

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES) Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”), s.48 and Schedule 13

Premises: 15 Fordwell, Llandaff, Cardiff, CF5 2EU (“the property”)

Reference: LVT/0015/07/16 - Fordwell

Hearing: 28 September 2016

Applicants: Mr David Powell Williams and Mrs Rhiannon Williams
(expert – Mr John Arbourne FRICS Retired)

Respondent: Coffin Developments Limited
(expert – Mr Kenneth Cooper FRICS)

Tribunal: Rhys Taylor – legal chairman
Mr Mark Taylor - MRICS

ORDER

1. The price to be paid for the lease extension is £17,500.

20 October 2016

A handwritten signature in black ink, appearing to read 'Rhys Taylor'. The signature is written in a cursive style with a large initial 'R'.

Legal Chairman

REASONS

Background.

1. This case concerns an application for the determination of the premium to be paid for a lease extension at the property.
2. The parties are agreed on all matters save for the premium to be paid. The application is dated 1 July 2016.
3. The tribunal's jurisdiction arises from s.48 of the Act and its valuation approach is prescribed by Schedule 13 of the Act.
4. Under Schedule 13 of the Act the tribunal is required to determine the price to be paid in this case by calculating:-
 - a. The diminution of the landlord's interest in the flat determined in accordance with paragraph 3 of Schedule 13; and
 - b. The landlord's share of the marriage value in the flat as determined in accordance with paragraph 4 of Schedule 14.
5. In both paragraph 3(2) and 4A(1), the tribunal is required to adopt certain assumptions when considering value. These include assuming that the Act does not apply to the property and disregarding any tenants' improvements.

Matters agreed between the parties.

6. There was much common ground between the parties. It is agreed that:-
 - a. The date of valuation is 10 October 2015.
 - b. The lease was granted for a period of 99 years from 1 January 1986.
 - c. The remaining term as at the date of valuation is 69.2 years.
 - d. The capitalised ground rent for the term is £1,103.
 - e. A deferment rate to the reversion was 5%.

- f. The value of the extended lease as at the valuation date should be £195,000.
- g. At the outset of the hearing there was a discussion about whether the Applicants proposed to seek an unreasonable costs order against the Respondent. It was conceded by the Applicants that this was not going to be pursued and so the tribunal makes no findings about the conduct of either party during these proceedings.

Matters not agreed between the parties.

- 7. The following matters were not agreed:-
 - a. Unimproved value of the existing lease as at the valuation date.
 - b. What deduction should be made for the assumption that the Act did not apply to the property.

The position of the experts before the tribunal.

- 8. Mr Arbourne, on behalf of the Applicants, changed his position in opening. He had argued in his report for an extended lease value of £200,000, having already made a deduction of £5,000 for tenants' improvements. In opening Mr Arbourne stated that he was simply prepared to accept Mr Cooper's figure of £195,000 for the unimproved extended lease value. Mr Arbourne did not follow his figure through to explain how it altered his bottom line purchase price, making the tribunal's task more complicated
- 9. We understand the logic of Mr Arbourne's position to be as follows:
 - a. Given that the unimproved extended lease value was agreed at £195,000 and the deferment rate of 5% was agreed, it follows that the landlord's freehold interest was £7,772.
 - b. Mr Arbourne had invited us to make a 1% discount to reflect the assumption that the Act did not apply to this property.

- c. He contended for an existing unimproved lease value of £183,100. This was based upon a comparable of £190,000 which was then deducted by 1% to reflect the assumption that the Act did not apply to the property and by a further £5,000 to reflect tenants' improvements.
 $£190,000 - £1,900 - £5,000 = £183,100$.
- d. Based upon these figures, we understood that Mr Arbourne was contending for a marriage value of £195,000 – $(£183,100 + £7,772) = £4,128$.
- e. This would result in an overall payment by the Applicants of £7,772 + $(£4,128/2) = £9,836$. This is primarily how we understood Mr Arbourne's opening position to be.
- f. Another view would be to take the relativity which Mr Arbourne posited in his written report (when he was advancing a case for an extended unimproved lease value of £200,000). He had suggested a relativity of 89.625% using the Beckett and Kay graphs (2014 First Revision). However, we make clear that Mr Arbourne also "stood back" and applied his independent valuation expertise in determining that the figure produced by this relativity figure was too high and made a modest adjustment. If one takes the extended unimproved lease value of £195,000 (which was agreed between the experts) and apply a relativity of 89.63% an unimproved existing value of £174,779 results.
 $£195,000 \text{ less } (£7,772 + £174,779) = £12,449/ £12,449/2 = £6,225 + £7,772 = £13,997$, say £14,000 as a purchase price. This figure might have been subject to further adjustment by Mr Arbourne "standing back" and applying his independent valuation expertise. However, as noted, Mr Arbourne did not explain how his opening adjustment from £200,000 to £195,000 affected his overall approach.
10. Mr Cooper contended for a figure of £18,900 to purchase the extended lease. His approach had been to value the existing unimproved lease value at £165,000. He made no further adjustment for the assumption that the Act did not apply to the property. He did so upon the basis that the comparable upon

which he relied sold at £165,000 without, in effect, the benefit of Act rights as it was being sold by a deceased's estate and the property had been unoccupied for some time prior to sale. Whilst it is not quite the same as applying the assumption that the Act does not apply – a new tenant could have resided there for 2 years and acquired rights in due course – we follow the logic that at the moment of valuation the property did not benefit from Act rights, which would be likely to have had a similar (but not identical) effect as applying an assumption that the Act did not apply wholesale.

The Inspection.

11. The Tribunal members attended for an inspection on 28th September at 9.40 am and were accompanied by Mr. D Williams (one of the Leaseholders). Neither Mr. Cooper or Mr. Arbourne were in attendance but the members of the tribunal had the benefit of their written submissions which dealt with description of the property.
12. Fordwell is a purpose built scheme of houses and flats, the later being arranged in blocks of two stories, constructed in the mid 1980s. It is accessed off Mitre Close. The area is close to local amenities in the centre of Llandaff and is well served by transport links to the commercial centre of Cardiff.
13. The development is arranged around a central cul-de-sac spine road with some limited off road parking with individual communal forecourts providing access to garages arranged in small terraces. There is a mixture of communal and separately demised external areas that have been landscaped and laid to grassed areas. The site slopes down to the north with a fall from west to east.
14. The subject property lies in a two-story block on the western side of the site and benefits from good natural light although the rear of the property is more shaded due to the continued slope and more mature vegetation. Generally the external accesses are finished in brick pavers and all areas appear well maintained and subject to a suitable management arrangement.
15. The block comprises 6 flats and is of traditional cavity construction under pitched roofs covered in concrete tiles. Elevations are of brick finished with a

textured render. They have predominantly Aluminium double glazed units. There are six single garages leading from the communal area, set out in two small terraces, each of brick construction. Overall the property appears to be in good order including all rainwater goods, although it was not raining at the time of inspection.

16. There is an intercom controlled access door leading to the common hall/staircase that are generally finished in brick to the walls and vinyl to the floor surfaces and stairways. There is no lift and due to the slope of the site there is an additional flight of stairs/half landing to arrive at the 1st floor. The common areas again appeared to be in good order but it was noted that natural light becomes restricted as you approach the first floor and electric lighting appears to be on a timed rather push switch.

17. Internally the flat comprises well-decorated good quality residential space with living room, kitchen and two (double) bedrooms, with built in wardrobe space, and bathroom. It benefits from gas central heating and all mains services. The space is light and airy and we understand was refurbished around five years ago to include a fully fitted kitchen with integrated appliances and new fittings to the bathroom with shower, wash hand basin and low level WC.

Market value of existing lease

18. As already identified, the key issue between the experts was the existing unimproved value of the lease.

19. Mr Arbourne identified two comparable sales, both within the same road as the property.

- a. 19 Fordwell sold on the 23 December 2014 for £165,000. It is situated on the other side of the road to the property. Mr Arbourne noted that the property had been part of a deceased's estate and that he considered that the figure reflected a significant discount in order to close the estate.

b. 16 Fordwell was sold for £190,000 in a fully modernised condition on the 21 December 2015. It is noted that this was the same figure which the property had been purchased for in 2007, some 8 years previously. It was suggested by Mr Arbourne that the same price over the period reflected how the market value of flats has not improved since the recession. Mr Arbourne did not reflect further upon this general observation and the tribunal is bound to note that the true logic of the position is that the value of flats has decreased over the period, because in 2007 the property benefitted from a further 8 years unexpired on the term.

20. Mr Cooper was involved with negotiated statutory extended lease terms for an adjoining block of block of 6 flats (Numbers 4 – 9) at Fordwell in 2014. The valuation dated was 15 August 2014 at which time there were 70.38 year unexpired on the existing leases. The negotiation involved a fellow of RICS acting for the tenant. The unimproved extended lease values were agreed at £185,000, with unimproved existing lease values being agreed at £158,000. This represented a relativity of 85.4%.

21. Applying a capitalisation rate to the ground rent of 6.5% and a deferment rate to the reversion of 5%, the premiums payable for the extended leases, according to Mr Cooper, were £17,036 plus costs.

22. During the course of negotiations at flats 4 – 9, Mr Cooper became aware of the sale of 19 Fordwell at £165,000. He was also advised by the estate agent involved in the transaction, at around the same time, that the market value of an extended lease at Fordwell would have a sale price of £195,000. He wrote to his opposite number on 12 November 2014, drawing attention to these figures, as part of his attempt to agree the premium at £17,036 (based on £158,000 and £185,000). He stated that a notional revised calculation, based upon his revised figures resulted in a premium of £18,698.50 which justified the figure which he was contending for at, we believe, £17,036. It is of some significance, we consider, that Mr Cooper did not seek to revise his negotiating figure to the higher calculation at this stage. His revised figures were never tested in the fire of further negotiation or tribunal determination.

23. The relativity in that instance (i.e. £165,000 to £195,000) would have been 84.6%.
24. Mr Cooper also drew our attention to the sale at 16 Fordwell in December 2015 at £190,000 and also, fairly, highlighted a sale at 18 Fordwell in April 2016 at £212,000.
25. Mr Cooper stated that 19 Fordwell was being marketed on an assured shorthold basis in January 2015. He suggested that this meant that the property was not in a dilapidated condition as it was most unlikely that significant works of improvement could have been undertaken between 23 December and the start of January. On the balance of probabilities, this appears to us to be a fair observation, albeit an assured shorthold tenant under this shorter term may have a different perception of condition to a purchaser for occupation under a longer lease.
26. Mr Cooper commented upon the sale at 18 Fordwell for £212,000. He stated that the property has been finished to a very high standard and that he was of the opinion that, even allowing for the finish, the purchasers had over bid for it. He stated that he was aware that the purchasers were very keen to purchase in Fordwell. It was his opinion that this property was something of an outlier and unhelpful in the tribunal's considerations. Mr Arbourne commented that the property was located on the ground floor with a decked patio area but found it difficult to ascribe a specific differential in value for this other than in his experience it would tend to increase the marketability of the property.
27. Having discounted 18 Fordwell at £212,000, this left Mr Cooper with a range of £190,000 at 16 Fordwell in December 2015 and 19 Fordwell in December 2014 for £165,000. Mr Cooper was of the opinion that £165,000 was the more realistic figure. He stated that people would often purchase flats without taking proper advice whereas the £165,000 was more firmly in the parish of the price upon which carefully negotiated lease extensions at 4 – 9 had been conducted, with qualified surveyors representing each side. The tribunal agrees that there is much to be said for this observation.

28. Mr Arbourne had suggested that the sale of 19 Fordwell at £165,000 was likely to have been at a substantial discount in order to close the estate of a deceased. It appeared to be agreed that the property had stood unoccupied for some time, prior to it coming to market. However, without specific evidence as to the circumstances of the estate the tribunal cannot place too much reliance upon this suggestion. The administrators of the estate would be under a fiduciary obligation to secure the best price. However, we have to acknowledge the fact that this was a sale by a deceased's estate and that there may have been further factors in play, of which we are unaware, which may have effected the way in which the market operated on this occasion. However, we simply do not know the full facts and must simply proceed with caution.
29. As already noted above, Mr Cooper did not seek to revise his negotiating position in his 12 November 2014 letter by testing the strength of his £165,000 to £195,000 argument. In fact the case was settled using a relativity of 85.4%
30. Having carefully reviewed each expert's report we prefer the evidence of Mr Cooper. His evidence appeared to be based on the firmer ground of being closer to the figures previously agreed on other surveyor negotiated lease extensions and was supported by an actual sale at £165,000 which had, unusually (at that time) no Act rights at that time. Mr Cooper presented his arguments more persuasively on this occasion and we were left in an unsatisfactory position with Mr Arbourne adjusting his extended lease figure in opening, but without articulating how that worked through and effected other assumptions he was inviting us to adopt. We do not accept that the overall premium of £9,836 (if indeed that was what Mr Arbourne was contending for) is realistic in this instance.
31. Whilst we preferred Mr Cooper to Mr Arbourne, Mr Cooper did not persuade us that he should have it all his own way. Whilst he sought to advance arguments based on a possible revised negotiating stance he adopted in his letter of 12 November 2014, we note that this was not tested by the revised figure actually being advanced at that stage. We do not know why but it seems to us that the relativity in this application should be closer to what was

actually used, namely 85.4%. We have determined, doing the best we can, that a relativity of 86% would be appropriate in this case.

32. We discount the £212,000 sale as an “outlier”. The £190,000 sale would produce a premium overall which we regard as unrealistic, given Mr Arbourne’s change of position in opening. We do not draw much assistance from the Hollybush Heights case which was submitted by Mr Arbourne. That case was determined on its own facts, which included an agreed relativity figure. Here the relativity is disputed and there are starkly competing comparables which the tribunal has had to grapple with. Ultimately, we found Mr Cooper’s arguments more attractive on this occasion.

The “No Act world” assumption.

33. As already noted, Mr Cooper made no further adjustment for the assumption that the Act did not apply to the property upon the basis that 19 Fordwell did not, at the date of sale, benefit from an immediate statutory right to extend. As already noted, this is not quite the same as applying an assumption that the Act does not apply. However, it is likely to have had a not dissimilar effect here, in our opinion.

34. Mr Arbourne invited us to apply a 1% discount. He noted that the right to extend under the Act was valuable and highlighted other discounts made in reported cases with much shorter terms than we have in this application.

35. We have in mind the guidance of the Upper Tribunal in the case of *Trustees of the Sloane Stanley Estate v Adrian Howard Mundy* [2016] UKUT 0223 (LC) at [168] where it was stated,

“[168] ... in some (perhaps many) cases in the future, it is likely that there will have been some market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for the interest, then that market value will be a very useful starting point for determining the value of the

existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.”

36. It is a notoriously difficult and artificial exercise to attempt to try and assume that the Act does not apply to the property. Given the relatively long lease term on the property we are of the view that no further adjustment is required on the figure of £167,700. The property which sold at £165,000 did not benefit from an immediate statutory right for an extension and we accept Mr Cooper’s expert view, given that our determined current lease value is very close to the £165,000 that a further adjustment is therefore not required for this factor.

Approach to relativity.

37. Mr Cooper stated that he did not like to rely on graphs of relativity. He said they were apt to mislead and that he was aware that none of the usual published graphs contained any analysis of transactions from the Welsh leasehold sector. Mr Cooper staked his claim on the existing unimproved value being £165,000 which resulted in a notional 84.6%

38. Mr Arbourne, in his original report had posited a relativity of 89.625%, before stepping back and forming an independent view that this probably resulted in too high a figure. He did not comment upon any revised relativity stance having changed his position in opening. As already noted above, this has made it difficult for us to properly understand what Mr Arbourne’s case is.

39. Overall, we prefer Mr Cooper’s evidence, but with the modest adjustment to relativity we have explained above. His evidence was articulated clearly and based on evidence of a market sale and a negotiated lease extension, albeit not entirely certain as to full circumstances, and supported by clear reasoning. Mr Arbourne, as noted, did not articulate his final revised purchase price in

light of having agreed Mr Cooper's unimproved extended lease value of £195,000.

Summary

40. We have set out our calculations in the attached spreadsheet. It is our determination, on the facts of this case, that a premium of £17,500 should be paid.

20 October 2016

A handwritten signature in black ink, appearing to read 'Rhys Taylor'.

Legal Chairman

Schedule to the decision

Flat 15, Fordwell, Llandaff

Term

Agreed £1,103

Reversion

Unimproved extended lease value (agreed)	£195,000	
PV of £1 69.2 years @5% (agreed)	<u>0.0342</u>	
		<u>£6,669</u>
Freeholder's interest (agreed)		£7,772

Marriage Value

Unimproved extended lease value (agreed)	£195,000	195,000	
Less			
Relativity at 86%	£27,300		
Unimproved non-Act value	£167,700		
Value of existing reversion	<u>£7,772</u>		
		<u>£175,472</u>	
Marriage value		£19,528	
50%		<u>£9,764</u>	£17,536
Premium payable			£17,500