Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0007/04/13, 0007/04/13, 0008/04/13

In the Matter of Hansen, Ezel and Judkin Court

In the Matter of an Application under S84 (3) Commonhold and Leasehold Reform Act 2002

TRIBUNAL AVS Lobley Chair
R W Baynham FRICS

APPLICANTS Century Wharf (One) RTM Company Limited
Century Wharf (Two) RTM Company Limited
Century Wharf (Three) RTM Company Limited

RESPONDENTS OM Property Management Limited
Fairhold Properties (No 6) Limited

ORDER

1. Following a hearing on 27th November 2013, and after receiving a copy of the decision in *Ninety Broomfield Road RTM Company Ltd v Triplerose (2013) UKUT 606*, (the *Ninety Broomfield Road* case)the Tribunal found, in its decision issued on 17th February 2014, that it was lawful for one RTM company to acquire the right to manage over more than one property, so long as every property meets the qualification conditions in the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Tribunal found that the Applicants are RTM companies and claim notices served on their behalf were valid, as were the counter notices.

2. At the hearing, Mr. Bates had asked the Tribunal to issue decisions on the issues of the validity of the counter notices, whether the applicants are valid RTM companies and whether the claim notices were validly signed. No argument or evidence had been heard on the substantive issues and Mr. Bates submitted it was wrong for Ms. Mossop to suggest there was no need to hear any evidence on the issue of whether the individual buildings were within the scope of S. 72 of the 2002 Act and if neither party achieved knock out success on the preliminary issues, then the Tribunal was asked to give further directions for the production of evidence with a view to a final hearing.

3. The Tribunal, following the hearing, considered it likely it would not be necessary to consider fully the substantive issues as its findings on the validity of the claim notices and counter notices were likely to be conclusive. However, following the decision of the deputy President in *83 Crampton Street RTM Company*, the Tribunal was forced to a conclusion that the claim notices were valid and in relation to the substantive issues,

was conscious the parties wished to say more. Accordingly, a further hearing was arranged.

ADJOURNMENT OF APPLICATIONS

4. In his statement of case filed in August 2013, Mr. Bates noted that the Tribunal did not appear to require the parties to address the substantive merits of the claim and the directions made on 1st July 2013 made no provision for the exchange of witness statements or expert evidence, both of which, he asserted, were plainly necessary to establish whether, for example, the buildings in the present case came within S 72 of the 2002 Act. He asserted the Applicants were under a similar impression as they had not adduced evidence on the substantive qualification conditions of the buildings. Mr. Bates invited the Tribunal to adjourn the application pending the decision in *Sinclair Gardens Investments Limited (Kensington) Limited v Darleston Court RTM Co Ltd* which related to the issue of whether one RTM company can acquire the right to manage more than one block (that appeal was heard with two other appeals in the *Ninety Broomfield Road* case). Mr. Bates also submitted that if either side was correct on a jurisdictional argument then then was no need to deal with any substantive argument. He did, however, make written submissions on the substantive issues (see paragraphs 21 and 22 below).

5. On 18th December 2013, in a further submission, Ms. Mossop said the decision in *Ninety Broomfield Road* confirmed their submission that there was no statutory restriction on the number of premises to which one RTM Company could relate. That case also confirmed that one right to manage claim can extend to multiple blocks of flats and appurtenant property. She further asserted that the Respondent was wrong to argue that the blocks did not qualify under S. 72 of the 2002 Act because of the undercroft car parking beneath some of the blocks. The fact that the premises shared appurtenant property did not prevent the separate blocks being self-contained within S. 72. She said the language of S. 72 envisaged premises can contain a self-contained building or several self-contained buildings in addition to appurtenant property, but only the buildings have to be self-contained as opposed to the appurtenant property or the premises as a whole. She also asserted that where buildings were self-contained there was no further requirement for them to be vertically divided. The applicants had served claim notices for whole buildings not for parts of these buildings. The fact that self-contained blocks are subdivided into smaller parts was irrelevant as long as the block as a whole was self-contained, which, it was said, the Tribunal's visit had established. The Tribunal was asked to find in the Applicant's favour in respect of the arguments advanced in Ms. Mossop's skeleton served at the hearing on 27th November 2013. She referred to Mr. Bates' submission at the hearing on 27th November 2013 that the decision in *Ninety Broomfield Road* would dispose of all outstanding issues in this application. She said there was no need for the Tribunal to make further directions for the filing of expert reports.

6. In a submission dated 23rd December 2013, Mr. Bates submitted that in the light of the decision in *Ninety Broomfield Road*, the Tribunal had to hold that one RTM company could acquire the right to manage over more than one property but asserted the Tribunal had not heard any evidence or argument on the substantive dispute, whether

the individual buildings were within the scope of S. 72 of the 2002 Act. It was wrong of the applicants to suggest there was no need to hear evidence on these questions, which he submitted was to confuse the preliminary issues with the substantive issues.

7. In a letter dated 9th January 2014 Mayfield Law for the Applicants wrote to the Tribunal stating that the Tribunal's intention was to deal with all preliminary and substantive issues, confirmed in an email dated 17th September 2013 and confirmed by the chair at the hearing. The applicant disagreed with Mr. Bates' submission that there had been no evidence or argument on the substantive issues as the Tribunal had been conducted on the basis that it would hear submissions on all issues save for those that fell within the scope of the pending decision in *Ninety Broomfield Road*. It was asserted that when counsel for the Applicants proposed directions for the appointment of an expert, Mr. Bates led the Tribunal to believe this would not be necessary after the decision in *Ninety Broomfield Road*. At the time, Mr. Bates had read the draft decision and it was said either he misrepresented the scope of the issues in that case or his request for further evidence and a final hearing were a disingenuous attempt to delay the outcome of the application. It was the Applicants' position that no further evidence was necessary to enable the Tribunal to decide if the Applicant companies met the qualification criteria in S. 72 of the 2002 Act. The Tribunal had been given evidence about this in the form of freehold titles and plans and had inspected the premises. If the Tribunal were not to make its final determination, then the Applicants asked for a directions hearing to determine what, if any, further evidence was required. As the Applicants' counsel had sought to do this at the hearing on 27th November 2013 and was stopped by Mr. Bates submission this would not be necessary once the decision in *Ninety Broomfield Road* was given, it was submitted the Respondents should bear the costs of the Applicants in attending the hearing.

8. In a letter dated 5th March 2014, Peverel Property Management (PPM) said it had been informed that the Upper Tribunal had given permission to appeal its decision to the Upper Tribunal in the case of *Ninety Broomfield Road*. PPM sought a stay of the LVT proceedings pending the outcome of the Court of Appeal decision. If the appeal was allowed then the applicants' claim notices may well be invalid. Proceeding with a directions hearing would result in costs to both parties and there was a requirement for expert evidence in relation to the buildings and whether they satisfy S. 72 of the 2002 Act. Alternatively, PPM asked if the Applicants would agree to a postponement until the Court of Appeal decision.

9. The Applicants strongly opposed this in their e mail dated 10th March 2014 as a postponement severely prejudiced the rights of the individual leaseholders and the outcome of the pending appeals was a matter of speculation and not relevant. The Applicants referred to a decision of the first tier tribunal property chamber in *Old House Gardens RTM Company Limited LON/00BD/LSC/2013/0020*. Paragraph 16 gave weight to the fact the Court of Appeal had already given tacit approval for the proposition that a RTM company could acquire right to manage more than one property. The issue of whether one RTM company could manage multiple blocks had been decided by two separate hearings of the Upper Tribunal. It seemed likely permission to appeal to the Court of Appeal had been granted in order to have the issue settled once and for all so RTM practitioners could have confidence in the court's

decision. The applicants asked the Tribunal to make a decision on the Respondent's request for an adjournment so each party could make short submissions. It was said the Respondent had contributed to wasted costs by retracting from its unambiguous position at the last hearing that everything would be disposed of by the decision in *Ninety Broomfield Road.*

DIRECTIONS HEARING

10. At the hearing on 19th March 2014, Miss. Mossop pointed out that sufficient time had been reserved for the hearing in November 2013 to deal with all substantive issues. In its Directions dated 1st July 2013, the Respondent was directed to submit its position on jurisdictional matters and any further documents they wished to rely on by 12th August 2013. Paragraph 4 of the Directions made it clear all matters in issue were to be heard. Once the hearing was fixed, Miss. Mossop wrote on 17th September 2013 to clarify all issues to be heard as the submissions received on 17th September indicated some doubt about the scope of the hearing. The Tribunal confirmed all issues were to be dealt with at the hearing on 27th November 2013. Mr. Bates at the hearing told the Tribunal the decision in *Ninety Broomfield Road* would enable the Tribunal to deal with all outstanding issues. After the hearing the only issues outstanding were the qualifying criteria under S. 72 of the 2002 Act and whether one RTM company could manage more than one block. Her suggestion to make directions at that hearing was met with the response that there was no need and everything would be clear following the decision being made public. Her client was upset that there appeared to be a U turn. In her submission filed on 18th December 2013, she addressed all outstanding issues including the qualification criteria. Her position was that there had already been a 3/4 month delay as a result of Counsel's last request for an adjournment and any further delay caused irreversible damage to her client. She also took the view that the Tribunal had given adequate directions for all parties to file all evidence on which they needed to rely. The Respondent has had since July 2013 to do this. At no stage did they request to file any documents out of time or request to file any expert evidence. The impression given was that the Respondent was playing for extra time to delay the outcome, which was utterly unfair to her client who could not be compensated for the fact the RTM would be acquired on a later and later date. If the Tribunal granted an adjournment or stay pending the outcome of the appeal to the Court of Appeal, it could take 6 to 12 months to resolve the matter. There would be an additional delay in listing and there might be another delay of 18 months. The Tribunal was in a position to dispose of all outstanding issues now and the only issue was the qualification criteria in S. 72 of the 2002 Act. She had gone in detail at the last hearing identifying each claim notice and the property it covered and she identified clearly how the premises qualified under S. 72 of the 2002 Act.

11. The Applicants had always made it clear their evidence on the qualification criteria depended on the premises identified in the claim notices, on the freehold title and she matched the claim notices to the plan. At the inspection, the Tribunal could see the blocks and the houses and the undercroft car parks which were shared appurtenant property. It was not disputed by them that some of the buildings comprise houses. In her skeleton she matched the houses to the blocks in great detail, she identified them all so there was no need for expert evidence. Underneath the block there were

extensive undercroft car parks, that was not disputed. All they needed was the decision in *Ninety Broomfield Road* to be applied to the facts. Any stay pending an appeal to the court of Appeal was speculative and it would be wrong to delay final determination. Indications from the Court of Appeal in *Gala Unity v Ariadne Road RTM Company* was that tacit consent had been given to the fact that one RTM company can manage several blocks. There were several decisions going against the Respondent and she believed his chances of success in the Court of Appeal were slim. If the Court of Appeal did decide in favour of the Respondent, then they could appeal against this Tribunal's decision out of time.

12. Miss. Cullen, for the Respondent, referred to the grounds for leave to appeal in the *Ninety Broomfield Road* case. The Court of Appeal was asked not to follow the decision in *Gala Unity.* If the Court of Appeal overturned the Upper Tribunal decision, this was highly relevant to this case because the LVT would not have jurisdiction to consider the right to manage claims. There was a further case outstanding in the Court of Appeal, in *No. 1 Deansgate (Residential) Limited* on the interpretation of S. 72(2), whether premises are structurally detached. In that case, it was decided only an attachment of a structural nature would fall outside S. 72 (2). Mr. Bates' written submissions in respect of the meaning of structural detachment were prepared before this Upper Tribunal decision.

13. Miss. Cullen handed up two decisions in respect of her application for a stay, *In re Yates Settlement Trusts 1954 WLR 564* and *Johns and Solent SD Limited (2008) EWCA Civ 790.* In the former, the Court of Appeal decided the court of first instance ought not to have adjourned a hearing pending the outcome of an appeal to the house of Lords (due to the crucial issue of the survival of the frail settlor of the trusts). In the latter, the Court of Appeal upheld a stay by the employment tribunal in a discrimination case pending an appeal to the European Court. She submitted the decision in both *Ninety Broomfield Road* and *No 1 Deansgate* would be relevant to the Tribunal's decision and there would be considerable further expense in preparing the expert evidence. She submitted the Applicants needed to identify the premises over which it was claimed the right to manage, why they meet the qualification conditions, whether within S. 72(2) or (3), why it was said the notices were sufficiently clear, not matters the Tribunal was in a position to consider on 27th November 2013, given the jurisdiction points on the validity of the notices. There were issues on which an expert would be able to assist the Tribunal, the nature of the premises and whether they were self-contained and structurally detached. If the premises fall within S. 72(3), there is a strict approach to vertical division, expert evidence will be needed on that issue as well. Other issues on which evidence may be necessary included whether or not there were qualifying tenants, when the property was built, a map of the utilities, pipes or cables. It was for the applicant to show each and every premises fulfil the criteria. This would be witness evidence. She sought a full statement of case from the Applicant as to why they say each and every premises satisfies the criteria, expert evidence, responses from the Respondent, and a meeting of the experts. In her reading of the order of the Tribunal made on 17th February 2014, the Tribunal had considered further directions would be necessary. She outlined the further directions she considered would be necessary, including timing for the hearing and submissions of documents.

14. Miss. Mossop responded that it was not appropriate to delay a determination because of the *Deansgate* appeal, a case upon which neither party had relied at the hearing in November 2013. She submitted the Tribunal had to make a decision based on the law as it stood at the date of the hearing otherwise the proceedings would be delayed indefinitely. The latter decision was in any event not directly relevant as it concerned an overhang between the buildings. The decision was clear support for their position. The role of the Tribunal was to construe S. 72 and apply it to the facts. There was no need for expert evidence on the construction of S. 72. She had said in the statement of case and in submissions the *Ninety Broomfield Road* case enabled the Tribunal to deal with the interpretation of S. 72 as it concerns the undercroft car park. It has been suggested that expert evidence was needed on wiring and pipes. The Applicants had made it clear in their submission the claim was on the basis of S. 72(2), not (3). The issues of vertical division and the independence of the services was only relevant to S. 72 (3). There was nothing to add to their statement of case and the Tribunal understood what their case was about. It was not clear on what expert evidence was needed. She considered the time estimate for a hearing was excessive and if evidence had been needed it should have been done earlier. She asked the Tribunal to award the costs of today caused by Mr. Bates' refusal to deal with directions at the hearing in November 2013.

15. Miss Cullen in reply stated the issue in *No 1 Deansgate* was clearly referred to in the Respondent's submissions. She submitted it was not clear on what basis the application for costs was made, the Respondents behavior was not unreasonable. It had been necessary to have further directions as the Tribunal had restricted itself to jurisdiction issues and the Applicants at that stage were disputing the counter notices.

16. Miss. Mossop further said it was not appropriate to have a stay on the basis of the appeals before the court of Appeal as there was a decision. The only issue for any possible adjournment related to whether there should be an adjournment for further evidence. She referred again to the decision in *Old House Gardens*. Any further appeal was a matter of speculation and the Tribunal had to decide the matter on the basis of the law at the date of the hearing.

TRIBUNAL DETERMINATION ON APPLICATION FOR STAY/POSTPONEMENT

17. The Tribunal is bound by decisions of the Upper Tribunal. It made its decision on 17th February 2014 following the decision of the Upper Tribunal in *Ninety Broomfield Road* as it was urged it had to do by Mr. Bates in his submission dated 23rd December 2013. The grant of leave to appeal to the Court of Appeal cannot alter that fact. The only possible decision open to the Tribunal was that one RTM company could manage more than one building. It also appears unlikely the Court of Appeal will overturn the Upper Tribunal decision in *Ninety Broomfield Road*. In the case of *Old House Gardens*, the Judge referred to a body of decisions which concluded that a RTM can acquire the right to manage more than one property and although the point was not strictly considered the Court of Appeal in *Gala Unity v Ariadne Road* lends tacit support for the proposition that a RTM could acquire the right to manage more than one property. In refusing leave to appeal to the Upper Tribunal the Judge pointed out the decision in *Ninety Broomfield Road* remained binding upon the tribunal and any appeal against the

tribunal's decision in this case had no prospect of success. The outcome of any appeal to the Court of Appeal was a matter of speculation and was not relevant to the appeal.

18. For the preceding reasons, and taking into account the prejudice to the Applicants the Tribunal did not consider it appropriate either to stay or adjourn a final determination of whether the Applicants could acquire the right to manage the premises covered by the claim notices.

19. The Tribunal did not consider it needed expert evidence on the outstanding point of whether the Applicants satisfied the qualifying criteria of S. 72 (1) of the 2002 Act for the reasons set out below. Nor did it consider there should be an adjournment for the Respondent to answer the points made by the Applicants in respect of the need for expert evidence. Miss. Mossop in her submissions repeated what was said in her submission dated 18th December 2013 and Mr. Bates responded on 23rd December 2013.

QUALIFICATION CRITERIA UNDER S. 72 OF THE 2002 ACT

20. S 72 of the 2002 Act provides as follows:

72 Premises to which this Chapter applies

This Chapter applies to premises if

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,

(b) they contain two or more flats held by qualifying tenants, and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the building.

(2) A building is a self-contained building if it is structurally detached.

(3) A part of a building is a self-contained part of the building if-

(a) it constitutes a vertical division of the building

(b) the structure of the building is such that it could be redeveloped Independently of the rest of the building, and

(c) subsection (4) applies in relation to it.

(4) This subsection applies in relation to part of a building if the relevant services provided for occupiers of it

(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

21. .Mr. Bates asserted in his written submission the houses at Century Wharf were not within S 72 of the 2002 Act as they were not self-contained buildings. He referred to S 3 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) and to paragraph 21-02 of Hague on leasehold enfranchisement, 2009 edition, which says that structural detachment is a mandatory requirement of the Act but which is not defined in the 1993 Act. He referred to the decision in *Parson v Viscount Gage (1974) 1 WLR 43*5. Hague summarized the effect of this decision meant that structural detachment

meant actual physical detachment from any other structure and separation merely by party walls etc was not sufficient. Mr. Bates therefore asserted that it was clear that the slightest touching was sufficient to mean a property is not structurally detached and the overwhelming majority of the houses at Century Wharf were touching and not structurally detached (Mr. Bates made a similar submission in the case of *No 1 Deansgate RTM* but both the Tribunal and the Upper Tribunal found against him).

22. In addition, the houses do not amount to self-contained parts of a building under S 72. In order to amount to a vertical division of a building, it must be possible to draw a vertical line from the ground to the sky, with the building falling entirely within the line. The sky to ground division would result in the undercroft car parks at various of the houses falling on the wrong side of the line. Further factual details would, it was said, be provided by witness evidence in due course. There would also be significant interruption to the supply of services and again further details were said to be provided by witness evidence in due course.

APPLICANTS' SUBMISSIONS ON S 72 OF THE ACT

23. On 27th November 2013, Miss. Mossop produced a 26 page skeleton, much of it dealing with the various jurisdictional points dealt with by the Order dated 17th February 2014. Miss. Mossop responded to Mr. Bates submissions on S 72 of the 2002 Act at paragraph 74 of the skeleton onwards. She submitted the effect of the provisions in S. 72 of the 2002 Act was that the right to manage can be exercised for any self-contained building irrespective of whether it contains other property enjoyed by the tenants under the lease such as garages and gardens but does not have to. She submitted Mr. Bates' arguments that the premises do not qualify because vertical separation could not be achieved because of the undercroft car parking was flawed and could not succeed because it was based on an incorrect assumption that a claim notice has been issued in respect of each self-contained part of the separate buildings, known as houses.

24. Miss. Mossop submitted all premises in respect of which claim notices were served are premises which consist of self-contained buildings, with or without appurtenant property and so met the qualification criteria under S 72 (1). Each of the claim notices served by the first applicant related to a separate self-contained building and each of the three claim notices served by the second applicant relates to a separate self-contained building and the claim notice served by the third applicant related to a separate self-contained building. She submitted the Respondent's argument about lack of vertical separation was irrelevant as that requirement only applied where the right to manage was claimed in respect of self-contained parts of a building and in any event the 19 separate buildings were vertically divided from one another and there was no requirement for any appurtenant property enjoyed with the buildings to be vertically divided. A self-contained building was not always the same as a structurally detached building otherwise there would be no need to add S. 72 (3). If the two terms "structurally detached" and "self-contained" were interchangeable there would be no need to add S. 72 (2). She referred *to Brewhouse Yard RTM Co Ltd v Fairhold Clerkenwell Ltd Lon/00AU/LRM/2011/0017* in which a Tribunal had said that if a property is structurally detached it is to be regarded, by statute, as a self-contained

building. It does not follow that a property which is not structurally detached is statutorily required not to be regarded as self-contained.

25. Miss. Mossop submitted that there was no requirement for appurtenant property to appertain exclusively to the self- contained building or part of a building subject to the claim to right to manage. She referred to *Gala Unity v Ariadne*. Lord Justice Patten had said in that case the fact that the definition in S 112 (1) of the 2002 Act (which defines the meaning of "appurtenant property") was not limited to appurtenances which belong to the building in question was a powerful indication that Parliament did not intend that appurtenant property for the purpose of S 72(1) should be limited to property that is exclusively appurtenant to the self- contained building in question. This approach had been adopted in two tribunal decisions*, Albion Riverside Residents RTM Company Limited v Albion Residential limited* and *No 1 Deansgate RTM Company Ltd v No 1 Deansgate (Residential) Ltd.* In the latter case, the Tribunal found that the premises were a self-contained building despite the fact that they overhang adjacent properties and there was vehicular access into the ground and basement floor for the use of a commercial unit.

26. Miss. Mossop sought to distinguish the *Parsons* case relied on by Mr. Bates as that case dealt with the Leasehold Reform and Urban Development Act 1967, concerning the right to enfranchisement of houses not flats and it was recognized the definition of a house in the 1967 Act was different to the definition of self-contained premises.

27. Even if the Tribunal were to find the buildings were not self-contained, she submitted they still qualified as self-contained parts of a building as there was no requirement to claim the smallest part of a building in order to satisfy S 72(1).

TRIBUNALS DECISION ON QUALIFICATION UNDER S 72 OF THE ACT

28. The Tribunal accepted Miss. Mossop's submissions in respect of S. 72 of the 2002 Act. As noted in the order dated 17th February 2014, the First Applicant served 15 Notices in respect of Lynton, Penstone and Talesin Courts. Where houses in each court adjoined, a notice was served in respect of the houses adjoining. Where the houses were entirely separate, a separate notice was served. So, for example, one notice covered Florence, Palma, Athens and Oslo Houses which are adjoined and only one notice was served in respect of Venice House, which stands alone. The Second Applicant served 3 notices in respect of Ezel Court and the Third Applicant served one notice in respect of Hanson Court (which has five adjoining houses). As such, each of the claim notices served relates to a self-contained building. The provisions of S. 72 (3) and (4) only come into play where a self-contained part of a building is involved. That is not the case here. Florence, Palma, Athens and Oslo Houses together constitute a self-contained building. So do Seville, Barcelona and Madrid Houses. They are structurally detached from other houses covered by other claim notices. There is no requirement for appurtenant property to be vertically divided. The premises covered by the claim notices qualify under S. 72 (1) of the 2002 Act.

29. As a consequence, in accordance with S. 84 (5) of the 2002 Act, the Applicants acquire the right to manage the premises set out in the claim notices. Pursuant to S. 90 of the 2002 Act, the acquisition date is 3 months from the date of this determination.

COSTS

30. These are provided for in S. 88 of the 2002 Act. Paragraph 10 of schedule 12 to the 2002 Act further provides that

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedIngs in any circumstances falling within sub-paragraph (2)
(2) The circumstances are where
(*a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance made with regulations made by virtue of paragraph 7, or b) he has in the opinion of the leasehold valuation tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

31. In a submission made by the Second Respondent on 7th August 2013, it was said the claim notices were invalid and the Tribunal had no jurisdiction. The Second Respondent asked for a costs order pursuant to paragraph 10 of the 12th Schedule to the 2002 Act. As the claim notices were held to be valid in the Tribunal's order dated 17th February 2014 and there has been no appeal to the Upper Tribunal, there are no grounds to make such an order in the Second Respondent's favour.

32. The Applicants also make such an application in respect of the hearing on 19th March 2013. The Tribunal does not consider the Respondent's behaviour comes within paragraph 10 of the 12th schedule to the 2002 Act. For a start, the Tribunal itself directed a further hearing in its order dated 17th February 2014, not least because, at that stage, it was not known whether there would be an appeal by either party against the order. If the Tribunal had found either the notices or the counter notices defective, then there would be no need for any decision in respect of whether the premises covered in the claim notices came within S. 72 (1) of the 2002 Act. The issues as to expert evidence were not fully aired at the hearing on 27th November 2013 (for whatever reason).

Dated this 8th day of May 2014

CHAIR