

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0024/06/13

In the Matter of 10 Alianore Road Caldicot Monmouthshire NP26 5DF (the Property)

In the Matter of an Application under Section 21 (1)(a) and Section 27 of the Leasehold Reform Act 1967 (as amended) (the Act)

TRIBUNAL P H Williams, Chairman
NFG Hill FRICS, Surveyor

APPLICANTS Mr David Waite and Mrs Jean Frances Waite

RESPONDENT Person or persons unknown

DECISION

INTRODUCTION

1. We convened as a Leasehold Valuation Tribunal under the provisions of the Act on the 1st October 2013. We had before us an Order of the Newport Gwent County Court dated the 19th April 2013 that the freehold interest in the Property be vested in the Applicants subject to the requirements of the Leasehold Valuation Tribunal as to price and any other matters

BACKGROUND

2 The Applicants are the leaseholders of the Property and wish to acquire the freehold pursuant to the Act. After exhaustive enquiries the freeholder of the Property cannot be traced. On the 4th April 2013 the Applicants made an Application to the Court resulting in the said Order. The Application was made by Messrs Twomlows, Solicitors, of Caldicot

LEASE

3. The Lease of the Property is dated the 8th July 1969. It was made between Nash Investments Limited of the first part Tudor Jenkins and Company Limited of the second part and Stephen Locke and Dorothy Nina Locke of the third part for the term of 99 years from the 1st January 1969 at the yearly rent of £15 payable half yearly. The Lease contains the usual obligations for the lessees to pay the outgoings, insure the Property and to maintain it.

INSPECTION

4. Prior to the hearing we inspected the Property internally and externally in the presence of the Applicants. The Property is a two storey semi-detached dwelling constructed in brick and block cavity, part spar dashed with a Marley tiled roof. It was built circa 1969. The front garden has been completely block paved to provide a parking area and driveway. The rear garden gives access to a communal pedestrian footpath. There is an attached extended garage with a linked car port and the whole site is level. The Ground Floor comprises an entrance hall, kitchen, living room and a through lounge and dining room the lounge of which benefited from a single storey extension. The First Floor had a landing, with airing cupboard off, 3 bedrooms, 2 of which had fitted wardrobes, and a small bathroom comprising a Wash Hand Basin, Water Closet and a bath with shower over. There was access to the roof space from the landing and in the roof space was a combination boiler. The Property benefits from a Gas Central Heating system and all mains services. It is situated in a residential street and area amongst similar styled houses and bungalows and there is a primary school close by. It is within walking distance of Caldicot town centre, with which it is on the level. Caldicot has all usual urban amenities and the Property is close to the bus service. Caldicot is a small town approximately 4 miles from the larger town of Chepstow. The M4 and M48 motorways are accessible within 5 miles at Chepstow and Magor respectively.

HEARING

5. The Hearing was held at St Arvans Monmouthshire on the 1st October 2013 and was by way of written representations which comprised a Valuation Report by Mr A W Graham FRICS dated the 3rd July 2013. Mr Graham adopted a two stage approach. He firstly capitalised the current ground rent for the remainder of the term, and secondly ascertained a modern ground rent for the Property, recapitalising the result for 50 years from the end of the current term. He adopted a 5.25% deferment rate compared with 5.5% used in the Upper Tribunal decision in *Clarisse Properties Ltd (2012) UKUT4 (LC) ("Clarisse")*.

CONSIDERATION

6. Section 9(1) of the Act requires us 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 make certain assumptions, one of which is that the Property is being sold freehold but subject to the lease which, if it has not already been extended, has been extended. In other words the assumed term expires 50 years after the contractual term. In this case the contractual term expires at the end of 2067 so that the assumed date when the Lease will expire is on the 31st December 2117.
7. *Clarisse* decided that there should be a third stage in which a deduction is made from the Standing House approach in order to calculate the reversion pursuant to the case of *Hare sign v St John the Baptist's College Oxford (1980) 255 EG711 ("Hare sign")*. Until *Clarisse* the standard practice was the two stage approach adopted by Mr Graham, unless the three stage approach (to include a Hare sign reversion) produced a valuation which was significantly higher. *Clarisse* decided that good valuation practice was to separately assess every element of value unless there is good reason not to do so. This is guidance rather than a constraint and the knowledge and experience of Leasehold Valuation Tribunals are relevant in assessing whether the third stage is appropriate.

8. In Clarisse the lease had a 28 ½ years unexpired term and hence an assumed term date of 78½ years. In this case the lease has 55 years to run and an assumed term date of 105 years. In Mayfly (Crib) Ltd's appeal (LRA/29/2002) " the essential question is not whether the subject property will be standing [in that case] 62 years after the valuation date ; but whether the purchaser in the hypothetical sale envisaged in Section 9 (1) of the 1967 Act would value the reversion to standing house value ". We consider that the market will simply not consider circumstances or events that far ahead. We have therefore concluded that it is not appropriate to value the reversion on the basis that there will be a house standing on the site at the end of the extended term and we agree with Mr Graham that a two stage process should be adopted. Mr Graham has only valued the modern ground rent for 50 years but under a two stage valuation we consider that the second stage should be valued in perpetuity. We shall accordingly proceed to value the reversion to site value and not to a standing house value.

DETERMINATION

9. Date of Valuation. We have considered our decision on the basis that the valuation date is the 4th April 2013 being the date of the Application to the Court

CAPITALISATION

10. Mr Graham has used a capitalisation rate of 5.25% for the ground rent. An investor purchasing the asset will view a return of £15 as small, particularly as there are administration costs for the collection of the ground rent. We consider that a rate of 6.5% is more appropriate and more in keeping with other decisions of this Tribunal. Our calculation is £ 223.50p

VALUE of the PROPERTY

11. Although we are acquainted with the cost of development land as well as single plots, we have no comparable evidence of land values in the Albacore area. We therefore decided to proceed on the "Standing house "method. We have taken into account Mr Graham's valuation, and also relied on our own expertise and knowledge of the property market in the area. We viewed externally his two suggested comparable properties, namely 7 and 34 Albacore Road Caldecott. We discounted Number 7 Albacore Road as this is a bungalow. Number 34 Albacore Road is a similar property and was built at about the same time as the Property, and whilst it had also been extended it had not been done so to the same standard and the sale price of £149000.00p had been achieved nearly six months' prior to the Valuation Date. We concluded that the market value of the Property was higher. We consider that the Standing House value of the Property, on the basis that the house was in good condition and fully developed was £ 155000.00p as at the Valuation Date

PLOT VALUE

12. Mr Graham suggests a plot value of 30% of the Standing house value. We agree with his assessment as it is a level plot and easily accessible. We therefore determine that the plot value is £46500.00p

DECAPITALISATION/RECAPITALISATION RATES

13. Mr Graham has applied a rate of 5.25% for recapitalisation. As a general rule it does not matter what rate is used for recapitalisation provided that the same rate is used for recapitalisation. If this principle is not adopted there would be an adverse differential favouring one of the parties. The recapitalisation rate must always be a question of fact and depend on the circumstances of the case. Current rates of return in the market are at a low level, although they may not always remain this

low. Returns from property are affected by economic conditions and landlords are accepting lower rents in order to keep premises tenanted. On the other hand, the modern ground rent would be fixed for a long period. Clarisse adopted a rate of 5 ½ % as did the case of O’Grady v Cool race Ltd (BIR/00CT/OAF/2011/0091). However, Mr Graham has reduced this rate by 0.25% because of Obsolescence and Depreciation having regard to the Property in terms of the Lease. However, in paragraph 14 of this latter decision the Tribunal had already taken this into account and a further reduction of 0.25% would result in double accounting. Mr Graham agrees that Poorer growth outside of Prime Central London should be taken into account and that the Risk Free rate should be regularly reviewed and currently reduced in view of a decline in gilts since the decision of the Lands Tribunal in Sportelliily (LRA/50/2005). We agree with Mr Graham’s views as referred to in the preceding sentence. In our view, using our own knowledge and experience, 5% produces a fair assessment of the modern ground rent attainable for the Property and so we determine that the appropriate recapitalisation rate is 5% which produces a modern ground rent of £2325.00p pa. It follows that it is necessary to use the same rate for recapitalisation in perpetuity, namely 5%. We also mention that if the Hare sign principle is not applied then the modern ground rent must be deferred in perpetuity.

DEFERMENT RATE

14. Mr Graham uses the deferment rate of 5.25% compared with the rate of 5% used in Mensal Securities Ltd (LRA/185/2007) (Mensal) varying Sportelliily. The Land Tribunal’s reason in Mansal for increasing the “generic rate “ propounded in Sportelli was that “ since the reversion in the case of Section 9(1) is to a ground rent only, a potential purchaser is likely to require a higher Risk Premium to compensate for the increased volatility and illiquidity than if the reversion also included a house standing on the site “. That is the situation here, and we consider that the appropriate deferment rate should be 5% in accordance with Mansal. This produces a figure of £3177.18p to which must be added the capitalised value of the ground rent of £ 223.50p thereby valuing the freehold reversion at £3400.68p which we round down to £ 3400.00p

DECISION

15. Applying the findings that we have made above we calculate the value of the freehold reversion of the Property as follows:-

Ground Rent	£15.00	
55 years purchase at 6.5%	<u>14.9</u>	£223.50
Standing House Value	£155000.00	
Plot Value at 30%	£46500.00	
Modern Ground Rent at 5%	£2325.00	
Years purchase in perpetuity		
Deferred 55 years at 5%	<u>1.36653</u>	<u>£3177.18</u>
		£3400.68
		Say £3400.00p

GROUND RENT ARREARS

16. Section 27 (5) (b) of the Act substituted by Section 149 of the Commonhold and Leasehold Reform Act 2002 requires the leaseholder to pay “ the amount or estimated amount of any pecuniary rent payable for the house which remains unpaid. The amount payable can only be the amount for which the freeholder can enforce payment. The evidence before us shows that no ground rent has been paid since 1974. We conclude therefore that the maximum recoverable is £15 for the period of 6 years, namely £90 and we consider that this sum is payable to the Court on behalf of the Respondent in addition to the sum of £3400.00p making a total of £ 3490.00p. However, we note that the Court Order does not specifically require us to make this calculation and hence it is for the District Judge to direct payment of the said sum of £90.00p

SUMMARY

17. We determine that the total payable pursuant to the Order of the Newport Gwent County Court dated the 19th April 2013 is £ 3400.00p together with such ground rent as the Court shall determine.

DATED this 22nd day of October 2013



CHAIRMAN