

**MOULDED FOAMS (WALES) LIMITED  
(THE CLAIMANT)**

**AND**

**MOULDED FOAMS LIMITED  
(THE RESPONDENT)**

---

**ON THE MATTER OF  
A  
DILAPIDATION DIMINUTION VALUATION  
UNDER  
S18(1) LANDLORD & TENANT ACT 1927  
AND COMMON LAW PRINCIPLES**

**AT**

**UNIT 4 DINAS ISAF INDUSTRIAL ESTATE  
WILLIAMSTOWN**

---

**ABRIDGED EXPERT WITNESS REPORT**

**BY**

**SCOTT JOHN WILLIAMS, FRICS ACI Arb MEWI  
MAPLE LEAF PROPERTY CONSULTANTS LTD  
BROOKWOOD  
CRIPPETTS LANE  
CHELTENHAM  
GL51 4XT**

**ON INSTRUCTIONS FROM THE CLAIMANT**

## **INDEX**

---

1. The Dispute/Instructions
2. Expert's Qualifications
3. Executive Summary
4. Premises, Location & Leases
5. Background to a Diminution Valuation
6. Background to the Current Claim
7. Expert Opinion – The Required Works
8. Expert Opinion – Market Values
9. Expert Opinion – The Valuation Scenarios
10. Expert Opinion – Assessment of Diminution
11. Statement of Truth & Compliance

## **APPENDICES**

---

1. Documents, Investigation Limits and Caveats
2. Schedule of Relevant Terms – The Superior Lease
3. Schedule of Relevant Terms – The Lease
4. Surrender Heads of Terms/Land Registry Form TR1
5. DCF Valuations – Surrender Scenario
6. DCF Valuations – Assignment Scenario
7. DCF Valuations – Subletting Scenario

## 1.0 THE DISPUTE / INSTRUCTIONS

---

- 1.1. The Claimant, for the purpose of this valuation, is Moulded Foams (Wales) Limited whose registered office is 3180 Park Square, Birmingham Business Park, Birmingham, B37 7YN.
- 1.2. The Respondent, for the purposes of this valuation, is Moulded Foams Limited whose registered address is 1 Ward Park Road, Ward Park South, Cumbernauld, Glasgow, G67 3EX. By Certificate of Incorporation of Change of Name dated 7<sup>th</sup> June 2007 the Respondent changed their name to Moulded Foams Limited from DCB Mouldings Limited.
- 1.3. Through the Claimant's solicitors, Berwin Leighton Paisner LLP, I have instructions to undertake this Diminution Valuation in accordance with S18(1) Landlord & Tenant Act 1927 and with the principles of Common Law in the capacity of an Expert Witness. In accordance with Civil Procedure Rules Part 35 and the RICS Practice Statement and Guidance Note for Surveyors Acting as Expert Witness (3rd Edition) I have drawn my client's attention to, and my client has formally acknowledged, my Primary Duty to such court, tribunal or arbitral body as the subject matter of this dispute is referred to and to my obligation to provide a complete, true and honest opinion.
- 1.4. This Diminution Valuation is prepared in compliance with the Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at the Termination of a Tenancy (The Dilapidations Protocol).
- 1.5. Any Diminution Valuation contained herein, is prepared in contemplation of litigation proceedings and does not, therefore, come within Standard VS1 of the Valuations Standards published by The RICS. However, where such procedures represent best practice for application to the matter under consideration these procedures have been adopted.
- 1.6. This Valuation is intended to assess the diminution in the Claimant's reversionary value on the Term Date of 1<sup>st</sup> March 2012 arising from wants of repair under a lease dated 1<sup>st</sup> March 2007 and made between Moulded Foams (Wales) Limited (as Landlord) and DCB Mouldings Limited (as Tenant) for premises known as Unit 4 Dinas Isaf Industrial Estate, Williamstown, Mid-Glamorgan.
- 1.7. This Report has been based upon the documentation listed within Appendix 1 hereto, upon the investigation limits set out within that Appendix and is subject to the Caveats also set out within that Appendix.

1.8. The Claimant's reversionary interest in the property was Leasehold and in order to avoid confusion the following terminology shall be used for the purposes of this report: -

1.8.1. "The Superior Landlord" – The Welsh Development Agency/Lear Investments Limited.

1.8.2. "The Landlord" – Moulded Foams (Wales) Limited.

1.8.3. "The Tenant" – Moulded Foams Limited (Formerly DCB Mouldings Limited).

1.8.4. "The Superior Lease" – The Lease dated 12<sup>th</sup> March 1997 and made between The Superior Landlord and The Landlord.

1.8.5. "The Lease" – The Lease dated 1<sup>st</sup> March 2007 and made between The Landlord and The Tenant.

## 2.0 EXPERT'S QUALIFICATIONS

---

- 2.1. I Scott John Williams am the sole Director of Maple Leaf Property Consultants Limited, a specialist Landlord & Tenant practice established in 1997.
- 2.2. I have some 25-years experience in surveying, over 21-years of which have been in the specialist field of rental valuation, for rent review and lease renewal disputes.
- 2.3. I have over 18-years experience of establishing the impact of issues of disrepair on the rental and capital values of premises following vacation by prior tenants without Dilapidation works being completed.
- 2.4. I have conducted such valuations both formally and informally on behalf of both landlords and tenants on office, industrial, retail and banking premises throughout the United Kingdom. This has included the formal assessment of diminution for dilapidations disputes and the presentation of such assessments as Expert Witness Evidence in compliance with Civil Procedure Rules Part 35 and the associated Practice Directions and Pre-Action Protocols.

2.5. I am a Fellow of the Royal Institution of Chartered Surveyors.



2.6. I am an Associate of The Chartered Institute of Arbitrators.

2.7. I am an Individual Member of the Expert Witness Institute.



2.8. I am an Accredited Expert Witness holding:-

- The Cardiff University Law School Bond Solon Expert Witness Civil Certificate.
- The Bond Solon Civil Procedure Rules for Expert Witnesses Certificate.



### 3.0 EXECUTIVE SUMMARY

---

- 3.1. The property is a 1990s industrial building extending to 63,400 sq ft, located approximately 7 ½ miles north of Junction 34 of the M4 motorway.
- 3.2. The Landlord's reversionary interest is a Leasehold interest under The Superior Lease which at the Term Date had 9-years and 4-months unexpired at a rental of £195,000 pa. It is this reversionary interest that requires valuation under Section 18(1) Landlord & Tenant Act 1927.
- 3.3. The Tenant occupied the premises under The Lease and exercised a Tenant's Break Option to terminate The Lease with effect from 1<sup>st</sup> March 2012, which date represents the Term Date for this valuation.
- 3.4. Having carefully considered the provisions of The Superior Lease and The Lease, I have noted that there is no material difference between the provisions that would lead to a differential in the works required in order to comply with the respective parties' repairing obligations.
- 3.5. Given the restrictions of The Superior Lease I have concluded that there were three notional disposal options available to The Landlord at the Term Date; the actual surrender that was negotiated and executed, the assignment of The Superior Lease in the open market or the subletting of the premises at current market rent.
- 3.6. I have carefully considered the Dilapidations Schedule provided to me, together with costings therein, and have reflected upon the works that would be undertaken by the notional purchaser in each of the respective scenarios, concluding: -
  - 3.6.1. The payment of £250,000 in lieu of dilapidations on the surrender is not out of keeping with The Landlord's liabilities.
  - 3.6.2. The condition precedent on any assignment that the premises shall be in such state and condition so as to fully comply with The Superior Lease terms would result in The Landlord having to undertake substantial works immediately in order to ensure consent to any assignment. I have assessed these at a total cost of £224,500, excluding scaffolding, contactors' preliminaries and surveyors' fees.
  - 3.6.3. There is no condition precedent relating to any subletting and whilst The Landlord would require to undertake certain works to render the premises marketable, some works would be superseded by the sublease covenants and other works could be deferred until the expiry

of The Superior Lease. I have assessed these works as being £152,500 required to make the property marketable, £52,000 deferred to the end of The Superior Lease and £20,000 superseded. Again, these are exclusive of scaffolding, contactors' preliminaries and surveyors' fees.

- 3.7. In my opinion the Open Market Rental Value for the premises in good condition would be £130,000 pa and that they would be likely to be let for a 5-year term subject to a 6-month rent free period.
- 3.8. If these terms represent what the open market would offer for these premises, then any prospective assignee would expect to be compensated for the rental overage of £65,000 pa and to receive a premium from The Landlord the equivalent of 6-months rent free. Having carefully considered these aspects it is my opinion that a reverse premium totalling £390,000 would need to be paid by the assignor to an assignee in order to secure an assignment.
- 3.9. Having carried out Discounted Cashflow Valuations for the three notional purchase scenarios it is my opinion that, In Compliance, the surrender scenario would have a value of -£100,000, the assignment scenario would have a value of -£635,000 and that the subletting scenario would have a value of -£660,000.
- 3.10. Accordingly, it is my Expert Opinion that the value of the property In Compliance would be -£100,000.
- 3.11. Having carried out Discounted Cashflow Valuations for the three notional purchase scenarios it is my opinion that, In Breach, the surrender scenario would have a value of -£350,000, the assignment scenario would have a value of -£925,000 and that the subletting scenario would have a value of -£900,000.
- 3.12. Accordingly, it is my Expert Opinion that the value of the property In Breach would be -£350,000.
- 3.13. Accordingly it is my Expert Opinion that the diminution in The Landlord's reversionary value interest at the Term Date, as a result of the Wants of Repair, was:-

**£250,000 (Two Hundred and Fifty Thousand Pounds)**

#### 4.0 PREMISES, LOCATION AND LEASES

---

- 4.1. The property is one of four units located on Dinas Isaf Industrial Estate (east) located approximately 7.5 miles north of Junction 34 of the M4 motorway along the A4119. The estate is identified within the aerial photo below, with the subject unit being the most south-easterly unit on the estate.



- 4.2. The premises were constructed in the early 1990s of steel portal frame construction with powder coated profile steel cladding and roofing and with translucent roof lights. The property was extended in 1999 to provide additional floor space and loading bays and now comprise a total Gross Internal Area of 5,890 sq metres (63,400 sq ft).
- 4.3. I have been informed that the premises are provided with mains drainage, water, electricity and gas services but have not carried out service testing.
- 4.4. The premises is currently entered in the 2010 Rating List as a “Factory and Premises” with a Rateable Value of £199,000 with effect from 1st April 2010.

- 4.5. The Landlord held the premises under The Superior Lease for a term of 25-years from and including 1st August 1996, with 5-yearly rent reviews to Open Market Rental Value. A Schedule of the Superior Lease Terms relevant to the consideration of issues of dilapidations is included within Appendix 2 hereto.
- 4.6. The Tenant held the premises under The Lease for a term of 10-years from and including 1st March 2007, subject to a Tenant Only Break on the fifth anniversary of the start of the contractual term. A Schedule of the Lease Terms relevant to the consideration of issues of dilapidations is included within Appendix 3 hereto.
- 4.7. I have been informed that The Tenant served notice in accordance with the break provisions to terminate The Lease with effect from 1st March 2012 and that this therefore represents the Term Date for the purposes of this report and valuation.
- 4.8. Having carefully considered the lease provisions relating to dilapidations within The Superior Lease and The Lease it is my opinion that there are no material differences between the repairing obligations which arise therein.
- 4.9. It is, however, noted that Clause 9.3 of The Lease does make provision for The Landlord to make contributions to The Tenant in three potential scenarios:-
- 4.9.1. £50,000 if the Superior Landlord requires the dilapidation works listed within a schedule of condition to be carried out within 2-years of the date of The Lease commencement, or
- 4.9.2. £50,000 if the Tenant purchases the freehold interest in the premises without a discounted purchase price to reflect the condition of the premises, or
- 4.9.3. If neither 1 or 2 occur, a sum not exceeding £100,000 towards The Tenant's costs of carrying out dilapidation works at the expiry or sooner determination of The Lease.
- 4.10. I have discussed, with my client's instructing solicitor, the implications of this provision but am informed that:-
- 4.10.1. The Superior Landlord did not require the dilapidation works listed within the schedule of condition to be carried out within 2-years of the date of the Lease commencement.
- 4.10.2. The Tenant did not purchase the freehold interest in the premises.
- 4.10.3. The Tenant did not carry out the dilapidation works on The Lease's termination.

4.11. Accordingly, I have not taken account of any sums referred to within this provision as the payments have not been triggered by the satisfaction of the conditions precedent.

## 5.0 BACKGROUND TO A DIMINUTION VALUATION

---

5.1. Section 18(1) Landlord & Tenant Act 1927 lays down two limbs to limit the damages a landlord is entitled to claim in any dilapidations dispute: -

5.1.1. The first limb provides

*“Damages for breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) is diminished owing to the breach of such covenant or agreement as aforesaid.”*

5.1.2. The second limb provides

*“...and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been or be pulled down or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.”*

5.2. In addition to these limitations on damages that can be claimed for issues of repair, the assessment of damages at Common Law is also limited in relation to issues of reinstatement and redecoration in so far as such works would be superseded and would not therefore lead to loss or diminution.

5.3. The practical application of these issues is that dilapidations claims can be divided into three distinct stages: -

5.3.1. The assessment of the works, and their costs, required to comply with the lease terms (the Dilapidations Schedule). This represents the basic contractual claim.

5.3.2. The removal from the contractual claim of items superseded or rendered valueless by the actual landlord's intentions under either the second limb of Section 18(1) Landlord & Tenant Act 1927 (as to repair) or under Common Law principles (as to reinstatement or redecoration). This provides an assessment of the loss actually suffered by the landlord in light of his actions and is particularly notable as being a subjective assessment.

- 5.3.3. The assessment of any cap on the liability arising from a wholly objective assessment of the market value of the property (In Compliance and In Breach (the Diminution Valuation)). It is particularly notable here that this is not determined by the actual landlord's intentions or actions but by a broader consideration of the market place for the property at the Term Date.
- 5.4. In the current case the landlord for our consideration is the tenant under The Superior Lease. In such circumstances the reversion to be valued is that leasehold interest not The Superior Landlord's freehold interest. It is well established that in such circumstances the reversion may have a nominal or negative value. The role of the valuer is to assess the impact of the tenant's breaches which may have the effect of converting the reversion into a liability with a negative value, rather than an asset with a positive value, or of detracting from an already negative value.

*“As a matter of simple logic it will not do to say that because the value of the property in repair is nil, therefore, the value is still nil if it is out of repair due to the breaches of the outgoing tenant. Not at all. The value is minus £X, which is what the tenant must pay someone to take over, first, the fag end of the lease, and later the last moment of the lease.”*

*Sir Brett Cloutman, QC (Lloyds Bank Limited –v- Lake [1961])*

- 5.5. As at the Term Date the Superior Lease had 9-years and 4-months unexpired at a passing rent of £195,000 per annum. It is this interest that requires our valuation.

## 6.0 BACKGROUND TO THE CURRENT CLAIM

---

- 6.1. The Landlord's interest in the premises at the Term Date was governed by the terms of the Superior Lease for which the following provisions are particularly notable for our consideration: -
- 6.1.1. The passing rent at the Term Date was £195,000, equating to £33.10 psm (£3.05 psf). This was subject to review from 1<sup>st</sup> August 2011 but I have been informed that this rent review was settled at a Nil Uplift as the passing rent exceeded the Open Market Rental Value of the premises.
- 6.1.2. The Superior Lease prohibits the subletting or assignment of part only of the demise.
- 6.1.3. The Superior Lease permits the assignment of the whole of the demised premises subject to prior Landlord's consent (including the giving of guarantees where reasonably required). However, it is of note that the Superior Landlord is entitled to withhold their consent to any such assignment if the demised premises are not in the state and condition required by full compliance with the terms and covenants of the Superior Lease and this could have represented a significant obstruction to any assignment of the Superior Lease at the Term Date.
- 6.1.4. The Superior Lease permits the subletting of the premises subject to prior Landlord's consent (not to be unreasonably withheld or delayed) but does not provide any additional conditions.
- 6.2. I have been informed that following service of the Break Notice, but before the Term Date, The Landlord entered into negotiation with The Superior Landlord to surrender The Superior Lease. Heads of Terms to effect the surrender were issued on 24th May 2012 providing for a payment to The Superior Landlord comprising £100,000, by way of consideration for the early surrender of The Superior Lease, and £250,000 in lieu of dilapidations. A copy of the Heads of Terms, and of the Land Registry Form TR1, are enclosed within Appendix 4 hereto.
- 6.3. It is my understanding that this sum of £250,000 represents the basis upon which The Landlord is claiming dilapidation damages from The Tenant but that The Tenant has queried whether or not this loss would have been capped by a diminution valuation. Accordingly, I have been asked to provide an assessment of the diminution in The Landlord's reversion to determine whether or not this would

or would not cap the damages of £250,000 for Wants of Repair, Reinstatement and Decoration.

6.4. Having carefully considered this background it is my opinion that there are three scenarios that need to be considered both In Compliance and In Breach: -

6.4.1. The actual surrender negotiated and completed between The Landlord and The Superior Landlord.

6.4.2. The potential assignment of The Superior Lease by The Landlord in the open market.

6.4.3. The potential subletting of the demise by The Landlord.

## 7.0 EXPERT OPINION – THE REQUIRED WORKS

---

- 7.1. I have been provided with a copy of the Terminal Schedule of Dilapidations dated 3<sup>rd</sup> April 2012 and prepared by DTZ, Cardiff and have relied upon this schedule and the costings contained therein.
- 7.2. I have given careful consideration to the items within this schedule and the likely need to carry out works in order to secure a disposal of the reversionary interest for each of the valuation scenarios. Where lesser works than those detailed in the schedule would be undertaken, in order to secure the notional disposal, I have discussed the cost of such alternative works with The Landlord's building surveyor.
- 7.3. Having carefully considered these aspects I have arrived at the following cost summary relating to key items and classifications that would be undertaken in order to secure the potential notional disposals: -

Roof – replace holed and damaged roof sheets and treat cut edge corrosion. £29,500

Roof lights – clean and where required replace damaged or deteriorated translucent roof lights. £21,000

RWG - repair, renew or replace damaged rainwater goods and drainage. £26,700

Cladding - Repair or where necessary replace damaged and holed cladding sheets. £41,300

Yard - Repairs to damaged surface in yard areas. £1,000

Alterations - Reinstatement and making good of unit after removal of Tenant's improvements/alterations. £47,000

Warehouse Floor - Remove fixing bolts from Tenant equipment, making good with appropriate resin finish. Where the floor presents in poor order/finish a thorough clean would be necessary. £30,000

Chattels - Removal of Tenant's equipment, machinery and fittings. £8,000

Decoration - Redecoration of previously painted/decorated surfaces. £20,000

---

**TOTAL      £224,500**

- 7.4. Contractor's preliminaries have been assessed at 15% of the total contract cost for each valuation scenario detailed below. Surveyor's supervision fees have been assessed at 9%, including CDM Regulation Planning Supervisor's fees.
- 7.5. In addition, scaffolding would be required in order to access and undertake high level works and repairs, including the roof, roof lights, RWG and high level cladding. My client's Building Surveyor has confirmed that the extent of scaffolding required, for the period necessary to undertake such works, would cost £25,000.

## 8.0 EXPERT OPINION – MARKET VALUES

---

### The Rental Value

8.1. There have been very few transactions in the immediate vicinity for premises of this size. However, I am aware of the following:-

8.2. A1/A2 Llantrisant Business Park was let in August 2011 on a 3-year FRI term. The premises extends to 4,740 sqm (51,016 sq ft) and was let for an annual rental of £117,000, equating to £24.68 psm (£2.30 psf).



8.3. This premises is both newer and in a better position than the subject premises, being closer to Junction 34 M4 motorway, and would secure a higher rental level than the subject unit. However, having discussed the letting with the agents I am aware of their view that a slightly higher rental could have been secured if the landlord was not particularly keen to see a letting achieved and in my opinion a valuation closer to £27.00 psm (£2.50 psf) would be appropriate for such a unit in that location on such terms.

8.4. Unit 9 Llantrisant Business Park is currently being marketed at a rental of £208,500 for a unit of 5,072 sqm (54,591 sq ft), equating to £41.10 psm (£3.80 psf).



8.5. Although it is recognised that this premises is substantially newer than the subject premises and in much better location, it is my Expert Opinion that there would need to be substantial movement in the landlord's asking rent in order to achieve a letting. The premises does have excellent accommodation with high eaves height but in my view this is unlikely to achieve a rental much in excess of £32.00 psm (£3.00 psf).

8.6. Unit 2 Pencoed Technology Park was let in December 2008 on a 10-year term. The unit extends to 5,673 sqm (61,066 sqft) and was let for an annual rent of £122,132, equating to £21.50 psm (£2.00 psf).



8.7. This unit is of similar age but of better specification than the subject premises. It is closer to the M4 motorway but is further west adjoining Junction 35 at Bridgend. It is also of note that the rent achieved of £21.50 psm compares to the asking rent for the unit of £35.00 psm.

8.8. As there is limited evidence of premises of this size I have also considered premises of smaller size in the immediate vicinity to provide a fuller background of rental values.

8.9. Unit K Coedcae Lane, Pontyclun was sold in November 2010 for £520,000. The property extends to 1,567 sqm (16,869 sqft) with a significant yard, equating to £332 psm (£31.00 psf).

8.10. This unit is slightly older than the subject premises and, whilst closer to Junction 34 of the M4 motorway, it is part of a larger estate of older premises. I am also aware that the property was sold without the dilapidations from the prior vacating tenant having been undertaken, but that the majority of these dilapidations were rendered irrelevant by a substantial fit out of the ingoing purchaser.

8.11. Unit 2 Llantrisant Business Park was let in February 2010 for a 10-year term, subject to fifth year break. The premises extends to 2,932 sqm (31,560 sqft) and was let for an annual rent of £94,680, equating to £32.30 psm (£3.00 psf).



8.12. This is a substantially older premises than the subject although it is in a better location closer to Junction 34 of the M4 motorway.

8.13. Unit H2 Coedcoe Lane, Pontyclun was let in November 2009 on a 5-year lease. The premises extends to 516 sqm (5,550 sqft) and was let at an annual rent of £19,000 pa, equating to £36.60 psm (£3.40 psf).



8.14. Again, this is a similar age and specification of premises to unit K on the same industrial estate, as detailed above.

8.15. Taking all of these factors into consideration it is my view that the subject premises, at the Term Date, would have been likely to have been let at a rental of between £125,000 and £130,000 pa, equating to £21.25 and £22.05 psm (£2.00 and £2.05 psf). Given the limited demand for space of this size it is also my view that any prospective notional purchaser would have provided for a void marketing period of not less than 12-months and a rent free period on a 5-year lease of not less than 6-months.

#### **The DCF Yield**

8.16. It is of note that the passing rent under the Superior Lease is substantially in excess of the Open Market Rental Value for the premises. Accordingly, even if the premises were relet by The Landlord, they would represent a significant liability rather than a net asset to the business.

8.17. In reality there is little or no market place for acquiring such liabilities when other vacant accommodation is available and as a result there is no market evidence from which to make a comparison valuation in this case. However, this is not problematic. In reality the market would assess any acquisition of this liability by reference to the income and expenditure stream that would arise from it, compared to the acquisition of a vacant property of the same nature available to let on a current market rent.

8.18. As a result, it is more appropriate to consider the valuation of the Landlord's reversionary interest here, by adopting a Discounted Cashflow Valuation which properly reflects the income and expenditure stream that would arise within the reversionary interest when compared to the potential acquisition of a vacant unit in the market on a new lease at current rental values. This provides a far more transparent and accurate assessment of the liabilities that arise and of the impact upon these of the wants of repair.

- 8.19. Within this context it is useful to consider International Accounting Standard 17, which sets specific requirements for the assessment and inclusion of such liabilities within company accounts. As a result of this requirement, any prospective notional purchaser would be less likely to assess the value of this liability by reference to market yields and far more likely to assess it by reference to the impact on their accounts and the cost of finance which accountants would use to assess the liability.
- 8.20. For this reason the adoption of a market yield, appropriate for industrial premises, would not be appropriate to the assessment of the liability value here. It would be far more appropriate to gear this to the cost of finance (the opportunity cost of money) and for this reason I have adopted a yield for my Discounted Cashflow Valuations of 8.5%.

## 9.0 EXPERT OPINION – THE VALUATION SCENARIOS

---

### **The Surrender**

- 9.1. The terms that were negotiated for the surrender of the Superior Lease are clear and are set out within the Heads of Terms within Appendix 4 hereto.
- 9.2. The division of the surrender premium between a consideration for surrender and a payment in lieu of dilapidations is clear and, having considered the repair works that would need to be undertaken by a party seeking to let the premises, the payment in lieu of dilapidations is not unrealistic once fees and contractors' preliminary costs are taken into account.
- 9.3. Within Appendix 5 hereto I have enclosed my DCF Valuations for this scenario In Compliance and In Breach. These show values of the Landlord's reversionary interest for the surrender scenario at the Term Date of -£100,000 (Minus One Hundred Thousand Pounds) In Compliance and -£350,000 (Minus Three Hundred and Fifty Pounds) In Breach.

### **Assignment**

- 9.4. Having considered the market conditions it is my view that an assignment is a very unlikely disposal scenario as an incoming tenant is unlikely to want to take the length of commitment involved to the end of the Superior Lease at a rental level that is so far above the open market level. However, for notional valuation purposes it is worth considering the figures involved here in order to dismiss this as an option.
- 9.5. As detailed above, it is my opinion that any marketing period for the disposal of this property would involve a minimum of 12-months and I see no reason why this would change for an assignment rather than an onward letting. The Landlord would therefore have to incur 12-months of void rent liability and 6-months of void rate liability before any assignment could be secured.
- 9.6. The assignment itself would involve the assignee accepting a rent substantially above the open market rental value for the property and they would require to be compensated in advance for this overage. Whilst the differential is some £65,000 pa, the assignees would be in a position to place this in an interest bearing account which would reduce the lump sum that the assignors would need to settle. The 2016 rent review would also be likely to reduce this deficit, although it is unlikely, in my opinion, to eliminate it.

- 9.7. Having considered this on a Years Purchase valuation basis, it is my opinion that the assignors would need to pay a premium in the region of £325,000 to the incoming assignees to compensate them for this excessive rental level.
- 9.8. In addition, any incoming assignee would need to be paid a lump sum in lieu of the rent free fitting out period they would normally anticipate at the commencement of a lease. This would necessitate a payment of a further £65,000 from the assignor to secure a disposal.
- 9.9. I have applied the same assumptions for the valuation of the assignment scenario In Breach as I have In Compliance. However, there is the additional complication that The Superior Landlord is in a position to withhold their consent to any such assignment if the demised premises are not in the state and condition required for compliance with the terms and covenants of The Superior Lease. In my opinion any prudent superior landlord is unlikely to pass the opportunity to require the premises to be placed into such repair and condition without the need to enter into the usual arguments over dilapidations. As a result, it is my Expert Opinion that any prospective assignor of The Superior Lease would have to carry out substantial repair works in order to fully comply with the lease's conditions if they are to secure the necessary consent for an assignment to proceed. They would therefore have to incur costs of £224,500 excluding contractor's preliminary costs, scaffolding and surveyor's supervision fees in order to ensure that landlord's consent will be forthcoming.
- 9.10. I have enclosed within Appendix 6 hereto valuations for the assignment scenario, showing a valuation of -£635,000 (Minus Six Hundred and Thirty Five Thousand Pounds) In Compliance, and -£925,000 (Minus Nine Hundred and Twenty Five Thousand Pounds) In Breach.

### **Subletting**

- 9.11. The assumptions that apply to this scenario are very similar to those applied to the assignment scenario above but in this case the premises would be sublet from the end of the marketing period, subject to a 6-month rent free period, rather than assigned.
- 9.12. However, one significant difference is that The Landlord would not need to undertake all of the works required prior to any subletting in order to secure consent and it is extremely likely that some of these at least would be deferred to the end of the lease.

- 9.13. However, it is unlikely that an incoming tenant would accept liability for pre-existing wants of repair and that there is likely therefore to be a qualified repairing covenant with schedule of condition attached to any sublease. Therefore, whilst the liability does not fall immediately to The Landlord to undertake, it would fall to him at the expiry of the lease.
- 9.14. It is also the case that certain obligations under The Lease would supersede breaches that subsisted at the commencement of the subletting, for instance a redecorating obligation in the third or fifth year would supersede the lack of decoration prior to the grant.
- 9.15. However, the incoming subtenant would require the premises to be cleared for their own purposes and would certainly require fundamental repairs to make the premises wind and watertight to be undertaken prior to taking any lease. On this basis I have assessed £152,500 of works to be undertaken before subletting, £52,000 to be deferred to the end of The Lease and £20,000 that would be superseded. Contractors' preliminary costs, scaffolding and surveyors supervision fees would need to be added to these figures.
- 9.16. In addition, the cost of scaffolding would need to be incurred and I have given consideration to this in light of the split in works detailed in the paragraph above. However, the vast majority of the works that would be required to be undertaken at high level are included within those that would be undertaken before subletting in order to render the premises wind and watertight. As a result, I have incorporated £25,000 of scaffolding fees within these initial works in my Discounted Cashflow Valuation.
- 9.17. I have enclosed within Appendix 7 hereto valuations for the subletting scenario, showing a value of -£660,000 (Minus Six Hundred and Sixty Thousand Pounds) In Compliance, and, of -£900,000 (Minus Nine Hundred Thousand Pounds) In Breach.

## 10.0 EXPERT OPINION – ASSESSMENT OF DIMINUTION

---

- 10.1. Having carefully considered all of the issues and potential valuation scenarios for The Landlord's reversion, the three scenarios identified as viable produce valuations In Compliance of -£100,000 (Minus One Hundred Thousand Pounds), -£635,000 (Minus Six Hundred and Thirty Five Thousand Pounds) and -£660,000 (Six Hundred and Sixty Thousand Pounds). Accordingly, it is my Expert Opinion that the value of The Landlord's reversionary interest In Compliance would have been -£100,000 (Minus One Hundred Thousand Pounds).
- 10.2. Again, having carefully considered the valuation scenarios, these give rise to valuations In Breach of -£350,000 (Minus Three Hundred and Fifty Pounds), -£925,000 (Minus Nine Hundred and Twenty Five Thousand Pounds) and -£900,000 (Minus Nine Hundred Thousand Pounds). Accordingly, it is my Expert Opinion that the value of The Landlord's reversionary interest In Breach would have been -£350,000 (Minus Three Hundred and Fifty Thousand Pounds).
- 10.3. Accordingly, it is my Expert Opinion that the Diminution in The Landlord's reversionary interest at the Term Date would have been £250,000.

## 11.0 STATEMENT OF TRUTH & COMPLIANCE

---

- 11.1. In accordance with Civil Procedure Rules Part 35 and the Royal Institution of Chartered Surveyors Practice Statement and Guidance Note for surveyors acting as Expert Witness (3rd Edition) I confirm the following:
- 11.2. My report includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.
- 11.3. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and completed professional opinions on the matters to which they refer.
- 11.4. My duty to such court, tribunal or arbitral body, as this dispute is referred to, as an Expert Witness overrides any duty to those instructing or paying me. I understand this duty and have complied with it in giving my evidence impartially and objectively and will continue to comply with that duty as required.
- 11.5. I am aware of the requirements of Civil Procedure Rules Part 35 and Practice Direction 35 and am familiar with the Pre-Action Protocols applicable to these proceedings.
- 11.6. My report complies in all respects with the requirements of The Royal Institution of Chartered Surveyors as set down in Surveyors acting as Expert Witness Practice Statement (3rd Edition).
- 11.7. I have no actual, perceived or potential conflicts of interest arising in relation to this instruction and my fee is not dependant on the result of these proceedings.



Signed: \_\_\_\_\_  
Scott John Williams, FRICS ACI Arb MEWI

22 November 2012  
Date: \_\_\_\_\_

## APPENDICES

---

1. Documents, Investigation Limits and Caveats
2. Schedule of Relevant Terms – The Superior Lease
3. Schedule of Relevant Terms – The Lease
4. Surrender Heads of Terms/Land Registry Form TR1
5. DCF Valuations – Surrender Scenario
6. DCF Valuations – Assignment Scenario
7. DCF Valuations – Subletting Scenario

Appendix 1

Documents, Investigation Limits and Caveats

Appendix 2

Schedule of Relevant Terms – The Superior Lease

Appendix 3

Schedule of Relevant Terms – The Lease

Appendix 4

Surrender Heads of Terms/Land Registry Form TR1

Appendix 5

DCF Valuation – Surrender Scenario

Appendix 6

DCF Valuations – Assignment Scenario

Appendix 7

DCF Valuation – Subletting Scenario