

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES) Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”), s.48 and Schedule 13

Premises: 5, 7, 9 and 14 Hollybush Heights, Cardiff, CF23 7HF (“the properties”)

Reference: LVT/0034/04/12, LVT/0035/04/12, LVT0036/04/12, LVT/0037/04/12.

Hearing: 20 March 2013

Applicants: (1) David & Linda Jennings (Flat 5)
(2) Jonathan & Rachael Westall (Flat 14)
(3) Stuart & Margaret Davies (Flats 7 & 9)
(Mr Martin Cotsen FRCIS)

Respondent: Mayquest Limited (Mr Geraint Evans FRICS)

Tribunal: Rhys Taylor – legal chairman
Mrs Ceri Trotman-Jones MRICS
Mrs Carole Calvin-Thomas

ORDER

1. The price to be paid for an individual lease extension is £8,570 per lease.

10 April 2013

A handwritten signature in black ink, appearing to read 'Rhys Taylor'.

Legal Chairman

REASONS

Background.

1. This case concerns 4 applications for the determination of the premium to be paid for individual lease extensions at the properties at Hollybush Heights.
2. The parties are agreed on all matters save for the premium to be paid. The applications were individually received by the Tribunal on the 11 December 2012. Despite being individual applications, the issues and representation are common in each case and it has been agreed that the applications can be dealt with together and subject to one decision.
3. The Tribunal's jurisdiction arises from s.48 of the Act and its valuation approach is prescribed by Schedule 13 of the Act.
4. Under Schedule 13 of the Act the Tribunal is required to determine the price to be paid in this case by calculating:-
 - a. The diminution of the landlord's interest in the flat determined in accordance with paragraph 3 of Schedule 13; and
 - b. The landlord's share of the marriage value in the flat as determined in accordance with paragraph 4 of Schedule 14.
5. In both paragraph 3(2) and 4A(1), the Tribunal is required to adopt certain assumptions when considering value. These include assuming a "No Act world" and disregarding any tenants' improvements.

Matters agreed between the parties.

6. There was much common ground between the parties. It is agreed that:-
 - a. The date of valuation is 3 May 2012.
 - b. The current leases expire on the 31 December 2082.
 - c. The remaining term as at the date of valuation is 70.66 years.

- d. The annual ground rent is £100 without review through the entire term.
- e. A capitalisation rate for the ground rent of 6.5% should be adopted. Factually, this produces a sum of £1,520 for this part of the valuation.
- f. A deferment rate of 5% should be adopted.
- g. Tenants' improvements should be treated as £2,000.
- h. Marriage value should be apportioned equally in accordance with the Act

Matters not agreed between the parties.

7. The following matters were not agreed:-

- a. Market value of the existing leases as at the valuation date. The Applicants contended for a valuation of £120,000 without making a deduction for tenants' improvements. The Respondent contended for a figure of £140,000 having made a deduction for tenants' improvements.
- b. The use of Land Registry data for the Cardiff area to apply uplifts to historic market transactions.
- c. The Applicants contended that tenants' improvements should not be discounted until the Tribunal considered marriage value, whereas the Respondent discounted off the current value in arriving at £140,000. This point we resolve shortly in favour of the Respondent, it being clear from Schedule 13 of the Act that this is an assumption we make throughout the valuation exercise. In effect, applying this reasoning to the Applicants' starting figure, this meant that the parties were £118,000 for the Applicants and £140,000 for the Respondent.
- d. The discount to be applied for the "No Act world" assumption. The Respondent stated a discount of 1.5% would be appropriate, whereas the Applicants suggested no more than 0.25%.

- e. Whilst the parties did agree that the appropriate relativity figure (in comparing the existing lease value with a virtual freehold or 999 year lease) was 92.75%, they were unable to agree how this figure should be presented. The Applicants suggested an uplift of the current leasehold value by 7.25%, whereas the Respondent sought to apply a factor as a percentage of the freehold, namely $100/92.75 = 1.0781671$. The difference between the two approaches is not insignificant in this case.

The position of the experts before the Tribunal.

8. We were greatly assisted by both Mr Cotsen and Mr Evans. However, we must record two points at the outset. Both Mr Cotsen and Mr Evans accepted that there were some errors in their original workings. Little turns on this as various amendments and concessions were made during the course of the hearing to correct matters which were obvious errors. However, the figures as contended for in each report had changed in some respects by the end of the hearing.
9. Mr Evans sought to make some mileage over the fact that Mr Cotsen accepted that his role had a dual approach as both advocate and expert, whereas Mr Evans claimed to be purely an expert. Whilst Mr Cotsen had to concede that his report lost some of its force by virtue of the fact that he had not referred, as comparables, to Flat 14 (£138,000 in 2009) and Flat 15 (£140,000 in 2011) of Hollybush Heights, we find that each expert did the best they could to assist the tribunal. Mr Evans made representations that he was acting purely as an expert witness (and to be fair to him, he made several observations regarding Mr Cotsen's calculations which were favourable to the Applicants, thereby supporting this claim). However, Mr Evans also asked questions during the hearing and made general representations to us. In the round, little turns on any of this and the Tribunal is well placed to digest the totality of what both experts had to say, bearing in mind the hats which they each had to wear and the duties they owe as experts.

The Inspection.

10. The Tribunal members attended for an inspection at 9.30 am on the 20 March 2013 and were accompanied by Mr Cotsen and Mr Evans.
11. Hollybush Heights is a purpose built scheme of maisonettes constructed circa 1985 in an elevated position and lying between Hollybush Road and Glyncod Road. It is accessed off Goldcrest Drive. The area is referred to as Cyncoed but lies on the border with Pentwyn. Local facilities include convenience style shopping within walking distance, local schools and bus routes.
12. Hollybush Heights is a small scheme of maisonettes comprising blocks of two and three storey units. Estate design is fairly uniform despite construction by two separate developers originally. Two storey blocks on the northern side of the estate do not have garages but do have off road parking areas. There are small communal grounds around the blocks laid to grassed areas.
13. The subject properties lie within blocks of either two or four units, all of three storey construction with lower ground floor (rear) providing garages for each maisonette. They are positioned on the southern side of the main estate road and have extensive views over north eastern Cardiff from their lounge/kitchen windows. Each flat has individual access from the side of the blocks.
14. The blocks are of traditional cavity construction under timber pitched roofs with tiled cover. Elevations are of facing brick and match the majority of properties on Hollybush Heights. The flats are all self contained and have predominantly UPVC double glazed units with the exception of the French sliding doors onto balconies to rear which are of hardwood double glazed type.
15. The properties subject to this application are all of similar layout and design, the only difference being either ground or first floor position. Internally they are centrally heated and provide modern residential space extending to open plan living room and kitchen area, two bedrooms, (one double one single) and bathroom. There was a slightly different internal layout to No 9 where the

kitchen had been partitioned from the living room area. The flats varied slightly in terms of internal specification but tenants' improvements had been agreed between the parties.

16. The garages lie to lower ground floor rear, each property having one garage and there is also off road parking to the rear of the blocks. Garages have water and electricity supply. The garage inspected to No5 had a car comfortably accommodated.

Market value.

17. Much of the debate as to market value centred on whether the properties could be said to be situated in Cyncoed, or whether their value was depressed by virtue of being situated in or very close to Pentwyn. Cyncoed is a highly desirable part of Cardiff whereas Pentwyn is generally not regarded as such a good area. The front of the properties look out over the road which might be considered the natural cut off point between Cyncoed and Pentwyn. At one stage during the hearing it was suggested that Hollybush Heights is situated "in the borders." Memorably, Mr Cotsen, when emphasising his point regarding the overwhelming importance of location to value, referred to the properties as being akin to "a petunia in an onion patch."

18. Mr Cotsen presented a comparable on the north side of Hollybush Heights. This comparable did not form part of the development which contains the subject properties which lie on the southern side of Hollybush Heights, but it is in close proximity and is of similar design. Further, it appeared that the management of the north side of the road had not been undertaken with as much care as the subject development. The comparable on the north side had been on the market for £115,000 but had sold in the last few weeks for £100,000. Whilst this was after the valuation date, this market evidence is valuable to us as it is indicative of prices as at the valuation date, given that we find little has happened since May 2012 to date. This comparable did not benefit from a garage, lacked the fine view and was sold in a poor condition. Mr Evans had sought further details from the selling agent and he reported to us that the sale was by a motivated seller keen to close an estate. He

suggested that probate estates were more likely to sell at a discount due to emotional pressures. We do not agree that estates will necessarily discount, as for every estate that is prepared to discount for a quick sale, there will be other estates which persevere to obtain the best price. This property had been on the market for several months.

19. Mr Cotsen also drew our attention to two flats in Palace Court which is situated within central Cyncoed. These comparables differ in that they benefit from 999 year leases. Further, they are accessed via communal areas, rather than private front doors as at the subject properties. They are also subject to a restrictive covenant preventing sub-letting. These points make the comparables difficult to benchmark against the properties. Further, one fully modernised flat sold for £147,000 in July 2011, whereas an unmodernised flat had recently sold for £110,000. The valuation range of these comparables encompasses both ends of the debate in this case but the properties differ too widely in respect of repair, location and unique terms.

20. Mr Cotsen also drew our attention to flats at Androvan Court, again firmly situated within Cyncoed. A property sold in March 2011 for £125,000. However, we were told that this was in need of much modernisation and, again, benefitted from a 999 year lease.

21. Whilst Mr Cotsen sought to demonstrate that two bed flats in central Cyncoed were obviously higher, his comparisons, by their very nature, were not on a like for like basis and we derived limited assistance from them.

22. We record herein those comparables upon which Mr Cotsen appeared to place particular emphasis. There are further comparables in his report which we found of even less assistance and we do not comment upon them further herein.

23. It appears to us that Mr Cotsen's best point was the comparable on the north side of Hollybush Heights which had recently sold for £100,000 albeit, without a garage, view and in a poor condition, sold by a motivated seller.

24. Mr Evans appeared, in opening, to have the superior comparables (albeit historical). Flat 14 (a subject property) had sold on 21 September 2009 for £138,000 and Flat 15 had sold on the 31 January 2011 for £140,000.
25. However, during the hearing we were told by one of the Applicants, Mr Jennings, that the property sold in 2011 was not a market transaction. The property had been owned by two brothers in their late twenties or early thirties and, upon setting up with their own partners, they sold the property to their parents. There was some debate as to how the price would have been fixed in such a family transaction and whether this may have resulted in a discount or been at a market value. In short, we are unable to say. The only matter we can determine is that this transaction was not an arm's length transaction and, as such, we consider it of limited assistance and treat it with caution.
26. This leaves us with a range of £100,000 to £138,000 (subject to Mr Evans' Land Registry adjustments, which we deal with below). We place considerable weight on the up to date comparable, whilst accepting its limitations. The Flat 14 comparable does provide some assistance. However, bereft of the 2011 Flat 15 comparable (which we have discounted as not being a market transaction) we cannot say that this forms part of a reliable valuation pattern in the lead up to the valuation date.
27. Of note was the evidence of Mr Jennings. He is the chair of the management company and appeared very conversant with issues pertaining to the subject development. He was asked by Mr Evans what he thought his property was worth. He was reluctant to answer but when pressed suggested a price between £130,000 and £135,000. We have firmly in mind that he is not an expert. Flat 19, a similar style property, had also been on the market on and off for the last couple of years and had failed to sell at £145,000. When asked whether he lived in Cyncoed or Pentwyn, Mr Jennings replied the answer depended upon whether you were buying or selling.
28. Overall, we find Mr Evans' comparable at £138,000 and Mr Cotsen's at £100,000 to be the two most helpful comparables. These comparables largely obviate the need for a detailed analysis of the valuation differences between

central Cyncoed and “the boarders,” as the most helpful comparable evidence is within Hollybush Heights itself. It seemed to us that the £100,000 comparable would have to be adjusted to reflect the lack of garage, view and poor condition if comparing on a like for like basis. It was emphasised to us at the hearing that valuation is an art and not a science. Bearing in mind all of these factors, we are of the opinion that the market value of the properties should set at £130,000.

29. We are unpersuaded by Mr Evans’ approach in uprating his historic figures by reference to Land registry data for the Cardiff area. Whilst we accept that in some cases this may be a helpful device, we find that the Cardiff flat market is simply too variable to be able to provide us with any meaningful assistance. It was agreed by all that the Cardiff Bay developments were not driving prices and if anything, would be depressing the flat market in Cardiff. Mr Evans’ point is that if the Bay was having such an effect, the growth had to be coming from elsewhere in Cardiff. Sadly for Mr Evans, the Land Registry figures are not broken down in more detail than “Cardiff.” We are simply unable to say where price increases have come from since 2009 on the Land Registry tables. We are very mindful of Mr Cotsen’s point that, in contrast to the situation in the Bay, there have been prestigious flat developments in the City Centre which may well be responsible for some of the prices increases. In short, we cannot be confident enough, as to how the recorded price increases are being driven in Cardiff during this period to be able, to apply a blanket increase.

30. Taking all of the above factors into account, WE DETERMINE, that the market value of the existing leases as at the valuation date are £130,000 on an improved basis. Improvements, as agreed at £2,000, are deducted to give unimproved value at £128,000.

The “No Act world” assumption.

31. Mr Evans suggested that a figure of 1.5% should be discounted off the tenant’s interest when we considered the marriage value part of our calculation. He stated that he had not applied the discount when valuing the “virtual freehold” (having applied a relativity figure as a percentage of freehold

to convert the leasehold into a 999 lease/virtual freehold) as a purchaser of a 999 year lease need not concern himself with rights of extension.

32. Mr Cotsen, for his part, firmly expressed the view that there should be no discount for the “no Act world.” When pressed he stated that many negotiations took place between surveyors ignoring this feature as, in practice, it was highly artificial and impossible to quantify. Mr Evans’ accepted Mr Cotsen’s point that sometimes, in negotiation, this discount is ignored or treated as zero.

33. When pressed by the Tribunal Mr Cotsen reluctantly accepted a discount of no more than 0.25% to reflect this part of the calculation.

34. The Tribunal must therefore determine between the competing figures of 0.25% and 1.5%, in a context where Mr Evans accepts that sometimes the figure is zero.

35. We accept that this is a highly artificial exercise but we are required by the Act to acknowledge and reflect it in our decision. We have adopted a 1% discount to apply the “no Act world” assumption in this case. We emphasise that this has been reached upon the evidence before us and in no way sets any precedent for other matters which may be argued before other Welsh LVTs. The Applicants’ interest in the “no Act world” is therefore taken at £126,720.

Approach to relativity.

36. The parties are agreed as to the figure of 92.75%. The question is as to how this is presented, as noted above.

37. In some cases the difference may be so small as to make little practical difference, in which event it may matter not which approach is adopted. However, in this case the difference does result in a few hundred pounds which should be fairly reflected in the calculation.

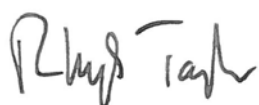
38. We find Mr Evans' approach more compelling in this instance. He produced for us some RICS relativity charts from which the figure of 92.75% had been obtained. He drew our attention to the fact that the figures are presented as a % of freehold rather than an uplift as against the leasehold figure. This persuades us that it would not be appropriate to adopt Mr Cotsen's approach in this particular case, where the difference in presentation makes such a difference.

Summary

39. Taking £130,000 as the market value of the existing lease improved, we deduct £2,000 to reflect tenants' improvements. This leaves a figure of £128,000. £128,000 multiplied by 1.0781671 (taking relativity as a percentage of freehold) results in a figure of £138,005 as the virtual freehold figure we start with, when assessing the diminution of the Respondent's interest.

40. The remainder of the approach was agreed between the experts by the end of the hearing, and are shown in the attached Excel calculation.

10 April 2013



Legal Chairman

Rent Passing (pa)	100		
YP 70.66 Years @ 6.5%	<u>15.2049</u>		
<i>Reversion</i>			1,520
Virtual freehold	138,005		
PV of £1 70.66 Years @5%	<u>0.0318</u>		
			4,389
<i>Retained Interest</i>			
Virtual freehold	138,005		
PV of £1 160.66 Years @5%	<u>0.0004</u>		
		<u>55</u>	
Landlord's Interest			5,854
Marriage Value			
Virtual freehold	138,005		
<i>Less</i>			
Tenants Interest in "no Act world"	126,720		
Landlord's Interest	<u>5,854</u>		
Marriage value		5,431	
Split 50/50		<u>2,715</u>	
Premium per lease extension			8,570