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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0081/03/14

In the Matter of 41 Furzeland Drive, Bryncoch, Neath, SA10 7UG

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

TRIBUNAL **Timothy Walsh (Chairman)**
Ruth Thomas (Surveyor)
Peter Tompkinson (Surveyor)

APPLICANT **Mr. Gary Frazer Aitchison**

RESPONDENT **Unknown Owner of the Freehold**

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Introduction

1. The Applicant, Mr. Gary Frazer Aitchison, is one of two registered proprietors of the leasehold interest in the property known as, and located at, 41 Furzeland Drive in Bryncoch, Neath ("the Property"). The leasehold interest is registered at HM Land Registry under title number WA115929. The second registered proprietor is Mrs. Pamela Aitchison.

2. The Lease was dated 23 December 1970 and was for a term of 99 years from 25 March 1969; the original parties were Melville Gwyn Morgan (as landlord) and Glynne Jones (as tenant). It is apparent that this was what is generally known as a building lease under which, by clause 4(b), the original tenant covenanted to build a dwelling-house upon what was then plot number 7 on the Bryncoch Estate. By Clause 3 the rent under the Lease was a yearly rent of £20.00 payable by equal half-yearly instalments. There is no provision in the Lease for rent review.

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. Specifically section 27(1) of the 1967 Act 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. Both registered proprietors issued proceedings in the Swansea County Court on 7 February 2013. It is unnecessary to recount the detail of that claim save that we note that it refers to a valuation of the freehold reversion by Astleys Chartered Surveyors in the sum of £4,850, We were not presented with a copy of any such valuation however.

5. By order of District Judge J Garland Thomas the County Court determined that it was satisfied that all proper steps by way of advertisement and otherwise had been taken for the purpose of tracing the landlord and it was ordered that:

   5.1 The Applicants were entitled pursuant to the provisions of section 1 and section 27(1) of the 1967 Act to have invested in them the freehold of the Property.

   5.2 The terms upon which the Applicants were entitled to have freehold vested in them were to be determined by the Leasehold Valuation Tribunal as if the applicants had, as at 7 February 2013, given notice under section 1 of the 1967 Act including, in particular, the assessment of the appropriate sum pursuant to section 9 of the Act and the form of conveyance which is to contain such matters as it may be appropriate to include pursuant to section 27(3) of the 1967 Act.

6. By an application dated 14 February 2014, but received by the Tribunal on 11 March 2014, an application was made pursuant to section 21(1)(a) of the 1967 Act. By that section the Leasehold Valuation Tribunal is the tribunal with jurisdiction to determine the price payable under section 9(1) of the 1967 Act for a house and premises.

7. The application under section 21(1) was made in the name of Mr. Aitchison alone but that was evidently simply an oversight. Mr. and Mrs. Aitchison appeared at the hearing before us and their solicitor, Mr. Murphy, confirmed that this was a joint application. We indicated that we would accordingly proceed on that basis and as though Mrs. Aitchison's name had also appeared in the application dated 4 February 2014.

The character of the Property and the Valuation Evidence

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

9. It is a detached four bedroomed house of cavity wall construction built in the 1970s. The Property has a series of pitched concrete tiled roofs, rendered elevations and double glazed timber windows.

10. As originally constructed it is evident that the property built in accordance with the Lease terms was a three-bedroomed property. The first floor was extended during the 1980s shortly after the Applicants purchased the Property on 8 December 1978 (the title was first registered at HM Land Registry on 2 February 1979). A new conservatory has been erected to the rear elevation by the Applicants in more recent years. The extension and modifications to the Property carried out at that time and the conservatory have enhanced the appearance and quality of the accommodation. The Property occupies a relatively large "L" shaped plot. It is well presented both internally and externally. Space heating is provided by a gas fired boiler.

11. Finally, the Property is located in a quiet highly sought after residential area of Neath. Neath itself provides comprehensive facilities and is within easy reach both of Swansea and the M4 motorway.

The Statutory Approach to Valuation

12. 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 different

bases of calculation depending on the qualifying conditions under which the tenant has claimed the right to buy the freehold.

13. In the case of a house and premises with a rateable value which was not above £500 on 31 March 1990 the appropriate basis of valuation is generally under section 9(1) of the Act although, as Hague: Leasehold Enfranchisement (6th Ed.) explains at paragraph 9-02, that is not invariably the case. We proceed here on the basis that section 9(1) applies. At the hearing Mrs. Aitchison gave evidence that she had spoken with Welsh Water both the day before the hearing and again on the day that we heard the application. It was her evidence that she had been informed that the rateable value of the property was £218.

14. At the conclusion of the hearing we indicated that we would delay our decision in order to allow the Applicants to file confirmatory evidence of the rateable value and on 21 July 2014 Mr. Murphy forwarded to the tribunal an email from one T Parry at Dwr Cymru Welsh Water Customer Services, also dated 21 July 2014. That email relates that a rateable value of £218 was set by the District Valuation Office prior to 1990.

15. No evidence in relation to the historic rateable values was available. It seems probable that the rateable value that we were given was based on the 1 April 1973 rating lists. As this lease was dated 23 December 1970 we do not know whether "the appropriate day" for the purposes of the Act pre-dated 1 April 1973 nor, if so, what the rateable value would have been at that time although, given the fact that the premises were constructed in the 1970s, it seems to us reasonable to suppose that 1 April 1973 was the first date upon which a rateable value other than nil appeared in the rating valuation list so that 1 April 1973 may well be the "appropriate day". Moreover, if there was an antecedent valuation that was probably less than £200. In our view, therefore, by virtue of subsections 1(1)(a)(i) or 1(5)(b) the section 9(1) valuation basis applies rather that section 9(1A) (which applies if rateable values exceed £500) or section 9(1)(C) (which applies where section 1A applies because the financial rateable value limits are exceeded in section 1). If the "appropriate day" was on or after 1 April 1973 the rateable value was less than the £500 qualifying limit. If the "appropriate day" was before 1 April 1973 we infer that the rateable value would have been less than £200 since, as Hague relates at paragraph 7-07, on 1 April 1973 there was an average increase in rateable values of 150 percent.

16. Mr. Edwards, the surveyor and valuer who also gave evidence, confirmed that in his experience properties of this type and in this area would have rateable values bringing them within section 9(1) of the Act and we proceed accordingly.

17. 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..."

18. 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. In this case the proceedings were issued in the Swansea County Court on 7 February 2013 which is accordingly the appropriate valuation date which we adopt.

19. 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 thus 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 section 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 of Schedule 10 to the Local Government and Housing Act 1989 to the tenancy;
(4) The value (if any) of the Landlord's right under section 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..."

20. As the editors of Hague observe, however, in practice it is rare that the purchase price is affected by (4), (5) or (6).

The capitalised value of the rent payable for the unexpired term of the Lease

21. 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. Here that is from 7 February 2013 to 24 March 2068. Broadly this is a period of just over 55 years. Mr. Edwards confirmed that he was content for us to adopt 55 years as the appropriate period.

22. 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. The factors which may influence this rate include (i) the length of the lease term, (ii) the security of recovery, (iii) the size of the ground rent, and (iv) whether there is provision for review of the ground rent. In practice this rate affects the overall price of the reversion only slightly.

23. As noted above, the ground rent in the Lease is £20 per annum. An investor purchasing the asset will bear in mind that the return of £20 per annum is not substantial and there are necessarily administrative costs associated with the collection of that ground rent which need to be factored in. There is, moreover, no provision in the Lease for review of the ground rent. Mr. Edwards had adopted a rate of 6% in his report. In our view that is not inappropriate and is, according to Mr. Edwards, consistent with local practice. That produces a value for the unexpired term of 55 years of **£319.81**. That is fractionally different from the figure is Mr. Edwards' report because he had not adopted the valuation date of 7 February 2013.

The appropriate approach to valuation

24. 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) 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. Accordingly, in *Farr v Millersons Investments Ltd* ((1971) 22 P & CR 1055) it was stated that the *"generally recognised approach"* was to estimate the section 15 rent and then:

"To capitalise this section 15 rent as if in perpetuity, deferred for the period of the unexpired term of the existing tenancy; not seeking to quantify any different rent that might become substituted at the expiration of twenty-five years from the original term date, and not quantifying separately the value in reversion at the expiration of fifty years from the original term date."

25. As was observed in *Re Clarise Properties Ltd's Appeal*, that practice did not assume that the ultimate reversion had no value. On the contrary, the fact that the capitalisation of the section 15 rent was in perpetuity rather than to the end of the 50-year renewal meant that a value was attributed to the reversion. The justification for not valuing it separately was that, given the period of deferment and the small amounts of value involved, any difference in the end result would be minimal and would be lost in the other elements of the valuation. That was also Mr. Edwards' view in the present case.

26. In *Haresign v. St. John's College, Oxford* ((1980) 255 EG 711) 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. The reason explained there was as follows:

"[15] The essential question, to my mind, is not whether the subject property will still be standing 62 years after the valuation date, but whether the purchaser in the hypothetical sale envisaged in section 9(1) of the 1967 Act would value the reversion to standing house value? The usual practice is to capitalise the modern ground rent in perpetuity, ignoring both the rent review at the 25th year and the landlord's right to possession at the end of the extended lease. The so-called Haresign addition is an exception to this practice. The circumstances must warrant this exception. I accept that 11 Park Avenue will still be standing

at the end of the extended lease but I cannot accept that the hypothetical purchaser would include in his price any additional value for the house in excess of the capitalised ground rent in perpetuity which forms part of a standard enfranchisement valuation under section 9(1). I can accept that a Haresign addition might be included where the house is substantial (as in the Haresign decision itself) but not where it is a small terraced house..."

27. The pendulum has, however, now swung the other way. The presently prevailing guidance is to be found at paragraph 36 of *Re Clarise Properties Ltd's Appeal* 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 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]

28. 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. There has been no material change in the housing market since the hearing of *Re Clarise Properties Ltd's Appeal*.

29. It is true that the *Re Clarise Properties Ltd's Appeal* guidance has not been universally applied in Wales but 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

30. As Mr. Edwards observed in his report, there is only some limited evidence of vacant plots. He referred us to only one such plot in the Brynoch area which was 136 square meters and

sold for £60,000. No date for that sale appeared in the report of Mr. Edwards but he confirmed that it was sold in 2013. That plot is smaller than the instant property which measures 526 square metres.

31. More comparable evidence of house prices is available and Mr. Edwards referred to the following:

    31.1 Number 78 Rowan Tree Close sold in September 2013 for £219,950.

    31.2 Number 35 Rowan Tree Close sold in June 2012 for £245,000.

    31.3 Number 44 Lerios Park Drive sold in November 2011 for £230,000.

    31.4 Number 45 Furzeland Drive sold in March 2014 for £250,000.

    31.5 Number 73 Rowan Tree Close is presently being marketed for £259,950.

32. Following our visit to, and inspection of, the subject property we drove to each of these properties in order to form a view as to their relevance as comparables.

33. The nearest comparable was located just down the road at number 45 Furzeland Drive. This property is a detached 5 bedroom house which also has the benefit of a recent two story extension. The property is of a similar age and occupies a reasonably sized plot. It has an extra bedroom to No 41 but otherwise is very similar and is the closest transaction both in terms of location size and date. Of the comparables provided by Mr Edwards we consider this to be the best.

34. The three comparables in Rowan Tree Close are very similar in type and design to each other. Rowan Tree Close is located about a quarter of a mile away but is still within the same residential area as Furzeland Drive. Demand for the two locations will be similar. Rowan Tree Close is a high quality modern estate built in the last 10 to 15 years. The development is much denser and the plots are smaller as a result but the size of the accommodation internally will be on a par with the subject property. There is some variation in prices achieved as well as the date of the transactions. Number 73 was not sold so we cannot rely on the asking price as clear evidence. It does, however, provide us with some guidance as to the current state of the market.

35. Lerios Park Drive is about half a mile away from Furzeland Drive but still within broadly the same residential area and would be equally sought after. Number 44 Lerios Park is larger than 41 Furzeland Drive and we would expect it to achieve a slightly higher price than Number 41 Furzeland Drive if they were both marketed simultaneously. As a guide it should be approached with the most caution, however as it is the least recent transaction. We do appreciate that good comparable evidence is not always available especially when the market has been suppressed as it has since 2008. Taking this into consideration we accept Mr Edwards' comparables as being relevant.

36. 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. In his report Mr. Edwards effectively adopted the standing house approach and arrived at a valuation of the "entirety value" as £240,000.

37. Mr. Edwards has adopted a percentage of 33.33% (i.e. a third) to arrive at a plot value of £80,000. 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.

38. Here Mr. Edwards gave further evidence that he would value this plot as cleared and vacant at £80,000 in view of the recent plot sale for £60,000 referred to above. That plot sold for less in his view because it was in an inferior position and was smaller in size.

39. The plot value corroborates the analysis based on the standing house approach and so endorses the 33.33% figure in his report.

40. From our review of the comparable evidence of values in the area, we have concluded that it is appropriate to accept Mr. Edwards' evidence of the entirety value of the property at £240,000 and his adopted figure of 33.33%. We were also persuaded by Mr. Edwards' evidence of the clear site value of the plot at £80,000.

41. As Hague explains at paragraph 8-13, 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.

42. 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

43. The section 15 rent is payable as from the original term date (24 March 2068) up to the extended term date (24 March 2118), 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).

44. 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 since we cannot see that it should necessarily follow that all three rates are the same. It was not contended by Mr. Edwards that we should depart from that practice here.

45. Unsurprisingly there is considerable authority on the rates to be applied for capitalisation/decapitalisation and deferment. In particular *Earl Cardogan and Cardogan*

Estates Limited v. Sportelli and others [2007] 1 EGLR 153 (LT), *Zuckerman v. Trustees of Calthorpe Estate* [2009] UKUT 235, *Mansal Securities Ltd's Appeal* (LRA/185/2007, 24 February 2009, unreported) and, more recently, *Sinclair Gardens Investments (Kensington) Ltd's Appeal* [2014] UKUT 0079 (LC).

The Authorities

46. 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. 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.

47. 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.

48. 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").

49. 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%."

50. 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 has not been universally adopted subsequently.

51. 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 of 4.5% was increased to 5.25% and the 0.25% management allowance for flats was increased to 0.5% (NB: this aspect of the decision is no longer sustainable following *Daejan Investments Ltd. v. Benson* [2013] 1 WLR 854). 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%.

52. 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 of *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%"

53. It followed that:

    (I) The *Sportelli* starting rate of 4.75 percent applied to houses outside London.

    (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.

54. Most recently, all of these decisions have been reviewed in the *Sinclair Gardens Investments* case. There the Upper Tribunal enjoined first-tier tribunals to "*well bear in mind any limitations in the scope or quality of the evidence they receive"* but 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. A further 0.25 percent addition for deterioration was not permissible, however, absent adequate evidence justifying that addition and given that each case must be considered by reference to the characteristics of the property in question (see paragraphs 88 to 89 of the judgment in *Sinclair*).

55. 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 *Sportellii* rates (contrast *Mansal* at paragraph 27 with *Clarise* at paragraph 38 for example). Of course, key differences in outcome also turned on the evidence. In *Mansal* there was insufficient evidence available to justify a variation in rate based upon location whereas in *Zuckerman* and the Midlands cases that have followed it there was such evidence.

Application to the present case

56. Here we start with the 4.75 percent deferment rate in *Sportlelli*. Mr. Edwards adopted a deferment rate of 5½ percent but accepted in evidence that a deferment rate of 5% would not be inappropriate. In order to adopt the rate of 5½ percent advocated we would need satisfactory evidence to justify a departure from the *Sportelli* rate of 4¾ percent. We can and do take note of the fact that other local tribunals have adopted a rate of 5 percent for this area but each case must be decided on the available evidence.

57. 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. At paragraph 88 *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 Neath compared with those in *Sportelli*.

58. 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 Mr. Edwards' evidence that the prospects for growth here are less than London. That was unsurprising but limited evidence and given those limitations we adopt a deferment rate of 5%. 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 Neath area than in London but the evidence to support a full 0.5 percent additional increment was absent.

59. We also adopt a percentage of 5 percent for both capitalisation and decapitalisation rates. Mr. Edwards has adopted a rate of 6 percent but we adopt a rate of 5 percent 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. 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) and *12 Crofton Drive, Baglan, Port Talbot* (2 April 2014).

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

(i)	The entirety value:	£240,000
(ii)	Plot value at 33.33%:	£80,000
(iii)	Section 15 rent at 5%	£4,000
(iv)	Years purchase 50 years at 5%:	18.2559255
(v)	Present value of £1 in 55 years at 5%:	0.0683
	Valuation:	**£4988.95**

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

61. 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."

62. We have seen no evidence to indicate 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 55 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. Doing the best we can we apply a more modest 10% deduction.

63. The third stage calculation is accordingly as follows:

(i)	Standing house value:	£240,000
(ii)	Less Schedule 10 deduction of 10%:	£24,000
(iii)	Adjusted value:	£216,000
(iv)	Present value of £1 in 105 years at 5%:	0.0060
	Total:	**£1,296.00**

64. We would add that we have adopted Mr. Edwards' analysis to the effect that the entirety value is the same as the standing house value since there is no proper basis upon which we felt able to arrive at differing values.

Total purchase price and outstanding matters

65. In the circumstances, the total value of the three stages fixes the purchase price at **£6,604.76**. We round that down to **£6,600.00**.

66. We would add that we note from the present application that a further application under section 21(2) of the 1967 Act is intimated but that was not before us at the instant hearing. We were told that that application is still to be made.

67. 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. From what we were told the Applicants cannot have 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. If this was not the position, a tenant of an

untraced freeholder would be required to pay more than his landlord could have recovered. On this basis an additional **£120** must be added to ascertain the "appropriate sum".

68. A summary of the calculations in this decision is appended.

ORDER

The Leasehold Valuation Tribunal determines that the appropriate sum to be paid into court under section 27 of the Leasehold Reform Act 1967 is £6,720.00 being the aggregate of the price payable in accordance with section 9 and the additional amount required under section 27(5)(b) of that Act.

DATED this 2nd day of September 2014

CHAIRMAN

APPENDIX – SUMMARY

Stage 1		
Ground rent:	£20	
YP 55 years at 6%	15.990543	
		£319.81
Stage 2		
The entirety value:	£240,000	
Plot value at 33.33%:	£80,000	
Section 15 rent at 5%	£4,000	
Years purchase 50 years at 5%:	18.255925	
Present value of £1 in 55 years at 5%:	0.0683	
		£4988.95
Stage 3		
Standing house value:	£240,000	
Less Schedule 10 deduction of 10%:	£12,000	
Adjusted value:	£228,000	
Present value of £1 in 105 years at 5%:	0.0060	
		1,296.00
Total		
Valuation:		**£6,604.76**
Rounded down:		**£6,600.00**
Section 27(5)(b) addition		
6 years at £20	£120	
Summary		
Appropriate sum:		**£6,720.00**