



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

Case reference : **KA/LON/00BK/OC6/2021/0002
KA/LON/00BK/OC6/2021/0003
P: PAPERREMOTE**

Property : **28 and 30 Claverton Street, London
SW1V 3AU**

Applicant : **Crown View Estates Limited**

Representative : **Hamlins LLP**

Respondent : **Peabody Trust**

Representative : **Winkworth Sherwood LLP**

Type of application : **Sections 9(4) and 21(1) of
Leasehold Reform Act 1967 –
Reasonable Costs**

Tribunal member(s) : **Judge Donegan**

**Date of paper
determination** : **21 September 2021**

Date of decision : **22 September 2021**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 301 pages, the contents of which I have noted.

Decision of the Tribunal

The following costs are payable by the respondent under section 9(4) of the Leasehold Reform Act 1967 ('the 1967 Act'):

- (a) 28 Claverton Street - £15,967 (Fifteen Thousand, Nine Hundred and Sixty-Seven Pounds), including VAT**
- (b) 30 Claverton Street - £14,720 (Fourteen Thousand, Seven Hundred and Twenty Pounds), including VAT**

The background

1. These proceedings arise from enfranchisement claims under the 1967 Act. The respondent holds underleases of houses at 28 and 30 Claverton Street. The applicant is their immediate landlord and holds an intermediate lease of 28, 30, 48 and 58 Claverton Street, 54 and 98 St Georges Square and 93 Grosvenor Road. There is a superior lease of various properties, including 28 and 30 Claverton Street held by Parkchoice Limited, and the freeholder is St George' Estate (London) Limited.
2. The respondent served notices of claim, to acquire the freeholds of 28 and 30 Claverton Street, dated 31 January 2019. The applicant served counter-notices dated 29 March 2019, admitting the respondent's right to have the freehold of each house. The Tribunal received applications to determine the price and conveyance terms dated 18 November 2019. Directions were issued on 12 December 2019 and the parties agreed all terms in March 2020. The respondent withdrew the notices of claim on 17 April 2020.
3. The parties have been unable to agree the costs payable by the respondent under section 9(4) of the 1967 Act. The Tribunal received applications to determine these costs dated 28 June 2021. Directions were issued on 30 June and the applications were allocated to the paper track, to be determined without an oral hearing. Neither party has objected to this allocation or requested an oral hearing. The paper determination took place on 21 September 2021
4. The Tribunal was supplied with a bundle of documents in accordance with the directions. This included copies of the applications, directions, the parties' statements of case, costs schedule and invoices, various title documents and documents from the underlying enfranchisement claims.
5. The relevant legal provisions are set out in the appendix to this decision.

Submissions

6. The applicant claimed the following costs in their Tribunal applications:

28 Claverton Street

Applicant's legal costs: £5,500 plus VAT and £106 disbursements

Applicant's valuation fee: £3,250 plus VAT

Freeholder's legal costs: £3,300 plus VAT and £25 disbursements

Freeholder's valuation fee: £3,450 plus VAT

30 Claverton Street

Applicant's legal costs: £5,500 plus VAT and £21 disbursements

Applicant's valuation fee: £3,250 plus VAT

Freeholder's legal costs: £2,250 plus VAT and £23 disbursements

Freeholder's valuation fee: £3,450 plus VAT

7. The applicant's solicitors, Hamlins LLP ('Hamlins') served costs schedules in accordance with the directions, giving details of their charging rates (Grade A - £355ph, Grade B - £245/290/295ph and Grade D - £115/150ph) and a breakdown of the fee earners' time. The schedules were accompanied by invoices dated 27 October 2020, each for £5,500 plus VAT. The costs claimed in the schedules were marginally higher (£5,500.50 plus VAT for 28 Claverton Street and £5,501.50 plus VAT for 30 Claverton Street). The applicant also relied on invoices and time summaries from their valuer, billing guides from the freeholder's solicitor and time summaries from the freeholder's valuer.
8. Paragraph 5 of the directions gave the following guidance for the respondent's statement of case:

"The statement shall identify any element of the claimed costs that are agreed and those that are disputed (with brief reasons). The statement may usefully (a) specify alternative costs that are considered to be reasonable and (b) where the tenant is represented, details of the hourly rates or other basis for charging, applied by its

solicitors, valuers or other professional advisors in the calculation of their equivalent costs.”

9. The respondent relies on a statement of case dated 11 August 2021. Their grounds for disputing the costs are summarised below:
- (a) The enfranchisement claims were admitted and most of the work should have been undertaken by a Grade B fee earner with limited supervision from a Grade A fee earner.
 - (b) The nature of the claims does not justify a departure from the SCCO guideline rates (Grade A - £317, Grade B - £242, Grade C - £196 and Grade D - £126).
 - (c) There has been a breach of the indemnity principle, as the sums invoiced by Hamlins were less than the figures in the costs schedules.
 - (d) There has been a duplication of work due to the number of different fee earners. It is not possible to precisely identify this duplication due to the lack of detail in the costs schedules.
 - (e) The time claimed is excessive, given the similar nature of both claims. 28 Claverton Street was addressed first, and the costs should have been lower for the second claim (number 30). The freeholder’s solicitors have charged significantly less for 30 whereas the applicant’s solicitors have charged the same amounts for both claims.
 - (f) The Tribunal should consider proportionality when determining the costs.
 - (g) A tenant *“should only pay the level of costs that they would have been required to pay with respect to the transaction given the circumstances of the case and the principle of reasonableness”*.
 - (h) The respondent is not liable to pay any costs for the original Tribunal proceedings, including the £100 application fee, pursuant to section 9(4A) of the 1967 Act.
 - (i) The total time claimed for under sections 9(4)(a), (b) and (e) is excessive.
 - (j) The freeholder’s valuation fees are excessive. The time claimed for researching valuation issues (3.5 hours for each house) is too

high and the total claimed by the surveyor (10 hours for each house) should also be reduced.

- (k) The applicant and freeholder should be able to recover the VAT element as input tax. All VAT should be disallowed unless the applicant can provide supporting evidence.

- 10. Based on these submissions, the respondent proposed the following sums:

28 Claverton Street

Applicant's legal costs: £2,275.40 no VAT and £6 disbursements

Applicant's valuation fee: £2,425 no VAT

Freeholder's legal costs: £3,300 plus VAT and £25 disbursements

30 Claverton Street

Applicant's legal costs: £1,885 no VAT and £21 disbursements

Applicant's valuation fee: £2,425 no VAT

Freeholder's legal costs: £1,750 plus VAT and £25 disbursements

It is unclear why the respondent offered to pay VAT on the freeholder's legal costs for 30 Claverton Street but not 28. Further, the disbursements offered (£25) were more than those claimed (£23).

- 11. The respondent did not supply details of their legal and valuation fees, as suggested in the directions. Further, they did not address the freeholder's valuation fees.

- 12. The applicant responded in two statements of case (one for each house), both dated 31 August 2021. They highlighted the respondent's failure to address the freeholder's valuation fees and made preliminary points on the costs payable under section 9(4). Their responses to the specific challenges are summarised below:

- (a) The use of a Grade A fee earner was justified, given the complexities of the 1967 Act and the specialist nature of the work (***Sinclair Gardens Investments (Kensington) Limited v Wisbey [2016] UKUT 0204***).

- (b) The SCCO guideline rates are over 11 years old and have recently been reviewed by the Civil Justice Council. The suggested new rates are £373ph (Grade A), £289 (Grade B), £244 (Grade C) and £139. The rates claimed are reasonable for the level of expertise required. The respondent has not disclosed the hourly rates or grade of fee earner for solicitors and has not commented on the rate charged by the freeholder's solicitor (Grade A - £250).
- (c) There is no breach of the indemnity principle as the sums invoiced by Hamlins match those in the Tribunal applications. The sums claimed in the schedules are only marginally higher (£0.50 and £1.50 plus VAT) and the applicants are not pursuing the balances.
- (d) The alleged duplication of work is denied. The grade A fee earner has overall responsibility for both claims and delegated tasks to other fee earners, as appropriate. The number of different fee earners reflects staff turnover at lower levels.
- (e) 28 Claverton Street was dealt with first, but the arguments applied equally to each property and the costs have been split equally.
- (f) Proportionality is not relevant, as the costs are being determined under the 1967 Act rather than the Civil Procedure Rules.
- (g) The applicant is unaware of any principle that a tenant "*should only pay the level of costs that they would have been required to pay with respect to the transaction given the circumstances of the case and the principle of reasonableness*" and this is in direct conflict with the scheme of the 1967 Act.
- (h) The costs claimed in Hamlins' schedules do not include any time relating to the original Tribunal proceedings. The applicant accepts that the Tribunal fees are not recoverable.
- (i) The total time claimed under sections 9(4)(a), (b) and (e) is not excessive and the sums offered by the respondent are too low. The respondent has not provided details of the time or charges it has incurred, which infers they are similar, or more than the sums claimed.
- (j) The sums claimed for valuation fees are supported by time breakdowns and are reasonable. The valuations were not straightforward, and counsel's advice was obtained on the appropriate valuation methodology. The prices agreed by the surveyors (£696,676 and £691,559 for 30) were significantly

higher than the respondent's initial offers. The respondent has not addressed the freeholder's valuation fees.

(k) Neither the applicant nor the freeholder is VAT registered.

The Tribunal's decision

13. The Tribunal determines that the following costs are payable by the respondent pursuant to section 9(4) of the 1967 Act:

28 Claverton Street

Applicant's legal costs: £4,400 plus VAT and £6 disbursements

Applicant's valuation fee: £2,925 plus VAT

Freeholder's legal costs: £3,300 plus VAT and £25 disbursements

Freeholder's valuation fee: £2,655 plus VAT

Total: £15,967

30 Claverton Street

Applicant's legal costs: £4,400 plus VAT and £21 disbursements

Applicant's valuation fee: £2,925 plus VAT

Freeholder's legal costs: £2,250 plus VAT and £23 disbursements

Freeholder's valuation fee: £2,655 plus VAT

Total: £14,720

Reasons for the Tribunal's decision

14. Costs are only payable under section 9(4) if they are reasonable. Further, there they must be costs of or incidental to any of the matters at subsections (a) to (e). There is no express requirement of proportionality. Unlike sections 33(2) and 60(2) of the Leasehold Reform, Housing and Urban Development Act 1993, there is no additional safeguard restricting the e costs to those a landlord would incur if they were paying the bill. Having said that, proportionality may be a factor when looking at the reasonableness of the costs.

15. In this case, the prices agreed by the parties were close to £700,000 per house. Given the value of the claims, the complicated tenure and the intricacies of the 1967 Act, the use of Grade A fee earners was entirely justified. This is specialist work, and it was reasonable for the applicant and freeholder to use experienced solicitors.
16. The SCCO guideline rates are not binding on the Tribunal and provide guidance only. The 2010 rates were nine years old when the notices of claim were served and are of limited use. The suggested new SCCO rates, whilst not yet in force, are more helpful. The respondent has not disclosed the rates charged by their lawyers, so the Tribunal had no other figures before it. The Tribunal allows the rates claimed by the applicant and freeholder, which are broadly in line with the proposed new SCCO rates.
17. The Tribunal accepts there was no breach of the indemnity principle for the reasons advanced by the applicant. The disparity in the figures is marginal and the applicant is only claiming the sums invoiced by Hamlins. The Tribunal also accepts that none of Hamlins' costs relate to the original Tribunal proceedings.
18. Six different fee earners at Hamlins dealt with the enfranchisement claim for 28 Claverton Street and four different fee earners dealt with number 30. This is excessive and is bound to have led to duplication of work. This may be partially explained by staff turnover, but the respondent should not pay for additional work generated by personnel changes. Adopting a broad-brush approach, the Tribunal reduces Hamlins' costs by 10% to reflect this duplication.
19. The notices of claim were served by the same party on the same date. The two houses are adjacent and there would have been economies of scale dealing with both claims at the same time. Put simply, the work on both claims would not be double that for one independent claim. 28 Claverton Street was treated as the lead claim and the work on the second claim, for number 30 should have been significantly lower. This is borne out by the differing costs claimed by the freeholder's solicitor, whose charges for 30 were approximately two-thirds of those for 28. The Tribunal reduces Hamlin's costs by a further 10% to reflect these economies of scale. The Tribunal makes no reduction in the freeholder's legal costs, as the economies of scale have already been reflected in the lower charges for 30. Further, the freeholder's solicitors have not charged for all their time.
20. There would also have been economies of scale for the valuations. The surveyors were able to inspect both houses on the same date and the research would have been the same (or very similar) for both. Further, there would have been time savings in analysing the comparables and preparing the reports. The Tribunal reduces both sets of valuation fees by 10%. The respondent did not specifically challenge the freeholder's

valuation fees but they should be treated in the same way as the applicant's charges.

21. The Tribunal accepts that VAT is recoverable on both sets of costs, given the applicant and freeholder are not VAT registered.

Summary

22. The Tribunal has reduced Hamlins' fees by a total of 20%. This reduces their costs to £4,400 plus VAT per house. The applicant has rightly withdrawn their claim for the Tribunal fee. The other disbursements are allowed in full.
23. The Tribunal has allowed the freeholder's legal costs (£3,300 and £2,250 plus VAT) in full. The disbursements are also allowed in full.
24. The valuation fees have been reduced by 10%. The adjusted sums due for the applicant's valuations are £2,925 plus VAT per house. The time summaries from the freeholder's surveyors show their charges as £2,950 plus VAT per house, rather than £3,540 plus VAT. The Tribunal has applied the 10% reduction to the lower figure, so the sum allowed is £2,655 plus VAT per house.

Name: Tribunal Judge Donegan **Date:** 22 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Leasehold Reform Act 1967

Section 9 Purchase price and costs of enfranchisement, and tenant's right to withdraw

...

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters –

- (a) any investigation by the landlord or that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest thereof;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

but so that 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.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to the appropriate tribunal.

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