# LDCS 15000/2021

[2025] HKLdT5

### IN THE LANDS TRIBUNAL OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

### LAND COMPULSORY SALE MAIN APPLICATION NO 15000 OF 2021

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BETWEEN

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| WISE GRACE INVESTMENT LIMITED  (智喜投資有限公司) | 1st Applicant |
| READY EARN LIMITED  (韋迪有限公司) | 2nd Applicant |
| FORTUNE MOTION LIMITED  (聖維有限公司) | 3rd Applicant |
| and |  |
| LUI MAN DUNG (雷文動) | 1st Respondent |
| LEE KA LEUNG (李嘉樑) | 2nd Respondent  (Discontinued) |
| LAM YIP YICK (林業億) | 3rd Respondent |
| ALLEN CHARLES WILLIAM | 4th Respondent  (Discontinued) |
| LIU CHING HEUNG (廖清香) by her guardian ad litem WONG CHUNG YAM (黃松欽) | 5th Respondent |
| LEUNG CHOI KAM (梁彩金) | 6th Respondent  (Discontinued) |
| BELCITY INTERNATIONAL DEVELOPMENT LIMITED (麗拜國際發展有限公司) | 7th Respondent  (Discontinued) |

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| Before: | Her Honour Judge LJ Cruden, Presiding Officer of the Lands Tribunal, and  Mr Alex Ng, Member of the Lands Tribunal | |
| Dates of Trial: | 9-12 & 15-18 July 2024 | |
| Dates of Written Closing Submissions: | | 8 & 27 August 2024 |
| Date of Judgment: | 13 February 2025 | |

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J U D G M E N T

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*Background*

1. This is the applicants’ application for an order for sale, for the purposes of redevelopment under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap 545 (“the Ordinance”), of all the undivided shares of and in three groups of adjoining lots.
2. The first group of adjoining lots comprises the Remaining Portion of Section A of Inland Lot No 381, the Remaining Portion of Section C of Inland Lot No 381 and Section C of Inland Lot No 382 (“the 1st Lot”), together with a building erected thereon known as Nos 70 & 72 Queen’s Road West, Hong Kong (“the 1st Building”).
3. The second group of adjoining lot comprises the Remaining Portion of Inland Lot No 381 and Inland Lot No 4699 (“the 2nd Lot”), together with a building erected thereon known as No 74 Queen’s Road West, Hong Kong (“the 2nd Building”).
4. The third adjoining lot comprises Inland Lot No 4698 (“the 3rd Lot”), together with a building erected thereon known as No 76 Queen’s Road West, Hong Kong (“the 3rd Building”).
5. In this judgment, the 1st Lot, the 2nd Lot and the 3rd Lot are collectively referred to as “the Lots”; and the 1st Building, the 2nd Building and the 3rd Building are collectively referred to as “the Buildings”.
6. The 1st Building is a 6-storey tenement block served by a common staircase. Occupation Permit No H168/71 was issued for the 1st Building on 8 September 1971 granting permission to occupy its ground floor as 2 shops with cocklofts for storage for non-domestic use, its 1st floor as 2 offices for non-domestic use, and its 2nd to 5th floors as 3 tenements per floor for domestic use. According to the approved building plans, there are 2 shops together with cocklofts on the ground floor, 2 offices on the 1st floor, and 3 flats on each of the 2nd to 5th floors. In addition, the applicants, the 3rd respondent (“R3”) and the 5th respondent (“R5”) agree that each of the 2 ground floor shops has attached a yard, Office A on 1st Floor has attached a flat roof, Flat C on 2nd Floor has attached a flat roof, and each of the 3 flats on 5th Floor has attached a roof.
7. The 1st Lot together with the 1st Building standing thereon has 22 undivided shares. Each of the 2 shops with cocklofts is attached to 3 undivided shares, each of the 2 offices is attached to 2 undivided shares, and each of the 12 flats is attached to 1 undivided share, making up a total of 22 undivided shares.
8. The 2nd Building and the 3rd Building together is also a 6-storey tenement block served by a common staircase. Occupation Permit No 167/67 was issued for the 2nd and 3rd Buildings on 1 June 1967 granting permission to occupy their ground floor as 2 shops and 2 cockloft stores for non-domestic use, their 1st floor as 2 offices for non-domestic use, and their 2nd to 5th floor as 2 tenements per floor for domestic use. According to the approved building plans, there are 2 shops together with cocklofts on the ground floor, 2 offices on the 1st floor, and 2 flats on each of the 2nd to 5th floors. In addition, the applicants, R3 and R5 agree that each of the 2 ground floor shops has attached a yard, each of the 2 flats on 2nd Floor has attached a flat roof, and each of the 2 flats on 5th Floor has attached a roof.
9. The 2nd Lot together with the 2nd Building standing thereon has 7 undivided shares. Its ground floor and mezzanine floor (cockloft) is attached to 1 undivided share respectively, and each of its upper 5 floors is also attached to 1 undivided share, making up a total of 7 undivided shares. The ownership of the 3rd Lot together with the 3rd Building standing thereon had been unified before the proceedings herein were commenced.

*section 3 of the Ordinance – ownership of the applicants*

1. At the time of filing of the Notice of Application (“the NOA”) on 17 December 2021, there were 7 respondents. The applicants then owned 81.818% or 18 out of the total 22 undivided shares in the 1st Lot, 71.429% or 5 out of the total 7 undivided shares in the 2nd Lot and 100% of the 3rd Lot. The 2nd Lot (i.e. the 2nd Building) and the 3rd Lot (i.e. the 3rd Building) are connected by a common staircase, and the applicants then owned on average 85.714% of the 2nd and 3rd Lots.
2. Section 3(1) of the Ordinance prescribes that the minimum percentage of undivided shares that an applicant or applicants should possess before making an application under the Ordinance is 90%.
3. Section 3(2) of the Ordinance prescribes that an application under subsection (1) may cover (a) 2 or more lots where the majority owner owns not less than the percentage specified in subsection (1) of the undivided shares in each lot; or (b) 2 or more lots (i) on which one building is connected to another building by a staircase intended for common use by the occupiers of the buildings; and (ii) where the average of (A) the percentage of the undivided shares owned by the majority owner in the lot or lots on which one of the buildings stands; and (B) the percentage of the undivided shares owned by the majority owner in the lot or lots on which the other of the buildings stands, is not less than the percentage specified in subsection (1).
4. Section 3(5) of the Ordinance provides that the Chief Executive in Council may, by notice in the Gazette, specify a lower percentage in respect of a lot belonging to a class of lots specified in that notice.
5. The Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice, made under section 3(5) of the Ordinance (“the Notice”), was gazetted on 22 January 2010 and came into operation on 1 April 2010. Section 3 of the Notice lowered the threshold for compulsory sale of specified classes of lots from 90% to 80%. Those classes of lots include: -

*“a lot with each of the buildings erected on the lot issued with an occupation permit at least 50 years before the relevant date”*

1. Since the occupation permit of the 1st Building was issued on 8 September 1971 and that of the 2nd and 3rd Buildings was issued on 1 June 1967, both were more than 50 years before the application on 17 December 2021, the applicable percentage for the Buildings under the Ordinance subject to The Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice is therefore 80%.
2. We are satisfied that as at the date of the application, the applicants owned more than 80% of the undivided shares in the 1st Lot and more than on average 80% of the undivided shares in the 2nd and 3rd Lots. We are therefore satisfied the applicants are entitled to make the present application under the Ordinance.

*THE REMAINING RESPONDENTS*

1. After the filing of the NOA, the applicants acquired Flat C on 2nd Floor and Flat Roof Adjoining of Nos 70 & 72 Queen’s Road West (i.e. the 1st Building) owned by the 2nd respondent, Flat C on 5th Floor & Portion of Main Roof Immediately Thereover of Nos 70 & 72 Queen’s Road West (i.e. the 1st Building) owned by the 4th respondent, and 1st Floor of No 74 Queen’s Road West (i.e. 2nd Building) owned by the 6th and 7th respondents, and have discontinued the proceedings against them. The applicants have also amended and re-amended the NOA on 27 May 2022 and 31 May 2024 respectively pursuant to the Orders of the tribunal.
2. By the purchases of the units owned by the 2nd, 4th, 6th and 7th respondents, the applicants become the 90.909% owner of the 1st Lot and on average the 92.857% owner of the 2nd and 3rd Lots.
3. At the trial, the following 3 respondents (“the respondents”) remain in the present proceedings, who own the following properties in the Buildings: -

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| --- | --- | --- |
| Respondent |  | Properties |
|  |  |  |
| 1st respondent | (“R1”) | Flat A on 2nd Floor and Flat Roof Adjoining Thereto of Nos 70 & 72 Queen’s Road West (“R1’s Property”) |
| 3rd respondent | (“R3”) | Flat B on 5th Floor and the Portion of the Main Roof Immediately Thereover of Nos 70 & 72 Queen’s Road West (“R3’s Property”) |
| 5th respondent | (“R5”) | 4th Floor of No 74 Queen’s Road West (“R5’s Property”) |

1. R1 has not filed any Notice of Opposition. He is unpresented and is not active in these proceedings.
2. R3 is represented by Mr Simon Lam (“Mr Lam”). In addition to the disputes on valuations, Mr Lam submits that the age and state of repair of the 1st Building do not justify the redevelopment of the Lots. Further, Mr Lam submits that, other than the 2 criteria under section 4(2) of the Ordinance (i.e. “age and state of repair” and “reasonable steps”), there is a “residual discretion” on the part of the tribunal under the Ordinance not to make an order for sale. The tribunal after taking all the circumstances of the case into account should exercise its discretion against granting an order for sale of the Lots even if section 4(2) of the Ordinance is satisfied.
3. R3 has appointed Mr Liu Yuk Shing (“Mr Liu”), a structural engineer, of Civic Consultancy Limited and Mr Lau Pak Wo (“Mr Lau”), a building surveyor, of Trusty Surveyors as their building experts. R3 together with R5 have also jointly appointed Mr Patrick Lai (“Mr Lai”), a valuation surveyor, of AA Property Services Limited as their valuation expert.
4. R5, represented by Ms Emily Ting (“Ms Ting”), primarily disputes the valuations in the application and advocates a “residual discretion” of the tribunal not to make an order for sale. Subject to strict proof by the applicants, Ms Ting does not take issue on the other statutory requirements under the Ordinance.
5. The applicants are represented by Mr Mok Yeuk Chi (“Mr Mok”) and Ms Julia Au. The applicants have appointed Mr So Kin Shing (“Mr So”), a structural engineer, of KS So & Associates Limited and Mr Benson Wong Sai Ning (“Mr Wong”), a building surveyor, of Benson Wong & Associates Limited as their building experts, and Mr Charles CK Chan (“Mr Chan”), a valuation surveyor, of Savills Valuation and Professional Services Limited as their valuation expert.

*Issues for Determination by the Tribunal*

1. The remaining issues to be decided in this case are as follows: -

|  |  |
| --- | --- |
| (1) | What was the respective market value of each property in the Buildings for the purposes of and in accordance with Part I of Schedule 1 of the Ordinance? (“Issue 1”) |
| (2) | Whether the redevelopment of the Lots is justified due to the “age” and/or “state of repair” of the Buildings in accordance with section 4(2)(a)(i) of the Ordinance? (“Issue 2”) |
| (3) | Whether the applicants have taken “reasonable steps” to acquire all the undivided shares in the Lots on terms that are fair and reasonable in accordance with section 4(2)(b) of the Ordinance? (“Issue 3”) |
| (4) | In the event that the tribunal is satisfied with the matters set out in section 4(2) of the Ordinance, whether the tribunal has a “residual discretion” not to make an order for sale of the Lots? (“Issue 4”) |
| (5) | In the event that Issue 4 is determined in the affirmative, whether, in the circumstances in the present case, the tribunal’s discretion ought to be exercised against granting an order for sale of the Lots, despite being satisfied with the matters set out in section 4(2) of the Ordinance? (“Issue 5”) |
| (6) | If an order for sale is granted, what should be the reserve price for the sale of the Lots by public auction in accordance with Paragraph 2 of Schedule 2 of the Ordinance, and upon successful sale of the Lots how would the expenses and proceeds of sale be apportioned? (“Issue 6”) |

*ISSUE 1 - the mArket value of each property in the buildings*

1. Pursuant to section 4(1)(a)(i) of the Ordinance, if there is a dispute between the parties on the market value of the properties as assessed in the application, the tribunal shall determine the proper value.
2. Section 4(1)(a)(ii) further provides that, in the case of any minority owner of the lot who cannot be found, the majority owner of the lot is required to satisfy the tribunal that the value of the minority owner’s property as assessed in the application is: -

*“(A) not less than fair and reasonable; and*

*(B) not less than fair and reasonable when compared with the value of the majority owner’s property as assessed in the application.”*

1. There is no missing owner in the present case, but the applicants, R3 and R5 dispute the valuations.
2. Mr Chan and Mr Lai, appointed by the applicants and R3 / R5 respectively, agree on the assessments by direct comparison method, the valuation date of 21 October 2021, the market value of each property on the ground floor and 1st floor, and the unit rate of the domestic reference unit (i.e. Flat B on 3rd Floor of Nos 70 & 72 Queen’s Road West) at $152,100 per square meter. They also agree on the parameters and attributes of each upper floor domestic unit, except for the internal condition of R3’s Property and the conversion rate for roof area. In the comparison between the domestic reference unit and the other domestic units in the Buildings, they disagree on the adjustments for noise, lighting and ventilation only.

*Market Value of Flats on Upper Floors*

1. The 2 valuation experts agree on the adjustment for floor at 2% per 1-level, adjustment for top floor at -3%, adjustment for size at 1% per 10-square meter and adjustment for age at 0.5% per 1-year. They also agree on all the adjustments for view and the adjustment rates for internal condition.
2. With benefit of a site inspection together with the parties and the photos produced by the 2 valuation experts, we agree with Mr Chan that the internal condition of R3’s Property should be fair only instead of good suggested by Mr Lai. We are of the view that, despite the lapse of time, the internal condition of R3’s Property as at the valuation date should not be much better than that as at the inspection date. However, we consider that the conversion rate for roof area should be 1/6 suggested by Mr Lai instead of 1/8 proposed by Mr Chan. We note each roof of the Buildings is clearly subdivided and has easy access from the 5th Floor. As compared with the flat roofs on the 2nd Floor with direct access from the unit, which are all located at the back of the Buildings, the roof should be converted at 1/6 the same as that for the flat roof as agreed by the 2 valuation experts.
3. Regarding the adjustment for noise, we agree with Mr Chan that the flats on the 4th and 5th Floor facing Queen’s Road West are also affected by traffic noise, similar to that of the reference domestic unit, and therefore there should be nil adjustment. We also agree with Mr Chan that Units C in the 1st Building, which have windows with 3 aspects, should have better lighting and ventilation, but the adjustment rate should be 1.5% instead of 3%.
4. The valuation of each flat is listed in Appendix I of the judgment.

*Market Value of the Properties in the Buildings*

1. The market value of all properties in the Buildings as at the relevant date of valuation, 21 October 2021 (“EUV”), and adopted by this tribunal are tabulated below: -

|  |  |  |  |
| --- | --- | --- | --- |
| *The 1st Building (Nos 70 & 72 Queen's Road West)* | | |  |
|  |  |  |  |
| *Street No* | *Floor* | *Unit* | *EUV* |
| 70 | G/F and CL | - | $31,409,000 |
| 72 | G/F and CL or M/F | - | $34,095,000 |
| 70 & 72 | 1/F | A and FR | $9,361,000 |
| 70 & 72 | 1/F | B and FR | $9,411,500 |
|  |  | Sub-total: | $84,276,500 |

|  |  |  |  |
| --- | --- | --- | --- |
| *Street No* | *Floor* | *Unit* | *EUV* |
| 70 & 72 | 2/F | A and FR | $5,690,000 |
| 70 & 72 | 2/F | B and FR | $6,050,000 |
| 70 & 72 | 2/F | C and FR | $6,620,000 |
| 70 & 72 | 3/F | A | $5,580,000 |
| 70 & 72 | 3/F | B | $5,930,000 |
| 70 & 72 | 3/F | C | $5,110,000 |
| 70 & 72 | 4/F | A | $5,470,000 |
| 70 & 72 | 4/F | B | $5,810,000 |
| 70 & 72 | 4/F | C | $5,010,000 |
| 70 & 72 | 5/F and Rf | A | $6,130,000 |
| 70 & 72 | 5/F and Rf | B | $6,330,000 |
| 70 & 72 | 5/F and Rf | C | $5,140,000 |
|  |  | Sub-total: | $68,870,000 |
|  |  |  |  |
|  |  | Total: | $153,146,500 |

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| --- | --- | --- | --- |
| *The 2nd and 3rd Buildings (Nos 74 & 76 Queen's Road West)* | | | |
|  |  |  |  |
| *Street No* | *Floor* | *Unit* | *EUV* |
| 74 | G/F and M/F | - | $31,472,500 |
| 76 | G/F and CL | - | $20,714,500 |
| 74 | 1/F | - | $11,502,000 |
| 76 | 1/F | - | $5,781,500 |
|  |  | Sub-total: | $69,470,500 |

|  |  |  |  |
| --- | --- | --- | --- |
| *Street No* | *Floor* | *Unit* | *EUV* |
| 74 | 2/F | - | $9,100,000 |
| 74 | 3/F | - | $8,850,000 |
| 74 | 4/F | - | $8,420,000 |
| 74 | 5/F and Rf | - | $9,190,000 |
| 76 | 2/F | - | $5,080,000 |
| 76 | 3/F | - | $4,600,000 |
| 76 | 4/F | - | $4,510,000 |
| 76 | 5/F and Rf | - | $4,730,000 |
|  |  | Sub-total: | $54,480,000 |
|  |  |  |  |
|  |  | Total: | $123,950,500 |

1. We therefore assess the total market value of the Buildings at $277,097,000 ($153,146,500 + $123,950,500).

*ISSUE 2 – aGE AND STATE OF REPAIR*

1. Section 4(2) of the Ordinance provides that: -

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| --- | --- | --- |
| *“The Tribunal shall not make an order for sale unless, after hearing the objections, if any, of the minority owners of the lot the subject of the application under section 3(1) concerned, the Tribunal is satisfied that —* | | |
| *(a)* | *the redevelopment of the lot is justified (and whether or not the majority owner proposes to or is capable of undertaking the redevelopment) —* | |
|  | *(i)* | *due to the age or state of repair of the existing development on the lot; or* |
|  | *(ii)* | *on 1 or more grounds, if any, specified in regulations made under section 12; and* |
| *(b)* | *the majority owner has taken reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable).”* | |

1. Thus, the applicants have to satisfy the tribunal that the redevelopment of the Lots is justified due to the age or state of repair of the Buildings (section 4(2)(a)); and that the applicants have taken reasonable steps to acquire the respondents’ undivided shares in the Lots (section 4(2)(b)). If not, the tribunal shall not make an order for sale.

*The Proper Approach*

1. Before we address the specifics of the expert evidence, we should first deal with Mr Lam’s submissions on what he considers the proper approach. Mr Lam advocates for the separate consideration of “age” and “state of repair”.
2. For “age” Mr Lam submits that the relevant considerations are: -
   1. The extent to which the building, because of its age, has fallen into obsolescence.
   2. In what respect is the building obsolete, which materially affects the use, enjoyment and safety of the building,
   3. Whether the obsolescence can be removed or improved at reasonable cost.
   4. To what extent the obsolescence, which cannot be removed or improved, materially affects the reasonable use, enjoyment and safety of the building.
3. For “state of repair”, Mr Lam submits the proper approach ought to be: -
   1. First, ascertaining what aspects of the building have fallen into disrepair. Bearing in mind that “repair” should be distinguished from “improvement”, “reinstatement’ and/or “rectification”. Further, it is the present state of repair and the cost of repair of present defects, not the future state of repair and the costs of repair of defects that may occur in the future (or the cost of prevention of future defects), that are relevant. The cost of renovation of individual units is irrelevant, unless their state of repair is caused by defects in common structures or facilities.
   2. Secondly, asking the question whether the items of disrepair of the building would materially affect the use, enjoyment and safety of the building.
   3. Thirdly, asking the question whether the items of disrepair of the building could be put back to a reasonable state of repair by incurring reasonable repair cost (including the cost of replacement if the item cannot be reasonably repaired).
4. Mr Lam further submits that the applicant’s approach, which is based on the expert opinion of Mr Wong including the adoption of “tenantable condition” and the comparison between the repair cost and the construction cost of a new similar structure, bears a number of fundamental flaws. Such approach was also seriously doubted by the Court of Appeal in *Fineway Properties Ltd v Sin Ho Yuen Victor* [2010] 4 HKLRD 1.
5. In principle, what is submitted by Mr Lam for “age” and “state of repair” in these proceedings is mostly similar to what he had submitted in another compulsory sale case, *Starwick Investment Ltd and Another v Yip Ka Yin and Others* [2023] HKLdT 64 (§35 of the judgment).
6. In *Starwick*, the tribunal did not generally agree with the approach submitted by Mr Lam (§36 of the judgment). In these proceedings, we agree with the judgment in *Starwick*, which made the following determinations: -

*“37. As noted above, Mr Lam contended that, for “state of repair” and “age”, the relevant test is whether an item of disrepair or an obsolescence would “materially affect the use and enjoyment” of the Building. Although Mr Lam did not give further elaborations on what his proposed test entailed, we understand that it is in fact a standard lower than the “tenantable standard” set out in Intelligent House and more akin to the “habitable standard” advocated by Mr PW Lau.*

*38. In this regard, previous cases have already dealt with the issue of whether Fineway did in fact have the effect of casting doubt on the “tenantable standard” set out in Intelligent House. For example, at Century Supreme International Limited v Kam Chi Kit Charles and Hui Pui Kuen & Ors [2022] HKLdT 6 §§57 to 63, the tribunal (constituted by DDJ Michelle Soong and Member Alex Ng) was of the view that Fineway, properly construed and comprehended, did not have such effect and the tribunal should adopt the tenantable standard in assessing whether the statutory criteria of “age” and/or “state of repair” are satisfied. We agree with and adopt the analysis set out in Century Supreme. See also China Orchid International Ltd & Ors v Fujitec (HK) Company Limited & Ors [2023] HKLdT 38 at §§165 to 166 where the tribunal (constituted by HHJ M Wong and Member Lawrence Pang) noted that the “tenantable standard” has been consistently applied by the tribunal and the “habitable standard” is inappropriate as it is a disincentive to improvement in living or occupation condition.*

*39. As submitted by Ms Ngai, the “tenantable standard” is set out in Intelligent House at, inter alia, §§145 to 146 and 199. The tribunal is entitled to look at any factors or matters that are directly or indirectly related to the elements of “age” or “state of repair” of the existing building and can include: -*

*(1) a comparison made between the old building and a new building or any proposed redevelopment;*

*(2) the obsolescence of an existing building in terms of its functional items or facilities and a comparison of these facilities of the old building with what a modern day building could correspondingly offer;*

*(3) in considering the costs of the “state of repair”, repair works which are necessary to render the building fit for use in the sense that it should be safe and hygienic for occupiers and visitors and provide a standard of comfort and convenience which is reasonable in the present day circumstances for the type of building in question, and with its structural frames, components, finishes and service installations in either fair or good conditions requiring no repair in the near future.*

*40. Once it is accepted (as we do) that the “tenantable standard” is the preferred standard, it is evident that the parameters proposed by Mr Lam are unduly restrictive. We do not accept that improvement, reinstatement and rectification can never be relevant considerations when one considers “state of repair” or that we should not look at repairs which may become necessary in the future. As the cases have emphasised, this is a fact-sensitive issue. For example, it may that repairs which are only identified as being necessary in a very distant future should not feature or feature prominently. However, we do not see how the tribunal should be oblivious to repairs or maintenance which have been identified as necessary in the near future.*

*41. We also do not accept Mr Lam’s submissions that the costs of renovation (i.e. the costs of internal work on individual units) are irrelevant. The Bright Full case cited by Mr Lam was the tribunal’s judgment dismissing the applicant’s application for an order for sale under the Ordinance. The tribunal thereafter heard the application for leave to appeal ([2023] HKLdT 45). As is made clear in the tribunal’s decision on the leave to appeal application, it did not lay down any general proposition that the costs of renovation of individual units are irrelevant. In fact, the tribunal acknowledged the propositions set out in Fortress Jet Limited & Ors v Tang Hoi Yip and Cheung Sau Chan Property Limited, LDCS 3000/22015, 11 August 2017 that, as a matter of principle and construction of the Ordinance, it is relevant to look at the state of repairs concerning every part of a building, common parts and parts privately owned included: Leave Decision §§50 to 52.*

*42. In passing, we also deal with Mr Lam’s submission that Mr Benson Wong’s attempt to compare repair costs with construction costs (but excluding demolition and foundation costs) is fundamentally flawed. Again, arguments of similar nature have been dealt with in previous cases and rejected by the tribunal. See Greatmax §76.*

*43. For the above reasons, we generally disagree with the approach advocated by Mr Lam. We do agree, however, with the one aspect of Mr Lam’s submissions, namely that the demarcation between “age” and “state of repair” may sometimes be obscure. For example, we tend to agree with Mr Lam that Mr Benson Wong’s suggestion that the lift of the Building should be replaced may not neatly fall within the rubric of “state of repair” and may be more appropriately be dealt with under “age”. However, we regard that such criticisms are only ones on presentation as opposed to ones of substance. As submitted by Ms Ngai, Century Supreme §50 is an authority for the proposition that the two factors, despite being put in the alternatives in section 4(2)(a) of the Ordinance, are related as they both relate to the physical state of the building in question. This is particularly so if the “tenantable standard” is adopted for the costs of the “state of repair” because it entails an assessment of a standard of comfort and convenience which is reasonable in the present day circumstances. Whilst it may be more “direct” to discuss the old lift in terms of obsolescence, we do not regard it as entirely inappropriate to discuss its replacement as an item of the costs of the “state of repair”.”*

1. Mr Lam in these proceedings further argues that the tribunal in *Starwick* misunderstood the approach propounded by the respondent (1st respondent) in that case. He submits that the tribunal in *Starwick* did not generally agree with his proposed approach, and the only reason given by the tribunal, at §37, was that the “*materially affect the use and enjoyment*” test, as the tribunal understood it, was “*in fact a standard lower than the ‘tenantable standard’ set out in Intelligent House and more akin to the ‘habitable standard’ advocated by Mr PW Lau*”. He further submits that the respondent in *Starwick* had not (and R3 in these proceedings has not) proposed any test to bring the building concerned to any standard. What R3 in these proceedings invites (and the respondent in *Starwick* invited) the tribunal to do is to abandon the adoption of any test or standard whatsoever, but to consider all the items of obsolescence and disrepair in the round, access their impact on the users of the building, and come to a conclusion as to whether the redevelopment may be justified.
2. However, contrary to Mr Lam’s submissions, R3’s building surveyor (Mr Lau) has set up rules for assessing “state of repair” and has used “habitable condition” to formulate his repair items. We are of the view that these rules and “habitable condition” as proposed by Mr Lau are in substance a test and/or standard. Mr Lam in his closing submissions (§14) has also relied on a criteria “as long as a premises is habitable”, which is in substance referring to a standard.
3. We prefer “tenantable condition” as relied upon by the applicants to “habitable condition” as proposed by R3. Given that R3 is in substance referring to a test and/or standard, we do not accept that the tribunal should (and could) abandon any test or standard. In any event, we agree with Mr Mok that R3 has not provided the tribunal with a satisfactory alternative to “tenantable condition”, which has long been accepted by the tribunal in assessment of “age” and “state of repair”.
4. In addition, since we do not accept present safety and stability should be the sole test in assessment and the building condition (at least) in the near future should also be taken into consideration, we do not agree with Mr Liu to interpret the structural test results by the standard of “imminent danger affecting safety and stability” only. We agree with Mr So that structural survey alone cannot determine whether redevelopment of the Buildings is justified. The age and state of repair of the structural aspects of the Buildings form part only of the building surveyor’s overall assessment.

*The Evidence on the Age and/or State of Repair of the Buildings*

1. The applicants rely on the expert evidence of Mr So and Mr Wong. Only R3 has adduced the expert evidence of Mr Liu and Mr Lau to rebut the applicants’ evidence. R5 merely puts the applicants to strict proof as to the issues of “age” and “state of repair” of the Buildings.
2. Mr Liu and Mr Lau have reviewed the structural and building conditions of the Buildings including the 1st Building, the 2nd Building and the 3rd Building. Whilst, Mr Lam has made submissions mainly on evidence of the 1st Building only, in which R3’s Property is located.
3. Based on the evidence before the tribunal, we are of the view that the overall condition of the 1st Building completed in 1971 is similar to that of the 2nd and 3rd Buildings completed in 1967. In the circumstances, we shall first deal with the evidence of the 1st Building in this judgment.

*Structural Assessment*

1. Mr So has carried out visual inspection and various structural tests and surveys of the Buildings. He has then reported his findings in his Structural Assessment Report dated 12 July 2022. He has also made comments in his Rebuttal Report dated 29 May 2023 and in the Joint Statement dated 27 July 2023.
2. Whilst, Mr Liu has carried out visual inspection of the Buildings. Based on structural tests and surveys commissioned by Mr So and his findings in the visual inspection, he has made comments on the structural condition of the Buildings in his Rebuttal Report dated 14 April 2023 and in the Joint Statement dated 27 July 2023.
3. The two structural experts have carried out their visual inspections of the Buildings respectively. They have also interpreted the results of the structural tests and surveys differently.
4. In terms of the 1st Building, 9 surveys or tests (3 on columns, 3 on beams and 3 on slabs) were carried out for each type of survey and test, and the results as reported by Mr So are as follows: -
   1. Cover-meter surveys: only 1 out of 3 surveyed locations on beams does not comply with the required concrete cover.
   2. Carbonation depth tests: carbonation depths in all the 9 tests exceed the measured mean thickness of concrete covers.
   3. Coring and compression tests: all 9 test results comply with the required concrete strength.
   4. Cement content tests: only 1 out of 3 test results on columns does not comply with the required cement content.
   5. Chloride content tests: only 1 out of 3 test results on beams and 2 out of 3 test results on slabs exceed the chloride content limit.
   6. Reinforcement corrosion surveys: all 14 exposed bars of columns and all 16 exposed bars of beams suffer loss in sectional area ranging from 9.33% to 6.98%; all 14 exposed bars of slabs suffer loss in sectional area ranging from 15.12% to 6.45% and 1 of them suffers loss in sectional area of more than 15% .
5. In the visual inspection of the 1st Building, Mr So identified 44 structural elements with defects in the form of spalling or cracks, and he concludes that the structural frames of the 1st Building are satisfactory and there are no structural defects in the form of shear cracks, excessive deformation and tilting in the structural frames. Whilst, Mr Liu concurs with the results of Mr So’s investigation, and he concludes that all the identified defects are minor and not affecting safety and stability of the 1st Building, and the main structural frame of the 1st Building has no immediate danger and is safe for occupation.
6. Having considered the evidence before the tribunal, we are of the view that the structural condition of the 1st Building is satisfactory. Nevertheless, we note that the structural elements of the 1st Building have considerable wear and tear as revealed in the results of the structural tests / surveys and the visual inspections of the structural experts.

*Building Condition Survey*

1. We do not repeat here our comments and determinations on the standard to be adopted, the costs of renovation, the comparison with construction costs and Mr Wong’s presentation on repair costs in the section “*The Proper Approach*” above.
2. Regarding the other major disagreements between Mr Wong and Mr Lau, we make the following findings: -
   1. Building Facades: Based on the evidence before the tribunal and the adoption of “tenantable condition”, we prefer complete replacement of external rendering proposed by Mr Wong to patch repair suggested by Mr Lau. We accept that there are great extent of hollow spots, cracks and water seepage in the 1st Building and lack of movement joint is a deficiency. Further, although the external rendering of the 1st Building had been patch repaired in 2015, the 1st Building is in fact over 53 years of age and there is no record of any complete replacement of its external rendering in the past. We consider that complete replacement is necessary at present to meet the “tenantable condition”. Accordingly, we also accept the associated costs for re-painting, covered walkways, hoardings, scaffoldings and window sealants proposed by Mr Wong.
   2. General Inspection and Repair of Pipework: We accept the costs for general inspection and repair of pipework proposed by Mr Wong. We are of the view that routine maintenance of the pipework as measures for preventive repair and safety is necessary to meet the “tenantable condition”.
   3. Fire Services Installation: we agree with Mr Wong that the costs for fire services installation should cover both the domestic units and the commercial portions. Nevertheless, on balance, we agree with Mr Lau that Fire Services Department in this instance would accept the installation of an improvised sprinkler system with water supply from a direct town’s main connection instead of an automatic sprinkler system with a water tank installed as proposed by Mr Wong. However, there would be additional costs and fees of an Authorized Person and a structural engineer to support the application for exemption of an automatic sprinkler system as required by the Fire Services Department. Given that the roof of the 1st Building is privately owned, we have doubts on the feasibility for installation of water tank in reality. Such problem for installation of water tank is common in old tenement buildings, which usually have structural constraints too, and hence an improvised sprinkler system is likely a safety solution.
   4. Unit Rate of Costs of Repair: We prefer the unit rates proposed by Mr Wong, who relies on the expert advice of a quantity surveyor, Mr K C Tang, instead of those proposed by Mr Lau, who refers to the unit rates published by the Urban Renewal Authority and his own experience. Since Mr K C Tang in his report refers to 3 renovation projects only with different characteristics, we agree with Mr Lam that the expert advice of Mr K C Tang is limited by his own experience. However, on balance, we are of the view that the professional advice of a relevant expert in building cost estimation, a quantity surveyor in this instance, should be better than that of a building surveyor and / or a contractor. Moreover, the unit rates published by the Urban Renewal Authority consist of 25 items only, comprise a wide range and are for reference only.
   5. Work Preliminaries: Similar to our discussions on “Unit Rate of Costs of Repairs” above, we prefer the costs of work preliminaries estimated by Mr K C Tang at 23.8% with item-by-item breakdown instead of 15% adopted by Mr Lau.
3. Having considered all the evidence and made the above determinations, we consider that the repair cost of the 1st Building as proposed by Mr Wong should be revised to say $5,000,000 (i.e. deduction of say $216,105). The revision would reflect the installation of an improvised sprinkler system only, the addition of costs and fees for the application for exemption, and the corresponding adjustments for work preliminaries, contingencies and fees.
4. The estimated repair cost of $5,000,000 for the 1st Building would be equivalent to 30.37% of the rebuilding cost at $16,466,000 proposed by Mr Wong, or 3.26% of the market value (as at 21 October 2021) at $153,146,500 determined by the tribunal.
5. We are of the view that repair cost at 30.37% of the rebuilding cost is proportionally high, that repair cost at 3.26% of the market value is not a low figure and that most owners in old tenement buildings would not be willing to make such contribution.
6. Mr Lam submits that when considering the building condition of the 1st Building, there are records that the 1st Building had been refurbished in 2015. Over the years, there were a total of 31 building orders / notices / directions issued against the Buildings, but out of which 29 have already been complied with and the two outstanding orders do not concern the 1st Building. In addition, the two Fire Safety Directions were issued in June 2022 only, at a time the application has already been commenced and the applicants were the majority owners.
7. In our view, no matter whether the 1st Building had been repaired in the past, more important in the assessment is the current building condition of the 1st Building. We accept that the owners of the 1st Building had attended to the building orders / notices / directions in the past. Nonetheless, we consider that compliance with the building orders / notices / directions were acts of corrective maintenance only. From another perspective, the existence of the building orders / notices / directions in the past has indicated that maintenance of the 1st Building had not been able to prevent defects in advance.
8. On the other hand, since we adopt “tenantable condition” in the assessment, we accept the physical obsolescence on the appearance of the Buildings and the functional obsolescence in terms of structural / physical design, fire escape / fire resistance / fire services installation, barrier free access, equipotential bonding / lightning protection / building management systems, and facilities identified by Mr Wong.
9. In summary, we prefer the evidence and expert opinion of Mr Wong, which have incorporated the evidence and expert opinion of Mr So, to those of Mr Lau and Mr Liu. We agree with Mr Wong that the “age” and “state of repair”, each on its own, is a justification for redevelopment of the 1st Building. Since the overall condition of the 1st Building is similar to that of the 2nd and 3rd Buildings, we also accept that the “age” and “state of repair” of the 2nd and 3rd Buildings justify redevelopment.
10. Although the structural condition of the Buildings is satisfactory, we accept that the Buildings are in poor state of repair and the costs of repair to bring the Buildings to tenantable condition are disproportionate to the costs for constructing a new similar superstructure. Even if repair works are carried out, such works would bring about a modest improvement only and the Buildings would remain sub-standard.
11. We also accept that the Buildings, having been erected about 53 to 57 years ago, are aged, in poor condition and have come to the end of their design working life. The design of the Buildings has become obsolete over time in many aspects both physically and functionally, and fails to conform to modern safety standards and statutory requirements.

*ISSUE 3 – REASONABLE STEPS*

1. The applicants have made 3 rounds of offers to R1, R3 and R5 respectively as follows: -

|  |  |  |  |
| --- | --- | --- | --- |
|  | *R1* | *R3* | *R5* |
| *29-Oct-21* | $6,800,000 | $7,100,000 | $10,000,000 |
| *12-Jun-24* | $5,000,000 | $5,200,000 | $7,300,000 |
| *07-Jul-24* | $5,300,000 | $5,600,000 | $7,900,000 |

1. Mr Mok submits that the applicants’ offers have made reference to the then independent valuations prepared by Mr Chan and have reflected the RDV attributable to the respective units owned by the respondents.
2. In assessing the reasonableness of the offers, we have considered the Court of Final Appeal’s judgment in *Capital Well Ltd v Bond Star Development Ltd* FACV 4/2005, (2005) 8 HKCFAR 578 particularly paragraphs 33 and 36 thereof where Ribeiro PJ held: -

*“33. In making that assessment the Tribunal is not conducting a valuation exercise. It does not need to adjudicate upon any disputes about the correct valuation principles to be applied. It does not itself arrive at any conclusion as to what figure represents the correct valuation. It merely needs to be satisfied that, on the evidence available, the offer falls within the range of what may broadly be regarded as fair and reasonable compensation for the interest in question. It is obviously necessary to recognise that there will often be differences of opinion on that matter …*

*…*

*36. ... We are of course not suggesting that it is necessary for the offer to ‘beat’ the valuation as if it were a payment into court. What the Tribunal must do is to consider whether, in the circumstances of each case, the offer falls within a band of what represents a fair and reasonable assessment of the value of the minority owner’s interest reflecting a proportionate share of the redevelopment value of the whole site …”*

1. We accept that the applicants’ respective offer prices fall within the range of what may broadly be regarded as fair and reasonable compensation for the interests in question. In these proceedings, there is no evidence that Mr Chan’s valuations were unreliable, and in fact the determinations by the tribunal in the judgment are not far from the assessments by Mr Chan. Although we may not agree with Mr Chan on each and every item in his assessments, it is a matter of differences in opinion and his valuations before the tribunal have no serious faults.
2. Thus, we are satisfied that the applicants have taken reasonable steps to acquire the respondents’ properties in accordance with section 4(2)(b) of the Ordinance.

*ISSUE 4 – WHETHER THE TRIBUNAL HAS A RESIDUAL DISCRETION NOT TO MAKE AN ORDER FOR SALE*

1. The applicants frame the issues that the tribunal must consider under Issues 4 and 5 as follows: -
   1. The legal question whether there is a residual discretion of the tribunal to refuse an order for sale notwithstanding it is satisfied of the two criteria in section 4(2);
   2. If the answer is “yes”, whether the tribunal should refuse a sale order here on the bases of: -
      1. Market downturn, the closeness in value between RDV and EUV of the Lots, joint development, the Buildings are in good shape even if “age” and “state of repair” justify redevelopment, as claimed by R3; or
      2. Hardship, as claimed by R5.
2. Sections 4(1) and (2) of the Ordinance provide, inter alia, as follows: -

*“(1) Subject to subsection (2), the Tribunal shall determine an application under section 3(1) by—*

*(a) first —*

*(i) if any minority owner of the lot the subject of the application disputes the value of any property as assessed in the application, hearing and determining the dispute;*

*(ii) in the case of any minority owner of the lot who cannot be found, requiring the majority owner of the lot to satisfy the Tribunal that the value of the minority owner’s property as assessed in the application is—*

*(A) not less than fair and reasonable; and*

*(B) not less than fair and reasonable when compared with the value of the majority owner’s property as assessed in the application;*

*(b) second —*

*(i) making an order that all the undivided shares in the lot the subject of the application be sold for the purposes of the redevelopment of the lot; or*

*(ii) refusing to make such an order; and …*

*(2) The Tribunal shall not make an order for sale unless, after hearing the objections, if any, of the minority owners of the lot the subject of the application under section 3(1) concerned, the Tribunal is satisfied that—*

*(a) the redevelopment of the lot is justified (and whether or not the majority owner proposes to or is capable of undertaking the redevelopment)—*

*(i) due to the age or state of repair of the existing development on the lot; or*

*(ii) on 1 or more grounds, if any, specified in regulations made under section 12; and*

*(b) the majority owner has taken reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable).”*

1. Section 4(2) of the Ordinance is said to be drafted in a double-negative manner.
2. We shall consider how the provision should be construed before considering the authorities and then exercise of the discretion.
3. R3 submits that the tribunal is given a wide power and discretion under the Ordinance whether or not to make a compulsory order for sale. Thus: -
   1. Under section 4(1)(b) after first determining the EUV of the properties, the tribunal shall determine the application by, secondly

*“(i) making an order that all the undivided shares in the lot subject of the application be sold for the purposes of redevelopment of the lot; or (ii) refusing to make such an order …”.*

* 1. However, the tribunal’s power and discretion to order compulsory sale is curtailed, in that it cannot make a compulsory sale order unless the two pre-requisites are satisfied, namely section 4(2)(a) age and state of repair of the building and section 4(2)(b) reasonable steps to acquire, in terms of section 4(2).
  2. The two criteria in section 4(2)(a) and (b) are prerequisites that must be fulfilled before an order for sale would be made. On the other hand, it does not mean that where redevelopment is justified due to the age or state of repair of the existing development, and where reasonable steps have been taken to acquire all the undivided shares in the lot, a compulsory sale order must be made.
  3. Even if the two criteria are satisfied, the tribunal would still have to consider “*whether, in all the circumstances of the case*”, it ought to make an order for compulsory sale, or refuse to make such an order.

1. R5 says it is important to bear in mind when construing the Ordinance that: -
   1. The statutory criteria exist to not only facilitate urban renewal and redevelopment, but also to safeguard the right to minority owners’ private ownership which is protected under Articles 6 and 105 of the Basic Law from being overridden without justification: *Sin Ho Yuen v Fineway Properties* (2011) 14 HKCFAR 497 at §25.
   2. In interpreting a disproprietary statue, if there is any ambiguity, the statutory provision should be construed in favour of the party whose private property is being dispropriated: *R (on the* *application of Sainsbury’s Supermarket Ltd) v Wolverhampton City Council and Another* [2011] 1 AC 437 (UKSC) at §11. Where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights. If there is doubt as to the scope of “*objections*” under section 4(2), that scope should be interpreted in favour of R5 whose property is to be dispropriated.
2. Ms Ting submits that the starting point is section 4(2) and focuses on the phrase “*after hearing the objections, if any, of the minority owner*” to contend:
   1. First, the wording of the Ordinance place no restrictions on the type or nature of the “*objections*”. They are not expressed to be restricted to those relating to age or state of repair under section 4(2)(a) or the reasonable steps required under section 4(2)(b). It therefore follows that the tribunal is to hear objections relating to other relevant matters of the minority owner. There is no limitation on the scope of such “*objections*”.
   2. Second, the phrase “*after hearing the objections, if any, of the minority owner*” would be redundant if the legislative intent were to restrict the objections to only matters relating to age or state of repair or reasonable steps, because even without that phrase, the rest of section 4(2)(a)(i) and 4(2)(b) indicates that the tribunal must satisfy itself as to these issues in any event. So the “*objections*” to be heard must be intended to be something more or other than just the two criteria in section 4(2)(a)(i) and (b), and they are intended to be a non-exhaustive category. The “*objections*” cannot be simply equated with the two statutory criteria of “reasonable steps” and “age or state of repair”.
   3. Third, while the tribunal must consider and be satisfied of the two the conditions in section 4(2) it does not follow that if those two criteria are fulfilled, an order for sale must then be granted or that no other considerations could be taken into account. If that were so, there would be no purpose in phrasing section 4(2) in the double negative. The tribunal in *Century Supreme International Limited v Kam Chi Kit Charles and Hui Pui Kuen & Ors* [2022] HKLdT 6 (unrep., LDCS 24000/2018, 21 January 2022) stated at §40 that “*such textual expression does not compel the tribunal to make an order for sale once the ‘age or state of repair’ and ‘reasonable steps’ are satisfied. This means that the tribunal could refuse to grant an order even though the criteria are met*”. It is because there is ambiguity as to what “*objections*” pursuant to section 4(2) the tribunal is to hear, that both R3 and R5 invite the tribunal to refer to the same legislative materials as an aid to interpret the meaning of the statutory language

*Legislative Materials*

1. Ms Ting relies upon the rule in *Pepper v Hart* [1993] AC 593, as applied in Hong Kong, that statements made by officials of the Government in relation to the Bill in Legislative Council may be referred to as an aid to interpretation for the purpose of ascertaining the meaning of the statutory language, where the following 3 conditions are met: (1) The legislation is ambiguous or obscure or leads to absurdity; (2) The material relied upon consist of one or more statements by a Minister or other promotor of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (3) The statements relied upon are clear: *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568 at §§15 to 17, citing *Pepper v Hart* [1993] AC 593. All 3 conditions are said to be satisfied:
   1. The first condition is met because there is ambiguity as to which “*objections*” pursuant to section 4(2) the tribunal is to hear. The relevant phrase would become superfluous if it refers purely to the age or state of repair or reasonable steps. “*Objections*” can genuinely be open to two possible constructions: either it only refers to the two criteria in section 4(2), or “*objections*” is open-ended and can encompass matters other than those referred to in section 4(2)(a) and (b). There are also conflicting views in the tribunal’s case law as to whether there is a residual discretion to consider matters other than the two criteria under section 4(2).
   2. The second condition is met because the statement relied upon consists of the speech of the then Secretary for Planning, Environment and Lands (“the Secretary”) to the Provisional Legislative Council on the occasion of the resumption of debate on the Second Reading of the Land (Compulsory Sale for Redevelopment) Bill (“the Bill”).
   3. The third condition is met as the statement is clear on the subject of whether section 4 allows the tribunal to consider other factors, including undue hardship.
2. R5 submits that any doubts on the scope of objections and factors the tribunal may take into account are dispelled by the remarks of the Secretary when the Bill was read the second time, as recorded in the Official Record of Proceedings of the Provisional Legislative Council dated 7 April 1998 at pp.177-178, namely:

*“Second, the Lands Tribunal shall not make an order for sale unless it is satisfied that certain criteria have been met, including criteria that the redevelopment of the lot is justified and that the majority owner has taken reasonable steps to acquire all the undivided shares in the lot.*

*The question has been raised as to whether the Lands Tribunal should take into consideration whether compulsory sale of the lot would cause undue hardship to the minority owners.*

*I wish to assure Members that the criteria specified in the Bill are not exhaustive and that the relevant clause has been purposely drafted to allow the Lands Tribunal to take into account other relevant factors, including that of undue hardship on the part of the minority owners. However, we have also reached consensus with the Bills Committee that the factors to be considered shall not include hardship on the part of tenants, as they are entitled to fair compensation as ordered by the Lands Tribunal.”*

1. In *Crown Centre Development Ltd & Another v Wong Wai Ping & Ors* 12000/2021 (unrep., 8/12/2023), [2023] HKLdT 73 the tribunal, after considering the legislative history, held that there is no residual discretion to refuse a sale order once the two criteria in section 4(2) are satisfied. At §124, the tribunal found that there was “no basis on which the Administration could proffer” the view that the criteria specified in the Bill were not meant to be exhaustive, there was no Committee Stage Amendment introduced to make “undue hardship” a factor which the tribunal would need to consider and no regulation introducing additional factors under the power provided for in section 12(1) of the Ordinance.
2. R5 also relies on *Crown Centre* §124, for the reference to the *Proposed Measures to Update and Streamline the Compulsory Sale Regime under the Legislative Council Panel on Development* dated 22 November 2022 (LC Paper No.CB(1)776/2022(05)), Development Bureau (“the Paper”). Paragraph 26 of the Paper recognises that the current section 4(2) allows the tribunal to take into consideration factors not specified in section 4(2)(a) and 4(2)(b) and that it has been the policy intent to allow such flexibility to the tribunal to cater for unforeseen circumstances. *Crown Centre* §124 noted that “the Administration is going to ‘remove any lingering doubts on other grounds that the tribunal shall take into account and thus help expedite the hearing process’ by amending section 4(2)(a) to confine the factors for justifying redevelopment to ‘age’ or ‘state of repair’”. In our view observations made in 2022 when considering measures to update the compulsory sale regime cannot assist in construction of the Ordinance. The Paper does not satisfy the second condition of the rule in *Pepper v Hart* to allow admission as an aid to construction for the purpose of ascertaining the meaning of the statutory language.
3. In *China Orchid International Limited & Ors v Fujitec (HK) Company Limited* [2023] HKLdT 38, at §206, the tribunal came to the view that there was no residual discretion as no “discretion” or “hardship” which was discussed during the Bill stage was incorporated into the Ordinance in the end.
4. In *Fuller Holdings Ltd v Hsu Ling Ling*, LDCS 13000/2019 (unrep., 27/8/2020), [2020] HKLdT 34 at §§24-27 the tribunal held that section 4(2) was clear on what the tribunal needed to consider, there was no residual discretion grounded on undue hardship and no regulations under section 12(1) have been made to cover other matters to be taken into account by the tribunal.
5. R5 maintains that it is clear from the Secretary’s statement that “the criteria specified in the Bill” are not exhaustive. The Secretary was at pains “to assure Members” of the Provisional Legislative Council that the criteria specified in the Bill were not exhaustive and the “clause” (impliedly section 4(2)) is purposely drafted to allow the tribunal to take into account other relevant factors “including that of undue hardship on the part of minority owners”. There was no need to introduce any amendment or additional ground of objection on hardship. It is apparent that the Administration considered the wording of section 4(2) could already encapsulate consideration of other factors, including undue hardship.
6. The applicants’ construction of section 4(1) and (2) is that the statutory language is clear and admits of no ambiguity, obscurity or absurdity. Therefore there is no scope to admit reference to legislative materials for the purpose of ascertaining the meaning of section 4: *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFA 568 §§11-17. *Cheung Kwun Yin* §47 states that “*The Court seeks to ascertain the purpose of the statute to inform its construction. It does not identify a purpose which it thinks would be beneficial and then construe the statute to fit it*”: It is impermissible to look to the legislative materials to identify a beneficial purpose, and then construe the statute to fit it. Statutory interpretation is first and foremost a textual analysis: *Century Treasure Ltd v Or Pui Kwan* [2024] 1 HKLRD 72 §22.
7. Ms Ting rejects the allegation that she first looked at the Secretary’s remarks as a base for construing section 4(2) and only then to the sub-section. The starting point of R5’s argument is the wording of section 4(2) and it is because there is an ambiguity as to the “*objections*” in section 4(2) that R5 invites the tribunal to refer to the legislative materials. The legislative intent is clear that the criteria specified in the Ordinance are not exhaustive and the tribunal ought to take all relevant factors into account, including hardship.
8. The applicants maintain that the words “*objections, if any*” clearly refer to the statutory criteria specified within section 4(2) in which this phrase is found. It could not be reasonably read as meaning “*objections relating to any aspect of the statutory process including outside section 4(2)*”, which in essence is what the respondents argue. If that had been the intent, given the tight drafting of section 4 with clear separation of each requirement into further sub-clauses, one should expect to see some clause such as *“(3) or any other matter that the Tribunal may deem relevant”*. There is no such clause and no such ambiguity.
9. The applicants’ proffer that the purpose of the phrase “*objections, if any*” in section 4(2) was to emphasise the burden on the applicant to satisfy the tribunal, even if the minority owners in a case did not raise any objections. The respondents consider this sidesteps, and still fails to answer, the question why “*objections*” should be limited to the two statutory criteria. It remains the case that “*objections*” is not qualified or limited in any way in the wording of section 4(2).

*Proper Construction of the Ordinance*

1. R3 advocates a wide discretion to consider “*all the circumstances*”. R5 says that the word “*objections*” is open-ended and can encompass matters other than those referred to in section 4(2)(a) and (b) or confines the discretion to at least include consideration of “*hardship*”. We accept that the word “*objections*” read alone does not indicate the nature and extent of the objections. It is necessary to consider not just the word but the phrase, sentence, sub-section and section where it appears, as well as their place in the context of the whole Ordinance and statutory scheme.
2. An ordinance is to be construed as a whole, such that any enactment within it is not treated as standing alone but is interpreted in its context as part of the ordinance. Reading the Ordinance as a whole sheds light on the meaning of the provision in issue. Words may be reduced in scope by the context. Here the context cuts down the type of objections. The context indicates a restriction is intended on the meaning, nature and extent of objections to be heard. Reference to the entire section resolves any apparent ambiguity. The apparently wide word “*objections*” in context must be restricted by implication to provide a consistent and coherent legislative scheme.
3. While R5 submits the starting point is section 4(2), that cannot be the finishing point. To ascertain the intent and meaning of the word or phrase the whole of section 4 must be read, staring at section 4(1). Section 4(1) provides “*Subject to subsection (2), the Tribunal shall determine an application under section 3(1) by-*”. The section strictly prescribes what the tribunal shall do to determine the application setting out the first, second and third steps. Having prescribed what the tribunal must do, the section then goes on to state what the Tribunal must not do. Under section 4(2) it “*shall not make an order for sale unless*” the 2 stated criteria are satisfied. The use of the so-called “double negative” is readily explained by the structure of the section as a whole. By first setting out the steps in section 4(1) it is appropriate linguistically to provide in section 4(2) that the tribunal shall not make an order unless satisfied of the two criteria. That does not open up how the tribunal “shall determine an application” to require it then at the next stage also to consider even unrelated circumstance raised by minority owners, when determining whether it is satisfied that redevelopment is justified due to age and state of repair of the existing development and whether the majority owner has taken reasonable steps to acquire all the undivided shares in the lot. We cannot agree with the respondents argument that the use of a “double negative” in section 4(2) must mean that all manner of objections on any matter are to be heard when the tribunal is determining whether the age and state of repair and the adequate steps requirements are satisfied. We do not accept that there is no limitation on the scope of such “*objections*”.
4. A further indication that the tribunal does not have a general discretion to consider additional grounds of objection that have not been expressly provided in section 4 is that by section 4(2)(a)(ii) the legislature has reserved to itself the right to specify further grounds that the tribunal is to be satisfied of by making regulations under section 12. This reinforces our view that the matters that the tribunal is required to consider have been expressly prescribed. We agree with Mr Mok that the section is tightly drafted. There is no room for the tribunal to add other matters. That is consistent with the over all scheme of the Ordinance. Where private property rights are to be encroached upon constitutional issues arise. The legislature has determined how the balance is to be struck. The legislation must be clear. There is much to be said for certainty. The Ordinance sets out the steps to be taken and what must be established. This does not only give clarity for the majority owner. It is in the minority owners’ interests to know before proceedings precisely what the tribunal will and will not consider and must be satisfied of when they are considering any offers made to them by the majority owner.
5. R3 says that the general discretion “to consider whether in all the circumstances of the case it ought to make a compulsory sale order” is to be inserted into section 4(2) as additional criteria or added above the two criteria at section 4(2)(a) and (b). That does not sit well with the statutory text. We agree with Mr Mok’s submission that given the tight drafting of section 4, with clear separation of each requirement into further sub-clauses, one should expect to see an additional clause such as *“(c) or any other matter that the tribunal may deem relevant”*. Further, such a discretion goes against the tenor and scheme of the Ordinance. The scope of the jurisdiction is narrowly and strictly prescribed. R3’s addition would allow an infinite array of matters to be raised with each application advancing new possibilities for consideration. R5’s basis of hardship is particularly problematical. Some degree of hardship must be a given, at least in respect of owner-occupied premises. The right of private ownership is protected under Article 6 of the Basic Law. The Ordinance is a statutory compromise. The legislature struck the balance it determined proper. Were the tribunal required to consider every individual’s personal circumstances uncertainly is inevitable. Matters such as age, health, disability, period of ownership, to name a few, may be raised to establish hardship with uncertainty as to the threshold for “hardship” or “undue hardship”. This would change the present nature of applications. Considerable additional evidence would likely be advanced with reference to past decisions to discern what may be determined bad enough for the tribunal to refuse an order for sale or attempts made to rely upon similar facts as precedents. Even if an objective test applied there is necessarily a spectrum of subjective factors and a risk of the appearance of inconsistent decisions.
6. We agree with the applicants that the purpose of the words “*if any*” in the phrase “*objections, if any*” in section 4(2) is to emphasise that the burden is on the applicant to satisfy the tribunal, even if the minority owners in a case did not raise any objections and it expressly provides for the minority owners right to make objections relating to those two matters. R5 argues redundancy, that the objections must be something “more or other than” just the two criteria and they are a non-exhaustive category. However, if the objections must be “other than”, not the two criteria, that could even imply the minority owners could not raise objections on those two criteria. Whereas, if they may raise objections on those two criteria the phrase is not redundant or superfluous. In any event, legislation may provide overlapping provisions or words that do not amount to surplusage. There may be a presumption against surplusage but presumptions in statutory interpretation are merely an aid to construction and are only that, they may be rebutted. The construction exercise does not always necessitate a search to ascribe a separate meaning to every word. Here it is not necessary to find that “*objections*” must be other than those related to the 2 statutory criteria. We are not persuaded by the redundancy argument.
7. In our view section 4 is clear and unambiguous. There is no apparent intent to provide a general discretion such that even if the two criteria are satisfied, the tribunal would still have to consider whether, in all the circumstances of the case, it ought to make an order for compulsory sale, as advanced by R3 or hardship, as advanced by R5. There is no ambiguity as to the meaning of “*objections*” as submitted by the respondents. Therefore, we find that the first condition of the rule in *Pepper v Hart*, requiring that the legislation be ambiguous, obscure or lead to absurdity to allow reference to legislative materials, is not satisfied. We do not need to refer to the legislative materials as an aid to interpretation. Given there is no ambiguity the issue of construing dispropriatory statutes in favour of the party whose private property is being dispropriated does not arise.
8. If we be wrong, and there is in fact material ambiguity, we find that the second condition under the rule in *Pepper v Hart* is satisfied. The statements relied upon are of the then Secretary on the occasion of the resumption of the debate on the Second Reading of the Bill.
9. As to the third, the applicants point out that legislative material such as the speech of government officials, can be ambiguous, particularly when there is no clear reference to a specific phrase. There can be subjective intention of a particular government official or legislator that is not in fact reflected in the drafting, just as the subjective intentions of the parties to a contract cannot override the objective meaning of the contractual clause as drafted. However, contractual interpretation is not directly analogous when *Pepper v Hart* is engaged. Mr Mok continues there being no text in the final drafting of section 4 that is capable of bearing this alleged intent to allow objections on the ground of undue hardship, it was impermissible to read in any such residual discretion.
10. Although the Secretary did not expressly refer to the provision addressed by number or to the word allowing such discretion, it is tolerably clear that the material provision was the present section 4. The applicants suggest the remarks may just be the subjective intentions of the Secretary but it is apparent they were statements of the Secretary’s understanding of the Bill, whether the Secretary had been so advised or arrived at such view otherwise, the Members were being assured that the Bill was drafted to allow the Lands Tribunal to take account of other factors, including that of undue hardship, on the part of minority owners. *Pepper v Hart* condition 3 is satisfied. However, we have found that such a general discretion to take account of other factors or undue hardship has not been included in section 4 of the Ordinance as drafted.

*Authorities*

1. The applicants submit that the tribunal has repeatedly held: -
   1. Under the statutory regime there is no residual discretion to consider matters other than the 2 statutory criteria under section 4(2);
   2. Once the tribunal decides that the statutory criteria has been met, the sale order is to be made and the minority owners obliged to sell.
2. The applicants rely on the line of cases grounded upon the Court of Appeal’s judgment in *Good Faith Properties Ltd & Ors v Cibean Development Co Ltd* [2014] 5 HKLRD 534 at §§5-18, which considered the statutory regime of the Ordinance and the four phases of the whole process identified by Ribeiro PJ in *Capital Well Ltd v Bond Star Development Ltd* (2005) 8 HKCFAR 578. The cases are: -
   1. *Able Luck Development Ltd & Ors v Public Global Investments Ltd & Ors*, LDCS 7000 of 2014, 6 October 2017 (“*Able Luck 2017 (LT)*”) at §§168-170
   2. *Able Luck Development Ltd & Ors v Pawling Ltd* [2023] 1 HKLRD 1448 (CA) (“*Able Luck v Pawling (CA)*”) at §49 citing the tribunals judgment *Able Luck 2017 (LT)* §168 with approval.
3. The applicants maintain that the Court of Appeal in *Good Faith* has clearly determined that there is no general discretion under the statutory regime to consider matters other than the 2 statutory criteria under section 4(2). The careful exposition of the statutory process interprets section 4 as intended: a step-by-step process laid out by the legislature as to how the tribunal shall determine applications under the Ordinance. *Good Faith* held, inter alia, that: -

*“[5] ... In Capital Well Ltd v Bond Star Development Ltd (2005) 8 HKCFAR 578, Ribeiro PJ examined the scheme of the LCSRO at paras 10 to 21 of the judgment. His Lordship identified four distinct phases for the whole process: (a) application; (b) determination by the Tribunal; (c) the sale; and (d) apportionment and application of the proceeds of sale. The first phase is the application by the majority owner(s) who own(s) not less than 90% of the undivided shares in the lot in question. There are statutory requirements as to the criteria which the applicant(s) must satisfy and the filing of valuation reports.*

*[6] The second phase is the determination by the Tribunal. Such determination usually falls into two parts. First, the Tribunal must determine whether the applicant has satisfied the conditions under s 4(2) of the LCSRO. Expert evidence is usually required to satisfy the first condition, viz redevelopment is justified due to the age or state of repair of the existing building. As for the second condition, whether the majority owner(s) has taken reasonable steps to acquire all the shares, including negotiating on terms that are fair and reasonable, is a matter of fact and judgment. On the question of whether the terms offered falls within a band of what represents a fair and reasonable assessment of the value of the minority interest, it may, subject to what was said by Ribeiro PJ at paras 32 to 36 of the judgment in Capital Well, supra, on the object of the exercise under this limb, depend on expert evidence on valuation.*

*[7] If those conditions are met, the Tribunal would have to set the reserve price and decide how the proceeds of sale are to be apportioned by reference to the valuations in the s 3(1) report. The second stage is essentially a valuation exercise...*

*...*

*[11] We must recognise that the LCSRO is a statutory compromise balancing the competing interests of the co-owners: the majority owner’s interest in utilising his property by releasing the land for redevelopment versus the minority owner’s proprietary interest in the disposal of his own property. The right of private ownership protected under Article 6 of the Basic Law (see Litton NPJ in Sin Ho Yuen v Fineway Properties Ltd supra at para 24) should not be overridden without justification. Even if the right of private ownership of the minority owner were to be overridden when there is proper justification, there must be fair and reasonable compensation. Thus, the statutory compromise is to provide safeguards on two different levels:*

*(a) The majority owner(s) (who must hold at least 90% of the interest in the land) must establish his justification to the satisfaction of the Tribunal before he could override the private right of ownership of the minority owner. To do this, he must produce evidence to satisfy the statutory criteria; and*

*(b) If he manages to establish the grounds to the satisfaction of the court, the minority owner would have to sell his property even though he does not wish to do so. But he would get back a fair share of the sale proceeds on a pro rata apportionment determined by the Tribunal.*

*[12] It is necessary to analyse the first tier safeguard at greater length because the proper understanding of this safeguard is important for the purposes of this appeal. First, until the Tribunal is satisfied that the statutory criteria are met, the majority owner(s) does not have any right to compel the minority owner to sell...*

*[13] LCSRO gives the majority owner(s) a means to override the will of the minority owner not because the minority owner has done something wrong: there is no legal wrong committed by the minority owner against the legal interests of the majority owner(s). It merely gives the majority owner(s) an opportunity to establish the justification for doing so to the satisfaction of the Tribunal. And it is only upon the Tribunal deciding that the statutory criteria have been met that the minority owner becomes obliged to sell.*

*…*

*[15] Further, the LCSRO also gives a right to the minority owner to have objections heard by the Tribunal. Objections can be raised in several respects. Under s.4(1)(a), the minority owner can dispute the value of the property. Under s.4(2), objections can be raised as to whether the applicant has met the statutory criteria in s.4(2)(a) and (b).*

*[16] Though the Tribunal will only come to the question of the reserve price under Sch.2 para.2 pursuant to s.5(1)(a) after it concludes that the statutory criteria under s.4(2) are met, the minority owner is also entitled to be heard on the setting of the reserve price because it would have a bearing on the quantum of the sale proceeds in which he has an interest …*

*…*

*[18] To sum up, the first-tier safeguard is to ensure that the minority owner’s right of private ownership of property is not taken from him without the Tribunal being satisfied in the statutory process that there are sufficient justification for the same in terms of the statutory criteria. The proceedings in the Lands Tribunal should be regarded as a statutory means to justify this exceptional interference with the right of private ownership of property. The right to raise objections is part and parcel of the process, without which the process cannot be a fair one.*

*[19] Turning next to the second-tier safeguard, the fair and reasonable compensation to the minority owner if an order for sale is to be made against his will. …”*

1. *Good Faith* analysed the safeguards and specifically addressed the objections. First, the tribunal must determine whether the applicant has satisfied the conditions under section 4(2). The first condition being whether redevelopment is justified due to the age or state of repair of the existing building and the second condition, whether the majority owner(s) has taken reasonable steps to acquire all the shares. The first-tier safeguard is to ensure that the minority owner’s right of private ownership of property is not taken from him without the tribunal being satisfied in the statutory process that there are sufficient justification for the same in terms of the statutory criteria. If those conditions are met, the tribunal would have to set the reserve price. The Court of Appeal recognised that the Ordinance is a statutory compromise balancing the competing interests of the co-owners: the statutory compromise is to provide safeguards on two different levels. If the majority owner manages to establish the grounds to the satisfaction of the court, the minority owner would have to sell.
2. The Court of Appeal expressly considered how the Ordinance also gives a right to the minority owner be heard by the tribunal on disputes and objections. Objections can be raised in several respects, “*Under s.4(1)(a), the minority owner can dispute the value of the property*.”, “*Under s.4(2), objections can be raised as to whether the applicant has met the statutory criteria in s.4(2)(a) and (b)*” and *“after [the tribunal] concludes that the statutory criteria under s.4(2) are met, the minority owner is also entitled to be heard on the setting of the reserve price*”: §§15 and 16.
3. The applicants rely on *Able Luck 2017 (LT)* §§168-170 where the tribunal, relying on *Good Faith*, concluded at §170, that whether the section 4(2) criteria have been met is the only requirement that the tribunal needs to consider and once satisfied that criteria has been met, an order for sale should be allowed. *Able Luck 2017 (LT)* clearly and unequivocally held: “*There is no room for other consideration on top of the statutory criteria of age or state of repair and reasonable steps taken to acquire all the shares*”: at §170.
4. R5 does not accept the applicants case that the tribunal’s previous judgments held that there is no residual discretion to consider matters other than the two statutory criteria under section 4(2). While *Able Luck 2017 (LT)* cited *Good Faith* and held at §170 that there was no room for other considerations on top of the two statutory criteria the issue of discretion to consider hardship and the legislative materials were simply not argued before the Court of Appeal in *Good Faith* or the tribunal in *Able Luck 2017 (LT)*. Ms Ting accepts that the Court of Appeal set out the statutory scheme and recognised the minority owners had the right to raise objections in several respects, including in relation to the statutory criteria under section 4(2), but submits that the Court of Appeal did not expressly hold that the objections were limited to those categories.
5. The applicants continue that *Able Luck v Pawling (CA)* at §49 clearly cited with approval the ruling of the tribunal in *Able Luck 2017 (LT)* §170 that there is no room for other consideration on top of the statutory criteria.
6. R3 and R5 accept that *Able Luck 2017 (LT)* §170 was referred to by the Court of Appeal in *Able Luck v Pawling (CA)* at §49 but the question for consideration by the Court of Appeal was narrowly framed as whether the tribunal is under a duty to consider or weigh the merits or benefits of alternative options (such as conservation, revitalisation, rehabilitation, urban renewal) vis-à-vis redevelopment: CA at §48. The Court of Appeal was not invited to and did not make any determination on whether the tribunal has a general discretion to refuse a sale order. The Court of Appeal agreed with the tribunal that the question as posed ought to be answered in the negative, and that the tribunal was not obliged to satisfy itself that redevelopment is the best option among all possibilities before it could make an order for sale: CA at §50. What the Court of Appeal held was that there was no requirement for the tribunal to weigh up potential alternatives to redevelopment such as conservation before it could make an order for sale. The Court of Appeal did not endorse *Able Luck 2017 LT* §170 in the context of a discretion to take into account hardship, and these issues were simply not argued before the Court of Appeal. The Court of Appeal made no observation or ruling on the tribunal’s broad and generalised view in relation to the tribunal’s discretion.
7. In any event, it is submitted that what a court says by way of generalised approach is not to be treated as a straight-jacket or statutory provision. Therefore, it is open to the tribunal to arrive at a view on this point that is contrary to that expressed in *Able Luck 2017(LT)*, which was merely *obiter*. Further, in view of the clear wording of the Ordinance, a contrary view should be reached by this tribunal.
8. R5 also refers to *Able Luck Development Ltd v Boly Metal Manufacturing Ltd* [2022] HKLdT 52 (unrep., LDCS 11000/2018, 11 October 2022) at §§52-53, commenting upon *Century Supreme*, which was not about revitalisation but concerned with a different topic, hardship where the tribunal recognised that a discussion on hardship was different from a discussion on revitalisation.
9. On the other hand, in *Century Supreme* the tribunal took the view that it is entitled to take into account all the circumstances and not just “*age or state of repair*” in determining whether an order for sale should be made: §§39-40. The tribunal nevertheless found that the personal circumstances raised by the respondent were highly subjective and general factors such as emotional attachments to the properties and fondness for the neighbourhood or local community, stress in relocation arrangements, family plan, did not have an impact on its determination as to whether an order for sale should be made: §44. R5 submits that the case was decided on its own facts and was not meant to lay down any general legal principle, as pointed out by the tribunal in *Able Luck Boly* at §52 commenting on *Century Supreme*.
10. The applicants submit that *Century Supreme* should be treated with caution as it runs contrary to *Able Luck v Pawling (CA)* authority and it was delivered on 21/1/2022, before the Court of Appeal judgment on 17/2/2023.
11. *Starwick* §§97-110 analysed in some detail the judgments of the tribunal and the CA in *Able Luck v Pawling* to reject the argument that the Court of Appeal in *Able Luck v Pawling (CA)* did not rule on the question of whether the tribunal has residual discretion to refuse an order for sale and to conclude that the Court of Appeal “*endorsed the analysis and conclusion set out in Able Luck LT §§167-170 and made its decision on that basis*”. The applicants invite the tribunal to come to the same conclusion.
12. In *Starwick* the tribunal held at §§102-110 that: -

*“102. The arguments on undue hardship in the present case are further dealt with at Peace Ever §§344 to 356. Although the tribunal (constituted by DDJ SH Lee and Member Lawrence Pang) found the arguments to be initially attractive, it considered that indications in the Court of Appeal authorities to be to the contrary (§350). In particular, after citing Able Luck CA §50 (at §355), the tribunal said at §356 as follows:*

*“To the numerous considerations cited above in parenthesis, we have no doubt that the Court of Appeal would have added “undue hardship” if required.”*

*103. We agree with the analyses set out in the recent judgments.*

*104. It may be said that Peace Ever has stopped short of stating clearly that the Able Luck CA has laid down a general principle that the statutory criteria stipulated in section 4(2) of the Ordinance are the only requirements which the tribunal has to consider in deciding whether or not to grant an order for sale.*

*105. In so far as necessary, we would go further than Peace Ever and state that Able Luck CA has done so.*

*106. At Able Luck CA §50, the Court of Appel agreed with the tribunal that in an application for compulsory sale under the Ordinance, there is no requirement on the part of the tribunal to engage itself in weighing redevelopment against other potential alternatives, nor is it obliged to satisfy itself that redevelopment is the best option among all possibilities before it could make an order for compulsory sale.*

*108. In gist, whilst the applicant at Pawling §93 referred to Able Luck LT §§168-170, the tribunal in Pawling instead drew an analogy with Pacific Base Holdings Limited v Lee Hop Biu & Ors [2021] 5 HKC 214 in which the Court of Appeal stated that in dealing with a compulsory sale application the tribunal is not expected to be concerned with the feasibility of the redevelopment. The tribunal reasoned that, if that be the case, it did not see why the tribunal should be concerned with the relative feasibility of redevelopment as compared with other options. At Pawling §99, 101 and 103, the tribunal said as follows:*

*“[99] As said in paragraph 97 above, in light of the Court of Appeal’s observations and ruling in Pacific Base Holding, we see no merits in the contention that the tribunal must weigh the relative feasibility or benefits of redevelopment vis-à-vis revitalization or other options when considering whether an order for sale shall be made. Such a contention would place an impossible task on the tribunal to explore and go into those other topics which the Ordinance does not even mention by name, let alone prescribing what are to be considered under those topics. To embark on such an exercise would risk usurping the functions of other bodies such as the URA which are tasked to oversee the specific area.*

*[101] In conclusion, we cannot agree more with the Court of Appeal’s observation that once we go into the rabbit hole and expand the statutory equation to include topics such as revitalization, rehabilitation, urban renewal etc, the whole exercise would be blown out of proportion and no one can tell when the expansion of considerations under the Ordinance would come to an end. We do not find this to be the legislative intent of the Ordinance.*

*[103] We therefore conclude and rule that in an application for compulsory sale order under the Ordinance, the tribunal should focus on whether redevelopment is justified by reason of the age or state of repair of the building concerned. In the exercise, the tribunal is not required to engage itself in weighing redevelopment against all other potential alternatives (such as conservation, revitalization, rehabilitation, urban renewal etc) nor is it obliged to satisfy itself that redevelopment is the best option among all possibilities before it could make an order for compulsory sale.”*

*109. In Able Luck CA, the principal reason given by the Court of Appeal in agreeing with the tribunal was not the “narrower” analysis of drawing an analogy with Pacific Base Holdings, but the “wider” analysis carried out and the conclusion set out at Able Luck LT §§168-170 and advocated by the applicant at Pawling §93, namely there is no room for other consideration on top of the statutory criteria of age or state of repair and reasonable steps taken to acquire all the shares: Able Luck CA §§49 to 50.*

*110. We therefore disagree with Mr Lam’s reading of Able Luck CA. Whilst the question of consideration before the Court of Appeal was whether, when determining an application for compulsory sale under the Ordinance, the tribunal is under a duty to consider or weigh the merits or benefits of alternative options vis-à-vis redevelopment, it endorsed the analysis and conclusion set out at Able Luck LT §§168-170 and made its decision on that basis.”*

1. Contrary to *Starwick* at §§104-110, R5 does not accept that *Able Luck v Pawling (CA)* laid down a general principle that the statutory criteria in section 4(2) are the only requirements which the tribunal has to consider in deciding whether or not to grant an order for sale, on the basis that the Court of Appeal had endorsed the analysis and conclusion in *Able Luck 2017 (LT)* which was based on *Good Faith*. This is because the issue of discretion to consider hardship was not argued before the Court of Appeal in *Able Luck v Pawling (CA)* or *Good Faith* nor before the tribunal in *Able Luck 2017 (LT)*. R5 seeks to distinguish the whole line of cases, including *Able Luck v Pawling (CA)*.
2. R5 also refers to *Capital Well Ltd v Bond Star*, in which the CFA reviewed and set out the statutory scheme. Ribeiro PJ at §15 said “*there are two conditions which must be satisfied before the Tribunal can make a compulsory order*”. R5 submits that the CFA does not say that the tribunal must make the order once the criteria are met, and it does not follow that these are the only two factors the tribunal may take into account. Ribeiro PJ continued at §16 that “*If those conditions are satisfied and the tribunal decides to make an order…*”. R5 repeats that satisfaction of the two conditions does not automatically mean that the tribunal must make the order once the criteria are met.
3. The applicants reply that R5’s argument is essentially that it is necessary for the legal precedents to have explicitly held that (1) the words “*objections, if any*” in section 4(2) are ambiguous and unqualified, opening the door to comments made at the Second Reading; and/or (2) there is no general discretion to take into account hardship”. Mr Mok submits that this cannot be a means to sidestep the clear and express Court of Appeal holdings that there is nothing in section 4(2) that would give the tribunal a residual discretion notwithstanding satisfaction of the statutory criteria stipulated in section 4(2). Further, since *Able Luck v Pawling (CA)* clearly held that there is no general residual discretion (and the tribunal below roundly rejected that suggestion), by necessity there must also be no discretion to take into account the specific ground of hardship.
4. We hold that upon a proper construction of the Ordinance and the weight of the authorities the tribunal has no residual discretion by reason of the word “*objections*” in section 4. We answer the Issue 4 question, whether there is any residual discretion to refuse an order for sale despite satisfaction of the other statutory criteria under section 4(2) “no”.
5. The applicants submit that if the answer is “no”, such that there is no discretion, the tribunal need not consider the factual evidence on those grounds. Lest we be wrong we shall go on to consider the evidence and submissions on exercise of the discretion.

*ISSUE 5 – THE CIRCUMSTANCES IN THE PRESENT CASE*

*R3 Discretion*

1. If the tribunal has a discretion, R3 invites the tribunal to consider all the circumstances of the case in deciding whether or not to make an order for sale. R3 provided 2 witness statements setting out the facts that were admitted without calling R3 and were not challenged by the applicants. We accept the facts as stated and find those facts proved. We do not accept the opinion evidence on Class A and Class B sites and valuation objected to by the applicants on the basis that is properly the domain of experts.
2. The value of R3’s Property, Flat 5B of the 1st Building as at 21.10.2021 was assessed to be $6,711,000 by Mr Lai and $6,170,000 by Mr Chan. Using the experts total EUV figures, R3 is entitled to a 2.41% interest in the proceeds of sale of the Lots in the event of a compulsory sale according to Mr Lai and 2.23% according to Mr Chan. On the RDV valuations as at 7.5.2024 of Mr Lai of $310,000,000 R3 would get $7,471,000 and on Mr Chan’s figure of $234,000,000 R3 would get $5,218,200. Therefore, upon compulsory sale at a reserve price on Mr Chan’s figures R3 would get less than the existing value of his premises as at 21.10.2021.
3. Mr Lam runs an argument that during the period from October 2021 to May 2024, the Private Domestic Price Index (all classes) dropped from 398.5 to 307.2, which Index he appends to his Closing Submission. This is a drop of about 23%. The EUV of R3’s premises as at 7.5.2024, by reference to Mr Chan’s valuation as at 21.10.2021, ought to be about $4,750,900. The RDV of R3’s premises is therefore merely about 1.098 of its EUV, as at 7.5.2024, an increase of less than 10%.
4. Mr Lam continues that the figures show how dire the present economic circumstances are. If compulsory sale is ordered now, not only would R3 be deprived of the real benefit of the redevelopment, he would have difficulty finding a replacement apartment to live in, particularly if related expenses such as removal costs, agency fees and stamp duty are taken into account. On the other hand the applicants would be able to combine the Lots with the neighbouring site of the former Ko Shing Building, and jointly develop them as a Class B site. Further, the applicants would have the option of adopting a wait-and-see approach, as they have 6 years to await a market rebound. Compulsory sale in the present case would be tantamount to benefiting the majority owners by unjustifiably depriving the minority owners of their private property rights.
5. Mr Lam sets out the tribunal’s important constitutional role in the safeguarding of private property rights, that in the exercise of its jurisdiction the tribunal should act in an even handed manner, balancing the respective interests of the majority and minority owners and that in the present case the balancing exercise should come down against making an order for sale.

*R5 Discretion*

1. R5 submits that even if redevelopment is justified on age and state of repair the tribunal has a discretion to take into account other matters, including hardship of the minority owner and may nevertheless refuse to grant an order for sale in view of the hardship which will be suffered by R5 and her family. The situation of R5 and her family is a fact-finding exercise that falls to be determined by the tribunal.
2. R5 is the registered owner of 4th Floor of the 2nd Building, R5’s Property. R5’s son and *guardian ad litem*, Mr Wong Chung Yam (“the Son”), is the factual witness for R5, who provided 2 witness statements that were admitted without calling the Son or any challenge by the applicants.
3. The hardship said to be suffered by R5 and her family is as follows: -
   1. R5’s Property has since 1970 been the family home, with her children and later her grandchildren. R5 had to move to an elderly care home and then hospital due to age, declining physical and mental health and now mental incapacity. The Son, his wife, their son together with his wife and 7-year old daughter, and R5’s daughter (“the Daughter”) reside at R5’s Property.
   2. The Son is a 65-year old construction worker, his wife is a cleaner and they earn less than $15,000 a month. The Daughter is aged 61 and a cleaner earning $10,000 per month. Their combined incomes barely cover living expenses and R5’s expenses. Given their age it is likely their earning capacity and income will only decrease.
   3. They need to live around the same district which is close to R5’s hospital so they can manage their duties caring for R5. Search for a replacement unit of a similar size or approximately 600 square feet in the same district would cost around $30,000 to rent or HK$12 million to purchase. R5’s family simply could not afford either.
   4. If R5’s Property is ordered to be sold the compensation would be managed according to the Mental Health Ordinance. The family would not easily be able to utilise the money to rent or purchase a replacement property. They would have to rent or purchase a smaller unit in other districts so be uprooted and suffer great financial hardship. Given the age of the Son, his wife and the Daughter, their lives would be adversely affected.
4. We accept the truth of facts set out in the Son’s Witness Statements and find those facts regarding R5 and her family proved. We do not accept his opinion evidence properly the domain of experts.

*Applicants Reply*

1. If there is a residual discretion the applicants submit that there is no basis or evidence on which to exercise such discretion advanced by either R3 or R5. The applicants reply to the different bases proffered by the respondents for the exercise of the discretion in turn.

*Market Downturn*

1. R3 suggests that market downturn has resulted in substantial reduction in the RDV of the Lots, and the purchaser would have 6 years to await market rebound; it is grossly unfair to the minority owners to compel them to sell in such market situations, hence this is not the right time to sell and the tribunal ought to exercise its residual discretion against making an order for sale. The tribunal in *China Orchid International Ltd v Fujitec (HK) Co Ltd* LDCS 7000/2018 (unrep., 5/5/2023) [2023] HKLdT 38 at §199 held:

*“With respect, there is no crystal ball to predict market fluctuation. How could one determine which was the right moment to make a compulsory sale application or which is the appropriate time for the Tribunal to grant a sale order. Everybody has to take the market condition as it is to make the decision.”*

1. The applicants point out that market fluctuations cannot be predicted and are beyond the control of any party or the tribunal. There is no “crystal ball”. The primary function of the tribunal is to resolve applications under the Ordinance in a fair and predictable manner, making sure the reserve price reflects the land value on a redevelopment basis. The market condition has to be taken as it is. The tribunal cannot look into the future to determine the ideal time for an order for sale. Nor should it determine the economic viability, or make the policy decision of whether the risk of market fluctuation ought to be allocated to the owners or the would-be developer. Markets go up and markets go down. That was so at the time of enacting the Ordinance. In our view market downturn cannot be a ground to refuse the order for sale.

*If RDV < EUV*

1. R3 suggests that in the event that the RDV of the Lots is a sum close to the EUV of the Lots this indicates that the redevelopment potential of the Lots would not be truly materialised by the proposed development at this stage in time due to, for instance, the development profit being consumed by high developer’s profit, high interest rate and low gross development value.
2. The applicants also rely on *Winland Property v Chang Sai Ho & Ors* LDCS 7000/2022 (unrep., 28/3/2024) [2024] HKLdT 27 which held at §200, that economic viability was no ground to refuse an order for sale and at §89 the argument that the closeness of EUV and RDV should impact on section 4(2)(a) was rejected.
3. R3’s Closing Submission adduced evidence of the Private Domestic Price Index, used the drop in the Index to extrapolate the EUV of R3’s Property from the valuation date of 21/10/2021 to the RDV valuation date of 7/5/2024, and thereby alleges that there is a closeness in value between the RDV and the EUV of the Lots. The applicants object to this method of comparing the EUV and the RDV at the date of valuation. If this point is to be properly run, it should first be pleaded and secondly, be backed up in the valuation reports by proper valuation assessments of the EUV and the RDV on the same valuation date. R3 never introduced such valuation evidence and this argument coming at the closing submissions should be rejected. The use of the Private Domestic Price Index for this purpose was not raised in evidence. Even if this use of the Index for the purpose of showing the closeness of the RDV and EUV were allowed it should, at the very least, have been put to the applicants’ valuation expert. It was not. This argument based on the Index should not be permitted. The applicants submit that it is certainly inappropriate to use the Private Domestic Price Index (a territory wide index) to purportedly obtain the EUV of the subject property at a date 30 months away from the original valuation date in this case. It is wholly inappropriate for new argument and evidence to come through counsel’s written Closing Submissions.
4. *Able Luck v Pawling (LT)* was clear, if RDV is found to be higher than EUV, there is no need to make a determination on whether the residual discretion existed and ought to be exercised on that ground. The applicants submit that in the premises, even if the tribunal shall find that there is a residual discretion under section 4, and even if in its assessment the RDV of the Lots is close to or even lower than the EUV of the Lots, R3’s contention should be rejected.
5. The Ordinance sets out the purpose of each the EUV and the RDV in the statutory scheme. Each has a distinct and different purpose. *Good Faith* at §25 stated “… The EUV is only adopted in the LCSRO as a mechanism for deciding the *pro rata* share in the apportionment of the sale proceeds. …”. It has not been the practice of the tribunal to allow evidence of EUV valuation on an additional valuation date, namely the RDV date, to found an argument on a basis not prescribed by the Ordinance. Even were such an approach to be adopted we accept the points made by the applicants that the respondents would first have to duly notify the applicants of the intent to run such a case in the usual way by their pleadings and secondly expert evidence would have to be adduced by the respondents to establish the case. There was no material pleading, evidence or application by the respondents and the applicants had no opportunity to adduce expert evidence on the issue. The issue is raised far too late. We reject the argument of R5. In any event, even if established evidentially we do not consider such a comparison to be a proper basis to refuse the order for sale.

*Joint Redevelopment*

1. R3 alleges that if the applicants are able to jointly develop the Lots together with the neighbouring site of Nos 78-80 Queens Road West and Nos 265-267 Hollywood Road, compulsory sale of the Lots would amount to benefiting the majority owners by unjustifiably depriving the minority owners of their private property rights in the Lots, and would therefore be unfair in the circumstances.
2. The argument is based on the assumption that the possibility of a merged site redevelopment, including lots not subject to the application under consideration would amount to deprivation of the minority owners. Variations of this argument have long been run and rejected. Most recently the Court of Appeal in *Century Treasure Ltd v Or Pui Kwan* [2024] 1 HKLRD 72 at §21 held:

*“21. … The role of the Lands Tribunal is to fix the reserve price according to Schedule 2 para. 2 and leave it to the public auction to reflect any possible hope value arising from the majority owner’s adjacent lot (which does not form the subject of the sale order in this instance) … Nor do we think there is any unconstitutional deprivation of the minority owners of a portion of the true value of their units”.*

1. In the context where the task of the tribunal is kept simple by excluding in the setting of the reserve price the factor of redevelopment with adjoining sites not the subject of the application, it cannot be the legislative intent that the tribunal shall need to go through this complex task in another part of the statutory process in order to determine whether or not to grant an order for sale.
2. Even if there be a residual discretion, we accept the applicant’s submission that the possibility of joint development with adjacent lots, not subject of the sale order, does not give rise to any unfairness and there can be no policy reason to exercise the discretion to refuse a sale order on this ground. The applicants add that in this case, all the subject Lots are considered together and the respondents shall receive their respective share in the redevelopment value of the 1st Lot, the 2nd Lot and the 3rd Lot as a merged site redevelopment.

*The Buildings are in Good Shape*

1. R3 pleaded that even if the tribunal shall be satisfied that due to the age and state of repair, redevelopment of the Buildings is justified, the Buildings are in “fairly good shape and would not pose any safety problem or hazard in the near future”, hence this would be a ground for refusing an order for sale and to “wait for a better time to redevelop” . R3 did not make submissions on the pleaded issue and appears no longer to pursue the argument. The applicants say that the concept of “waiting for a better time” repeats the “market downturn” complaint and the same challenge in *China Orchid* of needing a crystal ball to predict there is to be a better time.
2. The applicants are correct in noting that the Ordinance statutory regime does not envisage that orders of sale should only be made in the event that a building is found to be hazardous and posing a danger. The tribunal does not go through the exercise of assessing the building condition to satisfy itself of the fitness for redevelopment relying on the higher standard of tenantable condition, only to refuse the sale order on the basis that the building is merely safe for now. We find that is no basis to refuse an order for sale.

*Hardship*

1. On the issue of the hardship suffered by minority owners or their families the applicants rely of the following cases, *China Orchid* at §§205-206, *Starwick* at §§90-110, *Crown Centre* at §§117-128 and *Fuller Holdings* at §§24-27 rejecting such ground.
2. Mr Mok addressed the hardship faced by R5’s family as set out by the Son. The Son had stated on 12/4/2023 that he was applying to the High Court to be appointed committee of the estate of R5. There is no further information on whether there is any committee appointed for the purpose of administering R5’s Property and affairs under section 11 of the Mental Health Ordinance, Cap 136. Mr Mok points out that should R5 be under guardianship or the committee, it is open for her dependents to make application to the Guardianship Board or to the court under the Mental Health Ordinance for payment out and maintenance. Whether any such application shall be approved is a matter to be determined under those statutory provisions and process and not the tribunal on a Cap 545 application. The Son’s witness statement does not address the prospect of them making any applications under the Mental Health Ordinance (if appropriate) in respect of R5’s assets or for financial assistance to meet any hardship they may suffer. We agree that such applications in relations to R5 and her family or dependents are not matters for the tribunal.
3. Further, R5 retained Mr Lai as a valuation expert but he has not adduced evidence from an expert that R5’s share of the RDV would be insufficient to secure alternative accommodation, in the area or elsewhere. Mr Mok submits that the evidence of the Son in his witness statement is insufficient to establish inability to secure alternative accommodation. We accept that the expert evidence did not specifically address the issue and find that the evidence of the Son did not establish inability to secure alternative accommodation in the area on R5’s share of the RDV.
4. We accept the applicants submissions that even if the tribunal should hold that there is a residual discretion to take into account hardship suffered by R5:
   1. The hardship relied upon is not hardship of R5 but that of her adult son (and his family) and daughter who are each over 60 years of age and on the facts is not a basis to refuse a sale order.
   2. No authority has been cited in support of the proposition that hardship of adult children of a minority owner can be a relevant factor in the exercise of any discretion to refuse a sale order.

*Discretion Determination*

1. Even if the answer were “yes”, such that there is a residual discretion, the second question is whether there are valid grounds for exercising that discretion in the circumstances of this case? We have considered all of the evidence and the submissions of each R3 and R5 and find for the reasons set out above that there is no basis to exercise the discretion to refuse a sale order on the evidence and/or the bases advanced by either R3 or R5. We would decline to exercise the discretion in their favour.
2. In answer to Issue 5, whether, in the circumstances in the present case, the tribunal’s discretion ought to be exercised against granting an order for sale of the Lots, despite being satisfied with the matters set out in section 4(2) of the Ordinance the answer is “no”.

*ISSUE 6 - Reserve Price for the Auction and apportionment*

1. We are satisfied that the redevelopment of the Lots is justified and that the applicants have taken reasonable steps to acquire all the undivided shares in the Lots. Such being the case, we are satisfied that an order for sale should be granted in favour of the applicants.
2. For the redevelopment of the Lots, Mr Chan and Mr Lai agree that the Lots have a net site area of 312.23 square meters. They also agree to develop the Lots into a 24-storey composite building with retail shops on the ground and 1st floors and domestic units on the upper floors.
3. The 2 valuation experts agree on the adoption of residual valuation method, the valuation date of 2 May 2024 and the saleable areas of the retail shops on the ground and 1st floors. Nevertheless, they disagree on the size of common areas, and the headroom and number of domestic units on the typical domestic floors. As a result, they disagree on the floor areas of the domestic units in the hypothetical development.
4. In the residual valuation, although they agree on many parameters including the gross development value (“GDV”) of all retail shops on the ground and 1st floors and the developer’s profit at 18%, they disagree on the GDV of the domestic units. They also disagree on interest rate and construction cost.

*Hypothetical Development*

1. Mr Chan proposes to build 3 domestic units with headroom of 3.5 meters on each typical domestic floor, and therefore there would be larger common area on typical domestic floors and lower total domestic saleable areas (i.e. 1,472.026 square meters) in the hypothetical development. Whilst, Mr Lai suggests 2 domestic units and headroom of 3.15 meters only, and the total domestic saleable areas could be increased to 1,482.759 square meters. The differences in design of the hypothetical development would also cause the difference in construction cost (i.e. $173,720,624 v $142,450,000) adopted by the 2 valuation experts. Since Mr Chan’s hypothetical development would build more units with smaller size and higher headroom, his proposed construction cost is higher than that suggested by Mr Lai.
2. In fact, the difference in total domestic saleable areas between the 2 hypothetical developments is not so significant (i.e. 1,482.759 – 1,472.026 = 10.733 square meters) in valuation, but the difference in construction cost (i.e. $173,720,624 - $142,450,000 = $31,270,624) is an issue and would materially affect the residual land value. Mr Chan adopts the construction cost as assessed by Rider Levett Bucknall (“RLB”) a construction-consulting firm, whereas Mr Lai assesses the construction cost by using the “Building Cost Pro-Forma” and the building cost data released by RLB. Neither valuation expert has commented in detail on the construction cost estimate of the opposing party, but it is not in dispute that the difference in construction cost is mainly attributable to the differences in design, particularly on whether the hypothetical development should comprise smaller units with higher headroom or larger units with lower headroom.
3. We agree with Mr Chan that as at the valuation date, when the property market was relatively poor and uncertain, smaller units with lower purchase price were generally in demand and developers would tend to build smaller units with higher headroom in order to minimise the overall development risk. Although building of smaller units with higher headroom would incur higher construction cost, the sale price of smaller units with higher headroom could achieve higher unit rate. The 2 valuation experts have agreed in these proceedings size is adjusted at 1% per 5-square meter difference and headroom is adjusted at 4% per 1-meter difference. The higher sale price for smaller units with higher headroom in this instance could compensate partly the higher construction cost.
4. We note that there were abundant supply of smaller units in the past few years and developers therefore had once planned to build larger units when the property market appeared to stabilise or recover. However, when the property market in fact remained inactive and property price had dropped again, developers continue to build smaller units, though they have minimised the building of very small flats with open plan design. We are of the view that the demand for the 1-bedroom flat of about 23 – 24 square meters proposed by Mr Chan is greater than that for the 2-bedroom flat of about 35 square meter suggested by Mr Lai. The sale price of the 2-bedroom flat of over $10 million each is almost 50% above the sale price of the 1-bedroom flat, and such large lump sum would limit its demand in a relatively poor market and in turn affect the cash flow of the developers.
5. Mr Lai quoted and relied on the comments of RLB in its 2022 publication “Trend in Residential Developments in Hong Kong”, which said that “speculative demand over Hong Kong’s nano flats appears to be over, following the city’s median home price decline; history suggests that small flats tend to suffer more when there are price adjustments.” We consider that this general statement might be true in 2022. Nonetheless, the residential property market has been changing since 2022. We are of the view that, as at the valuation date and in the new development at a relatively small site in the traditional urban area, most developers after consideration of their cash flow in the development process tend to build smaller flats.
6. In view of the above discussions and determinations, we prefer Mr Chan’s hypothetical development to that of Mr Lai. Accordingly, we accept all the saleable areas and construction cost proposed by Mr Chan. We also accept Mr Chan’s proposal at trial that the residential tower on a transfer plate can turn 180 degrees, so all the domestic units in his hypothetical development could then enjoy view towards the park, resulting in an increase of overall GDV.

*GDV – Flats on Upper Floors*

1. In the valuation of the reference unit (i.e. a hypothetical unit on 15th floor), the 2 valuation experts agree to adopt the recent transactions in 3 comparable developments, namely One Artlane, Two Artlane and 15 Western Street for direct comparison. They also agree on the adjustment for time with reference to time indices, adjustment for floor at 0.5% per 1-level, adjustment for size at 1% per 5-square meters, adjustment for age at 1% per 1-year, adjustment for scale and facilities at -2.5% (i.e. One Artlane and Two Artlane) and 0% (i.e. 15 Western Street), and adjustment for headroom at 4% per 1-meter. However, they disagree on the adjustments for location and environment, view, lighting and ventilation. They have also adopted different methods to derive the average adjusted unit rate.
2. We agree with Mr Chan that the location and environment of One Artlane and Two Artlane, immediately next to an MTR entrance and in a regenerated area, is better than that of the hypothetical development, though the hypothetical development is located immediately next to a park and is closer to the Central Business District. We accept Mr Chan’s proposed adjustment rate at -3%.
3. We also agree with Mr Chan that the location and environment of 15 Western Street should be adjusted at 5% only instead of 10% suggested by Mr Lai. Although 15 Western Street is located in an uphill area, its location in the fringe of Mid-Level and Pokfulam is more attractive to occupants from middle-income group.
4. Regarding the adjustment for view, we accept Mr Lai’s opinion that the view of the reference unit towards the park is a positive factor, but the adjustment rates for open view and building view should be 1% and 5% respectively. We also accept Mr Lai’s opinion that the lighting and ventilation of the reference unit with double aspects facing Queen’s Road West and a park should be better than that of the comparables with single aspect only, but the adjustment rate should be 1% only.
5. The valuation of the reference unit is listed in Appendix II. The average adjusted unit rates of the 11 comparables in One Artlane, 5 comparables in Two Artlane and 11 comparables in 15 Western Street are $290,470, $273,385 and $392,406 per square meters respectively. While Mr Chan takes average of the 3 comparable developments to derive the adjusted unit rate of the reference unit, Mr Lai adopts the average of the 27 comparables.
6. We agree with Mr Chan that the adjusted unit rate of 15 Western Street, which is much higher than the adjusted unit rates of both One Artlane and Two Artlane, is out of line. Although there is no objective evidence to prove the abnormality, we agree with Mr Chan that the availability of agency fee rebate for 15 Western Street is likely the reason. At present, there is not much transparency for the disclosure of agency fee given by the developer and the agency fee rebate if any by the agent to the purchaser in the 1st hand sale of residential properties.
7. Nonetheless, since Mr Chan has not excluded the comparables in 15 Western Street and his method has taken into consideration all these comparables, we would assess the adjusted unit rate of the reference unit at $320,000 per square meters, between the overall average and the average of the 3 comparable developments.
8. In the comparison between the reference unit and the other units in the hypothetical development, they agree on all the adjustments (i.e. including the adjustment for special units on the 3rd floor with flat roof and the 23rd floor with roof at 20%) except the adjustment for view. We consider that the units on the lower floors facing both the building and park or the park only would have relatively inferior view and they should be adjusted at -1%. In addition, we consider that Unit B with one facing aspect only should also be adjusted at -1% for lighting and ventilation.
9. The valuation of all the flats in the hypothetical development is listed in Appendix III. The total GDV and the average unit rate of all the flats are $474,599,940 and $322,413 per square meter.

*Residual Method – Interest Rate*

1. The 2 valuation experts agree on the marketing and agency fees at 3% of the GDV, demolition costs at $3,033,968, demolition period of 9 months, professional fees at 6%, construction period of 2 years, developer’s profits at 18%, and stamp duty and legal costs at 4.25% and 0.1% on residual land value. Further, since we agree to adopt the construction cost proposed by Mr Chan, there is one remaining dispute on interest rate only.
2. We agree with Mr Lai that the interest rate in residual valuation (i.e. the lending rate for project finance) is much more sensitive to the change of the HKD Interest Settlement Rates. While the HKD Best Lending Rate issued by HSBC has remained at 5.875% since 28 July 2023, the HKD Interest Settlement Rates have been decreasing since its peak in about the 2nd and 3rd quarters of 2023. With reference to the data provided by Mr Chan, the 1-month, 3-month and 12-month rates as at the valuation date have in fact dropped to 4.19929%, 4.57548% and 4.84411% respectively.
3. However, we do not agree to rely on the borrowing cost of local developers, which would comprise the finance costs of both investment properties and development projects and would also be affected by the overall gearing of a particular developer, suggested by Mr Lai. We are also of the opinion that there should be a spread on top of the cost of money in the interbank market. In view of the decreasing HKD Interest Settlement Rates, the development risks of the hypothetical development and the uncertain property market as at the valuation date, we adopt the interest rate of 5.25%, between the 5.5% proposed by Mr Chan and the 4.75% suggested by Mr Lai.

*RDV of the Lots as at 7 May 2024*

1. The residual valuation of the Lots is listed in Appendix IV of the judgment. Based on the agreements between the two valuation experts and the above determinations by the tribunal, we assess the RDV of the Lots at $242,000,000, equivalent to an accommodation value of about $89,411 per square meter (i.e. about $8,306 per square foot).

*Joint Sale of the Lots and Apportionment*

1. R1 has not made any representations in these proceedings. The applicants, R3 and R5 have no dispute on joint sale of the Lots together and apportionment of the sale proceeds and expenses. In the circumstances, we agree to put up the Lots together for sale in one public auction, set the reserve price on a merged site basis and, in case of a successful sale, apportion the sale proceeds and expenses according to the market value as determined by the tribunal.
2. From a valuation perspective, the value of a merged site, which would release marriage value in most cases, is generally higher than the aggregate of individual site values of the lots. Thereof we are of the view that the joint sale of the Lots together and apportionment in accordance with the respective market value would not prejudice the interest of the minority owners in this instance.

*Orders*

1. We have set out the reasons (i) why we are satisfied an order for sale of the Lots should be granted; and (ii) why we are not persuaded by R3 and R5 not to make an order for sale of the Lots, and we therefore make the following orders: -
   1. All the undivided shares in the Lots, the subject of the application, be sold by way of public auction for the purposes of the redevelopment of the Lots;
   2. Mr Cheung Wood Keung and Ms Pang Shuk Man Eva, nominated by the applicants, be appointed the trustees (“the Trustees”) to discharge the duties imposed on them as trustees by the Ordinance in relation to the sale of the Lots;
   3. The Trustees be authorised to charge such remuneration for their services in accordance with the terms set out in the letter of Messrs Lo & Lo dated 8 May 2024;
   4. For the purposes of the sale of the Lots by public auction: -
      1. the sale of the Lots be on the particulars and conditions of sale the same or substantially the same as those set out in the draft Particulars and Conditions of Sale to be approved and initialed by the tribunal; and
      2. the reserve price be set at $242,000,000;
   5. Subject to further extension(s) that the tribunal may subsequently allow upon the application of the purchaser of the Lots or its successor in title, the redevelopment of the Lots and the Buildings shall be completed and made fit for occupation within a period of 6 years after the date on which the purchaser of the Lots becomes the owner of the Lots; and
   6. Liberty to the applicants, the respondents, the Trustees and the purchaser of the Lots or its successor in title to apply to the tribunal for further directions.

*COSTS*

1. We consider that the costs of these proceedings should follow the compensation approach as determined by the Court of Appeal in *Good Faith*.
2. We make a costs order *nisi* that save for costs orders that have already been made, the applicants do pay costs of these proceedings to the respondents, including all reserved costs and the costs of this trial with certificate for counsel, to be taxed on the High Court scale if not agreed. Unless any parties apply by summons to vary the costs order *nisi*, it shall be made absolute upon expiry of 14 days from the date of this judgment.

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| (Her Honour Judge LJ Cruden)  Presiding Officer  Lands Tribunal | (Alex NG)  Member  Lands Tribunal |

Mr Mok Yeuk Chi and Ms Julia Au, instructed by Mayer Brown, for the applicants

The 1st respondent was not represented and did not appear

Mr Simon Lam, instructed by Yu & Associates, for the 3rd respondent

Ms Emily Ting, instructed by Ho Tse Wai & Partners, for the 5th respondent







