



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BK/OAF/2018/0026**

Property : **35 Portland Place, London W1B 1AE**

Applicant : **QAS Nominees (No 1) Limited**

Representative : **Mr A Radevsky – Counsel instructed by Charles Russell Speechlys LLP Solicitors with Mr Kevin Ryan FRICS of Carter Jonas LLP**

Respondent : **City & Provincial (Equity Partners 3) Limited**

Representative : **Mr T Jefferies – Counsel instructed by Muscatt Walker Hayim Solicitors with Mr Gavin Buchanan BSc MRICS with Lamberts**

Type of Application : **Section 21 Leasehold Reform Act 1967**

Tribunal Members : **Tribunal Judge Dutton
Mrs E Flint FRICS**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR on 18th - 20th November 2019**

Date of Decision : **9th January 2020
amended 5th March 2020**

DECISION

DECISION

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at the heading and at paragraphs 94 and 96 of our Decision dated 9th January 2020. Our amendments are made in bold and underlined. We have corrected our original Decision because of a mathematical error. 5th March 2020

The Tribunal determines that the price payable for the freehold of 35 Portland Place, London W1B 1AE is £6,116,540 as set out on the attached valuation sheet.

BACKGROUND

1. This matter first came before us for hearing on 21st May 2019 but had to be adjourned as additional evidence was being sought. Directions were given at that time and the matter eventually came for hearing before us starting on 18th November 2019 originally listed for four days.
2. The matter we are asked to determine is the price to be paid for acquiring the freehold of 35 Portland Place, London W1B 4AE (the Property) under the Leasehold Reform Act 1967 (the Act). The Applicant, QAS Nominees (No 1) Limited is the reversioner and owner of the head lease dated 29th September 1990 due to expire 25th December 2134. The Applicant is a company owned by the Howard de Walden Estate, which is the owner of the freehold whose interests are being represented by the Applicant.
3. The Respondent Company is a tenant under a lease dated 28th April 1937 granted for a term of 99 years due to expire on 25th December 2035. This lease originally included a property at 5 Weymouth Mews but that was sold off in 2003 and does not form part of this claim. The claim is therefore limited to the Property.
4. Prior to the commencement of the hearing we were provided with a substantial number of documents, a number of which were no longer relevant as a result of matters having been agreed between the valuers. Those agreed matters were set out in a supplemental statement of agreed facts and disputed issues signed by Mr Ryan and Mr Buchanan as well as by Mr Carter-Pegg MRICS, who had been retained to calculate the enfranchisement price. However, he was not required to give evidence at the hearing. The matters agreed, and for us to determine, were as follows:
 - The gross development value of the subject Property is agreed at £24,700,000.
 - We should disregard valuation expert reports where they dealt with the assessment of the value by reference to comparable houses as none were thought appropriate.
 - After discussions it was agreed that the relativity should be assessed by applying 38.252% to the freehold value in the hands of the Claimant to

calculate the existing lease value for the purposes of the marriage value calculation.

- The rent paid and received in respect of the office space on ground and third floor is to be capitalised at 4% and all other rates to be capitalised in accordance with a statement of facts signed at May of 2019.
 - It was agreed that there were no improvements of any value to the subject Property which called to be disregarded.
 - This therefore left us with two issues to resolve. The first was the freehold reversionary value, being the value of the freehold adopted for both the freeholder's interest and head leaseholder's interest (at 98%), it allowing for the possibility of obtaining vacant possession of the whole of the Property on the expiry of the lease of the two floors currently used as offices.
 - The second element we needed to consider was the freehold value in the hands of the Claimant, that is to say the freehold value of the Property on the valuation date (3rd January 2018) that is to be obtained by the Claimant and allows for the fact that vacant possession is not available for the two floors of the building currently used as offices. It is this freehold value that is to be adopted and the marriage value calculation as being the value of the Claimant's proposed interest.
5. As well as the bundles that were provided we received skeleton arguments from Mr Radevsky and from Mr Jefferies, for which we would like to thank Counsel, as well as the experts' reports of Mr Ryan, both his first and supplemental one, and Mr Buchanan, again both his first and supplemental report.
 6. In the bundles available for this hearing there were substantial planning reports, but we do not need to consider those because both valuers have applied a 20% planning discount to their assessment of the value. There was no need for oral evidence from Mr Carter-Pegg as we have indicated above and the live factual evidence was confined to that of Mr Steven Plant, a Director of the Respondent Company who made statements dated 17th May 2019 and 12th November 2019.
 7. Before the hearing we inspected the Property in the company of both experts and Counsel as well as Mr Plant, who had arranged for access to all parts of the Property.
 8. The Property was originally constructed as a house and at one time had been converted for use for broadcasting and recording studios. From 1962 it appears that it had been granted permission for use as offices, consulting rooms or private residential flats but until 2016 had remained in office use. The Respondent applied for and was granted planning permission, it seems originally as a single dwelling but subsequently converted to three flats on the lower ground, first and second floors with offices on the ground floor and third floor. Later in 2015 permission was granted for five flats subject to conditions, one of which was that work could not start until the Council had approved arrangements for the provision of affordable housing. It seems in late 2015 the Respondent converted the lower ground and first floor to flats thus implementing the three-flat planning permission. In 2017 the Respondent obtained possession of the second floor premises and converted that into a flat as well. Accordingly, at the time of these proceedings there were residential premises at the lower ground, first and second

floors with the ground and third floors demised to the Columbian Government for a lease of 15 years dated 18th November 2011. It is noted that this lease was not excluded from the Landlord and Tenant Act 1954.

9. In this chronology, the Respondent then served his notice to acquire the freehold on 3rd January 2018, an earlier one having been issued on 7th December 2015 but which had resulted in County Court proceedings that were compromised on the basis that the right to the freehold pursuant to the notice dated 3rd January 2018 was admitted.

INSPECTION

10. The Property is in poor external condition. When viewed against the other properties in Portland Place the somewhat run-down condition is very apparent.
11. We started our inspection at the ground floor, which is reached through an entrance porch into a large communal area to the left hand side of which is what would appear to be the consulate waiting room and offices with further office accommodation behind including a kitchenette and a passageway leading to the rear exit and toilet. Access to the upper floors is by an uninspiring staircase which is quite steep and quite tight. On the top floor of the building is the other part of the Columbian Consulate, which is office accommodation sub-divided to provide a number of rooms. We noted that there was clearly visible water damage to the ceiling at this level and the spiral staircase affording an emergency access to the rear was in poor order showing extensive water ingress.
12. Going down then to the flat at the second floor level, this had a somewhat unusual layout with a large living/dining room to the rear with kitchen behind that having double access. The kitchen fittings were not of a high quality finish. To the front was a large double bedroom with a dressing room off to the left hand side and to the right hand side the same arrangement. In addition there was third bedroom facing the rear also with a dressing room. On the plans of the intended layout these dressing rooms appear to be en-suite accommodation. There was a second bathroom which was outside the flat, as presently configured and opposite the lift. There was in addition a good sized bathroom with double sinks, WC bath with shower -within the curtilage of the flat.
13. Descending to the first floor, this flat had a large L shaped living room to the front with an internal kitchen area. This room was very grand. To the rear of the flat was a good sized bedroom leading to an ensuite and dressing area. There was a small WC between the bedroom and living room and a lobby giving lift access. Between the first and second floor were two mezzanine rooms, one of a reasonable size and the other nothing more than a large walk in cupboard.
14. The lower ground/basement has good natural light as there is a large space between the pavement and the building. There were three vaults under the pavement, two of which were in poor order. Internally the flat had what would be either living room or bedrooms to the front leading off the passageway, one with ensuite facilities. There was a shower room with wash hand basin and WC and a kitchenette. To the rear was a large room presently used as an office and behind

that further accommodation. The plan of the proposed layout shows a large two bedroomed property. To the side of the flat was a small patio area enclosed by the Property and neighbouring accommodation.

15. After we had had the opportunity of inspecting the Property we viewed, externally, those comparables which were referred to by both valuers in their reports and cited in Portland Place. Without exception they were externally in better condition than the Property.

HEARING

16. At the commencement of the hearing Mr Radevsky highlighted the differences between the parties. The value attributed to the freehold by Mr Ryan was £7,817,635 and by Mr Buchanan £5,687,089. As we have indicated above, the existing lease value is 38.252% of the freehold in the hands of the Respondent. He further told us that Mr Ryan had applied a cost of £475 per square foot for construction giving a site value of £16,952,750 from which a profit of 10% would be derived. Mr Buchanan had assessed the constructions costs at £5.5m, plus additional costs with a 15% profit, which gave a site value of £13,515,000. The freehold value in the hands of the Respondent is assessed at £14,730,00 by Mr Ryan and £10,627,000 by Mr Buchanan.
17. It is perhaps helpful at this stage to set out the issues that we were required to consider apart from the price to be paid for the freehold. In assessing this figure both valuers had adopted a residual valuation approach starting with the agreed gross development value (GDV) of the flats and deducting the costs to arrive at a site value. They then made deductions for the perceived risks, which was that planning permission will not be forthcoming for the conversion of the two office floors and the risk that vacant possession would not be obtained for those floors. Both valuers, whilst adopting a residual valuation approach, have come at it from different aspects, which we will refer to in due course. The Respondents rely also on the evidence of Mr Plant in respect of these development costs. In addition, the valuers adopt differing levels of profit and there is some inconsistency between them as to the costs of finance to undertake the project.
18. In respect of the planning risk for which we had received substantial reports from Mr Oliver and Mr Goldsmith, it was eventually condensed down to an agreed allowance for planning risk of 20% between the difference in value of the Property with full permission to use all five floors as residential and the existing permitted use of three flats and the offices. Both valuers have agreed that the affordable housing contribution would be £700,000 but have dealt with the impact of that sum slightly differently.
19. The ability to obtain vacant possession of those parts of the Property occupied by the Columbian Consulate also led to some disagreement. It was accepted that if possession could be granted under the 1954 Landlord and Tenant Act compensation of £267,000 would be paid, although Mr Ryan assessed the total potential liability for obtaining possession of the two floors would total some

£378,685 whereas Mr Buchanan factoring in other potential problems assessed the sum that would be allowed by a purchaser of £750,000.

20. The first witness we heard from was Mr Plant who as we indicated above has provided two witness statements. We do not consider it necessary to go into great detail as to what was said. His first report gave details of the planning history of the Property confirming at the time of the original notice given in 2017 the occupancy of the Property was as follows:
 - Lower ground floor flat let on an AST at £44,199.96 per annum
 - First floor flat let on an AST for 12 months at a rent of £62,400 per annum
 - Ground and third floors demised to the Republic of Columbia at a rent of £192,5000
 - The second floor, at the time of the 2017 notice had been converted but had not been let, but was in occupation at the time of our inspection.
21. In the final paragraph of his statement he confirmed he was a director of Home Run Services Limited which had carried out a redevelopment of a property at 48 Elsworthy Road, London NW3 comprising a total refurbishment.
22. In a second witness statement made on 12th November 2019 he took the chance to respond to some issues raised by Mr Ryan on his first statement and the values of the works to the Elsworthy Road property. He produced a rearranged costing summary showing a grand total of costs to carry out the works at Elsworthy Road of £5,448,148.24 giving a rate per square foot inclusive of VAT of £544.81. We noted all that was said in these two statements.
23. At the hearing he told us that the refurbishment of Elsworthy Road consisted of essentially gutting the interior, leaving the external façade only but creating a basement and remodelling and completely altering the internal layout. They were, he told us, very expensive works using marble, bespoke joinery, expensive floorings and best quality bathrooms. He had used his own in-house design team and the costs referred to above excluded profit and finance costs.
24. In his second witness statement a query had been raised by Mr Ryan about the possible need to replace the roof at the Property. He confirmed the roof had been leaking in several places and was in need of replacement.
25. Under cross examination he confirmed that once he had acquired the freehold he would redevelop and that the Columbian Government had indicated that they may well leave the Property. Indeed, this seemed to be recorded in some planning documents to which we were referred. Asked about the basement use he confirmed that this was residential but that he was working from there on a temporary basis.
26. He was then questioned on the items of expenditure in respect of the development works at Elsworthy Road and we noted all that was said. He did accept that the planning application he had put in for the Property did not include the type of work that had been undertaken at Elsworthy Road. A number of items of expenditure were challenged, including those associated with

demolition, hire of skips and other materials, the costs of some Mr Plant could not assist with.

27. After we heard from Mr Plant we heard from Mr Ryan. He prepared two reports one on 20th May 2019 and the other on 16th October 2019. He confirmed that the leasehold interest was ascertained by utilising a relativity figure of 38.252%. The basement flat he thought was being used as part-office but the best way of dealing with the Property would be to combine the lower ground floor and the first floor to form a maisonette, which could also be done with the first and second floors.
28. In Mr Ryan's first report he had set out details of the comparable evidence. He confirmed he had valued the Property on the basis of the ground and lower ground floor being combined as maisonettes and the first, second and third floors as flats. In order to arrive at the value of the Property at the valuation date he had sought to ascertain the value of each of the actual envisaged residential flats developed and refurbished to a high standard, which he had used to compare the properties listed in his report and as we indicated previously we had the opportunity to inspect externally from street level. He considered that having had many years of experience in development and refurbishment projects in central London a spend of £475 per square foot would be the level required to refurbish the flats to a standard referable to the refurbished comparables. He had, however, reduced that in respect of the first floor flat, which he considered had been refurbished to a good standard. This led him to conclude in his first report that, after taking into account various risks, the freehold value of the Property was £17,180,000. This he considered was the reversionary value. He then had undertaken a similar assessment to reach the freehold value in the hands of the Claimant at the valuation date at £15,670,000. He had also conducted a valuation on the basis that the basement, first and second floor flats could be refurbished and sold but that the Consulate would not vacate and would therefore continue to generate a rental income of £192,500 which he capitalised to give a total value in the hands of the Claimant at the valuation date, assuming the Consulate did not vacate, of £15,845,000.
29. In his supplemental report he confirmed that the GDV of the Property was agreed at £24,700,000. He recalculated his reversionary values flowing from the GDV figure to achieve a reversionary value of £15,570,000 after he factored in the risk for planning at 20%, the difference in combining or not combining the ground and lower ground floors and the risks associated with the Consulate obtaining a new lease, the payment to them of damages for vacating, which is £276,000 being two times the rateable value and the affordable housing payment which had been agreed at £700,000. In respect of these latter two figures he only made a deduction of 80% to reflect the planning risk.
30. The freehold in the hands of the Claimant valuation was reduced to £14,330,000 after taking into account the planning risks but allowing for the capitalised rent from the Consulate and again applying an 80% element to the 'rateable value' damages and the affordable housing payment. It should be mentioned that in both cases he had allowed a profit of 10%. His value in the hands of the Claimant at the valuation date where the Consulate remained in situ gave a figure of £14,730,000.

31. His supplemental report then went on to comment on the reports of Mr Buchanan with the conclusion that Mr Buchanan's approach was, in his view, over-cautious in terms of costs and risk. He confirmed that his view was that the freehold reversionary value was £15,570,000 and the freehold value in the hands of the Claimant at the valuation date was £14,730,000.
32. In evidence to us at the hearing he confirmed the relativity figure, that the 1% value for not obtaining possession under the 1954 Act remained and that because the lease held by the Consulate did not expire until 2026 he had valued the Property in the hands of the Claimant until that date.
33. As regards the percentage reduction for planning, this he applied to the first and third floors only and as the development costs at £475 per square foot he based this solely on his experience but it was a figure that included contingencies, VAT and a margin for other costs that might arise. He did, however, include an element of finance costs although profit was separate. He was of the opinion that the units could be sold individually and therefore finance costs might not arise. He confirmed that the freehold in the hands of the Claimant with the Consulate remaining would result in the capitalised rent achieving a higher overall figure. He was not aware of any survey report stating that a new roof was required and he could see no reason why the units could not be sold individually.
34. Asked about Mr Plant's evidence on residual values, he said he did not think that 48 Elsworthy Road was a good comparable it being a completely different project in a different part of London. The demolition works would not be required at the Property and he had reviewed the costs. He confirmed that doing the best he could he had tried to remove from the schedule of costings prepared by Mr Plant those items which would not be required at Portland Place leaving those that he considered would be necessary at the Property with some adjustment. He was of the view that the £475 per square foot he had allowed covered all eventualities. As to fees, he thought that 1% would be sufficient to cover estate agent fees and that legal costs could be competitively tendered and that you would find a firm willing to undertake the legal works at a price of £50,000 plus VAT. Asked why he had not carried out a full scale residual approach, he said that he was adopting the position of an experienced developer, as Mr Plant had done, and on profit that whilst a developer would like 15%, in reality and in the market, if a developer can come out with a 10% profit he would be very happy with that outcome.
35. On the question whether or not the Consulate would remain, he thought that a hypothetical purchaser would carry out research, see the planning documents including the comment made that the Consulate was considering moving and that there would be little risk of them claiming a new tenancy.
36. During cross examination by Mr Jefferies, he was asked whether the matter would be dealt with as a sale of a single building to which he confirmed it would be the case, but in the hands of the Claimant they would be able to sell off on a piecemeal basis. Whilst the starting point would be the sale of the entire building, there was no comparable evidence of sales that could be utilised and Mr Ryan considered that in purchasing the reversion a purchaser would be a single buyer who may be a developer or an investor. He confirmed that the GDV was an accumulation of the whole and to get to that figure he had assumed a sale of the

flats. Asked about the sale of the individual flats, he thought that people might buy them individually, set up a structure creating 999 year leases with the refurbishment of the common parts and the reversioner remaining in charge of the whole building and maintaining the common parts.

37. He confirmed that his assessment of the refurbishment costs at £475 per square foot did include all items of expenditure save profit and planning. This rate, however, did not appear to include the common parts. Indeed he accepted that there had been no allowance for the common parts, structure, services or lift. On review, he considered that £350 per square foot would be the actual cost of refurbishing the flats with £475 per square foot being the overall cost. He had produced a further schedule which he handed in on the morning of 19th November which spoke to these figures. He had attempted to extrapolate from Mr Plant's statement those items of expenditure that he thought would be relevant to the development of the Property giving a total cost of £3,503,273.58. If one then applied his overall costs of £475 per square foot as against the costs of the works, this left a surplus which he considered would be sufficient to cover the costs of sale, including estate agents and legal fees, VAT and the refurbishment of the common parts at a figure of £75 per square foot. These total extras came to £859,175 which he indicated may or may not reflect finance depending upon whether the hypothetical purchaser required assistance. He said that holding costs were part of finance costs and if the transaction were a cash purchase then there would be no holding cost to consider.
38. Asked why he had not gone into a detailed assessment on a residual valuation basis as Mr Plant had done, he said he had not been able to get any information from Howard de Walden despite being involved with them for quite some time but had a good knowledge of what was being undertaken by developers.
39. Mr Jefferies took Mr Ryan through the document he had produced in the morning concerning various items of expenditure and we noted what was said. He confirmed that he had not made any allowance for a roof replacement but that the cost at Elsworthy Road would have included the roof. It was said to him that he needed to apply his overall rate of £475 per square foot to the whole building and was asked whether he thought £173,000 would cover a new roof and/or a lift. He confirmed that £475 per square foot included the cost of a roof and lift.
40. He was then asked questions as to his assessment of the profit element. His view was that an experienced developer who had the opportunity to undertake such a scheme would review the profit to enable him to proceed. Too high a profit would mean he would be out bid and he considered achieving a return of £2.5m would be sufficient to cover the profit and any risk. He thought the project was relatively straightforward and did not have the issues of Elsworthy Road. He did, however, accept that at the valuation date values were falling but his profit element allowed for this.
41. On the question of the discount for planning risk, he confirmed that the 20% applied only to the ground and third floor. He did not think there was any planning risk in respect of the first and second floors and was asked whether if planning was not available for the first and third floors this would affect the value of the other flats. His view was that the person buying the reversion will have

seen the documentation and assessed that the Consulate was likely to leave. They would know that there was a 3/5 flat scheme and the 20% allowance was appropriate but only for the ground and third floor. He was asked whether if the Consulate stayed, he accepted that the same values would not be achieved. His view was that the market place was wide and that selling on a flat by flat basis was possible. In the market he thought there would be purchasers who would take an unimproved property and refurbish it themselves and rebutted the suggestion that the planning risk affected all floors.

42. He was taken to the comparables, which were in the main wholly residential and was asked what valuation might be achieved in a building with mixed use. He had included some buildings in the report which were of mixed residential/commercial but had excluded those in Harley Street and Wimpole Street considering them of no relevance and in the case of many, the mixed use was medical, which was protected and in a special policy area. This would mean that if one could get possession, you would still have to keep medical usage. However, this was somewhat irrelevant he said because he had agreed with Mr Buchanan that these houses as comparables were not of assistance.
43. He confirmed that he assessed the vacant possession risk at 1% notwithstanding Mr Buchanan's assessment at a sum considerably higher than that of £526,000. He did not agree with Mr Buchanan and considered that a developer would take the view that there was hardly any risk backed up by the report from the Council concerning the potential desire of the Consulate to vacate. He was asked further questions about the risks associated with the Consulate's possession. It was put to him that there was no incentive for Mr Plant to encourage the consulate to leave. Mr Ryan's response was that as the reversioner he would become the competent landlord so 14 months or so before the expiry of the lease he would seek permission under the 1954 Act to obtain possession, perhaps finding better alternative accommodation for them. He was asked whether he would have to factor in an inducement to persuade them to leave if they would not leave on the statutory basis for which Mr Buchanan had allowed over £700,000. He considered that was too much. He considered his 1% risk was sufficient. Asked about potential redevelopment and obtaining possession under those circumstances, he considered the combining of the ground and basement flat would require structural works for a staircase and a material change and would therefore qualify as works efficient to enable possession under the 1954 Act.
44. He was asked by Mr Jefferies why he had only allowed an 80% reduction in respect of the residual value and the affordable housing payment. His response was that if there was no risk then there would be a 100% liability and he considered it wrong to allow a full 100% when he thought there was an 80% chance and thus the bid would be too low. He confirmed that the 20% allowance was just for the planning risk and the 1% allowance was for the freehold reversionary value. Asked why having agreed the valuation on flats did the value of leaving the Consulate in place produce a higher figure, he responded that you could sell three flats and lease the Consulate and the higher figure came about as there was no rateable value payment to make and no affordable housing payment. Asked why he had not carried out a residual valuation he referred us to section 9 of the Act and confirmed he was undertaking an open market valuation and this was why he did not carry out a full residual valuation. He confirmed that

in his view the costs of the internal works would be £173,000 and put a figure of somewhere between £40,000 to £45,000 for the external costs.

45. We then heard from Mr Buchanan. Like Mr Ryan he had provided two reports, the first of which was dated 20th May 2019. In this report he confirms that the agreed gross internal floor area for the Property is 11,000 square feet and that if the ground and lower ground floors were combined to form a two floor residential maisonette, then the expected gross internal floor area would increase by ten square feet. At the time of this report there were two agreed statement of facts and issues in dispute dated 8th and 17th May. It is to be remembered that both Mr Ryan and Mr Buchanan's first reports are dated 20th May 2019 and therefore reflect these agreed matters.
46. Under the planning heading Mr Buchanan confirms that the Property is a Grade II Listed building having first entered the list in 1954. The details of planning were set out in Mr Plant's witness statement and it is not necessary for us to repeat those details. Mr Buchanan confirmed that a GDV was agreed of £24,700,000. He had allowed 15% profit of the estimated GDV and after allowing just over £6m for construction and contingencies with finance costs and fees, he came to a net site value of £12,021,695. However, for reasons he set out in his report he accepted the pounds per square foot rate of £1,145 which appeared to be based on the comparables of houses giving a freehold value of £12,720,000. His figures in connection with planning risk have now been overtaken by the agreed sum of 20% and in addition the report records that there had been an agreement on the existing lease value which has subsequently been resiled from leading to the relativity percentage that we have mentioned previously.
47. In his second report prepared after having seen Mr Ryan's initial report and the planning matters, has led him to confirm that the GDV figure should be £24,700,000. These figures are, however, in his view derived from the development of the whole building to a very high standard and it would be incorrect to assume that these individual values could be achieved from a refurbishment of only individual parts of the building, especially where the remainder of the building is unimproved and in mixed use.
48. He confirmed that both he and Mr Ryan have adopted the residual method to arrive at the freehold value for the conversion to flats. Taking Mr Ryan's figure of £475 per square foot would give a cost of £5,277,250 which is relatively close to his own view on construction costs inclusive of VAT and contingencies of £5,500,000. However, it appears that due to an oversight he omitted to include a figure for sales and legal costs which he equates to £592,800. As to profit he was of the view that a 15% allowance was correct. He considered that Mr Ryan's allowance of 10% is too low for a development of this size, risk and complexity. He mentioned that according to Savills the prime markets have been falling since 2014 and there is uncertainty following the EU referendum. He therefore believes that a prospective purchaser/developer would seek a higher profit margin and he considers 15% to be appropriate. On finance costs, he had originally included an amount of £1,956,761 but reflecting on his earlier report he has reduced that to £1,386,733. This gives a residual valuation of £13,515,000. He agrees the deduction of £700,000 for affordable housing payment. He then

assessed the difference between the mixed used value and the full residential value. In respect of the mixed use he concluded that the value was £10,358,612 by applying yields of 4% to the commercial and 3% to the residential elements giving a difference of over £3m between the two. As to the planning risk, he has accepted the 20% suggested giving a figure of £628,000 rounded down.

49. In respect of possession risk, in contrast to Mr Ryan's deduction of 1% he makes an allowance of £750,000 to include the statutory compensation. He then assessed the reduction from the vacant possession value for the risk of not getting planning and compensation but did not include the affordable housing payment which caused the figure to rise from £1,378,000 to £2,078,000 giving a freehold reversionary value of £11,437,000.
50. Originally, he did not consider there needed to be any difference in the reversionary value to reflect the different situation of the Claimant at the valuation date. However, he now accepted that is not appropriate and that the freehold in the hands of the Claimant is different to the freehold reversionary value because the Claimant will acquire the freehold subject to a lease that does not expire until 2026. Mr Ryan had put forward two approaches in this regard. The one was to adopt the same figures for deriving the reversionary freehold value but deferring the value of the ground and third floors for 8.87 years from his full value but adding in the capitalised rent arriving at a net value of £15,670,000. The alternative was on the assumption that the Consulate remains in occupation and a capitalised rent is then to be valued, giving a figure of £15,845,000. Mr Buchanan accepted the first approach, but on the assumption that the Property would be developed as a whole under a single project and not as individual units. This gave a net value of £13,501,000 after adding back in the rental values for the Consulate premises and the flats but then deducting the statutory compensation and affordable housing payment.
51. Mr Buchanan dismissed Mr Ryan's second assessment assuming the basement, first and second floor flats could be developed separately. He considered this to be an unrealistic approach on the basis that a purchaser/developer would not refurbish individual floors but would develop the Property as a whole in a single development. He was also of the view that the ground and third floors remaining as offices would reduce the expected values of the development. Accordingly, his revised methodology of Mr Ryan's first approach gave a net value of the freehold of £10,385,524 but this was amended to reflect an increased rental income for the basement, first and second floors giving a figure of £10,429,303. He had further reductions in allowances to make, which utilising previous figures would result in the freehold in the hands of the Claimant in fact being £10,627,000 to which when applying the agreed relativity rate would give an existing freehold value of £4,064,827. In his report he valued the amended enfranchisement price at £5,815,831. However, when the amendments to his report were built in, which included the current freehold value at £11,437,000 the total price payable was in fact £5,687,089.
52. At the hearing he was asked questions about his reports. He told us that he had been advised that the cost of the works in respect of Elsworthy Road would not be greatly different from those in relation to the Property. He was referred to the valuation schedule produced on the morning by Mr Ryan, which he thought was

difficult to interpret. It seems that some items were not disputed but others were. For example, there was the construction costs from Megabuild but it was not clear what this related to. His view was that this development would require party wall agreements but there was no detailed scheme in place. He was also of the view that the costs would escalate in a Grade II listed building. He was of the opinion that £350 per square foot was too low. Asked what he thought the costs should be, he reminded us that the GIA for the flats was larger than at the Elsworthy Road property and there were works to be done to the common parts. He thought it was more appropriate to apply costs to the overall GIA to include the common parts and that Mr Ryan's assessment of the costs was too low. The planning consents were designed to obtain a change of use but in his view if you wanted to achieve the GDV figure being argued for you would need to look at it as a total project. He disputed whether the refurbishment of the individual flats as opposed to the whole building was appropriate.

53. On the question of estate agents costs he thought 2% would be appropriate for a high quality agent and legal costs could be 1% or £50,000.
54. In answer to questions by Mr Jefferies, he confirmed that in his view the only way to develop this Property was as a whole. He did not think the GDV figure would be the same if it was sold on a piecemeal basis. In his view the Property was worth more as five flats than three flats and two offices. He would consider that a developer would look at the income coming in over the 8.87 years and the rental income to be derived from the AST and develop at the end of that period.
55. He was asked in cross examination whether he had surveyed the roof or seen a survey and his answer was that he had not. He was asked why if his report was prepared in May 2019 he had not made further enquiries but stated that all he had produced was a summary of the costs. He was asked whether certain costs at Elsworthy Road would not be incurred at the Property. His response was that when the reports were exchanged in May of this year, he noticed that the cost figures for the development were not hugely apart, although accepting that the projects were different. The costs he thought were about the same. Asked whether he accepted that residual valuations were unreliable and not universally adopted, his response was that recent cases at the Upper Tribunal had adopted residual evaluations. He did accept, however, that small differences can make a substantial difference.
56. He was then asked why he had applied the planning risk to the whole building. His view was that there had been no agreement between the planning experts and having reviewed the evidence took the view that 20% would be appropriate but for the whole building not just the first and third floor. He confirmed he was aware that Mr Plant had been discussing the future with the Consulate but it was informal and nothing had been agreed. He was not aware that Mr Plant had told the planners that the Consulate was likely to relocate but he did accept that the accommodation that they currently occupy is not good. Asked if the Consulate was still there in 2026 what routes could be taken. It was put to him that alternative accommodation or compensation/redevelopment were the routes to go down and that a purchaser would be confident that this would occur. His view was that it would be difficult to provide alternative accommodation. He accepted it was a possibility that suitable accommodation would be found that would avoid

the rateable contribution although accepted there was no reason for the Consulate to move before 2026 unless suitable accommodation became available. On considering this he thought that perhaps he would reduce the risk figure that he had included at £750,000 by £50,000.

57. He was asked further questions by Mr Radevsky on his supplementary report and he confirmed that in his view the building only generated the agreed GDV by proceeding with all the flats at the same time. It was put to him that some could be unimproved and there was no reason why you could not sell flats to a purchaser who would do it up to a high standard. His response was that he could see no reason to do this when you could develop the whole, further selling one flat at a time would prevent development as a whole and would not enable the developer to achieve the values that were agreed. He was then questioned about the fees but considered that 2% was right for the estate agents but would accept a percentage of 1.5% for the agent and .5% for solicitors.
58. On the question of profit he was asked why he had gone for 15% and it was pointed out to him that if you looked at it as an investment the return would be 11% of the sum invested and therefore 15% seemed too high. However, he thought that a profit of 15% was realistic.
59. Reference was made to RICS paper on residual valuations which it was put to him does not apply to enfranchisement. He did, however, think that a similar approach would be adopted and noted that it was only a guidance note. He was then questioned about finance costs and explained that he had reduced his figure to £1,056,733 on the basis that only 70% of the costs were actually borrowed, particularly given the lower interest rates and he based this on evidence given from bank valuations and discussions with colleagues.
60. He was asked about the percentages applicable on the rental values for the commercial units to which he had given a yield of 3%. He accepted that the figure appeared to be low but he did not think that developer would look to sell off existing leases.
61. It was put to him that the now reduced risk of obtaining possession at £700,000 was too high. He accepted it was not scientific but was of the view that it was likely that possession could be obtained at the end of the lease and that there would be negotiations that may proceed beyond the end of the lease term. Alternative accommodation would be a costly exercise. He was asked whether he would reduce the £700,000 figure for risk but said he would not. As to the planning risks he assessed those at a figure of £628,000. He confirmed that he had discounted the risk for possession but he thought that the planning position was acceptable. He also reminded us that he did not think that planning risk was the same as the possession risk.
62. On the question of the freehold value for marriage value purposes he was referred to his approach set out at paragraph 6.6 of his supplemental statement which led to the net value of £13,000,501. He was asked whether the value needed to be deferred presumably on the basis that flats could be sold off along the way. He however thought that an unlikely scenario. Possession of the two commercial premises in 2026 would be available subject to matters that had been discussed

earlier, and he did not consider that unimproved flats would be sold before then. He was satisfied that a rental situation would apply until vacant possession of the whole property could be obtained. He confirmed also that he did not accept Mr Ryan's contention that you would get the same value for the flats whether you sold them as part of a whole development or individually because the presence of the Consulate would lower the value whilst they remained in situ. He was asked why the freehold vacant possession value of £13,515,000 was close to the deferred value for marriage purposes. He confirmed he had approached the freehold vacant possession value on an assumption that the whole would be developed and the discount would be because you could not get possession of the Consulate and would have to rely on the capitalised rent.

63. He was asked why there was a difference in the capitalised residential rent at 3% but subsequently 5% was allowed. He explained the 3% was a yield in perpetuity and the 5% was applied because only 8.87 years remained and he would not apply the same rate to the shorter period. He was clarified that in respect of the freehold value for marriage purposes, the figures shown at 6.6 of £13,000,501 was based on Mr Ryan's figures using his approach. However, using his own values at 6.8 of his report he came to the conclusion that the alternative figure would be £10,385,524 increased slightly to £10,429,303 as a result in a slight uplift of the rental income of the basement, first and second floor flats.
64. He was asked by the Tribunal about the residual valuations and confirmed that the figures he had used were based on the advice of Mr Plant. However, he did not think that Mr Ryan's approach was unreasonable and that £500 per square foot would be a reasonable sum which coincided with his experience. This would include all external works and common parts.
65. After we had heard from the valuers we had submissions from both Mr Jefferies and Mr Radevsky. Mr Jefferies went first confirming that both Mr Ryan and Mr Buchanan had done residual valuations utilising the GDV less the cost of development. We were reminded that comparables of the sale of whole buildings was not used and that the evidence was on the basis of the comparables as developed flats.
66. We were referred to Mr Radevsky's skeleton argument where we were urged to be cautious relying on the family court case of *Versteegh v Versteegh*. We were referred to elements of the judgment in particular comment made that this related to the valuation of private companies. In the report reference is made to the RICS valuation information paper and also a comment made by the Upper Tribunal on the problems associated with the valuation based on the residual method, which it is said should be adopted only in the absence of some more reliable method. In this case he reminded us there was no real market in which we could test the figures and accepted that we should not use residual calculations if better comparable evidence was available to us. We were faced with two different forms of residual valuations, one by Mr Ryan which relies solely on his experience and the other from Mr Buchanan which contained a detailed residual assessment. His submission to us was that whilst both included uncertainties they should be transparent and capable of analysis, which was the case with Mr Buchanan's assessment. Whilst he accepted that the propositions put forward by Mr Ryan might be a common approach for adjusting comparables

when talking about single flats, he was not able to produce any example where a sale to a developer had been undertaken which proceeded on such a broad brush approach. As Mr Buchanan had observed, this was a £24m development and it was likely that a detailed assessment would be carried out such as that by Mr Buchanan rather than Mr Ryan's simplistic approach. Mr Ryan's assessment we were told was based on experience and he pointed out to us that on the base level neither valuer was that far apart. The difficulty, however, came because Mr Ryan had amended the figures to include finance and costs of sale and refurbishment of the common parts. He reminded us that Mr Ryan had "rowed back" from the adjustments to the comparables on the basis of the Elsworthy Road development and appeared to have reduced the rates to £350 per square foot consistent with his analysis of the Elsworthy Road development. In Mr Jefferies' submission the construction costs of £350 per square foot was inconsistent with the reports and the adjustment to the comparables.

67. He accepted that the raw information contained in the Elsworthy Road development provided in May was produced in a difficult format but it had remained unquestioned. The Applicants could have asked questions if they had wished. Mr Ryan's supplemental report raised issues which were answered by Mr Plant and the brochure which was exhibited. The fact that Mr Plant was not able to give detailed information on some elements was to be expected. Mr Jefferies then took us through some of the items that had been removed or amended by Mr Ryan which we noted. It was said by Mr Jefferies that Mr Ryan's estimate of the costs of dealing with the common parts was inadequate. It appears that the roof was leaking and the lift was in disrepair both of which would need to be addressed to maximise the return. In addition, finance and sales costs needed to be added and we were therefore requested to accept Mr Buchanan's assessment of the construction costs.
68. On the question of profit it was suggested that Mr Ryan had given insufficient consideration to the complexity and also that the property prices were falling. Mr Ryan's broad brush approach gave uncertainty on the scale, cost and financial exposure of the development. In his opinion a developer with a lower profit would win the bid. Mr Ryan, he said, assumes an optimistic purchaser with costs of £350 per square feet, no finance and no problems with possession. However, the hypothetical purchaser will be prudent and well advised and careful about paying more than is necessary.
69. Mr Jefferies asked to accept that a 2% allowance for sale costs was reasonable, that finance should be allowed for based on the Francia case where money would be tied up for perhaps a year or more. His view was that most developers will seek to finance as much as they could and Mr Buchanan says 70% which he felt was appropriate. Mr Ryan's view that the developer would fund it was not in Mr Jefferies' submission in accordance with normal practice and there was no evidence to support that proposition. Mr Buchanan had given evidence of the period of construction and the rates compared to nothing from Mr Ryan and therefore we should adopt Mr Buchanan's view.
70. On the question of planning, the issue was really whether one could achieve the same value for three flats without developing the whole. The GDV figure had been derived from values of the building as a whole, which it was submitted,

would not be achieved if development occurred separately. It would, he said, feel like an upmarket property with various unknown visitors attending at the Consulate which raised security issues. Further Mr Ryan's suggestion of selling off individual floors with a promise concerning the common parts was not a great appeal to an individual purchaser. In Mr Jefferies' submission Mr Buchanan was right and the planning risk should be applied to all flats and the Consulate. Mr Buchanan's value was by reference to the rental yield and although Savills produced a lower value that was not altogether surprising. There was some evidence of mixed use buildings, largely medical but it was not comparable, and ending up with a mixed use building will not achieve the highest values in respect of the building as a whole.

71. On the possession risk Mr Ryan accepted that if the Respondent did not have rights under the 1967 Act the Respondent would be looking to the reversion at 2026 subject to the Respondent's lease. It would be the intention of a developer for the Consulate to stay and to pay rent and if they did vacate to perhaps put another tenant in under an AST. The fact that there were some discussions with the Consulate was neither here nor there in the Act world. There was, he said, no reason for the Consulate to leave. The question then was whether the Consulate would leave under the redevelopment or alternative accommodation provisions and we were referred to ground 30i(f) of the 1954 Act and referred to cases that illustrated the difficulties in dealing with occupation under the development ground.
72. At present there was no scheme available and it was not known what work would be required. Accordingly, there was uncertainty. The third floor would involve the removal of partitions and possibly the installation of a new staircase. It was Mr Jefferies' submission this was not the sort of development which will obviously qualify and that is the risk. It appears to be common ground that there is a risk but Mr Ryan has only allowed compensation plus 1%. Mr Buchanan allows £500,000 which is a reasonable and prudent assessment which includes the risk of losing, experts' costs and delay. It was, he said, possible that one might achieve possession within a year but the court system could take more than that to get to a hearing. It was also subject to a possible appeal. There was therefore ample scope for delay and all good grounds for Mr Buchanan's assessment.
73. On the question of suitable alternative accommodation for the Consulate, it was suggested by Mr Ryan in his first report that it would be unlikely that there would be an ability to secure same. It was made clear to us that just pointing out accommodation to the Consulate was not sufficient for the purposes of the Act. It would be necessary to acquire a lease and make the property suitable for the Consulate, which all points to potential difficulties in obtaining possession. In Mr Jefferies' submission it is only ground sub-paragraph (f) that is available. As far as the affordable housing payment and rateable value compensation was concerned, Mr Buchanan's view was you either pay it or you don't and therefore there should be no discount.
74. We then heard from Mr Radevsky who first challenged the assertion that Mr Ryan had failed to ask for an explanation in respect of the Plant figures. It was pointed out that Mr Plant's second statement was only provided just before the

hearing and therefore it was unfair to say that information had not been sought. Mr Jefferies responded that Mr Ryan raised the matter in his supplementary report in October.

75. We then heard submissions from Mr Radevsky. He told us that both valuers had assumed that the best price was to be on the basis of four flats with a maisonette at the lower ground and ground floor. It may also be possible to create a maisonette on the second and third floors. However, the GDV was agreed. His view was that a purchaser would carry out the exercise that Mr Ryan had done using a value of £475 per square foot to assess the cost of refurbishment and allowing a 10% profit. Both were based on his long experience. The property at Elsworthy Road was a poor comparable. The Property itself would be a refurbishment from flats and commercial into possibly five flats. The comparables, he said, could hardly be more different. Elsworthy Road contemplated the demolition, the creation of a large basement and increase in size of some 50%. Mr Ryan had done his best to carry out an analysis on the inadequate information given to him. Mr Ryan had in fact prepared his own list considering those expenses which were reasonable leaving him with a figure of £350 per square foot. Applying that to the subject Property gave a sufficient margin for costs of sales, common parts and finance costs if any. It was to be accepted by us that Mr Ryan's £475 per square foot assessment was based on that analysis. The suggestion by Mr Jefferies that the assessment of the Property would balance with the costs incurred at Elsworthy Road by the removal of unnecessary costs was nothing more than a desperate attempt to rescue the figures. No evidence was produced other than that from Mr Plant who was not an expert and has a direct interest in the matter.
76. Mr Radevsky accepted that it was desirable to develop all flats at once. However, Mr Ryan's suggestion that some could be sold off as needed would achieve their present unimproved value. His submission to us was that plenty of properties are refurbished where there are other building/flats not so well developed and Mr Ryan had adopted a market approach and a purchaser would not carry out a residual approach as suggested in this case. The Versdeeg case rejected residual valuations in that matter and we were referred also to the RICS code which did not appear to apply to this type of development.
77. Mr Radevsky then went on to deal with some other elements including the risk for possession. It was his view that a hypothetical purchaser would know that the Consulate was likely to relocate as mentioned in the planning document. The hypothetical purchaser would also have conversations with Mr Plant and would be of the view that it would not be surprising if the Consulate wished to relocate given the awkwardness of the accommodation. On this question of risk Mr Buchanan had been prepared to reduce the figure to £700,000 but in his view a purchaser of the reversion would be confident of getting possession under subparagraph (f) of the 1954 Act. It was accepted there was no scheme in place for the development but there were plans for which planning permission had been granted, which had been provided to produce a minimum standard of accommodation. The third floor would require replacement to the partitions and relying on the Ivory Grove v Global Grange case partitioning can amount to sufficient works to get by on the redevelopment element. Mr Ryan put an

assessment of this risk at 1%. It was suggested that Mr Buchanan had plucked a figure out of the air.

78. We were reminded that two payments would be required to be made at the valuation date which would be the affordable housing payment and two times the rateable value if possession were gained under sub-paragraph (f). Mr Ryan had accounted for these and would be subject to a 20% reduction for planning risk. The two times rateable value would only be paid if planning permission were granted. Mr Buchanan suggested in re-examination that it might be that possession would be obtained first and then planning permission sought. This was Mr Radevsky suggested an extraordinary proposition for to get permission under (f) you would need to have planning permission in place. We were referred to the Francis v Cavendish case as to the acid test of the type or quality of intention under (f) and it was not considered that the findings of that Supreme Court case would be a hurdle to obtaining vacant possession. As to the replacement of the roof, no evidence had been adduced to show that it needed that work. There was no survey. Mention was made of Mr Buchanan's previous willingness to agree the existing lease value at £6m which subsequently was dealt with by reference to the relativity percentage. It was suggested that Mr Carter Pegg's report demonstrated that when one applied that figure of £6m it would achieve freehold values of over £15m but that Mr Buchanan had resiled from that and agreed relativity in line with the Carter Pegg evidence. The difference between Mr Ryan and Mr Buchanan was considerable and Mr Buchanan had rejected the view that flats could be sold at their capital values on an individual basis. We were urged therefore to accept Mr Ryan's evidence and to determine the price accordingly.

FINDINGS

79. There are a number of matters that we need to determine to enable us to achieve the two missing figures being the freehold reversionary value and the freehold value in the hands of the Claimant.
80. To reach these figures we need to deal with a number of aspects but firstly record those matters that have been agreed between the parties and which are referred to in this decision.
- The GDV of the Property is agreed at £24,700,000.
 - The calculation of the existing lease value will be achieved at applying a relativity of 38.252%.
 - The rent paid/received in respect of the office space on ground and third floor is to be capitalised at 4% (single rate).
 - It is agreed there are no improvements of any value the subject property which are to be disregarded.
 - The capitalisation rate had previously been agreed but it is agreed that the intermediate leaseholders current negative rental income of - £360 per annum be capitalised at the national loan fund rate of 1.95% (single rate until 24th December 2035).
 - It is agreed that all other rents both paid and received be capitalised and deferred at 5% (single rate).

- The total open market yearly rent for the property at the valuation date has been agreed at £358,900.
- An allowance for a palatable ground rent has been agreed at 0.1% of the freehold vacant possession value.
- The formulae for the apportionment between the landlord interest of the determined enfranchisement price has been agreed separately between those two parties and need not be considered by the Tribunal.
- The value of reversion to head leasehold interest as a percentage of freehold vacant possession value is agreed at 98%.
- The GIA of the building configured as a single house is 13,419 square feet.
- The GIA at a range of five flats is 11,000 square feet.
- The GIA if arranged as three flats including the creation of a ground and lower ground maisonette is assessed at £11,110 square feet.
- The date of valuation is 3rd January 2018.
- The term date of the underlease is 24th December 2035 having an unexpired term of 17.97 years.
- The term date of the head lease is 24th December 2134 having an unexpired term of 116.97 years.

81. Accordingly, to assess those elements which are not agreed we need to firstly consider what the construction costs would be. Mr Ryan has taken a somewhat simplistic approach assessing the square footage rate at £475, which if we apply that to the preferred redevelopment creating a maisonette on the ground and lower ground floor, gives a construction cost figure of £5, 272,500. He did of course reduce the element of refurbishment in respect of the first floor flat but appeared to accept that £475 per square foot was the appropriate sum but that would appear to be on the basis that it related to the flats only. In his evidence to us he suggested that there would be another £173,500 for the common parts (which included the store rooms at mezzanine level) which he concluded had an overall square footage of 2,309. This equated to £75 per square foot allowance in respect of these common parts that he had made. He had not, however, had made any provision for the exterior of the Property but at the hearing estimated the costs for such external refurbishment to be between £40,000 and £45,000.
82. In contrast we have the evidence of Mr Buchanan, which is based on the comparable at Elsworthy Road, the evidence which largely came from Mr Plant via an accountant who had prepared the schedule. We must bear in mind that Mr Plant is the Respondent in this matter and therefore has a vested interest in the figures. On Mr Buchanan's appraisal summary he has the construction costs at £5,000,000 with a contingency at 10% if Mr Ryan's square footage rate was applied to the total of the property, including the common parts, a figure in excess of 6.3m is achieved.
83. We find that Mr Ryan's evidence was not as compelling as that produced by Mr Buchanan. Neither valuer was able to give us what we were consider to be a definitive residual value. Mr Ryan has assessed the figure of £475 per square feet on, it would seem both experience and the assessment of the refurbishment costs he attributed to the comparable flats. In this case there are substantial common parts and the exterior of the Property is in poor condition. Although he says that the rate was to include those elements, he did of course in part resile from that by

putting forward costs to represent the common parts and the exterior, but those appear to have been put forward at the last minute. It seems to us that to achieve the redevelopment of the Property and to produce the levels of return on the flats, there would need to be top quality refurbishment both of the flats and the common parts. At the time of our inspection the lift was not working and it appeared had not been in a functioning condition for a while. It was a mean lift and would need to be replaced. In addition, we would have thought that to achieve the levels of capital return on the flats substantial work would be required to the main entrance way including perhaps the construction of a more spectacular staircase at least to first floor level. These are all elements that we think would greatly exceed the amount that Mr Ryan has allowed for the common part works. There is also the problem with the roof which on our inspection we could see was undoubtedly leaking. It was also apparent from our inspection that a number of the window frames were in poor condition and the exterior of the Property was tired and stuck out like a sore thumb in the row of neighbouring properties, which all had excellent facades. It is to be remembered that it is a Grade II listed building.

84. That is not to say that Mr Buchanan's assessment of the construction costs is wholly without criticism. We are being asked to compare apples and pears in the shape of the works at Elsworthy and those that would be envisaged at the Property. However, both would seek to produce high quality accommodation and we are satisfied that there are a number of elements of the works undertaken at Elsworthy that would need to be considered in the subject Property. Taking the matter in the round, therefore, and doing the best we can on the information/evidence before us we accept Mr Buchanan's assessment backed up the schedule of costs at £5m with a contingency of £500,000 as the basis of the construction figures.
85. On the question of professional fees, we prefer the evidence of Mr Ryan to that of Mr Buchanan. We are satisfied that an estate agent in the market at the valuation date with the opportunity to sell flats at the GDV anticipated in this case would be quite content to do so at 1% and we therefore agree the figure of £247,000 for that element.
86. In respect of legal fees we find that Mr Ryan is more realistic. We would have thought that a solicitor would be willing to undertake the preparation of possibly three or four leases, presumably in common terms at a fee of £50,000.
87. On the question of the profit that is to be applied to the GDV we heard what was said by both Mr Ryan and Mr Buchanan on this point. There is no doubt that whichever developer sought to recover the higher level of profit is going to have to potentially suffer being out-bid. However, this is not a development without its problems, both as to the actual works to be undertaken and the difficulties associated with obtaining vacant possession of the two units occupied by the Columbian Consulate. Taking all these matters into account, together with the planning risk, we consider that we are reasonable in exercising the judgement of Solomon and splitting the level of profit to 12.5% of the GDV giving a figure of £3,087,500. We consider that is a sum that any developer would be pleased to receive in the market as it was at the valuation date.

88. We then turn to the question of potential finance costs. It is not possible to know how much a developer or an owner would need to borrow to deal with this transaction. Certainly, it would be over a period of time as the costs of development are unlikely to be incurred until 2026 at the earliest. Furthermore, we would have anticipated that any owner or developer would have funds of their own which they would use particularly as interest rates on savings are very low. Mr Ryan appeared to include his finance within his £475 per square foot figure, and Mr Buchanan had assessed finance costs of nearly £2m. There is on the face of it a world of difference. Doing the best we can on the assumption that the hypothetical purchaser will have his or her own finances available to fund much of the purchase and possibly the development costs, we have allowed a figure of £500,000 to represent the financial costings to the hypothetical purchaser. It is to be remembered that the purchaser will have the rental income agreed at £358,900 to offset against the finance costs. Accordingly, as can be seen from the attached schedule where we set these figures out, this gives a total deduction from the gross development value of £9,384,500.
89. We then have to consider the possession risk. Mr Ryan assessed this as 1% and Mr Buchanan after review reduced his to the figure of £700,000.
90. The Landlord and Tenant Act 1954 at section 30 dealing with the opposition by a landlord to the application of a new tenancy sets out at 30(1)(f) the following: *“that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof that he could not reasonably do so without obtaining possession of the holding.”*
91. In considering this Property we bear in mind that which we saw on inspection. The Consulate’s offices are split on the ground and third floor. On the ground floor appears to be the main waiting room and what may well be interview booths with offices behind. There is then a ‘trudge up’ several flights of stairs (assuming the lift remains out of action) to reach the third floor. This has been sub-divided into various offices both open plan and not. We cannot envisage that this is a layout that the Consulate would find most appropriate. In those circumstances we would anticipate that at the conclusion of the lease the Consulate may well be willing to vacate. This is borne out to an extent by the reference made in a planning document from the Local Authority which was referred to during the course of the hearing. However, to obtain vacant possession if the Consulate did not vacate voluntarily, a scheme would need to be put in place which complied with sub-paragraph (f) did not fall foul of the Supreme Court ruling in *Francis v Cavendish* and would have to take into account the compensation payable of two times rateable value which is agreed at £267,000. Mr Buchanan assessed this at £750,000 subsequently reducing that to £700,000.
92. We think that Mr Ryan’s assessment of the risk is too positive. There will likely be costs associated with obtaining vacant possession and of course it may be resisted by the Consulate. Taking the matter in the round and considering all that was said by both valuers in their reports and at the hearing we conclude that the assessment of £700,000 put forward by Mr Buchanan is a more realistic assessment of this risk.

93. The affordable housing payment is agreed at £700,000 and the next element we need to consider is the planning risk. Mr Ryan in his calculations set out in his supplemental report appears to give a figure of £444,243 to this element basing it on 20% of the difference between the proposed value of the flats and its existing value. In contrast Mr Buchanan put aside his original method of assessing this risk and instead considered the matter on the approach that the full value of the residential elements can only be achieved by development of the whole property. He therefore believed the correct approach was to compare the freehold value of the Property with full residential use with the existing values as part office and part residential and by capitalising the rental values.
94. Pausing at that point we should perhaps address our views on the development of the whole or on a bit by bit basis. We have no hesitation in agreeing with Mr Buchanan that to achieve GDV figures it will be necessary to develop as a whole. We cannot imagine that you would be able to achieve the full price of the flats certainly on the first and second floors whilst the Consulate may remain in occupation on the ground and third. The layout is not conducive to high quality residential accommodation. Indeed, on one of the doors on the second floor is a notice advising callers that that is not the Columbian Consulate. Furthermore, the entrance way is open to any person visiting the Consulate and would therefore be a security issue for residential occupiers. Further it seems to us that to properly achieve the values that have been agreed on the GDV basis substantial works will be required to the common parts. To expect to be able to sell flats at levels 1 and 2 at the figures suggested in reaching the GDV figure seems to us to disregard the poor state of the staircase leading to these floors and the unappealing common parts. We therefore consider that the only way in which the full GDV will be generated in connection with this Property is to develop as a whole and accordingly we find Mr Buchanan's assessment of the planning risk on that basis to be correct. We also accept his view that the risk should not be discounted to 80% as suggested by Mr Ryan. It seems to us it is an all or nothing assessment. **The planning risk is 20% of the difference between the freehold value and the freehold value for marriage value purposes giving a figure of £628,907.** Taking these matters into account gives us the first figure that we need to insert into the valuation schedule attached which is the freehold reversionary value of **£13,286,593**
95. We then turn to the freehold value in the hands of the Claimant for marriage value purposes.
96. Having assessed the freehold at £13,915,500 before reducing for the planning risk, we need to defer that for 8.87 years at 5% which is reduced to £9,045,075. The calculation of the rent for the ground and third floor and for the lower ground floor, first and second floor gives the figures shown on the attached schedule. The freehold deferred to reflect the receipt of ground rents on the basis that we find development will be as a whole and not on a piecemeal basis gives a figure of £11,737,964. From that we need to deduct the affordable housing cost of £700,000 and the statutory compensation of £267,000. This then gives us the freehold value for marriage purposes of £10,770,964 which is the remaining missing element of the calculation. Inserting these figures and applying them to

the valuation as a whole, gives in our finding, an enfranchisement price of **£6,116,540.**

Andrew Dutton

Judge: _____

A A Dutton

Date: 9th January 2020

Amended 5th March 2020

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.

35 Portland Place London							
Existing freehold							
Gross Development Value							£24,700,000
Construction costs				£5,500,000			
Finance				£500,000			
Profit 12.5% GDV				£3,087,500			
Estate agent 1% GDV				£247,000			
Legal fees fixed price				£50,000			
				£9,384,500			£9,384,500
							£15,315,500
less possession risk				£700,000			
affordable housing payment				£700,000			£13,915,500
Planning risk*							£628,907
Freehold							£13,286,593
Rental income basis							
accept G Buchanan revised figures							£10,429,303
Freehold in hands of claimant							
Freehold as above							£13,915,500
deferred 8.87 years at 5%				0.65			£9,045,075
Add							
rents for 8.67 years							
ground and 3rd floors				£192,500			£1,414,105
YP 8.67 years @ 4%				7.346			
lgfl, 1st & 2nd				£166,400			
YP 8.67 year @ 3%				7.685			£1,278,784
							£11,737,964
less affordable housing and statutory compensation							£967,000
							£10,770,964
*planning risk				20%(13,915,500-10,770,964)	£628,907		

35 Portland Place, London W1							
Valuation in accordance with Section 9(1C) of the Leashold Reform Act 1967 (As Amended)							
Date of Valuation:	03/01/2018		Length of reversion to Headlease holder:	99.00 years			
Term date of Headlease:	24/12/2134		Term date of Underlease:	24/12/2035			
Unexpired term of Headlease:	116.97 years		Unexpired term of Underlease:	17.97 years			
				£	£	£	£
Value of Intermediate Leaseholder's Existing Interest							
Negative profit rent until 2035						-360	
Years Purchase	17.97 years @	1.95%	15,0380				(5,414)
Intermediate Leaseholder's Reversionary Interest							
Reversion to value of 99 year lease	% of FH reversionary value	98.00%				13,020,861	
Deferred	17.97 years @	5.00%	0.4161			5,418,032	
Deferred value of Intermediate Leaseholder's Reversionary Interest (to add)						5,418,032	
Less rent liability							
Annual rent received from 25/12/2035 reviewed 5 yearly until 24/12/2134							
15% of open market yearly rent that might be obtained for the demised premises							
Open market yearly rent	358,900	15%				53,835	
Less palatable rent		0.1% FH reversionary value				13,287	
Annual rent liability after deduction of palatable rent							
Years Purchase	99.00 years @	5.00%	19,8403			40,548	
Rent liability capitalised							
Deferred	17.97 years @	5.00%	0.4161			804,493	
Deferred total rent liability (to deduct)						334,753	
Value of Intermediate Leaseholder's Existing Interest							5,077,866
Value of Freeholder's Existing Interest							
Annual rent received until 24/12/2035							
Years Purchase	17.97 years @	5.00%	11,6779			1350	
Annual rent received from 25/12/2035 reviewed 5 yearly until 24/12/2134							
15% of open market yearly rent that might be obtained for the demised premises							
Open market yearly rent		358,900	15%			53,835	
Years Purchase	99.00 years @	5.00%	19,8403			1,068,103	
Deferred	17.97 years @	5.00%	0.4161				444,442
Freehold reversionary value:						13,286,593	
Deferred	116.97 years @	5.00%	0.0033				
Deferred value of Freeholder's Interest						44,151	
Value of Freeholder's Existing Interest							504,358
Value of both Landlords' Existing Interests before marriage value added							5,582,224
Calculation of Marriage Value							
Freehold value in the hands of the claimant:						10,770,964	
Less value of Existing Interests							
Freeholder's						504,358	
Intermediate Leaseholder's						5,077,866	
Tenant's	38.252% of freehold value in hands of claimant:					4,120,109	
Total value of existing interests:						9,702,334	
Total Marriage Value						1,068,630	
MV attributed to Landlords @		50.00%					534,315
Total enfranchisement price							6,116,540