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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBE/OCE/2016/0176**
Property	:	**Flats 1-8 Queens' Court, 6/7 Grove Park, London SE5 8LS**
Applicant	:	**QC Grove Park CE Limited**
Representative	:	**Bolt Burdon Solicitors** **Mr W Dunsin FRICS** **Ms S Rahman, Mr T Yapp, Ms A Green and Mr J Wright**
Respondent	:	**Quandron Investments Limited**
Representative	:	**Altermans Solicitors who instructed Mr P Harrison (Counsel) and Mr Andrew Balcombe BSc FRICS FCIA RB**
Type of Application	:	**Application under Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr N Martindale FRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 24th January 2017**
Date of Decision	:	**17th March 2017**

DECISION

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 42 of our Decision dated 27th February 2017 . Our amendments are made in bold. We have corrected our original Decision because of the calculation of the percentage reduction was incorrect at £100,000. Our apologies to the parties

Signed: Andrew Dutton Tribunal Judge
Dated: 17th March 2017

DECISION

The parties having agreed the freeholder's loss of income and reversion at £46,500 the only matter the Tribunal needed to determine was the value for the potential to develop the space above the roof of Flat 8 which both parties had undertaken using the residual valuation method, which on our findings results in a value for the roof space of £ £93,750 for the reasons set out below.

BACKGROUND

1. By notice under Section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) the tenants in this case gave notice to the Respondent of their wish to collectively enfranchise the property at Flats 1-8 Queen's Court, 6/7 Grove Park, London SE5 8LS (the Property) at a price of £49,412 together with an additional £100 for the garages and appurtinent land.

2. On 26th November the Respondents filed a counter notice rejecting the Applicant's offer, although accepting that there was the right to enfranchise, but instead substituting a price of £298,000 for the freehold interest and the sum of £1,000 for the additional property.

3. As a result of agreements reached between both Mr Dunsin for the Applicants and Mr Balcombe for the Respondents, the premium payable in respect of the freehold and loss of income was £46,500. The disagreement centred around the value attributable to the potential to create a new unit on the roof above Flat 8. For the Applicants Mr Dunsin concluded, as set out in his report, dated 20th January 2017, that the value to develop above the roof of Flat 8 was £10,239 on the basis set out at page 12 of his report. By contrast, Mr Balcombe for the Respondents concluded that the value of the roof space was £125,000 as set out in his report dated 15th January 2017 and in more detail at page 101 of that report.

4. Prior to the hearing we had been provided with a substantial bundle of documents which contained the application, the notices served under the Act, Land Registry documentation in respect of the various flats and the freehold, specimen copies of leases and the reports of Mr Dunsin and Mr Balcombe. In addition, there were additional documents including the approved transfer, a statement of Mr Paul

Alterman for the Respondent. We also received a statement of Mr Joseph Wright for the Applicants, some photographic evidence and on the morning of the hearing what was titled as the Applicant's skeleton argument. In addition, during the course of the hearing, we were provided with the Party Wall Act 1996 explanatory booklet, an extract from the text book 'Modern Methods of Valuation' and the Court of Appeal case of *Inland Revenue Commissioner v Clay and Buchanan [1914]1KB339*.

HEARING

5. At the hearing Mr Yapp represented the Applicants and provided us with his skeleton argument. The basis of the Applicant's case was that they did not believe there was any development value in respect of the roof above Flat 8 and that the evidence of the potential to obtain planning contained in a letter from the Local Authority, which is Southwark, dated 11th September 2015 did not show that planning was an inevitability. Further, the offer that had been made by the owner of Flat 8, a Mr Patrick Cobb, should not be admissible as it was subject to contract and for other reasons which were developed during the course of the hearing.

6. Mr Yapp tendered Mr Dunsin for cross examination, although we had the benefit of his report before us. He had assessed the value of the proposed development, as set out at paragraph 2.09 of his report, including a build cost of £135,000, which we understand was agreed, and certain other expenses, including professional fees, the construction period, marketing period, contribution to the local authority and developer's profit. He had assessed the value of the new flat when built at £325,000 and had provided for disposal costs of 2.5%; finance costs of 7%; costs in respect of party wall matters of £9,600; compensation to be payable to leaseholders for the works of £8,000 and a building contingency cost of 20%, which would be £27,000. He had also discounted the risk associated with the development by some 75% giving in his view a value for the roof space of £10,239.

7. In reaching the value of the property to be built, which it was agreed would be a one bedroom flat, he found what he considered to be close comparables at Linwood Close, a relatively modern residential development in close-ish proximity to the subject property. There he put forward four properties, numbered 8, 44, 89 and 101 Linwood Close. These gave a figure of £285,000 for a one bedroom flat but he concluded the new flat would be in better condition and although located on top of a 1970s block without a lift he considered that a market value of £325,000 was appropriate. Paragraph 5.04 of his report set out the reasoning behind his assessment of the development value taking into account problems associated with the development, an estimate of risk, profit and the development potential to be included in the enfranchisement price. It should be noted that there is no marriage value as all leases are more than 80 years in length. His calculations had led him to conclude that the initial development value of the roof space would be £40,957.

8. However, as there was no planning permission at the date of valuation, he considered that the risk factor for lack of planning needed to be factored in. He had taken into account the Tribunal's findings in Arrowdale v Coniston Court (North) Hove Limited and considered that the chances of obtaining permission of the subject property were lower than in the Arrowdale case where a discount of

50% had been made. He concluded that a deduction of 75% from the development value was appropriate. He also referred us to a case at Stratheden Court, 33 Grove Road, Sutton, a matter before this Tribunal in 2012 where he had acted for the freeholder. In that case a deduction of 15% had been made from the development value because planning permission had previously been granted but had lapsed. He also considered that the Trustees of Sloane Stanley Estate v Care-Morgan was of assistance where a reduction in the development value as a result of risk was made and this was followed in the case of Sherwood Hall (East End Road) Management Company v Magnolia Tree Limited where a development value was again substantially reduced.

9. In cross-examination he accepted that he had not advised developers but had in the past advised on development value. He had no experience of planning matters. His report appeared not to make reference to the offer made by Mr Cobb, the owner of Flat 8, through his company Bradfield Properties Limited, the details of such offer being set out in the witness statement of Mr Paul Alterman included in the bundle and dated 13th January 2017. Mr Dunsin indicated that he had not had regard to the notices served under section 5 of the Landlord and Tenant Act 1987 and nor the offer made by Mr Cobb.

10. On the question of the comparables, it was pointed out to him that they all came from the same estate, which was bounded on two sides by railway lines. Photographs showing this were produced to us. Mr Dunsin indicated that he had not noticed the noise from trains when inspecting but that these comparables were one bedroom flats within close proximity to the subject property. Asked whether he had made adjustments for location he felt that had been included in the average price for those properties at Linwood Close of £285,000 being lifted to £325,000 for the new flat. He accepted, however, that the railways may affect the value by £5,000 but the remaining discount would be for condition, although the issue of parking might cause a problem. Asked whether the figures recited in his report were the actual sale values, he told us that they were but had not produced any documentation to provide such evidence. Instead he indicated that he had looked at them on documents that were in the public domain and had expected that the Tribunal might check them accordingly. He accepted that it was necessary to adjust some of the comparables for time which he had done, for example in the case of 101 Linwood Close which was a December 2014 sale at £270,000 he had adjusted that to the valuation date to make a figure of £293,000. All comparables, he said, pre-dated the valuation date and accepted that it was a rising market. No workings were included within his report to show the adjustments. He confirmed, however, that he had used the 'all property index' rather than those relating just to flats but he was of the view that the house index from the Land Registry would be more accurate in that it provided, he thought, more data. He confirmed that he was aware that sales of flats in the locality had taken place after the valuation date but he would not consider them.

11. Asked about the planning position and the letter from the Council contained in Mr Blackwood's report, he questioned why planning application had been made. He considered it would be difficult to obtain planning.

12. The letter in question is one from Southwark Council dated 11th September 2015, which said under the heading Principle, *"the principle of an extension in this*

location is accepted subject to the proposal of preserving or enhancing the character and appearance of the Camberwell Conservation Area and subject to the detailed consideration set out below." The letter then went on to confirm that under the 'Design and Conservation heading' the proposal was "*acceptable in terms of bulk and was of an appropriate design and scale as well as being sufficiently set away from the nearby Listed Buildings so as not to materially be harmful to its setting*". The letter went on to deal with other matters and at its conclusion said as follows *"please accept this advice is given in order to assist you but is offered at officer level only and is not a decision of the Council. Should you require a further clarification on any of the other issues raised in this letter, please do not hesitate to contact the above-named officer."* Mr Dunsin's view was nonetheless it would still be difficult to get planning. He told us that the valuation had been carried out on the basis that planning will be obtained. He confirmed that he was not a planner and was referred to the Camberwell Grove Conservation Area document, an extract which was included in his report. At paragraph 3.4.6 of that document the following wording was to be found *"some other elements failed to make a positive contribution to the conservation area. Modern flats at Queen's Court, Grove Park could have addressed the street in a more traditional way but instead leave a gap albeit well landscaped."* He confirmed that he had not been in touch with Camberwell Society but referred us to a letter from Michael Crowley, Architect living Grovehill House, 8 Grove Park, a neighbouring property, who objected to the proposal for reasons set out in that letter.

13. Discussions ensued as to the state of the existing roof and the need to replace same and the impact that might have on the works and also the question of party wall issues, although Mr Dunsin admitted he did not undertake party wall works. He considered that notice would have to be given to each lessee and that a figure of £1,200 had been agreed for this but contrary to Mr Dunsin Mr Balcombe considered that only two flats would need to be involved. As to compensation, he had put before us the Tribunal case of Stathedene Court referred to above where compensation had been ordered by the Tribunal in that matter, although Mr Dunsin had in fact argued in that case that there would be no compensation payable. He had taken his figure for compensation bases solely on that case. As to estate agency fees, he was not clear what those might be and confirmed his 75% deduction for risk was based on previous cases. He did not consider that the pre—planning indication put the purchaser in a better position, indeed, indicating that he thought a refusal of planning permission might be better as it could contain possible explanations which would then enable the person making the application to address those issues and deal with them if necessary on appeal. Indeed, he went as far as to say that planning refusal could be a good thing and better than the indication given by the Council in its letter.

14. Asked about the comparables put forward by Mr Balcombe, he was of the view that the property at Drewery Court was not helpful as it was in Blackheath and was not, he considered, relevant.

15. On the question of Mr Cobb's involevment, he concluded that it should be excluded. He considered that Bradfield Properties Limited owned by Mr Cobb meant that this was not a bid that he needed to take into account. He would treat Bradfield Properties as one as the same as Mr Cobb as he did not consider it was an open market offer. Asked whether or not this offer could have influenced hope

value Mr Dunsin said he did not know how credible the offer was. It was the subject of various matters, for example he thought it must be subject to planning, although it does not say so on the letter. He could not treat it as a genuine offer again repeating that it must be subject to planning permission.

16. Following the luncheon adjournment, Mr Dunsin was asked about the residual value and the two years taken to sell which had been discounted by Mr Dunsin using a 7% rate. It was pointed out to him that the text book on the modern method of valuation indicated that it would be wrong to discount the proceeds to their present value because the cost of holding the property is taken as a cost of the development and therefore to discount the proceeds of sale would be an adjustment. His response to this was that he had just capitalised this figure on the basis that he had the ground rent and that it was just his experience based on other Tribunal decisions.

17. Mr Yapp re-examined Mr Dunsin asking him why he had chosen the flats at Linwood Close. Mr Dunsin thought that these were good comparables being flats in a modern development, although accepting that the flat to be built at the subject property would be modern and more valuable. Asked about more historic sales, for example the last one in Queen's Court in April 2014 being Flat 8 for £265,000, he considered that was too historic and would only go back one year at most. He considered again that the building of the flat would have an impact on the residents and that compensation would therefore be payable. He had no particular comment that he could make on the investigations into the structural capacity of the block.

18. We then heard from Mr Balcombe whose report was in the bundle. He confirmed those matters that were agreed and highlighted those areas where disagreement remained. This was over the length of time required before construction began, the value of the new flat, the cost of party wall matters, compensation, contingency, flat disposal fees and discounts.

19. Under the heading History at paragraph 5 of his report, he gave details of the pre-valuation date dealings between Mr Alterman and Mr Cobb, which do not seem to be contentious, save as to the relevance of the offer made by Mr Cobb and his status.

20. Under paragraph 7 of his report, he concluded that a potential purchaser would be of the view that planning consent for the additional floor would be granted and drew on his personal experience of development at a block of flats at Drewery Court on the Glebe in Blackheath where a similar 1960s block received planning permission for development.

21. On the structural issues, he confirmed that a trial pit had been dug by Mode Constructions Services Limited and the findings were set out in a letter dated 15th January 2017. The nub of the letter was to be found in the following wording: *"Based on these findings the existing foundations would be more than adequate to take an addition al floor."* This contrasted with a structural engineer's report from Campbell Reith said to have been made in January of 2017 but the identification of the author is unknown. Their report appears to have been based on limited photographs provided by the freeholder showing excavations. The

report under the conclusion heading while accepting that the roof extension may be acceptable for a planning point of view, indicated that they believe further engineering studies were required. It suggested that possible strengthening or replacement of the existing roof structure would be required to accommodate the increased roof loading and strengthening of the existing foundation system was also likely to support the increased loadings and the new structure. The report did not have a signature at the end of same. Campbell Reith had sent a letter just prior to the hearing which was not admitted.

22. Returning to Mr Balcombe's report, and relying on the letter from Mode Construction he was of the view that a potential purchaser would be satisfied that the new flat could be constructed. As to the potential value of the flat, he relied on comparable properties at 4 and 6 Camberwell Grove two small flats sold in September and November of 2015 and in the same location to the subject property although of a lower standard.

23. He also put forward that flats at 4 and 6 Ayers Court which appeared to have been sold in May of 2016 and which formed part of a new development south to the subject property in a less valuable location. The flats were marketed in September of 2015 at £435,000 and £445,000 and were, we were told, sold at the asking prices. Accordingly, these were figures that would be known to a potential purchaser. There was also a flat at Camberwell on the Green, a new development, a good sized one bedroom flats being sold between £450,000 and £505,000. These again post-dated the date for the subject flat but a properly advised purchaser would have been aware they were coming to the market at these prices and have borne them in mind.

24. He accepted that the subject building was not the most attractive but it enjoyed mature communal gardens in a popular location. He did not consider that the sales of the flats at Linwood Close were helpful, having been sold in a used condition without the guarantees that would be available for a new development. He considered that a potential purchaser would be aware of the sale prices achieved for the flats in Ayers Court. He taken them into account and accordingly concluded that a price for the flat at the subject property would be not less than £425,000.

25. He considered that the works would commence within six months for the reasons set out in paragraph 9.22 onwards of his report. He agreed with Mr Dunsin that the professional fees would be 12.5% and that the project would take some nine months to complete. He concluded that it would be three months to sell the flat and that the party wall costs would be limited to two flats only at a price of £2,400. He did not consider that any compensation would be payable as there was no legal requirement to do so and furthermore the layout of the site would cause little disruption to the adjoining leaseholders. He thought that a contingency of 5% would be sufficient and that sale costs would be in the region of 1.5% plus VAT. He had used the rate of 6% for the costs, the finance based on capital expectation and borrowing costs and agreed that the profit would be 15%. These figures gave him a development value of £153,000 but accepted that there would be a potential risk although he put this at no more than 20%. The reasons for this were set out in paragraph 10 of his report. His view that a discount of not more than 20% was appropriate resulting in an offer for the roof and air space of £122,400. However,

he considered this in the light of the offer made in February of 2015 by Mr Cobb of £125,000, although accepting this was for a small two bed flat. However, he was aware that the market had moved between February and September of 2015 by some 9% and that a one bed flat would still leave the developer to make the offer that had been made of £125,000, which was repeated in Mr Cobb's letter dated 10th January 2017 when he confirmed that he was still prepared to pay the sum of £125,000.

26. He was asked questions by Mr Yapp and confirmed that he had not got direct estate agency experience and that the offer from Mr Cobb's company could be withdrawn. He agreed also that he was not a planning consultant but that he had experience of cases where he had employed planning consultants over the years and learned through that experience. He was, he said, a surveyor who had experience in planning matters even though not a planning expert.

27. Asked about the development at Drewery Court, he confirmed that it was a 1960s block in a Conservation Area where planning had been sought for two flats and obtained after an appeal. He was of the view that there were national and local policies but the local authority could not depart from planning guidelines. He thought, however, that a purchaser would proceed in this case on the basis of the letter from the local authority and the letter from the builders with regard to the foundations. He was asked about the comparables and confirmed that Camberwell Grove was closest to the subject property, that Ayers Court was a new development and Camberwell on the Green was an inferior building.

28. In cross-examination he was asked about car parking. He showed us a photograph showing a van parked in an area where he considered a space might be created.

29. The letter from the local authority made reference to highways and servicing. The proposal had not provided details of off-street parking, although that should be explored, but otherwise provided that a Transport Statement should be undertaken, which Mr Balcombe indicated was in his experience around £750. His discount of 20% allowed not only for planning uncertainty and design but for parking issues. Asked by the Tribunal about Linwood Close, he considered this to be a weaker location and one comparable was in December of 2014 so he had not taken this into account. They were second hand accommodation, where this would be new and it would have all the benefits that comes with a new build. He did concede that if parking might be an issue then his price of £425,000 could be reduced by £5,000.

30. We then had submissions from Mr Harrison. He was critical of Mr Dunsin's use of the comparables in Linwood Close. He had not really looked at other locations he said and had not been candid about the close proximity of railway lines. He had admitted there might be a £5,000 deduction in respect of the railways but this was not argued and in Mr Harrison's view we could not rely on these comparables. In addition also, he was critical of Mr Dunsin's use of documentation supposedly in the public domain but not included within the report. He also thought it was inappropriate to have used the price allocation under the Land Registry for all houses and not just flats. Further, no real explanation was given as to why the comparable price at Linwood Close rose from £285,00 to £325,000. In contrast, he considered that Mr Balcombe had been frank in the evidence he had given and

had taken all appropriate factors into account in reaching the figures that he had. The structural issues Mr Harrison said were a red herring. The build costs of £135,000 had been agreed. Contingency figures had been arrived at differently. Mr Dunsin had allowed a contingency figure of 20% which appeared to include building difficulties whereas Mr Balcombe had confined this to 5%. His view was that we should prefer the evidence of Mr Balcombe.

31. On the question of parking, nothing had been made of this by the Applicants and Mr Balcombe did not consider the legal position. The lease appears to give rights but in Mr Harrison's view there would be no difficulties if those rights were not interfered with. It might well be that £750 would need to be spent for the report and a Section 106 agreement that this might diminish the value by some £5,000. Mr Harrison drew to our attention that only Mr Balcombe included the cost of acquisition. He relied on the party wall booklet that he had provided us with and in particular paragraphs 5, 7 and 8 where the duties of the owner were set out and some definitions as to adjoining owners. It was his view that the party wall was that above the roof of Flat 8 and that only at best would notice be given to two owners. He did not think there was any basis for compensation as there was no nuisance. He again referred to other financing costs which he said had been doubled discounted by Mr Dunsin which should not have been the case by reference to the text book referred to above. He also highlighted Mr Dunsin's approach to the planning issues, suggesting that a refusal of planning was better than the pre-planning acceptance. He accepted, however, that nothing was guaranteed which was why Mr Balcombe had deducted 20% for this. He also gave his view that the Bradfield offer did not breach the provisions of Schedule 6. There was no suggestion that the connected parties are excluded. Bradfield Properties Limited is clearly a separate legal entity to Mr Cobb and would not fall within the definition of a qualifying tenant. It seemed to him unsupportable that a hypothetical purchaser holding a bid of £125,00 would accept a suggestion by Mr Dunsin that this only had a value of £10,000 or so. Bradfield Properties Limited fell within the hypothetical purchaser class. In connection with the possibility of the withdrawal of the offer it was pointed out that substantial costs that had been incurred by Bradfield as set out in Mr Alterman's statement, which indicated that this was a serious bid and not some flight of fancy on the part of Bradfield.

32. Mr Yapp relying on his skeleton argument, which we have noted, confirmed that Mr Cobb having engaged with the leaseholders in the possibility of joining in with them in the enfranchisement. The question, therefore, was whether this was a genuine offer, which he considered was really nothing more than an invitation to treat. He considered that one could set up a company 'tomorrow' to get around the legislation, which could not be right. As to the comparables put forward by Mr Balcombe, he thought that they were rather high end, new or nice period buildings and the discounts applied were insufficient. The relevant development he thought was Linwood Close which had been disregarded by Mr Balcombe. London, he said, had trains criss-crossing the capital and these comparables should be taken into account. As to the planning, he reminded us that no application for planning had been made and drew our attention to the architect's letter from Mr Conway objecting, which he said would be supported by others. A prudent and cautious purchaser would consider this to be a gamble. The suggestion as to parking, as evidenced by the photograph of the red van, was absurd as it would block the garages and he thought that disruption in the build process should result in some

compensation. As to the Drewery development this was different and unhelpful and there had been strong objections to this application.

THE LAW

33. The law attributable to this application is set out at section 24 of the Act and schedule 6. We have borne those in mind in reaching our decision.

FINDINGS

34. In this case, thanks to the hard work of the valuers, we are left only with having to consider what the development value might be for creating what would appear to be a one bedroom flat above the roof of Flat 8 currently owned by Mr Cobb. The gross development value is suggested at being £425,00 by Mr Balcombe and £325,000 by Mr Dunsin. In this case both valuers have adopted the residual value approach with no evidence of site sales. In those circumstances we are prepared to proceed on the residual value basis for this case.

35. Mr Dunsin relies on comparables at Linwood Close, which although not referred to in his report were situated between two railway lines. The photograph of the development from the air clearly shows this. We consider that would have an impact on the value of the property. He makes little or no adjustment for that. Mr Balcombe by contrast relies on other properties, details of which are provided in his report that leads him to conclude that a value of £425,000 is appropriate. With respect to both valuers, both sets of comparables are not without their problems. The Camberwell on the Green development is new but in a noisy location although close to amenities and transport. It gives an indication as to what the prices might be to a potential purchase. The flats at 4 and 6 Ayers Court are of some help. We also find those flats at Camberwell Grove of assistance although they are quite small but nonetheless indicate values.

36. We prefer the evidence of Mr Balcombe on the question of the value attributable to the flat to be built at the subject property. We think it was remiss of Mr Dunsin not to make clear that the comparables upon which he sought to rely were so closely sited to railway lines and although Mr Yapp sought to argue that these criss-crossed London these were both over-ground lines and from the photograph would appear to be multi-track. Indeed, we believe that there was reference in one of the estate agent's particulars to trains running every 15 minutes. The properties are also quite tightly packed and do not have the benefit of the garden space available at the subject property. Taking these matters into account, therefore, we lean more towards Mr Balcombe's view of the value attributable to the development once completed. As we have indicated we are in this case prepared to accept the residual valuation undertaken by both valuers and accordingly rather than issue a complete valuation it seems to us we need merely to assess the value attributable to the new flat and any discount for risk in respect of planning and certainty. Where the valuers disagree on discounts we, by and large prefer the evidence of Mr Balcombe.

37. The Camberwell Grove flat is in a period property and therefore not wholly comparable with the subject proposed flat. The Ayers Court flats are in a modern block which would in our view add to the value. In May of 2016 4 Airs Court sold

for £435,000 and 6 Airs Court in May 2016 at a price of £445,000. We think, doing the best we can on the comparables before us, that a reasonable starting point for the value of the flat to be built above Flat 8 at the subject property would be £400,000. That, therefore, is our determination on the development value for the flat at the subject property. We must then consider any discount to be applied to this for planning uncertainties as the bulk of the other issues have been agreed.

38. Those issues not agreed, which were set out at paragraph 2.10 of Mr Dunsin's report, aside from the value of the new flat and the planning risk are as follows. Construction period, disposal costs, party wall costs, compensation and contingency. Taking those in turn. The construction period is 12 months or 9 months. We consider that a one bed-roomed flat would be built in 9 months, given that it is agreed that there would be a period of pre-construction, assessed at one year by Mr Dunsin and 6 months by Mr Balcombe. We consider that 6 months would be appropriate, given that we do not see the planning difficulties envisaged, although not expanded upon, by Mr Dunsin. The disposal costs would be in the region of 1.5% plus VAT not 2.5% in the estate agency market at the valuation date, although in truth there is little difference between the parties. No real evidence was given to us by the valuers and to an extent we have relied on our own knowledge and experience.

39. As to the finance rate we prefer the evidence of Mr Balcombe. Mr Dunsin appeared to have used the capitalisation rate for the rent without any thought and had over-egged the pudding in any event when considering the wording of the text book on modern method of valuation. Although neither valuer was an expert it is we find likely that only two party wall notices would be required and therefore the costs of same would be limited to £2,400. We see no legal basis for compensation. The development will in the main be external and the person most affected would be Mr Cobb. The building contingency suggested by Mr Dunsin is too high. He said this included potential structural problems but the build costs had been agreed at £135,000 so this appeared to be an element of double counting. 5% seems a more realistic percentage.

40. Mr Balcombe in his report taking into account the agreed items such as profit and other matters concludes that the value attributable to the development of the flat should be £125,000 slightly more than the figures that he had calculated at paragraph 10.8 because this is the offer made by Mr Cobb, an offer which he considered to be genuine. We agree with him. We do not consider that Mr Cobb's company would have undertaken the costs that it did, which are set out in Mr Alterman's statement, if the bid was not realistic and one that the company would proceed with. The more so as this was repeated albeit in a letter, which has no particular legal status dated 10th January 2017. It does, however, in our view point to there being a genuineness relating to Mr Cobb's company's proposal. We do not consider that he is prevented from making an offer through his limited company. This is a separate legal entity, it is a limited company and would not fall foul of provisions of schedule 6. We consider, therefore, that the site acquisition figure of £125,000 is a good starting point.

41. However, we do not consider that Mr Balcombe has given sufficient discount for planning risks. We certainly consider that Mr Dunsin's view that 75% discount is appropriate to be excessive. His suggestion that a planning refusal is better for a

hypothetical purchaser than a letter from the council indicating an approval to the plan is somewhat strange. A refusal of planning could of course be an outright refusal and not one that lists steps that need to be taken. We think that a hypothetical purchaser having the benefit of the letter of 11th September 2015 would consider that there was a pretty good chance of obtaining planning permission subject to the points raised in that letter. We have also considered the question of the structural integrity. It seems that the trial holes may have only been dug under the two-storey block. It is not possible for us to know whether the foundation arrangements for the three-storey block as well as the two-storey side block were the same. We suspect they probably were. Nonetheless we have the letter from the builder who actually carried out the excavation of the trial holes which was said to be on the existing two storey block and found them to be of sufficient strength to accept the new development. This was also support by the fact that they had carried out a number of developments of this nature. The report from Campbell Reith relied on the photographs but nothing more. On the basis that the letter from the builder followed on from them actually having carried out the investigation works we put more weight to that than we do to the report from Campbell Reith. Our view, therefore is that the structural issues would not cause too many headaches to a potential purchaser.

42. There are, however, potential issues in respect of parking. There are also potential issues in respect of objections. However, it is our understanding that objections from neighbours would only be accepted by the local authority if they had a planning basis. The fact that they may not wish to have the development there is not necessarily going to be sufficient to persuade the local authority that planning should not be granted. It is in our view very helpful that a letter has been provided by the local authority supporting the proposal. The more so, as the original was for a two-bedroom property which has now been reduced to one bedroom which would seem to meet one of the bullet points under the summary of key points in that letter. Taking those matters into account, we conclude that a hypothetical purchaser would probably up the discount for risk to a degree to 25%. This reflects the planning letter and the three bullet points contained therein. This, therefore, gives a value for the development of the flat of £93,750 and we conclude that that is the appropriate figure to be represented in the price paid for the collective enfranchisement.

Judge: Andrew Dutton

A A Dutton

Date: 17th March 2017

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.