

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: 1038919

In the Matter of Number 3 Lime Close Newport South Wales NP20 2LP (the Property)

In the matter of an Application under Section 21 (1) (a) and Section 27 of the Leasehold Reform Act 1967 (as amended) (the Act)

TRIBUNAL      P H Williams  
                    N F G Hill FRICS

APPLICANTS   Michael Roger Davies and Claire Bridget Davies

RESPONDENT   Archibald Robert Francis

DECISION

Introduction

1. We convened as a Leasehold Valuation Tribunal under the provisions of the Act on the 21<sup>st</sup> January 2013. We had before us an Order of the Newport Gwent County Court dated the 5<sup>th</sup> October 2012 requiring the Applicants to apply to the Leasehold Valuation Tribunal to make a determination of the value of the freehold reversion of the Property.

Background

2. The Applicants are the leasehold proprietors of the Property and wish to acquire the freehold reversion pursuant to the Act. After exhaustive enquiries the Freeholder of the Property cannot be traced. On the 12<sup>th</sup> June 2012 the Applicants made an Application to the Court and on the 5<sup>th</sup> October 2012 the Court ordered that the Application be transferred to the Residential Property Tribunal to make a determination of the value of the freehold interest in the Property. The Application was made by the Applicants' Solicitors FWD Law Associates.

Lease

3. The Lease of the Property is dated the 19<sup>th</sup> July 1938. It was made between Archibald Robert Francis of the one part and Arthur John Reardon of the other part for the term of 99 years from the 25<sup>th</sup> March 1937 at a yearly rent of £4, payable half yearly. The Lease contains the usual obligations for the lessee to pay the outgoings, insure the Property and to maintain it.

## Inspection

4. Prior to the hearing we inspected the Property internally and externally in the presence of the Applicants. The Property is mid terraced and built circa 1938 and constructed in brick render with a tiled roof. There is a small forecourt fronting the access road with on street parking. There is a rear lane which appears to be adopted and which flanked 1 Lime Close before reaching the Close itself. The Property has a lounge and dining room, and a kitchen had been formed by way of a ground floor extension which had a flat roof. A staircase leads off the hallway to the first floor which contains two reasonably sized bedrooms and a smaller bedroom which is currently used as a study and store area. The Bathroom is situated off the landing and comprises a Wash Hand Basin, Water Closet and Bath with an electric shower over. The Property benefits from a gas central heating system and has UPVC double glazed windows and has all usual main services. A condensing boiler feeds both the central heating and the domestic hot water systems. A kitchen door leads into the reasonably sized rear garden in which there is a solid built garden storage shed. There is no vehicular access onto the rear lane at present but there is potential for same.
5. There are a few local shops in the area and the City Centre is approximately one and a half miles distant. There is a regular bus service and the City of Newport has all the usual urban amenities. There is a local park and the area is primarily residential.

We also viewed externally the three comparable properties suggested by the Applicants' Surveyor, Mr S Parker, namely :-

6 Alice Street Newport. A stone faced, 3 bedroomed mid terraced property constructed circa 1900 without any rear access. Sold in May 2012 for £103,000.00p

15 Oswald Road Newport. A brick rendered 3 bedroomed mid terraced property constructed in the 1930s with potential for a rear access. Sold in February 2012 for £95,000.00p.

50 Wolsely Street Newport. A brick rendered 3 bedroomed mid terraced property constructed in the 1930s without any rear access and no potential for same. Under offer in June 2012 at £83,000.00p

We consider that 15 Oswald Road is the best comparable as it is an equivalent property and has a rear access lane.

## Hearing

6. The Hearing took place on the 21<sup>st</sup> January 2013 and was by way of written representations which comprised a Valuation Report by Mr Parker FRICS of Nuttall Parker dated the 26<sup>th</sup> November 2012. Mr Parker adopted a three stage approach. He firstly capitalised the current ground rent for the remainder of the term. However, in this regard, he was not provided with a copy of the Lease and was advised that the ground rent was £ 3.50p per annum whereas the Lease shows £4 per annum. Secondly, he calculated a modern ground rent for the Property, recapitalising the modern ground rent and deferring the result to the end of the current term and thirdly he deducted ten per centum from the Standing House approach in order to calculate the reversion pursuant to the case of Haresign –v- St John the Baptist's College Oxford (1980) 255 EG 711. He had based this three stage approach on the decision of the Upper Tribunal in Clarice Properties Ltd (2012) UKUT 4 (LC) ("Clarice "). He adopted a 5% deferment rate compared with 5 ½ % used in Clarice.



## Consideration

7. Section 9 (1) of the Act requires us 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 further 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. In this case the contractual term ends in 2036, so that the assumed date when the Lease will expire is in March 2086.

8. Until Clarice the standard practice was the two stage approach of a capitalised current ground rent and a deferred capitalised modern ground rent, unless the three stage approach (to include a Haresign reversion produced a valuation which was significantly higher. Clarice decided that good valuation practice was to assess every element of value unless there is good reason not to do so. This is guidance rather than a constraint and the knowledge and experience of Leasehold Valuation Tribunals are relevant in assessing whether the third stage is appropriate.

9. In Clarice the lease had a 28 ½ years unexpired term and hence an assumed term date of 78 ½ years. In this case the Lease has 24 years to run and an assumed term date of 74 years. In Mayfly (Corrib ) Ltd’s appeal ( LRA/27/2002) “ the essential question is not whether the house will be standing [in that case] 62 years after the valuation date; but whether the purchaser in the hypothetical sale envisaged in Section 9 (1) of the Act would value the reversion to standing house value “ We consider that the market will accept a standing house value on the particular timescales and we have concluded that it is appropriate to value the reversion on the basis that there will be a house standing on the site at the end of the extended term and that a three stage valuation process should be adopted. We shall accordingly proceed to value the reversion to standing house value and not site value.

## Determination

10. Date of Valuation. We have made our decision on the basis that the Valuation Date is the 12<sup>th</sup> June 2012, being the date of the Application to the Court.

## Capitalisation

11. Mr Parker has used a capitalisation rate of 6 ½ % .An investor purchasing the asset will view a return of £4 as miniscule, particularly as there are administrative costs for the collection of ground rent. We consider that a figure of 6 ½ % is appropriate and in keeping with other decisions of this Tribunal. Mr Parker’s methodology is correct, but as stated, he was wrongly advised of the ground rent. Our calculation is £ 48

## Value of Property

12. Although we are acquainted with the cost of development land as well as single plots, we have no evidence of land values in the Lime Close area. We have therefore decided to proceed on the Standing House method. We have taken into account Mr Parker’s valuation, his suggested comparables and we have also applied our own expertise and knowledge of the property market in the area. We agree with Mr Parker that the Standing House value of the Property, on the basis that the house is in good condition and fully developed, is £95,000.00p as on the Valuation Date.

## Plot Value

13. Mr Parker suggests a plot value of 25% of the Standing House value. However, it is considered that a plot value of 27 ½ % is more appropriate and more in line with other decisions of this Tribunal in the cities of Cardiff, Newport and Swansea. We therefore determine the plot value to be £26125.00p.

## Decapitalisation/ Recapitalisation Rates

14. Mr Parker has applied a rate of 5% for decapitalisation, the process used to ascertain the modern ground rent and has used the same percentage for recapitalisation. These percentages are in line with other decisions of the Tribunal and in our view produces a fair assessment of the modern ground rent attainable for the Property. Current rates of return in the market are at a low level although they may not always remain so low. A decapitalisation rate of 5% produces a modern ground rent of £1306.00p

## Deferment rate

15. Mansal Securities Ltd (LRA/185/2007) (Mansal) adopted a rate of 5% following the principles set out in Cadogan — Sportelli (2007) 1 EGLR 153 (subsequently confirmed by the Court of Appeal) ("Sportelli"). The Land Tribunal's reason in Mansal for increasing the "generic rate" propounded in the Sportelli case was that "since the reversion in the case of 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". This is the situation here and we therefore determine that the appropriate deferment rate is 5%. This produces a figure of £7392.00p

## Schedule 10 of the Local Government Act 1989 (Schedule 10)

16. In Clarice the Upper Tribunal commented that whilst "the purchaser of the freehold reversion would have no means of knowing whether vacant possession would be gained at the end of the 50 year lease extension the fact that there can be no certainty of obtaining vacant possession would have a significant depressing effect on value". Without the benefit of comparable evidence, the Upper Tribunal deducted 20% from the full standing house value of the Property.

17 This issue has been considered previously by the Land Tribunal in Vignand —v- Keepers and Governors of John Lyon's Free Grammar School ( LRA/ 9 & 11/1994 (Vignaud) and by the Upper Tribunal in Sillvote —v- Liverpool City Council (UKUT 192 LC) ( Sillvote) .In the former case HH Judge Rich accepted a deduction of 10% to reflect " the remote risk that [the leaseholder] or some assignee in the last ten months of the term might " exercise her rights under Schedule 10 and remain in possession even though he was " virtually certain " that the leaseholder would not exercise those rights. In his decision HH Judge Rich stated that "the proper deduction for this right must be a matter of evidence or agreement ". In Sillvote where there were 11 years remaining on the lease Mr P R Francis FRICS stated that the question was "whether, as a matter of evidence, there is a likelihood that the lessee will exercise that right ". He then held that there was no evidence and made no deduction. Following that decision, in Cardiff City Council —v- the Estate of Alice Zelia David (3 Ovington Terrace Cardiff) (reference QA 976565) this Tribunal also held that it had no evidence upon which to base a deduction from the house value to take account of the lessee's Schedule 10 rights. In Clarice the Surveyor for the Appellant had suggested a nominal deduction to take account of the fact that these rights would only be exercisable in 78 ½ year's time. However, the Upper Tribunal made its 20% reduction on the assumption that the deduction had to be significant. In this



case the extended lease term ends 74 years after the Valuation Date and is comparable to Clarice where it was 78 ½ years and some 13 years more than in the case of Sillvote. We accept the Upper Tribunal's guidance and we conclude that a significant deduction needs to be made from the standing house value to take account of the lessee's Schedule 10 rights. The amount of such deduction is preferably to be based on evidence. Mr Parker has assessed same at 10% and in the absence of supporting evidence we must rely on our own knowledge and experience. We do not consider that the market would factor in a deduction as high as 20% to take account of the possibility that a lessee might retain possession in 74 years time with the benefit of an assured tenancy. We agree with Mr Parker that the appropriate deduction is 10%, significant enough to take account of the Section 10 right being exercised in 74 years time balanced against the fact that it might not be exercised at all. This produces an adjusted standing house value of £85,500.00p.

18. Applying the same deferral rate of 5% as above, the second reversion is valued at £ 2308.00p, to which we add the capitalised current ground rent of £48 and the value of the first reversion of £7392.00p, making a total of £9748.00p which we have rounded up to £9750.00p. We set out our calculation below.

#### Decision

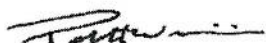
19. Freehold Valuation. Applying the findings we have made above, we calculate the value of the freehold reversion of 3 Lime Close Newport NP20 2LP as follows:-

Ground Rent		£4.00p
24 years purchase at 6.5%	<u>12</u>	48.00
Entirety Value	£95000.00p	
Plot value at 27 ½ %	£26125	
Modern ground rent		
At 5%	£1306	
Years Purchase 50		
Years deferred 24 years		
At 5%		
Present value of £1		
In 24 years	<u>5.66</u>	7392.00
Standing house value	£95000	
Less Schedule 10		
Rights at 10%	<u>9500</u>	
Adjusted value	85500	
Present Value of £1 in		
74 years time at 5%	<u>0.027</u>	2308.00
		<u>£9748.00p</u>
<b>SAY</b>	<b><u>£9750.00p</u></b>	

## Ground Rent Arrears

20. We respectfully draw the attention of the County Court to the provisions of Section 27 (5) (b) of the Act, substituted by Section 149 of the Commonhold and Leasehold Reform Act 2002, which requires the leaseholder to pay " the amount or estimated amount of any pecuniary rent payable for the home...which remains unpaid ". The amount so payable can only be the amount for which the freeholder can enforce payment. The maximum recoverable is £4 for a period of 6 years, namely £24. However, this was not an issue referred to us and so the actual amount of ground rent payable by the Applicants is a matter for the County Court.

Dated this 29<sup>th</sup> day of January 2013



CHAIRMAN