



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

Case reference : **JM/LON/00AZ/OC6/2022/0001**

Property : **4 Elm Court, 93 Belmont Hill London SE13 5DX**

Applicant : **Beverley Michelle Morris**

Representative : **None**

Respondent : **Brickfield Properties Ltd**

Representative : **Wallace LLP**

Type of application : **A determination of reasonable costs under Section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal member(s) : **Mr Duncan Jagger MRICS**

Date of paper hearing : **20th April 2022**

Date of decision : **20th April 2022**

DECISION

Summary

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face to face hearing was not held because no-one requested to same, and all issues could be determined on paper. The documents that I was referred to are the Respondents submissions the contents of which I have noted and extend to 103 pages. No submissions were received from the Applicant, therefore the Tribunal can only rely on the Respondents evidence in this matter.

The application

1. The Applicant seeks a determination of the amount of costs payable by the Applicant (tenant) pursuant to sections 60(1) and (3) of the 1993 Act. In respect of the agreed terms for the lease extension for 4 Elm Court, 93 Belmont Hill, London SE13 5DX (“the Property”) which was completed on the 14th January 2022.
2. The application was dated the 21st January 2022 and directions were issued on 25th January 2022. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 20th April 2022.
3. The Respondent filed a detailed schedule of costs for the property together with costs submissions in accordance with the directions. The Tribunal did not receive any correspondence from the Applicant other than the application where it stated the appropriate level of costs is £1750 plus VAT. The Applicant has not provided any evidence for this Tribunal to consider.
4. The relevant legal provisions are set out in the Appendix to this decision.

The Background

5. The Respondent holds a long lease for a term of 999 years dated 14th February 2012 for 4-9 Elm Court, 93 Belmont Hill London SE13 5DX (The property) The Applicant is the lessee of 4 Elm Court and holds a long lease dated 25th March 1971 for a term of 125 years. The Respondent is the competent Landlord as defined by Section 40 (1) of the Act.,

6. The application was made by the Applicant for the determination of the reasonable costs payable by the Applicant (tenant) to the Respondent (landlord) under section 60(1) of the Act. It follows the service of Notices of claim to acquire a new lease for the property.
7. The former leaseholder (Deborah Callow) served a notice of claim for the property on the Respondent on, 6th October 2020, in which it proposed a premium for a new lease of £13,850. The lease was assigned to the Applicant on the 16th October 2020.
8. The Respondent served a counter-notice on 17th December 2020, in which it admitted the claim but proposed a higher premium of £53,170. The Applicant now seeks to recover costs from the Respondent, pursuant to sections 60(1) and (3) of the 1993 Act. Terms for the acquisition of a new lease were subsequently agreed and this was completed on the 14th January 2022

Evidence and submissions

1. The Tribunal issued its standard costs directions on the 25th January 2022. These required the Respondent to serve a Statement of case by 8th March 2022. The Respondent complied with the Directions. The Applicant failed to serve a Statement of case
10. The Respondent provided a schedule of the work undertaken for the property. The cost of all items was said to to be recoverable with the exception of a sum of £197.50, labelled Post Completion. For each item of the legal costs the Landlords representative provided: the date, activity, description, fee earner, hours rate amount. Legal work was provided variously by two partners, and two assistant solicitors.at decreasing hourly rates of £525/£495, £395/£385 These hourly rates are line with the recently publishes *Guide to the Summary Assessment of Costs*, published by the Master of the Rolls 2021 edition.
11. The schedule showed that time spent by the Respondents solicitors was divided approximately between two partner and two assistant solicitors. The Respondent referred the Tribunal to a number of earlier cost decisions in order to demonstrate that its level of costs should be accepted by the Tribunal based upon these similar lease extension cases.
12. The Respondents claim for legal fees was £3440.50 and £24 Disbursements (land registry fees). All figures exclude Vat.
13. As previously mentioned, the Respondent has not challenged these figures only to say in the Application a reasonable cost would be £1750.
14. The Tribunal considered all of the documents provided by the Respondent when coming to its decision.

The Tribunal's decision

15. **The Tribunal determines that the total costs payable by the Applicant to the Respondent under s.60 (a) excluding VAT are £3440.50 plus VAT and Land Registry fee of £24 plus Vat. This totals £4157.40.inclusive of VAT.**

Reasons for the Tribunal's decision

16. As far as the legal costs are concerned, the Tribunal accepts the Respondents schedule of items, the allocation of work between those responsible and the hourly rates, without amendment. In making this decision, the Tribunal is following its recent decision in *Price v Daejan Investments Ltd 2020 (Lon/00ak/oc9/2019/0231)* The Applicant has long chosen and is free to use its current legal representatives to act in such lease extension cases.

Judicial guidance on such an the application, 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 [60(1)(a) to (c)]. The Respondent tenant is also protected by section 60(2) which limits recoverable costs to those that the Applicant landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

- . 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.
- . 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 33 says, nor is ***Drax*** an authority for that proposition. Section 33 is self-contained.

11. Further judicial guidance was given by the Upper Tribunal about the relevant principles to be applied in ***The Trustees of John Lyons Charity v Terrace Freehold LLP*** [2018] UKUT 0247¹ when assessing costs under section 33 of the Act and, essentially, confirmed the principles laid down in ***Drax***.
17. The Tribunals view, was that this is a highly technical area of law mainly conducted by firms of solicitors with the requisite knowledge and experience of which the Respondents solicitors are one.
18. Section 60 (2) states:-) 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**
19. The Tribunal has allowed the VAT charged on the Applicant's costs as VAT is payable on the solicitor fees, if the Respondent is not VAT registered. And the Applicant is able to recover the VAT charged then sum due should be adjusted accordingly.

Name: Tribunal Judge: Duncan Jagger **Date:** 20th April 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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(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