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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/OCE/2012/0072**
Property	:	**Eton House, 57-61 Venn Street, London SW4 0BD**
Applicant	:	**Eton House (Collective Enfranchisement) Ltd**
Representative	:	**Ringley Legal Services LLP**
Respondent	:	**Ground Rent (Regis) Ltd**
Representative	:	**Pier Management Ltd**
Type of Application	:	**Costs relating to a claim for collective enfranchisement**
Tribunal Members	:	**Judge Timothy Powell** **Ian Holdsworth FRICS**
Date of Hearing and Venue	:	**19 & 20 November 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**5 December 2013**

DECISION

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1. The tribunal determines that sum of £4,611 plus VAT (i.e. £5,533.20 in total) should be allowed for the landlord's statutory valuation costs;

2. The tribunal determines that the freeholder's statutory legal costs should be allowed at £5,169.49 (including VAT and disbursements).

History of the application

3. By an initial notice dated 28 July 2011, served to pursuant section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), the participating lessees of flats at Eton House, 57-61 Venn Street, London SW4 0BD (the Property) sought to exercise their right to collective enfranchisement.

4. The respondent gave a counter-notice dated 5 October 2011 admitting that, on the relevant date, the participating tenants were entitled to exercise the right to collective enfranchisement.

5. On or about 3 April 2012 the applicant, as nominee purchaser, made an application to the Leasehold Valuation Tribunal (LVT) as it then was, pursuant to section 24 of the Act for the terms of the acquisition of the freehold interest in the subject property to be determined.

6. Directions were duly given and the application was listed to come on for hearing on 11 December 2012. At that hearing, both parties were represented by solicitors: Mr Lee Harle of Ringley Legal for the applicant and Ms Laura Cleasby of Pier Management for the respondent. The parties' respective valuers were also present. On that date, the parties confirmed to the tribunal that the terms of the acquisition had been agreed and all that remained was the issue of the landlord's statutory costs under section 33 of the Act. Accordingly, the application dated 3 April 2012 was withdrawn.

7. However, on or about 29 July 2013, the applicant made an application to the tribunal for the matter be re-opened, because agreement on certain key matters could not be reached with the respondent. It was said by the applicant that the December 2012 agreement was arrived at to avoid the costs and delay of a hearing, so that the progress could be made with the purchase on the basis of reasonably-drafted documents, but those documents could not be agreed. For its part, the respondent claimed that terms had been agreed in December 2012, there had been a tribunal determination to that effect and that the tribunal lacked jurisdiction to re-open the matter because, absent any application to court, the matter was deemed withdrawn.

8. Further directions were given and on 8 September 2013 the tribunal determined on the papers, in the light of the parties' representations and upon consideration of the documents supplied, that terms had not

in fact been agreed in December 2012, so that the tribunal retained original jurisdiction under the Act to determine any outstanding terms of acquisition. Yet further directions were given for the remaining terms to be determined, at a hearing on 19 and 20 November 2013.

9. On 19 November 2013, the parties were once again represented by the same solicitors as previously, with the addition of Mr Daniel Harrison of Pier Management Ltd. At the outset of the hearing, Mr Lee Harle for the applicant applied for a postponement of the hearing on the basis that he had only received documents from the respondent late the previous evening, that two of his three clients were out of the country and he had not yet been able to obtain instructions from them on the matters arising from new documents. The respondent objected to postponement but, after careful consideration, the tribunal granted one for a period of 24 hours, re-listing the matter at 10am on the following day, 20 November 2013.

10. On 20 November 2013, all the same representatives appeared once again. Following negotiations, all terms of acquisition had been agreed by the parties and copies of the signed consent orders were lodged with the tribunal. In particular, the parties had agreed: the premium at £92,000, the terms of the transfer of part, the terms of a lease to be granted back to the respondent in respect of flat 6 and the terms of two leasebacks of the commercial (shop) units on the ground floor of the premises. Further, it was agreed that each party would have permission to apply to the county court to enforce those terms agreed.

11. All that remained outstanding for the tribunal to determine were the landlord's statutory costs under section 33 of the Act, that is to say the valuation and legal costs incurred since the service of the initial notice over two years previously, in July 2011.

12. The respondent relied upon a schedule of costs and supporting papers that had been sent to the tribunal by Tolhurst Fisher LLP solicitors on 27 September and received by the tribunal on 30 September 2013. It was said that the schedule and documents had also been served upon the applicant's solicitors at the same time, but Mr Harle said that he had not seen them before the evening of Monday, 18 November 2013. However, overnight on 19 November, he had prepared a witness statement dealing with the landlord's statutory costs, which he handed in to the tribunal on morning of 20 November 2013.

13. Despite the apparent late service of documents all round, the tribunal considered that the matter had been ongoing for a sufficiently long time, such that further postponement was unjustified and disproportionate. The matter was put to the legal representatives, who agreed that they wished the tribunal to proceed with the determination of the statutory costs, so that the matter could be brought to a final conclusion.

The valuation costs

14. The freeholders' surveyors, Morgan Sloane, submitted a schedule of costs dated 2 August 2013, in the sum of £6,678.00 (including VAT).

15. Mr Harle for the applicant objected to the sum claimed on several grounds. He complained that there was no detailed break down as to how the figure had been reached and no indication of the work that had been undertaken. The schedule appeared to show that a total of 14 hours (2 hours x 7 units) had been spent researching the appurtenant land and roof space, and another 14 hours (again, 2 hours x 7 units) producing the valuation report, and all had taken place on 25 August 2011. He could not understand how, after more than 35 hours in total of preparation and research, it had then taken 14 hours to prepare a valuation report.

16. Even allowing for his understanding that the valuation fee had been reduced by the respondent from £1,416.66 plus VAT (at 17.5%) per unit, to £795 plus VAT (at 20%) per unit, the valuation fee was more than five times that charged by the applicant's surveyor.

17. Ms Cleasby and Mr Harrison for the respondent suggested that the time spent by the surveyor had been explained sufficiently in the schedule of legal costs prepared by Tolhurst Fisher LLP. They confirmed that the valuation related to 7 units and that a fixed fee of £795 (plus VAT) per unit, as has been agreed with the Regis Group, had been applied to the valuation costs (£795 x 7 units = £5,565, plus VAT at 20%, being equivalent to a valuation fee inclusive of VAT of £6,678).

18. Although the premises comprised 8 units, Mr Harrison explained that shop 1 and flat 1 comprised one title, where an underlease of the shop had been carved out of the title. While there had been 8 "valuation events" only 7 had been charged for, but that of course went against the respondent because the cost of 8 valuations would have been higher then the 7 charged for.

19. Mr Harrison also agreed that there four types of property being valued, in terms of bedrooms/ size, but he could not say in relation to layout.

20. With regard to Mr Harle's suggestion that the valuation information gleaned as a result of an earlier, abortive attempt to enfranchise in November 2007, could have been re-used, Mr Harrison said that the present valuations were distinct, so that, for example, Flat 6 had been valued with vacant possession then, and the valuation had been carried out by a different company at that time.

The tribunal's decision

21. The tribunal determines that sum of £4,611 plus VAT (i.e. £5,533.20 in total) should be allowed for the landlord's statutory valuation costs.

The reasons for the tribunal's decision

22. The tribunal is not satisfied that the full valuation fee is justified. The report itself was not produced to the tribunal and insufficient details were given of the time spent and the work actually done.

23. The valuation was in respect of four types of property and therefore it does not seem unreasonable that the valuers should charge four sets of full fees, as agreed with the Regis Group, at £795 per unit = £3,180 plus VAT.

24. However, when it comes to doing valuations of the other properties, these are largely replications of the original work already charged for. There are number of items do not need repeating, such as the assessment of the historic and current house price data for the area, consulting local estate agents, reviewing recent LVT cases, consulting research data and researching appurtenant land.

25. The tribunal considers that for three of the seven units a 40% reduction would be reasonable fees for those units, i.e. £795 x 0.6 = £477 x 3 = £1,431 plus VAT.

26. All together, the valuation fees come to £4,611 to which VAT should be added at 20%, £922.20, making a total of £5,533.20 (including VAT).

The statutory legal costs

27. The tribunal makes allowance for brevity of Mr Harle's submissions in relation to the statutory legal costs (as indeed to the valuation costs), arising from the fact that he only had a very short period of time to review and consider the draft cost schedules.

28. With regard to the solicitors' costs of Tolhurst Fisher LLP, Mr Harle did not challenge the £200 per hour charging rate, which has risen from the £180 per hour charged by the solicitors in respect of the aborted 2007 enfranchisement. It was also noted that the VAT rate had increased from 17.5% then, to 20% now.

29. Nonetheless, Mr Harle took issue with the total £6,151.09 (including VAT and disbursements), which he compared unfavourably to the £3,282 (plus VAT and disbursements) claimed in respect of the previous enfranchisement claim and to the £2,160 (plus VAT and

disbursements) allowed to Tolhurst Fisher LLP by this tribunal in April 2011.

30. Although Mr Harle accepted that more work had been involved in the current enfranchisement claim, he submitted that the two matters largely involved the same documents and processes and, therefore, Tolhurst Fisher LLP were necessarily involved in less work than if they had started from scratch.

31. Mr Harle challenged the number of letters and telephone calls listed in the schedule, saying that some of them must have related to court proceedings issued by the respondent in about December 2011, which challenged the validity of the initial notice, but which were then withdrawn.

32. So far as the anticipated costs to completion were concerned, Mr Harle objected to these because he had not heard from the solicitors since May 2013, they had not negotiated on the transfer since the applicant's July 2013 application to determine the terms of acquisition and, so far as he was aware, they had undertaken none of the items in that part of the schedule and were not going to.

33. Mr Harle did not challenge the £500 claimed in respect of the time spent by Pier Management.

34. On behalf of the respondent, Ms Cleasby and Mr Harrison emphasised the differences between the current enfranchisement claim and the aborted 2007 claim. In 2007, there had been no negotiations concerning a leaseback of flat 6 and the respondent, at that stage, had not been seeking to retain the roof space. These issues made the current claim more complex and there was very little by way of documentation that was capable of being carried forward from 2007 to the present time. The respondent said the two claims were not entirely dissimilar in terms of the time taken and, of course, some of the increase costs related to the higher hourly rate.

35. With regard to the anticipated costs, Mr Harrison said that he had been speaking with Tolhurst Fisher the previous week in relation to the proposed transfer; indeed, he had had several long telephone conversations of about 45 minutes each.

The tribunal's decision

36. The tribunal determines that the freeholder's statutory legal costs should be allowed at £5,169.49 (including VAT and disbursements).

Reasons for the tribunal's decision

37. For reasons which are not clear, the sub-total times in the schedule of costs were inaccurate. The total 17.1 hours (comprising sub-totals of 5.02, 8.44 and 3.64 hours) did not reflect the costs actually claimed. When the tribunal did a manual adding-up of the hours charged, the actual sub-totals came to 7.6 hours for correspondence and telephone calls, 9.4 hours for preparation and 5.4 hours for anticipated costs, making a total of 22.5 hours in total, not 17.1 hours. The tribunal's calculations appear to be justified, in that the overall fee of £4,498 when divided by the £200 per hour charging rate, equals an equivalent of 22.49 hours spent on this claim.

38. The costs which can be claimed by a freeholder in an enfranchisement claim are those set out in section 33(1) of the Act. As the respondent points out in paragraph 2.5 of its submissions relating to costs, section 33(2) of the Act sets out the test of reasonableness and provides that costs are reasonably incurred only to the extent that the costs might reasonably be expected to have been incurred, if the respondent was personally liable for all such costs.

39. In its schedule of costs, the respondent's solicitors, Tolhurst Fisher, made out a case that they were entitled to indemnity costs as against their client, the respondent reversioner, under the contract between solicitor and own client; and that, in turn, the respondent was entitled to full recovery of those costs from the applicant nominee purchaser, by virtue of section 33 of the Act.

40. However superficially attractive this argument may be, even a solicitor's right to indemnity costs against their own client would not necessarily entitle them to recover all of those costs without challenge. Furthermore, section 33 of the Act itself does not make reference to "indemnity costs"; instead, the test in section 33 is that the reversioner is entitled to "reasonable costs".

41. Contrary to paragraph 3.2 of Tolhurst Fisher's schedule of costs, section 33 does not say that reversioner's costs "are recoverable" if the circumstances had been such that the reversioner was paying the costs personally, but rather section 33(2) is a limitation on the costs that may be recovered by the reversioner. Section 33(2) states that the costs incurred by the reversioner "shall only be regarded" as reasonable if the reversioner would have been expected to incur the costs had he been personally liable for them. This measure is designed to prevent the reversioner from claiming inflated or more than reasonable costs merely because the tenants are paying for them.

42. When the tribunal assesses statutory costs under section 33, the question whether the test of reasonableness is satisfied or not is a matter of proof, the burden of which is on both parties: i.e. on the

reversioner to prove the costs claimed, and on the nominee purchaser to challenge them. The tribunal's determination as to whether the reversioner's costs have been reasonably incurred and are reasonable in amount includes consideration of all the preparation items and anticipated costs (as allowed by section 33), both in the submissions and in the schedule of costs, and an assessment of the likely reasonable and necessary work involved in the enfranchisement claim, the history of the matter and the overall conduct of the claim.

43. With regard to the correspondence and telephone calls, the tribunal was not shown copies of these and it was not possible for the respondent's representatives to point out or explain what any of them actually involved. The tribunal considers that there must been items in this part of the schedule that either related to the court proceedings in December 2011 or the earlier tribunal hearing in December 2012. Doing best it can, the tribunal deducts the equivalent of 1½ hours worth of letters and telephone calls (i.e. 15 items or £300.00) for these reasons.

44. With regard to the preparation item, although the current enfranchisement claim is different from the 2007 claim, there must have been some overlap and some re-use of word processed documents, which would have resulted in savings. Accordingly it appears to the tribunal that 2 hours 48 minutes drafting a counter-notice and 2 hours for drafting the leases for shops 1 and 2 are too high, and each item should be reduced by 1 hour, i.e. a total reduction of 2 hours or £400 for this item.

45. With regards to the anticipated costs, while the tribunal accepts that some of the items have now been carried out since the schedule was prepared on 27 September 2013, the bulk of them are yet to follow, as part of the conveyancing process. The tribunal considers that there should be a reduction of the letters out to Ringley Legal and to the respondent of two items each (i.e. 4 units or £80).

46. In addition, although the statutory procedure envisages the contract will be signed, it is not at all the universal practice; but, in any event, if a contract is signed, it will usually be a standard pre-printed or word-processed document, which should not require the 30 minutes claimed to be produced. Therefore this item should also be reduced by 12 minutes (i.e. by 2 units or £40).

47. All together, the deductions amount to 4 hours 6 minutes, or 4.1 hours, reducing the 22.5 hours claimed to 18.4 hours allowed by the tribunal. On this basis, the fee is calculated as follows: 18.4 hours allowed x £200 per hour = £3,680, plus VAT at 20%, £736, makes a total inclusive sum

with VAT of £4,416, add Pier Management's fee of £500, plus disbursements of £253.49, makes a grand total of £5,169.49 statutory legal costs allowed.

Name: Judge Timothy Powell **Date:** 5 December 2013