

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)

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

Premises:	18A Queens Road, Penarth, CF64 1DJ ("the property")
Reference:	LVT/0035/09/16
Hearing:	19 December 2016
Applicant:	Mr Jeffrey Hodgkinson (expert – Mr Chris Clarke LLB FRICS)
Respondent:	Beili-Bach Estates Ltd represented by CJCH Solicitors, (Mr Marcus Brace) (expert – Mr Rhodri Poiner, BSC (Hons) MRICS)
Tribunal:	Rhys Taylor – legal chairman Mr Roger Baynham - FRICS

ORDER

Upon the parties having agreed that the figure in clause 3(J) of the lease should be amended from £35.25 (inclusive of VAT) to £60 plus VAT.

IT IS ORDERED THAT:-

1. The price to be paid for the lease extension is £9,190

21 December 2016

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

Legal Chairman

REASONS

Background

1. This case concerns an application for the determination of the premium to be paid for a 90 year lease extension at the property.
2. The parties are agreed on all matters save for the premium to be paid. The application is dated 7 September 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 6 January 2016.
 - b. The lease was granted for a period of 99 years from 17 July 1992.
 - c. The remaining term as at the date of valuation was 75.52 years
 - d. The capitalised ground rent for the term is £823.11. The experts agreed a yield rate of 6% which is slightly lower than the 6.5% which the tribunal often determines. However, as the issue was agreed the tribunal adopts that approach in this instance. It is not intended to signal any change of approach by the tribunal.
 - e. A deferment rate to the reversion was 5%.
 - f. Both experts were of the opinion that in this instance there were no relevant leaseholders' improvements and that there was no adjustment required for the assumption that the Act did not apply to this property.
 - g. It was also agreed that the tribunal should record that clause 3(J) of the lease should be updated to the figure of £60 plus VAT rather than the £35.25 inclusive of VAT which was in the original lease.

Matters not agreed between the parties

7. The main areas of dispute were the current value of the property, its value once extended and consequently the relativity figure which should be adopted by the tribunal.
 - a. The difference between the parties on the current lease value is considerable. The applicant contends for a figure of £118,750 whereas the respondent contends for £225,000.
 - b. The applicant contended for a relativity figure of 95%, whereas the respondent contended for 93.5%.

- c. The approach to relativity resulted in differing extended lease values, with the applicant contending for a figure of £125,000 and the respondent £240,640.

The Inspection

8. The Tribunal members attended for an inspection at 9.30 on the 19 December 2016. Present were the applicant and Mr Jacobson on behalf of the respondent. Mr Poiner and the respondent's solicitor Mr Brace were also in attendance. Mr Clarke was not present but attended at the hearing later.
9. The property comprises a modestly proportioned 1st and 2nd floor flat located partly above a garage (which is part of the demise) within a small detached development consisting of a total of 2 flats.
10. The building was constructed approximately 25 years ago and consists of a flat fronted (i.e. without a forecourt) 3 storey building with 3 garages on the ground floor and living accommodation on the first floor and also in the attic spaces which are configured to provide further bedrooms. The building is conventionally constructed of cavity brick work which has been part cement rendered and has a composite slate roof and plastic rain water goods. The window frames are in wood and single glazed with the attic bedroom having a Velux type window in the roof.
11. The access to both flats is via the communal recessed entrance porch and small hallway and then a staircase leading to the first floor with a small landing giving access to the 2 flats.
12. On the first floor the subject property consists of a small entrance hall which leads to the living room having a small open plan kitchen, a small double bedroom, and a small bathroom accessed via a concertina type plastic door, having a bath with an electric shower over, wash hand basin and a w/c. The access to the 2nd floor is via the open tread staircase in the living room which leads to a landing and a large double bedroom located in the attic space. The property has the benefit of gas central heating.
13. The garage is accessed directly from the road and is of good size and there is also a door leading to the rear utility area, which is in hard standing, and very limited in depth and overshadowed by a substantial retaining wall.
14. The property is situated on a busy residential road with lots of cars parked at the side of the carriageway, in an area of Penarth which is increasing in popularity. It is set alongside far older and more traditional "Dockers" style housing. It is within relatively easy reach of the town centre where most amenities are available. There are limited views from the first floor of Cardiff Bay.

Market value of existing lease

15. Given the juxtaposition of the property next to far older and more traditional style housing, it was described as something of an "unusual animal" at the hearing. The older surrounding housing does not tend to benefit from garage facilities, resulting in the road feeling rather crowded with parked cars.
16. At the outset of the hearing it was contended by the applicant that the property should be treated as being akin to a one bedroom flat with additional attic space and the three comparables provided by Mr Clarke were for one

bed properties. Later in the hearing it was conceded by the applicant himself that he would “settle for 2 bedrooms” after hearing from Mr Jacobson concerning the steps taken during construction to ensure that the property was properly and lawfully configured as a two bedroomed flat.

17. Having made the concession that the flat was essentially two bedroomed, the one bed comparables became less helpful. Flat A, 22 Arcot Street is a one bed flat which sold for £91,000 in January 2016. It does not benefit from a garage. It does not appear to us to be a helpful comparable. Further, the term is one of 150 years from March 2013, adding a further difference to the property which has a much lower term.
18. The two other comparables were in the Penarth Marina. The tribunal conducted external drive by viewings of these properties. The tribunal is of the view that the Marina occupies a very different place in the market to the property and we did not derive much, if any, assistance from these comparables.
19. The respondent provided 7 comparables in Mr Poiner’s report and highlighted a further property which has just come to the market at the hearing.
20. We did not derive assistance from The Coach House, Beach Lane which is a much more substantial three storey property with 3 bedrooms in a traditionally more desirable area of Penarth. It sold for £280,000 in October 2015 and we consider it to be a significantly superior property. We were also not assisted by 3 John Street, Penarth. This has three bedrooms and two reception rooms and sold in December 2014 for £214,000 on freehold basis. This, again, is a far more substantial property in terms of size and tenure. It cannot be right that the subject property with its existing lease terms is worth more than this property.
21. We viewed 22 King Street, Penarth which is an end of terrace property which sold for £208,500 in July 2015. Again, from an external inspection, we consider this to be a more substantial property. We did not view 23 Fairfield Road but with three bedrooms and two reception rooms selling for £270,000 in May 2015, we did not consider it to be within the parish of our deliberations.
22. We discounted 21 The Moorings, a two bed apartment which sold for £149,000 in December 2014 as it is based (as noted above) in the more desirable area of Penarth Marina.
23. The two most helpful comparables in Mr Poiner’s report are 30 Mariners Heights, Penarth and Flat 4 The Royal, Queen’s Road, Penarth.
24. 30 Mariners Heights is a 2 bedroomed flat, located within a purpose built private development which comprises several two story, red brick buildings housing 36 similar type flats on one level. All benefit from double glazing. There is private parking for the residents and the appearance of the estate is that it is well managed. The lease was 99 years from 1 May 1988 (about 4 years different to the property) and sold in September 2015 for £160,000.
25. Mr Baynham disclosed at the hearing that many years ago he managed some of the flats within the development when he was in practice as a full time surveyor. He shared his recollection that the size of the flats, in particular the size of the kitchens and bathrooms, were more generous than the property.
26. Whilst the flats at Mariners Heights do not benefit from individual garages, they do enjoy private parking. The Mariners Heights’ development is relatively close to Queens Road. It was suggested that it was difficult to put a precise value on a garage but that the range might be between £5,000 and £10,000. It

was also suggested that when comparing the utility/value of a garage when compared with an off road parking space (as opposed to kerbside parking) the utility would be at the lower end of the range.

27. It was suggested by the respondent that the evident good management of the Mariners Heights' development comes at a price and that there is likely to be modern, all encompassing service charge provisions which may put potential purchasers off, when compared to the more "light touch" service charge provisions in the lease of the subject property. We accept that this is a valid point to be making but consider that it will have limited effect upon the price.
28. Overall, we found 30 Mariners Heights to be a very helpful comparable property. Despite the lack of a garage, we consider the overall "package" available from 30 Mariners Heights to be more desirable than the property and that this will be reflected in the price.
29. Flat 4, The Royal is a two bedroome demise in a modern development of an old hotel. It sold in February 2015 for £150,000. It does not benefit from off-road parking, but appeared to have double glazing. The lease was longer at 125 years from March 2004. This is roughly 38 years longer than the property and we consider that this is likely to have real capital value in the market. We cannot say by how much, but we do consider that Flat 4, The Royal would sell for less in the event that the term was at 75.52 years. We did not see the inside of the Flat 4, The Royal but given that it is a modern development we anticipate that it will feel less tired than the property.
30. We were unassisted by a rather sterile debate in the papers and hearing as to whether we should consider the property a flat or a "coach house". It was conceded by the respondent's counter notice that the property fell within the definition of a flat for the purposes of the Act. Further, the internal dimensions of the property are what they are and it matters not to the tribunal whether they are described as a flat or coach house.
31. Mr Jacobson gave clear evidence about the circumstances of the development of the property in order to ensure that it was a two bed property. He stated that when he realised how small the bedroom 1 was, he sought to utilise the attic space which necessitated going back to his architect for further drawings which altered the pitch of the roof and he also described the materials (steel joists) used which he stated were used when it was realised the attic space would need building regulation approval as a second bedroom. He also stated that the original closed stairs have been removed and replaced by the more insubstantial open stairs. This was without his permission and gave the wrong impression of what was there in the first instance. Whilst there is no formal document that can now be found to confirm the status of the attic bedroom at the point of development, we consider that on the balance of probabilities Mr Jacobson's detailed evidence has a real ring of truth about it and we accept his unchallenged account.
32. Our attention was also drawn to a property on the market in Coronation Terrace. It is a 2 bed property on the market with Savills. It has an asking price of £285,000. It enjoys undercroft parking. We are unaware of the precise tenure. The internal marketing pictures which we were shown were considerably more impressive both in terms of size and finish and we consider that the subject property occupies a much more modest place in the market.
33. Drawing the threads together, we consider than the property subject to its existing lease terms is likely to have a current value of about £135,000. This is

based upon the fact that 30 Mariners Heights is clearly a superior “package” albeit one without a garage but benefitting from off road parking. Flat 4, The Royal is a useful cross check for us. The length of term and fact of more recent development must count for a premium when compared with the property, albeit that has to be balanced against the fact that it enjoys no garage and no off road parking.

Approach to relativity

34. Neither Mr Clarke nor Mr Poiner provided much by way of analysis when it came to relativity.
35. Mr Clarke contended for 95%. It was not clear from his report how he had alighted on this figure. In oral evidence he stated that he was relaying upon the RICS table of relativity as he believed that this had been accepted by this tribunal in other cases. He did not produce the graph. Mr Clarke referred to a particular case in which Mr Baynham had been part of the tribunal and Mr Baynham indicated to the hearing that the RICS table had been adopted in a particular case when there had been little counter argument put against it. Mr Clarke fairly stated that tables of relativity are subjective and that he was not saying that he was “100% right” in adopting the RICS table. He also commented that all the tables “may not be good for South Wales” given that the data presented in them does not include Welsh data.
36. Mr Poiner relied on the Leasehold Advisory Service graph, but did not produce it at the hearing. There was little analysis provided by Mr Poiner beyond commenting that this is the graph he habitually used when preparing such reports.
37. In the absence of any significant assistance from either expert, Mr Baynham produced a printout showing a range of relativities from www.graphsofrelativity.co.uk. Copies were given to each expert and neither objected to its production. It was noted that for the term concerned, The Savills 2002 graph was at 90.96%, the Savills Enfranchiseable graph 2015 was at 89.21% and the Gerald Eve 2015 graph was at 90.26%. It was noted in the case of *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC) at [170] that the Savills, “...2015 graph is still subject to some possible technical criticisms ...”
38. The tribunal has had limited assistance on the question of relativity, but doing the best we can with the evidence we had before us the tribunal considers that a relativity figure of 90.50% was appropriate. This results in an extended lease value of £149,171, which is the figure we propose to adopt here. Our determination of relativity comes approximately mid way between the Savills 2002 graph and Gerald Eve graph which we consider a more realistic parish than either of the graphs mentioned by the experts in this case.

Summary

39. Overall, Mr Clarke for the applicant contended for a premium of £6,200. Mr Poiner for the respondent contended for a premium of £11,250 (rounding up somewhat generously from £11,157.36).
40. Having arrived at the conclusions we have, relating to the current and extended lease values and doing the best we can on the question of relativity,

we determine a total premium to be paid of £9,190. Our calculations are set out on the attached spreadsheet and form part of this decision.

21 December 2016

A handwritten signature in black ink, appearing to read 'Rhys Taylor'. The signature is fluid and cursive, with the first name 'Rhys' being more prominent than the last name 'Taylor'.

Legal Chairman

18 A Queens Road, Penarth, CF64 1DJ

Term

Ground Rent	£ 50.00		
Y. P. for 75.52 years at 6.00 %	<u>16.4621</u>	£ 823.11	
Agreed matter			£ 823.11

Reversion

Current Lease Value	£ 135,000		
P.V. of £1 in 75.52 years at 5 %	<u>0.025106</u>		<u>£ 3,389.31</u>
Freeholders Interest			£ 4,212.42
	Say		£ 4,212

Marriage Value

Long Leasehold Value		£ 149,171	
Current Lease Value	£ 135,000		
Landlords Interest	<u>£ 4,212</u>	<u>£ 139,212</u>	
		£ 9,959	
At 50 %		<u>£ 4,979.5</u>	<u>£ 4,979.5</u>

Premium			£9,191.50
	Say		£ 9,190