

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.21 (1) (a)

Premises: 8 Allensbank Crescent, Cardiff, CF14 3PR (“the premises”)

RPT ref: LVT/0033/10/18

Hearing: 1ST November 2019

Order: The value of the premium for the freehold of the premises as at 27th June 2018 is assessed at £102000

Applicant: Lynne Catherine Foley

Respondent: Coolrace Limited

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

ORDER

The value of the premium payable by the applicant for the freehold of the premises as at 27th June 2018 is assessed at £102000

Dated this 9th day of December 2019

J Shepherd

CHAIRMAN

DECISION

Introduction

1. The Applicant applied to the Tribunal pursuant to Leasehold Reform Act 1967,s.21 (1)(a) on 3rd October 2018. The parties had been unable to agree the value of the freehold in a proposed enfranchisement in relation to the premises. A hearing took place on 1st November 2019 following an inspection of the premises.
2. In a previous determination (LVT/0016/07/18) the Tribunal assessed the section 15 rent at £2940 per annum.

Background

3. 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.

The Inspection

4. 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.
5. 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.
6. 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.
7. Internally the decorations and fittings are basic and are showing signs of deterioration, possibly as a result of the property not having being occupied for some while. All windows are of uPVC and the property also has the benefit of gas central heating.
8. The area is popular given not only it’s 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.

9. On the day of the inspection the property was in a poor state in terms of tidiness and general appearance. Terms had been agreed on a sale.

Representation and witnesses

10. Both parties relied exclusively on the evidence of their experts, Geraint Evans (FRICS) for the Applicant and Marc Llewellyn Williams FRICS for the Respondents.

Issues in dispute

11. All of the key valuation issues were in dispute, namely the value of the freehold (Applicant: £175000. Respondent: £210000), capitalisation rate (Applicant 8%, Respondent: 6.5%) and relativity.

The hearing

12. The parties helpfully made their submissions on each of the issues in sequence

Freehold valuation

13. Mr Evans updated the Tribunal with regard to the sale of the premises. A sale had been agreed in June 2018 for £180000 but he said the freeholder had prevented the sale. The property had been re-offered in February 2019 for £209000. The property has been sold for £200000. According to Mr Evans it had been sold to a "special purchaser" to the Red Rose School a local special needs school. There was no independent evidence to support the submission by Mr Evans that this was a special sale. The property had been on the market since April 2018 and had not sold.
14. Mr Williams appeared at first to be suggesting that the Applicant had deliberately allowed the premises to deteriorate in order to engineer a lower value. Mr Evans said this was an outrageous suggestion. The premises had been improved by the Applicant with double glazing and central heating. In essence he said that the premises had been maintained in accordance with the obligations of the lease.
15. In the event Mr Williams backed away from the suggestion that there had been deliberate deterioration of the premises. He emphasised that the premises, although in a poor condition, were in a good location, walking distance from the university and on a main bus route. The area was popular. He maintained his valuation of £210000 but acknowledged that he had utilised £205000 in his calculation of the premium.

Capitalisation rate

16. Mr Williams submitted that the capitalisation rate generally used was 6.5%. Mr Evans sought to depart from this norm on the basis that potential Law Commission reforms in relation to onerous ground rents would cause the rate to be higher. The rent at the premises was onerous. He referred to the case of CAM/00MC/OLR/2019/0020 (18 Farringdon Court, Erleigh Road, Reading) in which he was the expert for the freeholder. The only issue in that case was capitalisation. There was an unusual rent review pattern. Mr Evans had contended for a capitalisation rate of 7.5 %. The Tribunal decided that the rate should be 8.5%. At para [23] the Tribunal stated:

There is, it seems to us, little doubt that at the valuation date a purchaser of ground rents aware of the publicity associated with onerous rents and the risk of Government interference, would take that into account when considering whether or not to acquire the property

Relativity

17. Mr Evans stated that neither party knew what the value of the property with the current lease was. It was necessary to use theoretical tables of relativity. The question was which table should be used? Different cases had recommended different graphs to use. Mr Williams relied on the authority of *Judith Reiss v Ironhawk Ltd* [2018]UKUT 0311 (LC) and in particular paragraph [54] where AJ Trott FRICS had found that the most reliable method of valuation *in this appeal is to use the Savills' Enfranchiseable Graphs*, in particular he preferred the 2015 graph. Mr Evans stressed that each case should be determined on its own merits and emphasised the words *in this appeal* from *Ironhawk*. Although the Savills graphs may suit prime central London that was not the case in Cardiff and relativity should be higher outside prime central London. He referred to the case of *Trustees of The Barry and Peggy High Foundation v Zucconi and Another*. [2019] UKUT 242 (LC) where at paragraph [27] the Upper Tribunal found the following:

In my opinion the FTT did not pay proper regard to the more recent cases, outside of prime central London, where the Savills enfranchiseable and unenfranchiseable graphs have been preferred by the Tribunal to the use of an average of the RICS 2009 Graphs. In Mundy the Tribunal identified two valuation methods where there was no reliable market transaction concerning the existing lease value with rights: either use the most reliable unenfranchiseable graph or use an enfranchiseable graph and make a deduction for the benefit of the Act. Had the FTT considered the most reliable (and recent) graphs they would have taken into account the Savills 2015 enfranchiseable graph, the Savills 2016 unenfranchiseable graph and the Gerald Eve 2016 (unenfranchiseable) table and graph. They should have been aware of the Tribunal's previous decisions adopting the Savills graphs outside of prime central London

The law

18. The Act enables tenants of long leases let at low rents to enfranchise their properties – in other words to acquire the freehold on terms. One part of this procedure requires a Leasehold Valuation Tribunal to determine the purchase price, in accordance with the appropriate valuation methodology as set out in the Act. The valuation methods are set out in s.9 of the Act, which has been amended several times and now provides for valuation upon a number of different bases, depending upon which category the property and the lease fall into. In the present case the valuation is carried in accordance with section 9(1A) which includes marriage value, which is to be apportioned equally between the landlord and tenant for the purposes of calculating the premium payable.

Decision

Freehold valuation

19. Although the transaction is not yet complete the sale of the premises for £200000 is possibly a good indication of value. It is just over a year after the valuation date, which is likely to be a factor increasing the figure in terms of the general market over that period and the value could have been reduced by the enfranchisement process being seen as a risk in the market in terms of the timing of any sale. The Tribunal finds no evidence that the sale represents a "special purchase" as subject to adjustment, it is consistent with comparable evidence at 5 Allensbank Crescent at £227,750 sold a month prior to the valuation date and the property next door being under offer at £235k. These properties are similar in size and the only deduction applied on the basis of the evidence presented is that they are both improved. Overall the approach adopted by Mr Williams appeared by the tribunal to be correct but the Tribunal considered that a small adjustment was appropriate in the circumstances giving a value of £200000.

Capitalisation rate

20. The Tribunal notes the *18 Farringdon Court* decision but considers that the present case is distinguishable because the amount of the ground rent may be considered onerous solely as a consequence of the statutory valuation process that had to be adopted by the Tribunal in setting the s.15 rent. There was no issue of future escalating rents at rent reviews as in *Farringdon Court* where there was also a much longer unexpired term. Accordingly there does not appear to be justification to depart from the generally accepted 6.5% in this location of South East Wales

Relativity

21. Cases such as *Ironhawk* and *Coolrace* are consistent in directing that open market evidence on relativity is always preferable. In the absence of this graphs of relativity can be used. Overall it is not advised to place great store on other Tribunal decisions as each case will depend on its own facts. There is considerable debate about the relevance of different graphs due to both the time and geographical location but as yet there is no definitive answer. The *Ironhawk* decision seems to support the use of a range of graphs from Savills 2015 and Gerald Eve 2016. However it does not necessarily exclude others

The Upper tribunal has also considered this matter in the case of Mrs Ohunene Oliyide and Elmbirch Properties PLC [2019] UKUT 190 (LC).

“42. The parties refer to the 1996 Gerald Eve Graph and Mr Oliyide also refers to the Savills 2015 graph.... The problems of using such graphs outside prime central London were discussed in Midland Freeholds Ltd’s and Speedwell Ltd’s appeals [2017] UKUT 0463 (LC) at paragraphs 37 to 43 and for the reasons given there I consider their use to be appropriate in this appeal.

43. Both graphs show the relativity net of Act rights. The Gerald Eve 1996 graph gives a relativity of 84.5%..... The equivalent figure in Savills Unenfranchiseable Graph 2015 is 82.0%. Gerald Eve published an updated version in Dec 2016.... The 2016 Gerald Eve Graph shows a relativity, without Act rights of 82.3%..... in line with the Savills graph. In my opinion the appropriate relativity is 82.0%

In terms of the approach of this Tribunal the Beckett and Kay (2013) presentation of the RICS data has been accepted in a number of cases in 2016 and 2017, including 123 Laburnum Court Cardiff (LVT/0009/05/16). In contrast in 18A Queens Drive Penarth (LVT/0035/09/16) faced with unsatisfactory evidence on this matter the Tribunal utilised the Savills 2002, Savills Enfranchiseable 2015 and Gerald Eve 2015 graphs in determining relativity

Taking the agreed unexpired term of 23.59 years produces the following for each graph

Gerald Eve 2016	42.11%
Savills Unenfranchiseable 2015	43.81%
Savills Enfranchiseable	53.81%.

The average of these graphs being 46.58%. but say 47.0% Doing the best it can the Tribunal has used this average figure in its calculation. It is not an ideal method of calculation but until clear guidance or bespoke graphs are produced it suffices for present purposes.

The calculation

8 Allensbank Crescent Cardiff

Valuation Date 27th June 2018

Freeholders Interest

Rent	£2940.00	
YP 23.59 yrs @6.5%	11.90197	£34991.79

Freehold value	£200000	
PV £1 23.59 yrs @ 5.0%	0.316333	£63266.60
		£98258.39

Marriage Value

Freehold value		£200000.00
Freeholders interest	£98258.39	
Leaseholders Interest @ 47.0%	£ 94000.00	£192258.39
		£7741.61
	@ 50%	£ 3870.81

£102129.20

Premium

But say £102000

Dated this 9th day of December 2019

J Shepherd

Chairman