

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0069/01/14

In the matter of 115 Pantbach Road, Cardiff CF14 1TX
In the matter of an Application under Sections 21(1)(a) of the Leasehold Reform Act 1967

TRIBUNAL David Evans LLB LLM
Andrew Morris LLB
Roger Baynham FRICS

APPLICANT Clarise Properties Ltd

RESPONDENTS Rachel Emily Rees and John James Rees

DECISION

INTRODUCTION

1 The Applicant is the freehold owner of the Property, a substantial 4 bedroom semi-detached house located in the Rhiwbina area of Cardiff. The Respondents are the leasehold owners, having acquired their interest on the 7th September 2001. The lease (the Lease) is for the term of 99 years from the 24th June 1991 at an initial ground rent of £45 subject to review. On the 10th September 2011, the Respondents served notice under the Leasehold Reform Act 1967 (the Act) claiming the right to purchase the freehold. The Applicant admitted the Respondents' claim and issued these proceedings for us to determine the price payable for the freehold reversion under section 9(1) of the Act.

2 The principal difference of view when negotiating the price was the effect on the ground rent of a rent review clause requiring the ground rent to be increased in 2015, 2040 and 2065 to "such annual rent....being a sum representing the open market letting value of the land". The parties referred the interpretation of the rent review clause to this Tribunal which we considered at a preliminary hearing held on the 3rd and 4th September 2013.

THE PRELIMINARY HEARING

3 At that hearing both parties were represented by experienced Counsel and Surveyors - Mr Mark Loveday and Mr Geraint Evans FRICS for the Applicant and Mr Barry Denyer-Green and Mr Kenneth Cooper FRICS for the Respondents. The Applicant argued that the reviewed ground rent should be a "modern ground rent" or a "full ground rent" akin to that payable under section 15(2) of the Act when a lease is extended under section 14 of the Act or is deemed to be so extended under section 9(1)(a) of the Act (we shall refer to this as the "full ground rent"). The Respondents argued that the reviewed ground rent should be a "nominal ground rent" at a level set by developers today

on the few sites where leaseholds are still granted (we shall refer to this as the “nominal ground rent”).

4 After detailed argument and after considering the authorities we concluded (at paragraph 63(f) of the decision) that “the open market letting value of the land” was “a marketable ground rent; the highest ground rent at which a purchaser (builder or otherwise) in the hypothetical open market would be willing to acquire a lease of the plot of land” (we shall refer to this as the “market ground rent”. Our decision is dated the 13th September 2013.

APPEAL

5 On the 8th October 2013, the Applicant sought permission to appeal to the Upper Tribunal setting out a number of grounds which we need not go into here. Permission was refused and on the 21st November 2013, the Applicant applied to the Upper Tribunal for permission to appeal. The Respondents have similarly sought permission to cross appeal.

6 On the 9th January 2014, Deputy President Martin Rodger QC deferred consideration of the applications to appeal and cross appeal on the basis that an appeal would be inconclusive of the real issue namely the purchase price of the Property. He directed that the parties to seek final determination by this Tribunal of the purchase price before further consideration is given to the grant or refusal of permission to appeal. The determination should be on the basis of our decision on the preliminary issue, namely that the ground rent was to be a market ground rent. Additionally, the parties should also seek to agree the alternative valuations - a full ground rent and a nominal ground rent.

SUBSEQUENT HEARING

7 Directions were given on the 4th February 2014 requiring the Surveyors to prepare, exchange and attempt to agree valuation reports. Consideration of the valuations was set for the 15th and 16th April. We were provided with valuations from Mr Cooper dated 28th March 2014 and from Mr Evans dated the 31st March 2014 with Mr Evans providing a supplemental valuation dated the 14th April 2014. Skeleton arguments were received from Mr Loveday for the Applicants dated the 14th April 2014 and from Mr Denyer-Green also dated the 14th April 2014.

8 As directed, the Surveyors had provided valuations in respect of:

	Applicant	Respondent
The market ground rent	£10,530	£6,830
The nominal ground rent	£5,140	£4,925
The full ground rent	£83,610	£75,300

9 Both Surveyors had adopted the Haresign approach (named after the Lands Tribunal’s decision in Haresign –v- St John the Baptist’s College Oxford (1980) 255 EG 711). Neither party had been able to obtain comparable evidence of plot sales and had used the standing house method in order to ascertain the value of the plot. They had agreed the same percentage of the entirety value of the house to achieve the plot value (33.33%). They had applied the same capitalisation rate in respect of the ground rent (6½%) and the same decapitalisation, recapitalisation and deferment rates (5%). They had also agreed a reduction in the standing house value of 5% to take account of the possibility that there may be a sitting tenant at the Property when the lease eventually terminates (see Schedule 10 of the Local Government and Housing Act 1989).

10 The only differences between the Surveyors, apart from the issue of the reviewed rent, were in respect of the entirety value and standing house value of the Property. Mr Evans put forward an entirety value of £300,000 whilst Mr Cooper's valuation was £270,000. Mr Cooper adopted the same value (£270,000) for the standing house value whilst Mr Evans had used the figure of £280,000. The effect was to produce the following difference in value of the first reversion: £2,052 (Mr Evans) and £1848 (Mr Cooper); and for the second reversion: £ 521 (Mr Evans) and £513 (Mr Cooper. The overall figures for the two reversions differed therefore by only £212.

11 On the morning of the hearing after we had inspected the Property and carried out an external inspection of some of the comparables, both Counsel and both Surveyors conferred and AGREED the following, without prejudice to their respective rights to argue for their respective valuations on appeal should permission be given:

A market ground rent would result in a price for the freehold reversion of £10,530;

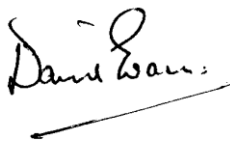
A nominal ground rent would result in a price for the freehold reversion of £5,025;

A full ground rent would result in a price for the freehold reversion of £79,325.

DETERMINATION

12 We have already concluded that the reviewed ground rent is to be a market ground rent for the reasons expressed in our decision of the 13th September 2013. The Surveyors have agreed both the methodology and the valuation issues arising from that decision. We therefore determine that the price payable by the Respondents for the freehold reversion of the Property is £10,530.

DATED the 12th day of May 2014

A handwritten signature in black ink, appearing to read "David Evans", with a horizontal line underneath it.

CADEIRYDD/CHAIRMAN