

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)
Leasehold Reform Act 1967 s.27

Premises: Elmore, Barry Road, Barry, Vale of Glamorgan, CF62 8HE
("the property")

LVT ref: LVT/0001/04/17

Determination: 8 June 2017

Applicant: Ian Barrie Griffiths

Tribunal: Mr R S Taylor – Legal Chairman
Mr R Baynham FRICS

ORDER

1. The price to be paid into court by the Applicant for the freehold interest of the property is £2,075.

Dated 8 June 2017

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Lawyer Chairman

Background.

1. This case concerns the valuation of the appropriate price to be paid by the Applicant for the freehold reversion of the property.
2. The Applicant made an application via Part 8 of the Civil Procedure Rules to Cardiff County Court on the 17 February 2017, pursuant to s.27 of the Leasehold Reform Act 1967 (as amended) (“the Act”) for the purchase of the freehold reversion of the property.
3. The matter came before Deputy District Judge T D C Jowett sitting in the Cardiff County Court on the 17 February 2017 when he ordered that the application be transferred to the Leasehold Valuation Tribunal to determine the sum to be paid for the freehold interest in the property.
4. The lease of the property was granted for a term of 150 years from the 25 March 1933. The lease states that the annual ground rent is four pounds, four shillings per annum for the term. There were 66.09 years unexpired at the valuation date.
5. The Tribunal must determine the purchase price on the relevant day. The relevant day in this case is the date of application to court, namely the 17 February 2017 (“the valuation date.”)
6. The Act enables tenants of long leases let at low rents to enfranchise their properties – in other words to acquire the freehold on terms as set out in the Act. s.27 of the Act which provides for an application to the court and sets out the procedure to be followed where the landlord cannot be found.
7. One part of this procedure requires a Leasehold Valuation Tribunal to determine the purchase price, in accordance with the appropriate valuation methodology as set out in the Act. The valuation methods are set out in s.9 of the Act, which has been amended several times and now provides for valuation upon a number of different bases, depending upon which category the property and the lease fall into.
8. In the case of a property with a low ratable value outside of London, that is less than £500 on the 31 March 1990, the valuation methodology is the s.9(1) valuation, which applies here.
9. Under s.9(1) the price payable is the amount which on the valuation date, the site, if sold in the open market by a willing seller (with the tenant and members of his family not seeking to buy, thereby excluding what is called “marriage value”) might be expected to realise on certain assumptions, including the assumption that the tenant has complied with his covenants and disregarding any tenants’ improvements. It is further assumed that the tenant would exercise his right to claim an extended lease under section 14 of the Act. If the lease is extended under s.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 Act. The statutory term is for 50 years, with a review at 25 years.
10. Under s.9(1) the task of the Tribunal is to determine, as at the valuation date, the present capital values of the rent due for the remainder of the term of the lease and thereafter the value of the reversion.

11. For many years the calculation of the reversion was valued by capitalising in perpetuity the modern ground rent and deferring for the unexpired term. Although, it was thought, there may be a property standing on the land at the end of the term, it was unnecessary to separately value how the market would value that as at the valuation date on the grounds that it was unlikely to differ substantially from the capitalised modern ground rent deferred for the unexpired term. There were exceptions to this approach, most notably *Haresign v St John the Baptist's College Oxford* (1980) 255 EG 711 where the property was substantial enough to justify the conclusion that the market would value, as at the valuation date, the property upon ultimate reversion at a figure markedly different to the deferred modern ground rent.
12. This long standing valuation approach was disapproved of by the Upper Tribunal in the case of *Re Clarise Properties Limited* [2012] UKUT 4 (LC) where it was held at [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 much greater likelihood that the ultimate reversion will have significant value 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 in 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 the valuers and LVTs treat the criterion for the application for 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.”
13. In accordance with the Tribunal directions, the Applicant has filed a valuation report from Mr Martin Cotsen FRICS.

Inspection.

14. The Tribunal inspected the property on 8 June 2017.
15. The property comprises a semi detached house constructed approximately 80 years ago, located on a busy main road within walking distance of local amenities and town centre, which is about 1 mile distant.
16. The house is conventionally constructed, having brick exterior walls, which have been cement rendered, with a slate roof. A ground floor extension was added some 40 years ago. The window frames and doors are double glazed units.
17. The accommodation on the ground floor comprises an entrance hall with a staircase leading to the first floor, a lounge with sliding doors leading to the dining room and a kitchen. On the first floor, there is a landing, two double bedrooms, a single bedroom, and a bathroom having a bath with shower over, wash hand basin and a WC.
18. The property has the benefit of full gas central heating.

19. The front garden is of reasonable size and has steps from the road, together with an access ramp leading to the front door. The remainder consists of a flower area.
20. The rear garden is of good size and comprises a large concrete area which has been covered by astro turf. There is a garden shed which is in poor condition. The property does not have a garage and car parking is outside on the busy road.
21. The overall internal decorative condition of the property is poor, with the exception of the newly modernised bathroom. Consequently many rooms require redecoration and refurbishment and the kitchen units require replacement.

Determination.

Capitalisation rate for unexpired term

22. There remained unexpired at the valuation date 66.09 years. The ground rent in the lease is for £4.20 per annum, which Mr Cotsen has capitalised at 6.5%. In our view a figure of 6.5% is appropriate and in line with other decisions of this Tribunal.
23. This produces a figure for the valuation of the term of £63.61.

Entirety Value

24. In the absence of any comparable evidence of plots or development land nearby, Mr Cotsen has approached this exercise by taking the entirety value of the property and then taking a percentage to arrive at the plot value. In adopting this valuation method the Tribunal must consider the property to be in a modernised state, with covenants fully complied with and to be fully developing the value of the site.
25. Mr Cotsen did not supply any comparable properties within his report and consequently the tribunal has had to apply its knowledge and expertise. In doing so it has identified, in particular, two comparables on the same road. These are number 210 and 212 which sold for £150,000 in October 2015 and £137,000 in June 2015 respectively. Of note from our researches is that 210 was sold in March 2015 for £119,000 before being sold on seven months later for £150,000. From this we infer, on the balance of probabilities, that the property was sold in a modernised state in October 2015 for the sum of £150,000.
26. The comparables each appear to have been built at an earlier time and enjoy some Victorian features, including Victorian bay windows on both the ground and first floor of the front elevation. By comparison, the property has a far more modestly presented box bay window to the ground level only with no bay to the first floor. Overall, we were left with the impression that the market would put something of a premium on the Victorian features, meaning that the property if compared on a like for like basis would have a lower value. We were not deflected in this view, despite the property being a semi-detached property and the comparables being Victorian middle of terrace. All of the properties are very close to each on a steep, busy road.
27. At this stage of the calculation we must assume that the property has been fully developed and modernised. In such a condition we determine that the market value should be £145,000.

Site value.

28. Mr Cotsen submitted that the appropriate site value should be calculated at 33.3%. Taking the location of the property on a steep, busy road on the outskirts of Barry, we consider that 33.3% is perhaps a little on the high side. It is a matter of judgment, but also bearing in mind the fact that the property is semi-detached with narrow side access, we determine that a percentage of 30% is more appropriate.

Decapitalisation/Recapitalisation/Deferment rates

29. We agreed Mr Cotsen's figure of 5% as being in accordance with many other tribunal decisions.

Standing house reversion

30. For the third stage of the valuation we must determine the standing house value of the property deferred, in this instance, for 116.09 years (namely, 66.09 years unexpired + 50 years statutory extension).
31. Case law under the Act requires us to assume the property is fully developed as at the relevant date when valuing the entirety value (above) and subsequent calculation of modern ground rent. In contrast to this approach, at this third stage we must value the property as we find it i.e. its existing form. As already noted, the property is in need of modernisation.
32. We agree Mr Costen's assessment of £130,000.

Schedule 10 of the Local Government Act 1989

33. In the case of *Plasmael* the issues at play here were explained and summarised as follows:-
- "32 In *Clarice*, 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.
- 33 This issue has 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 the former case, 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 her rights under Schedule 10 and remain in possession even though he 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 *Clarice*, 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 *Clarice*, in 78½ years' time. However, the

Upper Tribunal made its 20% deduction on the assumption that the deduction had to be significant.

34 Mr Morse has followed Clarice and applied the 20% deduction, but without providing any justification or evidence to support such an amount. In this case, the extended lease term ends 66 years after the valuation date, a shorter period than that in Clarice and substantially longer than Vignaud and Sillvot. 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 Clarice, we have none provided on behalf of the Applicant. We must therefore rely upon our knowledge and experience. The value of the Schedule 10 rights is essentially a question of judgment. Whilst there is a wait of 12½ years longer before the Schedule 10 rights take effect in Clarice, the value of the property in this case is less the half that in Clarice. We do not consider that the market would factor in a deduction as high as 20% to take account of the possibility that a lessee might retain possession in 66 years' time with the benefit of an assured tenancy. In our judgment, we consider the appropriate deduction is 10% - significant enough to take account of the possibility of those rights being exercised, but not such as to over compensate bearing in mind that these rights are only exercisable in 66 years' time and indeed may not be exercised at all. This produces an adjusted standing house value of £54,000."

34. Mr Cotsen contended for a 5% reduction at this point. We agree with this assessment. The unexpired term and the statutory 50 year term means that it is 116.09 years before expiry. Whilst we are clear that this element of the calculation can be substantial, the term outstanding is such that we consider the market as at the valuation date would not price the discount at more than 5%.

Decision

35. Applying the findings we have made above, we calculate the value of the freehold of the property as follows:-

Stage 1.

Ground rent	£4.20	
YP 25 years at 6.5%	<u>15.145</u>	
		£63.61

Stage 2.

Entirety Value	£145,000	
Plot Value @30%	<u>£43,500</u>	
Modern Ground rent @5%		£2,175
YP 50 years @5%	18.2559	
PV of £1 in 66.09 years @5%	<u>0.0398</u>	
		<u>0.7266</u>
		£1,580.35

Stage 3.

Standing house value	£130,000	
Less Schedule 10 @5%	<u>£6,500</u>	
Adjusted value	£123,500	
PV in 116.09 years @5%		<u>0.0035</u>
		£432.25

Total		£2,076.21
Say		£2,075

Dated 8 June 2017

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Lawyer Chairman