FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/OLR/2018/1140**
Property	**:**	**76 Clementina Road, Leyton, London E10 7LT**
Applicant	**:**	**Mr Ibrar Sahall**
Representative	**:**	**Quality Solicitors Mirza**
Respondent	**:**	**Deajan Estates Limited**
Representative	**:**	**Wallace LLP**
Type of application	**:**	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge Ruth Wayte** **Duncan Jagger MRICS**
Date of determination and venue	**:**	**15 January 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**14 February 2019**

DECISION

Summary of the tribunal's decision

(1) The appropriate premium payable for the new lease is **£101,168**.

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Background

1. This is an application made by the applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of 76 Clementina Road, Leyton (the "property").

2. By a notice of a claim dated 29 January 2018, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. The existing lease was granted on 1 April 1982 for a term of 99 years from 25 December 1963 at an annual ground rent of £50 rising to £75 over the life of the lease. The leaseholder proposed to pay a premium of £58,022 for the new lease.

3. On 14 March 2018, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £119,875 for the grant of a new lease.

4. On 3 August 2018 the applicant applied to the tribunal for a determination of the premium.

The Act

5. Schedule 13 of the Act provides that the premium to be paid comprises the aggregate of:

   - the diminution in the value of the landlord's interest in the flat – i.e. the difference between the value before and after the new lease is granted;

   - the landlord's share of any marriage value that may be applicable and

   - any compensation for other loss or damage resulting to the freeholder as a result of the lease extension.

The issues

Matters agreed

6. By the date of the hearing the following matters were agreed:

   (a) The subject property is a ground floor purpose built maisonette with entrance hallway, reception room, kitchen, two bedrooms, bathroom/wc and half share of the rear garden;

(b) The gross internal floor area is 665 square feet;

(c) The valuation date: 29 January 2018;

(d) Unexpired term: 44.91 years;

(e) Ground rent: £50 rising to £75 over the lease period;

(f) Deferment rate: 5%;

(g) Capitalisation of ground rent: 7% per annum;

(h) Long leasehold value: 99% of the freehold value;

(i) Long leasehold value: £370,000;

(j) Deduction for Act rights: 7.5%.

Matters not agreed

7. The sole issue at the hearing was therefore the valuation of the existing short lease to complete the calculation of the premium. The parties approached the issue differently. The Applicant proposed using an average of the five relativity graphs which cover Greater London and England, producing a relativity of 68.67% and a premium of £77,818. The Respondent relied on market evidence producing a relativity of 52.96% and a premium of £107,550.

The hearing

8. The hearing in this matter took place on 15 January 2019. The applicant was represented by Wilson Dunsin. The respondent was represented by counsel Ms Muir.

9. Neither party requested that the tribunal inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination. Good quality photographs were in the papers before the tribunal and the valuer member was familiar with the Warner estate of which Clementina Road is part.

10. The applicant relied upon the expert report and valuation of Wilson Dunsin FRICS dated 28 December 2018 and the respondent relied upon the expert report and valuation of Genevieve Mariner FRICS of Strettons, dated 18 December 2018.

The short lease value and relativity

11. Both valuers agreed that *Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC) is authority for preferring market evidence as to the value of the existing, short lease to the use of

relativity graphs, provided that evidence is at or near the valuation date. In the absence of recent transactional evidence of the subject property, the Respondent relied on two comparables: 107 Clementina Road and 36 Morieux Road, both similar purpose-built two bedroom flats within the same estate, although slightly smaller than the property. These were rejected by the Applicant on the basis that the sales were not at or near the valuation date and that both comparables required too many adjustments to apply them to the subject valuation.

12. The Applicant therefore relied on the five Greater London and England graphs, with the average producing a relativity of 68.67% for a 44.91 year lease. Mr Dunsin justified those graphs over prime Central London evidence due to the property's location in Leyton and maintained that the Greater London graphs were the industry standard for valuations outside of prime Central London.

13. In response, Ms Mariner's report maintained that graphs are a very poor second to market sales. She stated that the Greater London graphs are generalised and often based on settlements, tribunal decisions or opinion. They were produced in 2009 and even then contained historical data. She maintained that the updated Beckett and Kay graph for 2017 shows some 57% for 44.91 years unexpired and that if the average of the graphs were to drop by the same amount, the adjusted graphs would show 62.7%. In cross-examination, Mr Dunsin conceded that relativity has gone down since 2009 but maintained that his choice was better in respect of the subject property than the Respondent's comparables.

14. Turning to that evidence, 107 Clementina Road is on the same road as the property but at the end of the terrace. The property history taken from Zoopla indicated that the maisonette had originally been listed for sale in September 2015 at a guide price of £250,000. It finally sold in January 2017 for £200,000 to a company called Universal Homes Management Ltd, with a 46 year old lease. Following the sale the flat had been inspected by a colleague of Ms Mariner, who had included a copy of the floor plan in her report, together with photographs taken during the inspection. On the basis of that inspection, Ms Mariner suggested that £15,000 should be added to the sale price to bring the property up to a reasonable standard. Having deducted the agreed 7.5% for Act rights, the short lease value was £198,875, producing £345 per square foot.

15. 36 Morieux Road is mid terrace and was sold at auction in June 2017 for £225,000 with a 45.5 year lease. Ms Mariner had the entry from the auction catalogue and subsequent particulars when the flat was put on the rental market, with photographs indicating that it had been newly decorated and a reference to the bathroom as having been "newly fitted". As the flat was sold by Strettons, Ms Mariner's colleagues were able to confirm that it was in a reasonable condition at the time of the

auction, she therefore made no adjustment to the auction price. After the deduction of 7.5% for Act rights, the short lease value for this property was £208,125, producing £357 per square foot.

16. Ms Mariner then compared these figures with the time adjusted value of four long lease comparables taken from sales dating from December 2016 to June 2017. She made adjustments for condition on three of the four comparables and adjusted the price to compare with the Clementina Road sale in January 2017 and the Morieux Road sale in June 2017. Averaging out her calculations she arrived at a relativity of 52.57% in her report, which was increased to 52.96% in the skeleton argument of Ms Muir, producing a premium of £107,550.

17. The Applicant's main objection to the comparables for the short lease value was that as the sales took place on 13 January 2017 and 22 June 2017, neither sale was at or near the agreed valuation date of 29 January 2018. Mr Dunsin relied on the case of *Mallory v Orchidbase Limited* [2016] UKUT 468 in support of his argument, although in that case the rejected comparable was sold three years before the valuation date. Mr Dunsin's second line of attack was that there was insufficient information about the comparables, in particular the method of sale in respect of 107 Clementina and the condition of both properties at the point of sale. He pointed out that in order to qualify as market value the sale had to be an arm's length transaction and there was no evidence that 107 Clementina had been marketed in 2017. Ms Mariner conceded that she had not been able to find sales particulars for the property but that at very least 107 Clementina provided support for the calculation of the short lease value, once adjusted for condition. On the condition of both properties, she submitted that there was sufficient evidence to justify her valuation.

The tribunal's decision

18. The tribunal was not convinced by Mr Dunsin's argument as to the date of the sales: both maisonettes were sold within just over a year of the valuation date and cannot be described as historic sales or rejected for that reason alone. The tribunal also felt that Ms Mariner was able to provide sufficient evidence of the likely condition of the flats to support their use as comparables. The tribunal accepts that there is some doubt as to the method of sale of 107 Clementina but still considers that the short lease comparables are better evidence than the 2009 relativity graphs. The Warner Estate is a collection of remarkably similar properties, with the subject flat and the comparables sharing the same features. Apart from time, the only adjustment was £15,000 for condition for one of the properties. This adjustment cannot properly be described as "*artificially extensive manipulation*" so as to rule it out under the criteria set out in paragraph 42 of *Mallory v Orchidbase* [2016] UKUT 468.

19. However, the tribunal does not agree with Ms Mariner's approach in calculating her relativity by comparing her short lease comparables with four other long lease sales. This methodology produced a short lease value for the subject property of £196,586, which the tribunal considers is too low. In particular, it is over £11,000 lower than the equivalent value for 36 Morieux Road, which is smaller than the subject property by 82 square feet and was sold some 6 months before the valuation date.

20. In the circumstances, the tribunal decided to use the short lease comparables alone. Adjusting those sales for time to the valuation date, using the House Price Index in the Respondent's report and deducting 7.5% for Act rights produces an average short lease value of £209,945. This compares much better with the equivalent value for Morieux Road. The relativity is 56%, which is close to the 2017 Beckett & Kay graph. The tribunal did not consider it necessary to adjust for the slight difference in lease length.

The premium

21. The tribunal therefore determines the appropriate premium to be **£101,168**. A copy of its valuation calculation is annexed to this decision.

Name: Judge Wayte **Date:** 14 February 2019

Appendix: Valuation setting out the tribunal's calculations

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX A	The Tribunal's Valuation	
Valuation date:	29th January 2018	
Yield for ground rent:	7%	
Deferment rate:	5.0%	
Long lease value	£370,000	
Freehold value	£373,737	
Unexpired term	44.91 years	
Existing leasehold value	£209,945	
Relativity	56%	
Ground rent currently receivable	£75	
Capitalised @ 7% for 44.91 years	13.6014	£1,020
Reversion to:	£373,737	
Deferred 41.91 years @ 5%	0.118	£41,784
Freeholder's Present Interest		£42,804
Landlords interest after grant of new lease	£373,737	
PV of £1 after reversion @ 5% 0.0014	£523	**£42,281**
Marriage Value		
Extended lease value	£370,000	
Plus freehold reversion	£523	£370,523
Landlord's existing value	£42,804	
Existing leasehold value	£209,945	£252,749
Marriage Value		£117,774
Freeholders share @ 50%		**£58,887**
LEASE EXTENSION PREMIUM		**£101,168**