

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
Leasehold Reform Act 1967, s.15

Premises: 8 Allensbank Crescent, Heath, Cardiff, CF14 3PR
("the premises")

RPT ref: LVT/0016/07/18

Hearing: 27th February 2019

Order : The Section 15 rent is assessed at £2940 per annum payable from 1st February 2017

Applicant: Lynne Catherine Foley

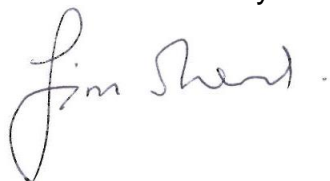
Respondents: Coolrace Limited

Tribunal: Mr JE Shepherd – Judge Chairman
Mr M Taylor MRICS - Surveyor member
Mrs A Harrison - Lay Member

ORDER

1. The S.15 rent is assessed at £2940 per annum payable from 1st February 2017.

Dated this 25th day of April 2019



Judge Chairman

Introduction

1. The Applicant is the personal representative of Ms Winifred May Davies. The estate owns the long lease of premises at 8 Allensbank Crescent, Heath, Cardiff, CF14 3PR ("the premises"). The Respondents own the freehold of the premises.
2. Forfeiture proceedings in the County Court between the parties (E00CF855) were stayed on 4th September 2018 and the question of the determination of the ground rent (hereafter referred to as the "s.15 rent") was transferred to the Tribunal. The matter was heard on 27th February 2019 following an inspection of the premises.

The Inspection

3. The property is a mid terraced house originally constructed in the early 1900's and is typical of this locality of Cardiff. It is of traditional construction with a single bay window and fair stone finish to the front elevation which also has the benefit of a small forecourt. There is a small rear garden, where the boundaries with some adjoining properties are not well defined. Externally the rear elevation is rendered. The main roof and rear extension have a pitched slate roof.
4. Internally the property would have originally comprised two main living rooms. The dividing wall has been removed to form one large room with a small rear kitchen leading to a bathroom with WC, hand basin and walk in shower. Floors to the main rooms are of suspended timber.
5. Leading from the entrance passage way is the main staircase which is narrow and steep. There are 2 double bedrooms and a small single with a bathroom to the rear providing WC hand basin and bath.
6. Internally the decorations and fittings are basic and are showing signs of deterioration, possibly as a result of the property not having been occupied for some while. All windows are of uPVC and the property also has the benefit of gas central heating.
7. The area is popular given not only its proximity to the City centre but also its convenient location for Universities, the Teaching Hospital and other sources of employment. There is a thriving local commercial and retail area with a number of food and restaurant outlets, transport connections via bus are easily accessible.

Representation and witnesses

8. Both parties relied exclusively on the evidence of their experts, Geraint Evans (FRICS) for the Applicant and Matthew Fell for the Respondents.

9. In fact it became clear during the hearing that Mr Fell was not an expert at all. In his report dated 5th October 2018 he stated merely: *In accordance with the Estate Agents Act 1979, I declare an interest in this case.* He did not declare what his interest was neither did he make clear that his report was not an expert report. At the start of the hearing he confirmed that he had a personal interest in the premises and that he was not an expert. He asked the Tribunal to accept his evidence as mere assistance to the Tribunal. The Tribunal is concerned about the way that Mr Fell's evidence was put forward in his written report. According to him he is involved in other Tribunal hearings in England and Wales. The Tribunal considers that he needs to be clearer about his role otherwise there is a risk of the Tribunal and other parties being misled. For the purposes of the present case the Tribunal admitted Mr Fell's evidence but gave no weight to it as expert evidence. Accordingly there was effectively only one expert in the case, Mr Evans.

The relevant law

10. Section 15 (2) of the 1967 Act provides:
15.— Terms of tenancy to be granted on extension.
(2) The new tenancy shall provide that as from the original term date the rent payable for the house and premises shall be a rent ascertained or to be ascertained as follows:—
(a) the rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy, other than uses which by the terms of the new tenancy are not permitted or are permitted only with the landlord's consent;
(b) the letting value for this purpose shall be in the first instance the letting value at the date from which the rent based on it is to commence, but as from the expiration of twenty-five years from the original term date the letting value at the expiration of those twenty-five years shall be substituted, if the landlord so requires, and a revised rent become payable accordingly;
11. In simple terms determining the section 15 rent involves calculating the rental value of the site alone without the house upon it but where the purpose of the site is residential. There are no market transactions of this sort and so the calculation is formulaic.
12. The first task is to calculate the capital value of the site alone. If there are equivalent sites for sale in the area this evidence can be used but the capital value is usually established by calculating the capital value of the site fully developed ("the entirety value") then attributing a percentage for the site alone ("site value proportion"). Collectively this is called the Standing House approach. Sites in expensive areas attract higher percentages. The site value is then decapitalised to arrive at the s.15 rent.

Entirety Value

13. Hague on Leasehold Enfranchisement, 6th Ed at para 8.08 states the following:
*..It has been said that the entirety value must represent the value of the property "fully developing the value of the site ".This needs qualification, because the statutory formula restricts the uses of the property to that which "it has been put since the commencement of the tenancy", and so excludes any development inconsistent with such uses. But it does require the assumption that, if the house is already in multiple-occupation, it has been properly converted for that use. No deduction falls to be made for the costs of conversion. It may be appropriate in certain cases, e.g. where the house is small in relation to the site or to the neighbouring properties, to assume that the house has been extended or even wholly or partially replaced by a larger house, provided that the potential is realistic and not fanciful. No deduction is made in such circumstances to reflect uncertainty over obtaining planning permission or other works approvals.
In practice, the valuers on each side are frequently able to agree the entirety value, or at any rate the differences between them fall within a relatively narrow range. There is usually ample good comparable evidence available to enable a determination of the entirety value to be made with little difficulty.*
14. In the present case Mr Evans used a wide net of "comparables" from Allensbank Crescent, Allensbank Road and Talygarn Street. He calculated the average of the 4 sales in Allensbank Crescent and produced a base value of £196,224 to which he makes an addition, rounded to £200000 to reflect this assumption.
15. Although it is undoubtedly clear that Mr Evans has an integral and detailed knowledge of the local area (to the extent that he was able to recount visits to his Aunt who lived in one of the properties previously) the Tribunal was concerned about the use of such a wide net of properties which vary in many respects. Instead the Tribunal narrowed the net to just three comparables all on Allensbank Crescent (No 5, 16 and 26). The Tribunal has had the benefit of seeing this road and looking at the comparables. The Tribunal did not include number 32a Allensbank Crescent which is a narrower plot than the other comparables and appears for whatever reason to be an outlier. Using Mr Evans' averaging method the average adjusted value of the three comparables used is £ 210,474 (say £210,500).
16. Mr Evans' valuation sought to reflect his opinion that the property was not entire as per Para 13, which whilst being technically correct, is not fully justified by the paucity of detail in the comparable evidence submitted. However, it is a reasonable assumption given the current condition of the property so we have sought to reflect this in an addition of £3,500 giving an entirety value of £214,000.

Site Value Proportion

17. Hague, chapter 8-10 reveals that the site value proportion can vary considerably depending on the locality. *The problem (and the inherent weakness) of the standing house approach is the selection of the appropriate percentage of the entirety value attributable to the site.* Nonetheless Hague also makes clear that the percentage adopted depends on the evidence and the individual circumstances of each case and the Tribunal are not bound to follow previous decisions.
18. Mr Evans gave expert evidence as to the potential limitations of the site in question. He emphasised that the use of the building opposite the premises as a "Scout Hut" and special needs school was constant and caused inherent traffic issues on the Crescent. He also identified the potential development of the pharmaceuticals warehouse adjoining 32a Allensbank Crescent and the university and hospital as potential sources of traffic congestion. Finally he emphasised what he considered to be site constraints of the plot including the fact there was no rear lane access and difficult turning space. In his report he said that the site may be regarded as "pokey".
19. As a result of these alleged site restrictions Mr Evans reduced the site percentage from a starting position of 30% to 25%. The Tribunal acknowledges Mr Evans' concerns about the site but also accepts Mr Fell's comments that the lack of rear lane access potentially improves security and that the building opposite provides a greenish aspect. It also noted the discussion over varying site value percentages adopted in other LVT decisions and whilst not persuaded by the percentages quoted agree with Mr Fell that most significant adjustments relate to ,sometimes unusual ,physical constraints. It is accepted that the site is narrow but this is similar to other properties on the Crescent and not unusual for a densely developed area. However, it is the most relevant physical constraint that was advanced by Mr Evans and was apparent from the inspection in terms of the internal physical arrangement of the accommodation, with narrow staircase and small single bedroom.
20. It is also considered that the traffic measures on the Crescent have necessarily reduced the amount of through traffic. Doing the best we can the Tribunal have decided to adopt a site value proportion of 27.5%.

Decapitalisation rate

21. Hague at paragraph 8-13 states the following:

The site value when agreed or determined must be "decapitalised" (or "rentalised") to arrive at the section 15 rent. The percentage rate of decapitalisation reflects the rate of return a landlord would expect to achieve on a letting of the site on the terms laid down by the 1967 Act, i.e. for a 50-year term, with a rent review after 25 years, but with a full reversion of the site and its buildings at the end of the term.

22. Mr Evans sought to argue that a decapitalisation rate of 4.75% should be used. This was based on a comparative analysis of three cases:

a) 10 Clare Street (LVT/WAL/876/1/146). This was a decision of this Tribunal made on 14th December 2010 in which, despite representations by Mr Evans that the decapitalisation rate should be 7% the Tribunal decided (following *Mansal Securities* -see below) that the appropriate rate was 5% .

b) *Re Mansal Securities Ltd and other's application* [2009] 2 E.G.L.R. 87 Lands Tribunal, in which 22 conjoined appeals were heard in relation to properties in Birmingham and the surrounding districts and a deferment rate of 5 per cent was decided. Hague states at paragraph 9-15:

The Lands Tribunal adopted the same methodology used for the purpose of determining the deferment rate under s.9(1A) but went on to consider whether the nature of the investment (a right to receive a rent determined by reference to a site value as opposed to a right to receive vacant possession of a site and building) meant that the component parts making up the rate should be subject to different factors. The Tribunal agreed with the landlord's expert that the risk-free rate should be the same at 2.25 per cent. Equally, it decided there was no justification for adopting a different growth rate from 2 per cent. However, the Tribunal determined that a purchaser would likely require a higher risk premium to compensate for the increased volatility and liquidity that the Tribunal decided would attach to a site without a building, although that increase would be off-set to some extent by the reduced risk of deterioration and obsolescence. The overall result was to increase the risk premium by 0.25 per cent to 4.75 per cent thereby resulting in a deferment rate of 5 per cent. Evidence was put before the Tribunal to suggest that, over a period of some 55 years, house price growth was significantly slower in the West Midlands than in central London. However, the evidence as presented was not considered to be sufficiently robust to warrant a departure from the Sportelli rate on the grounds of location. It was however made clear that this decision had been made without the benefit of expert evidence from the leaseholders (none of whom took part in the appeal).

c) *JGS Properties Limited v King and Others* [2017] UKUT 233(LC) in which the Upper Tribunal used a deferment rate of 5.25%. Mr Evans used this decision primarily to justify his argument for departure from *Mansal* and his use of a 4.75 % decapitalisation rate. The Tribunal understood his representations to be that there had been something of a sea change in valuer opinion based on *JGS*. This is a difficult proposition for the Tribunal to accept for two reasons. Firstly it appears that *JGS* was a decision on its own facts, where there was no conscious challenge to the overall effect of *Mansal*. For instance at paragraph 23 of *JGS* AJ Trott FRICS states that a 0.25% adjustment for the increased risk of volatility included in *Mansal* was not justified *in this instance*. Secondly the coverage of *JGS* in the supplement to *Hague* does not suggest a sea change of opinion at all. It states merely the following:

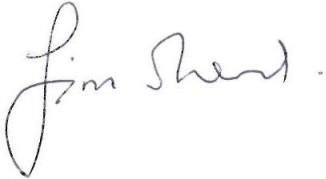
In JGS Properties Ltd v King [2017] UKUT 0233 (LC) concerning a house in Solihull, the Upper Tribunal again stressed that, in assessing the deferment rate, the starting point must always be the generic Sportelli deferment rate. Nevertheless, the tribunal upheld the decision of the FTT to add 0.5% to the deferment rate (thereby applying a rate of 5.25%) for risk of a lower growth rate in the West Midlands as compared to PCL. The FTT had relied on the decision in Zuckerman; it was entitled to do that in the absence of any persuasive evidence that there was a difference in the rate of growth between Solihull and the rest of the West Midlands.

23. Accordingly the Tribunal considers that the approach used in 10 Clare Street, following *Mansal* is still appropriate and that a 5% decapitalisation rate should be used.

24. The calculation therefore is as follows:

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|-----------------------------|--------------|
| Entirety Value | £ 214,000 |
| Site Value percentage 27.5% | £ 58,850 |
| Decapitalisation @5% | £ 2,942.50 |
| But say | £ 2,940 p.a. |

Dated this 25th day of April 2019



Judge Chairman