

April 2026

WHAT IS 'A BUILDING' UNDER THE RIGHT OF FIRST REFUSAL: THE COURT OF APPEAL EXPLAINS IT ALL IN RELATION TO THE LANDLORD AND TENANT ACT 1987, PART 1

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INTRODUCTION

Last month an important decision was handed down by the Court of Appeal about rights of first refusal for tenants of flat where the landlord proposes to sell some or all of its reversionary interest under Part 1, Landlord and Tenant Act 1987 ("the 1987 Act"): *SGL 1 Limited -v- FSV Freeholders Limited* [2026] EWCA Civ 267 (Lewison, Asplin and Arnold LJ).

On a relevant proposed sale of a landlord's reversion the tenants, subject to exceptions, have the right of first refusal to purchase that interest on the same terms the landlord proposed to a prospective third party purchaser.

It is an important part of the process that when the landlord serves an offer notice or the tenants have cause to serve a purchase notice, the "building" which is the subject-matter of the respective notices consists of a single building.

There is no statutory definition of "a building" in the 1987 Act. Prior to the decision in *SGL 1 Limited -v- FSV Freeholders Limited* different decisions have expressed conflicting reasoning as to how one identifies whether one or a series of structures together can constitute "a building" under the 1987 Act.

PART 1, THE 1987 ACT

The 1987 Act created the right for tenants to have a right of first refusal regarding the acquisition of their landlord's reversionary interest if the landlord wished to sell, in defined circumstances.

The long title of the 1987 Act included as a stated aim of the 1987 Act that it is: "*An Act to confer on tenants of flats rights with respect to the acquisition by them of their landlords' reversion*". Since enactment of the 1987 Act, litigants and the courts have criticised it for having been ill-drafted, complicated, and confused; see e.g., *Denetower Ltd -v- Toop* [1991] 1 WLR 945 (CA), 952G per Browne Wilkinson V-C.

The 1987 Act applies, amongst other criteria, to premises which consist of “*the whole or part of a building*”. For present purposes, the meaning of “*relevant disposal*” (subsection 1(1)) is “*the disposal by the landlord of any estate or interest (whether legal or equitable) in any such premises, including the disposal of any such estate or interest in any common parts of any such premises ...*”. (subsection 4(1))

Disposals can include by surrender, grant of an option or a right of pre-emption; they exclude disposal under a will or under intestacy laws (subsection 4(3)). The exceptions also include where the demised premises consist of a single flat.

The landlord cannot make a “*relevant disposal*” affecting any “*premises*” to which Part 1 of the 1987 Act applies without:

- previously serving a notice concerning that disposal on “*qualifying tenants*” of the flats contained in the premises pursuant to subsection 5(1) containing the principal terms of the landlord’s proposed disposal. (“**an Offer Notice**”) The Offer Notice must comply with applicable provisions as form in sections 5A to 5D. Service of the Offer Notice confers the rights of first refusal; and
- ensuring the disposal is made in accordance with the requirements in sections 6 to 10 of the 1987 Act

SGL 1 Limited -v- FSV Freeholders Limited was directly concerned with the interpretation and application subsection 5(3) which provides:

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

Thereafter sections 6 to 10 procedures allow the tenants to nominate a person to take the protected interest described in the Offer Notice on their behalf. A landlord is thereafter obliged to proceed with the transaction unless it serves a notice that it no longer intends to proceed with the disposal at all.

Service of an Offer Notice is mandatory. A failure to comply with subsection 5(1) renders service of an Offer Notice a nullity. Further if a landlord, without reasonable excuse, makes a relevant disposal affecting premises to which the 1987 Act applies without complying with section 5 of the 1987 Act concerning service or contravenes a prohibition or restriction in sections 6 to 10, the landlord commits an offence; see section 10A.

Where a landlord makes a relevant disposal without serving an Offer Notice or makes a disposal in contravention of any sections 6 to 10 provisions, the premises remain subject to Part 1 of the 1987 Act. (section 11)

Pursuant to subsection 12B(2), the requisite majority of the qualifying tenants, Freeholders Ltd, may serve a notice on the purchaser requiring it to dispose of to their nominee the estate or interest which was the subject-matter of the original disposal on the terms on which it was made (“a **Purchase Notice**”).

Where the original disposal included other property, a Purchase Notice may require the purchaser to make only a disposal of those premises to which the 1987 Act applies on same terms as the purchaser acquired the applicable premises, with necessary modifications. (subsection 12B(4))

FACTUAL BACKGROUND IN SGL 1 LTD -V- FSV FREEHOLDERS LTD

The residential development in issue was Fox Street Village, close to Liverpool city centre. There are five blocks of flats in the development (Blocks A, B C, D, and E), all registered at HM Land Registry under a single title number. Block D was not in issue because it was subject to demolition following a fire.

Blocks C and E are adjoining new-build constructions in the north of the development. There is a public access road separating Blocks E and C from Blocks A and B to the south of the development. Block A is in the west of the development and it is a conversion of an existing former warehouse building with its own utility services, developed before the other blocks were constructed. Block B is a new-build construction to the east of the site and opposite Block C. Blocks B, C, and E are of similar construction and were built at about the same time, as the second phase of the development.

Blocks C and E share a staircase and entrance (in Block E). Blocks B, C and E share utilities, including gas, electricity, and water. The three blocks are serviced by one plant room, one boiler and one CCTV system (all situate in Block C). Block B is not physically connected to Blocks C and E. Each of the four Blocks share a car park and access points.

THE ORIGINAL DISPOSAL AND DISPUTE

FSV, the landlord and registered proprietor went into administration. The joint administrators negotiated a sale of the whole development to SGL 1. In February 2020 FSV in its capacity as landlord served two section 5 Offer Notices on the qualifying tenants:

- Notice One offered the freehold reversion of Block A for sale for £350,000.
- Notice Two offered the freehold reversion of Blocks B, C and E for sale for £1,050,000.

The offers were not accepted by a majority of the qualifying tenants. FSV and SGL 1 entered into a contract for the sale of the whole development in June 2020. SGL 1 became the registered proprietor in November 2020. However, the tenants served section 12B Purchase Notices in August 2021 claiming the right to purchase Blocks A, B, C, and E.

The dispute was whether FSV had complied with the section 5 Offer Notice requirements in its original disposal of the entire freehold interest to SGL1. The contention was that Blocks B, C, and E formed more than one building under the 1987 Act and therefore Notice Two did not constitute a valid Offer Notice concerned with only one building.

JUDGMENT IN THE HIGH COURT

In earlier proceedings the tenants challenge to validity of the Offer Notice was dismissed at first instance and then restored on appeal. The substantive challenge was decided by His Honour Judge Hodge KC in the High Court: [2025] EWHC 3 (Ch).

The learned judge dismissed SGL 1's application for a declaration that FSV acting by its administrators had complied with the section 5 Offer Notice provisions when disposing of its freehold reversion to SGL 1. It was held that Blocks A, B, C, and D constituted a single building. Accordingly, the Offer Notices One and Two served on the qualifying tenants were invalid.

A multi-factorial evaluation of factors His Honour Judge Hodge KC considered to be relevant was carried out in this case below by the learned judge to decide whether Blocks A, B, C, and E were one building under the 1987 Act. His Honour Judge Hodge KC followed the reasoning of the deputy High Court judge, Geoffrey Vos QC (as he then was) in *Long Acre Securities Ltd -v- Karet* [2004] EWHC 442 (Ch), [2005] Ch 61.

Long Acre Securities concerned a single residential estate consisting of four or more separate structures in north London. *Long Acre Securities* sought to sell its entire reversionary interest at auction. It served a single Offer Notice on the qualifying tenants treating all the structures on the estate as one building. A qualifying tenant challenged the validity of the Offer Notice on the grounds subsection 5(3) required the transaction be severed so that each structure was treated as a separate building with its own separate Offer Notice. Geoffrey Vos QC held that the legislation could not be construed so that "building" could also include a "building scheme" – a single development of one or more buildings built at the same time, as contended by the claimant. However, it was held that the purpose of the legislation was to give tenants the right to acquire their landlord's reversion and from that, it could be discerned that the 1987 Act did not require "... *integrated developments to be split into inappropriate and unwieldy sections.*" (para.68)

Thus, the *Long Acre Securities* decision was based on reasoning that when Parliament referred to “a building” in the 1987 Act, it must have intended that to include more than one structure in some limited circumstances. In para.74 of *Long Acre Securities* the deputy judge held that “a building” was “... a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises” – such as gardens, yards, and outhouses.

JUDGMENT IN THE COURT OF APPEAL

Thus, on SGL 1’s challenge in the Court of Appeal to His Honour Judge Hodge KC’s decision, the question of what is “a building” under the 1987 Act was the central question. Was the reasoning His Honour Judge Hodge KC followed in the *Long Acre Securities* decision correct?

SGL 1 argued that the decision in *Long Acre Securities* was wrong; subsection 5(3) was in mandatory terms and provided that an Offer Notice should only deal with a single building. SGL 1 also submitted that while a building is a single structure, where in practice one structure was indivisible from another structure or physical division was impossible, those structures together could be one building. SGL 1 contended that this approach rather than an evaluation of several factors considered in the court below should be applied to determine what is a building.

The qualifying tenants’ nominee company contended in the Court of Appeal that the decision in *Long Acre Securities* was correct because it was consistent with the purpose of the 1987 Act. It was further submitted that the amalgamation of separate structures in a single Offer Notice is appropriate because it can avoid difficulties of separating common appurtenant land into separate parcels for sale. In the particular case, it was submitted that if Block A was offered separately from Blocks B, C and E that would produce unwieldy and unreasonable results.

In the Court of Appeal Asplin LJ gave the principal judgment and Lewison LJ also made some further observations. Arnold LJ agreed with both judgments.

Asplin LJ held there was little doubt about the purpose of Part 1 of the 1987 Act, viz to confer on tenants of flats rights with respect to the acquisition by them of their landlord’s reversion.

As to the interpretation of subsection 5(3) and the question of whether “a building” can include more than one structure, Asplin LJ held that the *Long Acre Securities* decision took no account of the landlord’s ability to determine what it offers for sale under an Offer Notice,

including the power to decide whether and how much appurtenant land might be included in an Offer Notice, and with it the power to avoid unwieldy and unreasonable results. Asplin LJ explained that this process would not adversely affect tenants' legal easements or quasi easements in relation to shared appurtenant land. Thus, the avoidance of absurdity rationale for the *Long Acre Securities* decision was incorrect.

Crucially, at para.83 Asplin LJ wrote:

"It seems to me, therefore, that [Long Acre Securities] was wrongly decided. That is not to say that there will not be circumstances in which separate structures may be one "building". It is difficult to formulate a single test. The central question is likely to be whether the structures are within a functionally integrated built envelope. If that yardstick is applied, the uncertainty with which [SGL 1] was concerned should not arise, nor should a lengthy consideration of a large number of factors be necessary to determine the status of a structure." [My underlining]

At para.96 of the judgment Lewison LJ made several observations which elaborated on Asplin LJ's findings that the perceived potential unwieldy and unreasonable results regarding the division of appurtenant land described in *Long Acre Securities* need not arise and could not be a justification for finding that in some circumstances more than one building can be included in a section 5 Offer Notice. Lewison LJ concluded para.96 with the following words: *"In short, I consider that to allow the meaning of "building" to encompass a number of free-standing structures as a single building because of their shared use of appurtenances [is] to allow the tail to wag the dog."*

Lewison LJ also observed in para.99 that there was no satisfactory interpretation of subsection 5(3) which avoided inconvenient results. Lewison LJ considered that the Secretary of State should give serious consideration to exercising its statutory powers to make modifications to subsection 5(3).

As the learned judge below had adopted the wrong legal test by following the reasoning in *Long Acre Securities*, Asplin LJ considered it was necessary to interfere with the earlier findings of fact in order to correct the error of law. The Court of Appeal found:

- Block A is not part of a single building consisting of Blocks A, B, C and E. Block A was not part of a functionally integrated built envelope; it was a separate structure.
- SGL 1's Block A section 5 Offer Notice One was valid.
- Block B could not function separately without a new plant room and new plant installed in or under it. Overall, Block B should be regarded as part of the same building as Blocks C and E.
- Blocks C and E are part of a functionally integrated built envelope. They were built together with a single plant room and share a single entrance and staircase.
- As a result, SGL 1's Blocks B, C and E section 5 Offer Notice Two was also valid.

SUMMARY CONCLUSIONS

What is “a building” under Part 1 of the 1987 Act? It will ordinarily be a single self-contained structure within a functionally integrated built envelope. That more than one structure can together be “a building” is also true, but those structures must together be within a functionally integrated built envelope rather than separate and functionally self-contained structures.

In each particular case where subsection 5(3) severance is in issue, the facts must be carefully considered to ascertain whether the Court of Appeal “yardstick” is satisfied as regards the structure(s) included in a particular notice.

It is not particularly relevant to the application of the yardstick that the structures enjoy shared appurtenances.

Further, the application of the yardstick does not require a multi-factorial evaluation of the nature and use of the structures is question of the kind which was conducted by the learned judge below in this case; rather, a focused assessment of the degree of integration between structures is more appropriate.

Thus, even after this decision of the Court of Appeal in *SGL 1 Limited -v- FSV Freeholders Limited*, there remains scope for argument as to whether the ascertained degree of integration between two or more structures is sufficient for them to constitute “a building” under subsection 5(3) of the 1987 Act.



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