



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

Case Reference : **LON/00BH/OLR/2014/0499**

Property : **Ground Floor Maisonette,
5 Bloxhall Road, Leyton, London E10
7LW**

Applicant : **Tarasaim Chand**

Representative : **Whitefield Solicitors**

Respondent : **Daejan Estates Limited**

Representative : **Wallace LLP**

Type of Application : **Determination of premium for
extended lease**

Tribunal Members : **Judge F Dickie
Mr D Jagger, FRICS**

**Date and venue of
Hearing** : **12 August 2014, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **19 September 2014**

DECISION

Decision of the tribunal

The appropriate rate of relativity to be applied is 68%. The tribunal determines that the premium payable for the lease extension is £39,892 according to the attached calculation.

The application

1. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms on which an extended lease of the subject premises ("the premises") is to be granted. Those premises are the property known as 5 Bloxhall Road, London E10 7LW and are situated in Leyton.
2. The Respondent is the freeholder. The lease of the premises was purchased by the Applicant on 30 November 2005. the terms of the lease being as follows:
 - (i) Dated 23 October 1978
 - (ii) Parties Daejan Estates Limited (1) and Nuduke Company Limited (2)
 - (iii) Term 99 years from 25 December 1963.
3. A Notice of Claim under section 42 of the Act was served by the Applicant on 7 August 2013 (the valuation date) proposing a premium of £31,000 in respect of the grant of the new lease pursuant to the provisions of Part II Schedule 13 of the Act. The landlord's counter notice is dated 8 October 2013 and proposed a premium of £60,000. By an application to the First Tier Tribunal dated 1 April 2014 the Applicant sought a determination under s.48 of the Act.

The Hearing

4. As at the hearing, which took place on 12 August 2014, the only issue in dispute between the parties and for the determination of the Tribunal in reaching the premium payable for the lease extension was the appropriate rate of relativity to apply. All other matters had been agreed.
5. The Tribunal heard oral evidence at the hearing from the Applicant's valuer Mr Ian Asbury MRICS, and from the Respondents' valuer Ms G Mariner, FRICS in support of their respective valuations and accompanying written reports.

"It is necessary for the Tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no act world".

13. Given the limited market evidence however this tribunal considers it appropriate to have regard to the graphs of relativity in the way in which they were presented by Mr Asbury. He did not seek to rely on an average of any of the graphs, preferring to rely on the Gerald Eve graph because its data was all collected prior to the commencement of the 1992 Act. This produced a relativity of 73% for which he advocated. He supported this by relying also on market evidence of the sales of 10 and 19 Seymour Road. However, in cross examination of his evidence of the market comparables, he conceded that he has been incorrect in his analysis of the sale of 10 Seymour Road because that was in fact a first floor flat and he had made no adjustment for that fact. His evidence in his report was that the first floor flats are worth about £10,000 more than the ground floor flats in the estate.
14. Mr Asbury did not seek to correct his position on relativity by way of making appropriate adjustments to the sale of number 10, but did recalculate the relativity derived from the market evidence of the sale of number 19 alone to be 71.63%. He based this revised figure on concessions made in evidence as to the superior condition of number 19 compared with the subject flat, plus an agreed adjustment of 1% for the freehold value. Accordingly, the tribunal notes that Mr Asbury's relativity derived from the limited market evidence is lower than the relativity he advocates based on the graphs.
15. The experts were not in agreement as to what, if any, adjustment to relativity should be made to reflect the need to arrive at a rate of relativity in a No Act world. The issue in dispute required the tribunal carefully to consider the decision of the Lands Tribunal in *Nailrile* and how the parties' experts' various positions on adjusting for a No Act world were presented and considered by the tribunal in that case.
16. Broadly speaking, the Lands Tribunal preferred an approach which applied a fixed percentage deduction as being a reliable method of reflecting the inevitable price difference it considered there must be between the value of a medium length lease without the benefits of the Act and with. In that case, the landlord's valuer proposed a fixed percentage reduction of 7.5% (which he had reduced from his initial position of a 12.5% reduction for a No Act world being appropriate). His opinion was adopted in workings by the other valuers. However, this tribunal notes that no rationale for adopting that particular figure was put forward by the landlord's valuer. The tribunal in *Nailrile* accepted arguments demonstrating that the 12.5% reduction was too high, and settled on the lower 7.5% reduction based on the expert's superior local knowledge and experience.
17. Ms Mariner sought to persuade this tribunal to apply the same 7.5% reduction. However, she frankly acknowledged that she offered no rationale or evidence for doing so, other than the decision of the tribunal in *Nailrile*, and

her experience that such a deduction was becoming customary amongst some valuers. Her position on this point had been accepted by the tribunal in the 56 Perth Road decision. This tribunal notes that, applying a straight line adjustment of the relativity in that case to the present would produce a relativity of 67.7% from her two original comparables.

18. Mr Asbury accepted that there must be an adjustment for value to reflect the No Act world, but would not put forward a particular figure as a percentage. He considered the adjustment would be “nowhere near 7.5%” in his professional opinion, and that the reduction might indeed be “a couple of percentage points”. He also referred to the exceptionally high sale price paid at auction in 2013 of a 10 year lease of 30 Seymour Road for £102,000, indicating a relativity of approximately 50%, suggesting in his view that there was a strong market with people prepared to pay good prices for short leases with the right to extend.
19. The tribunal notes that the Lands Tribunal in *Nailrile* was dealing with a property in Prime Central London, and preferred the evidence of Mr Wilson because of his “greater experience and personal knowledge of the comparables” [218]. It is not made clear by the tribunal that 7.5% is a universally applicable percentage reduction to be applied to achieve a No Act world relativity, and the opposing views were based on mathematical models and not on alternative market opinion as to another appropriate fixed rate deduction. Accordingly, this tribunal is cautious about accepting Ms Mariner's bald contention that this fixed percentage should be applied in this and every case, regardless of location and any other factors.
20. The tribunal considers that evidence of market transactions in the real world must be preferred in the first instance in comparison to the graphs. However, in view of the very limited market evidence, and even notionally allowing for Ms Mariner's deduction of 7.5% in spite of the tribunal's reservations, the tribunal in any event considers that a relativity based on one transaction is too unreliable an indicator, and on all the available evidence should conservatively be increased to 68% once a check is made to take into account the significantly higher relativities produced by almost all of the graphs. This figure still makes for a material reduction in relativity for the No Act world based on the available market evidence.

Name: F Dickie

Date: 19 September 2014

5 Bloxhall Road, Leyton, London, E10 7LW

APPENDIX A

The Tribunal's Valuation

Assessment of value for the lease extension

In accordance with Schedule 13, Leasehold Reform, Housing and Urban Development Act 1993

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Components

Valuation date:	7 ^h August 2013
Capitalisation Rate	7%
Deferment rate:	5%
Freehold value	£197,475
Long lease value	£195,500
Existing leasehold value	£134,283
Relativity	68%
Unexpired Term	49.35 years

Freeholders present interest

Ground rent currently receivable	£50	
Capitalised @ 7% for 16.35	9.56	£478
Rising to:	£75	
Capitalised @ 7% for 33 years	12.754	
Deferred 16.35s @ 7%	0.3308	£316
Reversion to:	£197,475	
Deferred 49.35 @5%	0.09	<u>£17,773</u>
		£18,567
Less		
Freeholders proposed interest		
Reversion to	£197,475	
Deferred 139.35 years @5%	0.00112	<u>£221</u>
		£18,346

Marriage Value

Extended leasehold interest	£195,500	
Freeholders proposed interest	<u>£221</u>	
		£195,721
Less		
Short leasehold interest	£134,283	
Freeholders present interest	<u>£18,346</u>	<u>£152,629</u>
		£43,092
Freeholders share @ 50%		£21,546

LEASE EXTENSION PREMIUM

£39,892