



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

Case reference : **LON/00AB/OC9/2021/0160**

HMCTS code : **P: PAPERREMOTE**

Property : **53 Kettlebaston Road London E10 7PE**

Applicant : **Daejan Estates Limited**

Representative : **Wallace LLP**

Respondent : **Mr Devon White**

Representative : **In person**

Type of application : **Costs – payable by the Respondent
under s.60(1) Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal members : **Judge Pittaway**

Date of decision : **8 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents to which the tribunal was referred were

- An Applicant's bundle of 241 pages
- A Respondent's bundle of 33 pages.

The decisions made and reasons are set out below.

Decisions of the Tribunal

The Tribunal determines that the amount of costs payable by the Respondent are

- Fees under section 60 (1) (a) of the 1993 Act £3,600 (inclusive of VAT) and Land Registry fees of £25.20.
- Fees under section 60 (1) (b) of the 1993 Act of £1,020 (inclusive of VAT).

Background

- (1) The Applicant freeholder seeks an order under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "**1993 Act**") as to the amount of costs payable in connection with the application made by the Respondent for an extended lease of 53 Kettlebaston Road London E10 7PE (the '**property**'). The application did not proceed because the Tribunal did not have jurisdiction as the application to it was not made within the time limit prescribed by section 48 of the 1973 Act.
- (2) Section 60 of the 1993 Act provides that

“(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.

(3) Where by virtue of any provision of this Chapter the tenant’s notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant’s liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant’s notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate 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, any other landlord (as defined by section 40(4)) or any third party to the tenant’s lease.”

(3) By Directions dated 8 September 2021, amended on 22 December 2021, the Applicant landlord was directed to provide to the Respondent by 29 September 2021 a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.

(4) The Directions provided for the Respondent to provide a statement in response by 20 September 2021 and to provide an agreed bundle to the Tribunal by 17 November 2021.

- (5) The Directions were amended by the Tribunal on 22 December 2021, when the Tribunal noted that it had received a bundle of documents from the Applicant setting out its case, and directed that the Respondent should make a statement and provide any documents upon which he relied by 29 January 2022. The Respondent did not provide any statement as directed so the Tribunal have treated the Respondent's letter of 22 November 2021 as his statement of case.

Statements of case, evidence and submissions

1. The Applicant's statement
 - (a) Drew the Tribunal's attention to the costs for which a tenant shall be liable set out in section 60(1) (a) to (c) of the 1993 Act;
 - (b) Submitted that both the legal costs of £3600 (including VAT) and valuer's fees of £1,020 (including VAT) were reasonable. The majority of the work was undertaken by a partner (Samantha Bone) in the Leasehold Enfranchisement Department of Wallace LLP, whose charge-out rate at the relevant time was £495 per hour. An assistant dealt with matters concerning the agreement for lease and at the relevant time had a charge-out rate of £385 per hour. The statement also referred to Land Registry fees of £25.20.
 - (c) Referred the Tribunal to various Tribunal decisions where the Notice of Claim had been deemed withdrawn;
 - (d) Referred the Tribunal to various cases where the charge-out rates of the Applicant's solicitors had been approved by the tribunal;
 - (e) Submitted that the provisions of the 1993 Act are complex and must be dealt with by a solicitor with the relevant level of experience. Additionally in this application it was necessary to consider the position of the intermediate landlord in circumstances where its interest had vested in the Crown bona vacantia; and
 - (f) Referred the Tribunal to the decision in *Daejan Investments Limited –v- Parkside 78 Limited* LON/ENF/1005/03 ('**Parkside**') as to the basis that costs are paid is by reference to time spent and the principles the Tribunal needs to consider in connection with reasonableness of costs.
2. The Applicant further submitted that as a result of a Notice of Claim having been served it is entitled to recover its costs in accordance with section 60 for the enquiries and tasks that section requires it to perform. It submitted that the costs incurred were costs that the Applicant would have incurred had it been personally liable for them, that the involvement of a partner was required by reason of the complexity of the provisions of the 1993 Act, which complexity justified the time which had been spent by the solicitors following receipt of the Notice of Claim.
3. As for the valuer's fees The Applicant submitted that the valuer's fees were consistent with the fees usually claimed by the valuer in Central London (citing a usual range of between £750 and £1500 exclusive of VAT) and that they are reasonable in the circumstances. The valuer's invoice was included in the Applicant's bundle but there was no breakdown of the fees.

4. The Respondent did not provide any response to the Applicant's statement of case other than the comment, contained in his letter of 22 November 2021, that the fees of Wallace LLP were 'extortionate' for a firm specialising in lease extensions.

Reasons for the tribunal's decision

5. The Tribunal has considered the Applicant's statement of case and the statement in relation to Wallace LLP's level of charging in the Respondent's letter of 22 November 2021 when reaching its decision. It has also had regard to the various Tribunal decisions referred to in the Applicant's statement of case. The Tribunal would remind the parties that while previous decisions of the First tier Property Tribunal may be persuasive they are not binding on the Tribunal.
6. The Tribunal finds that the costs sought are costs that the Applicant would have incurred if it had been personally responsible for them. The Tribunal accepts the Applicant's submission that it is entitled to use the firm of its choice and that the Applicant's firm of choice is Wallace LLP, a firm based in Central London, who have for many years have acted for the Applicant in enfranchisement matters. Their charge out rates are consistent with the usual charge out rate for solicitors in Central London.
7. The decision in *Parkside* is authority for the proposition that it is reasonable for the Respondent to use a fee earner with relevant experience. The Tribunal find that it was reasonable for the Applicant to involve a partner in the matter, given the complexity of the 1993 Act, and the added complication of the intermediate landlord's interest having vested in the Crown bona vacantia.
8. Having reviewed the time spent by the partner on this matter the Tribunal finds the time spent by the partner (4.9 hours in total) and by the assistant (1.6 hours) to have been reasonable and the time spent has not been challenged by the Respondent. The Tribunal not consider that it was necessary for a partner to obtain the official copy entries and copy lease, on which the partner spent 0.3 hours. This task could have been undertaken at a more junior level. The Tribunal does not make a deduction in the Applicant's fees to reflect this as the Applicant has already rounded down its fees to £3600 and any deduction the Tribunal would have made would be less than the discount already applied by the Applicant.
9. The Tribunal finds the Applicant's legal fees of £3,600 inclusive of VAT to be reasonable.
10. There has been no challenge to the land registry fees claimed by the Applicant in its applicant and statement of case of £25.20.
11. The valuer's fees have not been challenged by the Respondent. The Tribunal finds that the valuer's fees of £1,020 (inclusive of VAT) are reasonable when considered in the context of the usual fees claimed by valuers in Central London and the level of valuer's fees that have been found to be reasonable in previous tribunal decisions.

12. The Tribunal acknowledges that the Respondent has found himself in the present position of having to pay the Applicant's fees in relation to an application which did not proceed through no fault of his own. This is not a reason for finding the Applicant's costs to be unreasonable. The Tribunal has had regard to and accepts the comments of Professor Farrand QC in *Parkside* in which he stated, at paragraph 8;

'As a matter of principle, in the view of the Tribunal, leasehold enfranchisement may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly, it would be surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that this expenditure is recoverable, in effect, from the tenant-purchasers subject only to the requirement of reasonableness.'

Name: Judge Pittaway

Date: 8 February 2022

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).