



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

Case reference : **MM/LON/00AP/OC9/2022/0006**

Property : **20 Hampden Road London N8 0HT**

Applicant : **Claudia Spawls**

Representatives : **Peter Norton**

Respondent : **Moore Kingston Smith Trust
Corporation Limited**

Representatives : **Ashfords LLP**

Type of application : **For a determination of the statutory
costs under section 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Ian B Holdsworth FRICS MCI Arb**

Date of decision : **11th April 2022**

DECISION

Decision

Pursuant to section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of **£2,981.25 exclusive of VAT** are payable by the Applicants to the Respondents for legal and valuer fees.

Should the Respondent not be VAT registered at HM Revenue and Customs then a further payment of £596.25 will be payable as VAT on the determined costs.

The application

1. By their application received on 1st June 2021 the tenants sought a determination under section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) of the Landlord’s statutory costs incurred in their collective enfranchisement claim.
2. Standard directions were issued on 11th January 2022. The directions stated that the application was suitable for determination on the basis of written submissions and without an oral hearing, but they informed the parties of their right to request an oral hearing. No such request was received and accordingly we have determined the statutory costs on the basis of the written submissions and other documents included in the comprehensive document bundle that was submitted in accordance with the directions.

The claimed costs and Applicants response

3. In response to the tribunal’s directions the landlord’s solicitors provided a schedule of costs suitable of summary assessment. The schedule is detailed and records the time spent in 6 minute units. The work was undertaken by a range of legal staff from Ashfords LLP, from a Paralegal to an Associate. The hourly rate charged varied from £370 for an Associate to £120.00 per hour for a trainee solicitor.
4. Ashfords LLP proposed statutory legal costs associated with the application as £5,434.50 plus VAT. Best Gapp, Surveyors and Valuers were instructed by the Respondents to undertake a valuation of the property. The fee for undertaking this instruction is charged in addition to legal costs at £2,400 plus VAT. The total statutory costs claimed by the landlords are **£7,834.90 plus VAT**.
5. The Applicants representative, Mr Peter Norton responded with a detailed critique of the summary assessment. It is his contention that a fee of **£1,600 plus VAT** is payable based upon a composite fee of £200 per hour. This charge to include the valuation costs.
6. The Applicants representative claims the Respondent is a Trust and thereby registered for VAT. This VAT status permits recovery of any VAT payable to Ashfords LLP and for this reason they deny liability for VAT on the statutory charges. They seek to pay any statutory costs exclusive of VAT.
7. The Applicants submission comments contains comments on the different elements of the Respondents’ charges. They argue that the time expended on the tasks is excessive. The Applicants representative disputes the hourly charges made by Ashfords LLP and claims they are

excessive for a provincial solicitors practice. He submits that a more appropriate composite fee of £200 per hour should apply across all skill levels employed in dealing with the application.

8. The Applicants representative highlights to the tribunal that the proposed total fee is disproportionate to the complexity of the issues addressed in the application and the sums involved. The tribunal are told the agreed premium for the enfranchisement is in the order of £1,600.

The Tribunal's Determination

9. The Respondent has provided a detailed schedule of the work undertaken in responding to the notice. The submission explains how Ashfords LLP carried out the work. The basis of the fees charged by the solicitors to their client is by reference to the time spent by the relevant fee earners. The solicitors are based in Bristol. A Partner conducted most of the work and charged around £350 per hour.
10. We accept that the Landlord is entitled to instruct Ashfords LLP and that the rates charged are consistent with the usual charge out rates for solicitors in Central London.
11. The Applicant disputes that there was a need to carry out all the work that is shown on the summary schedule and the time devoted to the work is excessive. The Applicant also claims that the fees charged by the Respondents' solicitors are unreasonable and should reflect provincial rather than London solicitor charges.
12. The Applicants also submit the Valuer charges are excessive given the complexity of the instruction. They comment on the availability of comparable evidence and wasted time on the assessment of development potential.
13. After review of the schedule the time expended is not considered appropriate for the complexity of the application. It is acknowledged that the tasks associate with dealing with the notice require a skill level commensurate with a Partner or Associate but given their experience it is reasonable to expect a lessor time requirement than that shown in the summary assessment. This comment applies equally to the valuer who submitted a fee for the valuation based upon 8.5 hours of chargeable time.
14. After deliberation the Tribunal has determined that the chargeable work is as shown in Table 1 below:

Table 1: Determined time allowable

	Units	Hours
Investigation	60	6
Valuation	10	1.0
Counter Notice	15	1.5
Conveyancing	15	1.5
Valuation advice/report	32.5	3.25
Total time allowed		13.25 hrs

15. The Tribunal has carefully considered the arguments made by the Ashfords LLP about the basis of their fees. They have also had regard for the comments made by the Applicant about the hourly fee level. The tribunal have referenced their experience and knowledge of solicitor fee rates charged both in Central London and provincial cities. They have concluded the proposed hourly rate of around £350 exceeds the hourly rates for provincial solicitors.
16. The Tribunal has decided to apply a composite fee of £225 per hour to the determined chargeable time shown in table 1. This fee is based upon their knowledge and experience of hourly fees charged by provincial solicitors undertaking similar work to that addressed by Ashfords LLP.
17. The determined statutory fees payable including a valuation fee of £731.25 exclusive of VAT, are **£2,981.25 exclusive of VAT.**
18. The Applicant disputes the liability to pay VAT on the fees. The Tribunal directs Ashfords LLP should obtain from the Respondents confirmation in writing on the VAT status of the Trust. **If the Trust is not registered for VAT a further sum of £596.25 will be payable by the Applicants as VAT.**

Name: Ian B Holdsworth

Date 11th April 2022

Valuer Chairman

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

Section 60 (as they apply to S33 of the Act)

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 a leasehold valuation tribunal 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.

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(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);

[F1(ca)]

the amount of any compensation payable under section 37A;]

[F2(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.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a)

shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly, once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating Tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those Tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation 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.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the M3Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)

in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as

if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.