

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0014/06/14 Hereford Street

In the Matter of 15 Hereford Street, Presteigne, Powys LD8 2AR

And in the Matter of Applications under sections 21(1)(a) and 21(1)(ba) of the Leasehold Reform Act 1967 (as amended)

TRIBUNAL: Dr Christopher McNall (Lawyer – Chairperson)
Mr Roger Baynham FRICS (Surveyor-Member)

APPLICANTS: Christopher Geoffrey Rowlatt
Janet Evelyn Covey-Crump
Marion Elizabeth Rowlatt

RESPONDENT: Unknown owner of the freehold

DECISION

It is determined that the appropriate sum to be paid into Court under section 27 of the Leasehold Reform Act 1967 (being the price payable in accordance with section 9 of that Act for the freehold interest in the house and premises at 15 Hereford Street, Presteigne, Powys LD8 2AR) is **£1,725**.

REASONS FOR THE DECISION

Background

1. This case concerns the valuation of the appropriate price to be paid by the Applicants to buy the freehold reversion of the residential property situated at 15 Hereford Street, Presteigne, Powys LD8 2AR: **‘the Property’**.
2. The Applicants are the registered proprietors with good leasehold title to the Property, registered with the Land Registry under Title Number WA465488. The freehold interest is unregistered and all attempts to trace the freeholders have failed.
3. On 3 February 2014, the Applicants issued a claim in the County Court at Brecon under Part 8 of the Civil Procedure Rules, pursuant to section 27 of the Leasehold Reform Act 1967 (as amended by section 148 of the Commonhold and Leasehold Reform Act 2002) (**‘the 1967 Act’**) for the purchase of the freehold reversion of the

Property, for further or other relief, and provision for their costs. The claim is supported by a witness statement (endorsed with a Statement of Truth) from Christopher Geoffrey Rowlatt dated 29 October 2013.

4. That claim came before District Judge C Asbrey, sitting in the County Court at Cardiff, on 22 April 2014 when, upon hearing the solicitor for the Claimants and reading the witness statement of Christopher Geoffrey Rowlatt, he permitted the Claimants to apply to this Tribunal for the purchase price to be determined and adjourned the substantive claim pending the outcome of any such application. On 11 June 2014, the Applicants applied to determine the price payable.

The Lease

5. The original lease of the property cannot be located and is believed to have been lost. However, its terms are referred to in an Indenture dated 30 July 1909 (lodged at first registration in 1989) made between Shirley Price of the one part and Ernest Alfred Price of the other part. The 1909 Indenture in turn records an Indenture of Demise dated 10 April 1682 made between Jonas Blayney and Jonas and Sarah Godwin for a term of 399 years from that date at an annual rent of one peppercorn, to be paid at Christmas. Thus, there were 67.2 years of the term unexpired at the valuation date.
6. The Tribunal must determine the purchase price on the relevant day. The relevant day in this case is the date upon which the underlying claim was issued, namely 3 February 2014.
7. The 1967 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 1967 Act.
8. The 1967 Act sets out the procedure to be followed where the landlord cannot be found. The Leasehold Valuation Tribunal is required to determine the purchase price, in accordance with the valuation methodology as set out in section 9 of the 1967 Act, which has been amended several times and which now provides for valuation upon a number of different bases, depending upon which category the property and the lease fall into.
9. In the case of a property outside London with a rateable value on 31 March 1990 of less than £500, the valuation methodology is to be found in section 9(1). The net rateable value of this Property as at 1 April 1973 was £47. We do not know the net rateable value on 31 March 1990, but we consider it safe to assume that the net rateable value as at 31 March 1990 will not have increased ten-fold in 17 years, and therefore would have been less than £500. Given that the annual rent was expressed as a peppercorn, it is (on any view) less than 2/3rds of the rateable value.

10. Under section 9(1) the price payable is the amount which, at the relevant time, the house and premises, if sold on 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 on certain assumptions, including the assumption that the tenant has complied with his covenants and disregarding any tenant's improvements. It is further assumed that the tenant would exercise his or her right under section 14 of the 1967 Act to claim an extended lease. If the lease is extended under section 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 1967 Act. The statutory term is 50 years, with a review at 25 years.
11. Under section 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 to determine the value of the reversion.
12. We consider that the correct approach for this Tribunal to adopt is that set out by the Lands Chamber of the Upper Tribunal (the President and NJ Rose FRICS) in the recent case of Re Clarise Properties Limited [2012] UKUT 4 (LC), where it was said as follows (at Paragraph [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 a much greater likelihood that the ultimate reversion will have a significant value than 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 is 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 valuers and LVTs treat as the criterion for the application of 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. The Applicants did not require the Tribunal to deal with their application by way of a hearing. They were content for the Tribunal to decide the matter from the papers before it. The evidence and submissions upon which the Applicants seek to rely are contained entirely in a valuation report from Sarah L Abel MSc MRICS, a partner in the firm of Lawrence & Wightman, Chartered Surveyors, dated 25 July 2014, and its Appendixes. That report asks the Tribunal to determine a price payable for the freehold interest of £781.

Inspection

14. The Tribunal inspected the Property externally and internally on 17 September 2014. The Property presents from the street as an attractive two-storey semi-detached house with white-rendered pebble-dashed walls. It is located towards the eastern end of Hereford Street, which is a quiet street approximately 300 metres from the centre of the small market town of Presteigne.
15. We were informed that the Property has been extensively remodelled in the last 15 years, including demolition and reconstruction of the exterior walls.
16. Inside, the accommodation comprises, on the ground floor, a living room, kitchen and bathroom (which are both contained in a single storey L-shaped extension), two bedrooms and a further bathroom on the first floor, and a single 'attic room' within the eaves of the building, lit by a dormer window at the rear. The total Gross Internal Area across all three floors is approximately 882 square feet.
17. Externally, there is no access to the Property except through the single front door. The rear garden is paved and landscaped. There is a small outhouse and shed to the rear boundary wall. The garden is approximately 28 feet long and 21 feet wide at the rear boundary. There is no off-street parking, but there is unrestricted on-street parking nearby.

Determination

Capitalisation rate for the unexpired term

18. 67.2 years remained unexpired at the valuation date.
19. However, the ground rent is a peppercorn, which we treat as having no monetary value. This produces a figure of zero for the valuation of the term.

Entirety value

20. Several comparables were supplied on behalf of the Applicants, being prices paid between December 2012 and March 2014 and ranging from £85,000 to £187,500: that is, a significant range. All the comparables supplied were within easy walking distance of the Property, and we were able to locate and view all of them externally.
21. We considered the most helpful comparables supplied by the Applicants to be:
 - 21.1 **29 Hereford Street**, sold in December 2012 for £131,000. It is a 3 bedroom end terrace with a 2-storey rear extension and a single-storey extension. Its Gross Internal Area is given as 839 sq ft. Its internal condition, so far as we were able to judge from the photographs which were reproduced in the report, was broadly equivalent to that of the Property. Its garden was not sloping, but appeared (again, as far as we could tell) to be slightly superior to that of the Property.
 - 21.2 **30 High Street**, sold in May 2013 for £155,000. It is a semi-detached 3 bedroom house with a large integral rear workshop (which gives into the sloping site at the rear). Its Gross Internal Area was 1431 sq ft (including the workshop and store, which together account for about 300 sq ft). It is somewhat closer to the heart of Presteigne than the Property, albeit that we doubted that its location could be meaningfully described as superior.
22. The Applicants contended for an entirety value of £110,000. The Tribunal reflected upon this carefully, and also upon the comparables provided.
23. We agree that the Property has been extended to its maximum degree, taking into account the layout of the ground and upper floors, as well as the sloping nature of the rear garden and the fact that (i) it has already been extended; and (ii) if it was extended any further all amenity land would be lost. We acknowledge the potential for a new kitchen, although we do not consider either the kitchen or the bathrooms to be so basic as to warrant immediate replacement.
24. Applying its knowledge and experience, the Tribunal, as an expert tribunal, was not persuaded that an entirety value of £110,000 was appropriate.
25. Taking the above comparables into account, together with our inspection of the Property and the locality, we find that the entirety value is £140,000.

Site value percentage

26. We consider that the site value percentage put forward of 27.5% was appropriate, and we find accordingly.

Deferment rate

27. In the present case, the Applicants contend for a deferment rate of 5.5%. We have had regard to the decision of Clarise, already referred to, as well as to the decision of the Upper Tribunal in Zuckerman and others v The Trustees of the Calthorpe Estates [2009] UKUT 235 (LC) referred to us by the Applicants. In Clarise, the figure was 5.5% (which started at 4.75% and which was then adjusted to reflect the deterioration and growth argument).
28. We have adopted a rate of 5%. Without more analysis, and oral evidence, the Tribunal was not persuaded to depart from the generic 'Sportelli' rate (4.75%) (see the decision of the Court of Appeal in Earl Cadogan v Sportelli [2007] EWCA Civ 1042) to which it has added an adjustment of 0.25% based on our knowledge, experience, and characteristics of the Property. Whilst we have had regard to the information supplied by the Applicants, we do not consider that the Applicants have made out their case for a rate of more than 5%.
29. Whilst deciding this application on its own merits, and the available evidence, we nonetheless can and do take note that we are adopting a similar approach to the Lands Tribunal (NJ Rose FRICS) in Re Mansal Securities Limited and others [2009] 2 EGLR 87 and the fact that other local tribunals have adopted a figure of 5%.

Standing house value

30. For the third stage of the valuation, we must determine the standing house value of the property deferred, in this case, for 117.2 years - namely 67.2 years unexpired term plus 50 years statutory extension.
31. Case law under the 1967 Act requires us to assume that the property is fully developed as at the relevant date when valuing the entirety value and subsequent calculation of Modern Ground Rent. Given that the external structure of the Property was substantially rebuilt within the last 15 years, we agree that it could plausibly still be standing in 117 years.
32. The Appellants invite us to find a Standing House Value of £100,000. Although we have differed from the Applicants in terms of the Entirety Value, we nonetheless consider that there is scope for a modest deduction, and we agree with the Applicants that this should be £10,000.

Deduction under Schedule 10 of the Local Government and Housing Act 1989

33. The Tribunal was invited to use the figure of 5% (or £5,000) from the Standing House Value to take into account the right conferred within Schedule 10 of the 1989 Act. We do so. This is in line with other decisions of this Tribunal (for instance, 18 Kimberley

Road, Cardiff) where there is a long term remaining, and where the valuation (as in this case) has proceeded to Stage 3.

Decision

34. Applying the findings which we have made above, we calculate the value of the freehold of the Property as follows:

Stage 1 – The Term

Ground rent	£0.00
YP in 67.2 years at 6.5%	15.1611589
Capitalised value of the Term	= £0.00

Stage 2 – First Reversion

Entirety value	£140,000.00
Plot value @ 27.5%	£38,500.00
Modern Ground Rent at 5%	£1925.00
YP in 50 years at 5%	18.2559
PV of £1 in 67.2 years @ 5%	0.0376772
	= £1,324.06

[YP = 'Years' Purchase'; PV = 'Present Value']

Stage 3 – Second Reversion

Standing House Value	£130,000.00
Less Schedule 10 rights @ 5%	£6,500.00
Adjusted Value	£123,500.00
P.V of £1 in 117.2 years @ 5%	0.00328559
	= £405.77

Total: £1,729.84

But, Say

£1,725.00

Other orders

35. The Tribunal is also invited, by way of an application form LVT10 dated 11 June 2014, to determine part or all of the provisions which ought to be contained in the conveyance, pursuant to section 21(2) of the 1967 Act. However, Box 9 of the form refers to an ‘attached TR1’ which was not attached to the LVT10 which was before the Tribunal for consideration.
36. Whilst there is a draft TR1 attached to the valuation report, it contains many gaps, which, without a hearing, the Tribunal does not consider it appropriate to fill. Box 12 is expressed to be for execution by the First-Tier Tribunal (Property Chamber). That is a different tribunal. Moreover, there is no extant Order (whether of the Court, or of this Tribunal) which would authorise the execution of this TR1 by the Tribunal.
37. Given that the claim made in the County Court included (i) a claim for a declaration vesting the freehold in the Claimants thereto, which declaration has not yet been made, and (ii) a claim for an Order under section 27 of the 1967 Act, which order has not yet been made, and moreover that the learned District Judge (having heard submissions from the Claimants’ solicitor) adjourned those proceedings only for an application for the price to be determined (that is, without making reference to any other application) we do not consider it appropriate to make any further order in this Application, or to make any order as to the terms or provisions of the conveyance or transfer.
38. The Tribunal does however direct that a copy of this Decision and Reasons be placed before the Judge at any renewed hearing of the claim.

Dated: 5 November 2014



Dr Christopher McNall
Lawyer-Chairperson