



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

Case Reference : **BIR/00FY/OC9/2024/0001-4**

Property : **217 Highbury Road, Bulwell, Nottingham, NG6 9BN
14 Riseborough Walk, Nottingham, NG6 8DS
1 Boniface Gardens, Top Valley, Nottingham, NG5 9NZ
13 Jacklin Gardens, Nottingham NG5 9JD**

Applicants : **Michael Alan Roberts and Tara Louise Jordan-
Roberts**

Representative : **Massers Solicitors**

Respondent : **Nottingham City Council**

Representative : **Leonie Hutchins/Alizah Ehsan**

Type of Application : **Application for the determination of statutory costs
under section 60 Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Judge T N Jackson
Mr I Humphries B.SC. (Est. Man.) FRICS**

Date of Decision : **8 August 2024
Paper determination**

DECISION

Decision

We determine that, pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993, statutory costs of £1053.20, exclusive of VAT, in relation to each Property are payable by the Applicant tenants to the Respondent landlord.

Reasons for decision

The application

1. By four applications dated 17 April 2024, the Applicants sought a determination under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') of the Respondent's statutory costs incurred in the lease extension claims in relation to the four Properties.
2. Standard Directions were issued on 22 April 2024. The Directions consolidated all four of the applications. The Directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing but informed the parties of their right to request an oral hearing. No such request was received and we have therefore determined the statutory costs on the basis of the written submissions and other documents included in the comprehensive agreed document bundle that was submitted in accordance with the Directions.
3. The Applicants made four separate Notices of Claim under section 42 of the 1993 Act, each dated 20 December 2022 for lease extensions under the 1993 Act in relation to the four Properties. The Applicants proposed a premium payment of £800 per Property. The Respondent instructed an independent surveyor to value the four Properties. The Respondent issued Counter-Notices, and the premiums were agreed based upon the valuations provided by the independent surveyor. The agreed premiums for the lease extensions were £630, £780, £460 and £680 respectively. The lease extension for each of the Properties was completed on 30 January 2024.

The claimed costs

4. In response to the Directions, the Respondent's solicitors provided a Schedule of Costs suitable for summary assessment. The work was undertaken by a range of staff from the in-house legal and surveyor's teams. The Respondent instructed an external valuer to undertake a valuation of the Properties prior to serving the Counter Notices.
5. In relation to each Property, the Respondent proposed statutory legal costs of £500 fixed fees (exclusive of VAT) in relation to the in-house legal team and a further £500 fixed fee (exclusive of VAT) in relation to the in-house surveyor's costs. The Respondent also sought the cost of the independent valuer, namely £825 (exclusive of VAT) per Property. The total statutory costs claimed by the Respondents were £1825 per Property.
6. The legal work on two of the Properties was carried out by a Grade D Legal Assistant under the supervision of a Senior Solicitor Grade A. Due to capacity reasons, the legal work on the remaining 2 Properties was carried out by a Grade D Trainee Solicitor under the supervision of the same Senior Solicitor. The work included investigation

into the leaseholder's right to a new lease including checks on registered titles for each Property; reviewing the section 42 Notices to ensure compliance with the legal requirements; service of the Counter Notice; time taken in undertaking a valuation of the Properties to fix a premium; and the drafting and completion of the new lease for each Property.

7. The Respondent's say that the 2021 Guideline Hourly rates published by HM Courts and Tribunal Service (in force for 1 October 2021 to 31 October 2023) indicate that the relevant hourly charge out rate would be National Band 1 £126 and therefore the legal costs would be considerably greater than the fixed fees the Respondent is seeking to recover. The in-house legal team do not time record. The fee earners say that 'as a very rough estimate', the time spent on each of the lease extensions averaged approximately 12.5 hours. They say that the four leases were drafted separately with amendments made individually to each lease as required.
8. Work done by the in-house surveyors team includes reviewing the section 42 Notice of Claim and investigating the right to a new lease by reviewing the existing leases and obtaining title information; instructing an independent valuer to undertake the valuation and liaising in relation to the valuation; instructing the in-house legal team to progress the matter and serve the Counter Notice; liaising with the legal team re the drafting of the new lease and its terms; agreeing the final form of lease for completion and preparing updated lease plans. The in-house surveyors do not time record and the fixed fee of £500 per lease extension is said to 'reflect the time spent working on these matters and was calculated based on the input required on the surveying side.'
9. An independent valuer was instructed in order to discharge the Respondent's duty to deliver best value consideration under section 123 of the Local Government Act 1972.
10. The Respondent's solicitor says that, in accordance with current case law, a discount was given in relation to the fees which were reduced to £500 for in-house legal fees per Property due to the consolidation of the four separate lease extensions.

The Applicants' response

11. The Applicants' solicitor responded with a detailed critique of the summary assessment. He contends that a fee of £750 (exclusive of VAT) per Property is payable. He had conduct of the matter and says that the dealings with the Respondent were as if it was one Property and the leases were not separately negotiated. He had no direct dealings with anyone purporting to act as a surveyor for the Respondent.
12. He says that as there is no time recording, any doubt as to the reasonableness of charges should be determined in the Applicants' favour. He says that the Respondents are seeking to recover, through their charge of £2000 for legal fees, (£500 x 4), the equivalent of 16 hours at the hourly rate of £126 and contends that such length of time is unreasonable for the simple drafting of a new lease. He exhibits the email correspondence between himself and the legal department throughout the transaction which demonstrate that all four matters were dealt with by the parties as if it were one transaction. He contends that a reasonable amount of time in connection with the preparation of the four leases is 8 hours at £126 which equates to a total of £1008.

13. In relation to the in-house surveyor costs of £2000 (£500 x 4), the Applicants' solicitor says that there has been no attempt to justify the cost despite an explanation being sought. He speculates that it is for plans appended to the leases but says that such plans were unnecessary as there had been no change to the extent of the demised premises. In any event, the cost of such plans would have been minimal. He says the costs should be disallowed in their entirety.
14. In relation to the independent surveyor, the Applicants' solicitor says that the individual inspections took 20 minutes each. Given the time involved in the inspection, all reports would have been dealt with together and the small premiums payable which were less than those offered by the Applicants, he considers that a surveyor's charge of £450 per Property to be reasonable and proportionate.
15. He says that the proposed total fee of £1825 per Property is disproportionate to the complexity of the issues addressed in the application and the sums involved. He proposes that the fee should be £750 per Property.

Deliberations

In-house legal costs

16. We are not required to do a detailed examination of all the costs. The process is a summary one. We have carefully considered the Respondent's arguments about the basis of the fees for each Property. We have also had regard to the comments made by the Applicants' solicitors regarding the fees level. The Tribunal has had regard to the judgement in *Kuznetsov, R (on the application of) v London Borough of Camden [2019] EWHC 3910 (Admin)* regarding the recovery of in-house legal fees.
17. We have had regard to the 2021 Guideline Hourly Rates and our experience and knowledge of solicitor fee rates charged by provincial solicitors undertaking similar work to that carried out in this case and conclude that an hourly rate of £126 is appropriate for this level of work.
18. We have reviewed the leases drafted in response to the application for lease extensions. They are standard leases. All four leases appear to contain the same provisions for each Property with the only difference being the front sheets and the Land Registry prescribed Clauses Document, comprising 3 pages in total. The pages are proforma documents where specific detail relating to each lease have been entered. We have reviewed the steps detailed by the fee earners in carrying out the transaction which are standard in such transactions. The terms of the extended leases were not in dispute and the only issue was the premium to be paid. Whilst we accept that enfranchisement work can be complex, these particular transactions could not have been simpler. We do not accept the Respondent's assertion that the work for each lease extension would take 12 and a half hours which was given as a 'very rough estimate' by one of the fee earners. Having had regard to our experience and knowledge of the steps required to carry out the lease extension and the simple nature of each lease transaction, we conclude that 4 hours would be a reasonable time to carry out each of these lease extensions.
19. We have also had regard to *Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 203 (LC)* and note that the Respondent accepts the principle

that a discount should apply in this case as the proposed fees are said to be so discounted.

20. The correspondence between the parties reflects that the matter was dealt with as one transaction and concerned one leaseholder. We conclude that a discount of 20% should apply to the time spent on the legal work, resulting in time spent of 3.20 hours for each Property. At a rate of £126 per hour, this amounts to £403.20 per Property. We therefore conclude that £403.20 would be reasonable legal fees for each Property.

In- house surveyors

21. The Respondent has not provided details to either the Applicants' solicitor when requested or the Tribunal of the time spent by the in-house surveyors' team on the lease extensions nor any hourly rate or details of salary with on costs of the relevant officers involved in the work. Further, it is clear, as described in both the in- house lawyers and surveyors' witness statements, that there is a lack of clarity as to the extent of their respective roles. Both the in-house lawyers and in-house surveyors claim to have investigated the validity of the section 42 Notices and undertaken work regarding the valuation of the Properties. Such duplication should not be charged to the Applicants and it is not clear from the generic description of the work involved, exactly who did what, although we accept that the costs of checking the validity of the section 42 Notices and seeking a valuation of the Properties properly fall as costs which can be claimed under section 60 of the 1993 Act. The Respondent's statement that the £500 fixed fee is 'calculated based on the input required on the surveying side' lacks detail of any such calculation.
22. Within a local authority context, the surveyors are the client in relation to a lease extension. Client costs such as instructing an in-house legal team and liaising with an independent valuer, (as distinct from instructing a valuer), are not, in our view, the 'costs of and incidental to' any of the matters specified under section 60 of the 1993 Act. Whilst we accept that the surveyor's in their professional capacity, (as distinct from their role as client), may have instructed the independent valuer, the Respondent has not provided details of the hourly rate, costs or time spent in carrying out that task. If it had, then an adjustment would have to be made to reduce the in-house legal teams' costs to prevent duplication. In the absence of such information, we have therefore included the instruction of the independent valuer within the total fees of the in-house legal team.
23. Whilst we accept that new plans may have been provided in the lease extensions, we have not been told why this was necessary as the extent of the demised area has not changed. In any event, the cost of producing new plans would be de minimis. On the basis of the Respondent's evidence, (or lack thereof), we conclude that the £500 fixed fees for surveyor's costs are unreasonable and determine that no in-house surveyor's costs are payable in relation to each Property.

Independent surveyor fee

24. We accept that the Respondent was entitled to instruct an external valuer to comply with its duty under section 123 Local Government Act 1972.

25. The fee of £825 (exclusive of VAT) in relation to each Property is said to cover taking instructions; visiting site; reviewing comparables; carrying out statutory valuation to calculate the premium valuation price and the issue of a RICS complaint report.
26. We note from the Applicants' solicitor that the four inspections were carried out on the same date and took approximately 20 minutes each. The independent valuer was based in Newark, Nottinghamshire. From tribunal experience and knowledge, we determine that a valuation fee of £825 plus VAT for each Property is excessive and therefore unreasonable. We determine that a fee of £650 plus VAT for each Property is reasonable.
27. The determined statutory fees payable in relation to each Property are therefore £403.20 legal fees plus £650, exclusive of VAT, in relation to the independent valuation fee, totalling £1053.20 exclusive of VAT.

Appeal

28. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

.....

Judge T N Jackson
8 August 2024

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

Section 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 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.

Section 91 Jurisdiction of ... tribunals.

(1) ... any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are—

- (a) the terms of acquisition relating to—
 - (i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or
 - (ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;
- (b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;
- (c) the amount of any payment falling to be made by virtue of section 18(2);
- (ca) the amount of any compensation payable under section 37A;
- (cb) the amount of any compensation payable under section 61A;
- (d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and
- (e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

- (3)
- (4)
- (5)
- (6)
- (7)
- (8)

(9) The appropriate tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

(11) In this section-

“the nominee purchaser” and “participating tenants” have the same meaning as in Chapter I;
“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

(12) For the purposes of this section “appropriate tribunal” means-

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.