualifying tenants": see section 72. The concept of a "qualifying tenant" also features in relation to RTM companies. An "RTM company" must have as its object, or one of its objects, "the acquisition and exercise of the right to manage the premises" and its articles are required to take the form set out in the schedule to the RTM Companies (Model Articles) (England) Regulations 2009 ("the 2009 Regulations"): see sections 73 and 74 of the 2002 Act and regulation 2 of the 2009 Regulations. It is further provided, by section 74 of the 2002 Act, that the persons who are entitled to be members of an RTM company are "qualifying tenants of flats contained in the premises" and, once the RTM company has acquired the right to manage, the landlord(s).

11. As subsection (1) states, section 75 of the 2002 Act "specifies whether there is a qualifying tenant of a flat … and, if so, who it is". By subsection (2), subject to exceptions which are not material to this appeal, "a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease".

12. Sections 76 and 77 of the 2002 Act "specify what is a long lease for the purposes of [chapter 1 of part 2 of the 2002 Act]": see section 76(1). Section 76 goes on to say:

> "(2) Subject to section 77, a lease is a long lease if—
>
> (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
>
> (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
>
> (c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage or the formation of a civil partnership),
>
> (d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,
>
> (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
>
> (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).
>
> (3) 'Shared ownership lease' means a lease—
>
> (a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or
>
> (b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.
>
> (4) 'Total share', in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired."

These subsections are central to the present appeal.

13. Section 78 of the 2002 Act provides that an RTM company must, before making a claim to acquire the right to manage any premises, give notice (by a "notice of invitation to participate") to each person who is at the time the qualifying tenant of a flat contained in the premises, but neither is nor has agreed to become a member of the RTM company. By section 79, a claim to acquire the right to manage premises is made by giving notice of the claim (by a "claim notice"), but subsection (2) stipulates, "The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before". Under section 84, a landlord may serve a counter-notice and, if the RTM company's entitlement to acquire the right to manage is disputed, it may apply to the FTT for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

14. Returning to section 76 of the 2002 Act, the explanatory notes to the 2002 Act said in paragraph 132:

> "*Section 76 and 77* specify what is a 'long lease' for the purposes of the right to manage. The provisions mirror the relevant existing provisions for the right to collectively enfranchise. A long lease is principally any lease originally granted for a term certain exceeding 21 years, but includes also certain other types of lease regardless of term, including leases of leaseholders whose long leases have expired and who remain as tenants under the provisions of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989. Where the lease is a shared ownership lease, it is only counted as a long lease for the purposes of the right to manage if the leaseholder owns a 100 per cent share of the lease."

15. This paragraph is in keeping with paragraph 13 of the Consultation Paper. Paragraph 13 of the Consultation Paper explained:

> "For consistency, we propose that in general RTM should be exercisable by those leaseholders who would be eligible for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 …. The right would be exercisable by qualifying tenants, as defined in the 1993 Act. These are essentially leaseholders with a lease which was originally granted for a term exceeding 21 years. Where the lease in question is a shared ownership lease, the leaseholder would have to hold a 100 per cent share of the equity. Tenants with business or commercial leases would not be qualifying tenants."

16. The Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), to which there was reference in this passage, conferred (and confers) a right to collective enfranchisement on "qualifying tenants of flats". By section 5 of the 1993 Act, a person was a "qualifying tenant of a flat" if "he is a tenant of the flat under a long lease", and section 7(1) defined "long lease" as follows:

> "(a) a lease granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise;
>
> (b) a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (other than a lease by sub-demise from one which is not a long lease) or a lease taking effect under section 149(6) of the Law of Property Act 1925 (leases terminable after a death or marriage);
>
> (c) a lease granted in pursuance of the right to buy conferred by Part V of the Housing Act 1985 or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act; or
>
> (d) a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent or
>
> (e) a lease granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire)".

Previous authorities

17. Aside from Fancourt J's decision, we were referred to three cases in which consideration was given to the meaning of "long lease" in either the 1993 Act or the 2002 Act. The earliest of these, *Brick Farm Management Ltd v Richmond Housing Partnership Ltd* [2005] EWHC 1650 (QB), [2005] 1 WLR 3934 ("*Brick Farm*"), concerned the 1993 Act. The decision there turned on whether tenants who wished to exercise the right to collective enfranchisement were not "qualifying tenants" because their flats were "housing accommodation provided by [a charitable housing trust] in the pursuit of its charitable purposes" within section 5(2)(b) of the 1993 Act. In the course, however, of his judgment, Stanley Burnton J commented on a submission that section 7(1)(a) of the 1993 Act had to be read as excluding shared ownership leases. Rejecting the submission, Stanley Burnton J said:

> "15. Mr Arden [i.e. counsel for the landlord] drew to my attention another curious feature of the 1993 Act. Shared ownership leases, as defined in section 7, are always, or virtually always, for a term of years exceeding 21 years. Such leases have, or are expected to have, a capital value: they have either been granted on payment of a premium, or confer on the tenant a right to a proportion of the value of the premises; they must therefore be for a term having a realisable value, and that means a term of 60 or 99 years or more. It follows that in practice all shared ownership leases are long leases within the meaning of section 7(1)(a) of the 1993 Act. On the face of it, therefore, para (d) of section 7(1) is otiose. Indeed, the restriction of the paragraph to

> a shared ownership lease where the tenant's share is 100% suggests that a tenant under such a lease with a share of 90% of the value of the premises is not a qualifying tenant. It was for this reason that Mr Arden submitted that paragraph (a) has to be read as referring to leases other than a shared ownership lease. Despite the curious result that paragraph (d) appears to have no practical effect, I cannot accept this submission, which does violence to the words of section 7 of the 1993 Act. Parliament cannot be taken to have intended to restrict the unqualified ambit of paragraph (a) of section 7(1) by adding a paragraph purporting to widen rather than to narrow the definition of 'long lease'.
>
> 16. The same observation may be made in relation to paragraph (c) of section 7(1) of the 1993 Act. A lease of a flat acquired under the right to buy provisions of the Housing Act 1985 will always be for a minimum term of 50 years, since if the landlord's term was less than this the right to buy provisions are excluded by paragraph 4(b) of Schedule 5 to the 1985 Act. Thus it appears that paragraph (c) too is otiose.
>
> …
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> 23. It is less surprising that section 5(2)(b) of the 1993 Act should have little if any practical effect when one sees that other provisions of this part of the 1993 Act have no or little effect. Paragraph (c) of section 7(1), as has been seen, adds nothing to paragraph (a). Paragraph (d) is probably a left-over from the unamended Act, which as originally enacted excluded long leases let otherwise than at a low rent. Shared ownership leases are seldom at a low rent, since a rent must be paid in respect of the landlord's retained share. Paragraph (d) made the tenant a qualifying tenant once he had bought out his landlord's share. It became otiose when the exclusion of long leases let otherwise than at a low rent was removed by the 2002 Act, but Parliament omitted to delete it from the remaining provisions of the 1993 Act."

18. The next case was *Richardson v Midland Heart Ltd* [2008] L&TR 31 ("*Richardson*"). One question there was whether the appellant, who had had a shared ownership lease granted for a term of 99 years, had been entitled to rely on sections 166 and 167 of the 2002 Act, which respectively restrict the circumstances in which a "tenant under a long lease" is liable to make a payment of rent and the ability of a "landlord under a long lease" to forfeit for a small amount of rent. Mr Jonathan Gaunt QC, sitting as a Deputy High Court Judge, held that the appellant's lease was not a "long lease" within the meaning of section 76 of the 2002 Act. He said:

> "18. [Counsel for the appellant] very properly referred me to s.76 which defines 'long lease'. Section 76 provides:

> 'A lease is a long lease if it is a shared ownership lease, whether granted in pursuance of the Housing Act 1985 or otherwise, where the tenant's total share is a hundred per cent.'

There is then a definition of 'total share' which is defined to mean:

> 'In relation to the interests of a tenant under a shared ownership lease, his initial share plus any additional share or shares in the demesne premises which he has acquired.'

> 19. In this case [the appellant's] initial share was 50 per cent. She had not acquired any additional shares and so her share remained 50 per cent and so her total share is not 100 per cent but only 50 per cent and so she does not fulfil the condition in s.76(2)(e) and her lease is, therefore, not a long lease as defined."

There is no reference in the judgment to either section 76(2)(a) of the 2002 Act or *Brick Farm*, which does not appear to have been cited.

19. The third case was *Corscombe Close Block 8 RTM Co Ltd v Roseleb Ltd* [2013] UKUT 81 (LC), [2013] L&TR 16 ("*Corscombe Close*"). In that case, as in the present one, there was an issue as to whether tenants with long shared ownership leases whose shares were less than 100% had "long leases" for the purposes of the 2002 Act. His Honour Judge Mole QC, sitting as a Judge of the Upper Tribunal (Lands Chamber), concluded that they did. He said:

> "The starting point is always to consider what the most natural meaning of the section is. The definitions in section 76(2)(a) to (f) can either be read as a series of gateways; so it is enough to pass through any gate to qualify as a 'long lease'. Or it can be read as a stack of sieves; so a lease can fall through (a) but then be caught by the specific mesh of (e). In my judgement s.76 makes much more sense if it is read in the former way. The definitions of a long lease in s.76(2)(a)–(f) are additive: a lease qualifies as a 'long lease' if it falls under any one of those definitions. Thus if a lease that is a shared ownership lease is granted for a term of years certain exceeding 21 years and comes under (a), it is a 'long lease'. It does not also have to qualify under (e), so it does not matter if it does not do so. The draughtsman did not intend (e) to operate to exclude a shared ownership lease that would otherwise have qualified under (a). As Burnton J. put it in [15] of the *Brick Farm* case:
>
> > 'Parliament cannot be taken to have intended to restrict the unqualified ambit of paragraph (a) of section 7 (1) by adding a paragraph purporting to widen rather than to narrow the definition of "long lease".'
>
> He preferred to concentrate on the natural meaning of the relevant sections, as do I. Certainly Burnton J.'s comments were

> obiter and about a different statute. However the wording of the definition of 'long lease' and 'shared ownership lease' is almost identical, the purposes of the legislation similar and I find Burnton J.'s analysis very persuasive ….
>
> 16. I conclude that the appellant succeeds on this point. The tenants under the shared ownership leases held 'long lease' under s.76(2)(a) and were the qualifying tenants who needed to be and were served with notice."

The Decision

20. Just as he did before us, Mr Justin Bates appeared for Avon before the Judge and contended that shared ownership leases are dealt with comprehensively in section 76(2)(e) of the 2002 Act and so impliedly excluded from section 76(2)(a). One of his arguments was to the effect that "it is in practical terms unheard of (even if not legally impossible) to have a shared ownership lease of 21 years or less duration and that Parliament cannot be taken to have legislated specifically for such a case": see paragraph 38 of the Decision.

21. The Judge did not agree. He said in the Decision:

> "39. Apart from the difficulties with that construction explained by Stanley Burnton J and Judge Mole, which would attribute to the Parliamentary draughtsman a curious change in drafting style, so that what appears to be an additional class of qualifying interests operates by implication to cut down the width of a previous class, I cannot accept the premise of Mr Bates's argument. Shared ownership leases as defined in the 1993 and 2002 Acts include bespoke agreements made by landlords and tenants, with no restriction on length of term, under which a tenant (or their PRs) may become entitled to a sum calculated as a share of the value of the demised premises. Parliament was legislating for a broader class of shared ownership lease, not a limited statutory model that uses a much longer term of years.
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> 40. In any event, it is an outside possibility that at some stage a right to buy lease or a shared ownership lease could be granted for a term of 21 years or less ….
>
> …
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> 42. The reality is therefore that, however unusual it might be in practice, Parliament did recognise the possibility of leases for 21 years or less being granted pursuant to the [Housing Act 1985]. That, and the fact that shared ownership leases can include non-statutory models of any duration, explains why Parliament provided for such cases in s. 76(2)(d)-(f) of the 2002 Act: such leases would not fall within s. 76(2)(a) even though the vast majority of right to buy, shared ownership, rent to mortgage and right to acquire leases would fall within it."

22. With regard to *Brick Farm*, *Richardson* and *Corscombe Close*, the Judge said in paragraph 43 of the Decision:

> "The observations of Stanley Burnton J in *Brick House Management* on statutory interpretation were, with respect, clearly right, even if the particular reason why s. 7(1)(d) of the 1993 Act was not otiose was incorrectly identified (an exception to the low rent requirement would be needed in the case of shares of less than 100%, not for 100% shares where no rent would be paid in respect of the landlord's share). *Corscombe Close* is in my judgment correctly decided. The Deputy Judge in the *Richardson* case did not have the relevant statutory material and previous authority referred to him and his reasoning on shared ownership leases should not be followed."

Discussion

23. As was stressed by Mr Mark Loveday, who appeared for the Company with Mr James Castle, there is an "or" between paragraph (e) and paragraph (f) in section 76(2) of the 2002 Act. That plainly means that paragraphs (e) and (f) are alternatives, but it is also clear that the "or" is intended to apply more generally. As was accepted by Mr Bates, this time appearing with Ms Katherine Traynor, there is no question of, say, a lease "granted for a term of years certain not exceeding 21 years" within paragraph (a) also having to fall within one or other of paragraphs (b), (c), (d), (e) and (f). On the face of it, the various paragraphs represent, as was submitted by Mr Loveday, a series of gateways. A lease will be a "long lease" if any of paragraphs (a) to (f) is in point. That suggests that, as the Company contends and the Judge held, a shared ownership lease for a term of more than 21 years will be a "long lease" whether or not the tenant has a 100% interest: paragraph (e) will not be applicable, but paragraph (a) will, and that will suffice.

24. Mr Bates, however, argued that such a conclusion would run counter to paragraph 13 of the Consultation Paper. That, as he pointed out, states, "Where the lease in question is a shared ownership lease, the leaseholder would have to hold a 100 per cent share of the equity". As, however, Lord Briggs observed in *Settlers Court RTM Co Ltd v FirstPort Property Services Ltd* [2022] UKSC 1, [2022] 1 WLR 519, at paragraph 53, "In the end it is the language Parliament has chosen to use which must be the primary guide, both to purpose and detailed application". In any case, I agree with Mr Loveday that the thrust of paragraph 13 was to the effect that the legislation which was being proposed should borrow from the 1993 Act. The point being made was that the right to manage would be exercisable by "qualifying tenants, as defined in the 1993 Act". Paragraph 13 went on to supply a summary of what the 1993 Act provided for, but those details, whether or not stated accurately, were not the focus of the paragraph. The message being conveyed was that the approach taken in the 1993 Act should be adopted. The paragraph cannot be taken as a reliable guide to whether the authors (let alone Parliament) intended a shared ownership lease for more than 21 years which would naturally fall within what became section 76(2)(a) of the 2002 Act to be a "long lease" only if the tenant had a 100% interest. I should add that counsel confirmed to us that the 2002 Act, as passed, corresponded to the draft bill which had been published with the Consultation Paper.

25. Another of Mr Bates' objections to the Judge's view was that it would reduce section 76(2)(d), (e) and (f) to virtual irrelevance. He did not go so far as to assert that, if paragraph (a) were read as extending to *all* leases "granted for a term of years certain exceeding 21 years", paragraphs (d), (e) and (f) could have no application at all, but he argued with justification that they could apply no more than rarely. On the other hand, paragraphs (b) and (c) also provide for very uncommon situations. Perpetually renewable leases are dealt with in section 145 of the Law of Property Act 1922 and paragraphs 1 and 2 of schedule 15 to that Act, but they are unusual to say the least. Leases taking effect under section 149(6) of the Law of Property Act 1925 are likewise seldom encountered, but Parliament has nonetheless thought it appropriate to provide for them in paragraph (c). In the circumstances, it seems to me that the fact that paragraphs (d), (e) and (f) might be rendered of little importance if any lease for a term in excess of 21 years is deemed a "long lease" under paragraph (a) does not matter. There is good reason to think that, as regards not only paragraphs (d), (e) and (f), but paragraphs (b) and (c), Parliament was intending to provide for particular circumstances which were uniformly likely to occur infrequently, if at all. I agree with the Judge that it is not significant that "the vast majority of right to buy, shared ownership, rent to mortgage and right to acquire leases would fall within [paragraph (a)]".

26. Further, there seems to me to be force in Mr Loveday's argument as to the policy underlying section 76. Tenants with long shared ownership leases who have not staircased to 100% will still have an obvious interest in how the premises are managed, the more so since they will typically pay full service charges. That being so, Parliament might have been expected to have intended them to be able to participate in management issues.

27. In short, I agree with the Judge that a tenant with a shared ownership lease "granted for a term of years certain exceeding 21 years" has a "long lease" within the meaning of section 76 of the 2002 Act regardless of whether the tenant has a 100% interest and, hence, that every shared ownership tenant in Block A is a "qualifying tenant" for the purposes of the 2002 Act. To adapt slightly what Stanley Burnton J said in *Brick Farm*, "Parliament cannot be taken to have intended to restrict the unqualified ambit of paragraph (a) of section [76(2) of the 2002 Act] by adding a paragraph purporting to widen rather than to narrow the definition of 'long lease'".

28. In the circumstances, I do not need to address the respondent's notice.

Conclusion

29. I would dismiss the appeal.

Lady Justice Elisabeth Laing:

30. I agree.

Lady Justice King:

31. I also agree.