

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: 1038555

TRIBUNAL D J Evans LLB LLM
C Trotman Jones MRICS

In the matter of an Application under the Leasehold Reform, Housing and Urban Development Act 1993 dated the 2nd October 2012

PROPERTY Flat 12 and garage, Clos Hendre, Rhiwbina, Cardiff, CF14 6PN
APPLICANT Mrs Verena Ruth Jenkins
RESPONDENT Coffin Developments Ltd

DECISION

1 INTRODUCTION

1.1 We convened as a Leasehold Valuation Tribunal under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (the Act) at the Tribunal Offices, First Floor, West Wing, Southgate House, Wood Street, Cardiff on Wednesday the 9th January 2012. We had before us an application by Mrs Verena Ruth Jenkins (the Applicant) to determine the premium payable to Coffin Developments Ltd (the Respondent) for the acquisition of a new lease of Flat 12, Clos Hendre, Rhiwbina, Cardiff (the Property) together with the garage in accordance with the terms of Schedule 13 of the Act.

1.2 The Property is held on a lease dated the 30th May 1963 for a term of 99 years from the 25th March 1961 and made between Beulah (Cardiff) Investment Ltd (1) and Douglas Jones (2) at a yearly ground rent of £18. The Applicant's leasehold interest is registered at the Land Registry with Good Leasehold Title under title number WA239242.

1.3 The Applicant served Notice of Claim on the 5th July 2012 in which she proposed a premium of £10,000. The Respondent served a counter notice on the 24th August 2012 accepting the Applicant's right to acquire a new lease, rejecting the Applicant's proposed premium but putting forward a counter proposal of £21,000.

1.4 At the time of the Notice of Claim, there were 47 years and 9 months approximately left unexpired on the lease (the parties agreed to use the figure of 47¾ years in the calculations). The new lease, therefore, would be for just under 138 years.

2 INSPECTION

2.1 Prior to hearing, we inspected the Property and garage. The Applicant's niece was present. Neither the Applicant nor the Respondent attended. We also inspected externally a number of the comparables referred to by the parties.

2.2 Clos Hendre is located in a residential area in north Cardiff known as Rhiwbina, an attractive area with a good range of housing of varying ages and types. It has local shops and good communications by bus and rail and easy access for the M4. Clos Hendre is principally a close of two and three storey blocks of flats with open plan front and rear gardens, communal landscaped areas and garages. They are set apart from each other and the two bedroom blocks have the appearance of semi detached houses giving the development a more spacious feel than many similar types of developments. Number 12 is on the first floor of a three story block which contains 12 flats of similar design. There is a communal entrance and staircase as well as a rear staircase leading to the garden area and the garage block behind. Most of the flats now have upvc double glazing although in the case of the Property, the seals have broken down in some windows. There are also upvc bargeboards, gutters and downpipes for ease of maintenance. Each flat has a designated garden area in the front leading from the block to the road. Each flat also has a section of rear garden. Neither the front or rear garden areas is clearly defined from visual inspection. The garage block is accessed by means of a private road which runs to the side and rear of the block and is in need of maintenance. The garage itself is very basic. It has no internal electric light so far as we could tell, but there is a security light outside.

2.3 The accommodation comprises two bedrooms (or as here one bedroom and a dining room), a living room, a kitchen and a bathroom. Leading from the living room is a small balcony to the front. The flat is centrally heated except for the kitchen. The kitchen has fitted units, a tiled floor and half tiled walls. The parquet floors and the artex ceilings rather date the Property as does the style of the kitchen units and the bathroom fittings.

3 HEARING

3.1 The Applicant was represented at the hearing by Mr Robert Morrell MRICS and the Respondent by Mr Kenneth Cooper FRICS. In accordance with the directions given, they had each submitted their reports.

3.2 The issues between the parties were as follows:

Issue	Mr Morrell	Mr Cooper
Capitalised ground rent	£325	£325
Extended lease value (with improvements)	£110,000	£128,000
Less improvements	<u>£11,000</u>	<u>£5,000</u>
Unimproved	£99,000	£123,000
Present value @	5%	5%
Relativity	86%	75%
Non-act value	£86,000	£104,548
Premium	£11,851	£21,524

Mr Morrell's initial report is dated the 30th November 2012. In it he valued the Property with the benefit of the extended lease at £120,000. From that he deducted what he referred to as 10%, in reality 7½% (£9,000) to calculate the unimproved extended lease value which he put at £110,000. Having received Mr Cooper's report which is dated the 7th December, Mr Morrell modified his figures in a supplemental report dated the 18th December 2012 and put the extended lease value with improvements at £110,000 from which he deducted 10% (£11,000) to achieve the unimproved extended lease value. We have applied Mr Morrell's modified figures in the above table. We shall deal with the issues in turn.

3.3 Capitalisation of the Ground Rent

As far as the capitalisation of the ground rent is concerned, the parties agreed the figure of £325 and we are happy to accept that.

3.4 Diminution in value of freehold

(a) The diminution in the value of the Respondent's interest is the difference between the value of the reversion prior to the grant of the new lease (assuming there is no right to extend the lease) and the value after the new lease has been granted. It is generally determined by calculating the value of an extended lease of the property in its unimproved condition.

(b) Mr Morrell referred us to three sales of flats in Clos Hendre. Number 74 (£124,500) is a ground floor flat in one of the two storey blocks whilst numbers 53 (£124,950) and 54 (£115,000) are on the top floor of a three storey block at the end of the cul de sac. Mr Morrell also referred us to number 7 Wenallt Court, Rhiwbina which sold for £127,000 and 8 Clos Hendre which is currently on the market for £127,000. He also mentioned 3, Felin Wen, Rhiwbina (£128,500), and 82, Clos Hendre which had had an asking price of £129,950 but which had recently been withdrawn from the market.

(c) Mr Cooper referred us to 3 Felin Wen, Rhiwbina and 7 Wenallt Court as well as providing us with more details of 8, 53, 54 and 74 Clos Hendre. In response, Mr Morrell referred us to Numbers 23 (£95,000) and 50 Clos Hendre (£115,000).

(d) One of the complications in valuation terms concerning some of the comparables is that the leases are not consistent. Some of the properties have been the subject of non-statutory extended lease terms. Lessees have agreed to pay a reduced capital sum in return for taking an 80 year lease and paying a higher, or in many cases, an escalating ground rent. One of the valuation issues between the experts is whether such an arrangement would affect the resale value of the leases, especially as the ground rent in most cases doubles every 15 years for the first 60 years. In his report, Mr Cooper states that "inevitably the extended lease value must be higher than the sale prices achieved for similar properties in Clos Hendre which are the subject to..." this arrangement. Mr Morrell argued that an owner occupier would not factor the escalating ground rent into the price he/she would be willing to pay for a flat. When pressed, he accepted that there might a difference in value, but as there was no comparable evidence, he did not think it would be more than 1% or 2% as the lessees would still have the right to a new lease. Mr Cooper agreed that the difference in the length of the term – 80 years as opposed to an extended lease of, say, 130 years - would make no real difference to the value. He produced a schedule which he had prepared for his client setting out the amount of premium which a lessee of a flat with an escalating

ground rent might have to pay to acquire a new statutory extended lease. He put the figure at £16,059. He accepted that this amount would not be the difference in value between the statutory and the non-statutory extended leases. There was after all a saving in the initial enfranchisement cost and reduced prices on subsequent sales which provided some savings for the lessees. He maintained that there was a difference and he had, therefore, adjusted the values of those flats with the non-statutory extended leases by £5,000 to take into account the fact that the extensions were non-statutory at escalating ground rents.

(e) Whilst we can see that for some people, having an extended lease at a higher ground rent and paying less for the privilege of having an extended lease has its attractions, particularly if the lessee is elderly or if he/she views his/her tenure as short term only and perhaps wishes to sell the property, the non-statutory extension with escalating ground rents – doubling every 15 years – is bound to have an effect on the market value. We agree with Mr Cooper's argument that some adjustment has to be made when comparing the prices achieved on the resale of such leases with the value of a statutory extended lease at a peppercorn rent. We also agree that the difference in value will not equate to the value of a further statutory extension to that lease.

(f) The combined evidence of the parties is as follows:

(i) 8 Clos Hendre

A two bedroom, 2nd floor flat with gas central heating, double glazing and with a single garage in a separate block. The lease is for 80 years from 2005 at an initial ground rent of £170 pa. The property is on the market at £127,000. The present owners are not in any hurry to sell. The agents consider that there would be more interest if the price were to be reduced to £123,000.

(ii) 23 Clos Hendre

A two bedroom flat, in need of repair, in a two storey block with a single garage in a separate block. There had been a leak through the chimney stack causing water damage. Re-decoration was needed. The seller had committed to purchasing another property. It was assumed that this property was on a non-statutory extended lease as there were 76 years left. The ground rent was probably escalating. The property has been sold subject to contract for £99,000.

(iii) 50 Clos Hendre

A 2 bedroom, ground floor flat with a single garage in a separate block. This has a new 80 year lease which the parties presumed to be at an escalating ground rent. The property was in reasonable condition and was sold in June 2012 for £115,000.

(iv) 53 Clos Hendre

A 2 bedroom, second floor flat with double glazing and central heating and with a single garage in a separate block. Again the lease was for 80 years, this time from the 24th March 2006 at an escalating ground rent starting at £170 pa. The property was said to be of very high quality and completely refurbished with a new fully fitted kitchen, modern radiators and a "beautiful" bathroom. It sold in July 2012 for £124,950. The flats in this block (at the end of the cul de sac) have a slightly different configuration, but the same number of rooms as in number 12.

(v) 54 Clos Hendre

A 2 bedroom, second floor flat with double glazing and a single garage in a separate block. This property, said to be in reasonable condition and décor, was sold for £115,000 in March 2012. Here, there was a new 99 year lease from September 2003 at a fixed ground rent of £120 pa.

(vi) 74 Clos Hendre

A 2 bedroom, ground floor flat with double glazing, central heating and a single garage in a separate block. The property was sold in September 2012 for £124,500. There was a new 80 year lease with an escalating ground rent starting at £300 pa.

(vii) 7 Wenallt Court

A 2 bedroom, ground floor maisonette with double glazing and central heating and a single garage in a separate block. It has a gross internal floor area of approximately 66.8 m² (compared with 57.2m² for the Property). The property has been sold subject to contract for £127,000, a previous sale for £135,000 having fallen through. A new lease is to be granted from completion. It will be for 80 years at an initial ground rent of £300 pa doubling every 15 years for 60 years.

(viii) 3 Felin Wen

A 2 bedroom, ground floor maisonette with double glazing, central heating and reserved parking only. The gross internal floor area is 59.56 m². Again there is a new 80 year lease with an escalating ground rent starting at £230 pa. A sale has been agreed at £133,000 subject to contract.

(g) The parties refer to other properties in their reports. In particular, Mr Cooper refers to properties in Harlech Court. He explained that they were not intended as comparables in connection with the valuation of the extended lease, but to provide assistance in the issue of the non-Act value of the existing lease. In the circumstances, we shall not deal with these properties at this stage. He also referred us to two properties in Lindway Court, Canton, Cardiff (numbers 10 and 17) where the value of the extended leases had been agreed with surveyors at £98,500 for a one bedroom flat and £116,000 for a two bedroom flat. He suggested that these values had been influenced by a slightly earlier mortgagee sale of number 9 Lindway Court, a one bedroom flat, at £66,500. He mentioned 2A Pentwyn Court, Whitchurch, Cardiff which had settled prior to the Tribunal hearing and where the unimproved extended lease value had been agreed at £105,000. Mr Morrell referred us to 15 Trewartha Court, Whitchurch, Cardiff where surveyors agreed an extended lease value of £105,000. He felt that the Canton properties, which were 4 or 5 miles away from Rhiwbina, should be disregarded and that less weight should be given to Pentwyn Court than to the sales achieved in Rhiwbina. Mr Cooper pointed out that the settlement agreed in Pentwyn Court would have been affected by the proximity of a hearing before the Tribunal. He also produced a letter from Ingram Evans Care who represented one of the parties in 15 Trewartha Court which stated that one of the parties had accepted a reduced premium in order to avoid the cost of a Tribunal hearing.

(h) We had inspected the properties in Clos Hendre as well as 7 Wenallt Court and 3 Felin Wen from the outside only prior to the hearing. We do not regard the properties in Canton or Whitchurch as providing much assistance, particularly when we have a number of more comparable properties in Rhiwbina, and in particular in Clos Hendre, to consider. Mr Morrell suggested that 7 Wenallt Court and 3 Felin Wen are in better locations. We agree. They are also bigger than the Property, 7 Wenallt Court significantly so. We do not regard them as being more than indicators of values in the general area. Even amongst the Clos Hendre comparables, there is considerable variance. Number 23 has been sold subject to contract for £99,000. However, this property has certain repair issues and the seller has committed himself/herself to a purchase. This is bound to affect the negotiated price. At the other end of the scale, number 53 sold for £124,950. That property had been completely refurbished and was in excellent condition. This would account for a premium price and would not in our view fairly reflect the general level of the market. However,

number 74 achieved £124,500. We have no information as to its condition. We had noted on inspection that this was within a two storey building which gave the appearance of the property being a house rather than a block of flats. Although both surveyors seemed to be of the view that such a consideration was not material when we suggested this to them, in our view it can be a deciding factor for some purchasers. The building certainly had a more spacious look to it. Numbers 50 and 54 both sold for £115,000. The latter had a 99 year lease at a fixed ground rent whilst the former had an 80 year lease at an escalating ground rent. These are, in our view more indicative of the main stream. There is no offer on number 8 and, whilst it is interesting that the agent considers £123,000 to be a more realistic asking price, that in itself is no indication as to the likely sale price.

(i) As well as adjusting for “extraordinary” factors, we must also take into account that all the comparables had actual ground rents and all but one of them increased every 15 years for the first 60 years of the 80 year term. Disregarding number 23 (£99,000) for the reasons mentioned above, we have a price range of £115,000 (numbers 50 and 54) to £124,500/£124,950. On the basis of the evidence, number 53 was in top class condition whilst number 54, the adjoining flat which was sold earlier in 2012 for nearly £10,000 less, was in reasonable condition. The Property is, as Mr Cooper points out, somewhat “tired” and we cannot see it selling for the same price as number 53. We also consider, from the point of view of “pavement appeal” that number 74 would be a more attractive purchase for many. In assessing the extended lease value of the Property, we consider that if it enjoyed the same terms as numbers 50 or 54 (and we appreciate that they are different) it would be valued in the region of £118,000. Making an adjustment for the fact that the property will enjoy a lease for 137¾ years at a peppercorn rent, we have concluded that the extended lease value for the Property with tenant’s improvements is £123,000.

(j) In order to achieve a value of the Property without any tenant’s improvements, it is necessary to discount the value of the Property by the value of those improvements. The parties agreed that the Applicant had been responsible for installing the double glazing and the central heating. Mr Morrell suggested that we should discount the improved value by 10% or £11,000. He told us that on today’s prices, central heating would cost £6,000 to £7,000 to install and the double glazing a further £3,000. He also mentioned that the bathroom suite had been upgraded including the addition of a plumbed in shower.

(k) Mr Cooper deducted £5,000. He argued that it was the value of the improvements, which had been carried out 16 years ago, which had to be taken into consideration and not the cost of carrying them out today. In his view, replacing the bathroom fittings or kitchen units did not constitute “improvements”. He thought that there might have been an electric shower over the bath originally. He attributed £3,000 to the double glazing and £2,000 to the central heating. The system was not extensive and the flat was small. Mr Morrell suggested a compromise figure of £7,000.

(l) Paragraph 3(2)(c) of Schedule 13 to the Act requires us to disregard “any increase in the value of the flat which is attributable to any improvement...” Neither the cost of any improvement carried out many years ago nor its cost today has much bearing on the value of that improvement in the market. Even in today’s market, we find Mr Morrell’s figures high. We agree with Mr Cooper that the Property is a small flat and the central heating system is not extensive. Whilst the double glazing includes a “picture” window, we cannot see that the total value of these improvements is more than £5,000. We also agree with Mr Cooper that the upgrading of the bathroom fixtures and replacement of the kitchen units are not really “improvements”. In any event, they do not add any significant value to the Property. As far as the shower is concerned, we are not satisfied on the evidence

whether there was one there when the lease was granted or not. Again, we cannot see that it would make any material difference to the “value” of the Property.

(m) On balance, we prefer the evidence of Mr Cooper and so we determine that the value of the improvements to the Property is £5,000. The unimproved value of the Property is therefore £118,000.

3.5 Deferment rate

(a) The parties agreed a deferment rate of 5% in order to achieve the present value of the reversion.

(b) The unimproved extended lease value of £118,000 deferred for 47¾ years at 5% (0.0973439) is £11,487, to which must be added the agreed capitalized ground rent of £325 to determine the value of the freehold interest, namely £11,812.

(c) Mr Morrell has deducted a notional value of the reversionary freehold interest - £118. Bearing in mind that the reversion is subject to a 137¾ year lease at a peppercorn ground rent, we cannot see that there would be any market for this. Consequently, we determine that the value of the reversionary interest after the grant of the extended lease is nil.

3.6 The Unimproved Non-Act Value of the Property

(a) To ascertain the leasehold value of the flat in its unimproved condition and on a non-Act basis – ie without the statutory right to an extended lease, as required by Schedule 13 of the Act – Mr Morrell has deducted 14% of the current market value of the unimproved extended leasehold interest (£99,000) producing a figure of approximately £86,030. He has taken the figure of 14% from the College of Estate Management (CEM) graph of relativity published in the RICS report in 2009. He states in his report that the CEM data were taken from Leasehold Valuation Tribunal (LVT) decisions in England and Wales excluding central London. He produced a copy of the graph. He accepted that the data were obtained between 1994 and 1999 – ie the data were 13 years old – but he considered that they were based on a broad geographical spread.

(b) Mr Cooper submitted that the non-Act value was 75% of the extended lease value (£92,250). He had also used relativity graphs to achieve this figure although he did not like using them. He told us that for a lease with 47¾ years remaining, the Leasehold Advisory Service graph showed a relativity of 78%. This was the graph accepted by the Upper Tribunal (Mr Francis) in *Coolrace and others* [2012] UKUT 69 (LC) as it was “a broad geographical analysis of a large number of LVT decisions”. Beckett and Kay’s 2011 graph for Greater London and England showed a relativity of between 72% and 75% whilst the Nesbitt & Co graph showed a figure of 73½%. He informed us of Beckett and Kay’s comments that the recent restrictions on mortgage lending were having the effect of lowering the relativity figures.

(c) Mr Cooper also referred us to the settlements achieved in the last few years with experienced Cardiff chartered surveyors - Graham Griffiths, Martin Cotsen and Marc Williams. The two flats in Lindway Court, Canton, to which we referred earlier, resulted in differentials of 22.4% and 23.8% where the unexpired lease term was 60½ years. In 2A Pentwyn Court a differential of 20.66% was negotiated for a lease with 50 years unexpired. Mr Cooper considered that the impending Tribunal case will have affected that negotiation (the so called Delaforce effect). He also referred us to the two sales in

Harlech Court, Curlew Close Whitchurch, Cardiff, mentioned in his report. He argued that in the non-Act world, with no protection, a flat with less than 50 years remaining would not be mortgageable. We agree. A cash purchaser would require a substantial reduction. Number 23 Harlech Court was sold to a cash purchaser for £53,000. There were only 54/55 years remaining on the lease. Number 1, Harlech Court was sold with a statutory extended lease for £68,000. He submitted that this differential of 22.06% was indicative of what the theoretical market would do in the non-Act world. We find this evidence persuasive.

(d) We do not accept Mr Morrell's view that the non-Act unimproved value is only 14% less than the unimproved extended lease value. The only support for this figure was the CEM graph which as Mr Cooper pointed out was based on data which, although drawn from a wide geographical area, were 13 years old. The CEM graph appears to be at odds with the other graphs, particularly the Leasehold Advisory Service graph upon which Mr Cooper relies and even that may be a little out of date taking into account the current mortgage climate.

(e) We must, however, approach these graphs with caution. To a certain extent they are a self-fulfilling prophecy – the more they are relied upon, the more accurate they become. They are drawn from negotiated settlements or LVT decisions or both. The former rely upon the relative skills of the surveyors and, sometimes, the stubbornness of the parties. The latter are based upon evidence which sometimes, sadly, is in short supply. In fairness, Mr Cooper has responded to the Lands Tribunal's decision in *Arrowdell Ltd –v- Coniston Court (North) Hove Ltd* [2007] RVR 39 and provided us with evidence of actual negotiated settlements and of the difference in sale price achieved in the case of two properties in the same block, one with the original term remaining and the other with an extended lease. Of course, we do not know if there were any other issues determining the price of each, but it is indicative of how the market views these situations.

(f) On balance, we accept Mr Cooper's argument. Whilst Mr Morrell's case is based solely upon the CEM graph, Mr Cooper's figure of 75% is within the ambit of the graphs produced. His evidence of negotiated settlements locally suggests to us that a differential of 25% is in the right region and the evidence of the sales at Harlech Court again lends support to his view. Upon the basis of the evidence adduced by the parties, we therefore determine that in this case it is appropriate to adopt Mr Cooper's approach and apply his relativity figure of 75% making the unimproved non-Act value £88,500.

4 DETERMINATION

We make the following determinations:

- 4.1 The unimproved value of an extended lease of the Property is £118,000.
- 4.2 The agreed deferment rate is 5%.
- 4.3 The present value of £118,000 is therefore £11,487.
- 4.4 The diminution in the Respondent's interest is £325 + £11,487 = £11,812.
- 4.5 The unimproved non-Act value of the present leasehold interest is £88,500.
- 4.6 To this figure we must add the value of the Respondent's interest prior to the grant of the extended lease, namely £11,812, making the total of the separate interests £100,312.
- 4.7 This is to be deducted from the value of the extended leasehold interest, namely £118,000, producing a marriage value of £17,688. In accordance with paragraph 4(1) of Schedule 13 of the Act, the marriage value has to be divided equally between the freeholder and the leaseholder. One half of the marriage value is, therefore, £8,844.

4.8 The premium payable is the sum of the diminution of the Respondent's reversionary interest (£11,812) and the one half of the marriage value (£8,844), namely £20,656, say, £20,650.

5 SUMMARY

Diminution in value of Respondent's interest

Ground rent - £18.00 pa - agreed at		£ 325
Extended lease with improvements	£123,000	
Less improvements	<u>£5,000</u>	
Unimproved extended lease	£118,000	
PV of £1 deferred 47¾ years @ 5%	<u>0.0973439</u>	<u>£11,487</u>
		<u>£11,812</u>

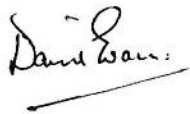
Respondent's share of Marriage Value

Unimproved extended lease	£118,000	£118,000
Relativity @ 75%	<u>£29,500</u>	
Unimproved non-Act value	£88,500	
Value of existing reversion	<u>£11,812</u>	<u>£100,312</u>
Marriage value		£17,688

One half		<u>£8,844</u>
		£20,656

PREMIUM PAYABLE say £20,650

DATED the 31st day of January 2013



CHAIRMAN

