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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/OC9/2013/0074**
Property	:	**180 Camden Road, London NW1 9HG**
Applicant	:	**Stella Wong-Lun-Sang**
Representative	:	**Thrings LLP**
Respondents	:	**Christopher A Briere-Edney** **Kathryn M Briere-Edney &** **Elaine M Lewis**
Representative	:	**Tucker Turner Kingsley Wood LLP**
Type of application	:	**Cost of collective enfranchisement**
Tribunal Judge	:	**Judge T J Powell** **Mr N Maloney FRICS**
Date:	:	**22 January 2014 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 January 2014**

DECISION

The tribunal's decision

The total costs allowed for the two costs schedules come to £4,608 inclusive of VAT and disbursements, which the Tribunal determines are the reasonable costs payable by the respondents under section 91 of the Act.

Background to the application

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The application is for a determination of the costs payable by the respondent qualifying tenants under section 33 of the Act following the service of two initial notices on 20 July 2012 and 18 October 2012, under section 13 of the Act. The property in question is 180 Camden Road, London NW1 9HG.

2. In respect of the first initial notice, the applicant freeholder served a counter-notice dated 20 September 2012 which, for various reasons, did not admit the respondents' right to acquire the freehold and, in correspondence, the applicant's solicitors made it clear that they disputed the validity of the notice. Although this was disputed by the respondents' solicitors, the first initial notice was withdrawn on 8 October 2012.

3. With regard to the second initial notice, dated 18 October 2012, the applicant's solicitors served a second counter-notice dated 18 December 2012, which, without prejudice to their contention that the second initial notice was also invalid, admitted the respondents' right to acquire the freehold, while making alternative proposals. In particular, whereas the respondents had proposed a premium of £24,400, the applicant proposed a premium of £1,000,000.

4. The validity of the second initial notice was subject to much debate between the parties. Once again, the applicant's allegations were disputed by the respondents' solicitors, who eventually issued an application to the Tribunal on 19 February 2013 for a determination of the terms of acquisition. The Tribunal listed the matter for jurisdiction hearing in the light of the applicant's allegations as to the validity of the second initial notice, and the respondents eventually withdrew their application to the Tribunal on 17 April 2013.

5. A third initial notice and counter-notice were subsequently served, but the Tribunal has no details of them. It is only concerned with the applicant's claim for costs incurred by her as a consequence of the service of the first two initial notices. In her application of 31 October 2013, the applicant claimed some £9,996 (including the VAT and disbursements) in respect of the first initial notice and £5,340

(including VAT and disbursements) in respect of the second initial notice.

6. The respondents accept their liability to pay the reasonable costs of enfranchisement under section 33 of the Act but have refused to pay what they regard as the applicant's "excessive and unreasonable demand."

The statutory provisions

7. Section 33 of the Act provides, in so far as is relevant to the purposes of this decision:

> 33 Costs of enfranchisement.
>
> (1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—
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> (a) any investigation reasonably undertaken—
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> (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
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> (ii) of any other question arising out of that notice;
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> (b) deducing, evidencing and verifying the title to any such interest;
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> (c) making out and furnishing such abstracts and copies as the nominee purchaser may require;
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> (d) any valuation of any interest in the specified premises or other property;
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> (e) any conveyance of any such interest;
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> 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 the reversioner or any other relevant landlord 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) The nominee purchaser 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

Directions and the schedules of costs

8. On 15 November 2013, the Tribunal gave directions for the determination of this application, including a direction to the effect that the applicant should send to the respondents a schedule of costs sufficient for summary assessment. Thrings LLP for the applicant

supplied two two-page schedules of costs, the first for the period covered by the first initial notice (in effect from 20 July 2012 to 8 October 2012) and the second covering the period of the second initial notice (the period from 18 October 2012 to 17 April 2013). In addition, they provided a series of invoices addressed to their client, the applicant, a fee note from Knight Frank surveyors and a counsel's fee note from Tanfield Chambers. While details of the fee earners' hourly rates are given, in neither case is there a detailed breakdown of the time spent by those fee earners or any time recording sheets.

9. Both parties have submitted comprehensive arguments as to the reasonableness of the costs claimed by the applicant and the Tribunal was provided with a lever-arch file containing various notices, counter-notices, schedules, documents and copious correspondence passing between the respective solicitors.

10. The directions provided for a determination on the papers, unless either party asked for an oral hearing. Neither party requested a hearing and the tribunal did not consider that one was necessary.

The applicant's case

11. The applicant's statement of case is contained within the witness statement of Michael Tatters at pages 341-346 of the bundle of documents. It relies heavily on the fact that the first and second initial notices were invalid and that the question of their invalidity "through no fault of the applicant" had led to additional and unnecessary work, including advice and assistance to the applicant and detailed correspondence with the respondents' solicitors that was "over and above the normal work" to be expected to flow as a result of the service of an initial notice under section 13 of the Act.

12. In broad terms, the property in question needed careful consideration of the title by reference to the content of the invalid notices and their "defective" plans. More specifically, it was said that the costs incurred on behalf of the applicant - for reviewing the notices, reviewing the title documents, investigating the questions arising by reason of the initial notices, advising the applicant, liaising with an expert valuer, considering and preparing the correct counter-notice, consulting with counsel and corresponding with the respondents' solicitors (who refused to accept the issues of invalidity) - were all reasonable.

13. Although, as drafted, the first costs schedule was said to extend between 1 May 2012 to 8 October 2012, the Tribunal accepts that no costs were claimed by the applicant prior to 20 July 2012, being the date of the first initial notice. The Tribunal notes that there was "prolonged communication" regarding arrangements for the applicant's surveyor to inspect the property for the purposes of producing a valuation report and "prolonged correspondence" between the

respective solicitors concerning the validity/invalidity of the initial notices.

14. In particular, the Tribunal noted the complaints by the applicant that the plans attached to the two initial notices were defective and did not properly reflect either the premises to be acquired or those which were entitled to be acquired by the respondents. These issues gave rise to a need for the applicant's solicitors to give "detailed advice" and have "detailed discussions" with their client, and for "detailed correspondence" with the respondents' solicitors.

The respondents' case

15. The respondents submit that they should only be liable to pay costs that have been reasonably incurred and which arise "as a result of, or caused by" the initial notices. They are only liable to pay a cost "that is either directly or incidentally concerned with the matters contained in section 33(1) of the Act" (relying upon *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC)).

16. When assessing the landlord's costs under section 33, the Tribunal should not do so using the indemnity costs framework, but section 33 "introduces a [limited] test of proportionality of the kind associated with the assessment of costs on the standard basis" (see paragraph 22 of *Drax*).

17. The respondents make general submissions that the applicant's claim for costs totalling £15,336 is excessive and clearly unreasonable, and they complain that the applicant has provided an insufficient breakdown of those costs, which are entirely unsupported by time ledgers. The respondents make detailed comments on the two cost schedules, which are dealt with below, but generally rely upon the lack of information or supporting evidence, excessive time being spent and the lack of evidence or explanation as to how any work claimed was in respect of matters set out in section 33(1)(a)-(e) of the Act.

The principles

18. The Upper Tribunal decision in *Drax v Lawn Court Freehold Ltd* established that costs must be reasonable and have been incurred in pursuant of the section 13 notice and in connection with the purposes listed in subsections 33(1)(a)-(e). The respondent nominees are also protected by section 33(2), which limits recoverable costs to those that the applicant would be prepared to pay if she were using her own money rather than being paid by the respondents.

19. 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 applicant should only receive her costs where she has explained and substantiated them.

20. It does not follow that this is an assessment of costs on the standard basis. That is not what section 33 says, nor is *Drax* an authority for that position. Section 33 is self-contained.

Conclusions: the applicant's solicitors hourly rate

21. The respondents rightly raise no issue as to the hourly rates charged by the applicant's solicitors. The bulk of the work was done by a Grade B associate, at an hourly rate of £200 plus VAT, with passing involvement from a grade A partner, at an hourly rate of £250 plus VAT, and from a Grade D fee earner, at an hourly rate of £125 plus VAT. The Tribunal is satisfied that these are reasonable charging rates.

22. When carrying out its assessment of the reasonable section 33 costs below, it should be noted that although the Tribunal applied a charging rate of £200 throughout, this is an average rate and includes any supervisory work that will have been carried out by the partner in this case.

Specific challenges to solicitor's time spent

23. The first schedule of costs which related to the first initial notice covers a period of some 11 weeks. During this period the applicant's solicitors spent an astonishing 7 hours and 42 minutes attending on the applicant. No evidence is given as to how this time was incurred or how any of that time related to the matters in section 33(1)(a)-(e) of the 1993 Act.

24. The Tribunal accepts, of course, that it would have been necessary to take instructions from the applicant in relation to the initial notice and to advise her about the solicitor's view as to its validity. However, notwithstanding the alleged imperfections of the initial notice, the Tribunal struggles to see how more than two hours' of such work could be recoverable from the respondents under the Act. It therefore allows 2 hours at £200, i.e. £400 for this item.

25. With regard to the attendance on the respondent's solicitors, some 3 hours and 36 minutes are claimed for this. Again, the Tribunal accepts that it is inevitable that there will be some correspondence with the respondent's solicitors in pursuance of the initial notice, but the mass of e-mails and letters seen by the Tribunal either relate to non-fee earner time arranging a mutually convenient time for the applicant's surveyor to inspect the property, or to non-progressive, repetitious submissions and arguments as to whether or not the first initial notice

this was valid. Perhaps generously, the Tribunal would allow up to two hours for this item, i.e. another £400.

26. The item "attendance on others" is said to include instructing the expert valuer to carry out a valuation report, collating title documentation, answering questions about that documentation and the layout of the property, assisting in co-ordinating the valuer's inspection and subsequent discussions with the valuer. While the Tribunal accepts that time will have been spent by the applicant's solicitors in connection with these matters, the 5 hours 12 minutes claimed is very high indeed, is not supported by any breakdown and must be unreasonable. Doing its very best, the Tribunal considers that this work could not have exceeded 2 hours and it therefore allows further £400 for this item.

27. Similarly, there is very little detail as to the "work done on documents", such as would justify the 5 hours 54 minutes claimed. The Tribunal accepts, of course, that time would have been spent briefly considering a valuation report and thereafter drafting a (negative) counter-notice and serving it but, together, this cannot have exceeded 1½ hours' work, for which a further £300 is allowed.

28. Even less detail is given as to the 4 hours 12 minutes claimed for "other work not covered above" bar further consideration of the invalidity question and informal discussions with counsel, and the Tribunal cannot see how other work could have been carried out that would be referable to section 33(1)(a)-(e), that is not already catered for in the sums already allowed. Therefore no costs are recoverable under this item.

29. With regard to the office copy entries from the Land Registry, no dispute is taken in relation to the £48 disbursement. However, the valuer's fee of £3,000 seems extraordinarily high, particularly for a valuation report on a property in Camden with only three flats and a roof space. Even taking into account the time a surveyor would spend visiting a property, inspecting the flats, measuring up, examining the leases, investigating and considering comparables and then producing a valuation report, the surveyor is unlikely to spend more than 7 or 8 hours on the matter. No breakdown of time is given by the surveyors and the Tribunal has not seen a copy of the valuation report. Again perhaps generously, the Tribunal would allow up to £1,500 for the valuer's fees, but cannot see any justification for allowing more to be recoverable from the respondents under the Act.

30. Altogether, therefore, in the respect of first costs schedule the Tribunal allows £1,500 plus VAT for solicitors' costs, £1,500 plus VAT for valuers' fees and £48 for Land Registry fees, making a grand total £3,648 payable by the respondents.

The second costs schedule

31. The schedule of costs in respect of the second initial notice covered a period of some 6 months and, once again, the Tribunal applies an average hourly rate of £200 plus VAT, making an allowance for partner input in the time allowed, rather than in the hourly rate.

32. Given the apparently lengthy attendances on the applicant by her solicitors in the first costs schedule, the Tribunal again struggles to see justification for the further 8 hours 42 minutes claimed for attendances on the applicant in respect of second initial notice. No breakdown or details were given, either as to the time spent or how the work was consequent upon the matters in section 33(1)(a)-(e) of the 1993 Act. The Tribunal therefore allows 1 hour, or £200 for this item.

33. With regard to the 4 hours 18 minutes claimed for attendances on the opponent, so far as they are represented by the copy letters in the bundle, those letters are largely repetitive and non-productive, often rehearsing arguments as to the validity or otherwise of the first initial notice (in the context of the applicant's subsequent claim for costs) and the validity or otherwise of the second initial notice; arguments that would or could in due course be raised in the tribunal or county court. One or two letters should have been sufficient to set out the applicant's position on these points; and anything above amounts to negotiations and/or correspondence relating to proceedings, the costs of which are non-recoverable in any event. Once again, it is hard to see how the letters are consequent upon the matters in section 33(1)(a)-(e) of the Act. At best, the Tribunal allows 1½ hours, or £300 for this item.

34. The applicant's statement of case suggests that the 1 hour 36 minutes claimed for "attendance on others" include attendances on the valuers as to the appropriate value to be inserted into the counter-notice. However, the valuation report had already been obtained in relation to the first initial notice and there could have been no appreciable difference in the figures in the short space of time between the first counter-notice dated 20 September 2012 (which did not admit the right to collective enfranchisement and did not include the applicant's counter proposals as to premium) and the second counter-notice dated 20 December 2012 (which included the applicant's counter proposal of a premium of £1,000,000).

35. In so far as counsel may have also be instructed to advise as to the validity of the second initial notice, this appears to have been in the context of subsequent LVT proceedings issued by the respondents and is dealt with below.

36. As there was no involvement with the Land Registry or the valuer, so far as the second initial notice was concerned, it is not clear as to what

matters "attendance on others" relate and, therefore, nothing is allowed for this item.

37. With regard to "work on documents", once again, the Tribunal accepts that time would have been spent drafting the second counter-notice, which was different in detail to the first counter-notice. However, it would not justify 2 hours 48 minutes claimed and the Tribunal will only allow 1½ hours for this item, which includes an element of partner supervision, i.e. £300.

38. The applicant's statement of case states that the 1 hour 42 minutes claimed for "other work not covered above" includes internal discussions by the applicant's solicitors on issues arising as a result of the invalidity of the initial notice and instructions to counsel, but allowance for any such discussions and work is covered by the amounts previously allowed and there is insufficient detail as to how this "other work" related to costs claimable under the Act. Therefore, nothing is allowed for this item. In so far as work under this heading may have been related to litigation before the Tribunal, it would of course not be recoverable anyway.

39. The second cost schedule includes a £600 plus VAT fee to counsel and the applicant's statement of case explains that counsel was instructed to advise on the validity of the second initial notice and the impact of the respondents issuing LVT proceedings. Very little other information is provided and no correspondence was contained within the hearing bundle. However, counsel's fee note suggests that on 2 April 2013 counsel considered papers sent by e-mail and settled a preliminary advice (2 hours) in relation to a matter before the Leasehold Valuation Tribunal.

40. Given that the LVT proceedings had been commenced on 19 February 2013 and were not withdrawn to until 17 April 2013, the timing of the counsel's work suggests it was squarely aimed at those proceedings and is therefore not recoverable under the Act. There is insufficient evidence to say that the advice related purely to the question of the validity of the second initial notice, as opposed to the LVT proceedings, and therefore the Tribunal disallows this amount.

41. Altogether, in respect of the second costs schedule the Tribunal allows and £800 plus VAT, making a total £960, which is payable by the respondents.

Summary

42. The total costs allowed for the two costs schedules come to £4,608 inclusive of VAT and disbursements, which the Tribunal determines are the reasonable costs payable by the respondents under section 91 of the Act.

Name: Judge Timothy Powell **Date:** 28 January 2014