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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HN/OCE/2015/0008
Property:	Vale Mansions, Vale Road, Bournemouth, Dorset BH1 3TD
Applicant:	Vale Mansions Ltd
Representative:	Ms E Gibbons of counsel
Respondent:	Withorpe Investments Ltd
Representative:	Mr J Shale of counsel
Type of Application:	Section 24(1) Leasehold Reform, Housing and Urban Development Act 1993 (Enfranchisement: Matters in Dispute)
Tribunal Members:	Judge A Cresswell (Chairman) Mr B H R Simms FRICS
Date and venue of Hearing:	25 September 2015 at Bournemouth County Court
Date of Decision:	29 September 2015

DECISION

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The Application

1. The Applicant is the nominee purchaser appointed to acquire the freehold of Vale Mansions, Vale Road, Bournemouth, Dorset, BH1 3TD ("the Property") on behalf of the participating tenants who are 5 of the 6 tenants of long leases of the property. The Respondent is the freeholder.
2. By written notice dated 14 July 2014, under Section 13 Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), the Applicants claimed to exercise the right to collective enfranchisement of the property, pursuant to Section 1 of the 1993 Act. They proposed a premium of £337,244 and £500.
3. The Respondent's counter-notice, pursuant to Section 21 of the 1993 Act, is dated 23 September 2014 and proposed a premium of £764,000.
4. The Applicants referred the dispute as to the premium to the Tribunal by application of 3 March 2015 in accordance with Section 24 of the 1993 Act.

Decision Summary

5. The Tribunal determines that the price to be paid by the Applicant for any Development Value in the Respondent's freehold interest in the property is £nil.
6. No compensation is payable to the Respondent under Paragraph 3 or 4 of Schedule 6 of the 1993 Act in respect of any Development Value in the roof void of the property.

Preliminary Issues

7. Whilst there was some difference as to the basis, the parties agreed that the premium properly payable should reflect any value arising from the development of the roof void of the property (**Padmore v Official Custodians for Charities (on behalf of the Trustees of the Barry and Peggy High Foundation)** (2013) UKUT 211 (LC) and **Cravecrest Ltd v Trustees of the Will of the Second Duke of Westminster** (2013) EWCA Civ 731). Ms Gibbons believed that the present claim was made under paragraph 3 of Schedule 6 of the 1993 Act; the Respondent's expert agreed with Ms Gibbons; Mr Shale believed that the claim was made under paragraphs 3 and 4 of Schedule 6. Given the Tribunal's decision on premium, no difference is created by a reference to either paragraph 3 or paragraph 4 and the Tribunal will use the term "Development Value" within this Decision to describe the value in issue.

Inspection and Description of Property

8. The Tribunal inspected the property on 25 September 2015 at 1000. Present at that time were, amongst others, counsel for the parties and the 2 expert witnesses.
9. Vale Mansions is one of a pair of similar purpose-built blocks probably constructed in the 40s on a site at the junction of Vale Road and Knyveton Road. The adjoining building, Pine Mansions, fronts Vale Road whereas Vale Mansions is skewed across the corner on rising ground. Access to the rear is by way of a shared drive from Vale Road to a yard area and a terrace of garages. There is also access to the yard by a driveway from Knyveton Road but this is blocked by a motor-caravan and, from the look of the double gates, has not been used for some time. There is a communal garden area.
10. The building is of brick with the upper part cement rendered with a roughcast finish; there are also bays and tile hanging. The roof is of, near vertical, mansard design with a traditional low-pitch roof area both covered with tiles. Access to the

flats is by way of a central lobby in a central stairwell having a flat roof behind parapets. There is also an open rear service staircase with access to each flat. The flats are served by a lift. The Tribunal members had access to the roof space. The two top floor flats are located behind the mansard leaving a loft area with limited headroom except beneath the central flat roof. The Tribunal members saw the lift motor room and the general roof construction described in the experts' reports.

11. A majority of the windows are now modern plastic frames but some of the original galvanised metal windows remain. The exterior decorations are in poor condition and the rear staircase has an unkempt appearance.
12. There are two flats on each floor, eight in total. The Tribunal members inspected flat 5 on the third floor which has a hall, two reception rooms, kitchen, three bedrooms, bathroom and separate WC and also flat 7 on the top (fourth) floor which has similar accommodation, although the living rooms are combined as a single room.

Directions and Hearing

13. Directions were issued on 5 June 2015.
14. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
15. This determination is made in the light of the documentation submitted in response to those directions and the evidence given and submissions made on behalf of the parties at the hearing. The Tribunal heard evidence from the Chartered Surveyor witnesses, Mr Stephen Allan Higley for the Applicant and Mr Peter Gordon May for the Respondent, and received written and oral submissions by counsel for the parties.

The Law

16. The right to a collective enfranchisement is provided by Part I of the Leasehold Reform, Housing and Urban Development Act 1993 as amended. The Act sets out the procedure to be followed for the right to be exercised. In outline the procedure is started by what s.13 calls an "initial notice" served on the reversioner by the tenants of at least half of the flats in the specified premises. The notice must identify a nominee purchaser and contain a number of details including the proposed purchase prices for the freehold and leasehold interests. The initial notice must specify a date for a response by the reversioner (called a "counter-notice") which is not less than two months from the date when notice of the claim is made by the initial notice.
17. Section 21 requires the reversioner to give a counter-notice by the specified date in which it is either to admit or deny the right to collective enfranchisement. Where the right is admitted the reversioner must state which proposals are accepted, and which are not, and the reversioner's counterproposals for the unaccepted proposals.
18. Section 24 deals with what happens when the right is admitted but the terms are in dispute or there is a failure to enter a contract. If, after a further period of two months from the service of the counter-notice there is no agreement as to the terms of acquisition, either side can apply to the Tribunal to "determine the matters in dispute." Such an application must be made within six months of the counter-notice.
19. By virtue of section 32 the price payable for the freehold of the building is to be determined in accordance with Schedule 6. Schedule 6 contains the provisions for ascertaining the purchase price payable by the nominee purchaser for the freehold.

20. The Leasehold Reform, Housing and Urban Development Act 1993:

SCHEDULE 6
Part II
Compensation for loss resulting from enfranchisement
"Price payable for freehold of specified premises
2.—
(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of —
(a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
(b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
...
Value of freeholder's interest
3.—
(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub–paragraph (1A) buying or seeking to buy) on the following assumptions—
(a) on the assumption that the vendor is selling for an estate in fee simple—
(i) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but
(ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;
(b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant); ...
(1A) A person falls within this sub–paragraph if he is—
(a) the nominee purchaser, or
(b) a tenant of premises contained in the specified premises, or
(ba) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or
(c) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).
(2) It is hereby declared that the fact that sub–paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub–paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub–paragraph."
"4.—
(1) The marriage value is the amount referred to in sub–paragraph (2), and the freeholder's share of the marriage value is 50% of that amount.
(2) Subject to sub–paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the

specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value—
(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and
(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.
(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub–paragraph (2)(a) is to be ignored.
(3) For the purposes of sub–paragraph (2) the value of the freehold or any intermediate leasehold interest in the specified premises when held by the person from whom it is to be acquired by the nominee purchaser and its value when acquired by the nominee purchaser—
(a) shall be determined on the same basis as the value of the interest is determined for the purposes of paragraph 2(1)(a) or (as the case may be) paragraph 6(1)(b)(i); and
(b) shall be so determined as at [the relevant date].
(4) Accordingly, in so determining the value of an interest when acquired by the nominee purchaser—
(a) the same assumptions shall be made under paragraph 3(1)(or, as the case may be, under paragraph 3(1) as applied by paragraph 7(1)) as are to be made under that provision in determining the value of the interest when held by the person from whom it is to be acquired by the nominee purchaser; and
(b) any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser shall be disregarded."

Agreed Matters

21. The parties informed the Tribunal that the terms of the new lease had been agreed and that the only issue for resolution remained the premium.

22. The following items, more fully described in the statement of issues agreed and not agreed signed on behalf of the parties, were agreed in respect of the premium:
    a) The Valuation Date of 14 July 2014.
    b) The Value of the Freehold of the Specified Premises at £381,942.
    c) The Freeholder's share of marriage value of £30,535.
    d) The Freehold to be acquired under Section 1(2)a of £150.

Disputed Items

23. The following items were disputed:
    The Development Hope Value attributable to the roof void.

The Applicant's Evidence

24. Mr Stephen Allan Higley gave evidence. He adopted his report of 27 July 2015 as his evidence in chief.

25. Mr Higley had ascribed a nil development value to the loft space. He had arrived at that conclusion by a route described in his report. He had inspected the roof void and concluded that there was some 40, possibly 45, square metres of usable space

per flat based on his view of the available headroom/height. He had used the existing flats at the property as comparables and noted that the prospective flats would be roughly half of their size and with limited headroom and without a garage and had concluded a value of £130,000 per newly constructed flat.

26. Mr Higley had identified various issues, including upgraded fire precautions throughout the building, possible Party Wall Act issues, possible leaseholder challenges relating to new parking spaces and cycle store and service charge issues. He had used other properties as comparables too, being Greenbury Lodge (Bromley), 42 Church Lane (East Finchley) and Knyveton House (Bournemouth), being 3 properties where roof space had been a feature of sales. This had led him to conclude that an assessment of these comparables contained no support for there being development value in the roof space at the property.

The Respondent's Evidence

27. Mr Peter Gordon May gave evidence. He adopted his report of 27 July 2015 as his evidence in chief.

28. Amongst the exhibits to his report were a number of documents. A letter from John Harrison of harriplan, Chartered Building & Design Engineers, to Bournemouth Borough Council's planning department of 13 February 2015 requested pre-application advice on creation of 2 additional flats in the roof space of the property. Within that letter, Mr Harrison wrote: *"I am aware that in determining any formal application that you will require details of car parking, amenity areas, refuse and cycle store provision. Such issues do not need to be considered at this time: we are aware of your requirements and will ensure that any application complies with Current Policy."* A letter of 15 April 2015 from Julie Allington, Planning Officer at Bournemouth Borough Council, points out that the property is adjacent to the East Cliff Conservation Area and is identical to the block next door, both properties being *"considered to be attractive buildings of their time which contribute positively to the setting of the conservation area and are a heritage asset to Bournemouth." "Whilst the principle of providing roof accommodation and additional flats may be acceptable, subject to meeting the requirements of other policies in the Core Strategy and Parking SPD, the design of any such development would need to take its cues from and respect the existing design and form of the development."* The letter pointed out that the proposal for the addition of 4 large dormer extensions to the roof *"would not be characteristic of the period of the property and would significantly alter the existing form of the roof."* The letter also pointed out the adverse effect such dormer extensions would have when viewed relative to a group of bungalows to the east of the property. *"The proposed dormers would have a very prominent appearance from these properties and have a detrimental effect in the existing strong design features of the property and be out of keeping with the property, wider street scene and setting of the Conservation Area contrary to policies CS 21, 39 and 41 of the Core Strategy." "From the information provided I would advise that unfortunately I would not be able to support the proposal for the reasons outlined in my letter above."* Finally, in this sequence, there is a letter from Mr Harrison to the Respondent of 16 June 2015, where he opined that Ms Allington's letter was an indication that provided the proposal met the Council's policies in the Core Strategy and Parking SPD, a redesigned scheme might be acceptable. He reported that he had prepared a new drawing with more modest pitched roof dormers, which he believed would find favour with the Planning Authority and there could be negotiated changes to the design suggested, it being common for such changes to be discussed and agreed after submission of an

application. "*Before any formal application is submitted to the LPA a more detailed survey of the existing premises would be required but I am confident from the information given to me and from what I have seen on site that the necessary car spaces, cycle stores and bin areas can be provided in areas available.*" He believed that a properly prepared application with all detail matters addressed would stand a good chance of a negotiated Planning Approval; with chances of success at any appeal "*in the 75-80% success range although it is difficult to assess further without knowing how an application may have failed.*"

29. Mr May pointed to terms of the lease (the Tribunal was told that all of the long leases were similar in form), the Second Schedule of which reserved to the freeholder "*the right to build on any part of the estate or the building and of any adjacent land of the lessors notwithstanding any interference with the access of light or air to the demised premises*". He also pointed to the First Schedule, detailing the rights included and demised, with paragraph 1 stating "*the right in common with the lessors and others from time to time having a like right of access to and egress from the demised premises and to use any lift or any other facilities or services provided in and to pass and re-pass over the common parts of the building and also and where appropriate with vehicles over the roads or ways now or hereafter during the term hereby granted to be laid out on the estate or any adjacent premises of the lessor.*" Mr May believed that the Respondent could grant rights to park for the proposed flats.
30. The original drawings prepared on behalf of the Respondent by harriplan indicated each of the two units would have a floor area of 55.5 square metres.
31. Mr May relied upon the correspondence from Mr Harrison and Ms Allington detailed above.
32. Mr May indicated that neither Mr Harrison nor a Brian Morton, a structural engineer, had raised concerns about the existing structure or the feasibility of the project from an "in principle" perspective. Mr Morton had indicated a satisfaction that an engineered solution could be provided without undue difficulty to the presence of the steel beam supporting the lift and spanning the roof space and that its presence would not have an adverse effect on the project.
33. Mr May detailed the route he had taken so as to reach a valuation of the proposed flats applying adjustments to the comparables, being other flats at Vale Mansions, flats at the similar next door property Pine Mansions and flats at 3 other properties in the area.
34. Mr May also detailed how he had arrived at a figure for gross realisation value by comparison with other developments in the area.
35. Mr May also presented details of a residual valuation based upon the anticipated costs that would be incurred in developing the flats.
36. Mr May's conclusion was that the loss of value to the Respondent attributable to development value was £65,000 (during the course of cross-examination, Mr May accepted that there had been a miscalculation on his part and that this figure should be £60,000).

The Respondent's Submissions

37. Mr Shale had submitted written submissions prior to the hearing. He made oral submissions at the hearing, which are summarised below.
38. He said that the Tribunal had to ask itself would planning permission be granted; what was the likelihood? He said that, in principle, there was nothing to prevent permission. He said that there would be a need to negotiate about the roof windows, but this would not prevent permission.

39. He argued that the engineering work associated with the RSJ supporting the lift was not insurmountable.
40. In relation to fire precautions, Mr May had said that an alarm may be sufficient and he queried whether tenants would refuse a better door if one was required.
41. He indicated that the Party Walls issue was not significant and had been vastly over –allowed for in Mr May's calculations featuring, as it did, as a percentage.
42. The issue of parking spaces would not affect planning or building regulations and planning permission could be gained irrespective of a dispute with the tenants, who had a right only to pass and re-pass. A similar situation pertained in relation to any required cycle store.
43. He argued that the service charge issue was an otiose point, as any existing leaseholders would welcome paying a tenth rather than an eighth of relevant costs.
44. He argued that Mr Higley's valuation of £130,000 was plucked from the air and was not based on comparables or floor space and queried whether Mr Higley, as a surveyor, was qualified to give a valuation, value being what people will pay.
45. He posited that a reason there are so few comparable properties for sale was because owners would generally develop properties themselves so as to maximise profits.
46. He noted that there were no building estimates provided by the Applicants and that Mr Higley had referred only to a comment made by a builder he had brought to the property. Conversely, the Respondent's builder had an existing relationship with the Respondent and had broken down the relevant works and he believed that the lift shaft RSJ issue would have been taken into account when reaching the estimate cost.
47. Any issues raised by other tenants would have to be made by way of legal challenge. Their best argument would be in relation to parking spaces. Provision of a fire alarm would be an improvement for all.

The Applicant's Submissions

48. Ms Gibbons had submitted written submissions prior to the hearing. She made oral submissions at the hearing, which are summarised below.
49. She submitted that as the Respondent was arguing that there was development value in the roof void, it was for the Respondent to prove its case. Whilst accepting that a party would apply proportionality to the level of evidence gathered for such an exercise, this Respondent could easily have obtained better evidence.
50. She argued that it was not the role of the Tribunal to decide the legal issues, but to ask would a prospective purchaser bid at auction. She noted that there was very little evidence of roof spaces selling or of development opportunities for sale locally or of sales of rooftop flats and that purchasers were not, apparently, paying for rooftop opportunities. She noted too that the Respondent had owned the property for 27 years and had never made a planning application and that the identical neighbouring property, Pine Mansions, had similarly had no such development. She submitted that the premium should consist of the capitalised ground rents and value of reversions only.
51. She reflected that residual valuations are not favoured and pointed to comment to that effect in **Arrowdell** (see below).
52. She pointed out that the comparables used by Mr May were not actual comparables, whereas Mr Higley had compared the proposed flats with actual flats in the same property, when reaching his valuation of £130,000. She pointed out that £3077 per square metre of the 52 square metres argued for was considerably in excess of the £1000 per square metre of Mr May's claimed comparables. His argument of a

premium for a new build was not supportable, when seen against it being only partially newly built and in an older building.

53. She argued that Mr May's valuation of £160,000 per flat would have to be reduced in any event in the light of the evidence heard by the Tribunal. The costs of the build were based on a "ballpark" figure and other figures used were a percentage of that and would be similarly affected by any reduction. Nothing had been allowed for fire protection, for the engineering relative to the RSJ supporting the lift or for potential disputes with leaseholders. She reminded the Tribunal that Mr May had accepted that such a scheme would not be popular with leaseholders, which was a factor which a developer would need to deal with as well as the lease rights to pass or re-pass on the common areas and the lack of a right within the lease to change the roadways. There would also be a need for agreement by the leaseholders to any change to their front doors arising from fire control works. She pointed out that the right to develop within the lease did not permit trespass or infringement of rights under the lease.
54. She argued that the developer's profit allowed for in Mr May's calculations of 15% was not realistic given that this was not a clear site, that the project would take longer and would involve a number of different parties.
55. Added to the costs would be costs associated with planning.
56. She asked the Tribunal to consider what effect the planning letters would have on a hypothetical purchaser. She addressed the Tribunal in respect of **Arrowdell** (see below) and **Sloane Stanley Estate** (see below).
57. In conclusion, she submitted that the residual value could be reduced to level where a developer would not take a risk and that there would be better opportunities in Bournemouth for a developer.

The Tribunal's Decision

58. The Tribunal unanimously finds that it prefers the case for the Applicant and finds that the Value of the Freeholder's Interest in Development value is £nil.
59. The Tribunal is guided by **Earl Cadogan v 2 Herbert Crescent Freehold Limited** LRA/91/2007, HH Judge Huskinson

"It is necessary for us to consider the extent to which the alleged (but disputed) difficulties in the way of a hypothetical purchaser would affect the mind of the hypothetical purchaser when deciding how much to bid for the freeholder's interest in the Building."

"We conclude therefore that we should not assess the value of the freeholder's interest under Schedule 6 paragraph 3 on the basis that the successful hypothetical purchaser would receive ultra cautious advice. However we conclude that we must assume that this successful hypothetical purchaser would receive sound and responsible advice rather than over optimistic advice."

"Considering the matter broadly (and in our judgment this is the manner in which the Lands Tribunal should consider the matter)."

69. We have already indicated (see paragraphs 44 and 59 above) that it is not appropriate for this Tribunal to reach final conclusions upon all the points of law which the parties contend may have weighed in the minds of the hypothetical purchasers as being potential difficulties which might arise if the successful hypothetical purchaser sought to obtain vacant possession at the end of the head lease. These points do not arise for decision – for instance this is not a case where

a landlord is seeking to exercise section 61 against a lessee. It would be inappropriate for us to purport to decide the disputed points of law. Instead it is necessary for us to consider the extent to which the alleged (but disputed) difficulties in the way of a hypothetical purchaser would affect the mind of the hypothetical purchaser when deciding how much to bid for the freeholder's interest in the Building. We are fortified in our conclusion that it is inappropriate for us to purport to decide (or indeed to give some form of advisory opinion upon) the legal difficulties which could face the hypothetical purchaser at the end of the head lease having regard to the decision of the Court of Appeal in ***Office of Telecommunications v Floe Telecom Limited*** *[2009] EWCA Civ 47 where it was stated at paragraphs 20 and 21:*

> *"20. It is the unnecessary nature of the Tribunal's legal rulings in its judgment that is most troubling. The court itself drew the attention of the parties at the hearing to* ***R (Burke) v GMC*** *[2006] QB 27. There are sound reasons why courts and tribunals at all levels generally confine themselves to deciding what is necessary for the adjudication of the actual disputes between the parties. Deciding no more than is necessary may be described as an unimaginative, unadventurous, inactive, conservative or restrictive approach to the judicial function, but the lessons of practical experience are that unnecessary opinions and findings of courts are fraught with danger.*
>
> *21. Specialist tribunals seem to be more prone than ordinary courts to yield to the temptation of generous general advice and guidance. The wish to be helpful to users is understandable. It may even be commendable. But bodies established to adjudicate on disputes are not in the business of giving advisory opinions to litigants or potential litigants. They should take care not to be, or to feel, pressured by the parties or by interveners or by critics to do things which they are not intended, qualified or equipped to do. In general, more harm than good is likely to be done by deciding more than is necessary for the adjudication of the actual dispute."*

The Tribunal told the parties that it would take account of the above advice and it has taken a broad view of the evidence available to it in line with that advice.

60. The Tribunal was referred to 3 cases; what follows is a very brief synopsis. In **Arrowdell Limited v Coniston Court (North) Hove Limited** (2007) RVR 39 (LRA/72/2005), a 50% reduction had been made for uncertainty and a further reduction of £10,000 for modification of a restrictive covenant. In **Trustees of Sloane Stanley Estate v Carey-Morgan and Stephenson** (2011) UKUT 415 (LC), the Tribunal assessed through the eyes of a hypothetical purchaser and a value of development was assessed in a situation of uncertainty as being a "gambling chip" of some £10,000 set against a property with a freehold value of £2.8 million. In **Jackson and Jackson v The Keepers of the Possessions Revenues and Goods of The Free Grammar School of John Lyon** (2013) UKUT 056 (LC), the Tribunal deducted 20% from the gross development value to represent development and planning risks.

61. These cases illustrate that there will be a range of circumstances in each case before the Tribunal and the importance of taking a rounded view of all information properly available to the hypothetical purchaser as well as an assessment of the impact of gaps in the information available. For instance, in **Trustees of Sloane**

Stanley Estate v Carey-Morgan and Stephenson (2011) UKUT 415 (LC), the Tribunal said this:

72. What we find remarkable is that in all the extensive evidence called on behalf of the appellants there is nowhere any useful factual material as to the pattern of permissions and refusals for rooftop development either by the council or on appeal. A purchaser in our view would undoubtedly wish to be advised about this, rather than basing his bid on the opinions of a planning consultant and a conservation area specialist unsupported by such material. He would know that, due to the very nature of planning, it is often possible to make out a reasonable case that a particular development would accord with planning policy or would be acceptable in planning terms. In support of his evidence that planning permission could be expected Mr Oliver produced ten planning permissions granted by the council for rooftop development. One of these, at 352A King's Road was for the renewal of a 1998 permission for the erection of an additional storey in the form of a mansard roof; another (25-39 Thurloe Square) was for the replacement of existing mansard extensions; and eight (all of them properties in the same terrace on King's Road) were for the replacement of roof access housing. No fuller description of the development and no drawings were produced. These instances are wholly insufficient to suggest that planning permission might be expected for the particular schemes of rooftop development suggested for Vale Court. Moreover Mr Oliver had not sought to establish what planning refusals there had been, so that the picture presented was incomplete and one-sided. We do not think that, in giving the evidence that he did in this respect, Mr Oliver was fulfilling his duty to the Tribunal.

73. We have no doubt that a purchaser, if he had consulted the council on the prospects of planning permission being granted, would have received the strongly negative indications that both the appellants and the respondents in fact received. He would realise that, if permission was to be obtained, he would have to go to appeal. No appeal decisions have been produced to us to suggest that an appeal would probably be successful.

74. Nor are we persuaded by the evidence of Mr Oliver and Mr Walker that any of the schemes referred to would accord with planning policy or be otherwise acceptable in planning terms.

62. The Tribunal accepts that a freeholder will always wish to draw a balance between investment in evidence and the premium hoped for, so that there will always likely remain a number of questions for which there are no defined answers. Similarly, when contesting a freeholder's assertion as to value, leaseholders too are likely to take a proportionate view of an investment in evidence.
63. There are, however, issues here which could have been resolved at little further cost and where better planning could have provided answers at no significant extra cost.
64. There appear to be key data in Mr May's calculations, the distortion of which can have a significant effect, primarily being associated with the value he ascribes to the 2 new flats and the costs associated with their build.
65. The Tribunal would expect any freeholder to act honourably with the Planning Authority and that certainly appears to be the case with this freeholder's intentions, given the assiduous nature of the comments of Mr Harrison detailed above in respect of parking at the property and compliance with policies. Although Mr Shale indicated that an application could be made for permission even though there was no agreement with leaseholders about parking, that does not appear to be the actual stated intention from what we have recorded. The Tribunal could foresee significant

issues for the Respondent in carving out the parking spaces that the Planning Authority would require in the face of leaseholder resistance. Whether the lease would allow for such changes in the face of opposition is not at all clear; the Tribunal is not required to determine the issue one way or the other, but does conclude that a hypothetical purchaser would be cautioned as to the real difficulties.

66. Mr Harrison does not refer to the terms of the lease in his documents when discussing the parking, only to the geography. There does not appear to have been any real consideration as to the existence, let alone the resolution of such an issue of conflict with the leaseholders over the parking spaces, an assumption having been made that there was no issue.

67. There is real scope here for relationship issues with the leaseholders and the developer of the roof space to consume time and resource. There would need to be an agreement as to service charges; it would not be quite so simple as moving from $1/8^{th}$ to $1/10^{th}$ as Mr Shale submitted as there would need to be a formal agreement, which would come at a cost. There would need to be agreement as to the parking or some legal resolution of that issue; this could well delay any project and come at cost and may not be resolved in favour of the developer. There would be disruption caused by scaffolding and a site hut and discussions, etc about those issues with a resistant party. There was no evidence as to what fire controls would actually be required; as well as being a real concern as to gaining the approval of the other leaseholders, the Tribunal has no way of knowing what the unknown requirements could cost or how they may impact upon future service charges.

68. The Respondent suggests that Planning Permission is likely on negotiation or appeal, but has not provided evidence which could have answered some of the unknowns. For instance, why did Mr Harrison not simply go back to Ms Allington with his revised plans and ask her whether they met her concerns? Why did he not include any evidence of his experience and expertise so that the Tribunal could take a more assured view of his prognosis of success by negotiation or appeal? In the case of the latter, the 75-80% estimation is qualified by the words that follow it; what do those words mean? The Tribunal is aware too that Mr Harrison's prognoses of acquisition of planning approval do not take account of the concerns about the availability of parking. Nobody has thought to tell the Tribunal what the various policies of the Planning Authority, referred to in correspondence, contain so as to allow the Tribunal to reach a more informed view. Nor had there, apparently, been any enquiries of the Planning Authority about similar applications in the area.

69. Mr May's assessment of premium relies also on the costs associated with the development being correct. Put crudely, if you take the costs from the value of the flats, you arrive at the premium. The Tribunal had considerable concerns about the costs, as it will explain.

70. Mr May's valuation of the flats at £160,000 relies upon comparables. Whilst the Tribunal applauds Mr May for detailing other properties which do not support a high premium so as to demonstrate a fair method of appraisal, the Tribunal lacks confidence in the methods used and the end valuations. It is clear from the evidence available to the Tribunal that there are not, in the area, for sale properties with planning permission for development of the roof space (no evidence of such was provided), or flats within roof spaces. Mr May had, as a consequence, used as comparables other flats of a different nature and then applied his own adjustments so as to make them "better" comparables. To keep faith with Mr May's reasoning for his adjustments required the Tribunal to be assured first that this was a sound route to reach a valuation of the subject roof space flats and to have confidence too in the adjustments he made. Unfortunately, apart from telling the Tribunal that the

adjustments applied were ones he always used and were based upon his experience, the Tribunal could not be confident as to the science behind them. The comparable properties appeared to the Tribunal to be quite dissimilar in nature to the flats planned at the subject property, such that the science behind any adjustments was of real importance.

71. The Tribunal was not satisfied that Mr May's attribution of a 7.5% premium for new build was sound. Firstly, there was no referenced basis for such an addition and secondly, the proposed new flats would not be truly new build, resting as they would be in a somewhat tired older building and under the original roof.

72. The Tribunal agreed with Ms Gibbons that the posited 15% developer premium was not established to a satisfactory level. The 15% had been reached by analysis of other developments, which were not similar in nature or value and which did not appear to have the complications already described above.

73. The actual building costs come from the estimate provided by Axis Construction London Ltd, described widely at the hearing as being a "ballpark" figure of £140,000, broken down only as to a budget price per unit of £65,000 and preliminaries of £10,000. The preliminaries are not detailed. The estimate has a number of identified items, but none is costed. There is no reference to the need to find a solution to the RSJ supporting the lift structure or the associated cost, only an assurance elsewhere in the Respondent's documents that the issue is resolvable.

74. Mr May has not provided for the costs associated with the planning application. Nor has he allowed for the costs associated with leaseholder resistance, which the Tribunal has described above. Shifts in the cost of building would also affect the percentages applied by him to other elements of his calculation.

75. The Tribunal has not detailed or commented upon every piece of the evidence laid before it, but the Tribunal confirms that it takes account of the totality of the evidence in reaching its conclusion.

76. When the Tribunal takes the broad view, advised by HH Judge Huskinson in **Earl Cadogan** above, and places itself in the position of a hypothetical purchaser who would receive sound and responsible advice rather than ultra-cautious or over-optimistic advice, the Tribunal can only conclude that the hypothetical purchaser would turn his or her attention to the next lot on the auction programme once the bids had reached the premium already agreed here between the parties. There are here too many concerns and imponderables to merit even a gambling chip bid for the development vale of the roof space at this property.

Conclusion

77. For the reasons stated above the Tribunal determines that the price to be paid by the Applicant for the Development Value of the roof space as part of the freehold in the Property is £nil and no compensation is payable.

Signed A Cresswell
Judge of the First-tier Tribunal

Date 29 September 2015

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.