

2708



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

Case Reference : LON/00AF/OC9/2013/0021

Property : 1-5 The Dell, 30 Southend Road
Beckenham BR3 5AW

Applicants : Ms Jacqueline Ann Lawrie Flat 1
Michael Paul McGowan Flat 5
John MacLennan Paterson
Matthew Flat 4
Shula Curto Flat 2
Farhad Tadayon Flat 3

Representative : Mr T Ablitt – Ablitts Solicitors

Respondent : Deltagrove Properties Limited

Representative : Ms T Straiton – Portner & Jaskell
LLP

Type of Application : Sections 33 and 91 Leasehold
Reform, Housing and Urban
Development Act 1993 –
determination of the amount of
costs payable

Tribunal Members : Judge John Hewitt Chairman
Mr Charles Norman BSc FRICS
Mr John Barlow FRICS

**Date and venue of
Hearing** : 26 June 2013
10 Alfred Place, London WC1E
7LR

Date of Decision : 17 July 2013

DECISION

Decision of the Tribunal

1. The Tribunal determines that the costs payable by the Applicants and/or nominee purchaser to the Respondent are as follows:

Valuation of the specified premises:		
Fee	£1,000.00	
Disbursements	<u>£ 9.60</u>	
	£1,009.60	
Vat @ 20%	<u>£ 201.92</u>	
	£1,211.52	£1,211.52
Legal costs		
Fees	£3,690.00	
VAT @ 20%	<u>£ 738.00</u>	
	£4,428.00	<u>£4,428.00</u>
Total		£5,639.52

2. The reasons for our decision 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 hearing file provided to us for use at the hearing.

Reasons

Procedural background

3. On 14 February 2012 the Applicants served on the Respondent an initial notice pursuant to section 13 Leasehold Reform, Housing and urban Renewal Act 1993 (the Act) and sought to exercise the right to collective enfranchisement.
4. By a counter-notice dated 23 April 2012 [42] the Respondent admitted that on the day the initial notice was given the participating tenants were entitled to exercise the right to collective enfranchisement in relation to the specified premises.
5. Following negotiations between the parties' respective solicitors by 31 January 2013 the price to be paid for the specified premises, and the terms of the transfer, and other terms of acquisition were agreed. However the parties were not able to agree the amount of costs to be paid to the Respondent pursuant to section 33 of the Act.
6. By an application dated 3 May 2013 [1], and made pursuant to section 91 of the Act, the Applicants seek a determination of the amount of costs to be paid.
7. Directions were duly given. Both parties have filed and served statements of case. The Respondent's is at [7]; and the Applicants' is at [61].

8. The application came on for hearing on 26 June 2013. Mr Ablitt represented the Applicants and Ms Straiton represented the Respondent. Both Mr Ablitt and Ms Straiton have represented their respective clients throughout, both as regards transactional and litigation aspects of the enfranchisement.

The specified premises

9. The specified premises comprise five self-contained flats within a block and three lock-up garages in a nearby block containing several garages.
10. It was agreed by the parties that the title structure was not straightforward with the leases not being uniform and some flat leases including a garage/garden and some not.
11. It was agreed that the specified premises were on an estate owned by the Respondent and that provision had to be made in the transfer for the granting of appropriate rights and obligations arising in relation to the remainder of the estate.

The costs claimed

12. The costs claimed at the hearing were as follows:

Valuation:	Fees	£1,950.00
	Travel	£ 15.20
	Expenses	<u>£ 9.60</u>
		£1,974.80
	VAT @ 20%	<u>£ 394.96</u>
	Total	£2,369.76
Legal Costs	Solicitors costs	£5,250.00
	Counsel's fees	£1,000.00
	Expenses	<u>£ 150.00</u>
		£6,400.00
	VAT @ 20%	<u>£1,280.00</u>
	Total	£7,680.00

The statutory provisions

13. Section 33 of the Act imposes an obligation on the nominee purchaser (and also the participating tenants) to pay certain costs to the reversioner.
14. The provisions of section 33 are as follows:

33.— 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 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.*

The rival submissions

Valuation fee

15. Ms Straiton submitted that the valuer concerned, Mr J Harris, carries out a deal of work for the Respondent and that a fixed fee of £1,950 had been agreed. We were not shown a copy of the agreement.
16. Ms Straiton sought to justify the amount of the fixed fee by reference to an hourly rate of £195 per hour + VAT. The Respondent's statement of case [12 -13] sets out details of the time claimed to have been spent by the valuer, a total of 12 hours.
17. During the hearing Ms Straiton produced to us a copy of the invoice issued by Jonathan Harris Associates to the Respondent. It is dated 4 May 2012. It makes reference to a fixed fee. It also claimed disbursements of £9.60 being Land Registry fees which were not in dispute. The invoice did not include the travel costs of £15.20 which have been claimed.
18. Mr Ablitt submitted that the valuation fee was excessively high and compared unfavourably with the fee of £500 paid by the Applicants. Mr Ablitt also drew to our attention a previous decision of a Leasehold Valuation Tribunal, concerning a property at 1-12 Stamford Mansions, in which that tribunal allowed valuation costs of £750 on the basis that there was nothing particularly complex about the valuation exercise.

Findings on the valuation fee

19. Drawing on the accumulated experience of the members of the tribunal we find that a fixed fee of £1,950 + VAT is exceptionally high for a case such as this which is relatively straightforward in valuation terms. The figure is so out of line with the norm that an explanation is called for in order to justify it. No persuasive explanation was put to us. We were not persuaded that if the Respondent had been personally liable for the costs it might reasonably be expected to have incurred costs at that level, because we find the amount of the costs excessive and disproportionate.
20. We find that acting reasonably a reversioner such as the Respondent paying the valuation fee itself would not have incurred a fee of more than £1,000 + VAT for the specified premises in issue. We have disallowed the claim to travel costs of £15.20 because this sum was not invoiced to the Respondent. Accordingly the valuation costs payable amount to £1,211.52 inclusive of VAT.

Legal costs

21. The Respondent's statement of case sets out full details of the time spent by Ms Straiton [4-6]. The total time spent was said to exceed 23 hours but the claim was limited to 19.6 hours. The charge-out rate of £300 per hour for an experienced solicitor such as Ms Straiton was not in dispute.
22. Ms Straiton took us through her claim to costs and the time spent and expanded on a number of points as she did so. The time spent on considering the initial notice and drafting the counter-notice and transfer form TP1 totalled in excess of 15 hours. Ms Straiton said that she was meticulous about detail and that it was absolutely essential that she covered every aspect fully in order that her client was fully protected. Ms Straiton said that she could not exaggerate the need to get the counter-notice and transfer right; and she strives to get it right first time around.
23. Ms Straiton submitted that this was not a straightforward transaction and that the relationship with the specified premises and the remainder of the estate raised complications. Ms Straiton also submitted that the lease structure was not straightforward and it took time to read all relevant leases in some detail.
24. Ms Straiton also considered it necessary to consult leading counsel, Mr Robert Pearce QC. Evidently this was on a narrow point concerned with appurtenant property and section 1(3) of the Act, a point that, in the event, was not pursued. Ms Straiton said that as the papers were before Mr Pearce she took the opportunity to ask him to review the draft form TP1; that he did so and that he made some useful comments on it. Ms Straiton claimed that the fee of £1,000 was reasonable for senior counsel such as Mr Pearce and that it was a modest and discounted fee she had been able to negotiate with his clerk due to her long standing professional relationship with Mr Pearce.
25. Ms Straiton said that she had incurred fees of £150 with Land Registry to obtain copies of the relevant leases because the Respondent was unable to supply copies to her. The implication was that they had been mislaid by the Respondent but we were not provided with any detailed explanation.
26. Mr Ablitt was highly critical of the substantial amount of time spent. He reminded us that the specified premises comprised five flats and three garages., one flat has exclusive use of a garden space and the other four share communal garden space, but otherwise no points of great difficulty arose. He accepted that the form TP1 was not the simplest, but it did not present great or usual difficulty, especially for such an experienced conveyancing solicitor as Ms Straiton. Mr Ablitt said that both he and Ms Straiton were experienced and competent solicitors and that the transaction was concluded in professional manner and in an amicable spirit. He suggested that a reasonable amount of time to be spent on the TR1 would not exceed two to three hours.
27. Mr Ablitt submitted that in the circumstances of this case it was not reasonable or proportionate for the Respondent to have instructed

counsel at all, let alone leading counsel and that it was not reasonable that the cost of obtaining duplicate leases from Land Registry should fall on the Applicants.

28. Ms Straiton made submissions in reply and said that she wished to stick by the time and sums claimed.
29. We prefer the general thrust of the submissions made by Mr Ablitt. He said, and we accept, that in a case such as this a tribunal can only take a broad brush approach and do the best it can with the imperfect evidence before it.

Findings on legal costs

30. We do not hesitate to accept that Ms Straiton is an experienced solicitor with particular expertise in residential enfranchisement transactional and litigation casework. Indeed if this were not so her charge-out rate of £300 would not be justifiable. We are also satisfied that Ms Straiton is meticulous in her approach to her work and strives to master the detail to a very high degree. However, we have to bear in mind the provisions of section 33(2) of the Act and the limit it places on the costs payable by the nominee purchaser and the participating tenants. Drawing on our accumulated experience we find that if a prudent property investor such as the Respondent circumstanced as the Respondent is, was bearing the costs of the enfranchisement transaction in question it would not have required its solicitor to have spent quite so much time on the transaction as Ms Straiton did in fact spend. Inevitably there comes a time when a commercial view is taken on what level of legal costs to incur on any given project.
31. Taking the broad brush approach, and doing the best we can we find that the prudent investor paying its own costs would not have incurred more than 12.3 hours at £300 per hour on this transaction.
32. We find that counsel was engaged to advise on a narrow point which was not in the event pursued. Having engaged an experienced and specialist solicitor we find that a prudent investor such as the Respondent would not have gone to the expense of seeking advice from counsel if it had been bearing the costs of the project itself. We consider that such an investor would rely upon the advice of its experienced solicitor. We therefore disallow the claim to counsel's fee. In case it may be said we are wrong to do so, it may be helpful if we say that we find the quantum of the fee is within the range that can be considered reasonable for counsel and that if it was considered reasonable to have gone to counsel a fee of £1,000 would have been reasonable in amount. We do not consider that it would have been reasonable to go to leading counsel but we accept the evidence of Ms Straiton that Mr Pearce was prepared to accept instructions at no more than the cost of junior counsel in this matter (see above).
33. It appears that the Respondent mislaid the counterpart leases. The cost of obtaining duplicates so that its solicitor could respond to the initial notice

and dealt with the transaction do not properly fall within the ambit of section 33 and we disallow the expense claim of £150.

34. Accordingly we find that the legal costs payable by the nominee purchaser or the Applicants amount to the sum of £3,690.00 + VAT, total of £4,428.00.

John Hewitt
17 July 2013