

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0025/09/15

In the matter of an Application under the Leasehold Reform, Housing and Urban Development Act 1993 dated the 1<sup>st</sup> September 2015

PROPERTY 44 Cumberland Court, Ridgeway Road, Rumney, Cardiff, CF3 4AE

APPLICANT Mrs Susan Frances O'Keefe

RESPONDENT Ground Rents (Regis) Ltd

TRIBUNAL D J Evans LLB LLM  
P Tompkinson BSc MRICS

PENDERFYNIAD / DECISION

**1 INTRODUCTION**

1.1.1 We convened as a Leasehold Valuation Tribunal under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (the Act) at the Tribunal Offices, First Floor, West Wing, Southgate House, Wood Street, Cardiff on Friday the 27<sup>th</sup> November 2015. We had before us an application by Mrs Susan Frances O'Keefe (the Applicant) to determine the premium payable to Ground Rents (Regis) Ltd (the Respondent) for the grant of a new lease of 44 Cumberland Court, Ridgeway Road, Rumney, Cardiff, CF3 4AE (the Property) in accordance with the terms of Schedule 13 of the Act.

1.1.2 The Property is held on a lease dated the 26<sup>th</sup> June 1962 for a term of 99 years from the 25<sup>th</sup> December 1961 and made between Stanbryn Company Ltd (1) Rosser Thomas and Company Ltd (2) Florence Beatrice Bain (3) at a yearly ground rent of £15. The Applicant's leasehold interest is registered at the Land Registry with Absolute Title under title number WA779910.

1.1.3 The Applicant served Notice of Claim on the 26<sup>th</sup> January 2015 in which she proposed a premium of £16,750. The Respondent served a counter notice on the 1<sup>st</sup> April 2015 accepting the Applicant's right to acquire a new lease, rejecting the Applicant's proposed premium but putting forward a counter proposal of £44,172.

1.4 At the time of the Notice of Claim, there were 45.91 years left unexpired on the lease. The new lease, therefore, would expire 135.91 years from the date of the Notice.

**2 INSPECTION**

2.1 Prior to the hearing, we inspected the Property. The Applicant was present along with the two surveyors instructed by the parties. We also inspected externally a number of the comparables referred to by the parties.

- 2.2 Cumberland Court is located on Ridgeway Road in a residential area in east Cardiff known as Rumney, an area with a range of low rise flats and houses of varying types many of which were constructed in the 1960s. It has local shops and good communications by bus and easy access for the M4. Cumberland Court comprises three attached blocks of six flats each. There are two flats on each of the three floors and each block has its own entrance with a communal hallway, stairs and landings. There is a small amenity area between the front of the block and Ridgeway Road included in the demise of the Property as well as the right to use the bin storage area at the rear. The Property is on the first floor of the block. Behind the three blocks is an access area and a number of garages. The garages are not included in the Respondent's title and we were given to understand that, in general, the garages were occupied by persons unconnected with Cumberland Court. Most of the flats now have upvc double glazing installed by the lessees replacing the original steel framed windows. The blocks are of concrete frame construction with fair-faced brick facades and concrete tiled roofs. There are upvc gutters and downpipes for ease of maintenance. Each flat has a designated amenity area in the front leading from the block to the road. The lease requires the lessee to contribute 1/18<sup>th</sup> of the cost of decoration, repair and maintenance of the structure plus a 5% management charge.
- 2.3 The accommodation comprises two bedrooms (or, as here, one bedroom and a playroom for the Applicant's grandchild), a living room, a kitchen and a bathroom. The flat is heated using electric wall mounted heaters except for the kitchen and, so far as we could see, the bathroom and playroom. The kitchen has fitted units with a built in oven and hob, a vinyl tile-effect floor and part tiled walls. The bathroom includes a bath, toilet and wash hand basin. The Applicant has added an electric shower over the bath, Although the heating, fitted kitchen and the shower are enhancements on what was originally at the Property, they may be considered by some potential purchasers as a little out of date taking into account modern tastes and preferences.

### 3 HEARING

- 3.1 The Applicant was represented at the hearing by Mr Martin Cotsen FRICS and the Respondent by Mr Colin Horton BSc AssocRICS. Mr Horton is a surveyor employed by Pier Management Ltd which part of the same group of companies as the Respondent. As required by the Tribunal's directions dated the 4<sup>th</sup> September 2014, they had each submitted their reports. Mr Cotsen's report is dated the 15<sup>th</sup> October 2015. That of Mr Horton is dated the 20<sup>th</sup> October 2015. As Mr Cotsen pointed out, this was delivered after the date directed by the Tribunal for exchanging reports.
- 3.2 The issues between the parties were as follows:

Issue	Mr Cotsen	Mr Horton
Capitalised ground rent	£218	£204.70
Extended lease value (unimproved)	£90,000	£103,000
Relativity	68%	59%
Non-Act existing lease value	£61,740	£60,770
Premium	£19,180	£26,631

We should at this stage mention that unfortunately Mr Cotsen's calculation contained a couple of arithmetical errors. Mr Horton stated that his extended and existing lease values were on an unimproved basis. Mr Cotsen's report did not indicate whether lessees' improvements had been taken into account in arriving at his extended and existing lease valuations.

- 3.3 Prior to the hearing the surveyors had agreed that the capitalisation of the ground rent should be taken as Mr Cotsen's figure of £218.

#### 4 **STATEMENT OF AGREED FACTS**

- 4.1 On the 10<sup>th</sup> November 2015, both surveyors (not the clients) signed a document headed "Statement of Agreed Facts". In it Mr Cotsen and Mr Horton agreed the date of valuation (26<sup>th</sup> January 2015), the capitalisation rate for the current ground rent (6½ %) and the deferment date (5%). The surveyors also stated that what was referred to as the "short lease value", ie the value of the current lease without the statutory right to extend it, was Mr Cotsen's figure of £61,740.

- 4.2 Whilst the Tribunal generally has no issue with the parties agreeing aspects of the valuation process, we were concerned that both surveyors had started from different extended lease values and by applying different relativities they had reached a common non-Act value of the current leasehold interest. They had agreed that valuation but on entirely differing bases as became clear at the hearing.

- 4.3 Normally where there is such an agreement, the Tribunal will not look behind the factual concessions. However, exceptional circumstances may arise where a concession is partial or not clear and evidence develops in such a way that the Tribunal considers that the extent and correctness of the concession must be revisited. This is the view expressed by the Upper Tribunal in the case of *Kalidas -v- The Secretary of State for the Home Department* [2012] UKUT 327 (an Immigration and Asylum case) and we consider it to be equally applicable in this Tribunal.

- 4.4 The Tribunal has been asked to determine the premium payable on the grant of the new extended lease. That determination will involve the ascertainment of the marriage value - the difference between the extended lease value and the value of the combined leasehold and freehold interests. The Tribunal will clearly give due consideration to the reports and evidence of both surveyors including any facts agreed between the parties prior to or at the hearing. Here, however, the agreement of the non-Act leasehold value is based on coincidence and not on evidence. In this case, the fundamental disagreements are in relation to the extended lease value and the relativity. To us it makes no sense to agree the result of a calculation when the composite parts of that calculation remained to be determined by us. Indeed, by agreeing a figure for the non-Act value of the leasehold interest, it is arguable that the parties are restricting or modifying the ability of the Tribunal to come to a fair and just determination of the marriage value. Such an agreement would be void under section 93 of the Act.

- 4.5 The Tribunal indicated to the parties that it would wish to hear argument as to whether such an agreement was in fact void and whether the Tribunal was entitled, notwithstanding the statement of agreed facts, to make its own findings on the basis of the evidence. When the parties were invited to consider the issue at the hearing, Mr Horton readily conceded that, whilst it was incumbent upon the parties to seek to agree issues wherever possible, the

Tribunal had the right not to adopt that agreement. He would, however, in such circumstances, wish to retain his earlier positions relating to the valuation of the extended lease and relativity. We agreed that he should be able to do so.

## 5 IMPROVEMENTS

- 5.1 In the course of our inspection we noted that the Applicant had carried out certain enhancements to the Property: namely the installation of upvc double glazed windows; the installation of a fitted kitchen with built in cooker and hob and some wall tiling; the provision of partial electric heating; and work to the bathroom including the installation of an electric shower. Both surveyors agreed that the partial electric heating and the work to the bathroom including the electric shower either did not constitute improvements under the Act or did not increase the value of the Property. We therefore disregard these two items. Mr Cotsen and Mr Horton also agreed that the double glazing was an improvement which would have an effect on the value of the Property.
- 5.2 The surveyors, however, did not agree with regard to the fitted kitchen units, tiling and the built in hob and oven. Both accepted that they could be considered as improvements, although Mr Horton had reservations bearing in mind the comments in Hague (Hague on Leasehold Enfranchisement) on the subject. He queried whether the provision of new fitted cupboards was sufficiently structural to be classed as an improvement. He referred us to, and provided us with a copy of, paragraph 7-12 of Hague and to the passage which states that “examples of non-structural works are installations of sinks and cookers with the necessary plumbing, fitted cupboards...” He conceded, however, that it was a question of fact and degree and did not argue the point with any conviction. He did, however, argue that the fitted kitchen was not a modern one and that its value as an improvement - were we to find that it was - would be negligible. It would not be the cost of the new kitchen (either when it was installed or at today’s cost), but the increase in the value of the flat. As the fitted kitchen was somewhat dated, it would have no material effect on the value of the Property. Mr Cotsen argued that in view of its nature and extent, the fitted kitchen was an improvement on what had been at the Property previously and would add £500 to the value of the Property.
- 5.3 All in all, Mr Horton considered that a deduction of £2,000 to take account of all improvements would be reasonable. In Mr Cotsen’s view, the improvement value of the double glazing was £2,000 which when added to the improvement value of £500 for the fitted kitchen, made the total value of the improvements £2,500.
- 5.4 As a Tribunal, we and our colleagues rely upon the professionalism and expertise of the lawyers and surveyors appearing before us and their respective duties to the Tribunal particularly when referring us to passages from text books and authorities. During the course of the parties’ submissions we did not have time to read the whole paragraph and footnotes, only the few sentences to which we were referred. On reviewing the evidence and submissions, it became clear that the passage at paragraph 7-12 of Hague relates to Schedule 8 of the Housing Act 1974. Paragraph 1(2) of that Schedule specifically deals with “any improvement made by the execution of works amounting to structural alteration, extension or addition”. The Schedule refers to the adjustment of the rateable value of a property where there has been an improvement, the effect of which would be to take the property outside the rateable value limits for enfranchisement or lease extension. The relevant paragraph of Hague (6<sup>th</sup> edition) is 9-37 which states that “improvements do not have to be structural so that non-structural works such as the installation of sinks and

cookers, cupboards... fall within the assumption [that the price is diminished to the extent that the value has been by the tenant's improvements] ." We put Mr Horton's error down to a misunderstanding rather than to any deliberate attempt to mislead us. On balance we prefer Mr Cotsen's approach. In our view, the fitted kitchen is an improvement.

- 5.5 It is well known that the value of any improvements rarely equates to the cost of making them, as both surveyors acknowledged. In the case of a modest flat such as this at the lower end of the property market in terms of value, the cost of many improvements will sometimes do little more than make one flat sell more quickly than an unimproved version of an otherwise identical flat. The cost of double glazing would no doubt be factored into a buyer's offer. Both surveyors suggested a deduction of £2,000 to allow for the double glazing. The effect of the fitted kitchen would in this case be more limited. It would certainly not be the cost either at the time of its installation or at today's cost. However, we agree with Mr Cotsen that the presence of a fitted kitchen, albeit now somewhat dated, would induce a higher bid for the Property than for an equivalent flat without one. Overall we are inclined to the view that Mr Cotsen's figure of a £500 deduction for the fitted kitchen improvement is right. We determine that the total value of the improvement is £2,500.

## 6 DIMINUTION IN VALUE OF FREEHOLD

- 6.1 The diminution in the value of the Respondent's interest is the difference between the value of the reversion prior to the grant of the new lease (assuming there is no right to extend the lease) and the value after the new lease has been granted. The former is generally determined by calculating the value of an extended lease of the property in its unimproved condition. The difference between the surveyors was as follows: Mr Cotsen - £90,000; Mr Horton - £103,000. In their respective reports both parties referred to a number of comparables. Both surveyors agreed that although the comparables referred to flats in different blocks in Ridgeway Road and Cranleigh Rise, they were all similar in design, and the amount of any amenity space, or lack of it, would make no difference in valuations terms.
- 6.2 Where the surveyors differed was in respect of flats in nearby Kennerleigh Road. In a supplemental report, Mr Horton relied heavily upon Kennerleigh Road where the property prices were generally more than those in Ridgeway Road and Cranleigh Rise. Mr Cotsen, who had managed the flats in the area for 25 years, had been inside flats in Kennerleigh Road as well as those in Ridgeway Road and Cranleigh Rise. He considered that the flats in Kennerleigh Road were bigger and better designed and better configured. Further, they had been sold with 999 year leases. He pointed out that beyond Belvedere Court (a block similar in design to Cumberland Court) there were flats in blocks of a different design where sale prices were regularly in the £80,000s and beyond them blocks where the sale prices for flats were in the £60,000s. Simply because the flats were nearby did not mean that they were of the same value. Mr Horton did not consider that the difference in size of the flats in Kennerleigh Road would make any difference to the cost - if there was in fact a difference, which he doubted. He did, however, agree that the fact the leases were for 999 years was a factor which would influence a prospective buyer to pay more than for a flat in Cumberland Court.
- 6.3 On this point, we accept Mr Cotsen's evidence. He has extensive knowledge of the flats in this area having managed some of them for 25 years. It may well be, as Mr Horton suggests, that there is little difference in the size of flats, but the better configuration, as mentioned by Mr Cotsen, may give a prospective purchaser the impression that they are larger even though they might not be. The added attraction of the 999 year lease would also be

significant. As we have evidence of values for flats on Ridgeway Road and Cranleigh Rise similar to the Property, we do not find sale prices of the flats in Kennerleigh Road to be of assistance.

- 6.4 One of the other issues where there was a divergence of opinion between the surveyors was over the report that the Property was the subject of an offer on the basis of a new lease in the sum of £103,000. There was no issue that such an offer had been made “recently” according to Mr Horton’s report dated the 20<sup>th</sup> October 2015 although according to Mr Cotsen the offer was made a while ago. There is, however, no binding contract. We do not know if there has been a valuation let alone an offer of a mortgage. We doubt it as the terms of the lease have only just been agreed by the lawyers acting for both parties. We have, as Mr Cotsen submits, no evidence that the transaction will go ahead. In previous cases in which he had been involved, the Tribunals had declined to accept the evidence of offers which were subject to contract. Mr Horton’s view was that even though contracts had not been exchanged, the deal was evidence of what a willing buyer would be prepared to pay for the Property.
- 6.5 Mr Cotsen referred us to eight comparables in Cranleigh Rise. The earliest of these was in June 2011 with the latest being 7 Albemarle Court, a property also mentioned by Mr Horton. Prices ranged from £82,500 to £99,500. He averaged the prices out to achieve a value of £88,437. He considered that flat prices in the area had not moved significantly over the period which justified the use of the average to achieve the value for the Property. Mr Horton did not agree. He did not accept that there had been little or no movement in flat prices in the area. Indeed, as the Tribunal put to Mr Cotsen, his own comparables showed an increase from 2011 (£82,500 and £85,000) to 2012 (£82,500 to £88,000), 2013 (£90,000) and 2014 (£95,000 and £99,500). In Mr Horton’s view, comparables within the last 12 months prior to the valuation date were preferable and older data should not be used where more recent data are available.
- 6.6 Broadly, we agree with Mr Horton on this issue. If more recent data were not available, it might be necessary to consider prices achieved for similar properties two or three years ago, but with a number of more recent sales of such properties, such an exercise is not required. Where we do not agree with Mr Horton is his use of the Cardiff House Price Index to up-value the original sale prices to the valuation date. Like most metropolitan areas, Cardiff’s housing market varies from district to district and the rate of increase in one such district may not mirror the rates of increase in others. In our view such an approach is unreliable. Even applying an average rate of increase will not fairly reflect what is happening in a particular locality.
- 6.7 The more relevant comparables are:
- (a) 22 Cranleigh Rise - a 99 year lease from 26/05/04 which sold on the 31/10/13 for £90,000;
  - (b) 8 Cranleigh Rise - a 99 year lease from 28/11/05 which sold on the 01/04/14 for £90,000;
  - (c) 39 Belvedere Court - a 99 year lease from 28/11/05 which sold on the 10/04/14 for £95,000;
  - (d) 9 Ridgeway Road - a 99 year lease from 28/11/03 which sold on the 26/09/14 for £83,000;
  - (e) 7 Albemarle Court - a 99 year lease from 28/11/03 which sold on the 3/10/14 for £99,500.

The 99 year leases are with escalating ground rents of £50 for the first 33 years rising to £100 for the next 33 years and £150 for the final 33 years. There was some suggestion at the hearing that 9 Ridgeway Road might be 9 Albemarle Court as the flat numbers were consistent with the street numbers. However, we do not believe this to be the case as Albemarle Court is in fact in Cranleigh Rise and not Ridgeway Road and the adjoining block (Richmond Court) has the same numbers as Albemarle Court but, as shown on the Land Registry title plan submitted with the papers, is in Ridgeway Road. However, as the parties have agreed that the location of a flat in a particular block has little bearing on its valuation, it does not affect our decision.

- 6.8 The two most recent sales (9 Ridgeway Road and 7 Albemarle Court) are not consistent either with each other or with the previous sales. This suggests to us that there may be special circumstances that affect both sales which are not apparent from the information available to the surveyors. A lower than expected price can indicate a mortgagee sale or a probate sale. A higher than expected price may reflect the quality of the fittings, carpets or decoration or an individual preference to living on a top floor or even the proximity of a friend or relative in the same block. A price differential of £16,500 requires us to approach the figures with caution. The price differential of £5,000 between the two sales in April 2014 is less problematic and the prices achieved are more consistent with the sale in October 2013.
- 6.9 We are not convinced by Mr Horton's argument concerning the subject to contract offer for the Property. We prefer Mr Cotsen's evidence and argument on this issue. There is no commitment on the prospective buyer's part. The lease had not been agreed when the offer was made. The reversioner's statutory right to develop the site at the end of the current term might have an effect on the offer when the prospective purchaser is informed of the terms. If a mortgage is required, the valuer on behalf of the lender may well have the same concerns as we have about the price differential. A privately instructed surveyor will also have the same concerns. Even if 9 Ridgeway Road was a forced sale or a probate sale, it is bound to impact on the amount a prudent lender will lend on the security of the Property. This may not affect the present offeror's ability to buy the Property, but it may influence him or her as it could affect the price achieved on a resale. We also cannot ignore the fact that the valuation date is the 26<sup>th</sup> January 2015 and whether the offer was made "recently" (Mr Horton) or "a while ago" (Mr Cotsen), our understanding from both parties is that the offer post-dated the valuation date. Whether that is the case or not, there are too many uncertainties for us to feel able to place any reliance upon the price offered.
- 6.10 We are of the view that, at the valuation date, the value of the Property including the tenant's improvements is £97,500. In our view such a valuation properly reflects the trend in prices for these properties since October 2013, acknowledges the price achieved for 7 Albemarle Court and recognises that whilst the sale of 9 Ridgeway Road may not be a sale by a willing seller to a willing buyer, the price paid will affect mortgage valuations and in turn will influence the prices achievable in the open market. From the figure of £97,500, we must deduct the value of the tenant's improvements (£2,500). The unimproved value of the extended leasehold interest is therefore £95,000.
- 6.11 The parties agreed a deferment rate of 5% in order to achieve the present value of the extended lease. The unimproved extended lease value of £95,000 deferred for 45.91 years at 5% (0.10646314) is £10,114, to which must be added the agreed capitalized ground rent of £218 which results in an extended lease value of £10,332.

6.12 Both parties have valued the reversionary freehold interest by deferring the unimproved extended lease value to the end of the extended term, namely 135.91 years at the agreed deferment rate of 5% (0.00131875) - £125. The diminution in the Respondent's freehold interest is therefore £10,332 - £125 = £10,207.

## 7 THE UNIMPROVED NON-ACT VALUE OF THE PROPERTY

7.1 The next stage in the valuation process is to ascertain the present leasehold value of the flat in its unimproved condition and on a non-Act basis – ie without the statutory right to an extended lease, as required by Schedule 13 of the Act. The best evidence would of course be in the form of comparables, but there is no evidence of sales of flats in this area on a non-Act basis. Nor were we provided with any evidence of the sale of flats on short leases with benefit of the rights to an extended lease, nor evidence of settlements. Both surveyors agreed that the appropriate method of ascertaining the non-Act leasehold value of the Property was by using one or more of the graphs of relativity and applying the appropriate percentage to the extended leasehold value. Mr Horton, who appended a graph of relativities in his supplemental report, accepted that proposition although Mr Cotsen initially proposed a further deduction in the value as shown by the graphs to account for the non-Act nature of the exercise. Whilst Mr Horton was quite prepared to accept the additional deduction, he conceded that it was his understanding that the graphs showed the non-Act value relative to the extended lease value. In the light of this Mr Cotsen withdrew his suggestion for an additional deduction.

7.2 Mr Cotsen submitted that the non-Act value was 70% of the extended lease value (£95,000). He had used relativity graphs to achieve this figure. He told us that for a lease with 45 years remaining, 70% was the average figure taken from the graphs in the RICS Research Paper produced after the Lands Tribunal's decision in *Arrowdell Ltd –v- Coniston Court (North) Hove Ltd [2007] RVR 39*. We informed the parties that we had a copy of the Paper at the hearing.

7.3 Mr Horton relied on the Beckett and Kay mortgage dependant graph (2014 Revision) which he considered to be the most appropriate as most purchases in the Rumney area would be with the assistance of a mortgage. In his opinion, as the mortgage criteria had changed following the collapse in the housing market, flats with less than 50 years remaining on the leases were unmortgageable. They were unsaleable. Many of the graphs were now out of date. That was why the 2014 revisions by Beckett and Kay were the most relevant. The current data forming the basis of the graph were now drawn from many areas. He also relied on the Austin Gray graph and the average of the two was 59%.

7.4 Mr Cotsen responded that there was a good buy to let market locally. People had the money to buy without mortgages. In his view the mortgage dependent graph was not relevant. He also considered that the ascertainment of the non-Act value was to a large extent down to the knowledge and experience of the surveyor.

7.5 For his part, Mr Horton accepted that in South Wales there was a well developed buy to let market, that there were purchasers of properties in the Cardiff area who did not require mortgages, that in some cases those who did mortgaged other property and that purchasers from outside the area bought properties in South Wales as investments. He told us that he was aware of the criticisms of the mortgage dependant graph from Tribunals (including this one) and that he had tried to address those criticisms. He accepted that there was authority for the use of a number of graphs rather than any one particular graph and whilst



he agreed that he had selected the graphs which had resulted in the lowest relativity, he considered that these more fairly reflected the non-Act valuation particularly since the changes in mortgage criteria would not be represented in the earlier graphs. Since the change, once a flat crossed the 60 year threshold, its value dropped significantly. If we were minded to adopt the view that we should consider a broad range of graphs, he urged us to recognise that the Beckett and Kay mortgage dependant graph was one of those we needed to take into account.

- 7.6 Without market evidence, we are to a large extent reliant upon the graphs and upon the expertise of both surveyors and the Tribunal. We must, however, approach these graphs with caution. To a certain extent they are a self-fulfilling prophecy – the more they are relied upon, the more accurate they become. They are drawn from negotiated settlements or LVT decisions or both, and in some cases “opinion”. Settlements rely upon the relative skills of the surveyors and, sometimes, the stubbornness of the parties. LVT decisions are based upon the evidence provided by the parties - which may be in short supply - as well the Tribunal expertise. Some graphs are compiled from data from Prime Central London, some mainly from (say) the South East of England some from house enfranchisements, some from the personal experience of the individual surveyor and almost all are derived from and certainly contain data which are historic.
- 7.7 The Leasehold Advisory Service graph was accepted by the Upper Tribunal (Mr Francis) in *Coolrace and others* [2012] UKUT 69 (LC) as “a broad geographical analysis of a large number of LVT decisions”. The relativity figure shown on the graph for 45 years is 75%. The graph is produced from data from LVT decisions only but it covers England and Wales. It uses data gathered between 1994 and 2007 and so, as Mr Horton argues, does not take account of the market changes since 2007. The Beckett and Kay’s 2014 graph for Greater London and England showed a relativity of 58%. The 2011 graph within the RICS Report indicates a figure of 63%. There has therefore been a drop of 5 percentage points from the 2011 figure to the 2014 figure. The commentary in the RICS report refers to the nature of the data as “opinion”. However, our concerns are those which were put to Mr Horton and which he accepted that in essence the market for flats such as the Property is not restricted to mortgage dependant purchasers. We accept Mr Cotsen’s evidence on this point. We do not consider the Beckett and Kay mortgage dependant graph to be fairly representative of the market in respect of the Property. We also have concerns in respect of the Austin Gray graph. This shows a relativity of 63.88%. The underlying data are taken principally from the Brighton and Hove area. In our view, it is too narrow an area to be of assistance. The Nesbitt & Co graph shows a figure of 72% and the Andrew Pridell Associates’ figure is 68%. Mr Nesbitt’s data are drawn from settlements and LVTs where he has appeared. His experience is, however, wider than in some cases taking in the Midlands as well as the South coast. Andrew Pridell Associates’ graph which shows a significant dip between 50 and 45 years is drawn from “opinion, settlement, transaction, LVT and Lands Tribunal” but is drawn predominantly from the South East and suburban London. The Nesbitt & Co graph and the Andrew Pridell Associates graph both have their limitations but are within the same general area as the LEASE graph. The South East Leasehold graph is based on research carried out in 1997 in Beckenham and Bromley. It produces a figure of 77% for relativity. We consider the data to be too restrictive to be of assistance.

- 7.8 On balance, we find the LEASE graph (75%) which has the broadest geographical spread is the most helpful. It is, in a way, a collective indication of where relativity lies in a wide range of cases. It cannot be regarded as a precedent and in no circumstances can it be followed slavishly. If the surveyors had been able to provide some comparables of short leasehold sales of flats having the benefit of the Act, it would have served as a useful cross check. Unfortunately we have no such evidence to guide us. The Nesbitt & Co (72%) and Andrew Pridell Associates (68%) lend some limited support to this view although they are both slightly lower but also more restricted in the areas from which their data are drawn. (The figures for 45.91 years would actually be slightly more as we have used the figures for 45 years for ease of reference in our discussion.)
- 7.9 We do, however, accept Mr Horton's point that whilst the Beckett and Kay graph has been revised in 2014, there is nothing to suggest that the others have carried out the same exercise. We feel that we ought therefore make some adjustment from the LEASE figure of 75% to reflect the changes in the mortgage market, as suggested by the London Tribunal in Tysman -v- Linsdell and Bottelli (LON/00AC/OLR/2011/0001), the case to which Mr Horton referred. On balance, we agree with Mr Cotsen's figure of 70%. This has the effect of valuing the unimproved short leasehold non-Act value of the Property at £66,500.

## 8 DETERMINATION

We make the following determinations:

- 8.1 The capitalised value of the current ground rent is agreed at £218
- 8.2 The unimproved value of an extended lease of the Property is £95,000.
- 8.3 The agreed deferment rate is 5%.
- 8.4 The present value of £95,000 is therefore £10,114.
- 8.5 The value of the freehold interest after the grant of the extended lease is £125.
- 8.6 The diminution in the Respondent's interest is  $£218 + £10,114 - £125 = £10,207$ .
- 8.7 The unimproved non-Act value of the present leasehold interest is £66,500.
- 8.8 To this figure we must add the value of the Respondent's interest prior to the grant of the extended lease, namely £10,332, making the total of the separate interests £76,832.
- 8.9 This is to be deducted from the value of the extended leasehold interest, namely £95,000 to which must be added the value of the Respondent's interest after the new lease is granted (£125), ie £95,125 producing a marriage value of £18,293. In accordance with paragraph 4(1) of Schedule 13 of the Act, the marriage value has to be divided equally between the freeholder and the leaseholder. One half of the marriage value is, therefore, £9,146.50.
- 8.10 The premium payable is the sum of the diminution of the Respondent's reversionary interest (£10,207) and the one half of the marriage value (£9,146.50), namely £19,353.50, say, £19,355.

9 **SUMMARY**

Diminution in value of Respondent's interest

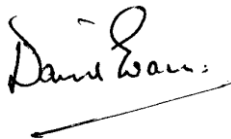
Ground rent - £15.00 pa - agreed at		£218
Unimproved extended lease	£95,000	
PV of £1 deferred 45.91 years @ 5%	<u>0.10646314</u>	<u>£10,114</u>
		£10,332
Less Respondent's retained value of freehold interest		<u>£125</u>
Diminution in value of Respondent's interest		£10,207

Respondent's share of Marriage Value

Unimproved extended lease	£95,000	
Respondent's retained value	<u>£125</u>	£95,125
Unimproved non-Act value	£66,500	
Value of existing reversion	<u>£10,332</u>	<u>£76,832</u>
Marriage value		£18,293
One half		<u>£9,146.50</u>
		£19,353.50

PREMIUM PAYABLE say £19,355

DATED this 14<sup>th</sup> day of January 2016



CADEIRYDD/CHAIRMAN