



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

Case reference : **LON/00BH/OLR/2020/0359**
HMCTS code : **V: CVPREMOTE**
(video)

Property : **36 Morieux Road, London E10 7LL**

Applicant : **Susan McAleer**

Representative : **Mr D Bromilow, counsel**

Respondent : **Daejan Estates Limited**

Representative : **Mr C Fain, counsel**

Type of application : **Lease extension**

Tribunal members : **Judge Tagliavini**
Mr L Jarero BSc FRICS

Venue & date : **10 Alfred Place, London WC1E 7LR**
of hearing : **V: CVPREMOTE.**
12 January 2021

Date of decision : **29 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle pages 1 to 224 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The premium payable for the lease extension of 36 Morieux Road, London E10 7LL is £98,700.**
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The application

1. This is an application for a determination as the premium payable and terms of a new lease for the subject property 36 Morieux Road, London E10 7LL under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993.

The background

2. The applicant is the long leaseholder of the subject property under a lease dated 28 July 1969 made between Daejan Estates Ltd and John Benjamin Offord and Elsie Emily Offord for a term of 99 years commencing on 24 December 1963 at a fixed ground rent of £12.60 per annum. The respondent is the headlessee of a lease dated 3 August 1966 which granted a term of 900 years from 25 December 1963 and is therefore the competent landlord.
3. The subject property is a ground floor flat in a converted Victorian terrace house with part of the rear garden demised to it.
4. On 9 October 2019 the applicant served a Notice of Claim seeking to acquire a new lease of the subject property at a premium of £79,000. In a counternotice dated 17 December 2019 the respondent admitted the applicant's right to acquire new lease at a premium of £129,150.
5. The parties through their valuers have in a Statement of Agreed Facts dated 6 November 2020 agreed the following:
 - (i) Date of valuation: 11 October 2019
 - (ii) The terms of the new lease have been agreed

- (iii) The GIA of the subject property is 53.4 sq m (585 sq ft)
 - (iv) The deferment rate at 5%
 - (v) The capitalisation rate at 8%
 - (vi) There is a 1% differential between the long lease value and the freehold value.
6. Therefore, the only issues in dispute between the parties is the short lease value and hence relativity and therefore the premium requires the tribunal's determination. It was also agreed between the parties' valuers that the FHVP of the subject property is £353,500 being the long lease value of £350,000 plus 1%.

The applicant's case

7. The applicant relied upon the expert valuation evidence of Mr Tim Henson BSc MRICS who spoke in his oral evidence to the tribunal to his report dated 21 December 2020 in which a premium of £81,500 is proposed.
8. In his evidence Mr Henson told the tribunal that he had relied upon the Savills/Gerald Eve 2016 relativity graphs in the absence of comparable sales evidence. This produced a relativity of 64.97% which when applied to the FHVP of £353,000 produced a short lease 'No Act' value of the subject property of £229,669.
9. In cross-examination Mr Henson confirmed that he had not relied on market evidence as he had been unable to find sales that he considered relevant. Mr Henson stated that he did not consider Mr Balcombe's approach to be sufficiently robust as some of the properties relied upon had been auction sales rather than sales on the open market and Mr Balcombe had not made sufficient adjustments to reflect difference between them and the subject property.
10. Mr Henson conceded that he had made an error in his report and had incorrectly reported the size of 105 Morieux Road which when corrected provided a relativity of 53%. Mr Henson also accepted he had not made adjustments for floor or condition and had not disregarded the second bedroom as an improvement although it had been added after the initial conversion. Mr Henson told the tribunal he had disregarded the market evidence as 'there was not enough of it.'
11. It was submitted by Mr Bromilow that Mr Henson's approach should be preferred where there were no comparable sales evidence to be relied upon and in the absence of this the graphs provided the starting point. Mr Bromilow accepted that although the graphs were derived from transactions in the PCL area and that the subject property is not within it, the Upper Tribunal had

nevertheless held that it was better to use those relativity graphs for a property outside the PCL area where alternative local relativity data suffered from 'limitations in scope and source'; *Deritend Investments (Birkdale) Ltd v Treskonova* [2020] UKUT164 (LC). Therefore, Mr Henson's premium of £81,500 based on a short lease value of £229,669 and a relativity of 64.97% should be accepted as correct.

The respondent's case

12. The respondent relied upon the expert valuation evidence of Mr Andrew Balcombe FRICS who in his oral evidence to the tribunal spoke to his report dated 22 December 2020 in which a premium of £98,700 is proposed.
13. In contrast, Mr Balcombe told the tribunal that he had rejected a reliance on graphs as they provided limited information and should not be preferred to market evidence. Mr Balcombe told the tribunal that he had relied on 'real world' market evidence as his starting point which comprised two sets of comparables at 7 and 115 Clementina Road and 105 Morieux Road and 117 Clementina Road. Mr Balcombe he had made appropriate deductions for Act rights to achieve his short lease value for the subject property of £195,222, a relativity of 55.22% and a premium payable of £98,700.
14. In his evidence Mr Balcombe defended his reliance on market evidence from a small number of sales as they established that the relativity was below the average of the graphs relied upon by Mr Henson.
15. Mr Fain submitted that the tribunal should prefer the market evidence of Mr Balcombe and following the tribunal decision in *Arrowdale Ltd v Conniston Court (North) Hove Ltd* LRA/72/2005.

The tribunal's decision

16. In considering the evidence of the parties' valuers the tribunal was a little surprised at the lack of market evidence for this particular non PCL area. However, the tribunal preferred the evidence of sales provided by Mr Balcombe, albeit limited to that of Mr Henson although the sale of 7 Clementina Road concerned an auction sale and therefore not a true open market sale although achieved at auction a higher price than that advertised on its brief exposure to the open market
17. Therefore, the tribunal finds that the premium payable by the applicant for the grant of a new lease is £98,700.

Name: Judge Tagliavini

Date: 29 January 2021

Rights of appeal from the decision of the tribunal

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).