



**Ref LON/OOAC/OC9/2008/0046
LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 91(d) OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Property: 25, 31 and 39 Chandos Way NW11 & 39 and
131 Britten Close NW11

Applicants: Paul Martine Warren & Loraine Rosalie Warren

Represented by: Messrs Lawrence Stephens

Respondent: Saffron Developments Limited

Represented by: Messrs Eversheds LLP

Application date: 11th July 2008

Hearing date: 7th October 2008

Members of the Leasehold Valuation Tribunal:

**Mrs. F. R Burton LLB LLM MA
Mr. D. N. Huckle FRICS**

**Date of Tribunal's
decision:** 13th October 2008

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**Applicants: Paul Martin Warren and Lorraine Rosalie Warren (25 and 31
Chandos Way NW11 and 39 and 131 Britten Close NW11)
Lorraine Rosalie Warren (39 Chandos Way NW11)**

Respondent: Saffron Developments Limited

**Premises: 25, 31 and 39 Chandos Way NW11 and
39 and 131 Britten Close NW11**

Hearing date: 7 October 2008

**Appearances: Paper Track: For the Tenant: Lawrence Stephens,
Solicitors
For the Landlord: Eversheds LLP
Solicitors**

**Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr D N Huckle FRICS**

Date of Tribunal's decision: 13 October 2008

25,31 & 39 CHANDOS WAY and 39 & 131 BRITTEN CLOSE NW11

BACKGROUND

1. This was an application pursuant to s 91(d) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for the determination of the amount of the Landlord’s statutory costs in accordance with s 60(1) of the Act, following agreement between the parties of all other terms for lease extensions in respect of each of the subject properties. The Respondent Landlord in each case was Saffron Developments Limited and an intermediate Lease was held by Safeland Investments Limited. The subject properties are all in the same immediate locality in Golders Green. The usual Directions were first issued on 14 July 2008 requiring a detailed statement of the costs incurred and setting the case down for hearing on the Tribunal’s paper track without an oral hearing, subsequently amended on 30 July 2008 following a request for postponement due to non receipt of the earlier Directions by one party. The case ultimately came before a Tribunal in the week commencing 6 October 2008.

THE CASE FOR THE APPLICANT

2. It was the case for the Applicant Tenants that the costs to be paid were strictly governed by s 60(1) of the Act and were “grossly excessive” in relation to the provision of new Leases in similar form for each of 5 properties where much of the work would have been duplicated. Attempts had been made by the Applicants’ solicitors to negotiate what they regarded as a “more sensible figure” when first asked for their undertaking to pay costs of £5,000+VAT and disbursements in relation to the drafting, negotiation and agreement of the Leases whether or not the matter proceeded to conclusion. They had considered these charges to be “monstrous”, at the same time objecting to giving such an undertaking, on the basis that s 60(1) did not require any such undertaking to be given.

THE CASE FOR THE RESPONDENT

3. It was the case for the Respondent Landlord's solicitors that they had had to prepare 5 separate statements of costs because they had had to open 5 separate files in order to deal with some aspects of each case individually. However, where possible, they had worked on the 5 cases simultaneously and they had divided the time spent equally so as to avoid duplication of time recording. Where it was necessary to deal with each matter individually, they had recorded the time spent against the particular file. They claimed that the costs were "not excessive" and in fact "reasonable"

4. The governing section of the Act, s 60(1) states as follows:

"(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 an incidental to 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 sub-section 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."

The following sub-section, s 60(2), further states:

"(2) For the purposes of sub-section (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."

THE PAPER TRACK DETERMINATION

5. The Tribunal received an individual application, official copy of the Register of Title and Landlord's Counter Notice in respect of each property, together with individual breakdowns of costs in each case, and single copies of the valuer's invoices in relation to his work in respect of all five properties. The valuer was an unnamed individual, whose seniority was not disclosed, from the Professional Valuation Department at the Chelsea office of Douglas & Gordon, Chartered Surveyors.

6. The Tribunal perused the respective breakdowns and made their determination as follows below.

THE VALUER'S COSTS

7. The Valuer had submitted two separate accounts: (1) for inspecting the properties, researching comparables, valuing the existing leaseholds and long lease values and determining the appropriate premium in each case; (2) for negotiating with the Lessees' surveyor. The amount charged under (1), of £450+VAT totaled £2,250+VAT. The amount charged under (2) was £585 (3 hours @ £195) + VAT.

8. The Tribunal notes that the costs claimed under (2) are not allowable pursuant to the terms of s 60(1) which is concerned with valuation and does not contemplate the recovery of the cost of negotiations: these costs are therefore disallowed in full. With regard to the costs claimed under (1), the Tribunal considers that the invoice is excessive in relation to 5 flats, all of which are in the same immediate locality: a proper charge would have been £450+VAT for inspecting and valuing the first property, including researching comparables (many of which would be readily available to the valuer within his firm), traveling and writing a short report for the purposes of the Landlord's Counter Notice, together with a lower charge of £250+VAT for each of the other 4 properties, since there are obvious economies of scale in relation to the task in hand. On the basis

that perhaps 5 additional hours work would be required for the other 4 properties @ £200 per hour which would be appropriate for a principal in the firm, the sum charged is excessive since in the circumstances the valuer's bill should have been no more than a total of £1,450+VAT, which would have allowed for over 7 hours work depending on the rate per hour charged, or say for a round figure £1,500+VAT. This averages out at £300 per property. The Tribunal nevertheless wonders why this North London work has been allocated to an office in Chelsea, which would have increased traveling time.

THE LEGAL COSTS

9. The total claim for solicitors' work is for £9839.50. The Landlord's Counter Notice in each case (save that of 131 Britten Close where no copy of the Counter Notice has been provided) concedes that "the terms of the new lease be on the same terms as those contained in the lease" to be extended "but for a further term of 90 years at a peppercorn rent". The work required was therefore not unduly extensive since the existing leases were likely to be in similar if not identical form, and a full new lease was not required in any case since the Tribunal notes that it is common practice to provide only a shorter document by way of surrender and lease in such cases, each of which could have been produced following a common template. Moreover the Tribunal notes that an excessively complex group of fee earners were assigned to the work, including a Senior Associate @ £220 per hour, an Associate @ £205 per hour, 2 Solicitors @ £200 and £180 per hour respectively, to oversee a Paralegal @ £110 per hour, whereas much of the work could have been done by a Paralegal with appropriate supervision. The breakdown indicates much duplication of work, particularly as it must be remembered that the same solicitor was acting for all the Lessees, and some items are included which are not contemplated by the terms of s 60(1) and which are therefore to be disallowed.

10. The breakdown of legal work falls into 11 categories which are set out in the letter dated 12 September 2008 from the Respondent's solicitors in response to Directions. Of these categories 5, 7 and 8 must be disallowed as falling outside the terms of s 60(1). In respect of category 5 (Correspondence with Applicant's (Tenant) Solicitors

regarding Heads of Terms provisionally agreed between the surveyors) the Act does not provide for recovery of the costs of negotiations between surveyors. In respect of category 7 (Costs incurred in relation to Court proceedings issued by the Applicant (Tenant) for a new lease) again the Act does not provide for recovery of costs of any proceedings. Similarly for category 8 (Costs incurred in relation to Tenant's application to the LVT under s 191(d) of the Act) the Act does not provide for recovery of costs of any proceedings.

11. In relation to the remaining categories, the Tribunal's approach is that the breakdown (for which the Landlord's solicitors also surprisingly seek to charge) is excessively detailed and that regardless of any time costing which the solicitors involved wish to use for their own cost centre purposes an average should have been taken across the 5 properties for work which is essentially repetitive and where much of the work would have been duplicated. This has been done in some cases where the amounts charged are the same. ie categories 2, 3 and 6 (respectively Attendance on Landlord's surveyor regarding valuation of premium for new lease, Correspondence and discussions with Client (Landlord) regarding valuations and premium to be agreed and Internal attendance on Real Estate department regarding drafting of new lease). In others, particularly category 11) widely different figures are claimed in most cases and the Tribunal considers that a much simpler approach, less time and less complexity of fee earner involvement would have been appropriate.

12. In relation to category 1 (Assessing validity of Tenant's notice under s 42 of the Act) this is clearly qualifying work, suitable for a paralegal under some supervision of say 0.1 hours, for which the Tribunal considers that £110 per property is allowable.

13. In relation to category 2 (Attendance on Landlord's surveyor regarding valuation of premium for new lease) this also is qualifying work but some of the tasks listed are not required at this stage, which requires photocopying of the lease and title documents, although there is no need to review the surveyor's report at this stage. The

Tribunal considers that the claim should be reduced by about half, and allows £60 per property.

14. In relation to category 3 (Correspondence and discussions with Client (Landlord) regarding valuations and premium to be agreed) this is clearly qualifying work and the £77 charged per property is allowed in full.

15. In relation to category 4 (Preparation and service of Landlord's Counter Notice under s 45 of the Act) this is clearly qualifying work but the Tribunal considers that £70 per property should be sufficient since this is paralegal work with some supervision, but does not require both that of a Senior Associate and a Solicitor nor more than half an hour per property of a paralegal's time to ensure accuracy of the document.

16. In relation to category 6 (Internal attendance on Real Estate department regarding drafting of a new lease) it is clear to the Tribunal that only short new lease and surrender documents were required. The Tribunal considers that £37.50 per property should be sufficient for giving instructions to deal with the work which genuinely needs to be done to produce deeds supplemental to the original lease. This is classic paralegal work with some element of supervision and does not require a lengthy time commitment.

17. In relation to category 9 (Costs incurred by Real Estate department preparing draft lease) the Tribunal repeats that no new lease was required. There is no need to consider the title and is classic paralegal work to be sent out under a standard letter. The Landlord's solicitors have charged the same amount to most properties for this work with, for some reason unexplained, a very large uplift in the case of 39 Britten Close. The Tribunal considers that, whatever the reason for the disproportionate charge for one property, this work could quite well be done by a paralegal with little supervision a total of £87 per property.

18. With regard to category 10 (Attendance on Tenant's solicitors in relation

to form of draft lease, including letter in from Tenant's solicitors confirming that Tenant's solicitors changed etc and reissuing draft lease to new solicitors) there is again some disparity between amounts charged to the different properties and a wide disparity between most and 39 Britten Close, which on this occasion is very low in relation to the others. In the absence of any explanation as to the underlying content for these figures the Tribunal considers that £87 should be sufficient for each property.

19. The total amount which the Tribunal is prepared to allow is £658.50+VAT per property for legal fees and an average of £300 per property for valuer's fees.

DECISION

20. The total claim made was of £12,674.50 including £3,225 of non-allowable items (solicitors' £2640 and valuer's £585). The net claim is therefore £9449.50, of which £7199.50 + VAT is solicitors' costs and £2250+VAT the valuer's. The Tribunal determines that the total allowable is £958.50 x 5 properties (ie £4,792.50 + VAT). These figures reflect that the work was repetitive and in respect of 5 connected properties in an immediate locality with the same solicitor on the other side.

Chairman F. R. Smith
Date 13.10.08