UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2016] UKUT 370 (LC)
UTLC Case Number: ACQ/32/2014

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory Purchase – site in Salford – CPO as part of wider scheme – planning permissions – methods of valuation – residual method preferred – profits of development claim rejected in addition to market value - basic loss and other costs – compensation awarded at £321,702.61 – Section 5, Land Compensation Act 1961.

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**MR MICHAEL MICHAEL**	**Claimant**
	and	
	SALFORD CITY COUNCIL	**Acquiring Authority**

Re: 212 Great Clowes Street,
Salford
M7 2ZS

Before: Peter McCrea FRICS

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
13 January 2016

and

at: Manchester Employment Tribunal
on
21 March 2016

Mr Michael represented himself
Jonathan Easton, instructed by Salford City Council, appeared for the acquiring authority

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The following cases are referred to in this decision:

Pattle v Secretary of State for Transport [2009] UKUT 141 (LC)
Ryde International plc v London Regional Transport [2004] EWCA Civ 232
Director of Land and Buildings v Shun Fung Ironworks Ltd [1999] 2 AC 111
Lancaster City Council v Thomas Newall Ltd [2013] EWCA Civ 802
Welford v Transport for London [2010] UKUT 99 (LC)
Bluefoot Foods v Greater London Authority [2015] UKUT 0208 (LC)

DECISION

Introduction

1. This is a reference by Mr Michael Michael ("the claimant") to determine the compensation payable upon the compulsory purchase of a site known as 212 Great Clowes Street, Salford, M7 2ZS ("the reference land") by Salford City Council ("the acquiring authority"). The reference land was compulsorily acquired under the Salford City Council (212 Great Clowes Street) Compulsory Purchase Order 2005 ("the CPO").

2. The CPO was made by the acquiring authority under section 226 of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 and was confirmed by the Secretary of State without modification on 1 March 2007. The acquiring authority made a general vesting declaration in respect of the reference land on 25 January 2008. The vesting date was 28 April 2008, which is the date of valuation. The CPO was made to facilitate a comprehensive residential development on the reference land and adjacent land by developers, Godliman & Watson Limited ("G&W").

3. The claimant represented himself. On the first day of the hearing he called expert valuation evidence from Mr Andrew Stride BSc MRICS. As I explain below, by the second day of the hearing, the claimant also relied upon the evidence of Mr Stuart Beesley FRICS, with permission of the Tribunal. The acquiring authority was represented by Mr Jonathan Easton of Counsel, who called Mr Michael King FRICS to give valuation evidence. Mr Philip Holden MRICS submitted written factual evidence for the acquiring authority but was not called.

4. On 21 July 2016, I carried out an unaccompanied inspection of the reference land and comparable sites and properties.

Facts

5. The reference land fronts Great Clowes Street within Lower Broughton, a predominantly residential suburb in the city of Salford, located approximately one-mile north of Manchester City Centre. The socio-economic demographic of the location was in part the catalyst for the "New Broughton Initiative", a development initiative covering approximately 180 acres of land on the eastern side of Salford, progressed under the auspices of Salford City Council, Contour Housing Group and the Local Community and Countryside Properties to endeavour to regenerate the area of Lower Broughton. The reference land occupied an elevated and prominent position overlooking open space and Albert Park.

6. The re-development of the wider area had commenced in 2005 and developments including the Countryside Development at Camp Street were started in 2006. G&W commenced development on the adjoining site in early 2006.

7. The reference land extended to 0.224 acres or 906 sq metres. At the valuation date, it was the site of a traditional 2-3 storey former dwelling that had suffered from arson and vandalism and was derelict. It is agreed between the parties that there was no inherent value in the former structure of the building and the value of the reference land lay in its redevelopment potential.

8. At the date of my inspection, the front element of the reference land was vacant, on the rear element there were some townhouses that are part of the G&W scheme, and part of the land had been fenced off and formed part of the car park for the adjoining building that was formerly the Presidential Hotel.

9. At the valuation date, the reference land was included in two planning permissions. The first was as part of a wider planning permission, granted on 17 February 2005 under code 04/49631/FUL, for the Albert Park View Development comprising the conversion of two listed buildings to form 14 apartments, the erection of four 4-storey blocks comprising 43 apartments, 31 three-storey terrace dwellings and associated parking with new vehicular access (a total of 88 residential units). Under that planning permission the reference land was to be the site of two and a half town houses, and the majority, but not all, of a 12-unit apartment development. I shall call this the "G&W permission".

10. The second permission was obtained by Mr Michael, solely in respect of the reference land, on 6 October 2006 under reference 06/5328 5/FUL, and was for the demolition of the existing building and the erection of a new 4-storey apartment block with associated parking accommodating 8 two-bedroom apartments and 4 one-bedroom apartments. I shall call this "the Michael permission".

A brief history of the reference

11. An understanding of this decision will be assisted by a short section outlining the history of the reference, the various characters involved, and the way in which the parties' contentions, particularly those of the claimant, developed between the reference being made and the end of the hearing.

12. The Notice of Reference was received by the Tribunal on 25 April 2014. Mr Michael had prepared his own Statement of Case, which included a claim comprising a reference land value of £465,000 plus basic loss, occupier's loss [since abandoned], disturbance and other costs.

13. In August 2014, Mr Michael received legal advice that in principle "the property could enjoy a premium value as the last bit in the jigsaw to assemble the development site. How valuable the property is in such circumstances is a matter for valuation".

14. Armed with this advice, Mr Michael submitted a Supplementary Statement of Case dated 26 February 2015, in which this "premium value" was claimed at 10% of the market value. The Supplementary Statement of Case included a valuation report by Mr Peter Townley FRICS, then of Dunlop Heywood, dated 23 January 2015, in which Mr Townley valued the reference land at £465,000, using a comparable method of valuation. I should add at this point that I have not attached any weight to Mr Townley's evidence which was, to all intents, superseded by that of Mr Stride. I mention it only to explain the range of figures advanced on behalf of the claimant.

15. The involvement of Mr Michael King FRICS in the reference land dates from 2007. In May 2009 he prepared a valuation report of it for the acquiring authority ("the King 2009 report"). In this, he valued the reference land at £65,000, based on an apportionment of the implementation of the G&W permission. This apportionment comprised 12 apartments (notwithstanding that the apartment block was partly on land outside the reference land) and two townhouses (notwithstanding that half of a third house also lay within the reference land). Mr King commented:

> "Although the subject site does not in isolation facilitate strictly the total apartment block, nor indeed two of the four units, we have for the purposes of our appraisal assumed this to be the case for the purposes of establishing an underlying Market Value. One might reasonably argue a further reduction should be made from our conclusion to reflect this point, however we consider in the "no scheme" world a developer purchaser would likely take a more robust approach to consider a private treaty purchase."

16. The King 2009 report assumed eight two-bedroomed apartments and four one-bedroomed apartments totalling 7,920 sq ft, and two town houses totalling 2,340 sq ft.[1]

17. Mr King sent Mr Michael a copy of the King 2009 report on 16 November 2015. Mr Michael used this as the basis for a further calculation of his own. However, in this calculation, Mr Michael adopted a floor area of 7,920 sq ft, - he did not include the two town houses. Mr Michael's revised residual land value was calculated at £628,000 based on a 12-unit apartment development. This revised figure appeared for the first time in the bundle which Mr Michael had prepared for the hearing. He confirmed in this bundle that "The compensation claim will be based as a stand alone development with the benefit……of my planning permission (06/53285/FUL)" i.e. the Michael permission.

18. At the start of the hearing, notwithstanding his own figure of £628,000, Mr Michael relied upon an expert report by Mr Andrew Stride BSc MRICS of Dunlop Heywood (Mr Townley having retired) dated 18 November 2015. Mr Stride adopted a comparable-based valuation method, in which he valued the reference land at £488,000, using the same basic comparables as Mr Townley.

19. The acquiring authority relied upon an expert report of Mr King dated 7 September 2015, prepared for the Tribunal, in which Mr King valued the reference land at £80,000 (rounded from £77,433), but again based upon an apportionment of a development of the G&W permission.

20. As I explain below, during his evidence on the first day Mr Stride accepted that his method was simplistic, and had he had more time he would have also carried out a residual appraisal. At the end of that day, with a second hearing day in prospect, I indicated to the parties that I would be assisted by Mr Stride and Mr King each carrying out a residual valuation exercise based upon the Michael permission, in order that the valuers' contentions could be compared on a like for like basis, and by them drafting a statement of agreed facts and matters disagreed on that basis. Up to that point

[1] These appear to be gross internal areas since the same areas were used for the purposes of assessing construction costs.

in respect of expert evidence I had Mr Stride's view based upon a comparable method but not a residual method, and Mr King's view adopting a residual method, but of a development the scope of which exceeded the reference land.

21. I subsequently granted Mr Michael's application for Mr Stride to be replaced by Mr Stuart Beesley FRICS, the principal of Beesleys Chartered Surveyors. Prior to the second day of the hearing (held in Manchester some two months after the first day), Mr Beesley submitted an expert report in which he advanced several different figures: a value of the reference land, based on the Michael permission and valued using the residual approach, of £606,500; to this he added back the finance element of the residual calculation (£48,750), on the basis that Mr Michael owned the land and was ready to develop it, and also added back the profit element (£323,750) as Mr Michael had been prevented from realising the profit from the proposed development. He arrived at a figure of £917,600. He also provided a figure of £650,800 "if the claim is based upon the actual development that took place, which included a further two residential units".[2] To all of these figures, Mr Beesley added a 10% "premium value", together with basic loss and other costs.

22. Mr King's residual valuation based on the Michael permission was £73,000, but he was content that Mr Michael should still be awarded £80,000 as compensation for the reference land based on an apportionment of the G&W permission. But Mr Beesley and Mr King submitted a helpful joint statement, which did narrow some of the issues between them.

23. I directed that the parties should submit sequential closing submissions, and received those of the acquiring authority on 13 April 2016. Following a number of permitted extensions of time, I received Mr Michael's closing submissions on 10 June 2016, which amounted to 240 pages of closely typed text. They introduced a change to the basis of Mr Michael's claim to one based on the G&W permission, and he included *yet further* valuations on that basis.

24. I have based my decision on the contentions of the parties at the end of the second day of the hearing. It is unfair to the acquiring authority for Mr Michael to introduce new valuations in his closing submissions. Mr Michael has not been put at a disadvantage by my disallowing his alternative basis. As I explain below, I would have rejected that basis in any event.

25. In summary, the valuations advanced on behalf of the claimant have comprised £465,000 (Michael 1 and Townley), £488,000 (Stride), £628,000 (Michael 2), £606,500, £650,800 and £917,600 (Beesley). Counsel for the acquiring authority, Mr Easton, understandably submitted that it was extremely difficult to know exactly what case the acquiring authority had to meet. Mr King's £73,433 and £77,000 were closely aligned, but in both cases he rounded to £80,000. As I explain below, I have not placed any weight on his 2009 valuation report.

26. At the start of the second day of the hearing, I asked Mr Michael to clarify what at that point his claim actually comprised. There was a brief dialogue regarding Mr Beesley's reference to £650,800. However, after some discussion Mr Michael assured me that he was content with his original claimed figure of £628,000, i.e. excluding the two town houses. I have therefore based my decision on the claim as it stood on the second day of the hearing, which was as follows:

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[2] This wasn't quite correct, as the front block of apartments have not been built.

Land Value:	£628,000
Basic Loss @ 7.5%:	£47,100
"Premium Value" @ 10%	£62,800
Surveyors' fees:	£2,700
Planners' fee:	£4,591
Architect's fee:	£10,904
Planning fees:	£3,180
Bank arrangement fee:	£1,750
Interest on bank loan:	£5,000
Owner's time:	£2,500

27. For completeness, I have also dealt with Mr Beesley's alternative approaches.

Statutory Basis of Valuation

28. Mr Beesley and Mr King adopted as the basis of valuation the definition of Market Value outlined in the RICS "Red Book" (RICS Valuation – Professional Standards), but the correct basis of valuation is set down in statute, under section 5 of the Land Compensation Act 1961, ("the 1961 Act") in rule (2):

> "The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold on the open market by a willing seller might be expected to realise"

29. Rule (6), related to disturbance, which is also relevant, provides:

> "The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land."

The Claim

Market conditions leading up to and beyond the valuation date

30. In order to consider the value of the reference land in context, it is helpful to summarise the views of the experts as regards the state of the market at about the valuation date of April 2008.

31. Mr Stride said that whilst there was some concern in the market following the run on Northern Rock in September 2007, the market continued unchanged although there was a softening of residential sales prices "beyond" the start of 2008. Following the nationalisation of Northern Rock in February 2008, the property market continued, cautiously, but debt financing was becoming more difficult. He referred to a Land Registry Index for apartment sales in Salford from October 2005 to December 2009, which included the following (my selection, with the valuation date highlighted):

Month	Index	Average Price (flats)
September 2007	222.21	£123,036
December 2007	225.18	£124,680
March 2008	218.04	£120,728
April 2008	**217.99**	**£120,701**
June 2008	217.05	£120,178
September 2008	213.22	£118,063
December 2008	204.18	£113,055
June 2009	182.36	£100,972
September 2009	181.98	£100,760

32. Mr Stride also referred to data produced by Salford City Council's Strategic Land Housing Assessment published in February 2012 which showed average apartment sale prices between April 2003 and March 2010. Mr Stride focussed on the City average figures which were:

Year	Average Price	% increase year on year
2005/6	£128,597	+4.6%
2006/7	£131,720	+2.42%

2007/8	£143,750	+9.1%
2008/9	£133,111	-9.2%

33. Mr Stride relied on this data in forming the view that whilst values had only softened slightly from the peak of the market, probably in December 2007, the real fall in values only occurred from the end of 2008. He also referred to a table of sales on apartments in Great Clowes Street which appeared to show a peak in the market at January 2008.

34. Mr Beesley said that the market remained strong in the years leading up to 2008, with a fall in property prices only occurring in September 2008 after the collapse of Lehman Brothers. From September to December 2008 there was a 6.5% reduction in property prices. He quoted from National Institute of Economic and Social Research which said that "our latest estimate suggests that the growth rate in the three months ending April 2008 is 0.4%, after 0.4% in the three months to March."

35. He relied upon a series of transactions where the same properties had been sold twice in relatively close succession, which appeared to show increases in value between September 2007 and May 2008.

36. Mr King relied upon research and analysis undertaken by his firm in the second quarter of 2008. He said that economic output was slowing fast, with Q1 2008 revised down to 0.3%, with further weakening in Q2. The economy was generally slowing, inflation was rising, and the housing sector and appetite of developers was being considerably curtailed at the valuation date. He said that there was little or no appetite to seek or procure new development opportunities, and housebuilders were, anecdotally, known to be shelving new site acquisitions where not already committed to progress development. The glut of apartment development in the city centre of Manchester and peripheral areas was causing concern, with an oversupply having an impact on market sentiment.

37. Mr King included in his report the RICS Housing Market Survey dated March 2008, which headlined with "Lending Freeze continues to undermine the housing market", and commented "Sentiment in the housing market deteriorated again in March. The net balance of surveyors reporting falling rather than rising prices declined to 78.5% compared with 65.7% in the previous month, making March the most negative month since the survey began (January 1978). Falls in the price balance are being driven by weakness in the demand for property, reflecting lack of credit, rather than new supply coming onto the market".

38. The Market Survey was a national document, but as regards the North West, it reported "house prices declined for the eighth successive month, and at the fastest rate since July 1995. New buyer enquiries declined for the eight successive month and at the fastest rate since March 2003. New vendor instructions declined for the tenth consecutive month, but the rate of decline while still sharp eased back slightly. Confidence in the price outlook deteriorated further into negative territory reaching the lowest level in the survey's history. Confidence in sales fell back into negative territory, reaching last November's lows."

39. Mr King contended that there was no appetite from developers or housebuilders for development land acquisitions, particularly for schemes underpinned by apartment development, where sentiment was particularly negative. There would have been little or no demand for such opportunities, and no bank funding. Investor and owner-occupier purchasers were deserting the market, partly owing to the credit crunch, and partly because of fears of major price corrections and concerns of oversupply in apartment development.

40. In Mr King's view, one could not underestimate the effect this would have had on the reference land. The only likely purchaser would have been a cash rich speculator or investor or developer purchaser who might seek to acquire at a heavily discounted price in order to reflect an anticipated longer-term strategy. In these circumstances, a prudent valuer would reflect this fundamental void in, or at best thin level of, market demand.

Value of the Reference Land

Mr Stride

41. Mr Stride said that the reference land could be valued using either a residual appraisal method, or by reference to comparable land sales. In his expert report, he indicated a preference for the comparable method for several reasons. First, the high number of variables involved in a residual appraisal; secondly, there was, in his view, a sufficient amount of comparable evidence; and thirdly because small residential sites are more often purchased by small builders or speculators who view value in a fairly simplified form.

42. Mr Stride considered it relevant that, at the valuation date, G&W were progressing with the Albert Park View development, the planning permission for which also covered the reference land. He thought any overbid that G&W might have been prepared to pay was unquantifiable, but they would have been prepared to pay at least the market value and may have been willing to make an overbid. He also considered it relevant that the wider area was undergoing comprehensive redevelopment.

43. In terms of the national economy, Mr Stride accepted that at the valuation date the credit crunch was a factor, but said that there had been a minimal effect on the market until the collapse of Lehman Brothers in September 2008. From an examination of apartment sales in 2007 to 2009, Mr Stride noted that there was only a marginal fall in prices between late 2007 and April 2008, for which he thought that the fall of the Northern Rock Building Society played some part, but a significant fall post-Lehman. Small development sites were very much in demand up to the autumn of 2008, and had the reference land been on the market at the valuation date it would have been saleable.

44. Mr Stride's valuation approach was based on an assumption that in April 2008 one-bedroomed apartments in the Salford area were selling for £100-£110,000, whereas two-bedroomed apartments were achieving £150-£160,000, therefore broadly 50% more on a like for like basis. In devaluing his three comparable sites he made adjustments for time, changes in value and construction costs, and then applied his 1:1.5 ratio of one-bedroomed units to two-bedroomed units by reference to the planning permissions that each site had at the date of sales.

45. In order of weight, his comparable sales were land at Rake Lane, Clifton; 12/14 Delaunays Road, Crumpsall; and 274 Lower Broughton Road, Salford.

46. The site at Rake Lane, Clifton was sold seven months before the valuation date. It had planning permission for a single block of six two-bedroomed apartments. Mr Stride said that between October 2007 and April 2008 apartment prices rose by 3.1%, but construction costs also rose by 2.2%. He therefore adjusted the sale price of £244,000 by a net 0.9% to arrive at £246,196. He applied a 10% adjustment to reflect Rake Lane's inferior location (adjacent to an industrial complex), to come to £270,815. He devalued this using nine units (six units at a factor of 1.5), to equate to £30,090 per bed unit.

47. 12/14 Delaunays Road, which Mr Stride considered a comparable location, sold for £470,000 in December 2005, some 30 months before the valuation date. It had planning permission for 12 apartments (11 two-bedroomed and 1 one-bedroomed), with underground parking. Adding 10% to the build cost (which had been adjusted by -10.5% for time) to reflect this, and making an adjustment of 11.9% for increase in sales valued, Mr Stride arrived at a devalued £29,956 per bed unit.

48. He considered 274 Lower Broughton Road to be an inferior location to the reference land, although it was nearby. It sold for £490,000 in September 2006, with planning permission for 12 apartments (11 two-bedroomed and 1 one-bedroomed). He made an adjustment of 15% for location, 9.6% for increase in sales prices, and -6.2% for construction costs, to arrive at an adjusted sales price of £582,659 or £33,294 per bed unit. However, he considered this to be high, and thought that there might have been an overbid. He noted that the site was not built out and eventually resold at £45,000 in January 2010.

49. Having regard to his three comparables, Mr Stride had a range of £29,956 to £33,294 per bed unit. He considered £30,500 per bed unit to be an appropriate rate, having regard to the above factors, which he applied to the planning permission which Mr Michael had – 12 units comprising eight two-bedroomed and four one-bedroomed so 16 bed units – to arrive at a market value at the valuation date of £488,000.

50. During cross-examination, Mr Stride made some significant concessions. He accepted that he had not had regard to, although was aware of, the RICS Valuation Information Paper – "Valuation of Development Land"[3], which indicated (at paragraph 4.4) that "high density or complex developments, urban sites and existing buildings do not easily lend themselves to valuation by comparison". He accepted that he should have carried out a residual valuation, but did not do so because he did not have information on build costs at the valuation date and had not had the time to consult a quantity surveyor (his report dated 18 November 2015 indicates that he had been instructed by Mr Michael on 9 November). He still considered the comparable method to be valid, however, as the market was sufficiently active.

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[3] http://www.rics.org/uk/knowledge/professional-guidance/information-papers/valuation-of-development-land-1st-edition/

51. Mr Stride also accepted, very fairly, that at the valuation date he was not active in the market, acquiring and selling residential sites for clients, and that the bulk of his practice was in the field of lease advisory work – although considered himself qualified to advise on residential land. He also accepted that he had not inspected or was familiar with the reference land around the valuation date. As for his valuation approach, he accepted that this could fairly be described as simplistic. Mr Stride accepted that had he had more time, he might have approached the valuation differently.

52. Having regard to those concessions, I can only place limited weight on Mr Stride's evidence. His approach could at best be described as broad brush. There are only three comparables, each of which has been adjusted by a method which he accurately accepts as being simplistic. His adjustment to sale prices uses an index derived from data across Manchester, and has no account on changes in the number of transactions. His construction cost adjustment was framed on an even broader basis, being based upon UK-wide figures derived from a European database. Quite apart from these difficulties, his method in my view is too simplistic to be reliable. The main concern I have about his approach is that one cannot simply adjust sales prices and construction costs on a crude basis to arrive at a land value. The limited assistance I derived from Mr Stride's evidence is the fact that there were some sales of land on the dates he suggests.

Mr Beesley

53. In his expert report, Mr Beesley adopted both a residual valuation and a comparable-based approach.

54. The starting point of his residual valuation, assuming the reference land was developed in line with Mr Michael's planning permission, was a gross development value of £1,850,000. He arrived at this figure as follows:

1 bed apartments	437 sq ft @	£291.48 per sq ft	£127,376 x 4	£509,507.04
2 bed apts (front)	660 sq ft @	£252.87 per sq ft	£166,894 x 4	£667,576.80
2 bed apts (rear)	652 sq ft @	£252.87 per sq ft	£164,871 x 4	£659,484.96
				£1,836,568.80
				(say) £1,850,000

55. In adopting these rates, Mr Beesley relied upon a variety of transactions in the vicinity. These included nine sales of one-bedroomed apartments at Camp Street, a short distance away, in September and November 2008. These ranged from £99,900 to £108,950, equating to an average rate of £264.00 per sq ft. Also at Camp Street, 14 one-bedroomed flats of 446 sq ft were sold in or around September 2008 at an average rate of £279.20 per sq ft. 25 two-bedroomed apartments were sold between September and December 2008 at rates equivalent to an average £224.00 per sq ft, which Mr Beesley noted was post-Lehman Brothers' demise.

56. In the G&W scheme, adjacent to the reference land, he referred to two sales within block B, Albert Park View. Flat 4, 1st floor front – a two bedroomed unit of 754 sq ft – sold for £152,500 in September 2007, equating to £202 per sq ft. Flat 9, 2nd floor rear – a two bedroomed unit of 671 sq ft – sold for £140,000 in September 2009, equating to £208 per sq ft.

57. Mr Beesley noted that the whole of block C, Albert Park View was sold to a housing association, Contour Homes, in May 2007 for £1,530,000. The block consisted of 11 units (eight two-bedroomed and three one-bedroomed), totalling 7,419 sq ft. Mr Beesley said that to compare this to a twelve-unit block, the adjusted sale price should be £1,669,090, equivalent to £224.98. He considered this a discounted price since the developers would not incur individual agency and legal costs in disposing of 11 individual units.

58. He said that he had spoken to the sales team of Countryside, the selling agents for the Camp Street development. They told him that the highest price paid for a one-bedroomed apartment of 446 sq ft was £130,000 on 30 September 2008; and for a two-bedroomed apartment of 593 sq ft was £149,950, also on 30 September 2008. These sales equated to £291.48 per sq ft and £252.87 per sq ft respectively. Mr Beesley adopted these rates in assessing gross development value.

59. Mr Beesley also reviewed sales of properties in the Greater Manchester area between 2007 and 2008. It is unnecessary to outline them, but they comprised a variety of apartments and houses, each of which appears to show an increasing trend in values.

60. Close to the reference land, he identified the sales of apartments 1, 4 and 7 at £145,000, £152,500 and £160,000, in July 2007, September 2007 and January 2008 respectively.

61. Other sales in Block B Albert Park View included the following: Flat 10, 3rd floor, sold for £145,000 in June 2009, equating to £246 per sq ft for a unit of 589 sq ft; Flat 9, 2nd floor, sold for £140,000 in September 2009, equating to £208 per sq ft for a unit of 671 sq ft; and Flat 12, 3rd floor, sold for £140,000 in September 2009, equating to £282 per sq ft for a unit of 496 sq ft. Mr Beesley said that these sales equated to £245.00 per sq ft "in the depths of the recession". Applied to the block for which Mr Michael had planning permission, this would equate to a gross development value of £1,713,800 at that time.

62. Having regard to all of this evidence, Mr Beesley selected the rates for different apartment types which I have recorded at paragraph 54 above.

63. Mr Beesley then produced a residual appraisal, based on his GDV of £1,850,000. His construction costs were based upon £82.87 per sq ft, after other costs, including finance on land of £48,750, and a developer's profit of 17.5% of GDV, he arrived at a residual land value of £606,850.

64. Mr Beesley then considered several alternative "check" methods. The first was to apply a rule of thumb approach to the gross development value, which Mr Beesley thought should be 30% to

35%, which would give a land value of between £555,500 and £647,500. Using an average of these three figures, he arrived at £605,789[4], say £605,000.

65. He also looked at comparable sites and, like Mr Stride, referred to 274 Lower Broughton Road. The reference land had a site area of 906 sqm. The sale of 274 Lower Broughton Road at £490,000 equated to £628 per sqm. Applied to the reference land would indicate a land value of £562,871 at September 2006. Prices rose between then and the valuation date, he said.

66. He also referred to a site comprising 268, 270, and 272 Lower Broughton Road and 2A Corinthian Avenue, Salford, which together comprised 2,295 sqm. Mr Beesley considered this site to be in an inferior position to the reference land. It sold in October 2004 for £900,000, equating to £392 per sqm. Applied to the reference land would suggest a value of £351,375 in 2004.

67. Like Mr Stride, Mr Beesley also considered 12-14 Delaunays Road to be of relevance. Mr Beesley said that of the gross area of 896 sqm, only 772 sqm was developable, and on this basis the sale price of £470,000 equated to £609 per sqm. Applied to the reference land this would suggest a value of £545,500, some 2 years and 3 months prior to the valuation date. He noted that 12-14 Delaunays Road was sold on 3 February 2004 for £250,000, and then in December 2005 for £470,000.

68. He also referred to the sale of a site at 125 Great Clowes Street, very close to the reference land. This amounted to 4,042 sq yards, upon which there was subsequently erected 21,056 sq ft of residential accommodation. This was sold at £840,000, equating to £39.06 per sq ft, in August 2011 – or as he put it, well into the recession. Applying this to the reference land, Mr Beesley arrived at £273,264 for the reference land in the "depths of the recession".

69. He considered that all of these background comparable transactions supported his view that the market value of the land at the valuation date was £606,500.

70. As I indicated earlier, Mr Beesley also advanced some further heads of valuation. The first was that since the site was the last piece of land to enable the adjacent development to take place, a "premium value" should be added, at a rate of 10% of the market value. He therefore added £60,500 to his figure.

71. Secondly, in his expert report, he submitted that, since the land was in hand to Mr Michael, the finance on land element of his residual could be removed, adding £48,750. However, he accepted in cross-examination that this was incorrect.

72. Thirdly, he said that the CPO had prevented his client[5] from enjoying the profit associated with the development he planned to carry out. On his figures, this amounted to £323,750. He relied upon the Tribunal's (HH Judge Huskinson & Mr A J Trott FRICS) decision in *Pattle v Secretary of State for Transport* [2009] UKUT 141 (LC) in this regard.

[4] The average is in fact £603,283 but when rounded nothing turns on this.

[5] Mr Beesley's expert report made repeated references to "my client". This is best avoided in an expert report since it suggests partiality. I have not taken his report to be biased in favour of the claimant.

73. Taking these additional sums into account, Mr Beesley came to a figure of £917,600 – which would require to be reduced in view of his concession in respect of the £48,750 for finance on land. Alternatively, if the claim was based on the actual development that took place on the reference land, including two town houses, his amended figure was £650,800.

74. Ultimately, suggested three figures: £606,500 if sold to a developer, £917,600 assuming Mr Michael undertook the development, and £650,800 if sold to a developer based upon the actual development that took place. He felt that of these, the appropriate amount was £917,600, as Mr Michael had been deprived of the opportunity to carry out the development himself (again, before his concession on the finance on land amount of £48,750).

Mr King

75. The King 2009 report estimated a gross development value of £1,400,000, total costs of £1,334,680 (using an overall construction cost of £80 per sq ft) including a profit of £257,143, to arrive at a residual land value of £65,230, say £65,000. In his expert report for this case, Mr King had refined his approach. Its basis remained an apportionment of the wider scheme, but his gross development value had increased to £1,824,100, total costs had also increased to £1,746,667 including a profit of £364,820, to arrive at a residual land value of £77,433, say £80,000. In giving evidence, Mr King said that he carried out a more robust valuation in his expert report, and carried out more due diligence than he had for his 2009 valuation. He now considered that, for instance, his £80 per sq ft was too simplistic, and did not differentiate between the differing construction costs of the town houses in comparison with the apartments.

76. The discrepancies between Mr King's two reports were the subject of some criticism from Mr Michael, but I do not consider such criticism to be justified. There was more than a five-year gap between the dates of the reports, and I consider Mr King's candid explanation that he had prepared his expert report for this Tribunal, knowing that it would be the subject of some scrutiny, with considerably more diligence that his previous valuation, to be entirely plausible. I have not placed any weight or reliance on his 2009 report.

77. As I indicated above, following the first day of the hearing I asked the valuers to produce residual appraisals based upon the planning permission which Mr Michael had obtained. Mr King's version gave gross development value of £1,434,180, total costs of £1,361,498 including a profit of £286,836, to arrive at a residual land value of £72,682, say £73,000. However, his valuation of the site for the purposes of this reference remained at £80,000.

78. In terms of comparable evidence of apartments, Mr King said that there was limited direct comparable evidence at or around the valuation date, largely due to the state of the market and the negative sentiment that existed at that time. The following transactions occurred in the vicinity in the third and fourth quarters of 2007, in a better market than the valuation date: two sales at Broughton Lane, at prices equivalent to £250 and £225 per sq ft in July and August 2007; two sales at Alban

Street, at £260 and £250 per sq ft in June 2007; and three sales in Duke Street, at £220, £220, and £230[6] per sq ft, in September, October 2007 and February 2008.

Mr Michael's data

79. I have read and noted the extensive evidence which Mr Michael has submitted in respect of sales of houses and flats in Manchester, which he produced having carried out lengthy research on the Land Registry website. Some of this data is relevant, not least where he was able to fill the gaps which the valuers had left in respect of sales of apartments in close proximity to the reference land and the comparable land transactions cited by the valuers. I have found his other evidence, dealing with values and changes of values in other areas of Manchester, to be less helpful, and it is not necessary for me to outline it to aid the understanding of this decision.

Discussion of evidence

Gross development value

80. I deal first with which of the two planning permissions should form the basis upon which the reference land should be valued. Mr King's initial approach was to apportion part of the planning permission for the wider development. Mr King said that since the reference land encompassed "a large part, but not entirely accommodating, a 12-unit apartment block, and two of four town house units", his appraisal was generous.

81. I do not consider this method correct, not least because the front apartment block lies partly outside of the reference land. The better method, in my view, is to value the reference land based on the planning permission which Mr Michael obtained, which allows a 12-unit apartment scheme with rear parking. This planning permission, disregarding the scheme, was realisable without the need for any third party land. In my view, the compensation payable by the respondents should be based upon the Michael permission.

82. In their subsequent joint statement, Mr Beesley and Mr King agreed that a development based on that planning permission would have had a total net sales area of 6,996 sq ft, and a gross floor area for the purposes of assessing construction costs of 7,920 sq ft.

83. In terms of the market, combining the evidence of the three experts and Mr Michael, I have a wide selection of transactional data from which to draw conclusions. It is unnecessary for me to outline all of the evidence to enable an understanding of this decision - the number of transactions submitted literally runs into hundreds, if not a thousand, individual entries. Having regard to this data, I accept Mr Beesley's (and Mr Michael's) view that, despite the national and in fact regional negativity in the market, sales were still occurring in the vicinity of the reference land well into the latter half of 2008. However, the number of transactions might be treated with some caution. A large

[6] In fact, this sale (of Flat 3, 33 Duke Street), was at £146,950 equating to £253 per sq ft rather than the £132,000 which Mr King had used. Mr King said that he would have to investigate this further, as it showed a "remarkable increase" since the previous sale at £124,900 in September 2007.

number of properties on Camp Street sold on exactly the same day, which may mean that there was a portfolio sale to a single purchaser, but there was no evidence to prove or disprove this.

84. In the immediate vicinity of the reference land, as opposed to other parts of Manchester, the lowest sale price for a one-bedroomed apartment was £89,950, and the highest was £130,000. I pause there to note that Mr King's one-bedroomed value was £89,585 – lower than any of the comparables. Mr Beesley's was £127,376, which would place it in the top quartile of the evidence. For two-bedroomed apartments, the lowest sale price was £95,255 (although this may be an outlier as the next lowest was £121,970), and the highest was at £160,000. Mr King's two-bedroomed values were £135,300 for the front apartments, and £133,660 for the rear. Mr Beesley's were £166,894 and £164,871 respectively – higher than any of the comparables.

85. It follows from this that, in my view, neither Mr King nor Mr Beesley has "stood back and looked", and considered their figures in the light of the comparable transactions available from the evidence. Mr King is asking me to accept that the value of the one-bedroomed apartments was lower than any of the comparable sales. Conversely, Mr Beesley's view of the two-bedroomed apartments is higher than any of the comparable sales. In my judgement those positions cannot be correct. It may be that, in the plethora of evidence submitted I have missed on or two particular transactions, but if so that would not detract from the general principle of the point I have made.

86. From my inspection I have concluded that the most helpful and appropriate comparable evidence lies in the transactions within the G&W development. Mr King accepted in evidence that this would be the case. The reference land and the G&W block is topographically higher, with more open aspects, than for instance Camp Street, Alban Street, Moss Street, Duke Street or Broughton Lane, and generally has a more open feel. I am satisfied that this would have been the case at the valuation date.

87. All three valuers quoted transactions in the G&W development, although there seems to have been no differentiation between those in the converted listed buildings, and those within the new blocks.

88. I derive no assistance from the sale of Block C to Contour Homes. Mr Beesley's interpretation of this sale is somewhat misleading, as he devalued the sale of £1,530,000, by increasing it by a factor of 12/11 to arrive at an adjusted price of £1,669,090, by which he then divides by the actual floor area of 7,419 sq ft to arrive at £224.98 per sq ft. If he had also adjusted the floor area by 12/11 this would have been more in the region of £206 per sq ft. In any event, as he observed, the price was discounted since it was a bulk sale of 11 units and in my view, the developer would have been willing to sell at a more favourable figure as the block would have gone towards the developer's obligation under the s106 agreement.

89. The other sales include, in date order:

Flat		**Address**	**Price**	**Beds**	**Date**	**Size**	**Price psf**	**Position**
2	224	Great Clowes Street	£89,950	1	Jun-07	527	£170.68	M
1	224	Great Clowes Street	£145,000	2	Jul-07	754	£192.31	F

5	224	Great Clowes Street	£94,950	1	Jul-07	527	£180.17	M
8	224	Great Clowes Street	£99,950	1	Jul-07	527	£189.66	M
11	224	Great Clowes Street	£104,950	1	Jul-07	366	£286.75	M
4	224	Great Clowes Street	£152,500	2	Sep-07	754	£202.25	F
7	224	Great Clowes Street	£160,000	2	Jan-08	754	£212.20	F
10	224	Great Clowes Street	£145,000	2	Jun-09	678	£213.86	F
9	224	Great Clowes Street	£140,000	2	Sep-09	671	£208.64	R
12	224	Great Clowes Street	£140,000	2	Sep-09	613	£228.38	R

90. The evidence seems so show a broadly consistent pattern. For two-bedroomed apartments, the pattern seems to be values of £145,000 - £152,500 in July to September 2007, decreasing to £145,000 in June 09, and dropping further to £140,000 in September 2009. This is broadly, but not entirely, consistent with the Salford Apartment Price Index which Mr Stride produced, of 222.1; 182.79; and 181.98 for the same periods. I am not sufficiently confident of the one transaction at £160,000 to place reliance upon it.

91. Doing the best I can from the evidence, in my opinion the two bedroomed apartments in Mr Michael's proposed scheme would have had an average value of £150,000, with those at the front at £151,500, and those at the rear at £149,500. I have had regard to the fact that the apartments in the Michael permission are larger than many of the comparables. These compare with Mr King's £135,500 to £136,660, and Mr Beesley's £164,871 and £166,871. On a broad approach, given both valuers are experienced practitioners in Manchester, I am satisfied to be somewhere between them on value.

92. The one-bedroomed flats are more of a challenge, as there is less available evidence. I consider the sale of Flat 11 at £104,950, to be somewhere near the top of the market. Again, doing the best I can, I consider Mr Michael's one-bedroomed apartments would have had a value of £99,000. This would compare with Mr King's £89,585, and Mr Beesley's £127,376. I note, in passing, that my ratio of one to two bedroomed values would broadly mirror Mr Stride's ratio of 1:1.5.

93. From the available evidence, in my judgement the gross development value of a completed development, based on the Michael permission, should on the following basis (rounding up for each apartment):

1 bed apartments	£99,000 x 4	£396,000
2 bed apts (front)	£151,500 x 4	£606,000
2 bed apts (rear)	£149,500 x 4	£598,000
Gross development value:		£1,600,000

Construction and other costs

94. Mr Beesley adopted a construction cost of £82.87 per sq ft, which he said was derived from the BCIS data for Spring 2008, with a location factor for Manchester. His basic construction cost, using the agreed gross internal area of 7,920 sq ft, was therefore £656,330. To this he added a

contingency of 3.5% (£22,972), demolition costs (agreed at £10,000), site works of £20,000, s.106 costs of £17,280, and professional fees at 10% (on the basic construction cost of £656,330), to arrive at £792,215.

95. In his expert report, Mr Beesley said, "my client received advice dated 4 August 2006 from Britch and Associates Quantity Surveyors which indicated total bill costs, including works and fees, of £998,656." In cross-examination, Mr Beesley was unable to explain the discrepancy between this figure, and his figure of £792,215 (the components of which he accepted – with the possible exception of s106 costs - would be a fair comparison with those assumed to be in the Britch and Associates figure). Mr Beesley accepted that there would have been an element of increase between August 2006 and April 2008.

96. Mr Beesley also said that he understood that in 2006 G&W were prepared to build the block for which Mr Michael had planning permission, for Mr Michael, for a cost of £1.1 million, including their profit.

97. Mr King used a construction rate of £91 per sq ft. He said that this was the BCIS figure for the UK average, for apartments of 3-5 storeys. He accepted that with a locational factor this would reduce to £83 per sq ft, but said that he preferred the higher figure, as he knew the reference land was a problematic site. Mr King thought that the G&W 2006 offer would be likely to have included a lower profit element than in a normal appraisal, as the developer did not have the risk of having to sell the completed apartments themselves – as they would be building it for Mr Michael.

98. He applied £91 per sq ft to the agreed gross internal area of 7,920 sq ft, added 5% for contingencies, the agreed amount of £10,000 for demolition, £95,000 for externals and £22,700 for s.106 costs (both as an apportionment of the wider scheme), and 10% for fees (on all of the above), to arrive at a figure of £966,028. This was, he said, entirely consistent with both the G&W offer of £1.1 million including an element of profit, and the Britch and Associates figure of £998,656.

99. As regards the basic build cost, I prefer Mr King's approach. His view is more consistent with the other, albeit hearsay, evidence from Britch and Associates and the G&W offer. I accept Mr King's view that the G&W offer would probably have included a lower profit element, as the developer would simply be contracting to Mr Michael.

100. I also prefer Mr King's contingency rate of 5% to Mr Beesley's 3.5%, largely owing to the relatively small numbers that these figures produce – Mr Beesley's £22,972 does not leave much room for error, and I prefer Mr King's higher figure.

101. The valuers have agreed a figure of £10,000 for demolition, and I adopt that. On first glance they also agreed a rate for professional fees of 10%, but Mr Beesley applied this only to the basic build cost. Mr King applied it to the wider range of costs, including demolition, site works/externals etc. I do not think that these operations can be carried out in a vacuum of professional advice, and I have therefore applied it to the wider range.

102. As for s106 costs, Mr Beesley's £17,280 compares with Mr King's £22,780, which was an apportionment of the wider scheme costs. I do not consider Mr King's approach to be correct.

Condition 5 of the Michael permission (06/53285/FUL) refers to a s106 obligation for the provision of public open space. Mr Michael said that there was no obligation for affordable housing for sites under 1 hectare or 25 units, and referred to Salford's adopted policy UDP H4. He said that the planning authority advised him that the total commuted sum towards public open space was £17,280, which is the figure that Mr Beesley has used. I have adopted that amount.

103. Finally, for site works/externals, Mr Beesley's £20,000 compares with Mr King's £95,000, the latter being an apportionment of the wider site works for the G&W scheme. Looking at the reference land in isolation, I prefer Mr Beesley's evidence, and have adopted his figure.

104. I can deal with the remaining items of the residual appraisal relatively briefly. For disposal fees for the completed units, Mr Beesley used 1% for agents' fees, and 0.5% for legal fees. Mr King was at 1.5% and 1%. For 12 transactions, I am satisfied that Mr Beesley's rates are correct. I have adopted a halfway figure of £5,500 for marketing costs (Mr Beesley £5,000, Mr King £6,000), and similarly £4,000 as an arrangement fee. The valuers have agreed an amount for NHBC certification of £12,000 and I adopt that.

105. In respect of finance, I do not agree with Mr Beesley's initial view that finance on the land can simply be added back. This is not because I agree with Mr King's view that it is inconsistent with the concept of market value – as I indicated above market value is not the basis upon which to value the land. But Mr Beesley's position is inconsistent with the notion of a sale of the reference land under rule (2), where the vendor is an anonymous, hypothetical seller. In any event, he conceded this point in cross-examination. Mr King's total finance cost was £62,055, and Mr Beesley's was £70,333. Mr King's finance on land of £5,203 was, in my view too low, but his finance on "other", of £33,253 was too high. Neither expert gave a detailed account of how his finance was calculated. Doing the best I can I have adopted a total finance cost of £65,000.

106. Finally, as regards developer's profit, Mr Beesley's figure was 17.5% of costs, and Mr King's was £20%. I prefer Mr King's figure, as I accept his view that the notional developer would be aware of a general oversupply in this sector, notwithstanding that demand for the apartments in the immediate vicinity remained reasonable.

107. The outcome of those calculations is a residual land value, after acquisition costs of £280,255, say £280,000.

108. However, this must be considered in the light of the other evidence. As the RICS Valuation Information Paper states (at 5.1 onwards):

> "…even limited analysis of comparable sales can provide a useful check as to the reasonableness of a residual valuation…
>
> …The residual method requires the input of a large amount of data, which is rarely absolute or precise, coupled with making a large number of assumptions. Small changes in any of the inputs can cumulatively lead to a large change in the land value. Some of these inputs can be assessed with reasonable objectivity, but others present great difficulty."

109. Given the well-recognised uncertainties of residual valuations generally, it is perhaps unsurprising that two Chartered Surveyors, each an experienced valuer in the North-West, can have such diverging views as to the value of the reference land using this approach. Some help might be obtained from section 7 of the Valuation Information Paper, entitled "Assessing the Land Value", which says this:

> "Some elements of the calculations may be sensitive to adjustments and, although these may be reflected in the cost calculations, such sensitivities may also be reflected in an adjustment to the residual value…..If at all possible an attempt can be made to compare the result [of a residual appraisal] with such market evidence as may exist because the residual method sometimes produces theoretical results that are out of line with prices being achieved in the market."

110. There are sources of information against which the residual approach might be judged. These are the offers for the reference land that Mr Michael received, and the limited comparable evidence that is available.

Offers received by Mr Michael

111. Mr Michael outlined the number of offers he received. In the first quarter of 2004, he received a verbal offer from G&W of £75,000, who he said wanted the reference land in order to provide parking for the development of the Presidential Hotel. He said that this was increased in around June 2004 to £100,000.

112. He submitted a copy of an offer letter dated 10 August 2004 from independent developers, Wispers Developments, in the sum of £180,000. On 20 August, G&W made a written offer of £130,000, which he said was increased to £185,000 after Mr Michael had told G&W that he had received an offer of £180,000.

113. There was no further dialogue until after G&W had secured their wider planning permission, but in a letter of 14 February 2006, the developer offered Mr Michael three one-bedroomed flats, which it said had a value of £300,000, in exchange for the reference land.

114. Mr Michael said that during the interval of the first public inquiry on 6 June 2006, G&W made two further offers for the reference land, after approaching his planning consultant, Ms Brownridge. These were for £500,000 shortly followed by £550,000. Mr Michael said that, between the two public inquiry hearings, the second being in October 2006, he had a discussion with G&W which resulted in G&W offering to construct the development on Mr Michael's behalf for £1.1million, as referred to above. He said that he rejected this as it would have been part of the wider scheme, and he would have been liable for a service charge of £12,000 – being £1,000 per apartment.

115. With the exception of the cost at which G&W were prepared to build out the 12-apartment scheme, which I have referred to previously, I do not derive much assistance from this evidence. At best, it might show that G&W were prepared to pay a substantial sum for the reference land in the middle of a planning inquiry, in an undoubtedly better market, but I am not persuaded that this largely hearsay and uncorroborated evidence can be taken into account if one is disregarding the scheme that

underpins the CPO. The sums under discussion were contingent on the scheme and shed little light on the value of the land in different circumstances.

116. I now turn to the comparable sites, all of which I have inspected.

117. I derive very little assistance from the sale of the site at Rake Lane, Clifton. In my view, the location is not sufficiently comparable to the reference land to place much reliance upon the sale as comparable evidence. Whilst on the periphery of a housing estate, the location is quasi-rural, albeit close to some large industrial facilities. It does not compare with the more urban feel of the reference land.

118. The site at Delaunays Road, Crumpsall is slightly more comparable, but situated in an older part of the City, with large Victorian villas and within a conservation area. I have placed some weight on this transaction, at £470,000, but its usefulness would have been greater had the sale taken place closer to the valuation date, rather than over two years earlier, in what was undoubtedly a better market. The site had an overall area of 896 sqm, very comparable to the reference land. Mr Beesley said that only 772 sqm was developable, but there was no evidence that the sale price was based on this lower area.

119. The site at 274 Lower Broughton Road is of some use. The site was sold in September 2006 at £490,000, at what Mr King described as the peak of the market. I note that the site was not built out, and in fact was resold in January 2010 at £45,000.

120. These sales serve only to give some form of benchmark and, as the RICS Information Paper correctly observes, a simple like for like comparison is difficult. Additionally, the market changed dramatically in the period of five years or so, as the fortunes of 274 Lower Broughton Road indicate.

121. I have not derived any assistance from the brief references to 125 Great Clowes Street, or the Lower Broughton Road/Corinthian Avenue site, nor to the sale of the adjoining Presidential Hotel, sold four years before the valuation date with a listed building thereon. Mr Beesley said that the 125 Great Clowes Street site pointed to a value of just over £270,000 for the reference land "in the depths of the recession", and adjusted upwards for it, but that site accommodated over 12,000 sq ft of residential development – around double that of the reference land.

122. I have balanced the fact that two comparable sites, each with different characteristics to the reference land, sold at different points in the market cycle, but each with planning permission for 12 apartments, at substantial six-figure sums. However, I have also had regard to Mr King's evidence that the market was turning, and that developers were taking a more pessimistic view of apartment schemes. However, as I have indicated above, I am not with Mr King to the extent that the apartment market was non-existent.

123. Mr King was dismissive of a "rule of thumb" indicator of residual land value to gross development value. Like Mr Beesley, I find that to be a partly useful "rough and ready" indicator. Mr King's land value of £72,682 represented 5% of his assumed gross development value. To my mind that was an (albeit crude) indicator that something was amiss. My own figure, at 17.5%, is more in line with what I would expect for a high-density development.

124. Having considered this wider evidence, I do not find anything to displace my calculation on a residual basis of a basic reference land value of £280,000.

Ransom Value, Premium Value, and Development Profit

125. There are three other elements that require comment.

126. Mr Michael claims that the reference land enjoyed some form of extra value since part of it was used for the car park of the converted Presidential Hotel, which was developed into a live-work mixed unit. I do not consider that that has suggestion any merit. The values which I have attributed to the notionally completed units in Mr Michael's scheme are underpinned by the parking provision which is included in his planning permission, and which includes the area of land which was, in the end, used as part of the parking for the adjoining development. Secondly, there was no evidence that the adjoining property could not be developed without part of the reference land. Mr Michael also put some weight on the fact that the reference land was used for the storage of materials during the construction of the scheme. I am not persuaded that that adds anything to his case. In reality, I suspect the builders simply used the site as it was vacant, and might have used land elsewhere had it not been.

127. Secondly, premium value. Mr Beesley added a 10% "premium value" to his residual land value, due to the last piece of land to allow adjacent developments to take place. This did not appear in Mr Beesley's original report, and Mr Beesley said that it was added following Mr Michael receiving legal advice from Mr Philip Maude that "in princip[le], the property could enjoy a premium value as the last bit in the jigsaw to assemble the development site. How valuable the property is in such circumstances is a matter for valuation". Indeed.

128. However, Mr Beesley was not able to show in any convincing way why a value of 10%, a conveniently round number, should be attributed to this proposed premium. Other than part of the G&W planning permission covering the reference land, there was nothing to show that the remainder could not be developed without it. I note from my inspection that the front part of the reference land remains undeveloped to this day. The addition of a further 10% ignores the effect that this would have an impact on the viability of the reference land under the residual method. I am not satisfied that the claimant has shown that a 10% addition is warranted.

129. Thirdly, there was the concept of development profit. As indicated above, Mr Beesley carried out his residual appraisal, and then added back in the profit element of £323,750. This was on the basis that since the CPO had prevented Mr Michael from enjoying the profits associated with the development he had planned to carry out, he had been denied the developer's profit element, and relied upon the Tribunal's decision in *Pattle*.

130. Mr Beesley was questioned closely on this element by both Mr Easton and myself, and maintained that his position was correct. In my view, he was wrong. Mr Easton correctly observed in his closing argument that Mr Beesley has misread *Pattle*, which was a case in which the vast majority of the land was not taken.

131. Rule (6) of the 1961 Act provides that:

> "The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter **not directly based on the value of the land**."
>
> (my emphasis)

132. In *Ryde International plc v London Regional Transport* [2004] EWCA Civ 232, the Court of Appeal held that under rule (2) a developer was entitled to the market value of the property being compulsorily purchased, but was not also entitled to the loss of profits that he would have made by refurbishing and selling individual flats under rule (6). Carnwath LJ, as he then was, said this:

> "23. …. It is true that the acquisition deprived Ryde of their expected profit, but it also relieved them of the corresponding risk. Therefore, there was no reason for the loss of profit to be the subject of separate compensation, and no departure from the principle of equivalence. At the date of entry, Ryde's interest in the land, as a source of expected future profit, was replaced by a different asset, in the form of a statutory debt. The delay between the acquisition of that new asset and its realisation was compensated by the right to statutory interest at the prescribed rate.
>
> 24. It follows, in my view, that there was no separate head of loss which fell to be compensated under rule (6)…
>
> 25. However, rule (6) specifically excluded compensation for any matter "directly based on the value of land". The purpose of this was clearly to avoid any potential overlap with the market value principle, introduced by rule (2), in order to provide a more certain and objective test of land value than the somewhat arbitrary criteria applied by juries under the previous law (the "evil of excessive compensation" to which Scott LJ referred in *Sunderland* at p 40). Any additional value which might have been represented by the potential for marketing the flats separately would in my view have been "directly based on the value of land". Thus, even if it had otherwise qualified as a loss caused by the acquisition, it would have been excluded from the scope of rule (6)."

133. In essence, since the rule (2) compensation included the value of the potential to make a profit while also taking into account the risk of development, any claim under rule (6) for the loss of future profit would amount to double counting.

134. I consider Mr Beesley's approach to be entirely at odds with *Ryde*, as his profit element was directly based on the value of the land which has already been accounted for in his rule (2) market value, and I reject it.

135. Accordingly, I determine that the value of the reference land at the valuation date, and thus the compensation payable to Mr Michael under this head, is £280,000.

Basic Loss

136. The parties are agreed that Mr Michael is entitled to a basic loss payment at 7.5% of the Market Value, and I therefore determine Basic Loss at £21,000.

Other Costs

137. Mr Michael submitted a large folder of documents shortly prior to the second day of the hearing in respect of costs and other elements of his claim. Many of these costs are costs of the reference, and are therefore not for me to deal with at this point. The costs incurred prior to the reference being made comprised the following.

Surveyors' fees: £2,700

138. Mr Michael submitted documentation in relation to costs incurred with five different firms of surveyors. Three of these related to pre-reference costs totalling £2,700.00. The first was an invoice dated 15 April 2014 in the sum of £1,200 including VAT from Roger Hannah and Co for "professional services for advising on the value of [the reference land] as part of compulsory purchase negotiations and advising as to compensation"; there was then a cheque (but no invoice) dated 22 April 2014 to "Peter Cunliffe" in the sum of £600.00; and finally an invoice dated 28 April 2014 from Longden and Cook in the sum of £900.00 in relation to "our professional charges in providing a report for compensation purposes".

139. Mr King said that he was satisfied to recommend payment of the cost incurred with Longden and Cook, which was Mr Townley's former firm. However, he said that he guarded against duplication. He had not carried out any negotiations with Roger Hannah and Co, and there was insufficient information as regards the Peter Cunliffe cost.

140. I consider Mr King to be correct, and award to Mr Michael the sum of £900.00

Planning fees: £4,591.44

141. Mr Michael claimed £4,591.44 in planning fees, comprising £1,153.94 to The Graham Bolton Planning Partnership, and two invoices totalling £3,437.50 to Halliwells LLP. He submitted statements in respect of invoices dated 7 June 2006 from Graham Bolton, and in respect of 30 June 2006 from Halliwells. No invoices were submitted, and the statements did not outline the work that had been done.

142. Mr Michael accepted in cross-examination that a representative from Graham Bolton attended the public inquiry with him (on the day before that firm's invoice, 6th June 2006), and said that Halliwells gave him legal advice in respect of his planning application. I note that the public inquiry was adjourned, to allow Mr Michael to prepare and submit his own planning application (that resulted in the Michael permission).

143. Mr King provided a short supplementary report in which he made observations on Mr Michael's various claims for costs. In it, he said that if the costs incurred related to Mr Michael's

unsuccessful objection to the CPO, they would not be recoverable. If they were in relation to his planning application that had been used to support his claim for compensation, they might be recoverable but there was insufficient information for him to be able to recommend payment.

144. It is for Mr Michael to prove his claim, and there is no documentary evidence that assists him. However, from his oral evidence, I am satisfied that the fee payable to Graham Bolton Planning was in relation to his objection to the CPO, which is not claimable. However, I am persuaded, on balance, that part of the Halliwells fee is recoverable, as it was in relation to his planning application in support of his claim, and I award to Mr Michael 50% of that firm's fees, namely £1,718.75

Architect's fees: £10,903.86

145. Mr Michael submitted a copy invoice from Britch and Associates, dated 7 August 2006, in the sum of £9,279.88 plus VAT of £1,623.98, in respect of that firm's work in submitting the planning application that resulted in the Michael Permission.

146. Mr King's chief objection to this was that the Michael permission would result in a scheme which was unviable. I do not agree that it was unviable. Mr King accepted that in principle the amount might be recoverable. I am satisfied that it is, and award £10,903.86 to Mr Michael.

Planning costs: £3,180.00

147. Mr Michael claims £3,180, and submitted a copy of a receipt, dated 7 August 2006 from Salford City Council which indicated that the payment was for Building Regulation and Planning fees.

148. Adopting the same reasoning as above, I consider that this is recoverable.

Bank arrangement fees: £1,750.00 and
Interest on bank loan: £5,000

149. Mr Michael claims £1,750.00 as a bank arrangement fee. This comprised £1,500.00 in respect of a letter which the Bank of Cyprus provided to him, dated 2 October 2008, to confirm in principle that it was prepared to support him with his proposed development "at £1m of 212 great Clowes Street". He said in cross-examination that the £250.00 related to the arrangement of a £25,000 loan to clear debts that he incurred in paying various professional fees. He also claims £5,000 as interest on a bank loan.

150. I am persuaded that the claim in respect of the bank's letter, of £1,500.00, is claimable, as it was necessary for Mr Michael to procure it in relation to the CPO. The fee of £250.00 is not claimable, nor the claim for interest on a bank loan, as insufficient details have been submitted to satisfy the tests outlined in *Director of Land and Buildings v Shun Fung Ironworks Ltd* [1999] 2 AC 111 as regards causation and remoteness.

Owner's time: £2,500.00

151. Mr Michael submitted that of his total claim for time of £25,000, £2,500 of this was incurred prior to the reference. He accepted that there were no written timesheets to evidence the claim. However, he did submit a 53-page document in support of his claim, which outlined in detail the work which he had undertaken.

152. In answer to a question from me, Mr Michael said that he estimated 100 hours prior to the reference, and claimed £25.00 per hour.

153. It is important to differentiate cases involving companies, and cases involving individuals. In *Lancaster City Council v Thomas Newall Ltd* [2013] EWCA Civ 802, it was held that a claim for management time was not proven in the absence of any supporting documentary evidence. However, Rimer LJ said this:

> "I can well see that if an individual faced with a compulsory acquisition reasonably devotes his own time to dealing with it, he ought in principle to be compensated for his time. He can fairly say that the expenditure of such time represents a loss to him"

154. I am satisfied that, on the evidence submitted and the oral evidence I heard, Mr Michael has spent at least 100 hours on this matter as a direct result of the CPO. I am satisfied that he should be compensated to the amount of £2,500, and I award this to him. However, for the avoidance of doubt I would not wish to bind the hands of the Registrar, if he is required to assess the costs of the reference, in respect of Mr Michael's time post-reference.

Summary

155. I determine compensation on the following basis:

Value of reference land:	£280,000.00
Basic Loss @ 7.5%:	£21,000.00
Surveyors' fees:	£900.00
Planning fees:	£1,718.75
Architects' fees:	£10,903.86
Planning costs:	£3,180.00
Bank arrangement fee:	£1,500.00
Owner's time:	£2,500.00

156. This totals £321,702.61. In addition, the claimant is entitled to statutory interest.

Concluding Remarks

157. I cannot leave this case without making some general observations.

158. Parties are under a duty to assist the Tribunal in furthering the overriding objective to deal with a claim in a way that is proportionate to the complexity of the issues. Whilst unrepresented claimants should not be expected to conduct a case with the efficiency that a solicitor or counsel, familiar with the procedures of the Tribunal, would be able to achieve, neither should they adopt a "kitchen sink" approach of submitting evidence of huge length and of considerable detail, irrespective of its relevance to the actual points of dispute which the Tribunal is being asked to determine. This is inappropriate, inconsistent with the overriding objective, and leads to increased costs.

159. The road has been a long and tortuous one for Mr Michael, as he sought to resist his land being taken against his will. I am quite satisfied that he wished to develop the reference land himself. He has fought his corner with considerable tenacity and should be commended for that. He submitted expert evidence on his behalf, and two Chartered Surveyors gave live evidence for him. Where he departed from that evidence seeking to give his own opinion of value, I placed little weight on his opinion, which cannot be regarded as objective. As I commented in *Bluefoot Foods v Greater London Authority* [2015] UKUT 0208 (LC), claimants must appreciate that if they presenting their own opinion in addition to expert evidence, the Tribunal will normally place more reliance on his expert's evidence, especially when the claimant is seeking a more advantageous basis than his expert is suggesting.

160. I say that with every respect to Mr Michael. In other regards, his factual evidence has been helpful in determining this matter. I read his extensive evidence, but it was unnecessary to comment on all it when explaining my decision.

161. However, at the conclusion of this reference it is important that both parties, whilst they might not agree with my findings as to compensation, are satisfied that they had a full opportunity to present their case, and that all substantial points raised have been fully and properly dealt with. I finish by expressing my thanks to Mr Easton for his co-operation in accommodating what was a significant degree of procedural flexibility in order to allow Mr Michael the opportunity to fully present his case in the way he chose to do.

162. This decision is final on all matters other than the costs of the reference. The parties may now make submissions on costs, and a letter giving directions for the exchange of submissions accompanies this decision.

Dated: 6 September 2016

Peter D McCrea FRICS