

**UPPER TRIBUNAL (LANDS CHAMBER)**



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**Royal Courts of Justice, Strand,  
London WC2A 2LL**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***COMPULSORY PURCHASE – COMPENSATION – house acquired following an Emergency Prohibition Order under section 43 of the Housing Act 2004 – rule 2 value s.5, Land Compensation Act 1961 – Compensation determined at £345,000***

**IN THE MATTER OF A NOTICE OF REFERENCE**

**BETWEEN:**

**ANDREW FRASER AS ADMINISTRATOR IN THE ESTATE  
OF MONICA AGNES IRENE MILLER**

**Claimant**

**-and-**

**HERTSMERE BOROUGH COUNCIL**

**Acquiring Authority**

**Re: 111 Strafford Gate,  
Potters Bar,  
Hertfordshire,  
EN6 1PR**

**Mr Mark Higgin FRICS  
2 March 2023**

**Decision Date: 11 May 2023**

*Andrew Byass*, instructed by Wedlake Bell for the claimant  
*Martin Edwards* for the acquiring authority

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No cases are referred to in this decision:

## **Introduction**

1. This reference concerns the value of a house at 111 Strafford Gate, Potters Bar, Hertfordshire ('the Property') which was compulsorily acquired by Hertsmeire Borough Council in March 2018, having been unoccupied since 2010 and in disrepair.
2. The issues which are said by the parties to have a bearing on the value are the disrepair itself and the extent to which the value should reflect the development potential of the site. In this decision I will establish the condition of the property at the valuation date of 9 March 2018, its value by reference to comparable properties and examine whether there were prospects for development.
3. Following the acquisition of the Property the Council obtained planning permission for conversion into two flats and the works to facilitate this change have now been completed.
4. I carried out an unaccompanied external inspection of the Property, and several comparables identified by the parties, on the afternoon of 20 February 2023.
5. At the hearing of the reference the claimant was represented by Andrew Byass of counsel and the respondent by Martin Edwards of counsel. I am grateful to them both for their submissions and assistance.

## **The factual background**

6. Potters Bar is a town in southern Hertfordshire situated about 13 miles north of Central London. The A1(M) motorway lies some 1.5 miles to the west and the M25 passes about 0.75 miles south of the town. It is served by the East Coast Main Line railway and has direct services to Kings Cross and Moorgate stations, amongst many other destinations. Potters Bar has two commercial centres, one focussed on Darkes Lane which traverses the railway line and contains the station, the second is based around the High Street which runs parallel to Darkes Lane but about 0.6 miles to the east.
7. The Property is located between these two centres but much closer to Darkes Lane. The station is only 180 metres to the north east and the nearest shops are even closer. The Property sits at the junction of Strafford Gate and The Walk and has substantial frontages to both roads, each of which is a bus route.
8. At the valuation date the Property comprised a semi-detached house dating from 1935. It was constructed of solid brickwork under a roof which is partly pitched with clay tiles and partly flat. The elevations were finished in a mixture of fair faced brick and cement render and it had a two storey bay window on the front elevation with a pitched roof. The Property still had its original 'Critall' style windows comprising rectangular panes arranged in rows. Those in the bay were placed in a curved arrangement typical of the period.
9. Internally the Property was arranged with two reception rooms, a kitchen and WC on the ground floor. On the first floor there were three bedrooms, a bathroom and separate WC. The Property was not centrally heated but had been rewired with a modern consumer unit installed. Some of the sanitary ware had been replaced, the first floor WC for instance was a contemporary close coupled design with plastic pipework.
10. The property did not have vehicular access or a garage.

11. The Property occupied a plot of some 475 m<sup>2</sup>.
12. The plan below shows the location of the Property relative to its surroundings:



13. Mr Byass called Mr Andrew Fraser as a witness of fact. Mr Fraser is the administrator of the estate of Mrs Monica Agnes Irene Miller who, at the time of her death in April 2010, was the owner of the Property. He explained that he is a partner in the firm of Fraser & Fraser who are international probate researchers and professional estate administrators. He is also a chartered building surveyor with experience in the disposal of dilapidated properties.
14. Mr Fraser said that the Property had been acquired by Mrs Miller's husband in 1960 and had passed to her on his death in 2002. Mrs Miller died without making a will and her estate

consequently passed to her sole surviving son, Terence Miller who lives in Bristol. Mr Fraser said that the acquiring authority first took steps to manage the Property in 2017 as the gardens had become overgrown. He went on to explain that an Emergency Prohibition Order was made under section 43 of the Housing Act 2004 restricting the use of the Property and it was subsequently boarded up using 'Sitex' security screens.

15. The administration of the estate of Mrs Miller was issued to Mr Fraser by grant of a letter of administration dated 11 July 2019. Under the same process the administration of Mr Miller's estate was issued to Mr Fraser on 16 January 2020, but it was limited until the grant of further representation in the estate of Mrs Miller. The property was registered in Mr Fraser's name, in his capacity as administrator of Mr Miller's estate, at the Land Registry on 3 February 2020.

### **The statutory context**

#### *The EPO and acquisition process*

16. Due to the poor condition of the Property, in early 2017 the Acquiring Authority issued an 'Emergency Prohibition Order' ('EPO') under section 43 of the Housing Act 2004 restricting the use of the Property. It was subsequently boarded up and the process of acquiring the Property compulsorily commenced.
17. An EPO can be made when residential premises exhibit one or more Category 1 hazards. Such hazards are listed in the Housing Health and Safety Rating System and include defects which would give rise to an imminent risk of serious harm to the health or safety of any occupier of such premises. Hazards can include the risk of parts of the fabric of a building being displaced or failing due to inadequate fixing or disrepair and health threats due to the presence of damp and mould growth.
18. On 27 April 2017 the acquiring authority made the Hertsmere Borough Council (111 Strafford Gate Potters Bar) Compulsory Purchase Order 2017 ('the Order') which was subsequently confirmed by the Secretary of State on 28 July 2017. Notice of confirmation of the Order was first published in accordance with section 15 of the Acquisition of Land Act 1981 on 13 September 2017.
19. On 6 December 2017 the Council executed a General Vesting Declaration in accordance with section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 and the freehold title of the property became vested in the Council on 9 March 2018.
20. Land to be acquired by compulsory purchase is valued in accordance with Rule 2 of section 5 of the Land Compensation Act 1961, which states that:

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

### **The claimant's case**

21. The claimant submitted that their Rule 2 valuation (and therefore the compensation sought) was £545,000 comprising £525,000 for the Property assuming average to reasonable condition, less £40,000 for repairs and with a further uplift of £60,000 for hope value relating to the possibility of development. They sought a Basic Loss Payment of £40,875 and statutory interest.

### **The acquiring authority's case**

22. The acquiring authority submitted that the starting point for their calculation of compensation was £485,000 (assuming good repair and reasonable decorative order), less 2.5% for lack of certainty regarding the ability to extend the Property, plus £2,500 for the unusually large plot. They then deducted the cost of repairs which they took to be £188,425, resulting in a final figure of £286,575.

### **State of repair**

23. Neither Mr Fraser nor the two expert witnesses had inspected the Property at the time of the acquisition. However, in January 2018 the acquiring authority commissioned a report from Frampton Martin Sage Design Ltd entitled 'Structural Condition Review and Structural Remedial Works Proposals'. The report was undertaken by Mr Laurence Goodman, a chartered structural engineer and completed on 2 February 2018, a little over a month before the Property was acquired.
24. Mr Goodman commenced his report by providing a general appraisal of the condition of the Property and noted that 'the property has been very poorly maintained, having suffered from fairly extensive foundation movement and water ingress'. He considered the Property to be 'typical to the area and is of an average quality of construction'.
25. Three trial pits were dug as part of the investigations into the structure of the Property, and these showed that the shallow footings were some 5-600 mm wide, 2-300 mm deep with the base of the footing being 4-500 mm below external ground level. The underlying soil was said to be medium shrinkage, gravely clay and typical of the area. However, with the exception of the front bay and notwithstanding the shallow foundations, Mr Goodman noted no significant structural movement that would warrant further foundation remedial works. This appeared to be at odds with his earlier statement about the extent of foundation movement. He did, however, recommend a more detailed geotechnical site investigation to 'assess the likely future movement of the property'.
26. Turning to the main roof he described the roof structure as 'well braced with sufficient collars and struts'. He also noted 'no significant structural distortions or movements within the timber rafters, purlins, binders etc'. His recommendation for the roof focussed on a complete overhaul of the roof finishes to closely inspect the flashings and soakers which should be replaced where necessary. A similar methodology should be applied to the mortar pointing and haunches on the chimneys. The gutters, fascias and soffits would need to be renewed. He did not say that the roof tiles would need to be replaced. The flat roof at the rear of the Property was not inspected but Mr Goodman was concerned that water had penetrated the junction between the main roof and the flat roof. The weight of the main pitched roof appeared to be supported by the flat roof and there was extensive cracking of the ceiling in the rear bedroom below the point at which the junction would occur. He considered that structural remedial works were required, possibly in the form of a steel or timber beam.
27. The two storey bay window structure at the front of the Property was exhibiting signs of damage resulting from the movement of the footings. The displacement was estimated at 50 mm below the general ground floor level. As a result, the ground floor masonry structure had cracked and settled away from the main structure and it was likely that there had been long-term water penetration to the timber framing to the bay. Taking all of this into account

Mr Goodman recommended that consideration be given to the replacement of the whole bay structure including the provision of deeper foundations.

28. The chimneys also required remedial works, including repointing with Hellifix Hellibar which is a proprietary method of repairing and stabilising cracked masonry. Mr Goodman did not comment on the state of the services or the condition of the kitchen or bathroom. His observations in relation to decoration were centred on repairs to the existing plaster work arising from the movement of the structure and water ingress although he did note that it was likely that the existing plasterboard ceilings throughout the property would need to be replaced. Photographs appended to the report showed the interior of the property to be in a poor condition and in need of repair and updating.

*Quotation for remedial works and refurbishment*

29. In August 2018 the acquiring authority organised a tender for the structural repair and refurbishment of the Property. It is not clear how many parties were invited to tender. However, a copy of the response from Procure Group Limited ('Procure') was appended to the report of the acquiring authority's expert. It also contained the specification. The table below shows the sums allocated to each element of the Property.

<b>Tender Summary</b>		
<b>Item ref</b>	<b>Description</b>	<b>Total (£)</b>
A10	Preliminaries and General Items	15,176.00
B3	Windows	18,665.00
B7	External Doors	5,862.00
B16	Lounge	5,386.00
B22	Dining Room	4,401.00
B34	Kitchen	14,931.00
B41	Hall stairs landing	5,734.00
B50	Bed 1	3,919.00
B58	Bed 2	5,955.00
B64	Bed 3	2,703.00
B75	Bathroom/WC	14,757.00
B92	Roof/External	23,392.00
B93	Structural	33,919.00

B94	Electrical	5,850.00
B95	Heating & H&C water	7,088.00
C7	Landscaping	23,682.00
D3	Provisional sums	16,525.00
	<b>Total</b>	<b>£207,945.00</b>

30. The works envisaged in the tender went far beyond simply putting the property back into repair. For instance, in relation to the roof they envisaged that the roof tiles, battens and felt would be removed and the roof would be refelted, new tanalised battens installed and the roof retiled with the original tiles. This process required the whole house to be scaffolded and a temporary ‘top hat’ roof to be provided until the roof was complete and weather tight.
31. It is not necessary for me to list every item of expenditure but it is clear that the Procure works would have resulted in a fully refurbished house with all of the defects remedied, new kitchen and bathroom, a new heating system, it would have been rewired, have new plumbing, replacement windows and be completely redecorated. In addition, the gardens would have been landscaped and a driveway installed. The only original parts of the Property to survive would have been the foundations, floors, and walls.

#### **Expert evidence**

32. Mr Marcus Clark FRICS, MEWI, ACI Arb gave expert evidence on behalf of the claimant. He explained that he had about 30 years’ experience of carrying out pre-purchase residential surveys but much of his day-to-day work involved housing disrepair claims and advice in relation to what he termed ‘building pathology’. He considered himself suitably qualified to provide expert evidence on the costs of repair as well as having experience and knowledge of property values in Potters Bar.
33. Mr Keith Murray FRICS gave expert evidence on behalf of the acquiring authority. He qualified as a chartered surveyor in 1974 having started his career in 1970 at the Valuation Office. He is a former Chair of the Compulsory Purchase Association and during the course of his career has provided advice on statutory compensation matters to a variety of local authorities, multi-national corporations, smaller traders and private individuals.

#### *Construction and repair*

34. Before I examine the experts’ views on value it is worth recording what they had to say about the condition of the property at the valuation date. In contrast to Mr Goodman, Mr Clark assumed the main walls to be of cavity brickwork and the roof to be ‘surfaced over’ with concrete interlocking tiles. Mr Goodman’s photographs show clay tiles. In his report Mr Clark said that he had assumed no essential repairs were deemed necessary but noted that the Property required certain upgrading. He had also assumed that there was no significant structural movement but had estimated that the cost of underpinning the bay window to be in the region of £5,000 to £10,000.

35. Mr Murray had relied upon the Frampton-Martin Sage Design Ltd report and variously described the Property as being in ‘significant disrepair’, ‘dilapidated’, ‘derelict’ and ‘in a very serious state of disrepair’.

#### *Valuation methodology*

36. Both experts adopted the same basic approach to arrive at the market value of the Property in its existing condition at the valuation date. This involved ascertaining the value of the Property in what Mr Clark described as ‘average to reasonable condition’ and Mr Murray characterised as ‘in good repair and reasonable decorative order’, and then deducting the costs of putting the Property in to these respective states. Thereafter their approaches diverged with Mr Clark adding £60,000 for hope value associated with the prospect of developing a ‘significant extension or possibly a new, self-contained, dwelling by virtue of the subject property’s corner plot location’. I now turn to the evidence used by the experts to support their opinions.

#### *Market evidence*

37. Mr Clark appended details of fifteen properties in the locality of the Property to his report. The transactions were mostly derived from the Rightmove website and were spread over a timeframe from June 2000 to November 2022. Ignoring the 2000 sale, only one of these properties transacted prior to the valuation date, namely 63 The Walk, Potters Bar which sold for £544,000 on 12 February 2018. Seven of his comparables were sold in 2018 but the completion dates were after the valuation date. Four of the seven were said to be larger than the Property but no details of the difference in size were provided. One of the comparables was sold in 2019, the remainder related to properties under offer. Mr Clark had undertaken some analysis of the sales and firstly computed the ‘average [mean] sales price for sold comparables in 2018 (without ‘adjustment’ for either being before/after the antecedent date or the dwelling’s general condition or size, unless otherwise stated)’ and arrived at a figure of £559,000.
38. He then calculated the ‘average [mean] sales price for sold 3 bedroom semi-detached comparables in 2018 (without ‘adjustment’ for either being before/after the antecedent date or the dwelling’s general condition, unless otherwise stated)’ as being £509,750.
39. Finally, he ascertained that the ‘average [mean] sales price for sold 3 bedroom semi-detached comparables in 2018 (without ‘adjustment’ for either being before/after the antecedent date or the dwelling’s general condition, unless otherwise stated) with comparable at 2.8<sup>1</sup> (above) excluded’ was £539,666.
40. Mr Clark then averaged these averages resulting in a figure of £524,000. He considered that the market value of the Property, assuming it to be in average to reasonable condition was in the region of £525,000. He did not offer a definition of ‘average to reasonable condition’.
41. Mr Murray provided details of twenty transactions; the details again having been gleaned from the Rightmove website. They included terraced, semi-detached, and detached houses together with four bungalows.

<sup>1</sup>The property referred to at ‘2.8’ was a house in Mutton Lane which was sold in September 2018 at £420,000. Mr Clark speculated that it was ‘seemingly sold below market values – possibly because of condition and/or a quick sale was required.’

42. Some of them were also on Mr Clark's list. The transaction dates varied from May 2015 to September 2022 and Mr Murray had been able to analyse most of the sales using the floor areas on Rightmove. Mr Murray could not discern a clear pattern from this data and attempted to adjust them for the different sale dates by using the Land Registry House Price Index for semi-detached houses in Hertsmere. The purpose of this exercise was to bring each transaction to a common date, namely 9 March 2018. As the index had not altered much over the relevant period, he concluded that the adjustments made very little difference to the overall pattern. The range of values without indexation varied from £3,757 to £6,973 per m<sup>2</sup>.
43. Five properties on Mr Murray's list were located close to the Property and were the subject of sales in the first half of 2018. 26 Strafford Gate sold at the end of January at £565,000 and despite being a 1930s built semi-detached house, Rightmove had omitted both floorplans and floor areas from its listing. It was therefore difficult to draw any conclusions from it. The same was true of 85 Strafford Gate which sold in June. The sale of 49 Strafford Gate related to a bungalow and was therefore not strictly comparable. That left 63 The Walk which I have already mentioned, and finally 10 Strafford Gate which sold for £485,000 on 11 May 2018.
44. Given their physical proximity to the Property and bearing in mind that the transactions straddle the valuation date, the latter two properties warrant closer scrutiny. 63 The Walk was, in 2018, a three bedroomed 1930s semi-detached house on two floors. It is located approximately 270 m east of the Property. Details included in Mr Murray's report showed it to be similar in layout to the Property but larger having a total area of 107.4 m<sup>2</sup>. It also benefitted from a tandem garage some 10.95 m in length and a downstairs WC. The agent's sale particulars described it as needing full modernisation and with 'tremendous extension potential'. It is evident from the particulars that the kitchen had a range of wall and base units but needed updating, the master bedroom had fitted wardrobes and the bathroom had a low-level WC and a panel bath with a shower installed over it. The gardens which extended to more than 140 feet in depth were said to be in need of landscaping.
45. The new owner appears to have wasted no time in seeking to exploit the development potential of the house and documents appended to Mr Murray's report included plans dated March 2018 depicting the conversion of part of the garage to a playroom, with the remainder incorporated into a substantial extension to provide a kitchen and living space. The first floor was also to be extended and reconfigured to provide three double bedrooms and two bathrooms. Finally, the loft was to be converted to facilitate a fourth bedroom.
46. A planning application was made on 3 April 2018 and Mr Murray provided a copy of the Planning Officer's Delegated Report. This was undated but recommended approval. It is not known whether the report was accepted without modification but on the day of my inspection it appeared that the works had been completed.
47. On the original floor areas, the sale price, reflecting the unmodernised condition and the potential for development, devalues to £5,065 per m<sup>2</sup>.
48. 10 Strafford Gate is a two-storey 1930's built semi-detached house. It is in a cul-de-sac off the main part of Strafford Gate and is situated about 300m south east of the Property. Mr Murray commented that given the completion date of the sale at 10 Strafford Gate he would not normally place reliance on evidence that post-dated the valuation date but in view of the limited evidence available prior to the valuation date he considered it appropriate to make an exception. He went on to say that as the sale of 10 Strafford Gate took place only two

months after the valuation date it was quite possible that the eventual sale price may have been agreed close to the valuation date. He also considered the situation of 10 Trafford Gate to be superior to the Property as it had the benefit of very little passing traffic unlike the property which had the disadvantages of passing traffic on two road frontages and the roundabout in the immediate vicinity. He considered the more private location of 10 Trafford Gate to be of equal if not greater benefit than the larger plot enjoyed by the property.

49. The sales particulars that Mr Murray appended to his report date from October 2021 and showed 10 Trafford Gate to be in need of updating but capable of immediate occupation. For instance, the kitchen has a range of wall and undercounter units whilst the bathroom has a modern suite with a panel bath and base units with a built-in sink. I have no reason to believe that 10 Trafford Gate would have been in a different state at the point when it was sold in 2018.
50. Mr Clark considered 10 Trafford Gate to be the most comparable property and noted that it was unmodernised. He thought the position was slightly inferior as it was closer to a main road which was likely to have a 'slight adverse effect on saleability and value, regardless of market conditions'. He noted that the dwelling did not have the benefit of a corner plot position and consequently considered that it had less development potential.
51. Although both experts had agreed that the floor area of 10 Trafford Gate was 85 m<sup>2</sup> the floor plans from the Rightmove listing showed that this could not be the case. I asked them to recalculate the area and Mr Clark arrived at a figure of 95 m<sup>2</sup> including the garage whilst Mr Murray arrived at 92.6 m<sup>2</sup> for the house only. I am inclined to believe that Mr Murray's figure is the more reliable of the two.
52. The Rightmove listing stated that it had potential to extend at the side and rear of the Property (subject to planning permission), and the garden extended to approximately 100ft.
53. As far as development potential is concerned planning permission was granted in March 2018 for an extension which would have resulted in it becoming a five-bedroom house. The claimant's statement of case noted that planning permission was obtained on appeal after the sale was completed for the conversion of the property into two flats. Plans attached to Mr Murray's report depicted a scheme of development involving a substantial extension to the rear of the property and conversion of the loft space, but it is not clear whether these plans related to the application which ultimately succeeded or whether another scheme was preferred.
54. I observe from the Rightmove particulars that 10 Trafford Gate was marketed again in October 2021 at £550,000 with prospective purchasers invited to "make an offer". At that point in time, it was clear that no development had taken place at the site and that appeared to be the case in February when I carried out my inspection.
55. Using Mr Murray's recalculated floor area, the sale price analyses to £5,238 per m<sup>2</sup>, a difference of some 3.4% in comparison to the larger property at 63 The Walk. Mr Murray considered this difference to be 'what a valuer would typically expect to see, i.e. that the house with a smaller floor area shows a proportionately higher price per metre squared than the house with the larger floor area'. However, he made that statement at the time when he considered the floor area to 10 Trafford Gate to be 7.6 m<sup>2</sup> smaller.

### *Allowance for repair*

56. The experts' approaches in relation to the allowance for repairs were quite divergent. Mr Clark stated that in his view the refurbishment costs would amount to £40,000 and included an overhaul of the roof coverings, repairs to external joinery and an overhaul of rainwater fittings, upgrading of services, such as electrical circuits and the heating system, possible underpinning to the bay and brickwork, crack repairs as well as certain internal redecoration. In his view this expenditure would bring the property to average/reasonable condition, similar to the comparables as opposed to complete refurbishment/modernisation. At the hearing he broke the figure down further as follows:
- £5,000 to deal with the roof
  - £6,000 on external joinery (windows based on £15,000 renewal cost)
  - £1,000 worth of surface rainwater disposal
  - £5,000 for the bay window repair
  - £15,000 on services
  - £8,000 on internal decorations
57. He also thought that to provide a new kitchen and bathroom would require expenditure of £40,000. He commented that the figures were based on his experience, but no evidence was provided to support them or for that matter, details of similar projects on which he had been engaged.
58. Mr Murray based his adjustment on the Procure quotation which amounted to £207,945. Mr Murray noted that his preferred comparable at 10 Strafford Gate was in a 'clean but relatively tired' state and new decorations at the Property would represent an improvement. He therefore adopted 50% of the tender cost of decorations (£11,309) which resulted in a reduction of £5,655. He also noted that the tender quotation provided for fitting out the kitchen and bathroom with new equipment which would similarly represent an improvement over the existing fittings at his comparable property. He again adopted 50% of the cost of fitting out resulting in a further deduction of £5,310 from the quotation. He additionally deducted the £8,550 cost of installing a patio. Taking these deductions together resulted in a reduced tender cost of £188,425.

### *Prospects for development*

59. Mr. Clark said that in view of the Property's corner plot location there would have been a good prospect of achieving a planning consent for a significant extension or possibly a new self-contained dwelling. He noted that the Property had received the benefit of planning permission for his two-story side extension of approximately 60 m<sup>2</sup> albeit this was for a horizontal conversion/extension for two self-contained flats. The additional value attributable to the prospect of extending or developing a separate property was characterised by Mr. Clark as 'hope value' although he said such a phrase was not specifically recognised by the RICS International Valuation Standards or the Red Book Global Standards but was defined in the RICS guidance note 'Valuation of development property' (1st edition, October 2019) and is a phrase that is in common use by practitioners.
60. In his opinion, assuming planning permission for a new, albeit small, self-contained property was already in place, the market value would be enhanced by approximately £200,000. Mr.

Clark then provided a brief residual valuation based on a gross development value from the analysis of his valuation of the Property in reasonable condition (£6,175 per m<sup>2</sup>). I set out the details below:

GDV (gross development value) [or out-turn value] 60m <sup>2</sup> @ £6,175 =	£370,500
LESS:	
Build costs: 60m <sup>2</sup> @ £2,000/m <sup>2</sup>	£120,000
Contingency @ 10%	£12,000
Finance costs @ 5% of contract sum	£6,000
Developer's profit @ 10% of GDV	£37,050
Professional fees	<u>£10,000</u>
	£185,050

61. The resulting residual land value amounted to £185,450 or £222,500 excluding developer's profit. His reference to an enhancement in value of £200,000 was derived from these figures. However, since the planning permission was not in place, he took account of the risk involved in its procurement by adjusting his opinion of the likely bid a prospective purchaser would make to £60,000. He did not provide his view on any other development scenario such as an extension to the existing house.
62. Mr. Murray noted that if the claimant considered that without the order planning permission would have been granted for an additional house within the plot of the Property, they could have applied to the local planning authority for a Certificate of Appropriate Alternative Development in accordance with section 17 of the Land Compensation Act 1961. Such a certificate would constitute an assumed planning permission for the purposes of determining the quantum of statutory compensation. An application was not made which he interpreted as recognition that the view was possibly taken that if such an application was made which resulted in the local planning authority issuing a certificate stating that no additional development would be permitted on the plot of the Property that might destroy the claimant's argument for including an element of development value within its assessment of market value.
63. He also noted a list of restrictive covenants attached to the Land Registry title of the Property dated 1<sup>st</sup> April 1935, the second of which was headed 'Building Line' and stated:
 

'The line of frntge of the bldgs on the ppty shall not project near to any of the roads than the Bldg Lines fixed by the Local Authrty. The Prchar shall not build or set up any erection or projection of any kind in the garden in front or rear of any messuages to be erected on the ppty wch may in any way obstruct or lessen the access of light or air to or interrupt the view from the neighbourg houses now erected or hereafter to be erected'
64. Mr Murray had appended a plan to his report which showed the layout of the development surrounding the Property. In his view there was a clearly defined line to the frontages of all the nearby properties which he considered to be the 'building line'. He thought that the position of the Property was clearly in front of the apparent building line on the southern side of The Walk which meant that any new house built within the plot of the Property would have been in front of the building line. As a consequence an adjacent plot with the benefit of a similar restrictive covenant would have had the prospect of seeking relief in the event

of an attempt to build in front of the building line. He did not provide any evidence that similar covenants were contained in the title of any neighbouring plots, nor did he identify the persons with the benefit of the restriction who may be entitled to enforce it.

65. Mr. Murray also attached various internal emails between Council officers sent during the period December 2018 to March 2019. These showed that the possibility of an additional detached house on the plot was discounted as was the attachment of a separate residential unit to the Property. He further noted that the Council finally settled upon an extension to the Property to enable its conversion into flats. His conclusion was that there was no prospect of securing planning permission for an additional residential unit either detached or as part of a terrace due to both planning considerations and the likelihood of being in breach of the restrictive covenants which bound the Property. The only possibility for development was in his view an extension to the size of the existing structure. However, a prospective purchaser in 2018 would not have had the benefit of this planning insight.
66. Mr. Murray noted that 10 Trafford Gate had planning permission for an extension at the time that it was sold. The sale price therefore represented the value of that property with the benefit of certainty rather than just hope value. Although the Property did not have planning permission, he considered that any purchaser would foster the hope that a planning permission could be achieved to extend the Property or convert it into flats as was the case latterly at 10 Trafford Gate. Taking into account the sale price of 10 Trafford Gate with planning permission in place he was of the view that it was appropriate to adjust the sale price of 10 Trafford Gate to reflect the difference between certainty and hope. He did this by reducing the sale price of 10 Trafford Gate by 2.5% and then applied the outcome directly to the Property arriving at a figure of £473,000.
67. He said this assumed the Property to be in good repair and reasonable decorative state but with the benefit of hope value but without recognition of it having a larger than typical plot size, a factor for which he had adjusted separately.

## **Discussion**

### *Market value*

68. I regard the means by which Mr Clark arrived at his value prior to adjustment as flawed. Some of the data was missing and as a consequence he relied upon the sale prices rather than analysis of them. He further compounded the deficiencies by averaging his outcomes from the various exercises he undertook, which themselves were averages. I would have been better assisted by the use of a smaller number of relevant comparables which had been the subject of robust interrogation. His initial conclusion was therefore highly questionable.
69. Both experts viewed 10 Trafford Gate as their primary comparable. They initially noted that it was the same size as the Property and that the sale date was less than two months after the valuation date in this case. At the time of the sale it already had planning permission for an extension to provide additional ground floor living space and two extra bedrooms. In my judgement the sale of 63 The Walk provides superior evidence with which to approach this valuation. In addition to being physically nearer to the Property, The Walk is a through road and therefore has more in common with the Property than the cul-de-sac situation of 10 Trafford Gate. Since it sold just before the valuation date rather than just after it can be said with certainty that the evidence was available in March 2018 rather than being the subject of speculation about when the price was agreed as was the case with 10 Trafford

Gate. Unlike 10 Trafford Gate it was sold with the prospect of development rather than with planning permission in place.

70. However, it is undeniably larger than both the Property and Trafford Gate. 63 The Walk has 26.3% more floor space than the Property and 16% more than 10 Trafford Gate. Mr Murray put the difference in analysis (3.4%) between the two comparables down to what is usually described as the quantum effect. In other words, all other aspects being equal, the larger house will have a lower unit value. In this case there is very limited evidence on which to make such an assertion but working with the available information and applying an extrapolation of the relationship between the comparables, the difference in size between the Property and 63 The Walk should result in a value difference per m<sup>2</sup> of about 5%. That translates into a starting point for the valuation of £5,318 per m<sup>2</sup> and an outcome of £452,000.
71. Leaving the question of repair and hope value to one side for the moment, there are a number of other attributes of the Property which in my view are value significant. Mr Murray balanced the size of the plot at the Property and its attractiveness to a keen gardener against its position next to a roundabout and having two frontages. These features were worth £2,500 in his view. Mr Clark thought that relative to 10 Trafford Gate the Property had a better position away from a main road and the benefit of a corner plot which he conflated with greater development potential. He accounted for the latter attribute separately and made no adjustment for the former. I think Mr Murray's view is to be preferred.
72. It was surprising that the Property had neither a garage nor a driveway. Additionally, there is very limited on street parking in the locality. Disappointingly neither expert mentioned this deficiency in their reports. There was undoubtedly room on the site to create these facilities but a prospective purchaser seeking to provide them would have to not only allow for the cost but also for the time involved in dealing with planning and highways issues, not to mention the risk that permission might not be granted. Both of the nearest comparables have a garage and driveway capable of accommodating two vehicles. In my judgement the lack of these facilities warrants a reduction of 7.5%.
73. The final aspect which should be taken into account is the proximity of the Property to the town centre and its facilities, notably the railway station. This factor was not mentioned by either expert but in my view is a relevant factor. I make a modest addition of 2.5%. Taking these various adjustments into account I arrive at a value of £431,775 prior to any adjustment for the state of repair or hope value.

#### *Repair*

74. Both experts adopted a similar approach of starting with a value derived from a comparable which was in repair and then deducting the costs of repair at the Property to arrive at a value for the Property in disrepair. In doing so they both equated costs directly with value thereby assuming that the cost of any works would be reflected in the value at precisely the full cost.
75. Mr Clark provided costs which were based entirely on his experience of advising on remediation works for properties in disrepair. Whilst I do not doubt his sincerity and experience, he provided no evidence at all by which his figures could be substantiated. His estimate for the work to the bay structure had a variance of £5,000 or 100% between the lowest and highest figures and the lack of detail generally did not inspire confidence that his figures were reliable.
76. Mr Murray relied wholly on the Procure quotation. The works envisaged in the quotation would have resulted in a finished article that was markedly better than any of the comparable

properties. Nevertheless, Mr Murray had only adjusted the cost of decorating the Property and the cost of installing the kitchen and bathroom by 50%, from which I conclude that he thought that the decorations, kitchen and bathroom at 10 Strafford Gate had reached the halfway point in their useful lives.

77. I perceive there to be a clear difference in the condition of the Property and that at 63 The Walk and 10 Strafford Gate. In my view, Mr Murray's approach is to be preferred but it requires further refinement. It is clear from the Rightmove details for 10 Strafford Gate that its decorations and fittings were superior to those at the Property, but they were getting close to the point where they would require renewal. I would therefore adopt a figure of 25% of the cost of renewal. It seems to me that the windows, electrical and heating/plumbing system should also be discounted to a similar degree. The roof works foreseen in the quotation far exceed those identified by Mr Goodman and I have therefore adopted a factor of 33%. I view the structural works as an essential item which will remedy serious defects, none of which appear to be present in the comparables and I therefore adopt 100% of the quoted figure. The landscaping works represent a noticeable improvement over what was evident at the comparables, and I adopt 20%. Finally, as the scope of works is reduced, I have discounted the preliminaries and provisional sums by 50%. A summary of my amendments is set out below:

<b>Description</b>	<b>Original Quotation</b>	<b>Percentage Adjustment</b>	<b>Adjusted Cost</b>
Preliminaries and general items	£ 15,176.00	50%	£ 7,588.00
Windows	£ 18,665.00	25%	£ 4,666.25
External doors	£ 5,862.00	25%	£ 1,465.50
Lounge	£ 5,386.00	25%	£ 1,346.50
Dining room	£ 4,401.00	25%	£ 1,100.25
Kitchen	£ 14,931.00	25%	£ 3,732.75
Hall stairs landing	£ 5,734.00	25%	£ 1,433.50
Bed 1	£ 3,919.00	25%	£ 979.75
Bed 2	£ 5,955.00	25%	£ 1,488.75
Bed 3	£ 2,703.00	25%	£ 675.75
Bathroom/WC	£ 14,757.00	25%	£ 3,689.25
Roof/external	£ 23,392.00	33%	£ 7,719.36
Structural	£ 33,919.00	100%	£ 33,919.00

Electrical	£ 5,850.00	25%	£ 1,462.50
Heating & H&C water	£ 7,088.00	25%	£ 1,772.00
Landscaping	£ 23,682.00	20%	£ 4,736.40
Provisional sums	£ 16,525.00	50%	£ 8,262.50
Total	£ 207,945.00		£ 86,038.01

### *Prospects for development*

78. Although both experts referred to ‘hope value’ it would, in my view, be more appropriate in the circumstances that existed at the Property in 2018 to refer to development potential. Hope value usually relates to a longer term proposition, often where the prospect of development is remote. As Mr. Clark noted the RICS defines it as ‘an element of market value in excess of existing use value, reflecting the prospect of some more valuable future use.’ By way of illustration, an example might be additional value to reflect the prospect of using agricultural land for residential development.
79. The question of whether it is appropriate to make an addition for development potential to a large degree hinges on the starting point for the valuation. For the reasons that I have already outlined I prefer 63 The Walk over 10 Trafford Gate as a superior comparable from which to commence, not least because at the date of sale it did not have planning permission for any kind of development.
80. It was surprising that neither expert undertook a detailed appraisal of the additional value created by the conversion and extension of the Property into two flats, given that was the outcome in reality. In that regard the sale of 10 Trafford Gate is relevant because a similar scheme to create two flats was clearly in the mind of the purchaser, to the extent that the planning permission for conversion into flats was obtained on appeal.
81. Mr Clark’s proposal for a separate dwelling of 60 m<sup>2</sup> was, in my judgement, ill conceived. He provided no planning evidence to support his view that such a development would be possible or a narrative to explain how the issues with the building line and restrictive covenants could be overcome, or the cost implications. He based the value of a prospective newly built property on his analysis of a larger, inter war property in average to reasonable condition with no adjustment at all. Additionally he did not explain how he arrived at a figure of £60,000 having taken risk into account. These deficiencies left me with the impression that his scheme had not been properly thought through.
82. The sale of 63 The Walk reflected the strong possibility of gaining planning permission for development, and 10 Trafford Gate was clearly purchased with conversion into flats in mind. It already had permission for an extension. In my view the small difference in analyses can be put down to a variance in size rather than any difference in the prospects for development. In both cases what was ultimately secured was not dissimilar in size to the outcome at the Property and in my view, it could have reasonably been foreseen by a prospective purchaser of the Property that planning permission for an extension would have been forthcoming at the valuation date. I have already concluded that the analyses of the

sales of both properties are compatible and the value of £452,000 I adopted as my starting point (devaluing to £5,318 per m<sup>2</sup>) was based on those figures. I also note that the neighbouring house which forms part of this pair of semi-detached houses had a substantial, two storey, side extension although it is not known when it was completed. It follows that there is no need to make an additional adjustment for development potential.

### **Determination**

83. I have already identified the value of the Property assuming the same state of repair as 63 The Walk and 10 Trafford Gate as being £452,000. My adjustments for the size of the plot, the lack of a driveway or garage and the proximity to the town centre result in an adjusted value of £431,775 from which I deduct £86,038 for the state of repair. I therefore determine a value of £345,737 which I round to £345,000.
84. The Basic Loss payment will be £25,875. Statutory interest will be payable at the prevailing rate.

**Mark Higgin FRICS**  
**Member**  
**Upper Tribunal (Lands Chamber)**  
**11 May 2023**

### **Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.