

4396



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/OOBH/OLR/2016/1321

Property : 84 Morieux Road, London E10 7LL

Applicant : Dean Nicholas Citroen

Representative : Mr Pierce Harrison of Counsel instructed by
Gelbergs LLP Solicitors
Mr S R Jones BA (Hons) MRICS, Chartered
Surveyor and Director of Leasehold Valuers
LLP

Respondent : Daejan Estates Limited

Representative : Mr D Dover of Counsel instructed by Wallace
LLP Solicitors
Miss G Mariner BSc (Hons) FRICS of Strettons
Chartered Surveyors

Type of Application : Application for determination of the premium
or other terms in dispute under section 48 of
the Leasehold Reform, Housing & Urban
Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mrs S F Redmond BSc (Econ) MRICS

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on 13th
December 2016

Date of Decision : 9th January 2017

DECISION

DECISION

The Tribunal determines that the premium payable for the lease extension in respect of 84 Morieux Road, London E10 7LL (the Property) under section 48 of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act) shall be £40,143 as set out on the attached valuation sheet.

BACKGROUND

1. This was an application made by Mr Dean Nicholas Citroen for the determination of the premium payable in respect of the lease extension for the Property. On 1st December 2015 a notice under section 42 of the Act was sent to the Respondent indicating a proposal on behalf of the Applicant to pay the sum of £27,650 for the lease extension of the Property and also that the lease terms should remain as they were subject to the additional 90 years and the inclusion of a peppercorn rent.
2. On 15th February 2016 the Respondents replied accepting that the Applicant had the right to acquire a new lease but putting forward a counter proposal of £67,789 for the premium but otherwise agreeing the suggestions with regard to the new lease terms.
3. Matters could not be agreed and the case came before us for hearing on 13th December 2016. For the Applicant, Mr Jones, whose report is dated 2nd December 2016 and was included in the bundle of papers before us argued that the premium payable for the Property should be £38,480. In response, Miss Mariner for the Respondent, by a report dated 24th November 2016, also included in the bundle before us, calculated that the premium should in fact be £62,150.
4. The valuers had helpfully agreed a number of matters which were set out on a joint statement of agreed facts and valuation issues signed by both parties and dated 19th October 2016. The terms that were agreed were as follows:
 - The valuation dated is 1st December 2015.
 - The unexpired term of the lease at the valuation date is 55 years.
 - The ground rent until 24th December 2019 is £75 per annum rising until 24th December 2052 to £100 per annum and thereafter £125 per annum.
 - The Property is described as a one bedroom, ground floor, “Warner” style purpose-built maisonette with garden.
 - The capitalisation rate is agreed at 7%.
 - The deferment rate is agreed at 5%.
 - The relativity to be applied to the freehold value to reflect the long lease value is agreed at 99%.
5. The two matters that remain in dispute are (a) the long leasehold value; and (b). relativity.

HEARING

6. Mr Harrison for the Applicant confirmed that the relativity was the main issue between the valuers. Mr Jones relied on graphs whereas Miss Mariner, who was

considerably below Mr Jones on the relativity percentage, took market evidence of two bedroom flats - notwithstanding that this was a one bedroom property – dealt with relativity in the real world and deducted 6% for the value of the Act rights. It was said by Mr Harrison that the market evidence approach adopted by the Respondents was flawed.

7. He then called Mr Jones to give evidence. Mr Jones confirmed that he had no changes or amendments he wished to make to his report. He was invited to take us through the relevant sections relating to the valuation matters. We had noted his qualifications, background to the instructions, location, description of the property, the accommodation and condition. For the record, we should confirm that the Property is a ground floor maisonette with a hallway, reception room, bathroom, bedroom and kitchen which has a door to the rear garden. The gross internal area is approximately 53.58 m² or 577 square feet. It was said that the Property was in a reasonable condition and indicated that so far as Mr Jones could tell the only improvement may have been a gas fired combination boiler which he did not think was likely to exist in 1985 but made no adjustment for this in any event.
8. In determining the extended lease value he relied on comparable properties at 12, 46 and 16 Morieux Road as well as a property at 137 Blyth Road. To these properties he made deductions to reflect the condition and adjusted the price to reflect the passage of time relying on the Land Registry property price index for Waltham Forest. Taking the average of the four adjusted sale prices, which equated to £296,545 he rounded this down to £296,500, the figure he considered appropriate for the extended lease value. A 1% difference between the hypothetical share of freehold and the extended lease value gave a figure of £299,540 at the agreed date of valuation for the hypothetical freehold vacant possession value.
9. He referred to the John D Wood and Co pure Tribunal graph of 2011 which gave a relativity of 78.5% for a 55 year unexpired, which he had considered applying to the subject property. However, he told us that this graph had been criticised and that he placed no reliance upon the same. He referred also to the Upper Tribunal case of the *Trustees of the Sloane Stanley Estate v Adrian Howard Mundy reference [2016]UKUT223(LC)*. However, this case superseded this matter by some six months and he indicated that the relativities of that decision were not relevant to this case. His report went on to say that at the time of the valuation date, the method adopted by valuers appeared to be the consideration of a number of relevant graphs. In this respect he considered there were five graphs for properties in Greater London and England, the details of which he set out on page 12 of his report. This gave an average utilising those five graphs of 81.53% but he concluded that two of the graphs, those prepared by Austin Gray and South East Leasehold, involved a limited number of claims in north/east Greater London and removing them gave an average relativity of 80.5%. He considered that the use of the graphs was preferable for this case as opposed to the short sales of leases for two reasons. Firstly, was the almost impossible task of deducting an amount for the Act rights from the sale price as virtually all leasehold properties sold on the open market are enfranchiseable. And that, secondly, he considered it unsafe to solely rely on short lease sales as buyers and sellers of flats did not generally have the ability to consider the appropriate purchase price for a 55 year lease.

10. Settling, therefore, for a relativity of 80.5% based on the freehold vacant possession value of £299,540 gave a short lease value of £241,130. Applying the agreed elements in respect of the ground rent and the reversionary deferment rate gave, in his calculation, a figure of £38,480 for the premium.
11. Having taken us through his report he was asked to comment on the review of relativity conducted by Miss Mariner. He was doubtful that her method of utilising two bedroom flats gave an appropriate figure. As to the benefit of the Act he considered that 5% would be appropriate for a lease of between 50 and 60 years although this was based on little knowledge. He was asked to consider the impact of the Savills 2002 graph which was set out in the bundle. Applying this to the freehold value and applying 5% deduction for the No Act World gave a short lease value of £236,472 which was not far removed from the figure that he had calculated and which he therefore considered supported his evidence.
12. Mr Jones was then cross examined by Mr Dover. It became clear during the cross examination that Mr Jones was not aware of the basis upon which a number of the graphs upon which he relied had been created, although he did consider that the Priddell graph would have been of assistance because they were active in the Walthamstow area. He confirmed that he had looked for market evidence of short leases but only for one bedroom properties and was referred to the Mundy case and the steps that were taken by the Upper Tribunal to deal with this aspect. He was referred to paragraph 166 of the Mundy decision but also paragraph 169 which we will refer to in the findings section of this decision.
13. He was then taken through his comparable properties and we noted all that was said. He did not think in the case of 12 Morieux Road that the inclusion of UPVC double glazing was any relevance to the value. He was also asked why he had used as a comparable a first floor flat at 16 Morieux Road and he told us it was because it was in Morieux Road and he did not consider that the floor level would have any particular effect on the value. Also, it was a similar period after the valuation date as the other comparables were before that date. He denied he had used the comparables at 16 Morieux Road and 137 Blyth Road to enable him to "evidence" a drop in the price. He was also asked why he had not considered 86 Bloxall Road which he said was improved and he wanted to try and find something that was unimproved and had a similar view on the property in Kettlebaston Road put forward by Ms Mariner as a comparable.
14. We then heard from Miss Mariner. As with Mr Jones, she had prepared a full report and after considering the earlier elements which were relating to at the Property, lease terms and matters that were agreed, we noted that she put forward comparables at 12 and 46 Morieux Road and at 86 Bloxall Road as well as 8 Kettlebaston Road. In considering 12 Morieux Road she made no deductions for improvements, largely because it appears the kitchen had been painted in a vibrant lime colour and the property was heated by way of underfloor heating which she thought would be costlier to deal with. She therefore concluded that an adjusted value for this comparable was £325,000 above the £309,673 that Mr Jones had attributed to this property. Both had also used 46 Morieux Road and again Miss Mariner made no deductions for improvements and concluded that adjusting for time the value for this property would be £322,000. Her comparables at 86 Bloxall Road and 8 Kettlebaston Road were noted. This she concluded having put

aside 86 Bloxall Road, which appeared to be somewhat out of line with the other three, led her to the conclusion that the long leasehold value of the property, making at the end of her analysis a small deduction of £2,500 for the kitchen, gave the long leasehold interest of £322,500.

15. In reaching the reversionary value, she had applied the 1% uplift for freehold agreed by the valuers giving a hypothetical freehold value of £325,750.
16. We then heard from her on the question of relativity. Her adjustment, she said, for the real world as against the No Act World was to be found in the decision of Nailrile at 7.5%. However, that figure related to cases where the lease lengths remaining were mid to late 40 years. She considered that there should be some differential to reflect the present remaining lease term, albeit small, and adopted therefore 6% as being the appropriate No Act World allowance.
17. She told us that she had been fortunate to have obtained details of three short lease sales of around 55 years on the estate in the last few years. She referred to a property at 1 Kettlebaston Road which sold at auction for £240,000 to which she made a fairly substantial reduction of £20,000 for the reasons set out in her report which adjusting for time and the 6% no act world adjustment gave a figure of £244,400. This property was also sold subject to a 3 year letting agreement from 28th March 2015. This, of course, we were reminded was a two bedroom, ground floor flat. She then told us that she had obtained details of the sales of two bedroom ground floor flats with long leases around the sale date and listed those as 110 Morieux Road, 16 Perth Road, 44 Bloxall Road and 20 Clementina Road. The average gave a long lease value of £350,750 and a freehold vacant possession value of £354,300. This, she said, on the basis of the short lease value of 1 Kettlebaston Road and the average of the long lease comparables gave a relativity of 68.9%.
18. As further evidence to support her view on relativity she put forward a sale of a flat at 39 Boxall Road in April of 2014 with a short lease which apparently had been sold for £180,000. She had no sales particulars for this but apparently an abortive auction had taken place in May of 2014 where it was described as a two bedroom property. Apparently this sold again in April 2015 refurbished at £330,000. Assuming this property to have been in more basic order at the time of the first sale, she added £20,000 to the short lease value for works and again made a deduction of 6% for the No Act World giving a short lease value of £188,000 and adjusted for time a figure of £216,150. This compared to the freehold vacant possession value of the property sold in April 2015 gave a relativity of 64.9%. She also put forward a property at 102 Clementina Road being a ground floor two bedroom flat which sold in June of 2015 with 55.5 years unexpired achieving a price of £251,500. She again added £20,000 for improvements and deducted 6% for the No Act World giving a figure of £255,000. She considered this comparable against the two bedroom long leases referred to before and concluded that this gave a relativity of 74.9%. This gave a range of relativities from 64.9% to 74.9% and she considered that the evidence relating to 36 Bloxall Road was the most compelling and gave the lowest relativity at 64.9%. However, she was aware that the range must be considered, the average was 69.8% and allowing for weighting she put forward a relativity rate of 68%. Using this gave rise to her suggested premium of £62,150.

19. She was then cross examined by Mr Harrison on the comparables that she had utilised and the deductions that she had made. We heard all that was said. She was also asked about the £20,000 that she had allowed in respect of the two bedroom flats which were in not such good order. She told us that this was a sum to bring the property from poor order to good order and would include probably more work that was required in respect of the other comparables that she had relied on to achieve the long lease value. However, under further cross examination she did appear to concede that she may have undervalued the costs of improvement works to those long lease comparables. She suggested that perhaps the figure of £17,500 should be applied, which appeared to be not only the costs but also the value of the works. Asked whether the comparable at 16 Morieux Road, a first floor flat, was unreasonable she confirmed that she agreed with Mr Jones that there was really little difference and on the whole she agreed with his figures. However, she thought that there was evidence in four ground floor flats so there was no need to take into account the first floor property. She also reviewed the improvement costs to 86 Bloxall Road and 8 Kettlebaston Road. She did not consider that 137 Blyth Road was helpful. Although it was in a similar style, it was on a different estate and post code although she conceded that anybody wanting to look in the area would probably consider this property. It was, she said, secondary evidence.
20. She was then asked about her calculations of relativity. She did not consider that advice would be given to a purchaser based on graphs. Asked about the property at 1 Kettlebaston Road, she confirmed that she had not got the legal pack and was not able to say what type of letting to which the property was subject. She considered it might be appropriate to make some small adjustment for the loss of control the property at the time of the auction but she thought that the market would be for investors and dealers who would consider the matter accordingly. Asked why she had only relied on two bedroom properties to deal with the relativity rate, she said she had not made further adjustment because there was no evidence that one bedroom flats would be any different. She did, however, accept that there was a potential for error in using two bedroom properties. She accepted that there was a lack of evidence relating to the various comparables that she had put forward and that she had made certain assumptions. She confirmed that she had not made use of any graphs and had relied on three pieces of evidence which had not been cross checked. She did not think that the graphs were appropriate, that they were not up to date and that she had taken her authority from Nailrile. She was asked to consider whether the difference between the freehold vacant possession value and her short lease value was too high to be realistic. She was asked to rework the calculations using the Savills 2002 graph based on her freehold vacant possession value of £325,750. Using the Savills relativity figure of 83.1% and deducting 6% for the no act right gave a figure of £255,460 for the short lease value, considerably above her figure of £221,515.
21. On re-examination from Mr Dover she sought to clarify some of the deductions that she had made for improvements and explained in more detail the £20,000 deductions made for the relativity comparables, which reflected £2,500 for the bath, £10,000 for repairs and sums in respect of other matters including contingencies. Her view was that the cost of doing the work was the value added to the property.

22. We then had submissions from both Counsels. Mr Dover reviewed the comparables and that in respect of any concessions made by Miss Mariner we should ignore them as what in fact she was saying was that we should take the properties in fair condition and should not adjust unless there were specific items that needed to be taken into account. The adjustment of £20,000 made in respect of Kettlebaston Road was of course of benefit to the tenant in that it raised the short lease value. It was suggested that the best comparables were 12 and 46 Morieux Road and suggested that there was a use by Mr Jones of other comparables, in particular one in Blyth Road, with a view to dropping the overall price.
23. On the question of relativity he suggested that specific market transactions were the best evidence and referred to the case of Mundy in this regard. In particular he referred to paragraph 168 of Mundy which says as follows: *“Fourthly, some (perhaps many) cases in the future, it is likely that there will have been a market transaction around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for the market transaction was a true reflection of the market value for that interest, then that market value would be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have the rights under the 1993 Act.”* His submission was that market transactions were useful and that the wording of that paragraph was not intended to limit market transactions to the sale of the subject property. It was, he said, necessary to read it in conjunction with the decisions of the Upper Tribunal/Land Tribunal in Nailrile and Arrowdale. He complained that Mr Jones could not find market evidence and he had instead 'jumped' straight to the graphs. By contrast, Miss Mariner provided three transactions which we can consider. He said that these were transactions that had happened and even if elements were missing we should still take them into account. As for the graphs, he considered that they were not appropriate and were problematic and that we should prefer Miss Mariner's evidence in this regard.
24. In response Mr Harrison firstly considered the question of improvements. The question is not for us to consider whether the property is in a fair condition, but that there has been compliance with the lease terms and whether or not there are improvements. He considered that Miss Mariner had been applying the wrong rules and that when she did correctly apply the costings related to refurbishments she had given reductions of around £17,500. On the question of the comparables, he was of the view that 16 Morieux Road was useful as neither valuer thought there was any great impact on it being a first floor property. The comparable in Blyth Road was approximate in time and place and all that could be said was that it disclosed a lower price but that in itself was no reason to exclude it. The two bedroom property approach adopted by Miss Mariner to assess relativity was challenged. He did not think that the property at 1 Kettlebaston Road was of assistance. This was subject to a tenancy and the only purchaser was likely to be an investor. There was no evidence before us as to the sale figures or the details. In respect of 39 Bloxall Road, again no condition or the sale price was given in respect of the 2014 sale.

25. Mr Harrison also referred us to the written submissions that he had made and which was included in the bundle of the authorities and made the point that at the valuation date it would have been completely orthodox to adopt an average relativity from the graphs. The case of Mundy clearly established that we should consider the property at the time of the valuation and not reflecting subsequent market changes. It was also suggested that even if reliable real world evidence had been available, and this produced a result different from the graphs, no valuer would have completely ignored the graphs, rather reviewed and if there were reasons to believe the real world evidence was not reliable, then the valuer would reject that evidence and prefer the graphs. His written submission went on to postulate that it was widely known and accepted that relativity is higher outside PCL rather than in it and accordingly the approach adopted by Miss Mariner, which appears to have resulted in a relativity some 10% below the Gerald Eve graph, was unreliable. He concluded that the evidence of Mr Jones should be preferred.

THE LAW

26. The law applicable to this matter is to be found in the Act and we have applied that, including the provisions of schedule 13.

FINDINGS

27. Both experts had provided a selection of comparable properties within the Clementina estate, although Mr Jones had strayed slightly into Blyth Road. Both had adjusted for the valuation date using the Land Registry price index for Waltham Forest. Mr Jones had also made deductions to reflect the differences between the subject Property in its present condition compared to those of the comparables. It must be said, however, that the evidence provided in respect of the comparables was fairly limited relying on somewhat indistinct photographs and estate agents details. Mr Jones relying on such evidence concluded that the average of the four comparables that he had put forward, rounded, came to a figure of £296,500. Miss Mariner making little or no adjustments for the difference between the subject property and the comparables, came to the conclusion that the long lease value was £322,500. She had allowed £2,500 for the kitchen.
28. Two comparables, those at 12 and 46 Morieux Road, have been adopted by both parties. As to 16 Morieux Road, a first floor flat, no explanation was provided as to why the lower sale price had been achieved and we felt it appropriate to exclude that from the basket of comparable property before us. The same applied to the property at 137 Blyth Road. Not only was this not on the same estate and may be affected by differing post codes, the valuation was out of line with the remaining comparables. Miss Mariner had herself excluded 86 Bloxall Road from her average as this also appeared to be out of line with the other three comparables she put forward, the additional one being 8 Kettlebaston Road.
29. If we, therefore, take the adjusted sale prices for time of these comparables as 12 and 46 Morieux Road as well as 8 Kettlebaston Road, it gives an average long leasehold value of £325,000. We consider that there should be some adjustment

made for condition. We have noted all that has been said by both valuers and conclude that, in the round a deduction, of £5,000 would be reasonable to allow for the older and partly fitted kitchen and bathroom within the property at 84 Morieux Road, giving an extended lease value of £320,000.

30. On the question of relativity, we prefer the evidence of Mr Jones. It seems to us that Miss Mariner's submissions were flawed. The paragraph that we have recited above from Mundy in our view clearly indicates that the market transaction relates to the existing lease, not a two bedroom property, which differs from the subject property, which of course is one bedroom. Furthermore, the evidence that Miss Mariner could put before us in respect of the condition and the works that may or may not have been required to the various comparables that she placed before us was unconvincing. The case of Mundy also indicates that we must deal with the valuation at the valuation date and not reflect any influences that might have taken place afterwards. Mr Jones has relied on the graphs of greater London, although excluded two resulting in a relativity figure of 80.5%. This is greatly removed from the relativity figure that Miss Mariner has assessed which is at 68%.
31. Such a difference requires an explanation. It seems to us, as we have indicated above, the basis upon which Miss Mariner has reached her assessment at 68% relativity is flawed. She has not used one bedroom properties with which to assess the relativity. But just as importantly, she has not provided sufficient evidence as to the short lease comparables to enable us to be satisfied that her calculations are appropriate. The difference between her long and short lease values are too great. This was highlighted by Mr Harrison using the Savills index which we have referred to above. She did not appear to have undertaken any cross reference with the graphs. In the absence of supportive market evidence we consider that the most appropriate method of establishing relativity in this case is to utilise the graphs, as Mr Jones has done. We agree with Mr Harrison with what he said both in his oral submissions to us and his written closing submission.
32. Under the circumstances, therefore, preferring the evidence of Mr Jones on relativity and finding that the long lease value of £320,000 is appropriate the valuation attached supports the premium payable of £40,143 and that is the amount that we determine is the premium payable in respect of the Property.

Andrew Dutton

Judge:

A A Dutton

Date:

9th January 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

VALUATION FOR PREMIUM FOR A NEW LEASE

Leasehold Reform, Housing and Urban Development Act 1993

84 Morieux Road, Leyton, LONDON E10 7LL

Agreed facts and matters

Ground rent: £75 p.a. to 24/12/19, £100 p.a. to 24/12/52, £125 to term
 Valuation date: 1st December 2015
 Unexpired lease term: 55 years
 Capitalisation rate 7%
 Value of Ground Rent interest as calculated by both experts: £1,330
 Deferment rate 5%
 Relativity of Freehold value to long leasehold 99%
 Property description: one bedroom ground floor 'Warner' style purpose built maisonette with garden

Determined by tribunal

Long leasehold value unimproved £320,000
 Relativity 80.5%

Diminution in Value of Freeholder's interest

	£	£	£
Ground rent interest			1,330
Reversion			
Virtual freehold value	323,232		
Deferred 55 years @ 5%	<u>0.068300</u>	22,077	
Less Freeholder's interest at end of extended lease	323,232		
Deferred 145 years @ 5%	<u>0.000800</u>	<u>259</u>	
			21,818

Calculation of Marriage Value

Value of proposed interests:
 Landlord's 259
 Tenant's new 145 year lease at a peppercorn 320,000 320,259

Less value of existing interests:

Landlord's

23,407

Tenant's existing lease

260,202 283,609

Marriage Value

36,650

50% marriage value attributed to landlord

18,325

TOTAL PREMIUM PAYABLE

£40,143