



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

Case Reference : **LON/00AC/OC9/2018/0160**

Properties : **34A Lyttelton Court, Lyttelton Road,
London N2 0EB and
68 Lyttelton Court, Lyttelton Road,
London N2 0ED**

Applicants : **34A – Mr Dylan Mark Burke
68 - Mr Richard Engler**

Representative : **Roulla Georgiou Solicitor**

Respondent : **Brickfield Properties Limited**

Representative : **Wallace LLP**

Type of Application : **S91(2)(d) Leasehold Reform,
Housing and Urban Development
Act 1993 (the Act) – determination
of the amount costs payable
pursuant to s60(1) of the Act**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan)
FRICS**

**Date and venue of
Determination** : **23 January 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 January 2019**

DECISION

The issue before the tribunal and the decision of the tribunal

1. The sole issue before the tribunal was the amount of costs payable by each of the applicants to the respondent pursuant to s60 of the Act arising from their claims to the extension of their respective leases.

2. The decision of the tribunal is that there is payable by the each applicant to the respondent the total sum of £2,602.80 made up as to:

	Mr Burke 34A	Mr Engler 68
Solicitors' costs	£2,144.50	£2,144.50
Expenses	<u>£ 24.50</u>	<u>£ 24.50</u>
	£2,169.00	£2,169.00
VAT at 20%	<u>£ 433.80</u>	<u>£ 433.80</u>
Totals	£2,602.80	£2,602.80
Valuer's fees	£ nil	£ nil
Totals	£2,602.80	£2,602.80

3. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the file provided to us by the applicant for use at the determination.

Background

4. Each Property comprises a self-contained flat let on a long lease. Each of the applicants is the registered proprietor of the lease of their Property. Each applicant sought to exercise the right a new lease to extend the term of their lease pursuant to s42 of the Act.

5. The respective notices and subsequent agreements are as follows:

	34A	68
S42 Notice	2 November 2017	28 September 2017
Premium offered:		
Reversioner	£27,000	£42,000
Schedule 13	£ 700	£ 500
S45 C/notice	10 January 2018	12 December 2017
Premium sought:		
Reversioner	£53,350	£107,150
Schedule 13	£1	£1
Premium agreed	£39,337	£58,000

6. The respondent is the reversioner and an intermediate lease is held by Fencott Limited It may be noted here that those interests cover many

properties in and around Lyttelton Court which are held on leases in similar terms, of which quite a few have been the subject of lease extensions.

The respondent instructed Wallace LLP, which has acted for the reversioner for a number of years (both in respect of Lyttelton Court and other developments), and evidently it was agreed that Wallace LLP would represent both the reversioner and the intermediate landlord.

7. We understand that in respect of both Properties terms of acquisition have been agreed but completion has not yet taken place, and will not take place until the amount of costs payable have been determined.

8. S60(1) of the Act provides that the nominee purchaser is liable for the payment of certain costs that have been incurred in pursuance of an initial notice. Those costs are 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

S60(2) provides:

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.

9. The parties have not been able to agree the amount of costs payable pursuant to the above provisions.

10. In May 2018 each of the applicants made an application pursuant to s91(2)(d) of the Act in which they sought a determination of the amount of costs payable by them. Directions were given. The applications were consolidated to be case managed and determined together.

The parties were content that the amount of costs payable should be determined on the papers pursuant to rule 31.

Directions were given on 14 November 2018. In particular we note that direction 2 was in these terms:

2. The landlord shall send the following documents to the tenant by 28 November 2018

- A schedule of costs sufficient for a summary assessment.

The schedule shall identify the basis of the charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, the detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.

- Copies of the invoices substantiating the claimed costs.
- Copies of any other documents/reports upon which reliance is placed.

There was then a direction for:

- the tenant to serve a statement of case in answer by 12 December 2018;
- the landlord to serve a statement of case in reply by 19 December 2018; and
- the tenant to file bundles for the tribunal comprising those statements of case relating to relevant issues by 9 January 2019

11. Pursuant to those directions the tribunal has been provided with a file which contains:

The Landlord's schedules of costs	[C1-16]
The Tenant's Answer	[D1-10]
Appendix	[E1-7]
The Landlord's Reply	[F1-18]
Appendix	[G1- 129]

The costs claimed

11. The respondent claimed (with arithmetic corrected):

	Mr Burke 34A	Mr Engler 68
Solicitors' costs	£2,784.00	£2,784.00
Courier fees	<u>£ 24.50</u>	<u>£ 24.50</u>
	£2,808.50	£2,808.50
VAT @ 20%	<u>£ 561.70</u>	<u>£ 561.70</u>
	£3,370.20	£3,370.20
Land Registry fees	<u>£ 45.00</u>	<u>£ 42.00</u>
Totals	£3,415.20	£3,412.20
Valuer's fees	£ nil	£ nil
Totals	£3,415.20	£3,412.20

The rival submissions

The applicants

12. The gist of the applicants' case is that some work carried out by a partner ought to have been carried by a lower grade fee-earner at a lower charge-out rate, the charge-outs claimed were far too high and substantially above the rates recommended by the Supreme Courts Costs Office (SCCO) in April 2010 and that some of the time claimed for was too excessive or was unreasonably incurred.

12.1 Hourly rates are too high:

Rates claimed	Rates proposed
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Partner	£475	£317
Assistant	£385	£317
Assistant	£365	£317
Paralegal	£200	£-

12.2 Time spent

The applicants drew attention to a number of items where it was submitted that the time claimed was unreasonable and excessive and/or the task was undertaken by a too senior and too expensive a fee-earner for transactions such as these on an estate well-known to the respondent and its advisers and where the premiums were of relatively low value

12.3 Land Registry fees

These were challenged as unreasonably incurred and were said to have been duplicated within a short period.

The respondents

13. The respondent's position is set out in some detail in its submissions [F1-18] and in the appendix.

14. The respondents reasonably remind us that the costs are payable pursuant to statute and the amount of them has no relevance to the assessment of costs by the courts under CPR or the guidance given by SCCO in that respect. We were also reminded that each of the applicants sought quite detailed changes to the terms of the original leases and this inevitably generated a certain amount of additional work.

15. The respondent argued that a time-based method of charging was reasonable and they sought to justify the charge-out incurred rates (and the time spent) on the basis of a London firm specialising in enfranchisement work and the complexities involved.

16. In its reply the respondent did not seek to justify the Land Registry fees claimed and conceded the claim to £40 costs being the time claimed for a paralegal obtaining them.

Discussion

Solicitors' costs

17. The respondent cited several FTT previous decisions to support its arguments. Each case is fact specific and in broad terms we did not find them to be of much assistance. Thus we do not propose to analyse or comment on each of the decisions cited.

18. We must have in the forefront of our minds the provisions of s60(1) that the costs recoverable must be 'reasonable' and the provisions of s60(2) that such costs shall only be regarded as reasonable if and to the extent that a party might reasonably be expected to incur them if the circumstances were that the party was personally liable for such costs.

19. The respondent is a substantial and extensive property owner/investor. The subject development is a small part of a much larger portfolio and it is reasonable to infer that their long-term solicitors will have and deploy standard documentation in so far as that can be done. A number of new leases of properties within the development have already been granted.
20. In these circumstances we find that such a substantial property investor will have some bargaining power with its advisers such that it will be able to agree a range of fees depending on the value of the transaction. One would readily expect a lower rate for lower value transactions leading to higher rates for the more substantial transactions. Where there is a development with leases in substantially common form and where approved precedents can be deployed, we anticipate the investor will require less input/supervision from fee-earners at partner level and will be content for new lease transactions to be handled by experienced and well qualified/trained assistants with lower charge-out rates. We infer this will certainly be the case in circumstances where the premiums are at the lower end of the scale and where investor will be personally liable for such costs.
21. We have considered carefully the time-based method of charging adopted in this case. We accept it is a reasonable approach. In the circumstances of this case we find that it was not unreasonable of the respondent to have instructed Wallace LLP to act on its behalf in respect of the two claims. The respondent has been a long standing client of that firm which has accumulated knowledge of the development and its title structure and specialises in enfranchisement casework which can, sometimes, be complex.
22. We find that the charge-out rates agreed and within the broad range of reasonableness for a central London law firm specialising in this type of case work. Guideline rates which were recommended by SCCO some seven or eight years ago have no bearing on charge-out rates sought in these cases.
23. Well trained and qualified assistants who are able to command charge-outs rates of around £365/£385 will readily be suited to carry out the bulk of the case work relating to an established development and we infer that an investor paying for such services himself will expect and negotiate for that position.
24. We therefore find that the charge-out rates claimed are not outside the range of what is reasonable in context. We find that some of the work claimed for ought reasonably have been carried at assistant level and some of the time claimed is greater than would appear to be reasonable. We have therefore made some adjustments. We have reduced the solicitors costs claimed from £2,784.00 down to £2,144.50.
25. The courier expenses claimed were not challenged. We understand why they were incurred and we consider they were reasonably incurred. We allow them in full.

Land Registry fees £45.00 and £42.00 respectively

26. These were challenged and that challenge was not addressed by the respondent in its reply but the respondent did concede the time costs of £40 the paralegal obtaining them.

We accept and prefer the challenge and submissions of the applicants on this subject. We can infer that a substantial property investor will provide to its solicitors the original (or a copy) of the counterpart lease, and so avoid incurring fees for copies from HM Land Registry. We find it would do so if it was bearing the costs itself.

27. Further, s20(1) of the Act empowers the reversioner to give notice to require the nominee purchaser to deduce title of each participating qualifying tenant. Giving the notice will result in the production of an official copy of the register and a copy of the lease. We find that a property investor acting reasonably, and if incurring the costs itself, would direct the exercise the right under s20(1).

28. Accordingly, we find that these costs are not payable by the applicants.

Valuers' fees

29. The directions clearly and expressly required the respondent to include in its schedule "...shall identify the basis of charging legal and/or valuation costs" and attach to it "*Copies of the invoices substantiating the claimed costs*".

30. The respondent's schedule does not make any claim to valuation costs, does not provide any breakdown of charging for any such costs and there is not attached to the schedule any invoice(s) substantiating any such valuation costs.

31. In these circumstances where there is no claim to valuation costs incurred within the meaning of s60(1)(b) of the Act and in the absence of any invoice to substantiate valuation costs we determine the amount payable in respect of valuation costs is nil.

Judge John Hewitt
25 January 2019

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.