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

Case reference	:	LON/OOBH/OLR/2017/0976
Property	:	21 Clementina Road London E10 7PD
Applicant	:	Matthew Richard Revell
Representative	:	Nicola Muir of Counsel
Respondent	:	Daejan Estates Limited
Representative	:	Mark Loveday of Counsel
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Professor Robert M. Abbey Duncan Jagger MRICS
Date of determination and venue	:	6th March 2018 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	12th March 2018

DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable for the new lease is **£50,110**. The basis for this valuation is set out in detail in appendix A to this decision.

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 21 Clementina Road London E10 7PD (the “subject property”).

2. By a notice of a claim 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. At the time, the applicant held the existing lease of the subject property. The applicant subsequently proposed to pay a premium of £36,300 for the new lease.
3. The respondent freeholder served a counter-notice admitting the validity of the claim and subsequently counter-proposed a premium of £100,000 for the grant of a new lease.
4. On 13 July 2017, the applicant applied to the tribunal for a determination of the premium.

The issues

Matter not agreed

5. The following matter was not agreed:
 - (a) The premium payable, (relativity for the short lease value).

The hearing

6. The hearing in this matter took place on 6th March 2018. The applicant was represented by Ms Muir, and the respondent by Mr Loveday.
7. Neither party asked the tribunal to inspect the subject property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
8. The applicant relied upon the expert report and valuation of Mr Richard John Murphy MRICS dated 21st February 2018 and the respondent relied upon the expert report and valuation of Ms Genevieve Mariner FRICS dated 21st February 2018.
9. The representatives advised the Tribunal that they had reached agreement on one outstanding issue and consequently confirmed to the Tribunal the agreed freehold value at £400,000 and the long lease value of £396,000.

The tribunal’s determination

10. The tribunal determines that the appropriate premium payable for the new lease is **£50,110**.

Reasons for the tribunal's determination

11. The single unresolved issue for the tribunal was the calculation of Relativity. Mr Murphy for the applicant put forward a schedule of four comparables that he said were in the vicinity of the subject property. However, the tribunal was of the view that only one comparable from that list of four should be considered for the following reasons
12. First 1 Kettlebaston Road was an auction sale. As such the tribunal were firmly of the view that the auction sale gave rise to a very restricted market for investors and possibly cash buyers only. Therefore this form of sale does not in the opinion of the tribunal produce a reliable market value.
13. Secondly, 69 Harris Street was also an auction sale. As such the tribunal were again firmly of the view that the auction sale gave rise to a very restricted market for investors and possibly cash buyers only. Therefore this form of sale does not in the opinion of the tribunal produce a reliable market value.
14. Thirdly, 271a Lea Bridge Road is a much larger flat than the subject property, (@807 ft²) and moreover is located on a busy commercial arterial roadway and as such is really not comparable with the subject property.
15. This leave just the fourth comparable, 102 Clementina Road, a comparable also adopted by Ms Mariner for the respondent. In fact Ms Mariner provides three comparables including this one. Once again Ms Mariner mentions 1 Kettlebaston Road, an auction sale property. As has been noted before the tribunal were firmly of the view that the auction sale gave rise to a very restricted market for investors and possibly cash buyers only. Therefore this form of sale does not in the opinion of the tribunal produce a reliable market value.
16. The other comparable from Ms Mariner was 39 Bloxhall Road. Once again this was an auction sale and was not acceptable to the tribunal for all the reasons set out above. Moreover during the hearing there was doubt over the value of this property with a sale consideration quoted at a different price at a time quite close to the auction date. The tribunal could not accept this as a reliable comparable.
17. The outcome of this review of comparables is that the one reliable comparable accepted by the parties and which has been accepted by the tribunal is 102 Clementina Road. The tribunal have used this comparable to calculate the short lease value.

18. The comparable sale date was 1st June 2015 at £251,000 whereas the valuation date is 9 January 2017, some eighteen months difference.
19. Mr Murphy makes a 5% (£15765) adjustment for condition. Ms Mariner adjusts for condition at £25,000. Based upon the photographic evidence supplied to it the tribunal prefer the figure of £25,000 and adopt it for valuation purposes.
20. Mr Murphy asserted that the comparable at 102 Clementina Road was 603 square foot based upon the EPC provided for the property at the time of sale. However, Ms Mariner confirms this flat is 642 square feet which she measured and provides a sketch plan. Because her figure is based upon an actual measurement the Tribunal prefers Ms Mariner's evidence.
21. Mr Murphy takes the House Price Index for flats and houses in the Waltham Forest area to bring the value in line with the valuation date of 09/01/2017. This provides a figure of £315,307, some £63,807 enhancement. This significant adjustment over 19 months must incur considerable variations etc as a consequence of this approach to the figures. These variations will undermine the reliability of this evidence.
22. Ms Mariner takes another approach. She also starts with the short lease value and provides a schedule of four long lease transactions as close as possible to the sale date of 21 Clementina. Of these transactions the Tribunal discount 40 Perth Road and 110 Morieux Road, as they are much smaller units compared to the subject at 749 square feet and therefore throw up a much higher pound per square feet figure.
23. This leaves 139 and 20 Clementina Road. She then takes the average of the long lease evidence providing a pound per square feet figure. This is used then to calculate and provide relativity for 55.5 years, being the unexpired term for 102 Clementina Road.
24. In line with what is stated in Ms Mariner's report, the Tribunal agree a £10,000 deduction should be made for the refurbishment of these two flats when compared to the subject property. The Tribunal prefers this approach as more accurately reflecting the probable expenditure for this kind of work.
25. In order to calculate the adjustment for 'No Act Rights' Ms Mariner deducts 6.7% based on Savills 2015 Graph data as produced to the tribunal. Mr Murphy went for 6% based upon a schedule on page 191 of the trial bundle and which can be expressed as Savills 2002 data less Gerald Eve = value of Act Rights. This method was adopted in recent decisions (*Mundy* and *Mallory*), so the tribunal intends to adopt this approved approach.

26. Therefore, for 139 Clementina Road the adjusted value is £339,379 less £10,000 = £329,379 at 621 square feet = £530 pounds per square feet.
27. Similarly, for 20 Clementina Road the adjusted value is £361,065 less £10,000 = £351,065 at 666 square feet = £527 pounds per square foot.
28. Taking the average of these figures produces a figure of £529 per sq ft. So, £251,500 plus £25,000, (adjustment for condition), = £276,500 less 6%, for no Act Rights, (£16,590) = £259,910 = £405 square feet. The average of the long lease evidence showing a pound per square foot of £529 reflects a relativity of 76.56% for 55.5 years, (405 x 100 divide 529 = 76.56 for 55.5 years).
29. In order to calculate Relativity for 57.96 years: 76.56 divided by 55.5 x 57.96 = **79.95 %**
30. Rights of appeal are set out below.

Name: Judge Robert. M Abbey **Date:** 12th March 2018

21 Clementina Road London E10 7PD
APPENDIX A

The Tribunal's Valuation
Assessment of premium for a new lease
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
DD/LON/OOBH/OLR/2017/0976

Components

Valuation date:	9 th January 2017	
Deferment rate:	5%	
Capitalisation rate:	7%	
Freehold value:	£400,000	
Long lease value	£396,000	
Existing leasehold value	£319,800	
Relativity	79.95 %	
Unexpired Term	57.96 years	
Ground rent currently receivable	£26	
Capitalised @ 6.0% for 52.18 years	14.00269	£364
Reversion to:	£400,000	
Deferred 52.18 years @ 5%	0.059138	£23,655
Freehold reversion to	£400,000	
PV£1 def 147.96 years @ 5%	0.000733	<u>-£293</u>
		£23,726

Marriage Value

<u>Value of Proposed Interests</u>		
Extended leasehold interest		£396,000
Landlords proposed interest		<u>£293</u>
		£396,293
<u>Value of Existing Interests</u>		
Landlord's existing value	£23,726	
Existing leasehold value	<u>£319,800</u>	<u>£343,526</u>
		£52,767
Freeholders share @ 50%		£26,384
LEASE EXTENSION PREMIUM		£50,110

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).