The Role of the Surveyor Member in the Lands Chamber

I first met Tony Johnson in September 1965. I was a student at the College of Estate Management, which at the time was in St. Albans Grove in Kensington. Tony was there for two reasons. Firstly, he had just been appointed to lecture in valuation to students at the College, including those reading for the BSc (Est. Man) degree. Secondly, he was himself a student. He, too, was studying for the BSc but, unlike me, who had just started on my second year, Tony was just beginning the course.

One might ask how it was that Tony came to be teaching us, who had studied valuation for longer than he had himself. The answer is that we had not. Whereas we had merely completed one year of study, Tony had already qualified as a chartered surveyor and worked for several years in the department of the Valuer to the then London County Council. There his exceptional ability had been recognised and resulted in his appointment at the CEM, presumably on condition that he augmented his RICS qualification with a degree.

I still remember the first lecture. It started with Tony asking all those who had worked in a surveyor's office to name the firm. This was followed by brief details of negotiations Tony had conducted with some of them. He later explained that the purpose of this exercise was to impress upon us the fact that, whilst we were undertaking a course of academic study, valuation was essentially a practical profession, and that the reason for teaching the theory was to enable us properly to understand and interpret what was happening in the market.

Tony Johnson was an inspirational teacher, who enlivened the sometimes dry subject matter with a fund of amusing anecdotes, often delivered in that characteristic barking voice. He was happy to continue chatting on an individual basis at the end of a lecture or tutorial. He gave valuable career advice to many, including myself and it is a personal pleasure, as well as a professional honour, to have been invited to deliver this lecture in his memory.

As you probably know, Tony was the founding father of the CPA, and he became its first chairman in 2001. In some ways it is rather surprising that the formation of the association had been so long delayed. After all, a most important function of the Lands Tribunal, when it was established in 1950, was to resolve compensation disputes, particularly those arising from compulsory purchase. Although rating appeals were also included in the Tribunal's jurisdiction, it was only as a result of a relatively late amendment that rating was included in the Lands Tribunal Act. And yet the Rating Surveyors Association had been formed in 1909, nearly a century before Tony became chairman. Even the surveyors' specialist arbitration body, ARBRIX, had been established 15 years earlier.

At the risk of oversimplifying the position, I would suggest that one of the reasons why it took so long for those with an interest in compulsory purchase to achieve the critical mass necessary to form a specialist association was the unsatisfactory nature of Ryde's scale. It meant that for most surveyors, apart from those in a limited number of specialist practices with a substantial workload, the fees payable for claims involving matters such as the quantification and negotiation of complex disturbance claims, or the application of statutory planning assumptions, meant that the work was not economically viable. Many surveyors would accept instructions to deal with such claims, but in general their interest in the subject would not have been sufficient to justify support for a specialist compulsory purchase body.

It is perhaps no coincidence that, in the year Tony became chairman of the CPA, the Minister for Housing, Planning and Regeneration published a paper proposing new legislation, providing for those claiming compulsory purchase compensation to be reimbursed for all professional fees on the basis of actual expenditure reasonably incurred, rather than by reference to the previous arbitrary Ryde's scale. That Paper followed a recommendation along similar lines by the Compulsory Purchase Advisory Group – CPPRAG – which had published its final report in July 2000. A number of CPPRAG's Members went on to become distinguished members of the CPA. A considerable debt of

gratitude is owed to them for the work they did by all those who are now involved in compulsory purchase compensation claims.

Since their inception the Lands Tribunal and the Lands Chamber have always comprised legal and surveyor members. By sub-section 2(2) of the Lands Tribunal Act 1949 the Tribunal's membership was to comprise a President and legal members, who were to have either held judicial office under the Crown or be barristers or solicitors of at least seven years' standing. The other members were to be "persons who have had experience in the valuation of land appointed after consultation with the President of the Royal Institution of Chartered Surveyors."

By paragraph 1 of Schedule 3 of the Tribunals, Courts and Enforcement Act 2007 the Lord Chancellor may now appoint a person to be a Member of the Upper Tribunal, provided such person has qualifications prescribed in an Order made by the Lord Chancellor with the concurrence of the Senior President of Tribunals.

Following the establishment of the Judicial Appointments Commission (the JAC) in April 2006, the President of the RICS is no longer consulted as part of the appointment process, but the Order made pursuant to the 2007 Act prescribed that the valuer members must be members or fellows of the Royal Institution. Moreover, in recognition of the specialised nature of the role, the job description prepared for the recent recruitment exercise by the JAC specified that applicants must possess "expertise in valuation practice and relevant law, including having acted as an arbitrator and/or an expert witness."

This emphasis on litigation experience reflects the fact that the function of the surveyor member is different from that of valuers in practice. It is true that in most cases the Member will inspect the subject matter of the case, as well as the comparables upon which the experts have relied. But the purpose of these inspections is not to enable the member to prepare his own valuation, no matter how relevant and extensive his own professional experience may be. It is to enable him better to understand the evidence which has been put

forward by the expert witnesses. Whilst the Member is entitled to use his professional experience in deciding what weight to attach to that evidence, it is that evidence alone which must form the basis of his decision.

Moreover, from time to time surveyor members are called upon to determine disputes relating to matters in respect of which it is most unlikely that a valuation surveyor in general practice – certainly one in Central London – will have had previous experience. I shall give some examples.

Four months after my appointment I was asked to travel to the north-east to hold a 9 day hearing into a claim for compensation under section 40 of the Coal Mining Subsidence Act 1991. That Act defines subsidence damage as "any damage to land or to any buildings, structures or works on, in or over land, caused by the withdrawal of support from land in connection with lawful coal-mining operations."

The case in question – *Straker and Others v The Coal Authority* – concerned a terrace of nine houses in Morpeth, which had been constructed by the local authority in the 1960s. In 1990 and 1991, various residents of those properties noticed structural defects emerging in their homes. Following advice from consulting engineers, the houses were vacated. Three years later the terrace was demolished by the local authority with the agreement of British Coal Corporation, the predecessor of the Coal Authority.

Between April 1991 and March 1992 the owners of all nine properties gave formal notice of subsidence damage, as they were required to do by section 3 of the Act. British Coal, who were obliged to remedy any subsidence damage, or pay compensation in lieu, denied that the damage was subsidence damage. The matter was referred to the Lands Tribunal to determine whether it was and, if so, the quantum of damages payable in respect of British Coal's failure to take appropriate remedial action before the properties were demolished.

Coal mining had taken place in the vicinity of the terrace in the 1950s and earlier. Moreover, the profile of the surface subsidence was consistent with one which **could** be generated by mining. In these circumstances the Coal Authority accepted, as it was bound to do under section 40(2), that the onus was on it to show that the damage was not subsidence damage.

It was agreed that, if the damage had resulted from coal mining, the most likely culprit was a coal seam at a depth of approximately 43m. That seam had been worked by a room and pillar system. This form of mining comprised a series of roadways or tunnels (known as “rooms”) driven at right angles to each other on a grid pattern, leaving areas of coal known as pillars. It was common practice to leave these pillars unworked to give support to the roof of the mine until such time as they could be removed by a secondary system of mining called “broken working”. Local mining practice dictated how much coal was removed by this secondary system of mining.

The claimants’ case was that a coal pillar or pillars had degraded or deformed, so as to reduce support to the overlying strata. The Coal Authority contended that the damage was not caused by coal mining, but by the loss of fine particles from the foundation material, transported by ground water to another location. This had resulted in a loss in density and load-bearing capacity and an overall loss of volume beneath the subject properties.

At the hearing evidence was given by civil engineers, a geotechnical engineer, a geologist and a mine surveyor. The case was far from straightforward The evidence showed that incidents of mining subsidence such as that which the claimants suggested had taken place were unusual. Some of the available borehole information was unreliable. The abandoned mine plan of coal workings beneath the subject properties was inaccurate and did not represent the actual geometry of coal pillars remaining. Those boreholes which were reliable indicated that the coal seam had been subject to a further stage of unrecorded workings, which had not been shown on the mine plan.

I found that the Coal Authority had failed to discharge the onus placed upon it by the Act of showing that the damage was not subsidence damage. The homes having been demolished, and there being no residual value, damages were awarded based on the agreed pre-settlement values plus the costs of demolition and, in the case of each owner occupier, a home loss payment equal to 10 per cent of the value of his interest in the dwelling house.

Another case before the Tribunal which involved evidence which was likely to be new to a general practice surveyor was concerned with leasehold enfranchisement, the statutory entitlement of a lessee of residential property to acquire an extended lease of, or in some cases the freehold interest in his home. The example I have chosen resulted in possibly the most important decision made by the Tribunal since I was appointed, certainly in terms of its impact on a significant portion of the residential property market.

The landlord's interest to be valued for enfranchisement purposes is the right to receive the rent reserved during the term of the lease and the right to vacant possession at the end of the term. The valuation assumes a hypothetical market, with the tenant and members of his family not buying or seeking to buy – the "no Act world".

Since the only leases which qualify for enfranchisement are those which were originally let at a low rent, the value of the landlord's right to receive the reserved rent is commonly very much less significant than the value of the right to possession at the end of the term. The latter is quantified by assessing the market value of the property with vacant possession at the valuation date, and applying an appropriate deferment rate to reflect the postponement of that interest until the expiry of the lease.

The first Act granting some tenants the right to enfranchise was The Leasehold Reform Act 1967. From the time that Act first came into force, surveyors instructed on behalf of the Grosvenor and Cadogan Estates in Central London kept records of settlements and valuations agreed with valuers acting for tenants exercising their statutory right. In 1989, in the case

of *Cadogan Estates Ltd v Howes*, the Lands Tribunal heard evidence as to how the settlements – which then numbered 334 on the two estates – had been arrived at. The Tribunal accepted the settlements as being good evidence of what is called "the land market" and adopted a deferment rate of 6% derived from those settlements. That was the same rate as had been agreed in the 1970s. Following the decision in *Howes* the deferment rate of 6% was treated as an established figure on the Cadogan Estate. It continued to be applied throughout the 1990s, notwithstanding the sharp rise in interest rates and inflation in the early years of that decade. Only in the early years of the current century did valuers for the Cadogan Estate begin to propose lower deferment rates and to press their claims to the Leasehold Valuation Tribunals (the LVTs).

In view of the large number of applications for permission to appeal to the Lands Tribunal against decisions of the LVTs on the appropriate deferment rate it was decided to give comprehensive consideration to the issue in order to reduce the number of appeals in the future. The result was that, in 2005, the Tribunal heard five appeals together, relating to the price payable for extended leases of houses or flats in Central London. The case has become known by the name of one of the appellants, *Arbib*; evidence was given by one valuation surveyor on behalf of each party and the decision was published in September 2005.

The Tribunal's conclusions in *Arbib* included the following. Although market evidence was usually the best evidence of value, the extent of the right to enfranchise was now so wide, that there was likely to be no dependable market evidence in any particular case. Certainly, there was no reliable evidence in any of the appeals that were before the Tribunal. The deferment rate in each case must be individually determined on the evidence. It was unlikely that there could be a constant deferment rate over a period of several years despite changes in the investment market and financial indicators. Settlements relating to comparable properties were admissible as evidence of value, but were subject to criticism. They would generally only be given weight where a detailed analysis of the price or value had been agreed and

the agreement had not been influenced by the *Delaforce* effect i.e. the anxiety of one of the parties to settle rather than incur the costs of a Tribunal hearing. None of the settlement evidence before the Tribunal was helpful.

The Tribunal noted that it was disappointed with the quality and analysis of the evidence which had been put forward by the two valuers. Since there was no reliable market or settlement evidence, the Tribunal had to do the best it could with the available financial information, which consisted only of published statistics and supporting published notes, and had been confined to a small range of investments. Subject to these caveats, the Tribunal concluded that the normal deferment rate for houses on the Cadogan Estate was 4.5% and that this would increase to 4.75% for flats.

The Tribunal subsequently decided to collect up further cases, for hearing together, at which evidence which filled the gaps which had been commented upon in *Arbib* might be presented. In February 2006 the Tribunal directed that the proper deferment rate to be applied to vacant possession value should be determined as a preliminary issue in seven appeals to be heard together. In the event, only 5 appeals were subject to the hearing of what has become known as *Cadogan v Sportelli*. Of these, only two were contested appeals, where each party called both valuation and expert financial evidence. The hearing lasted for 11 days. Evidence was given, in total, by four valuation surveyors and four financial experts.

The Tribunal followed *Arbib* in finding that it was not possible to rely on market transactions as evidence. For the purpose of determining the deferment rate the valuer had to consider a reversion that could be held until the end of the lease, and could be sold at any time with this potential. Its attraction, therefore, was as a secure long-term investment, and its value consisted entirely of the vacant possession value to be realised at the end of the lease. In the real world, on the other hand, valuers and purchasers knew that, because of the Acts, the reversioner would have no expectation that he would be able to retain the reversion to the end of the lease. Indeed, the likelihood was that it would be enfranchised at some point, possibly at an early date. In

consequence the market was driven, not by the perception of the value of a long-term investment but by the expectation of profit through the early realisation of marriage value. The Tribunal considered that these differences were so fundamental as to mean that market evidence could not be used as the basis for calculating the deferment rate.

The Tribunal decided that the deferment rate should be calculated using the following formula. To the risk free rate of interest is added a risk premium to reflect the risks inherent in an investment in a freehold reversion. The resultant figure is reduced by the real growth rate of house prices. The Tribunal, relying on the evidence of one of the financial experts, found that the risk free rate should be taken as 2.25% and that the appropriate risk premium was 4.5%. From the resultant total of 6.75% it deducted an annual growth rate of 2%. The growth rate was the only element of the decision which was based on the evidence put forward by one of the valuation experts. The effect was to produce a generic deferment rate for houses of 4.75%, which the Tribunal found to be constant with unexpired terms of more than 20 years. Below 20 years the Tribunal accepted the view of two of the financial experts and one of the four valuers that the rate would need to have regard to the stage of the property cycle at the time of valuation. As in *Arbib* an addition of 0.25% to the generic deferment rate was made in the case of flats. This addition was solely to reflect the fact that, even where flats were efficiently managed, service charge and repair problems inevitably occurred and the management exercise in itself was more complex than in the case of a house.

Permission was granted to appeal against the Tribunal's decision in *Sportelli* in considering the decision, the Court of Appeal agreed with the Tribunal that an important part of its role was to promote consistent practice in land valuation matters. It said that it was entirely appropriate for the Tribunal to invite Leasehold Valuation Tribunals to adopt the deferment rates it had determined in future cases concerning enfranchisement in Prime Central London in the absence of compelling evidence to the contrary. The court added that, in cases outside Prime Central London, whilst the *Sportelli* deferment rates would no doubt be the starting point, and the Tribunal's

conclusions on methodology, including the limitations of market evidence, were likely to remain valid, it was possible to envisage other evidence being called, for example on issues relevant to the risk premium for residential property in different areas.

The reason why *Sportelli* was so important is that the reduction in the established deferment rate from 6% to 4¾% or 5% significantly increased the enfranchisement prices generally payable, particularly in the case of long-dated reversions. It is now relatively rare for the Lands Chamber to be asked to consider the appropriate deferment rate because hundreds, and probably thousands of cases have been settled on the *Sportelli* basis. In general the proportion of the real world value of residential property attributable to the freehold interest has increased, with a corresponding reduction in the value of the leasehold.

The third example of a case where evidence from non valuers proved to be crucial was a claim by John Lyon's Charity, the freehold owner of a house in St John's Wood in London, for compensation for losses it alleged that it had incurred in consequence of a planning decision by the City of Westminster. The council had refused consent to fell a robinia tree, which was protected by a Tree Preservation Order (TPO). The tree was situated in front of the adjoining dwelling house. The claimant's case was that the tree's roots had caused damage to their property and that it should have been removed in order to prevent further damage in the future. Since removal of a TPO protected tree was prohibited without the approval of the local planning authority, and since such consent was refused, the claimants were advised to carry out underpinning works to the foundations of their house. They claimed compensation of approximately £68,000, being the cost of such works. The compensating authority resisted the claim on the grounds that the identification of the specific causes of movement was not possible on the basis of the available information and that, if tree roots had been responsible, roots from the wisteria to the rear of the property could have extended to the front and caused the cracking.

At the hearing both parties called expert evidence from an amenity tree specialist – an arboriculturalist - and a civil engineer. Factual evidence which was interpreted by the experts included descriptions of the nature and extent of the damage, crack monitoring results, laboratory soil test results and root identification certificates.

I found that the following matters, considered together, suggested on the balance of probabilities that movement to the property had occurred as the result of the influence of vegetation: the presence of clay of high shrinkage potential beneath the foundations; the occurrence of damage in late summer/early autumn, a time of year when damage associated with tree roots typically becomes apparent; the presence of desiccation beneath the foundations of the property; and crack width monitoring indicating a seasonal pattern of movement, which suggested vegetative action.

I further found that the tree roots in the trial pit in the front of the property were more likely to have come from the robinia than from the wisteria. The reasons for this conclusion were that it would be unusual to find wisteria roots travelling the distance from the rear of the property to the borehole at the front and that the robinia was capable of causing much greater movement, being a larger plant, requiring more energy to support it and hold up its large canopy mass, and also requiring much more water than the wisteria.

There was no arboricultural or civil engineering evidence at the hearing of a claim for compensation for injurious affection to their retained land by F Saxton and Sons, arising from the compulsory acquisition by the Secretary of State for Transport in 2000 of approximately 36 acres of Saxton's 1,600 acre farming enterprise near Lichfield, for the construction of the M6 Toll road. Rather, expert evidence was given on hydrogeology, agronomy and land drainage, as well as valuation.

The claimants' farm was bisected by the M6(T) running north-west to south east and by a railway line running on an embankment north-south. The M6(T) lies within a cutting beneath the railway line, extending several metres

beneath the original ground level. It was agreed that, as a result of the construction of the new road and allowing for the effect of natural groundwater level changes, dewatering had occurred to an area of 50 acres.

Apart from valuation, there were two main issues to be determined. The first was the pre-scheme depth below ground level of the water table underlying the affected area. The claimant's case was that groundwater was within 1m of ground level and the acquiring authority said that it was between 2 and 3½m below ground. The difference was important because, although crops vary in their depth of rooting, the crop rooting zone is normally in the first metre of soil depth. The second issue was whether the lowering of the groundwater table had reduced the crop rearing capability of the affected land. The claimants' expert considered that the value of the affected land for extensive vegetable production had been reduced substantially; in the case of Brussels sprouts in an average year there had been a reduction of 70% in yield. The acquiring authority's expert, on the other hand, considered that other factors apart from water could have reduced the viability of growing certain crops on the affected area – in particular one of a number of soil borne pests and diseases might have been responsible.

In the light of the evidence – including factual evidence from independent contractors who had carried out work at the claimants' farm for many years –
I found that the pre-scheme water table had been within 1m of the ground surface; that the dewatering had had a serious adverse affect on the quality of the crops which could be grown on the affected land without irrigation; that it was not possible to design an irrigation scheme which would compensate fully for the loss of ground water; that the productivity of the affected area had not been reduced by pests or disease and that it was no longer possible to cultivate the affected area to the high standards which were achieved before the cutting was constructed.

Although the proportion of cases relating to agricultural land which have been heard by the Tribunal has tended to be low, their number is likely to increase somewhat in the future, as a result of the recent incorporation of agricultural

land tribunals in the First Tier Tribunal (Property Chamber), Agricultural Land and Drainage, appeals from which go to the Lands Chamber. The main issues dealt with by the First Tier Tribunal which are likely to be heard by surveyor members are: applications for a direction to tend ditches or carry out drainage work on neighbouring land; applications by landlords for a certificate to the effect that the tenant is not farming in accordance with the rules of good husbandry; applications by tenants for approval to carry out long-term improvements on the holding; and applications for a direction to provide fixed equipment.

Another class of cases considered by surveyor members which involve issues other than orthodox valuation disputes arises from section 84(1) of the Law of Property Act 1925. Section 84 gave the Tribunal a discretionary power to discharge or modify restrictive covenants affecting land. An application seeking such discharge or modification must satisfy one of four requirements – grounds (a), (aa), (b) and (c).

A large proportion of the applications under s84(1) which are heard by the Tribunal involve the issue, under ground (aa), of whether a restriction, in impeding the proposed user, secures to the persons entitled to its benefit "any practical benefits of substantial value or advantage to them." Examples of practical benefits which have been treated by the Tribunal as resulting from the observance of restrictions include: preserving a view over the burdened land and beyond; freedom from objectors' gardens being overlooked; the continuance of a scheme of covenants; the preservation of privacy and a sense of spaciousness; and the prevention of a material alteration in the character of a residential street.

In order to satisfy the requirements of ground (aa) the practical benefits must be of "substantial value or advantage" to the owner of the benefited land. Whether they are of substantial **value** is a matter upon which a general practice surveyor can reasonably be expected to form a view. Whether they are of substantial **advantage**, on the other hand, involves considerations

which are wider in scope than mere value, as Eveleigh LJ held in *Gilbert v Spoor* [1983] Ch 27.

An example of such wider considerations was provided by an application by *Hamden Homes Ltd* to modify a restriction affecting land in Little Chalfont, Bucks, so as to permit the redevelopment of the subject land containing one detached house and garden with one detached house at the front and a pair of semi-detached houses at the rear.

The only relevant evidence from an expert witness demonstrated that the effect on the value of one of the houses in the close vicinity was either nil, or at the most very small. It was, however, also necessary for the Tribunal to consider the effects of the proposed modification on a broader basis than merely a financial one, in order to decide whether the practical benefits were of substantial advantage. The owner of a neighbouring property gave evidence that one of her children, who was 4½ years old, was deaf and autistic. He had a tendency to try to escape from the rear garden and in the past had had to be rescued from a neighbouring house. The witness considered that it would be difficult for her to control her son's movements following the forthcoming birth of her fourth child. Were her son to climb over the rear fence at the present time he would land in a patch of brambles. If the rear land were developed, however, the area immediately to the rear of her garden would be used by motor vehicles.

I concluded that if the proposed modification resulted in the implementation of the existing planning permission it would cause anxiety to one of the adjoining owners that her son might be injured as a result of climbing over the rear fence on to the car park and roadway at the rear. I found that the effect of this consideration, together with others, was sufficient to establish that the restriction secured practical benefits of substantial advantage to people entitled to the benefit of it, even though the market value of the property might not be affected. The application was refused.

It will be apparent from these examples that surveyor members are regularly required to assess evidence from practitioners in disciplines which they have rarely or ever experienced during their own professional career. Such an exercise can be more or less difficult, depending upon the quality of the evidence and, more particularly, the skill with which it is cross-examined. In my experience, however, the occasions where the answer is not reasonably clear by the time a Member starts writing his decision are limited.

Before leaving the topic of limitations on the role of valuers as expert witnesses, I must refer to the recent judgment of the Court of Appeal in *Lancaster City Council v Thomas Newall Ltd*. That case concerned compensation payable for disturbance resulting from the compulsory acquisition of a multi-let property in a variety of commercial uses.

It was agreed that 327 hours of management time had been spent by the directors of the freehold claimant company in dealing with CPO matters. In awarding compensation based on an hourly rate of £55, the Tribunal – yours truly – essentially based its decision on the evidence of the claimant's valuer. However, the court held that, in the absence of any proof that the devotion of directors' time to dealing with acquisition matters had resulted in consequential loss to the company, there was no basis upon which the Tribunal could find that it had suffered any "management time" loss. The evidence of the claimant's valuer on the topic was irrelevant and ought not to have been admitted, let alone relied upon.

That judgment was, of course, based on the particular circumstances of the case. Nevertheless, surveyors seeking to advance claims of this nature in the future will be well-advised to bear the judgment well in mind.

In my experience, the cases where the weight to be attached to expert evidence presents the greatest difficulties are, somewhat surprisingly , those involving an exercise which most general practice valuation surveyors will have encountered regularly in their professional career. I refer to the valuation by the residual method of sites with development potential.

Before such properties are offered for sale the vendors, or their agents, commonly prepare a residual valuation to assist in arriving at the asking price. Potential purchasers will also calculate the price they can afford to pay by preparing a residual, taking account of the value of the completed development and all the costs of constructing it, and allowing for an acceptable level of profit.

Given the widespread adoption of residual valuations, therefore, one might wonder why it is that Members of the Lands Tribunal and Lands Chamber have, over many decades, repeatedly expressed their reluctance to attach significant weight to valuations prepared on that basis. The answer to that question is to be found on most residual valuation programmes, which contain, in addition to the valuation itself, a series of alternative figures commonly described as sensitivity analyses.

The reason a sensitivity analysis is required is this. Valuation is always a matter of judgment. The scope for different judgments increases when the valuer is appraising a development project which will not be completed and marketed until a future date. Thus, a purchaser of an office development site, who is confident that the finished building, let to an institutional quality tenant, might be sold today on the basis of a 6% initial yield, will know that conditions in the investment market might be better or worse by the time he is in a position to market the completed investment. Equally, letting market conditions do not remain the same for lengthy periods. A rent which could be obtained in the current market might not be achievable at a later date. On the other hand, rental market conditions might improve over the development period. Depending on his view of future market trends, the developer may well decide to incorporate rents and yields in his valuation which are different from those which currently apply and which would result from an analysis of current rents or sale prices.

A development site which is properly marketed is likely to be sold to the developer who takes the most optimistic view about future market conditions.

As a generality, in a strong market competition from potential purchasers will reflect an optimistic view of the future. In a very poor market even a residual valuation prepared on a conservative basis might prove to be too high if problems with their existing schemes, or the disappearance of their usual sources of funding, lead developers generally to withdraw from the market.

Against that background it is difficult to judge the reliability of a residual valuation, often prepared some years after the valuation date for the purposes of a reference to the Tribunal, even if extensive contemporaneous evidence of rents and yields and development costs is available. For that reason, the Tribunal attaches more weight to an analysis of the prices actually paid for other development sites in the vicinity close to the valuation date. However, whilst such evidence might well exist to assist with the valuation, for example, of relatively small residential sites, it is likely to be much harder to find when valuing larger schemes, particularly those involving mixed uses and/or phasing of development.

On occasions there is simply no reliable evidence of land sales and the Tribunal must do the best it can on the basis of the residual valuations prepared by the respective expert witnesses. In such cases I would suggest that the Tribunal might be assisted if evidence could be found of a contemporaneous residual valuation which resulted in the purchase of another site. Even if the physical characteristics of the development on the comparable site differ significantly from the subject property, the approach adopted by the successful purchaser, considered in conjunction with rental and capital values actually achieved at the time of the valuation, might provide useful guidance as to the approach being taken by developers at the relevant date.

I mentioned earlier that experience as an arbitrator was considered by the JAC to be a helpful qualification for candidates for the post of surveyor member. In many respects, the exercises undertaken by Tribunal members and arbitrators are similar. Both arrive at the value of a property by reference to expert evidence, usually supported by comparables. Where the two

functions differ, however, is that arbitration is a private process, and both the hearing and the award are confidential to the parties. Hearings of the Lands Chamber, by contrast, are open to the public, and all decisions are available on the Tribunal's website (with the exception of the limited number of cases where the Tribunal itself acts as arbitrator). The distinction is important. Whereas an arbitrator's award is prepared solely for the parties, it is an important function of the Lands Chamber to provide guidance. Such guidance is used by practitioners as the basis for settling many other cases without recourse to the Tribunal, in the knowledge of the approach which the Tribunal is likely to adopt in the absence of an agreement.

The decision in each case is made by the Member to whom the reference or appeal is allocated, and by him or her alone. Nevertheless, there is a strong collegiate culture in the Tribunal, which helps to ensure consistency of decisions. In concluding, I would like to pay tribute to my fellow Tribunal Judges and Members for the considerable assistance which they have been prepared to offer on so many occasions. I would mention in particular those who have served full-time at the Tribunal in that period, namely George Bartlett, Peter Clarke, Paul Francis and Andrew Trott. From time to time the Tribunal is overturned by the Court of Appeal. That is inevitable in our hierarchical courts system. The fact that there have been relatively few successful appeals in recent years has been due in no small measure to the high degree of communication and co-operation that exists between the Tribunal's Judges and Members, both full and part time, and for which I am extremely grateful. In the light of my experience in recent months I am in no doubt that my successor, Peter McCrea, will find that the culture of the Tribunal under the leadership of Keith Lindblom and Martin Rodger will be unchanged.