



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

Case reference : **LON/00AW/OC9/2024/0096**

HMCTS code : **P: PAPERREMOTE**

Property : **First Floor Flat, 149 Holland Park
Avenue London W11 4UX**

Applicant : **CH Chesterford Limited**

Representative : **Wallace LLP**

Respondent : **Karis Developments Limited**

Representative : **Withers LLP**

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

Tribunal members : **Judge Pittaway
Mr K Ridgeway MRICS**

Date of decision : **3 December 2024**

DECISION

Description of hearing

This has been a remote hearing on the papers, the form of the hearing being P:PAPERREMOTE.

The documents to which the Tribunal was referred in a bundle of 138 pages which included the Applicant's Statement of Costs and the Applicant's submissions on costs.

The Tribunal has had regard to the documents before it in reaching its decision set out below.

Decisions of the Tribunal

The Tribunal determines that the amount of costs payable by the respondent under section 60 (1) of the 1993 Act are

- Legal fees of £2,500 exclusive of VAT
- Valuation fees of £1,250 exclusive of VAT
- Disbursements of £25 exclusive of VAT.
- VAT on all of the above costs if the VAT is not recoverable by the applicant.

Background

- (1) The applicant landlord 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 negotiations for the grant by the applicant landlord of a lease of **First Floor Flat, 149 Holland Park Avenue London W11 4UX** (the '**property**').
- (2) The costs application, dated 8 August 2024, stated that the applicant was content for the matter to be dealt with by way of a paper determination. The Tribunal's Direction, undated but sent to the parties under cover of letters dated 17 September 2024, confirmed that the Tribunal considered the matter suitable for determination without an oral hearing but that either party could request a hearing. Neither party did.
- (3) The costs sought are
 - Landlord's legal fees £3,900 (including VAT)
 - Landlord's valuation fee £1,500 (including VAT)
 - Land registry fees £14.40 (including VAT)
 - Courier fees £15.60 (including VAT)

- (4) By the Directions the applicant landlord was directed to provide the respondent by 8 October 2024 a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.
- (5) The Directions directed the respondent to provide the applicant by 29 October 2024 a statement of case, details of comparative cost estimates and any other documents she wished to rely on and giving the applicant the right to respond to the respondent's case by 12 November 2024.
- (6) The Directions required the applicant to prepare an agreed bundle and email it to the respondent and the Tribunal by 19 November 2024.
- (7) The bundle provided by the applicant's solicitors contains submissions by the applicant's solicitors dated 11 November 2024 in which they ask the Tribunal to note that the respondent had failed to comply with the Directions and that by that date the applicant had received no submissions on behalf of the respondent.
- (8) 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.

(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.”

The applicant's statement of costs and submissions

1. The submission on Costs gives a charge out rate for a partner in both the Leasehold Enfranchisement and Property departments at Wallace LLP of £520 per hour, increasing to £575 per hour in August 2023. The charge out rate, at the relevant time, for the assistant solicitor in the Leasehold Enfranchisement Department who considered the Notice of Claim is given as £425 per hour. The Statement of Costs gives a breakdown of the time spent by individual partners and assistant solicitor up to 9 August 2023 on work on the documents, communications with their client, the tenant and the tenant's solicitors, communications with the valuer and considering matters relating to the inspection of the Property, calculated in total as 6.2 hours, amounting to fees of £3,280.50, exclusive of VAT ((£3,936.60).
2. The bundle contains one invoice from Wallace LLP, dated 29 April 2024 for legal fees of £2,500 (£3,000 inclusive of VAT).
3. The bundle contains evidence of the land registry disbursements of £12 and the courier fees of £13.
4. The bundle includes an invoice from Fanshawe White, chartered surveyors, for £1,250 plus VAT. The narrative of the invoice suggests that this was an agreed fee for preparing a lease extension report following service of the section 42 notice on the applicant.
5. The applicant's statement of case states the respondent's claim on or around 27 September 2022 was suspended by reason of an ongoing collective enfranchisement claim which was completed on 13 June 2023, when the applicant became the respondent's competent landlord. The applicant admitted the respondent's claim on or around 8 August 2023. The respondent applied to the Tribunal to determine the terms of acquisition on or about 5 February 2024 but withdrew its application on 27 June 2024.
6. The applicant in its statement of case asked the tribunal to note the respondent's failure to comply with the Directions and that no submissions have been received from the respondent. The applicant therefore submits that the costs set out in the statement of costs are not disputed.
7. The applicant's solicitors have acted for the applicant for many years in enfranchisement matters. They submit that it is reasonable for fee earners with relevant experience to have conduct of the matter, and refer the Tribunal to cases which set out the principles the Tribunal is asked to consider in connection with the reasonableness of costs, in particular *Daejan Investments Limited v Parkside 78 Limited*.

8. The statement of case refers the tribunal to various recent cases where the statutory costs are payable where Notices of Claim are withdrawn and to cases where the charge out rate of the applicant's solicitors has been approved.

The respondent's case.

9. There was no evidence or submissions from the respondent.

Reasons for the tribunal's decision

10. In the absence of any evidence from the respondent the Tribunal has reached its decision on the basis of the statement of costs and submissions from Wallace LLP. The Directions stated, '*If any party fails to comply with these directions the Tribunal may in any event determine the issues in dispute on the basis of such information and evidence as is available.*' The respondent has provided no statement of case, no details of comparative cost estimates nor any other documents it wishes to rely on, as it was directed to do.
11. The Tribunal has to decide whether the costs are costs recoverable under section 60(1) and if so whether they meet the test of reasonableness set out in section 60(2).
12. The cases cited by the applicant in which the level of fees charged by Wallace LLP have been approved by other tribunals are instructive but are not binding on the Tribunal and each case must be determined on its own merits.
13. There are no submissions from the respondent before the Tribunal challenging the charge out rates of Wallace LLP, the time spent on the transaction or the seniority of solicitors used for all aspects of the application.
14. The Tribunal accepts that the applicant is entitled to instruct Wallace LLP, who are its long time solicitors, and that the rates charged by Wallace LLP are consistent with the usual charge out rates for solicitors in central London.
15. On the basis of the breakdown of costs provided by Wallace LLP the Tribunal find that the costs listed in that breakdown fall within section 60(1), as they relate to investigation reasonably undertaken of the tenant's right to a new lease, the valuation of the tenant's flat or the grant of a new lease. The Tribunal notes that they do not include any costs incurred in connection with any application to the tribunal, which are excluded under section 60(5).
16. However any costs incurred by the relevant person in respect of professional services rendered are to be regarded as reasonable only 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. There is only one invoice in the bundle for legal costs addressed to the Applicant and that is for £2,500 (plus VAT). The Tribunal finds, on the evidence before it, that it was the applicant's solicitors intention to charge its client £2,500 and not the total costs of £3,280.50 set out in the Statement of Costs. The invoice is dated April 2024. There is no suggestion in the bundle of any intention by the applicant's solicitor to make any further charge to its client.

17. In the circumstances the tribunal finds the legal costs of Wallace LLP in the sum of £2,500 plus VAT and disbursements to be reasonable. It also finds the level of disbursements charged to be reasonable.
18. The respondent has not challenged the valuer's invoice of costs of £1,250 plus VAT. In the absence of any challenge the Tribunal finds this cost to be reasonable.
19. The Tribunal notes that the applicant is seeking the costs plus VAT. The recovery of VAT from the respondent is only reasonable if the applicant is unable to recover the same.

Name: Judge Pittaway

Date: 3 December 2024

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).