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

Case reference : LON/00AS/OC9/2017/0030

Property : 323, Aylesham Drive, Ickenham,
Uxbridge, UB20 8UJ

Applicant : Tulesense Limited

Representative : SA Law LLP

Respondent : Kauser Parveen

Representatives : Payne Skillington Solicitors

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** : 20 April 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 21 April 2017

DECISION

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

- Legal Fees - £1,240.00 plus VAT
- Valuation Fees - £750.00 plus VAT

REASONS

Background:

1. This matter arises from an application made by The Applicant, as freeholder of 323, Aylesham Drive, Ickenham, Uxbridge, UB20 8UJ (the subject property). The application is dated 2 February 2017.
2. The Tribunal issued Directions in respect of the application on 6 February 2017. 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 Applicant are the legal costs of £1,430.00 plus VAT of £286.00, totalling £1,716.00; valuation costs of £750.00 plus VAT of £150, totalling £900.00.
4. It appears that there had been an earlier, abortive application for a lease extension in 2011 and that had resulted in an application dated 23 May 2014 for the determination of section 60 costs. The decision in respect of that application was date 26 August 2014 and determined that total costs of £2,205.00 were payable.
5. The current application arises from an Initial Notice dated 29 October 2014 and a Counter Notice of 2 January 2015. It appears that the lease extension was completed in August 2015.

The Law:

6. Sections 60 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993 are reproduced in the Appendix to this decision.

Costs Claimed:

7. A costs schedule was prepared by the Applicant. This explained that in respect of the legal costs a legal executive at a charge out rate of £150 per hour undertook 4.7 hours of work on this matter. This work involved the consideration of the Initial Notice; request of title, contact details and deposit from the Respondent; drafting and serving the Notice Requiring Entry and related correspondence; legal analysis of the Initial Notice; review of lease and title; instruction of a valuer; considering relevant authorities and advising client; considering letter about contact details and communication with the valuer and considering the valuation, advising the client and preparation of the Counter Notice.
8. It is explained that a paralegal at a charge out rate of £150 per hour undertook 3.1 hours of work on this matter. This work involved the

preparation of the draft lease and correspondence with the Respondent; subsequent amendments to the draft; preparation and completion of the matter.

9. It is further explained that a partner in the firm at a charge out rate of £260 per hour undertook an hour's work. This work involved reviewing the draft lease and the amendments.
10. The valuation fees of £750 plus VAT was supported by an invoice from Gemis Limited. This invoice is dated 23 January 2017 and described the work as the provision of professional services in respect of a lease extension.

Respondent's Case:

11. The Respondent's general position is that the arguments in respect of costs are the same as the 2014 case and reliance is made upon that Tribunal's decision. It is noted that the claim for costs in that case of £4,519.80 was reduced to £2,205.00. It is also noted that the current charging rate for Grade D fee earners who had conduct of this matter should be £111.00 per hour and suggested that the hourly charging rate for the partner should be £201.00.
12. Dealing with the details of the costs schedule it is stated that the work undertaken by the legal executive should be 1.2 hours. The main argument is that the work undertaken could be done swiftly, that it is not necessary to undertake any legal analysis or consideration of authorities, there are queries about why the lease was being reviewed and that in respect of advice to the client, they are a large organisation that would not need any advice from the solicitors. In respect of the paralegal it is submitted that the work could be undertaken in 0.4 hours as there had been a previous draft and that the only amendments to the draft were in respect of the Respondent's address that had been incorrectly inserted by the paralegal. Additionally there would be no preparation for completion and that completion itself could be concluded quickly with the Respondent admitting 12 minutes for the completion of the matter. No costs in respect of the partner are admitted as the draft had been used in the earlier application and as the amendments that had arisen were due to the errors of the Applicant's solicitor.
13. The Respondent suggests that the valuation fee should be £400 as there had been a previous valuation and all that was necessary was a review of that valuation.
14. The arguments put forward in the 2014 decision which the Respondent relies upon include arguments about an invalid notice, which are not relevant here. Other arguments were that there was a breach of the

indemnity principle as there had been no copy of the retainer provided; that the charging rates were excessive as these were higher than those allowed in the magistrates courts and that there were challenges to the time spent on the matter.

15. The total costs admitted by the Respondent for both legal and valuation fees in this claim were £693.12.

Applicant's Case:

16. The Applicant denies that the claim for costs is the same as the 2014 decision as that was in relation to an Initial Notice dated 23 May 2011. There is a distinction between the two cases and no relevance of that decision to the current case. However, they refer to a paragraph in the 2014 decision which states that the rates recommended by the SSCO are for guidance in general civil litigation work and that this is specialist work. In the 2014 case a fee of £214 for a Grade D fee earner was accepted as being reasonable for work undertaken in 2011-2013 and therefore a current rate of £150 per hour is reasonable.

Decision and Reasons for the Tribunal's Determination

Legal Costs:

17. Enfranchisement and lease extension work is a complex and specialist area of work and as such it is the opinion of the Tribunal that the Applicant is not limited to guidance rates which may be applicable to more general civil work. The respective charging rates proposed for the legal executive, the paralegal and partner are very modest rates in comparison the charging rates of specialist solicitors that deal with this type of work. Therefore the Tribunal accepts the charging rates proposed by Applicant are not unreasonable.
18. The time claimed by the legal executive of 4.7 again is a modest amount of time, given the importance of ensuring that the process is correctly followed and the consequences of a failure to follow the correct process. Given the very low charging rate it seems reasonable that a small amount of time is taken by a legal executive to check the principles involved. It is noted that there was no supervision of this work. Overall the Tribunal considers that the total time of 4.7 hours by the legal executive is not unreasonable. The costs for this element of £705.00 plus VAT is acceptable to the Tribunal.
19. The next issue is the time taken by the legal executive of 3.1 hours for the work relating to the new lease and completion. The Tribunal notes that some of the time expended related to amendments to the draft which were caused by the mistakes of the Applicant themselves. In the circumstances the Tribunal considers that it should reduce the time

spent on this matter by 0.4, which is the time spent dealing with the amendments. However, the rest of the time is still modest. It is appreciated that the draft may have been based on the earlier case and may be in standard form, but it is still important to carefully review the documentation and there is more time involved in completing a lease than the 12 minutes suggested by the Respondent. The Tribunal limits the time to 2.7 hours. This work was undertaken at a charging rate of £150 per hour. Therefore the Tribunal allows the costs of £405.00 plus VAT for this work.

20. Finally, in respect of the legal costs is the time spent by the partner reviewing the lease documentation and the amendments. As noted above the amendments to the travelling draft appear to have arisen from the Applicant's drafting and therefore allowing a whole hour for the supervisory review of the relatively standard lease and the erroneous address details of the Respondent in the travelling draft seems unreasonable. The Tribunal allows 0.5 hours for this work as there must be some degree of supervision of the paralegal undertaking the main work. The Tribunal limits the time to 0.5 hours. This work was undertaken at a charging rate of £260 per hour. Therefore the Tribunal allows the costs of £130.00 plus VAT for this work.
21. The total costs determined by the Tribunal for the legal costs of the Applicant are £1,240.00 plus VAT.

Valuation Fees

30. It is appreciated that there must have been an earlier valuation report, but that report dealt with a valuation date of 2011. The current valuation date is 29 October 2014. Given the passage of time and the resulting changes to the property market and to any changes in valuation practice, then there must be more than a review of a previous valuation. New comparables would need to be examined and as this is a fluid area of valuation practice, any changes to practice would need to be considered. In the opinion of the Tribunal it is not unreasonable for the Applicant to seek a new valuation report rather than just a review. The costs of £750 is a level of fee that would normally be expected for this type of work. Accordingly the Tribunal confirms that the valuation fees of £750.00 plus VAT are payable by the Respondent.

Name: Chairman - Helen Bowers **Date:** 21 April 2017

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] ¹ 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.