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

Case reference : **OT/LON/00BK/OC9/2017/0123**

Property : **99 Hamilton Terrace, London,
NW8 9QW**

Applicant : **The Trustees of John Lyon's
Charity**

Representative : **Pemberton Greenish LLP Solicitors**

Respondent : **Terrace Freehold LLP**

Representatives : **Howard Kennedy LLP**

Type of application : **Section 33 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal member : **N Martindale FRICS**

**Date of determination
and venue** : **11 July 2017 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **22 August 2017**

DECISION

The section 33 costs determined by the Tribunal are:
Legal; £4,187.50 plus VAT plus disbursements £81, no VAT.
Valuation; £7,620 plus VAT.

REASONS

Background

1. This is an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in relation to the prospective enfranchisement of 99 Hamilton Terrace, London, NW8 9QW “the Property”). In their application dated 12 May 2017 the applicants seek section 33 costs in the sum of: ‘legal costs’, £12,045 (plus VAT and disbursements); ‘valuation’ £15,495 (plus VAT), and ‘Charities Act Report fee’ £250 (plus VAT).
2. Directions issued on 17 May 2017 provided for the application to be dealt with on papers unless either party requested a hearing: Neither did.
3. Notice under Section 13 of the Act, dated 28 January 2016 was served on the applicants by the respondent, in which the respondent sought to acquire the freehold of the Property. The Notice was accepted; Counter Notice served, but the terms of transfer, including the premium, were challenged
4. The applicants now seek their costs of enfranchisement under section 33 of the Act.

Law

5. Section 33 is reproduced in the Appendix 1 to this decision.
6. 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, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, must be reasonable and have been incurred in pursuance of the 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.
7. 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.

8. 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.

Respondent's Case

9. The respondent describes the total cost of "*£26,492.50 plus VAT*" as "*...grossly excessive and unreasonable*". Their objections may be summarised: The hourly rates for each grade of staff are excessive; much of the work suitable for junior or unqualified staff was instead allocated to highly qualified and experienced staff; the subject property consisted of only five flats; the intermediary head leasehold interest only had nominal value. They conclude that the respondent's solicitors' costs should not exceed £4,000 plus VAT; and that disbursements and valuation costs be no more than £3,500 plus VAT.

Applicant's Case

10. The applicants state, as regards legal costs that, "*the price paid for the applicant's freehold interest was £2,884,000 and therefore the total legal costs claimed of £10,997.50 plus VAT and disbursements are proportionate and are not considered to be excessive and grossly unreasonable*". They further state as regards "*...the cost of the valuation at £15,495 plus VAT is not excessive for the considerable time that was taken on this valuation.*"

Background and Submissions

11. The directions dated 17 May 2017 required the final combined bundle incorporating submissions from both parties to be with the Tribunal office by 28 June 2017: It was. Subsequently additional submissions from the respondent were received on 6 July 2017. They were out of time and were not referred to by the Tribunal.
12. The Tribunal did not receive any breakdown of costs directly, rather, the respondent provided two sets of documents, both of which appeared to have been originally generated by the applicant in support of the claim for costs.
13. The first document was labeled "*Schedule of the Freeholder's legal costs payable...*" (numbered pages 1 to 6). It contained 47No. entries (paragraphs), each an item of work. For ease of reference it appeared that the respondent had numbered them in manuscript. They were arranged in date order, oldest first. The total of the sums referred to in these entries was stated to be £10,997.50 consisting of 26 hours and 30 minutes at £395 per hour for 'KMS' - and £530.00 consisting of 2 hours at £265 per hour for 'GDAC'. To these two sums were added VAT at

20% £2,199.50 and disbursements of £80 and £1 (no VAT). The first item of work was dated 2 February 2016, the last 28 April 2017.

14. The second document appeared to be a timesheet relating to work for “99 *Hamilton Terrace 1993 Act collective claim*”. It referred to work undertaken by ‘KMS’. It contained 32No. entries in all. There were no entries, nor separate timesheet submitted for staff member GDAC, but instead staff member KD3 had undertaken one item. All unnumbered. They were arranged in date order, oldest first. The total of the sums referred to in these entries was stated to be £4,833.50. It was unclear if VAT was included. The first item of work was dated 3 February 2016, the last 11 April 2016.
15. In comparing the ‘schedule’ with the ‘timesheet’, it appeared to the Tribunal that the original document had been the timesheet upon which or related to which additional detail was set out in the schedule. Although there was some overlap, the Tribunal noted that: The total number of items was different; the applicant had not supplied the original timesheet for any work stated in the schedule to have been undertaken after 11 April 2016; the start dates were different; that besides KMS, one referred to work by staff member ‘GDAC’, the other to staff member ‘KD3’.
16. The Tribunal noted that the 32No. entries of the timesheet appeared to mostly align with the first 14No. entries in the schedule up to and including 11 April 2016. However more than half (8No. of these 14No. entries) listed on the schedule were not directly supported by the original timesheet dates and/or hours for this period, and approximately 250 of the 725 minutes on the schedule were not supported by the original timesheet entries, representing an overstatement by the applicant, of time spent, amounting to more than 35%.
17. These contradictions and striking differences were of concern to the Tribunal. They did not serve to assist the applicant’s case in support of its claim for payment, but tended to undermine it. The absence of the original timesheets for 12 April 2016 to 28 April 2017, the bulk of the period was not provided by the applicant. Neither party offered an explanation for the differences, but both the applicant and the respondent’s submissions focused on the ‘schedule’.
18. The respondent’s statement of case was labeled by paragraphs A-N. This incorporated H1-47 (their commentary on the applicant’s schedule of legal costs applicants paragraphs No.1-47) and incorporated N1-14 (their commentary on the applicant’s breakdown of valuation costs).

Decision and Reasons

19. **Para E - Legal hourly rates:** The schedule (and timesheet) set out a rate of £395/hour charge rate for KMS and £265/hour for GDAC (no timesheet entry). The respondent considered this excessive and quoted the Supreme Court Costs Office guidelines for a similarly experienced solicitor grade A in an equivalent central London firm at £229-267/hour and a grade C fee earner at £165/hour respectively. They did however acknowledge that neither had been increased for many years and offered £300 and £175 respectively.
20. The applicant drew the attention for comparison to other Tribunal decisions from 2015 and 2016. These showed that costs of similarly graded solicitors working on similarly complex enfranchisement claims, based in central London offices had been determined at rates ranging from £350 to £420/hour for grade A solicitor and £285 to £330/hour for grade C solicitor..
21. The Tribunal considered each side's submissions and determines rates of £350/hour for senior, KMS; and £225/ hour for junior solicitor, GDAC.
22. **Para F – H: Legal work:** The respondent submitted that nearly all of the work in this case having been apparently undertaken by a very experienced solicitor, could in many areas have been satisfactorily concluded by a more junior member of staff. They suggested that the ratio split of work between experienced and junior staff member rather than being around 95% to 5%, should have been around 25% to 75%. They state that the firm employed is a specialist in leasehold enfranchisement, is experienced in and has established procedures to efficiently complete such work. In the alternative they submitted that if such an experienced solicitor was engaged in such work, it would have been undertaken much more quickly and so the times booked for each item should be shorter.
23. The applicant argued that such complex work invariably requires the more experienced solicitor and that use of more junior staff will incur more time and still require checking by a more senior solicitor. They referred to the respondent's own legal work also being substantially undertaken by a senior solicitor.
24. The Tribunal has considered each side's brief submissions and determines whether the item falls within S.33 and if so the reasonable time period required and the rate for each item No.1-47, below.
25. Item 1: 48 minutes at £350/hr. £280.
26. Item 2: Nil, outside S.33.

27.	Item 3: 30 minutes at £225/hr.	£112.5.
28.	Item 4: 18 minutes at £225/hr	£67.5.
29.	Item 5: Nil, outside S.33	
30.	Item 6: Nil, outside S.33.	
31.	Item 7: Nil, duplication of valuer's work.	
32.	Item 8: 1.5 hours at £350/hr.	£525.
33.	Item 9: Nil, duplication of valuer's work.	
34.	Item 10: 6 minutes at £225/hr	£22.5.
35.	Item 11: 2 hours at £350/hr.	£700.
36.	Item 12: 1 hour at £350/hr.	£350.
37.	Item 13: Nil, outside of S.33.	
38.	Item 14: 30 minutes at £350/hr.	£175.
39.	Item 15: 12 minutes at £225/hr.	£45.
40.	Item 16: 1 hour at £225/hr:	£225.
41.	Item 17: 30 minutes at £225/hr:	£112.50.
42.	Item 18: Nil, outside of S.33.	
43.	Item 19: 12 minutes at £225/hr.	£45.
44.	Item 20: Nil, outside of S.33.	
45.	Item 21: 6 minutes at £225/hr:	£22.5.
46.	Item 22: 6 minutes at £350/hr:	£35.
47.	Item 23: 12 minutes at £225/hr:	£45.
48.	Item 24: 12 minutes at £225/hr:	£45.

49. Item 25: 12 minutes at £225/hr:	£45.
50. Item 26: 12 minutes at £225/hr:	£45.
51. Item 27: 18 minutes at £225/hr:	£67.50.
52. Item 28: 6 minutes at £225/hr:	£22.50.
53. Item 29: 6 minutes at £225/hr:	£22.50.
54. Item 30: 30 minutes at £350/hr:	£175.
55. Item 31: 6 minutes at £225/hr:	£22.50.
56. Item 32-35: 1 hour at £350/hr:	£350.
57. Item 36: 12 minutes at £225/hr:	£45.
58. Item 37: 12 minutes at £225/hr:	£45.
59. Item 38: 12 minutes at £225/hr:	£45.
60. Item 39: 24 minutes at £350/hr	£140.
61. Item 40: 12 minutes at £225/hr	£45.
62. Item 41: 12 minutes at £225/hr:	£45.
63. Item 42: 12 minutes at £350/hr:	£70.
64. Item 43: 12 minutes at £225/hr:	£45.
65. Item 44: 12 minutes at £225/hr:	£45.
66. Item 45: 6 minutes at £350/hr:	£35.
67. Item 46: 12 minutes at £350/hr:	£70.
68. Item 47: Nil, outside S.33.	
69. Legal costs allowed	£4,187.5 + VAT.
and disbursements	£81 (no VAT)

70. **Para I – M: Valuation work:** The respondent submitted that nearly all of the work in this case having been apparently undertaken by a very experienced valuer, could in some areas have been satisfactorily concluded by a more junior member of staff, and that more valuers were involved in the inspection, photographs and referencing than should be required. The property was a detached (albeit large) detached house subdivided into 5 flats and although there was a head leasehold interest it was agreed by the parties to have nil value.
71. The respondent submitted that their very experienced valuer would have charged less than half of his total fee (£4000 of £10,000 plus VAT) for the valuation alone here; additional sums being due for the negotiations preparation and attendance at Tribunal, but which are without S.33.
72. The respondent accepted the applicant's hourly rates senior valuer JLS at £300/hr, junior valuer SB at £80/hr. However they disputed the times required to be spent on the inspection, research and valuation of the interests to be acquired. They pointed to the specialist experience of the firm engaged and databases of transactions accrued by the applicant and valuer, reducing time needed for research and analysis of comparables.
73. The applicant argued that such a complex and large scale property of nearly 8000ft2 of flats and common areas, requires a more experienced valuer assisted by junior staff. A very substantial and detailed report of all of the varied flats contained in the property, required extensive fresh research work on comparables for each unit, adding detailed appendices.
74. The Tribunal has considered each side's brief submissions and determines whether the item falls within S.33 and if so the reasonable time period required and the rate for each item No.1-14, below.
75. Item 1-3: SB 5.25 hours at £80/hr. £420.
76. Item 1: JECB duplication. Nil.
77. Item 1-3: JLS 4.5 hours at £300/hr £1350.
78. Item 4-6: JLS 8 hours at £300/hr £2400.
79. Item 7: JLS 5 hours at £300/hr £1500.
80. Item 8-14: JLS 6.5 hours at £300/hr £1950.

Valuation costs allowed

£7,620 + VAT.

Name: N Martindale

Date: 22 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.

ANNEX 2 - 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.