

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0015/07/17

In the matter of number 9 New Road, Trebanos, Pontardawe, Swansea, SA8 4DL

And in the matter of an application under the Leasehold Reform Act 1967

TRIBUNAL: Timothy Walsh (Chairman)
Roger Baynham (Surveyor)

APPLICANTS: (1) Gareth Llyr Morgan
(2) Sinead Catherine Gorman

RESPONDENT: Person(s) unknown

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. The Applicants, Mr Gareth Llyr Morgan and Mrs Sinead Catherine Gorman, are the registered proprietors of the leasehold property known as, and located at, number 9 New Road, Trebanos, Pontardawe, Swansea (“the Premises”). That leasehold interest is registered at HM Land Registry under title number CYM345142.
2. This decision concerns the Applicants’ application to the Leasehold Valuation Tribunal for a valuation of the premises under sections 9 and 21 of the Leasehold Reform Act 1967 (“the Act”).

The Lease and the Premises

3. The leasehold interest in the Premises was first registered on 1 May 2007 and the Applicants were registered as proprietors on 19 May 2016 having purchased that interest on 11 May 2016 for £74,950.00.
4. The material lease of the Premises (“the Lease”) is dated 6 September 1905 and the grant was for a term of 999 years from 25 March 1904; the original parties were John and Daniel Bowen (as lessors) and David Williams Davies (as lessee). Under the terms of the Lease the tenant covenanted to pay a yearly rent of £3/10s payable by equal half yearly payments on the 25th March

and 29th September quarter days. Post decimalisation that is a yearly rent of £3.50 payable as £1.75 on the traditional Lady Day and Michaelmas quarter days. There was no provision in the Lease for any rent review.

5. We were provided with details of the Lease in an Abstract of Title (that appears to contain the only particulars of the Lease available) and that, in fact, refers to two dwelling houses. Moreover, it is apparent that the Lease itself was a building lease which had permitted the erection of up to three dwelling houses. This is material because, as the HM Land Registry Official Copies of the Register confirm, the Lease contained or demised other land as well as the Premises registered to the Applicants. The rental covenant applied, of course, to all of the land so demised and not simply to that which comprises the Premises and is the subject of the present application.
6. This Tribunal had the benefit of inspecting the Premises which are, in fact, presently sub-let.
7. The Premises comprise a semi-detached house constructed over 100 years ago and the age of the Premises is, of course, consistent with the terms of the Lease itself. The house is conventionally constructed, having brick exterior walls which have been cement rendered, with a composite slate roof. A ground floor rear extension was obviously a late addition and that has a flat roof. The window frames and exterior doors are double glazed units. The accommodation on the ground floor comprises an entrance hall with a staircase leading to the first floor, a lounge, a dining room having a sizeable walk in cupboard and a kitchen which has recently been modernised to a high standard. On the first floor there is a landing, two double bedrooms, a single bedroom and a bathroom having a bath with a shower over, wash hand basin and a w.c. The property has the benefit of full gas central heating.
8. The front garden is laid to lawn with a concrete path and steps leading to the front door whilst also providing pedestrian access to the rear garden which is enclosed, is relatively large and is also laid as lawn. There is no garage nor any off-road parking. The overall condition of the house, both internally and externally, is good and it has been refurbished to a high standard.
9. The parcels clause to the Lease describes the plot originally demised as “40 perches or thereabouts” and so was about a quarter of an acre. It appeared to the Tribunal that the Premises do not occupy a plot of that size. Scaling from the filed plan for the Premises (always an inexact science given the limitations of the underlying OS mapping) would suggest that the Premises stand on around an eighth of an acre or roughly one half of the plot demised under the Lease.

The hearing and evidence

10. The hearing of this application took place on 19 December 2017. As at that date the unexpired term of the Lease was 885.24 years.
11. At the hearing, the Applicants were represented by Ms Charlene Jenkins of Messrs Sam Hawking & Co. Solicitors of Port Talbot. Prior to the hearing the Tribunal had only been supplied with an unsealed copy of the Claim Form by which the Applicants commenced proceedings seeking to acquire the freehold reversion to the Premises under the Leasehold Reform Act 1967. Ms Jenkins was, however, able to confirm that the claim had been issued on 25 April 2017 under claim number DDDNT165. The proceedings were issued in the County Court sitting at Port Talbot.
12. The Claim Form did not name the freeholder because none could be identified. Rather, the Claim Form gave particulars of the efforts that had been made to locate the owner of the reversion. The matter was referred to the District Judge who declined to make any order. Instead, the Court wrote to the Applicants on 6 June 2017 relating that: "*The District Judge states that you must refer this [matter] to the Residential Property Tribunal for a valuation of the freehold*". Further to correspondence from the Applicants, the Clerk to this Tribunal wrote to the Applicants on 17 July 2017 explaining that it is usual for the Court to make an order referring the matter to the Leasehold Valuation Tribunal once it had made a determination that it was satisfied that all appropriate steps had been taken to trace the missing landlord. No order has been forthcoming because of the Court's articulated position in the letter of 6 June 2017. In the opinion of this Tribunal, a Court order will usually be appropriate *before* the Leasehold Valuation Tribunal values premises in order to avoid any possible procedural or jurisdictional issues. If a court order is not made first the whole process might, for example, transpire to be a waste of time and resources if the court were to subsequently determine that the Applicants were not eligible to acquire the reversion or had failed to take appropriate steps to trace the landlord.
13. Here, the procedural Chairman took a pragmatic approach and, on 10 August 2017, issued case management directions to bring this Application on for determination. Given the amounts in issue that was clearly the practical and proportionate approach and we have proceeded on the same basis.
14. Indeed, in accordance with the letter from the Court, on 23 July 2017 the Applicants had issued the present application in the Tribunal's standard Form LVT11, which is the appropriate application form to use when seeking a determination as to the price payable for the freehold reversion of a house under section 21(1)(a) of the Leasehold Reform Act 1967. In support of that application they subsequently filed a valuation of the Premises dated 14 September 2017 which had been prepared by a Mr Dylan William MRICS of Rees Richards and Partners following an inspection on 6 September 2017.

15. In paragraph 3.1 of his report Mr Williams expresses the view that the rateable value of the Premises as at 31 March 1990 would have been well below £500. At paragraph 15 of the report Mr. Williams then goes on to give evidence of a range of comparable properties in and around the Trebanos area which provide a bracket of £92,500 for a two-bedroom semi-detached property in Alltwen up to £150,000 for the nearby number 4 New Road which was a property in the same street which sold in March 2016. Whilst we note that all of the comparable properties sold for markedly more than the £74,950 paid for the premises in May 2016, we also note from the Claim Form that the Applicants purchased the Premises from a mortgagee in possession and so may very well have paid a reduced price. In the circumstances, we do not consider that the evidence of the value of comparable properties is any indication that the leasehold character of the property affected its value and nor, therefore, is this evidence that suggests that the reversion has any inherent value (beyond the capitalised value of the ground rent).
16. At paragraph 16 of his report, Mr Williams concurs in this view when he expresses the opinion that *“due to the length of the unexpired term, the freehold has no value aside from the ground rent”*. Mr Williams then proceeds to value the freehold reversion by capitalising the fixed ground rent in perpetuity at 6.5%. The present value of £1 per annum forever gives the “years purchase in perpetuity” which at 6.5% is accordingly 15.385. Mr Williams erroneously states that the years purchase is 15.384 and that the ground rent is £3.12 (it is actually £3.50) which he states produces a figure of £47.99 to which he adds 6 years of unpaid ground rent at £3.12 per annum (£18.72) giving a total of £66.72 which he rounds up to £67.
17. Adopting a lower percentage to calculate the years purchase obviously increases that figure and we drew Ms Jenkins’ attention to the decision of this Tribunal in the matter of *7 Austin Avenue* in Bridgend (LVT/0049/02/16) in which an experienced Tribunal, which included the Tribunal President, determined that in a case involving a 999 year lease in (broadly) this area the appropriate percentage to apply in calculating the years purchase was 5%. Ms Jenkins did not demur from the suggestion that that rate (5%) would also be the appropriate rate to apply here.

Discussion: The statutory provisions and valuation

18. Section 1 of the 1967 Act confers on the tenant of a leasehold house a right to acquire, on fair terms, the freehold of that house and premises where certain conditions are met. Where a qualifying tenant gives to the landlord written notice of his desire to have the freehold then, subject to the other provisions of the Act, section 8 provides that the landlord shall be bound to convey the freehold estate in fee simple absolute to the tenant at the price provided. The price so payable on a conveyance under section 8 is determined in accordance with the provisions of section 9 of the Act. Where the landlord cannot be served with notice of the tenant’s desire to acquire the freehold because he cannot be found then section 27 provides a statutory mechanism for the court to make appropriate orders so that the matter proceeds *“as if [the tenant] had at the date of his application to the court given notice of his desire*

to have the freehold". To facilitate the fixing of the price to be paid in these (and other) circumstances, section 21(1)(a) of the Act provides that the price payable for a house and premises under section 9 shall be determined by a Leasehold Valuation Tribunal. It is that narrow question alone that we determine in this decision.

19. When fixing the price under section 9 of the Act, there are different bases of calculation depending on the qualifying conditions under which the tenants claim the right to buy the freehold reversion. In the case of a house and premises with a rateable value which was not above £500 on 31 March 1990, the appropriate basis of valuation is generally that provided under section 9(1) of the Act and, in light of Mr Williams' evidence which we accept, we concur with him that section 9(1) is applicable here.

20. In its present form section 9(1) provides as follows:

"9(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be 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 the following assumptions-

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold; and if the tenancy has not yet been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below..."

21. By section 37(1)(d) the "relevant time" means, in relation to a person's claim to acquire the freehold, the time when he gives notice in accordance with the Act of his desire to have it. As noted above, in this case the proceedings were issued on 24 April 2017 and that is accordingly the valuation date which we adopt.

22. Hague on Enfranchisement summarises the usual elements of the section 9 valuation in these terms:

"The purchase price payable by the tenant for the landlord's freehold interest under section 9(1) as amended thus comprises and (subject as mentioned

below) in valuations made for the purposes of the Act, can be broken down into the following elements:

- (1) *The capitalised value of the rent payable under the tenancy from the date of service of the Notice of Tenant's Claim until the original term date;*
- (2) *The capitalised value of the section 15 rent payable from the original term date until expiry of the 50-year extension (due regard being had to the provision for review after the first 25 years of the extension);*
- (3) *The value of the landlord's reversion to the house and premises after the expiry of the 50 year extension, on the basis of Schedule 10 to the Local Government and Housing Act 1989 to the tenancy;*
- (4) *The value (if any) of the Landlord's right under section 17 to determine the 50 year extension for redevelopment purposes;*
- (5) *The effect of new easements and restrictive covenants in the conveyance;*
- (6) *The value (if any) of any other rights under the extended lease extinguished on the acquisition of the freehold..."*

23. Where the unexpired term is limited to mere decades, it is generally appropriate to adopt a three-stage process. First, the Tribunal will determine the value of the rent payable for the period of the unexpired term of the existing tenancy. Secondly, the Tribunal will capitalise the value of the rent payable under section 15 of the 1967 Act from the original term date until the expiry of the statutory 50 year extension. Thirdly, the Tribunal will assess the value (if any) of the ultimate reversion (see, for example, *41 Furzeland Drive LVT/0081/03/14*).

24. Where, however, the unexpired term of the lease is 885.24 years such an approach is not warranted. The reality is that the only value in the reversion is the right to receive the ground rent. Separately capitalising the value of the section 15 rent is inappropriate because the right to receipt does not arise until the original term date some 885 years hence. It accordingly adds no real value. Further, where the unexpired term is 885 years, the hypothetical purchaser would not include in his price any additional value for the house in excess of the capitalised ground rent in perpetuity because, in truth, the length of the term means that the reversionary interest does not have any significant value.

25. In the circumstances, and in accordance with the approach of this Tribunal in the matter of *7 Austin Avenue* (above), we proceed to value the freehold by capitalising the ground rent in perpetuity at an adopted rate of 5% with a resulting years purchase of 20. That produces a valuation for the entire plot of £70.00.

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| • Ground rent: | £3.50 |
| • Years purchase in perpetuity at 5%: | 20 |
| • Valuation: | £70.00 |

26. In our view that premium must, however, be discounted. As we have already observed, the Lease makes plain that up to three dwellings could be erected on a plot of a quarter of an acre. The Land Registry extracts confirm that the Premises do not occupy the whole plot demised in 1905 and the Abstract of

Title implies that two dwellings were probably erected and this is borne out by the fact that the Premises are part of a semi-detached block. From our inspection, and the available plans, the Premises appear to occupy about half of the land described in the parcels clause as 40 perches. As such, and doing the best that we can on the available evidence, it would seem that the ground rent should be apportioned rateably and so equally. Namely, the tenants of the Premises would be obliged to pay one half of the ground rent and the valuation should accordingly be halved to £35.00.

27. In respect of absentee landlord applications under section 27 of the Act, it is necessary for the Applicants to pay an "appropriate sum" into court under section 27(3) of the Act. Section 27(5) defines that as a combination of (a) the section 9 valuation by this tribunal and (b) the amount, or estimated amount, of any rent payable for the house and premises up to the date of the conveyance to be made under the Act. The question of the sum to be added to the valuation for these purposes is a matter for the Court although generally this Tribunal adopts a figure for unpaid rent that is limited to the six years in respect of which there would be no issue for limitation purposes under the Limitation Act 1980. Here, six years at half the apportioned ground rent equates to £10.50 and so produces an "appropriate sum" for the purposes of the Act of £45.50. Our order is, however, confined to a determination under sections 9 and 21(1)(a) of the Act.

ORDER

The Leasehold Valuation Tribunal determines that the price payable by the Applicants for the premises known number 9 New Road, Trebanos, Pontardawe, Swansea, SA8 4DL for the purposes of sections 9 and 27(5)(a) of the Leasehold Reform Act 1967 is £35.00.

DATED this 4th day of January 2018



CHAIRMAN