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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

London RENT ASSESSMENT PANEL

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Messrs Thirsk Winton LLP
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Your ref: J.990.Martin
Our ref: BG/LON/00BC/OLR/12/0850

Date: 8 January 2013

Dear Sirs

RE: Leasehold Reform, Housing & Urban Development Act 1993 - Section 48

PREMISES: 135 Maybank Road, London, E18 1EJ

The Tribunal has made its determination in respect of the above application(s) and a copy of the document recording its decision is enclosed. A copy of the document is being sent to all other parties to the proceedings.

Any application from a party for leave to appeal to the Upper Tribunal must normally be made to the Leasehold Valuation Tribunal within 21 days of the date of this letter. If the Leasehold Valuation Tribunal refuses leave to appeal you have the right to seek leave from the Upper Tribunal itself.

If you are considering appealing, you are advised to read the note attached to this letter.

Yours faithfully



Mr Brian Godfrey
Case Officer

cc Mr Murphy ✓



**HM Courts
& Tribunals
Service**



**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BC/OLR/2012/0850

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM,
HOUSING & URBAN DEVELOPMENT ACT 1993**

Applicants: (1) Ian Martin (2) Fabiola Smolowik
Respondent: Alistair James McKenzie Craig
Property: 135 Maybank Road, South Woodford, London, E18 1EJ
Hearing: 7 November 2012

Appearances

Applicants

Mr R Murphy Dip. Surv. MRICS Richard John Clarke, Chartered Surveyors

Respondent

Mr A Craig Freeholder, in person

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)

Mr D Banfield FRICS

Introduction

1. This is an application made by the Applicants under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (“the Act”) for a determination of the premium to be paid for an extended lease of 135 Maybank Road, South Woodford, London, E18 1EJ (“the property”).
2. The property is described as a first floor flat within a 2-storey converted house comprised of 2 bedrooms, reception room, dining room, kitchen and bathroom with access to the rear garden via a rear staircase. The Tribunal was told that it is in a good condition having been modernised to a reasonable standard. The improvements claimed by the Applicants are the installation of new UPVC windows, modern bathroom, modern kitchen and a new central heating system.
3. The lease presently held by the Applicants is for a term of 99 years from 30 March 1984 with a fixed ground rent of £25 for the term of the lease. As at the valuation date, there were 71.2 years unexpired.
4. By a Notice of Claim dated 18 January 2012 served pursuant to section 42 of the Act, the Applicants exercised the right to the grant of a new lease of the property. The proposed premium was £7,250, although a premium of £9,850 was contended for at the hearing.
5. By a counter notice dated 24 March 2012 served pursuant to section 45 of the Act, the Respondent admitted the Applicants’ right to acquire a new lease and counter proposed a premium of £13,587.
6. It seems that the parties were unable to agree the premium to be paid for the new lease and the Applicants issued this application for the Tribunal to make this determination.
7. The expert valuation evidence relied upon by the Applicants is set out in the report of Mr Murphy MRICS dated 31 October 2012. The valuation evidence

relied on by the Respondent is set out in a report prepared by Mr S Barrable, FRICS of Hull & Co dated 14 March 2012. The report does not contain a formal valuation and appears to have been obtained for the purpose of preparing the counter notice. It simply contends for a premium of £13,587. Mr Barrable did not attend the hearing to either represent the Respondent or to give expert evidence on his behalf.

Matters Agreed

8. The matters agreed by the respective parties were:

Valuation date – 18 January 2012

Lease commencement date – 30 March 1984

Lease term – 99 years

Unexpired lease term (as at the valuation date) – 71.2 years

Capitalisation rate – 7%

The deferment rate – 5%

Matters Not Agreed

9. The issues that fell to be decided by the Tribunal were relativity and the freehold vacant possession value. It should be noted that the Tribunal was told by the Respondent that the lease terms had not been agreed. As the Respondent had appeared in person and told the Tribunal that he did not possess sufficient lease knowledge or expertise to make submissions on the terms of the proposed lease, it decided to adjourn this part of the application on the basis that, once the premium had been determined, it was hoped that agreement on the lease terms could be achieved.

The Relevant Law

10. It is sufficient to note that the Tribunal's determination takes place under section 48 on the statutory assumptions set out in Schedule 13 of the Act.

Hearing and Decision

11. The hearing in this matter took place on 7 November 2012. The Applicants were represented by Mr Murphy MRICS. The Respondent appeared in person.

Freehold Vacant Possession Value

12. Mr Murphy contended for a figure of £200,000 on the basis that the property had been marketed on or about the valuation date for a number of months at an asking price of £220,000. The highest offer received was £211,000 on the assumption that the lease had already been extended. Deducting the (unchallenged) improvements made by the Applicants, Mr Murphy concluded that the correct value was £200,000.
13. Mr Murphy had also relied on two comparable properties. First, 131 Maybank Road, which was sold in May 2010 for £220,000 in an improved condition and the benefit of an extended lease. When asked by the Tribunal, he said that this value would have increased to £225,000 at the valuation date when adjusted for time.
14. Second, was the sale of 35 Highland Court, 87 Gordon Road, which is close to the subject property. This sold for £182,000 on 9 December 2011 and was in a reasonable condition. Mr Murphy said that he had used this property “to set a bottom line” on the valuation.
15. Mr Murphy told the Tribunal that he had looked on the Land Registry website for comparable market evidence but could not find any. The position was the same when he made enquiries with local estate agents. He said he had been informed by the estate agent that the sale of 131 Maybank Road was on the basis that the lease extension would be granted and at the vendor’s cost. The offer of £211,000 had been made on this assumption.
16. As stated earlier, no formal valuation evidence had been advanced in the report prepared by Mr Barrable on the Respondent’s behalf. He simply contended for a value of £220,000 based on the highest comparable property provided by Mr Murphy, namely, 131 Maybank Road.
17. The best evidence before the Tribunal as to value had been provided by Mr Murphy regarding the sale of 131 Maybank Road. He conceded that he had not adjusted the sale price to reflect the valuation date and had he done so the

correct value would be £225,000 and this figure was adopted by the Tribunal as the starting position. The Tribunal placed no reliance on the sale of 35 Highland Court, as did Mr Murphy.

18. Both Mr Murphy and Mr Barrable had agreed in their reports that the improvements made by the tenants should be deducted and, therefore, the Tribunal allowed the sum of £10,000 for these for 131 Maybank Road. This resulted in a freehold vacant possession value for the comparable property of £215,000.
19. However, the Tribunal was mindful of the fact that the subject property had been the subject of an offer of £211,000, with the benefit of the notice for the grant of a new lease. This, in the Tribunal's judgement, was the best evidence of the market value of the freehold vacant possession value and it found in these terms. It then made a deduction of £5,000 for the improvements carried out by the Applicants rather than the £10,000 applied at 131 Maybank Road to reflect the higher quality of the improvements at 131 Maybank Road. The Tribunal concluded, therefore, that the freehold vacant possession value of the subject property was £206,000.

Relativity

20. Mr Murphy contended for a figure of 93.4%. He argued that there was no market evidence of short leases being sold without the benefit of "rights under the Act". In the absence of such evidence, he relied on the graphs of relativities provided in the October 2009 RICS Research Report. He summarised the graphs outside the Prime Central London area, but included the research carried out by the College of Estate Management and the Leasehold Advisory Service (LEASE). The highest relativity for a lease with an unexpired term is 94.2% and the lowest is 91.6%, thereby producing an average of 93.4%. He found support for his approach in the Upper Tribunal judgement given by P R Francis FRICS in the joint appeals regarding *Coolrace Ltd & Ors* (2012) UKUT 69 (LC).

21. The Respondent submitted that the most relevant graph was the Nebitt & Co graph as Woodford is a good suburb. He therefore, contended for a relativity figure of 90.9%. He argued that, for example, the Austin Gray and Andrew Pridell graphs were not helpful because the “kinks” in those graphs indicated that they suffered from the data on which they are based. Another shortcoming with the Andrew Pridell graph was that it was biased because he acted almost exclusively for tenants and not landlords. Indeed, the Respondent argued that all of the data in the graphs appeared to be based on opinion.
22. The Tribunal concluded that the correct approach to the issue of relativity was that propounded in *Nailrile Ltd v Earl Cadogan & Anor* (LRA/114/2006) , namely, that “*relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity*”.
23. However, in the present case, there was no evidence of the sales of short leasehold interests. The Tribunal was, therefore, obliged to have regard to the graphs of relativities set out in the RICS research paper. The Tribunal discounted the South East Leasehold graph because it is based entirely on transaction evidence in the ‘Act world’. The LEASE graph based solely on LVT decisions was also discounted for the reasons set out in *Arrowdell* and the inherent unreliability of such evidence. The Tribunal also discounted the Andrew Pridell graph, as it is based on transactional evidence in the Brighton area, which was of little or no relevance in the present case.
24. An averaging of the remaining graphs produced a relativity figure of 92.95% and this was the figure that the Tribunal found should be adopted in this instance.
25. Accordingly, the Tribunal determined that the price to be paid by the Applicants for the grant of a new lease is £10,592. The Tribunal’s valuation is annexed hereto.

Dated the 7 day of January 2013

Chairman... MR I Mohabir LLB (Hons)

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135 Maybank Road, South Woodford, London E18 1EJ

LEASE EXTENSION VALUATION

In accordance with the Leasehold Reform and Urban Development Act 1993

Agreed Matters

Valuation Date	18/01/2012
Lease commencement date	30/03/1984
Term	99yrs
Unexpired Term	71.2
Ground rent	£25.00
Capitalisation rate	7%
Deferment rate	5%

Determined by Tribunal

Relativity	92.95%
Long leasehold value	£206,000
Uplift to freehold	nil
Existing leasehold interest	£191,477

Freeholder's Present Interests

Ground rent	£25.00	
YP	71.2 yrs	7.00 %
	14.17016241	354

Freeholder's reversion

Reversion to freehold		
PV£1	71.2 yrs	5.00 %
	£206,000	
	0.03099716	£6,385
Total value of present interests		£6,739

less

Freeholder's Proposed interests

Freeholder's reversion	£206,000	
Defer	161.2 yrs	5.00 %
	0.000383959	£79

Diminution of freeholder's interest

£6,660

Marriage Value

Values of proposed interests

Leaseholder

£206,000

Freeholder

£79

£206,079

Less

Values of present interests

Leaseholder

£191,477

Freeholder

£6,739

£198,216

Marriage value

£7,863

50% of marriage value to freeholder

£3,932

Premium

£10,592