Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0031/12/17

In the Matter of number 8 Barthropp Street, Newport NP19 0JQ

In the matter of an Application under the Leasehold Reform Act 1967

TRIBUNAL:	**Timothy Walsh (Chairman)** **Hefin Lewis (Surveyor)**
APPLICANTS:	**(1) Mr. Andrew James Bewley** **(2) Mr. Roger John Malam**
RESPONDENT(S):	**Persons Unknown**

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Introduction

1. The Applicants are Mr. Andrew James Bewley and Mr. Roger John Malam who are the joint registered proprietors of the leasehold interest in a property known as, and located at, number 8 Barthropp Street in Newport ("the Property"). That leasehold interest is registered at HM Land Registry under title number WA91464.

2. The material lease was dated 17 February 1978 and was for a term of 99 years from 1 December 1977; the original parties were Ryan Edwin Brice Richards (as landlord) and Florence Mary Skeats (as tenant). Under that lease an annual rent of £25 was reserved and payable. The Applicants became the registered leasehold proprietors on 4 June 2003 having purchased their interest in the Property on 11 April 2003 for £55,000. The freehold is unregistered land.

3. Section 1 of the Leasehold Reform Act 1967 ("the Act") confers on a tenant of a leasehold house a right to acquire on fair terms the freehold of the house and premises where certain

conditions are met. Section 27 of the Act addresses the problem of enfranchisement where the landlord cannot be found. More specifically, section 27(1) provides that:

27(1) Where a tenant of a house having a right under this Part of this Act to acquire the freehold is prevented from giving notice of his desire to have the freehold because the person to be served with the notice cannot be found, or his identity cannot be ascertained, then on an application made by the tenant the court may, subject to and in accordance with the provisions of this section, make such order as the court thinks fit with a view to the house and premises being vested in him, his executors, administrators or assigns for the like estate and on the like terms (so far as the circumstances permit) as if he had at the date of his application to the court given notice of his desire to have the freehold.

4. The Applicants wish to buy the freehold reversion of the Property but have been unable to trace the freehold owner. Accordingly, on 19 September 2017 they issued proceedings in the County Court sitting at Newport. Those proceedings resulted in an order of District Judge Holmes, dated 9 October 2017, who ordered that the Applicants had permission to apply to this Tribunal to determine the value of the Property; the District Judge also directed that the basis of the valuation upon which the Tribunal was to determine the value of the freehold was that under section 9(1) of the 1967 Act.

5. The present application was duly made and, following case management directions made on 21 December 2017, the Applicants filed a supporting valuation report prepared by a Mr. Stephen Parker (now retired but formerly FRICS). He values the freehold reversionary interest in the property at £1,970.00.

The character of the Property and the Valuation Evidence

6. We have had the benefit of a site visit and from our observations the Property can be described as follows.

7. The Property is a mid-terraced house forming part of an established residential area of similar style properties built in around 1900. It is traditionally constructed and of solid brick construction with spa dash rendered elevations. The roof is pitched and clad in a composite slate tile; the windows are double-glazed aluminium.

8. The accommodation is arranged over two floors and briefly comprises an entrance hall, sitting room, dining room, kitchen and bathroom with w/c on the ground floor. On the first

floor there is a landing and two bedrooms. Externally there is an enclosed rear yard and gravelled garden area. We noted that part of the rear garden may have been sold off a number of years ago and now comprises a garage belonging to an adjoining property. The Property has mains gas, electricity, water and drainage. The central heating is provided by way of a gas fired combination boiler.

9. The general condition of the Property appears consistent with its age and type of construction, but some works of repair and maintenance are required. Elements of the property, including windows and external joinery, are ageing and require attention or renewal. Internally, fixtures and fittings are dated and require replacement whilst we noted localised damp penetration and condensation in a number of rooms. The decorative condition is average at best and poor in places.

The Statutory Approach to Valuation

10. Where a tenant of a house has a right under Part I of the 1967 Act to acquire the freehold the price payable for the house is determined under section 9 of the Act. There are three different bases of calculation depending on the qualifying conditions under which the tenant has claimed the right to buy the freehold.

11. In the case of a house and premises outside Greater London with a rateable value which was not above £500 on 31 March 1990 the appropriate basis of valuation is generally that under section 9(1) of the Act although, as Hague: Leasehold Enfranchisement explains at paragraph 9-02, that is not invariably the case. We proceed here on the basis that section 9(1) applies. The court has made a direction to that effect and having regard to the character of the Property we are satisfied that that is almost certainly the appropriate prescribed method of valuation.

12. In its present form section 9(1) provides as follows:

"9(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold on the open market by a willing seller (with the tenant and members of his family not buying to seeking to buy), might be expected to realise on the following assumptions-

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold; and if the tenancy has not yet been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below..."

13. By section 37(1)(d) the "relevant time" means, in relation to a person's claim to acquire the freehold, the time when he gives notice in accordance with the Act of his desire to have it. As we have already noted, in this case the proceedings were issued in the County Court on 19 September 2017 which is accordingly the valuation date that we adopt.

14. Hague summarises the position in respect of ascertaining the purchase price at paragraph 9-09:

"The purchase price payable by the tenant for the landlord's freehold interest under section 9(1) as amended…comprises and (subject as mentioned below) in valuations made for the purposes of the Act, can be broken down into the following elements:

(1) the capitalised value of the rent payable under the tenancy from the date of service of the Notice of Tenant's Claim until the original term date;

(2) the capitalised value of the s. 15 rent payable from the original term date until expiry of the 50-year extension (due regard being had to the provision for review after the first 25 years of the extension);

(3) the value of the landlord's reversion to the house and premises after the expiry of the 50-year extension, on the basis that Sch. 10 to the Local Government and Housing Act 1989 applies to the tenancy;

(4) the value (if any) of the Landlord's right under s. 17 to determine the 50-year extension for redevelopment purposes;

(5) the effect of new easements and restrictive covenants in the conveyance;

(6) the value (if any) of any other rights under the extended lease extinguished on the acquisition of the freehold."

15. As the editors of Hague observe, however, in practice it is rare that the purchase price is affected by the factors at sub-paragraphs (4), (5) or (6) above.

Stage 1: The capitalised value of the rent payable for the unexpired term of the Lease

16. The first stage in the ascertainment of the purchase price is to determine the value of the rent payable for the period of the unexpired term of the existing tenancy, i.e. from the date of the claim until the original term date. Here that is from 19 September 2017 to 30 November 2076. Broadly this is a period of around 59 years.

17. Calculation of this figure is generally done by multiplying the rent by the figure for the "years' purchase" shown in valuation tables and the only difficulty is the selection of the appropriate rate of return to assume for that purpose which is a matter for land market evidence in the vicinity.

18. As noted above, the rent in the Lease is £25 per annum. An investor purchasing the asset will bear in mind that the return of £25 per annum is not substantial and there are necessarily administrative costs associated with the collection of that rent which need to be factored in. There is, moreover, no provision in the Lease for review of the rent. In Mr. Parker's valuation report he adopted a rate of 6.5%. In our view that is not inappropriate and is consistent with local practice.

19. With an annual rent of £25 and a Years' Purchase for 59 years at 6.5% (15.01) the resulting value for this stage of the valuation is £375.25.

Stages 2 and 3: The appropriate approach to valuation

20. As was observed in *Re Clarise Properties Ltd's Appeal* [2012] UKUT 172 (LC) at paragraphs 31 and 32, from the outset of valuations under section 9(1) of the 1967 Act it was the common practice to adopt a two-stage approach to valuation, not quantifying separately the value of the reversion at the end of the assumed 50-year lease renewal. In *Haresign v. St. John's College, Oxford* ((1980) 255 EG 711), however, the Tribunal adopted a three-stage approach (resulting in the so-called "*Haresign* addition") but following two decisions of the Lands Tribunal given on the same day (*Marlodge (Monnow) Ltd's Appeal* (LRA/28/2002) and *Mayfly (Corrib) Ltd's Appeal* (LRA/29/2002)) in which the two-stage approach was endorsed, the *Haresign* approach was only adopted exceptionally. More recently, *Re Clarise Properties*

Ltd's Appeal saw the pendulum swing the other way and the presently prevailing guidance is to be found at paragraph 36 of that decision of the President in the following terms:

"36. We consider that the time has now come to move away from the two-stage approach as the standard practice in section 9(1) valuations and to apply instead the three-stage approach. As a matter of good valuation practice, where a price has to be determined, every element of value should in general be separately assessed unless there is some good reason not to do so. There is now a much greater likelihood that the ultimate reversion will have a significant value than there was when the two-stage approach became adopted as standard practice 40 years or more ago. There are two reasons for this. The first is that house prices, including the prices of houses that would fall to be valued under section 9(1), have increased substantially in real terms; and the second is the lower deferment rates that are now applied in the light of [the decision in the case of] Sportelli. There is, we think, a real danger that applying the two-stage approach as standard will in some cases lead to the exclusion of an element of value that ought to be included in the price. This is particularly so if valuers and LVTs treat as the criterion for the application of a Haresign addition whether the house is "substantial" and thus exclude any element of value in the ultimate reversion (other than that included in the capitalisation of the section 15 rent in perpetuity) where the house does not meet this ill-defined criterion. The only relevant question is whether the reversion does have a significant value. In future, therefore, we consider that the appropriate approach will be to capitalise the section 15 rent to the end of the 50-year extension and to assess the value (if any) of the ultimate reversion." [emphasis added]

21. The presumption is accordingly that a three-stage approach should be adopted "*unless there is some good reason not to do so*". The ill-defined criterion of whether the house is "substantial" should rarely dictate the correct approach; the only relevant question is whether the reversion does have a significant value.

22. There is nothing on the facts of this case, in our view, that justifies the conclusion that there is a "good reason" not to adopt the three-stage approach.

The "entirety value" and the plot value

23. In Mr. Parker's valuation report he concluded that the "standing house" value for this property was £80,000 and the plot value was £24,000 (taken as 30% of the standing house value). To reach these figures Mr. Parker drew on evidence of the sale values of comparable properties in Newport. Namely:

    23.1 Number 6 Barthropp Street which sold in July 2017 for £68,000.

    23.2 Number 28 Hamilton Street which sold in May 2017 for £85,000.

    23.3 Number 6 Magor Street. That was sold in June 2017 for £70,000.

24. Following our visit to, and inspection of, the subject property we drove around the locality in order to form a view as to the value of this evidence of comparable recent sales. Having done so, we infer that number 6 Barthropp Street was probably in very poor order as it now appears to be back on the market following renovation. Number 28 Hamilton Street is a larger property and better in terms of its style and condition. Number 6 Magor Street had been marketed at £75,000 and as in need "some internal updating".

25. Other local properties sold in this part of Newport provide the following additional indication of the local market for this type of property:

    25.1 Number 23 Ifton Street is also a two bed mid-terrace property built in around 1900 which sold in August 2017 for £87,500. That appears to be a well-presented house with modern fittings.

    25.2 Number 20 Henson Street is a two bed mid-terrace home built in around 1905. It sold in August 2017 for £82,000. Again, it appears to be a well-presented house with modern fittings.

    25.3 Number 3 Ifton Street is a further 2 bedroom terraced property which recently sold for £75,000. It looks to be dated and in need of refurbishment.

    25.4 Number 48 Barthopp Street is a two-bed property in the same street as the material property although it is a semi-detached house with off-street parking and seemingly in better condition. It sold in July 2017 for £99,950.

26. If one uses the so-called "standing house" approach to valuation, this involves first ascertaining the freehold value with vacant possession of the whole property including the buildings giving "the entirety value". The site value is then taken as a proportion of the entirety value.

27. Having regard to the totality of the valuation evidence available to us, the development of the area in general and the character and condition of the Property, we have concluded that the "entirety value" of the Property is £85,000.

28. In his report Mr. Parker ascertained the plot value as 30% of the entirety value. As Hague observes at paragraph 8-10, outside central London it has been observed that a percentage

or proportion of between one-quarter to one-third has generally been adopted but any given case depends upon the evidence and individual circumstances. The adoption of a third would be in line with other decisions of this Tribunal but we adopt Mr. Parker's slightly lower percentage of 30% as appropriate here. This is particularly appropriate, in our view, having regard to the character of the Property and plot size and the fact that part of the rear garden looks to have been sold off at some point in the past (with the loss of garden and a lack of off street parking or garage facilities for the Property itself).

29. The site value must be "decapitalised" or "rentalised" to arrive at the section 15 rent. The percentage rate of decapitalisation reflects the rate of return which a landlord would expect to achieve on a letting of the site on the terms laid down by the 1967 Act, i.e. for the 50-year extended term, with a rent review after 25 years, but with a full reversion of the site and its buildings at the end of the term.

30. It is settled that in the absence of evidence to contrary effect, the percentage adopted for decapitalising the site value to ascertain the section 15 rent should be the same rate adopted for capitalisation of the section 15 rent and we accordingly consider that generic rate below.

Capitalised value of the Section 15 rent – capitalisation, deferment and decapitalisation

31. The section 15 rent is payable as from the original term date (30 November 2076) up to the extended term date (30 November 2126), subject to review after the first 25 years of the extended term. As we are adopting the three-stage approach advocated above the capitalisation is limited to the 50-year additional term. Capitalisation is made by multiplying the section 15 rent by the appropriate figure for the "Years' Purchase of a Reversion to a Term" shown in valuation tables after the unexpired residue of the original term (see Hague at paragraphs 9-13 to 9-14).

32. The right to receipt of the section 15 rent does not arise until the original term date and so it follows that the capitalised value of the section 15 rent needs to be deferred until that date in order to ascertain the present value of a future receipt. Whilst the deferment rate will not necessarily be the same as the capitalisation and decapitalisation rates in reality it is almost universally the case that the rates applied are the same. In the decision in *Re Mansal*

Securities Ltd (considered below), for example, in every one of the 22 cases under consideration, the LVT used the same percentage when decapitalising the site value to arrive at the modern ground rent as it did when capitalising and deferring the rent and it was specifically noted, at paragraph 13, that there was no suggestion that it was wrong to do so. That stated, this is best viewed as a matter of general practice only.

33. Unsurprisingly there is considerable authority on the rates to be applied for capitalisation/decapitalisation and deferment. In particular *Earl Cadogan and Cadogan Estates Limited v. Sportelli and others* [2007] 1 EGLR 154 (LT) (the neutral citation for the appeal to the Court of Appeal is [2007] EWCA Civ 1042), *Zuckerman v. Trustees of Calthorpe Estate* [2009] UKUT 235 (LC), [2010] 1 EGLR 187, *Mansal Securities Limited's Appeal* [2009] 2 EGLR 87 and, more recently, *Sinclair Gardens Investments (Kensington) Ltd's Appeal* [2014] UKUT 0079 (LC) as considered on appeal by the Court of Appeal under neutral citation [2015] EWCA Civ 1247.

The Authorities

34. The starting point is *Sportelli*. That case was concerned with the proper deferment rate to be applied, which is addressed at paragraph 60 onwards of Carnwath LJ's judgment in the Court of Appeal. It was, however, concerned with section 9(1A) not section 9(1) valuations. The issue, to give it context, had become contentious because landlords were questioning the blanket adoption of an historic 6 percent deferment rate when yields on other investments had been falling.

35. In that case the tribunal had arrived at a deferment rate by applying a formula (summarised at paragraph 66 of the judgment) from which a deferment rate for houses of 4.75% (5% for flats) emerged. That formula was: Deferment Rate = Risk Free Rate – Real Growth Rate + Risk Premium. It determined that the risk-free rate (defined as the return demanded by investors for holding an asset with no risk) was 2.25% less a real growth rate (i.e. in house prices) of 2% resulting in 0.25%. To that a risk premium for houses of 4.5% was added (total 4.75%). The risk premium is the additional return required by investors to compensate for the risk of not receiving a guaranteed return. The assessment of the risk premium involved a consideration of the individual components of the risks of investment in long reversions. Namely, volatility, illiquidity, deterioration and obsolescence.

36. Notwithstanding the foregoing, the Court of Appeal endorsed the general application of the 4.75% deferment rate whilst leaving open the possibility that evidence may justify a variation of the rate outside prime central London ("PCL").

37. In *Re Mansal Securities Ltd.* [2009] 2 EGLR 87 the Lands Tribunal considered the application of *Sportelli* to section 9(1) valuations in the West Midlands. In that case, the deferment rate of 4.75% was increased to 5%. Paragraph 27 of the judgment explains why:

"[27] Since the reversion in the case of section 9(1) is to a ground rent only, a potential purchaser is likely to require a higher risk premium to compensate for the increased volatility and illiquidity than if the reversion included a house on the site. The increased risk would, however, be offset to some extent by the reduced risk of deterioration and obsolescence. I find the overall result would be to increase the risk premium to 4.75% and thus to increase the deferment rate to 5%."

38. It follows that *Mansal* had appeared to have effectively indicated a new benchmark of 5% for the deferment rate applicable to houses in section 9(1) valuations but that was not adopted universally subsequently.

39. In *Zuckerman* the tribunal again applied *Sportelli* as the starting point (in that case 5% as flats were in issue) in the West Midlands but that was revised up to 6%. The risk premium element of the equation was increased from 4.5% to 5.25%. The increase in the risk premium in that case was for two reasons. First, given the "striking difference" between the value of flats in prime central London (in *Sportelli*) and Birmingham (in *Zuckerman*) there was a greater risk of deterioration in Birmingham compared with London such that a purchaser in Birmingham would have required an increase in the risk premium of 0.25% (see paragraph [46]). Secondly, the available statistical evidence in *Zuckerman* demonstrated that the difference between past rates of long-term increases in London and the West Midlands had been "considerable". An investor could *"reasonably anticipate significantly slower long-term growth from residential properties in the West Midlands generally than in PCL...".* This justified increasing the risk premium by a further 0.5%. These adjustments were considered and approved by the Court of Appeal at paragraph 15 of the later decision in *Sinclair Gardens Investments (Kensington) Limited* [2015] EWCA Civ 1247.

40. In *Clarise Properties* the Upper Tribunal was again concerned with property in Birmingham. At paragraphs 37 and 38, having determined that a three-stage approach to valuation should be approved, it then endorsed the approach in *Zuckerman*.

"[37] The starting point for determining the deferment rate to be applied in this case is the generic rate of 4¾% for houses in Prime Central London (PCL) determined in Sportelli (see Cadogan v Sportelli [2008] 1WLR 2142 per Carnwath LJ at para 102). We accept Mr Evans's evidence that the prospects of capital growth were lower in the West Midlands than in PCL and that it is appropriate to increase the Sportelli rate by 0.5% to reflect this difference in line with the decision in Zuckerman. In that case, however, the Tribunal made a further addition of 0.25% because it was "likely to remain economically viable to repair high value properties in PCL for considerably longer than it will for similar sized flats in Kelton Court." The open market value of each of the Kelton Court flats was agreed to be £158,025, which is similar to the agreed value of the appeal property. The respective floor areas of the relevant properties are not available, but in both cases the accommodation includes two bedrooms. Mr Evans did not suggest that there was any reason why the risk of deterioration of the appeal property was less than at Kelton Court and, to be consistent with the decision in Zuckerman, we find that the Sportelli rate should be increased by a total of ¾% to 5.5%"

41. It followed that:

(I) The *Sportelli* starting rate was 4.75 percent.

(II) A further 0.5 percent increase was applied as an investor could reasonably anticipate significantly slower long-term growth from residential properties in the West Midlands generally than in prime central London.

(III) A further 0.25 percent was applied for deterioration.

(IV) The same rates were applied at each stage including as capitalisation and decapitalisation rates.

42. Of paragraph 37 of the *Clarise Properties* case, the Court of Appeal in *Sinclair Gardens Investments (Kensington) Limited* observed (at paragraph 17) that consistency was an important consideration and the court had had little doubt about the propriety of adopting a higher risk premium for the West Midlands. In *82 Portland Place (Freehold) Ltd v Howard de Walden Estates Ltd* [2014] UKUT 1033 (LC) the Deputy President (Martin Rodger QC) put it thus: "*Clear evidence of regional or locational considerations not fully reflected in the freehold vacant possession value may justify a departure from the Sportelli rate".*

43. In the Upper Tribunal in the *Sinclair Gardens Investments* case first-tier tribunals were directed to "*well bear in mind any limitations in the scope or quality of the evidence they*

receive" but it added that such tribunals should not feel inhibited by the need to find compelling evidence to justify a departure from the *Sportelli* rates (see paragraph 75). On the facts, the LVT was held to have been entitled to rely on the *Zuckerman* decision as a sufficient basis for an additional 0.5% to reflect poorer long-term growth in the West Midlands. An appeal on the law challenging the status to be accorded to Upper Tribunal decisions on this issue failed in the Court of Appeal.

44. The South Wales area has not been the subject of the same scrutiny in the appeal courts. Moreover, comparison of the foregoing authorities does not reveal an absolutely coherent approach to departure from the *Sportelli* rates whilst differences in outcome will turn on the evidence.

Application to the present case

45. Here we start with the 4.75 percent deferment rate in *Sportelli*. Mr. Parker adopted a deferment rate of 5%. We can and do take note of the fact that other local tribunals have also adopted a rate of 5 percent for this area but each case must be decided on the available evidence.

46. As the decision in *Sinclair Gardens* makes plain, we cannot simply assume that 0.25 percent should be added to the deferment rate to reflect obsolescence and deterioration outside PCL. On one view, the reasoning in *Zuckerman* at paragraph 46 might be thought to have universal application to lower value properties. Namely, that it is likely to remain economically viable to repair high value properties in PCL for considerably longer than elsewhere. As paragraph 88 of the Upper Tribunal decision in *Sinclair Gardens* makes plain, however, that *"whether such an allowance is justified must be considered in each case by reference to the characteristics of the property in question"*. In this case we heard no evidence on the relative economic viability of the subject property in Newport compared with those in *Sportelli*.

47. To some extent the same issue arises in relation to other bases for varying the starting rate, including evidence of anticipated long-term growth. On balance, however, we do accept that a slightly higher rate than that in *Sportelli* is justified. In particular, we have regard to the widely accepted reality that the prospects for growth in Newport are probably less than

in London. To make no increase on the *Sportelli* rates would have an air of unreality about it since growth rates are clearly probably markedly lower in the Newport area than in London. The Newport area almost certainly has more in common with the market under consideration in *Zuckerman* than it does with PCL.

48. We also adopt a figure of 5 percent for both capitalisation and decapitalisation rates which is in line with other decisions of this tribunal in this locality. It is also consistent with our determination on the deferment rate and the practice of adopting the same rate. We bear in mind that it is necessary that the capitalisation and decapitalisation rates should generally be the same to avoid any adverse differential.

49. We also bear in mind that no detailed or adequate evidence was placed before this tribunal in the form of settlement evidence that might have justified a departure from the 5 percent adopted by other local LVTs for the reasons given by them. In particular, the cases of *19 Plasmarl Terrace, Plasmarl, Swansea* (25 July 2012), *18 Kimberley Road, Penylan, Cardiff* (14 February 2013), *6 Mellte Avenue, Glynneath* (7 October 2013), *12 Crofton Drive, Baglan, Port Talbot* (2 April 2014), *95 Taillwyd Road, Neath* (20 October 2017) and *276 Ringland Circle, Newport* (6 November 2017).

50. On this basis our valuation for the second stage of this process is as follows:

(i)	The entirety value:	£85,000.00
(ii)	Plot value at 30%:	£25,500.00
(iii)	Section 15 ground rent at 5%	£1,275.00
(iv)	Years purchase 50 years at 5%:	18.2559
(v)	Present value of £1 in 59 years at 5%:	0.056212
	Valuation:	**£1,308.41**

Valuation effect of the tenant's right to remain in possession after the 50-year lease extension

51. The issue here is succinctly summarised in *Re Clarise Properties Ltd's Appeal* at paragraph 39 *et seq*:

"39. When valuing the reversion to a standing house on the expiry of the 50-year lease extension it is necessary to assume that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy. Accordingly the tenancy automatically continues until notice is served under para 4 of Schedule 10, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. Mr Evans made a deduction of £2,500 (or 1.75 per cent) from his standing house valuation of £142,500 to reflect this provision. He accepted that the freehold interest in a house is significantly less attractive to a purchaser if it is subject to an assured tenancy than if it is vacant. He justified his very modest deduction, however, by emphasising that what is to be assumed is not that the tenant will continue in possession at the end of the 50-year extension, but that the tenant will have the right to remain in possession. It was impossible to know what the view of the tenant would be in 78.5 years' time.

40. It is true that the purchaser of the freehold reversion would have no means of knowing whether vacant possession would be gained at the end of the 50-year lease extension. In our view, however, the fact that there can be no certainty of obtaining vacant possession would have a significant depressing effect on value and a substantially greater effect than that suggested by Mr Evans. In the absence of any comparable evidence to indicate the scale of the appropriate deduction we conclude that a purchaser would assume that the value of the eventual reversion would be £114,000, equivalent to 80% of the full standing house value of £142,500."

52. We have seen no evidence to assist on the scale of the deduction but we do note that the unexpired term in *Re Clarise Properties Ltd's Appeal* was 28 ½ years whereas here it is 59 years. Artificial though the exercise may be, we consider that the market today would be less concerned about Schedule 10 rights given the length of time before the reversion would fall in than it was in *Re Clarise*.

53. Although not binding on this Tribunal we also note the following decisions of the Welsh Tribunal:

    53.1 *Number 19 Plasmarl Terrace* (25 July 2012): 17-year term unexpired – 10% deduction;

    53.2 *Number 41 Furzeland* (2 September 2014): 55-year term unexpired – 10% deduction;

    53.3 *Number 18 Kimberley Road* (14 February 2013): 57-year term unexpired – 5% deduction.

    53.4 *Number 34 Ryder Street* (20 November 2015): 26-year term unexpired – 5% deduction.

    53.5 *Number 95 Taillwyd Road, Neath* (20 October 2017): 48-year term unexpired – 10% deduction.

53.6 *Number 276 Ringland Circle* (6 November 2017): 43-year term unexpired – 5% deduction.

54. The foregoing paragraph demonstrates that the deductions have not always been consistent. The rationale is often that the market will be less concerned with Schedule 10 rights if there is a greater term unexpired. Whilst the benchmark is *Re Clarise,* the length of the unexpired term is greater in this case than in any of the foregoing cases and so, on balance, we consider a 5% deduction appropriate given that the reversion will not fall in for 109 years in total.

55. For these purposes, we have adopted a standing house value of £80,000 (as distinct from the entirety value of £85,000). This is on the basis that the property is not modernised and is in a generally poor overall condition.

56. The third stage calculation is accordingly as follows:

(i)	Standing house value:	£80,000.00
(ii)	Less Schedule 10 deduction of 5%:	£4,000.00
(iii)	Adjusted value:	£76,000.00
(iv)	Present value of £1 in 109 years at 5%:	0.0049
	Total:	**£372.40**

Total purchase price and outstanding matters

57. In the circumstances, the total value of the three stages fixes the purchase price at **£2,056.06**. We round that up to **£2,060.00**.

58. The "appropriate sum" which is to be paid into court under section 27 is, by virtue of section 27(5) of the 1967 Act, the aggregate of (a) such amount as may be determined by an LVT to be the price payable in accordance with section 9, and (b) the amount or estimated amount of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid. The Applicants have not paid the rent for in excess of 6 years and as the limitation period under the Limitation Act 1980 is six years that provides the multiplier

for the unpaid rent. On this basis, an additional **£150** must be added to ascertain the "appropriate sum".

59. A summary of the calculations in this decision is included as an appendix.

ORDER

(1) The Leasehold Valuation Tribunal determines that the price payable for the material house and premises under section 9 of the Leasehold Reform Act 1967, being number 8 Barthropp Street in Newport, is £2,060.00.

(2) The Leasehold Valuation Tribunal determines that the appropriate sum payable under section 27(5) of the Leasehold Reform Act 1967 is accordingly £2,210 (being the aggregate of the foregoing valuation of £2,060.00 and the sum of £150 payable under section 27(5)(b)).

DATED this 26th day of April 2018

CHAIRMAN

APPENDIX – SUMMARY

Stage 1

Ground rent:	£25	
YP 59 years at 6.5%	15.01	
		£375.25

Stage 2

The entirety value:	£85,000	
Plot value at 30%:	£25,500	
Section 15 rent at 5%	£1,275	
Years purchase 50 years at 5%:	18.2559	
Present value of £1 in 55 years at 5%:	0.056212	
		£1,308.41

Stage 3

Standing house value:	£80,000	
Less Schedule 10 deduction of 10%:	£4,000	
Adjusted value:	£76,000	
Present value of £1 in 105 years at 5%:	0.0049	
		£372.40

Total

Total:	**£2,056.06**
Valuation (rounded):	**£2,060.00**

Section 27(5)(b) addition

6 years at £25	**£150.00**
Total payable to be paid into court under section 27(5) of the Leasehold Reform Act 1967:	**£2,210**