

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

(Determination of the terms [premium] following a vesting order made 29 April 2020 by District Judge J Collins at the County Court Swansea under Part 11 of the *Leasehold Reform, Housing and Urban Development Act 1993* [the “Act”])

Reference: Claim No: F00SA781

Property: 57a Vincent Street, Swansea, SA1 3TZ

Applicant: Paul James Edwards [As Executor of Late Michael Jeffrey Edwards]

Respondents: Mr Jian Zhang

Committee: Chairman J Rostron
Surveyor Johanne Coupe FRICS

Introduction

1. On 18 December 2019 Toner Johns Ratti Solicitors issued a part 8 Claim in the County Court at Swansea seeking a vesting order under section 50(1) of the Act.
2. On 29 April 2020 District Judge J Collins made an order that the case be transferred to the Residential Property Tribunal, and after the Tribunal has determined the price and terms on which the surrender of the Applicant’s lease of the Property and the grant of a new lease to the Applicant should take effect, the leasehold Property shall be vested in the Applicant on such terms and at such price as the Tribunal has determined.

Background

3. Salient details of the lease in respect of the Property are as follows:
 - (a) Date of lease: 30 October 1992
 - (b) Lease Commencement date and term: 25 March 1992 for 99 years
 - (c) Ground Rent: £10 for the first 25 years
£20 for the next 25 years
£30 for the next 25 years
£40 for the remainder of the term
4. The Property:
 - (a) From the Applicant’s submissions the Property comprises a self-contained one-bedroom flat which is situated within a two-storey converted building.
 - (b) The Property is of solid wall construction with rendered elevations contained beneath a pitched tiled roof.

- (c) Fenestration is believed to be Upvc double glazed units.
- (d) It is configured to provide entrance lobby to ground floor with the first floor comprising lounge, kitchen, bathroom, w.c. and bedroom.
- (e) The Property is situated within the densely populated area of Sandfields, Swansea, close to all usual services and amenities. The Property affords convenient access into Swansea city centre and the wider variety of services and amenities.
- (f) An external inspection only [because of the Corona virus pandemic constraints] by the Tribunal indicated no allocated parking, however street permit parking was noted to be available locally. The expert valuer's comparables were also inspected externally.

Issues

- 5. The Tribunal is required to determine the terms of the new lease pursuant to section 51(3) of the Act and the appropriate sum to be paid into court pursuant to section 51(5) of the Act.
- 6. The Applicant did not seek any amendments to the terms of the new lease from the original.

The Law

- 7. The salient law is section 51 of the *Leasehold Reform, Housing and Urban Development Act 1993*: -
 - 51(1) A vesting order under section 50(1) is an order providing the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal...
 - 51(3) Where a lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which...
 - 51(5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of –
 - (a) Such amount as may be determined by a leasehold valuation tribunal to be the premium...
 - (b) Such other amount or amounts (if any) as may be determined by such a tribunal...
 - (c)

Valuation

- 8. The Applicant's valuation was prepared by Rhodri Poiner BSc (Hons) MRICS of Mallard (Wales) Ltd. The Tribunal's comments on the Applicant's comparables are as follows:
- 9. Applicant's Comparables

9.1 The Applicant's expert witness report provided insufficient information on each comparable to enable a comprehensive analysis and comparison to the subject. With the exception of the address, number of bedrooms and date of sale & price, no further details on the accommodation, parking, condition, unexpired lease term, ground rent was provided. A copy of each Title Register and sales particulars would have proven useful, as would a location plan showing the comparables' proximity to the subject.

Considering each comparable in turn:

9.2 48 Mansel Street – a two storey mid-terraced house converted into residential or residential/commercial accommodation. Sold for £50,000 in August 2019 however the expert valuer doesn't advise which floor the flat is on, any other accommodation or parking, the size of flat, condition or unexpired term/ground rent. Although this is the most similar comparator in terms of age and style, insufficient information has been provided for the Tribunal to assess value against the subject.

9.3 Flat 73 Home Gower House & Flat 79 Home Gower House – a modern purpose-built retirement complex which, from our own knowledge, provides residents with a communal lounge & conservatory, 24-hour emergency call system, laundry, a site manager, guest suites, and a 60-year age restriction. The Tribunal does not consider this property comparable to the subject in any shape or form. The retirement property market is a complex one with less regard to open market value and more regard to facilities provided.

The expert valuer informs the Tribunal that Flat 73 and Flat 79 both provide one-bedroom accommodation however no explanation is provided as to why Flat 73 sold for £50,000 in November 2019 and Flat 79 for £73,000 in September 2019. As such neither comparable can be relied upon.

9.4 Flat 4 Ty John Penry – a modern purpose-built block in the city centre set over four floors with commercial usage at ground level. The expert valuer provided the Tribunal with insufficient information from which to analyse or compare the transaction and, coupled with the difference in age and style of block, the Tribunal does not find this comparable either suitable or useful.

9.5 36 Brunswick Court – a modern purpose built three storey block set within a five minute walk of both the city centre and subject property. A parking space marked '36' was noted to the rear. The Tribunal finds the block of flats to be neither comparable nor has sufficient information been provided by the expert valuer on the transaction to enable any useful analysis.

9.6 Summary: With the exception of 48 Mansel Street none of the comparables are of particular assistance to the Tribunal. Without further information on the sale and details of the lease of 48 Mansel Street, it is useful as a guide only.

9.7 As an expert Tribunal we therefore rely upon our own knowledge of the Swansea property market.

10. Applicant's Expert Valuer's Report

10.1 The Tribunal draws attention to its comments on the numbered paragraphs in the report:

1.5 Instructions: The report advises on the market value in "*respect of the acquisition of the freehold interest*". The application however is for a statutory lease extension, not a freehold acquisition, the valuation for which is markedly different.

2.1 The expert valuer carried out neither an internal or external inspection of the subject property, despite it being vacant and currently on the market. Instead they rely upon an Energy Performance Certificate (EPC) for size in square metres. The basis of measurement for an EPC differs from that of a statutory lease extension valuation. It would have assisted the Tribunal if the expert valuer had inspected the flat and provided measurements in accordance with RICS Property Measurement standards.

12.1 Valuation 'base' is proposed as £58,825. The expert valuer provides no narrative on how this figure is arrived at or by way of comparison with the sales information listed at 11.1 of their report, and upon which they rely.

12.2 'Enhanced value' is proposed as £65,000 again without explanation, or with any reference to the current marketing price of £74,995.

13.1 The expert valuer's report provides an incorrect valuation date of 24 August 2020; the correct date being 18 December 2019. As at the correct valuation date the unexpired term was 71.26 years.

10.2 The Tribunal draws attention to information omitted from the report:

- (a) Plan identifying both the subject and comparable properties
- (b) Confirmation of the correct valuation date
- (c) Identification and explanation of the deferment rate applied
- (d) Reference to any improvements or disrepair disregarded
- (e) Worked valuation consistent with the Act
- (f) Commentary on comparable sales transactions with short unexpired terms or, in the absence of reliable data, an opinion on the relativity basis/graphs applied – supported by Tribunal decisions or market evidence
- (g) Consideration of development value
- (h) 1% adjustment of the freehold value vs long leasehold value or reference as to why ignored
- (i) Consideration of Schedule 10 deductions

Tribunal's Valuation

11. The Tribunal has undertaken its own valuation as follows. The subject property is currently being marketed, with the present unexpired term, at £74,995 and is considered to be in a condition inconsistent with when first converted. The Tribunal is of the opinion that, having regard to the short unexpired term and condition of the property as advised, the asking price is excessive.
12. Having regard to the limited usefulness of the comparable evidence provided and using our own valuation knowledge we have valued the Property ignoring any disrepair and refurbishment requirements. As per statute, the property is valued as if in a condition consistent with when first converted. The Tribunal applies a long lease value of £75,000.
13. Applying the principles of *Contractreal Ltd v Smith (2017) UKUT 0178 (LC)*, reaffirmed in *Elmbirch Properties Plc (2017) UKUT 0314 (LC)* we apply a 1% difference between freehold value and long leasehold value, thereby providing a freehold value of £75,757.
14. Relativity - In the absence of any reliable transactional evidence of short leases we refer to the decision of *Deritend Investments (Birkdale) Limited V Treskonova (2020) UKUT 164 (LC)* and apply an average of the Gerald Eve 2016 and Savills graph, that being 85.41%, to provide the short lease value.

In making this assessment regard was also paid to the decisions in *Reiss v Ironhawk Ltd (2018) UKUT 0311 (LC)*; *The Trustees of the Sloane Stanley Estate v Mundy (2016) UKUT 0223 (LC)*; and *Trustees of the Barry & Peggy High Foundation v Zucconi & another (2019) UKUT 242 (LC)*.

15. Capitalisation Rate - We find the ground rent of £20.00 per annum rising to £40.00 per annum to be modest and, as such, unlikely to appeal to the mass investment market. Applying the criteria set out in *Nicholson v Goff (2007) 1 EGLR 83* we apply a capitalisation rate of 6.5% throughout the term.
16. Deferment Rate - We determine no reason to deviate from the decision in *Earl Cadogan v Sportelli (2006) LRA 50 2005* and adopt a deferment rate of 5%.
17. Development Value – It is our opinion that the site is fully developed and no adjustment is required.
18. Schedule 10 Deduction - Following the principles in *Midlands Freeholds Ltd & Speedwell Estates Ltd (2017) UKUT 463 (LC)* and, having regard to the unexpired term of 71.26 years, we make no adjustment for Schedule 10 rights.

Determination

19. The Tribunal's valuation is attached as an appendix.

20. The Tribunal determines that the premium to be paid for a 90 year lease extension in respect of the Property under the *Leasehold Reform and Urban Development Act 1993* is **£6,478.00** and that this is the appropriate sum to be paid into court under section 51(5) of the Act.

Dated this 3rd day of November 2020

J Rostron
Chairman

**Appendix
The Tribunal's Valuation**

Diminution of Landlord's reversion:

Term 1

| | | | |
|---------------------------|---------|--|---------|
| Ground rent | £20.00 | | |
| YP for 22.26 years @ 6.5% | 11.5977 | | £231.95 |

Term 2

| | | | |
|--|--------|--------|--|
| Ground rent | £30.00 | | |
| YP for 25 years @ 6.5%, deferred 22.26 years | 3.0025 | £90.07 | |

Term 3

| | | | |
|---|--------|--------|--|
| Ground rent | £40.00 | | |
| YP for 24 years @ 6.5%, deferred 47.26 years £346.48 | 0.6114 | £24.46 | |

Reversion 1

| | | | |
|---------------------------|---------|-----------|------------------|
| Freehold value of flat | £75,757 | | |
| PV £1 in 71.26 years @ 5% | 0.03091 | £2,341.65 | <u>£2,341.65</u> |
| | | | £2,688.13 |

Reversion 2

| | | | |
|----------------------------|----------|--------|--|
| Freehold value of flat | £ 75,757 | | |
| PV £1 in 161.26 years @ 5% | 0.000383 | £29.01 | |

Diminution of Landlord's reversion: **£2,659.12**

Freeholder's Share of Marriage Value

| | | | |
|------------------------------|---------|------------|--|
| Long leasehold value of flat | £75,000 | | |
| Landlord's proposed interest | £29.01 | £75,029.01 | |

LESS

| | | | |
|-----------------------------|-----------|-------------------|--|
| Short lease value of flat | £64,704 | | |
| Landlord's current interest | £2,688.13 | <u>£67,392.13</u> | |
| | | £7,636.88 | |

Marriage Value

Freeholders share @ 50% **£3,818.44**

£6,477.56

Enfranchisement Premium £6,478.00