**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2021] UKUT 0201 (LC)**

**UTLC Case Number: LC-2018-19**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

**COMPENSATION – COMPULSORY PURCHASE – valuation following CAAD appeal**

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

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| **BETWEEN** | **PRO INVESTMENTS LIMITED** | **Claimant** |
| | **-and-** | |
| | **LONDON BOROUGH OF HOUNSLOW** | **Acquiring Authority** |

**Re: Capital Court,**

**Interchange Way,**

**Kew Bridge,**

**Brentford,**

**TW8 0EX**

**Martin Rodger QC, Deputy Chamber President and P D McCrea FRICS FCIArb**

**Royal Court of Justice**

**12-16 April 2021**

Richard Glover QC and Merrow Golden instructed by Gateley plcfor the Claimant

Timothy Mould QC and Andrew Byass instructed by Taylor Wessing LLP for the Acquiring Authority



The following case is referred to in this decision:

Pro Investments Limited v London Borough of Hounslow [2019] UKUT 0319 (LC)

**Introduction**

1.
In this decision the Tribunal returns to the site of Brentford FC's new Community Stadium in West London, the construction of which was enabled by the London Borough of Hounslow (Lionel Road South) Compulsory Purchase Order 2014 ("the CPO").

2.
In Pro Investments Limited v London Borough of Hounslow[2019] UKUT 0319 (LC), ("the CAAD decision") the Tribunal allowed the appeal of the claimant, Pro Investments Ltd, against a Certificate of Appropriate Alternative Development ("CAAD") issued by the London Borough of Hounslow (the

local planning authority and the acquiring authority) in respect of the claimant's site at Capital Court, Capital Interchange Way, Kew Bridge, Brentford ("the reference land") which had been acquired pursuant to the CPO on 1 September 2016.

3.
The parties agreed the broad planning conditions that should be included in the Certificate issued by the Tribunal on 3 January 2020 ("the CAAD"). However, they were unable to agree the amount of compensation payable to the claimant. When the parties first exchanged valuation evidence the claimant's case was that it was entitled to a little over £19.9m, of which £18.75m represented the open market value of the reference land on 1 September 2016. The acquiring authority valued the reference land at £6m and at that stage had not formed a view of the value of the other claims. The gap between the parties later narrowed considerably but they remain far apart.

4.
At the hearing of the reference the claimant was represented by Mr Richard Glover QC and Ms Merrow Golden; the acquiring authority by Mr Timothy Mould QC and Mr Andrew Byass. We are grateful to all of them for their assistance.

5.
Written and oral evidence on town and country planning matters was given by Mr Sean Bashforth MRTPI for the claimant, and Mr Richard Jones FRICS MRTPI for the acquiring authority. We also received written and oral evidence on valuation matters from Mr Richard Asher FRICS for the claimant, and Mr Colin Cottage MRICS IRRV for the authority. The parties reached agreement on the issue of building costs with the assistance of Mr Barry Winterton FRICS and Guy Solway FRICS, neither of whom was required to give oral evidence.

6.
On 29 April 2021, we undertook a site visit on an itinerary agreed by the parties, taking in the reference land and comparable sites, both in the immediate vicinity and further afield.

**The reference land and its surroundings**

7.
In the CAAD decision we described the reference land and its surroundings, but we do so again now with specific reference to the evidence presented at the final hearing.

8.
The reference land is located on Capital Interchange Way, approximately 150 metres to the south of the M4 Chiswick flyover and to the west of the A205 Chiswick High Road, close to the Chiswick roundabout where the M4 elevated section over-sails the A205. The area is at the eastern end of the old Borough of Brentford, close to Chiswick, both of which are now part of the London Borough of Hounslow. The reference land is approximately three minutes' walk from Kew Bridge railway station, which has a journey time to London Waterloo of approximately 30 minutes, and 1.3 miles from Brentford Station. Gunnersbury Tube station on the District Line is 13 minutes' walk away.

9.
The reference land comprises an irregularly shaped parcel of land of 1.48 acres adjoining a railway line, on which at the valuation date there stood a four-storey office building, Capital Court. The details of that building have no further bearing on this reference, but photographs of the surrounding area

taken from it provide a useful record of what might have been the outlook from the lower stories of any development on the land had the CPO scheme not been implemented.

10.
At the valuation date Capital Court was vacant, as it had been for some time. Capital Interchange Way ran along its eastern boundary, turning through ninety degrees as it did so. To the north, there were warehouses at units 1-4 Capital Interchange Way ("1-4 CIW"). On the opposite side of Capital Interchange Way, to the east, were two car showrooms, the closest of which was occupied by Citroen and was trading at the valuation date. Kew House School lay to the south east, accommodated in a converted office building similar to Capital Court. A deep railway cutting ran along the western boundary of the reference land, the school and units 1-4 CIW, with twin track railway lines which were used for freight services.

11.
On the opposite side of the railway lines, to the south west of the reference land, on the site now occupied by the Brentford Community Stadium, a large construction waste transfer station was operated by Quattro UK Ltd. The waste management licence and working plan for the Quattro site permitted it to operate between 06.30 and 18.00 Monday to Friday and between 06.30 and 14.00 on Saturday, but not on Sundays or bank holidays. Access to the Quattro site was to the south west, from Lionel Road South, on the far side of the site from the reference land. A contractors' yard, which was referred to in this reference as the Duffy site, was also accessed from Lionel Road South, opposite the Quattro site.

12.
To the south east of the reference land and adjoining the Citroen site was the Brentford Fountain Community Leisure Centre, which stood on the opposite side of Capital Interchange Way at its junction with the A205. At the north end of Capital Interchange Way, the elevated M4 was flanked by large commercial buildings.

13.
Further afield, to the southeast beyond Chiswick High Road were residential areas, largely of terraced and semi-detached housing with some flats. Much of this area is within either the Wellesley Road or the Strand on the Green Conservation Areas. A greater variety of residential property can be found to the southwest in the area surrounding Kew Bridge Station, and south of the railway tracks leading into the station, ranging from two storey houses to high rise apartments. To the west the area was also substantially residential and included the Brentford Towers, six, 23-storey residential blocks lining Green Dragon Lane.

**The claim**

14.
The parties have agreed some aspects of the compensation payable, including basic loss at £75,000 and reinvestment costs at £168,000. By the end of the hearing the disputed elements of the claim were as follows:

Market value of the reference land: £14,500,000

Costs in connection with the CAAD appeal

including pre-reference costs of £40,472.10: £693,723.91

Financial early redemption charges: £218,335.11

**Market value of the reference land**

15.
The value of the reference land is to be assessed on the counterfactual assumptions required by the Land Compensation Act 1961 ("the 1961 Act") on the basis of an assumed sale in the open market by a willing seller (rule (2) of s.5) on 1 September 2016, that being the date the land was vested in the acquiring authority (s.5A(4)). In assessing the price which would have been achieved on such a sale, account is to be taken of any planning permission for development of the reference land or other land which was in force at the valuation date; it is also to be assumed that planning permission was in force for the appropriate alternative development identified by the CAAD (s.14).

16.
While the no-scheme principles within ss.6A-E are not engaged in this case (because the CPO was authorised before 22 September 2017), it is common ground that any increase or diminution in the value of the reference land attributable to the stadium scheme authorised by the CPO must be disregarded, and that that can be achieved by assuming that the stadium scheme had been cancelled.

17.
Much of the evidence on which the parties relied was based on transactions in the market around the valuation date which were either part of, or were influenced by, the Stadium scheme. We therefore begin by contrasting the circumstances as they were in reality on the valuation date in the "scheme world" and as we will assume them to have been for the purpose of the valuation in the "no-scheme world".

18.
With the exception of the allocation of the CPO lands to the scheme, which must be assumed no longer to be effective, the planning policy context would not have differed significantly in the alternative situations. On the valuation date the statutory development plan included the Mayor of London's London Plan (consolidated with alterations in March 2016) which identified Brentford as an opportunity area. Relevant local planning policy documents included the London Borough of Hounslow Local Plan of September 2015; the direction of emerging strategic planning policy was apparent from background papers including the Great West Corridor Plan – Issues Consultation (December 2015), the Golden Mile Vision and Concept Masterplan (April 2014) and the Golden Mile Site Capacity Study (October 2014) all of which were published prior to the valuation date.

19.
The scheme itself comprised the development of around 11.5 acres to secure the long-term requirements of Brentford FC, through the construction of the new Brentford Community Stadium and the delivery of new housing to help fund its development. In our CAAD decision, we described the scheme at [48] as follows:

"The core of the CPO scheme is the construction of the new stadium on what was referred to as "the central site", with accommodation for 20,000 spectators and hospitality facilities for 1,500. Accommodation will be provided in and around the stadium for Brentford FC's 11 management functions and related activities including its Community Sports Trust and an education centre. 910 new dwellings with associated parking and amenity spaces will be created on land surrounding the central site, including the reference land, arranged in 10 primarily residential blocks of varying heights up to 17 storeys. A hotel, retail and leisure uses and car parking will also be provided. A pedestrian link will run through an underpass to Kew Bridge Station and a new pedestrian and vehicular bridge will be built over the railway line linking the stadium to Capital Interchange Way."

20.

In granting planning permission for the scheme on 12 June 2014, the Council accepted the recommendations of its planning officer that, for the construction of the Stadium at a cost of over £71 million to be viable, receipts from the enabling development, including up to 253 dwellings on the reference land, needed to be maximised by the exceptional step of omitting any requirement for affordable housing.

21.

Thus, in the scheme world 253 apartments, none of which are affordable housing, are being built on the reference land as part of a much wider development which will transform the immediate environment and, it is hoped, contribute substantially to the regeneration of the area.

22.

We have already described the reference land and its locality above, and in the no-scheme world we assume it would have remained substantially as described on 1 September 2016. Capital Court would have been vacant and would have had the benefit of the CAAD planning consent. That consent allowed for a mixed use residential and commercial scheme over three buildings of eleven, nine and seven storeys, comprising 205 apartments together with ground floor employment space of 780 sqm within use class B1. The apartments would comprise 61 (30%) one bed units, and 82 (40%) two beds units, with the remaining 62 (30%) being three beds or larger units. In accordance with planning policy 40% of the residential units would be affordable housing. Of those homes, 60% would be for affordable social renting, and 40% would be of intermediate tenure (shared ownership), unless otherwise agreed with the local planning authority.

23.

The planning experts assumed that the CPO lands and other sites in the immediate vicinity, including the reference land, the Quattro and Duffy sites, 1-4 CIW and the Citroen site would, in planning terms, have been "white land" and unlike other parts of Hounslow's Great West Corridor, would not have been the subject of restrictive employment designations. We agree with Mr Bashforth that planning policies aimed at regenerating the centre of Brentford and satisfying housing need would have encouraged applications for residential development along Capital Interchange Way; developers would have been justified in assuming that applications which respected local design and heritage constraints would have a good prospect of success, as the Tribunal has already found in the CAAD decision. In the locality of the reference land planning permission had been granted in March 2015 for the redevelopment of a former telephone exchange at 650 Chiswick High Road for 95 apartments and 464 $m^2$ of ground floor commercial floorspace, a development now known as Wheatstone House. The CAAD permission is also to be assumed. Nevertheless, as the issues considered in the CAAD decision demonstrate, and as Mr Bashforth acknowledged, the achievement of residential planning permissions in this locality is not straightforward, there would have been some uncertainty in relation to adjoining sites, and there would have been an expectation that the development of those sites would take time.

24.

A number of important matters are agreed. It is common ground that the open market value of the reference land is reflected in its value for redevelopment in accordance with the CAAD planning permission. There was little dispute between the planning experts, Mr Jones and Mr Bashforth, over the details which would be required to discharge the various conditions. A design prepared by the acquiring authority's architects, JTP, was agreed to represent one interpretation of the consented development that would have been acceptable to the local planning authority. Other designs might have been approved, but for the purpose of this reference the JTP design provides an agreed framework for the parties' competing valuations. Additionally, Mr Winterton and Mr Solway agreed the build cost of the JTP design at £48,378,218.

25.
Mr Jones and Mr Bashforth also agreed the amount of the Community Infrastructure Levy and section 106 costs which would be payable by a developer.

26.
Despite those fundamental matters being agreed, the Tribunal was nevertheless faced with significantly different opinions of the value of the reference land formed by two highly experienced experts, Mr Asher for the claimant, and Mr Cottage for the acquiring authority. We are grateful to them both for their considerable efforts to present the Tribunal with all the available relevant evidence. It is also to their credit that they continued to exchange information, to discuss the issues, and to identify the reasons for the differences between them leading up to, during, and indeed after the hearing; as a result the gap between their views narrowed by over £6m.

27.
In the end, however, the experts were unable to agree how the market would have valued the reference land. Mr Asher's final assessment of the value of the land was £14.5m, and Mr Cottage put it at just short of £8.67m. That may appear a remarkably wide range, even for residual valuations, but we recognise that this was a particularly difficult valuation exercise.

Valuation methodology

28.
Each expert referred to the RICS guidance for the valuation of development land and assessed the value of the reference land using both the residual and comparable methods of valuation. The nub of their disagreement, and the issue at the heart of this reference, was whether it was necessary for the evidence of comparable land sales and the sales values achieved for individual apartments in the scheme world to be adjusted to reflect the statutory basis of valuation in which the scheme is assumed to have been cancelled. Mr Asher made no adjustment to reflect those assumed circumstances, but Mr Cottage considered that significant adjustment was required.

29.
In his initial reports Mr Asher placed more reliance on the comparable method than the residual, but by the end of his evidence he agreed with Mr Cottage that the residual method was the better guide to value. Both valuers still placed some reliance on the comparable method as a sense check, Mr Asher making the valid point that using the residual method alone risked divorcing the end result from the market for development land.

30.
It is not necessary to record the evidence in the detail in which it was presented to us, or to refer to locations some distance from the reference land to which we were referred (and which we inspected) but which serve only as background or context. Nor is a detailed analysis required of the complicated series of adjustments that the valuers applied to the evidence in reaching their conclusions. The critical issue does not turn on those fine distinctions, and the experts agreed that purchasers of the

reference land at the valuation date would not have approached an assessment of value in the same detail as they had. We will therefore identify those developments which we consider produced useful evidence of comparable transactions and provide our impressions of them based on the evidence and our walking tour of Brentford.

Mr Asher’s view

31.
Mr Asher’s general view was that the cancellation of the scheme would have had a neutral effect on nearby residential land values and that real world transactions could therefore be used as a guide to value in the no-scheme world. This was on the basis that by the valuation date the Brentford area had become a major focus of housing development and that the locality of the reference land had already seen significant change from commercial to residential uses and would have continued to do so, irrespective of the stadium scheme. Chiswick and Kew, both high value locations, had little further room for growth so, as is commonplace in London, residential development was pushing into lower value areas such as Brentford, where developers were competing for sites and causing land values to rise.

32.
In support of this general picture Mr Asher pointed to numerous high-density developments within one mile of the reference land which were either under construction or had been completed. To the south the Berkeley Group had acquired and developed its Kew Bridge, Heritage Walk and Kew Bridge West sites, at which 752 units had been completed and sold by the valuation date. 2 Kew Bridge Road, a 31-unit permitted development conversion, had also been completed by the end of 2016. Further west, the Brentford Project development, part of an ongoing CPO scheme to regenerate Brentford town centre, had received planning permission for 876 residential units in April 2015. Brentford Lock, a waterside development comprising 520 units had been completed and most sold by the end of 2019. Great West Quarter, a 680-unit scheme which received planning permission in 2009, was completed and sold by mid-2014. Great West Plaza, a mile to the west of the reference land, was a permitted development conversion of existing office buildings, including 165 build to rent residential units.

33.
Mr Asher emphasised the attractiveness of the locality for a residential scheme, being only 300 metres from Kew Bridge and the Thames and having the amenities of Chiswick 1.3 miles to the east, via the riverbank, Kew Gardens just over 1km to the south, and leisure facilities including Gunnersbury Park and the Brentford Leisure Centre both a short distance away. He recognised that the reference land was in an area that had been mainly commercial or industrial, but noted that planning permission had been or was expected to be granted for a large number of residential developments, and by the valuation date these had been constructed, were under construction or were close to commencement. He acknowledged that, at the valuation date, those that had been constructed were in Brentford town centre, rather than in the Kew Bridge area. Neither of the sites in the immediate vicinity of the reference land on which he relied, the Citroen site and 1-4 CIW, had planning consents in place at that time, but Mr Asher thought that the market would have been aware that discussions were going on in relation to those sites and that a prospective purchaser would see the reference land as a promising target for development.

34.
The extension of permitted development rights had led to a substantial increase in development with many volume housebuilders and registered providers vying to secure sites, both for conversion under

general permitted development rights and for sites with or without planning permission. In addition to conventional volume housebuilders and registered providers (housing associations) developing sites for the public housing sector there was an emerging third category of developer competing for sites – operators in the private rental sector ("PRS"), some of whom were behind significant nearby developments. Mr Asher suggested that if the reference land had been offered to the market on the valuation date it would have been of interest to PRS operators, one of whom might well have been the successful purchaser, as well as to developers already active in the area, including the Berkeley Group, London and Quadrant, Redrow and Barratt.

35.
In the no-scheme world any assessment of the reference land by a prospective developer at the valuation date would have to take account of the fact that the waste transfer operations of Quattro on its adjacent site and the similar activity on the Duffy site beyond would continue at least for the immediate future. Mr Asher acknowledged this, but having had regard to emerging planning policy and to abundant market demand for residential led development, his view was that the two waste transfer sites would themselves have been brought forward for redevelopment soon after the valuation date, and that a prudent hypothetical purchaser would have foreseen this. This was an important part of Mr Asher's assessment, and the view a prospective developer would take about the rate of development on adjoining sites, and the risk of the reference land being isolated amongst unattractive neighbouring uses, was a key difference between the experts.

Mr Cottage's view

36.
Mr Cottage took a rather bleaker view of the reference land on the assumption the scheme had been cancelled. He characterised the site as occupying an inward-looking, commercial/industrial setting. The surrounding uses were industrial or warehousing to the north, a car showroom to the east, a school occupying an office building to the south and, to the west beyond the railway line an operational waste transfer station. In the absence of the stadium scheme there was no obvious reason to think these 'bad neighbour' uses would change in the short term, and no indication at the valuation date that any other land adjoining the scheme would be brought forward for development in the foreseeable future.

37.
Mr Cottage accepted that residential development on former commercial sites in London is not unusual, but in his view the development of the reference land would be considered 'pioneering' as there were no existing residential uses or other residential consents in the immediate vicinity and this would be the first such development in what was an established commercial and industrial location. The presence of the waste transfer station would have been a significant negative factor which would have deterred some purchasers and influenced the market's assessment of value. Despite generally difficult market conditions there was a reasonable level of demand for development sites in outer London, including in Brentford, but the market was cautious, and developers would consider the reference land to be high risk. Potential purchasers would regard the site as a medium to long term development prospect, rather than one which they would look to develop immediately. In particular, while the market would see that the direction of travel in the locality was towards residential development, and would assume that the Citroen site, 1-4 CIW, and the Quattro site would all eventually be developed, there would be considerable uncertainty about the timing of that change without the impetus created by the CPO scheme.

Evidence of apartment sales rates

38.
A key input in each expert's residual valuation was the price at which a prospective purchaser of the reference land for residential development would assume completed apartments would eventually be sold. Mr Asher considered that price would be at a rate of £720 per sq ft; Mr Cottage, £675 per sq ft. In forming their opinions each had considered three sources of evidence: market reports and intelligence; sales in comparable schemes; and the levels actually achieved in the stadium scheme, albeit in the scheme world and long after the valuation date.

39.
The information provided by the numerous market reports submitted in evidence was broad brush and not much can be gained from it other than as a contemporary indication of market sentiment. We do, however, derive some assistance from the CBRE Residential London Living 2016 report published in October 2016. Commenting on a borough-by-borough basis, CBRE said in relation to Hounslow:

'Of the schemes under construction, those that were closest to the river were achieving the highest premiums, with Chiswick Gate asking £1,000 psf and Kew Bridge £936 psf. In contrast, those other schemes in the borough that are not situated along the river are asking between £400 and £635 per sq ft. This highlights the value of river views in pricing; our previous analysis has shown premiums of 10-15% for river view apartments over comparable units without the view.'

40.
Both experts analysed the comparable apartment sales evidence by reference to a blended or average sales rate across each development, acknowledging that the rates achieved would vary dependent on size of unit, number of bedrooms, and the location of a particular apartment within the development. They took a similar approach in valuing the units in the JTP design.

41.
The evidence of sales within comparable developments included a number of developments in Brentford town centre, including The Syon, and The Market Building. The experts agreed that these locations would generally command lower values than the Kew Bridge area. We concur. These sales only demonstrate that values fall as one travels south-west from the Kew Bridge area, and we place little weight on them as comparable evidence.

42.
Other developments were plainly superior to the reference land and can be discounted for that reason. For example, Taylor Wimpey's Emerald Gardens is a low-rise development adjacent to the National Archive, on the opposite side of the River and ten minutes' walk from Kew Station. The rate achieved, in the low £800's per sq ft, reflects the development's superior location and facilities, including a 24-hour concierge service and allocated parking.

43.
There was more useful evidence of sales in three developments closer to the reference land, Heritage Walk, Quayside House, and 2 Kew Bridge Road. Heritage Walk is on the north side of the High Street, close to the Kew Bridge junction. Developed by the Berkeley Group under its St James brand, the development benefits from courtyard gardens, elevated terraces, a concierge, gym and undercroft parking. In his first report, Mr Asher reported an average asking price of £836 per sq ft, with most sales having taken place in the early part of 2016. He considered that some negative adjustment would be required because Heritage Walk is closer to the river and in an area predominantly of

residential uses. The experts subsequently agreed that the average sales rate was in fact £765, achieved between the third quarter of 2015 and early 2016. We also agree with Mr Asher that a negative adjustment should be applied for location, putting the average sales rate for the JTP design somewhat lower than £765. Mr Asher contended for £720.

44.
Nearby, on the south side of High Street and closer to the Kew Bridge junction, Quayside House is another Berkeley Group development, this time under the badge of St George. Its high-end specification, featuring river views, covered parking, concierge, gym etc, is reflected in the average sales rate of £929 per sq ft. In our judgment this development would command significantly higher rates than the apartments in the JTP scheme.

45.
The third of these local comparables was a former office building at 2 Kew Bridge Road converted to 35 residential units under permitted development rights. A new build element of nine units was constructed to the rear. The valuers agreed that the average sales rate, achieved in sales between April and August 2016, was £788. There was only one three-bedroomed unit – on the third floor; the remaining units were all one and two-bedroomed. Mr Cottage suggested that since three-bedroomed units generally command a lower price per square foot than one or two-bedroomed equivalents, the small proportion of these relative to the JTP scheme would have the effect of inflating the average sales rate. In fact, the three-bedroom unit at 2 Kew Bridge Road, which was considerably larger and appears to have been a top-floor penthouse, achieved £1,020 per sq ft, and omitting it would reduce the average sales rate to £772 or thereabouts. We agree that despite being on a busy junction it is in a more desirable location than the reference land, closer to the Thames and Strand on the Green. However, we accept that as a relatively low-rise development, there are likely to be more units with river views than at the reference land, and we accept Mr Asher's point that a taller building is likely to generate a higher average rate per square foot because of the attraction to purchasers of apartments with far-reaching views. Additionally, as a commercial conversion, the building might have inherent features affecting value that would not be found in the JTP design. But overall, this is a better location than the reference land.

46.
Standing back, it comes to this. Both valuers accepted that river-fronting developments would command a premium. Independent research agrees and provides some assistance in calibrating that premium. It seems to us that the most useful comparables are at Heritage Walk (£765) and 2 Kew Bridge Road (£772 excluding the penthouse). The deduction to be applied to the rates achieved in these superior developments is a matter of judgment. The 10-15% allowance suggested by the CBRE in their report was specifically for a river view, but we do not think the relative location of the reference land and the two comparables requires any lesser allowance. Taking £769 as the average of the two rates and applying a 10-15% adjustment would point to something in the order of £653-£690, with Mr Cottage's £675 falling squarely in the range. Or, taking the higher of the two (Kew Bridge Road) only, and applying the smallest CBRE reduction would come to £695, roughly halfway between Mr Asher and Mr Cottage. Based on this evidence, on any view, Mr Asher's figure of £720 seems high.

47.
These are very broad adjustments to what in themselves are very broad averages and depend upon a subjective judgment of how one location compares with another. However, we also received evidence of sales rates achieved in the immediate vicinity of the reference land in the real world; that evidence does not require a locational adjustment. Information about sales achieved for apartments in the

blocks surrounding the new stadium was originally supplied by Mr Cottage, who obtained it from JLL, the selling agents for the development. Mr Asher used that information in his original report to support a rate for the JTP design of £750 per sq ft.

48.
In his first report, Mr Cottage relied on a March 2016 document prepared by JLL which estimated average sales values for the apartments across the scheme at £772 per sq ft, with those on the reference land estimated at £682 per sq ft. Mr Cottage also produced data for what he initially understood were actual sales values, averaging £805 per sq ft in 2019, some 11% higher than the March 2016 JLL estimate. He later corrected this figure following further discussions with JLL, explaining that he now understood £805 represented the average asking price, whereas the average sale price achieved was £760 per sq ft. If adjusted by the Land Registry index for new homes in Hounslow, this represented circa £720 at the valuation date.

49.
When he was made aware of Mr Cottage’s correction Mr Asher reconsidered his original rate for the JTP design of £750 per sq ft and concluded that it was too high and at the start of the hearing he reduced his estimated sales value based on the stadium scheme sales to £720 per sq ft. This change reduced Mr Asher’s residual valuation to £15,800,000, and his claim figure under rule (2) from £18,500,000 to £16,000,000 (a further reduction to £14,500,000 would follow by the end of the hearing).

50.
There would of course be a number of significant differences between the notional JTP design on which the experts’ residual valuations were based and the real-world scheme from which the evidence of sales values was derived. Three in particular have the potential to affect value. First, the apartments in the stadium scheme are wholly for private sale, with no affordable housing element, whereas the CAAD requires 40% affordable housing of which 60% would be affordable social rent. The value of the affordable units is not in issue, but an adjustment may also be required to the private sales rates. Secondly, the proportion of three-bedroomed units (which would have a depressing effect on the average rate per sq ft) is higher in the JTP design than in the stadium scheme. Finally, major changes to the surrounding area have also been brought about by the scheme, the most important being the removal of the waste transfer station on the Quattro site and its replacement by the new stadium, but also including the disappearance of other nearby commercial and industrial uses, and the arrival of residential development, hotels, retail space and cafes, and a new bridge over the railway line. This complex transformation of the environment, from one centred around a working waste site, to one anchored by a busy sports stadium, makes the use of real-world sales rates achieved in the stadium scheme a problematic exercise.

51.
The experts proceeded on the basis that £760 per sq ft (equivalent to £720 at the valuation date) was achieved in the stadium scheme. That was for a development with 100% private sales and, as Mr Mould submitted in closing, with flats coming to the market in the context of the regeneration of the order lands delivered by the scheme and with well-advanced planning proposals for residential development of the Citroen and 1-4 CIW sites. As Mr Cottage stressed, these scheme-world values were achieved where the surrounding industrial uses, including the waste transfer station on the Quattro site, had been removed.

52.

We agree with the acquiring authority that when formulating bids for the reference land prospective purchasers who intended to develop it straight away would make assumptions about the marketing of their own development, and about the condition of the surrounding sites when their own completed apartments were being offered for sale; they would be interested in how the completed development and its surroundings would appear to prospective purchasers of the apartments when they considered how much they were willing to pay for them. As for timing, while some of the following propositions had initially been contentious they were all common ground by the conclusion of the hearing: first, marketing of apartments in the JTP scheme would have begun in March 2018, and sales, initially off plan, would have continued at a steady pace until completion of the development, some 42 months later, in March 2020; secondly, at about the time marketing began at the reference land a planning application or applications for development of the Quattro site would have been likely to have been made (some 18 months after the valuation date) with consent being secured by late 2020 to early 2021 – post-dating the sale period of all of the flats within the JTP scheme; finally, the Quattro waste transfer station would have continued to operate during that period, and possibly thereafter.

53.
Having walked around the area, putting ourselves in the shoes of a purchaser of the whole site at the valuation date, anticipating the environment in which apartment sales would have occurred, both off plan and following completion, our view is that the developer purchaser would not have taken a bullish view of prices that could be expected to be achieved in what was, at best, an area in transition; the developer's assumption would have been that individual purchasers of completed apartments would want a keen deal to buy in this location. They (and the developer) might well be confident that the surrounding land uses would eventually disappear as development progressed, but in the critical period when sales were being achieved no amount of persuasive marketing or noise attenuation could hide the fact that the JTP scheme would look out over a waste transfer station and other non-residential uses, which, gradually, over a period of unknown duration, would be replaced by development sites and, eventually, by completed residential schemes. In our judgment that prospect would have had a depressing effect on the rates which could be achieved on apartment sales, and that in turn would have reduced the price which a prudent developer would pay for the reference land on the valuation date.

54.
Our general conclusion is that by making no adjustment to allow for these factors Mr Asher's approach is untenable. How much the scheme world rate of £720 per sq ft should be reduced before being employed in a residual valuation is a question we shall return to below after considering the evidence relating to the sale of comparable development sites.

Evidence of land values from sales of comparable development sites

55.
Both experts relied on evidence derived from sales of comparable development sites to support their valuations but by the completion of the evidence it was common ground that the comparable approach served only as a sense check for the more reliable residual valuation method.

56.
Transactions in development sites for high density, high-rise residential schemes do not lend themselves to a convenient analysis on a rate per acre basis. Instead, in order to employ evidence of the sales of development sites to the valuation of the reference land, both valuers derived a rate "per

habitable room" from the evidence, applying their findings to an agreed figure of 616 habitable rooms in the JTP scheme.

57.
Sales of sites at some distance from the reference land provided little assistance. 1 Commerce Road (three years after the valuation date, part new-build and part conversion, involving only 76 units and located over a mile from the reference land), Reynard Mills (a low-rise development of much lower density than the JTP design), and Churchill House (12 months after the valuation date, one mile away, and a lower density development, sold without planning permission and with no indication of affordable housing contribution) are too dissimilar to the reference land to supply useful evidence.

58.
Two successive sales of the site of Morrisons supermarket, a mile away on Brentford High Street provide some assistance. The two sales straddled the valuation date: the first, in August 2015 at £16.25 million was without planning permission, but consent had been obtained by the time of a re-sale in March 2019 at £28.4 million. The experts agreed that the growth in value was influenced by the increased certainty that a regeneration of Brentford Town Centre development, supported by a CPO, would take place, and by planning permission having been secured, but there may also have been other factors in play. The second purchaser was London and Quadrant ("L&Q") a registered social housing provider active in the development market (of whom more below). But the Morrisons site is distant from the reference land, and the much higher proportion of commercial space, and a social housing contribution quite different from the requirements of the CAAD, weaken the second transaction as a comparable.

59.
There was evidence of a number of transactions in the area immediately surrounding the reference land involving the sales of Wheatstone House, the Citroen site, 1-4 CIW and the Duffy site. By the valuation date only the Wheatstone House sale had occurred, and we agree with Mr Cottage that the same would have been the case in the no scheme world. We also accept that the Citroen and 1-4 CIW transactions were influenced by the scheme, and the Duffy site was sold to the developer of the scheme in an off-market transaction. All three must therefore be treated with particular caution.

60.
Wheatstone House was the site of a former BT telephone exchange on Chiswick High Road, a short distance from the reference land. The 0.86-acre site was sold to an L&Q group company in December 2015, nine months before the valuation date. The assignment of a long leasehold interest for £15.7 million, with an option to purchase the freehold for £1, was treated by both valuers as effectively a freehold sale. The site had planning permission for the demolition of the exchange and the construction of a mixed-use scheme comprising 95 apartments, 464 sqm of commercial space and car parking at ground and basement levels. The price achieved was something of a surprise to both valuers, equating to just under £60,000 per habitable room before adjustment. Mr Cottage considered the transaction to be an outlier, at a price substantially higher than any other comparable for reasons which were not clear. Mr Asher considered the site's W4 Chiswick postcode, together with its prominent location on Chiswick High Road, were factors influencing the high price paid and, while not entirely abandoning the transaction as a comparable, he did not place much weight on it.

61.
The planning history of the Citroen site has been something of a roller-coaster. Pre-application discussions with the local planning authority began in March 2016 before L&Q purchased the site in

June 2017 for £30.13 million. An application for consent for a 427-unit development was submitted in November 2017, including 40% affordable housing, but the proposed mix and unit sizes were not policy-compliant. By February 2018, planning officers were recommending refusal owing to the adverse effect of the proposals on heritage assets, but the application was called in by the Mayor of London who saw an opportunity to boost affordable housing numbers. Following discussions with GLA officers an amended proposal was submitted, which the Mayor determined to grant. However, in April 2019 the application was called in by the Secretary of State, before being granted in September 2020. The consented scheme comprised 441 units in blocks of up to 18 storeys, with a 50% affordable housing allocation, 510 sqm of commercial space and 250 sqm of D1 nursery space.

62.
All but the earliest pre-application discussions concerning the Citroen site post-dated the valuation date for this reference. The sale took place nine months later, without planning permission, but it is agreed that we may assume the hypothetical purchaser of the reference land would have been aware of those discussions, although they would obviously have been uninfluenced by subsequent events including the price paid on the sale itself. It was common ground that the purchase price of £30.13m measured on a gross rate per habitable room basis before any adjustments, equated to £27,218 on the 2017 planning application for 427 units, or £26,291 based on the eventual 441-unit consent. We agree with Mr Cottage that the 427 units in the application submitted before the land was sold better reflects the market’s assessment of the capacity of the site at that date, and we have therefore assumed the sale equated to £27,218 per habitable room.

63.
The 2.11-acre site at 1-4 CIW immediately adjoins the reference land to the north-east and was sold to Redrow Homes and Catalyst by Design Ltd in November 2018 for £32 million. At the date of sale, consent for a 550-unit development had already been refused by the planning authority, and a further application for 420 units had been submitted but not determined. A resolution to grant permission subject to a section 106 agreement was adopted on 5 September 2019 for a development of up to sixteen storeys comprising 420 units (50% affordable of which 20% affordable rent and 30% intermediate ownership), 3,728 sqm of commercial space and 929 sqm of retail space. The experts’ agreed analysis of the purchase price was £27,350 per habitable room based on the application undetermined at the date of sale. But all of this was in the future; at the valuation date the warehousing units at 1-4 CIW had yet to be demolished.

64.
In a third report submitted by Mr Cottage shortly before the hearing he introduced evidence of the negotiated sale of the Duffy site to the scheme’s developer, Lionel Road Developments Ltd (“LRDL”). The transaction was complex, but the net effect was a sale of the freehold for £12.5 million on 12 January 2015. This was 18 months prior to the valuation date, but after planning permission had been granted for the stadium scheme, under which 275 units comprising 770 habitable rooms were allocated to the site. The price equated to £16,234 per habitable room.

65.
Mr Cottage exhibited a letter to the Duffy Group from Catherine Raynsford, a director of JLL, the agents acting for LRDL. Ms Raynsford was not called to give evidence but her letter was the subject of lengthy but speculative cross-examination and submissions. Mr Mould and Mr Cottage relied on a statement that the purchase price reflected the scheme planning permission, suggesting that the absence of affordable housing would have inflated the price. Mr Glover pointed to a comment that the Football Club could not be seen to be overpaying for the site and suggested that the lack of affordable

housing on that part of the scheme must already have been stripped out. The letter as a whole is likely to have been written with the intention of persuading the Duffy Group of the merits of the proposed transaction in the hope of avoiding a contested CPO inquiry, and it would be unwise to place reliance on the precise wording of individual paragraphs.

66.

Ms Raynsford’s letter would not have been available to potential purchasers of the reference land, but we are satisfied that the purchase price would have been known to the market, either through a Land Registry check or though the commercial agent network. But the Duffy transaction could safely inform our valuation only if it could be assumed that LRDL did not pay more for the site than a developer would have done in a no scheme world. We are sceptical that any such assumption can properly be made on the evidence.

67.

In closing Mr Glover submitted that the Duffy sale equated to £19,223 per habitable room. That submission was not based on an analysis advanced by Mr Asher in evidence, but on a series of arithmetical steps proposed by Mr Glover. These made no adjustment to the headline rate of £16,234 per habitable room for the lack of affordable housing, but accepted Mr Cottage’s 15% allowance for the passage of time between the Duffy sale and the valuation date and his 2.97% adjustment for the lack of commercial space on the Duffy site. 5% was then added for location and build costs, with the result, Mr Glover suggested, that the Duffy sale supported a value of £12.5 million for the reference land at the valuation date. Elegantly explained though it was, that exercise fails at the first hurdle. We are satisfied on the evidence that the price achieved for the Duffy land is very likely to have reflected the scheme planning consent and therefore to have been influenced by the absence of affordable housing on the site. It is not a reliable guide to values which might have been achieved on the no-scheme hypothesis.

68.

Both experts did their best to adjust the comparable evidence for factors such as location, planning risk, changes in value over time, affordable housing provision, construction type, site density, and the amount of commercial space within each development. Mr Asher’s final valuation equated to about £23,500 per habitable room, but the basic flaw in his approach, as Mr Cottage identified, was that he assumed at least in part that a fall in gross development value would equate to a proportionate fall in land value. That relationship cannot be assumed, as is demonstrated by the fact that Mr Asher’s own reduction in his apartment sales rate, from £750 to £720 per sq ft, just over 4%, resulted in a reduction in his residual land value of over 9%, from £16m to £14.5m. Mr Asher’s approach also assumed, initially at least, that the comparable transactions could safely be analysed on the basis that the value attributed to all commercial space was the same, whether it be retail space or B1 space. We do not think that assumption is reliable, and it undermines the weight that can be placed on Mr Asher’s analysis of the comparables.

69.

Mr Cottage’s final valuation of £8.67 million equated to £13,392 for each of the 616 habitable rooms in the JTP design, and he did not shy away from the fact that his rate was significantly below that of any of the comparable transactions.

70.

It was common ground that the valuation was not a mathematical exercise but was a matter of professional judgment, and that a purchaser would have adopted a more broad-brush approach than the experts. We agree and look at the matter in much simpler terms. A developer purchaser standing on Capital Interchange Way at the valuation date in the no-scheme world would have made no allowance for planning risk, as planning permission is assumed to have been in place for the CAAD. Having carried out due diligence the developer would be aware that Wheatstone House had sold for what, on any view, was an extremely high price, but in a much better location. The only other recent transactions were the sale of Reynard Mills in February 2015, equivalent to £28,069 per habitable room, and the first Morrisons sale in August 2015, at £33,784. But these sites were over a mile away in Brentford town centre and were different in many ways. The developer would know that there had been some planning enquiries made on the Citroen site, and that 1-4 CIW was vacant and looked like a development prospect, but the Quattro site would continue waste transfer operations for some years to come, including in the period when the developer would be marketing the completed apartments. We agree with Mr Cottage's view that such a developer would proceed with some caution, and would regard the reference land, if not as an entirely pioneering site, then at least as one which was not straightforward.

Applying the evidence

71.
Having heard all the evidence in this reference, we are unsurprised that agreement could not be reached. Each party relied on the evidence of a highly experienced compensation surveyor, each of whom has done his best with the evidence before him. They each preferred the residual method of valuation, but it is a feature of very high-density development sites that, as Mr Asher showed, even minor tweaks to the sales rate as an element of gross development value can result in significant change to the land value. As a sense check both valuers used the comparable method but, for the reasons we have explained, it is difficult to adjust the comparables with much confidence to place them in the required counter-factual world.

72.
The Tribunal has often been cautious about the residual valuation method. Had it not been for the hypothetical nature of the exercise, there is little doubt that the comparable method, using the sales of sites surrounding the reference land, would have been preferable. As it is, we must make the best of what we have. Borrowing from the RICS Valuation Information Paper 12 – Valuation of Development Land:

"In practice it is likely that a valuation would utilise both [the residual and comparable] approaches, and the degree to which either, or both, are relevant depends upon the nature of the development being considered, and the complexity of the issues."

73.
We will therefore begin with the residual method and then consider whether the outcome, analysed on a per habitable room basis, is consistent with the comparable evidence, before coming to a final conclusion.

74.
Helpfully, by the end of the hearing the experts were able to agree many components of their residual valuations. There were some slight discrepancies in the floor area breakdown, but we have adopted Mr Cottage's figures because his total of 154,657 sq ft accords with the valuers' statement of agreed facts. The experts were able to agree the value of car parking, affordable housing, ground rental and commercial investment values totalling £23,876,989. To arrive at the total gross development value

we must add the value of the private apartments, for which the starting point is the rate to be applied per sq ft.

75.

We consider that the appropriate sales rate to assume in a residual approach is £690 per sq ft. This seems to us to be consistent with the CBRE ranges, remembering that the figure is an average and at least some of the apartments would probably have far-reaching, and possibly river, views. It is also consistent with the two more useful comparable sites at Heritage Walk and Kew Bridge Road, adjusted for their superior location and specification. It is rather closer to Mr Cottage's figure of £675 than to Mr Asher's £720, and generally we consider Mr Cottage's assessment of the development prospect on the no-scheme hypothesis to be the more realistic of the two.

76.

Applying £690 per sq ft to the private space of 92,887 sqft produces a total gross development value of £87,969,019. After a deduction for purchaser's costs on the commercial and ground rent investment elements, and an addition for one year's income from the ground rent tenants, this equates to a net realisation of £87,682,846.

77.

Many of the outgoings to be deducted were agreed, with only four remaining in issue. Three of these are linked: developer's profit, developer's contingency, and a developer's cost overrun guarantee. The fourth is finance costs.

78.

As regards developer's profit, both parties acknowledged that it is extremely difficult to derive a developer's profit from market transactions. In his last valuation Mr Cottage adopted a blended rate of 16.86% of gross development value made up of 20% on the sales of private flats, 6% on affordable housing, and 15% on the commercial element. This was the equivalent of 20.36% profit on cost, compared with Mr Asher's rate of 15%, but Mr Asher then added a developer's contingency of 5% of build cost.

79.

On closer examination there was not as much between the two experts as originally appeared, when Mr Asher's contingency is factored in. Mr Cottage's 20% on cost can be compared in broad terms with Mr Asher's 18%. In our judgment it is right not to allow for a separate developer's contingency, as Mr Asher has done, but instead to absorb that element of risk within the developer's profit. On that basis, we accept Mr Cottage's view that the appropriate developer's profit would be based on 20% on private sales, 6% on affordable housing and 15% on commercial. The blended end result would depend on the total value of private housing.

80.

The principle behind the cost overrun guarantee is agreed. The developer and its lender would expect provision to be made to guarantee against the project overrunning. Mr Asher did not dispute Mr Cottage's suggested figure of £433,860. The only issue was whether that commitment would be made against the balance sheet of the developer or its parent company, so as not to appear as a cost in the residual appraisal, or whether it would be purchased as a standalone product which needs to be reflected as a cost. The answer might be influenced by the nature of the hypothetical purchaser, but we accept Mr Asher's evidence that even if the purchaser was a registered provider rather than a national volume housebuilder, there would have been little difference in their approach, and we find force in Mr Glover's submission that in a competitive situation (which it is agreed this would be) it is unlikely that a purchaser would make a specific deduction for a cost overrun guarantee when considering what to bid for the reference land. We therefore make no allowance for a cost overrun guarantee.

81.
The only remaining disputed element of the residual appraisal was finance costs, on which at the Tribunal's request the experts made submissions in writing after the hearing. They agreed that the basic components would be a structured finance package with a 60/40 debt/equity split, an arrangement fee of 1.25%, and a base interest rate of 4.25%. We were provided with sheets of calculations and cash flow projections but consider the picture can be painted with a slightly broader brush. There are three issues, but on two of these the evidence is little more than assertion by the experts, assisted by others with more direct knowledge who were not tendered for cross-examination. The first disputed item is the finance arrangement fee, which Mr Asher is advised should be £585,027, whereas Mr Cottage suggests £537,500. We have adopted the average of the rival positions, £561,263. We have done the same on the commitment fee (on undrawn finance), where Mr Asher's £1,550,168 contrasts with Mr Cottage's £1,415,471. We have adopted £1,482,819.

82.
On interest costs, however, we generally prefer Mr Cottage's evidence (£2,254,427) to that of Mr Asher (£1,173.175). Interest costs are influenced by cash flow, and Mr Asher's approach – in which he assumes no outgoings whatsoever in the first six months of the timetable other than land purchase, seems to us to be unrealistic. However, we accept Mr Asher's observation that Mr Cottage's cashflow projections assume a regular linear pattern whereas in reality development finance would take the form of an S-curve. Doing the best we can we have adopted interest costs of £2 million.

83.
We accept that there might be some modest internal inconsistencies when our arrangement fee, commitment fee and interest calculations are combined. But in a case in which the experts have adjusted their own valuations by £4m in the case of Mr Asher, and £2.75m in the case of Mr Cottage, and where both acknowledge that the market would take a broad view, we do not think that further fine tuning is necessary.

84.
We have next carried out our own residual valuation adopting the inputs identified. We have calculated a net realisation of £87,682,846. Using the agreed rates for marketing and letting, disposal costs, and our preferred finance figures, total construction, marketing, disposal and finance costs would amount to £61,921,917 (construction £51,570,151, fees £3,870,255, marketing and letting costs £884,679, disposal costs £1,552,751, and finance of £4,044,082). Applying the profit rates explained above (20% on apartments, 6% on affordable housing, 15% on commercial) would produce a profit of £14,869,908, equivalent to a blended profit of 16.9 % of GDV.

85.
Having assessed total income and total outgoings, including profit, what is sometimes called "land surplus" can be calculated, which on this hypothesis is £10,891,021 (net realisation of £87,682,846 less construction etc of £61,921,917 less profit of £14,869,908). This figure represents the residual land value, plus stamp duty and acquisition fees. Working backwards, assuming the statutory stamp duty rates applicable at the valuation date, and adopting the agreed acquisition fees of 1.5%, produces a residual value of £10,236,170 – say £10.25 million. This is equivalent to £16,617 per habitable room on the JTP scheme.

86.
It is finally necessary to consider this outcome result in the light of the other evidence. Does a rate of £16,617 per habitable room seem too low in the light of the evidence? We do not consider it does. The rate reflects the nature of the development land at the valuation date, surrounded by non-residential uses. The rates achieved for Citroen and 1-4 CIW were, in our view, very much influenced by the transformative effect of the stadium scheme itself. We are also mindful that in the scheme world the Duffy site changed hands at a price equivalent to £19,223 per habitable room, on Mr Glover's analysis of Mr Cottage's figures, for a site with planning permission for development and with no affordable housing.

87.
Taking all of the above into account, we find the value of the reference land at the valuation date on the statutory assumptions to have been £10,250,000.

**Costs of the CAAD appeal and pre-reference costs**

88.
At the conclusion of the CAAD appeal the Tribunal made an order that the claimant's expenses reasonably incurred in connection with the original application for the certificate, and the subsequent appeal to the Tribunal, were to be taken into account as part of the compensation payable. The costs claimed under that order were stated in the claimant's amended statement of case of 30 June 2020 to be £653,249.19, a figure which was particularised in a schedule of invoices. In the case of invoices submitted by Savills and Gately plc it was recognised that their services had included work done on the compensation reference itself, as well as on the certificate and the appeal, so only an apportioned part of their charges was claimed.

89.
The principle that the claimant is also entitled to be compensated for its pre-reference Tobin costs is not disputed by the acquiring authority. These were not quantified in the claimant's amended statement of case but were later said to total £40,474.42.

90.
In its statement of case the acquiring authority put the claimant to proof of these elements of its claim. It wished to be satisfied that the sums claimed were reasonably incurred and did not include costs of the reference itself (which will be in the discretion of the Tribunal, or governed by statute, once the outcome of the reference is known).

91.
Before the hearing the parties had assumed they would be able to reach agreement on the figures. The claimant continued to supply information before, during and after the hearing, but it led no relevant evidence, nor were any substantive submissions made on the issue. Both parties had invited the valuation experts to express a view on the rule 6 claim, and in their valuation reports Mr Asher and Mr Cottage each repeated the figures which had been supplied to them. At the end of the hearing the parties asked for the opportunity to make written submissions, which we permitted them to do according to a timetable they had agreed between themselves.

92.
The authority's position remained that an element of the total was properly to be regarded as post-reference costs, which were not recoverable under rule 6. It originally suggested that 60% of the amount claimed was recoverable, equating to £416,234.37. The sum admitted was then increased to

£499,173.06. A schedule supplied by Mr Cottage showed how this figure was calculated. Some of the invoices supplied by the claimant had been reduced on the basis that the narrative supplied provided an insufficient explanation of what the charge was for, and others because they related to work done after the commencement of the reference.

93.
Even in the context of a reference in which almost £20 million was claimed the rule 6 claim involves relatively large sums of money and we are surprised that timely consideration was not given to gathering the evidence required to prove the claim at the hearing. The claimant could easily have filed a witness statement confirming that it had incurred the costs claimed, supported by a bill of costs specifying what the costs were for. It could have sought directions for the acquiring authority to respond, identifying those charges which were challenged. As it was, Mr Asher was expected to be the mouthpiece for a claim of almost £700,000 about which he had no first-hand knowledge, except in relation to his own firm’s charges, and Mr Cottage was expected to rebut it. We question whether the professional fees incurred by the claimant was a proper subject for expert evidence at all; by each presenting their case in this way the parties only succeeded in compromising the independence of their experts.

94.
Despite the unsatisfactory way in which this part of the claim was developed, the Tribunal is required to deal with it. We have considered limiting the sum awarded to the figure admitted by the acquiring authority on the basis that the claimant has not proved its rule 6 claim, but we have decided against doing so. Rule 16(1)(e) of the Tribunal’s Rules enables us to give directions about the manner in which evidence or submissions are to be provided, including in writing, and rule 16(2)(a) enables us to admit evidence which would not be admissible in a civil trial. Neither party has objected to this issue being dealt with by submissions, rather than by evidence, and we infer from the exchanges which have been provided to us that each is content for us to treat those submissions as if they were witness statements supported by statements of truth. In any event, the acquiring authority has not disputed that the sums claimed have been spent by the claimant.

95.
On the basis of the confirmation supplied with the claimant’s final submissions we are satisfied that the work carried out by DPP and by Gleeds was all in connection with the CAAD process. We do not think it was unreasonable for two senior members of Savills to work together on this matter, given its importance, and we do not consider any adjustment in Savills fees is required. Similarly, nothing in Mr Cottage’s schedule causes us to doubt that Gateley’s fees all related to the CAAD and the only adjustment required is the agreed omission of a disbursement of £1,825 plus VAT. None of the other invoices appear to be challenged except on the basis that they were incurred after the compensation reference commenced. That does not make them costs of the reference if the work to which they relate was done for the purpose of the CAAD appeal. It should be remembered that the compensation reference and the CAAD appeal were commenced at the same time. The claimant’s solicitors have confirmed what tasks the various consultants were engaged to perform and on that basis we are satisfied that they are properly claimable as Tobin costs or as costs falling within the Tribunal’s CAAD order.

96.
The total compensation payable in respect of the costs of the CAAD process and other pre-reference costs will therefore be £697,000.

**Early redemption costs**

97.
The final element of the claimant's disturbance claim relates to two charges secured on the land. These were discharged directly by the acquiring authority in January 2017 and it seeks credit for the sums paid to the chargees. The claimant argues that early redemption charges incurred on the discharge of the charges ought to be part of its compensation, as the cost would have been avoided had the land not been acquired.

98.
The first of the charges was in favour of Aviva and was discharged on payment of £1,100,203.77 covering the principal, a contractual release price, early repayment charge and interest, and legal costs; the claimant claimed compensation in respect of the release price of £116,875, an early redemption fee of £21,037.50, interest of £9,697.35 and the chargee's legal costs of £17,593.90, amounting in total to £165,203.75.

99.
A second charge in favour of Pramerica was discharged on payment of £1,170,132.19 which represented the principal sum, interest and legal fees. In its amended statement of case the claimant claimed compensation totalling £53,132.19, comprising interest of £33,418.19 and legal fees of £19,714.

100.
In both cases the sums required to redeem the charge were agreed by the acquiring authority's agents with the chargees and ratified by the claimant's solicitors. There is no dispute that the sums paid were due and payable under the finance agreements which the charges secured. The issue is whether, in principle, the sums paid are recoverable as compensation.

101.
The relevant evidence concerning the charges was supplied in the form of an undated letter from the Chief Executive of the claimant to the acquiring authority's solicitors, which was handed to us in the course of the hearing. It explained that Capital Court was part of a portfolio of investments held by the claimant which was financed by charges in favour of Aviva and Pramerica. Had it not been for the compulsory acquisition of the land it would have remained part of that portfolio, including after redevelopment, and repayment charges would not have been incurred.

102.
As with the CAAD and pre-reference costs, the parties did not deal with the issue of early redemption costs during the hearing but made submissions in writing after it had concluded. The claimant argued that the costs claimed flowed directly from the acquisition, they were not remote from it, they would not otherwise have been incurred, and ought therefore to be regarded as a proper subject of compensation for disturbance.

103.
The acquiring authority pointed out that the sums now claimed exceeded those in the claimant's original statement of case of 12 October 2018, which had sought the early repayment charge to Aviva (then quantified at £31,556). The authority had admitted the claimant's entitlement to the pleaded sum but sought to retract that admission and substitute the figure of £21,037.50 now said by the claimant to represent the Aviva early redemption fee. It also denied that the claimant was entitled to

compensation in respect of the Aviva release price, or the legal fees and interest paid to both chargees.

104.
In its final submissions the claimant withdrew the part of its disturbance claim which related to interest, acknowledging that the interest paid to secure the discharge of the security would have been payable by it in any event. It did not challenge the acquiring authority's contention that the Aviva early redemption charge had been less than the sum originally pleaded and admitted or suggest that the erroneous admission could not be retracted.

105.
There were two substantive issues in relation to the chargees' legal fees. The acquiring authority's position was that legal costs would have arisen in connection with the discharge of the loans whenever this occurred and would have been the responsibility of the claimant under the finance agreement and therefore were not compensatable. We do not accept that proposition. The legal costs in question arose out of the early redemption and are agreed to have been payable under the facility agreement. If the facility had run for its full five year term, as the claimant maintains would have occurred but for the compulsory acquisition, there does not seem to us to be anything in the facility agreement itself which would have required the claimant to pay any legal costs of the lender arising simply out of the expiry of the arrangement. Costs might have been incurred if a new facility had been negotiated, but that did not happen, and we can see no reason why the claimant should give credit for notional costs which might or might not have been incurred if the acquisition had not taken place.

106.
The acquiring authority's second line of defence was that the legal costs were excessive. We do not consider that is an objection which is open to it. The sums paid to the chargees to meet the legal expenses they had incurred in connection with the early redemption were agreed with the chargees by the acquiring authority itself. It cannot now suggest that the sums it agreed were excessive, as they were the sums required in practice to redeem the charges. A reduction of £2,932.32 would be required if, as the acquiring authority suggested, the Aviva legal costs included VAT recoverable by the claimant; the relevant invoice was not identified to enable us to verify what was said about it, but as the claimant did not respond to the suggested reduction, despite being asked specifically to do so, we have assumed that the acquiring authority is right and that the reduction is appropriate.

107.
We nevertheless agree with the acquiring authority's submission that the claimant is not entitled to claim compensation in respect of the sum of £116,875 described by it as a "release price" because the payment of that sum to Aviva did not cause a loss to the claimant but was applied by its lender to reduce its total indebtedness. The payment was made because, when a prepayment was triggered by the disposal of one of the properties in the portfolio on which the charge was secured, clause 7.3 of the Aviva finance agreement required the claimant to make a prepayment equal to 112.5% of an amount allocated by the parties to the property being disposed of. We agree with the claimant that the payment was caused by the compulsory acquisition of Capital Court, but since the payment was for the claimant's own benefit, and reduced its total indebtedness, it does not represent a loss. There is therefore no basis on which the claimant can be entitled to compensation for it. The fact that the sum was agreed between the acquiring authority and the chargee as the amount required to discharge the security does not amount to an acceptance that the full sum was the proper subject of compensation.

108.

The sums payable in respect of this head of claim are therefore limited to the Aviva early redemption charge of £21,037.50, and the chargees' legal costs of £14,661.60 and £19,714, totalling £55,413.08.

**Conclusion**

109.
We award to the claimant the following amounts:

Market Value of reference land: £10,250,000

Basic Loss: £75,000

Reinvestment costs: £168,000

CAAD appeal and pre-reference costs: £697,000

Financial and early redemption costs: £55,413

Total: £11,245,413

110.
This decision is final on all matters except the costs of the reference. If those cannot be agreed the parties should agree a short timetable for the exchange of submissions.

Postscript

111.
In one of his last cases before retirement from full time practice at the Bar, Mr Guy Roots QC appeared for the claimant before us in the CAAD appeal, and we welcome this opportunity to mark the considerable assistance that Mr Roots has given to the Tribunal, its predecessor the Lands Tribunal, and the world of compulsory purchase over many decades. We wish him well for the future.

Martin Rodger QC, P D McCrea FRICS FCIArb

Deputy Chamber President

6 September 2021