

Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0066/01/14

In the Matter of 34 Ninian Road, Roath, Cardiff, CF23 5EG

In the matter of an Application under Section 24(1) Leasehold Reform, Housing and Urban Development Act 1993

TRIBUNAL Chairman: Richard Payne LLB M Phil
 Surveyor : Roger Baynham MRICS

APPLICANT Hafod Housing Association Limited

RESPONDENTS Freehold Portfolios GR Limited.

HEARING: 14th May 2014

ORDER

The price to be paid for the premium for the purchase of the freehold of 34 Ninian Road, Cardiff is £100,562.

Reasons.

1. By an application form dated 9 January 2014, the Applicant sought the Tribunal's determination on the extent of the freehold property to be subject to collective enfranchisement, the amount payable as the purchase price and the indemnity provision in the conveyance. At the hearing, the Tribunal benefited from appearances by the expert chartered surveyor witnesses on behalf of the parties, Mr Marc Williams FRICS for the Applicant and Mr Geraint Evans FRICS for the Respondent. The experts had exchanged valuation reports and much of what had previously been at issue had been agreed. The Tribunal wishes to formally record its thanks for the assistance provided to it by Mr Williams and Mr Evans and for the helpful and co-operative manner in which they conducted themselves at the hearing.

Background.

2. The original lease for 34 Ninian Road (the premises) was dated 11 January 1960 and was for a term of 80 years from 29 September 1959 between Western Ground Rents Limited and Clifford Isaac Morgan at a rent of £17.10s. The property register for title number WA351516 included with the application, records as follows "NOTE: the original lease was stolen prior to first registration. No copy of the lease is held by Land Registry. "Therefore, throughout

this matter the applicants did not have a copy of the original lease until, curiously, the date of the hearing. Mr Evans explained that he remembered many years ago preparing a statutory declaration with regard to the lease of another property in Ninian Road owned by the same freeholder and he had returned to his archives to see if he could locate this believing that it may be of assistance in this case. By extraordinary good fortune, the statutory declaration in relation to the other lease had been based upon the lease for 34 Ninian Road and a copy was in Mr Evans archives, unbeknownst to him, all this time. Mr Evans quite properly referred it to his instructing solicitors Stevensons, as a matter of urgency and they faxed a copy of the lease to the Tribunal on 13 May 2014.

3. By a licence dated 5 August 1974 between British Petroleum Pension Trust Ltd and the Cardiff Civic Housing Association, permission was given to the latter tenant to carry out works to the premises and to convert and use the premises as three self-contained flats. The tenant also covenanted to pay to the landlord by way of additional rent the sum of £52 per annum to be paid half yearly in arrears on the 25th day of March and 29 September. Hafod Housing Association subsequently became the proprietor/leaseholder on 20th October 1986 succeeding Cardiff Civic Housing Corporation.
4. By a lease dated 30 October 2002 in relation to the ground floor flat between the landlord Freehold Portfolios GR Limited and the tenant Christine Brewer, the landlord let the ground floor flat for a term expiring on 28 September 2129 for a premium of £9000. This lease included the obligation upon the tenant to return possession of the property to the landlord at the end of the lease in the state in which the tenant was required to keep the property. Included with the application to the Tribunal was the office copy entry for title number CYM101728, namely Flat 1, 34 Ninian Road (the ground floor flat) dated 7 January 2014. This showed that Flat 1 had been sold on 16 March 2011 for £180,000. This flat remains in private ownership.
5. The other two flats at the premises, namely the First Floor flat (Flat 2) and the Second Floor flat (Flat 3) remain in the leasehold ownership of the Applicant and are currently tenanted.

Inspection.

6. The Tribunal inspected the premises at 10:00 AM on 14 May 2014 when the weather was fine and dry. The premises were inspected externally and internally in the common parts and, with the cooperation of the tenants, the 1st and 2nd floor flats. Despite making enquiries, it was not possible to inspect the privately owned ground floor flat. The Tribunal were accompanied upon the inspection by Mr Williams and Mr Evans who did not enter the 1st floor flat with the Tribunal members but did enter the 2nd floor flat.
7. 34 Ninian Road is a three-storey mid terraced property that has been converted into three self-contained flats. It is built of solid stone and masonry walls under a slate roof. It is well situated, being a short walk away from the shopping centres at Wellfield Road and Albany Road and being directly opposite Roath Park recreation ground. There is a modestly sized front garden largely laid to paving with a small flowerbed, and at the rear there is a plain concrete back yard that contains some basic garden furniture, with a locked door leading to

the rear lane. All three flats have access to the backyard, the first and second floor flats via a spiral steel staircase that is also the fire exit.

8. The First Floor flat (Flat 2) has a corridor leading to the back of the property off which to the left are the bathroom with a shower over the bath, toilet and basin, a second smaller bedroom (that was full of the tenant's mechanical workings on inspection) and the main bedroom at the back that looks out over the rear yard. There was damp noted at the top right hand side of this room looking towards the rear. Doubling back past the front door and a step and another corridor leads to the kitchen on the right from which a metallic spiral staircase and fire escape leads to the back yard. This was concreted over and had a table and chairs and a small flower bed. The front room of Flat 2 is a large lounge/ sitting room with sash windows overlooking Roath Park recreation ground.
9. A further staircase outside Flat 2 leads to Flat 3 on the second and top floor. This flat has a small hallway/landing from which immediately opposite the front door is a small narrow kitchen with one small window. There is a small bathroom containing bath, basin, toilet and skylight. The flat has gas central heating and the boiler is housed in cupboard off the landing. There is one bedroom from which a door opens externally to the fire exit and spiral staircase that continues past Flat 2 to the rear yard. The bedroom has wooden flooring and wardrobes along one side and the ceiling was plain and undecorated. The living room has what appear to be the original sash windows in poor condition allowing views over Roath Park. There is a fireplace in addition to the radiator. The living room, kitchen and bathroom were effectively in the eaves of the building and had sloping ceilings internally as a result.

The hearing

10. Before hearing evidence from both parties the Surveyors agreed to some minor, and one major change in their respective valuations. It was agreed that the value of the term was £860 and that the value of the ground floor flat was £630, (the Applicant had originally suggested £630 and the Respondent £633). In addition, the final reversion in the Applicant's valuation of £365 per flat should be disregarded. Mr Evans for the Respondent had previously been unable to gain access to Flat 3 but was able to do so on the day of the inspection and hearing and he subsequently amended his figure of £150,000 downwards to £135,000. In addition there were small arithmetical errors in both calculations. The net result of these changes was that the Applicant's valuation of the premium increased to £85,370 (from £85,310) whereas the Respondent's valuation of the premium decreased to £120,462 (from £126,522).
11. To summarise, the matters that were agreed by the parties and that did not require a determination from the Tribunal were;
 - a. The valuation date was 15th May 2013
 - b. The unexpired term was 26.37 years.
 - c. The ground rent is £69.00 per annum.
 - d. The reversion for the Ground Floor Flat was agreed at £630.
 - e. The deferment rate was 5% and the capitalisation rate 6.5%.

- f. Marriage value was to be apportioned equally.
12. Matters that remained at issue were the value of the extended lease in existing condition without improvements or expressed by Mr Evans as the freehold value with vacant possession (FHVP). The Applicant contended that for Flat 2, the first floor flat, this was £125,000, whilst the Respondent valued this at £177,000. For the second floor flat, Flat 3, the Applicant valued this at £105,000 and the Respondent at £135,000 (down from £150,00 as explained above). In addition, Mr Williams argued for a relativity figure of 55% and Mr Evans for 51.08%. Mr Williams therefore argued for a premium of £85,370 for the freehold and, after adjusting his original figures, Mr Evans submitted that the figure ought to be £120,462.

The expert evidence before the Tribunal.

13. Mr Williams for the Applicant relied upon his report dated 11th February 2014 and the following additional submissions. He said that 34 Ninian Road ("the property") was one of the smaller houses on Ninian Road. He said that despite carrying out extensive research on the websites 'Rightmove' and 'Zoopla' in addition to examining his own firm's records there were very few sales by way of comparable evidence and he also drew a distinction between what he called apartment sales as opposed to basic flat sales.
14. For Flat 2, he referred to the comparable of 76 Ninian Road, which sold in July 2013 for £190,000. This was a large ground floor flat, with a garage, in a more substantial semi detached house. Mr Williams referred to 4B Ty Draw Road which is on the other side of Roath Park Recreation ground, which is a 2 bedroom flat which sold in January 2013 for £175,000. The particulars showed this to be a flat in exceptional condition with a private balcony. He said that he had included this one as there were so few comparables available.
15. There was also a two bedroom second floor flat at 18 Ninian Road which had sold twice, once for £128,000 in October 2011 and again in February 2014 for £157,500. Mr Williams stated that Flat 2 in the property was a very basic flat even when taking out the occupier's furnishings and considering it in an unimproved state. He contrasted this with flats at Park View Ninian Road which he said had been developed and improved to a very high standard and the quality was quite exceptional to justify the £178,000 in June 2012 and £185,000 that were recorded in Mr Evans' report. He urged the Tribunal to distinguish these properties from the subject property.
16. With regard to Flat 3 on the second floor, Mr Williams said that there was very little comparable evidence available. He referred to a one bedroom flat at 66D Ninian Road in good condition that sold for £93,000 in July 2011 which had 63 years unexpired of the lease term. He said that this needs adjusting so that the freehold figure would be estimated at £115,000. He had found and referred the Tribunal to other one bedroom flats in the locality, available for £109,950 and £105,000 in Penylan Road, and a one bedroom flat in nearby Hendy Road available for £99,950. He said that there were one bedroom flats available at the time of the hearing nearby for between £99,950 and £94,000. Mr Williams referred to the two bedroom flat in Stonewall Court in Penylan mentioned in his report for £112,000 but conceded that this may be a 'red herring' since it was a retirement flat for those aged

55 plus, but he maintained that it was still an indication of values in the area. With regard to the one bedroom flat comparables that he had mentioned, he stressed that details of the remaining lease terms were unknown.

17. Mr Williams referred to the Beckett and Kay 'graph of graphs' which suggested a relativity of 55% and referred in his report to the Coolrace case suggesting reliance on a composite graph rather than a single graph that may be unreliable. (Coolrace Ltd and others [2012] UKUT 69 (LC)). Mr Williams provided the Becket and Kay graph dated 2011 in support of his figure.
18. Mr Williams also stated that Flats 2 and 3 were not apartments. He said that to get up to the level of apartments then a lot of money would have to be spent. He referred to them being part of a social housing scheme and stated that he had been brought up on Ninian Road and knew the area well. He said that when the lease was granted that he was a student in Cardiff and the area was "bedsit country". He suggested that the original features would have likely been removed and, with the modern taste for original style features, they would most likely have to be put back in and viewed as improvements.
19. Mr Evans for the Respondent relied on his report and written submission dated 13th February 2014. He also provided some further history from his own knowledge and previous employment with William Ricketts as long ago as the summer of 1979 and then in the early 1980's. He said that when the 80 year lease was granted by Western Ground Rents dated 11th January 1960, the premium of £100 and the annual ground rent of £17 and ten shillings were serious considerations and reflected the value of the building. He stated that at the time this would have been a "beautifully presented merchant's house" and there was an obligation under clause 8 of the lease to return it at the end of the term to yield up the property in good condition and repair. Indeed the obligations to keep the demised premises in good condition, decoration and repair were at clauses 6 and 7 of the lease.
20. Mr Evans stated that the licence of the 5th August 1974 to convert the premises into three flats made no mention of social housing and was intended to be for private flats not sheltered or social housing. He said that his view was supported by the tenant of the ground floor flat selling it for a premium in 1993 and making a profit from it. With regard to the comparable valuation evidence and in response to Mr Williams' submissions, he described as "the elephant in the room" the sale of the ground floor flat. His report describes how it had been offered for sale at an asking price of £195,000 and that although as at the date of his report it was still being marketed for £189,950 he said that he understood that in fact a sale had been agreed for £181,000 with exchange of contracts on the 14th February 2014.
21. Mr Evans amplified upon his report which recorded that the ground floor flat at 34 Ninian Road had been sold three times, firstly in June 2003 for £128,000, secondly in March 2011 for £180,000 and thirdly in February 2014 for £181,000. He submitted that we are to look at valuation issues in a theoretical 'No Act' world, and yet there is no such evidence as "*all market evidence must, by its very nature, be considered in a world where the Act applies*". In respect of the ground floor flat, there had been a previous lease extension and the remaining term expired on 28th September 2129 and the 2013 sale therefore would not have been valued in a "no Act world" as a virtual freehold but as demised premises with a term of

over 116 years. Mr Evans submitted that *“the value is increased ...by 1.5% to allow for the property not being a virtual freehold and being transacted in a world where the benefit of the 1993 Act is available to the tenant. This provides a “starting point” of £183,715.”* He suggested that £184,000 would be the correct price at the time of the valuation.

22. Mr Evans pointed out that the ground floor flat’s particulars referred to a cellar but that he did not consider this to be habitable space and was likely to be a simple corridor. He believed that this added £5,000 when compared to the other properties in the building but he revised downwards his starting point to £178,715. He also explained that in his valuations that he had made allowances for improvements and suggested that we were concerned with the effect of the value of improvements to the structure only. He distinguished what he described as ‘stuff’, such as a pretty kitchen and bathroom in the ground floor flat (as it appeared from the particulars) but suggested that these would not lead to a real improvement in value. Mr Evans did not consider that the retention or reinstallation of period features, that is , of what was already in place, would add to the value. He did concede however that the installation of uPVC double glazing would be an improvement that would add value and he revised further downwards as a result of this to a starting point of £177,000.
23. Mr Evans considered that the footprint of the first floor flat was similar but not identical to the ground floor flat. He considered that the Tribunal should ignore the ‘stuff’ on the ground floor and the first floor flat and submitted that although the first floor flat was cluttered and untidy, he considered that there would be little difference in the freehold unimproved vacant possession value between the ground floor flat and the first floor flat. He pointed out that although the ground floor flat had easier access to the garden, the first floor flat had better views of the park. Mr Evans was lyrical in his description of the large front sitting room in the first floor flat as the ‘piano nobile’, and conjured images of a bygone era where gentlemen would retire to discuss the matters of the day. The Tribunal’s Collins dictionary defines piano nobile thus; *“The main floor of a large house containing the reception rooms: usually of lofty proportions [Italian: great floor]”* and the Oxford online dictionary as *“the first floor of a large Palladian or Georgian house, containing the principal rooms.”*
24. Mr Evans valued the second floor flat at less as it had only one bedroom and revised his valuation further downwards following inspection. Mr Evans had provided a number of comparables at paragraph 3.10 of his report sourced from “Nethouseprices.com” but he willingly accepted the limitations of both his comparables and Mr Williams’ since none of the sales in Ninian Road could have been made in a no –Act world and the lease terms of the sales were unknown.
25. Indeed Mr Evans said that there is no evidence of short lease sales in South Wales or anywhere else for that matter and so he was unable to present evidence of the properties with their actual lease terms. With regard to relativity, he had followed the approach of the Upper Tribunal in Arrowdell [2007]RVR39 which he cited in his report with regard to the predominant factor being the length of the term and the possibility of producing standard graphs distinguishing between mortgage dependent markets and those that are not so dependent. Mr Evans explained that he had adopted the graph of relativity taken from RICS

research dated October 2009 and had interpolated data from the four graphs for Greater London and England that show a lease term similar to the subject property. He explained that he had taken an average between the four graphs (Beckett and Kay, Nesbitt and Co, Austin Gray and Andrew Pridell) and taken a straight line between the figures published for 25 years and 30 years unexpired to produce a relativity of 51.08%. He also pointed out that the subject property would not in fact conform to the Council for Mortgage Lenders guidance for loans due to the lease length making it difficult to gain a mortgage in the open market.

26. Mr Evans further referred to the guidance of the Upper Tribunal in *Coolrace* and cited the comments of Mr Francis in that case with regard to the use of graphs generally and the paper produced by the RICS Leasehold Relativities Group in October 2009, the variety of graphs produced that were prepared by surveyors and lawyers acting for both landlord and tenants and the resulting graphical analysis based upon a large number of LVT decisions, settlements and valuation opinion. *“Collectively, therefore, they represent the broadest currently available study relevant to the issue of relativity.”* (Per Mr Francis).

Determination.

27. The procedure for the valuation of the price payable for the freehold is prescribed by Schedule 6 Part II of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) and is based on market value (paragraph 3 of Schedule 6 states that *“the value of the freeholder’s interest in the specified premises is the amount by which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller...”*) subject to certain assumptions. The value of the freeholder’s interest before enfranchisement has two elements, firstly the capitalised rental income and secondly the value of the freehold with vacant possession (but excluding the tenant’s improvements) deferred for the unexpired term of the lease.
28. The assumptions are in effect that this it will be an arm’s length sale on the open market as it will be assumed that none of the following will be buying or seeking to buy; the nominee purchaser, a tenant of premises in the specified property, freehold or leasehold owners of any additional interest to be acquired by the nominee purchaser (such as common parts). It is assumed that the sale is of an estate in fee simple, and that it is taking place in a “No Act” world, that is, there is the assumption that there is no right to acquire any interest or new lease under the Act. The Tribunal is also to disregard any increase in value of a particular tenant’s flat as a result of improvements carried out by the tenant at his/her own expense. The sale is assumed to be subject to the rights and burdens which will apply to the conveyance to the nominee purchaser.
29. The Tribunal carefully considered all of the oral and written evidence before it and noted the observations of both experts about the limitations of the comparable evidence particularly the absence of any information about the length of the unexpired lease terms. However, the Tribunal was persuaded by Mr Evans that the evidence in relation to the ground floor flat at the subject property was of relevance and importance in the valuation. Mr Williams had not referred to this in his comparables and he was not able to put forward any good or

convincing reason as to why this should be either disregarded or given more limited weight than the other comparables. The Tribunal agree with Mr Evans that this comparable was clearly of assistance and relevance since it related to the subject property and there had been sales at different dates which, although not directly contemporaneous with the valuation date of 15th May 2013, were still helpful. There was no reason to disregard this evidence. The Tribunal considers that the valuation of the ground floor flat at the relevant date was £180,000.

30. From the £180,000 for the ground floor flat deductions would be made because it appeared from the particulars that it was in very good order and had been subject to tenant's improvements. It was also larger than the first floor and had the cellar. In addition, the first floor flat had other disadvantages- it was reached by a narrow staircase, the layout was awkward with the kitchen and front room being around the corridor from the bathroom and the bedrooms, which themselves were small. The Tribunal consider that Mr Evans' memorable description of the 'piano nobile' over exaggerates the front room's status, although it was of a very good size and had attractive views over the park opposite. Further, the access to the rear garden was via the fire exit and the narrow spiral staircase.
31. Therefore the Tribunal consider that, in accordance with the valuation assumptions prescribed by Schedule 6 part II, the freehold value of the first floor flat with vacant possession at 15th May 2013 was £145,000. The second floor flat was considerably smaller, had only one bedroom and a small narrow kitchen and was reached by a further flight of narrow stairs and had the disadvantage of further to go to reach the garden down the narrow spiral staircase. The Tribunal value the freehold with vacant possession of this flat at £115,000.
32. With regard to the experts' respective approaches to relativity, both experts agreed that the graph system was inexact and there were limitations as a lot of the data related to Prime Central London. Mr Williams was asked to critique the approach taken by Mr Evans and indicate why the Tribunal should prefer his approach. Mr Williams felt that he had taken the graph of graphs from Beckett and Kay and said that he had analysed a lot of graphs and that 55% based on Beckett and Kay supported his figure. However Mr Williams did not offer any reason why the Tribunal should not prefer the more detailed and comprehensive approach of Mr Evans that involved analysis of a number of different sources. The Tribunal were more impressed with the evidence of Mr Evans on this issue. Mr Evans had diligently sought to extrapolate the relativity figure from a number of different graphs available and had transparently demonstrated his calculations and approach in following the approach of the Upper Tribunal in Coolrace. Mr Williams' report referred to Coolrace and the preferable use of a composite graph rather than a single graph. Whilst Mr Williams relied on the composite graph from Beckett and Kay, this had the limitations of being based on PCL locations, was historical and was two years out of date and did not have the breadth of Mr Evans' approach. The Tribunal preferred the evidence of Mr Evans on relativity and adopt his figure of 51.08%.
33. The experts agreed on the equal apportionment of the marriage value and the freeholder's share of the marriage value is to be calculated in accordance with paragraph 4 of Schedule 6

Part II of the Act. The appropriate calculations are below and it can be seen that the premium to be paid is accordingly determined at **£100,562**. There was no application for costs or for compensation for the Tribunal to determine.

34. Calculation of premium.

Landlord's Interest.

Term, as agreed.		£860
Reversion		

First Floor Flat (Number 2)	£145,000	
PV of £1 for 26.37years @5%	<u>0.2762</u>	£40,049
Second Floor Flat (Number 3)	£115,000	
PV of £1 for 26.37 years@5%	<u>0.2762</u>	<u>£31,763</u>

Landlord's Interest		£72,672
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Marriage Value

Tenant's proposed interest

First Floor Flat (number 2)	£145,000	
Second Floor Flat (Number 3)	<u>£115,000</u>	£260,000
Less;		

Tenant's interest £260,000 x 51.08%	£132,808	
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Landlord's interest	<u>£72,672</u>	<u>£205,480</u>
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Marriage Value		£54,520
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At 50%		£27,260
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Add Ground Floor Flat (Number 1)		£630
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<u>Premium</u>		<u>£100,562.</u>
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DATED this 9th day of July 2014

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CHAIRMAN