

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference LVT/0048/02/15

In the matter of 33 Maes Deri, Winch Wen, Swansea SA1 7LW
In the matter of an application under S.27 of the Leasehold Reform Act 1967

APPLICANT Ms Joanne Catherine Amelia Grey

RESPONDENT Unknown

TRIBUNAL: D J Evans LLB LLM
 R W Baynham FRICS

DECISION

INTRODUCTION

1 We convened as a Leasehold Valuation Tribunal under the provisions of the Leasehold Reform Act 1967 (as amended) on the 22nd April 2015. We had before us an Order of the Swansea County Court dated the 17th February 2015 requiring the Leasehold Valuation Tribunal to make a determination of the price payable by the Applicant for the freehold reversion of 33 Maes Deri, Winch Wen, Swansea SA1 7LW (the Property).

BACKGROUND

2 Ms Joanne Catherine Amelia Grey (the Applicant) is the leasehold proprietor of the Property and wishes to acquire the freehold pursuant to the Leasehold Reform Act 1967 (the Act). After enquiries made on the Applicant's behalf, the freeholder of the Property cannot be found. On the 16th January 2015, the Applicant made an application to the Swansea County Court claiming the right to purchase the freehold under the Act and on the 17th February 2015, the Court issued the Order referred to above.

LEASE

3 The lease of the Property (the Lease) is dated the 8th December 1961. It was made between Bel Homes (1959) Ltd (1) and John Leslie Mentessi (2). The Lease is for the term of 99 years from the 1st March 1960 at a yearly ground rent of £10 payable annually. The lease is in a standard form for leases of that era requiring the lessee to construct a dwelling house and to pay the outgoings, insure the Property and maintain it.

INSPECTION

4 Prior to considering the valuation of the freehold reversion, we inspected the Property internally and externally. We were accompanied on our visit by the Applicant. The Property is a semi-detached house constructed in about 1961. The side wall is brick. The front wall has a painted spar finish to the front ground floor and a uPVC panel to the upper floor. The back wall is rendered and painted. It is, however, cracked and discoloured and in need of attention. The guttering at roof

level is missing. There is a tiled roof with a chimney. The Applicant has added a side porch, an improvement consistent with a number of houses in the road, and has removed the wall dividing the dining room from the kitchen to create more spacious kitchen/diner. There is a small tiered front garden and a large, west facing, rear garden only part of which is serviceable as a substantial part of this has been walled off and allowed to return to its wild and natural state. There is no garage but there is room to park a car provided the steep access is safely negotiated.

5 The Property is located in a quiet road of privately constructed houses. These are of differing styles. Some owners, including the owner of the adjoining property, have added substantial extensions. Winch Wen is a residential part of Swansea. There is some private development. However, from their appearance many of the houses in the adjoining streets were originally local authority housing. Some of these are now in private ownership. This is bound to affect the price not only of those houses but other privately owned houses in the nearby area.

6 Internally, the porch leads into the kitchen/diner with a breakfast bar and a range of units. Leading directly from the dining area is the living room which has a gas fire. We were surprised to note that there was no rear entrance. The stairs lead from the kitchen/diner to the landing where there was a cupboard which contained the boiler for the central heating and the hot water. There are two double bedrooms and a bathroom with a wash hand basin, toilet and a bath with a shower. The Property is double glazed.

REPRESENTATIONS

7 The Applicant had agreed that we should determine the case on the papers without a hearing. She submitted a report, dated the 17th March 2015, by Mr Matthew Barry Mason MRICS of Dawsons, Surveyors, Swansea for our consideration. Mr Mason has adopted the "standing house" method in order to ascertain the value of the plot on which the house stands. This involves valuing the Property on a freehold basis, assuming it to be in good condition and fully developing the plot. This is sometimes referred to as "the entirety value". He values the Property on that basis at £80,000.

8 Mr Mason refers to a number of comparable properties in support of his valuation. He has also annexed particulars of three of those properties but submitted a list of over 50 other "comparable sale properties". Following our inspection of the Property, we made external inspections of one of the properties for which particulars had been supplied. From the details provided, we did not consider that either 7 Old Farm Court, Llansamlet (offers over £75,000) or 24 Pen y Garn Pentrechwyth (offers over £80,000) would provide much assistance except as to the general pricing of houses, as they were terraced houses and a little out of the immediate area. We did however look at:

44 Lan Coed - a three bedroom, semi-detached house with a conservatory and a prefabricated garage which was on the market at £95,000. According to the particulars there are some aluminium window and door frames and the Property needs updating. From our external inspection we are inclined to agree with that assessment. We noted from the particulars that two of the three bedrooms were only comfortably single bedrooms whereas the Property had two fairly generous double bedrooms.

53 and (we believe) 61 Cefn Hengoed Road - two three bedroom properties situated a short distance from the Property. The numbers of the property were not stated in the particulars given, but we were able to identify them from the photographs as being for sale at the prices indicated. Both appear to be former Council houses built on corner plots. The former

is priced at £110,000 whilst the latter which has a garage and a sun room and being marketed at £129,950

11 Criccieth Place - a traditional three bedroom semi-detached former local authority house in a narrow but quiet cul de sac which sold in December 2014 for £76,000.

Whilst inspecting the above properties, we took the opportunity to look at:

6 Colwyn Avenue - a former local authority house of a similar design to that in Criccieth Place. Located on a busy main road, it sold for £87,500 in June 2014.

We also looked at numbers 15 and 21 Cardigan Crescent which sold in 2012 and 2013 respectively for £77,000 and £62,000. We did not gain much assistance from them as the sales were not particularly recent, the properties appear to be in an area of generally less valuable housing and in the case of number 21 it is a mid-terrace property.

VALUATION METHOD

9 Section 9(1) of the Act states 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 by 50 years. In other words the assumed term expires 50 years after the contractual term date. Here, the contractual term ends in 2059 so that the assumed date when the lease will expire is in February 2109.

10 In the past, it has been accepted that, what is sometimes called, the “two stage” approach would generally be used where there were, say, over 50 years to run on the lease so that the deemed expiry date was over 100 years into the future. This involves ascertaining a modern ground rent for the Property (or, as it is more properly called, a section 15 ground rent), recapitalising that section 15 ground rent in perpetuity, and deferring that value to the end of the current term. Nonetheless, it was always considered more likely that the market would adopt the “three stage” approach or, as it is often called, the Haresign approach (named after the Lands Tribunal’s decision in Haresign –v- St John the Baptist’s College Oxford (1980) 255 EG 711), where that approach produced a value significantly higher than that achieved by the two stage approach. In the “three stage” approach, the section 15 ground rent is capitalised only for 50 years, deferring the result to the end of the current term. The added third stage is to calculate the standing house value of the Property and defer that value 50 years beyond the end of the current term.

11 Mr Mason initially employed the “two stage” approach in order to calculate his valuation, putting the value of the Property at £3,448. After initially looking at the papers, we invited Mr Mason to consider whether in the circumstances the three stage approach might be more appropriate. Having considered the matter afresh, Mr Mason agreed that it would be more correct to follow the reasoning of the Upper Tribunal in Clarise Properties Limited [2012] UKUT 4(LC)(Clarise) and to the use of the “three stage” approach. There is nothing to suggest that the house will not still be standing in 2109 provided it is properly maintained. We accept that there is no guarantee that in the future it will be, but in the absence of any evidence to suggest otherwise, we conclude that it is appropriate to adopt the three stage approach as used in Clarise to determine the value of the freehold reversion.

CONSIDERATION

12 Date of Valuation

We have considered our Decision on the basis that the valuation date is the 16th January 2015 being the date when the application was made to the Court. The lease is for 99 years from the 1st March 1960 which means that at that date when proceedings were commenced approximately 44 years unexpired.

13 Capitalisation Rate

Mr Mason has initially used a capitalisation rate for the ground rent of 5%. He gave no reason for doing so. In his revised valuation he has used the rate of 6½ % (somewhat surprisingly confusing the number of years unexpired as the amount of the ground rent). An investor purchasing the asset will bear in mind that the return of £10 is relatively 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 appropriate and in keeping with other decisions of this Tribunal. This produces a figure of £144.20 (and not £635 as stated in Mr Mason's revised calculation).

14 Entirety Value of the Property

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. We have therefore adopted Mr Mason's approach and proceeded by way of the "Standing House" method. This requires us to value the Property on the basis that it is in good condition and fully develops the plot. In doing so, we have taken into account Mr Mason's valuation report to which we have applied our knowledge and experience of the market in the area. Of the 3 properties for which full particulars have been attached, 44 Lan Coed appears to us to be the most relevant. Although it is a three bedroom property, two of the bedrooms are not particularly big. It also has the benefit of a garage with a level access, and a conservatory. However it is in need up updating and the aluminium window frames will not appeal to many prospective purchasers. The asking price of £95,000 fairly reflects these issues. The two properties in Cefn Hengoed Road (£110,000 and £129,950) whilst being former local authority housing and in a better location, are also indicative of the values of three bedroom houses. We appreciate that the Property only has two bedrooms, but they are of a good size. It also has a steep access and no garage and no rear access to the garden, but the creation of the kitchen/diner, the good size living room as well as the large west facing rear garden are features which many potential buyers will find attractive. In our view, a valuation of the Property of £80,000 is on the low side. A differential of £30,000/£49,950 between the properties in Cefn Hengoed Road and the Property cannot in our view be justified. Even a difference of £15,000 between 44 Lan Coed and the Property is difficult to sustain. In our view the standing house value of the Property is £85,000. We are supported in this view by the 2014 sales of the nearby properties in Criccieth Place (£76,000) and Colwyn Avenue (£87,500), both three bedroom but former local authority houses in an area of less valuable housing, and the latter being on a busy main road. We have considered whether the Property fully develops the site. There is unfortunately no consistency either in the design of the houses or the additions which some of the owners have made to them. Some houses have porches, some garages and some - as with the next door property - a two storey extension no doubt adding an additional bedroom or bedrooms. To a certain extent this is a matter of personal choice. If there had been no addition, we would have been inclined to make some adjustment to the valuation. As it is, we do not consider that we have sufficient in the way of evidence to support our making such an adjustment.

15 Plot Value

Mr Mason originally suggested a plot value of 35% of the standing house value. In his subsequent calculations he suggests a plot value of 30%. In our view this latter figure is appropriate. Although the front of the plot is steep, the remainder is level. It is a large plot, but we must take into account that the overall values in this area are relatively low so that the building cost will represent a higher proportion of the overall cost than in an area where the housing costs are substantially more. We accept Mr Mason's revised percentage of 30%. The plot value is therefore £25,500.

16 Decapitalisation Rate

Mr Mason applies a rate of 5% for decapitalisation, the process to ascertain the section 15 ground rent. We agree that a rate of 5% is appropriate. Returns in the market are currently at a low level, although they may not always remain this low. They are affected by economic conditions. However as the section 15 ground rent would be fixed for 25 years, the rate is bound to be higher than "high street" rates advertised by banks and building societies. Using our own knowledge and experience, we therefore consider that the appropriate decapitalisation rate is 5%, making the section 15 ground rent £1,275 pa.

17 We appreciate that in *Clarise* the Upper Tribunal endorsed a rate of 5%. This was the rate which the parties had agreed should apply to the deferment rate before the Leasehold Valuation Tribunal. The Upper Tribunal appears to be suggesting that the deferment rate determines all three rates - decapitalisation, recapitalisation as well as deferment. In our view, the process of decapitalisation – which can be independent of the acquisition of a freehold reversion – 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 many years. This does not seem to have been considered by the Upper Tribunal in *Clarise*. 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

18 In order to avoid what is sometimes referred to as an adverse differential, the same rate as is used for decapitalisation, i.e. to ascertain the section 15 ground rent, must be used 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 recapitalisation 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

19 Mr Mason applies the deferment rate put forward in *Cadogan –v- Sportelli* [2007]1EGLR 153 (subsequently confirmed on appeal) as adapted in *Mansal Securities Ltd (LRA/185/2007)* (Mansal), namely 5%. However, in *Mansal*, the Lands Tribunal (as it then was), increased the Sportelli rate by ¼% to compensate for the increased volatility and illiquidity because the reversion was to a site only and not to a house. That is not the case when applying the "three stage" approach.

20 In Clarise the Upper Tribunal used the Sportelli deferment rate of 4¾% as its starting point. However, it accepted the argument that the prospects for capital growth were lower in the West Midlands than in Prime Central London (PCL) and increased the rate by ½% to 5¼%. It then added a further ¼% to the deferment rate because the reversion was to a house and to allow for the possibility of greater deterioration relative to value for properties outside PCL. It considered that the cost of repairing a house outside PCL was relative to value more expensive than the cost of repairing a house within PCL. In Sinclair Gardens Investments (Kensington) Ltd [2014] UKUT 0079, the Upper Tribunal (Martin Rodger QC and A J Trott FRICS) emphasised the importance of relating the additional ¼% to the “characteristics of the property in question”. In this case, there are already indications that maintenance is required (see above). The Property is over 50 years old and with a brick side wall, a painted spar section of the front wall and a rendered and painted rear wall, the requirements for maintenance are going to be higher relative to value when compared with more expensive properties such as those found in PCL. The failure to programme regular maintenance, of which there is already evidence, will inevitably cause an investor to perceive a greater risk of deterioration and obsolescence than already accommodated in the Sportelli risk premium or reflected in the freehold vacant possession value.

21 Whilst we consider it correct to add the ¼% to the basic Sportelli rate of 4¾% to account for the deterioration factor, in the absence of evidence relating to the growth factor, we are unable to justify adding a further ½%. We therefore agree with Mr Mason and apply a deferment rate of 5%. This has the effect of valuing what is sometimes referred to as the first reversion at £2719.57.

Standing House Value

22 The final stage in the valuation process is to determine the value of the Property and defer that figure for the period of the contractual term plus the deemed 50 year extension as prescribed by the Act (not, as Mr Mason suggests in perpetuity). For this we use the value of the Property in its existing form as at the valuation date. The entirety value is based upon the assumption that the Property is in good repair and condition and fully develops the site. In our view, any works required to be done now are unlikely to have a significant effect on the value of the Property. We do not consider that there is any difference between the entirety value and the standing house value. We therefore determine that the standing house value is £85,000.

Schedule 10 of the Local Government and Housing Act 1989 (Schedule 10)

23 In Clarise, the Upper Tribunal dealt with the assumption that Schedule 10 of the Local Government and Housing Act 1989 (the 1989 Act) might apply to the tenancy created by the lease. Under the 1989 Act, the original tenancy automatically continues until notice is served under paragraph 4 of Schedule 10. The lessee is then entitled to an assured tenancy under the Housing Act 1988 at a market rent. The reversioner will therefore not be certain that it will obtain possession. The Upper Tribunal held that that uncertainty would have a depressing effect upon the value of that reversion. In Clarise, it reduced the standing house value (not the same as the entirety value used for ascertaining the plot value) by 20%.

24 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.

25 This issue had been considered previously by the Lands Tribunal in Vignaud –v- Keepers and Governors of John Lyon’s Free Grammar School (LRA/9 & 11/1994)(Vignaud) and by the Upper Tribunal in Sillvote Ltd –v- Liverpool City Council [UKUT] 192 (LC) (Sillvote). In Vignaud, 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 the tenant’s rights under Schedule 10 and remain in possession even though the Judge 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 held that there was no evidence and consequently made no deduction. Following that decision, in Cardiff County 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 Clarise, the Surveyor for the Appellant had suggested a nominal deduction to take account of the fact that these rights would only be exercisable at the end of the statutory 50 year lease extension – in Clarise, in 78½ years’ time. However, the Upper Tribunal made its 20% deduction on the assumption that the deduction had to be significant.

26 In this case, the extended lease term ends 94 years after the valuation date, a longer period than that in Clarise and substantially longer than Vignaud and Sillvote. We acknowledge the Upper Tribunal’s guidance and therefore we conclude that a significant deduction needs to be made from the standing house value in order to take account of the lessee’s Schedule 10 rights. The amount of such deduction is preferably to be based upon evidence, but, as with Clarise, we have none provided on behalf of the Applicant. Mr Mason suggests a deduction of 10% although he does not say why. We must therefore rely upon our knowledge and experience. The value of the Schedule 10 rights is essentially a question of judgment. We do not consider that the market would factor in a deduction as high as 20% or even 10% to take account of the possibility that a lessee might retain possession in 94 years’ time with the benefit of an assured tenancy. In our judgment, we consider the appropriate deduction is 5% - significant enough to take account of the risk of those rights being exercised, but not such as to over compensate bearing in mind that these rights are only exercisable in 94 years’ time and indeed may not be exercised at all. This produces an adjusted standing house value of £80,750.

27 Applying the same deferral rate of 5% as above to the standing house value, the second reversion is valued at £823.65 to which we add the capitalised current ground rent of £144.20 and the value of the first reversion of £2719.57 making a total of £3687.42, say £3690.

DECISION

28 Freehold Valuation

Applying the findings that we have made above, we calculate the value of the freehold of 33 Maes Deri, Winch Wen, Swansea SA1 7LW as follows:

Ground Rent	£10	
44 years purchase @ 6.5%	<u>14.42</u>	£144.20
Entirety value	£85,000.00	
Plot value @30%	£25,500.00	
Modern Ground Rent @ 5%	£1,275.00	
Years purchase for 50 years @ 5%	18.256	

PV of £1 in 44 years @ 5%	<u>0.11686</u>	<u>2.133</u>	£2,719.57
Standing house value		£85,000.00	
Less Schedule 10 rights @ 5%		£4,250.00	
Adjusted value		£80,750.00	
PV of £1 in 94 years @ 5%		<u>0.0102</u>	<u>£823.65</u>
			<u>£3,687.42</u>
		Say	£3,690.00

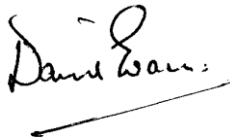
29 Ground Rent Arrears

Section 27(5)(b) of the Leasehold Reform Act 1967, 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, namely 6 years. According to the Applicant, she has not paid any ground rent since acquiring the Property in 2002. We conclude therefore that the maximum recoverable is £10 a year for the period of 6 years, namely £60. However, we have only been asked to determine the price payable for the freehold reversion. We therefore refer back to the County Court the question of any ground rent arrears.

SUMMARY

30 We determine the price payable for the freehold reversion of 33 Maes Deri, Winch Wen, Swansea SA1 7LW pursuant to the Order of the Swansea County Court dated the 17th February 2015 to be £3,690.

Dated this 28th day of April 2015



Chairman