

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0018/06/14

TRIBUNAL D J Evans LLB LLM
M Taylor MRICS

In the matter of an Application under s48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 dated 18th June 2014

PROPERTY Flat 1 Sheen Court, The Walk, Ystrad Mynach, CF82 7AY.

APPLICANT Ms Katie Louise Miller

RESPONDENT Sheen Court Management Co Ltd

DECISION

INTRODUCTION

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 3rd October and Friday the 24th October 2014. We had before us an application by Ms Katie Louise Miller (the Applicant) to determine the premium payable to Sheen Court Management Co Ltd (the Respondent) for the acquisition of a new lease of 1, Sheen Court, The Walk, Ystrad Mynach (the Property) in accordance with the terms of Schedule 13 of the Act.

2 The Property is held on a lease dated the 22nd July 2005 and made between Esme Regina Sheen (1) and the Applicant (2) for a term of 99 years from the 1st January 1977 at an initial yearly ground rent of £25, increasing every 10 years throughout the term. The Applicant's leasehold interest is registered at the Land Registry with Absolute Title under title number CYM 296451.

3 The Applicant served Notice of Claim on the 2nd June 2014 in which she proposed a premium of £4,220. The Respondent served a counter notice on the 4th June 2014 admitting the Applicant's right to acquire a new lease, rejecting the Applicant's proposed premium but putting forward a counter proposal of £8,500.

4 At the time of the Notice of Claim, there were approximately 61½ years left unexpired on the lease. The new lease, therefore, would be for just over 151½ years.

INSPECTION

5 Prior to consideration of the premium payable, we inspected the Property. The Applicant and her father were present. The Respondent was represented at the inspection by Mr Marc Williams FRICS of Ingram Evans Care.

6 The Property is one a group of 8 purpose built flats arranged in two blocks of four on a steeply sloping site in a residential area located to the north of Ystrad Mynach. Each of the blocks appears to be constructed of cavity brickwork with exposed brickwork to the upper floor and rendered elsewhere. There is a tiled roof. As the Property is situated well below the road level, access is by means of a steep flight of concrete steps. At the rear of the Property there is a small garden over which the owner of the flat above has a right of way to reach the garden allocated to flat 2. There is off street parking at street level with one space allocated to the Property as part of the demise. Access to the upper flat, which is virtually at street level, is by means of a concrete bridge which crosses over the pathway to the front of the Property.

7 The Property is a two bedroom flat at one end of the development. The entrance is at the side of the building. There are two bedrooms, a living room, a kitchen and a bathroom. The kitchen has been modernized recently by the Applicant's father with new units, tiling and a new (if not quite completed) floor. There is gas fired central heating and Upvc double glazed windows. The bathroom is fully tiled with a bath, toilet and wash hand basin and an electric shower over the bath.

8 One of the significant features of the interior of the Property was the presence of damp. Some of this in bedroom 1 and in the living room was from guttering which required attention. The damp in bedroom 2 and in the bathroom was, we were informed, as a result of rainwater collecting on the bridge to the upper flat and which overflowed as it was unable to drain away. We also noted that the area of the steps leading from the flat to the rear garden required attention, the handrail alongside the steps was in poor condition and the retaining wall around the car parking area showed significant cracking. The building was generally in poor decorative order. Our inspection indicated that this was a building suffering from a lack of management attention, a matter on which both Mr Williams and Mr John Arbourne of Cadenhead & Co, who represented the Applicant, both agreed.

9 Following our inspection of the Property, we were able to look from the pavement and from the garden of the Property at numbers 4, 7 and 8 Sheen Court to which both surveyors refer as comparables. We also looked at Flat B, 1 Greenhill Close, Penybryn, Hengoed and flats 2 and 3, 4-6 Penallta Road, Ystrad Mynach. During the course of the hearing reference was made to the decision of this Tribunal relating to 49 St Fagan's Rise, Fairwater, Cardiff (Morgan -v- Northridge Estates). We informed the parties that we would inspect the estate in which that property is situated in order to understand the context of that decision. We did so after the second day's hearing.

HEARING

10 Mr Williams and Mr Arbourne both attended the hearing together with Ms Miller and her father. In accordance with the directions given on the 27th June 2014, they had each submitted their reports. Mr Arbourne had also provided his observations on Mr Williams' report.

11 The issues between the parties were as follows:

Issue	Mr Arbourne		Mr Williams	
Capitalised ground rent	£710	£710	£710	£710
Extended lease value	£60,000		£72,000	
Less improvements	<u>£6,000</u>		<u>£5,000</u>	
Unimproved	£54,000		£67,000	
Present value @	5½%		5%	
PV £1 in 61½/62 years	<u>0.03716</u>		<u>0.048</u>	
	£2,006	<u>£2,006</u>	£3,216	<u>£3,216</u>
Value of reversion	£2,716		£3,926	
Extended lease value	£54,000		£67,000	
Relativity	<u>85.6%</u>		<u>80%</u>	
Non-act lease value	£46,224		£53,600	
Value of reversion	<u>£2,716</u>		<u>£3,926</u>	
Combined value	<u>£48,940</u>		<u>£57,526</u>	
Marriage value	£5,060		£9,474	
One half	<u>£2,530</u>	<u>£2,530</u>	<u>£4,737</u>	<u>£4,737</u>
Premium	£5,246		£8,663	

Mr Williams rounded his figure to £8,500. We shall deal with these issues in turn.

CAPITALISATION OF THE GROUND RENT

12 The parties have agreed the figure of £710.

DIMINUTION IN VALUE OF FREEHOLD; EXTENDED LEASE VALUE

13. 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. It is generally determined by calculating the value of an extended lease of the property in its unimproved condition.

14. The Property had originally been purchased by the Applicant on the 22 July 2005 for £58,000. Although the lease was new and stated to be for a term of 99 years, the commencement date was the 1st January 1977, so that in 2005 there were only 70½ years of the term to run. The Applicant had put the Property on the market at the beginning of 2013 with an asking price of £67,950, but it failed to attract any interest. She had been advised by the agent to extend the lease. The length of the term had been left open in the particulars, a point mentioned by Mr Williams, but the Applicant had understood she would in all probability have to pay for an extended lease as a condition of any sale.

15. Number 8 Sheen Court had sold on the 25th November 2005 for £70,000 and number 4 Sheen Court had been sold on the 8th December 2005 for £74,500. The lease terms of these properties were regarded as being the same as those of the Property. An issue arose concerning number 7 Sheen Court. This was stated as having been sold on the 3rd February 2012 for £44,000. The Land Registry records show that the lease is for 999 years. At the first day's hearing, Mr

Williams told us that this was a mistake and that the lease was only for 99 years. We had hoped in the intervening period that the Respondent would have produced the counterpart lease to establish the length of the term. After all, from the Applicant's point of view, this was a flat similar to the Property, albeit on the first floor, in the same development but with a "freehold" value. Even allowing for some reduction in value because of its condition, the price of £44,000 paid in February 2012 would be a good indicator as to the extended lease value of the Property. If the lease had only 62 years remaining when the 2012 sale was agreed, that could impact upon Mr Arbourne's valuation and he felt that further analysis would be required.

16. At the second hearing, Mr Williams produced for us a copy of a valuation of number 7 prepared by a company called "the mortgage works" which is a subsidiary of the Nationwide Building Society. It is described as a "report and valuation for mortgage". The mortgage applicant was Mr Michael Gwyther, one of the purchasers, and the report, after listing a number of repair issues, certified that in its view the Property was "not suitable for mortgage purposes." However, the report states that in the author's view after completion of essential work to the flat, it would be worth £62,000. The valuation "assumes an unexpired lease of 99 years" as at the date of the report (12th August 2011). Both surveyors speculated about the use to which the report was put and its role in securing a purchase price of £44,000 especially when taking into account the fact that the freehold of the two blocks and some other unspecified land was sold at the same time to the Respondent (which, we were told, is a company owned by Mr Gwyther and his wife) for £500, a figure which both surveyors considered to be well below market value. Mr Williams therefore argued that the price of £44,000 could not be regarded as an "arm's length" transaction for the purpose of using it as a comparable. Nonetheless, in valuation terms for the purpose of ascertaining the extended value of the Property, the difference between the extended lease and "an unexpired lease of 99 years" was marginal.

17. Mr Arbourne drew our attention to the condition of the two buildings and to what he considered to be the Property's shortcomings. The responsibility for the maintenance of the structure and external parts was the Respondent's and it had not carried out its responsibility. He referred us to the steep approach, the lack of adequate lighting, the poor condition of the hand rail, delamination of the brick sills at the rear elevation, the cracking in the retaining wall, settlement to the tarmac hard stand and the poor external decoration. It would be necessary to use scaffolding to deal with the back wall which would make repairs more expensive. The Applicant has an on-going problem with the lack of repair. There is no reserve fund for future repairs. There are shortcomings in the management of the buildings. These issues would become apparent to a potential purchaser or his/her Solicitors and would affect the price which the purchaser would be willing to pay. The Applicant did not know whether the building was insured. She has had to take out her own insurance because of the lack of information from the Respondent. The shareholders of the Respondent are Mr Gwyther and his wife. They now own 6 out of the 8 flats in the development so they (through their company) will be responsible for 75% of the expenditure on the external and structural parts of the development. All the flats are let on shorthold tenancies. With his experience in Barry, Mr Arbourne suggested that it only needed a couple of bad tenants and standards deteriorated quickly. When he inspected the Property, there had been lots of plastic bags there. Owner occupiers might be wary about moving to a location where there was a high proportion of tenanted flats. Tenants do not have the same interest in their properties. Whilst being anxious not to make any social comment, Mr Arbourne had experienced problems with people on housing benefits. There may be a worry among potential buyers because 75% of the flats are (in effect) owned by the Respondent. There has been a lack of maintenance work to the buildings since the Respondent had acquired the freehold. Even though the Property is a nice, spacious flat these elements - the shortcomings and the management problems - would be bound to impact on the value.

18. Mr Williams told us that it was not uncommon for leases to have no reserve fund. The lessor was entitled to have only what the law said. There was no record of there being problems with assured tenants. He was not aware of any. Not all social tenants were bad. It was just that they were not as well off as others. The costs of external and structural repairs were paid for by the lessees. If the rainwater goods were to be cleaned, the cost would be borne by the lessees. The Walk is in one of the better parts of Ystrad Mynach. It is described in agents' particulars as attractive and desirable. Agents have to be careful with their descriptions. The Property was described in its own particulars as "desirable" and "well presented".

19. Flat B, 1 Greenhill Close, Penybryn, Hengoed is a modern purpose built 2 bedroom flat. It was offered for sale in 2013 on the basis of "offers over £70,000". The agent's particulars are contained in Mr Arbourne's report. We were advised that this property sold for £71,000 in December 2013. Although not as centrally located as the Property, it appeared to us to be in a quiet close on a level site, near to the main road with regular bus services serving the local shopping areas. The exterior was well maintained.

20. Flats 2 and 3, 4-6 Penallta Road, Ystrad Mynach are two centrally located flats above the Spa supermarket in Ystrad Mynach. They are both first floor one bedroom flats. According to Mr Arbourne they were both sold in November 2011 for £62,000 and £64,000 respectively. We were given basic letting particulars for each flat, but could not gauge much from the external inspection. We were also referred to some recently constructed Redrow properties in Buzzard Way, Penallta. After our inspection of the Property, Mr Williams indicated that it would not be necessary for us to inspect these. In his report, Mr Williams also mentioned one and two bedroom flats in Cross Keys, Rhydfelin, Glyntaff and Abercarn. The Chairman indicated that he had inspected the development in Abercarn in connection with a totally unrelated matter. We did not inspect these additional properties as they were some distance away - indeed in different valleys.

21. We accept Mr Williams' comment that the price of £44,000 for the sale of flat number 7 Sheen Court does not fairly reflect the market value of that property. Whatever the circumstances, notwithstanding its condition and irrespective of the unexpired length of the term, the price is such that one cannot justify it simply in terms of the market. The seller may well have had other considerations in mind when she agreed the price. The fact that she also sold the freehold reversion of the 8 flats (together with other land) for £500 would support that view. Bearing in mind the remaining terms of the other 7 leases involved, that figure is well below what might reasonably be anticipated in the market.

22. We agree with Mr Arbourne about the shortcomings of the flat. The steep access and the inadequate lighting will in our view reduce the attraction of the property, notwithstanding its convenient location. The management failures will also be apparent and will contribute to the lack of "kerb appeal". However, we believe that Mr Arbourne's figure of £60,000 for the extended lease value of the Property attaches too much weight to the sale of flat 7. In our view, the evidence of the 2011 valuation by the mortgage works provides assistance. After completion of essential works, the valuer considered that, with an unexpired term of 99 years, the value of the Property would be £62,000. According to Mr Williams, whose evidence on this point we accept, the value of flat 7 with an extended lease would be little different. This is also supported by the evidence of the Applicant's failure to secure any interest in the Property with an asking price of £67,950 even accepting that a purchaser would probably insist on the Applicant acquiring and paying for the extended term. We did not find the flats in Penallta Road to be of much assistance. They are a different kind of property. The flat in Greenhill Close, although in a less convenient location, has the advantages of having a better appearance and being newer and in better condition with a longer term unexpired.

The price of £71,000 reflects these issues. Taking everything into account, in particular the mortgage valuation of flat 7, we determine the extended lease value of the Property in its improved condition to be £62,000. We do not consider that there is any necessity to adjust for any movement in prices since 2011.

23. In order to achieve the unimproved value of the Property, it is necessary to discount the value of the Property by the value of any lessee's improvements. Mr Arbourne suggested that we should discount the improved value by 10%, £6,000. He told us that the kitchen had been refitted. The work had been carried out by the Applicant's father. Double glazing had been installed, the bathroom had been refitted and fully tiled, internal doors replaced, walls and ceilings re-skimmed and new flooring installed. He considered that this was a little more than average and in his judgment, this justified applying a deduction of £6,000.

24. Mr Williams deducted £5,000 for improvements. This was a figure which had been used by this Tribunal in other cases. He did not consider that re-plastering constituted an improvement.

25. We cannot equate cost with value. There is bound to be some correlation, but not necessarily equivalence. Some improvements, such as replacing the internal doors, may add to the attraction of a property, but it might not add that much in terms of value. We do not consider the re-plastering to be an improvement. Certainly, the fitted kitchen will add value, but the incomplete flooring might deter some potential purchasers. We are not satisfied that the improvements overall are significantly more than are carried out in a great many properties and we agree with Mr Williams that the added value of these improvements is no greater than in other properties which this Tribunal has had to consider in recent years. We are of the view that the value of the improvements to the Property is £5,000. The unimproved value of the Property is therefore £57,000.

DEFERMENT RATE

26. Mr Arbourne has applied the rate of 5½% in order to achieve the present value of the reversion relying upon the Upper Tribunal decision in *Zuckerman and others -v- Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC) (*Zuckerman*) and the decision of this Tribunal in *Morgan -v- Northridge Estates Ltd* (2012)(49 St Fagan's Rise). His argument is that the Lands Tribunal's decision (confirmed on appeal) in *Earl of Cadogan and Cadogan Estates -v- Sportelli* (LRA/50/2005)(*Sportelli*) envisaged cases where the generic rate could be increased in exceptional circumstances on the basis of the evidence. He acknowledged that the Tribunal would need to be careful when doing so and to ensure that it did not double count - ie lower the value of the Property and raise the risk premium because of the same factors. However, the value of the Property was what a purchaser would pay for the leasehold interest. The investor purchasing the reversion would look at the Property from an investment point of view. He/she would look at growth and obsolescence. The investor would consider what the chances were that the Property would be in good condition in 61½ years' time. In his view, such an investor would say that there were elements which were risky. He/she would be taking on more of a burden than if he/she were buying a better block of flats and would require an increase of ¼% in the generic rate to compensate for the greater risk that the flats in Sheen Court would become obsolete over the length of the lease than would be the case where the development was on a level site where flat values were higher. Mr Arbourne invited us to consider the general ambience of the development, the site conditions and general appearance. That was why he was drawn to the decision in *49 St Fagan's Rise* where the development had metal windows, undecorated garage doors and unappealing entrances.

27. Mr Arbourne produced figures from the Nationwide Building Society from 1973 and the Halifax from 1983 to 2013. With a base level of 100 in 1983, the Halifax "all houses, all buyers"

regional house price indices rose to 737.2 for Greater London and 557.3 for Wales. The Nationwide “all properties - mix-adjusted” regional and UK indices showed that average house prices in London rose from £12,848 in 1973 to £345,186 in 2013 (a 26.86 times increase) whereas in Wales, the average house price increased from £8,955 in 1973 to £139,722 in 2013 (a 15.6 times increase). The investor would again wish to reflect the lower rate of growth by increasing the deferment rate by a further ¼%. He/she would look at the return over 50 years, see the reduced scale of increase in property prices and would view the return with the same optimism. He appreciated that he had produced figures over 40 years and the Upper Tribunal had indicated that 50 years was preferable, but he considered that this nonetheless indicated the way an investor would look at the different rates of growth for London and South Wales.

28. Since 49 St Fagan’s Rise, he had negotiated with Mr Nesbitt who had appeared for the freeholder in that case and who had been receptive to the idea of a deferment rate higher than the generic rate of 5% rather than go through proceedings although the rate had not been argued in respect of specific issues.

29. Mr Williams considered that the “generic” rate of 5% should apply in accordance with Sportelli. He pointed out that the generic rate should be used unless there was “compelling evidence”. He explained that this was a small block in a desirable cul de sac. Ystrad Mynach was no different from anywhere else. He could see no compelling reason why the Tribunal should depart from the Sportelli principle. He agreed that prime central London (PCL) was a distinctly separate area, but Ystrad Mynach was a popular area. He referred us to case of 24 Gwaun Hyfryd, Mornington Meadows, Caerphilly (LVT/0048/10/13) where 5% had been agreed as the appropriate deferment rate by himself and another surveyor. In 34 Ninian Road, Cardiff (LVT/0066/01/14), the surveyors had also agreed 5%. Mr Arbourne also told us that the same rate had been agreed in 1 – 8 and 13 – 16 Cefn Coed Gardens, Cardiff (LVT/0053/10/13) where he had acted for the freeholder.

30. Mr Williams did not consider that it was appropriate to follow Zuckerman. Sheen Court had just been painted. It had a pitched roof. The roof looked good. It was a small scale development located amongst traditional houses. It was in a popular area. He accepted that there were management issues but things would improve when proper management was in place. He conceded that the guttering and some painting needed doing. However, Sheen Court was nothing like St Fagan’s Rise. Sheen Court was better located. He considered that London was a different market. Growth there was better than anywhere. However, in Ystrad Mynach, the rental return on an investment was as good as anywhere. The South Wales market was buoyant. In Pontcanna and Llandaff (parts of Cardiff) prospective buyers were gazumping. The market was very good in places. There were plenty of local investors in the Cardiff area. It was difficult to find a house in Cathays (Cardiff).

31. Mr Arbourne stressed that it was important to distinguish between rental return on the one hand and ground rental income and growth on the other. The investor is looking for long term growth. He/she would look at trends. If there was uncertainty, this would affect the rate. He had anecdotal evidence that valuers were taking a cautionary approach and properties were being down valued in the London area by 10%. However, he was aware that prices were not dropping in East London - not a particularly salubrious area but this might be influenced by the possibility of the cross rail link in 18 months to 2 years’ time.

32. It is clear that in Sportelli, the Lands Tribunal intended to lay down guidance for Leasehold Valuation Tribunals (in England First Tier Tribunals) not merely to assist us in our decision making, but in order to achieve a level of consistency. We should only depart from the generic rate of 5% on the basis of evidence – indeed, as Mr Williams reminded us, “compelling evidence” is the expression

used. When considering whether to do so, we “need to bear in mind the considerations that led the [Lands] Tribunal in Sportelli to adopt the approach that it did, and the primary question will always be whether there are particular features that are not fully reflected in the vacant possession value and thus should be reflected in a higher risk premium. Moreover...what matters is the view that the market, properly informed, on relevant factual matters, would take on such features (the prospective movement of house prices in the area, for instance, or the potential obsolescence of the property) in considering an investment in the reversion” (Culley –v- Daejan Properties Ltd (LRA/82/2007) quoted in Zuckerman at paragraph 42). Indeed, it is apparent from the argument from both surveyors that the Sportelli principle is generally adopted in negotiations between surveyors and that the issues raised in Zuckerman and applied in 49 St Fagan’s Rise are more the exception rather than the rule.

33. In 49 St Fagan’s Rise, Mr Gibbs, the lessee’s surveyor, had submitted that whilst the structure and integrity of the buildings on the development were satisfactory, the buildings including the garages were not well maintained. We need not detail such matters here. However, we accepted that this development was likely to deteriorate more quickly than developments in other parts of Cardiff. We also accepted his argument that the lessees drawn to this kind of development were those lower down the income scale for whom the level of service charges was a material consideration. Therefore, whilst reminding ourselves that we must be careful when determining the rate not to “double discount” in effect by applying a higher rate of return to a lower value, we concluded that as a result of the added risk of deterioration and obsolescence, a willing purchaser would seek to factor into the bargain and a willing seller would have to accept an increase in the “risk” premium of ¼% to accommodate this.

34. From our inspection, we are satisfied that the development is not well managed. It has a neglected look about it. There are, as Mr Arbourne states, matters in need of attention. The sloping site and the high rear wall of the buildings mean that the cost of some repairs is going to be more expensive than for a building on a level plot. The bridge to the upstairs flat is a cause for concern as are the other matters referred to in paragraph 17 above. The Respondent has owned the freehold of both blocks since February 2012 and in the 2½ years since its purchase there are no signs of there being a responsible management regime. The problem may well be exacerbated by the fact that the shareholders of the Respondent own 50% of the one block and 100% of the other. They would be responsible for paying ¾ of any combined repair costs. The lease does not allow for a sinking fund and so the Respondent (and therefore possibly its shareholders) will have to pay out all the costs with the risk that it will not be able to recover the contributions payable by the owners of the other two flats. The more expensive the repair and maintenance costs, the more likely this will become the case. The cost of such repairs and maintenance relative to the value of the flats is therefore going to be greater than in areas where the value of the flats is much higher such as in Ninian Road, Cardiff and Cefn Coed Gardens, Cardiff and substantially higher than in the properties considered in Sportelli. Again reminding ourselves that we must not “double discount”, nor must we depart from the generic rate without compelling evidence, we are satisfied on the basis of the evidence that there is an added risk of deterioration and obsolescence in this case which the willing purchaser and the willing seller would recognise. For this reason, we consider it appropriate to increase the risk premium by ¼% and raise the deferment rate from 5% to 5¼%.

35. Mr Arbourne has submitted that the “risk” premium should be increased by a further ¼% to take account of the lower long term growth in value of the Property when compared with properties in PCL. In Zuckerman, on the basis of the evidence provided the rate was increased by a further ½%. In 49 St Fagan’s Rise, we adjusted the rate by a further ¼%. He produced two sets of statistics: firstly, the Halifax data; secondly, the Nationwide data. Mr Williams again did not regard the evidence as compelling. He did not, however, produce any statistics of his own. He accepted that

PCL was in a class of its own and that property price increases in South Wales might not be as good. However, he did not consider that it justified adjusting the Sportelli rate.

36. In our view, the Halifax data and the Nationwide cover far too large an area (Wales and Greater London in the one and London and Wales in the other) for us to accept them as being indicative of the relative rates of increase in property values in Ystrad Mynach and PCL. Indeed we doubt whether there would be sufficient data relating to flats in Ystrad Mynach for there to be any meaningful comparison. We cannot be satisfied even on the Halifax data that the difference in growth rates of 557.3 (Wales) and 737.2 (Greater London) would be sufficient for an investor to require a higher return. The Nationwide figures show a greater difference (15.6 (Wales) to 26.86 (London) over a longer period, but we were not told what from what area of London the figures were drawn. In any event, the Halifax data related to “all houses” and the Nationwide “all properties - mix adjusted”. Nonetheless in 49 St Fagan’s Rise we were not convinced that the Halifax statistics alone constituted compelling evidence. Nor are we in this case. We cannot be sure that the figures represent comparable properties in the two defined areas relevant to this decision. Nor are we satisfied that even if the data did fairly reflect the comparative rates of growth in Ystrad Mynach and PCL, the investor in Ystrad Mynach would seek and successfully negotiate a higher rate than the investor in PCL. The evidence from both surveyors suggests that it only rarely that the parties to a negotiation depart from the Sportelli rate. We see no reason to do so here.

37. We therefore determine that, on the facts of this case, it is appropriate to adjust the risk premium, increasing it by ¼% for the increased risk of deterioration and obsolescence but not by a further ¼% on the basis of the rate of long term growth achieved by properties in Ystrad Mynach when compared with PCL. The deferment rate to be applied is therefore 5 ¼%. The present value of £57,000 deferred for 61½ years at 5¼ % (@ 0.04299) is £2,450, to which must be added the agreed capitalized ground rent of £710 to determine the diminution in the value of the freehold interest, namely £3,160

THE UNIMPROVED NON-ACT VALUE OF THE PROPERTY

38. It is necessary to ascertain the leasehold value of the flat in an 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. Mr Arbourne considered the non-Act value of the Property to be 85.6% of the extended leasehold interest. He told us that that in his view the values achieved in sales of the flats were not really relevant as the Tribunal has to determine the value in a no-Act world. As there was no evidence of non-Act sales, the only method was to utilise one or more of relativity graphs. His particular preference was for the Beckett and Kay graph which he appended to his report. This graph, published in 2013, was a combination of statistics from the College of Estate Management (CEM) for both Inner London and the rest of England and Wales, Savills 1992 (non-Act) and Savills “enfranchisable” data as well as information from the Leasehold Advisory Service (LEASE) relating to Leasehold Valuation Tribunal decisions. At 61½ years, the figures ranged from 77% to 91% with an average of 85.6%.

39. Mr Williams submitted that the non-Act value was 80% of the extended lease value. He had also used relativity graphs to achieve this figure. In his view, it was the correct way to ascertain non-Act value of property. In his report he referred to the Beckett and Kaye as well as Nesbitt, Austin Grey and Andrew Pridell graphs. He agreed that the Beckett and Kay graph showed a relativity for 61½ years as being in excess of 80%, but he relied particularly on the Beckett and Kay mortgage-dependent graph as most purchasers of flat sales in South Wales would require a mortgage. This indicated a relativity of about 70%. At the adjourned also hearing, he produced a further Beckett and Kay graph (2013: first revision) stated to be for Greater London and England. This comprises

data from a number of sources - W A Ellis, Knight Frank, Cluttons, Charles Boston, John D Wood and Gerald Eve. He considered that Beckett and Kay were the experts. In the light of all the graphs, he submitted that a relativity of 80% was fair and reasonable.

40. The Tribunal noted that the mortgage-dependent graph extended from zero to 100 years unexpired. It was pointed out that it was virtually impossible to obtain a mortgage on a leasehold property with less than 60 years unexpired. It was also observed that many buy to let properties are purchased with finance secured on other properties. Mr Williams was unable to explain how data had been collected in respect of a period when mortgage transactions would rarely if ever have taken place.

41. In reply Mr Arbourne produced a summary of the graphs referred to in the both reports relating to leases with term of 61½ years remaining:

Beckett & Kay (Greater London & England)	86.42%
Nesbitt	84.5%
Austin Grey	86.61%
Andrew Priddell	86.91%
CEM (inner London)	88.5%
CEM (rest of England & Wales)	91.5%
Savills (1992)	85.8%
Savills (enfranchisement)	77.8%
LEASE	88.2%

42. We must also consider the two additional graphs introduced by Mr Williams at the second hearing. With regard to the Beckett and Kay graph (2013: first revision), whilst the John D Wood figure for 61½ years is around the 87% level, the others - which include houses as well as flats - are concentrated between 79% and 82%. One of the Cluttons' graphs specifically refers to houses, as does the WA Ellis graph. We have concerns about the mortgage-dependent graph. This suggests a figure of about 70%. However, as Mr Arbourne pointed out, the decision in Arrowdell 2 (Toogood and others -v- Arrowdell Ltd (CHI/00ML/OLR/ 2012/181)) is nowhere near the line of the graph. It may have been compiled before the publication of Arrowdell 2 where the Tribunal determined a relativity of 76% for an unexpired term of 54 years whereas the graph suggests a relativity of 60% - which happens to be the figure put forward by the respondent's surveyor in that case.

43. We need no reminding about the shortcomings of the various relativity graphs. They are well documented. However, both surveyors have relied upon them and both have acknowledged that there is really little else. South Wales has no history of non-Act transactions to call on, and it is only in recent years that flats have gained in popularity in the larger towns and cities here.

44. We feel that Mr Williams' figure of 80% is too low. In our view, it relies too heavily on the mortgage-dependent graph. Without more information about how the data supporting that graph were collated, we do not feel able to give it too much weight. Indeed, the Beckett and Kay graph (2013: first revision) also refers in its title as being the revised "Beckett and Kay: mortgage-dependant" graph. We consider that Mr Arbourne is closer to the right figure with his suggestion of 85.6%. However, we must give some weight to the Beckett and Kay (2013: first revision) graph which, apart from the John D Wood graph shows a remarkable consistency. We have therefore concluded that a relativity of 84% is appropriate and determine accordingly.

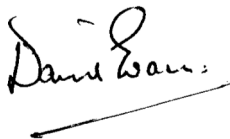
45. Applying a relativity of 84%, we determine that the unimproved non-Act value of the Property is £47,880. To this we add the value of the reversion (£3,160) making the combined value

of both interests £51,040. The marriage value is the difference between the extended lease value and the combined values, namely £5,960. The Applicant is required to pay one half of the marriage value - £2,980 - in addition to the value of the reversion (£3,160). We therefore determine that the premium payable is £6,140.

SUMMARY

Capitalised ground rent - agreed at		£ 710
Extended lease value	£62,000	
Less improvements	<u>£5,000</u>	
Unimproved value	57,000	
PV of £1 deferred 61½ years @ 5¼%	<u>0.04299</u>	<u>£2,450</u>
Value of reversion		£3,160
Extended lease value (unimproved)	£57,000	£57,000
Relativity	84%	
Non-Act value of lease	£47,880	
Value of reversion	<u>£3,160</u>	
Combined value	£51,040	<u>£51,040</u>
Marriage value	<u>£5,960</u>	
One half	£2,980	<u>£2,980</u>
Premium		£6,140

DATED the 3rd day of December 2014



CHAIRMAN