



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

**Case reference** : **LON/00BK/OC9/2016/0208**

**Property** : **Flat 49, Orchard Court & Garage 3,  
Portman Square, London, W1H  
6LG**

**Applicant** : **Zeal Holding Limited**

**Representative** : **Hogan Lisle Solicitors**

**Respondents** : **The Portman Estate Nominees  
(One) Limited & The Portman  
Estate Nominees (Two) Limited –  
First Respondent**  
**Orchard Court (Portman Square)  
Limited – Second Respondent**

**Representatives** : **Pemberton Greemish LLP for the  
First Respondent**  
**Wallace LLP for the Second  
Respondent**

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**Type of application** : **Section 60 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993**

**Tribunal member** : **Mrs Helen Bowers MRICS**

**Date of determination  
and venue** : **14 December 2016 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **23 December 2016**

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## DECISION

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The Tribunal determines that the Respondents' costs under section 60 are as follows:

- Legal Fees for the First Respondent - £2,861.50 plus VAT and disbursements
  - Legal Fees for the Second Respondent - £1,695.60 plus VAT and disbursements
  - Valuation Fees - £1,767.00 plus VAT plus disbursements
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## REASONS

### Background

1. This matter arises from an application made by The Applicant, as the leaseholder of Flat 49 & Garage 3, Orchard Court, Portman Square, London, W1H 6LG (the subject property). The application is dated 19 May 2016. The application required the Tribunal to determine the premium to be paid on a lease extension and the other terms of acquisition including the statutory costs. It appears that the terms of acquisition were agreed on or around 3 October 2016. On 3 October 2016 the Second Respondent served a Notice to Act Independently. Statutory costs were not agreed between the parties and the Applicant revived its application for the determination of costs.
2. The Tribunal issued Directions in respect of the statutory costs application on 10 October 2016. These Directions 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. The section 60 costs being claimed for the First Respondent are the legal costs of £3,717.00 plus VAT of £807.70 and disbursements for land registry fees of £18.00. Totalling £4,864.20.
4. The section 60 costs being claimed for the Second Respondent are the legal fees of £2,045.60 plus VAT and disbursements of £30.00. Totalling £2,484.60.

## The Law

5. Sections 60 and 91 are reproduced in the Appendix to this decision.

## Costs Claimed

### First Respondents' Costs

6. The total section 60 costs being claimed are £4,864.20. It is explained that the fee earners dealing with this case were two solicitors, each with a charging rate of £295 per hour and a partner with a charging rate of £375 per hour. The schedule of work undertaken describes the tasks undertaken from 12 October 2015 to 6 October 2016. The time claimed for this work is 11 hours and 18 minutes for the solicitors' time and 42 minutes for the partner's involvement. Additionally, a further 1 hour and 30 minutes is claimed for anticipated work to complete this matter.
7. There were further submissions from the First Respondent dealing with the comments made by the Applicant. This confirmed that there had been communication between the First and Second Respondents in respect of the s.42 notice and the draft lease.
8. The valuation fee claimed is £1,767 plus VAT and a time sheet that appears to have been submitted by Cluttons LLP is provided. This shows a total of 6.39 spent at an hourly charging rate of £225.00 plus VAT and disbursements of £80.00.
9. Responding to the previous lease extensions in the block, it is stated that each claim is individually investigated and that the previous lease extensions have occurred over several years, so that arrangements were not familiar. However, the Respondents had been able to reduce costs by using a standard form of lease.
10. The hourly charging rates quoted by the Applicant have not been updated for several years and are therefore not applicable. A solicitor experienced in enfranchisement work undertook most of the work and her charging rates have previously been approved by the Tribunal. The same points apply to the partner involved in this extension.
11. The time between 12 October and 30 November 2015 is reasonable and proportionate. The Applicant's submissions do not specify which items are not attributable to the investigation and do not show how they calculate that no more than one hour should be recoverable and therefore should be ignored.
12. It is not accepted that the time spent on the draft lease was unreasonable and it is the First Respondent's position that the draft

lease required significant amendments to ensure that it was in the form suitable for all the leaseholders in the development. The Applicant's counter-amendments were only accepted after careful consideration and involved liaising with the Second Respondent. The time spent on this element of the work was 6 hours and 54 minutes.

13. In respect of the anticipated time it is a reasonable allowance for any unforeseen work to complete the matter and is reasonable given the completion work required.

#### Second Respondent's Costs

14. The total section 60 costs being claimed are £2,484.60. It is explained that the charging rate for the relevant fee earners in a London firm for a partner would be £465 per hour; an associate dealing would be £330 per hour, rising to £350 per hour and a paralegal with a rate of £200 per hour. A schedule of work undertaken describes the tasks undertaken from 2 December 2015 to 11 October 2016. The time claimed for this work is a total of 5.1 hours, with a paralegal undertaking 0.2 hours; the assistant undertaking 4 hours and 0.9 hours for the partner's involvement. Additionally the anticipated time to conclude this matter was taken to be 0.7 hours for the assistant.
15. In the submissions it was explained that Wallace LLP was the solicitor of choice for the Second Respondent and has represented them for many years in enfranchisement work. The charge-out rates are consistent with the rates of solicitors in Central London. Reference was made to *Daejan Investments Limited v Parkside 78 Limited* [LON/ENF/1005/03], *Daejan Properties Limited v Steven Kenneth Twin* [LON/00BK/2007/0026] and *Andrew Allen v Daejan Properties Limited* [LON/00AH/OLR/2009/0343] where the principles as to the reasonableness of costs, charge out rates and the use of partners were set out. Numerous other cases were referred to where the FTT have approved the relevant charge out rates.
16. It is explained that the nature of this work is complex and the various stages of the process are described. It is submitted that it is reasonable for the Second Respondent to recover the costs incurred by their solicitors by reference to time spent on the various tasks and the principles of the case law.
17. General points were made that it is appropriate for an intermediate landlord to instruct their own solicitors and carry out the work specified in s 60 of the Act. Responding to the Applicant's submission that charge out rates should be in line with court proceedings guidelines, it is stated that this is irrelevant for consideration of costs under s. 60.

18. Reference is made in the detailed schedule responding to the points raised by the Applicant it was also noted that there was a significant amount of correspondence that was copied to the Applicant's solicitors. The annotations explain that in relation to 0.6 hours on 2 December 2016 this work was necessary to check the counter-notice to ensure that the Second Respondent was protected and a request that the valuation calculation was provided; there was various correspondence dealing with the terms of the draft lease and emails in respect of a licence for alterations and associated fee agreement dated 30 November 2012 and consideration of whether there should be reference to such in the new lease and that in relation to work undertaken on 10 and 11 October 2016 this was work involving the confirmation of the lease terms and not work in reference to the Tribunal proceedings.

### **Applicant's Case**

18. In its general comments the Applicant explains that the Second Respondent had very little involvement in this matter until approximately 2 October 2016 and had effectively authorised the First Respondents to make representations and proceed on its behalf.
19. Previously there have been at least ten lease extensions in the development where the subject property is situated. Therefore all Respondents would be very familiar with the title structure, lease form, general management and administrative provisions.
20. The guidelines of hourly charging rates from H M Courts and Tribunal Service for a London Grade 2 firm is £320 for a partner, £220 for a solicitor and £130 for a paralegal. Therefore the charging rates should be limited accordingly.

### **First Respondents' Costs**

21. From 12 October to 30 November 2015 a total of 4.5 hours had been claimed. As this work should be limited to the tasks involving investigating title the time should be limited to one hour.
22. From 1 December 2015 to 6 October 2016 a total of 7.5 hours had been claimed. The first draft lease contained a number of amendments that went beyond the scope of the original lease and ignored the approved alterations to the flat. It is suggested that this time should be limited to 4 hours to reflect the impact of s 56 of the 1993 Act on the form of an extended lease.
23. A total of 1.5 hours has been claimed in anticipation of the work to conclude this matter and includes financial reconciliation and accounting issues, which is claimed to be beyond the scope of the 1993

Act. It is suggested that an hour would be sufficient time for work to conclude this matter.

### Second Respondents' Costs

24. From 5 October 2015 to 30 September 2016 the Applicant's solicitor was not party to any correspondence between the two Respondents and therefore the Applicant is unsure of the extent to which costs were incurred in relation to 1993 Act work. The Second Respondent is claiming 36 minutes for work on 2 December 2015 in relation to the issue of the counter-notice and it is claimed that this is not recoverable under the Act. Finally the Second Respondent is claiming 30 minutes for work on 10 and 11 October 2016 and this would appear to be in relation to the vacated Tribunal hearing and should not be allowed.

### Decision and Reasons for the Tribunal's Determination

25. Enfranchisement work is a complex and specialist area of work and as such it is the opinion of the Tribunal that the Respondents are entitled to select a specialist solicitor to act for them. The guidelines from the H M Courts and Tribunal Service are just that, to provide guidance and a distinction should be made between county court work and this specialist work. The Second Respondent has used Wallace LLP previous in respect of enfranchisement work and the on-going relationship between client and solicitor is an aspect that has previously been accepted. The higher charging rate proposed by Wallace LLP of £465 per hour is at the higher end of the spectrum but on balance it is not unreasonable. Therefore the Tribunal accepts the charging rates proposed by both Respondents are not being unreasonable.

### First Respondent's Legal Costs

26. In respect of the work undertaken by the First Respondent from 12 October to 30 November 2015, the time of 4.5 hours seems a little high for work in relation to the consideration of the Applicant's rights and the preparation of the counter-notice. However, the time involved includes consideration of the lease and consideration of provisions to be included in the new lease. Overall the Tribunal considers that the total time of 4.5 hours is not unreasonable.
27. However in respect of the work undertaken from 1 December 2015 to 6 October 2016, some of the work in respect of the consideration of the existing lease and proposed terms of the new lease was included in the initial 4.5 hours. Additionally it should be remembered that the provisions of the Act allow for the lease to be extended on the existing terms, subject to the limited exceptions set out in s.57 of the Act. In this regard there would be very limited negotiations between the parties in respect of the terms of the new lease. There may be some aspects that would be of general benefit to the landlord and other leaseholders that

they may wish to pursue but are not within the scope of the legislation. Overall the Tribunal accepts that Applicant's submissions that the time taken on this aspect was unreasonable. The Tribunal limits the time to 4 hours. Most of this work was undertaken at a charging rate of £295 per hour. Therefore the Tribunal deducts the sum of £855.50 (2 hours and 54 minutes).

28. The Tribunal accepts that the work involved to complete this matter would be in the region of 1 to 1.5 hours. As the First Respondent is seeking 1.5 hours, this sum would appear reasonable and the Tribunal accepts this element.
29. The total costs determined by the Tribunal for the legal costs of the First Respondent is £2,861.50 plus VAT of £572.30 and disbursements for land registry fees of £18.00, totalling £3,451.80.

#### Valuation Fees

30. The First Respondent in their reply of 11 November 2016 provided the details of the valuation fees. The Applicant prepared the index to the bundle on 12 December 2016, so it appears that the Applicant has had sight of the proposed valuation fees and makes no submissions in respect of them. Accordingly the Tribunal confirm that the valuation fees of £1,767.00 plus VAT plus disbursements are payable by the Applicant.

#### Second Respondent's Legal Costs.

31. The Tribunal accepts that the Second Respondent will incur costs in dealing with the Applicant's claim. There is a need for the Second Respondent to protect its own interest. However, the solicitor acting for the First Respondent undertook the majority of the work. Also as mentioned in paragraph 27 above there is some merit to the Applicant's argument that some of the work was beyond the scope of the impact of s 56 of the 1993 Act as to the form of an extended lease. Accordingly the Tribunal considers that 3 hours of the assistant's time, 0.9 hours for the partner's involvement and 0.7 hours to conclude this matter would be reasonable. Accordingly the Tribunal deducts £350 plus VAT from the costs claimed on behalf of the Second Respondent. The Tribunal determines the Second Respondent's legal fees at £1,695.60 plus VAT and disbursements of £30.00, totalling £2,064.72.

**Name:** Chairman - Helen Bowers    **Date:** 23 December 2016

## ANNEX - 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.

### **Appendix**

#### **Leasehold Reform, Housing and Urban Development Act 1993**

##### **S60.— 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] <sup>1</sup> 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.

### **S91.— 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.

(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.

(11) In this section—

"*the nominee purchaser*" and "*the 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.