

# Y Tribiwnlys Eiddo Preswyl

## Residential Property Tribunal Service (Wales)

### Leasehold Valuation Tribunal (Wales)

#### DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL Leasehold Reform Act 1967

<b>Premises:</b>	58 Rhondda Street, Mount Pleasant, Swansea, SA1 6ET ("the premises")
<b>RPT ref:</b>	LVT/0027/10/20
<b>Inspection:</b>	No site inspection was undertaken
<b>Applicant:</b>	Williams & Brace Property Ltd (CRN07023649)
<b>Respondent:</b>	Unknown owner of the freehold
<b>Tribunal:</b>	Trefor Lloyd (Chairman) Hefin Lewis (Surveyor)

#### **DECISION and ORDER**

The Leasehold Valuation Tribunal determines that the appropriate sum payable under Section 27(5) of the Leasehold Reform Act 1967 is accordingly £2,900.00 being £2,796.00 under Section 27(5)(a) plus the sum of £120.00 under Section 27(5)(b).

## **REASONS FOR THE DECISION**

### **Background**

1. The Applicant is Williams & Brace Property Ltd (a company limited in England and Wales registered under Company Number: CRN07023649) the registered proprietor of the property known as 58 Rhondda Street, Mount Pleasant, Swansea, SA1 6ET “**the property**” which is registered leasehold at the Land Registry under Title Number: WA124349.
2. The freehold interest is unregistered and although correspondence in the hearing bundle before the County Court suggested that a William Keele Bell is the freehold owner of the property, no such evidence has been forthcoming to date.
3. As a consequence, the claim issued at the County Court at Swansea dated the 8th August 2019 which was initially stayed pending further enquiries in relation to the ownership of the freehold has been reinstated by virtue of an order of District Judge Collins sitting at the County Court at Swansea on the 28th August 2020. Following removal of the stay the issue of a valuation of the freehold has been remitted to this Tribunal for its consideration.
4. On the 28th September 2020 Marcus David Brace a director of the applicant company signed a Statement of Truth attached to the application to this Tribunal for the price of the freehold interest to be determined.

### **The Lease**

5. The Lease dated the 16th March 1979 granted a 99 year lease term for the 25th March 1978 at a ground rent of £20.00. The original parties to the lease were Olive Bell and Barry George Lewis and Angela Jones. The Lease was originally registered with HM Land Registry on the 6th June 1979 and the applicants became proprietors on the 6th September 2010. Thus, at the valuation date which is in this instance the date on which the application was made to the County Court being the 9th of August 2019, there were 57.62 years outstanding. As aforesaid the freehold is unregistered land.
6. Section 1 of the Leasehold Reform Act 1967 (“the Act”) confers on a tenant of a leasehold house a right to acquire on fair terms the freehold of the house and premises where certain conditions are met. Section 27 of the Act addresses the problem of enfranchisement where the landlord cannot be found by enabling an application to the County Court to be made and for the proceeds of the transfer of the freehold to be held in the Court funds until such time as the true owner of the freehold can be identified. In other words, the application to Court is in place

of serving upon a known freehold owner Notice of a desire by the tenant to acquire the freehold.

### **Description of the Property**

7. Given the Applicant was content for the matter to be determined on paper and the Corona Virus restrictions currently in place, we have not had the benefit of a site visit. However, we have seen copies of photographs of the exterior of the premises and have also been provided with a hand drawn layout plan of the property together with copies of an initial valuation report and a further updated valuation report both from Dylan Williams BSc (Hons) MRICS, partner in the firm of Reece Richards and Partners.
8. From the above it can be ascertained the property is a mid-terrace, 3 bedrooled dwelling, constructed of stone under a pitched concrete inter-locking tiled roof with a rear extension (cavity wall construction) under a flat roof in an established residential area of similar style properties. The property benefits from UPVC double glazing and rainwater goods.
9. As referred to above we did not carry out a site inspection but note from the valuation report that the internal accommodation is referred to as two double bedrooms and one single bedroom plus family bathroom on the first floor. The hand drawn plan in relation to the ground floor indicates kitchen in the extension plus three further rooms, one interconnected to the kitchen and referred to as "GFRR Living" and the further two rooms referred to as "GFMR Bed" being the front two rooms of the original house. From this we conclude that the house consists of four ground floor rooms, one of which is a kitchen and at least one is a living/reception room.

### **The Method of Valuation**

10. Section 9 of the Act determines the price payable for a house where the tenant has the right under Part 1 of the 1967 Act to acquire the freehold. Three different bases of calculation are present dependent upon the qualifying conditions under which the tenant has claimed the right to buy the freehold. Here we proceed upon the basis that Section 9 (1) applies as the Court made a direction to that effect. In addition, having regard to the property we are satisfied that is almost certainly the most appropriately prescribed method of valuation in this case.
11. 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 to 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..."*

12. 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 we have already noted, in this case the proceedings were issued in the County Court on 8 August 2019 which is accordingly the valuation date that we adopt.
13. There are three stages to the valuation process in this instance based upon what is known as the Haresign approach that emanates from the decision in **Haresign -v- St John's College Oxford (1980) 255EG711**. Whilst the Haresign approach fell out of favour for a period following the appeal decisions of **Marl Lodge (Mono) Ltd's LR28 2002** and **Mayfly (Corib) Ltd RA29 2002** and should only be followed in exceptional circumstances more recently in the Clarise Properties Ltd appeal (**Clarise Properties Ltd [2012] UKUT 172 (LC)**) the guidance has swung the other way to again adopt the Haresign three-staged approach unless there is some good reason to do so. In our view there is nothing on the facts of this case that justifies the conclusion that there is a good reason not to adopt the Haresign three-stage test.
14. The three stages are: establishing the capitalised value of the ground rent to the end of the lease term; establishing the entirety value and plot value and ascertaining the ground rent applying the 50 years purchase (YP) and then ascertaining the present value deferred for the remainder of the lease term (1<sup>st</sup> Reversion); Ascertaining the Standing House Value.
15. For the purposes of these deliberations, we have concentrated on the second report presented which is dated the 21st January 2021 prepared by the Valuer Mr Dylan Williams.

### **The Capitalised Value of the Ground Rent to the end of the Lease Term**

16. Whilst the Valuer Mr Dylan Williams has in our view correctly adopted the 6.5% years purchase, he has erroneously stated that the unexpired term is 58.6 years whereas in reality it is 57.62 years. Accordingly, we find as a fact that the capitalised value of the Ground Rent to the end of the Lease Term is £299.52 and not £299.95 as set out in the most recent valuation report.

### **The Standing House Value and Plot Value**

17. The Valuer places the standing house value for this property at £100,000.00 less the schedule 15 deduction at 10% resulting in an overall standing house value of £90,000.00. In addition, the valuer refers to the entirety valuation as an “open market value”, that is clearly incorrect. What is being valued is the entirety and not at open market.
18. To reach the above figures Mr Williams refers to only three comparables in his revised report, two of which are two rather than three bedroomed properties. In his earlier report of the 9th August 2019 (at page 63 of the Court hearing bundle) he relied and referred to four comparable properties.
19. Accordingly, in total the Valuer has relied upon the following in comparable evidence: -
- (i) 54 Rhondda Street, Swansea, SA1 6ET, referred to as a terraced freehold, sold for £100,000.00 on the 8<sup>th</sup> March 2019. The property is said to amount to approximately 1033 square feet of living accommodation and equates to £96.80 per square foot in terms of sale value.
  - (ii) 42 Hewson Street, Swansea, SA1 6HS, a two bedroomed mid-terraced house sold for £94,000.00 in October 2019. This property is said to amount to 968 square feet of living accommodation which equates to a sale value of £97.00 per square foot.
  - (iii) 4 Bryn Y Don Road, Mount Pleasant, Swansea, SA1 6YA, a two bedroomed mid-terraced house sold for £90,000.00 in October 2019. The property is said to extend to 958 square feet of living accommodation equating to a sale value of £94.00 per square foot.
  - (iv) 9 Terrace Road, Swansea, a two bedroomed mid-terraced house sold in August 2019 for £68,000.00 (this comparable is relied upon in the first but not the second report).

20. The Valuer concludes that the average for the freehold comparables he relies upon in the revised report amounts to £96.00 per square foot.
21. As aforesaid, the Tribunal has not undertaken a site visit and therefore has not viewed the comparable evidence. However, we have undertaken some research ourselves and in addition to the above comparable evidence relied upon by the Valuer, we have considered the following transactions by way of additional comparable evidence:-
- (i) 77 Rhondda Street, Swansea, SA1 6ET, a terraced house, comprising one living room, three bedrooms, one bathroom, gas central heating. It is a traditional terraced house with bay windows. A third bedroom in the loft space. Sold on the 12<sup>th</sup> April 2019 for £120,000.00.
  - (ii) 62 Norfolk Street, Swansea, SA1 6JE, a terraced house, comprising of one living room, three bedrooms, one bathroom, again gas central heating. Being a refurbished three bedroomed house sold on the 5<sup>th</sup> April 2019 for £118,000.00.
  - (iii) 41 Rhondda Street, Swansea, SA1 6ER, mid-terraced property comprising of one living room, three bedrooms, one bathroom, again gas central heating. Sold on the 24<sup>th</sup> June 2019 for £104,000.00 (there is limited detail in relation to this comparable, i.e., no photographs on line).
  - (iv) 31 Terrace Road, Swansea, SA1 6HN, mid-terraced property comprising of one living room, three bedrooms, one bathroom, gas central heating. It is a three bedroomed terrace house on two floors extending to 119 square metres. Sold on the 3<sup>rd</sup> May 2019 for £120,000.00.
  - (v) 37 Terrace Road, Swansea, SA1 6HN, mid-terraced property comprising of one living room, three bedrooms, one bathroom, gas central heating. Being a three bedroomed terrace house on two floors amounting to 124 square metres. Sold on the 11<sup>th</sup> March 2019 for £111,250.00.
  - (vi) 13 Terrace Road, Swansea, SA1 6HN, mid-terraced house comprising of one living room, three bedrooms, one bathroom, gas central heating. Being a three bedroomed terrace house on two floors amounting to 131 square metres. Sold on the 24<sup>th</sup> April for £122,500.00.
22. The average price of the additional six comparable properties identified by the Tribunal, comes out at £115,958.00. Having considered the matter we are of the opinion that the appropriate figure in this instance is £115,000.00 in relation to the standing house value.

23. In coming to this conclusion, we also note that, in relation to the second valuation, the Valuer's assessment of value is contrary to evidence upon which he himself relies upon, in so far as using his analysis on the average price of £96.00 per square foot from the updated report dated the 1st January 2021, the value of the property would equate to £111,552.00. Notwithstanding this analysis, he still comes to the conclusion of a standing house value of £100,000.00 without any explanation as to the departure from the adopted £96.00 per square foot value.
24. Accordingly, we disagree with his view and find as a fact that, in our judgement, the standing house value is £115,000.00.
25. In relation to plot value we agree with the valuer that 30% of the standing house value is appropriate and given our decision in that regard we determine the plot value as £34,500.

#### **Schedule 10 Rights**

26. The Valuer has deducted 10% from his standing house value to represent Schedule 10 Rights. The Valuer nowhere within his valuation provides any explanation as to why he thinks the Schedule 10 Rights are relevant in this instance.
27. We are of the view that it is not appropriate in this case to deduct any percentage for the Schedule 10 rights. This conclusion follows the decision in the Upper Tribunal in the case of Lomas Drive (2017) UKUT 0463 as there is clearly a significant unexpired term to the lease.
28. Accordingly, we make no deduction for Schedule 10 Rights.

#### **Entirety Value**

29. We find that the property is extended in common to similar properties in the terrace. It has a floor area of 1162 square feet which is generally in keeping with comparable properties in the area. Accordingly, there is nothing to suggest the property is not fully developed and as such, we conclude that the entirety value is also £115,000.00.
30. The second reversion calculation is incorrect as set out in the revised valuation. The present value deferment should be 107.62 years @ 5% which results in the multiplication of 0.005243. The Valuer has erroneously used a figure of 0.011654 and the Tribunal is unable to ascertain from where he has obtained this figure. Furthermore, the Valuer erroneously refers to this rate as YP (years purchase

rate) which is not correct. The correct reference is to present value of £1 in 107.62 years. The overall result of the Valuer's findings is to place the freehold at a higher value than is correct. Accordingly, for the reasons as set out below, this Tribunal considers the appropriate figure for the second reversion to be £602.98.

## **CONCLUSION**

31. Applying the above findings, we calculate the value of the freehold of the property as follows:

**Date of Determination** - 9<sup>th</sup> August 2019 being the date of the application to the County Court.

**Date of Lease** – 16<sup>th</sup> March 1979

**Initial Term** – 99 years from the 25<sup>th</sup> March 1978

**Unexpired Term** – 57.62 years

**Ground Rent** - £20.00

**Method of Valuation** - Section 9 of the Leasehold Reform Act 1967 Act

**Capitalisation Rate** – 6.5%

**Deferment Rate** – 5%

**Entirety Value** - £115,000.00

**Standing House Value** - £115,000.00

**Plot Value** - £34,500.00

### **Stage 1**

**Ground Rent** - £20.00

YP on 57.62 years @ 6.5% = 14.976

Capitalised value of the term – **£299.52**

### **Stage 2**

**First reversion** – entirety value £115,000.00

Plot value at 30% - £34,500.00

Section 15 Ground Rent @ 5% - £1,725.00



YP for 50 years @ 5% - 18.259

P.V. of £1 in 57.62 years @ 5% = 0.06013 = 1.10 = **£1,893.50**

**Stage 3**

**Second reversion** - standing house value - £115,000.00

No deduction for Schedule 10 Rights

P.V. in £1 in 107.62 years @ 5% - 0.00524 = **£602.98**

**Total - £2,796.00**

In addition, 6 years ground rent @ £20.00 per year - £120.00

Which totals **£2,916.00**

**TOTAL SAY £2,900.00**

**Dated this 5<sup>th</sup> day of February 2021**

**CHAIRMAN**