Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0029/09/18

LEASEHOLD REFORM ACT 1967

IN THE MATTER OF: 38 Shirley Road, Cardiff, CF23 5HN

Applicant: HAFOD HOUSING ASSOCIATION LIMITED

Respondent: BANKWAY PROPERTIES LIMITED

Before: Tribunal Judge E W Paton (Legal Chair)
Mr P Tompkinson FRICS (Surveyor Member)

Sitting at the Residential Property Tribunal, Southgate House, Wood Street, Cardiff

On 17th January 2019

ORDER

UPON the Applicant's notice under the Leasehold Reform Act 1967

AND UPON HEARING:

Mr. Marc Llewellyn Williams FRICS of Ingram Evans Care (surveyor) for the Applicant, and
Mr. Geraint Evans FRICS of eBureau Limited (surveyor) for the Respondent

IT IS ORDERED AS FOLLOWS:-

1. Pursuant to section 9 Leasehold Reform Act 1967, it is determined that the price payable by the Applicant for the Respondent's freehold title (WA 177395) to 38 Shirley Road, Cardiff, CF23 5HN is £31,000 (thirty one thousand pounds).

DATED: 14th February 2019

E PATON
CHAIRMAN

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Applicant:	HAFOD HOUSING ASSOCIATION LIMITED
Respondent:	BANKWAY PROPERTIES LIMITED
Before:	Tribunal Judge E W Paton (Legal Chair) Mr P Tompkinson FRICS (Surveyor Member)

DECISION

Sitting at the Residential Property Tribunal, Southgate House, Wood Street, Cardiff

On 17th January 2019

Background

1. Hafod Housing Association Limited ("the Applicant") is the registered leasehold proprietor, under title number WA 352495, of the leasehold interest in 38 Shirley Road, Cardiff, CF23 5HN ("the Property") derived from a lease dated 31st January 1968 for a term of 80 years from 29th December 1967. Bankway Properties Limited ("the Respondent") is the current proprietor of the freehold title (WA 177395) and so is the Applicant's current landlord.

2. By a notice dated 3rd April 2018, the Applicant gave notice of its claim under Part I of the Leasehold Reform Act 1967 to acquire the freehold of the property. By a reply dated 8th June 2018, the Respondent admitted the Applicant's right under the 1967 Act. The only issue between the parties is the price to be paid for the freehold, applying the relevant provisions and principles under the Act.

3. Within that issue, there is likewise an almost complete measure of agreement between the parties and their expert surveyor-valuers, both on the approach to valuation under the Act, and on every figure to which that approach is to be applied, save for one.

4. Mr Geraint Evans FRICS of eBureau Limited was instructed by the Respondent, and produced a report dated 30th October 2018. Mr Marc

Llewellyn Williams FRICS of Ingram Evans Care was instructed by the Applicant, and produced a report also dated 30th October 2018, together with a brief follow-up to it dated 13th November 2018. At the hearing and site visit on 17th January 2019, these surveyor-valuers were the sole attendees and representatives of the parties. The Tribunal therefore proceeded, at the hearing, in relatively informal fashion, allowing both of these experts to speak to their reports, and engage in dialogue as between themselves and with the Tribunal. We found their input and attendance extremely helpful, and thank them both for their assistance and courtesy.

5. The position was agreed to the following extent:-

i) the first element of the valuation, the capitalisation of the rent due under the lease, was agreed in a sum of £1042, based on a rent of £80 at YP29.74 years at 6.5%

ii) the last element, the reversion valuation, was likewise agreed. It was agreed that the valuation of the property as it stands was £325,000, and that applying a multiplier of 0.0204, based on a PV of £1 of 79.74 years at 5%, the figure was £6643 (in fact Mr Williams's figure was £6644 but we ignore the difference of £1)

iii) it was agreed that the correct approach to what is usually referred to as the "section 15 rent" element of the valuation was the so-called "standing house" basis of valuation. As set out in Hague on Leasehold Enfranchisement, at paragraph 8-06 and following:

"The statutory formula for ascertaining the s.15 rent is an artificial one. In practice, no landlord ever lets a site (or indeed any property at all) on the terms stipulated by the 1967 Act, i.e. for a 50-year term with just one rent review after 25 years, except when obliged to do so by the 1967 Act itself. So there are no comparable open market lettings that a valuer can utilise to determine the s.15 rent. In almost every case, the valuer has found himself with no real alternative except first to ascertain the capital value of the site, and then to consider what rate of income return the freeholder might expect if he were to grant a 50-year lease of the site on the terms set out in the 1967 Act. The valuer thus "decapitalises" the site value to arrive at the s.15 rent.

iv) in relation to how that site value is arrived at, because:

"..[m]ost houses within the 1967 Act are situated in areas which have long since been fully developed, and in which it is difficult to find evidence of sales or lettings of comparable vacant sites….a frequently used method of arriving at the site value of a property is by first ascertaining the freehold value with vacant possession of the whole property including the buildings, usually referred to as "the entirety value". The site value is then taken as a proportion of the entirety value, the appropriate proportion being a matter of evidence. After some early reluctance to accept this method of valuation, commonly called "the standing house approach", the Lands Tribunal came to recognise and frequently to adopt it, at any rate in cases where the house in question was likely to remain standing for the foreseeable future."

v) Also from Hague, at paragraph 8-09:

"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 other". For similar reasons, the property must be assumed to be in good condition and any tenant's improvements must be included in its value. Indeed, it has been said that the entirety value must represent the value of the property "fully developing the value of the site". This needs qualification, because the statutory formula restricts the uses of the property to that which "it has been put since the commencement of the tenancy" and so excludes any development inconsistent with such uses. But it does require the assumption that, if the house is already in multiple-occupation, it has been properly converted for that use. No deduction falls to be made for the costs of conversion. It may be appropriate in certain cases, e.g. where the house is small in relation to the site or to the neighbouring properties, to assume that the house has been extended or even wholly or partially replaced by a larger house, provided that the potential is realistic and not fanciful. No deduction is made in such circumstances to reflect uncertainty over obtaining planning permission or other works approvals."

vi) The parties' surveyors here were agreed on this as the correct approach, and also on the resulting calculations to be applied to the "entirety value" figure to arrive at a figure for the section 15 rent element. So the relevant percentage to be applied to the entirety value for this property was agreed at 33.33%, as were the figures of 5%, YP of 50 years at 5%, and a PV of £1 of 79.74 years at 5% to then be applied to the 33.33% site value figure.

6. The sole area and point of disagreement can be stated shortly. Mr Williams, for the Applicant, was of the view that the "entirety value" of the property was in fact no different from its current standing value, so that this was still £325,000 even in a fully developed condition. Mr Evans, however, put this value at £625,000, a vastly higher figure.

7. This large divergence produced a difference in the section 15 rent valuation figures, and final figures, as follows:

Applicant (Mr Williams): section 15 figure = £23,160.27 => final total sum payable = £30,846.24 – say £31,000

Respondent (Mr Evans): section 15 figure = £44,571 => final total sum payable = £52,260 – say £52,000.

That was therefore the issue for the Tribunal to resolve, represented by a final difference of some £21,000 in the price to be paid for the freehold.

The property

8. As stated, the Tribunal had the benefit of a site visit. The property is an Edwardian mid-terraced house. It is currently configured as two two-

bedroomed flats, only one of which is currently sub-let to and occupied by tenants of the Applicant. It has a currently unused basement area beneath ground floor level, and a substantial patio and yard area to the rear, which is accessible from a lane. The roof space of the property is not developed or incorporated as part of the upper flat.

9. The house was originally constructed as a single residential unit forming part of a terrace of similar dwellings, consisting of two storeys with bay fronted elevations to the street, red brick chimney stacks and dual pitched slate roofs. To the front of the property is a walled forecourt area, to the rear an enclosed garden area now laid to a concrete hard-standing. The site slopes considerably to the rear of the property.

10. There is no current planning application to alter the configuration of the property, and there was no evidence before us of any specific proposals or plans to do so. By a 1974 deed of variation, the lessor apparently gave permission to convert the property to four flats (which would presumably have been bedsits or small one bedroom or studio flats) but this was never pursued. There is no evidence, from a planning consultant, architect or anyone else, of what different configuration could be produced by way of development and alteration of this property, taking into account, for example:

- how many flats/units, and of what nature and size, could physically be created within this property

- whether any such development would be permitted or restricted to any extent by the applicable planning regime and Building Regulations, to say nothing of the fact of this property being located within a Conservation Area

- if it was able to be developed in some specific way, what the resulting value of the units would be, whether the total of these values would exceed the current standing value of the property of £325,000 to generate a greater "entirety value", and if so by how much.

11. This is not a criticism of either party or their surveyors, but it is necessary to make this point to explain the nature of the exercise which we were invited to undertake, and the difficulties inherent in doing so. The case actually cited in Hague (above) on entirety value deriving from "realistic and not fanciful" potential to convert and develop a property to a different configuration, subject to planning and other permissions, is Cadogan Estates v. Hows [1989] 2 EGLR 216, a decision of the Upper Tribunal (which was then the tribunal of first instance for such applications). In that case, the parties' surveyors differed by £20,000 on the entirety value of a mews house in Belgravia. The landlord had adduced specific evidence of a proposed scheme for "construction of a second floor, a single-storey rear extension and internal re-arrangement.. increasing the internal floor area from 1,050 sq ft to 1,500 sq ft". The Upper Tribunal, having cited the relevant authorities, said that:

"On the authorities to which we referred we are satisfied that the basis to be assumed for the purpose of finding the entirety value is "the value of the property in good condition and fully developing the potential of its site" (see Patten [H A Patten v Wenrose Investments Ltd (1976) 241 EG 396, LT)],

provided always that the potential identified is realistic and not fanciful. There must be a prospect of implementation in the sense that there is an absence of overriding constraints in the title to the land and under town planning and other statutory regulations. Any required building works must be feasible in practical terms and their cost, when compared with the extra value to be created, must not be so high as to deter a reasonably prudent owner from proceeding."

In that case the Upper Tribunal, in preferring the landlord's surveyor's higher figure of £320,000, expressly found on the facts that "the suggested scheme of extension and alteration is realistic and meets the criteria necessary to comprise an acceptable basis for valuation of the entirety" and "…that there was a firm prospect of planning permission being granted for the scheme of extension and alteration. From Mr Cook's evidence, we find that it was feasible and practical to carry out the proposed works at an estimated cost of £85,000 inclusive of professional fees and VAT (at November 1985 prices)".

12. We are not suggesting that in every case where a higher "entirety value" based on alleged untapped development potential is contended for, a landlord and its surveyor must produce specific, detailed and costed plans. There must, however, be at least some evidential burden upon them to justify such a higher figure. Otherwise the Tribunal and the parties are to some extent engaged in an exercise of speculation, which has no fewer than three speculative and uncertain elements, namely:

- whether any different configuration of units within the house is physically possible; and if so, what it would be

- whether such a re-configuration would obtain all necessary consents and conform with all applicable regulations – not just planning permission, but also Building Regulations and any additional requirements arising from other statutory sources.

- what the value of the resulting units would be, and so what the entirety value on this developed basis would then be.

13. It was against this backdrop that Mr Evans's argument and evidence for the Respondent was along the following lines:-

i) there is evidence in this street of houses being converted into flats. He referred to 39 Shirley Road (across the street) receiving a certificate of lawfulness for its previous conversion into four flats; and the 2015 permission to convert no. 47 into five one bedroomed flats

ii) his main "comparable", and indeed the basis of his argument and figures, was another property across the street, no. 49 Shirley Road, now known as "Lake Park House" and converted into three "luxury flats" which were sold off between 2015 and 2017 for £210,000, £192,500 and £185,000, a total of £587,500

iii) his figure of £625,000 was therefore derived simply from the figures for no. 49, adjusted in line with the House Price Index

iv) in relation to the subject property in this case, his evidence and argument was that it had potential for its basement or lower ground level to be developed, to make the property effectively a three storey one.

14. Mr Williams was unconvinced by such figures and arguments. His view was that if anything the present configuration of the property even as two flats lowered its value, since there was greater demand for these properties as single houses with period features. His view was that there was no possibility of this property being converted into four flats or bedsits, but even on a conversion into three flats, one might achieve at best a two bedroomed flat worth up to £135,000, and two smaller one bedroomed flats at £90,000, which he calculated as equalling £325,000 (although it is actually £315,000). Those figures were based on the general sales evidence for flats in this area. He rejected Mr Evans's reliance on the alleged comparables, arguing that no. 49 ("Lake Park House") in particular was already a substantial end of terrace three storey house (with an upper/dormer area able to be developed, and lane access), was much larger than no. 38, and so allowed much larger flats to be created. It was therefore an "outlier" whose flat sale values were of limited relevance. The same was true of no. 47, although there have been no recent sales of the flats in that property.

15. Having visited the property, and also taken the opportunity of the site visit to look at numbers 39, 47 and 49 Shirley Road from the outside, and considered the experts' evidence and discussion at the hearing, our view on the expert evidence and alleged comparables is as follows.

16. There is a clear difference both in terms of height and length between numbers 38 and 49. No. 49 was obviously designed to have accommodation in the attic area and has an extra 800mm or so of masonry making the building substantially taller. It is also larger in plan form resulting in a significant increase in volume compared with no 38. No. 49 and its neighbour No. 47 across the alley way both have a usable side and rear access over the alley facilitating good circulation. No. 38 does not have an easily accessible rear yard area and is accessed via a narrow lane serving several properties in the street.

17. Whilst we were not in disagreement with Mr Evans that No 38 could be developed into three units, by taking advantage of the topography and the large rear yard, we preferred Mr Williams' argument that such a conversion would be both an over development of the site and not financially viable in the current market. Neither Mr Evans nor Mr Williams could identify another comparable property on the street of the same size that had been developed successfully into three or more units. Considering that the property is in a conservation area, we considered Mr Williams' doubts that the Local Planning Authority would permit alterations to the gable to the front elevation and or the provision of roof lights to be well made.

18. Our conclusion on entirety value is therefore as follows, on two alternative bases via which we arrive at the same conclusion.

19. First, we cannot be satisfied on the evidence (or absence of evidence) that there is a real and genuine prospect of this property being converted from its present configuration into three or more flats, that it would be economically worthwhile to do so and that such a project would receive all the necessary consents. While that is of course possible, many things are possible. No similar project appears to have been undertaken in any of the similar properties in the terrace alongside this property. The "comparable" properties relied upon, while in the same street, were on the other side of that street and were significantly different in size and configuration, all of them having extant roof level/dormer accommodation to start with. As stated, we consider no. 49, "Lake Park House", to be a quite different and far larger property, whose development casts little light on whether anything remotely similar would be viable at no. 38.

    We are not therefore able to arrive at a higher entirety value, greater than the agreed figure of £325,000 for the property as it currently is, based on what is effectively mere speculation and supposition about re-development, without any concrete or even provisional proposals before us or any genuinely comparable examples.

20. Second, even if we were persuaded, taking a more generous and expansive view, that some sort of development and reconfiguration were possible, at best we consider that this might generate one two-bedroomed and two one-bedroomed flats, the latter of which would be relatively small and (in one case – if the suggestion of development of the rear and lower ground floor was pursued) somewhat unusual and possibly unattractive: certainly very far from the "luxury flats" of no. 49. We broadly accept the evidence of Mr Williams that if this were done, looking at the general sales evidence locally, the two bedroomed flat might fetch between £130-140,000, while the one-bedroomed flats would struggle to fetch much more than £90-95,000. Save for what we regard as the exceptional and non-comparable case of the luxury flats at no. 49, those figures are supported by the local sales data generally. By that route one arrives back at a figure of around £325,000, or even less, in any event [e.g. £135,000 + (2 x £95,000) = £325,000; or £140,000 + (2 x £90,000) = £320,000].

21. We are not therefore satisfied that the entirety value of this property is any greater than £325,000. We therefore accept the figures and calculations of Mr Williams which were based on that figure when calculating the section 15 ground rent element of the premium to be paid.

22. The total sum to be paid for the freehold of the property is therefore as follows:-

    i) Capitalised ground rent: £1041
    ii) Reversion: £6643
    iii) Section 15 ground rent (based on entirety value of £325,000) £23,160

We follow and adopt Mr Williams' conclusion in rounding that total to a sum of £31,000.

Dated this 14th day of February 2019

E W Paton
Chairman