4292

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/OC9/2016/0266**
Property	:	**28-30 Lansdowne Road, London W11 3LL**
Applicant	:	**Karen Roux and Oliver Roux**
Representative	:	**Winckworth Sherwood**
Respondent	:	**28-30 Lansdowne Road (Freehold) Limited**
Representatives	:	**Bircham Dyson Bell LLP**
Type of application	:	**Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal member	:	**Judge Amran Vance**
Date of determination and venue	:	**23 August 2016 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**23 August 2016**

DECISION

The section 33 costs determined by the Tribunal are £3,558.00 plus VAT as applicable.

REASONS

Background

1. This is an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in relation to the prospective enfranchisement of 28-30 Lansdowne Road, London W11 3LL ("the **Property**"). In their application notice dated 27 June 2016 the applicants seek section 33 costs in the sum of £8,586.96 (inclusive of disbursements and VAT).

2. Directions were issued on 29 June 2016 which allocated the matter to be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties.

3. Numbers in bold and square brackets below refer to pages in the bundle supplied by the applicants.

4. An Initial Notice under Section 13 of the Act **[43-52]** was served on the applicants by the respondent on 10 August 2015 ("the **First Notice**") in which the respondent sought to acquire the freehold of the Property and leasehold interests in relation to certain garages . On 13 October 2015 the applicants' solicitors wrote to the respondent's solicitors **[53-4]** pointing out what they considered to be several defects in the First Notice, including defects relating to an invalid acquisition of garage leases. On the same date, to protect their position, the applicants also served a Counter Notice **[55-59]** without prejudice to their contention that the First Notice was defective.

5. On 30 November 2015 the respondent's solicitors accepted that the First Notice was invalid **[60]**. They also served a second notice Initial Notice ("the **Second Notice**") under section 13 of the Act served on the applicants under cover of a letter dated 26 November 2015 **[62-72]** seeking to acquire the freehold interest in the Property together with the freehold of land shaded yellow on an attached plan subject to an unregistered superior leasehold title concerning the garages at the Property. The total premium offered was £250,832 and £100 for appurtenant land.

6. On 8 January 2016 the applicants' solicitors wrote to the respondent's solicitors **[78]**, pointing out two defects in respect of the Second Notice and stating that a Counter Notice would be served without prejudice to the contention that the notice was invalid. The defects in question concerned the omission to include particulars of the lease for flat 6 and

the failure to state whether copies of the notice had been given to any other relevant landlord.

7. The Counter Notice was served on 18 January 2016 **[73-77]** opposing the acquisition of the freehold land shaded yellow and suggesting a premium of £440,686 for the freehold interest in the Property. Counter proposals were also made in respect if the price of the additional property claimed in the event that it was acquired and as to the extent of the acquisition of the freehold land shaded yellow.

8. It appears that in a telephone conversation on 14 January 2016 the respondent's solicitors may have accepted that the Second Notice was invalid. However, this does not appear to have been confirmed in writing until an email sent on 12 April 2016 **[81]**.

9. The applicants now seek their costs of enfranchisement under section 33 of the Act in respect of the Second Notice.

The Law

10. Section 33 is reproduced in the Appendix 1 to this decision.

11. 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, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That 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 applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

12. 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.

13. 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 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Respondent's Case

14. The respondent's position is that the applicants' have not, despite requests, provided details of the costs incurred in respect of the First Notice. It is their view that the applicants' solicitor would have undertaken the majority of the work claimed for when considering the First Notice and preparing the first Counter Notice. They consider that there has been overlap and duplication of time and that the costs sought are disproportionate and excessive.

15. They submit that the defects in the First Notice were addressed in the Second Notice except for the failure to attach the lease details for one of the leasehold interests and query the need to obtain counsel's advice.

The Applicant's Case

16. The applicants assert that the costs claimed are proportionate and reasonable. They were, they say, required to determine the validity of the Second Notice, including investigating title for numerous leases and amendments to the same as well as checking the status of the qualifying tenants. This, it is said, was a complex matter as a result of the claim for additional property and the garages and advice was therefore sought from counsel.

17. They contend that routine attendances on the Landlord were kept to a minimum and were required in order to provide updates and advice on the validity of the respondent's claim.

18. They dispute the respondent's suggestion that the Second Notice simply addressed defects within the First Notice on the basis that the Second Notice contained its own defects which required investigation. They further dispute that all investigations would have been completed following the invalid First Notice. They consider that all disbursements were reasonably incurred and recoverable in full.

19. They also assert that the defects in the Second Notice would have inevitably increased the costs incurred by the applicants in dealing it

Reasons

20. The applicants' detailed statement of costs **[85-87]** identifies that all work in this matter was carried out by a partner at an hourly rate of £325. The respondent does not seek to challenge this hourly rate and in the absence of any challenge we accept the figure is reasonable.

21. However, we note that the solicitors Guideline Hourly Rates for 2010 suggest a range of £229 - £267 for a grade A fee earner in a practice based in London SE1 which is where the applicants' solicitor is based. We accept that this matter justified the involvement of a partner and that uplift in the guideline hourly rate is appropriate because of the specialist

nature of enfranchisement work and the need for care when dealing with such applications.

22. However, on the available evidence, the tribunal does not accept that the matter was of such complexity as to justify the involvement of counsel as well as a partner charged at an hourly rate significantly in excess of the guideline hourly rate for the area in which his firm is located. There were only six participating qualifying tenants in this matter and the background to the freehold and leasehold interests does not appear to be especially complex. The two identified defects in the Second Notice do not appear to give rise to any material complexity and nor is any revealed in the proposals in the second Counter Notice that would warrant recourse to counsel. All matters arising should have been well within the ability of a competent and experienced partner in a firm dealing with enfranchisement work. Nor have the applicants identified what counsel advised about and no assistance is obtained from her fee note **[91]** which just refers to reviewing papers and providing comments. On the evidence available we consider all costs incurred in having recourse to counsel to have been unreasonably incurred.

31. In considering the specific work that was undertaken we now turn to the time charged for the individual items on the detailed schedule, referring to those items in dispute between the parties.

Costs recoverable under section 33(1)(a)(b) and (c) of the Act.

23. The applicants seek a total of £3,628.80 plus VAT for work done in respect of section 33(1)(a)(b) and (c) of the Act.

24. Section 33(1)(a) concerns *any investigation reasonably undertaken—*

(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

(ii) of any other question arising out of that notice;

25. Section 33(1)(b) concerns *deducing, evidencing and verifying the title to any such interest*;

26. Section 33(1)(c) concerns *making out and furnishing such abstracts and copies as the nominee purchaser may require*;

Attendances on Landlord

27. The Second Notice was served on 26 November 2015. It was not withdrawn in writing until 12 April 2016. We consider it reasonable for

the applicants to require confirmation in writing, in addition to the intimation in the telephone conversation on 14 January 2016, that it was accepted that the Second Notice was invalid and that it was reasonable for the Landlord to be kept updated until written confirmation was received. However we agree with the respondent that 11 routine letters as well as four non-routine letters over a period of just over four months is excessive for the likely work involved. We reduce the non-routine letters to seven.

Attendances on Tenant's Solicitor

28. The respondent does not dispute that six routine letters and two non-routine letters were sent but argues that it was unreasonable for the applicants to have pursued matters that had been resolved. However, the respondent has not identified any specific correspondence where it says this arises and the tribunal's reading of the correspondence included in the hearing bundle does not indicate that the respondent's criticism is justified. We allow these items in full.

Attendances on Counsel

29. We consider these costs have been unreasonably incurred for the reasons stated above. They are disallowed.

Work Done on Documents

30. We do not consider there is evidence that there has been overlap and duplication of time spent as suggested by the respondent. However, we accept that the fact that the applicants' solicitor had spent time investigating title following service of the First Notice would have made this task quicker upon service of the Second Notice. In our view the time spent in reviewing the Second Notice and undertaking preliminary investigations is excessive. We consider 1 hour 30 minutes to be a reasonable amount of time for a partner to spend on this work in what was not a complex matter.

31. The Counter Notice contains significant detail and proposals at section five of the form and we consider the time spent to be reasonable except for the time spent in considering counsel's advice which is disallowed for the reasons state above.

Disbursements

32. The applicant has not explained what photocopying costs of £113.30 relate to and absent any explanation we do not accept they are payable as s.33 costs.

Costs recoverable under section 33(1)(d) of the Act.

33. The applicants seek a total of £3,040 plus VAT for work done in respect of section 33(1)(d) of the Act.

34. Section 33(1)(d) concerns *any valuation of any interest in the specified premises or other property*;

Attendances on Landlord

35. No explanation has been given as to why seven non-routine letters and one non-routine letter needed to be sent to the Landlord in respect of valuation issues. When considered alongside the 11 routine and four non-routine letters claimed for work carried out under section 33(1)(a)(b) and (c) we agree with the respondent that this is excessive. We allow 3 routine letters and one non-routine letter.

Attendances on Surveyor

36. The applicant has not explained why six routine letters and one non-routine letter needed to be sent to the surveyor. Given that there do not appear to be complex valuation issues involved we agree with the respondent that the time spent is excessive and consider four routine and one non-routine letter to be a reasonable.

Work on Documents

37. We have not been provided with a copy of the valuation report and in its absence agree with the respondent that the time spent is excessive. We consider that a partner dealing with enfranchisement work should have been able to consider a valuation report for a property of this size and nature, together with any further information provided regarding valuation within 36 minutes and we allow that amount

Surveyor's Fee

38. The tribunal's directions required the applicant to exchange copies of all invoices substantiating the claimed costs and to include these in the hearing bundle. It is therefore regrettable that the applicants failed to include the surveyor's invoice in the hearing bundle. Nor, as stated above, has the tribunal had sight of the valuation report in question.

39. Compliance with the tribunal's directions is important as the tribunal is not in a position to identify what work the surveyor has carried out and when he or she did undertook it. This information is not provided in the applicants' statement of case. This issue is important because whilst the costs of instructing the valuer and taking advice as to what figures should

be inserted in the second Counter Notice is incidental to the valuation work, any work carried out after the service of that Counter-Notice is likely to fall outside the scope of section 33.

40. In light of this failure to comply with the tribunal's directions, and we allow the sum offered by the respondent, £500 plus VAT.

Costs recoverable under section 33(1)(e) of the Act.

41. The applicants seek a total of £487.50 plus VAT for work done in respect of section 33(1)(e) of the Act

42. Section 33(1)(e) concerns *any conveyance of any such interest.*

43. The only item in dispute under this heading was work on documents for which the applicants spent a total time of one hour 12 minutes in: considering issues relating to the conveyance and draft transfer (18m); preparing and drafting the transfer (30m) and finalising the draft transfer (24m). The respondent states that no plan was supplied with the daft transfer meaning that it was difficult to assess the terms of the transfer and argues that the costs should be disallowed in full.

44. We have not been provided with a copy of the draft transfer. Without sight of the transfer we consider the amount that is reasonable for the work in question is a total of 48 minutes, disallowing the 24 minutes claimed for the last item.

Summary

45. Applying the above reductions we determine that the following amounts are payable by the respondent by way of s.33 costs before VAT.

Section 33(1)(a)(b) and (c)	£
Attendances on Landlord	
Routine Letters 7 @ £32.50 each	227.50
Non Routine Letters 4 @ £325 per hour	390.00
Attendances on Tenant's Solicitor	
Routine Letters 6 @ £32.50 each	195.00
Non Routine Letters 2 @ £325 per hour	227.50

Work done on Documents	
2 hours 48m @ £325 per hour	910.00
Disbursements	
Land Registry Search fees	3.00
Section 33(1)(d)	
Attendances on Landlord	
Routine Letters 3 @ £32.50 each	97.50
Non Routine Letters 1 @ £325 per hour	97.50
Attendances on Surveyor	
Routine Letters 4 @ £32.50 each	130.00
Non Routine Letters 1 @ £22.50 per hour	65.00
Attendances on Tenant's Solicitor	
Routine Letters 5 @ £32.50 each	162.50
Work done on Documents	
36m @ £325 per hour	195.00
Surveyors Fees	500.00
Section 33(1)(e)	
Attendances on Landlord	
Routine Letters 2 @ £32.50 each	65.00
Attendances on Tenant's Solicitor	
Routine Letters 1 @ £32.50 each	32.50
Work done on Documents	

48m @ £325 per hour		260.00
	TOTAL	**£3,558.00**

Name: Amran Vance **Date:** 23 August 2016

Appendix 1

Leasehold Reform, Housing and Urban Development Act 1993

S33.— 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—

(a) any investigation reasonably undertaken—

(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
(ii) of any other question arising out of that notice;

(b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

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.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

ANNEX 2 - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.