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

Case Reference : LON/OOBK/OLR/2016/0174

Property : 4 Milford House, 7 Queen Anne's Street,
London W1G 9HN

Applicant : Dr Richard Robert Harvey Coombs

Representative : In person

Respondent : The Chancellor, Masters and Scholars of the
University of Cambridge

Representative : Mr Paul Letman, Counsel instructed by Howes-
Percival Solicitors
Miss Jennifer Ellis FRICS of Langley Taylor

Type of Application : Section 48 of the Leasehold Reform Housing
and Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mr N Martindale FRICS

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on 28th June
2016

Date of Decision : 15th July 2016

DECISION

DECISION

The Tribunal determines that the premium payable for the lease extension of the property 4 Milford House, 7 Queen Anne's Street, London W1G 9HN (the Property) is £616,681 as set out on the attached valuation schedule.

BACKGROUND

1. This application arises from a notice served under Section 42 of the Leasehold Reform Housing and Urban Development Act (the Act) by Dr Coombs on the Chancellor, Masters and Scholars of the University of Cambridge (the Respondent) dated 24th September 2015. At the time the initial notice was served by solicitors for Dr Coombs, Collins, Benson & Goodhill LLP and put forward a premium of £350,000.
2. A counter notice was served on behalf of the Respondents dated 25th November 2015, rejecting the proposal and instead counter-proposing a premium of £869,000 together with some amendments to the terms of the lease, which initially were contentious but which were settled by agreement. We will refer to those in due course. An application to the Tribunal for the determination of the proposals and the lease terms was made by Dr Coombs on 26th January 2016 and following directions the matters came before us for hearing on 28th June 2016.
3. Prior to the hearing we were in receipt of a bundle of documents which included the notices served, the report of Miss Ellis which is dated 25th May 2016, a schedule of terms in dispute, land registry documents and correspondence.
4. Dr Coombs for reasons that he explained at the hearing, dispensed with the services of his solicitors and considered that he was able to put forward his views on the premium payable without the assistance of an expert. There were a number of letters written by him. In one letter written on 3rd June by Dr Coombs to Miss Trolove of the instructing solicitors for the Respondent, he confirms the only point in issue is the premium and was anxious to seek some form of compromise. In another he expressed concern that there may be an application for costs made under rule 13 of the Tribunal Procedures (First-Tier Tribunal) (Property Chamber) Rules 2013. He referred to the property at Flat 6 which features large in Miss Ellis's report and suggests for reasons that will be expanded upon that the valuation attributed to flat 6 should be discounted by 10% for his property. He said applying standard tables "*that an acceptable price for the lease extension would be in the region of £508,155 to £534, 900.*"
5. The valuation date is agreed at 25th September 2015 and the unexpired lease term is 34.25 years.

HEARING

6. At the hearing Dr Coombs represented himself and the Respondents were represented by Mr Letman of Counsel and by Miss Ellis

7. Dr Coombs told he us had dis-instructed solicitors in May partly because he did not consider the lawyers were dealing with the matter as he wished. The key issue was the premium. He referred us to his submissions in which he described Milford House as having six duplex flats on the ground and first floor which were very similar in size to each other. He told us what he considered to be comparable properties. These were Flat 5 for which a negotiated premium for a lease extension had apparently been reached in March of 2014 at £622,500 and Flat 2 where an premium of £537,500 had been agreed. He pointed out that Flat 2 was approximately 5% smaller than Flat 4. He also referred to the sale of 6 Milford House for £1,999,950 on the 1st May 2015. His view was that whilst this was a helpful comparable, as a result of the terrace to the rear of Flat 6 there should be a discount of 10% when comparing the value of Flat 4, a view not shared by Miss Ellis.
8. His statement went on to say there were no sales particulars in respect of Flat 6 Milford House when sold in 2015 but he believed it had now been totally refurbished to a high standard and put back on the market but that the price had been reduced.
9. He responded to other properties referred to in the report of Miss Ellis. In respect of the sale of Flat 25 Milford House, which took place in December of 2014 with a short lease, the sale price he said had achieved a rate per square foot of £790 which he thought was realistic in pricing property in Milford House at the present time. He then went on to highlight the existence of the external terrace for Flat 6 which he thought was an attractive addition, granting direct access to the external courtyard and garden to the rear. The terrace, he said, received direct sunlight, contrasting with his property which overlooked Chandos Street and which for privacy reasons required blinds to prevent passers-by looking in. He also questioned the costs of reconfiguring Flat 6, which had previously been used as a doctor's surgery which he thought were not as high as suggested by Miss Ellis in her report. His statement then went on to address the question of costs. It is not wholly clear whether he fully understood the provisions of Section 60 of the 1993 act but it was not an issue that we were at this hearing required to determine.
10. He went on to tell us that he had originally made an application in 2013 but the proposed premium at that time was £900,000 and he did not wish to proceed. However, the subsequent lease extensions for other properties in the building caused him to review and he therefore issued a further notice under Section 42.
11. He confirmed that his view was that Flat 6 was 10% more valuable than his own property although conceded that this was a personal view. He doubted that it would cost as much as £300,000 to convert. He said he had spoken to a builder who said it would be no more than £10,000, but we had no evidence of this.
12. In Miss Ellis's report mention had been made of sales of properties in Harmont House but he did not consider that they were helpful. A proportion he said were used for professional purposes but the properties were now becoming more expensive and there was conversion back to residential. One of the properties, Flat 25 Harmont House had been bought by a colleague and friend in 2014 for £1.2m but he did not think the price payable for that property was comparable to the

13. He expressed concerns that he faced a claim for costs under the Rules but Mr Letman confirmed that was not an issue at this hearing and something that might be considered later.
14. He was then asked questions by Mr Letman and confirmed that he had been an orthopaedic surgeon but was now aged 62 and retired from the NHS. He confirmed that he was not pretending to have valuation experience. He thought the figure put into the Section 42 notice was genuine although it was pointed out that in May 2014 he originally sought a figure of £168,000. He thought, however, that his figure of £350,000 was a realistic price to put forward, notwithstanding he was now in his latest correspondence suggesting a settlement at in excess of £500,000. He told us he had instructed solicitors at this time and they had advised him that the reasonable figure to put forward was £350,000 although no valuation had been obtained. He was, however, aware of the sale price for No 6 and the premium paid for No 5. These questions were in effect an attack on his independence as contrasted with Miss Ellis who is put forward by the Respondents as an independent expert. Asked what price he would pay he confirmed the bracket was still as set out in his letter of between £508,000 and £535,000. He confirmed he understood the Tribunal was guided by sales and not by negotiated transactions but he thought the negotiated settlement did give some indication, although he accepted he was clearly unaware of case law. He confirmed in further questioning he had purchased his property in 1991 and thought he paid £265,000.
15. The Respondent's evidence was to be found both in the report of Miss Ellis and her subsequent additions and clarifications at the hearing. Miss Ellis is an experienced practitioner and her details were set out in the report and we do not need to repeat those. It is accepted that she is an independent expert. It is also clear from the information available to us that she has practised in this particular area of London for some time.
16. On the question of settlements which appeared in her report at page 5, she confirmed that she placed no reliance on them. They were evidence that deals were struck and the levels at which those deals were settled. In her view the most helpful comparable was 6 Milford House. We were directed to photographs showing the terrace to Flat 6 which Dr Coombs said made this a better flat but we did inspect the property and we will confirm our inspection findings later in this decision. Using 6 Milford House as the appropriate comparable her report dealt with the adjustments necessary to bring this in line with the subject property. Some of these are set out at paragraphs 5.4 and 5.5 of her report. At 5.6 she deals with Flat 6 confirming that there is a terrace to the rear measuring around 7 feet by about 38 feet on which at least one air conditioning unit is located. It is suggested that the outlook to the rear is busy during the day.
17. We were told that Flat 6 required reconfiguration from dental surgery to a flat with renewal of fixtures and fittings and she would add around £200 per square foot for these works or £315,000. She thought that any value added by the narrow terrace was offset by the poorer setting of the flat at the rear compared to the subject property but out of caution deducted £25,000 (1.25% of the value) reaching, after adjustment for time, a value attributable to the subject flat, without the terrace of £2.28m giving a square footage rate of around £1,444. She told us that Flat 6 had

asking price had been reduced to £3.15m and although there had been more interest shown no offers had been made. She said the price was “over ambitious” and she set no store by it.

18. In respect of the flats at 9 and 25 Harmont House which she used as a form of comparable, these produced square footage rates of £1,585 for Flat 9 and £1,310 for Flat 25. This she felt supported her rate per square foot for the subject flat and thus the value of £2.282m. There was an uplift of 1.5% based on the Upper Tribunal case of Erkman lifting the freehold value of the subject property to £2,316,751.
19. The value of the current lease was affected by the decision in *The Trustees of the Sloane Estate and Adrian Howard Mundy [2016]UKUT 0223 (LC)* and we note all that was said. A comparable of 25 Milford House was made use of and with adjustments, it being sold in December of 2014, she concluded that a rate of £980 per square foot would be appropriate for the subject property on a 34.25 year remaining lease term. This gave a value for the subject property with rights under the Act of £1,548,400.
20. However, in the light of the Upper Tribunal findings in Mundy and the various percentages that were put forward in that case, she concluded that given the lease length remaining a 10% reduction should be made to represent the no act world, which reduced the value of the subject property, without rights to £1,393,560. She then sought to contrast this by using Gerald Eve graphs, which had been approved by the Upper Tribunal. This showed a relativity of 60.25%, which when applied to the freehold value gave a short lease value of £1,395,400. She also adopted the Upper Tribunal reliance on the Savills 2002 graph and applying the relativity from that of 71.33% and a deduction for rights, came to a leasehold value for the short lease of £1486,800.
21. She needed to make an adjustment to paragraph 6.19 of her lease which was in error and which we have noted. In any event, taking these three approaches which we have outlined above, she adopted a value for the property on the current lease of £1,395,000. She adopted capitalisation rates and deferment rates both of 5% and sought a premium of £661,000 as set out on her attached valuation sheet.
22. Her report contained a number of appendices which were noted. She confirmed that the properties in Harmont House were really only a check against her views on the values of 6 Milford House. On the current lease value her view was that 25 Milford House was the only real evidence and seeking to follow the Upper Tribunal's findings in Mundy, where market evidence must be best, she had utilised this as her basis for assessing short lease values. She therefore confirmed that all that was set out in her report was correct and that the figure she suggested for the lease extension was appropriate.
23. Dr Coombs asked her some questions and passed photographs of the terrace which she reviewed. She was of the view that it would be a good idea for us to inspect. Clarification questions were raised by us and in that she confirmed that the settlement figures were not relied upon by her but only indicative that settlement could be reached with, she said, experienced lessee valuers. Very little weight was

given by her to the comparables at 9 and 25 Harmont House and that she in effect nailed her colours to the mast in relying on the comparable at 6 Milford House.

24. Comments were made by Dr Coombs concerning the "colossal car park" that lay beneath the site of Harmont House and Milford House which had been an important factor when he had first purchased but was now not so important as there was residents' parking. As to the terrace, Miss Ellis was of the view that this was not the most attractive private space. It overlooked what appeared to be, from the photographs, a busy car parking area to the rear as well as the access to the underground car park. She also confirmed that she had undertaken an exercise in her report at paragraph 7.6 as a final check to ensure that the premium that she was suggesting should be payable did not exceed the value of the claim. She was satisfied that it did not and indeed left a margin of around £66,000 for Dr Coombs if the matter settled at the premium she suggested.
25. Mr Letman then made closing submissions referring to the provisions of Mundy and the paragraphs which we should consider. He reminded us that Dr Coombs was not an expert and he had not adduced independent expert evidence. He had been lacking in impartiality and that could be seen in the way he had advanced his claims in the initial notices. He had in questioning from Mr Letman accepted that although the notice price was £350,000 he was now accepting that the price would exceed £500,000.
26. For the Respondent, however, there was the independent expert's report of Miss Ellis and it was clear he said that she had been striving to give a complete and balanced view. It was not disputed that 6 Milford House was the primary comparable and the suggestion that the refurbishment works at £200 per square foot were too low, as was said by Dr Coombs, it should not be accepted as there was no evidence that this was the case. The presence of the balcony and terrace was a personal view, although Miss Ellis was looking at it through the eyes of the market. Her evidence he said was powerful. There was no alternative expert's view on the matter and that an inspection was appropriate. He confirmed that the view of Miss Ellis was that the view from the front of the subject property was preferable to that of the rear of No 6 and that we should accept Miss Ellis's evidence and her adjustments. He submitted that this being the only solid piece of expert evidence we were bound in effect to rely upon it.
27. Dr Coombs responded briefly indicating that £25,000 for the patio was insufficient and that he had felt compelled to proceed with the process as the report from Miss Ellis was not available until May.

INSPECTION

28. We inspected both the subject property and Milford House generally as well as the communal garden to the rear. There are attractive properties to be seen from the front windows of the subject premises although at ground floor level this is somewhat hindered by the air vents to the underground car parking. The situation is very close to Oxford Street and therefore is in a prime area. We were able to view somewhat superficially the interior of the subject premises which is of a somewhat linear design having the living room, dining area and kitchen at ground

floor level and bedrooms and bathrooms above. At ground floor level the windows are presently somewhat masked by wooden slatted blinds to create privacy.

29. We then inspected the terrace to the rear serving 6 Milford House. It is not a large area but does have the benefit of a gate which leads from the terrace into the car parking area and straight to the communal garden. This also would have the benefit of being able to bring items to the rear of the property without using the common parts. The view to the rear is affected by the car parking but is more open than to the front of the building. It is fair to say that at the time of our inspection there were a number of builders' vans in situ as there appeared to be refurbishment works being undertaken to a neighbouring property. However, we suspect that in the evening and weekends this area is not so heavily populated with large commercial vehicles. The entrance to the underground car park is some way from the terrace. The terrace itself has substantial wooden fencing running around its edge which certainly hinders any view out but equally provides privacy for those using the terrace.
30. The common gardens are very pleasant and are used by both Milford House and Harmont House together also with a block of houses the details of which were not readily known. It is well tendered with a grass area, water features and would certainly make a very pleasant sitting area for the residents to use.

THE LAW

31. The law in respect this matter is to be found in the Act and in particular schedule 13 of same.

FINDINGS

32. We agree with Mr Letman that in the absence of any alternative independent experts' evidence we must take full cognisance of Miss Ellis's report. Miss Ellis is a respected practitioner and indeed Dr Coombs accepted that was the case. The only real difference between them related to the somewhat subjective value given to the terrace at the rear of 6 Milford House. We think we can take quite shortly Miss Ellis's evidence for by and large we agree with it. It is quite clear to us that 6 Milford House is the best comparable, it being a sale close to the valuation date. There are issues with regard to the costs of refurbishment which she put at £200 per square foot, but more particularly the discount she has made in respect of the terrace to the rear of that property. We will return to that. Her reference to settlements was justified as only evidencing that agreements had been reached and her use of Harmont House properties was only a check against her views as to the value to be attributed to 6 Milford House.
33. We find that she has acted appropriately as an independent expert and exercised the relevant checks and balances in reaching her assessment of the values for the long lease, freehold and short lease in respect of the subject property. We have no argument with the capitalisation or deferment rate she utilised.
34. We do not take issue with her costs of refurbishment. The comment by Dr Coombs that a builder had indicated the costs would be less is not sufficient to displace

subjective, is the value that one might attribute to the terrace to the rear of 6 Milford House. In that regard we find Dr Coombs' comments, rather than evidence, perhaps slightly more compelling. What was not wholly clear in Miss Ellis's report and which we think of some importance, is the fact that the terrace not only affords a private area for outdoor usage but also convenient access and egress to the flat from and to the car parking to the rear as well as the communal garden. There is no need to traverse common areas, instead the owners of 6 Milford House can walk straight from their terrace area to the rear of the property and across to the garden. It also has the added benefit of affording helpful access to the flat for perhaps bringing in items that might not want to go through the body of the flat or the common parts.

35. Miss Ellis had attributed a figure of £25,000 to this reflecting it seems from paragraph 5.8, that there was a better outlook from the subject flat over Chandos Street. We do not necessarily share that view; again it is subjective. The view from the ground floor of the subject property is partly masked by the air vents to the car park below. The view is better from the first floor, which of course are bedrooms. There would, we find, be some issues on privacy with people walking past at street level and the buildings opposite are quite substantial and would certainly have an impact on daylight.
36. Accordingly, we find that Miss Ellis's report is in the main wholly acceptable to us. Our only reason from departing from same is the value we attribute to the terrace to the rear of 6 Milford House. It is, we find, extra outside space which would be of benefit. There is a reasonable outlook from the rear of the property and certainly in our findings no worse than the outlook from the front of the subject property. Accordingly in our finding the terrace deserves a greater percentage discount than 1.25% as provided for by Miss Ellis. We think a figure near 5% is appropriate, which gives an approximate reduction of £100,000. This, therefore, would reduce the £/sqft figure to £1,440,000, thus reducing the long lease value on our finding to £2,212,000. We have included that amended long leasehold value in the valuation which is attached which of course has an impact on the freehold value reducing it to £2,245,685. Applying the capitalisation and deferment rates that Miss Ellis suggested and which we agree and the short lease value based on 25 Milford House which does not have the terrace issue of £1,395,000, this gives rise to the premium which we find payable of £616,681. The details are set out on the attached schedule.

Judge: Andrew Dutton
A A Dutton

Date: 15th July 2016

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.

**4 Milford House, 7 Queen Anne
St.
London W1G 9HN**

FLAT - Lease Extension

Freehold		
Long Leasehold value 124.25 years (FH -1.5%)		£2,245,685
Valuation Date		£2,212,000
Expiry of existing lease		25-Sep-15
Existing Term unexpired		24-Dec-49
Capitalisation rate		34.25
Deferment rate		5.00%
Relativity		5.00%
Fixed existing GR		n/a
Short Leasehold value		£1,395,000

Diminution of Landlords Interest

Landlords Present Interest

Term 1

Fixed Present GR			
YP for 34.2 years @ 5%		£225.00	

Term 2

Additional GR	16.239		3,654
YP for 30 years @ 5%		£50.00	
PV£1 in 4.25 years @ 5%	15.373		

Term 3

Additional GR	0.8128		625
YP for 15 years @ 5%		£50.00	
PV£1 in 19.25 years @ 5%	10.38		

Sub Total	0.3909		203
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Reversion

FH Value			4,481
PV£1 in 34.25 years		£2,245,685	
	0.1881		422,346

Landlords Present Interest TOTAL			<u>426,827</u>
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Landlords Proposed Interest

Reversion

Freehold		£2,245,685	
PV £1 in 124.25 years @ 5%	0.0023		5,232

Landlords Proposed Interest			£421,595
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Landlords Present less the Proposed

Marriage Value

Tenants Proposed Interest

Less Tenants Present Interest		2,212,000	
Less Landlords Present Interest	£1,395,000		
Total	£426,827		1,821,827

Marriage Value		390,173	
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50% share of marriage value			195,086
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£195,086

Lease Extension Premium

Landlords Present - Proposed + Marriage share

£616,681