



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

Case reference : **JM/LON/00BK/OC9/2021/0199/0204**

Property : **6 & 51 St Mary's Mansions London W2 1SQ**

Applicant : **(1)Metropolitan Properties Company Ltd (2) Deritend Investments (Birkdale) Ltd**

Representative : **Wallace LLP**

Respondent : **Mr Andrew Gillick**

Representative : **None**

Type of application : **Application for determination of reasonable costs Section 60, 91(2)(d) of the Leasehold Housing and Urban Development Act 1993**

Tribunal member(s) : **Mr Duncan Jagger MRICS**

Date of paper hearing : **14th December 2021**

Date of decision : **14th December 2021**

DECISION

Summary

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 no-one requested to same, and all issues could be determined on paper. The documents that I was referred to are in two helpful bundles of similar content prepared by the applicants, the contents of which I have noted.

The parties have agreed that the original two separate applications should be consolidated.

The application

1. The Applicant seeks a determination of the amount of costs payable by the Respondent pursuant to sections 60(1) and (3) of the 1993 Act. In respect of a deemed withdrawn claim for the two lease extension claims for 6 and 51 St Marys Mansions London W2 1SQ. (The properties)
2. The two application were dated the 13th and 19th October 2021 respectively and directions were issued on 21st October 2021. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 14th December 2021.
3. The Applicant filed a detailed schedule of costs for each property together with costs submissions in accordance with the directions. The only correspondence received from the Respondent was an email dated 25th November confirming in his opinion the costs set out by the Applicant were 'totally unreasonable' but did not provide any alternative for this Tribunal to consider.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The first Applicant is the freehold owner of the premises of which flats 6 and 51 St Mary's Mansions London W2 1SQ (The Flats) form part The Respondent is the lessee of ('the Flats').The freehold is subject to a lease dated 999 years commencing on the 15th February 2016. This lease is held by the second Applicant Deritend Investments (Birkdale) Limited and Deritend is the competent Landlord as defined by Section 40 of the Act.,

6. The applications were made for the determination of the reasonable costs payable by the Respondent (leaseholder) to the Applicants (landlord) under section 60(1) of the Act. It follows two service of Notices of claim to acquire a new lease for each property.
7. The Respondent served the first notice of claim for each property on the Applicant on, 7th June 2018, in which it proposed a premium for a new lease of £100,000 and £74,700 respectively. It also proposed £1,800 pursuant to schedule 13 of the 1993 Act for No51.
8. In each case, this first claim was considered invalid and solicitors acting on behalf of the Respondent accepted this by correspondence dated 31st July 2018. Second Notices were served on the 22nd May 2019.
9. The Applicant served two counter-notices on 30th July 2019, in which it admitted the claim but proposed a higher premium of £216,000 and £200,000 respectively. No application was made to this Tribunal to determine the terms of the new leases and as such each Notice was deemed withdrawn from 29th January 2020.. The Applicant now seeks to recover costs from the Respondent, pursuant to sections 60(1) and (3) of the 1993 Act.

Evidence and submissions

1. The Tribunal issued its standard costs directions on the 21st October 2020. These required the Respondent to serve a Statement of case by 18th November 2021 and the Applicant to serve its Statement of case by the 4th November 2021. The Respondent did not serve a Statement of case and the Applicant served its Statement of case on time.
10. The Applicant provided a schedule of the work undertaken for each property. The cost of all items was said to be recoverable . For each item of the legal costs the Landlords representative provided: the date, activity, description, fee earner, hours rate amount. Legal work was provided variously by a partner, an assistant and a paralegal at decreasing hourly rates of £495/£475, £365/£385 and £200. These hourly rates are line with the recently publishes *Guide to the Summary Assessment of Costs*, published by the Master of the Rolls 2021 edition.
11. In addition, there was a separate schedule that included the fees for the valuer acting for the Applicant and for the small disbursements. VAT was added to these figures.
12. The schedule showed that time spent by the Applicant's solicitors was divided approximately between a partner and an assistant, with only a very small amount of support work from a paralegal. The Applicant referred the Tribunal to a number of earlier cost decisions in order to demonstrate that its level of costs should be accepted to the Tribunal based upon these similar lease extension cases.

13. The Applicants claim for each case was as follows: No 6 Legal Fees £3720 Valuers Fees £3000 and Disbursements £100.80. No 51 Legal Fees £4,260, Valuers Fees £3000 and £79.20 Disbursements. All figures include Vat.
14. As previously mentioned, the Respondent has not challenged these figures only to say by email that they are ‘totally unreasonable’
15. The Tribunal considered all of the documents provided by the Applicant when coming to its decision.

The Tribunal’s decision

16. The Tribunal determines that the following costs including Vat are payable by the Respondent:

Flat 6 St Mary’s Mansions

Applicant’s legal fees - **£3,720** plus **£100.80** Disbursements

Valuation fee – **£2,230**

Flat 51 St Mary’s Mansions

Applicant’s legal fees - **£3,720** plus **£79.20** Disbursements

Valuation fee – **£2,230**

Reasons for the Tribunal’s decision

17. As far as the legal costs are concerned, the Tribunal accepts the Applicant’s schedule of items, the allocation of work between those responsible and the hourly rates, without amendment for Flat 6. With regard to the cost schedule provided for Flat 51, the Tribunal consider there should be no significant variation as to the costs set out in the schedule for Flat 6 and for this reason this has been determined at the same figures. In making this decision, the Tribunal is following its recent decision in *Price v Daejan Investments Ltd 2020 (Lon/00ak/oc9/2019/0231)* The Applicant has long chosen and is free to use its current legal representatives to act in such lease extension cases.
18. This was a straightforward lease extension claim and the Applicant’s solicitors specialise in enfranchisement and lease extension claims and the work was suitable for a qualified Solicitor that specialises in this field.

19. Turning to the Valuers fees, the breakdown of the fee includes £500 for travel expenses. The Tribunal considers these should be included within the 'internal and external inspection of the property' and for this reason are excluded. It was also noted that there is a charge to read the lease. This is not recoverable, as it is the solicitors task to do so. See *Huff v Trustees of the Sloane Stanley Estate Unreported 1997*) referred to in *Hague on Lease Enfranchisement at 32-24*. The valuer has not broken down this charge with set up and calculation of the premium payable. So I have deducted a figure of £150. The total deductions are £650 from the figure of £2,493.75 which generates a revised figure of £1,843.75 plus £12 disbursements. With VAT added this produces a figure of £2,226.90 which is rounded to £2230.
20. Section 60 (2) states:-) 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**
21. The Tribunal has allowed the VAT charged on the Applicant's costs as VAT is payable on the solicitor's, valuer fees, if the Applicant is not VAT registered. And the Applicant is able to recover the VAT charged then sum due should be adjusted accordingly.

Name: Tribunal Judge:
Duncan Jagger

Date: 15th December 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, Housing and Urban Development Act

Section 60

(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 the appropriate 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