



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

Case Reference : LON/00AW/OC9/2020/0074

**HMCTS code
(paper, video, audio)** : P: PAPER REMOTE

Property : Flats 6, 7, 9, 15, 19, 28, 31,40 and 42 Old Court House, Old Court Place, London, W8 4PD

Applicants : The nine leaseholders of Flats 6, 7, 9, 15, 19, 28, 31,40 and 42 Old Court House,

Representative : Mills & Reeve LLP

Respondent : Urban Retail (V) (UK) Trustee I & II Limited

Representative : Bishop & Sewell LLP

Type of Application : Lease Extension

Tribunal Members : Judge Robert Latham

Venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 4 February 2021

DECISION

The Tribunal determines the section 60 statutory costs payable in respect of Valuation Fees to be £11,290 + VAT of £2,258, namely £13,548.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in support of the application.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The current application by the nine Applicant tenants is for the determination of the costs payable by the tenants under section 60(1) of the Act. The legal costs have been agreed. The sole issue which the Tribunal is required to determine is the landlord’s valuation costs. These are claimed in the sum of £24,648 (£20,540 + VAT of £4,108.00). The flats are in Kensington.
2. On 9 November 2020, the Tribunal issued its standard Directions, pursuant to which:
 - (i) The Respondent landlord has filed Cost Submissions which attach an invoice from Savills, dated 5 April 2019, in the sum of £24,648. The Respondents have paid this sum. A flat fee was agreed for each flat, a sum (net of VAT), which ranged from £2,000 to £2,750 per flat. This equates to an average of £2,278 per flat + VAT. £48 is payable in respect of disbursements.
 - (ii) The Applicant tenants have filed a witness statement from Timothy Wild, their Solicitor at Mills and Reeves LLP. The Applicant’s valuation fees were £600 (+ VAT) per flat. They suggest that the Respondent’s recoverable costs should be no more than £750 + VAT per flat.
 - (iii) The Respondent has filed a Reply. The Respondent state that if the Tribunal computes the fee on a time basis, it is prepared to agree to 39 hours at £350 per hour, namely a total of £13,650 (+ VAT). This would equate to £1,517 per flat (+ VAT).

The Statutory Provisions

3. Section 60 provides, insofar as relevant for the purposes of this decision:

“(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;
- (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

.....

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section “relevant person”, in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter... or any third party to the tenant's lease.”

The Principles

4. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

“9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of

resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable.”

The Submissions of the Parties

5. The Respondent argues that it is an investment company which has sought to have quality valuation advice from an established company that was used to providing corporate level advice and had experience acting for landlords in prime Central London. The Respondent had only acquired the freehold reversion to the block in 2015 and they are not experienced in leasehold reform matters.
6. The Respondent sought a number of estimates from firms with the appropriate experience. The quote provided by Knight Frank for the valuation work was lower, but ultimately comparable to the fee quote provided Savills. The Respondent agreed a flat fee for each flat. The Respondent instructed Savills due to their experience acting for large landlords of property in Prime Central landlord. The costs quoted by Savills were based on their experience of costs charged and agreed for similar projects and property in Prime Central London.
7. The Respondent has itemised the work which totals 45.5 hours. The majority of the work was carried out by Alistair Stimson, a Director at an hourly rate of £350 (+ VAT). Some work was carried out by an Associate and is charged at £280 (+ VAT). The Respondent has not quantified the fee based on a time basis, but the Applicants have computed this to be £15,785 (+ VAT).
8. The Respondent state that they did not base their decision to instruct Savills on the basis that the tenants would ultimately be responsible for the cost of obtaining valuation advice. Rather the decision to instruct Savills was based on the clients need and desire to obtain valuation advice from a company with significant experience acting for landlords in complicated lease extension claims such as the claims which were served on our client.
9. The Applicants respond that the Respondent’s valuer was required to carry out a straightforward valuation with the main issue being the value of the

Respondent's reversionary interest. The headlease had 116 years remaining at a peppercorn ground rent. The Applicants' leases all had 93 years remaining and so there was no marriage value to consider. There have been five relevant sales in the building which provided sufficient comparable market evidence for each of the Applicants' flats.

10. The Applicants note that a lower estimate was provided by Knight Frank, but there is no evidence of what this estimate was. Almost all the work was carried out by a Director at an hourly rate of £350. Much could have been delegated. The Applicants make detailed submissions of the itemised bill and contend that the work should have taken no more than 23 hours. Charged at £350 per hour, this would have amounted to £8,050 or £894.44 per flat (+ VAT). If charged at £280 per hour, the total would have been £6,440, or £715.55 per flat (+ VAT).
11. By comparison, the intermediate landlord's valuation fees were £222.22 plus VAT per flat and the Applicants' valuation fees were £600 plus VAT per flat. The Applicants conclude that the Respondent's recoverable valuation fee should be no more than £750 per flat (+ VAT).
12. The Applicants also argue that there should have been a discount where the expert was valuing a number of flats (see *Sinclair Gardens Investments (Kensington) Limited v Wisbey* [2016] UKUT 203 (LC)). Further, the landlord has failed to explain and substantiate the costs claimed (see *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC)). The majority of the fees were payable to the intermediate landlord. The Applicants conclude that the sums claimed are disproportionate to the premiums paid to the Respondent.
13. In their Reply, the Respondent argue that if the Tribunal do not consider that the time claimed by Savills is reasonable, it is prepared to agree to 39 hours at £350 per hour, namely £13,650 which equates to £1,526 per flat (+ VAT). They contend that the valuation fees charged by the intermediate landlord are not relevant as their valuer was only required to apportion the premium and based this on the ground work, inspections and research carried out by the Respondent's valuer. The valuation fee paid by the Applicants to their expert is disproportionately low for a valuation in this area of London. Savills agreed to discount their minimum fee of £2,500 for each property for some of the smaller properties on the basis of the multiple instructions.

The Tribunal's Determination

14. The Tribunal is satisfied that in the circumstances of this case a reasonable valuation fee is £1,250 per flat, a total of £11,250, to which should be added disbursements of £40 and VAT of £2,508. The total is therefore £13,548.
15. The Tribunal is satisfied that a fixed fee per flat was appropriate. However, a substantial discount was appropriate given that nine flats were to be valued. The Respondent should have been aware that there had been five

relevant sales in the block and that there were therefore a number of relevant comparables, albeit that other local sales may have been relevant. The Respondent's analysis of the time involved in the valuations, demonstrates that the sums charged were manifestly unreasonable. On the other hand the Tribunal recognises that it was for the landlord to decide who to instruct as its expert and that these flats are in Kensington, which is Prime Central London.

**Judge Robert Latham,
4 February 2021**

Rights of appeal

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).