

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0048/10/13

In the Matter of 24 Gwaun Hyfryd, Mornington Meadows, Caerphilly, CF83 BR

In the matter of an Application under Section 48(1) Leasehold Reform, Housing and Urban Development Act 1993.

TRIBUNAL Chairman: Richard Payne
 Surveyor : Mark Taylor MRICS

APPLICANT Anne Esther Duggan and Nigel Duggan

RESPONDENT Mary Teresa Edmunds

HEARING: 4th June 2014

ORDER

1. The price to be paid for the premium for the lease extension of 24 Gwaun Hyfryd is £10,500

Reasons.

2. By an application form dated 3rd October 2013, the Applicants sought the Tribunal's determination on the premium payable for the lease extension and for the amount of costs payable under section 60 in the event that the parties were unable to agree on this. At the hearing expert witnesses chartered surveyors Mr Adrian James MRICS appeared on behalf of the Applicants and Mr Marc Williams FRICS for the Respondent.

Background.

3. By an application to the Tribunal dated 3 October 2013, Mr and Mrs Duggan proposed a premium of £6,000 for the lease extension for 24 Gwaun Hyfryd ("the property") and indicated that the Respondent had proposed a premium of £15,000. The application included the notice of claim under section 42 of the Leasehold Reform, Housing And Urban Development Act 1993 ("the Act") dated 24 April 2013, the counter notice signed by the

Respondent dated 13 May 2013, a copy of the original lease dated 16 February 1973 and the title documentation for the freehold and leasehold titles.

4. The original lease was between Downglade Limited and Maud Whiteley for a term of 99 years commencing on 24 June 1972. At that stage the property was described on the development plan as “the ground floor flat to be known as flat 15 Mornington Meadows, Caerphilly CF83 3BR”. The lease included amongst the lessee’s covenants, at 3 (h) to surrender and yield up to the lessors at the expiration of the said term or sooner, the demised premises together with all additions thereto and all landlords fixtures and fittings (if any), in good tenable repair and condition. The ground rent is £15 per annum. The Landlord’s counter notice admitted the Applicants’ right to require a new lease of the property and the proposed terms of the new lease which included that it was to be for a term of 90 years plus the remaining years unexpired on the old lease paying in advance a yearly ground rent of a peppercorn, and the only matter that was not accepted was the proposal of £6000 for the premium.
5. Directions were given by the Tribunal which were complied with by both sides. The Tribunal had before it Mr James’ report and valuation received by the Tribunal on 16 December 2013, Mr Williams’ submission and valuation dated 19th of December 2013 together with all supporting documentation, and further written representations from Mr James dated 28 February 2014 in which he commented upon Mr Williams’s comparables. The experts were in agreement on the **valuation date of the 24th April 2013**, the valuation of the term of £15 per annum for 58 years unexpired as £282, and on the deferment rate of 5%.

The inspection.

6. The Tribunal inspected the property on the morning of 4 June 2014 when it was overcast and raining. The property is on the ground floor of a two storey block of four flats on the private part of the Mornington Meadows estate to the east of Caerphilly. There are other similar blocks of flats on Gwaun Hyfryd. The property is accessed by a door at the side. It has the benefit of a lawned garden to the front and a garden at the rear which is of a reasonable size and made up of both lawn and patio area. Upon entering the property, there is a bathroom to the right containing a toilet, basin and bath. The bathroom had been refurbished. The next room upon the right is a small kitchen which looks out over the front garden and has a small boiler for hot water. The first room to the left is a double bedroom which has a window looking out over the back garden and is of a reasonable size. The master and second bedroom is at the end of the corridor on the left and again looks out over the rear of the property. At the end of the corridor is the living room which has a window looking out over the front garden. There is a cupboard off the corridor containing a boiler. The property has the benefit of UPVC windows throughout. Mr Duggan was present during the inspection but neither of the surveyor expert witnesses were in attendance.

The hearing.

7. The matters that remained at issue were;
 - a. The current market value of the unimproved extended leasehold interest for the property. Mr Williams’ contending £92,000 and Mr James £72,500.
 - b. The reliability of the respective comparables submitted by the experts.

- c. The figure for relativity – Mr Williams used the figure of 20%, Mr James the figure of 83%, i.e. 17% if he had approached it in the same way as Mr Williams but had expressed his workings differently.
 - d. The resulting premium, with Mr Williams contending £12,000 and Mr James £8,500 on his calculations (more than the £6,000 cited in the original notice and the application to the LVT).
- 8. Mr James explained that the value of the term was not in dispute and was agreed at £282. He stated that the principle comparable for the basis of his valuation was number 42 Gwaun Hyfryd, the sale of which was completed on 5 November 2012 for £76,000. He said that this was the comparable that most closely pre-dates the valuation and he had adjusted the starting figure downwards to allow for improvements (double glazing and bathroom) leading him to his market value of the property at the relevant date as being £72,500. He explained that he had sought assistance from various published graphs of relativity, particularly those published by the Leasehold Advisory Service, that indicate that for a lease with 56.5 years remaining, relativity is 83% (or 17%) and he had applied this figure to his calculations. He referred to his additional written submissions of 28th of February 2014 in which he pointed out that Mr Williams had not referred to the sale of number 42 but had relied upon the sales of numbers 32, 36 and 54 Gwaun Hyfryd. He also said that number 38 Gwaun Hyfryd, referred to in Mr Williams's submission, was not a comparable because the property remains upon the market for sale at an asking price of £89,995 which he said was an inflated figure out of keeping with the evidence of other sales in the area and it should therefore be disregarded. Mr James letter of 28th February 2014 also corrected an error in his original submission, namely that as recorded above, he had referred to the outstanding term of 56.5 years remaining when the true figure was 58 years. He maintained however that whilst this would result in a slightly higher relativity figure, namely 85%, he would not wish to change the figure that he had previously submitted since the 83% approximated to the average relativity of all the graphs analysed in the RICS Research report "Leasehold Reform; Graphs of Relativity."
- 9. Mr James referred to the assumptions under the Act including that valuation is to be upon the basis of a "no Act world" and stated that in reality there is no real-world evidence of the value of the flats without the prospect of the right to a new lease. He submitted that to arrive at the value of the flat to the leaseholder without the benefit of the legislation then the starting point must be the current market value of the flat to which the appropriate relativity percentage is then applied which would give the correct adjusted figure to comply with the requirements of the Act.
- 10. Mr Williams submitted that the situation here was unusual. He said that he had done some research and investigating and there was very little comparable evidence around. With regard to number 42, he said that as the sale was going through he had been asked to advise on the lease extension which was viewed as important to the sale and he had agreed a premium of £10,000 with the landlord but for some reason the lease extension did not proceed. He said that the agreement was with the Caerphilly office of Brinsons. He said that he took a slightly different approach on valuation to Mr James by starting at the unimproved

value of the flat and then working backwards. He said that there is some evidence throughout South Wales that people will not buy flats.

11. Mr Williams provided the Tribunal with a list of sales of flats in Gwaun Hyfryd (numbers 30 on three occasions, 36, 54 and 42) obtained from "Myhouseprice.com" and also provided various details relation to certain of his comparables from "right move". These were all documents that were also provided to Mr James who was familiar with them and took no exception to them being produced at the hearing. Mr Williams referred the Tribunal to the sale of two properties in Bryn Heol in Bedwas. Number 50 Bryn Heol was a two-bedroom leasehold flat sold on 28 January 2013 for £80,000. He said that number 38 Bryn Heol, similarly was a two-bedroom flat that had sold for £80,000 on 13 December 2013. He said that these were former local authority properties that he would like to make an adjustment for and stated that they would be bound to have over 80 years unexpired. Mr Williams provided the Tribunal with details of a two-bedroom flat at 5 Brendon Court, Van Road, Caerphilly that was listed for sale on 25 May 2012 for £117,500 and apparently sold for £115,000. Mr Williams said that this was a nicer property and in a nicer location than the subject property.
12. With regard to the comparables in his report, of the five properties mentioned three were sold subject to contract, two in Bedwas and one in Caerphilly. He said that he did not believe that any of the 'subject to contract' properties had actually proceeded to completion. Mr Williams also produced a copy of a printout from Shepherd Chartered Surveyors showing a map with the location and details of eight properties (seven two bedroom flats and a one bedroom flat) which had been marketed and sold at various dates in 2013 and 2014, five of which were said to be sold subject to contract. This also included the details of the upper floor flat at number 38 Gwaun Hyfryd that remained on the market and had been so with Peter Alan estate agents for £89,995 since November 2013.
13. With regard to the sale of 42 Gwaun Hyfryd, he said that although the sale went ahead, the lease extension that he had valued with Brinsons at £10,500 did not. Mr Williams said that none of the leases on the estate had been extended, this property, number 24 would be the first and that this was an unusual situation. With regard to the comparable evidence in his report, he highlighted that the comparables were of some age and suggested that "the market has deteriorated for leasehold flats with short leases." He referred to 36 Gwaun Hyfryd a first floor flat that had been sold for £94,000 on the 2nd February 2007 and to 32 Gwaun Hyfryd, a ground floor flat that had been sold for £78,000 on the 3rd February 2012 on the same lease terms and to 54 Gwaun Hyfryd a ground floor flat that had sold for £90,000 on the 15th January 2010. He referred in his report to the first floor flat at 38 Gwaun Hyfryd being marketed with an asking price of £92,995 which he considered was unlikely to sell at that price. Indeed, it appeared to the Tribunal that this asking price had been reduced at the date of the hearing to £89,995 as per paragraph 12 above.
14. With regard to relativity, Mr Williams report says "The use of 'graphs' is a reliable way of calculating the relativity where there is little evidence. It is accepted that this is not perfect but valuation is not a perfect science." He said that there are no graphs for Wales but referred to the Beckett and Kay graph headed "Presentation of RICS data Leasehold Reform: graphs of relativity- PCL only (2013: second revision): leasehold value as a percentage of

freehold vacant possession value.” He added that in Wales, the vast majority of people require a mortgage and he provided the Beckett and Kay “Mortgage-dependent graph (2013 second revision)”. His report adds that “The situation with mortgage finance and the continued difficulty with mortgage availability must be an influence on relativity. The sale of flats with leases under 70 years is restricted to cash buyers.” He referred to the Coolrace case suggesting a composite rather than a single graph. (Coolrace Limited and others, [2012] UKUT 69 (LC) decision of Mr P R Francis FRICS, 29th February 2012). He submitted that the market value of the subject property would be £95,000 on a long lease.

15. In answer to questions from the Tribunal as to the weight to be placed on the Beckett and Kay composite graph which was based on data from prime central London (PCL), he acknowledged the limitations of this but said that he was adopting 20% for a flat. He said that in South Wales it was more likely that there would need to be reliance on a mortgage as opposed to in PCL. He said that valuing the freehold unimproved would lead to a realistic figure of £92,000.
16. Mr James referred to the sale of 58 Gwaun Hyfryd for £82,500 on the 19th July 2013 and pointed out that it was incorrectly described as a semi-detached house on ‘net house prices’ but that it was in fact a flat of the same description as the subject property. He submitted that this was helpful in considering the price given the proximity to the valuation date.
17. The Tribunal pointed out that in the office copy entry with title number WA401923 for the subject property, the proprietorship register recorded that the Applicants were registered with title absolute on the 26th April 2011 and that “the value stated as at 15th April 2011 was £72,500.” Mr Williams said that this was a probate valuation and such valuations are generally conservative as valuers tend to adopt lower figures, and the property market would have risen after this date. He said that the market was improving and that he was happy to accept this figure as being helpful and in fact he said that it was in line with the valuation for number 42 Gwaun Hyfryd. He submitted that this backs up the figure in his valuation calculation where he values the unimproved lease value at £73,600 having taken into account marriage value and relativity from an initial £92,000 valuation.
18. Mr James agreed that probate valuations err on the side of caution but felt that such valuations are undertaken by estate agents and that the figure for this property would have reflected the improved state of the flat. With regard to the comparables offered by Mr Williams, Mr James submitted that Mornington Meadows is a market in itself and the examples of properties in Trethomas and Bedwas were largely of former social housing and of limited assistance. With regard to number 42 Gwaun Hyfryd, he said that despite Mr Williams having said that the lease extension would have been essential to the sale, that in fact it had completed without the lease extension and so did not appear to have been essential after all. Mr James accepted that mortgageability is a factor and that lenders who lend on properties with less than 70 years unexpired term are few and far between, and that where a lease has less than 60 years unexpired as here, then obtaining a mortgage could be an issue.
19. On some further questioning as to his opinion of the value of the leasehold interest in an unimproved and unextended term value Mr James then considered the approach that he had taken to the valuation and accepted that he had been incorrect and agreed that the

methodology used by Mr Williams should be adopted. This necessitated Mr James being allowed a short adjournment in order to re-calculate his figures. He returned with an upwardly revised starting point of £85,000 for the current market value of the unimproved extended leasehold interest, applied his relativity figure of 83% and following through on his calculations he arrived at a figure of £9875 for the premium.

20. The Tribunal enquired about the question of costs but neither Mr James nor Mr Williams put any arguments on this matter forward for the Tribunal to determine.

Decision

21. The Tribunal carefully considered all of the documentary and oral evidence before it and consider that the value of the extended lease disregarding improvements at the valuation date is £87,000. The relativity figures are, as Mr Williams says, not an exact science and the graphs are comprised of different variables, and the Beckett and Kay graph is based upon Prime Central London where different considerations apply compared to South Wales. On this point the arguments advanced by Mr James following approach of a composite graphs produced by the RICS were marginally more persuasive than that of Mr Williams in the absence of directly comparative evidence. The Tribunal therefore adopts the relativity of 18% (or 82%).

22. We make the following determinations:

- a. The unimproved value of an extended lease of the property is £87,000.
- b. The agreed deferment rate is 5%.
- c. The present value of £87000 is therefore £5133.
- d. The diminution in the freehold interest is £282 plus £5133=£5415.
- e. The unimproved non-Act value of the present leasehold interest is £71,340.
- f. To this figure we must add the value of the Respondent's interest prior to the grant of the extended lease, namely £5,415 making the total of the separate interests £76,755.
- g. This is to be deducted from the extended unimproved leasehold interest, namely £87000, producing a marriage value of £10,245. In accordance with para 4(1) of Schedule 13 of the Act, the marriage value has to be divided equally between the freeholder and the leaseholder. One half of the marriage value is therefore, £5122.
- h. The premium payable is the sum of the diminution of the freeholder's reversionary interest (£5415) and the one half of the marriage value (£5122), namely £10,537 but say **£10,500**.

23. Summary

Diminution in value of Freehold interest

Ground rent £15.00 p.a.		£282 (Agreed)
Extended lease improved	£90,000	
Less Improvements	£ <u>3,000</u>	

Unimproved extended Lease	£ 87000	
PV of £1 deferred 58 yrs @ 5%	<u>0.059</u>	<u>£5133</u>
£5415		

Freeholder's share of Marriage value

Unimproved extended lease	£87,000	£87,000	
Relativity @ 82%	<u>£ 15,660</u>		
Unimproved non-Act value	£ 71,340		
Value of existing reversion	£ 5,415	<u>£76,755</u>	
Marriage Value		£10,245	
One half			<u>£ 5122</u>
			£10,537

Premium Payable say £10,500

24. Accordingly the premium payable for the lease extension under the Act is £10,500. As indicated above, there were no other issues for the Tribunal to determine.

DATED this 16th day of July 2014



CHAIRMAN