

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0080/03/14 Pennard Drive

In the Matter of 44 Pennard Drive, Southgate, Swansea SA3 2DB

In the matter of an application under section 27 of the Leasehold Reform Act 1967 (as amended by the Commonhold & Leasehold Reform Act 2002), referred to the Leasehold Valuation Tribunal by order of District Judge Garland Thomas dated 5<sup>th</sup> December 2013.

TRIBUNAL	Mr S A Povey Mrs R Thomas
APPLICANTS	Anthony & Sandra Evans
RESPONDENTS	Unknown

DECISION

The value of the freehold reversion of 44 Pennard Drive, Southgate, Swansea SA3 2DB is £5,900.

REASONS FOR THE DECISION

**The Application**

1. The Leasehold Valuation Tribunal ('the Tribunal') was convened on 23<sup>rd</sup> June 2014 at the Waterfront Community Church, Langdon Road, Swansea to determine the value of the freehold reversion of 44 Pennard Drive, Southgate, Swansea SA3 2DN ('the property').
2. The Applicants, as leaseholders of the property, wish to exercise their right under s.1 of the Leasehold Reform Act 1967 ('the Act') to buy the freehold. Unfortunately, they have been unable to locate or ascertain the identity of the current freeholder. As such, and pursuant to s.27 of the Act, the Applicants have been compelled to apply to Swansea County Court for an order transferring the freehold to them. The court issued that claim on 18<sup>th</sup> October 2013 (Claim Number 3SA90083).
3. Where the freeholder cannot be located or identified, it is clearly impossible for the price payable for the freehold to be agreed between the leaseholder and freeholder. In those circumstances, it is open to the court to ask the Tribunal to determine that price (by virtue of s.27(5) Leasehold Reform Act 1967).
4. By an order dated 5<sup>th</sup> December 2013, District Judge Garland Thomas referred the matter to the Tribunal to fix a price to be paid by the Applicants for the freehold reversion.

5. The date at which the freehold reversion is valued is the date on which the application to the court under s.27 of the Act was issued. For the purposes of this application, that date is 18<sup>th</sup> October 2013.

### **The Property**

6. The Tribunal visited the property prior to the hearing on 23<sup>rd</sup> June 2014. The Applicants were present and invited the members of the Tribunal into the property to carry out an inspection.
7. The property is located in the village of Pennard which is on the south of the Gower Peninsula, a statutory designated Area of Outstanding Natural Beauty, with strict planning and environmental constraints.
8. Pennard Road is the only road leading into and out of the village as it leads directly to cliff land and beaches. The village is perceived as being one of the more affluent areas of Swansea, it being well sought after in view of its country and coastal location, yet being within reasonable travelling distance of the city centre of Swansea. It also has a sought after primary school and falls within the sought after Bishopston Comprehensive School catchment area.
9. Pennard Drive and its neighbouring Three Cliffs Drive and Linkside Drive are accessed off Pennard Road at the entrance to the village and form part of a 1970s estate comprising of about 150 houses. These are a mix of detached four-bedroom houses, three-bedroom semi-detached houses and dormer bungalows (chalet style). There is a small convenience store in the centre of the estate. The estate is built amongst gorse and farm land and adjacent to or within an extensive sand dune system, part of which now forms common land and the Pennard golf club links. Although there are feeder roads through the estate, most of the houses are built in small cul-de-sacs.
10. 44 Pennard Drive, like the other properties on the estate, is of traditional masonry construction under a concrete tiled roof with rendered elevations. Replacement UPVC windows and doors have been provided and the property benefits from a gas fired central heating system. Accommodation comprises of an entrance hall, cloakroom, two reception rooms and kitchen on the ground floor, and on the first floor there are two double and two single bedrooms and a family bathroom. There is an attached garage at the side of the house.
11. Although the property is detached, it is constructed up to the right-hand boundary and with a very narrow path between the left hand wall and the left-hand boundary. The house is set back slightly from the highway with a small, level, front garden and driveway leading to the garage. At the rear, there is a footpath between the back wall of the house and a small retaining garden wall. The rear garden is terraced with the first-tier laid out as a patio, the second tier, is level and grassed, and the third tier, which takes up approximately half of the rear garden, is a very steep, upwardly inclined grassed and shrubbery area. There are steep narrow steps between the terraces. Although there is a hedge at the top end of the garden, it was possible to see through the hedge and into the garden behind which has a downward sloping gradient. The applicants pointed out to us that the garden was principally sand as the houses in the estate had been constructed on sand dunes, with their garden being on the ridge of a sand dune.

### **The Hearing**

12. The Applicants attended the hearing, along with their valuer, James Dawson (of Dawson's, 11 Walter Road, Swansea SA1 5NF). The Tribunal questioned the Applicants and Mr Dawson and also afforded them the opportunity to make any representations.
13. The Tribunal also considered the following:
  - 13.1. The valuation report of James Dawson, dated 8<sup>th</sup> April 2014;
  - 13.2. The original lease dated 1<sup>st</sup> January 1972;
  - 13.3. The application to, and orders of, Swansea County Court;
  - 13.4. A number of comparable properties in the vicinity;
  - 13.5. Various documents provided to the Tribunal in the course of the proceedings.

### **The Decision**

14. Mr Dawson was of the opinion that the value of the freehold reversion for the property was £4,000. Having considered the documents in this matter and applying our own knowledge and expertise, the Tribunal determines that the proper price for the freehold reversion is £5,900.

### **Reasons for the Decision**

15. The Tribunal accepted Mr Dawson's opinion that the rateable value of the property as of 31st March 1990 was less than £500. It follows that the basis upon which the freehold reversion is valued is contained within s.9(1) of the Act.
16. 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 assume that the property is being sold freehold but subject to the lease which (if it has not already done so) has been extended. In other words, the assumed term expires 50 years after the contractual term date. Here, the contractual term ends in 2071 so the assumed date when the lease will expire is in 2121.
17. Mr Dawson's report followed the methodology of firstly capitalising the current ground rent for the remainder of the term, and secondly ascertaining a modern ground rent for the property, recapitalising that modern ground rent in perpetuity and deferring the result to the end of the current term. The value of the reversion was the sum of these two calculations. At the hearing, we drew Mr Dawson's attention to the decision of the Upper Tribunal in *Clarice Properties Limited (2012] UKUT 4(LC)(the President and Mr N J Rose FRICS) ('Clarice')*. That decision included the following guidance in relation to the approach which Leasehold Valuation Tribunals should now adopt:

"We consider that the time has now come to move away from the two-stage approach 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, 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...The only relevant question is whether the reversion does have a significant value."

18. The Upper Tribunal also revisited the issue of the deferment rate. It accepted the valuation evidence that the prospects for growth were less in the West Midlands than in Prime Central London and increased the "generic" rate of 4 ¼ % put forward in *Cadogan -v- Sportelli* [2007]1EGLR 153 (subsequently confirmed in the Court of Appeal)(‘Sportelli’) to 5 ¼ %. Further, because it was "likely to remain economically viable to repair high value properties in PCL for considerably longer than it will for similar sized flats..." in *Kelton Court, Edgbaston* (see *Zuckerman -v- Trustees of the Calthorpe Estate* [2010]1EGLR 187 (‘Zuckerman’)) the Upper Tribunal in *Clarice* considered that it was appropriate to add an additional ¼ % to the Sportelli rate bringing the deferment rate up to 5 ½ %.
19. The third issue which the Upper Tribunal dealt with was to assume that Schedule 10 of the Local Government and Housing Act 1989 (‘the 1989 Act’) would 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. It therefore reduced the house value (not the same value used for ascertaining the plot value) by 20%.
20. The Tribunal therefore concluded that the valuation in this case should be calculated adopting the three stage approach approved in *Clarice*.
21. Based upon the evidence, the Tribunal made the following findings regarding the elements that make up a valuation within s.9(1) of the Act:

#### The Term

- 21.1. The ground rent under the lease is £35;
- 21.2. Given the valuation date of 18<sup>th</sup> October 2013, the remaining term of the lease is 57 and ¼ years;
- 21.3. Mr Dawson applied a yield rate of 5%. In our view, an investor purchasing the asset will bear in mind that the return of £35.00 is not substantial 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 not unreasonable and in keeping with other decisions of this Tribunal. We therefore applied a yield rate of 6 ½ %.

#### First Reversion (s.15 Rent)

- 21.4. Mr Dawson was of the view, for the purposes of his valuation, that the capital value of the property was £200,000. 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 within the Southgate area of Swansea . We therefore decided to proceed by way of the standing house method. In his report Mr Dawson provided a number of comparable properties in the locality as evidence to assist us. We also discussed with Mr Dawson other comparable properties which had come to the Tribunal’s own attention Mr Dawson’s opinion, using his own expertise and local knowledge, was that in general price ranges for similar properties was between £230 – 260,000. However, in his view, the steep sloping rear garden at the property would have an adverse impact on the capital value. We agree with Mr Dawson to an extent but applying the standing house method, we

have concluded that the impact of the garden should be properly reflected in the site value (see below). On that basis, and having regard to the comparables (particularly 65 Pennard Drive, which sold in July 2013 for £232,700), we assessed the capital value of the property at £230,000;

- 21.5. Having regard to the impact of the sloping garden, we assessed the site value at £74,750 (32 ½ % of the entirety value). Mr Dawson assessed it at £80,000. This reflects what, using our expertise and experience, we believe the cleared site would sell for on the open market, given the nature of the plot and its location. As explained, we differed from Mr Dawson simply in where we took account of the sloping garden;
- 21.6. Mr Dawson applied a deferment rate of 5%. As set out above, in *Clarice* the Upper Tribunal applied a rate of 5 ½ %. The application of *Clarice* to properties in Wales was considered in the case of *19 Plasmarl Terrace, Plasmarl, Swansea* (25<sup>th</sup> July 2012). The panel in that case included the President and Vice-President of the Tribunal. In a detailed and considered judgment, a deferment rate of 5% was adopted and has been followed in subsequent decisions pertaining to Welsh properties. We have no reason to depart from that approach and agree with Mr Dawson's application of a 5% rate;
- 21.7. Allowing for our October 2013 valuation date, we again adopted an unexpired term of 57 ¼ years.

#### Second Reversion (Schedule 10)

- 21.8. 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 (i.e. 107 ¼ years). For this we use the value of the property in its existing form as at the valuation date. That contrasts with the entirety value considered at paragraph 21.4 above. We therefore took into account the impact of the sloping garden on the value of the property as at the valuation date (October 2013) and concluded that the open market value was £210,000;
- 21.9. We then went on to consider the value of the property with the risk of a sitting assured tenant at the end of the extended term. We questioned Mr Dawson on this and he was of the opinion that an adjustment of 25% was appropriate. We did not agree with Mr Dawson. Using our expertise, we concluded that an adjustment in the region of 10% was more appropriate, given the nature and location of the property. This equates to a Schedule 10 valuation of £189,000.
22. In his valuation report, Mr Dawson went on to reduce the value of the freehold reversion by £1,500, on the basis that the freehold of 60 Pennard Drive was purchased in December 2010 for £3,740. It was a negotiated purchase, with both parties having the benefit of legal advice.
23. We do not accept that it would be appropriate to make a similar reduction in our calculations. It is the statutory formula in s.9(1) that determines the value of the freehold reversion, not a single example of a negotiated settlement. There is nothing within that statutory formula which permits us to make reductions or adjustments as applied by Mr Dawson.
24. In the alternative, and in any event, we concluded that the enfranchisement of 60 Pennard Drive could be suitably distinguished for the following reasons:

24.1. The evidence suggests that the valuation was negotiated by the parties solicitors rather than being subject to a strict s.9(1) assessment;

24.2. Even if s.9(1) was used, the valuation was pre-Clarisse;

24.3. The price paid was in December 2010 but it was unclear when the property was valued from or when negotiations began.

25. The Tribunals calculations for the purposes of s.9(1) are set out below:

Valuation Date: 18<sup>th</sup> October 2013

Lease Details: 99 years from 1st January 1972 @ £35.00 per annum

TERM

Ground Rent	£35.00 per annum	
YP in 57.25 years @ 6.50 %	<u>14.9664755</u>	
Capital Value of Term		£523.83

FIRST REVERSION

Reversion to Section 15 Rent		
Capital Value of house assumed to be in good repair	£230,000	
Site value @ 32.50 %	£74,750	
Section 15 rent @ 5.00 % of site value	£3,737.50	
Section 15 Rent	£3,737.50	
YP in 50years @ 5.00%	<u>18.25592546</u>	
	£68,231.52	
deferred for 57.25 years		
PV of £1 in 57.25 years @ 5.00%	<u>0.0612</u>	
		£4,177.32

SECOND REVERSION

Standing house value	£210,000	
less Schd 10 rights @ 10.00%	<u>£21,000</u>	
	£189,000	
PV of £1 in 107.25 years @ 5.00 %	<u>0.005339</u>	
		<u>£1,009.04</u>
Capital Value of Reversion		£5,710.19

26. By virtue of s.27(5) of the Act, the leaseholder is also required 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. If it were otherwise, the leaseholder of an untraced freeholder could be required to pay more than a leaseholder whose freeholder’s identity is known. The maximum recoverable is therefore subject to the provisions of the Limitation Act 1980 and limited to a maximum period of six years, at a rate in this case of £35 per year. That equates to a total figure of £210.

27. The capital reversion plus the s.27 ground rent comes to £5,920.19, say £5900.00.

DATED this 5th day of August 2014

A handwritten signature in black ink, appearing to read 'S A Povey', with a stylized flourish at the end.

S A POVEY  
CHAIRMAN