

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

REFERENCE: LVT/0010/07/15-Ryder Street

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

TRIBUNAL: Dr Christopher McNall (Lawyer–Chairperson)
Mr Hefin Lewis FRICS (Surveyor–Member)

APPLICANTS: Mr D Gabe-Jones and Mrs C Gabe-Jones

RESPONDENT: Bankway Properties Limited

PROPERTY: 34 Ryder Street, Cardiff CF11 9BT

DECISION

The Tribunal determines that the sum to be paid under section 21 of the Leasehold Reform Act 1967 (as amended), being the price payable in accordance with section 9 of that Act, for the freehold interest in the house and premises at 34 Ryder Street, Cardiff CF11 9BT is **£33,450**

REASONS FOR THE DECISION

Introduction

1. This decision concerns the appropriate price payable by the Applicants to buy from the Respondent the freehold reversion of their home, 34 Ryder Street, Cardiff CF11 9BT: ‘**the Property**’

The Lease

2. The Property is held on the terms of a lease dated 26 January 1960 for a term of 80 years from 29 September 1959. The lease was assigned to the Applicants on 27 September 1972. It expires on 28 September 2039. The annual ground rent is £17.50.
3. The Leasehold Reform Act 1967 (**‘the 1967 Act’**) allows tenants of 'long' leases such as this one to 'enfranchise' their properties: in other words, to acquire the freehold reversion on terms as set out in the 1967 Act.

4. In the case of a property outside London with a rateable value on 31 March 1990 of less than £500, the valuation methodology is to be found in section 9(1) of the Act.
5. In this case, the rateable value of the Property as at 31 March 1990 was £165, as confirmed by an email from Corporate Revenues Section of the City of Cardiff Council dated 30 July 2015.
6. Under section 9(1) of the 1967 Act, the price payable is the amount which, at the relevant time, the house and premises, if sold on the open market by a willing seller (with the tenant and members of his or her family not buying or seeking to buy) might be expected to realise on certain assumptions, including the assumption that the tenant has complied with his or her covenants and disregarding any tenant's improvements. It is further assumed that the tenant would exercise his or her right, under section 14 of the 1967 Act, to claim an extended lease. If the lease is extended under section 14, it gives rise to a further statutory term of the lease with the ground rent (known as the 'Modern Ground Rent') being set by section 15 of the 1967 Act. The statutory term is 50 years, with a review at 25 years.
7. Under section 9(1), the Tribunal's task is to determine, as at the appropriate valuation date, the present capital value of the rent due for the remainder of the term of the lease and thereafter to determine the value of the reversion. Our jurisdiction is limited. As a matter of law, we must stick firmly to the task which Parliament has set us, and we cannot venture further afield. Accordingly, although we read the letter from Mr Gabe-Jones to the Tribunal dated 21 August 2015 complaining of delay in the process, and we note his frustration (evident when he addressed the Tribunal at the hearing) we cannot, as a matter of law, put any financial value on those matters for the purposes of this valuation.
8. We consider that the correct approach for this Tribunal to adopt is that set out by the Lands Chamber of the Upper Tribunal (the President and NJ Rose FRICS) in the case of Re Clarise Properties Limited [2012] UKUT 4 (LC), where it was said as follows (at Paragraph [36]):

“We consider that the time has now come to move away from the two-stage approach [i.e., capitalised term rent and defer in perpetuity modern ground rent] as the standard practice in section 9(1) valuations and to apply instead the three-stage approach. As a matter of good valuation practice, where a price has to be determined, every element of value should in general be separately assessed unless there is some good reason not to do so. There is now a much greater likelihood that the ultimate reversion will have a significant value than there was when the two-stage approach became adopted as standard practice 40 years or more ago. There are two reasons for this. The first is that house prices, including the prices of houses that would fall to be valued under section 9(1), have increased substantially in

real terms; and the second is the lower deferment rates that are now applied in the light of Sportelli. There is, we think, a real danger that applying the two-stage approach as standard will in some cases lead to the exclusion of an element of value that ought to be included in the price. This is particularly so if valuers and LVTs treat as the criterion for the application of a Haresign addition whether the house is “substantial” and thus exclude any element of value in the ultimate reversion (other than that included in the capitalisation of the section 15 rent in perpetuity) where the house does not meet this ill-defined criterion. The only relevant question is whether the reversion does have a significant value. In future, therefore, we consider that the appropriate approach will be to capitalise the section 15 rent to the end of the 50-year extension and to assess the value (if any) of the ultimate reversion.”

9. The Applicants rely on the Reports and Valuation prepared by Mr John Arbourne FRICS of Cadenhead & Co Chartered Surveyors dated 10 August 2015 and 7 September 2015 (the latter in the form of a long letter) and their Appendixes. We also heard submissions from Mr Arbourne, and evidence from Mr Gabe-Jones.
10. The Respondents rely on the Reports and Valuation prepared by Mr Geraint Evans FRICS of Bureau Property Consultants dated 20 August 2015 (first report) and 7 September 2015 (second report). We also considered a clip of documents described as 'Supplementary Information for Hearing', handed to us at the hearing, and heard submissions from Mr Evans.

The Property

11. The Tribunal inspected the Property, both externally and internally on 1 October 2014. The weather was dry and bright. The Tribunal also inspected the neighbourhood.
12. The Property, which is in a conservation area, is a two-storey mid-terrace house, estimated to have been built in the 1890s. It is built of solid stone with stone elevations to the front and cement rendered elevations to the rear under a pitched slate roof. There is a ground-floor bay window to the front, and a small forecourt. There is on-street parking. Unlike some of its neighbours, which have garages in their back gardens accessible via the lane at the rear, the Property does not have off-street parking. There is a small and attractive rear garden.
13. The Property occupies a rectangular shaped plot with a frontage onto Ryder Street of 5.5m and a depth of approximately 30m. Ryder Street is an attractive location parallel to Cathedral Road, and within walking distance of Llandaff Fields, Bute Park, and the City Centre.

14. In the course of our inspection, we noted evidence of structural movement to the rear wing. Some defects were also found to external finishes and rainwater goods. Internally, it is also fair to say that the accommodation, fixtures and fittings are a little dated.
15. The internal accommodation of the Property is over two floors, with a lounge/sitting room and kitchen/dining room on the ground floor, three bedrooms and bathroom on the first floor. The Property does not have a loft conversion, although many of the properties in the terrace (by our count, 11 of 16) do. The windows throughout have been replaced with uPVC, and the Property has gas central heating.

The Valuation

16. The Tribunal must determine the purchase price on the relevant day. Following discussion before us, the parties agreed that the relevant day was the date of service of the Tenants' Notice, which date was agreed as 27 July 2013.

Capitalisation of the unexpired term

17. It was agreed that 26.25 years remained unexpired at the valuation date.
18. The ground rent is £17.50.
19. The parties agreed that the capitalisation rate should be 6.5%.

Entirety value

20. The entirety value was in dispute, and the details of a considerable number of other properties were supplied as comparables.
21. As a matter of principle, we agree that the entirety value in this context must represent the value of the property assumed to be modernised. Otherwise, the letting value of the site (without including anything for the value of the buildings on the site) would differ for identical sites in the same street that happened to be modernised houses on some sites but unmodernised houses on others: see Hague on Leasehold Enfranchisement (6th edition, 2014, edd. Radevsky and Greenish) §8-09. We also agree that the entirety value should represent the value of the property "*fully developing the value of the site*": *ibid.*
22. At our inspection, we noted that a significant proportion (11 of 16) of the properties in this terrace have a loft conversion in one form or another. As such, it is a consistent feature of the way in which the properties in this terrace have been developed for residential purposes. In considering the entirety value in this case, we consider that it cannot, in the circumstances, realistically be argued that the site is fully developed

without a loft conversion. As such, we consider that the entirety value must reflect the fact that the site, fully developed, would have a Property with a loft conversion.

23. We did not consider 32 Ryder Street to be an appropriate comparable. It was sold for £290,000 in May 2013, but was described by the agents as 'in need of renovation throughout'. The price paid for it was significantly lower than the prices obtained for other properties on Ryder Street, indicative of the degree of renovation required.
24. Nor did we consider 28 Ryder Street an appropriate comparable. We did not agree that the 'grandeur' facade and the two-storey bays found on it (as well as at 24 and 26 Ryder Street) could be recreated on this one. It also has a larger back addition, being exposed on three sides rather than a 'semi-detached' extension (as at the Property).
25. In our view, having had the opportunity to consider the comparables and also to inspect (albeit only externally) those in the immediate locality, we consider 6 Ryder Street most appropriate as a comparable for establishing entirety value. It was sold on 7 March 2013 for £338,300 (which gives an adjusted value of £340,713). Although 6 Ryder Street occupies what is (arguably) a better location (being at the 'quiet' end of the street) and easier vehicular access than the Property, it does (on the other hand) have noticeable structural movement which may impact on value and marketability. It has Velux windows in the roof suggestive of a room and bathrooms.
26. Taking all the above into account, we find that the entirety value to be £340,000.

Site value proportion

27. The site value proportion was in dispute.
28. On behalf of the Applicants, Mr Arbourne contended for a figure of 27.5%. This was on the basis that the cost of a 'replacement dwelling' and allowing for developer profit could not justify any higher figure.
29. However, we do not agree with this approach. Unless a thorough 'rebuilding cost' exercise were to be completed and put into evidence, it necessarily remains speculation. Without such a rebuilding cost exercise (which, arguably, would have to take into account, amongst other matters, the fact that the Property is in a conservation area, and therefore would need to employ similar materials and construction to its neighbours so as to remain 'in keeping') there is simply no sufficiently secure evidential basis to support a finding of the kind which Mr Arbourne suggests.
30. On behalf of the Respondent, Mr Evans contended for a figure of 33.33%. He invited us to apply what is commonly referred to as the 'law of thirds'.

31. We do not consider the application of the 'law of thirds' in this case to be appropriate, and we decline to adopt it. As Mr Evans accepts, it is a rule of thumb: like most rules of thumb, it is a generality only, and as such, we do not consider that it responds adequately to the circumstances of this individual case. The proportion adopted should depend on the evidence and the individual circumstances of each case: see Hague §8-10.
32. Mr Evans also sought to rely on a 2010 decision of this Tribunal in the matter of *10 Clare Street, Cardiff CF11 6BB* (LVT/WAL/876/1/146). However, we do not find that decision to be of assistance. We note that the Tribunal had to consider that application in the absence of any evidence or attendance by the respondent tenant. Hence (and even with the acknowledged assistance on that occasion from Mr Evans, who appeared as the landlord's expert) that panel of the Tribunal - unlike the present panel - had to decide the application without the benefit of full argument and submissions. In that case the applicant (through Mr Evans) contended for 35% (see Paragraphs 18 and 26 of the Decision). The Tribunal, applying its own judgment and expertise, concluded that a site value of 32% should be applied (see Paragraph 27 of the Decision). However, we do not consider there to be any good reason why the 32% in that case should be adopted in this case, or, if it were, that it then should be raised to 33.33% simply to accord with the law of thirds. Finally, we note that 10 Clare Street is a much bigger property than this one - five bedrooms over three storeys.
33. Taking the above into account, forming the best judgment that we can on the basis of the information and materials before us, and applying our expertise, we have concluded that a site value of 30% should be applied.

Deferment rate

34. It was common ground between the parties that this should be 5%, and we adopt that figure. For the sake of completeness, we note that other local tribunals have adopted this figure.

Standing house value

35. Mr Evans and Mr Arbourne each put forward 2, 12 and 28 Ryder Street as comparables, but with different opinions as to the adjusted values at the relevant date. The variation in the adjusted values was attributable to conflicting evidence of Land Registry and Nationwide 'House Price Index'. Mr Arbourne also put forward 32 Ryder Street, making adjustment for renovation works.
36. Both parties made reference to 6 Ryder Street but were restricted as to available information. Mr Evans pointed out that 6 Ryder Street had significant subsidence issues which would impact on 'mortgageability' and, as a consequence, value.

37. We considered 2 Ryder Street to be of most assistance in establishing the standing house value. It is of a somewhat similar design to the Property, with a single bay facade. Although not viewed internally, it is attractive and well-presented externally, with the original windows, an arched entrance porch and a contrasting coloured course of bricks. It was sold for £323,000 in July 2013, and did not have a loft conversion.
38. The condition of 34 Ryder Street is relevant in establishing its standing house value. We refer to the matters, already set out above, which we consider to be the relevant features of the external and internal condition noted during our inspection. We consider that the reasonable purchaser of this Property would anticipate some upgrading works being necessary as part of an improvement programme.
39. On the basis of our inspection, we consider that the condition of the Property is somewhere between a property in need of complete modernization and a property in good repair.
40. Given these considerations, we conclude that a standing house value of £320,000 is appropriate.

Schedule 10 of the Local Government and Housing Act 1989

41. This was in dispute. The Applicants contended for a deduction of 10%. The Respondent contended for no deduction.
42. Firstly, to deal with the principle. We consider that Schedule 10 does engage in this case, and that there should be a deduction to take account of Schedule 10 rights. Schedule 10 provides statutory rights, and we do not consider that those rights should, when it comes to our valuation exercise, be disregarded without good reason. We consider that a reasonable purchaser would have regard to those rights and would use their very existence to seek to secure a discount on the purchase price. Moreover, we consider there to be some risk that a tenant or some assignee might seek to exercise these rights so as to remain in possession as an assured tenant.
43. At the hearing, Mr Evans drew our attention, entirely properly, to the decision (at that time handed down, but not published) of the Property Chamber of the First-tier Tribunal (Judge Shaw and Mr I Holdsworth FRICS) in Southlands College Estate Wimbledon Limited v Fit Nominee Limited (12 August 2015) which could perhaps be read as support for the proposition that a hypothetical investor might not want vacant possession at the end of the lease, but would rather prefer an income stream under an assured tenancy, with the possible effect that Schedule 10 rights could be a practical benefit at the end of a lease, requiring a premium to value rather than a discount.

44. We have since had the opportunity to consider that decision. The application in that case was one for collective enfranchisement of over 100 flats, each costing between £600,000 and £800,000, in a 'high-end' estate in London, with 108 years left to run. The only contentious issue was the deferment rate to be used in calculating the overall price for the enfranchisement. The Tribunal considered that it was very unlikely that the risk to recovery of vacant possession at the end of the term - 108 years down the line - would significantly impact on the calculations of the hypothetical purchaser so as to justify a departure from the 'Sportelli' deferment rate. Whilst the Tribunal did remark (at Paragraph 18), in passing, that it could *'imagine that in some cases where one is dealing with the remainder of a much shorter term, these considerations might be of concern'* it does not seem to us that comment was a necessary part of its decision. It was, in strict terms, obiter, and does not cause us to revise our reasoning in the circumstances of this particular case.
45. When it comes to the quantification of those rights, we derive assistance from other Tribunal decisions: for instance, the valuable reviews and discussions of the authorities by the Tribunal (Mr D J Evans and Mr R W Baynham FRICS) in 33 Maes Deri, Winch Wen, Swansea SA1 7LW (LVT/0048/02/15), especially at Paragraphs 23 to 27, and 18 Kimberley Road, Penylan, Cardiff CF23 5DH (Mr R S Taylor and Mrs Ceri Trotman-Jones MRICS) (February 2013), especially at Paragraphs 37 to 38. The remaining terms in those cases were 44 years and 57 years respectively, and, as such, relatively close to the remaining term in this case.
46. Taking the above into account, we consider that a deduction of 5% is appropriate - significant enough to take account of the risk of those rights being exercised, but not such as to over-compensate.

Calculation

47. Applying the findings which we have made above, we calculate the value of the freehold of the Property as follows:

Stage 1: **Capitalised** **Remaining Term**

Annual Ground Rent	£17.50	
YP 26.25 years @6.5%	12.438	£217.67

Stage 2:

'1st Reversion'

Entirety Value		£340,000.00	
Plot Value at 30%		£102,000.00	
Section 15 Ground Rent@5%			£5,100.00
Y.P for 50 years @ 5%	18.2559		
P.V. of £1 in 26.25 years @5%	0.27789	5.07313205	£25,872.97

Stage 3:

'2nd Reversion'

Capital Value		£320,000.00	
Deduct 5% for schedule 10 rights		£16,000.00	£304,000.00
P.V of £1 in 76.25 years @5%		0.024233	£7,366.83
			£33,457.47
But, say			£33,450.00

Note

48. Mr Richard Payne, the Vice-President of the Tribunal, attended both the inspection and the hearing. As explained to the parties, this was for the Tribunal's own purposes, and, for the avoidance of any doubt, we confirm that Mr Payne has played no part in our arriving at this Decision.

Dated this 20th day of November 2015



Chairman