

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES) Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), s.32 and Schedule 6

Premises: 1 – 8 and 13 – 16 Cefn Coed Gardens, Cardiff

Reference: LVT/0053/10/13

Hearing: 21 May 2014

Applicant: Cefn Coed Gardens Limited
(Mr Martin Cotsen FRICS)

Respondents: Coral Bahrani and Kais Mohamed-Selim Bahrani
(Mr John Arbourne FRICS)

Tribunal: Mr Rhys Taylor – Legal Chairman
Mr Richard Payne
Mr Roger Baynham FRICS

ORDER

1. The price to be paid for the freehold reversion of the premises is £350,000.

Dated this 5th day of August 2014

A handwritten signature in black ink, appearing to read 'Rhys Taylor'. The signature is written in a cursive, slightly slanted style.

Legal Chairman

REASONS

Background.

1. This case concerns an application dated 18 October 2013 for the determination of the premium to be paid for the purchase of the freeholders' interest in the premises upon a collective enfranchisement.
2. The parties are agreed on all matters save for the premium to be paid.
3. The tribunal's jurisdiction arises from s.32 of the Act and its valuation approach is prescribed by Schedule 6 of the Act.
4. Under Schedule 6 of the Act the tribunal is required to determine the price to be paid in this case by calculating:-
 - a. The value of the landlord's interest in the premises, determined in accordance with paragraph 3 of Schedule 6; and
 - b. The landlord's share of the marriage value in the premises as determined in accordance with paragraph 4 of Schedule 6.
5. In both paragraph 3(1) and 4, the tribunal is required to adopt certain assumptions when considering value. These include assuming a "No Act world" and disregarding any tenants' improvements.

Matters agreed between the parties.

6. There was much common ground between the parties. It is agreed that:-
 - a. The date of valuation is 12 April 2013.
 - b. The current leases expire on the 24 June 2072.
 - c. The remaining term as at the date of valuation is 59 years and 2 months.
 - d. The current value of the ground rent for the remainder of the term is £11,500.

- e. A deferment rate of 5% should be adopted.
- f. Marriage value should be apportioned equally in accordance with the Act.

Matters not agreed between the parties.

7. The following matters were not agreed:-

- a. Market value of the premises upon a virtual freehold/999 year lease basis. The Applicant adjusted its case as it progressed, but its' final position was £2,466,000. This was based upon each unit of accommodation having a virtual freehold value of £205,000. The Respondents' case was that the market value was £2,900,000, upon the basis that the units of accommodation should be valued on a virtual freehold basis in three brackets, namely four at £240,000, four at £245,000 and four at £255,000.
- b. Market value of the premises with the existing leases. The Applicant's case was £2,040,000 based upon each unit being valued at £175,000. The Respondents' case was £2,356,248 based upon the units being worth, respectively, £190,937, £195,000 and £203,125.
- c. The Applicant contended that no allowance should be made for leaseholder' improvements whereas the Respondents applied a discount of £5,000 per flat.
- d. The discount to be applied for the "No Act world" assumption. The Applicant contended for 1% whereas the Respondent contented for 2%
- e. Relativity was also in issue in three respects, namely:
 - i. The appropriate relativity figure to be applied. The Applicant argued for a relativity of 85.15% whereas the Respondents argued for 81.25%.
 - ii. The manner in which relativity should be applied. The Applicant argued that we should first determine the current leasehold

value of the premises and then apply the relativity figure to scale up to the virtual freehold figure. The Respondents argued that we should make an assessment of the virtual freehold figure first and then apply the appropriate relativity figure to scale back to the current leasehold value.

- iii. In the event that the tribunal adopted the approach in (ii) using graphs of relativity, was it appropriate to make a further adjustment for the “No Act World” assumption, or did the graph go straight to the “No Act World” figure. The Applicant contended that it was not appropriate to use the graph to find relativity and then make a further “No Act World” discount. The Respondents argued that it would be appropriate, in this, case to adopt its suggested relativity figure (taken from a graph, but supported, it is said, by other comparable evidence) and then apply a further deduction on account of the “No Act World” assumption.

Background and documents we have taken into account

8. Mr Cotsen provided his expert opinion on behalf of the Applicant and assisted it at the hearing. Mr Arbourne was the expert on behalf of the Respondents. We are grateful to both experts for the time and careful consideration they have given to this matter.
9. We have taken all of the oral evidence and submissions and the following documents into account. For the Applicant, we have Mr Cotsen’s:-
 - a. undated (but date stamped into the tribunal on the 9 January 2014) report;
 - b. letter to the tribunal dated 11 February 2014 in which he makes clear that the sale had fallen through in respect of one of the properties (13 Cefn Coed Gardens) he had relied upon in coming to his opinion in his main report;

- c. letter to the tribunal dated 13 March 2014 in which Mr Cotsen draws to the tribunal's attention that 13 Cefn Coed Gardens had been sold at auction on the 26 February 2014;
- d. undated addendum report (but date stamped into the tribunal on the 13 March 2014) in reply to Mr Arbourne's report; and
- e. letter of 4 April 2014 in which the Applicant's relativity graphs were enclosed.
- f. An email dated 29 July 2014 (In fact two emails, which essentially make the same point) in which, in response to a written question by the tribunal dated 28 July, that it would not be appropriate to make a further "No Act World" adjustment in the event that the tribunal were persuaded to find relativity by reference to Mr Arbourne's relativity figure.

10. For the Respondent we have Mr Arbourne's

- a. report dated 7 February 2014;
- b. letter dated 18 February 2014 in which he encloses a memorandum of agreement and disagreement between the experts;
- c. addendum report dated 17 April 2014 in reply to Mr Cotsen's undated addendum report (date stamped by tribunal 13 March 2014);
- d. letter dated 9 May 2014 in which Mr Arbourne seeks to rely upon a further comparable property at Werngoch Road, Cardiff (we deal with this below).
- e. email dated 9 June 2014 (which post dates the hearing) in which we were informed that the sale STC in respect of the property at Werngoch Road has fallen through (we deal with this below).
- f. letter dated 17 June 2014 in which Mr Arbourne makes further submissions as to how we should treat the post hearing event of the Werngoch Road property falling through. This was at the invitation of

the tribunal which invited the experts to make any further *submissions* they wished to make in light of Mr Arbourne's email of the 9 June 2014. Mr Cotsen did not make any reply to us. The 17 June 2014 letter also seeks to introduce new *evidence* to the tribunal, by referring to a further sale which had exchanged (we deal with this below)

- g. A letter dated 31 July 2014 in which Mr Arbourne submits that it is appropriate to apply a "No Act World" discount to his relativity figure which is essentially derived from a graph of relativity (albeit, it is submitted, supported by other comparable evidence.)

11. We have set out the above history so that all parties can be assured that we have taken the relevant submissions and evidence into account. The evidence developed in this manner after the procedural chairman gave directions for the sequential filing of expert evidence, which resulted in not unreasonable requests for the right to reply by each expert. These addendum reports, filed sometime before the hearing, were clearly appropriate and documents upon which we rely.

12. Mr Arbourne's letters of the 9 May 2014, 9 June (email) and 17 June 2014 are more controversial. Mr Cotsen objected, at the hearing, to the admissibility of the new particulars contained in the 9 May 2014 letter as the sale was only STC and of no relevance. No objection was made upon the basis of its relatively late production (albeit more than a week before the hearing). We determined that the particulars should be admissible and that the fact that the property was sold STC was a matter which went to weight rather than admissibility. We are grateful for Mr Arbourne's email of the 9 June 2014 informing the tribunal that the sale had fallen through. In so doing Mr Arbourne was continuing to discharge his duty as an expert assisting the tribunal, albeit that the hearing and evidence had concluded. Mr Cotsen can no doubt take right satisfaction that his concerns were subsequently borne out by events.

13. Given that Mr Arbourne had emailed the tribunal on the 9 June 2014 we thought it appropriate that each side should have a proper opportunity to

make any further submissions in light of this development. As already noted, Mr Arbourne responded in a letter dated 17 June 2014 and Mr Cotsen declined to make any further submission. The letter dated 17 June 2014 does not confine itself to *submissions* as invited. Whilst the tribunal has every sympathy with Mr Arbourne's attempts to fully appraise the tribunal of the developing situation of the sale of properties on Werngoch Road (including the one which had fallen through and a further one, never previously mentioned in the evidence before us in the documents or at the hearing) we take the view that this further letter contains *evidence* which we should put out of our minds when making our determination. Whilst we accept it was appropriate to draw our attention to the fact that the sale had fallen through, we do not think the invitation for further *submissions* extended an opportunity to reformulate a very similar argument by reference to another comparable property, never previously mentioned in the evidence.

14. Upon this basis we put out of our consideration the facts of the sale (and the fact that it aborted) of the Werngoch Road property and any further evidence contained in the letter of the 17 June 2014.

The Inspection.

15. The tribunal members attended for an inspection at 9.30 am on the 21 May 2014 and after the hearing at 5pm as we had not been able to access all of the units at the agreed time.

16. Mr Arbourne helpfully describes the premises in his report, where he states,

"Cefn Coed Gardens is a small development of houses and maisonettes built in 1973 and located in the popular Cyncoed area of Cardiff close to Roath Park Lake and convenient for local shopping, schools and the City Centre. ...

The development comprises twelve self-contained maisonettes in two two-storey blocks. Nos 1 – 8 are situated fronting on to Cefn Coed Gardens. The ground rises up from the road and there are four sets of separate steps leading to each pair of maisonettes. There is also a ramp approach at ground floor level from the pavement alongside

maisonettes numbered 1 and 2. There is a further block of four maisonettes, Nos 13 – 16 in a two storey block fronting on to Cefn Coed Road. Here again the ground rises from the pavement level and the block is approached via a flight of steps. ...

The buildings are of traditional cavity brick/block construction with ground floor elevations of facing brick and first floor elevations of white cement render. The roofs are pitched and surfaced with concrete tiles. Features of the front elevations are the first floor balconies ...

There is a block of twelve garages at the rear approached from Cefn Coed Gardens. Each of the maisonettes is allocated a garage. There is no other on site parking but there is ample off road parking¹ on Cefn Coed Gardens. The buildings are set in attractive communal gardens.

The accommodation of the maisonettes is largely similar in that each of the maisonettes comprises internal hall or landing, lounge, dining room, kitchen, two double bedrooms, family bathroom and separate WC. The ground floor maisonettes have patio doors opening from the lounge on to a small front terrace and the first floor maisonettes have patio doors opening on to first floor balconies. There are internal variations to the first floor flats in the block 1 – 8. These have a vaulted ceiling in the lounge lined in hardwood which gives a very open and airy feeling to that part of the accommodation. In addition these first floor maisonettes have a small study area over what is the entrance to both ground and first floor maisonettes.”

17. The ground floor units at 1 – 8 enjoy a gross internal floor area of 992 sq. ft. The first floor units at 1 – 8 enjoy a gross internal floor area of 1027 sq. ft., whilst the 4 units at 13 – 16 are approximately 1287 sq. ft. Whilst all units of accommodation were similar in design, the gross internal floor area was obviously apparent upon our inspection, resulting in the tribunal batching the properties into 3 categories according to size.

18. We actually inspected Flat 3 (ground floor), Flat 8 (first floor) and Flat 16 (first floor of separate block). We also briefly inspected a further ground floor flat

¹ The issue of “ample off road parking” is discussed below and its recital here is not intended to denote the tribunal’s agreement.

which was similar in layout to Flat 3. Flat 8 had converted the separate WC so that a small ensuite could be accessed via a sliding door in the main bedroom. Many, but not all, properties had upgraded to UPVC double glazing.

Market value.

19. In Mr Cotsen's first report, in arguing for a virtual freehold value of £2,466,000² (based upon each unit of accommodation being worth £205,000 on a virtual freehold basis) he pithily sums up the valuation conundrum in this case. He states "These are spacious flats in an attractive and popular residential area of the city. Why then are they selling at what appears to be a lower selling price than would be expected?"

20. We do not recite herein every twist and turn of the arguments which were developed before us. We have in mind all of the arguments but recite herein the main issues upon which the tribunal determines this matter.

21. The tribunal notes that there was an aborted attempt at a collective enfranchisement in 2011, when the notice was withdrawn. Interested parties have been under the shadow of the possibility of the freehold purchase costs since that date.

Mr Cotsen's evidence.

22. Mr Cotsen's evidence-in-chief can be summarised as follows:

23. Flat 2 sold for £175,000 in November 2012 (after marketing of some 18 months) with the existing lease. Upon this basis Mr Cotsen argued for a current lease value of £175,000 and a virtual freehold of £205,000.

24. Flat 13 sold, with the existing lease, at a well attended auction, at which he was present, in February 2014 for £175,000. Mr Cotsen initially suggested that Flat 13 had been marketed by way of private treaty, prior to this date for some 6 months, but this does not appear to sit with the far shorter private

² In fact, Mr Cotsen adjusted his figure to £2,466,000 when making his final submissions, but the same reasoning applies throughout his submissions and it would be unnecessarily cumbersome for the tribunal to recite all the amendments and corrections made by Mr Cotsen.

marketing history described on behalf the Applicant and Mr Cotsen appeared to accept this point. It was Mr Cotsen's view that an auction was the best test of market value.

25. These sales, in the subject premises, says Mr Cotsen, give the best indication of market value.

26. Mr Cotsen discounts Mr Arbourne's comparables: In particular, he discounts 11 Glan-y-Llyn, Lake Road East, which is sold STC at £258,000 on the basis that it is wholly unlike the premises, being a refurbished Victorian villa split into flats which benefits from gated private parking and views over Roath Park Lake. The closest of Mr Arbourne's comparables, says Mr Cotsen, is Flat 7 Monmouth House which sold for £275,000 in March 2013. However Mr Cotsen highlighted the superior features to this development including undercroft parking, bike storage, lift, more extensive communal areas, better views, public transport convenience and the fact that the leaseholders already enjoy a share of the freehold. Mr Cotsen was of the opinion that the differential between Monmouth House at £275,000 and Mr Arbourne's valuations (£240,000, £245,000 and £255,000) did not adequately reflect the superior nature of the Monmouth House property, meaning that Mr Arbourne's valuations were simply too high.

27. Mr Cotsen stated that the location and build design (1970s style) of the premises, with many steps to navigate, made the property unattractive to significant sectors of the market such as those with children, the disabled or the elderly. In respect of the elderly, Mr Cotsen sought to persuade us that the units were "middle class" units of accommodation more likely to be sought by the elderly, but for the issue of access via the stairs. Mr Cotsen also countered Mr Arbourne's account that there is ample off-road parking by highlighting the proximity of the local college/university and double yellow lines in the vicinity, save in front of the premises. It was Mr Cotsen's argument that otherwise ample off-road parking was, in fact, blighted by students using it as it was an unrestricted area of parking (where neighbouring streets had restricted parking during office hours). Mr Cotsen also suggested that the valuation would be affected by the lack of gardens in which residents could

sit. Mr Cotsen withdrew an earlier suggestion (based upon the prospective purchasers' alleged likely concern as to vehicular access during wintery and icy months) that that the steepness of the approach of Cefn Coed Gardens would effect valuation. The premises were also not on a bus route.

28. Mr Cotsen declined to treat the different sized properties differently and stated that they all had the same rents, review patterns and amenities. He suggested there was no evidence to suggest that the market treated them differently. He also suggested that the larger units, facing on to Cefn Coed Road, would suffer a diminution in amenity on account of facing on to the main residential road on account of traffic noise.

29. Mr Cotsen gave confused evidence in respect of the sale of Flat 4. In his undated addendum reported (dated stamped 13 March 2014) Mr Cotsen stated, "I did not refer to the sales of No.4 in October 2009 for £240,000 as I understand from the purchaser of this flat, and who is still living there, that she was under the impression at the time of purchase, which I am told was £235,000 and not £240,000, that the flat was being sold freehold." In evidence, however, Mr Cotsen stated that he had meant to say £205,000 not £235,000.

30. In cross-examination it was put to Mr Cotsen that Flats 2 and 13 were not a true market value as they were both probate sales or units requiring extensive renovation where the purchasers would have be looking to recoup the full costs of renovation and likely enfranchisement costs (given that the market was aware of this likely cost by 2011).

31. Mr Cotsen also accepted that he had been engaged in the probate valuation of Flat 2 back in 2010, where he had agreed (reluctantly, he said) a valuation on the existing lease of £195,000 with the District Valuer. However, he countered this by stating that following this agreement the property was marketed for £225,000 for some 18 months before finally being sold for £175,000 in November 2012, with the vendor later obtaining a rebate from HMRC to reflect the reduced selling price. He also suggested, but could not confirm, that a further probate valuation at £175,000 had taken place on the

sale of Flat 6 shortly after, where Robertsons Solicitors had acted for the purchasers.

32. Mr Cotsen also denied that it was appropriate to add the costs of the auction purchase on to the sale price as suggested by Mr Arbourne.

Mr Arbourne's evidence.

33. Mr Arbourne stated that £205,000 on a virtual freehold basis was simply too low. His case was that the individual virtual freeholds were £235,000, £240,000 and £245,000 (prior to adjustment for improvements). He argued that the existing lease values should be £190,937, £195,000 and £203,125 having used the Beckett & Kay (2013 revised edition) relativity graph (discussed below).

34. He particularly advanced the comparables of 11 Glan-y-Llyn at sold STC for £258,000 (which also has steps if accessed from the front but not the back), 7 Monmouth House sold at £275,000 in March 2013 and a property at Emsworth Court, Werngoch Road, Cyncoed sold at £240,000.

35. Mr Arbourne was critical of the limited particulars given by Mr Cotsen of sales at the premises.

36. He noted that Flat 5 had sold for £205,000 back in 2007 when it had 65 years on the lease and was in need of upgrading. Following refurbishment (which Mr Arbourne understood to include a new bathroom, toilet, kitchen, opening between kitchen and dining room and adding an ensuite) it went on the market for £285,000 in 2008 but (in Mr Arbourne's words) it "was immediately caught by the downturn in the market" and price was reduced to £264,950 until March 2014 when it was withdrawn from the market.

37. Mr Arbourne also drew our attention to Flat 4 which sold in October 2009 for £240,000, having been renovated and marketed for some three years prior to completion of sale.

38. We were also told of Flat 16 selling for £240,000 in June 2006.

39. Mr Arbourne was keen to emphasise that Flats 2 and 13 were in poor condition on sale, requiring substantial refurbishment and that the prospective purchaser would wish to factor in the full cost of renovation into the purchase price. He suggested the necessary works may be as much as £25,000 per unit. He also referred us to a letter dated 2 December 2012 from the owners of Flat 2 to the management company, demonstrating, he said, the extent of the works proposed. It states “The flat has not been decorated for a long time and is very shabby and worn. It is our intention to upgrade the kitchen and to expand the serving hatch into an archway access into the dining room. We also plan to convert the toilet into an ensuite shower room in the main bedroom. In order to maximise storage potential, we plan to create a mezzanine in a part of the loft above the main bedroom, adding a velux window for added light. The work will be carried out in early spring of 2013 and we will, of course, ensure that there is minimum disruption to neighbours. The limited nature of the works means that renovations should be completed within a short span.”
40. It was also suggested on behalf of the Respondents that Flat 13 had had substantial works, including the dry lining of the walls but the provenance of this belief was less clear (although the detail had a ring of truth about it).
41. Mr Arbourne invited us to treat Flats 2 and 13 as out of step with the market norm, based upon his comparables, the fact that they were probate sales to close an estate where the purchasers were factoring in full costs of renovation and the likely share of the collective enfranchisement price. In respect of Flat 13, the purchaser already had a flat at the site, meaning that the detail of the likely future collective enfranchisement would have been well understood and factored into the price. Further, the vendor estate of Flat 13 had moved very quickly to sell, following the grant of probate in October 2013. A private sale was agreed at £167,500 by November 2013, which then fell through, followed by an auction in February 2014. Mr Arbourne stated this evidenced the vendor’s anxiety to close the estate and sell quickly, thereby resulting in a lower than market price.

42. Mr Arbourne invited us to treat the different sized properties differently, suggesting unadjusted market figures of £240,000, £245,000 and £255,000
43. Mr Arbourne suggested that the tribunal make a £5,000 per unit reduction on account of leaseholder improvements.
44. He countered Mr Cotsen's arguments about parking by highlighting that each unit has a garage in any event.
45. Mr Arbourne invited us to discount Mr Cotsen's confused account of both the purchase price of Flat 4 and the basis upon which the purchaser bought it. We had a Land Registry Office Copy Entry which clearly shows the purchase price was £240,000 casting considerable doubt on Mr Cotsen's analysis in this respect.
46. When cross-examined, Mr Arbourne accepted that, in respect of the comparable at Monmouth House, he had not been aware of a lift, store rooms and that the leaseholder's had already purchased their freehold. However, he invited the tribunal to accept that the differential between his proposed valuations and the Monmouth House comparable already reflected these different features.

Our determination

47. This has not been an easy valuation task to determine, given the constellation of evidence we must consider. In summary:-
- a. We discount both Emsworth Court, Werngoch Rd and 11 Glan-y-Llyn as comparables. The first sale fell through and the second, at the time of the hearing, was only sold STC. The failure to exchange on Emsworth Court amply demonstrates the problems of relying upon sales which are only STC.
 - b. For reasons already articulated, we do not take into account any attempt to put fresh evidence before us post the final hearing.

- c. We do not derive particular assistance from Monmouth House and accept, to an extent, Mr Cotsen's argument that Mr Arbourne had not fully factored in the difference between it and the premises. We find it is simply outside of the price bracket of the premises.
- d. We accept Mr Arbourne's basic premise that a purchasers of Flats 2 and 13 would have been, on the balance of probabilities, wishing to factor in the full cost of the required (as we find) extensive renovations into their purchase price.
- e. We accept that the estate of Flat 13 was anxious to secure a sale to wind up the estate. This would have depressed the price.
- f. We do not accept that a public auction is necessarily the best test of market value, where certainty of completion date takes a pivotal role in the process.
- g. We reject Mr Cotsen's confused evidence about Flat 4. There is simply nothing before us which allows us to make a finding that the purchaser thought she was buying a freehold in 2009. Rather, the fact that Mr Cotsen has got his purchase price confused rather suggests he is mistaken in this respect.
- h. Whilst Flat 4 is a useful comparison (it being a subject property), we bear in mind that the price of £240,000 was achieved in 2009 after three year's marketing. It was achieved at a time before the 2011 aborted collective enfranchisement notice had been served, but when the existing lease was likely to require extension for future saleability. We find that the market would not normally expect to have to wait 3 years in order to secure a sale of a property of this kind. This suggests to the tribunal that this sets something of an artificial value for this property (upstairs, middle sized flat). Balanced against this is the fact that the sale was achieved in well known adverse market conditions, to which we were referred in evidence by Mr Arbourne.

- i. Flat 5's sale in October 2007 was in very different market conditions and the extent of the renovations undertaken make it hard for us to place much reliance upon it.
- j. It is appropriate to differentiate between the different sized properties, as suggested by Mr Arbourne.
- k. Having been inside a larger unit facing on to Cefn Coed Road, we reject Mr Cotsen's argument that there should be any diminution in value as a result of traffic noise. The unit is well set back and traffic is not more apparent than in the other properties.
- l. We agree with Mr Arbourne that it is appropriate to make a £5,000 per flat reduction on account of leaseholder improvements. This can only be something of a rough and ready exercise in this instance and we accept that some units had been improved to a greater extent than others. However, taking matters in the round a £5,000 reduction per flat appears an entirely workable, proportionate and pragmatic approach.
- m. We accept Mr Cotsen's point that parking can be difficult outside the premises and that this is likely to be modestly reflected in the value. The garages at the premises are unlikely to be as convenient (and therefore used less) as parking on the road outside the premises, if that is possible.
- n. It is artificial to add the costs of purchase at auction to determine the "purchase price." There are purchase costs associated with purchase by private treaty and these are not routinely considered to form part of the value of the property, rather they are simply the necessary costs associated with the transaction which purchases property with an inherent value.
- o. We find that the market was aware of the possibility, and was therefore factoring it into the price, the fact that a collective enfranchisement was likely to follow the 2011 aborted notice. However, we do not accept Mr Arbourne's argument, if we have understood it correctly, that the full

price of a likely enfranchisement was likely to be factored into the price. Rather, it seems to us that the market would make a far more modest adjustment to reflect the uncertainty over the enfranchisement price and the inconvenience of dealing with the claim.

p. We were also impressed (unfortunately, for Mr Cotsen) with Mr Cotsen's agreement with the District Valuer in 2010 for the value of Flat 2, subject to its existing lease, in the sum of £195,000. This was no doubt a keenly negotiated figure by Mr Cotsen. The reason for the subsequent sale at £175,000, in the tribunal's view, is down to the fact that it was a probate sale where it is more likely than not that the vendor estate was prepared to take less than market value to close the estate and due to the fact that this property required considerable renovation.

48. We have largely preferred the approach of Mr Arbourne over Mr Cotsen but have dampened Mr Arbourne's figures, reflecting our concern that the best comparable, Flat 4, took so long to sell.

49. It is our determination that the open market value of the units, on a virtual freehold basis, as at the valuation date are as follows:-

a. 1 – 7 = £235,000

b. 2 – 8 = £240,000

c. 13 – 16 = £245,00

50. From these figures we deduct leaseholder's improvements to arrive at adjusted market figures of £230,000, £235,000 and £240,000 respectively on a virtual freehold basis.

51. On this basis the freehold value is £2,820,000.

Approach to relativity.

52. Mr Cotsen invited the tribunal to find relativity to be 85.15%, relying upon the 2009 RICS graph of relativities. When asked why he had not used more up to

date tables Mr Cotsen stated that it was fine to use old tables and that he had chosen not to use the more up to date tables. He did not seek to give any detailed reasons for this explanation, save that he was relying upon his experience.

53. Mr Arbourne stated that the 2009 table was based upon 'pre-2009 'collapse' data in the property market and the introduction of changed lending criteria by banks. He was of the opinion that the 2009 table did not reflect present market conditions and resulted in too optimistic figures. In support of this we were referred to the English FTT Property Chamber decision of *Toogood v Arrowdale Ltd* (CHI/ooML/OLR/20120181). This is not binding upon us, but the reasoning is helpful to consider.
54. Instead Mr Arbourne invited us to prefer the Beckett & Kay (2013:revised edition) table of relativities (including a mortgage dependant graph). Upon this basis he cogently argued that relativity of 81.25% was more appropriate.
55. Having considered this argument we find Mr Arbourne's approach to be more persuasive and adopt the figure of 81.25% in this case. The graph is more up to date.
56. We have not relied solely, however, upon Mr Arbourne's graph to arrive at our view of relativity. We have tested this against the fact that the existing lease of Flat 2 was agreed by Mr Cotsen at £195,000. From this figure we must deduct improvements to, say, £190,000. Further, we must make an adjustment for the "No Act World." Upon this basis the discount against £190,000 would be £3,800, leaving a current lease value of £186,200. We have determined that the virtual freehold value of Flat 2 (adjusted for improvements) is £235,000. The resulting relativity is therefore 79.23% when looked at from this perspective. This confirms our view that Mr Arbourne is correct in selecting a relativity of 81.25% over Mr Cotsen's 85.15%.
57. Upon this basis the tribunal has determined, doing the best we can with the graphs and other evidence, that the relativity to be adopted in this case is 81.25%.

58. It is trite that this has been decided only upon the evidence and submissions before us and sets no precedent for any future Welsh LVT decision where other arguments may be made.

59. We have also adopted Mr Arbourne's approach to relativity i.e. taking the virtual freehold figure and using the relativity figure to scale back to the leasehold figure. The tribunal agrees with this approach and rejects Mr Cotsen's argument that it is more likely to result in inaccurate outcomes. The valuation exercise is more of an art than a science in any event.

60. After the hearing the tribunal asked for further written submissions on whether it was appropriate to adopt a relativity figure based upon Mr Arbourne's graph and then apply a further "No Act World" discount. Both experts, as already noted, provided short further submissions, each referring to contrasting approaches taken by previous Welsh LVTs on this point. We are not bound by previous LVT decisions and it is not apparent that the point was even argued in the case of *Hollybush Heights*. Whilst we note Mr Arbourne states that his relativity figure is arrived at by a combination of comparable evidence and the graph, in our determination it is the graph figure which we have adopted. The actual comparable evidence has merely been used as a cross-check in support on the conclusion that Mr Arbourne's graph figure is the most appropriate between the competing positions put before us. Having made this determination Mr Arbourne has not persuaded us that it would then be appropriate to make a further deduction for a "No Act World" assumption.

The "No Act world" assumption.

61. Mr Cotsen contended for a 1% deduction and Mr Arbourne contended for a 2%.

62. Mr Cotsen states, "The purchasers of these properties would have been aware that they could extend their lease under the Act. The premium bid they would make with that knowledge needs to be adjusted to reflect a "No Act world" and I believe that an adjustment of 1% should be made in this case."

63. Mr Arbourne states “In my view a deduction of 1% is not enough. It would reduce the figure by only just under £2,000. Whilst this, by its very nature, must be a theoretical exercise, I feel that a reduction of at least 2% is justified here.” This quote is apt to mislead (unintentionally) as, of course, Mr Arbourne means that there is a reduction by approximately £2,000 per unit on 1%.

64. In the event, having made the determination that we have, in respect of whether a further “No Act World” discount should be applied after the relativity figure has been adopted from Mr Arbourne’s graph, this issue is not crucial to determine. However, if we were wrong in our approach not to apply a further “No Act World” discount, we would prefer Mr Arbourne’s 2% over Mr Cotsen’s 1%. We accept that this is a highly artificial exercise but one which is required by the Act.

65. We set out in a schedule attached hereto our calculations in light of these reasons.

Dated this 5th day of August 2014

A handwritten signature in black ink, appearing to read 'Rhys Taylor', written in a cursive style.

Legal Chairman

1 - 8 and 13 - 16 Cefn Coed Gardens, Cardiff

Term

As agreed between the parties 11,500

To Virtual Freehold Value

Flat Nos, 1, 3, 5 & 7

4 No. at £230,000 920,000

Flat Nos. 2, 4, 6 & 8

4 No. at £235,000 940,000

Flat Nos. 13, 14, 15 & 16

4 No. at £240,000 960,000

Virtual freehold value 2,820,000

P. V. £1 in 59.2 years at 5 % 0.056658 159,775

171,275

Marriage Value

Virtual freehold value 2,820,000

Less

Landlords present interest 171,275

Leasehold interest

2,820,000 x 81.25 % 2,291,250 2,462,525

357,475

50 % Share 50% 178,738

Premium 350,013

Say £350,000