



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

**Case Reference** : BIR/OOHA/OC9/2012/0003

**Properties** : Nos. 23 & 32 Mayfields, Keynsham, Avon, BS31 1BW

**Applicants** : No.23: Philip John Furze, Shirley Yvonne Furze, Andrew Richard Furze and Lesley Teresa Furze  
No.32: Judith Elizabeth Boardley, Anna Claire Barham and David Austin Boardley

**Representative** : Mr P.J. Furze FRICS of Messrs Davies & Way

**Respondent** : Kingley Properties Ltd.

**Representative** : Mr I. Mitchell of Messrs Anthony Gold, Solicitors

**Type of Application** : Determination of the landlord's reasonable costs to grant lease renewals under s.91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993

**Tribunal Members** : I.D. Humphries B.Sc.(Est.Man.) FRICS  
P.J. Hawksworth (Lawyer)

**Determination** : By written representations

**Date of Decision** : 5<sup>th</sup> December 2014

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**DECISION**

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## Introduction

- 1 This application is made under section 91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993 ('the Act') to determine the amount of the landlord's legal costs and surveyor's fees payable by the Lessees to the Lessor in connection with the grant of two extended leases.

## The Law

- 2 The items for which costs can be claimed are listed in Section 60 of the Act:

'(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.

...

(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.'

- 3 By section 91(2)(d), any dispute as to the amount of such costs is to be determined by a leasehold valuation tribunal, a jurisdiction transferred to the First-Tier Tribunal.

## Issues In Dispute

- 4     1        The landlord's legal fees.  
      2        The landlord's surveyor's fees.

## Legal Fees

### 5 Applicants' Submission

Mr Furze for the Applicants submitted that the Respondent's Solicitors had already drafted eight extended leases in the development that should be 'a significant factor in the tribunal's determination of the appropriate remuneration for the solicitors.'

He referred the Tribunal to the decision of a previous Tribunal in respect of flats 6,8,10,12,13,14, 21,,24 and 29 (case ref. CHI/OOHA/OLR/2013/0200-0208) where the landlord's legal costs had been assessed at £610 per flat plus VAT which he submitted should be applied in respect of flats 23 and 32 'less penal costs'.

### 6 Respondent's Submission

Mr Mitchell for the Respondent sent a submission by email advising that the costed amount of his firm's fees should have been £3,307.50 plus VAT for the two cases, but he would have been prepared to accept £1,200 plus VAT and disbursements in each case. The costed

amount was supported by an itemised Statement of Costs claiming 13.5 hours input for a Grade 1 Partner at a cost of £245 per hour plus VAT.

The disbursements were not identified at the time but as a result of further directions from the Tribunal the Respondent advised that the only disbursement was the Valuer's fee.

7 Tribunal Determination

The Tribunal accepts that the landlord is entitled to instruct its usual firm of Solicitors regardless of location which is Messrs Anthony Gold of Streatham High Road, London.

It also accepts that it would be reasonable to employ a Grade B Solicitor of at least four years' post qualification experience and based on the hourly rate of the Senior Courts Costs Office for a London based Solicitor, it finds that a reasonable cost would be £242 per hour.

In respect of time input, the Tribunal has considered each head of claim and determines the reasonable amount based on submitted costs as follows:

<b>Detail listed in Respondent's Schedule</b>	<b>Decision mins.</b>
Meeting with client director regarding section 42 notices	42
Letter of advice on 1993 Act process and terms of business	60
Drafting notice of deposit, access request, deduction of title requests and consideration of section 42 notices	48
Letter to Whittuck Taylor & Caines re deposit and deduction of title re 23 Mayfields.	6
Letter to Whittuck Taylor & Caines re deposit and deduction of title re 32 Mayfields.	6
Client email instruction regarding surveyor.	6
Drafting counter-notices on both properties, reviewing leases and title documents.	48
Email Whittuck Taylor & Caines re surveyor instructions.	6
Email instructions and title documents to surveyor.	12
Letter to Whittuck Taylor & Caines enclosing counter-notice.	6
Letter to Whittuck Taylor & Caines enclosing counter-notice.	6
Email client re lender's consent and possibility of premiums being paid to Greenwich Finance.	12
Preparing and drafting lease extension deeds for both properties.	72
Email Whittuck Taylor & Caines with draft deeds.	6
Email client re amendment and lender's consent.	12
Enquiry with client re ground rent and service charge arrears	6
Email to Whittuck Taylor & Caines re proceedings and form of lease.	6
Preparing completion statements	30
Email Whittuck Taylor & Caines with completion statements	12
<b>Total</b>	<b>402</b>

- 8 The Tribunal disallows all other claimed costs, many of which relate to reading and considering incoming emails and correspondence. Instead, the Tribunal adds 30 minutes for preliminaries and general case preparation to cover these items.
- 9 402 minutes detailed in the schedule plus 30 minutes is equivalent to 7.2 hours which at £242/hour totals £1,742.40 for the combined cases.
- 10 The Tribunal therefore finds the Respondent's reasonable legal fee to be £871.20 for each flat.

### **Surveyor's Fees**

#### 11 Applicants' Submission

Mr Furze submitted that no fee should be paid to the Respondent's Valuer for the following reasons:

- 1 it was unreasonable to have instructed a Valuer from Epsom to value property in Keynsham,
- 2 the Respondent's Valuer had caused negotiations to break down due to his 'unreasonable, vexatious and unjustifiable stance' in negotiations and
- 3 he had failed to comply with Directions.

#### 12 Respondent's Submission

By counter submission to Mr Furze, Mr Mitchell said the Valuer's fee had not been increased due to the location of his office as the Valuer had taken the opportunity to visit family members in Bristol at the time of the inspection and had not charged the leaseholders for travelling to the properties. He had charged £450 plus VAT to value each Flat and had produced a full report to respond to the section 42 notices.

#### 13 Tribunal Determination

The Tribunal were provided with no evidence to justify a claim that the Respondent's Valuer had been unreasonable or vexatious. His figures were some way from the Tribunal's determinations but were based on evidence that had been carefully presented. His opinions differed from the Tribunal but were nevertheless his professional opinion and could not be construed as unreasonable.

The Tribunal accepts that no additional charge had been made to cover the cost of travelling from Epsom.

The Tribunal notes that the landlord is entitled to have its interest professionally valued and that the tenant is required to pay a reasonable amount for the cost incurred.

Taking these points into consideration, the Tribunal finds the Respondent's Valuer's fee of £450 per Flat to be reasonable.

**VAT**

- 14 The Applicants are required to pay the Respondent's costs. If the Respondent is VAT registered and able to re-claim VAT on fees paid to its solicitor and surveyor from HMRC as an input, it has suffered no loss and the Applicants are not required to pay VAT.

If however the Respondent is not VAT registered and unable to reclaim VAT on fees as an input for VAT purposes, the Applicant is required to pay the VAT incurred on fees paid by the Respondent.

### **Summary**

- 15 The Tribunal determines the landlord's reasonable legal fees at £871.20 per flat and Surveyor's fees at £450 per flat.

### **Application to the Upper Tribunal**

- 16 If either party is dissatisfied with this decision an application may be made to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days of the date this decision is sent to the parties.

I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date