FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/OCE/2023/0004**
Property	**:**	**Flats 1-24 St Matthews Court, London N10 1NW**
Applicant	**:**	**St Matthews Court (N10 1NW) Ltd**
Representative	**:**	**TWM Solicitors LLP**
Respondent	**:**	**Greyclyde Investments Ltd**
Representative	**:**	**Freemans Solicitors**
Type of application	**:**	**Application under section 24(1) of the Leasehold Reform Housing & Urban Development Act 1993 (Collective Enfranchisement)**
Tribunal	**:**	**Judge Sheftel** **Mr D Jagger MRICS**
Date of Decision	**:**	**29 February 2024**

DECISION

Summary of Decision

The tribunal determines that the premium payable in respect of the development hope value relating to the collective enfranchisement of the property 1-24 St Matthews Court, London N10 1NW is **£762,203**. This is calculated as £699,703 in respect of the Roof Development (Appendix 1) and £62,500 in respect of the Garden Development (Appendix 2).

The other elements of the valuation are as set out in the amended statement of agreed facts dated 3 January 2024.

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Background

1. On 9 May 2022, the qualifying participating tenants gave notice to the Respondent of their intention to exercise a collective enfranchisement in respect of the property 1-24 Saint Matthews Court, London N10 1NW (the "Property") on the terms set out in that initial notice, The nominee purchaser is identified as St Matthews Court (N10 1NW) Ltd, the Applicant in these proceedings.

2. On 20 July 2022 a counter-notice admitting the claim was served on behalf of the Respondent.

3. The sole matter remaining in dispute is the amount of any premium attributable to the development hope value in accordance with paragraph 3 of Schedule 6 to the 1993 Act.

4. The valuation date is agreed to be 9 May 2022. Moreover, it is agreed that the total premium payable excluding any development value is £366,850.

5. The Applicant's primary position at the start of the hearing was that nothing should be payable in respect of hope development value. In contrast, the Respondent sought the sum of £1,048,288. The Respondent's figures were revised slightly during the course of the hearing and the parties agreed certain elements of the valuation as a result of the evidence that was heard.

6. The Respondent's claim to hope development value falls broadly into two categories:

    (1) the potential for roof development (said by the Respondent to be valued at £864,629); and

    (2) the potential to build a new building in the gardens of the Property, which would comprise four storeys and 8 new flats (valued by the Respondent at £183,659).

7. As result of the dispute over hope development value both parties have obtained expert evidence on planning, estimated building costs (Quantity Surveyors) and structural engineers.

The hearing

8. The hearing took place on 22-25 January 2024. The Applicant was represented by Mr Madge-Wyld (counsel) and the Respondent by Mr Jefferies (counsel). In addition, the tribunal heard oral evidence from the following experts:

    (1) *Planning*: Mr Eli Pick (Applicant), Mr Simon Wallis (Respondent)

    (2) *Structural engineering*: Mr Jenk Elkiner (Applicant), Mr Chris Martin (Respondent);

    (3) *Quantity Surveyors*: Mr Terrence Martin (Applicant), Mr Ben Walpole (Respondent);

    (4) *Valuers*: Mr Ross Maunder Taylor (Applicant), Mr Gavin Buchanan (Respondent).

9. The tribunal is grateful to both counsel and all expert witnesses for their assistance.

10. Ultimately, the tribunal did not consider it necessary to inspect the property owing to the extensive and detailed photographs and plans contained in the bundle.

The Property

11. The property comprises four blocks of flats – albeit they are structurally attached and together form a T shape – with three blocks facing Coppetts Road and the other to their rear. Each block has three storeys with two flats on each storey. The four blocks have separate tiled and pitched roofs and are a masonry construction. The four blocks are surrounded by a grassed garden area. The property also comprises a car park and a bin store.

Potential roof development

12. There is no dispute that the existing flat leases do not demise the roof, roof space or air space. The tribunal is informed that the Respondent

granted an air space lease, dated 16 November 2020 to C&R, an associated company of Greyclyde Investments Limited with a view to developing the roof space.

13. Further, there is no dispute that the proposed development would not be prohibited under the terms of the leases, save that the Applicant contends that there is a risk that the construction would breach the lessees' covenant for quiet enjoyment.

14. A planning application was submitted in March 2021 for a two-storey roof development. This was refused on 13 May 2021 and appealed on 13 July 2021. The appeal was refused on 4 May 2022. Given that the Applicants notice of claim was submitted on 9 May 2022, there is no dispute between the parties that no planning permission for any roof development had been granted as at the valuation date.

15. However, a further planning application for a single storey roof development was submitted on 16 June 2022 but refused on 11 August 2022. An appeal against this refusal was lodged on 29 November 2022 and this appeal was allowed with approval being granted on 3 May 2023. In any event, although planning permission had not been granted as at the valuation date, by the time of the hearing, the experts provided the following joint statement at para.12:

"*The parties agree that had an application been made and considered before 'the effective date' on 9 May 2022 for an additional storey on the existing blocks, it would have been granted 'Prior Approval'. Consent had indeed been granted for such development on appeal on 3 May 2023.*"

It will be noted that there is an absence of any caveat or qualification in the above statement. However, this is addressed further below in relation to planning risk.

16. Further, there is no dispute that the proposed development would not be prohibited under the terms of the leases, save that the Applicant contends that there is a risk that the construction would breach the lessees' covenant for quiet enjoyment.

Basis of valuation of roof development

17. As noted above, the tribunal heard evidence from Mr Maunder-Taylor on behalf of the Applicant and Mr Buchanan on behalf of the Respondent. Mr Maunder-Taylor was of the view that no value should be attributed to the proposed development whereas Mr Buchanan proposed a figure of £864,629 – which underwent some relatively minor revision during the hearing, in light of the evidence that was heard.

18. There did not appear to be a dispute between the parties that: the hypothetical purchaser operates in the real market and that the hypothetical purchaser is not ultra-cautious.

19. There was a fundamental difference between the experts as to methodology. Whereas Mr Buchanan's assessment was based solely on a residual valuation, Mr Maunder-Taylor sought to rely on market evidence. In this regard, the Applicant's principal position was that the market evidence demonstrates that a hypothetical purchaser would not have paid an additional premium for the development value given that prior approval for the proposed development had not been granted. Although he also produced a residual valuation as a cross check – which as amended during the hearing produced a figure of £317,227 – he ultimately discounted this in favour of his market assessment that there would be no premium payable.

20. As a matter of principle, Mr Madge-Wyld submitted that a residual valuation is a methodology of last resort and reliable market evidence is to be preferred where it is available. In support of this proposition he cited various Upper Tribunal decisions including: *Sherwood Hall (East End Road) Management Company Limited v Magnolia Tree Limited* [2009] UKUT 158 (LC), at [51]; *Allen v Leicester CC* [2013] UKUT 16 (LC); (2013) JPL 6 760, at [29]; *Ridgeland Properties Ltd v Bristol CC* [2009] UKUT 102 (LC), at [293]. In his submission, the examples of where the Upper Tribunal has adopted a residual valuation are therefore limited to cases where that was the only evidence before it (e.g. in

Francia Properties Ltd v St James House Freehold Ltd [2018] UKUT 79 (LC) / *Sherwood Hall*) or where the market data was old and limited (e.g. in *Charles Hunt (Holdings) Limited v 77-82 Bridle Close Freehold Limited* [2023] UKUT 32 (LC)). Mr Madge-Wyld also cautioned that the reason residual valuations can be unreliable is that changes to inputs, which are often based on assumptions, can produce vastly different outcomes. This was particularly so in the present case where there were no finalised, approved plans, with the result that the experts inevitably were required to base many of their figures on assumptions.

21. Mr Jefferies agreed that reliable comparable evidence is preferable to a residual valuation – but stressed that the test was whether the evidence before the tribunal was *reliable*. Accordingly, while there was therefore no real dispute as a matter of law, the question was what conclusions could be drawn from the evidence put forward by Mr Maunder Taylor.

22. As referred to above, Mr Maunder-Taylor was of the opinion that that the market evidence demonstrates that residential premises sold with the potential for rooftop development (especially in the locality of the property outer-north London) around the valuation date did not generally achieve a premium for development value unless they were sold with the benefit of planning permission. He arrived at this conclusion by analysing auction sales of sites without planning permission one year either side of the valuation date. His view was that post-pandemic, as construction costs, labour costs and interest have increased, very few of the transactions are completing. Of the 7 properties he analysed, although the auctioneers had marked them as sold, he found evidence of only one actually completing, Stafford Close. However, even in relation to that property, while Mr Maunder Taylor accepted that there is an argument that the remainder of the purchase price of £22,000 could be attributable to development value, he noted that there are also 8 parking spaces to the front which could only be used for short term parking and this remaining sum could be attributed to those spaces.

23. Mr Jefferies suggested that evidence of sales of other comparable buildings/airspace is rarely available for this sort of development. In this regard, he also noted that the RICS Guidance on Development Valuations envisages that comparable evidence may not be available. Mr Jefferies also questioned whether auction sales were necessarily the best evidence of value, noting that sales might also take place by private treaty – citing as an example a case Mr Maunder Taylor's own firm had acted in relation to such a sale in 2019 (Fairfield Close, for which a premium of £150,000 had been achieved).

24. Turning to the specific evidence produced, the Respondent's position was that the Applicant's evidence did not provide anything comparable. It was submitted that in each of the comparables put forward there were either major differences or a significant lack of information making a comparison impossible. Examples included the following:

    (1) *Greenbanks*: the freehold title only appeared to refer to a few of the flats within the building and there was an issue as to whether permitted development rights would exist. The result was that it was not entirely clear what the purchaser would be getting. Mr Jefferies suggested that the reason the sale did not complete might have been due to legal issues around the title, but the point was that we just do not know. It was also suggested that it was a much older building and so there might be additional structural concerns;

    (2) *Webber Street*: the proposed sale related to only part of the building (flats 1-7). Separately, there was lapsed planning permission for the other part of the building (flats 8-13). Given that there was a single freehold title for the entire building, it was odd that the proposed sale related only to part of it. The submission was that this raised the suggestion of potential problems and added a greater level of uncertainty;

    (3) *Westbourne Terrace*: it was noted that the building had already been extended by adding an additional floor to the top. The building was too old for permitted development

rights and Mr Maunder Taylor ultimately agreed that there was no prospect of adding an additional storey;

(4) *Stafford Close*: the documents provided included a copy of the lease, which specified that the demise included part of the roof. The result was that a purchaser would not be able to build, and any development would be impossible;

(5) *Joanne House*: images of the roof contained in the bundle showed a vent and a skylight. This meant that if lessees had a right to light and to the vent, it would not be possible to build – although it was accepted that we did not have the full information from the materials provided.

25. Further, in relation to one of the comparables, Webber Street, there had in fact been a sale of airspace of part of the block for £134,000 where there was no planning permission or history – which the Respondent submitted undermined the Applicant's conclusion that purchasers were not paying more than a bargaining chip.

26. We should add that Mr Maunder-Taylor has undertaken an extremely detailed and diligent exercise in this regard. The question is whether his conclusion can be safely drawn from the material produced. In our determination, we agree with Mr Jefferies as to the limitations of the Applicant's evidence as set out above notwithstanding the efforts made by Mr Maunder Taylor. There could be differing reasons why the examples put forward by the Applicant did not complete or realise a premium. Indeed even putting Mr Maunder Taylor's case at its highest, it is not clear that these examples establish the general picture that the Applicant paints, namely that the market evidence demonstrates that a hypothetical purchaser would not have paid an additional premium for the development value. Accordingly, we cannot accept the Applicant's overarching proposition based on what the evidence before us. As such, we must consider the parties' residual valuations.

Residual valuations

27. During the course of the hearing, the valuers agreed a number of elements of the valuation as follows:

    (1) gross development value - £3,000,000

    (2) finance costs - £58,500

    (3) sales costs - £62,400

    (4) community infrastructure levy - £168,000

28. The remaining issues in dispute were as follows.

Construction Costs

29. By the end of the hearing, the difference between the parties had narrowed somewhat: the Applicant proposed an amount of £1,370,716, whereas the Respondent's figure was £1,178,146.75. The tribunal heard evidence from structural engineers and quantity surveyors on behalf of each of the parties. Although a number of elements of construction costs were agreed prior to and during the hearing, there remained numerous points of difference. In some instances, this resulted from genuine differences in valuation and in those cases the tribunal is prepared to split the difference. However, this was not always the case. Mr Jefferies was critical of Mr Martin's evidence, suggesting that he had failed to update his costings to reflect changes in the design (for example by retaining concrete stairs and in relation to steel beams); failed to respond to Mr Walpole's evidence with justifications for his figures. It was also noted that he had suggested that the Respondent's proposed prices for kitchens and sanitaryware were for budget-end products, but this was inconsistent with the evidence and an assertion he was forced to withdraw during cross examination.

30. While we agree that both witnesses (and indeed all witnesses in these proceedings) were truthful and were doing their best to assist the tribunal, we nevertheless consider that where there has been a conflict, we have tended to prefer the evidence of Mr Walpole on the basis that he was able to give greater justification for his figures and analysis.

31. The schedule below sets out the items of expenditure and the tribunal's determination.

Item	App	Resp	Tribunal	Comments
Preparation and Demolition Works	£86,600	£73,102	£73,102	We prefer the Respondent's estimate. The Applicant's proposal included an allowance for asbestos removal. However, the tribunal has dealt with the issue of asbestos separately below.
Frame and External Works	£142,660	£149,059	£149,059	The Applicant allowed £22k for steelwork despite the lightweight structure being agreed. The Respondent's allowance for steelwork is included here rather than 'Works to floors below' and accordingly we adopt the figure proposed by the Respondent.
Stairs	£40,000	£26,000	£26,000	The higher figure proposed by the Applicant is for a concrete staircase. However, the lower cost of a timber staircase is appropriate given the overall agreed design.
Upper Floors	£66,700	£49,663	£49,663	It had been suggested that the Applicant's figure doubles up on insulation (acoustic and thermal). The Applicant contended that an additional layer was required for sound deadening. The Respondent disagreed, also noting that it was not possible to put an additional layer above the joists. Instead, Mr Walpole made provision for a soundproof floor. It was broadly (and fairly) accepted that Mr Walpole's evidence was more cogent on this issue. We agree and accordingly adopt the Respondent's figure.
Roof	£142,000	£130,173	£136,227	In our determination, the difference between the parties resulted from a genuine difference in valuation opinion between the experts. We do not find any evidence of error in either suggestion. We therefore split the difference between the two figures.
Windows	£30,250	£21,550	£25,900	The experts agreed that the two figures are within the expected range. In the circumstances, the tribunal is prepared to split the difference.

Internal walls	£62,522	£52,100	£52,100	During the course of cross examination, Mr Martin agreed that his costings included provision for plyboard which was not necessary and could be deducted. Overall, the tribunal prefers the evidence of Mr Walpole, who had detailed quotes to support his figure.
Internal finishes	£95,825	£91,814	£93,820	The experts agreed that the two figures are within the expected range. In the circumstances, the tribunal is prepared to split the difference.
Internal carpentry	£14,975	£8,895	£8,895	The Respondent's rate includes decorations as set out in the quotes provided. Although the Applicant asserted that the Respondent's quote was for a larger job, there was no evidence that this would have had an impact on the quote, and Mr Walpole's evidence was that the fact that the quote was for Birmingham would have only marginal impact on price. In the circumstances, and as Mr Walpole produced a detailed quote in support of his submission, we accordingly adopt the Respondent's rate.
Internal doors	£24,400	£24,400	£24,400	Agreed
Fixtures and fittings	£120,000	£120,500	£120,500	The Respondent allowed an additional £500 for signage which has been included.
Mechanical and Electrical	£142,590	£132,617	£137,604	The experts agreed that the two figures are within the expected range. In the circumstances, the tribunal is prepared to split the difference.
External works	£5,000	£5,000	£5,000	Agreed
Services Upgrades	£20,000	£0	£10,000	The Respondent contended that there was no need for an allowance for an upgrade to services, noting that this is a relatively modern building and suggesting that spared capacity would have been factored in at the time of construction. The Applicant contended that it was appropriate to make provision for upgrade to services, noting that the proposal would result in 8 new flats. Even if the initial build would have provided for extra capacity, the

				Applicant contended that it would be unlikely to have been for 8 additional flats. Although there was no conclusive evidence on the point, we accept that there is a possibility that an upgrade to service may be required and accordingly allow 50% of the sum claimed by the Applicant.
Works to floors below:				
Access hatches	£1,000	£1,000	£1,000	Agreed
Masonry Restraint Straps	£0	£4,000	£4,000	The Applicant's costings had included these elsewhere.
Ply boards	£13,530	£13,530	£13,530	Agreed
Rubber Matt	£4,510	£4,510	£4,510	Agreed
Confined Workspace	£15,000	£15,000	£15,000	Agreed
Cleaning and making good	£70,000	£19,960	£19,960	Both structural engineers were broadly agreed as to the costs for the necessary strengthening and protection works to the structure between the existing top floor and loft space. The principal point of difference was whether these costs should come from the £70,000 allowed by the Respondent for making good any damage to flats below (after which costs would leave £19,600 for cleaning/protection), or whether an additional £70,000 should be allocated. On this point, we prefer Mr Walpole's evidence. Once the above costs have been taken into account, it is difficult to see why an additional £70,000 should still be allocated. We agree that the remaining costs of cleaning/protection are unlikely to be more than the £19,960 allowed for by Mr Walpole as set out in his Addendum to Supplementary Report 2. In our determination, the Applicant could not establish a reasonable likelihood of additional costs which would justify the additional £70,000 claimed for.
			£970,270	
Preliminaries			£145,541	Percentages agreed

15%				
Fees 10%			£97,027	Percentages agreed
Contingency 5%			£48,514	Percentages agreed
Total			£1,261,352	
Inflation adjustment @ -6.3%			**£1,186,596**	Inflation adjustment percentage agreed

Need for underpinning / structural risk

32. By the time of the hearing, the key issue on which the experts had previously been divided, namely whether there would be a need for underpinning to support the roof development, had been resolved. According to their second joint statement, they confirmed:

> "*We agree that based on an increase of foundation loads of less than 10% underpinning is not required. This is subject to the same set of assumptions and there is a risk that additional investigation of the foundations would be required. Underpinning would need to be introduced should the change in loads exceed 10% and additional design checks for the foundations did not show sufficient spare capacity*."

33. There was nevertheless disagreement about the risk that there might be a need for underpinning once further investigations were carried out. Mr Elkiner for the Applicant assessed this risk at 33% whereas Mr Chris Martin for the Respondent put the figure at 10%.

34. In support of his position, Mr Elkiner raised several notes of caution:

    (1) The risk that the existing floor might not be concrete – although in cross examination he accepted that given the age of the building and his inspection, it was nevertheless a reasonable assumption;

(2) The risk that the joists might span in a different direction from that assumed – although again he agreed that if this proved to be the case, the issue could be overcome by changing the direction of the new joists.

35. Perhaps Mr Elkiner's principal area of concern was the fact that although, pursuant to the experts' agreed assumptions, the increase to foundation loads would be less than 10%, it would nevertheless be very close to 10% - at which point underpinning would be required. In other words, there was very little room for manoeuvre should the assumptions prove incorrect. He also stressed that Building Control are very firm on the 10% limit. In contrast, Mr Chris Martin was of the view that the existing estimates were already very conservative and so the possibility of exceeding the 10% threshold was small. He also commented that if internal walls showed an increase of greater than 10%, attempts could be made to place greater load on external walls.

36. In our determination, we find that the position is somewhere in between the two figures. While we note the experts' agreed position that any increase would be likely to be in the order of 1-3%, we are conscious of the fact that the expected increase will be very close to the critical 10% figure (albeit below it). In the circumstances, therefore, we assess the risk of underpinning to be 20%.

37. On the question of how this element of risk is accounted for in the valuation, the parties did not dissent from the proposition that it should be applied as a percentage of the costs of underpinning rather than as a percentage of site value. The parties agreed that should underpinning be required, it would not prevent the development itself, but would rather increase the overall costs.

38. This therefore leads on to the question of the likely costs of underpinning. Mr Terence Martin on behalf of the Applicant assessed the costs at £349,500, which when costs were added came to £464,223. Mr Martin's figure was based on an assessed need of 233m of underpinning. Mr Walpole had initially not included underpinning within his cost plan as the Respondent's position was that it was not

required. However, he produced a supplementary report in which he commented on the proposed costs and suggested a lower figure of £186,319, which totalled £239,000 when costs were added. Mr Walpole considered that the Applicant's analysis was overly simplistic and 'reflects more of basement than complex underpinning'. He considered that the perimeter of the building would be done from the outside with little logistical issues, albeit the internal party walls would be more complex. However, this was rejected by Mr Martin during the hearing who maintained that he stood by his figures and analysis. In the event, there was relatively little discussion of the respective analyses during the hearing. Notwithstanding our comments above as to expressing a preference for Mr Walpole's evidence in certain instances, on this occasion, in the absence of identification of clear errors in either expert's figures, we are prepared to split the difference between the two experts. In reaching this decision, we note that the difference in the two sets of calculated figures appears to be the complexity of the proposed underpinning works, whereby Mr Martin builds in a contingency and increased costings compared to Mr Walpole. Overall, the Tribunal was not given compelling evidence on the complexity issues and the best it could do was take an average of the two costings.

39. We therefore determine the costs of underpinning to be £351,612.

Purchase costs

40. The Applicant proposed a sum of £20,000 to cover the costs of purchase. This was rejected by the Respondent as a matter of principle.

41. The Applicant accepted that in many situations it would not be appropriate to include the costs of purchasing an asset in stipulating the value of that asset. However, in the context of a residual valuation, it was submitted that it would be appropriate to include such costs as they form part of the costs of realising that asset.

42. While there is a logic to Mr Madge-Wyld's submission, Mr Jefferies referred the tribunal to the Upper Tribunal decision in *Charles Hunt Holdings Ltd v Bradle Close Freehold Ltd* [2023] UKUT 32 in support of

the submission that no allowance should be made for purchase costs. In that case, the Upper Tribunal stated at para.71:

"*We do not make any deduction from GDV for site purchase costs since they will be incurred by the hypothetical purchaser in this case irrespective of development value.*"

43. Mr Madge-Wyld suggested that the case might be distinguishable on the basis that that case appeared to be concerned with a site purchase rather than the purchase of just an airspace lease. However, in our view it is difficult to see why that would make a difference to the principle as to whether the costs of purchasing should be included. In addition, neither party was able to point to a case where they had been allowed.

44. In the circumstances, and in accordance with the Upper Tribunal's approach in *Charles Hunt*, we do not include such costs within the residual valuation.

Profit

45. The Applicant considered that 20% should be allowed for profit. The Respondent suggested a lower figure of 10-15%.

46. While accepting that every case will be determined on its facts and noting that previous decisions where profit had been allowed did not set a precedent, Mr Jefferies submitted that 20% was excessive – and neither party could point to a previous decision where such a figure had been allowed. The Respondent referred to two cases where 15% had been allowed (including *Francia Properties Limited v St James House Freehold Limited [2018] UKUT 79*) and in *Charles Hunt*, a figure of 17.5% had been allowed, albeit in that case it was based on the only evidence before the tribunal and there was no explanation for the rate.

47. To the extent that it is said that a higher rate is justified due to the risks associated with planning and structure, we are conscious that there are already separate adjustments for risk within the residual valuation and so it is important to avoid double counting. On the other hand, Mr Buchanan accepted in cross examination, that the economic position as at the relevant date was different to what it had been at the time of

Francia (October 2015) in that construction costs and finance costs were now much higher.

48. In the circumstances, and having regard to the evidence, we agree that the Applicant's proposal is too high and instead allow 15% in respect of profit costs.

Professional fees

49. The Applicant had initially proposed a figure of £75,000. However, during the hearing it was accepted that this could be reduced by £10,000 because it included costs of engineers and quantity surveyors which had already been included in the costs plan. It also allowed for up to £5,000 in respect of a Party Wall Award, although the Respondent's argument that this would not be applicable in the present case was not resisted. As such, this left a sum of approximately £60,000, compared to £25,000 proposed by the Respondent.

50. Mr Maunder-Taylor indicated that much of this sum related to planning fees and it should be noted that in evidence, Mr Wallis accepted that there was a good possibility that the planning application might require an appeal to secure approval. On the other hand, Mr Jefferies submitted that as at the valuation date, there were already plans and supporting documents for the unsuccessful application for a two-storey extension. As such, the planning work would not necessarily have to start from scratch.

51. In our determination, the correct figure falls in between. We agree with the Applicant that a figure of £25,000 is too low, noting the likelihood for the need for an appeal as the Respondent accepted. However, we also take the view that the Applicant's figure remains on the high side, including having regard to the Respondent's point that this is not a case where the application would be starting from scratch. In the circumstances, we allow a figure of £45,000.

Sums attributable to asbestos works

52. In revised costings produced by Mr Maunder Taylor during the hearing, he proposed that sums be included representing an incentive to residents

of the top floor flats to vacate the premises temporarily for asbestos works to be carried out. The sums specified were £24,000 to be paid to residents and £10,000 legal costs to document the same.

53. The issue arose out the asbestos report contained in the bundle dated 26 May 2023 and prepared by 4 Site Consulting Limited. The Respondent contended that the report's conclusions indicated that the risk was relatively minor and that nothing would be required beyond labelling and ongoing management and inspection. However, it was nevertheless acknowledged on behalf of the Respondent that it would be necessary to cut through the ceiling to carry out the development to the roof space and that this would therefore disturb the asbestos material in the artex coating.

54. Mr Madge-Wyld submitted that under the terms of the lease, although the Respondent was permitted to build the roof extension, there was no qualification to the covenant of quiet enjoyment or obligation on the tenants to vacate to allow the construction to take place. Accordingly, it was said that as there was no obligation for residents to vacate, even for a day, they would need to be incentivised to do so – otherwise there would be the potential for breach of the covenant for quiet enjoyment.

55. In response, the Respondent maintained that the works to cut into the ceiling (which would disturb the asbestos) would be likely to only take about a day and could easily be achieved by doing so in conversation with residents on an informal basis to confirm a time when they would be out. Accordingly, it was submitted that there is no need for the Applicant's provision. It was also asserted that it would be for the contractor to deal with the construction budget, which already includes a 5% contingency and an allowance of £70,000 for dealing with tenants.

56. In our determination, given the need to cut through the ceiling and the presence of asbestos, if would not be appropriate merely to carry out the works in the manner suggested by the Respondent and proper precautions would need to be taken given the presence of asbestos. We see force in the Applicant's submission that the reference to and presence of asbestos inevitably means that there will be contentious

works which tenants are unlikely to be happy about, notwithstanding the Respondent's submission that the risk in the present case is at the lower end of the scale. However, while we note the points advanced on behalf of the Applicant, we are not persuaded that the total sums would be required but we nevertheless allow a sum of £15,000 in respect of the asbestos works. This sum is an estimated contingency allowance for any potential small compensation payments to the upper floor tenants, albeit bearing in mind the proposed works are in the common parts and the contractor's costings will have taken such matters into account, being the responsible party.

Risk

57. As noted above, we agree with the submissions that the risk of having to carry out underpinning should fall within construction costs rather than site risks – as it would not be a risk to the feasibility of the development as a whole.

58. This therefore leaves a sum for planning risk. As referred to above, the planning experts agreed unequivocally that:

> "*… had an application been made and considered before 'the effective date' on 9 May 2022 for an additional storey on the existing blocks, it would have been granted 'Prior Approval'. Consent had indeed been granted for such development on appeal on 3 May 2023 ?*."

59. Nevertheless, it was accepted that an amount should be allocated for planning risk, given that planning permission had not been granted as at the valuation date. The Respondent proposed 10% whereas the Applicant suggested 25%.

60. The parties were agreed that risk adjustments are case specific and previous decisions do not establish binding precedents. The Respondent sought to stress the unequivocal nature of the joint statement by the experts and the fact that the present case concerns prior approval for a scheme permitted under the GDO, not a case where planning permission is required. In contrast, Mr Madge-Wyld, who submitted that the

Respondent's figure of 10% was too low, noted that as at the valuation date, there had already been an appeal refused for a 2-storey extension and a rejection of an application for a 1-storey extension (which would subsequently be the subject of an appeal). In other words, it was not a development that was looked on favourably by the local authority.

61. In our determination, there is merit in both side's arguments. Taking the submissions into account, we consider that an appropriate amount would be 15%. This reflects the likelihood of permission being granted but also noting that as at the valuation date there had already been a refusal for a 1-storey development which would require an appeal.

62. Applying the various elements as determined above, the residual valuation in respect of the roof development, totalling £699,703, appears at Appendix 1.

Potential for an additional building in the garden

63. As set out above, the Respondent's proposal is for a new four-storey block in the garden area.

64. The parties are agreed that the proposed development would not be prohibited under the terms of the leases. There was also no dispute that planning permission had not been applied for as at the valuation date. It was explained that although the Respondent made a subsequent application, that application has not been accepted because it did not include an energy and sustainability statement.

65. On the question of whether the proposed development would be feasible, the tribunal heard expert evidence from Mr Eli Pick on behalf of the Applicant and Mr Simon Wallis on behalf of the Respondent. Mr Pick's position was that planning permission would not be granted for the proposed development. In contrast, Mr Wallis was far more bullish and considered that there was a strong chance of obtaining planning permission – although he accepted a possible route for this this could well be on appeal if the initial application were to be rejected. For the avoidance of doubt, while both experts inevitably sought to promote and

justify their view, we consider that both were honest and fair and attempted to assist the tribunal – and we reject any contention that either expert's evidence ought necessarily to be prefer to that of the other. We find that both Mr Pick and Mr Wallis readily accepted where a particular point being made was weaker or open to doubt.

66. Both experts referred the tribunal to national and local housing planning policies. Particular reference was made during the hearing to para.DM7 of the Haringey Policy, which, so far as is material, provides that:

> "*There will be a presumption against the loss of garden land unless it represents comprehensive redevelopment of a number of whole land plots.*
>
> *Development proposals for infill, backland and garden land should meet the requirements of Policies DM1 and DM2 and must*
> *(a) relate appropriately and sensitively to the surrounding area as well as the established street scene, ensuring good access and where possible, retaining existing through routes*
> *(b) provide a site specific and creative response to the built and natural features of the area;*
> *(c) …*
> *(d) safeguard privacy, amenity, and ensure no loss of security for adjoining houses and rear gardens;*
> *(e) retain and provide adequate amenity space for existing and new occupants*
> *… ."*

67. However, both experts readily acknowledged that the position espoused by the policies is never absolute and planning decisions will always depend on the particular circumstances of a case.

68. As to the particular circumstances of the case, Mr Pick set out various reasons why he considered that planning permission would not be granted for the proposed development:

    (1) The proposed block would result in a dominant feature out of scale and out of character with its surroundings of two-storey dwellinghouses. In particular, it would create a dominant feeling for residents of Nelson Mandela Close, who are at a lower ground level.

(2) The proposed development would result in the loss of good quality recreational amenity space. The quality of the remaining space would diminish by limiting its access to and from the parking area. In addition, the scheme fails to provide additional amenity space for the additional flats.

(3) The increase in number of flats at this site would result in a higher density and an increased number of residents arriving and departing at the premises lowering the standard of amenity to existing residential occupiers by reason of noise and general disturbance.

(4) The proposed development would result in a serious degree of overlooking from windows and balconies in the north and west elevations, causing a loss of privacy to neighbouring residents.

(5) The close proximity of the proposed building to Block D would result in loss of light and outlook to habitable room windows in the west elevation causing harm to the standard of amenity to occupiers of the existing flats. Indeed, it appears from the plans that the new block would be only 2 metres from the back of Block D.

(6) Insufficient car parking provision remains for the residents of existing flats, causing additional parking pressures on the public highway and being prejudicial to highway safety.

(7) Insufficient provision has been made for parking for persons with disabilities.

69. Mr Pick clarified for the tribunal that he would not apply equal weight to all of the above: the strongest objections were in relation to the position of the proposed block and the impact on Block D in terms of loss of amenity; and the overlooking of the terraced properties on Nelson Mandela Close.

70. Mr Madge-Wyld also noted that according to Haringey's own housing strategy, a large number of sites within the borough were already

earmarked for development. This meant, he submitted, that notwithstanding the general need for increased housing, the local authority could more readily adhere to its presumption against garden developments (referred to in DM7 of the policy as set out above) in a case such as the present.

71. Ultimately, the Applicant's position was that when all the risks were considered together, the development was simply not feasible.

72. While acknowledging Haringey's policy contained a presumption against a loss of garden land, Mr Wallis took the view that the present case was not a typical garden development: the site was a block of flats rather than an individual house. He considered that the Haringey policy was more apt for proposed backfill development behind existing houses. Moreover, he noted that the proposal would have a limited impact on the street scene and access already exists.

73. Further, Mr Wallis considered that the proposed development would not cause undue harm. In relation to the dominance issue, he pointed to the decision of the planning inspector in relation to the proposed additional storey. Specifically it was said that:

"*13. An additional storey would inevitably lead to an increase in height, and this is to be expected in developments of this type. However, the increase is minimal at 2.55m and due to the reduction from the previously rejected scheme, the proposal would no longer appear dominant in the street scene to a detrimental degree. Its height would appear larger than the houses of NMC when viewed from this vantage point as it already does, but it would not be dominant. Moreover, the ridge height would likely be similar to the adjacent buildings of Creighton Avenue and slightly taller than the opposing semis. Taken together, the proposal would not be a dominant addition to the street scene and would not harm the character and appearance of the area.*

14. I therefore conclude that the external appearance of the building and the impact on the character and appearance of the area would be acceptable, and would not result in harm within the context of Schedule 2, Part 20, Class A, Paragraph A.2(1)(e) of the GPDO. I also find that there would be no conflict with paragraph 130 of the Framework, which seeks development which is sympathetic to local character."

74. The Respondent's position is that any purchaser would be influenced by that assessment and be confident it would be applied by analogy to the

new block, such that the proposal would not be rejected on the basis of dominance.

75. Further, it was submitted that the new block would only look into the rear gardens of the properties at 7 Nelson Mandela Close (as it would be perpendicular to the houses). In contrast, the existing Block D already looks directly into the back of the houses of 4, 5 and 6 Nelson Mandela Close.

76. Turning to the question of loss of amenity, there were various elements to this discussed by the experts.

77. As to the loss of garden space, Mr Wallis contended that having regard to the proposals that have been submitted, a new block can be designed in such a way as to limit the amount of garden area lost to that nearest the car park. In his view, the amount of garden land lost by the proposed development can therefore be kept to a minimum with the remaining garden land re-landscaped to provide an attractive and more biodiverse offering for residents. Indeed, there may well be a number of design approaches that can be taken to minimise the loss of amenity. In his view, with good design, the amenity of neighbours should be able to be protected and good living conditions provided for future residents. It was also pointed out that paragraph DM7 of the Haringey policy provides that developments should provide for 'adequate' amenity space. The experts remained divided as to whether the remaining space would be adequate. While Mr Pick accepted that the objective minimum (5m sq) would be achieved by the balconies on the new flats, he maintained that the proposal would be denying residents an amenity that they had enjoyed, which should be considered as part of the more general policy presumption against the loss of garden land.

78. Of even greater concern was the proximity of the new block to the existing Block D – a distance of approximately 2 metres, albeit staggered - and the loss of outlook and daylight that would result. There are three windows in the rear façade of Block D, which are windows of the living rooms of flats in Block D, and it was acknowledged that there would be a significant loss of outlook caused by the new building. Further, the new

block could not be repositioned any further over so as to reduce the loss of outlook, as it would end up being in the car park. However, Mr Wallis contended that although there would clearly be an impact on outlook, residents would still be able to see the garden area from the windows in question, albeit at an angle. Further, he commented that the living rooms in the existing flats were dual aspect and the windows in question secondary windows, this limiting the loss of amenity. In this regard, reference was made to a report prepared by Herrington Consulting Limited dated September 2023, which concluded that the reduction in light to the room as a whole was within BRE Guidelines and would be acceptable. This analysis was rejected by Mr Pick, who stressed that the rooms that would be affected were the main living rooms of the relevant flats and moreover, even if the diminution in light to the room as a whole was within acceptable limits, although (i) as Mr Madge-Wyld pointed out, there would still be a reduced of between 1/3 and 4/10 according to the Harrington Report; and (ii) the part of the room nearest to the window in question would be adversely affected and the impact considerable.

79. In our view, while we note the confidence expressed by Mr Wallis, we are not satisfied that the chances of planning permission being granted are high – having regard to the matters identified by Mr Pick as set out above. In particular, we have concerns over the fact that the proposed block would be built so close to Block D and to the rear windows. While noting the report by Herrington Consulting Limited, there would clearly be an impact on the part of the room, a loss of outlook and overall diminished accommodation. We are also conscious of the block's size and the fact that it would look into the gardens of 7 Nelson Mandela Way. While we note the decision of the planning inspector in relation to the proposed extension as relied on by the Respondent above, we agree with the Applicant's caution on the basis that the difference was that in that case, a building overlooking the properties was already in situ. That is not the case of the proposed development.

80. Having said all that, we are not satisfied that the project could be said with certainty to not be feasible. While it is possible that the most anyone would pay would be only a nominal gambling chip, we consider that this would be overly cautious, noting the points raised by Mr Wallis above. Mr Buchanan made adjustments of 50% for planning risk and 10% for other risks, giving a total of 60%. However, we consider that the high degree of risk is more accurately reflected by applying a total risk factor of 85%.

81. Turning to the cost of the proposed development, the only assessment of costs was provided by Mr Walpole and so, as Mr Madge-Wyld accepted, it is difficult to depart from this to any significant degree. Gross development value had been agreed by the valuers prior to the hearing and we adopt the figures as set out in Mr Jefferies's closing submissions for construction costs (as adjusted for inflation, consistent with the calculation for the roof development), although have made the following adjustments to other elements:

    (1) For profit costs, we adopt the figure of 15% consistent with our findings in relation to the roof development as set out above;

    (2) We have applied sales fees at 2.08%, consistent with the agreed figure for the roof development;

    (3) For professional fees, we have allowed £45,000, consistent with our finding in relation to the roof development as similar considerations will apply (for example there are likely to be significant planning fees including the likelihood of an appeal for the reasons set out above).

82. The tribunal's residual valuation is set out in Appendix 2 to this Decision. We determine the hope development value in respect of the garden development to be £62,500.

Name: Judge Sheftel **Date:** 29 February 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix 1 – Residual Valuation for Roof Development

Gross Development Value	
8 flats @ £375,000	£3,000,000
Less	
Construction Costs	£1,186,596
Professional Fees	£45,000
CIL	£168,000
Finance Costs	£58,000
Profit @ 15% GDV	£450,000
PC Sum for Asbestos Works	£15,000
Sales Costs @ 2.08 GDV	£62,400
Total Costs	£1,984,996
Site value	£1,015,004
Less	
20% Planning Risk	£203,000
20% Average of Underpinning Costs @ £351,612	£70,322
	£741,682
Deferred for 12 months @ 6%	**£699,703**

Appendix 2 – Residual valuation in respect of Garden Development

Gross Development Value		
6 Flats @ £400,000		£2,400,000
Less		
Construction Costs		£1,303,305
Professional Fees, site investigation		£45,000
CIL		£148,000
Finance Costs		£52,000
Profit @ 15% GDV		£360,000
Sales Costs @ 2.08 GDV		£49.92
Total Costs		£1,958,225
Site Value		£441,775
Less		
85% planning and other risks		£66,266
Deferred 12 months @6%	0.9434	£62.515
Say		**£62,500**