



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HY/OCE/2020/0017

Property : Portway House, Portway, Warminster,
BA12 8QQ

Applicant : Portway House Warminster Limited

Representative : Norman Clark

Respondent : Gareth Emlyn Rees

Representative :

Type of Application : Collective Enfranchisement S.24(1)
Leasehold Reform Housing and Urban
Development Act 1993

Tribunal Member(s) : Judge J Dobson
Mrs J Coupe FRICS

Date of Hearing : 10th December 2020

Date of Directions : 4th February 2021

DECISION

Summary of the Decision

- 1. The Tribunal determines that the following elements have the values set out in addition to the value of the freehold interest in the House generally:**
 - i) Potential parking spaces near to the House- £4000;**
 - ii) The cellars- £5000.**

Background

2. The Applicant company made an application under section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”) dated 20th July 2020 for the premium and other terms of acquisition to be determined by the Tribunal pursuant to the collective enfranchisement of the grade 1 listed property Portway House, Portway, Warminster, Wiltshire, BA12 8QQ (“the Property”).
3. The notice was served by solicitors for the Applicant dated 26th November 2019. The counter- notice was dated 28th January 2020. The application was received by the Tribunal in time.
4. The Applicant proposed to pay £5000 for the freehold interest in Portway House (“the House”) itself (pursuant to section 1(1) of the Act) and £250 for the other freehold in the other property to be acquired (pursuant to section 1(2)(a) of the Act).
5. The Respondent’s counter-notice admitted the validity of the right to collective enfranchisement but not the sums proposed to be paid. The Respondent counter-proposed the amounts of £28,000 and £30,000 for the section 1(1) element and the section 1(2)(a) elements respectively.
6. The Tribunal first gave Directions on 28th August 2021. Further Directions were required during the course of the application. The bundle of documents for the determination was provided by the Applicant.
7. The most recent matter to have arisen prior to the final hearing was that the Respondent submitted an application, dated 3rd December 2020, to rely on further expert valuation evidence, which it is said was omitted from the evidence served on 17th November 2020. The reason given was essentially that the omission of service of the evidence had been realised. The Applicant objected. An issue was also raised by the Respondent in relation to documents included in the bundle by the Applicant. The Tribunal expressed the initial view that the Respondent would be allowed to rely on the report but the Tribunal gave the Applicant the opportunity to apply for the evidence to be excluded in the event of relevant circumstances.

8. Having considered the parties further submissions, the Tribunal considered that there were two possibilities. The first was the case proceeded. The second was that the Applicant was able to persuade the Tribunal that it needed the opportunity to respond in writing, although in that event the hearing would need to be adjourned. The Tribunal concluded that the matter would need to be considered at the imminent final hearing. The Tribunal did direct that the Respondent may not rely on certain documents annexed to the valuation report and that the Applicant's valuer could give oral evidence about any additional matters raised in the Respondent's report absent any written report in reply.
9. The two sets of Directions in December 2020 in relation to the above set out in detail the submissions and consideration and are not repeated at any length here.

The Law

10. Section 1 of the 1993 Act provides as follows:

1 The right to collective enfranchisement

- (1) This Chapter has effect for the purpose of conferring on qualifying tenants of flats, contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf-

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

[the right to acquire the freehold of premises to which this Chapter applies on the relevant date, at a price determined in accordance with this Chapter, exercisable subject to and in accordance with this Chapter by a company (referred to in this Chapter as a RTE company) of which the qualifying tenants of flats contained in the premises are qualifying tenants]

and that right is referred to in this chapter as "the right to collective enfranchisement".

- (2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises") -

(a) the qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if ... at the relevant time either

–

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with occupiers of other premises (whether those premises are contained in the relevant premises or not).

(7) “Appurtenant property,” in relation to flat means any garage, out-house, garden, yard or appurtenance belonging to or usually enjoyed with the flat.

The Lease

11. A sample lease was included in the bundle and entered into between the then freeholder and one Ms Lilly in 1983, “the Lease”. A further sample lease was also included. The Tribunal understands those and the other leases entered into by the Lessees are in substantively the same terms.

12. The Tribunal has not transcribed the Lease or Deed of Release at length in this Decision, in the absence of apparent merit in that in relation to the matters in issue. However, it should be identified that the Lease provided the following:

“The First Schedule
Rights and privileges

3. The right to park two private motor cars (in such position and in accordance with such directions as the Lessor may from time to time authorise and determine) upon the car parking areas shown coloured yellow on the said Block plan attached hereto.

.....

7. The right to use the garden and grounds forming part of the Property for the purpose of quiet enjoyment only (but not for the purpose of playing games or for any other purpose likely to cause offence or annoyance or to constitute a nuisance to the lessees of other flats in the Building or to the Lessor or the owners or occupiers of adjoining or neighbouring property)-

8. The right to use the driveway shown shaded yellow on the said plan with vehicles of reasonable size and weight only for the purpose of loading or unloading or picking up or setting down passengers-

.....”

13. A sample Deed of Release was also included in the bundle and entered into between the then freeholder, “The Lessees of Portway House” generally and Mr and Mrs Rodman (“The Deed of Release”), dated 21st June 1990. The Deed of Release states that it is:

“- in respect of –
Certain rights of way and parking
At Portway House Warminster...”

14. The Deed of Release recites that the Lessees were granted the right to park “two private motor cars” and provides in clause 3 that in return for payment of £15,000, the existing rights are extinguished, such rights then being released. Clause 2 then states as follows:

“2. FOR the avoidance of doubt the owners and the grantee acknowledge that the grantees rights of way and of parking as granted by the said Leases and as contained in clause 3 of the First Schedule hereto are now confined to the area shown edged yellow on Plan “B” annexed hereto which plan shall be the definitive plan for the purpose of determining such rights and that each of the Grantees shall henceforth have the right to park one private motor car only thereon.

3. THE owners hereby surrender the right of way contained in clause (a) of the First Schedule to the Conveyance and in substitution the Grantor with the knowledge and consent of the grantees hereby grants a right of way for the benefit of the land retained by the owners namely that edged red on Plan “” with or without vehicles or domestic animals at all times and for all purposes connected with the use and enjoyment of the property to be erected thereon as a single private dwelling but for no other purposes whatsoever over and along the driveway shown hatched red on Plan “B” SUBJECT TO the payment by the owners of a fair proportion according to user of the costs from time to time incurred in making up and maintaining and repairing the surface of the said driveway.”

The hearing

15. The application was listed for final hearing on Thursday 10th December 2020, by way of video proceedings. Mr Clark, a Lessee of one of the flats (“the Flats” or singular “the Flat”) in the House represented the Applicants. Mr Rees, the Respondent, represented himself. Whilst solicitors had represented both of the parties, to differing extents, during the process and proceedings, they were not instructed in relation to the hearing.
16. The valuer experts for both parties attended- Mr Simon Dancer FRICS of Dancer Consulting Limited for the Applicant, and Mr Trevor Edwyn-Jones FRICS of Ballie Jones Limited for the Respondent.

17. The bundle comprised 164 pages, including the application. Alternatively, the bundle comprised 214 pages if the report of Mr Edwyn-Jones prepared shortly before the hearing and its enclosures were included.
18. The Tribunal dealt as a preliminary issue with the question of the Respondent's (apparently recent but undated) written valuation report being admitted in evidence. Mr Clark for the Applicant did not wish to provide a written report from Mr Dancer in response to that of Mr Edwyn-Jones and for there to be an adjournment of the hearing, preferring to proceed. He accepted the inclusion of the report of Mr Edwyn-Jones and Mr Dancer having the opportunity to make any appropriate comments orally about the contents. Mr Rees similarly wished to proceed.
19. It was identified that the documentation in the bundle included communications prepared in the course of negotiations between the valuers for the parties. However, both Mr Clark and Mr Rees stated that they were content to waive any privilege.
20. The Tribunal then turned to the substantive elements in dispute between the parties, taking each in turn. The Tribunal adopts that approach in this decision, setting out the key aspects of the oral evidence received, any significant additional aspects of written evidence, the submissions made and then the decision reached in respect of the given element. Prior to that and for clarity, the Tribunal sets out the matters agreed between the parties.
21. Mr Clark and Mr Rees did not give evidence, making closing submissions. As set out below, that strayed into effectively seeking to give evidence about matters in respect of which there was no other witness evidence. Whilst the Tribunal rules in respect of evidence are less strict than in the courts, nevertheless the Tribunal considered that it could not permit evidence to be introduced in that manner, including in light of the consequent inability of the other party to challenge any such evidence from Mr Clark and Mr Rees at that stage. Specific instances are referred to below where they arose. In the event, nothing turned on any of the matters sought to be raised which amounted to evidence rather than properly being submissions and so it is unnecessary to dwell on the point unduly.
22. The evidence received by the Tribunal was from Mr Dancer and Mr Edwyn-Jones. The oral evidence principally repeated and clarified the relevant matters previously covered in writing, hence there is relatively limited need to refer to written evidence.
23. The Tribunal also referred when considering the issues not agreed to other written evidence within the bundle as and addresses that below where specifically relevant to the Decision, but not otherwise.

24. When dealing with the oral evidence, the Tribunal did allow Mr Dancer to give oral evidence in respect of matters within the late report of Mr Edwyn-Jones, in effect evidence in chief, as the Tribunal had stated it would in the Directions given earlier in the month. Whilst the Tribunal did not adopt a rigid approach to the giving of evidence, broadly speaking the Tribunal then gave Mr Rees the opportunity to cross-examine Mr Dancer and the Tribunal also asked questions, his evidence concluding with re-examination by Mr Clark. The Tribunal then took the oral evidence of Mr Edwyn-Jones, in cross-examination by Mr Clark and in answer to the questions of the Tribunal, followed by re- examination by Mr Rees. There were occasions where each valuer gave evidence in turn about specific points which arose, which the Tribunal considered to be appropriate in those instances.
25. Prior to taking evidence in relation to the specific issues to be determined, as set out below, the Tribunal clarified the experience of the valuers in relation to grade 1 -listed properties. Mr Dancer stated that whilst he was not a specialist in such properties, he dealt with a lot of grade 1 and grade 2- listed properties. He had not professionally overseen works to a grade 1-listed property but had been involved in planning.
26. Mr Edwyn-Jones said that he had dealt with several grade 1- listed properties, particularly in London and a lot of grade 2-listed ones, including both planning and development itself. Mr Edwyn-Jones had also provided relevant information in his written report.
27. The Tribunal accepts that both valuers gave honest opinions in relation to the issues, albeit different ones. Opinions as to valuation frequently differ but the Tribunal must determine the relevant values taking appropriate account of such opinions and the evidence and submissions received.
28. Mr Clark stated during the course of Mr Dancer's evidence that he wished to give evidence on behalf of the Applicant himself. The Tribunal refused that, noting that there had at no stage been a statement provided by him indicating a desire to give such evidence or the nature of it and providing the Respondent with an ability to prepare in light of any such evidence.
29. The Tribunal also records that it did not inspect the property but relied on plans and other photographic evidence provided in the trial bundle, which the Tribunal considered- and the parties did not demure- gave ample information on the basis of which to make the decisions required.
30. It additionally merits mention that an issue arose as to work that should have been undertaken by a right to manage (RTM) company established by the Lessees as opposed to being undertaken by the Applicant, although the Tribunal does not consider that anything to be determined turns on that.

31. The hearing took up a full hearing day and more, continuing some way beyond the usual finish time for a hearing day in order to conclude matters.

The Matters Agreed

32. The Respondent's title is registered with title number WT184626.

33. The Lessees hold 999- year leases, with ground rent payable of £50 per year and the usual sorts of provisions in relation to repairs and service charges.

34. The Property comprises the House, an early eighteenth century Grade 1 listed former mansion now consisting of the eight Flats, with grounds to the front and rear, with the front facing Portway, Warminster and with a vehicle entrance from Newport, a road running to the approximate south-west side of the land within the Respondent's title. The gates and walls to the front of the House and, the Tribunal understood, two other walls are themselves grade 2 listed. (Unusually, the House had been used by Warminster Urban District Council including as office and, in respect of the single storey part by Newport, as a library).

35. The Initial Notice was served on behalf of seven flats held by qualifying tenants and so the Applicant, established by the Lessees of the Flats for this purpose, is an right to enfranchise ("RTE") company and entitled to acquire the freehold.

36. The property additional to the House sought to be acquired is appurtenant property for the purpose of the Act and so also property which the Applicant is entitled to acquire.

37. The valuation date is 26 November 2019.

38. The valuation of the freehold of the House is £6,668 as agreed by both parties.

The Matters in Dispute- Evidence received and Consideration

39. There were six aspects in dispute, namely:

- i) Four car spaces adjacent to the House;
- ii) A single car space under title number WT97046;
- iii) The prospect of sale of additional car parking space for the adjacent land known as The Gazebo;
- iv) A garden area adjacent to Flat 6;
- v) The cellar below Flat 2 and Flat 6 and
- vi) The Main Cellars.

40. The approach taken to dealing with the items and the evidence received essentially joined together ii) and iii) on the one hand and v) and vi) on the other. The Tribunal also adopts that approach in relation to this Decision.

41. The Tribunal has reminded itself of the basis for valuation, in particular that the value is the sum which might be expected to be realised on a sale on the open market by a willing seller and a willing purchaser. The Tribunal has not, for example, given weight to disrepair matters where repair and maintenance can put the area into a reasonable state.

i) Four car spaces adjacent to the House

a. Evidence given and submissions

42. This issue involved a relatively high proportion of the time and evidence. There is an area described by the parties as the “hammerhead”, where the straight driveway through the garden area from the parking spaces by Newport widens near to the House and before the garden banks up to the House and steps climb to the House roughly in the middle of the width of the bank. The hammerhead enables, physically at least, cars to be parked. The area is easily identifiable on the plans submitted in evidence.
43. In essence the difference between the parties was whether the area could or could not be used for parking and more particularly whether there would or would not be planning permission for such parking, especially in light of fire safety requirements.
44. In respect of these parking spaces, the Applicant’s case was that they had no value. Mr Dancer considered that the area had to be kept clear for fire vehicles in the event of fire, noting that the House has a wooden staircase and he said there is no other means of escape. That was, it was clarified, at least where the Fire Service would need to attend to that side of the House and the Lessees and other occupiers needed to exit through the elevation facing the hammerhead. Hence, vehicles could not be permanently parked. He considered that the ability to use a drop-off and pick-up area had no financial value, the use being too transient. Mr Dancer asserted that the Lessees had stopped parking on the hammerhead since the Fire Officer had given advice to Mr Clark, although carers from agencies were not aware and so had used the area.
45. Mr Rees put to Mr Dancer that photographs, including very recent ones, showed the hammerhead still being used for parking. He also put that there is another staircase usable by several of the Flats, although Mr Dancer asserted the wooden staircase is the main one. Mr Rees further put that the Fire Officer had not expressed any issues with access and no Fire Report identified a problem. Further questioning related to the use of ladders by the Fire Service, Mr Dancer asserting that ladders from a fire engine to be the safest. Mr Rees established that Mr Dancer was not aware of the nearest fire station and the types of engines stationed there which could be deployed. Mr Dancer also asserted in response to questioning by Mr Rees that anyone

could park on Newport and the particular photographs showing a lot of cars parked there did not mean that was always the situation.

46. In response to questions from Mrs Coupe FRICS, Mr Dancer stated that if the Tribunal considered that the car parking spaces had value, he would value them at a nominal £500 each. He could not identify a market for the spaces, especially when he maintained that the planning department would not allow such parking.
47. Mr Edwyn-Jones said he had taken the spaces as worth £5000 each, adopting a notional rental basis and then capitalising. He noted that spaces could be rented at Warminster station for £450 per year. He also considered the £15,000 received by each of the eight Lessees in 1990 and applied a 3% compound rate of interest over thirty years. He considered that overall a realistic value was the £5000. Mr Edwyn-Rees had not allowed for the risk of a lack of planning permission, noting there had been parking in the hammerhead and there was a need for additional parking in the area.
48. The written information included in the bundle made reference on behalf of the Applicant to the Respondent having permitted parking in the area for seventeen years and only contending that the parking exceeded the Lessees' rights in September 2020. It also stated that three Lessees had to park in that area because the parking area by Newport- see below- only had six usable spaces in practice and not nine as it should.
49. In addition, correspondence from the Respondent to Mr Foley on behalf of Portway House Warminster Limited, the RTM Company established to manage the Property, refers to the creation of permanent parking rights in the hammerhead exceeding the rights granted in the Lease and invites discussion of the terms of a licence. That indicates that the Lessees sought such rights -and logically that was with the intention to use such in some manner- and there at least had been parking in the area. Subsequent correspondence from Mr Clark dated 30th October 2020 states no vehicles are then parked in the hammerhead. It goes on to state that the Respondent must allocate parking spaces for lessees in the hammerhead, amongst stating other matters.
50. Mr Edwyn-Jones in documents in the bundle had identified a lack of consent to parking in the hammerhead from the Respondent but also that the Applicant could grant such consent. He also stated that there had been up to four vehicles parked in the hammerhead on each of the five occasions on which he had attended at the Property. He suggested that demonstrated demand for parking there and that the large flats in the House could accommodate two or three-car families. Mr Edwyn-Jones explained his calculation of value fully in his written report.

51. Photographs showed cars parked in the hammerhead in December 2019, January 2020, May 2020 and 6th October 2020, some of which were seemingly the same or very similar cars.
52. The bundle contained a number of communications with officers at Wiltshire County Council (“the Council”) and their comments about parking (and other aspects of the dispute) but those are not transcribed here.
53. Mr Rees gave a very brief summary about this element in closing, but asserted that there was scope for additional use of the hammerhead area and that the Lessees could so use after acquiring the freehold. He submitted the planning officer’s comments were informal and no more.
54. Mr Clark in closing was keen to emphasise the grade 1 listing, as generally of importance and the situation of the Property in a conservation area. He asserted, of relevance to parking and the other issues, that there was no indication from the Council that they would allow any change. He also contended both in relation to the parking spaces and generally that Mr Edwyn-Jones had provided nothing identifying viability of any given matter or cost. He called Mr Edwyn-Jones’ valuation “fug- packed”.
55. With particular regard to the hammerhead, he submitted that would not be occupied, stating that there was no planning permission for parking there and that the Fire and Ambulance services would not be able to get close enough if there was.

b. Determination

56. The Tribunal considers that there is some additional value to parking in this area. The Tribunal does not consider that to be anything like the value asserted by the Respondent.
57. The Tribunal accepts the Respondent’s case that in practice there is or, at least has been until recently, parking on the hammerhead. The Tribunal considers that the photographic evidence sufficiently demonstrates that and rejects the Applicant’s position that there has just happened to have been parking there by agency carer staff on the particular occasions. Whilst Mr Dancer gave such evidence, there was nothing to suggest that he knew it to be correct from his own first-hand knowledge. It was not asserted that the photographic evidence was incorrect, not that such an argument could easily have been advanced.
58. Equally, the written information in the bundle that the Lessees had parked in the hammerhead for a number of years and asserted that they had to do so, ran contrary to their case advanced at the hearing that they could not park there and so there was no value for parking.

59. That rather detracted from the Applicant's case that the area could not be used for parking and so could not have any value because access for fire vehicles is required. Notwithstanding any assertions made, in practice the Lessees have not kept the area clear for such access. If any parking has been by agency carer staff, there is no evidence that appropriate efforts have been made to prevent it. The Tribunal does not accept that parking was limited to such staff, no evidence having been given based on any first-hand knowledge which supported such limit and hence the Applicant having in any event failed to prove its case in that regard.
60. The Tribunal accepts that there is no planning permission in place for parking on the hammerhead. Whilst each side asserted what the position would be in respect of planning permission, if applied for, it is apparent that the answer is not known for certain. Still less is it clear that the Applicant will apply for planning permission, as opposed to some parking simply happening (or not) without such an application being made and potentially being prevented.
61. The Tribunal doubts demand from third parties to parking anywhere on the Property. The Tribunal also considers that the potential issues as to Fire Service access, the lack of planning permission and the distinct uncertainty as to there being such permission granted, all carry weight. If the situation came to a head, it may well be that parking would be prevented.
62. The Tribunal accepts that there is only informal opinion from officers of the Council but also that no more than that is possible in the absence of an application being made, whereas there is certainly nothing to indicate that the Council would be more amenable were an application to be made. The Tribunal finds that the weight of evidence is that planning permission for parking in the hammer head would not be granted if applied for.
63. However, the Tribunal does not consider it appropriate to ascribe no value at all. The Tribunal accepts the potential for planning permission being granted at some stage. The Tribunal also considers the prospect that the area will simply continue to be used without an application for planning permission being made is of significance.
64. Having weighed the various above considerations, the Tribunal determines that the Respondent has demonstrated that it is appropriate to determine the four spaces as having some value. However, whilst not detracting from the methodology adopted by Mr Edwyn-Jones to arrive at a figure, the Tribunal considers that to be highly theoretical and not realistic in practice in all of the circumstances. The Tribunal finds Mr Dancer's valuation to be closer in practice but does not accept that valuation to be correct. The Tribunal considers there to be more than the nominal value he allowed the potential for, albeit he considered even that was not appropriate.

65. The Tribunal considers on the evidence that the appropriate value is £4000, being £1000 for each of the four spaces.

- ii) A single car space under title number WT97046 and**
- iii) The prospect of sale of additional car parking space for the adjacent land known as The Gazebo**

a. Evidence given

66. The dispute was essentially whether a further parking space, or more than one, could be created and would be of value as saleable. The particular title identified relates to rectangular area to the far corner of the parking areas by Newport when viewed from Newport itself.

67. Mr Dancer asserted that in the parking area by Newport, there were spaces for each of the Flats and one for the owner of the Gazebo. He said that there was no room to create additional spaces. He also stated that in practice, the spaces near the hedge were reduced due to the width of the hedge such that the vehicles were pushed into the area needed to be kept clear for access. He did not consider that there could be another space created to the far corner of the parking area because in practice it would not be possible to get in or out.

68. Mr Dancer did not read much into the Lessees having agreed the parking spaces to be sufficient when the 1990 Deed of Release had been entered into, suggesting they had not been represented and that they had taken the matters as a fait accompli. He asserted in response to questioning from Mr Rees that, albeit the Lease did not give a right to a given parking space, every Lessee had the right to park. Mr Rees suggested to him that the Lease gave the right to parking at the freeholder's discretion and the parking space could be anywhere. Mr Dancer accepted not having legal qualifications but relied on practicalities.

69. Mr Dancer did not consider that a space could be placed where the bin stores are situated because the bins needed to be accessible to the waste operatives. Mr Dancer also asserted that assigning a parking space in the parking area near Newport to a third party would require the consent of all Lessees where their own ability to park would be frustrated, such consent including consent for access.

70. In response to Mr Dancer's assertion that space was already tight in pinch points and there would be difficulty manoeuvring, Mr Edwyn-Jones suggested that the curved [low] wall could be moved. Mr Dancer observed that the wall is listed and so could not be moved to create more space in the parking area near Newport.

71. Mr Clark questioned Mr Edwyn-Jones about where another parking space would be located. He made reference to there being a right to park but not

necessarily in a space and that there are no allocated spaces. In response to the suggestion of Mr Clark that another vehicle would block access, Mr Edwyn-Jones accepted that creating another space in the area by Newport would be a challenge. Mr Edwyn-Jones had ascribed a £5000 value to that space, the sum calculated in similar manner to those in the hammerhead.

72. Mr Edwyn-Jones also stated that another space could be created in the hammerhead. He considered that additional parking by the existing parking in the hammerhead would not be problematic. He suggested that further spaces were possible and a scheme could be designed. Mr Edwyn-Jones considered two further spaces were realistic. He had set out in written comments his opinion that the hammerhead was not to the main elevation and that additional parking could respect the setting and statutory/ other requirements.
73. Mr Dancer repeated his opinion that there could not be a permanent space in the hammerhead. His written comments on the matter within the bundle arguably come across as less certain on the point but no distinction was put to him.
74. It was established that the land known as the Gazebo has no house standing on it. There is a narrow strip of land between that land and land which used to be occupied by a care home but which land has been sold off to McCarthy Stone for development for retirement flats. That strip of land could provide access to the Gazebo, although Mr Rees stated that ownership of it was split between two parties- and hence the implication was that obtaining access rights may be difficult.
75. There was some discussion of dimensions. It was accepted that there were no measurements in the bundle.
76. Mr Edwyn-Jones noted in his report that no similar single parking spaces for sale were found by him. He set out his approach to valuing the space contended for.
77. Mr Rees submitted in closing that the Lessees had freely entered into the Deed of Variation. He also submitted that the wall between the Property and the Gazebo was not listed and that there was confusion on the part of Mr Dancer. He suggested that there was merit in the Lessees seeking a deal with the owner of the Gazebo as currently there was no access from the land at the front of the House to that at the back.
78. Mr Clark submitted that regardless of any drawings that could be produced, there could be no more spaces in the parking areas near Newport.

b. Determination

79. The Tribunal has determined that the Respondent, who asserts that there could be a parking space with value, has failed to satisfy the Tribunal that there is anywhere that a further car parking space could practically be located in the parking areas near Newport. The Tribunal has considered the plans, photographs and both the written and oral evidence. The Tribunal has noted in relation to that parking, the access needed to the driveway towards the House and the access needed by the land sold off to the north-east of the parking area, the entrance to which is shown clearly in the photographs produced in evidence.
80. The Tribunal further noted that no-one had chosen to tackle the hedge growing into the parking spaces by it, somewhat inevitably where left and not cut back. It was not easy to understand why not, which the valuers were not asked about and which they could not have known. However, nothing turns on the matter.
81. Further, the Respondent has failed to persuade the Tribunal that the right to park means the right to do so if there is an available space and does not mean that there must be sufficient spaces for a car per Flat. The Tribunal has considered the wording of the Deed of Release and the context of that being entered into. The Tribunal is satisfied that the Lessees understood and intended that each would be able to park a vehicle and that the natural meaning of the words used in the Deed is that.
82. There is no basis for considering construing the Deed in another manner and of effectively implying after the words “the right to park one private motor car only thereon”, further words stating, “if there is a parking space available”, which the Tribunal considers necessary in order to give the Deed the effect contended by the Respondent. The Tribunal does not consider it necessary to address the rules of construction of contracts in detail in those circumstances.
83. That said, and for completeness, the Tribunal has determined that the right requires there to be a sufficient number of spaces in the parking area by Newport for each Flat to have one, not a right for any specific space per Flat. That is different to a particular space being assigned to the neighbouring property but nothing turns on that difference.
84. The Tribunal observes that both valuers essentially set out their client’s cases as to the legal effect of the provisions of the Deed of Release, without either having legal qualification. The Tribunal does not consider that the issue was one of evidence but rather one of legal interpretation.
85. The Tribunal observes that Mr Dancer had no first-hand knowledge of the belief of any of the Lessees when they entered into the Deed of Release and was in no position to give evidence about that. Equally, whilst Mr Rees may have been able to give evidence, he chose not to do so and was unable

properly to make any submission that the Lessees had freely entered into the Deed, there being no evidence adduced of that either.

86. The Respondent has also failed to persuade the Tribunal that a further space or more than one could be created in the hammerhead of value. Aside for the issues discussed within i) above, no evidence was provided of demand for such a space. The Tribunal received no evidence from the owner of the Gazebo that there is interest in obtaining a parking space in the hammerhead or elsewhere within the Property, and inevitably equally no evidence that such owner would be prepared to pay for such a space.
87. The Tribunal accordingly determines that there is no value to be ascribed to this element.

iv) A garden area adjacent to Flat 6

a. Evidence given

88. The essence of this dispute was whether the particular area could be separated off from the remainder of the garden and sold for the exclusive use of the Lessee of Flat 6, together with the value of such exclusive area created.
89. In relation to this item, Mr Dancer accepted that a separate little corner of the land had been identified but stated that all 8 Flats have rights over it. The area is small and concreted, he said, and can be accessed by any Lessee. Access is also needed over the area to the cellars and a drain. He opined that no-one would pay for such an area that they can already use. In response to questions from Mr Rees, Mr Dancer accepted that in the current pandemic gardens have value but contended that the value is in open space. Mr Rees also suggested that transfer of the area to Flat 6 would enhance that Flat without impact on the other Flats. Mr Dancer did not accept that, considering there would be an element of loss to the other Flats but the enhancement to Flat 6 would be limited given the need to use the area for access to communal elements.
90. Mr Edwyn-Jones in written evidence had identified that the area is physically separated from the rest of the gardens by the single storey portion of the House, has separate access from Newport [by a railed ramp] and there is a hedge between it and the remainder of the garden. He had also referred to the works needed to meet repair covenants and attraction to the Lessees in unlocking funds for that by sale of the garden area. Mr Edwyn-Jones said in his written report that none of the Flats have private garden space and the area was a natural fit for Flat 6, including for a garden office. He had allowed for 50% of his valuation of the area.
91. Mr Clark had only one question of Mr Edwyn-Jones, which was to seek confirmation that all Lessees pay for upkeep, to which he agreed. There were no other questions about this aspect of the dispute.

92. Little was said in closing, although Mr Clark submitted there to be a meagre space which other Lessees would be able to go into.

b. Determination

93. The Tribunal determines that there is no value to be ascribed to this element. The Tribunal can deal with the element in short terms.

94. The Tribunal accept that there is an area, identifiable from the photographs, which could relatively easily be separated off from the remainder of the garden. However, whilst the Tribunal has noted Mr Edwyn-Jones suggested uses and other observations, the Tribunal is not persuaded that the area, part of the main title and of no obvious appeal, would be marketable.

95. The area is small and is not attractive. The ramp and the steps detract from it. The Tribunal has not been presented with any persuasive evidence that anyone would consider it of value to have exclusive use of the area.

- v) **The cellar below Flat 2 and Flat 6 and**
- vi) **The Main Cellars**

a. Evidence given

96. This was the other element that took a significant time during the hearing and was the element in relation to which the single largest amount of evidence was given. The question was whether one or other portion of the cellars would be useable as living accommodation, storage or for other purposes, in light of various practical issues identified.

97. It was established that Flat 2 is a ground floor flat facing Portway and Flat 6 is a ground floor flat extending into the single storey part of the House and so abutting the pavement of Newport. There are cellars under the original part of the House and a continuation of the cellars, but somewhat different, under the later additions.

98. Mr Dancer's evidence was there were three significant hurdles to works that might be taken to the basement. The first was, he said, that Wiltshire County Council's permission would be required for any alterations to the House and that satisfying the Council would be almost impossible to achieve. He stated that the cellars flooded to quite a depth and were permanently damp, such that they would require tanking. He also stated that the head height was only two metres, where ten to twenty centimetres would then be lost to the tanking. Mr Dancer stated that grade 1- listed floors would have to be covered up, which he did not consider would be accepted. Mr Dancer accepted that the cellars may have been usable at one time when there were fields and country lanes in the area but now there are streets and buildings and now the garden

and the cellars flood. He also stated there to be poor natural light. There was nothing received from the Council, he considered, to suggest that work would be agreed.

99. Mr Dancer asserted that the Respondent had failed to take account of the cost of the work, particularly as compared to the value that might be produced. There was he asserted, no demand. The third hurdle was stated to be the need for all Lessees to give consent, where if any one of them felt the gain would not merit the cost, work could not go ahead. He suggested that the Respondent's case amounted to having produced some figures and a suggestion that the planning officers would think about it. Mr Clark put to Mr Dancer that there are different levels within the cellar, with which Mr Dancer agreed.
100. Mr Rees questioned consideration of the informal conservation officer's opinion, to which Mr Dancer replied that it would be informal as no application had been made, although he did not accept that rendered it not relevant. (That issue had also been raised in relation to the hammerhead.) Mr Dancer did not accept any use for the cellars on the basis of such a material change to the use of the House since built and because of the costs of the work he considered required, even to facilitate storage. He considered that the cellars were unusable for modern living and that there would be no interest in undertaking work.
101. Mr Rees asked a number of questions about responsibility for the cellar and the RTM company. Mr Dancer stated that quotes had been obtained for repair works with stopping flooding the first task. He considered that there were a number of causes of damp, including flooding that he considered may never be prevented. Mr Rees did observe that there had been a communal laundry and drying areas, suggesting washing machines would not be placed somewhere that regularly flooded, which Mr Dancer accepted.
102. In response to questions from Mrs Coupe FRICS, Mr Dancer said that there is a measurement of one metre as the level of flooding on one occasion. He asserted that the cellar would have no additional value to an existing Lessee because of the low height, reduced by beams and where the floor could not be lowered. Mr Dancer also expressed the opinion that natural light could not be increased, as requiring a change to the façade.
103. Mr Rees noted that part of the House had been converted into the local library after the House was listed and had been altered, but Mr Dancer stated that he did not know what alterations had been made, although asserted that the cellars would have to be significantly altered in order to be usable.
104. Mr Edwyn-Jones then gave evidence about this element of the case, firstly responding to questions from Mrs Coupe FRICS. It was first enquired of him why, given that he had valued as if hope value, Mr Edwyn-Jones had not made

an application to back that up. He replied that he had been engaged after the Initial Notice.

105. Mr Edwyn-Jones disagreed with the informal comments of the planning officer, stating that grade 1-listed properties did not have to be preserved in aspic. He maintained that the owner of the flats above might have interest in the cellar below Flats 2 and 6 or there may be use as an office. He said that the idea of public use, for example as a meeting space, was a secondary possibility. Mr Edwyn-Jones accepted the limited height in the cellars was a problem, but he considered this did not rule out use, and he considered was reasonable for storage or hobby rooms or an office. He did accept that the limited height may lead to a light touch to work, with damp proofing to enable use as auxiliary space.
106. Mr Edwyn-Jones stated that the cellars amounted to ninety square metres- although the Tribunal understands that he referred to the cellar under Flats 2 and 6 and not the whole, given the contents of his written report- with a cost to excavate of £10,000 to £15,000 per square metre. He had not prepared any costing. He did not accept that there was a problem with flooding as such, accepting flooding in June in Warminster. However, Mr Edwyn-Jones expressed the opinion that otherwise the problems had been ones of drainage and so the answer was to make sure the drainage was effective, which may require “French” drains (trenches filled with gravel or other material to re-direct water away) or land drains.
107. Mr Edwyn-Jones was firm that the starting point should be the area being in repair but provide for some water-proof rendering or dry-lining. He asserted that the values he had placed on the cellar areas were conservative to reflect the height and other factors.
108. Mr Clark questioned Mr Edwyn-Jones about the suggestion that Flat 6 could be turned into a 2-storey maisonette including the cellars beneath. Mr Edwyn- Jones said that was one possibility, accepting that the ceiling would need to be broken and there be a staircase, stating that to be easily designed and not likely to weaken the structure, although it was not certain whether the planners would agree.
109. The written evidence of Mr Edwyn-Jones had explained how he had valued the cellars under Flats 2 and 6. That was specifically calculated from a starting point of the value of a lower ground floor flat, although then substantially reduced to allow for the lack of planning permission and a future date of receipt. He had valued the remainder of the cellars on the basis of various potential uses as home offices, hobby rooms and/ or storage. The report clarifies that the overall size of the cellars is approximately 2000 square feet to the main area of the cellars.

110. Mr Dancer did not accept that French drains or similar would be possible, given the need to dig into the ground and the floors of the grade 1 listed building, also considering such work excessive for the use to which the cellars might be put. He also stated in response to questions from both Mr Clark and Mr Rees that there is a well in one of the cellar rooms on the elevation facing Portway, which he had inspected and which had been “pretty full”. The well is shown in photographs in the bundle.
111. Mr Dancer stated that it would be very expensive to vacuum seal the well. He accepted that tanking might block the well, although he opined that it would be better to remove the water via a sump pump. Mr Edwyn-Jones expressed his opinion that the well could be diverted and also considered that a sump pump with an alarm would be an obvious solution to any flooding.
112. Mr Rees put to Mr Dancer that much of the problem with water related to the gutters and that should be resolved before matters such as tanking were considered. He referred to photographs showing green algae around the gutters. Mr Dancer accepted that water could have splashed but not more than that.
113. The valuers agreed that the cellars to the northern side of the House had more natural light and more height. Mr Elywn-Jones suggested a doorway and above to be 2.6 metres. They also agreed, or at least one did not dispute evidence of the other, that there is one central corridor through the cellars, one internal staircase and one set of external stairs (accessed from the area discussed in iv) above and a redundant staircase by flat 2 which had been closed off.
114. The dispute as to the costs of work required to produce usable space and the value of that was at the heart of the difference of opinion between the valuers.
115. Photographs showed the height of cellars areas. Acro props for cellar ceiling areas are also shown. There also appear to be pipes running through and so reducing usable height in those locations.
116. The written evidence included the, as identified, informal comments of the Council’s Building Control and the Conservation Officer that it was unlikely that the cellars could be made to comply with requirements and would “almost certainly” involve unacceptable harm and further that it was unlikely that use other than incidental to domestic use would be acceptable. However, the email from the Council dated 23rd October 2020 does indicate that the area under the single storey extension- so some of that under Flat 2 and Flat 6-is of lesser significance and that some upgrading may be possible without unacceptable harm, including for provision of residential accommodation within existing flats. Separate and new accommodation are indicated to be unlikely

117. Mr Rees submitted in closing that the cellars are already used ancillary to residential use. He stated that the fire officer had required the cellar to be cleared in 2015 and at that time the corridors were full of furniture and paraphernalia. (Whilst no oral evidence had been given in relation to that, documentation in the bundle referred to it, including correspondence from Mr Dancer, the Applicant's valuer. Mr Rees re-iterated that there had been a laundry area in the cellars (which it was apparent was accepted) and that Warminster Urban District Council had previously used the cellars when it occupied the House.
118. Mr Rees also submitted that the roof and related disrepair should be dealt with and then the cellars assessed. He said that there were a number of grade 2-listed properties on the high street of Warminster with cellars, variously used as storage and as kitchens and fitted with sump pumps.
119. Mr Clark stated in closing that the use of the laundry room had ceased as issues were caused by its use, in particular moisture was produced and spalling was caused. Mr Clark disputed any impact from the roof or gutters. He submitted that drains in Portway are or become blocked. Mr Clark also said that the well has a cover but that lifts such that water seeps out.

b. Determination

120. The Tribunal has determined that the cellars have some value and has determined that value to be £5000.
121. The Tribunal has noted that there are a number of issues with use of the cellars and consequent uncertainty as to whether the cellars could be used and, if so, for what purpose.
122. The Tribunal was concerned about the well and flooding from that and generally through both of the cellar areas. No convincing solution had been advanced. The Tribunal accepted that suitable drains could be created, although in themselves involving some alterations, which may not be permitted, and expense. That may help to alleviate water issues. Even if those were resolved, it would not otherwise alter the other features of the available usable space.
123. Whilst Mr Rees put to Mr Dancer that problems with water in the cellars related to the roof and/ or gutters, Mr Dancer did not accept that and no clear evidence was advanced that Mr Dancer was incorrect. Mr Rees did not, for example, give evidence and indeed would not be regarded as an expert in any event. In a similar vein, no expert or other evidence had been called about the cellars of other properties or about blocked drains, such that the Tribunal could not properly give regard to submissions about such matters one way or

the other and so the Tribunal expresses no conclusion as to whether they were correct or not.

124. Likewise, Mr Clarks closing submissions about the cessation of use of the laundry room and about the well were instances in which closing submissions were made but where no evidence had been given on which to make it. Neither had the matters been put to either of the witnesses. That was different to the submissions of Mr Rees about the corridor in the cellars and related.
125. The Tribunal considered that the limited height was the most significant aspect and unlikely to be resolved irrespective of flooding potentially being. The Tribunal was not persuaded by Mr Edwyn-Jones' opinion as to uses of the area despite the height limits.
126. The Tribunal considered that the part of the cellars under the main house were more appealing to use if the other issues could be overcome, having more height at least in some areas and also better natural light in areas, in addition to the barrel vaults being more aesthetically pleasing. Even so, the Tribunal did not consider that any use other than as storage is realistic and the Tribunal considered that it was less than clear who would wish to own and make use of those cellars. The Tribunal considers it unlikely that there would be interest in incurring much expenditure to create a better storage area. Any value reflects those considerable limitations.
127. The Tribunal also considered it unlikely that the expense of excavation would be borne, even if such excavation were allowed by the Council, noting the significant cost Mr Edwyn-Jones suggested for such excavation. The Tribunal accepts the evidence that such excavation is unlikely to be permitted and hence the cost is arguably of limited relevance. Nevertheless, the cost would remain a significant impediment in the event that planning considerations ever altered. The Tribunal has concluded it to be unlikely that anyone would consider the space that could be created to be of sufficient value to merit such expense.
128. The Tribunal particularly considers that the particular prospect of turning Flat 2 into a maisonette including the cellars below it is sufficiently remote that no additional value should be ascribed to that. The cellars under that Flat are currently less realistically usable, at least as anything other than storage, than those under the main part of the House, in light of height restrictions. The cellars under Flats 2 and 6 may potentially have a greater chance of the Lessees of those particular Flats wishing to own them, but heavily tempered by the issues identified and so probably limited to use as storage, with the price paid reflecting that.
129. Whilst the Tribunal has had regard to the potential lesser concern of the Council in relation to at least of this part of the cellars, given the very limited height currently it is very difficult to see that a Lessee of Flat 2 could conclude

that acceptable living accommodation could be created such that the Lessee would be willing to pay for exclusive use of that part of the cellars so as to be able to attempt to create such accommodation, allowing both for the current height and for such Lessee incurring the cost of excavation, even if the Council's lesser concern permitted that.

130. Notwithstanding all of the above, the cellars comprise a large area and the Tribunal considered it to be possible that one or more Lessee or other could wish to have exclusive use of some part of the cellars at an unknown point. Hence there is some value to reflect the prospect that a return could be achieved by the Lessees at some stage. Consequently, it is appropriate to recognise that to have a value and to identify the appropriate value.
131. The Tribunal considers that, whilst the cellars are large, the value ascribed by Mr Edwyn-Jones of £11,500 for the cellars below Flats 2 and 6 in particular and of £10,000 for the remainder of the cellars is significantly too high. The Tribunal also rejects the basis on which Mr Edwyn-Jones arrived at that value, in light of its determination as to the lack of likelihood of use as residential accommodation. However, the Tribunal also considers that Mr Dancer is wrong to conclude that the cellars have no value at all.
132. Nevertheless, given the several issues in relation to the cellars and their use, the Tribunal considers that the value of each area is relatively nominal. The Tribunal determines that the appropriate value is £2,000 for the cellars under Flats 2 and 6 and £3,000 for the remainder of the cellars.

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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

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