



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

**Case Reference** : **CAM/OOME/OLR/2015/0194**

**Property** : **7 Eton Square and Garage 12, Eton, Windsor,  
Berkshire, SL4 6BG**

**Applicant** : **Marion McKenzie**

**Representative** : **AmphlettLissimore Solicitors  
Mr Wilson Dunsin FRICS of Dunsin Surveyors  
Limited**

**Respondent** : **Ambercroft Properties Limited**

**Representative** : **Mr Redpath-Stevens of Counsel**

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

**Tribunal Members** : **Tribunal Judge Dutton  
Mrs H C Bowers MRICS  
Mr D Barnden MRICS**

**Date and venue of  
Hearing** : **Holiday Inn Express, Slough, Berkshire on 18<sup>th</sup>  
March 2016**

**Date of Decision** : **25th April 2016**

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**DECISION**

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## **DECISION**

1. The Tribunal determines that under the provisions of Section 48 and Schedule 13 of the Leasehold Reform, Housing Urban and Development Act 1993 (the Act) the premium payable for the lease extension of 7 Eton Square, Eton, Windsor, Berkshire SL4 6BG and garage 12 (the Property) is £46,491.00 as set out on the attached valuation schedule.
2. The Tribunal determines that the costs payable under Section 60 of the Act shall be £1,000 plus VAT in respect of solicitors' costs and £300 plus VAT in respect of the costs of Mr Ross of the respondent company.

## **BACKGROUND**

1. This was an application made by Miss McKenzie for a determination as to the price payable in respect of the Property. The valuation date is 7<sup>th</sup> April 2015 which is the date upon which a notice was sent to the respondent landlord under Section 42 of the Act. The initial notice was served by Mr and Mrs Foster the owners of the Property which was assigned to Miss McKenzie when she purchased the leasehold interest completing that transaction on 21<sup>st</sup> April 2015. The Section 42 notice had suggested a price of £28,731.00. The price paid by Miss McKenzie for the lease then having some 64.73 years to run was £287,700. The counter notice served on behalf of Ambercroft Properties Limited suggested a premium of £50,000.
2. Prior to the hearing we were provided with a bundle of papers which included the documentation surrounding the acquisition of the Property by Miss McKenzie and the directions order issued by this Tribunal. In addition, there was an agreed statement of facts with confirmation of matters in dispute, a survey report from Dunsin Surveyors with further valuation evidence and a report from Mr Ross of the respondent company putting forward his views as to the price to be paid.
3. We also had before us details of the Respondent's costs, the Applicant's response thereto with a final response to the Respondent's solicitors. There were copies of relevant correspondence and additional papers, being the sale contract for the Property and the memorandum of exchange. We should also mention that in the bundle was a building survey report carried out by Dunsin Surveyors in February of 2015 which was used to support an alleged cost of over £28,000 in respect of refurbishment works carried out to the property by Miss McKenzie after her purchase completed.
4. Prior to the hearing we inspected the subject premises in the company of Miss McKenzie and Mr Treader.

## **INSPECTION**

5. The Property is a purpose-built, first floor, two bedroom flat erected in the 1980s. Since Miss McKenzie purchased it is said that the kitchen has been modernised, gas, which was in the Property but not connected, had now been fully installed to provide central heating and the bathroom had been improved. Details of the works were included in papers submitted on Miss McKenzie's behalf at an apparent cost in the region of £28,000.

6. The Property comprises one double and one single bedroom, bathroom, living room and a kitchen. The common parts are carpeted and were clean but somewhat basic and we were told that the boiler to the flat was sited outside the demise of the Property, in the loft. Entrance to the flat is by door entry-phone. There are communal gardens to the rear which were in good order and generally the Property presented well. Within close proximity, was a block of garages, we viewed garage 12 which is included within the demise of the Property albeit by way of separate lease. It has an up and over door and is not generous in proportion by today's standards although at the least provided useful storage.
7. Whilst we were viewing the garage we also made external inspections of the comparable properties that Mr Dunsin had put forward in his report. These were at 5 and 11 Eton Square. Both were identical to the subject premises. We also inspected the exterior of 48 Tangier Lane which was we believe in a much enhanced location looking over a tributary of the Thames and having a view of Windsor Castle from the rear elevation of the property. It was in our view a superior property to the subject flat.

### **HEARING**

8. At the hearing Mr Dunsin represented Miss McKenzie who was accompanied by Mr Treader. For the Respondent we were told that Mr Nigel Ross, who was a director of the company and had prepared the report upon which the Respondent relied, was unable to attend as he was presently in the United States for reasons that were explained to us and would not be available. Mr Redpath-Stevens of Counsel told us that he had been instructed to "do my best."
9. Mr Dunsin had submitted a report which was dated 11<sup>th</sup> December 2015. He also told us that some matters had been agreed and those were set out on a statement of agreed facts and disputed issues. Of relevance to us was confirmation that the date of valuation was 7<sup>th</sup> April 2015, that the lease term for the subject property was from 1<sup>st</sup> January 1981 to 31<sup>st</sup> December 2079 having an unexpired term therefore of 64.73 years. We were told that the deferment rate had been agreed at 5% and that the garage rent payable at the date of the Section 42 notice was £1,000 per annum to be reviewed in January of 2016 when it had increased, we were told, to £1,250. We were also told that the HM Land Registry housing price index for the Royal Borough of Windsor and Maidenhead had been used to make adjustments for time comparables.
10. Insofar as matters in dispute were concerned, we set out below a table which includes those elements sought by the Applicant and those by the Respondent.

Issues in Dispute	Leaseholder	Freeholder
Freehold Vacant Possession Value	£350,000	£405,475
Uplift between Extended Lease Value and Freehold Vacant Possession Value	1%	N/A
Extended Lease Value	£346,500	£405,475
Relativity	89.14%	N/A
Existing Lease Value	£311,990	£287,700
Capitalisation Rate	7%	5%
Ground Rent to be used for valuation	£102.92	£538.39

Garage Rent to be used for valuation	£1,000	£1,250
Premium Payable	£32,380	£85,491

11. It is noted that the premium payable as sought by the Respondent is considerably in excess of the sum which is stated to be payable on the notice served under Section 45 of the Act, which was £50,000.
12. We were told also that the terms of the extended lease had been agreed but that the costs payable under Section 60 had not.
13. Mr Dunsin's report, which commenced at page 70 of the bundle included the background of the matter and the instructions that he had received. It confirmed that he assessed the price payable for the lease under the Act at £32,380. To reach this figure he had utilised the deferment rate of 5% and a capitalisation rate at 7%. The relativity he assessed at 89.14% to calculate the existing lease value and he assessed the value of the long lease of the property by the use of comparables. His report described the Property and its condition and the lease terms. We were told there were no improvements to disregard and his comparable properties were 5 and 11 Eton Square and 48 Tangier Lane. These properties were all in the same development and in close proximity to each other.
14. To support his reasoning in respect of the deferment rate he relied on the Court of Appeal case of Sportelli. As to capitalisation rate he thought that the ground rent was not attractive although accepted that the garage rent was fixed for five years having an upward-only rent review. At the time of the initial notice it was £1,000 per annum increasing in January of this year to £1,250. He relied on a number of comparable properties to support a capitalisation rate of 7%. Insofar as relativity was concerned he relied on the graphs of relativity created as a result of RICS research. He told us he had taken the average of the five graphs that cover greater London and England to arrive at his opinion and in support of that stance relied on a number of other Tribunal decisions. He listed in tabular form the percentages of the five graphs, that is to say Beckett and Kaye, South East London, Nesbitt and Co, Austin Gray and Andrew Pridell which gave an average of 89.14% which he applied. He told us also that he had applied a 1% uplift from the freehold vacant possession value which he considered to be £350,000 giving an extended lease value of £346,500 with a short lease value after using the relativity of £311,990.
15. The report contained photographs of the Property, both internally and externally, the latter showing the condition prior to the works of improvement by Miss McKenzie. We also had copies of the sales particulars for the subject property which indicated that the bathroom had been refitted before the sale. It did confirmed that originally it was heated by way of wall-mounted electric heaters. We also had sales particulars for 5 Eton Square, which was a refurbished property in the same block but at ground floor level. The lease had been extended but no mention is made as to whether the flat has the benefit of a garage. The comparable at 11 Eton Square was also accompanied by estate agents' particulars confirming that a garage was included. Finally, we had the sales particulars for the property at Tangier Lane which is described as a river side apartment which castle views and delightful gardens and balcony at river side with garage and mooring available. There was also included in the papers the details of refurbishment works carried out and a building survey report that Mr Dunsin had carried out in February of

2015. In oral evidence to us he accepted that Tangier Lane was a better location, having loft storage and the potential for mooring. He had adjusted the price of £395,000 in July 2015 and with indexation and an adjustment for location he considered that the short lease price was £395,000 but that an additional £50,000 had been paid for the lease to be extended. However, he did not rely on this comparable because of its location and the price paid.

16. As to 5 Eton Square, he told us this was in the same building although on the ground floor, the lease had been extended in February 2012 and after adjustments for time and an allowance for condition of £30,000, he concluded that the adjusted figure for 5 Eton Square is £347,780. In respect of 11 Eton Square, this was a somewhat historic sale and although he had made adjustments for time, which he was not wholly comfortable with, and for condition, he considered that the price would have been £382,000 but did not think that it was helpful.
17. He then addressed the rent position in respect of the garage and the flat. The garage rent was £1,000 at the time of the valuation date and it was accepted had now increased to £1,250. For the flat at the valuation date the rental was £102.92 based on the percentage paid for the last transfer. The contract for the sale of the Property to Miss McKenzie was the same date as the valuation date because that is when the Section 42 notice was served although it was completed on 21<sup>st</sup> April 2015. This resulted in a ground rent payable of £538.39 and whilst he agreed this was the correct figure, his view was that it should be the ground rent passing at the date of valuation which was the relevant one. Asked what risk he thought there might be that completion might not take place, he said that it is possible that a purchaser or indeed a vendor could pull out and that the capitalisation rate should reflect that risk. On consideration he told us that whilst he thought the ground rent to be utilised for the purposes of calculations should be £102, the capitalisation rate could perhaps be amended.
18. He was then asked questions by Mr Redpath-Stevens when he confirmed that he was in effect ignoring the comparable at 48 Tangier Lane. He told us the other two comparables at 5 and 11 Eton Square were the only two he was aware of but that he had not approach the freeholder to see if there were any other properties that might have assisted him. He told us he preferred to get details from independent people. He was asked to compare the price paid by Miss McKenzie of £287,700 which included a purchase with the rights under the Act and that that it was said to him should be the price for the short lease. He did not agree.
19. Asked about the ground rent he indicated that he had not thought it appropriate to increase this to the sum determined following the sale of the flat to Miss McKenzie. He said there was no certainty that there would be a sale although it was pointed out to him that on the estate that only two flats had not sold since they were built. His view as that the best capitalisation rate would be 5% but that was where the ground rent was increasing each year by way of reference to capital values. He thought that the ground rent position would eventually disappear as people would extend before the ground rent becomes excessive.
20. On behalf of the Respondent, Mr Redpath-Stevens left us to read Mr Ross' report and to attach such weight to it as we wished. Mr Dunsin said we should not give

much weight to it as Mr Ross was not a valuer and accordingly much of it was irrelevant.

21. We heard what Mr Dunsin said but it seems to us that it must be appropriate for us to consider Mr Ross' report and put such weight to it as we feel appropriate as we were requested to do by Mr Redpath-Stevens. Mr Ross' report starts at page 203 in the bundle and is headed as being an expert witness report. Mr Ross describes himself as a director of the Respondent company and confirmed that he had dealt with the development since August of 1983, negotiating in that time numerous lease extensions. He told us that he had a Bachelor of Law degree from the London School of Economics and had worked full time in the property industry for over 40 years. Certain comments were made as to the impartiality of Mr Dunsin which we noted and he then made various comments on the report itself, noting that the price suggested by Mr Dunsin was in excess of the sum included in the initial notice and that he had apparently ignored various comparable transactions on the estate. Insofar as the ground rent, he suggested that Mr Dunsin's suggestion that this should be valued at £102.92 was "immoral" and that it would result in the Respondents appealing any decision on this point as a matter of law. We noted all that was said in relation thereto. As to the capitalisation rate, again comments were made on this generally seeking to support a suggested rate of 5% rather than the 7% sought by Mr Dunsin.
22. In respect of the freehold vacant possession values, he had taken a somewhat unusual step of considering the original sale prices of numbers 5, 7 and 11 and factoring this into his assessment of the current value of the Property. Applying adjustments for time based on the Land Registry indices used by Mr Dunsin and a sum of £10,000 for repairs and modernisation he adopted a price for the freehold of the subject property of £405,475. He relied on the price paid by Miss McKenzie as being the short lease value of £287,700. He then considered other lease extensions on the estate which appeared to have been the subject of agreement, although in some cases notices had been served under the Act. He considered that a price of £50,000 for a lease extension on a two-bedroom flat with a garage was not unreasonable. However, because of the insistence of Miss McKenzie going through the Tribunal process he had calculated what he considered to be the price to be paid by reference to the provisions of the Act which he calculated to be £85,491 as set out on page 207 of his report.
23. We were clearly unable to ask Mr Ross any questions on his valuation process.

### **THE LAW**

24. The law applicable to this matter is contained at Section 48 and schedule 13 of the Act and we have applied that in reaching our determination. Insofar as the costs are concerned, we have considered the provisions of Section 60 of the Act.

### **FINDINGS**

25. We deal firstly with the premium to be paid for the lease extension. We will first address the rates to be used. Both parties agreed a deferment rate of 5% and we have no qualms about accepting same.

26. As far as the capitalisation rate is concerned our view is that 7% is too high given the nature of the ground rent and the fact that it now stands at £538.39 and did so as a result of the purchase by Miss McKenzie. It seems to us that there is a certainty that would be the passing ground rent given the sale to Miss McKenzie and to adopt the previous ground rent as being the value for the landlord's existing interest would seem to us to be inappropriate. We think that a capitalisation rate for the flat with the potential for increases linked to capital values would best be served with a rate of 6%. We have therefore applied that to the ground rent for the subject property for the remainder of the term as set on the valuation sheet attached.
27. We must then consider the rental payable for the garage. We will deal with the value of the garage in more detail when we consider the comparable evidence. The rent passing at the time of the notice and until it seems January of this year was £1,000 per annum. It seems appropriate, therefore, to accept that as the rent that is lost to the landlord. We do not know what negotiations took place between the parties leading to a rent for the garage of £1,250 and indeed do not know whether this is fully agreed with all concerned. There was some doubt expressed at the hearing. It appears that the rent may be negotiated by the residents' association but there was no evidence before us to show how that rent had increased in January of this year. We do, however, think that a slightly different capitalisation rate should be applied. Although the ground rent is provided in the lease so as not to decrease there does not appear to be any set formula for the increase of same. Further, it is in five year cycles. Whilst an attractive income flow, it suffers from greater uncertainty and a perception of lower growth rates than anticipated with the geared ground rent provision for the flat. Taking that into account we conclude that a capitalisation rate for the rent for the garage at 6.5% would be appropriate.
28. We then turn to the values of the freehold and long lease. It seems to us reasonable to make a 1% allowance to reflect the freehold to leasehold position. We have taken into account the comparable evidence put to us. Unfortunately, it was not compelling and in the case of Mr Dunsin somewhat limited. Mr Ross's inclusion of the original value in determining the current freehold value is unhelpful. Further the use of indices going back to 2012 for flat 11 is also too great a passage of time to give a reliable outcome. We have nonetheless taken account of matters raised by Mr Ross in his report. We have to be careful because Mr Ross is a director of the Respondent company and although he puts himself forward as an independent expert in truth he cannot be considered by us as such. We therefore considered all he says with that caveat.
29. There is very limited evidence before us. The comparables are not of great help and the 'deals' that Mr Ross may have struck do not assist us, although they show the levels at which he had been prepared to settle. The best comparable is probably that of 5 Eton Square because of the closeness in date. However, so far as we are aware, this does not include a garage. No mention is made of a garage in the sales particulars, nor was it raised at the hearing. We therefore need to take that into account but accept that the Property does have the 'benefit' of a garage. The present position in respect of the current lease value is that in our finding there is no value for the garage, as the leaseholder is paying a rack rent for it. However, once the lease extension takes place and the rent drops to peppercorn,

then this should be reflected in the valuing process. To do otherwise it seems to us undervalues the Respondent's interest.

30. Doing the best we can, therefore, we conclude that the extended lease value for the property which would include the garage at no rent would be £390,000 uplifted by 1% to the freehold value of £393,939. This is based on the comparable of 5 Eton Square and reviewing it against 11 Eton Square, which was not as much help due to the passage of time. In that freehold value we need to reflect the value of the garage as to do otherwise would seem to us to reduce the value to the freeholder. The simplest way of doing that, we conclude, is to take the rent passing of £1,000, apply the capitalisation rate of 6.5% in perpetuity which gives a capital figure of £15,384. If we deduct that from the freehold value it leaves a freehold value of the flat of £378,555 and applying the relativity at 89.14% which we agreed was appropriate, having regard to the graphs put forward by Mr Dunsin, gives an existing lease value excluding the garage of £337,444.
31. We have calculated the rents for the garage and for the flat as shown on the attached valuation and applying the figures we have determined above with a marriage valuation of 50%, leads us to the conclusion that the premium payable for the lease extension is £46,491 as set out on the attached valuation sheet.
32. On the question of the costs under Section 60, we were told by Mr Dunsin that there was no objection to the solicitors' costs which we were told were £1,000 plus VAT plus Land Registry fees of £6. In the absence of any challenge to that we are content that those fees appear reasonable. Insofar as the fees of Mr Ross are concerned, we were told that he had spent some five hours and made an hourly charging rate of £100 plus VAT. Mr Ross, with respect to him, is not a qualified surveyor although we accept he has extensive experience in the property field. Equally he is not an independent expert. It would appear that much of the information put forward comes from his own knowledge of his experience of dealing with properties on the estate. Doing the best we can and taking into account the Applicant's agreement, it seems to us that an hourly rate of £100 for three hours' work is reasonable. We do not consider that VAT would be chargeable. In those circumstances, therefore, we approve the solicitors' costs at £1,000 plus VAT with a disbursement for Land Registry fees and the costs of Mr Ross at £300 without VAT.

*Andrew Dutton*

Judge:

\_\_\_\_\_   
 A A Dutton

Date:

25th April 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.