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

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| **Case Reference** | : | **LON/00AG/OC9/2017/0162** |
| **Property** | : | **48 Maygrove Road, London, NW6 2EB** |
| **Applicant** | : | **48 Maygrove Freehold Ltd** |
| **Representative** | : | **Moore Blatch LLP, Solicitors** |
| **Respondent** | : | **Maceplace Ltd** |
| **Representative** | : | **Howard Kennedy LLP, Solicitors** |
| **Type of Application** | : | **Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993** |
| **Tribunal Member** | : | **Judge I Mohabir** |
| **Date and venue of Decision** | : | **15 August 2017**<br>**10 Alfred Place, London WC1E 7LR** |

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**DECISION**

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## Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) ("the Act") for a determination of the statutory costs payable to the Respondent under section 33 of the Act to acquire the freehold interest in relation to the property known as 48 Maygrove Road, London, NW6 2EB ("the property").

2. The Respondent's entitlement to its costs under section 33(1) of the Act arises in the following way. Pursuant to section 13 of the Act, the Applicant, as the nominee purchaser, served an Initial Notice dated 23 August 2016 on the Respondent to acquire the freehold interest of the property. By a Counter-Notice dated 29 September 2016, the Respondent admitting the Applicant's right to acquire the freehold interest.

3. It seems that the parties were able to agree the purchase price and the terms of acquisition and the matter proceeded to completion.

4. The total legal costs claimed by the Respondent are £4,387.20 including VAT. The Applicant contends that costs of £1,244.25 plus VAT are reasonable.

5. A breakdown of the Respondent's legal costs has been provided by its solicitors pursuant to the Tribunal's Directions. This sets out the level of fee earners and hourly rates claimed in respect of each of them.

6. Both parties have filed written submissions in relation the costs claimed, which have been considered by the Tribunal.

## Relevant Statutory Provision

7. This is set out in Appendix 1 annexed to this decision.

8. Judicial guidance on the application of section 33 was given in the case of ***Drax v Lawn Court Freehold Ltd*** [2010] UKUT 81 (LC), LRA/58/2009. That case concerned 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. The 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.

9. 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.

10. 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.

**Decision**

11. The Tribunal's determination took place on 15 August 2017 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the Respondent's costs.

12. This matter relates to the Respondent's costs incurred in what can be described as a "standard" collective enfranchisement with no particular complication revealed on the papers.

13. Below, the Tribunal deals with, in turn, the specific items of cost challenged by the Applicant in its Points of Dispute dated 17 July 2017.

**Fee Earner & Hourly Rate**

14. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal's view was that this is a highly technical area of law mainly conducted by firms of solicitors with the requisite knowledge and experience, of which the Respondent's solicitors are one.

15. Having regard to the technical nature of the work and the location of the firm, the Tribunal considered the use of a Partner assisted an Assistant Solicitor was appropriate.

16. As to the hourly rates of £490 and £340 respectively claimed in respect of each fee earners, the Respondent relied on a number of earlier Tribunal decisions where similar hourly rates were allowed as being reasonable.

17. The Tribunal makes three points in respect of this. Firstly, the decisions of other Tribunals do not bind this Tribunal. Secondly, earlier Tribunal decisions by themselves do not establish a generic hourly rate for various grades of fee earners (in London). Each case is fact specific to which the statutory test of reasonableness in section 33(2) of the Act is to be applied. Thirdly, in the majority of cases relied on by the Respondent, the hourly rates allowed were not in fact challenged.

18. In the present case, the Applicant does challenge the hourly rates claimed in respect of each fee earner. The Tribunal accepted the submission made in paragraph 1 of the Applicant's points of dispute that the hourly rates claimed

are not proportionate for dealing with a "standard" collective enfranchisement. Therefore, as contended for by the Applicant, the Tribunal found that hourly rates of £325 and £280 plus VAT for Amanda McNeil and Julie Louis respectively to be reasonable.

## Work Incurred

19 2 September 2016 - No explanation was given as to what "further information" was required by the Respondent's valuer and the cost for this item of work was disallowed.

20. 13 September 2016 – the Tribunal did not accept the Applicant's submission that there was duplication of work for the preparation of the counter-notice and that the time taken was excessive. In the context of any application to collectively enfranchise, the consideration and preparation of the counter-notice (and initial notice) is important to ensure that a valid notice is served. The sanctions for failing to do so are potentially catastrophic for the party concerned. It follows that the Tribunal did not consider the time of 1.5 hours taken by the Respondent to do so was unreasonable and it was allowed as claimed.

21. 9 January 2017 – the Tribunal considered the submission made by the Applicant that 6 minutes was reasonable to prepare the draft Transfer to be wholly unrealistic. Again, this is a fundamental document and requires careful preparation and checking. This cannot be achieved in 6 minutes. However, the Tribunal found 1 hour was reasonable to prepare the draft Transfer. 18 minutes was disallowed as being unreasonable on the basis that time had already been incurred on 13 September to consider what provisions had to be included in the Transfer.

22. 17 January 2017 – 6 minutes are allowed as being reasonable given that the only amendment to the draft Transfer was the Applicant's address for service.

23. 31 January 2017 – the Tribunal found this cost to be reasonable because it appears to be in relation to the approval of the draft Transfer and, therefore forms part of the conveyance of the freehold interest.

24. 13 February 2017 – updating the Respondent was a necessary part of this transaction. However, the Tribunal found that only 6 minutes to be reasonably incurred in carrying out this task.

25. 27 February 2017 – the Tribunal found this cost to be reasonable because it appears to be in relation to the execution of the Transfer and, therefore forms part of the conveyance of the freehold interest.

26. 2 and 16 March 2017 - the Tribunal found these costs to be reasonable because it appears to be in relation to completion and, therefore forms part of the conveyance of the freehold interest.

27. 26 April 2017 – the Tribunal accepted the submission made by the Respondent in paragraph 8.10 of its statement and found this cost to be reasonable.

28. 24 May 2017 - the Tribunal accepted the submission made by the Respondent in paragraph 8.11 of its statement and found this cost to be reasonable.

29. Accordingly, the Tribunal determined that the section 33 costs payable by the Applicant to the Respondent are £2,578 plus VAT of £515.60 making a total of £3,093.60.

Judge I Mohabir

15 August 2017

## 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.