UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral Citation number: [2009] UKUT 102 (LC)
LT Case Number: ACQ/447/2007

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory purchase – substantial former city-centre office building – development prospects – planning – hope value – costs – residual valuation – alternative schemes – compensation £4,500,000

IN THE MATTER of A NOTICE OF REFERENCE

BETWEEN **RIDGELAND PROPERTIES LIMITED** **Claimant**

and

BRISTOL CITY COUNCIL **Acquiring Authority**

Re: Tollgate House, Houlton Street, Bristol BS2 9DJ

Before: P R Francis FRICS and A J Trott FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
on
29 September - 3 October, 6 -10 and 13 -14 October 2008

Timothy Mould QC and *Guy Williams*, instructed by Brecher, solicitors of London W1 for the claimant
Neil King QC and *Rupert Warren*, instructed by Ashurst, solicitors of London EC2 for the acquiring authority

The following cases are referred to in this decision:

Jumbuk Ltd v West Midlands Passenger Transport Executive [2008] RVR 186
Spirerose Ltd v Transport for London [2008] RVR 12
Transport for London v Spirerose Limited (in Administration) [2008] EWCA Civ 1230
Gateley v Central Lancashire New Town Development Corporation [1984] 1 EGLR 195
Bwllfa and Merthyr Dare Steam Collieries Ltd v Pontypridd Waterworks Co [1903] AC 426

DECISION

Introduction

1. This is a decision to determine the compensation payable to Ridgeland Properties Limited (the claimant) by Bristol City Council (the "council" or "acquiring authority") in respect of the compulsory acquisition of Tollgate House, Houlton Street, Bristol BS2 9DJ (the subject property) under the Bristol City Council (Broadmead Expansion, Bristol) Compulsory Purchase Order 2003 (the CPO). The notice of reference was lodged with the Tribunal by the acquiring authority on 9 August 2007.

2. Mr Timothy Mould QC and Mr Guy Williams of counsel appeared for the claimant and called David Napier FRICS, a director of G L Hearn, Property Consultants, of London W1 who gave planning evidence, Stewart Wallace MRICS, managing director of Kingfisher Associates of Teignmouth, Devon who gave evidence of conversion and development costs and James Edward Sydney Hewetson MRICS, a partner in Matthews & Goodman, Chartered Surveyors of London SW1 who gave valuation evidence.

3. Mr Neil King QC and Mr Rupert Warren of counsel appeared for the acquiring authority, and called Michael Orr BA (Hons) B.Pl Dip UD MRTPI, founding partner of CSJ Planning Consultants Ltd of Bristol who gave planning evidence. Tim Martin BSc CEng MICE MRICS, Christopher Baldwin BSc MRICS and Richard Alexander Owen BA MRICS IRRV, all partners in Drivers Jonas LLP, Property Consultants, gave costs, residential property and valuation evidence respectively.

4. Closing submissions were received from the parties by 4 November 2008; we undertook an accompanied inspection of one of the comparable sites, Ocean Views, Portland on 10 November 2008, and made an unaccompanied inspection of the former location of the subject property and its surroundings on 6 January 2009. A laptop computer containing the "Circle Developer" software upon which the valuation experts had constructed their residual appraisals (and containing their final versions of these) was provided to the Tribunal on 26 January 2009.

The claim

5. The claimant, which had acquired the subject property in August 1999 with the intention of converting it principally to residential use with elements of leisure and office uses, sought, in its amended statement of case, compensation on two alternative bases. Firstly (its principal case) that, due to the CPO scheme, it had been unable to proceed with a development **("the amended claim scheme")** which would, on increasing the height of the existing building by six storeys, comprise 485 flats (including 145 affordable units), a health club/gym of 23,850 sq ft, 18,425 sq ft offices and 371 parking spaces. Planning consent for such a scheme could be assumed to have been forthcoming at the valuation date, and the residualised land value was in the region of £37,000,000. In the alternative, a scheme that did not involve raising the height of the existing block **("the amended baseline scheme")** and which would comprise 335

residential units, a 26,695 sq ft health club/gym, 18,425 sq ft offices and 317 parking spaces would, the claimant said, have obtained consent at the valuation date. The residualised value of that, including an element of hope value to reflect the likelihood or prospect of subsequently obtaining a revised consent for the amended claim scheme, was in the region of £26,000,000. On each basis, additional claims were made for loss of profits, together with reinvestment costs, but these were subsequently withdrawn. By the time the hearing commenced, some amendments and corrections were made to the claimant's valuation of the amended claim scheme, which had the effect of reducing the principal claim to £36,500,000. The amended baseline scheme claim remained the same.

6. In its reply, the acquiring authority, whilst acknowledging that planning consent could reasonably have been anticipated for a major mixed-use (C3/B1/D2) development, contended that there was no prospect whatsoever of the claimant obtaining consent for its proposed amended claim scheme. Following meetings in November 2007 between the parties' planning experts, a scheme evolved that involved no increase in height to the main block and which would comprise 303 residential 1 and 2 bedroom units, 327 parking spaces and a new four storey block containing a health club and offices (**"the November 2007 scheme"**). Whilst in principle it was likely to have been considered favourably in planning terms, there were serious deficiencies in terms of the affordable housing element and section 106 obligations. The claimant's amended baseline scheme subsequently followed but in the council's expert's view a residual valuation of such a scheme would produce a negative value for the land. The council then produced a scheme (**"the Bristol scheme"**) which was a variation of the claimant's amended baseline scheme and which was considered by them to demonstrate a viable alternative that produced a positive site value. The Bristol scheme provided for 236 residential units (of which 30% were affordable housing, split 70/30 social rented/shared ownership), a 10,000 sq ft health and fitness centre and 11,250 sq ft of offices together with 190 parking spaces and would maximise the land value at £1,909,789. The loss of profits and reinvestment claims were, on any basis the council said, unsustainable.

7. By the time the hearing commenced, and some further amendments had been made, the parties had agreed that for the purposes of valuation, three schemes were to be considered:

> **The claim scheme** comprising 425 residential units of which 122 were affordable. A Health and Fitness centre of 23,850 sq ft, and new-build offices of 18,425 sq ft gross (15,091 sq ft net), 369 car parking spaces (290 in a newly constructed underground car park), 29 motorcycle spaces and facilities for parking 231 cycles. Height of building increased by 8 storeys.
>
> **The baseline scheme** comprising 295 residential units of which 88 were affordable. A Health and Fitness Centre of 26,695 sq ft, office accommodation as above, 310 parking spaces (again, 290 underground) and motorcycle/cycle parking as above. No material change to building height.
>
> **The Bristol scheme** Amended to 236 residential units, with 70 affordable. Health and Fitness Centre of 11,539 sq ft, offices of 13,498 sq ft gross (11,276 sq ft net), 187 car parking spaces of which 167 were accommodated in a new multi-storey car-park, 10 motorcycle and 236 cycle spaces. No material change to building height.

Facts

8. The parties produced a statement of agreed facts and issues from which, together with the evidence, we find the following facts. Tollgate House comprised a 19 storey (17 principal storeys with mezzanine decks above) tri-form office building constructed in 1976 of concrete frame with lightweight pre-cast concrete panel cladding incorporating aluminium framed single-glazed windows. It had 142,600 sq ft of accommodation including ground floor reception and offices, 16 upper floors of offices served by 6 high-speed passenger lifts in a central core, a 17th floor comprising restaurant and plant rooms, and a mezzanine deck above with further plant rooms and a warden's flat. 121 parking spaces were located around the building. It occupied an island site of 1.2 acres (0.486 ha) and was located on the north-eastern periphery of Bristol City Centre, on the edge of the St Pauls area at the junction of Newfoundland Street (the gateway to the city centre from the M32) and Houlton Street, from where access was obtained. It was within 200 yards of the Broadmead shopping centre, separated therefrom by Dale Street, a multi-storey car park and a large open tract of land that had historically also been used for car parking. To the south of the site, Frome Street separated the property from Aldworth House, a four-storey block of flats occupied by social housing tenants. Nearby were a furniture showroom and other tertiary retail units.

9. Tollgate House had been the former headquarters of the Planning Inspectorate, but was vacated some 4 years prior to the valuation date and, by the date of acquisition, had suffered extensive vandalism. The CPO, which was stated to be for the "securing and the carrying out of a comprehensive scheme of redevelopment (including retail, office and/or hotel, residential and leisure uses together with car parking and alterations to the highway network) at Broadmead, Bristol" was made on 3 November 2003. The claimant, as a statutory objector, whilst not opposing the principle of the expansion of the Broadmead Centre per se, unsuccessfully opposed the inclusion of the subject property within the scheme at the public inquiry. The Inspector's report of 25 August 2004 recommended that the order be confirmed without modification, and the Deputy Prime Minister and First Secretary of State thus confirmed the CPO on 18 May 2005. A General Vesting Declaration was made on 11 August 2005, and the acquiring authority took possession and entered upon the reference land on 13 September 2005. That is the valuation date for the purposes of this reference. The building was subsequently demolished.

Planning policies

10. At the valuation date, the statutory development plan was the Joint Replacement Structure Plan (2002) and the Bristol Local Plan (1997). The First Deposit (consultation draft) Proposed Alterations to the Bristol Local Plan were published in 2003, and its proposals were material planning considerations at the valuation date. Regional planning policy was contained in Regional Planning Guidance for the South West (RPG10): 2001. The subject property was within an area allocated in the Bristol Local Plan as a City Centre Mixed Commercial Area, to which Policy CC2 applied. That policy permitted a range of uses including office, research and development, light industrial, leisure, residential, institutional and small-scale retail uses. The subject property was adjacent to the Portland Square Conservation Area.

11. It was agreed that the following supplementary planning guidance notes were material considerations at the valuation date:

(a) PAN 1 (Planning Advisory Note) – Residential Guidelines

(b) PAN 12 – Affordable Housing (published May 2002)

(c) PAN 15 – Responding to Local Character – a Design Guide (March 1998)

(d) SPD 1 (Supplementary Planning Document): Tall Buildings (January 2005)

(e) SPD 4: Achieving Positive Planning through the Use of Planning Obligations (draft published December 2004 – adopted October 2005)

National Policies:

(a) PPS 1 – Delivering Sustainable Development (2005)

(b) PPG 3 – Housing (2000)

(c) Better Places to Live by Design: A companion guide to PPG3

(d) PPG 13- Transport 2001

Other material considerations:

(a) Guidance on Tall Buildings (CABE/English Heritage) (2003)

Issues

12. The parties agreed that, in determining compensation in accordance with section 5, rule (2) of the Land Compensation Act 1961 (the 1961 Act), sections 14 to 16 of that Act are relevant, and it is to be assumed that full planning permission would have been granted at the valuation date for a predominantly residential scheme of development. Whilst it was agreed that the value of the reference land for one of the aforementioned 3 schemes would have exceeded its value based upon use as offices either in its actual condition at the valuation date, or following a scheme of renovation, it was the form of the scheme to be assumed that was in dispute. It was common ground that the local planning authority would, in considering proposals for Tollgate, seek significant overall improvement in the design and appearance of the building, and would seek to achieve "architectural excellence".

13. In determining the scheme, or schemes, for which detailed planning consent could realistically be assumed to have been forthcoming, the key issues relate to the interpretation of the relevant planning policies in terms of:

1. Height of building – plan for additional storeys (claim scheme only)

2. Cladding materials (all 3 schemes)

3. Affordable housing mix – social rented and shared ownership (all 3 schemes)

4. Section 106 obligations - requirements for contribution to public realm, highways infrastructure and travel plan (all 3 schemes)

14. In determining the value of the site, the following issues relating to the cost of development remained in dispute (in respect of all three schemes unless otherwise stated):

1. Whether cost estimates should be taken at the valuation date, or the date of the projected commencement of building works

2. Approaches to costs estimation

3. Procurement

4. Preliminaries, demolition and enabling works

5. Nature and cost of cladding to the residential tower

6. Design requirements, engineering solutions and construction costs of subterranean car park (claim and baseline schemes)

7. M&E Services

8. Other disputed items relating to the superstructure of the tower (balconies, lift cores, floor plate extension, suspended slab and fit out), the offices and the health and leisure complex

9. Landscaping and external works

10. Development programme and phasing

11. Affordable housing – valuation by reference to TCI or Bristol Matrix

12. Contingencies

13. Professional fees

14. Profit

15. Hope value (baseline scheme only)

15. We consider firstly the evidence relating to the planning issues and, from our conclusions on these, move to the question of development costs and valuation issues relating to the scheme or schemes for which detailed planning consent could, in our judgment, have been anticipated. We conclude with a summary and our valuations.

Planning

Preamble

16. It was the claimant's case that, in the light of the prevailing local and national planning policies, full planning permission could reasonably have been anticipated for both the claim and baseline schemes; the proposals relating to the recladding, affordable housing mix and s.106 obligations would each have been acceptable, and would neither individually, nor taken together, constitute grounds for refusal. The proposal to raise the height of the building by the construction of additional floors in respect of the claim scheme would, they said, also be acceptable. The acquiring authority's case was that whilst in principle a mixed use development along the lines of that proposed under the baseline scheme (and, by association, the Bristol scheme) would have found favour with the local planning authority, the issues that remained the subject of dispute in respect of the baseline scheme would have required revisions in order to comply with the authority's policies and requirements. Failure to comply with any one of those issues was sufficient, in their view, to warrant a refusal.

17. At the commencement of his oral evidence, Mr Orr dealt with an apparent contradiction in his evidence relating to the council's position on the planning matters remaining at issue. Whilst he had never demurred from his view that the proposals to increase the height of Tollgate House (the claim scheme) were unacceptable, he had said in his main report (at paragraph 11.7):

> "... I consider that the [amended] baseline scheme might reasonably have been expected to achieve planning permission. Whilst there are strengths and weaknesses to the proposals and certain assumptions have had to be made because of missing information, I believe that there is sufficient justification to assume that competent professional consultants could have negotiated a conditional planning permission subject to appropriate planning obligations secured through a section 106 agreement."

In his subsequent rebuttal statement, he concluded, at paragraph 11.21:

> "My overall conclusion in the light of my main report and the foregoing [comments on Mr Napier's report] is that there is no reason to assume that planning permission could reasonably have been expected to be granted for either the [amended] baseline scheme, or the [amended] claim scheme."

The council had also said (in respect of the November 2007 scheme – which did not involve increasing the height of the building), in its amended reply to the claimant's amended statement of case:

> "Subject to the conclusion of planning obligations to secure the provision of affordable housing and the financial contributions ... and subject to planning conditions addressing (inter alia) the phasing of the development, the acquiring authority accepts that a development broadly as described ... can reasonably be expected to have been granted planning permission at the valuation date in the no-scheme world. The November 2007 scheme is therefore a reasonable starting point for an assessment of the open market value of the property as at the valuation date."

18. Mr Orr said that in his initial report he had assumed competent professionals would, through negotiation, plug any remaining gaps, especially in connection with the proposed appearance of the building, and anticipated that any remaining points could have been resolved. However, he said that by the time Mr Napier had produced his report, it had become clear to him that there remained major differences between them on the disputed issues, and as a result he had changed his mind over the likelihood of an acceptable solution being achieved. Thus, he had formed the view that the claimant's proposals as to cladding, affordable housing mix and section 106 contributions would each have been sufficient grounds to warrant a refusal.

The height of the tower

19. This was the only planning issue that related solely to the claim scheme. Mr Napier, for the claimant, has 30 years experience in matters of valuation, planning and development both nationally and in the Bristol area, and has formerly advised Bristol Development Corporation in respect of the Temple Quays regeneration. He appeared for the claimant at the inquiry into the Broadmead Expansion CPO, from which this claim emanates, and produced an expert planning report and a rebuttal statement for this hearing.

20. He set out the planning background, statutory assumptions and policy framework (the majority of which was agreed) that would be relevant in consideration of both the baseline and claim schemes at the valuation date. Regarding the latter, he explained that the claimant had, following consultation with the council, submitted a planning application in 2001 for renovation and conversion of the tower to provide 350 flats. To achieve this, it had been proposed to increase the height of the building by 8 storeys. The planning officer's report to committee of 18 November 2001 gave 9 reasons why the application should be refused but, in Mr Napier's opinion, none of these were insurmountable. However, the claimant withdrew the application before the committee considered it, and it was, therefore, not determined.

21. The claim scheme plan was also to increase the total height of the main building by 8 storeys to 27. The proposals (as explained in Mr Wallace's report) were to remove the existing upper floors, which housed the plant rooms and caretaker's accommodation, down to the 16th floor slab, and add a lightweight steel and concrete structure which would incorporate duplex penthouses on the new 25th and 26th floors. This would increase the overall height of the structure from 56.5m to 78m, ie by 38%.

22. Mr Napier said that CABE (Commission for Architecture and the Built Environment) and English Heritage (EH) jointly published "Guidance on Tall Buildings" in 2003. Acknowledging that, in the right place, tall buildings can make positive contributions to city life, the report set out the aspects that should be taken into account in considering proposals. These included natural topography, scale, height, form and massing, proportion and silhouette, facing materials, urban grain, streetscape, built form and effects on skyline, together with its interaction with and contribution to its surroundings and the environment, including conservation areas and their settings. Supplementary Planning Document 1: Tall Buildings (SPD 1), which was adopted by the council in January 2005, provided the assessment criteria for Bristol and contained specific advice on remodelling existing tall buildings. Tollgate

House, Mr Napier said, was an established tall building and, with the council having accepted the principle of the baseline scheme in planning terms, there was no question regarding its retention. The advice stated that, should it be determined that it was acceptable to retain a tall building on a particular site, it would be possible to provide "a new lease of life through relatively simple measures" including "re-cladding with more contemporary materials", the "addition of upper floors to change the profile of the building" and "introducing active ground floor uses". The document, he said, was written in permissive fashion and acknowledged that increasing building height could bring about improvements. This was particularly important as the existing building (which he accepted was the third tallest building in Bristol) was somewhat "squat" in appearance and increasing its height, together with re-cladding, would accentuate the slenderness ratio, and significantly improve its overall appearance and its impact on the street scene. The proposed additional floors would not, Mr Napier said, add substantially to the height, but whilst the building would be marginally more visible from surrounding areas (including the Portland Square Conservation Area), the improvements in terms of overall appearance would have served to preserve or enhance such views. The proposals also provided for active uses on the site, by the provision of the leisure and fitness centre.

23. In order to provide evidence as to the potential visual impact of the redevelopment of Tollgate House, Mr Napier produced a Visual Impact Assessment (VIA) based upon the 2005 Guidance on Environmental Impact Assessment set out in Circular 02/99, and the Guidelines for Landscape and Visual Impact Assessment (2002). It had been prepared by members of his staff and the claimant's architect. Following discussions with the council's planning officers, view points were identified, photographic records were used to show how the existing building would have appeared (it having been demolished by the time the exercise was undertaken), and comparative montages were added to indicate the projected appearance of both the baseline and claim schemes. Whilst accepting in cross-examination that the quality of the montages was poor, and the assessment as a whole would have been insufficient for inclusion with a formal planning application (for instance, the nature of the proposed cladding had not then been decided), Mr Napier said the VIA demonstrated that the increased height would not result in a demonstrably more imposing building. Indeed, he said, the scheme would result in an improvement in what had been identified and accepted as an important gateway location. He accepted that the methodology set out in Appendix E to SPD1 had not been used and that SPD1 would, at the valuation date, have been a significant material consideration.

24. Acknowledging the inadequacies of the VIA, and having accepted that plans for any proposed scheme would need to clearly demonstrate architectural excellence and to produce a "step change" over what was already there (Policy B6 of the Bristol Local Plan), he did say that whilst the developer would, of course, need to have regard to all the relevant criteria, the working up of the scheme design would have been an iterative process. The proposals would have evolved following meetings and discussions with the council over, possibly, a period of years. Nevertheless, and in the light of the concerns raised by the council, Mr Napier said he commissioned two further reports, although neither of the authors was called to give evidence before us. The first, prepared by Collado Collins, Architects and Urban Designers of London W1, was to consider (taking into account the relevant planning policy framework), the prospects of securing approval for a conversion that involved increasing the height of the building. Mr Jonathan Collins reiterated the iterative nature of achieving success in obtaining consents for tall buildings, and gave examples of 3 schemes in London, two of which were for

40 storey towers. He said that 18 months of design work and consultation with the local planners, statutory consultees and the wider community occurred before final designs were achieved, and the scheme in Woolwich went through 15 design iterations due to input from CABE, English Heritage and public consultation before planning consent was finally granted.

25. As to Tollgate House, whilst he did not specifically consider either the claim or baseline schemes that formed the basis of this reference, he was of the view that a conversion/extension scheme stood a good chance of obtaining consent, subject to a visually and environmentally sympathetic design being devised, particularly one that served to increase the building's presently low slenderness ratio in comparison with other tall buildings in Bristol. Given sufficient time and resources, and through detailed consultation with the LPA, it was Mr Collins' view that an elegant solution could be achieved that would increase the legibility of the city centre, contribute positively to its immediate surroundings and preserve the character of adjacent conservation areas. Mr Napier accepted in cross-examination that the Collado Collins report was generic rather than specific, and that although Mr Collins had looked at the claim scheme, he had also suggested alternative methodologies for achieving the required consent – for example by extending the tri-form wings in an asymmetric, spiral form. Mr Napier also accepted that the report underlined the importance of consultation with CABE and English Heritage.

26. The second report, by Dr Peter Smith B Arch RIBA PhD, principal of Dr Peter Smith, Architects and Planners of London NW3, commented upon the impact that the upward extension of Tollgate House might have on the Portland Square Conservation Area. In his opinion, due to the orientation of its streets, and the layout of the contours, the claimant's proposals would not have a substantial impact upon the Conservation Area as a whole, except where it abutted Newfoundland Street, the busy main access from the north into Bristol where, in any event, many of the frontages have been rebuilt or replaced by modern development. The only significant view of the subject property from the main Georgian square was in a south-easterly direction, and that was only in the winter when the trees were defoliated. The worst effect of the building, as it previously existed, was from the "heavy concrete cap" that housed the plant rooms and staff areas. Any improvements to the building, by softening the elevations and improving the silhouette would, in his view, more than offset any impact created by the proposed additional height. Mr Napier said, in cross-examination, that the proposals upon which Dr Smith had been asked to comment were those that were "evolving" into the claim scheme that was now before the Tribunal. He accepted that the report did not make any reference to CABE or English Heritage, and that the location of the building in the context of the adjacent Conservation Area was an important consideration.

27. Mr Napier was asked why he had made so little in his reports of the 2001 planning application, the planning officer's proposed reasons for refusal and, particularly, the objections that had been received from CABE and English Heritage, which had clearly been couched in the strongest possible terms. He said that the 2001 scheme had considerable differences, especially in respect of its external appearance, although he acknowledged that it was comparable in terms of proposed height. The letters from CABE and EH would have been important considerations, he said, but would not have been determinative. The local planning authority was not bound by their concerns and, indeed, he said that the claimant's scheme at Ocean Views, Portland, Dorset (which was 9 storeys high) had also received objections from

EH, but planning consent had still been obtained. Mr Napier said that the letter from CABE was not commenting specifically on height, although on a personal level, he did not disagree with their views as to the overall design impact. However, that scheme bore no resemblance to the proposed claim scheme and whilst he was sure CABE (and EH) would make similar comments if the 2001 scheme was re-submitted in 2005, the claim scheme was a significant improvement and he would expect their comments about that to be completely different. He accepted that neither he nor the claimant had sought the advice of those bodies in respect of these latest proposals.

28. Mr Orr has practised in Bristol since 1984. For the first 5 years of his professional career he was employed with Bristol City Council in both the development control and policy divisions. Since setting up his own practice in 1995, he has been involved with major regeneration and residential schemes in the Bristol area, including applications, appeals and section 106 planning obligation negotiations. He produced a report and a rebuttal statement.

29. He said that Tollgate House was located within, but on the fringe of, an area of Bristol city centre that had been identified as potentially appropriate for tall buildings. However, the property was already a very tall building at 19 storeys, and SPD 1 (the relevant sections of which he dealt with at considerable length) did not provide the basis for an assumption that any further height would be acceptable or appropriate. Although the SPD lends support for tall buildings to be located on gateway sites, which this undoubtedly was, it said that new buildings should be of a higher quality than existing tall buildings if such proposals were to be supported. Mr Orr said that SPD1 was supplemental to the other, agreed, Local Plan policies, and sections 4.11 and 5 provided the key criteria to be considered, these being derived to a large extent from the joint CABE/English Heritage Guidance. Three of the 10 assessment criteria in section 5 were particularly important and, in his view, the claimant's proposals failed to meet them:

Assessment Criteria (i): Relationship to context, including topography, built form and skyline. Mr Orr said that Tollgate House was already the third tallest building in Bristol, and its scale was at the upper limits of the townscape context of the city. Any additional height would be overly dominant particularly bearing in mind its high-profile location at the end of the M32, which was the principal vehicular access into Bristol from the M4 and the north. He produced photomontages which, he said, indicated the increased dominance that the claimant's proposed additional 8 storeys would create.

Assessment Criteria (ii): Effect on historic environment at a city-wide and local level. The close proximity of the building to the Portland Square Conservation Area, from which it was already clearly visible, would mean that any upward extension could have a seriously detrimental impact on such a sensitive area containing, as it did, Grade 1 listed buildings of considerable architectural importance. Such a development would thus be contrary to the statutory test and guidance contained in PPG 15 – to preserve and enhance conservation areas. The same comments applied, he said, to the Old Market Conservation Area and Castle Park. Bristol City Council, Mr Orr said, had spent 29 years bringing the conservation areas up to scratch, so any potential impact on them would be a key consideration. He said that the photomontages produced by Mr Napier purportedly showing the impact (or lack of it) from surrounding areas had been highly selective and did not reflect the reality that would have existed.

Assessment Criteria (iv): Architectural excellence of the building. The claimant's proposals, particularly in respect of the method of re-cladding the building, did nothing to take away or reduce the slab like effect of the building, and adding additional storeys would only serve to exacerbate the problem and create a "visually jarring form".

30. Mr Orr stressed that whilst other issues, such as re-cladding proposals, affordable housing provision and section 106 contributions might, in normal circumstances, be capable of resolution, the question of increasing the building's height would be non-negotiable. The strict guidelines laid down in SPD 1 and the CABE/EH requirements could not possibly be complied with. Although it was accepted that there were significant differences between the 2001 application and the claimant's 2005 proposals in many respects, the question of height was virtually no different. Both CABE and EH were extremely critical of the 2001 application, and circumstances had not changed sufficiently to assume that the previous objections did not still apply, or were likely to be overridden. The local planning authority would attach very significant weight to any comments received from CABE/EH, together with those from other consultees such as The Bristol Conservation Advisory Panel, St Pauls Unlimited Group (a local amenity society), Bristol Civic Society and the Kingsdown Conservation Group.

31. Although Mr Orr accepted that, for the purposes of formulating a bid for the subject property, a developer would not go to the lengths required to enable a full submission to be made for detailed planning consent, the indicative elevational designs and the Visual Impact Assessment produced with Mr Napier's evidence were inadequate, unconvincing and lacking in the necessary detail. He said that the 7 views selected in the VIA notably excluded conservation areas (except one from Portland Square) and was therefore an incomplete assessment. The report subsequently obtained from Dr Smith was also extremely brief, did not contain reference to relevant policies such as PPG 15 and gave no explanation as to why the proposals would be considered acceptable, or how they would comply with policies. The photograph Dr Smith produced showing Tollgate House visible from Portland Square indicated just how significant in terms of visual impact any height extension would be. Mr Orr was also dismissive of the Collado Collins report. It was generic in nature and failed to adequately consider the effect of the schemes. Whilst he agreed that a height extension would, marginally, improve the slenderness ratio, the fact that the building was constructed in a tri-form configuration accentuated the impression of visual bulk and an acceptable slenderness ratio was, therefore, likely to be unachievable. That consideration was, in any event, only one factor of the many that would have to be overcome, and in terms of overall appearance, it was the treatment of the cladding that would be the most significant.

Submissions

32. It was submitted by the claimant that the principal relevant policy consideration should be whether the proposal to increase the height of the building, alongside re-cladding the exterior, would deliver a significant improvement in the design of a property, which the acquiring authority had described as "a building of stunning mediocrity". If the proposals did serve that purpose, then there was no question that such a development would preserve, and indeed could possibly enhance, views from the nearby conservation areas, thereby meeting the established test for acceptability in planning terms. That was Dr Smith's view, and his professional opinion should be given weight. It was common ground that there were positive

reasons to support the retention of Tollgate House, that it occupied an important location at the northern gateway to the city in an area identified as suitable for tall buildings, and that there was an opportunity to improve the quality of its design and appearance. The claimant's proposals sought to respond to the "relatively simple" measures referred to in paragraph 4.11 of SPD1 by re-cladding the building with more contemporary materials, and increasing height to improve its profile. In the claimant's view, the policy objectives set out in SPD1 – which was the appropriate supplementary guidance and consistent with policies B5 and B6 in the Bristol Local Plan – would be met.

33. Mr Orr's opinion that the existing building was at the upper limits of scale was, it was submitted, indicative of the sort of prescriptive approach which national planning policy advised against in PPS 1. It was a fact that there was nothing in the Bristol Local Plan or SPD1 that prescribed upper limits to tall buildings and, as explained in the Collado Collins report, it is a principle of urban design that increasing the height of a building can, by giving it a greater vertical profile, produce a more elegant and less imposing form. The claimant said Mr Orr's criticism of Mr Napier's VIA was misplaced. It was produced purely to give the Tribunal an indication of the impact that the proposals might have. The points from which the photographs were taken, and the montages produced, were chosen following consultation with the council and it was never intended to be sufficient for incorporation within a formal planning application. Indeed, none of the plans or details that had been produced purported to contain enough detail to enable a formal planning decision to be made, but were all designed to enable the Tribunal to understand the proposed changes to the profile, form and design of the building.

34. As to the acquiring authority's reliance upon the CABE/EH responses to the withdrawn 2001 application, it was submitted that each application or scheme should, and would, be judged on its own merits, and that the 2001 scheme was significantly different in terms of form, profile and elevational treatment. It was unhelpful, they said, to speculate as to whether consultees would voice similar concerns in 2005 in respect of the claim scheme, especially as neither Mr Orr, nor the acquiring authority themselves had sought the opinions of EH or CABE on the matter.

35. The acquiring authority submitted that it was inconceivable that planning permission would have been granted for a material increase in the height of Tollgate House, and the onus was on the claimant to prove that it would have been through the production of convincing evidence. The evidence that had been provided was wholly unconvincing and inadequate, and it was remarkable that Mr Napier did not include reference to the significant objections that had been raised in connection with the "broadly similar" 2001 scheme. Although it was acknowledged that the design of the building in the latest proposal was less offensive than the 2001 scheme, there could, it was submitted, be little doubt that there would still have been significant objections from both of these principal consultees.

36. It was a fact that all the relevant planning policies, and the CABE/EH guidance placed considerable emphasis on the need to secure high standards of design and high quality development – in short, "architectural excellence". The building as it existed had little, if any, architectural or urban design merit, and it was implicit therefore that any scheme would need to encompass a step-change in terms of quality of finishes and appearance. The impact of the scheme on the conservation areas would have been as important a consideration in 2005 as it

was in 2001, and the claimant's evidence singularly failed to demonstrate that there would be enough of a step-change to overcome any concerns about its impact. The reports, submitted with Mr Napier's rebuttal report, from Collado Collins and Dr Smith were also inadequate for the Tribunal's purposes. In the light of the evidence, it was submitted that the council, acting reasonably as a planning authority, would have refused planning permission at the valuation date for the claimant's claim scheme.

Conclusions

37. The fourth of the 9 proposed reasons for refusal listed in the Planning Officer's report to committee in connection with the 2001 application is instructive on the subject of increased height. It said:

> "4. The proposed development by means of its height, massing, bulk and overall design would further exacerbate the impact of the building which is unduly prominent within the existing street scene and visually jarring with the Bristol City Centre skyline and would therefore be contrary to policy B1, B2, B5 and B6 of the Bristol Local Plan (December 1997). In addition, the proposal would fail to preserve and/or enhance the setting of the Portland Square Conservation Area and would therefore be contrary to policy B13."

Whilst accepting that a number of the design considerations of the claim scheme differ from the earlier application, in terms of the effect created by the increase in height, we are of the view that an application for the claim scheme, in 2005, would have elicited, quite justifiably, similar comments.

38. The letter from English Heritage that the council had received, objecting to the 2001 application said that "its aggressive design is an unfortunate feature, particularly when seen rising above the formal composition of historic buildings surrounding Portland Square" and "the increased height and dominance of the new design over Portland Square will be further detrimental to the setting of this important group of listed buildings, and to the conservation area generally." We agree with the council that the claim scheme is somewhat less offensive, is softer in terms of general visual impact and much less aggressive than the 2001 proposals appeared to be from the rather limited information that was before us at the hearing. However, notwithstanding those improvements, it is the question of dominance that we find hard to reconcile. All of the computer generated images (CGIs) that were provided by the claimant in the evidence both before and, at our request, additionally during the hearing, related to the baseline scheme and were principally prepared to show the effect of the proposed re-cladding. It would have been helpful if similar CGIs had been forthcoming showing the claim scheme with its additional 8 storeys. The only indications showing the potential impact of the additional storeys were the photomontages produced in Mr Napier's VIA and Mr Orr's own efforts that simply showed a slab like structure on top of the existing building.

39. In our view, Mr Napier's montages comparing existing, baseline and claim schemes from various points demonstrate just how overbearing such a height extension would be in terms of its immediate location, and from farther afield. This is particularly apparent from the two viewpoints on the M32/Newfoundland Street approach where the building dominates the

skyline to a considerable degree. It is from these vantage points on what was described as (and with which we agree) the major northern gateway into the city centre that the impact is most severe. We accept that the increased dominance would have been an important factor for consideration in terms of its potential effect upon the adjacent conservation areas, but it is our view, having undertaken an inspection on 6 January 2009, that Mr Napier was correct in saying that it would only be the closest part of the Conservation Area to the proposed building that would be seriously impacted. In any event, much unmeritorious development has been undertaken in this location, the office buildings overlooking Brunswick Square being a case in point.

40. As to the impact upon the main Georgian square, we think that the proposed increase in height to Tollgate Tower would be of little consequence. Having placed ourselves at the precise point on the square from which Mr Napier's photograph was taken, it is evident that the new building on the corner of St Paul Street and Wilson Street that was under construction when the image was taken, and has now been completed, would have almost completely shielded the tower from view. The additional height would have been barely visible and would certainly, where glimpsed from other parts of the square, be no worse than the view of Castlemead Tower seen when looking down Pritchard Street off the south west corner of the square. Whilst there is no question that Portland Square is a Conservation Area, we are of the view that we must make some comment in relation to Mr Orr's statements as to the importance placed upon it in terms of sensitivity and the fact that "the council has spent 29 years bringing conservation areas up to scratch." At the time of our inspection, the square contained a number of unoccupied (except perhaps for squatters) and run down buildings that served to give it an air of urban decay that belied Mr Orr's claims. Finally, in respect of the impact of tall buildings upon adjacent conservation areas, it did not go unnoticed that the west side of nearby Brunswick Square is completely dominated and overpowered by a very large 1960s /1970s office building.

41. Regarding the reports from Collado Collins and Dr Smith that were provided with Mr Napier's rebuttal report, we agree with Mr Orr's comments on their inadequacy and, particularly as neither Mr Collins nor Mr Smith was called, we attach little weight to them.

42. Policy B5 of the Bristol Local Plan states (where relevant):

> "The layout and form of development should seek to reinforce or create attractive and distinctive identity, and establish a scale appropriate to its locality and use. In determining applications, account will be taken of the following:
>
> (iv) Enclosure and height, scale and massing of development."

43. Policy B6 states:

> "Building exteriors and elevations which are designed to a high standard and provide visual interest, particularly adjacent to public routes, will be welcomed. In determining applications, account will be taken of the following:
>
> (i) The impact of development from both distant and close views.
>
> (ii) Existing skylines and the creation of new skylines.

(iii) The appropriate use of materials."

Each of these points are material considerations which the local planning authority is obliged to take into account, and in respect of all of them, we accept the council's arguments that the claim scheme proposals, as presented, would not satisfy them. SPD 1, which is specific to tall buildings, contains the key objectives in this instance. These would attract significant weight as material planning considerations. We accept and agree with Mr Orr's opinions on assessment criteria *(i) and (iv)*(paragraph 29 above). In our judgment the proposals fail to meet the high standard of design and "architectural excellence" that is a pre-requisite, would not secure sympathetic integration within the local and city context and would not provide the step-change to the quality or appearance of the existing building that Mr Napier accepted was necessary.

44. It follows therefore, that in our judgment, had a planning application been made for the claim scheme at, or immediately before, the valuation date, it would have been refused on broadly similar grounds to reason 4 of the proposed reasons for refusal given in the planning officer's report in connection with the 2001 application, although, as we have stated, we do not share his views about the severity of the impact of the proposal upon the Portland Square Conservation Area.

45. In its closing submissions, the claimant referred to the council's criticisms about the adequacy of Mr Napier's VIA, and their suggestion that the material provided to the Tribunal was "a pitifully inadequate basis upon which to make an assessment of the claim [and baseline] schemes, had planning permission been sought for them in 2005". The claimant said that this Tribunal's decision in *Jumbuk Ltd v West Midlands Passenger Transport Executive* [2008] RVR 186 (at paragraphs 25 and 28) had rejected similar criticisms "in trenchant terms". The claimant was of the view that the material in this case was sufficient and fit for purpose, particularly in enabling the Tribunal to understand the changed profile and form of Tollgate House, and whether it would have provided an overall improvement to the design and appearance of the building, significant enough to satisfy the council's policies.

46. In *Jumbuk*, the issue had been whether full or outline planning permission could have been anticipated for a significant new office development in Dudley town centre, and the amount of effort and research that a prospective purchaser would have undertaken in formulating a proposed bid for the site. The Member, Paul Francis FRICS, said this:

> "25. In his closing submissions, Mr Roots said that the test was not, as advanced by the acquiring authority, whether the revised BBLB drawings were sufficient to obtain a full planning consent, but whether, in the absence of the scheme and on the balance of probabilities, it can be concluded that full planning permission would have been obtained, at the valuation date for the form of development illustrated by those plans. I agree. It should be noted, Mr Roots said, that despite the argument that only outline consent could have been expected, it was not suggested either in Mr White's rebuttal valuation report, or was it put to Mr Cook, the claimant's valuer, in cross-examination that, if it was to be found that a residual valuation was the correct approach, he should have made an allowance to reflect the alleged uncertainties and delay that would inevitably result from an outline only consent being in place at the valuation date."

He went on to consider the Tribunal's then recent decision in *Spirerose Ltd v Transport for London* [2008] RVR 12 (which was subsequently upheld in the Court of Appeal – *Transport for London v Spirerose Limited (in Administration)* [2008] EWCA Civ 1230) which concluded that full planning consent could have been expected to have been achieved by the valuation date. Mr Francis continued:

> "28. It seems to me that the circumstances here are to all intents and purposes the same, and there is no dispute between the parties that planning permission would have been achieved. The question is simply, would it have been full or outline permission. In my view, Mrs Brooke-Smith painted a somewhat exaggerated picture in terms of the landmark and highest quality issues (which I deal with more fully under the question of costings), and was unrealistic when it came to interpreting the BBLB plans. In cross-examination she conceded that there was nothing to suggest that an applicant, in the absence of the metro scheme, would not have done everything in its power to achieve full planning consent by the valuation date, and that it could be expected they would have held detailed discussions with the local planning authority to that end. I am satisfied from the evidence that the BBLB plans as presented were sufficient for the purposes of this determination, and represented a scheme that would have been entirely appropriate, in planning terms, for the subject site. I accept Mr Roots' submission that the acquiring authority's arguments that only outline permission could be assumed because the plans and costings that had been prepared in respect of this compensation claim were not sufficient to achieve full consent in the real world, are absurd. I do not think it realistic to expect the claimant, as appeared to be suggested by the acquiring authority, to have expended perhaps another £50,000 in professional fees in providing sufficient supplemental information to make the BBLB proposals into what would effectively be a full planning submission to prove the argument that applies in this hypothetical situation, especially bearing in mind the concessions that had been made by Mrs Brooke-Smith. As Mr Roots said, quite rightly in my view, even if more substantial plans, costings and a planning brief had been produced, that could well have served as a vehicle for more subjective debate."

47. During the course of the hearing of this case, we reminded the parties (in the light of the vast amount of detail that the experts had gone into, particularly in respect of costings), that as far as determining value was concerned, the question of what a prospective developer purchaser would do in formulating what he could afford to pay for the land needed to be constantly borne in mind. The costs involved in making a formal planning submission on a development of the nature proposed for somewhere like Tollgate House would be considerable, and the exercise would be time consuming. It could be expected, therefore, that a prospective purchaser in a competitive situation would have to make certain broad assumptions. He would, of course, obtain input and advice from planning specialists, architects and others, and would make inquiries of the local planning authority, but the question is: how far would they realistically go? This has to be a question of balance, and would, in our view, be likely to vary depending upon which particular aspect of the project was under consideration. For instance, the exercise required to establish likely construction and associated costs on particularly complex aspects of the development would be (as we refer to again later) more substantial than, say, estimating the level of s.106 contributions. As to the proposal to increase the height of the building, in our judgment, whatever level of detail was provided to the planning officer in respect of the proposed claim scheme, the informal advice that would have been received would have been that such an application would be refused, for the very reasons we have given

in our decision on this issue. Therefore the issue of whether the Tribunal had sufficient information from the claimant to form a judgment on this aspect, was not one that has created a problem for us. Whilst Mr Napier's evidence, particularly in respect of his VIA, could rightly be criticised for its inadequacies, the policy issues and material considerations referred to above are so strongly against a major increase in height in this location that, for our purposes, the lack of further detail really does not matter.

Other planning issues

48. We turn now to the remaining planning issues in dispute, each of which apply, to varying degrees, to both the baseline and Bristol schemes.

Cladding

49. In this section, we consider only the question of whether or not the claimant's choice of design and materials for the proposed re-cladding of the building, if it were included within a planning application would, on its own, have been a ground for refusal. The subject of the comparative costs between the claimant's proposals and those that the council consider would have been appropriate are, of course, key issues in the determination of the value of the site for redevelopment, and the evidence and argument on these is considered separately below under "development costs".

50. Mr Napier said that in both the claim and baseline schemes, it was proposed to remove the existing external cladding and replace it with new finishes. This would allow the floor plates to be extended, providing an additional 175 sq m of space per floor. He said that the principle of re-cladding a tall building was accepted in SPD1 where it said: "it is possible to provide a new lease of life through relatively simple measures including...re-cladding with more contemporary materials." There was no issue with the acquiring authority on the principle, but it was the proposed materials to be used that were in dispute. The claimant, Mr Napier said, had costed the schemes on the basis of re-cladding with factory made rendered panels, manufactured by Marmorit, and which incorporated double-glazed uPVC window units. The construction, which he and Mr Wallace described as being of high quality, comprised a steel frame that incorporated pre-formed slabs of insulation block to which the "through colour external render" was applied. Thus, the rendering could be any hue that the client required, chosen from a palette of many hundreds of different shades, the colour being stirred into the final finish, which was mixed on site. At this point in his examination in chief, Mr Napier produced three CGIs that gave indications of how the finished article might look on the baseline scheme. He accepted in cross-examination that no details had been provided in the statement of case, and said that he had not, prior to the hearing, delved into Mr Wallace's proof of evidence to establish precisely what that form of cladding comprised. He said that the CGIs showed a darker finish at lower levels, lightening up as the height increased, which served to attenuate the appearance and give the impression of a more slender structure. The images had been sent to Mr Orr two weeks previously and had been produced in response to his expressed concerns that rendered finishes would produce a somewhat slab-like appearance, and there would be "no visual gradation over height". Mr Napier said that Marmorit was widely used, and was indeed being utilised at Comer Group's ongoing redevelopment of the

former Portland Naval base in Dorset (now known as Ocean Views), which we were invited to visit. He said that the part of the Ocean Views development that was virtually complete was "almost" a tall building, at 8 or 9 storeys, and used a single colour render that had been approved by the local planning authority. There were, he said, full width balconies on the Portland buildings' frontages that, for the purposes of comparison, would need to be ignored as they were a dominant feature and the proposed balconies at Tollgate House only extended along a short section of each of the building's three wings.

51. In his view the proposals complied in all respects with Policy B6 of the Bristol Local Plan, where it stated that the exteriors of buildings, designed to a high standard and providing visual interest, particularly adjacent to public routes, would be welcomed, and with the requirements set out in sub paragraphs (i), (ii) and (iii) of that policy (see paragraph 43 above). He believed that it would provide the step-change that was required, and that a sufficient degree of architectural excellence would be achieved. He did not agree with the suggestion that the use of rendered finishes (which Mr Wallace had costed on the basis of a 50/50 split between fenestration and rendering) would emphasise mass and height.

52. Mr Orr said that Tollgate House was a particularly prominent landmark that made, or had the opportunity to make, an entrance statement to Bristol. The choice of cladding materials was therefore a fundamental planning issue. The existing tri-form arrangement of the building tended to exaggerate its mass and bulk when viewing it from a distance. The "wings" of the tower became indistinguishable from each other, thus accentuating the bulk. Rendered or concrete panels are monotonous in colour and lack articulation. The single type of finish would be unrelenting, and this would only be marginally improved by varying the colours. Although there was no issue as to the quality of the proposed materials, it was considered to be a rudimentary system that "simply did not make the grade". On a building of 19 storeys it would most certainly not satisfy SPD1 in terms of architectural excellence. Furthermore, PPS 1 promoted the taking of opportunities to improve the character and appearance of areas, and although Mr Orr felt that planning officers would not be prescriptive in their demands or requirements, they would have seen the mitigation of the building's existing solid appearance and the provision of a fenestration pattern that lessened its visual impact as important objectives. He accepted that there was no particular right or wrong in terms of the chosen materials, but in achieving the required design excellence, a subjective judgement would be made based upon the arrangement, colour and articulation of materials.

53. In his view, in terms of design quality, Mr Orr said that the only way a satisfactory conclusion could be delivered was by implementing a scheme of finishes along the lines of those indicated in images produced by Glenn Howells, Architects of Birmingham, in connection with the council's suggested alternative to the baseline or claim schemes – the Bristol scheme. He also gave details of his involvement with another local Bristol landmark, the former Bristol and West (B&W) Tower at Broad Quay, Bristol, and used that as an example of the level of design excellence that would be required. He said that his practice had negotiated the planning consent for conversion of that building from offices to a Radisson SAS hotel with complementary mixed uses on the lower floors. The council's initial pre-application stance had been to require demolition, despite the fact that the original cladding was of high quality granite materials. However, the council eventually capitulated, and following design and re-cladding negotiations that involved the input of professional architects and public art

consultants, approved a scheme that comprised a high quality glass curtain walling system. Mr Orr said that if a curtain walling system of similar quality and appearance had been proposed by the claimant, he thought that there would have been a reasonable prospect of planning consent being achieved at Tollgate Tower.

54. Mr Orr said that he had visited the Ocean Views development with Mr Martin, and that this confirmed his concerns in terms of both quality and design issues. Although he subsequently said that he was satisfied that the materials were likely to be of sufficiently durable quality (as a product), he still had doubts over its weathering characteristics since green algae growth and some fracturing to surfaces was already apparent. It was the planning perspective that was the main stumbling block, and he could not agree that Ocean Views could be seen as a proxy for Tollgate Tower. Although he accepted in cross-examination that there were limitations as to what could be done bearing in mind the existing configuration of the subject property, and that it was difficult to "make a silk purse out of a sow's ear", its location in particular demanded finishes that would create an iconic structure. Marmorit would not do that, whatever the treatment as far as colour gradation was concerned.

55. Nor would increasing the percentage of glass. In that regard Mr Orr produced, during the hearing, a supplementary report that dealt with the claimant's response to a question asked by the Tribunal during Mr Napier's evidence. We had suggested that, in the light of Mr Orr's concerns, it would be helpful to receive further CGIs depicting a greater percentage of fenestration upon which the acquiring authority could comment. A series of images was produced that showed varying treatments to the glazing, including higher levels of glass to the lower floors, reducing proportionately higher up the building, and with that treatment reversed. Mr Orr said that the creation of a more lightweight appearance towards the top of the building was essential to help reduce its visual mass and bulk, and the second option, with more glazing towards the top, went some way towards achieving this. Of the three alternatives that were shown on this basis, the one with the highest proportion of glazing to render (75%) was the most aesthetically pleasing. However, despite that improvement, he was still deeply concerned about the inclusion of rendered panels at all in such a high building. It was inherently unsuited to a 19-storey tower, in such a location, and would remain particularly dominant especially to the end elevations. In summary, therefore, he was of the view that none of the options demonstrated the level of architectural excellence that was needed.

56. In cross-examination, Mr Orr said that if a scheme could be produced that satisfactorily covered the concerns about massing and bulk and comprised high quality durable materials then there was a good prospect of planning permission being granted. However, he felt unable to alter his opinion that render finishes were simply not appropriate – they did not offer sufficient visual interest, articulation and modulation. He said that his own opinions, with which he thought planning officers would agree (although he had not discussed the proposals with them), were not prescriptive. He was not saying that the B&W tower scheme had to be replicated here, and accepted that the finishes to that building did not offer much in the way of articulation, gradation or modulation in colour, but, as his Glenn Howells images were intended to show, a glass curtain walled option would offer the architectural excellence that was essential. It was accepted that there was nothing in the policies upon which the planners had to rely that said a render finish could not be used, and an application could not be refused just on the basis of the officer's (or committee's) personal tastes. However, the unrelenting,

slab like and monotonous appearance of the claimant's proposed finishes would properly invite refusal.

Submissions

57. The claimant submitted that the major problem appeared to stem from Mr Orr's personal aversion to any form of render finish. His comments and reasoning were examples of the over-prescriptive, over-detailed and subjective approach that a planning authority is required to avoid in policy-making and development control. The fact that he personally favoured a curtain walling solution could not carry any weight in relation to the claimant's proposals. The alternative designs that the claimant put forward at the Tribunal's request were an indication of what might happen in any negotiation process that would occur in the real world, and it was reasonable to assume that the prospective developer and the local planning authority would be able to reach a mutually acceptable accommodation on the issue.

58. The reference to the B&W scheme was, it was submitted, irrelevant as the proposed use of the original tower, that was to be re-clad with a glazed curtain walling system, was to be used as a hotel. The appropriateness of finishes was dependent upon the use to which any building was to be put, and it was pertinent to note that the residential elements of the B&W scheme, themselves falling within the category of tall buildings for planning purposes, made extensive use of coloured render.

59. The acquiring authority submitted that the key consideration was whether the claimant's proposed cladding system would create the desired level of architectural excellence, and it was their case that it would not. The use of a render finish would only serve to emphasise the mass and height of an already very tall and high-profile building. It was questionable whether the suggested colour graduation of the two-dimensional finish would achieve the object of lightening the top of the building, or whether it could work in practice, there being a risk that abrupt rather than gradual changes in colour would be apparent. The glass curtain walling system that had been used in the B&W tower was an example of where the previous visual impact had been reduced from the base to the top, to give the impression of it "dissolving into the sky". Whilst the council would not have imposed such a system on the claimant if an application had been made, it was reasonable to assume that a similar finish would have been acceptable.

Conclusions

60. It is clear that the nature of the re-cladding was not a specific issue at the time the acquiring authority produced its amended reply to the amended statement of case. The issue was only touched upon briefly in Mr Napier's main report, and not at all in his rebuttal. He expanded upon the nature and visual effect of the proposed cladding in examination in chief and cross-examination, and produced the images that had only been passed to Mr Orr two weeks previously. In the light of the late production of this evidence we think it is understandable that Mr Orr changed his mind over the effects that these undoubtedly cost-driven proposals would have upon an application for planning consent. At our request Mr

Napier handed in some further CGI drawings, showing a higher glazing to render ratio, later during the hearing. Mr Wallace (the claimant's costs expert) said in his evidence that increasing the glazing element to 75%, rather than 50% in the original proposals, would only add about £350,000 to the costs. Despite the claimant's further attempts to come up with an acceptable solution, Mr Orr was still not to be swayed. Whilst it was evident that he did, indeed, seem to have a strong personal aversion to the use of render, we are not surprised that his views, based upon the evidence that had been provided, were expressed as strongly as they were in respect of the proposed use of the Marmorit system on Tollgate Tower – even where the glazing percentage was increased.

61. In order to form a clear view as to the effect and impact that the use of Marmorit has in the construction or refurbishment of large buildings, we inspected Ocean Views, Portland, in the company of Mr Wallace and Mr Orr on 10 November 2008. Although, as Mr Napier had pointed out, Ocean Views has full width projecting balconies to each floor, with glazed balustrading that tends to break up the visual impact of the elevations to a considerable degree, the westernmost section of the main block (facing the new Portland Marina) was incomplete. Although the balcony structures were in place the green tinted glazed panels had not been installed. This enabled us to draw a close comparison with how such a finish might impact in visual terms on a tower that would be more than twice the height even though the percentage of glass to windows and patio doors to rendered finishes appeared less than was stated to be the case at Tollgate Tower. We are satisfied that Mr Orr's concerns were well founded and that the use of through colour render of the type proposed, even with a higher glazing ratio, would be wholly inappropriate on the subject property. Our views were reinforced following our site visit to Bristol. From adjacent to the site of the former Tollgate Tower, looking northwards along Newfoundland Street towards the M32, three very tall blocks of flats are visible in the distance. One of these is of brick construction, but the other two (one of which is Lansdowne House and is 17 storeys high), are rendered and colour washed. Even though the slenderness ratio is much better, and the glazing to render ratio is apparently less than that proposed for Tollgate, those blocks enabled us to form a clear picture of the effect such a finish would have on Tollgate Tower.

62. The subject property's location, strategically placed as it was at a major focal point on one of the principal routes into Bristol city centre demanded, in our judgment, materials of high quality that would help to soften its former bleak and drab appearance, and reduce its then existing heavy and stark visual impact. During the course of the hearing we asked the claimant if it was able to produce details of any other development or refurbishment schemes of similarly tall buildings where Marmorit or a similar proprietary material had been used. No such evidence was forthcoming, and this reinforces our views that it is not suitable for conversions of the type proposed at Tollgate Tower. On inspecting Ocean Views, we have to say that we both shared the concerns expressed by Mr Orr concerning the effects of weathering and atmospheric pollution on rendered finishes.

63. We agree that treatment with materials of a similar nature to those used on the B&W tower (which we also viewed) would serve to make a much more significant statement bearing in mind its position, and would help to reduce the impact on the adjacent conservation area. The claimant's proposed materials would not achieve the level of architectural excellence that the planning policies required. We fully accept that the specific type of finish used on the

B&W tower may have been appropriate for the particular kind of use to which it was to be put, but in such a landmark position as Tollgate Tower occupied, a similarly impressive standard of finish would be entirely justified. We do not agree with the claimant's suggestion that the council's attitude was prescriptive, and are satisfied that, when considering the relevant sections of policies B5 and B6 of the Local Plan and SPD 1 in particular, the council would be perfectly justified in insisting upon materials that were more appropriate to a building of this size and scale. We are also of the view that English Heritage, CABE and other consultees would be likely to voice strong objections to the use of Marmorit.

64. It follows, therefore, that we are satisfied that if an application had been made in 2005, the local planning authority would, in our judgment, have been fully justified in refusing consent on the grounds of the inappropriate type and use of cladding materials, and that the proposals did not comply with the council's policy requirements.

Affordable housing

65. The parties agreed that, faced with a planning application for any of the 3 schemes in 2005, Bristol City Council would have sought, and achieved, a social housing provision that represented approximately 30% of the total number of residential units proposed. In the case of the baseline scheme 88 of the 295 units would be allocated to affordable housing (29.8%), and in the Bristol scheme affordable housing would account for 70 of the 236 units (29.7%). The dispute, in planning terms, related solely to the tenure mix within the affordable element. The claimant sought (in approximate terms) 70% shared ownership and 30% social rented, whereas the council took precisely the opposite stance. The question of the price to be paid by the Registered Social Landlord (RSL) was also in issue, and will be considered later in this decision.

66. Mr Napier said it was common ground that at the valuation date local planning policy on the provision of affordable housing was encompassed in policy H9 of the Bristol Local Plan and Policy Advice Note (PAN) 12 "Affordable Housing". They reflected the national planning policy guidance in Circular 6/98 and PPG 3. On the question of tenure mix, he said that the Local Plan defined affordable housing as "tenure neutral", thereby allowing for a number of options eg, dwellings for rent, shared ownership or outright purchase, and there was no prescription in it for the assessment of percentages of tenure mix. Similarly, PAN 12 was not prescriptive other than in respect of the amount of affordable housing as a percentage of the total number of dwellings proposed (to be negotiated between 10% and 30% dependent upon the degree of local need, suitability of the site and the economics of its provision).

67. In the "Key Elements of PAN 12" (paragraph 12B) it is explained that local need is established by:

(i) Local Needs Assessment

(ii) Local Property Prices, and

(iii) Local Supply of Affordable Housing

Section 12C states that a "...variety of alternative types of affordable housing may be considered, such as rented accommodation or shared ownership." It goes on to say: "The council will promote the option which best reflects local need as established by the City Council's Housing and Neighbourhood Services Department and will further the establishment of 'well balanced communities' and address the barriers to social exclusion." It was clear from the policies, Mr Napier said, that flexibility was the key and the appropriate mix would be a matter for negotiation between the parties. The percentage of social rented units to be provided, and which it was accepted would be larger, 3 bedroomed flats, would to a great extent depend upon the proposed configuration of the site. For instance, it would not be appropriate for any of the social rented units to be located, as the council had suggested, within the main tower. There were questions of social integration (the importance of which the policies were at pains to stress) and the service charge levels that would apply in that building. In that regard, it was a fact that RSLs would not countenance accommodation in high-rise properties due to likely high service charges (see PAN 12, paragraph 12 H); the occupiers of the private sector accommodation would have to bear higher costs – which would be unacceptable and affect sales. By providing for 30% social rented accommodation in the baseline scheme, as the claimant proposed, all of that could be accommodated in the new build block adjacent to the main tower. All of the shared ownership units would be 1 and 2 bedroom flats occupying the lower floors of the tower. Paragraph 17.12 of PAN 12, referring to shared ownership housing, says:

> "This type of accommodation is becoming increasingly popular in Bristol and there is significant demand from young couples and low income workers who are unable to compete on the open housing market."

68. Mr Napier said that there was no specific local housing needs assessment relating to this particular location at the relevant time (meaning this particular part of Bristol as against city-wide needs). The most up to date information on affordable housing need covered by the relevant policies at the valuation date remained, he said, the 2001 update of the Bristol Housing Needs Affordability Model. That stated a requirement of 905 affordable housing units per year. The 2005 research document "West of England Sub-region Housing Need and Affordability Assessment" produced by Professor Glen Bramley and published by Heriot-Watt University, Edinburgh, forecast 935 units for 2006. These assessments, Mr Napier said, could not be used for calculating tenant mix. They were assessments of city-wide housing need set within a sub-regional study and did not purport to provide the basis for action under section 7 of PAN 12 which said, at 7.1:

> "... However, the type and form of affordable housing may be adjusted to suit the particular needs of a locality. For example, in an area of predominantly family sized rented accommodation it may be more appropriate to seek an element of shared ownership or low cost market housing/or discounted market housing available in perpetuity."

However, Mr Napier said, this location was not well suited to family accommodation, particularly in respect of the tight configuration of the site and lack of nearby public open spaces. In cross-examination, and in response to the suggestion that Model Legal Agreement 1 annexed to PAN 12 contemplated provisions for specifying the split between shared ownership and social rented accommodation, Mr Napier said that reference to type was to property rather than type of tenure. As to Professor Bramley's report in 2005, the splits between rented and

shared ownership recommended at Table 8.9 (showing 83/17% and the overall recommendation that 25% of net need could be provided by shared ownership), Mr Napier stressed that this was an overall requirement, and did not reflect specific local needs or suitabilities. There was no policy basis for the council to insist upon the splits that they were now arguing for. It was his view that the claimant's proposals fully met the policy requirements, but accepted that the residential developments at Stenner's Yard and Jewson's Yard provided social rented levels of 75% and 69% respectively. He also accepted that there was evidence, shown in a letter regarding Tollgate House from Sovereign Housing, an RSL, that social rented accommodation would have been considered in the main high-rise block at Tollgate House. Nevertheless, the integration problems and questions of service charges would militate against it.

69. Mr Hewetson is a chartered surveyor, and is national valuation partner with Matthews and Goodman, Property Advisors, based in their London SW1 office. Although he dealt primarily with valuation issues, he said that, as far as the planning arguments for tenure mix in respect of the affordable housing were concerned, it would be undesirable, in terms of integration, to mix social rented and private market units within the same development. That would have to occur in the Bristol scheme, whatever the eventually agreed mix, and may even require social rented and shared ownership to be intermingled at least on one floor, according, he said, to the council's suggestions. However, no integration issues would arise where shared ownership and private market units alone shared the same block, as in the baseline scheme. No developer, he said, would willingly consent to a scheme where there was such a high proportion of social rented units that they effectively spilled over from the separate new-build block into the main tower. Strenuous efforts would be made to agree either an off-site provision, a commuted payment or, indeed, a reduced percentage of social rented units.

70. Mr Orr said that in general terms, bearing in mind the location of the property in the Lawrence Hill Ward and adjacent to the St Pauls area of Bristol, the council would have been, at the valuation date, keen to promote an increase in the provision of affordable family dwellings. It was a fundamental tenet of the council's housing policy to create more family units, and to discourage the provision of single person accommodation in the area. In the council's view, the predominance of smaller 1 and 2 bedroom units, often occupied by single people, served to exacerbate the problems of a transient population and prevent the creation of stable, cohesive and balanced communities. These aims, he said, were reflected in the Development Plan Policy, namely the Joint Replacement Structure Plan Policy 33 and Alteration to the Bristol Local Plan 2003, Policy H6A. Significant weight would be attached to these and it was likely, he said, that the council would seek approximately 20% of all future residential dwellings to have at least 3 bedrooms. Family units are more applicable to social rented housing, and bearing in mind the citywide demand it would be reasonable to expect the council to insist upon a much higher proportion of social rented to shared ownership.

71. However, the parties had agreed to a 30% affordable housing provision on the proposed development, together with the mixes of 1, 2 and 3 bedroom flats to be incorporated within it, and it was accepted that that provision satisfied the provisions of policy H9 and PAN 12, in those terms. It was also accepted that the policies were not prescriptive in terms of adjusting the balance between tenures of house/dwelling types, and that there was an absence of a precise neighbourhood housing needs and aspirations survey for this particular location. In this

regard, Mr Orr said that the council would have relied heavily upon the citywide housing needs identified in the West of England Affordable Housing Needs Assessment published in 2005 (the assessment), which Professor Bramley had updated from the 2001 Bristol assessment. Since the 2005 assessment was published, escalating property prices in Bristol had made affordable housing demand even more acute, and Mr Orr said he would have expected the council to negotiate the appropriate mix in accordance with the overall citywide needs that it demonstrated. In his view policy H6A encompassed both the percentage of affordable housing and the tenure mix aspects, and it could have been anticipated that the council would seek through negotiation to provide a mix that reflected the city's social and housing needs – demonstrated as 77% social rented and 23% shared equity. The evidence from the s.106 agreements that were completed on similar developments (which often left final agreement on tenure, percentages and mix to be the subject of later written approval), showed those levels being achieved. For instance, the s.106 Agreement relating to the Linden Homes scheme at Jewson's Yard had finally negotiated percentages of 69% social rented, and 31% shared equity, the Barratt scheme at Stenner's Yard, Bedminster achieved a ratio of 3:1 social rented vs shared equity, and Linden Homes at Radnor Road, Bishopston provided 60% social rented, and 40% shared equity.

72. In cross-examination, Mr Orr insisted that Professor Bramley's 2005 assessment was a document upon which the council could, and would, have relied in assessing the appropriate split between social rented and shared equity. It was described in the introduction as: "a form of 'local housing needs study' such as many local authorities undertake at regular intervals to support ...Local Plan policies...for affordable housing." He did not accept that this study was quite different from that described in PAN 12, an example of which was the David Couttie Associates St Pauls Housing Needs and Aspirations Survey. Following the Bramley assessment, he said, the council had been negotiating s.106 agreements to secure 3 bedroom rented housing to address specific needs that had been identified within it. However, he accepted that there was no comparable survey or assessment for the area in which Tollgate Tower was located, and acknowledged that such an approach would not have been possible in the absence of a precise local housing needs survey. Nevertheless, Mr Orr did not accept the suggestion that the claimant, in its tenure mix proposals, would be contributing up to two-thirds of the net social rented requirement for Bristol City as a whole, and at precisely the sizes required, by incorporating 20, 3 bedroom units in the new-build block. He said that, if that were the case, there was no need for such a large percentage of shared equity units.

Submissions

73. The claimant submitted that the provision of social rented units within a separate, newly built, block and shared ownership units in the tower would enable successful integration and avoid any risk to affordability on account of prevailing service charge levels. Having to provide such a high percentage of social housing units that some of them needed to be accommodated in the main tower would create major problems. It was a fact that neither paragraphs 7.1 or 7.2 of PAN 12 suggested that the council would adopt a prescriptive approach to the precise mix of tenures within any particular development scheme. Its purport was to base requirements on local housing needs assessments, but the document upon which Mr Orr had relied (Professor Bramley's 2005 study) was not such a document. At most, it provided an assessment of citywide needs set within a sub-regional study; paragraph 8.7 and

table 8.9 to which Mr Orr referred, and upon which he had based his opinions, focused upon relative needs for different unit sizes rather than needs for different types of tenure. Indeed, if table 8.9 were relied upon (showing a need for 29 units of 3 bedroom accommodation in the social rented sector in Bristol Inner East area), then the claimant was offering two thirds of that need in one development. No evidence had been produced that could substantiate a refusal of planning consent on the grounds that the claimant's proposed tenure split was unreasonable – on the contrary, both the baseline and claim schemes had been designed to accommodate the maximum percentage of affordable housing units in a mixture of accommodation sizes and in a manner that would accord with local policy and secure the planning objective of mixed and balanced communities. As to Mr Orr's reliance upon the tenure splits that had been negotiated by other developers within the city, it was submitted that it was not for the Tribunal to judge the matters that motivated such arrangements. The relevant question was not whether the council would have sought similar arrangements on Tollgate House, but whether a reasonable planning authority could have justified refusing consent in the event that the applicant declined to move from his preferred tenure split arrangements.

74. For the council, it was submitted that whilst Policy H9 did not prescribe either any particular quantum of affordable housing, or the expected tenure mix, it did say that "the precise number of units would reflect demonstrable need..." It was clear, they said, that in implementing Policy H9, section 7 of PAN 12 plainly refers to "type", and is concerned with the split between social rented and shared ownership housing. Similarly, in section 12C it was stated that the council will "accept that a variety of alternative types of affordable housing may be considered, such as rented accommodation or shared ownership", and in that context "will promote the option that best reflects local need." Again, the Model Agreement included within PAN 12 referred to (*inter alia*) the type of housing units within a development and to "the agreed split (if any) between affordable housing units available for rent and those available for shared ownership." The 2001 update to the Bristol Housing Needs & Affordability Model (which was first set up by Professor Bramley) was carried out by officers of the council and was published at the same time as PAN 12. That showed a net citywide need for 905 affordable housing units. This was updated to 935 units in the 2005 West of England sub regional Study, which was clearly also a local housing needs assessment.

75. Table 8.9 of the 2005 study was headed "Size Mix of Net Social Rented Need and Intermediate Sector Need in 2006" and indicated a split of 82.4% to 17.6% in favour of the former. It was on this basis, it was submitted, that Mr Orr said the council in its negotiations with developers had sought to achieve a tenure split of 77:23 in favour of social rented, with a minimum of 70:30. The claimant was seeking a split of 70:30 in favour of shared equity housing, which was precisely the opposite and it was notable, they said, that Mr Napier had not produced any evidence showing agreements with developers that were anything other than in line with what the council had been seeking. Mr Baldwin (the council's expert on residential values) had also given examples in his evidence in chief of where social rented and private market housing had been mixed within the same building, so the integration argument was unsustainable. There was also the indication given to Mr Baldwin by Sovereign Housing that they would have been interested in purchasing 70 affordable housing units in a 70:30 split in favour of social rented in the Tollgate House development in 2005, if they had been offered to them. In summary, it was evident, the council said, that the local planning authority would have had solid grounds for refusing an application submitted on the basis of the claimant's proposed tenure split.

Conclusions

76. It seems to us that the council, through its expert, has taken an unrealistically inflexible stance in respect of what might have eventually been negotiated in terms of tenure mix. The key issue, we think, is not so much immediate local need (and it was agreed that there was no specific local needs assessment for that particular area), but more the potential problems of integration. We agree that in a block such as Tollgate Tower, it would be inappropriate to have mixed social rented units with private market housing. It was proposed that there would be three lifts serving the residential accommodation in the tower, and one of those would be dedicated to the first few floors, with the other two serving only the private units. In our view that is all very well in theory, but problems would occur when the 'social rented' lift broke down.

77. Then there is the question of service charge caps that would be demanded by the RSL. It would be unrealistic to expect the private market to 'pick up the tab' for any shortfall on service charge contributions. The open market flats (apart from the penthouse units) would, it was acknowledged, appeal to single people and couples. It would be important in marketing terms, we think, for budgeted service charge contributions to be competitive in comparison with other available units within the city, and anything that served to increase them to a level whereby they might become uncompetitive could seriously affect affordability and thus sales.

78. Whilst, on balance, we conclude that it would have been reasonable to expect the council to have taken Professor Bramley's 2005 study into account, we are satisfied that the proposal to locate all the social rented units in a separate new-build block thereby leaving the main tower for a mix of private and shared equity units was a sufficiently strong argument in favour of the tenure split percentages that were being proposed by the claimant. Furthermore, the fact was that the claimant was offering the full 30% affordable housing ratio that the council could demand whereas in all of the other developments that had been referred to in the evidence, those percentages had been agreed at, in some cases, very much lower figures. We also take into account the fact that, on the claimant's baseline scheme proposal, the provision of 20, 3 bedroom units in the new block would satisfy two thirds of the citywide requirement for social rented family accommodation and this would, in our judgment, be a very strong negotiating tool when it came to the question of tenure split. The requirements of Policy H9 and PAN 12 were certainly not, in our interpretation of them, prescriptive in terms of tenure mix and we think that there would have been a reasonable likelihood of the local planning authority accepting the claimant's proposals. We also note that Mr Orr had not consulted planning officers on this issue.

79. In any event, although the point was not covered in any detail in the evidence, there could well, in our view, have been the opportunity for the parties to negotiate some form of commuted payment to reflect the ratio of shared equity housing that was higher than the council would ideally have wished for. It follows that we do not think that a reasonable planning authority, acting in accordance with the relevant, non-prescriptive, policies would have been in a position to sustain a refusal of planning consent on this particular issue. In terms of the price to be paid by the RSL we will, therefore, be basing our determination for the baseline scheme on the tenure mix proposed by the claimant.

80. Regarding the Bristol scheme, Mr Hewetson in his rebuttal statement (which was produced before the parties agreed a 30% affordable housing provision across all three schemes) made a number of salient points, especially on the question of integration, that militated against such a high percentage if that scheme were adopted. However, when it comes to looking at the TCI versus matrix arguments, whether or not we agree with him, we are now constrained to base costings upon the 30% provision.

Planning obligations/section 106 contributions

81. Although the contributions had been agreed between the parties under a number of relevant heads, issues remained in terms of public realm, highways and travel plan. Mr Orr accepted that he had not made a separate allowance for a contribution to legible city and, in respect of the claim and baseline schemes, had included any sum due within the public realm and highway infrastructure payments that were required. It was agreed that the draft Supplementary Planning Document (SPD) 4, published in January 2005, set out the full range of s.106 contribution requirements that could be considered applicable to any relevant development scheme in Bristol.

82. Mr Napier said that when it came to the section 106 contributions the final overall figure would be a negotiated amount. Although it was possible to calculate payments under some of the heads by way of precise mathematical formula (these having been agreed by the parties), there were areas (including the three that were in issue) where final sums could only be arrived at by negotiation. Indeed, he said, even those that could be calculated were capable of adjustment, as the inconsistency evident from s.106 Agreements on other local developments clearly showed. The final deal would reflect, and take into account, the significant contribution that the development would be making to the city's regeneration objectives in terms of bringing a redundant office building back into beneficial use. Major planning benefits would include the creation of an active street frontage, improvements to the appearance of the building, the increase in vitality to this peripheral city-centre area created by the additional residents and the contribution to the city's affordable housing needs. It was thought that the council would accept these benefits as an offset to the full s.106 requirement calculated in accordance with SPD4.

83. In any event, Mr Napier said, as far as highways, public realm and travel plan were concerned, he had taken on board Mr Wallace's statement that any contributions that might be due had been accounted for elsewhere in his costings, and to accept Mr Orr's proposed figures against these heads would amount to double-counting. However, he accepted that Mr Wallace had been unable to identify specific figures, or where they were included in the overall costs analysis. He pointed out that Mr Orr had concluded that the claimant's proposals would not adversely impact upon local traffic conditions, and therefore the proposed contribution of £50,000 in respect of highway infrastructure was unnecessary. No evidence had been produced, and nobody from the highways department had been called, to suggest that any such works would be required. As to Mr Orr's inclusion of £200,000 towards a travel plan, Mr Napier said that the location was such that it was already well served by public transport, and a contribution of this magnitude would also be unnecessary. If there were to be any contribution under this head, such as for the provision of showers for cyclists in the employment generating areas (offices), this would be subject to a planning condition rather than contribution, and built

into the construction costs. Finally, on public realm, where Mr Orr had allowed £150,000, he pointed out that SPD4 identified that obligations under this head would normally be required in conjunction with development adjacent to those routes in the Local Plan Proposals Map that related to policies CC7 (Pedestrian Route Proposals) and CC8 (Streets for People). Tollgate House did not fall within such an area, and therefore no contribution could be demanded. It was also pertinent to note, he said, that there had been no explanation as to the derivation of Mr Orr's proposed figures.

84. Mr Napier said that, as far as he was concerned, the figure of £1,310,709 that had been agreed under the other heads (for the claim scheme) would be full the amount that a developer could have expected to pay in respect of s.106 contributions, there being no justification for the additional £400,000 being sought by the acquiring authority under the 3 disputed heads. He produced examples of other local developments where no such payments had been specified in the relevant agreements.

85. Mr Orr said that there was no good reason to assume that the local planning authority would accept a lower s.106 contribution figure than that which he had proposed, and if the claimant failed to agree, that would be ample justification for a refusal of planning consent. SPD 4 provided guidance on the thresholds where applicable, the formulae used to calculate the appropriate level of obligations, and the range of topics to be considered. Where specific obligations for on-site facilities were impractical or undesirable, the council would seek financial contributions towards providing facilities at appropriate alternative locations. Contributions, he said, were negotiated on a site-by-site basis, different types of obligations may be prioritised depending upon the particular development, and a balanced judgement would be made that reflected (a) the need for the contribution in relation to the development and its impact, (b) the site's specific characteristics, needs and constraints and (c) the overall economic viability of the proposed scheme. He said it was agreed that the last point was not in issue.

86. Commenting upon Mr Napier's reliance on the s.106 agreements drawn up in respect of other city-centre developments, Mr Orr said that not only were the summaries that he had provided incomplete and therefore misleading, but only one (the Bristol Brewery scheme), was negotiated after the publication of the draft SPD4. He produced corrected schedules. Although he had considered the s.106 agreements applicable to these other schemes himself, he accepted that circumstances differ, and that in producing his own assessments of the appropriate sums on the 3 disputed heads he had "taken a view". In his opinion the figures, whilst not scientifically produced, were "reasonable", and £400,000 for the 3 heads in issue was the appropriate sum. Mr Orr said that the council would be bound to insist upon the full contribution calculated under each head, and there was no justification, as Mr Napier had suggested, for allowing any form of "discount."

87. In respect of travel plan initiatives, Mr Orr acknowledged that they were mainly connected with commercial developments (which this was, in part), but the 'trigger for obligation' set out in section (v) of SPD4 stated that "...major residential developments may also be required to enter into obligations...". Contributions to public transport and provision of public cycle routes and walkways could be anticipated, especially bearing in mind the number of residential occupiers that there would be and, even though the subject property was close to

the town centre, some improvements to access would be required. His assessment of a contribution of £200,000 against this head was, he said, based upon other developments and was no more scientific than that. In cross-examination, he accepted that the ball would be in the council's court to justify any amount sought, and that it would need to demonstrate that there was an actual need.

88. The highway infrastructure requirement would be triggered under SPD4 (vii) where "there is a requirement to improve existing or construct new highway infrastructure in order to access the development in a safe and accessible manner." On a development of this size that included offices, leisure facilities and a considerable residential element, Mr Orr said, the traffic profile would be changed (from what it was previously) and it could be anticipated that off-site works, such as re-aligning footways and re-phasing local traffic lights would be needed. He estimated a contribution of £50,000 in this regard. On public realm, although he had allowed £150,000 in respect of the baseline scheme, Mr Orr accepted in cross-examination that the Tollgate House site did not fall within an area covered by SPD4 (x), and that a case would need to be made by the council to justify an exception.

Conclusions

89. Dealing firstly with public realm, it is clear that the subject property was not located adjacent to routes as defined in policies CC7 and CC8, and there was no evidence given to support a conclusion that the council might be able to make an exception, even if this provision allowed for such to be made (which in our view it does not). In the section of SPD4 (x) that covers the triggers for the obligation, it says: "The determining factor is location and those development proposals adjacent to a CC7 or CC8 route will be expected to provide the appropriate section of the route and dedicate it as an area of Public Realm." Nowhere is it mentioned that developments outside the specified area would be expected to contribute, and we therefore conclude that a demand for £150,000 under this head could not be substantiated.

90. As to a travel plan, we prefer Mr Napier's evidence in this regard. Bearing in mind the location of the subject property so close to the city-centre, and the fact that the provision is aimed at commercial rather than residential development (of which, in this case, the commercial element only comprises a relatively small part), we consider the suggestion that £200,000 would be demanded to be unrealistic. Nevertheless, we do think that some form of contribution might be justified. Bearing in mind that Mr Orr admitted that the non-formulaic parts of any s.106 contributions would be a matter for negotiation, and his own figures were based purely on his own professional opinion and "levels that had been agreed on other schemes" (which, of course, all differed in material respects from what was proposed for Tollgate House), we have formed the view that a figure of £50,000 would be more appropriate.

91. The one area where we think Mr Orr's arguments were fully justified was that relating to highways. Although the claimant argued that no off-site highway infrastructure works would be required, we suspect that, in reality, there would be some need and we accept Mr Orr's evidence on this point. £50,000 does not seem to us to be an unreasonable sum. We therefore conclude that, on top of the agreed s.106 items, a further £100,000 could have expected to have been negotiated, and a prospective developer would realistically have budgeted the total sum of

£1,410,709 under this head – say £1,410,000 for the baseline scheme. Similarly, £100,000 will need to be added to the agreed section 106 costs for the Bristol scheme (£1,026,707) giving £1,126,707 – say £1,126,000.

Development Costs

Preamble

92. It was common ground that the appropriate basis of valuation in this instance is the residual method. In that respect, it is necessary to establish the total development costs that the developer would expect to incur in undertaking his favoured development project. This sum, when deducted from the anticipated sales revenue and allowing for the desired profit return, leaves a balance, which is the amount the purchaser can afford to pay for the land. As a result of the failure, over a substantial period of time, to reach agreement on the costs that would be incurred by a developer in completing either of its proposed schemes, the parties had gone to considerable (and, we suspect, very costly) lengths to "prove" their figures and assessments. Additional advice and comprehensive reports had been obtained on both sides. Examples are the Davis Langdon costs schedule for the council, and Mr Wallace's own costing exercise accomplished through an extensive, time consuming and detailed trawl through Comer Group's invoices relating to earlier projects, and the reports from Collado Collins and Dr Smith on building height for the claimant.

93. As we said on a number of occasions during the hearing, and explained in paragraphs 45-47 above, a prospective purchaser would not have had the time, budget or inclination to go into that much detail. A prudent developer would, in our view, (and as the council said in closing submissions) "take a relatively cautious and broad-brush approach to costs in order to avoid a serious underestimate." He would, we think (as propounded by the claimant) rely heavily upon known costs incurred under relevant and straightforward heads in other similar and recent development projects, adjusted to reflect inflation over time, so long as that historical information was in readily accessible and understandable form. These would be tested by reference to published price books such as Spons, and the BCIS indices, the more so in complex areas of construction and those where past costs history is not of assistance. In any specialist or unusual areas of construction (such as the underground car parking in the baseline and claim schemes), he would be likely to obtain budget costings from specialist contractors, or specific quotations. In arriving at his conclusions on costs, the prospective purchaser would undoubtedly be mindful of the fact that that he was in a competitive bidding situation, and that, normally, it is the highest price offered that secures the purchase. In adopting and applying figures to each of the cost heads used in the traditional valuation model, therefore, he would need to be sure that the right balance was struck to ensure that neither did he overestimate, and thus potentially lose out to a higher bidder, or seriously underestimate and risk compromising his required profit.

94. It is against this background that we deal with each of the subject heads remaining in issue and make no apology, therefore, for not documenting every piece of evidence that was before us, especially in respect of items where the differences were small. Inevitably, in some areas, we have had to "take a view" on the conflicting evidence that was before us, as we think a developer would do when faced with alternative costs. Having said all that, we do

acknowledge the points made in the acquiring authority's submissions. They said that the reason their experts were "driven" to produce the level of detail that they did was because in their view the claimant's expert had seriously underestimated the complexity of the project and thus its cost, particularly in respect of the underground car park, M&E and procurement costs. He had also, they said, used an approach that no prudent developer would take and for these reasons, it was important to prove the point, because otherwise, effectively, the landowning vendor would be handed many millions of pounds to which he was not realistically entitled. The underestimate, they said, was so great that the costs that would actually be incurred would eat up the proposed contingencies ten times over.

Cost estimates – valuation date or commencement of development

95. Before turning to specific costs, it is necessary to establish the appropriate date upon which they should be assessed. It was the claimant's case that they should be those applying at the valuation date, September 2005, and it was submitted that not only was it inappropriate to forecast possible increases in costs, but even the acquiring authority's own valuer had assessed costs relating to preliminaries without reflecting the passage of time. The acquiring authority's costs expert had assessed them some 9 months later, June 2006, which was the date by which it was anticipated that construction would actually commence.

96. Mr Wallace is managing director of Kingfisher Associates (Consultancy) Ltd of Teignmouth, Devon, a practice specialising in the provision of expert witness and dispute management services, principally to the construction and engineering industries. His particular expertise relates to the preparation and forensic analysis of cost plans, both pre and post contract, in connection with inter-party disputes. He said that whilst having no previous involvement with the claimant company, he had acted, and continued to act, as a consultant to Opecprime Ltd, one of the other companies within the Comer Group. He said that in his build up of costs he had, where information was available and it was appropriate to do so, considered actual out-turn costs from other developments within the Comer Group (from which such things as unit costs for flats on a £ per sq ft basis could be established) and adjusted them "significantly upwards" to reflect the effluxion of time - to September 2005 - and other relevant factors. When challenged over the use of that date, he said that the buffer he had applied was so generous that it did not matter that the appropriate date might be 9 months hence. As to those factors for which such historic information was not available, and where he had used price books or actual quotes, these were those appropriate at the valuation date.

97. Mr Martin, the acquiring authority's costs expert, is a partner in Drivers Jonas LLP and is head of their technical due diligence team. He has been involved with Bristol City Council's Broadmead Expansion Project since July 2005 providing, as a chartered engineer and chartered surveyor specialising in acquisition, construction and procurement matters, advice in connection with the acquisition of Tollgate House and a number of retail properties affected by the scheme. His instructions were to assess the claimant's various schemes (and the council's alternative scheme), to review and cost as required the detailed proposals submitted by the claimant and to comment upon Mr Wallace's approach. He explained that from the date of acquisition, it could be anticipated that it would take at least 9 months (to June 2006) before construction could commence. This would allow sufficient time for the preparation of detailed design and construction drawings and specifications, completion of the requisite tender and

award processes, and enabling works such as asbestos removal, site set up and soft strip. It was unrealistic, therefore, for costs to be assessed at the valuation date. He gave an example in respect of the costs that Mr Wallace had estimated for the construction of the separate office block using the BCIS index of similar schemes. Using the Q3 2005 figures, Mr Wallace had estimated £906 per sq m (against his own estimate of £945 per sq m). Given that the contract date would be in the region of Q2 2006, the figure would increase (using a tender price inflation index) to £936 per sq m. Taken across the whole project, such an exercise would inevitably lead to a serious underestimate of costs and result in a bid price for the site substantially higher than the its actual value.

98. As to what material would have been available to a purchaser in September 2005, Mr Martin said that SPONS price book for 2006 (with forecast figures) was available at the time. Wherever possible, he said he would base his estimates on appropriate predictions from material available in September 2005, but where it was not, he rebased the figures back from 2008 prices in the light of actual increases that had occurred.

Conclusions

99. The answer to this is, we think, simple. In our judgment a prospective purchaser of the property for redevelopment, assuming (as is required for the purposes of this exercise) that it was being sold with full planning permission in place, would be aware that there was a considerable amount of preparatory work to be done prior to the formal contract being awarded, and works being commenced. The contractors invited to tender would build up their costings and base their estimates on forecasted costs of labour and materials at the date they expect the contract to commence. In that regard we accept Mr Martin's arguments, and think that Mr Wallace was wrong to base his costings (where he did so from reference material) on figures that were applicable at the valuation date. Wherever possible therefore, from the evidence relating to specific costs, we have attempted to extract and apply the figures that reflected the position as it would have been in June (Q2) 2006 and, resulting from our findings in respect of planning, have principally concentrated upon the baseline scheme. But we draw a distinction between the use at the valuation date of SPONS price book for 2006 (which contained forecast costs) and Mr Martin's rebasing of 2008 prices in the light of actual cost increases. We consider the former to be useful evidence but we are cautious about accepting the latter approach.

100. We are required to assess the open market value of the subject property at the valuation date (in this case by using the residual method). As the Law Commission stated in its Final Report "Towards a Compulsory Purchase Code: (1) Compensation" at paragraph 3.26:

> "Market value, by implication, is based on the knowledge which the market would have at the valuation date. The market does not have a crystal ball. This strict market value approach can be defended as appropriate where the object is to fix the price at which the authority are to be taken as acquiring the land at a certain date. Changes in circumstances after that date do not affect the vendor's interest, since he no longer owns the land."

This situation contrasts with that in respect of claims for disturbance or for compensation under section 7 of the Compulsory Purchase Act 1965 where this Tribunal has held that hindsight may be used, following the judgment of the House of Lords in *Bwllfa and Merthyr Dare Steam Collieries Ltd v Pontypridd Waterworks Co* [1903] AC 426. This is not a case to which the principles of *Bwllfa* can be applied.

101. Also, Section 5A(2) of the Land Compensation Act 1961 states that "No adjustment is to be made to the valuation in respect of anything which happens after the relevant valuation date", which in this case is 13 September 2005.

102. Mr Mould notes that the acquiring authority criticises Mr Wallace's adjustment to the valuation date of costs contained in the 2009 edition of Spons when estimating the costs of curtain wall cladding (see for instance paragraphs 162, 163 and 165 below). However, the claimant says that the acquiring authority, through Davis Langdon, adopts a similar approach when adjusting prices from the 2008 edition of Spons.

103. Davis Langdon explain their approach in the cost plan appended to Mr Martin's expert report:

> "The cost plan is based on current [2008] rates with a deflationary adjustment to the summary of the cost plan using actual indices to reflect rates at June 2006. At this stage a reconciliation exercise was undertaken to establish what the impact on the cost plan would be to have estimated in October 2005 for rates to be applicable for works starting in June 2006, using forecast indices available at that time. Because of the lack of cost data available now (or being unable to market test in October 2005) we sampled a basket of the more expensive and sensitive items. We have then used Davis Langdon Forecast Tender Price Indices published in July 2005 to calculate the forecast inflationary uplift to reflect a start on site in June 2006. The cumulative effect of these percentage adjustments is a net minus 12.13% to be applied to the cost plan and benchmark data. (See Appendix 3)"

104. Appendix 3 gives further details of Davis Langdon's approach. They compare the actual cost rates at October 2005 of 28 items with the actual rates of the same items as at February 2008. The former amount to 85.66% of the latter. This percentage is then increased by 2.58% in line with Davis Langdon's July 2005 forecast inflationary adjustment for construction starts in June 2006, giving a total adjustment factor of 87.87% (or minus 12.13%). This factor is then used to adjust all other 2008 cost items to June 2006 values. We are satisfied that this form of calibration, based as it is upon a representative sample of actual 2005 prices and their forecast increase until June 2006, may be usefully employed without being rejected for relying solely upon hindsight.

105. We also note that no evidence was adduced to suggest that, on a long contract such as this, the contractor might further adjust his initial figures to reflect continuing anticipated price inflation for those parts of the development programmed for later into the project. In our view, this possibility if anything lends further support to Mr Martin's approach, and his methodology (subject to what we say about historic evidence), to which we now turn.

Basis of/ approach to costs estimation

106. Mr Wallace approached the issue of costs on the premise that where a developer had experience of the type of project that he was contemplating, his first port of call would be to revisit actual costs incurred on past developments, making suitable adjustments for time. He said that an experienced developer would know what his average out-turn costs were to build or convert a flat, for example, and what the unit costs were likely to be in terms of price per sq ft. Similarly, historic construction costs for standard offices, leisure facilities or, for that matter, retail units would be available to him. He would then make adjustments to reflect any unusual factors ("value engineering" as he described it). For any area where his past experience was limited or non-existent (for instance, the construction of the basement car park around the perimeter of the Tollgate Tower footprint), he would approach a suitable contractor (such as groundwork specialists), who would be able to give indicative prices.

107. He said that it would be unlikely for a developer to build costs up on an elemental basis where his historic costs were known. Price books and indices were the least satisfactory option as they were general and unspecific, although they could be used for reference or as a check so long as the results were treated with suitable caution. In this instance, he thought the Comer Group (Ridgeland's parent company) was a good proxy for the type of purchaser who would be in the market for Tollgate House, although in cross-examination he did accept that it did not appear the Comer Group had ever previously attempted a project of this complexity. Their previous developments at Comer House, Barnet, Herts, an 8 storey former office block, and Northampton House, Wellington Street, Northampton, a 1960s 13 storey former office block that also had a leisure complex, were the most appropriate examples for comparison purposes. He said he had also considered developments at Tower Point, Enfield and Maritime House, Woolwich as cross-checks.

108. Mr Wallace said that Opecprime had recorded all costs associated with the Northampton and Comer House developments, but not in a summary format. He had therefore undertaken a detailed costs analysis, over "many hundreds of hours", by trawling through 12 lever arch files of invoices, day books and costs information that had been retained by the company following the completion of those developments. The information was then incorporated into spreadsheet schedules and mathematically analysed to give costs for individual items on a square footage or per apartment basis. That information, adjusted as necessary for time and location, formed the basis for cost assessments for the relevant items in Tollgate House.

109. The parties had, at the request of the Tribunal, produced a Scott Schedule setting out their respective figures under all individual heads, and Mr Wallace indicated which basis he had used for the costs build up of each item. Where comparison with past developments was inappropriate, or as a result of the ongoing failure to agree figures with the acquiring authority, he had relied upon the 2005 SPONS cost book (Q3), BCIS tables and, where appropriate quotations or estimates (including for the underground car park). He accepted that the exercise that had been undertaken to extract relevant costs from past developments was time consuming and cumbersome, and in normal circumstances he would have expected developers to have their own business models and databases upon which they could rely. Mr Wallace said in cross-examination that he considered it perfectly in order to take averages on individual costs over two or more developments, even where they were substantially different – in one case

47% apart, so long as the correct adjustments were made to reflect the particular scheme that was being costed. He pointed out that BCIS was based on averages, although he acknowledged that the sample size ran into the hundreds rather than two or three.

110. Mr Martin said that whilst he did not disagree with the principle that it was in order to take into account outturn costs from previous developments (and in fact, the BCIS indices were precisely that, spread over many developments), they would have to be comparable with the proposed project. His criticism of Mr Wallace's reliance on previous Comer Group projects was that they were simply not comparable - that being evidenced particularly by the huge divergence in costs between Northampton House and Comer House, under the same item heads. There was also no evidence to demonstrate that Opecprime, or any of the other related Comer Group companies had any experience of a building with the complexities of Tollgate House. It would be preferable, therefore, to cost the scheme as closely as possible. As a result of the serious concerns over the claimant's proposed costings, which were thought to have been underestimated to a significant degree (hence the very high residual land value), and the fact that the information in Mr Wallace's report was insufficient for the costing exercise required (and did not in any event tie up with the figures used in Mr Hewetson's residual valuation), the acquiring authority had assembled a large team of consultants to provide specific technical advice and to analyse the claimant's costs in detail. Mr Martin said that he had been appointed as project manager to co-ordinate the team which included external architects, structural engineers, cladding consultants, building and environmental surveyors, other specialists as appropriate and construction cost consultants (Davis Langdon).

111. Davis Langdon had (by the date of the hearing) used a common measure to provide detailed costings for each of the claimant's final claim and baseline proposals, and the council's alternative Bristol Scheme. It was notable, Mr Martin said, that Davis Langdon was one of the contributing editors to SPONS. In building up his costs analysis for the principal components of the schemes, he had relied upon their "detailed measure and application of published data (SPONS and BCIS) and their own unit rates". As to the offices, leisure facilities and separate new build residential complex, he said he used "benchmark rates from similar schemes and published costs data". He accepted that, in principle, the approach and technique he was adopting was the same as the exercise undertaken by Mr Wallace, but stressed that his own figures were derived from a much broader base that was more reliable and more accurately reflected likely actual outturn costs. He did acknowledge that the exercise that the council had been obliged to undertake was far more detailed than that which a prospective purchaser would have carried out, but said that it was important to prove that the figures Mr Wallace had provided were so low as to have created a false residual value for the land.

Conclusions

112. We refer, where appropriate, to individual approaches taken by the experts under the specific costs headings that remain in dispute. However, as to the general approach, we agree that where a prospective purchaser holds readily accessible and incontrovertible evidence of costs relating to previous developments of a very similar nature, it is entirely reasonable to rely upon them. If those costs reflect a particular developer's specialism, and the costs savings that may be achieved against other organisations as a result, they should, of course, be taken into account. However, the acquiring authority's concerns were that all of Comer Group's previous

developments were sufficiently different (and smaller scale) to warrant extreme caution when relying upon historic cost data. Furthermore, they said, the source of the data relied upon by Mr Wallace in relation to Northampton House and Comer House was potentially dangerously unreliable and, in many instances, individual costs had not been clearly allocated to specific heads.

113. We agree. The exercise that Mr Wallace undertook to trawl through historic invoices for the purposes of proving that the claimant could do things much cheaper than anyone else, left it vulnerable, in our view, to misallocation and underestimation. No developer would, in a bid situation, undertake an exercise of this magnitude – for a start, he would not have the time – and we find therefore that except in some limited areas, we can attach little weight to the analyses derived by this method. If the information upon which Mr Wallace sought to rely had been readily available in database form, it might have been a different matter. We agree with both experts who held to the view that the skill is to identify the most appropriate and reliable source of information to the specific project being costed, and to apply adjustments for time, particular site complications and other factors as necessary. We do not agree with Mr Wallace that SPONS/BCIS is inappropriate. It is simply a question of degree. As we have said, the correct approach is to consider the lengths to which a developer would reasonably go in identifying what it would cost him to undertake the project, building in as he would, sufficient contingencies to reflect risks and unknowns, and this is what we have attempted to do in our following conclusions.

Procurement

114. Mr Wallace assumed that the hypothetical purchaser would be either the Comer Group (more particularly its subsidiary company Opecprime) or another small, highly entrepreneurial developer operating the same business model as the claimant. The modus operandi of the Comer Group was to use its in-house site management team to run the construction works and to employ sub contractors directly. Mr Wallace said that this model offered a reliable proxy for what would have happened at Tollgate House, citing Northampton House and Comer House as his main comparables. The in-house team would comprise a project manager in overall control (part time, estimated at 50%), an on-site supervisor, a quantity surveyor (part time, 60%), a planner/health and safety surveyor (part time, 25%) and a locally recruited trade and general foreman. There would be an in-house structural engineer and external architects. The trade contractors would carry out other areas of specialist design such as M&E whilst the fitting out of the completed units was well within the experience and capacity of the claimant or similar developer.

115. Mr Wallace said that the claimant had not previously constructed a basement car park similar to that proposed at Tollgate House and he recognised, given the scope of the works required, the need to employ a specialist lump sum contractor to undertake the car park package. Opecprime's in-house structural engineer, Mr Sheppard, had therefore produced some in principle designs of a basement car park, the construction methodology of which was checked by Mr Osborne of Matthew Consultants (part of the Walsh Group) and was then costed by Mr Philip Little, a former Opecprime employee who was now a freelance project manager. Mr Little was experienced in ground excavation and structural works of this kind and was familiar with the location of Tollgate House. Subsequently Mr Wallace obtained

further (and higher) estimates from two specialist contractors; Lancsville Construction Ltd and MPB Structures Ltd. Mr Wallace averaged these two estimates in arriving at the figure that he used in his evidence.

116. A major benefit of undertaking the construction in-house was that the developer retained flexibility and responsiveness, enabling it to value-engineer at all levels in order to save money. The risk of specialist works, such as the basement car park, would be passed on to sub-contractors. The alternative of using a main contractor for all the works meant that these advantages would be lost; in theory they were traded for certainty about costs from the start. However, Mr Wallace said that it was difficult to achieve such certainty in practice because of unforeseen variations and the requirement to have a long lead in time. It was the sub-ground works where certainty was important; the developer would require flexibility when it came to the layout, size and fit out of the flats. It would be very difficult and expensive to achieve this by employing a main contractor. He felt that his procurement method would be cheaper and more appropriate.

117. Mr Mould submitted that the acquiring authority had overstated the complexity of the claim and baseline schemes. Mr Wallace had consistently acknowledged that the Tollgate House proposals were not comparable to either Northampton House or Comer House in respect of the car park element and he accepted that this more complex construction element would be let out on a design and build contract. There was no issue between the parties as to the feasibility of the engineering works to construct the basement car park and Mr Wallace's evidence about design and methodology had been substantially agreed. The specialist contractors approached by the claimant did not view the proposals as presenting any particular engineering challenge, risk or uncertainty. The acquiring authority had not produced any technical evidence to the contrary.

118. The need for proper liaison between the car park contractor and the other contractors on site was acknowledged. Such management issues were normal on major construction projects and would not present insurmountable problems. The use of a main contractor would be unnecessarily expensive due to its failure to distinguish between the more complex aspects of the work that required a more cautious approach to preliminaries, fees, risk and uncertainty, and those aspects of repetitive and straightforward work, such as fitting out, where a lower allowance could safely be made. It was neither necessary nor appropriate to overload the costs of the whole project by focusing upon the complex construction elements. The acquiring authority had been over cautious in this respect and had increased the costs unnecessarily by insisting that a main contractor would be employed.

119. Mr Martin said that the hypothetical purchaser would procure the Tollgate House development by means of a main contractor arrangement and would not seek to "ring fence" the complex engineering aspects of the project. This was a fundamental issue because the success of the project depended upon the right method of procurement at the outset. A developer would want to set up the project correctly and minimise any changes that would lead to increased costs, time overruns or non-compliance. It would go to a major contractor to carry out the works using a pre-qualification questionnaire and having examined the contractor's track record. Tollgate House was a large and complex scheme with a two storey underground car park, an existing tower that needed to be supported and cores that had to be extended

downwards; there were two tunnels at two levels into these cores. Freestanding offices, a health club and residential units had to be built on top of the deck over the car park. It was a complex and unusual engineering challenge with a straight-line cost average that exceeded £1m per month throughout the life of the project. The Comer Group had not demonstrated the necessary experience or expertise to meet such a challenge.

120. A developer would be very ill advised to let out the car park works under a separate contract. They were integral with the scheme as a whole and overlapped in construction phasing with other works being undertaken in the tower above. For instance, they could not be separated from the design and execution of the new offices and residential block which were to be constructed on the deck; the removal of the cladding and works to the core would impinge upon the car park area, as would the erection of cranes and scaffolding. The coordination problems would be legion making direct procurement of the individual works intractably difficult. Mr Martin's experience suggested that such a division of labour would be potentially disastrous, leading to delays and cost overruns. The appointment of a main contractor would have the major advantage of passing on these significant risks.

121. Mr Martin also queried whether the comparable Comer Group schemes relied on by Mr Wallace were in fact in-house developments. He said that only Comer House was an example of direct in-house procurement. That was a small (50 apartments) residential scheme involving the conversion and fitting out of a building and the renewal of its cladding. Although it did not require major engineering works, and despite its small size, it still took 24 months to complete, which Mr Martin said reflected the procurement method. The other main comparable used by Mr Wallace was Northampton House. This project was carried out on a tendered lump sum basis by outside contractors, Finchley Construction Management Ltd, whom Mr Wallace acknowledged had been responsible for everything, including on site management, health and safety and procuring individual trade packages. The project, which took 49 months to complete, involved the conversion of a 1970s office building into 187 apartments on 11 floors together with the addition of balconies. Re-cladding and major engineering works were not required.

122. Mr Wallace had used two further comparables, Towerpoint, Enfield and Maritime House, Woolwich, as cross-checks. Mr Martin said that neither of these projects could fairly be described as having been carried out in-house. Towerpoint was let on a similar contract to Northampton House to a contractor called Trident Construction whilst Maritime House was let on a tendered fixed price lump sum to GEC Construction. In both cases the involvement of Opecprime was minimal and the contractors took responsibility for delivery and budget. It took 6 years to complete the first phase of Towerpoint (the conversion of an 11-storey 1970s office block into 93 apartments, the addition of a lightweight steel structure roof extension to create penthouses and the conversion of low level podium offices into leisure use) at a cost of £12.6m. Maritime House was a late 1960s 8-storey office block with an adjacent podium building. The tower was converted into 93 apartments including a roof extension providing penthouse duplex accommodation. The existing cladding was replaced and balconies were installed on two elevations. The project took about 40 months and cost £9m. None of the projects cited by Mr Wallace were comparable to the size, complexity or cost of Tollgate House and only one of them had been managed in-house. Mr Martin also considered that the

size and composition of Mr Wallace's proposed in-house team was inadequate for the current project.

123. Mr King submitted that Mr Martin's evidence was to be preferred on this issue. He was a qualified and experienced engineer and project manager whose business was to advise developers and funders about proposed cost plans during the procurement phases of large construction projects Mr Wallace's expertise on the other hand lay in providing short-term assistance to clients in the building industry when they had a dispute. He was not a quantity surveyor and had no engineering or project management qualifications. Nor had he been involved in the procurement of any of the schemes about which he gave evidence. Furthermore, Mr Martin had exercised independent expert judgement in this case, unlike Mr Wallace who had been instructed to assume that the characteristics of the hypothetical purchaser would be those of the Comer Group. But during cross-examination Mr Wallace had conceded that there would be other hypothetical purchasers in the market other than the Comer Group, some of whom would adopt a main contractor approach.

124. The claimant's final position on procurement, which differed from its initial view, was that there was a meaningful distinction in risk between different parts of the project that would have influenced the hypothetical developer in making his bid. Mr Martin had explained why such a distinction was potentially disastrous for the project. It was not possible to make a clear distinction between the refit of the tower and the rest of the project as the claimant had suggested. The size of the site was limited, there were very significant ground works all around the tower, there was an overlap in the building elements and the sheer complexity of the basement construction meant that it was impossible to try and control risk differentially by notionally separating different parts of the scheme. Tollgate House was an order of magnitude larger in terms of cost and complexity than anything that the claimant had undertaken in the past; it was wholly unrealistic to assume that it would have managed it in-house rather than let it out to a main contractor (as they had effectively done on three of the four comparable schemes relied upon by Mr Wallace). In this instance the facts required that the claimant would have placed certainty above flexibility as its development priority.

Conclusions

125. Tollgate House is a large, complex and costly redevelopment project. It is significantly larger in scale than any of the four comparable Comer Group developments which Mr Wallace relies upon to support his preferred method of procurement. We are not satisfied that those comparables lend weight to an in-house approach to the redevelopment of Tollgate House and a direct, separate, letting of the car park construction contract. Only the comparable at Comer House is a true in-house project, the others being, in effect if not in name, building contracts with main contractors. The in-house team proposed by Mr Wallace appears to us to be inadequate for this size of project. We share Mr Martin's view that a full time project manager would be required together with appropriate contract management and design coordination resources.

126. The size and layout of the site and its relationship with the existing tower (which must be retained, supported and its core extended downwards) would act as a major constraint in the

planning and coordination of the redevelopment, which is correctly described, in our view, by Mr King as a logistical minefield. We do not underestimate the benefits that the hypothetical purchaser might gain in flexibility and responsiveness by running the project in-house, but we consider that these are outweighed by the need to maximise certainty for the project as a whole and to offload the risk of a major specialised structural engineering task onto a main contractor. The hybrid solution suggested by the claimant, whereby the more complex basement car park works would be made the subject of a separate contract, is only superficially attractive. We foresee that in practice it would be extremely difficult to manage, coordinate and integrate the development in this way, especially with the limited and, in some instances part time, resources proposed by Mr Wallace. It is not a procurement method that was used in the comparables which he relies upon.

127. Mr Wallace was instructed to assume that the hypothetical purchaser would be similar to the claimant (in undertaking an in-house development), and started his analysis on that assumption. However, he said that he considered it to be a credible (although not the only) approach. Whilst we acknowledge the considerable care and effort that Mr Wallace has put into his cost analysis, and feel that he has tried to assist the Tribunal, we find that Mr Martin has more relevant experience and expertise upon which to base his judgement on this issue and that he was not constrained by any prior assumptions about the identity of the purchaser or the procurement method.

128. We conclude that the baseline scheme would have been procured by means of a main contract and we have examined the detailed costs on this basis. We do not consider the claim scheme further in terms of its costs since we have rejected it on planning grounds. The Bristol scheme does not involve the construction of an underground car park but it is still a major development project being carried out on a difficult and restricted city centre site. As Mr Mould says in his closing submissions:

> "It is also to be borne in mind that the BCC [Bristol] scheme itself involves a significant element of structural engineering work, including reducing and then adding back height to the top of the tower, recladding the exterior of the tower and constructing a multi storey car park"

Although Mr King in his closing submissions says that the Bristol scheme would have been nothing like as complex as the other two schemes, in our opinion it was sufficiently large and challenging that a developer would procure its construction by means of a main contract.

Preliminaries, demolition and enabling works

129. Mr Wallace estimated the cost of preliminaries for the baseline scheme (including insurance and supervisory costs) to be £1,961,026 and the cost of site clearance and enabling works to be £551,270 (the costs of soft stripping the existing building and removing/disposing the existing cladding being included within his fit out costs).

130. The figure taken for preliminaries was £5.22 per sq ft, which was the average of the costs for Comer House (£6.21 per sq ft) and Northampton House (£4.22 per sq ft), adjusted for time

and location. The preliminaries for the car park were costed separately, as part of the estimates produced by Lancsville Construction Ltd and MPB Structures Ltd. The average allowance for car park preliminaries was £392,956 (adjusted for time and location). Mr Wallace said that his allowance for preliminaries (excluding those for the car park) were approximately 8.2% of the total scheme costs. He said that this was at the bottom end of the range of 6.5 - 25% that Mr Martin had taken from the Building Cost Information Service (BCIS). Mr Martin had relied upon an average of an average by taking a figure of 14.5% for preliminaries, which was the median of the BCIS figures. This figure was unrelated to the baseline scheme and Mr Wallace said that he doubted that he would use the BCIS data, even as a check. Despite these reservations he produced two extracts from BCIS, one of which was a large development of 223 flats (with basement car parking) in Manchester where the preliminaries had been 6% of cost based upon a JCT management contract. (The other example was a small scheme of 20 flats in Glasgow where the preliminaries were taken at 10% on a JCT 1998 standard building form.)

131. Mr Wallace said that Mr Martin's figure of 14.5% excluded some additional items of preliminary expenditure that had not been identified as such in his summary sheet. If these were included then the figure rose to 16%, which Mr Wallace felt was unrealistic. He said that his own figures were taken from comparable developments undertaken by the Comer Group. They were to be preferred. He acknowledged that the construction of the underground car park, the core extension and pile jacking were more complex activities than had been found at either Comer House or Northampton House, but these ground operations were self-contained and had been separately allowed for.

132. Mr Wallace was criticised in cross-examination for having himself relied upon the average of the preliminary costs at Comer House and Northampton House, which differed by 47%. He said that his prime position was that the hypothetical purchaser would know the average cost of these works, having undertaken similar schemes previously. The figures differed but the nature of the work was the same.

133. The cost of demolition (the existing roof and the top three floors) was put at £125,000. Mr Wallace explained that he had derived this figure from discussions and correspondence with a Northern Ireland firm called Engineering & Construction Projects which had done similar work for the Comer Group at Comer House and Maritime House. Structural alterations were costed at £126,270 and related mainly to the removal of a lift shaft that required the removal of a wall at each floor level and filling in the hole. Mr Wallace said that it did not involve a lot of work. The largest item of site clearance and enabling works was in respect of asbestos removal. The acquiring authority had commissioned an asbestos survey by Safeguard Environmental that had revealed the prevalence of chrysotile; a material that Mr Wallace said barely merited describing as asbestos. He argued that much of the expenditure on this item was due to vandalism that would not have taken place in the absence of the compulsory purchase, and estimated the cost of asbestos removal at £300,000. The cost allowances for soft stripping and the removal/disposal of cladding were included in the fit out costs and had not been separately identified. Mr Wallace explained that his analysis of the claimant's costs records had revealed unallocated expenditure for day labour that he had put under the heading of fit out on the basis of a global allocation.

134. Mr Mould submitted that Mr Wallace's figure for preliminaries was based upon actual developments by the claimant. He had shown how an entrepreneurial purchaser would be able to limit preliminary costs, whatever the actual procurement route that was chosen. By contrast Mr Martin had relied upon the median of a range of costs to be found in BCIS data. This bore no relationship to the main contract procurement method that he advocated. Although he had taken 14.5% for preliminaries, Mr Wallace had demonstrated that this was actually 16%, a figure that sat very uncomfortably with the actual figure of 7% for Mr Wallace's comparables.

135. The estimate for demolition was based on a quotation from an experienced engineering company, that had worked for the claimant on several schemes but which the acquiring authority had tried to dismiss by reference to its website appearing to show the Comer Group as its only client and to a lack of demolition experience. Mr Wallace had quite reasonably used this quotation; it was relevant and, as Mr Mould described it, "galvanized the reliability of the evidence". It gave details of the specific cost of the works involved and there was no reason not to use it.

136. The acquiring authority had not produced the quotation for asbestos removal upon which Mr Martin relied. The provenance of the acquiring authority's evidence on this point was unclear and Mr Wallace's estimate, whilst not exact, was reasonable and should be accepted, particularly in view of the relatively benign nature of the material found on site.

137. The difference between the parties in respect of soft stripping and the removal and disposal of cladding was due to the fact that Mr Wallace had made a substantial allowance for these items under the heading of fit out. Mr Martin by contrast had made a specific total allowance of £658,586. Mr Mould noted that Mr Wallace's figure for fit out was higher than Mr Martin's (by an eventual figure of £347,498), which he submitted supported Mr Wallace's explanation of how he had allowed for these items.

138. Mr Martin estimated the cost of preliminaries for the baseline scheme (including insurance and supervisory costs) to be £4,618,090 and the cost of site clearance and enabling works to be £1,507,674.

139. Mr Martin explained that the acquiring authority had engaged a team of consultants to provide specific technical advice about the proposed redevelopment of Tollgate House. His role was that of project manager with responsibility for directing, managing and coordinating the activities of the consultants. The construction cost consultant was Davis Langdon LLP. They had produced cost plans for the baseline scheme in September 2008. They allowed 14.5% of the construction cost (including the car park) for main contractor preliminaries, a figure that Mr Martin adopted. He supported this approach by reference to a study of preliminary percentages undertaken by BCIS. For the second quarter of 2006 this showed that the mean preliminary percentage was 15.7% and the median 14.4%. There was a good sample size (123 projects) and the percentages had been consistent over the period 2003 to 2008. Mr Martin said that he had been fairly conservative by taking the median and that he could have taken a higher figure given the characteristics of the site which was confined and busy with more than one building and limited working space. There would be a need for off-site

accommodation, the movement of the site establishment as the work proceeded, double handling and working at height, all of which would increase the allowance for preliminaries.

140. Mr Wallace's figures were exceptionally low. His comparables at Comer House and Northampton House showed a large disparity in the allowance for preliminaries and Mr Martin did not think that it was appropriate to average them without a detailed analysis of the quality of the data. These were very different projects to that at Tollgate House.

141. Mr Martin said that the claimant's cost of demolition (reduced from £181,185, or £5 per sq ft, to £125,000 during the course of the hearing) was wholly unrealistic. The demolition of the upper floors was a complex operation involving considerable temporary works, such as crash decks and craneage for the removal of the existing cladding panels, as well as material sorting and concrete crushing facilities. Mr Wallace had allowed for the removal and disposal of the cladding as part of the fit out works but taking the cladding off Tollgate House was a very different task to stripping the brick cladding off Comer House. The latter could be done using general labour and the salvaged material used as hardcore. Tollgate House on the other hand was clad in pre-cast concrete panels that needed to be released by burning through steel fixings and then lifted off by crane.

142. The steel reinforcing bars then needed to be removed and disposed off. The whole operation was more involved, more skilled and more costly.

143. The acquiring authority allowed £263,610 for demolition and £658,586 for soft stripping and the removal and disposal of the cladding. It costed the structural alterations at £214,930. Its allowance of £370,548 for asbestos removal was based upon an a survey that was carried out in November 2005 by Safeguard Environmental Consultants Ltd and adjusted for June 2006 prices.

144. Mr King submitted that the claimant had consistently underestimated the costs of the Tollgate House scheme by constantly referring to the Comer Group's other developments, especially those at Comer House and Northampton House, and by assuming that the Tollgate House project would be run in-house. Those erroneous assumptions meant that Mr Wallace had made an unrealistic assessment of the preliminaries that would be required. Those costs covered site management and personnel, site labour and accommodation, security, hoardings, scaffolding, craneage, site water, power and general waste disposal. He had taken them as being 8.2% of total costs, a figure that was at or around the lower decile of the BCIS data. It had been derived from information that Mr Wallace had laboriously extracted from the claimant's opaque records about Comer House and Northampton House. But the figures for the two projects were themselves 47% apart and neither of them, let alone an average of the two, could be said to be representative. Mr Wallace's allowance was unrealistically low for a scheme of this size and complexity. Mr Martin has chosen a figure of 14.5%, which was the median of the BCIS data and which he explained was conservative and could well have been higher. Mr Martin's conclusions were backed by years of relevant experience and were founded on the type of robust publicly available information to which the hypothetical purchaser would have regard.

145. Little weight could be given to Mr Wallace's evidence about soft strip and cladding removal/disposal costs because he had produced no separate figures in respect of them, saying that these costs were included within fit out costs. This was unsatisfactory because those costs were not particularised and related to buildings whose structure did not resemble that of Tollgate House. There was not much between the parties on the cost of asbestos removal but Mr Martin had derived his estimate from an actual survey undertaken at the time of demolition whereas Mr Wallace had made an ad hoc upward adjustment of £50,000 to the figure of £250,000 that had been given to him by Mr Lees of the Comer Group. This was no more than guesswork and Mr Martin's figure should be preferred.

146. Demolition costs had been costed by Mr Martin whilst Mr Wallace relied upon a quotation from Engineering and Construction Products, a company about which the Tribunal had been told nothing. No evidence was produced to illustrate that company's experience in demolition projects and Mr King submitted that the Tribunal should prefer Mr Martin's evidence on the point.

Conclusions

147. Before we can compare the parties' allowance for preliminaries it is necessary to ensure that they are on a consistent basis. Mr Wallace deals with preliminaries in two ways; firstly, as a project wide cost (which we take to include Opecprime's supervision costs); and, secondly, as a separate car park cost (which both Lancsville and MPB identified in their quotations). However, he does not isolate the car park preliminaries from the other car park costs in the agreed Scott Schedule. The total of Mr Wallace's two figures for preliminaries is £2,353,982, or 10% of his total construction cost (before fees). Mr Martin produces a single figure of £4,618,090 for the project as a whole, which is 14.5% of his total construction cost (before fees), including the car park.

148. Mr Wallace says that Mr Martin's figure of 14.5% excludes a number of items in the Davis Langdon cost plan that have been separately identified as preliminaries and that if these are taken into account his true percentage is 16%. We have examined the latest version of the cost plan that was submitted to us in respect of the baseline scheme (document BCC 7) and we agree with Mr Wallace that such separate allowances have been made. In that document we found seven entries for preliminaries, all of which relate to mechanical, electrical and public health installations, five of which are in respect of internal fit out works (totalling £480,300) and two in respect of the landlord's central M&E installations (shell and core) (totalling £239,700). The total allowance of £720,000 forms part of the net construction costs to which preliminaries are then added at 14.5%. Mr Martin therefore appears to have double counted by taking preliminaries on preliminaries.

149. Mr Martin relies upon the Davis Langdon cost plan, the BCIS data and his own experience. Mr Wallace relies mainly upon the data abstracted from the claimant's daybook records from the Comer House and Northampton House redevelopments. He acknowledges that he does not have direct experience of setting up such projects. Both sources of evidence have their problems as we have highlighted when discussing the respective approaches above. On balance we prefer Mr Martin's evidence. We consider that it fairly reflects the complexity

of the proposals and the main contractor procurement method that we favour, whilst being supported by objective, albeit generalised, data from BCIS. Mr Wallace is dependent upon his analysis of two schemes that he says are comparable but which in fact can be distinguished from Tollgate House. That analysis gives widely different results for the two comparables and we are not satisfied that a simple average of the two produces a robust result capable of use at Tollgate House. We conclude that preliminaries should be taken at 14.5% of the total construction cost (before fees), but avoiding the double counting referred to above. This figure is inclusive of insurance and supervisory costs.

150. We do not know what figure Mr Wallace has allowed for soft stripping and the removal and disposal of the existing cladding. These costs are embedded in the figure for fit out costs and are not separately identified. It may be, as Mr Mould suggests, that there is not a great deal between the parties on the point but the acquiring authority's approach has the benefit of being explicit and based upon documents to which we have ready access rather than the daybook extracts and summaries that Mr Wallace refers us to and which he invites us to consider "in the round". The acquiring authority's figure for soft stripping (including the removal of M&E services) is found in Davis Langdon's latest cost plan where each item of works is set out and costed. The total is £551,000, which when adjusted to June 2006 values using Mr Martin's assumptions (ie by reducing this figure by 12.13%) gives £484,164. We consider the costs to be reasonable and we accept Mr Martin's figure.

151. We find Mr Martin's arguments about the difference between Tollgate House and Comer House in terms of the difficulty of removing the cladding to be persuasive. We do not accept Mr Wallace's suggestion that this cost can properly be reflected as part of the general labour costs absorbed within the overall fit out costs. He accepted during cross-examination that it might be insufficient to allow for it in this way. We accept that the removal of the cladding at Tollgate would require craneage. The acquiring authority allows £160,000 for removing and disposing the cladding panels and £38,500 for removing and disposing the existing windows, glazing and curtain walling, making a total of £198,500. When adjusted for time to June 2006 values this gives a figure of £174,422, which we accept.

152. The claimant's figure for structural alterations is £126,270, being in respect of works on the shear walls, including foundation piles. The cost of infilling openings is separately shown under superstructure works in the sum of £73,562. The acquiring authority includes infilling works within its figure for structural alterations, which totals £214,930. We consider a sum of £200,000, including infilling costs, to be appropriate.

153. Mr Wallace's allowance of £300,000 for the removal of asbestos was not based upon the claimant's own survey but upon a critique of the survey and report prepared for the acquiring authority in November 2005 by Safeguard Environmental Consultants Ltd. That report was not submitted as evidence by either party but Mr Wallace says that it was disclosed to him. He argues that the acquiring authority's allowance for this item is too high for two reasons; firstly, because the type of asbestos found, chrysotile, was low risk and, secondly, because the cost of removal has been increased due to the exposure of the asbestos by vandalism which, he says, was due to the scheme. Whilst we have not had the benefit of reading the said report we have been given no reason why its costings did not reflect the type of material actually found. With regard to the effects of vandalism we refer to the statement of the President of the Tribunal, V

G Wellings QC, in *Gateley v Central Lancashire New Town Development Corporation* [1984] 1 EGLR 195 at 196K:

> "The general rule is clear: the risk of loss or destruction of property acquired compulsorily is on the owner and does not pass to the acquiring authority until entry or the date of determination of compensation (if that event precedes entry)…
>
> While that is the principle, an acquiring authority is, in my view, not entitled to increase the risk borne by the owner." (References omitted).

There is no evidence before us that, by their actions, the acquiring authority increased the risk of vandalism, the existence of which is not disputed. Unlike in *Gateley* the acquiring authority does not concede the point and it rests on the simple assertion of Mr Wallace. We consider that an allowance of £350,000 is reasonable for the cost of asbestos removal.

154. Mr Wallace bases his demolition costs on a quotation from Engineering and Construction Products (ECP) in a letter dated 9 September 2008. It is not clear whether the costs provided in that letter are as at the valuation date or the date of writing. The total cost is £174,250 but Mr Wallace excludes the insurance allowance of £50,000 which he says is included elsewhere, giving a rounded figure of £125,000. Mr Martin's time adjusted figure of £263,610 is based upon Davis Langdon's latest cost plan which in turn is taken from advice received from the "Broadmead Development Consultant" involved with the demolition of Tollgate House. The total costs of demolition are said to be £1.75m of which 30% is in respect of the top two floors, giving £525,000. Davis Langdon says that this is not supported by (unspecified) published data and that an allowance (before time adjustment) of £300,000 is appropriate. We have been told little about ECP other than they have acted for the Comer Group in the past. Equally the acquiring authority has not given any details of the consultant Davis Langdon relies upon and whose conclusions are not accepted by them but instead require a downward adjustment of over 40%. We consider that Mr Wallace's figure is too low for a building of this height and size and we allow a sum of £225,000 for demolition.

Cost of cladding the residential tower

155. We have rejected the claimant's argument that Marmorit would be a satisfactory form of cladding for the residential tower for the reasons given in paragraphs 60 to 64 above. What remains to be determined is the most suitable type of glass curtain walling and its cost. The difference in the cost estimate of the parties is substantial; the claimants say the cost of a curtain walling system for the baseline scheme would be £3,735,174 whilst the acquiring authority says that it would be £7,268,273, a difference of over £3.5m.

156. The parties disagreed about the type of glass curtain walling that would be appropriate. Mr Wallace maintained that a stick system would be used, this being a simpler and cheaper system to the unitised system favoured by Mr Martin. Mr Wallace said that he knew of no residential schemes where a unitised cladding system had been used. He described it as a Rolls Royce approach that was extremely expensive and probably at the very top end of both price and quality. He thought that the curtain walling proposed by Mr Martin was disproportionate

to the market that the flats were aimed at, namely first time buyers and affordable and social housing.

157. Mr Wallace said that he had estimated the cost of a stick curtain wall system for the baseline scheme at £380 per sq m by using the 2009 edition of Spons and then adjusting for time (to the valuation date) and location. The system was described in Spons as "Stick curtain walling with double glazed units; aluminium structural framing and spandrel rails. Standard colour powder coated." This represented the upper end of the cost range for such a system and compared with the adjusted cost of an equivalent unitised system of £605 per sq m (also at the top end of the range). Mr Wallace also provided further extracts from Spons but apparently did not rely upon these in the estimation of the cladding cost.

158. Mr Martin favoured a unitised curtain walling system. He said that this was a better build quality than the stick system. It was important in a high, exposed residential building such as this that good quality cladding was used in order to avoid water ingress. The unitised system would take less time to install and would not require scaffolding, an advantage because the basement car park works came right up to the tower. In their cost plan Davis Langdon had taken a (2008) figure of £750 per sq m for the cost of such a system. Mr Martin adjusted this using Davis Langdon's adjustment factor of minus 12.13% to give an equivalent 2006 figure of £659 per sq m.

159. He checked this figure by comparing it with the prices shown in the 2006 edition of Spons. He took as his starting point a medium quality curtain walling system with a price range of £433 to £721 per sq m and adopted a figure of £550 per sq m. He then made an addition of £70 per sq m for high performance glass, opening lights and fire/acoustic seals, giving a total of £620 per sq m. He explained that this check figure was for a stick system whilst Davis Langdon's figure was for a unitised system. He accepted that there was nothing in this part of his evidence (regarding the check costs) that dealt with a unitised system or with residential, as opposed to commercial, office or leisure buildings.

160. He criticised Mr Wallace's figure as being too low. He said that it did not allow for the increased thermal insulation requirements under the Building Regulations that were introduced in 2006 and were based on general figures for curtain walling that were not representative of a residential tower. It was based on a flat system with no openings, a commercial grid spacing of 1.5m rather than a residential module of 0.9 - 1m and low quality glass.

161. Mr Mould submitted that the use of a unitised system was inappropriate for the conversion of an office building to residential units and that no evidence had been adduced of its use on residential schemes in Bristol or elsewhere. A developer would not over specify the materials required and would act reasonably in pursuit of his commercial objectives. He said that this was not a scheme to produce a headquarters building for a FTSE 100 company and the use of the highest quality cladding solution was not essential to the success of the development. Mr Martin had chosen a unitised over a stick system "on balance" which was an unsustainable basis for making such a choice considering the cost consequences of doing so. Mr Orr had not argued that any particular curtain wall system was required on planning grounds and a prospective purchaser would choose the most economical system.

162. Mr Martin had taken the cost of the unitised system, in 2008 values, at £750 per sq m, a figure provided by Davis Langdon. There was nothing to support this figure; Mr Martin believed that it was taken from Davis Langdon's own information and published data. Mr Mould noted that Mr Wallace's extracts from the 2009 edition of Spons showed that £750 per sq m was the highest figure for any curtain walling system, being a bespoke unitised solution. Mr Martin's check of Davis Langdon's figure was based on the 2006 edition of Spons. This contained no information about the cost of curtain walling systems used in residential developments, which supported Mr Wallace's view that such a cladding system was normally inappropriate for residential buildings. Furthermore Mr Martin's check did not compare like with like. He had compared the adjusted mid-point cost of a stick system with Davis Langdon's cost of a unitised system. There was no way of knowing whether the two systems were truly equivalent.

163. Mr King submitted that Mr Martin's evidence about curtain walling costs had the benefit of being corroborated by information that was available at the valuation date, whereas Mr Wallace's evidence on the point was derived solely from the 2009 edition of Spons. Mr Martin relied upon the adjusted figure of £659 per sq m provided by Davis Langdon and had checked this against the data in the 2006 edition of Spons in respect of a medium quality stick system. He had made reasonable adjustments to his base figure of £550 per sq m to allow for a range of additional items. These brought the cost up to £620 per sq m. It was not suggested to Mr Martin that these additions would be excluded from the design of a residential tower such as Tollgate House.

164. Mr King said that none of the data from the 2009 edition of Spons that Mr Wallace relied upon was comparable to Tollgate House. It related to different geographical areas, mixed brickwork and curtain walling schemes, old (2004) projects, commercial rather than residential uses and did not allow for ventilation, fire/acoustic seals or adequate thermal insulation. In short, Mr Wallace's evidence did not assist the Tribunal.

Conclusions

165. Mr Martin does not convince us that a unitised curtain walling system would be a requirement of the hypothetical purchaser. He gave no evidence of the 2006-outturn prices for such a system in any actual residential schemes and checked the cost figure for Davis Langdon's unitised system against a medium quality stick system. The decision to use a unitised form of curtain walling was his alone and not that of the acquiring authority's core team. The acquiring authority's closing submissions record this decision "on balance" as being "likely to be preferred". It was not a clear-cut choice. Nor was it a planning requirement put forward by Mr Orr and, in our opinion, would in any event have been too prescriptive in terms of materials. We acknowledge the several advantages that a unitised system may have with regard to its quality and ease of fitting but we conclude that a prospective purchaser at the valuation date would have been particularly conscious of the sensitivity of the valuation to the cost of cladding and we consider that it would have based its bid upon a medium quality stick system of the kind described and costed by both experts.

166. We explained above that we are prepared to consider the adjustments applied by Davis Langdon to convert 2008 costs into 2006 values because the method they use calibrates the former costs against actual, specified 2005 costs and then increases the result to reflect the expectations for future cost increases as they existed at the valuation date. However, no such calibration exists in Mr Wallace's calculations. He takes the 2009 edition of Spons and adjusts the figures it contains backwards to the valuation date by a general index factor of 0.7 to allow for differences in time and location. Mr Martin challenges the accuracy of that adjustment and in our opinion Mr Wallace's methodology depends upon the type of hindsight that we have already said should not be used.

167. Mr Martin bases his check estimate on a system described in Spons as:

> "6 mm Clear float glass double glazed polyester powder coated aluminium site constructed 'stick' medium quality standard curtain walling system including opaque insulated spandrel panels"

The cost range for this system is £433 to £721 per sq m. Mr Martin adopts a figure of £550 per sq m and adjusts it by an additional £70 per sq m to allow for high performance glass, opening lights, vents and fire/acoustic seals, giving a total figure of £620 per sq m. However, despite this analysis, he still adopts Davis Langdon's adjusted figure of £659 per sq m for a unitised system.

168. It is not clear from the Spons 2006 extract submitted in evidence which, if any, of the 'extras' listed under the previous entry for an 'economical quality standard curtain walling system' are included within the cost of the 'medium quality' system adopted by Mr Martin. In his closing submissions Mr King says in a footnote that Mr Martin has allowed £35 per sq m for high performance glass, £50 per sq m for opening lights (purge ventilation), £10 per sq m for trickle ventilation and £10 per sq m for acoustic and fire breaks, making an additional £105 per sq m. Added to the base figure of £550 per sq m this gives a total of £655 per sq m which Mr King says "factored to Bristol at September 2005 came to £620 psm" Of those figures only that for high performance glass is readily discernable from Spons, the others either not being referred to at all (trickle ventilation and fire/acoustic breaks) or else are dependent upon the actual area of the opening windows (not stated in Mr Martin's evidence).

169. We do not understand Mr King's reference to factoring back to September 2005 prices. We understood Mr Martin's evidence to be that £620 per sq m was the cost as at 2006 prices, in accordance with his view that a prospective purchaser would estimate the cost as at June 2006 when undertaking a valuation in September 2005. That is what he said in his evidence in chief. We do not think that Mr Martin's check estimate resulted in a figure of £655 per sq m compared with the Davis Langdon figure of £659 per sq m as at 2006 prices. We understood his evidence to be that although his check produced a figure of £620 per sq m in 2006 prices he nevertheless relied upon Davis Langdon's 2006 figure of £659 per sq m, which had been included within the Scott Schedule placed before the Tribunal.

170. We think that Mr Martin was reasonable in choosing a medium quality stick system and adopting a figure of £550 per sq m, which is somewhat less than halfway (£577) within the stated cost range. However, we are not satisfied that the cost of the further adjustments has

been adequately established by reference to Spons or otherwise and we think, considering all of the evidence before us, that an addition of 10%, or £55 per sq m, should be made to the base cost to reflect the factors described by Mr Martin and which were not challenged in principle by the claimant. We therefore take the cost of the curtain wall cladding at £605 per sq m, or approximately 92% of the figure taken by Davis Langdon for a unitised system at the same date.

171. There is a slight disagreement between the parties about the area of the external walls to be clad under the baseline scheme. It appears that Mr Wallace took 9,577 sq m whilst Mr Martin took 9,874 sq m. We have taken the average of the two figures, namely 9,725 sq m. Applying our determined rate of £605 per sq m to this figure gives a total cost of £5,883,625.

Car Park

172. Mr Wallace relied upon a tender approach to assess the cost of the basement car park since he had no comparable evidence. An engineering solution was prepared by Mr Sheppard of Opecprime and checked by Mr Osborne of Matthew Consultants, part of the Walsh Group, before being given to Mr Philip Little of Interface Management Limited, who prepared projected costs and a method statement. The total costs were estimated as £2,717,187 (£2,425,283 as at September 2005), a figure that was updated to £3,112,213 in Mr Wallace's rebuttal report and rebased to the valuation date in the sum of £2,777,650.

173. In response to criticisms of this approach from Mr Martin, Mr Wallace subsequently obtained competitive estimates from two contractors experienced in this type of work, Lancsville Construction Limited and MPB Structures Limited. These estimates were based on September 2008 and September 2005 prices respectively. They both included preliminaries but excluded M&E services. Mr Wallace allowed for M&E costs in two ways. Firstly, he obtained an estimate for the ventilation of the cark park from SPA Systems, who in turn consulted Fire Design Solutions. This (undated) estimate was £115,000. Mr Wallace increased this by £5,000 to allow for builders work in connection therewith (BWIC), giving a total of £120,000. This figure was rebased to 2005 prices by reducing it by 10.75% for "time and location", giving an adjusted total of £107,100. Secondly, he allowed £219,000 for lighting and emergency lighting, making an overall allowance of £326,100 for M&E. Mr Wallace added this amount to both the Lancsville and the MPB estimates. He adjusted Lancsville's estimate to September 2005 prices by reducing the total cost by 10.75%. Having made these adjustments Mr Wallace then took the average of the Lancsville and MPB estimates to give his finally adopted figure of £3,952,215. In cross-examination Mr Wallace accepted that this estimate did not include any allowance for fitting out the car park.

174. Mr Mould submitted that Mr Wallace's approach was clear, realistic and responsive to criticism and new information. Mr Wallace's approach was difficult to fault. The acquiring authority had not challenged the competence of the two contractors whose estimates he had ultimately relied upon, the design solution prepared by the claimant was not significantly questioned and the quotations obtained were full and consistent with each other, adding confidence in their completeness and reliability. The acquiring authority raised a number of criticisms of the quotations from MPB and Lancsville but these were neither significant nor

supported. Both these contractors were experienced in this type of work and it was reasonable for them to assume slightly different methodologies to those specified by the claimant. It mattered not in practice, for instance, whether they used a waling beam or a berm as a means of temporary support. Mr Martin had not sought any quotation from a competent contractor based upon an agreed car park specification but instead relied upon an estimate by Davis Langdon, the details of which had not been provided.

175. Similarly, Mr Wallace relied upon a competent company to provide an estimate of the cost of ventilation. The acquiring authority had not substantiated its implicit criticism of SPA Systems and gave no evidence to support its assertion that their estimate was inadequate.

176. Mr Martin said that the cost of the car park in 2008 was £7,348,400 (basement) and £241,600 (surface). These figures were supplied by Davis Langdon and were based upon a cost plan that Mr Martin directed and managed, with input from himself and a number of consultants. Rebasing the figures to June 2006 gave costs of £6,457,022 and £212,267 respectively, and a total of £6,669,289 (excluding preliminaries). Davis Langdon based their estimate upon detailed measurements and the application of both their own and published unit rates. The results were compared with Davis Langdon's own and other published benchmark rates for underground car parks. (In his final valuation Mr Owen for the acquiring authority adopts a figure of £6,239,060 as the cost of the baseline scheme car park. The provenance of this figure is not explained but it appears to be the average cost of each of the 310 car parking spaces, £21,513, multiplied by 290, being the total number of underground spaces. Mr Owen does not appear to have allowed anything elsewhere in his valuation for the cost of the remaining 20 office/surface spaces.)

177. Mr Martin said that Mr Wallace had revised his cost estimate following criticism of it by the acquiring authority. However, the revised figure still did not allow for all the relevant construction items. For instance the downstand beams between columns, that had to take the weight of the office, leisure and affordable housing development above, were missing. Mr Wallace had assumed the use of sheet piles and it was necessary to provide sufficient stiffeners at both mid-height and the top of the structure. The claimant had not allowed for sufficient walers. Furthermore Mr Wallace had not allowed for joint isolation between the tower and the car park, or for breaking out rock and hard surfaces or for pile testing. Mr Martin denied that such items were just differences of methodology and said that they were omissions from the scheme that should be included. He said that Mr Wallace had also failed to allow for the fitting out of the car park which Mr Martin costed at £300,000. Finally, Mr Martin argued that the claimant's allowance for ventilating the car park was too small and lacked detailed analysis. The car park was divided into three areas for the purposes of ventilation for smoke extraction and would need twelve penetrations through the ground floor slab and six to the lower floor slab. He estimated that this would cost in the region of £400,000.

178. In cross-examination Mr Martin confirmed that he had not received independent advice about fire systems and that he had commented on Mr Wallace's method statement rather than produce one of his own. He also accepted that he had not sought to obtain quotations from firms working in this field.

179. Mr King submitted that the car park was crucial to the smooth running of the project as a whole and as such its cost would be carefully analysed by a prospective purchaser. Mr Martin had considered this item in the context of the programme for the project as a whole and he had been right to consider it in detail given the claimant's understatement of the cost. Davis Langdon's costings were robust and were based upon an agreed engineering specification and published data. The claimant on the other hand had changed its approach when it realised it had underestimated the complexity of the car park structure. The claimant's revised cost was derived from two quotations, one of which, that from MPB, was too brief to be of much assistance. The other quotation, from Lancsville, did not appear to have costed the specification since they had only priced the structural work. They had omitted important elements such as fitting out costs and M&E, the details of which Mr Martin had identified in his evidence. Mr Wallace described Lancsville's quotation as a "mock tender", but they had not allowed for risk or expressed any qualifications.

180. Mr Wallace's explanation that these points were merely a "difference in methodology" did not meet Mr Martin's criticisms. The omissions were significant. Mr Wallace conceded that he had omitted the fitting out costs for the car park. The allowance for "vent shafts" and "opening the slab" had contained no useful detail and had been defended by Mr Wallace as being the type of solution used before by the Comer Group. But that group had not previously provided a multi-level underground car park. It was obvious that an allowance of £115,000 for this item was inadequate and Mr Wallace could not answer detailed questions on the point, being wholly dependent upon the letter that he had procured from SPA Systems.

181. Mr Martin's evidence should be preferred because it was based on a thorough costing exercise undertaken by Davis Langdon that was not was not criticised in cross-examination. Mr Wallace on the other hand did not rely upon a verifiable cost build-up but instead gave evidence that contained admitted omissions and relied upon quotations that did not reflect the engineering specification or the self-evident ventilation requirements. This was a highly specialised and expensive item which Mr Martin had approached reasonably and carefully. His evidence on the point should be accorded substantial weight.

Conclusions

182. There is no significant dispute between the parties about the specification for the car park prepared by the claimant. The parties differ in how that specification should be costed and how fitting out costs and M&E should be allowed for. Mr Wallace decided to obtain quotations from companies that specialise in this type of work and relied initially upon an estimate from one of the claimant's former employees, Mr Philip Little. After criticism of this estimate from the acquiring authority Mr Wallace relied instead upon the average of two subsequent quotations from Lancsville and MPB. These quotations did not allow for either fitting out costs or M&E costs. The former were excluded altogether but Mr Wallace allowed £326,100 for M&E as described in paragraph 172 above. This figure had already been adjusted for time, but Mr Wallace added it to the quotation from Lancsville before adjusting the total amount back to the valuation date. The result is that he has applied his discount for time twice on the M&E estimate in relation to the Lancsville quotation. Correcting for this error gives an average for the two quotations of £3,969,743 adjusted to the valuation date

(including preliminaries). That is an increase of more than 63% above the claimant's original figure.

183. Mr Martin asked Davis Langdon to price a cost plan. This resulted in a level of detail that the hypothetical purchaser is unlikely to have contemplated, a fact acknowledged by Mr Martin in cross-examination but justified by him because of the "huge cost discrepancy in some areas" which meant that he had to try and break down the costs due to the lack of agreement on the main items. Mr Martin's time adjusted estimate of £6,669,289 (excluding preliminaries) substantially exceeds the claimant's figure. The main differences in those items which both parties included in their estimates are in the cost of the three reinforced concrete basement/ground floor slabs, the excavation of the basement and the sheet piling. The differences in the latter two items are especially pronounced, with the claimant's costs being less than half those of the acquiring authority. There are also a number of items where Mr Martin says that the acquiring authority has omitted important structural elements, such as downstand beams and walers, which cannot be explained by differences in engineering methodology. Finally, Mr Martin points out that the two contractors asked to quote did not price for either fitting out or M&E services.

184. We think that there is merit in asking contractors that are involved in this area of work to submit quotes against a given specification and we prefer this approach to that of the acquiring authority which relies upon an analysis of star rates based upon the National Cost Database, Spons and other published source material rather than direct, practical construction experience. The acquiring authority did not contest the expertise of the companies involved, although it dismissed the MPB quote as lacking detail. But we think that the amount of information provided by the contractors is representative of the level of detail that a prospective purchaser is likely to have gone into when making a bid at the valuation date. We do not believe it is realistic to suppose that a purchaser would have gone into the precise detail contained in the cost plan priced by Davis Langdon.

185. However, we accept Mr Martin's criticism of the claimant's quotations for not having conformed in certain respects with the specification provided and we agree that there are missing items that should be costed and which cannot be dismissed as differences of approach. We also agree with the acquiring authority that there should be an adequate provision for both fitting out costs and M&E services. Mr Wallace's approach to the latter seems to us to be unsatisfactory and we are not persuaded that the letter from SPA Systems and Mr Wallace's own analysis of lighting costs is a reasonable or reliable basis upon which to calculate the cost of such services. A total allowance of £326,100 is, in our opinion, wholly inadequate for a project of this size and complexity. It is also clear that an allowance must be made for fitting out the car park and Mr Wallace accepted that his figures do not include this.

186. Our starting point for the assessment of the car park cost is the average of the quotations from Lancsville and MPB, excluding preliminaries and adjusted to 2006 prices using the Davis Langdon adjustment factors. This gives a (rounded) figure of £3,265,000. We then allow for the cost of downstand reinforced concrete beams, the cost of waler support, for the breaking out of hard surfaces and for other items referred to by Mr Martin in his evidence. Doing the best we can with the evidence available we have taken the total 2006 cost of such items as £570,000. The cost of fitting out is said by Mr Martin to be approximately £300,000

(£265,000 at 2006 prices) and we accept this figure. Finally, it is necessary to allow for the cost of M&E services. Mr Martin said that the approximate cost of the necessary ventilation was £400,000 and we adopt this figure, which adjusts to £350,000 (rounded) at 2006 prices. The acquiring authority have allowed for a sprinkler system. In its 2008 letter to the claimant SPA Systems says that it is not necessary to provide sprinklers for any of the apartments but it is silent about sprinklers to the car park. We think that they should be included and we have allowed £200,000 at 2006 prices. Davis Langdon allow over £1m for electrical installations. We have examined the items included within this estimate and generally consider them to be reasonable although in our opinion the level of detail exceeds that which a prospective purchaser would adopt. We allow a total of £750,000 for electrical installations as at 2006. We also allow a total of £300,000 at 2006 prices in respect of a building management system, a lift to serve the car park from the affordable housing complex and sundry items. The total cost of the car park as at 2006 is therefore determined in the sum of £5,700,000, excluding preliminaries.

M&E services

187. Mr Wallace estimated the cost of M&E services to the apartments by analysing the equivalent figures at Comer House and Northampton House and adjusting the results for both time and location. The resultant cost per flat was similar, £15,718 at Comer House and £15,610 at Northampton House, in both cases excluding the cost of the lifts. Mr Wallace decided to use the higher figure for Tollgate House, which gave a total cost, when applied to the agreed figure of 275 flats in the tower, of £4,322,390. He also submitted an elemental M&E cost plan prepared by Consol Associates based upon Spons costs and which he said had been undertaken "late on to support my figure". This gave a figure per flat of between £12,391 (affordable) and £12,937 (private). In cross-examination he acknowledged that the Consol figures excluded M&E services to the shell and core of the building and also statutory charges. This explained the difference of some £3,000 between the Consol analysis and his figure. Mr Wallace explained that he did not assume the use of centralised plant which he said would save £600,000. He said that the M&E costs of the separate affordable housing block were included in their build rate.

188. Mr Wallace estimated the cost of the lifts by using the Comer Group development at Mast Quay, Woolwich as a comparable. This was a 15-storey new build development that provided a total of four, 8-person lifts. The total contract sum was just over £262,000 and Mr Wallace increased this to £300,000 for the larger baseline scheme at Tollgate House. He did not think it was necessary to provide 13-person lifts and considered that four 8-person lifts would be sufficient for the baseline scheme.

189. Mr Mould submitted that Mr Wallace's approach was robust and clearly supported by the analysis undertaken by Consol Associates. He had put forward a convincing rationale why Comer House and Northampton House were good comparables. Both involved the conversion of offices to flats with the attendant installation of residential M&E services. Mr Wallace, unlike Mr Martin, had visited these properties and provided evidence about the nature and standard of the units they contained. There was no reason to suppose that those at Tollgate House would be any different. Whilst Mr Martin had made unsubstantiated assertions about fire protection, Mr Wallace had consulted SPA Systems and had reasonably relied upon their

advice in this respect. The acquiring authority's reliance upon the costings produced by Davis Langdon was misplaced since there was no evidence to support the unit prices that they adopted and no reason to suppose that they were reliable or correct.

190. Mr Martin relied upon cost estimates prepared by Davis Langdon. These totalled £7,299,976 as at 2006 prices with a further £554,460 in respect of four 13-person lifts. The main difference between the parties was in respect of Mr Martin's allowance for the cost of the landlord's M&E installations (£2,316,429) and for statutory charges (£341,111). He said that he could find no allowance in Mr Wallace's figures for the latter and that he had been unable to identify anything in Mr Wallace's general building costs for the former. Mr Martin was very cautious about Mr Wallace's reliance upon Comer House as a comparable because there was no specification for it and it was not clear what items had been included. He said that there were differences between Comer House and the high rise Tollgate House. Traffic pollution was a problem on the Newfoundland Street elevation and would require the installation of carbon filters, the fire fighter's lift was 20m from a staircase which meant that either sprinklers or fire ventilation would be needed (he had assumed the latter) and a back up for the wet riser was necessary. Mr Martin disputed that the figure of £15,718 per flat adopted by Mr Wallace was adequate. There was not a sufficient difference between that figure and the cost per flat identified by Consol Associates to account for the landlord's installations. For instance he said that the claimant had not allowed for rainwater installations or electrical mains switchgear or cabling containment.

191. Mr King submitted that Mr Martin's analysis fairly represented the approach that a prospective purchaser would take, namely to use measured quantities at published costs. This approach had not been substantively criticised by the claimant other than in respect of Mr Martin's assumption of centralised plant. But Mr Wallace had not demonstrated that the comparable Comer Group developments justified a different type of plant. Indeed those comparables were neither similar to Tollgate House nor transparent in terms of their detailed specification and in any event would not be available to a prospective purchaser. For instance it was not clear whether any pre-existing M&E services had been re-used at Comer House. The daybooks upon which Mr Wallace relied were unhelpful on the point. Those daybooks did not necessarily contain details of all the M&E invoices. The cost of the statutory connections was unlikely to be included because that cost was met directly by Opecprime rather than the sub-contractor. Mr Martin had identified clear differences in scale and kind between Comer House and Tollgate House. The work that Consol Associates had done following earlier criticisms by the acquiring authority of Mr Wallace's analysis was not helpful. It was unclear what specification had been given to them; they had omitted all costs associated with the shell and core services; and they had included nothing for statutory charges. The claimants had wrongly assumed that 8 person lifts would be sufficient. But these costs were based upon the development at Mast Quay, each block of which only served 79 flats. The Tollgate House lifts had more floors and flats to serve and the development would require larger, 13 person, lifts. Mr King concluded that Mr Martin's evidence on the cost of lifts and M&E services in general should be preferred.

Conclusions

192. We are not satisfied that Mr Wallace's reliance upon the Comer House M&E costs as a comparable is justified. They lack detail, refer to a building that is different in size and kind to the subject property and exclude statutory charges. We prefer the acquiring authority's approach, although we have reservations about the use of centralised plant and the works of fire protection. The evidence on these points does not seem to us to be conclusive. We also note that Davis Langdon have allowed for preliminaries at 10% on the cost of mechanical, public health and electrical installations for all of the flats and the ground floor reception area. This amounts to £480,300 for the flats themselves and a further £239,700 for landlord's central (shell and core) installations, in both cases at 2008 values. For the reasons explained at paragraph 147 above we believe that to include this would double count the allowance for preliminaries and we therefore deduct these amounts from the acquiring authority's costs under this heading. This gives a revised cost, as at 2006 prices, of £4,220,396 for the flats and £2,105,805 for the landlord's installations, making a total (once statutory charges of £341,111 are included) of £6,667,312 or £24,245 per flat. This compares with the equivalent figure for the claimant of £15,718 per flat. But that figure excludes any allowance for statutory charges and, in our opinion, an inadequate allowance for landlord's installations. In the light of all the evidence we have adopted a robust figure for M&E costs of £22,500 per flat, including statutory charges and landlord's installations, which gives a total cost of £6,187,500.

193. We do not accept that the provision of 8 person lifts will be adequate at Tollgate House as suggested by Mr Lees, who, as the acquiring authority point out, is neither an engineer nor a lift/M&E expert. The property at Mast Quay is not as substantial as Tollgate House and we think the lifts should be larger, as they were when it was an office building. We accept the acquiring authority's figure of £554,460 which we think is reasonable. Our total allowance for M&E costs is therefore £6,741,960. The parties have agreed that the cost of the M&E services for the separate block of affordable housing is included in the build rate.

Other disputed cost items

Superstructure

194. Apart from the cladding of the building, which we have dealt with above (and the sum of £177,500 that we have allowed under the heading of superstructure for a cleaning cradle and automatic doors at ground floor level), there are four further disputed items relating to the cost of the superstructure. We deal with each of these in turn.

195. Balconies. Mr Wallace estimated the total cost of the balconies at £630,000 and that of the balustrades at £169,907. Mr Martin said the cost of external balconies was £675,017, the cost of internal balconies was £113,880 and the cost of balustrades was £395,679, making a total difference between the parties of £384,669.

196. Mr Wallace based his figures upon the development at Northampton House, which he said had a similar form of balcony construction to that proposed at Tollgate House (although

the balconies at Northampton House were larger). His analysis of the costs at Northampton House showed a cost per balcony of £7,135, which he increased to £7,500, the same rate as that taken by Davis Langdon when costing the balconies for the acquiring authority (at 2006 prices). He accepted that the agreed design Option G meant that the balconies would be longer than originally envisaged but they were still smaller than those at Northampton House and Mr Mould submitted that this was a robust figure. Mr Wallace said that the figure also allowed for the internal balconies because the method of construction was the same as that at Northampton House and included the newly created internal areas. The claimant allowed for the construction of 84 balconies. Mr Wallace's estimate for the balustrade included the terrace balustrade to floors 16 and 17 (penthouse), privacy screens and waterproofing to the 16th floor terrace.

197. Mr Martin relied upon estimates produced by Davis Langdon. Like the claimant they used a cost per balcony of £7,500 but applied this to 90 flats rather than 84. Their figure also excluded the cost of internal balconies which they estimated separately at £113,880 using rates derived from their national cost database and Spons. Mr Martin's allowance for the balustrade was made up of £115,300 for the 16th floor terrace and £335,000 for the penthouse on what Davis Langdon described as floors 17 and 18. In both cases the costs were developed on an elemental basis and included a paving finish to the terrace, glazed stainless steel balustrades and dividing walls. The cost was then adjusted to 2006 values to give a total of £395,679. Mr King submitted that the figure of £7,500 per balcony had been agreed by the parties before the finalisation of the preferred Option G layout and that as a consequence the longer balconies contained in that option would need to be taken into account. Mr Martin had done this proportionately but Mr Wallace had made no such adjustment. Nor had he allowed for the internal balconies which were significant additional components of the design.

198. *Conclusion*. We have found the evidence on this issue difficult to interpret. We understand from the plans and accommodation schedules of Option G that each of the four floors of affordable housing has a total external balcony area of 58.7 sq m which serves six flats. The balconies are of different size, ranging from 6.8 sq m to 12.7 sq m. The external balcony area on each of the twelve floors of private sector housing is slightly smaller, at 52.5 sq m which serves five flats. The range of balcony size is 6.8 sq m to 13.8 sq m. The difference is explained by the fact that flat 6 on the private housing floors is a three bedroom unit with two external balconies separated by what we assume to be an internal balcony, whereas the equivalent unit on the affordable housing floors is divided into two one bedroom flats each with its own external balcony. In total we calculate that there are 84 flats which have external balconies under Option G. We assume that the figure of £7,500 that both parties have used is an average cost per external balcony. It is not clear to us how Mr Martin has allowed for the longer balconies under Option G. Mr King says that he has done so proportionately but no details are given. The acquiring authority has assumed 90 flats rather than 84, but we think that this is incorrect on the interpretation of the evidence that we have outlined above. Using a figure of 84 units we calculate that the cost of the external balconies is £630,000 at 2006 prices.

199. The arrangement of balconies has changed from the previous versions of the baseline scheme. We have the plans that accompanied the November 2007 scheme and from these we note that the area of the external balconies was less, and the area of (what we assume to be) the

internal balconies apparently three times larger, than under Option G. Mr Martin has allowed separately for internal balconies (described in the August 2008 Davis Langdon report as "New internal area adjacent balconies 1-15 (based on Option G – 3 no.)"). It is not certain that Davis Langdon were costing the same version of scheme G as that subsequently agreed between the parties, namely Option G1 (formerly Option H) for the private sector housing and Option G2 (formerly Option F) for the affordable housing. Mr Wallace says that the cost of the internal balconies is already included in the unit figure of £7,500. Given the opaqueness of the elemental cost approach on this point, the fact that the statement of agreed facts does not distinguish between internal and external balconies, and the fact that there appears to be a smaller area of internal balconies than under previous versions of the baseline scheme, we accept Mr Wallace's view and make no addition for internal balconies.

200. There is a substantial difference between the parties about the cost of what is described in the Scott Schedule as "Terrace waterproof balustrade". Mr Wallace does not appear to have allowed for this item in his original report but has subsequently included a cost of £169,907 for "Balustrades etc to penthouses". This comprises a total of £89,696 for the sixteenth floor, £74,461 for the seventeenth floor and £5,750 for privacy screens. Mr Martin, relying upon the elemental analysis provided by Davis Langdon, allows £101,314 in respect of the terrace to the sixteenth floor and a further £294,365 in respect of floors 17 and 18. The notes which accompany this part of Davis Langdon's cost schedule are wrong and appear to have been incorrectly transposed from a previous version relating to the November 2007 scheme. As far as we can tell, however, the cost of two major items, the rain screen cladding and the glazed balustrade, have been reduced since the earlier scheme was costed. Nevertheless we think that the acquiring authority's allowance is still too high and that it is too reliant upon a detailed elemental cost analysis that a prospective purchaser would be unlikely to conduct. We therefore allow £300,000 for this item.

201. Lift cores. Mr Wallace allowed £73,562 for infilling two of the six lift shafts. He explained that the work involved was not great, requiring only the removal of a wall at each floor and the infilling of the hole that was left. He had prepared a detailed cost estimate based on the works designed by the Walsh Group. The claimant accepted that Mr Wallace's costs had not made a specific allowance for the demolition of the said wall but Mr Mould submitted that the figure proposed by the acquiring authority was not justified. Mr Martin's figure for structural works to the lift and stair cores was £468,159. He explained that because these lift shafts provided support to the surrounding building it was necessary to reinstate a structure that would continue to fulfil this function. He had consulted Waterman Structures who had advised him that four reinforced concrete columns should be provided from the ground floor to level 17.

202. We accept Mr Martin's evidence that the works required as a result of the removal of the lifts are not as simple as suggested by Mr Wallace and that new structural support will be required, including additional shear walls to the central core. (Mr Wallace allowed the sum of £126,270 in respect of shear walls and foundations under an alternative heading; see paragraph 151 above). We agree that this is an item that would require specialist advice and that it is site specific. However, there are no details of the input from Waterman Structures and, taking a robust view of the evidence, we allow £375,000 for this item.

203. Floor plate extension. Mr Wallace provided details prepared by Walsh Associates showing the works required to extend the floor plate of each floor 0.5m beyond the existing column line. The acquiring authority agreed these. He then gave a detailed analysis of how much each element of the agreed solution would cost based upon Spons prices. Adjusting for time and location gave a total price of £189,166. Mr Martin criticised Mr Wallace's figures for not reflecting the agreed design solution, in particular for using timber formwork rather than a permanent steel plate. He costed the agreed specification using Davis Langdon's rate of £277pm and a total floor length of 1974m to give a total cost of £546,800, which adjusted to £480,473 at 2006 prices.

204. The estimate prepared by Davis Langdon gives no details about the provenance of the cost of £277pm and Mr Martin agreed in cross-examination that there was nothing in evidence that threw light on its origin. We also note that the parties use different lengths for the floor extension. In view of this lack of information and agreement of detail, and also the fact that, unlike Mr Martin, Mr Wallace has direct, relevant experience of steel fabrication that he has been able to bring to bear on this item of costing, we do not accept the acquiring authority's figure. But we concur with Mr Martin that Mr Wallace has not priced the agreed specification for this item and has therefore underestimated its cost. Once again we have taken a robust view of the evidence in the light of the likely approach that a prospective purchaser would take to this matter and we assess the likely cost at £350,000.

205. Suspended slab Holorib. Mr Wallace allowed a cost of £145,563 for this item whilst Mr Martin allowed £210,624, a difference of £65,061. The figures were not the subject of cross-examination. It appears that Mr Wallace has taken the cost of a "Ribdeck" type floor at £50 psm and Mr Martin, based upon figures provided by Davis Langdon, at £75 psm. In the absence of any other evidence we have averaged these two figures and adjusted back to 2006 prices. Using Mr Wallace's floor area of 3107 sqm this gives a total cost of, say, £170,000.

Fit out

206. Mr Wallace based his internal fit out rate upon an analysis of the equivalent costs at Comer House and Northampton House. He did not differentiate between the penthouses, private apartments or affordable housing. He took an average of the two properties and adjusted for time and location to give a figure for Tollgate House of £238.02 psm. He then applied this to an overall area of 21,046 sq m to give a total cost of fitting out of £5,009,369. However, Mr Wallace explained that this figure also included labour costs that had not been allocated within site clearance and enabling costs (see paragraphs 137 and 149 above). Mr Wallace accepted that it was impossible to tell how much had been included in the fit out figure for such labour costs.

207. Mr Martin said that the total fit out costs were £4,661,871, a figure that he obtained from Davis Langdon. They had prepared the costs on an elemental basis and included allowances for internal partitions, internal doors, wall finishes, floor finishes and ceiling finishes. They considered the private and affordable flats under one heading but made different allowances for some items in respect of the penthouses and the ground floor reception/landlord areas.

208. Mr Wallace criticised Davis Langdon's work and said that he had specifically checked certain elements which he considered were costed excessively, eg the cost of door fitting. He said that Davis Langdon had used costs in the range of £700-1400 per door which he described as a staggering sum. He produced an appendix which demonstrated how the developer could save a million pounds on this item alone by adopting the claimant's door fitting rate of £160 each.

209. *Conclusion*. We find it impossible to say how much, if any, of Mr Wallace's figure represents labour costs for stripping out the existing building. His total fit out figure is calculated by multiplying the adjusted average cost of fitting out Comer House and Northampton House by an area of 21,046 sq m (an area that was apparently accepted by the acquiring authority, albeit implicitly, when agreeing the cost of fittings and furnishings). So unless the cost of stripping out Comer House and Northampton House is included within the fit out costs for those buildings it seems to us that no allowance for such labour costs has in fact been made. Mr Wallace provided us with elemental cost summaries for the fit out costs at both Comer House and Northampton House. There is no explicit allowance for labour costs in the Northampton House summary. The Comer House analysis shows a cost for "Labour for fit out of apartment and offices" of £14.74 psf, which is 61% of Mr Wallace's fit out cost figure for that property. There is nothing to suggest that this includes an allowance for stripping out costs. We find Mr Wallace's use of these average figures, which vary greatly between the two properties chosen, to be unreliable. Nor do they clarify the position with respect to the costs of stripping out the existing building at Tollgate House. We therefore place no weight upon this part of Mr Wallace's evidence.

210. Mr Martin's figures have been criticised as being excessive. But Mr Wallace's criticisms are based upon Davis Langdon's cost plan for the November 2007 scheme that they prepared in June 2008 rather than Document BCC 7 which is the cost plan for the baseline scheme that was submitted at the hearing and which was prepared in September 2008. It is the latter cost plan upon which Mr Martin relies. Looking at BCC 7 it is apparent that Davis Langdon have substantially reduced the cost of the doors. The range of prices is now £370 to £975 per door, with 70% of all the doors being at the bottom price. The total cost of the doors is now £832,800 (before adjustment), a reduction of approximately half from the figure upon which Mr Wallace based his criticism of Mr Martin's approach.

211. Although we find the detail of Mr Wallace's criticism to be exaggerated following the revisions made to the fit out costs by Davis Langdon we consider that a prospective purchaser would not undertake the extremely detailed analysis that they have done but instead would take an informed, overall view of this cost heading. Taking this approach we allow £4,000,000 for the cost of fitting out works.

Offices

212. The parties have agreed that the gross internal area of the offices is 1,712 sq m and that it would be constructed to a category A specification. Mr Wallace said that the construction cost of these offices would be £1,396,573 whilst Mr Martin took a figure, based upon Davis Langdon's analysis, of £1,617,159. The difference is £220,586.

213. Mr Wallace based his cost upon the construction costs for new build offices calculated using rates and prices issued by BCIS and rebased for location and to Q3 2005 values. He used four comparables and averaged their component costs, excluding the substructure rate which he said had already been allowed for within the basement and lower ground floor car park construction costs. This gave an average rate of £906.40 psm from which he deducted 10% for contractor's overheads and profit to give an adopted rate, excluding preliminaries, of £815.76 psm.

214. Davis Langdon followed a similar approach and based their costs upon benchmarked rates from comparable schemes and published cost data. They took a selection of eight projects from BCIS data, excluding preliminaries, overheads and profit and substructure. The resultant costs were then adjusted for location and inflated to 2008 prices before being adjusted back to 2006 values. Taking the average of the eight comparables gave a cost figure of £944 psm.

215. *Conclusion*. In our opinion there is little in the evidence upon which we can base a preference for either figure. The approach of the parties is the same and the only difference is in the identity and number of the comparables chosen, none of which are common between them. The acquiring authority have chosen a larger sample size and have included within it two properties that are within Bristol. The average gross area of offices selected by the claimant is 2013 sq m and that of the acquiring authority is 1,407 sq m, these two figures being almost exactly the same difference from the area of the subject offices (1712 sq m). In the light of these facts we have determined the cost of the offices by taking the average of all twelve comparables, having first adjusted those used by Mr Wallace to allow for 5% rather than 10% for overheads and profit and expressing them at 2006 prices. This gives a figure of £923.97 psm which when applied to the agreed gross internal area gives a total cost of £1,582,000 (rounded).

Leisure facility (health and fitness club)

216. The parties agreed that the health and fitness club would be finished to a shell and core with incoming services. The gross area was 2,480 sq m. Mr Wallace estimated the cost of the facility to be £761,178 (£307 psm) whilst Mr Martin said that it was £1,013,725 (£465 psm).

217. Mr Wallace submitted a cost plan with an elemental build up. He said that the ground floor slabs would be provided largely by either the existing structure under the retained building or as part of the car park works. He therefore made no allowance for any substructure construction. Mr Martin relied upon a cost figure of £465 psm. This figure was not supported by any explanatory evidence apart from a cost breakdown prepared (it is assumed) by Davis Langdon in respect of the November 2007 scheme which showed a cost of £366.08 psm as at 2006. At that time a larger leisure facility of 3,700 sq m was proposed. Mr Martin criticised Mr Wallace for not having included an allowance for the provision of services into the unit. However, Mr Martin's cost included an allowance for substructure that Mr Wallace argued was unnecessary.

218. *Conclusion*. We agree with Mr Martin that an allowance for incoming services should be made. On the other hand we accept Mr Wallace's argument that it is not necessary to allow for substructure works. Davis Langdon allowed £35 psm (2006 prices) for this item in their analysis of the November 2007 scheme. We are not satisfied that the acquiring authority's figure of £465 psm is supported by evidence and we do not accept it. Looking at the evidence as a whole we consider that an appropriate build cost rate for the leisure facility is £335 psm giving a rounded total cost of £830,000.

External works – landscaping and paving

219. Mr Wallace initially undertook an analysis of the costs that had been incurred at Comer House and adjusted them for date and location. He said that due to the configuration of the site, the landscaping requirements would be relatively small, being concentrated around the new build residential block, to the "lid" of the underground car park and to the roof of the leisure complex. Following discussions with Mr Martin he undertook a detailed costs build up from Spons, which produced a revised figure of £162,845. He said the figures included some 'value engineering' as, for instance, he had allowed for Saxon reconstituted paving slabs rather than, as Mr Martin had done, York stone paving. The same figures were adopted for each scheme.

220. Mr Martin approached these costs by measuring the external work on the site (as scheduled in the Davis Langdon costings) and adopting the Spons 2008 figures, suitably adjusted. He said that the incoming services to the site had been included within these costings, and was of the view that Mr Wallace's reliance upon the Comer House costs had been inappropriate. There was a much greater degree of landscaping required to Tollgate House. He said that the Davis Langdon costings were appropriate to the site, and were not, as Mr Wallace had suggested, of too high a quality. Mr Martin's figure, in his final analysis, became £422,353.

Conclusions

221. A detailed analysis of the costs build up undertaken by both parties in respect of this item would take many more pages of text, and would, in our view, serve little constructive purpose in the overall scheme of things. We tend to agree that Mr Wallace's costs may be somewhat understated, but on the other hand we agree with him that Mr Martin's figures seem exceptionally high. We are mindful of the fact that, in reality, Tollgate house occupies quite a small site, and the overall landscaping requirement will be limited. Taking, therefore, a robust approach, we conclude that a fair figure to be allowed would be £300,000, whichever scheme were to be adopted.

Agreed cost items

222. The parties have helpfully agreed a number of cost items, in respect of the baseline scheme, which we list below:

Superstructure

(i) Frame: £364,948

(ii) Roof: £125,730

(iii) Stairs: £82,615

Fittings and furnishings: £2,205,410

Separate affordable housing block: £1,438,922

The phasing of the development

223. Mr Hewetson gave the main evidence for the claimant on this issue. He submitted a revised phasing programme for the baseline scheme at the hearing which assumed a total development period of 40 months commencing at the valuation date in September 2005. He said that there were five phases of construction. Phase 1 commenced at the valuation date. It was assumed that planning permission had been granted and that 6 months would be required for site clearance, pre-construction works, preliminaries (spread over the whole construction period) and tendering. Mr Hewetson had increased this period from 3 months in his original report, saying that he had discussed and agreed the revision with Mr Wallace. This phase also included the construction of the car park which would commence in March 2006 and last for 9 months. The second phase comprised work on the superstructure which would start in April 2006 and last 15 months. Phase 3 included the construction of the health and fitness club, the offices and the social rented housing block. These would be completed in the 12-month period starting in December 2006. The health club would be open in time for the marketing of the flats and the remaining commercial elements would be let and income producing by the end of the development. This phase also included the fit out of the penthouses and the flats in floors 16 down to 13. Mr Hewetson assumed a top down approach to fitting out and sales, beginning with the penthouses and working down the tower. It would take 3 months to fit out the penthouses, starting in December 2006, ie before work on the superstructure was completed, and 15 months to sell them, with marketing commencing in October 2007. Once the penthouses were finished Mr Hewetson assumed that it would take a month per floor to fit out the flats on floors 16 to 13. Sales of the flats would commence during the last month of the fitting out period and would take four months. Phase 4 included the fitting out of the flats on the next four floors (12 to 9). This would again last for 4 months. However, Mr Hewetson assumed that it would take 6 months to sell these flats. The final phase included the fit out of floors 8 to 5, which would start in October 2007 but would take two months per floor rather than one and would also take 8 months to sell. Finally in this phase, floors 4 to 1 (the affordable, shared ownership, housing) would take 8 months to fit out, finishing in November 2008 with a sale of the completed units one month later.

224. Mr Hewetson thought that 6 months would be quite long enough for an experienced developer to prepare the site and satisfy all the preconditions under the planning permission. He explained that the increase in the time assumed to sell the flats was due to his allowance for pre-sales in the earlier phases. The fit out rate was then adjusted in line with the sales rate. He said that purchasers would move into the building while fitting out work continued, although he assumed that there would be no occupancy of flats less than two floors above the works. He was unable to give an example of another site where the Comer Group had sold all the flats

within one month of completion. In making his assumptions about the sales rate Mr Hewetson assumed that there would be some regeneration of the surrounding area in the no scheme world and that policy area CC1 would have been redeveloped alongside Tollgate House, although he could not say how likely this was to proceed without compulsory purchase powers.

225. Mr Wallace said that the total project period for the baseline scheme would be 30 months. Whilst he thought that this was possible Mr Hewetson said that his programme was longer in order to match the speed of fitting out with that of sales. Mr Hewetson said that the acquiring authority's "bottom up" approach was unsatisfactory because it meant that construction works were scheduled as a single phase with a 12-month void after practical completion to finalise sales. The developer was thereby obliged to pay interest on the full cost of construction for up to a year through the sales void.

226. Mr Martin said that his approach was to adopt a two-stage tender on a design and build basis (with some of the initial design work being carried out by consultants to the developer). He allowed 9 months for design, preparation of tender documents, two-stage tendering, site investigation and enabling works. The main contract would then commence in June 2006 and run for a period of 30 months, making a total project length of 39 months. This was longer than Mr Wallace's estimate but in line with that of Mr Hewetson. Mr Martin foresaw difficulties if a "top down" approach were used due to the height of the tower and the significant other construction activity around it. He said that occupation of one or more floors of the tower would require the use of the central lift core for access and the wing staircases for a means of escape. That would mean that construction access would then have to be from external hoists and staircases. But he acknowledged that the developer would require early access and he estimated that, with careful programming, this might be achieved 6 to 9 months before his estimated completion date for the construction works.

227. Mr Baldwin is a partner in the residential department of Drivers Jonas, having joined the practice in 1993. He became involved with Tollgate House in 2003 when he was instructed to advise the council upon residential matters relating to the property. His report addressed the market and demand for residential flats in Bristol (including analyses of comparable developments) at and around the valuation date, appropriate sizes and types of units for inclusion within the tower, likely timescale for sales, values and anticipated marketing costs. Mr Baldwin assumed a project length of 55 months. He agreed with Mr Martin's estimate of 9 months for initial design, tendering and site preparation and with his total construction period of 39 months. He assumed that the construction and fitting out of the car park would take 15 months during which time a number of other works could also take place, such as the demolition of the top of the tower and the erection of the penthouse frame, cladding removal, core strengthening and the erection of scaffolding. Following the installation of the new cladding and the provision of statutory services, fitting out works would begin in month 24 and last for 15 months. During that time the health and fitness club, ground floor car park, offices and the separate affordable housing block would also be completed. The external works would be finished in month 39 at which time the affordable units would be sold. Marketing of the private flats would start in month 33 (6 months before practical completion) and last for 21 months. He assumed a sales rate of 9 units per month based upon his research of comparables. The marketing of the penthouses would commence a little later, at month 37 (two months before practical completion), and would take 8 months to complete at a rate of two per month.

He assumed both the health club and the offices would be sold in month 40. Finally, the ground rents would be sold in month 55.

228. Mr Baldwin agreed that he had not looked at the construction programme from the point of view of a "top down" approach and that the acquiring authority had said nothing about Mr Hewetson's phasing and sales assumptions. However, he noted that Mr Hewetson had assumed that sales would start before the substructure was finished. Mr Baldwin thought that this was unrealistic as the most valuable flats were being offered for sale at a time when the works were still going on. He was not aware of other schemes where occupation had taken place before practical completion.

229. Mr Owen said that Mr Martin and Mr Baldwin were the principal authors of the construction programme but that he was happy with their conclusions. He explained that the main effect of the difference between the parties about the length of the programme was on finance costs, which were eventually offset by the receipt of sales income.

230. Mr Mould submitted that, on the assumption that planning permission had already been granted and that the developer had an incentive to act expeditiously, the adoption of a 6-month period for preparatory works was reasonable. Mr Hewetson's programme was longer than that of Mr Wallace but had been prepared on the logical assumption that there had to be a balance between the early sale of the flats and the requirement not to inconvenience the new occupiers by continued construction work. The construction period was therefore geared towards the pace of sales, allowing for a buffer zone of two floors between residents and the construction work. Mr Mould noted that the acquiring authority did not dispute the capability of a developer to adopt a "top down" approach and argued that the prospective purchaser would choose this in order to maximise his return since it enabled the developer to sell flats early. The acquiring authority's "bottom up" approach caused unnecessary delay before the flats could be sold. Nor did the acquiring authority's experts offer any opinion on the construction rate or sales programme under the top down approach and therefore Mr Hewetson's programme on these points should be accepted.

231. Mr King submitted that, given the extent of the pre-construction works, it was much more realistic to allow 9 months rather than 6 after the valuation date before the development could begin. There was disagreement between Mr Wallace and Mr Hewetson about the length of the construction works. Although Mr Hewetson had taken a longer period it was not clear which elements of construction he had decided to extend. A critical element was the date by which services through the core of the building were to be provided but in his evidence Mr Hewetson did not demonstrate that his assumptions on this point were feasible. His sales programme was also unrealistic, relying as it did upon the erroneous assumption that the surrounding area would have been redeveloped without compulsory purchase powers in the no scheme world. Mr Hewetson assumed that every flat would be sold (not just that deposits on them would have been taken) within one month of practical completion. That was unrealistic. His assumed sales rate was adopted as a matter of mathematical convenience rather than being founded, like Mr Baldwin's evidence, upon an analysis of sales actually achieved in other developments in Bristol. The "top down" approach assumed by the claimant meant that the most valuable units were being sold while the lower parts of the building were still being re-clad and the area around the tower was still a functioning building site. That too was

unrealistic. The "bottom up" approach meant that sales of the cheapest flats could begin 6 months before practical completion and work up the building towards the most valuable units. This was an achievable method and Mr Baldwin's approach should be preferred.

Conclusions

232. We reject Mr Wallace's construction programme of 30 months, including the preparatory works, as being unrealistically short. Mr Hewetson does not adopt it but prefers instead a total programme of 40 months. His programme allows 6 months for the preparatory works, having increased it by 3 months at the hearing. We think that this is still too short a period. There are a significant number of preconditions to be satisfied on the planning permission, working drawings would need to be prepared, the tender for a main contractor completed and the enabling works undertaken. We agree with the acquiring authority that a period of 9 months for these preparatory items would be realistic.

233. The main difference between the parties in respect of the programme is in their approach to fitting out and sales. It is agreed by the parties that the developer would want to maximise his returns and to sell the completed units as soon as possible. On the face of it a top down method would achieve this best, with the private flats on floors 16 to 13 being released once they are fitted out (with a buffer of two floors being left between them and the building works on floors below) and further floors being released as the fit out progresses. The penthouses would not be marketed until month 26, by which time most of the construction work will have been completed. But we see problems with this approach. As the acquiring authority points out the most valuable properties would be marketed at a time when either the construction or fitting out works were continuing and, in our opinion, this would not only create practical problems for both the occupiers and the contractors, but would also diminish the attractiveness of the units that were being sold. Mr Hewetson says that the fit out works will be geared to the rate of sales. This means that, compared to the acquiring authority's approach, there will be an extended fit out period (24 months compared to 15 months).

234. The main problem with the bottom up approach adopted by the acquiring authority is that there is little overlap between the construction/fit out phases and the marketing of the flats and penthouses. This means that the development programme is extended and the cost of finance is increased due to the developer having to carry the burden of the construction costs during the whole of the sales phase (albeit on a diminishing basis). Mr Baldwin proposes that the sale of the private flats will not begin until month 33, which is the date by when all shell and core services will be finished. At that time there will still be a further 6 months of fitting out, neither the health club nor the affordable housing block will be finished and the external works will not have been started. By comparison, and assuming a period of 9 months for design, tendering and site set up, the claimant's say that sales could commence in month 24, nine months earlier than the acquiring authority.

235. On balance we prefer the bottom up approach. We accept the acquiring authority's argument that to market the private flats, and later the penthouses, while the fitting out of half (or more) of the building remains incomplete will have adverse consequences for both the logistics of construction and upon the rate and price of the sales. But we consider that savings

can be made on the acquiring authority's 55-month programme. We have carefully considered the revised programmes submitted by Mr Hewetson and Mr Baldwin and have concluded that the development would take 45 months to complete, including the initial set up period of 9 months. In reaching this determination we have concluded, inter alia, that the car park will take 12 months to construct and fit out; the sequential process of demolishing the top of the tower, removing the cladding, scaffolding works and installing the new cladding will take 18 months; the installation of statutory services and services to shell and core will take 16 months; the fit out works will take 13 months and the marketing of the private flats will commence 9 months, rather than 6 months, before contract completion, this being within the period specified by Mr Martin in his rebuttal report. (It should be noted that these timesavings are not necessarily cumulative since not all of the activities are on the same critical pathway.) We have assumed a rate of sales for the private flats of 10 per month (19 months total sales period), which is rather less than Mr Hewetson's peak figure of 16 per month (his average figure being approximately 11 per month) but slightly higher than Mr Baldwin's figure of 9 per month. We accept Mr Baldwin's sales rate of 2 penthouses per month, sales of which would not commence until after contract completion.

Affordable housing – valuation by reference to TCI or Bristol Matrix

236. The claimant's case was that, in calculating the revenue to be derived from the sale of the affordable housing units (the numbers and sizes of which had been agreed for each of the alternative schemes, whilst the split between shared ownership and social rented had not), to an RSL, the developer would be most likely to have had regard to the Housing Corporation's Total Cost Indicator (TCI) matrix. Mr Napier said that it was accepted that the Housing Corporation had phased out the TCI in 2004/05, that there was no evidence that the council was still using it at the valuation date, and thus that there was no specific database from which to extract appropriate figures at the valuation date. However, he said that the general presumption at the time would have been for the council and the developer to rely upon the 2004 figures, applying an uplift for inflation to the relevant date, and other relevant adjustments. Mr Hewetson said he had accepted Mr Napier's advice that this was the appropriate benchmark by which prices would have been negotiated in Bristol at the time. He said that the unit sizes within the proposed development would all fall within the TCI size bands, and it was therefore relatively easy to assess appropriate values. Another option used by developers, he said, would be by reference to a "rule of thumb" percentage of market value, blended between rates for social rented (50%) and shared ownership (70%), giving overall rates amounting to 60 – 65% of market value.

237. Adopting the TCI for the 68 shared ownership units located in the tower (in the baseline scheme), he took the 2004 base figures and applied an uplift of 9% to take them to September 2005 values. He then applied a multiplier of 1.102, being a premium to reflect specific benefits such as "off the shelf new build" and new lifts. From that, he deducted a 12% on-cost to cover the acquisition related cost items referred to in the TCI statement. The resulting overall figure was £7,296,972 which represented 54.86% of open market value for those units. As to the 20, 3 bedroom social rented units proposed to be constructed in a brand new block, he again uplifted the base figures by 9%, but applied a multiplier of 1.07 and an on-cost of 8% to give a total of £3,250,800. The agreed overall area for the new build social rented units was 20,400 sq ft and, having agreed the open market value of all the flats with Mr Baldwin (the acquiring

authority's residential valuation expert) during the hearing, based upon the "benchmark seventh floor" in the tower at £310 per sq ft, the breakdown of the adjusted TCI figure became £159.35 per sq ft, which was just over the 50% of the OMV benchmark. The overall figure to be paid by an RSL would therefore have been £10,547,772.

238. Mr Hewetson said that, with the overall figure coming in at less than 55% of the open market value, his calculations could be seen to be highly conservative set against the rule of thumb basis he had outlined as an alternative. In cross-examination, he accepted that by his calculations, the unit price to be paid for the social rented flats was significantly higher than that for the shared equity ones. He agreed that this was not how it should work out, and said it was the treatment of multipliers and on costs that created the anomaly.

239. As to the Bristol scheme, he produced a number of alternative valuations that were appended to his rebuttal report, only one of which assumed affordable housing at 30% (because his overall view was that if all of it were to be provided within the tower, that percentage would be far too high – 10% being more appropriate). There were also other factors that led him to the overall conclusion that the Bristol scheme as proposed by the council was not economically viable, but with suitable adjustments it could be made so. In the 30% affordable housing example he assumed a 50/50 split between shared ownership and social rented. He then took an income of £100 per sq ft for 29,472 sq ft of social rented and £200 per sq ft for the shared ownership units giving a total to be paid by the RSL of £8,841,600. By the time the final revised valuations were received following the hearing, his assessment of the affordable housing element had become social rented on 1st to 3rd floors of the tower at a total of £4,694,034 with shared accommodation on the 4th and 5th floors totalling £3,107,960 – a grand total of £7,801,994.

240. Mr Orr said that as the Housing Association's TCI system was phased out, Bristol City Council issued its own affordable housing matrix (the matrix), which was made widely available to developers, landlords and the general public. It had been produced by the council's "Enabling Team Strategic Services", and was incorporated into a document entitled "S.106 Procedure Guide Working Document." He produced a schedule from it for the relevant postcode area that showed the prices that developers could expect to achieve in terms of social rented units. He said that this matrix had been used to calculate the figures to be entered into a s.106 agreement by the developers of Stenners Yard (24 May 2005), Jewsons Yard (30 June 2005), Radnor Road (17 February 2005) and the Bristol and West development (11 July 2005). Further evidence of its use was clear in a letter from Sovereign Housing Association stating that had it been approached in 2005, the prices it would have paid would have been calculated in accordance with the matrix. The suggestion made in cross-examination, therefore, that a developer would not necessarily have known about the document, and would have relied upon an adjusted TCI was, he said, unsustainable. He accepted however, that the matrix was not a part of PAN 12 and that it was the TCI that was referred to in the draft legal agreement contained within it. Furthermore, no formal evidence had been adduced as to the provenance of the matrix; it was not part of the statutory local plan and was not included within any formal planning guidance. Nevertheless, he said, it was a tool used by the council and the Tribunal should thus attribute appropriate weight to this evidence, although he acknowledged that in planning terms, a developer would have been justified in relying upon an adjusted TCI.

241. Mr Orr said it was agreed that an RSL would pay up to a maximum of 50% of open market value for the shared ownership units, so realistically it was just the calculation of the price payable for the social rented elements upon which the parties remained seriously at odds.

242. Mr Baldwin also considered the value of the affordable housing units, as he had over 15 years experience of negotiating with RSLs in respect of affordable housing. He said that his overall conclusions influenced the design of the scheme that the council had adopted for valuation purposes – the Bristol Scheme, and fed into Mr Owen's residual calculations. He said that he had adopted Mr Orr's advice that the matrix was the appropriate vehicle for calculating the price to be allowed for the social rented units, but acknowledged in cross-examination that whilst Bristol City Council were encouraging its use, the TCI had been intended to be used for the period up to and including the valuation date, it still being extant at that time. He also accepted that Mr Napier and Mr Hewetson had been justified in adopting that approach, and that it would have been reasonable for a vendor to be guided by the published policy guidance. Nevertheless, he said he would have expected the vendor to have spoken to the Housing Enabling Officer who would have advised him about the matrix, and the fact that it was by then being used. It was also published on the council's website.

243. In respect of the Bristol scheme, Mr Baldwin originally adopted the figures from the schedule that was provided as part of Mr Orr's evidence (Bundle 5, page 324) and applied them on a pro-rata basis to reflect the slightly smaller floor areas of the flats within the lower floors of the tower in comparison with those shown on the matrix schedule. This gave an average price of £73.02 per sq ft for a 1 bedroom flat, £66.14 per sq ft for the two bedroom units, and £55.11 per sq ft for the 3 bedroom units proposed to be accommodated in the tower in the Bristol scheme. This gave a gross development value of c. £2.032 million (£67.97 per sq ft) for the 50 social rented units he had allowed for, on Mr Orr's advice. As to the shared ownership housing, Mr Baldwin took 50% of market value for the 20 units, giving £2.021 million (on the basis of the agreed full open market value of £310 per sq ft). Thus the total to be paid by the RSL in respect of the Bristol scheme amounted to some £4.054 million, and that was the figure that was adopted by Mr Owen in his final appraisal. Mr Baldwin went on to say (at paragraphs 7.20 and 7.21 of his report), that on the basis of these figures, a 30% affordable housing provision "reduces the viability of the [Bristol] scheme to a point where it is at best marginal." He said that a developer (or prospective vendor at the pre-planning stage) might reasonably assume there would be some flexibility on the part of the RSL in negotiations on the pricing structure, as in his experience they were often prepared to pay more to secure units that were attractive in size, number and type. To allow for this, he adopted £100 psf for the social rented units, and £200 psf for the shared ownership units, giving a total of £5,543,000. However, we note that those figures did not find their way into Mr Owen's final Bristol scheme valuation.

244. Regarding the baseline scheme, based upon Mr Orr's advice as to mix, the price to be paid by the RSL for the social rented units would be £1.124 million (£55 per sq ft for the new build units – all 3 bedroom) and £1.713 million (£70 per sq ft for those in the tower) making £2.837 million. For the shared ownership units, he calculated £2.415 million making a grand total of £5.252 million. These figures were also adopted by Mr Owen in his final residual calculations for the baseline scheme.

Conclusions

245. In our view, there were equally cogent arguments advanced for the use of either the TCI or the matrix in respect of the social rented units, and it has been difficult to establish, on the evidence, precisely which route would have been taken. On the one hand, it was acknowledged that the discussions with the council over how much an RSL should pay would have been undertaken by the vendor, prior to the planning application for the redevelopment proposals being considered, and thus prior to the sale of the building to a developer It was agreed that the affordable housing arrangements would be subject to a section 106 agreement, and that the usual model was for an applicant to enter into an obligation prior to the grant of planning permission. This puts the date back to some extent, supporting the argument that it may have been reasonable to expect the TCI to have been used. On the other hand, it is a fact that the claimant produced no evidence to show that an adjusted TCI had been used at or around the valuation date, but the council produced evidence confirming that the matrix had been adopted in a number of other Bristol developments during 2005. It is reasonable, in our view, to assume that those arrangements would also have been entered into at the pre-planning stage, and we are satisfied therefore that, in terms of social rented housing, the matrix is the appropriate benchmark upon which to rely. Whilst we acknowledge the argument that it was the TCI which was referred to in all the relevant documentation and policy guidance, we can see no reason to conclude that it would still have been used (in what appeared to be an arbitrarily adjusted form) when negotiations with developers of other large schemes were conducted upon the Bristol matrix model. We were also somewhat concerned, in connection with Mr Hewetson's calculations, that the value of the social rented units came out higher, pro rata, than the shared ownership ones, and accept Mr Baldwin's statement that in his universal experience, the prices RSLs pay for shared ownership are always higher.

246. On the basis of our findings in connection with mix, and that the only social rented units will be 3 bedroom flats in the new-build block in the baseline scheme, we determine that (and noting that Mr Baldwin and Mr Hewetson had agreed the matrix based calculations, if that was the route taken by the tribunal), the agreed 20,400 sq ft at £55 per sq ft amounts to £1,122,000. The shared ownership accommodation on the first to fourth floors of the tower, amounting to a total of 39,650 sq ft net, at an agreed 50% of open market value (£155 psf) produces £6,145,750. Thus, the total amount that we conclude would be agreed as the contribution to be made by the nominated RSL is £7,267,750.

247. In terms of the Bristol scheme, were we to adopt it as that which produced the highest residualised land value, we agree (as we have indicated before) that if all the affordable housing had to be provided within the tower, there could be difficulties over access especially if, as appears to be the case, shared ownership and social rented units had to be accommodated on the same floor, as was the case with Mr Baldwin's proposals. As pointed out by Mr Hewetson, such a mixture would be unlikely to meet an RSL's approval, and in his view, the acquiring authority's proposals had been conceived and designed with no proper thought as to the commercial realities of development in the real world. Indeed, he said, Mr Baldwin had clearly accepted that a 30% affordable housing element would not be economically viable, but the council had not devised an alternative scheme that was.

248. Nevertheless, in the statement of agreed facts the parties say that there will be 50 social rented flats (71% of the affordable housing) and 20 shared ownership flats (29%) in the BCC scheme. The former are said to be on floors 1 to 3 and part of floor 4, whilst the latter are on part of floor 4 and the whole of floor 5. This arrangement is reflected in Mr Owen's final valuation but not in Mr Hewetson's, who, despite the agreed statement, assumes that shared ownership housing takes up the whole of the fourth floor. Our own analysis of the floor areas is slightly different to that of Mr Owen but the total net floorspace is the same. Taking the social rented housing at £67.99 per sq ft (the average of the appropriate figures for the 1, 2 and 3 bedroom units used in the calculation above) and the shared ownership at £155 per sq ft produces the following values:

Social rented	30,593 sq ft @ £67.99	£2,080,018
Shared ownership	12,377 sq ft @ £155	£1,918,435
Total that RSL would pay in respect of Bristol scheme		£3,998,453

Contingencies

249. Mr Hewetson, in his original report, made a variety of allowances for cost overruns and unforeseen eventualities on an elemental basis. He only applied contingency sums to those elements of the development process where he felt there was some risk, such as the underground car park (10%), superstructure works (5%) and fit out costs in phase 3 - lifts (1%). In all other cost areas, he was of the view that the project was relatively straightforward and repetitive, and admitted of limited scope for surprise. The allowances amounted to approximately 2.1% of the overall projected development costs in the baseline scheme. In cross-examination he accepted that the convention was to apply a single percentage figure to the whole development cost – as Mr Owen had done, but he did not accept his figures of 5% for the Bristol scheme, or 10% for the baseline scheme, due to its "substantially increased complexity". In this case, he said, there was significantly more costs information to go on than would normally be the case, and the inherent risks were therefore considerably less. For instance, he said, it should be borne in mind that the car park costs were based upon a formal quotation. He did, however, accept that the claimant's original car park figure was very substantially less than the final one adopted, and further that if there were significant delays or cost overruns on that early element of the construction process, it could have a knock on effect upon the rest of the development programme, and ultimate costs. However, Mr Hewetson said that a developer would know where the risks lay, and it was appropriate to apply figures to only the most sensitive areas.

250. Nevertheless, in response to the criticisms made by Mr Martin, in his final appraisal of the baseline scheme he revised his contingencies to 10% each for the car park and superstructure costs, 3% for some elements of M&E and fit out, and 2% for others. The sum allowed amounted to 4.6% of the overall construction costs for that scheme. His final appraisal of the Bristol scheme with contingency costs built up on the same elemental basis, came to 3.7%. It was submitted that the availability of information in the cost build-ups for all three schemes under consideration was equal, and it was thus ludicrous for the council to double the contingency for the more complex claim and baseline schemes. Technical complexity should not be confused with uncertainty and risk, and Mr Wallace, upon whose costs Mr Hewetson

was relying, had produced a level of detail that was considerably more informative than that which Mr Martin had provided. He had been able to test the reliability of the information and technical advice upon which he had based his original costs, and adjust them accordingly. To then add a very substantial contingency would in effect therefore, amount to double counting, and a prospective purchaser would not risk losing out in his bid for being over cautious. There being no justification for applying different levels of contingency between the schemes, it was submitted that if the Tribunal found for the alleged conventional approach, Mr Hewetson's 4.6% was close to that used by Mr Owen in his Bristol scheme appraisal, and a total not exceeding 5% should be determined.

251. Mr Martin accepted that in respect of contingency planning, it would have been reasonable to assume that at the point at which the prospective developer's bid was formulated, only limited design work would have been undertaken, sufficient for obtaining a planning consent. The design and tender documentation would not have been prepared or advanced at that stage and formal quotations or tenders would not have been received. Estimates of construction cost would therefore have been budget figures and, with no contracts yet in place, the developer would, at that stage, be carrying the full design and construction risk. Whilst he acknowledged that there would be varying levels of risk relating to different aspects of the construction process, and that the fit out was likely to carry the least risk, he did not accept Mr Hewetson's view that no contingency at all was required in that area. Whilst 10% would undoubtedly be high for that element, it may well not be enough for high-risk items such as the underground car park, core deepening and other subterranean works. On balance, therefore, he was of the view that a developer would have built in an overall 10% contingency for the claim or baseline schemes.

252. Mr Owen said that he had adopted 10% for the claim and baseline schemes due to their considerable complexity. He was aware of other schemes containing similar constructional or development risks where developers had applied that percentage or even higher. Due to the relative simplicity of the council's alternative Bristol scheme (in comparison), Mr Owen said he applied a 5% contingency. Although this was lower than might normally be included in such an appraisal, he said it reflected the fact that very detailed design and costings exercises had been carried out in this case, compared with a normal bidding situation. It would be wrong, he said, to build up contingency costs, as Mr Hewetson had done, on an elemental basis because it was impossible, at that stage, to predict precisely where problems may arise.

253. It was submitted that a developer looking to purchase the site would apply a single contingency allowance to all of the costs. It would not only have to cover the risks anticipated in respect of individual items, but unseen or unanticipated problems such as potential delays or abnormal ground conditions. The developer would want to ensure that his forecast profit was not eaten into by unforeseen extra development costs for which he had made insufficient allowance in his appraisal – that would effectively be handing some of his profit to the vendor. On the other hand, if the whole of the contingency were not spent, then that would serve to create some additional profit.

Conclusions

254. We have earlier concluded that the claim and baseline schemes were larger and more complex projects than the Comer Group had previously undertaken, and it is thus in our view appropriate that a robust, overall contingency should, and would, have been applied. The majority of Mr Hewetson's argument for elemental and selective contingencies was predicated upon the availability of information that was before the Tribunal. We have already made much of the question of what a prospective purchaser would have done in a real bidding situation, and do not intend to repeat it here. Suffice to say that he would most certainly not have had to hand anything like the amount of detail that was before us, and would not have had the benefit of the detailed costing exercises that have been undertaken by both Mr Wallace and Davis Langdon.

255. Whilst he may have gone somewhat further in the budget costings exercise in respect of the car park and other unusual elements (for example the superstructure for the additional floors in the claim scheme), he would in our judgment, and as argued by the acquiring authority, have wanted to ensure that the potential knock on effects of any problems or delays in those areas were adequately covered within the overall construction costs figure. The "conventional" approach also has the attraction of simplicity, and we are satisfied that an overall percentage figure is the route that would have been taken. We do, however, agree that whilst the baseline scheme (or the claim scheme which we are no longer considering) is more technically complex than the Bristol scheme, and thus would be seen to carry more risk, we cannot see any justification in Mr Owen's argument that the contingency should be double. In the circumstances, we accept his figure for the Bristol scheme (5%), but in respect of the baseline scheme, we conclude that an overall 7.5% of the total construction costs would be appropriate to reflect the additional complexity and risk.

Professional fees

256. Mr Wallace said he considered the manner in which previous Opecprime projects had been managed, specifically looking at Northampton House and Comer House, together with three other projects, and the professional fees element of these ranged from 1.18% to 1.8%. He also spoke to Mark Lees, Comer Group's in house architect and designer and took soundings from representatives of Walsh Group and Barratt Homes. The general consensus appeared to be that fees for external professional advice would be allowed in the range 1.25% to 1.5%. However, in his view, this would be an insufficient allowance to reflect the more complex nature of the Tollgate House development, and the longer construction period. It was accepted that whilst it is to be assumed that full planning consent had been obtained, and the vendor would therefore have borne the professional fees associated with that, there would still be a need for full working drawings, contract documentation and schedules to be produced. Nevertheless, the fact that much of the work, once the project was underway, would be repetitive and straightforward also had to be factored in. On balance, he thought that £870,000 was the appropriate figure for professional fees for the baseline scheme, and said that this represented around 2.8% of the construction cost. He subsequently discussed this figure with Mr Hewetson, who had initially looked at professional fees on an elemental basis, and agreed that £870,000 was the appropriate figure to use.

257. He calculated the in-house management and supervision costs at £406,562 for the baseline scheme. Taken together, the resulting £1,276,562 represented 5% of construction costs. In his view this was far more credible than Mr Martin's 14%, which was for professional fees only, with an additional allowance for supervision costs being included in his figure for preliminaries.

258. Mr Hewetson had originally (at the time the statement of case was prepared), taken an elemental approach to the build up of professional fees, which amounted to about 10.75% of construction costs. He said that following discussions with Mr Wallace, these were reduced due to the fact it was evident much of the work would be undertaken and managed in-house, and some of his allowances had already been covered under in-house supervision costs. The elemental approach was thus eventually abandoned, Mr Hewetson adopting, in the final baseline scheme appraisal under the heading "professional fees", £870,000 for design fees. Also, under this head, he added £150,000 as fees for the bank's quantity surveyor and £487,875 for on-site supervision costs. This latter figure was, in fact, incorrect as it had been transposed from Mr Wallace's figure for the claim scheme (including insurance) (from appendix L of his report). The correct figure should have been £369,062 which, with £37,500 insurance added, becomes £406,562. Our conclusions in respect of supervisory costs and insurance are dealt with elsewhere in this decision under preliminaries.

259. In respect of the Bristol scheme, Mr Hewetson applied the £150,000 QS cost, £475,624 for "design and consultant engineers etc", and £480,000 for on-site supervision costs totalling £1,105,624 or 6% of construction cost in total.

260. Mr Martin said that, based upon his experience of projects of the size and complexity of the claim and baseline schemes, a figure of 14% of the construction cost to include Project Manager and Employer's Agent, Architect and Structural/Civil Engineering professionals was appropriate. This figure was in line, he said, with the allowance made in the BCIS tables for professional fees in respect of fire insurance valuations (15%), and amounted to £5,732,843 for the baseline scheme. These fees would be in addition to the on-site supervision staff that the scheme would require (and which he had allowed for under preliminaries). For the Bristol scheme, which, he said, was altogether more straightforward and less complex, he allowed 10%, or £2,535,837.

261. It was submitted by the claimant that it was surprising that, having acknowledged that the main planning consent exercise had been completed, and apart from the areas of complexity that had been well rehearsed between the parties, the main scheme was relatively straightforward and repetitive, the acquiring authority should be suggesting over £5 million in external professional fees. This was on top of over £4.5 million that had been allocated by them for preliminaries and supervision costs. The acquiring authority said that Mr Hewetson had acknowledged that it was conventional to allow a percentage rate of total construction costs for each main professional discipline, and even if it were so that some fees could have been avoided by employing in-house staff, it was appropriate to allow them at commercial rates.

Conclusions

262. Mr Martin's methodology had the attraction of being straightforward and simple, being a specific percentage of the construction costs (14% on the baseline scheme, and 10% for the Bristol scheme). It is also, we think, the approach that a prospective purchaser would have taken when building up the costs during the bid formulation process. Mr Hewetson had initially considered an elemental build up that produced approximately 10% for fees but, in the valuation attached to his original expert witness report, this was reduced. He applied elemental figures that reflected Mr Wallace's view that an increase on the figures that he had extracted from the Comer Group's records of past developments was appropriate. The £870,000 that they proposed for external professional fees amounted to about 3.7% which is more than the 2.8% he referred to in evidence and in his report. This figure was exclusive of the addition for in-house supervision costs). However, in the final valuation (where construction costs had risen to £25,758,689), an additional £150,000 was applied to cover "the bank's quantity surveyor". Thus, external professional fees amounted to £1,020,000 or just under 4% of construction costs in the baseline scheme, in the final appraisal.

263. There was, therefore, a very significant 10% difference between the parties. We are satisfied that the claimant's figures, even at 4%, are too low and, as we have said elsewhere in this decision, we have concerns regarding the accuracy and reliability of the information that has been extracted from Comer Group's past records. The percentages quoted for previous developments seem to us to be exceptionally low, even where a large proportion of the work has been undertaken in house. Whilst it is accepted that a very significant proportion of the architect's work (and possibly to some extent the initial work of engineers), are to be excluded from this exercise, there would remain the need for significant input into working drawings and plans, and the need for external professionals' continuing input throughout the course of the development, especially in relation to the more complex areas. Notwithstanding, we do acknowledge that large elements of the scheme are relatively straightforward, especially as regards the new build offices, flats and leisure complex and the fit out of individual floors in the main tower.

264. In our view, Mr Martin's figures at 14% and 10% for the baseline and Bristol schemes respectively are too high, and he produced no concrete evidence to support the use of those figures. We also accept the argument advanced in the claimant's submissions where they said that by basing the distinction particularly on the more complex nature of the baseline (and claim) schemes, this had the effect of raising the costs by 4% even on the most straightforward elements. We think that a developer would apply the same percentage for external professional fees on each of the alternative schemes, and doing the best that we can on the evidence before us conclude that an appropriate figure would be 7.5%. This is, for the sake of clarity, the figure to be applied to external professional fees only; the question of supervision costs having, as we have said, been included under preliminaries.

Profit

265. The parties agreed that 15% was an appropriate allowance for profit in respect of the Bristol scheme. However, it was the acquiring authority's case that due to the inherently more

risky baseline (and claim) schemes, together with their longer development period, a return of 20% on cost would have been required for those. Mr Owen said that in a residual valuation it was prudent to look at the total return that the required profit figure and the (if unspent) contingency allowance would provide. This was because if any of the principal assumptions had been optimistic the developer would only have the cushion of those two sums before he moved into a loss-making situation. In the case of the Bristol scheme, where he had allowed a 5% contingency, the total potential buffer would therefore be 20%. For the baseline scheme, 20% profit and 10% contingency produced 30%.

266. Mr Hewetson said that it was assumed that, whichever scheme was adopted, detailed planning consent would have been achieved, and that was normally one of the greatest elements of risk. Whilst it was accepted that, with the additional storeys, the claim scheme was quite significantly more risky than the baseline scheme, the baseline project was only marginally more complex or risky than the Bristol scheme. A 15% profit return was the "market norm" for relatively straightforward and marginally risky developments, and it would only be in exceptional cases, or where the developer was unaware of the extent of risks involved, that a higher percentage – say 20% may be required.

Conclusions

In our view, the right place to reflect the more risky nature of the development is in the contingency allowance, and it would have to be a project of exceptional risk or complexity that warranted a requirement for profit on cost that was anything other than the norm. We have allowed an additional 2.5% contingency for the baseline scheme and do not consider it appropriate to make any increase over the figure that the parties clearly agreed was normal, and should indeed apply to the Bristol scheme. We therefore adopt 15% profit on cost on both schemes.

Hope value

267. It was the claimant's case that, assuming planning consent had been obtained for the baseline scheme following the refusal of an application for the claim scheme, a prospective purchaser would build into his bid an element of hope value on the assumption that he stood a good chance of achieving an enhanced consent – such as for an additional 3 or 4 storeys rather than the eight originally sought. In Mr Hewetson's view, a developer would be prepared to speculate between 25% and 33% of the estimated additional development value that such an improved permission would create and although no formal costings had been undertaken, he said that a further £2,000,000 would be an appropriate allowance. In cross-examination he accepted that a purchaser would be unlikely to "sit-on" the site once it had been purchased whilst a new planning application process was undertaken, but said that if the enhancements did not significantly affect the principal scheme, that exercise could proceed while the initial development programme was being worked up.

268. It was submitted that the council's approach was consistent with that of Mr Hewetson, although it was accepted that Mr Owen was referring to the prospects of a developer

anticipating being able to negotiate a more favourable planning agreement in respect of the affordable housing element. Thus, Mr Mould said, it was clear that the principle of allowing for hope value was in no way misconceived.

269. Mr Owen said in his rebuttal of Mr Hewetson's report that he could see no logical basis for the addition of any sum to reflect the perceived possibility that a more valuable planning consent may be forthcoming. The value that the Lands Tribunal was charged with assessing was that of a development site, with planning permission in place, and ready for development. That permission would reflect the optimum use of the land, it being assumed that the vendor will have sought to obtain the consent that gave the land its highest value. Even if, Mr Owen said, there were to be a prospect of a future higher value, it would not necessarily make the land more valuable to the purchaser. In order to obtain that enhanced permission, he would have to defer implementation of the permission that was assumed to be in place, thereby incurring additional interest and holding costs, together with the not insubstantial costs of going through another planning exercise. He would also run the not inconsiderable risk that the further application would be unsuccessful, with the result that the predicted profit from implementing the scheme for which permission existed, would be seriously compromised.

Conclusions

270. As to Mr Owen's reference to the question of hope value in his main report, mentioned by Mr Hewetson, it is clear to us that he was referring to something entirely different to the question of obtaining an enhanced planning consent, and we note also that, on the subject of negotiations over the affordable housing element he said in his main report:

> "Of course, this approach can only be justified in circumstances where the viability of the scheme is such that the developer can successfully argue that it is not economic to deliver the full 30% provision at the prescribed values." (Paragraph 7.35).

271. As Mr Owen said in cross-examination, it was agreed that the full 30% affordable housing element could be provided in the baseline scheme, and in any event, the principle postulated by Mr Hewetson was entirely different to the question of making minor alterations to the scheme for which planning consent was assumed to have been obtained. We agree, and accept Mr Owen's opinion under this head in its entirety. No evidence was produced to support the claimant's contention that a more limited increase in height to the main tower might find favour with the local planning authority, and on the basis of our findings on the question of height, we consider it most unlikely that a prospective purchaser would foresee any prospect of improving on the permission that was in place. Furthermore, we agree that the costs of holding the site whilst a potentially long-winded further planning exercise was undertaken (which might well be unsuccessful) would not be economically attractive. Thus, we conclude that this entirely speculative element of value proposed by the claimant is unwarranted and that there should therefore be no addition for hope value.

Summary

272. Having dealt at length with the issues remaining in dispute, we briefly summarise our conclusions as they affect the inputs to the valuation model in respect of the baseline scheme, having concluded that the claim scheme would not have achieved planning permission:

General

1. Marmorit cladding would not have been acceptable. The building would have been clad with a stick system of glass curtain walling.
2. Affordable housing would constitute 30% of the total number of dwellings (88 out of 295).
3. The total allowance in respect of planning obligations is £1,410,000.

Costs

1. Costs are taken at June 2006 prices.
2. The baseline scheme would have been procured under a main contract.
3. Preliminaries are taken at 14.5% of the total construction cost before fees.
4. The total cost of site clearance and enabling works is £1,433,586.
5. The cost of the cladding is £5,883,625.
6. The cost of the car park is £5,700,000.
7. The total cost of the M&E services, including lifts, is £6,741,960.
8. The total superstructure costs, including the agreed items but excluding the cladding, is £2,575,793.
9. The cost of fitting out works is £4,000,000.
10. The agreed cost of fittings and furnishings is £2,205,410.
11. The total cost of the offices, the health club and the separate affordable housing block is £3,850,922.
12. The cost of the external works is £300,000.

Valuation issues

1. There is no addition for hope value.
2. The construction programme is taken at 45 months, including a 9-month set up period, and a bottom-up approach is assumed for fitting out and sales.
3. Contingencies are taken at 7.5% of the total construction costs.
4. Profit is taken at 15% on cost.
5. External professional fees are taken at 7.5% of the construction costs.
6. The amount payable by the nominated RSL for the affordable housing is £7,267,750.

Valuation of the baseline scheme

273. Our valuation of the baseline scheme is attached at Appendix 1, and amounts to £3,242,363, say £3,250,000.

The Bristol scheme

274. Having determined that planning permission would have been granted for the baseline scheme at the valuation date, and that it was a viable project (subject to our conclusions on the various disputed issues), we now turn to the Bristol scheme. It is necessary to undertake a valuation to establish whether or not that proposal was capable of creating a residual land value of more than £3,250,000. However, we are conscious of the fact that such a scheme was not proposed by the claimant, having been produced by the council as an alternative to both the baseline and claim schemes and which was promoted as being the only one which would not only have achieved consent, but also would have produced a positive value.

275. We do however find ourselves in some difficulty, as there are some areas where there was little evidence or argument, particularly from the claimant. Indeed, the claimant's experts did not even consider the Bristol scheme in the early stages of preparing their evidence (understandably so), and an appraisal was not produced until much later. Furthermore, it is clear from close scrutiny of both parties' final appraisals that despite agreement on a number of issues the figures incorporated do not always reflect what was said, or what was included in the valuation Scott schedule, eg the parties agree in that schedule that acquisition costs should be 6% and yet they adopt 5.5% (as per the baseline scheme) in their residual valuations. In any areas where we have found difficulty in translating the evidence, or where the figures do not marry up with what was said to be agreed, we have "taken a view" based to a large extent upon our overall conclusions in respect of the baseline scheme.

276. We note that there are four main differences between the baseline and the Bristol schemes. Firstly, there is no underground car park; instead there is a separate multi-storey block. Secondly, there is no separate affordable housing block. The affordable housing in the Bristol scheme is all contained within the tower. Thirdly, there are no internal or external balconies, and, lastly, there is no floor plate extension. Apart from the consequences of these changes on costs and values there is also an effect upon the programme. For reasons that are not clearly explained, Mr Hewetson increases the programme from 40 to 45 months for the Bristol scheme. Mr Owen adopts a considerably shorter phasing of 42 months for the Bristol scheme compared with 54 months under the baseline scheme. The Bristol scheme does not require the complex civil engineering tasks associated with the underground car park and is slightly smaller in scale than the baseline scheme. We do not accept Mr Hewetson's view that it should have a longer programme. But neither do we accept Mr Owen's argument that the programme can be reduced by 12 months. In our opinion the reduced scale of works will shorten the programme by 6 months, which on our timescale means that the Bristol scheme would take 39 months to complete.

277. There is significant agreement between the parties about the value of the Bristol scheme. Firstly, as to residential development values, the valuers agreed the private housing element at £37,173,125, to which we add our figure for the affordable housing of £3,998,453 (see paragraph 247 above) and the agreed figure of £935,000 for car parking to give £42,106,578. As to ground rent income, Mr Hewetson and Mr Owen agreed £150 per unit for the private residential and shared ownership units. It will be seen from our conclusions on how the income relating to the affordable housing should be split, that we chose to calculate its value on the basis of net floor areas rather than the number of units, but it was agreed at the outset that of the 236 residential units in total, 70 would be affordable. The parties have also agreed that, in this scheme, the "split" will be 50 social rented units and 20 shared ownership. We have therefore added these 20 units to the 166 private flats and penthouses to give 186 units at the agreed £150 per unit. That amounts to £27,900 pa and capitalises to £398,571 at the agreed yield. The capital values of the offices and health club are agreed at £2,602,154 and £1,923,167 respectively. Thus the gross development value we adopt is £47,030,470 from which we deduct 5.75% purchaser's costs leaving £46,737,740 as the net development value.

278. Turning to construction costs we note that the Scott schedule is incomplete in several respects with no costs being identified by the claimant for the car park, offices or leisure facility. However, in Mr Hewetson's final residual valuation the amount entered for these items is the same as that adopted by the council and we therefore take the council's figures as agreed. Both parties adopt the same costs for site clearance and enabling works that they used in the baseline scheme and we therefore do the same.

279. There is a difference of some £4.5m between the parties regarding the cost of the superstructure works, most of which is due to the difference in the experts' opinions about the cost of the curtain wall cladding. We have expressed our views on such costs in paragraphs 164 to 170 above. Davis Langdon adopt a slightly higher area for the cladding under the Bristol scheme and we have similarly increased our adopted area of 9,725 sq m to 9,840 sq m which we then cost at our previous figure of £605 psm to give a total of £5,953,200.

280. Mr Wallace makes no allowance for a waterproof balustrade to the penthouses under the Bristol scheme. We can see no reason for this omission and none was given. We have reduced our figure for this item by broadly the same proportion as is represented by Davis Langdon's analysis of the cost of the balustrades under the two schemes. This gives a rounded figure of £75,000. We have taken a similar approach to the costing of the structural work to the lift cores and have reduced the cost by 12% being the percentage reduction represented by Davis Langdon's costing of the two schemes. This gives a figure of £330,000. (Mr Wallace takes the same figure for both schemes which we do not consider to be reasonable.)

281. Under the baseline scheme Mr Martin accepted the claimant's figure for the cost of the penthouse frame which was some £100,000 more than his own figure. Under the Bristol scheme the claimant has reduced its figure by just over 10% but Mr Martin has reverted to his original figure under the baseline scheme. We can see no justification for this and we adopt the claimant's figure of £327,478.

282. Mr Martin also keeps the same figure for the cost of the suspended slab Holorib whereas Mr Wallace reduces the cost by just over 10% in the Bristol scheme. We prefer the claimant's approach and we have reduced our costs by 10% to, say, £155,000.

283. Mr Wallace increases the cost of the roof for the Bristol scheme by over 25% but no explanation is given. Mr Martin accepted the claimant's figure of £125,730 for the baseline scheme but, under the Bristol scheme, reverts to the figure he first put forward under the baseline scheme of £138,922. We can see no justification for this increase or that made by Mr Wallace and we retain the previously agreed cost of £125,730.

284. Mr Martin accepted Mr Wallace's figure of £82,615 for the cost of stairs under the baseline scheme. However for the Bristol scheme Mr Martin reverts to the figure of £70,296 that he supported under the baseline scheme before reaching agreement. Mr Wallace reduces the cost to £74,133 and we prefer this figure.

285. Under the baseline scheme we allowed £177,500 for a cleaning cradle and automatic doors. We have increased this amount to £195,000 under the Bristol scheme to allow for a second set of automatic doors.

286. With regard to fit out costs Mr Wallace reduces his figure by 8% compared with the baseline scheme whilst Mr Martin reduces his figure by 14%. We did not rely upon Mr Wallace's figure for the baseline scheme because it contained unknown stripping out costs. We prefer Mr Martin's approach and we have reduced our figure for fit out costs by 15% to £3,400,000.

287. In the baseline scheme Mr Martin accepted Mr Wallace's figure for fittings and furnishings but he does not do so for the Bristol scheme. We prefer Mr Wallace's approach on this item and we adopt his cost of £2,025,800.

288. We have used the same average figure per flat for services as we used for the baseline scheme, namely £22,500. Applying this to a total of 236 units gives a cost of £5,310,000. So far as the cost of lifts is concerned we previously adopted Mr Martin's figure and we do so again for the Bristol scheme. He takes £521,948, which gives us an overall figure for M&E work of £5,831,948.

289. As we stated in paragraph 220 above we have adopted a figure of £300,000 for external works for both the baseline and Bristol schemes. The parties have agreed a total of £1,026,707 in respect of section 106 obligations for education, recreation, park and ride, library and public art. They disagree about the contributions for highways, travel plan and public realm. We take an overall figure of £100,000 for these items as explained in paragraphs 89 to 91 above, giving a total section 106 figure of £1,126,707, which we round to £1,126,000.

290. Most of the valuation variables have been agreed between the parties, but differences remain about the figures to be taken for contingencies and professional fees. (For the Bristol

scheme the parties have agreed that the appropriate profit would be 15% on cost.) We accepted above (see paragraphs 248 to 254) that there should be a reduction to the contingency allowance to reflect the less complex civil engineering works under the Bristol scheme, but we did not agree with Mr Owen that the allowance should be halved. We consider that the contingency allowance should be reduced from 7.5% to 5%. Mr Owen has reduced his figure for fees from 14% to 10% whilst Mr Hewetson adopts an overall figure of 6%. We are not persuaded that there should be a reduction in the fees allowance and we maintain the figure of 7.5% that we adopted for the baseline scheme (see paragraphs 261 to 263).

Valuation of the Bristol scheme

291. Our valuation of the Bristol scheme is attached as Appendix 2 and amounts to £4,508,847, say £4,500,000.

Conclusions

292. We have found that the value of the Bristol scheme is £1.25m more than that of the baseline scheme. We therefore agree with Mr Owen that the Bristol scheme is the most viable, although we disagree with him that the baseline scheme shows a negative value. This is a significant difference and, in our opinion, the extra value attaches to a scheme which is inherently less risky as well as being cheaper and quicker to build. Given these figures we do not believe that a developer would have based his bid upon the baseline scheme specification as at the valuation date. The claimant did not devote much evidence to the assessment of the value of the Bristol scheme but we are satisfied, having had to examine the baseline scheme in exhaustive, and at times minute, detail that our conclusion is based upon a rigorous and complete analysis of all the available evidence.

293. Finally we would draw the parties' attention, as we did several times during the hearing, to the need to consider pragmatically and sensibly how much information a developer would expect and require in order to formulate an open market bid at the valuation date using the residual method of valuation. This Tribunal has repeatedly stressed its reluctance to use this valuation method. Its enforced use in this reference does not mean that its faults are any the less; it remains a valuation method of last resort which is inherently very sensitive to even small changes in the input variables. We have therefore had to spend what we consider to be a disproportionate amount of time in assessing the detail of the parties' arguments in order to ensure the robustness of our decision. We have acknowledged the reasons why the parties felt it was necessary to go into such detail (see for instance paragraphs 47 and 94 above), but we were not helped in our task by the seeming inability of the parties to agree upon a common approach to some aspects of the costing and valuation processes; for example Mr Hewetson valued each scheme by capitalising the residential element either as units (penthouses) or as floors (flats) whilst Mr Owen valued it by reference to area. Such differences were time consuming to check and were, in our opinion, unnecessary. On future occasions we would hope that the respective experts of all disciplines in a reference such as this will be able to agree upon a larger number of variables at an earlier stage without, as here, pursuing an attritional battle of detail which descended to the farcical level of the council specifying the cost of, inter alia, shaver sockets on a scheme costing over £40m. We understand that the

President has it in mind to issue practice guidance designed to ensure that, in future, disproportionate demands are not placed upon the Tribunal's resources in cases such as this.

294. We determine the compensation payable in the sum of £4,500,000. The parties are now invited to make submissions on costs, and a letter relating to this accompanies this decision, which will only become final when the question of costs has been determined.

Dated 3 June 2009

PR Francis FRICS

AJ Trott FRICS

Appendix 1: Lands Tribunal Valuation: Baseline Scheme

Appraisal Summary for Part 1

REVENUE					
Sales Valuation	**Units**	**Unit Amount**	**Gross Sales**		
Car park	290 units at	£5,000	1,450,000		
Penthouses	15 units at	£475,000	7,125,000		
Totals			8.575.000		
	ft²	**Rate ft²**	**Gross Sales**		
Private flats	119,784	£331.43	39,700,000		
Shared ownership	39,650	£155.00	6,145,750		
Social rented: new build	20,400	£55.00	1,122,000		
Totals	179.834		46.967.750	**55,542,750**	
Rental Area Summary	**Units**	**Unit Amount**	**Gross MRV**		
Ground rent sales	275 units at	£150	41,250		
	ft²	**Rate ft²**	**Gross MRV**		
Health club	26,695	£8.75	233,581		
Offices	15,091	£15.00	226,365		
Totals	41.786		459.946		
Investment Valuation					
Ground rent sales					
Current Rent	41,250	YP @	7.0000%	14.2857	589,286
Health club					
Current Rent	233,581	YP @	6.0000%	16.6667	3,893,021
Offices					
Current Rent	226,365	YP @	6.5000%	15.3846	3,482,538
					7,964,845
GROSS DEVELOPMENT VALUE				63,507,595	
Purchaser's Costs		5.75%	(433,077)		
NET DEVELOPMENT VALUE				63.074.518	
NET REALISATION				**63,074,518**	
OUTLAY					
ACQUISITION COSTS					
Residualised Price			3,242,363		
Stamp Duty		4.00%	129,695		
Agent Fee		1.00%	32,424		
Legal Fee		0.50%	16,212		
				3,420,693	
CONSTRUCTION COSTS					
Construction	**Units**	**Unit Amount**	**Cost**		
Car park	290 units at	£19,655	5,699,950		
Superstructure works	1 unit at	£9,893,004	9,893,004		
Services	1 unit at	£6,741,960	6,741,960		
Fit out	I unit at	£4,000,000	4,000,000		
Fittings and furnishings	1 unit at	£2,205,410	2,205,410		
External works	1 unit at	£300,000	300,000		

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APPRAISAL SUMMARY				LANDS TRIBUNAL
Appendix 1: Lands Tribunal Valuation: Baseline Scheme				
Preliminaries	1 unit at	£4,740,238	4,740,238	
Totals			33.580.562	
		ft²	**Rate ft²**	**Cost**	
Health club		26,695	£31.09	830,000	
Offices		18,425	£85.86	1,582,000	
Social rented: new build		22,088	£65.14	1,438,922	
Totals		67.208		3.850.922	**37,431,484**
Contingency			7.50%	2,807,361	
Section 106 Costs					2,807,361
Section 106				1,410,000	
PROFESSIONAL FEES					1,410,000
AII professional fees			7.50%	2,807,361	
MARKETING & LETTING Marketing:					2,807,361
Commercial element Marketing:				45,000	
Residential (penthouses) Marketing:			3.00%	213,750	
Residential (prvt flats) Letting Agent Fee			3.00%	1,191,000	
Letting Legal Fee			10.00%	50,120	
			5.00%	25,060	
DISPOSAL FEES					1,524,929
Sales Agent Fee			1.25%	793,845	
Sales Legal Fee			0.30% I	190,523	
					984,368
Additional Costs					
Arrangement Fee				265,000	
					265,000
FINANCE					
Multiple Finance Rates Used (See Assumptions)					
Land				912,435	
Construction				3,283,767	
Total Finance Cost					4,196,201
TOTAL COSTS					**54,847,398**
PROFIT					**8,227,121**
Performance Measures					
Profit on Cost%			15.00%		
Profit on GDV%			12.95%		
Profit on NDV%			13.04%		
Development Yield% (on Rent)			0.91%		
Equivalent Yield% (Nominal)			6.29%		
Equivalent Yield% (True) Gross			6.55%		
Initial Yield%			6.29%		
Net Initial Yield%			6.29%		
IRR			16.61%		
Rent Cover			16 yrs 5 mths		
Profit Erosion (finance rate 6.500%)			2yrs 2 mths		

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Tollgate House

Appendix 2: Lands Tribunal Valuation: Bristol scheme

Appraisal Summary for Part 1

REVENUE

Sales Valuation	**Units**	**Unit Amount**	**Gross Sales**		
Car park	187 units at	£5,000	935,000		
Penthouses	12 units at	£540,000	6,480,000		
Private flats	154 units at -	£199,306	30,693,124		
Totals			38,108,124		
	ft²	**Rate ft²**	**Gross Sales**		
Social rented	30,593	£67.99	2,080,018		
Shared ownership	12,377	£155.00	1,918,435		
Totals	42,970		3,998,453	**42,106,577**	
Rental Area Summary	**Units**	**Unit Amount**	**Gross MRV**		
Ground rents	186 units at	£150	27,900		
	ft²	**Rate ft²**	**Gross MRV**		
Offices	11,276	£15.00	169,140		
Health club	11,539	£10.00	115,390		
Totals	22.815		284,530		
Investment Valuation					
Offices					
Current Rent	169,140	YP@	6.5000%	15.3846	2,602,154
Health club					
Current Rent	115,390	YP @	6.0000%	16.6667	1,923,167
Ground rents					
Current Rent	27,900	YP@	7.0000%	14.2857	398,571
					4,923,892
GROSS DEVELOPMENT VALUE				47,030,469	
Purchaser's Costs		5.75%	(267,729)		
NET DEVELOPMENT VALUE				46.762.740	
NET REALISATION				**46,762,740**	

OUTLAY

ACQUISITION COSTS

Residualised Price			4,508,847	
Stamp Duty		4.00%	180,354	
Agent Fee		1.00%	45,088	
Legal Fee		0.50%	22,544	
				4,756,834

CONSTRUCTION COSTS

Construction	**Units**	**Unit Amount**	**.. Cost**
Superstructure works	1 unit at	£8,669,127	8,669,127
Fitting out	1 unit at	£3,400,000	3,400,000
Fittings and furnishings	1 unit at	£2,025,800	2,025,800
Services	1 unit at	£5,831,948	5,831,948
External works	I unit at	£300,000	300,000

Tolgate House
Appendix 2: Lands Tribunal Valuation: Bristol scheme

Car park	187 units at	£8,004	1,496,748	
Preliminaries	1 unit at	£3,391,464	3,391,464	
Totals			25.115.087	
	ft2	**Rate ft2**	**Costs**	
Offices	13,498	£93.47	1,261,637	
Health club	11,539	£35.02	404,114	
Totals	25.037		1.665.751	**26,780,838**
Contingency		5.00%	1,339,042	
Section 106 Costs				1,339,042
Section 106			1,126,707	
PROFESSIONAL FEES				1,126,707
All professional fees		7.50%	2,008,563	
				2,008,563
MARKETING & LETTING				
Marketing: Commercial element Marketing:		3.00%	45,000	
Residential (penthouses) Marketing:		3.00%	194,400	
Residential (pvte flats) Letting Agent Fee		10.00%	920,794	
Letting Legal Fee		5.00%	31,243	
			15,622	
				1,207,058
DISPOSAL FEES				
Sales Agent Fee		1.25%	587,881	
Sales Legal Fee		0.30%	141,091	
				728,972
Additional Costs				
Arrangement Fee			200,000	
				200,000
FINANCE				
Multiple Finance Rates Used (See Assumptions)				
Land			1,047,502	
Construction			1,467,732	
Total Finance Cost				2,515,235
TOTAL COSTS				**40,663,249**
PROFIT				**6,099,491**

Performance Measures	
Profit on Cost%	15.00%
profit on GDV%	12.97%
Profit on NDV% Development	13.04%
Yield% (on Rent) Equivalent Yield%	0.77%
(Nominal) Equivalent Yield% (True)	6.35%
Gross Initial Yield%	6.61%
Net Initial Yield%	6.35%
	6.35%
IRR	18.72%
Rent Cover	19 yrs 6 mths 2
Profit Erosion (finance rate 6.500%)	2 yrs 2 mths