

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**



**Neutral Citation Number: [2017] UKUT 186 (LC)  
Case No: LRA/151/2016**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*LEASEHOLD ENFRANCHISEMENT – costs – two adjoining flats held on similar terms – parties common to both flats – notices of claim deemed withdrawn – costs incurred by freeholder in connection with new leases – whether costs duplicated – s60(1) Leasehold Reform, Housing and Urban Development Act 1993 – appeal allowed in part*

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE  
FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**BY:**

**NIGEL SPENCER SLOAM  
and  
JAMES PATRICK TYE  
as  
TRUSTEES OF THE JPT PENSION SCHEME**

**Appellants**

**Re: 395A and 397A High Road  
London  
E10 5NA**

**Decision on Written Representations**

**Peter D McCrea FRICS**

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## DECISION

### Introduction

1. This is an appeal by Nigel Spencer Sloam and James Patrick Tye, as the Trustees of the JPT Pension Scheme (“the appellants”) against a decision of the First-tier Tribunal (Property Chamber) (“the Ft-T”) dated 23 August 2016, corrected on 12 October 2016. The appellants are the freeholder owners of 395A and 397A, High Road, London, E10 5NA (“the appeal flats”).

### Facts

2. In the late 1980’s Topshelf Investments Ltd (“Topshelf”) owned the freehold interest in 395/397A High Road, Leyton, Waltham Forest (“the building”). On the ground floor of the building there was a central shop or betting office, the address of which was 397 High Road. On either side of 397 there was a separate entrance to two residential units (at that time called 395 and 397A High Road) each of which had rear ground floor space with stairs to further accommodation on the first and second floors – the upper floors extending over the ground floor commercial unit.

3. On 23 August 1988 Topshelf granted a lease of 395 to Mr Mohammed Idris, for a term of 99 years from 29 March 1988. Mr Idris paid a premium of £50,000, and the agreed annual rent was £100, “doubling over 33 years”. On 22 May 1989, Topshelf granted a lease of 397A to Mr Idris, on similar terms to that of 395 in terms of commencement date, length of lease, premium and rent.

4. The action now moves forward to June 2015, by which time the freehold interest of the building was vested in the appellants, and the leaseholders of the appeal flats were Mr Mazhar and Mrs Nasreen Hussain. At some point in the intervening period the address of 395 had been changed to 395A, but nothing turns on that. Of more relevance, 395A and 397A had each been sub-divided into four flats – therefore the appeal flats comprised eight residential units in total.

5. On 17 June 2015, Harris Waters, solicitors for Mr and Mrs Hussain served two notices under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”), claiming the right to acquire new leases of 395A and 397A.

6. On 12 August 2015, Winckworth Sherwood, solicitors for the appellants, served two counter-notices under section 45(1) of the Act, each of which admitted that on the relevant date the tenants had the right to acquire a new lease, subject to and conditional upon the tenants establishing that, on its true construction, each notice of claim proposed the granting of a new lease of a single “flat” within the meaning of the Act, and if so which of the four flats comprised was the object of the tenants’ notice. In a covering letter, Winckworth Sherwood indicated that the counter-notices were without prejudice to the freeholders’ contention that the notices of claim were invalid.

7. On 22 March 2016, Winckworth Sherwood wrote to Harris Waters indicating that, having heard nothing further from the tenants, the claims (insofar as they were valid in the first place)

were deemed withdrawn, and the tenants were liable for the freeholders' costs arising out of the notices.

8. The following day, Howard Kennedy LLP wrote to Winckworth Sherwood on behalf of London Land Holdings Ltd, to whom the leasehold interests in 395A and 397A had been assigned, indicating that their clients had indemnified Mr and Mrs Hussain against costs arising out of the s.42 notices. Ongoing correspondence proved fruitless, and on 24 June 2016 Winckworth Sherwood made two applications to the F-tT seeking a determination of the costs payable by Mr and Mrs Hussain under s.60 of the Act arising out of the withdrawn claims for both 395A and 397A.

9. The costs claimed in each case were £5,715.82, comprising:

Costs recoverable under s.60(1)(a)

Attendances on the landlord	
Routine letters 7 at £32.50 each	£227.50
Attendances on Harris Waters (tenants' solicitors)	
Routine letters 4 at £32.50 each	£130.00
Attendances on Tanfield Chambers	
Routine letters 6 at £32.50 each	£195.00
Work done on Documents	
Investigating the tenant's right to a new lease	
4 hours 36 minutes at £325 per hour	£1495.00
Disbursements	
Counsel's fees plus VAT	£747.50
Photocopying charges plus VAT	£22.35
Land Registry charges no VAT	£31.00
Sub Total	£2,848.35

Costs Recoverable under s.60(1)(b)

Attendances on the landlord	
Routine letters 3 at £32.50 each	£97.50
Attendances on B Bailey & Co Ltd. (Surveyors)	
Routine letters 4 at £32.50 each	£130.00
Attendances on Harris Waters (Tenant's solicitors)	
Routine letters 2 at £32.50 each	£65.00
Attendances on Tanfield Chambers (Counsel)	
Routine letters 2 at £32.50 each	£65.00
Work done on Documents	
Valuation of the tenant's flat to fix the premium	
1 hr 30 mins at £325/hr	£487.50
Landlords Surveyors fees (Valuation)	£750.00
Sub Total	£1,595.00

Costs Recoverable under s.60(1)(c)	
Attendances on the landlord	
Routine letters 2 at £32.50 each	£65.00
Attendances on Harris Waters (Tenant's solicitors)	
Routine letters 1 at £32.50 each	£32.50
Grant of a new lease.	
42 mins at £325/hour	£227.50
 Sub Total	 £325.00
 Total Costs	 £4,768.35
VAT @20% where applicable	£947.47
GRAND TOTAL	£5,715.82

10. Thus the total costs claimed were £11,431.64

### **The Ft-T's decisions and permission to appeal**

11. The Ft-T dealt with the applications jointly by way of written representations, but did not receive any submissions from either Mr and Mrs Hussain or from London Land Holdings Ltd.

12. The Ft-T's analysis and decision was as follows:

“29 Winckworth in two all but identical statements of claim asserts that the same costs are due in respect of each flat. This is however undermined in the bundle for 397a, by the invoices 268795 11 December 2015 on p.82; 262547 dated 25 August 2015 on p.83; 261568 dated 30 July 2016 on p84, all of which refer to work by Winckworth Sherwood at 395a & 397a. Identically numbered invoices appear in the bundle for 395a at pages 78, 79 and 80, again for work done at 395a and 397a. The same goes for the invoices dated 1 October 2016 from Tanfield Chambers (Counsel) and dated [sic] from Bailey & Co. Ltd. for identical sums, for identical work, copies of which appear in each bundle.

30 In the Tribunal's view the hourly rate £325/hour, sought is towards the lower end of the range of what can be considered reasonable. The guideline rates issued by the Senior Courts Costs Office currently suggest a figure of £409 for a Grade A solicitor and £296 for a Grade B solicitor. However, the Tribunal is conscious that those rates have not changed since 2010. The Tribunal accepts that enfranchisement .... work is of sufficient complexity and importance .... to justify the hourly rates sought and the involvement of a partner at least in the initial stages following service of a notice of claim. The hourly rate of £325 is therefore accepted.

- 31 The Tribunal accepts that it was reasonable for a partner to carry out the work identified in the schedules. However at this grade the Tribunal has concerns over the amount of time taken by some one of such seniority in the sort of issues which might be expected to be familiar to them.
- 32 The Tribunal determines that the statutory costs payable by the lessees under s.60 of the Act are:
- 33 For s60(1)(a). The attendances on Landlord, on Harris Waters and on Tanfield Chambers are accepted in full at £227.50, £130.00 and £195.00. However much of the time spent on investigating the tenant's right to renew, appears to have been substantially replaced by the time of the appointed Counsel. Therefore this figure is duly reduced to one hour at £325.00. Counsel's fees of £747.50 plus VAT are allowed in full. Disbursements for photocopying of £22.25, are nowhere justified and their requirement in this largely electronic age, unclear. Land Registry charges of £31 are allowed in full.
- 34 For S60(1)(b). Again the attendances on Landlord, on Harris Waters and B Bailey & Co (surveyors) to commission, arrange, prepare and consider a valuation of the premium to be paid are all allowed in full at £97.50, £130.00, £65.00, £65.00. However the Tribunal does not allow anything for 'Work Done on Documents', the sum of £487.50. The Landlord's Surveyor's fees are allowed in full at £750 plus VAT.
- 35 For S60(a)(c). Again the attendances on Landlord, and on Harris Waters at £65 and £32.50 are allowed in full. Again 'Work Done on Documents', presumably abortive preparation of the new lease, at £227.50, is also allowed.
- 36 The sub totals are therefore: (a) £1678.25; (b) £357.50; (c) £325 respectively. A grand total of £2360.75. With VAT on the portions which are fees from Counsel and the Surveyor."

13. Following receipt of an application on 20 September 2016, the Ft-T refused permission to appeal, but reviewed and corrected the figures in its earlier decision as follows:

"s.60(1)(a) Solicitor's costs £877.50 (+ VAT); Counsel's costs £747.50 (+VAT); Land Registry fees £31.

s.60 (1)(b) Solicitor's costs £357.50 (+VAT); Valuer's fees £750 (+VAT).

s.60(1)(c) Solicitor's costs £325 (+VAT).

Grand Total £3,088.50 with VAT on the sums as indicated."

14. The freeholders applied for permission to appeal. On 13 January 2017, the Deputy President (Martin Rodger QC), granted permission for the following reasons:

1. It is arguable that the first-tier tribunal wrongly disallowed half of counsel's total fees on the grounds that the same work had been billed for twice, when in fact a single piece of work applicable to both properties had been charged for and the fee then divided between the two properties. The FTT gave no reason for disallowing any part of counsel's fee other than what it believed to be duplication.
2. The FTT's view that only a nominal fee could reasonably be charged for a valuation of one of the two properties may not have given sufficient weight to the fact that it is likely to have been necessary for the valuer to inspect both properties to ascertain whether they had been converted in different ways or were in effect identical. It is arguable that the total fee ought not to have been reduced to the extent that it was.
3. The FTT's view that there was duplication in the fees of the applicant's solicitor is less obviously open to challenge but as permission to appeal is being granted in respect of other closely related points it is appropriate to grant permission additionally in respect of these fees."

15. The Deputy President directed that the appeal would be dealt with as a review of the decision of the Ft-T, and was suitable for consideration under the Tribunal's written representation procedure unless either party requested an oral hearing.

16. On 2 February 2017, Nasreen Hussain sent an email to the Tribunal indicating that the leasehold interests in the appeal properties had been sold on 24 January 2014, and that she and Mr Hussain did not wish to be a party to the appeal. On 3 February, the appellants confirmed that they did not require an oral hearing, and accordingly the unopposed appeal proceeded by way of written representations.

### **Statutory provisions**

17. Section 60 of the Act provides:

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 [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.

## **Discussion and conclusions**

18. I note in passing that the total amount claimed in legal fees of £6,435.00<sup>1</sup> is not supported by the invoices mentioned in the Ft-T's paragraph 29, which total £5,992.50<sup>2</sup>. The amount claimed appears to be overstated by £512.50 excluding VAT. However, for the reasons given below nothing turns on this.

19. It is convenient to deal with a review of the Ft-T's decision by reference to the reasons given by the Deputy President in granting permission to appeal.

20. First, was it reasonable to disallow half of counsel's total fees on the grounds that fees for the same work had been claimed for twice?

21. Whilst paragraph 29 of the Ft-T's decision casts limited light on its thinking, I would understand and agree with its reasoning and findings had the invoices referred to totalled the amount which the appellants were claiming for 395A and then the same amount again for 397A. However, (ignoring for the moment that the invoices don't support the total amount claimed) the amount claimed totalled £11,431.64, and the appellants were claiming precisely half for each property. The Ft-T's objection to the costs seems to me to be unjustified. The amount stated on the invoices had been halved, with half being applied to each claim.

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<sup>1</sup> s(60)(1)(a) - £4,095; s(60)(1)(b) - £1,690; s(60)(1)(c) - £650; totalling £6,435

<sup>2</sup> Invoice 261568 - £3,217.50; Invoice 262547 - £1,560; Invoice 268795 - £1,495; totalling £5,992.50

22. As regards counsel's fees, these are supported by an invoice for advising on what was a complicated situation. It is clear that the advice covered both 395A and 397A, but in my view there was no duplication. The appellants simply divided the amount equally between both properties. I therefore allow counsel's fees in total.

23. As regards the valuation fees, the text of the valuer's invoices, which was identical for both properties, indicates that the valuer read each lease, obtained archive details of the measurements and details of the internal parts of each flat, inspecting the property externally, obtained comparable evidence and provided a valuation report. It is clear from this that no internal inspections were carried out. I consider that the Ft-T's decision to disallow half of the valuation fees was unjustified, but I accept that some duplication of work – in terms of obtaining comparable evidence for instance – would have been likely. Additionally, since the leases were on identical terms, the valuations would have had a very similar framework. I therefore allow £750 plus VAT for one valuation, and £500 plus VAT for the second. It is unnecessary for me to decide which amount should be attributed to each property.

24. Finally, as regards the legal fees and disbursements, I see no reason to disturb the Ft-T's reasoning and conclusions on individual items, save its fundamental objection on the basis of duplication. Giving the appellant the benefit of the doubt that two hours rather than the one hour awarded by the Ft-T should be allowed for considering counsel's opinion, the amounts allowed by the Ft-T of £877.50 under s.60(1)(a); £377.50 under s.60(1)(b); and £325.00 under s.60(1)(c) can each be doubled, totalling £3,120.00.

25. The appeal is therefore allowed in part, and I determine that the appellants are entitled to recover the following costs under s60(1) of the Act:

Legal fees:	£3,120.00 plus VAT
Land registry fees:	£31.00
Counsel's fees:	£1,495.00 plus VAT
Valuation fees:	£1,250.00 plus VAT.

Dated: 4 May 2017



Peter D McCrea FRICS