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DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993 (Sections 91 and 33)**

REF: LON/00BK/OC9/2013/0005

Address: Blocks 5 & 6 Wellington Court, 55-84 Wellington Road, London NW8 9TD

Applicants: The Trustees of the Eyre Estate

Respondent: Wellington Court Freehold Limited

Tribunal: Mrs S O'Sullivan (Chairman)
Mrs E Flint FRICS

Introduction and background

1. This is an application by the participating qualifying tenants of Blocks 5 and 6 Wellington Court, Wellington Road London NW8 9TD under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the amount of the landlord's recoverable costs in connection with a claim under section 13 of the Act to exercise a right of collective enfranchisement in respect of the property. Initial notice of the claim was given on or about 15 June 2011 and 11 August 2011. Both of these notices of claim have been rejected by the landlord. In these

circumstances the landlord has applied for its reasonable and recoverable costs to be determined.

2. This determination is made on the basis of written representations and without an oral hearing according to the procedure set out in regulation 13 of the Leasehold Reform, Housing and Urban Development Act 1993. The landlord has provided a bundle of documents relating to costs in accordance with the tribunal's pre-determination directions. Both parties have lodged submissions.

The law

3. By section 33(1) of the Act, where a notice under section 13 is given, the nominee purchaser is liable, to the extent that they have been incurred in pursuance of the initial notice, for the reasonable costs of and incidental to the following:

- (a) *any investigation reasonably undertaken -*
 - (i) *of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the 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 such interest.*

4. Where a claim is withdrawn, the individual participating tenants are jointly and severally liable for the landlord's reasonable costs falling within section 33 down to the date of withdrawal.

5. The costs in issue are legal costs in the sum of £8,948 plus Vat and disbursements in the sum of £20 making a total of £10, 757.60 and valuation costs in the sum of £3,500 plus Vat making a total of £4,200.

Legal costs

6. The work was carried out by Giles Pemberton (partner) at an hourly rate of £350. A detailed breakdown was provided. It totals some 23 hours 36 minutes. The charge out was not challenged.

7. In reply the Respondents consider an allowance of 16 hours 48 minutes to be reasonable. They provide a competitive analysis of the legal costs to which the Applicants have replied. Many of the items are accepted as reasonable. The Tribunal sets out below a summary of the points made and its decision on each item as follows;

- a) 16 June 2011 – Perusal of Notice of Claim – 2 hours 18 minutes is claimed. The Respondents offer 1 hour 30 minutes and say the time is excessive. The Applicants say this was a substantial collective enfranchisement claim which required detailed consideration.

The Tribunal accepts this was a complex claim and allows 2 hours 18 minutes.

- b) 21 June 2011 – Discussion with headlessee's solicitor/correspondence in relation to s.42 -1 hour 12 minutes. Respondents offer 48 minutes and say it is excessive. The Applicants say overall time reasonable.

Allowed as reasonable in full.

- c) 24 June 2011 – perusal of copy leases/correspondence 4 hours. Respondent offers 2 hours and say no investigation of qualified status required. Applicants do not agree and say investigation under section 42 is not relevant to a claim under section 42. 3 hours allowed as reasonable.
- d) 27 June 2011 – correspondence obtaining plans and calls with solicitor – 1 hour 24 minutes claimed- 1 hour offered. 1 hour allowed as reasonable.
- e) 21 July 2011 – correspondence with solicitors – 18 minutes. 12 offered. 12 minutes allowed.
- f) 28 July 2011 – liaison with Cluttons/solicitors – 36 minutes, 24 offered 24 minutes allowed.
- g) 4 August 2011- conversation with Cluttons – 24 minutes 18 offered 18 minutes allowed.
- h) 8 & 9 August 2011 – 12 minutes each – exchange of emails/speaking to Cluttons – 6 minutes each offered 6 minutes for each allowed.
- i) 10 August 2011 – consideration of counter notice/correspondence – 1 hour 6 minutes – 48 minutes offered. Respondents say time excessive. 48 minutes allowed.
- j) 11 August 2011 – 2 hours 30 minutes – considering provisions in transfer and preparing initial draft – 1hour 30 offered 1hour 30 minutes allowed
- k) 15 August 2011 – liaison headlessee/Cluttons 54 minutes. 30 minutes offered 30 minutes considered reasonable
- l) 26 September 2011 – exchanging emails/considering report/speaking Cluttons 1 hour 24 minutes – 1 hour offered 1 hour considered reasonable
- m) 29 September 2011 – Speaking engineer/Cluttons 48 minutes. 30 minutes offered as excessive

30 minutes allowed as reasonable

n) 3 October 2011 – 54 minutes checking final details on counter notice/correspondence. 42 minutes offered.

42 minutes allowed as reasonable.

8. The Tribunal would mention that some of the above items were reduced as it appeared that there was an element of duplication.
9. The total time allowed was 19 hours and 26 minutes.

Valuation costs

10. The valuation costs total £3,500 plus Vat and comprise of work carried out by Cluttons by John Martin and his assistant Emily Summerfield. The Respondent accepts Mr Martin's costs of £3,000 plus Vat but challenges Ms Summerfield's on the basis of duplication. The Applicants say in reply that Mr Martin would have spent more time on the inspection without the assistance of Miss Summerfield.

11. The Tribunal allows the sum of £3,000 plus Vat. The Tribunal accepts that there was some duplication and has been given no information on the specific tasks carried out by Miss Summerfield. It does not accept the arguments put forward by the Applicants in this regard and has no evidence to support the contention that she carried out any separate tasks. In any event it considers the sum of £3,000 plus Vat to be a reasonable sum for a valuation of this type.

TRIBUNAL.....

DATE: 26 March 2013