

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL (WALES)  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0013/06/16

In the Matter of 42, Esplanade House, Porthcawl, Bridgend, CF36 3YE

In the Matter of an Application under s. 48 of the Leasehold Reform, Housing and Urban Development Act 1993

TRIBUNAL	AVS Scott Chair R Baynham FRICS
APPLICANT	Mr. and Mrs. Down
RESPONDENTS	Esplanade Porthcawl Limited

**ORDER**

1. We were duly convened as a Leasehold Valuation Tribunal on 31 August 2016 at Great House Hotel, Bridgend. We had before us an application by Mr. and Mrs. Down (the Tenants), on 2 February 2016 for the Tribunal to determine the price payable for a new lease of Flat 42, The Esplanade, Porthcawl (the Property). On that date, the Tenants had served Notice of Claim on the owner of the reversion to the lease, Esplanade Porthcawl Limited, under S. 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The Landlord served a Notice in reply on 6 April 2016.

**BACKGROUND**

2. Rees Wood Terry, solicitors, on behalf of the Tenants, in the Notice of Claim, proposed a 90 year lease from the expiry of the present lease, at a pepper corn rent for a premium of £2,000. Whittinghams, solicitors, on behalf of the Landlord, in its counter notice on 6 April 2016 proposed a premium of £4,500. Pursuant to a direction of the Tribunal made on 21 June 2016, the parties exchanged valuation reports on 2 August 2016.

**THE LEASE**

3. The lease of the property is dated 9 September 2005 and was made between Redrow Homes (South Wales) Limited and Betty Ryan for a term of 125 years from 1 March 2004 at a premium of £215,000 and an annual rent of £150 subject to review. The demise includes a car park space. There is thus 113 years remaining with 9 years to the next rent review.
4. The rent is subject to a review on each twenty first anniversary of the commencement date and shall be the sum of the rent plus such sum as shall be the difference between the review value of the building and the first value of the building.

**VALUATION REPORTS**

5. Mr. Martin Cotsen, FRICS, prepared a valuation report on behalf of the Tenants. He expressed the opinion that valuers could not be expected to predict how property values would change when considering the value of the property at the rent review date. He

pointed to the fact the builder of the development had offered all lessees the opportunity to purchase the freehold for £85,000. A majority (20), but not all, became members of the RTE Company Esplanade Porthcawl Limited and had granted themselves 999 year leases at a peppercorn rent. New lessees would not be able to join that company and could only seek a statutory extension of their lease under the Act and at least two had done so. There were therefore three different classes of lessees. In addition, as there were three different types of flats within the building and different values depending on floors, it would be "excessively difficult" to put a value on the flat in 9 years' time. He accepted values might go up over a 21 year period but following the property market depression in 2008, prices achieved in 2005 were above current prices.

6. Mr. Cotsen had not included the value of the reversion in his calculations as he took the somewhat surprising view that the development would not survive for a further 113 years. He justified this view on the basis of a property nearby, Dunraven Court, built by a housing Association in 1971 which lasted only a short time before it had to be demolished due to corrosion of the steel infrastructure.
7. Mr. Cotsen valued the ground rent at £2,071 (YP in perpetuity @7.5%, 13.8095) and therefore proposed a premium for the new lease at that sum.
8. Ms. Hilary Evans, MRICS, produced a valuation report on behalf of the Landlord. She valued the current ground rent of 9 years purchase at 5%, 7.1078 at £1,066. She considered the ground rent after the rent review should be increased by 20% to £180 a year in view of the provisions of the rent review clause in the lease. 104 years purchase at 5% (20) and PV of £1 in 9 years (0.64461) gave a figure of £ 2,321.
9. Ms. Evans considered the value of the reversion to be £906, calculated by reference to a present value of £225,000 with a PV of £1 in 113 years at 5% (0.00403). The diminution in value of the freehold was thus valued at £4,293. She rounded this to £4,500.
10. Ms. Evans justified the 20% increase in the ground rent by reference to the increase in local property values between the commencement date of the lease and the valuation date. Any further increases in property values by the time the rent review was due were reflected in the capitalisation rate adopted based on the cases of *Sportelli and Baikie and Baikie v Roberts and Thain*(LON/OOAF/OLR/2014/1209) even though long term interest rates had dropped since the former case. In the latter case, concerning a flat in Bromley, the tribunal had held that while a capitalisation rate of 7% might be appropriate for small rents with modest increases, this was not the case where increases in the rent were linked to changes in the value of the premises and used a capitalisation rate of 5%.
11. Ms. Evans set out an alternative valuation on the basis that there had been no increase in property values since the commencement of the lease. In her view this was unrealistic but the calculation produced a figure for the diminution of the value of the freehold of £4,050.
12. The value of the freehold interest was based on comparables in the development. The Tenants had acquired the Property in October 2013 for £201,500. No 29 (third floor, two bedrooms) had been sold in December 2015 for £275,000 and no 6 (first floor, two bedrooms) had been sold in February 2016 for 270,000. The Tribunal were told this flat had the benefit of a 999 year lease.

## INSPECTION

13. Prior to considering the application, the Tribunal inspected the Property internally and externally. The Property is on the fourth floor of the development, a purpose built block of 42 flats on the seafront. The communal entrance gives access to the flats via a lift with an open corridor to the entrance to the Property. The Property is about 69m<sup>2</sup> with living room and kitchen area, two bedrooms with one en-suite and a separate bathroom. It has extensive views from the balcony. Mr. Down also arranged for the Tribunal to inspect the penthouse above and a one bedroom flat on the first floor.

## THE HEARING

14. This took place immediately after the inspection when the Tribunal heard submissions from Ms. Evans and Mr. Cotsen. The Landlord was represented by a director and Mr and Mrs Down and their son (who owns the lease of the one bedroom flat on the first floor inspected by the Tribunal) attended the hearing.

15. In respect of the reversion, Ms. Evans clarified that there was a well-known building defect in Dunraven Court which had caused its early demolition. The development in which the Property was situated was well maintained and insured and there was no reason why it should not still be in existence at the end of the term. She also produced an alternative calculation based on an increase in the ground rent of 10% to £165 a year after the review, of £2,127 so that the diminution in value of the freehold was £4,100. She also corrected the current ground rent value in her first valuation to £1,006.

16. Mr. Cotsen told the Tribunal he had negotiated the new leases for both Mr. Down and another tenant at premiums of £2,000. The valuer representing the Landlord had accepted his calculations. However, the Tribunal noted Mr. Down's flat was only one bedroom.

17. The Tribunal also noted that a two bedroom flat had sold in March 2016 for £172,500.

## VALUATION METHOD

18. Under Schedule 13, Part II of the Act, the premium payable in respect of the grant of a new lease shall be the aggregate of -

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 2 and*
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4 and*
- (c) any amount of compensation payable to the landlord under paragraph 5.*

19. Pursuant to paragraph 3, the diminution in value of the landlord's interest is the difference between-

- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and*
- (b) the value of his interest in the flat once the lease is granted.*

20. As the remaining term of the lease was 113 years, there was no marriage value to be determined (paragraph 4 (2A) of Part II of Schedule 13 to the Act) and there was no compensation payable under paragraph 5. These matters were not in dispute between the valuers.

## FINDINGS

21. In respect of capitalisation of the current ground rent, Ms. Evans had used 5% on the basis of the *Baikie* case and Mr. Cotsen used 7.25%. Capitalisation rates were accepted as being much lower in London than elsewhere and the Tribunal considered a rate of 6% appropriate where the ground rent was much higher and there was at least the possibility of an increase in the ground rent at the rent review date.
22. The Tribunal did not accept that there would be no value in the reversion at the end of the term for the reasons submitted by Ms. Evans. Instead, the Tribunal considered what the capital value might be and then deferred it for 113 years. The flats had sold well following completion though the Tenants had bought the property for £201,500 in 2013. Whilst there were a number of factors affecting values, based on the evidence of recent sales, there had been some increase recently. The Tribunal considered a value of £210,000 to be appropriate.
23. In response to a question from the Tribunal, Mr. Cotsen agreed that the appropriate deferment rate, had he accepted there to be a virtual value, would be 5%.
24. The Tribunal therefore calculated the premium for the new lease as set out below.

Ground rent	£150	
Y.P. for 113 years at 6%	<u>16.643</u>	£2,496.45
Value of virtual freehold	£210,000	
P.V. of £1 in 113 years at 5%	0.00403	<u>£846.30</u>
..		
Premium		£3,342.75
<b>Say</b>		<b>£3,345.00</b>

Dated this 29<sup>th</sup> day of September 2016



Chair