



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

Case Reference : **VG/LON/00BC/OC9/2022/0008**

Property : **23 Breamore Court, Breamore
Road, Goodmayes, Ilford, Essex
IG3 9NP**

Applicant : **Tishri Estates Limited**

Representative : **Steve Hayward Conveyancing
Manager of Rice-Jones & Smiths
Solicitors**

Respondent : **Oakfield Estates Limited**

Representative : **Mr Samuel Pariente, solicitor;
Bude Nathan Iwanier LLP**

Type of Application : **Assessment of costs under section
60(1) of the Leasehold Reform
Housing and Urban Development
Act 1993 and fees under section 56.**

Tribunal members : **Judge Professor Robert M. Abbey
Sarah Redmond MRICS**

Date of Decision : **5 April 2022**

:

DECISION

The background

1. The Applicant is the long leaseholder of **23 Breamore Court, Breamore Road, Goodmayes, Ilford, Essex IG3 9NP**
2. The Respondent is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”).
3. The leaseholder served a section 42 notice seeking to exercise their right to a lease extension under S48 of the 1993 Act and a Counter notice was served.

The application

4. By an application dated 10 January 2022 the leaseholder has now applied for an assessment of the landlord’s costs under section 60(1) of the 1993 Act and surveyor’s fees under section 56.
5. Directions were issued dated 12th January 2022 and these were amended on 14 February 2022. Further to those directions a bundle was lodged containing the Respondent’s costs schedule and submissions made on behalf of both parties.
6. Neither party having requested an oral hearing, the application was considered by way of a paper determination.

The Legal costs

7. The costs in issue are limited to legal costs in the sum of £3060 (plus VAT), disbursements of £4 plus VAT plus an additional estimated £300 plus VAT to take the matter to completion. The valuation fees have been agreed between the parties and there are not being considered by the Tribunal.

The Respondent’s case

8. The Tribunal was provided with an itemised schedule of the legal fees. This did identify the date of each activity and it did give a brief description of the activity, the type of fee earner involved, (by reason of the level of the hourly rate) and the time spent and resultant cost. The schedule listed one fee rate of £300(Grade A). Helpfully each item

claimed is referenced by each subsection of s.60 thus showing the authority for each part of the costs claim.

9. The costs schedule breaks down into various sections. Each total item of claim for each section will be considered subsequently in this determination.
10. The respondent says that the rates charged are reasonable and properly payable by the applicant. The respondent denies that the charges are excessive or unreasonable or not within the ambit of section 60. The respondent says the work was necessary given the nature of the transaction and therefore it was proportionate for the respondent to incur the costs and disbursements listed above.
11. Disbursements in the sum of £4 in respect of land registry fees were not disputed and are therefore agreed.

The Applicant's case

12. The Applicant says that the legal charges are in part excessive and they set out the basis for this in the witness statement of Mr Hayward.
13. The Applicant disputes the legal costs on the basis that this was a routine lease extension with no unexpected complications or protracted negotiations. The Applicant also says that there would be limited title investigation and the Tribunal understood this to mean that the lease renewal was by way of precedent documentation that would be straight forward to prepare and or approve.
14. The applicants submitted that the costs disputed included a claim for corresponding with the managing agents and this was considered to be excessive and unnecessary. Secondly the claim included 126 minutes for corresponding with the client, The applicants thought this too to be unnecessary and excessive. There were further challenges to other parts of the claim including time for diarising deadlines.

Relevant Statutory Provision and Case Law

15. The statutory law applicable to this dispute is set out in Appendix 1 annexed to this decision.
16. Judicial guidance on the application of section 33 was given in the case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That case concerned the proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease. The decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice

and in connection with the purposes listed in sub-sections [33(1)(a) to (e)]. The applicant tenant is also protected by section 33(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

17. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.

18. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

19. There is further guidance in *Dashwood Properties Limited v Beril Prema Chrisostom-Gooch* 2012 UKUT 215: -

20. The value of a dispute and the amount to be gained, or lost, by a party, is always a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.

21. While the issues involved in enfranchisement claims can undoubtedly be complex and LVT decisions in Daejan Properties Ltd v Parkside 78 Ltd LON ENF 1005/03, followed in Daejan Properties Ltd v Twin LON/00BK/0C9/2007/0026 and Daejan Properties Limited v Allen LON/00AH/OLR/2009/0343 establish that the LVT accepted that a landlord is entitled to instruct the solicitors of its choice and is not obliged to instruct the cheapest or most local solicitors, the LVT were perfectly entitled to take into account the actual sum in dispute in determining whether the costs of professional services in investigating the tenant’s right to a new lease were reasonable and that the investigation was reasonably undertaken.

22. The LVT were entitled to determine that costs far in excess of the amounts involved were not costs that “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” and the appeal on this ground therefore fails.

The case of *Dashwood* has in setting out the details above helped further clarify how reasonable costs are to be determined in a enfranchisement claim such as this one.

20. Leggatt J in *Kazakhstan Kagazy plc v Zhunus* [20 15] EWHC 404 (Comm) at [13] wrote further guidance and clarification saying: -

“... it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone (of reasonable and proportionate costs) is not the amount of costs which it was in a party’s best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances.”

Thus, a court would look at what expenses were reasonable and appropriate by looking at the least amount a party in proceedings could be reasonably anticipated to have spent in order to have demonstrated to the court that it had presented its case in an effective and competent manner. Overall, the Tribunal will take a broad-brush approach to the question of costs but only in the light of the clear judicial guidance set out above.

The tribunal’s decision

21. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. (For reference purposes an extract of the legislation and in particular section 60 is set out in an appendix to this decision along with details of appeal rights in an annex). However, costs under that section are limited to the recovery of reasonable costs of an incidental to any of the following matters, namely: -

- i. Any investigation reasonably undertaken of the tenant’s right to a new lease;
- ii. Any valuation of the tenant’s flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
- iii. The grant of a new lease under that section.

22. Subsection 2 of section 60 provides that: -

“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”.

23. The Respondent has set charges using hourly rates of £300 (Grade A). The tribunal accepts the hourly rates mentioned above as being appropriate in the case. Moreover, the Tribunal noted that the applicant also approved the hourly rate and therefore did not form part of their challenge to the costs claim.

24. The Tribunal agrees with the solicitor for the respondents in that this case was not a straight forward enfranchisement case. There were clearly title and procedural issues that would have necessitated additional time for extra work arising out of these complications. Accordingly, the Tribunal felt it should allow many of the parts of the claim as drawn. Therefore, the Tribunal has carefully considered the details of the claim and has concluded that some sections seemed excessive in total while others seemed appropriate. The Tribunal accepts that some parts as highlighted by the applicant were excessive and or unnecessary and thus unreasonable. Therefore, the Tribunal considers that this would amount to an hour of time equivalent to £300. Consequently, the costs claim is reduced by £300 to £2760 plus vat. The Tribunal considers this amended sum to be a reasonable amount for costs in this case given the nature of the dispute.

25. For all these reasons the Tribunal reduces the costs claimed by the respondents by a sum of £300 but approves the remainder as claimed, including the estimated sum for costs up to completion.

Name: Judge Professor Robert
M. Abbey

Date: 5 April 2022

APPENDIX

Leasehold Reform, Housing and Urban Development Act 1993

60 Costs incurred in connection with new lease to be paid by tenant.

(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 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, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

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 Tribunal 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 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.
4. 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.