

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

LVT/0027/07/13

TRIBUNAL D J Evans LLB LLM
 M Abraham FRICS

In the matter of 21 St Mary's Rise, Burry Port, SA16 0SH
In the matter of an application under S.21(1)(cza) of the Leasehold Reform Act 1967

APPLICANTS: Nigel Dylan Thomas and Julie Anne Thomas

RESPONDENT: unknown

DECISION

INTRODUCTION

1 We convened as a Leasehold Valuation Tribunal under the provisions of the Leasehold Reform Act 1967 (as amended)(the Act) on the 9th October 2013. We had before us an Order of the Llanelli County Court dated the 25th June 2013 requiring Mr and Mrs Thomas (the Applicants) to refer to this Tribunal an application to determine the purchase price of the freehold reversion of 21 St Mary's Rise, Burry Port, SA16 0SH (the Property) and any rent payable up to the date of the conveyance of that reversion to the Applicants.

BACKGROUND

2 The Applicants are the leasehold proprietors of the Property and wish to acquire the freehold reversion pursuant to the Act. Enquiries were made on the Applicants' behalf but the freeholders of the Property cannot be found. On the 31st May 2013, the Applicants made an application to the Llanelli County Court claiming the right to purchase the freehold and on the 25th June 2013, the Court made the order referred to above.

LEASE

3 The lease of the Property (the Lease) is dated the 27th January 1972. It was made between James Douglas Howell and Alan Cooper Evans (1) and Andrew Scott (Western) Ltd (2). It is for the term of 99 years from the 25th March 1968 at a yearly ground rent of £15 payable half yearly. The Lease contains the usual requirements for the lessees to pay the outgoings, insure the Property and maintain it.

INSPECTION

4 Prior to hearing the application, we inspected the Property internally and externally. We were accompanied on our visit by Mr Thomas and the Applicants' Solicitor, Mr Christopher Davies. The Property is a semi-detached house constructed approximately 45 years ago. There is a small front garden and a large back garden with a separate garage and a shared driveway. There is brickwork to the front ground floor, but the remaining walls are rendered and painted. The Property has a tiled roof. Downstairs there is a combined sitting room and dining room with a modern kitchen with fitted units and the

central heating combi-boiler. Upstairs there are two double bedrooms, a single bedroom and a bathroom containing a bath with an electric shower, toilet and wash hand basin. The next door house has a conservatory as has another neighbouring property. There is central heating and double glazing throughout.

5 The Property is located in the seaside town of Burry Port, a few miles from Llanelli. It has local shopping with rail transport connections both to Swansea and West Wales. The former coal exporting harbour is now a marina. As well as the Property, we took the opportunity to inspect externally number 82 Tyle Teg, 10 Heol Llan and 25 Colby Road which are three of the properties mentioned by Mr R T Poiner MRICS in his report dated the 14th August 2013. We also looked at 8 Brynhyfryd and 17 Mansel Street which we understood were for sale. We informed Mr Thomas and Mr Davies of our intention and they directed us to these properties.

HEARING

6 The hearing took place at the Memorial Hall, Burry Port on the 9th October 2013. Mr Thomas was present and was represented by Mr Davies. Unfortunately, Mr Poiner was not present. However, Mr Davies introduced a supplemental report by Mr Poiner. In his original report Mr Poiner indicated that he had followed the guidelines set down in the Upper Tribunal's decision in the appeal of Clarise Properties [2012] UKUT 4 (Clarise). However, we were unable to follow Mr Poiner's calculation and so we directed that there should be a hearing. We also forwarded copies of two decisions of this Tribunal issued following Clarise - 6 Penypeel Road, Cardiff and 18 Camelot Court, Caerleon. Those decisions are indicative of the way this Tribunal has applied the guidance given in Clarise.

7 At the hearing, we considered with Mr Davies the guidance given by the Upper Tribunal in Clarise in relation to the approach which Leasehold Valuation Tribunals should now adopt and which is set out at paragraph 36 of the Decision (p 13), namely that "every element of value should in general be separately assessed unless there is some good reason not to do so..." In other words, the so called three stage approach should be adopted where "the reversion does have a significant value." This is sometimes referred to as the Haresign approach (named after the Lands Tribunal's decision in Haresign -v- St John the Baptist's College Oxford (1980) 255 EG 711).

8 However, in 18 Camelot Court, Caerleon this Tribunal reflected on the fact that the ultimate reversion was in that case over 100 years ahead by which time the house would be nearly 150 years old. We could not see that the market would consider circumstances or events that far ahead. We had therefore applied the two stage approach.

9 The supplemental report followed more closely the methodology employed in 18 Camelot Court, Caerleon and we shall therefore in this decision deal with that report rather than the original one. Mr Poiner firstly capitalises the current ground rent for the remainder of the term, and secondly ascertains a modern ground rent for the Property (ie under section 15 of the Act), capitalising that modern ground rent in perpetuity and deferring the result to the end of the contractual term. The value of the reversion is the sum of these two calculations.

10 There was no evidence of any single plot sales. Mr Poiner had applied the standing house approach as a means of ascertaining the plot value and the modern ground rent. This requires us to value the entirety of the house on the basis that it is in good condition and fully develops the plot.

11 We considered with Mr Davies the comparables which we had inspected prior to the hearing. We did not inspect 26 Bryneithin as we were told by Mr Thomas at the inspection that it was in fact in Pembrey.

(a) 82 Tyle Teg - Sold in April 2013 for £78,000. It appears to be an older property, a former local authority 3 bedroom semi-detached house with no front garden but a concreted parking area fronting onto the principle road through that estate. It is the closest house to the Property and therefore useful in giving an indication as to values locally.

(b) 25 Colby Road - Sold in December 2012 for £75,000. This is a three bedroom former local authority house on a busy main road. It has a garage, a lean to extension to the rear and a small garden.

(c) 10 Heol Llan - Sold in March 2013 for £65,000. This is a two bedroom semi-detached house closer to the town centre.

(d) 8 Brynhyfryd - On market for £85,000. This three bedroom house is situated in a cul de sac. It has no off street parking or garage. There is a reasonable size front garden and a rear garden with an outbuilding.

(e) 17 Mansel Street - On market for £92,000. This is a four bedroom extended semi-detached house. There is no garage or front garden.

12 We suggested to Mr Davies that his client might be disappointed if his property was valued at only £70,000 bearing in mind that 82 Tyle Teg had sold for £78,000 and Colby Road for £75,000. The former was on a principal estate road, had no garage, appeared not to be on such a large plot and lacked something of the kerb appeal which the Property enjoyed. The latter was on a busy main road and had a smaller plot. Mr Davies stated that he would stand by Mr Poiner's valuation.

13 Mr Poiner had applied 27½% as a proportion of the standing house value to ascertain the plot value making the plot value £19,250 but gave no justification for this percentage. Mr Davies told us that values in Burry Port were about the same as those in Llanelli but generally lower than for equivalent houses in Swansea. The building costs would be the same and as the house price was relatively low, the land value would necessarily be less as a proportion of the entirety value.

14 In his report, Mr Poiner had capitalised the ground rent of the unexpired term at 6½%. Whilst the figure mentioned in the report states 6%, the figure used is in fact 6½%. In the case of Sir Charles Christian Nicholson Bt, Sir Michael Bunbury Bt KCVO and William George Wilks (LRA/29/2006), the Lands Tribunal approved (at paragraph 10) certain issues as being relevant when determining the capitalisation rate to be applied when valuing the ground rent: the length of the lease unexpired, the security of recovery, the size of the ground rent and the period and nature of any review. Clearly, the less attractive the proposition, the higher the rate of return required by an investor. An investor purchasing the asset will bear in mind that the return of £15 is relatively small and there are administrative costs associated with the collection of the ground rent which will need to be factored in. The figure of 6½% is in line with recent decisions of this Tribunal.

15 When valuing the reversion, Mr Poiner now regards 5% as the appropriate rate to use for decapitalisation, recapitalisation and deferment.

CONSIDERATION

16 Section 9(1) of the Act makes it clear that our role is to determine “the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family...not buying or seeking to buy) might be expected to realise...” We are required to make certain assumptions one of which is that the Property is being sold freehold but subject to the lease which, if it has not already been extended, has been extended. In other words the assumed term expires 50 years after the contractual term date. Here, the contractual term ends in 2067 so that assumed date when the lease will expire is in March 2107.

17 Mr Poiner has adopted the two stage approach which is generally used where there are over 50 years to run on the lease so that the deemed expiry date is over 100 years into the future. As stated in paragraph 8, this is beyond the point where the market would even consider whether there was likely to be a house standing on the plot. In our view, Mr Poiner is right to do so.

18 The Property is in reasonable condition and in our view fully develops the plot. It is true that there are two nearby houses with conservatories, but although they are expensive to construct, they do not add their cost to the value of the house. The plot is large, but is sloping and narrower at the front than it is at the back. It would be possible to extend the house, but only in a manner consistent with those nearby houses with conservatories and the value is unlikely to be affected significantly.

DETERMINATION

Date of Valuation

19 We have considered our decision on the basis that the valuation date is 31st May 2013 being the date when the application was made to the Court. The lease is for 99 years from the 25th March 1968 which means therefore there were approximately 54 years unexpired.

Capitalisation Rate

20 Mr Poiner has used a capitalisation rate for the ground rent of 6½%. As referred to above, an investor purchasing the asset will bear in mind that the return of £15 is small and there are administrative costs associated with the collection of the ground rent which will need to be factored in. In our view, a figure of 6½% is not unreasonable and in keeping with other decisions of this Tribunal. This produces a value for the unexpired term of £223.

Entirety Value of the Property

21 Although we are acquainted with the cost of development land as well as single plots, we had no comparable evidence of land values relating to properties of this nature in Burry Port. We therefore decided to calculate the modern ground rent by the “Standing House” method. In his report Mr Poiner considered the entirety value to be £70,000 on the basis of the four comparable properties mentioned in his report. The two properties closest to the Property are 82 Tyle Teg and 25 Colby Road. The prices of these properties were £78,000 and £75,000 respectively. In our view, the Property is a more attractive house and would fetch a higher price in the market even if the interiors of the other properties were exceptional. 82 Tile Teg has no garage, 25 Colby Road is on a busy main road. Both are on smaller plots. We do not consider that the other houses which inspected provided much assistance other than to give a general indication of the level of the cost of housing in the area. Using our knowledge and experience, we consider that Mr Poiner’s valuation is on the

low side and that the entirety value of the Property on the basis that the house was modernised, in good condition and fully developed the site was £80,000 as at the valuation date.

Plot Value

22 Mr Poiner suggests a plot value of 27½ % of the entirety value. We must take into account the sloping nature and location of the site and the cost of building relative to the ultimate value of the Property. We accept Mr Davies' observations that the building cost would represent a relatively higher proportion of the cost of the finished house than a property in, say, Swansea. We consider 27½% to be appropriate. We therefore determine the plot value to be £22,000.

Decapitalisation

23 Mr Poiner has applied a rate of 5% to decapitalise the site value to ascertain the modern ground rent. He provided no evidence to support that rate. Such matters must always be a question of fact and depend on the circumstances of the case. It is however in line with other decisions of this Tribunal. In our view this produces a fair assessment of the modern ground rent attainable for the Property. Current rates of return in the market are currently at a low level, but they may not always remain this low. We have to bear in mind that the modern ground rent will be fixed for a long period.

24 In *Clarise*, the Upper Tribunal endorsed a rate of 5½%. This was the rate which the parties had agreed should apply to the deferment of the recapitalised modern ground rent. However, we cannot see the logic in the argument that the process for determining the modern ground rent – which can be independent of the acquisition of a freehold reversion – will be governed by the deferment rate. In our view, the process of decapitalisation is fundamentally different from the deferment exercise. The former is establishing a return on an investment, the latter the price someone would be prepared today for an asset which will not be in the buyer's possession for 104 years. The effect of decapitalising site values by applying deferment rates could be that two identical properties are assessed as having different modern ground rents simply because one is a basic modern ground rent calculation and the other is part of a freehold purchase. We conclude that notwithstanding the guidance in *Clarise*, and in line with other decisions of this Tribunal, the appropriate rate for decapitalisation is 5%.

Recapitalisation

25 In order to avoid what is sometimes referred to as an adverse differential the same rate must be used for decapitalisation, i.e. to ascertain the modern ground rent, and to recapitalise the modern ground rent before deferring it. (See Lord Denning MR in *Official Custodian for Charities and Others –v- Goldridge* (1973) 26 P & CR 191: "They should adopt the same percentage for re-capitalisation as for decapitalisation. This is a better way of finding 'fair terms'"). Using a different rate for recapitalisation produces an unfair advantage to one side or the other. We therefore adopt the same rate for recapitalisation as decapitalisation, namely 5%.

Deferment

26 In *Cadogan -v- Sportelli* [2007] 1EGLR 153, subsequently confirmed on appeal, the Upper Tribunal laid down guidelines for determining the deferment rate. It suggested a “generic” rate of 4¾%. In *Mansal Securities Ltd and others (LRA/185/2007)* (*Mansal*), the Upper Tribunal (Mr Rose) increased the *Sportelli* rate by ¼% on the grounds that “since the reversion in the case of a section 9(1) is to ground rent only, a potential purchaser is likely to require a higher risk premium to compensate for the increased volatility and illiquidity than if the reversion also included a house standing on the site” (paragraph 27). In *Clarise*, the Upper Tribunal also increased the deferment rate by ¼% to cover the possibility of greater deterioration of the house presumed to be on the plot relative to value for properties outside Prime Central London (PCL).

27 In *Mansal*, although the Appellants had argued that the prospects for growth in the West Midlands were less than in PCL, Mr Rose was not persuaded on the basis of the evidence adduced. He declined to increase the generic rate further. In *Clarise*, however, the Tribunal accepted the evidence on the issue of growth and increased the deferment rate by a further ½% to 5½%.

28 Whilst we consider it correct to add the ¼% to the basic *Sportelli* rate of 4¾% to account for the increased volatility and illiquidity factor of a site as opposed to a house, in the absence of evidence relating to the growth factor, we are unable to justify adding a further ½%. We therefore apply a deferment rate of 5% as suggested by Mr Poiner in his supplemental report. This has the effect of valuing the reversion at £1,578 to which we must add the capitalised value of the current ground rent.

DECISION

29 Applying the above findings, we calculate the value of the freehold reversion of 21 St Mary’s Avenue, Burry Port, SA16 0SH as follows:

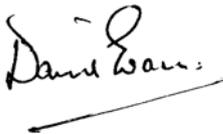
| | | |
|---------------------------------------|----------------|---------------|
| Ground Rent | £15 | |
| 54 years purchase @ 6.5% | <u>14.8715</u> | £223 |
| Entirety value | £80,000.00 | |
| Plot value @ 27½% | £22,000.00 | |
| Modern Ground Rent @ 5% | £1,100.00 | |
| YP in perpetuity deferred 54 yrs @ 5% | <u>1.43485</u> | <u>£1,578</u> |
| | | £1.801 |
| | Say | £1,800 |

We therefore determine the purchase price of the freehold reversion of 21 St Mary’s Rise, Burry Port, SA16 0SH to be £1,800.

Ground Rent Arrears

30 Section 27(5)(b) of the Act, substituted by section 149 of the Commonhold and Leasehold Reform Act 2002, requires the leaseholder to pay “the amount or estimated amount ...of any pecuniary rent payable for the house ...which remains unpaid”. The amount so payable can only be the amount for which the freeholder can enforce payment. If it were otherwise, a leaseholder of an untraced freeholder would be required to pay more than a leaseholder whose freeholder’s identity was known. The Applicants have not paid any ground rent since they acquired the Property in 1977. The maximum recoverable is £15 a year for the period of 6 years, namely £90.

Dated this 29th day of October 2013

A handwritten signature in black ink, appearing to read "David Evans", with a horizontal line underneath it.

Chairman