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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	GM/LON/00AY/OC9/2016/0476
Property	:	Loughborough Court, Shakespeare Road, London SE24 0QF
Applicant	:	The Mayor and Burgesses of the London Borough of Lambeth ("the Tenant")
Representatives	:	TLT LLP, Solicitors
Respondents:	:	Rimex Investments Limited ("the Landlord")
Representatives	:	Wallace LLP, Solicitors
Type of application	:	A determination of reasonable costs under Sections 33(1) and 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Angus Andrew Richard Shaw FRICS
Date and venue of hearing	:	25 January 2017 10 Alfred Place, London WC1E 7LR
Date of Decision	:	14 February 2017

DECISION

Decision

1. Pursuant to sections 33(1) and 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of £26,465 plus VAT are payable by the tenant to the landlord.

The application and hearing

2. By its application received on 21 November 2016 the landlord sought a determination under both sections 33(1) and 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") of its statutory costs incurred in the tenant's new lease and collective enfranchisement claims.

3. At the hearing on 25 January 2017 the landlord was represented by Neil Gordon and the tenant by Simon Serota, both of whom are solicitors.

Background

4. Loughborough Court is a block of 59 residential flats. On 22 October 1934 the then owners of the freehold interest in Loughborough Court granted a lease of the block for a term of 99 years from 24 June 1933 ("the 1934 lease"). At the time of the claims the landlord owned the freehold interest and the tenant the leasehold interest in Loughborough Court. The 1934 lease had 17 years left to run. All 59 flats were occupied by assured tenants: that is, none of them had been sold on the basis of a long residential lease. The 1934 lease is only 10 pages long and is a creature of its time.

5. On 11 November 2015 the tenant served 59 claim notices on the landlord under section 42 of the Act: one in respect of each flat. Each claim notice was accompanied by a 15 page draft lease in common form. In serving a claim notice in respect of each flat the tenant relied on section 39(4) of the Act as applied in Howard de Walden Estates Ltd v Aggio [2009] 1 A.C. 29.

6. On 12 January 2015 the landlord served 59 counter-notices admitting the new lease claims. All the counter-notices were in the same form save for the flat number, the premium proposed in the claim notice and the premium proposed by the landlord. The counter-notices simply record that the draft lease submitted by the tenant is not accepted and the landlord proposes that the new leases will be substantially on the same terms as the 1934 lease with such modifications as are required by section 57 of the Act.

7. On 4 February 2015 the tenant transferred its leasehold interest in the individual flats to 29 separate companies so that 28 of the companies each held a leasehold interest in two of the flats whilst the 29th company held a leasehold interest in one flat. The 29 12 page transfers are in common form save for the flat description and the premium.

8. The effect of the 29 transfers was to make each of the 29 companies a qualifying tenant within the meaning of chapter 1 of part 1 of the Act so that they were together entitled to acquire the freehold interest in Loughborough Court conferred by chapter 1 of the Act.

9. Three weeks after the completion of the 29 transfers the 29 companies as qualifying and participating tenants gave notice to the landlord claiming the right to acquire the freehold interest in Loughborough Court under section 13 of the Act. The claim notice proposed a total premium of £4,695,251. The claim notice identified the tenant as the nominee purchaser for the purpose of section 15 of the Act.

10. On 30 April 2015 the landlord served a counter-notice on the tenant admitting the claim. The counter-notice proposed a premium of £5,375,950. The counter-notice set out a small number of rights and restrictive covenants to be included in the transfer of the freehold reversion.

11. Following a lengthy period of negotiation the transfer of the freehold interest to the tenant was completed on 1 February 2016. The transfer records a premium of £5,375,850 and runs to 7 pages excluding the transfer plans.

12. By way of completeness it should be said that Mr Soreta accepted that the new lease claims given on 11 November 2014 were precautionary in the event of a point being taken relating to the control of the companies under what has become know as the Dolphin Square case. That is, the new lease claims were not directly relevant to or an essential element of the collective enfranchisement claim but could be pursued if the enfranchisement claim failed.

The landlord's costs

13. The landlord's valuers are Lambeth Smith Hampton. Mr Gordon told us that both his firm (TLT LLP) and Lambeth Smith Hampton had secured contracts to undertake the landlord's legal and valuation work following open competitions in which, he suggested, price had been a determining factor. The contracts had not been disclosed by the landlord although there was included in the hearing bundle a short extract from the agreement with Lambeth Smith Hampton, to which we shall shortly refer.

14. The legal costs were calculated by the application of hourly rates to the time spent: that is they had not been calculated on the basis of a fixed fee for each claim. The relevant hourly rates were £200 per hour for partners, £135 per hour for legal assistants and £75 per hour for trainees, exclusive of VAT. The usual computer generated time sheets had not been disclosed and were not included in the hearing bundle.

15. The landlord's claimed legal costs of £29,443 are explained by the following table:

	Hourly rate	Time	Cost	
New lease claims				
Partner	200	23 hours	4,600	
Legal assistant	135	93.87 hours	12,673	
Trainee	75	3 hours	225	
Sub-total			£17,498	**£17,498**
Enfranchisement				
Partner	200	28 hours	5,600	
Legal assistant	135	47 hours	6,345	
Sub-total			£11,945	**£11,945**
Total legal costs				**£29,443**

16. Turning to the valuation costs the extract from the landlord's agreement with Lambeth Smith Hampton provided for the following fees for work completed under the Act:

    a. For new lease claims a fixed fee *"per report"* of £240 plus 0.6% of the consideration if a resultant sale.

    b. For enfranchisement claims a fixed fee *"per report"* of £360 plus 0.6% of the consideration if a resultant sale.

17. The landlord's valuer accepted however that it would be inappropriate to apply these fees to this particular case in particular because the new leases were not completed and much of the enfranchisement valuation work duplicated valuation work already completed on the new lease claims.

18. Consequently the landlord negotiated the following reduced fees with its valuers:-

    a. On the new lease claims a fixed fee of £240 per flat. There being 59 flats the total cost claimed were therefore £14,160 plus VAT.

    b. On the enfranchisement claim a valuation fee of £18,125.10 plus VAT.

19. Mr Gordon explained that the total enfranchisement valuation fees, under the agreement referred to above would have been £32,585.10 exclusive of VAT: that figure being a fixed fee £360 plus 0.6% of the sale price. Lambeth Smith Hampton however agreed to deduct from that fee the amount claimed in respect of the new leases. There is, of course, another way of looking at this. Lambeth Smith Hampton simply charged their agreed fee for the enfranchisement claim and made no charge for the individual new lease valuations.

20. In addition Lambeth Smith Hampton claimed a further £2,750 for obtaining specialist valuation advice from Andrew Priddel Associates Ltd. That company's account addressed to Lambeth Smith Hampton was included in the

hearing bundle. It records that the costs were incurred for *"inspecting property, preparing valuation, liaising with the nominee purchaser valuers and settling price at £5,375,850"*.

21. In summary therefore the total costs claimed are represented in the following table:

Description		
Total Legal costs		£29,443.00
New lease valuation costs		£14,160.00
Enfranchisement valuation costs:		
Of Lambert Smith Hampton	18,125.10	
Of Andrew Pridell Associates Ltd	2,750.00	
Sub-total	£20,875.10	£20,875.10
Total		**£64,478.10**

The tenant's proposed costs

22. Mr Soreta did not take issue with the hourly rates charged by the landlord's solicitors and accepted in answer to our questions that his own hourly rate was now *"well in excess of £450"*. Mr Serota however considered that the time spent in undertaking the legal work was grossly excessive. In his view the legal work on the new lease claims should have taken no more than 5 hours of a partner's time and 15 hours of a legal assistant's time. Applying the agreed hourly rates this results in total costs of £3,025 as opposed to the £17,498 claimed by the landlord.

23. Turning to the legal fees for the enfranchisement claim Mr Soreta suggested that it would have taken no more than 10 hours to complete the claim related work and further two hours in completing the transfer after the terms of acquisition had been agreed. He did not say how the time should be charged but if all the work was undertaken by a partner it would result in costs of £2,400 rather than the £11,945 claimed by the landlord.

24. Turning to the valuation costs Mr Soreta considered the fixed fee of £240 for each new lease valuation excessive. He said that the work should have taken no more than 3 days in total, one day for an inspection of Loughborough Court and the flats, one day to complete the first valuation and the final day to complete the other valuations that would simply be variations of the first valuation. Standing back he suggested a valuation fee of £150 per flat that he considered to be generous. That would result in a total valuation cost for the new lease claims of £8,850 in contrast to the claimed costs of £14,160.

25. Turning to the enfranchisement valuation costs Mr Soreta discounted Andrew Priddel's fees on the grounds that they were instructed after the service of the counter-notice. He said that valuations having been prepared for the 59 new lease claims no more than 2 hours of work would have been required to

prepare a valuation for the enfranchisement claim and he suggested a valuation fee of £1,000 plus VAT.

26. In summary Mr Soreta proposed the following fees:

Description	
New lease legal costs	3,025
Enfranchisement legal costs	2,400
New lease valuation costs	8,850
Enfranchisement valuation costs:	1,000
Total	**£15,275**

Statutory framework

27. The tenant's liability for payment of the landlord's costs is governed by sections 33 (enfranchisement) and 60 (new leases) of the Act. The relevant provisions are as follows:

33. – Cost of enfranchisement

(1) where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely-

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

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 purpose of subsection (1) any costs incurred by the reversioner or any other relevant landlord 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.

60. – 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 Bone 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.

Reasons for our decision

28. In this case the hourly rates were agreed or conceded if only by implication. In assessing a reasonable time to undertake the tasks identified in sections 33(1) and 60(1) we have regard to our considerable experience both as specialist practitioners and more recently as members of this expert tribunal: we can do no other.

Legal costs

29. Mr Gordon made two generalised points and we deal with those first. Firstly he said that we should make allowance for the fact that the hourly rates had been competitively tendered. Secondly he said that we should take into account the fact that the new lease claims did not proceed.

30. We reject both arguments for each of the following reasons. The hourly rates had been agreed with the landlord and to use the language of sections 33(2) and 60(2) they were the rates that the landlord was "*personally liable*" to pay. The rates may be substantially lower than the going rate for private client work in Lambeth but they are about twice the rates paid by the Legal Aid Agency and doubtless reflect the volume of work that would be generated by the contract.

31. As to the new lease claims there is nothing in the statutory provisions that permits the landlord to recover enhanced costs solely because a claim does not proceed. In any event the tenant cannot be criticised for exercising a statutory right and it was the landlord's decision to admit the enfranchisement claim, no doubt for sound commercial reasons, thus rendering the new lease claims redundant.

32. The hourly charging rates are effectively agreed and the only issue is the time spent by the relevant fee earners. The difference between the time spent by the relevant fee earners and that proposed by Mr Serota is stark.

33. Mr Serota is an acknowledged specialist in this field and appears frequently before this tribunal. His expertise and reputation no doubt justifies his hourly charging rate that is considerably higher than that of most practitioners who undertake enfranchisement work. It may well be that Mr Serota could have undertaken the tasks identified in sections 33(1) and 60(1) within the time that he proposes. However in assessing the reasonableness of the time claimed we have regard not to Mr Serota but to a reasonably competent practitioner who undertakes enfranchisement work on a regular basis. That standard is reflected in the claimed hourly charging rates, to which no objection is taken.

34. The claims were unusual and not without legal uncertainty, as Mr Serota impliedly acknowledged when he accepted that the new lease claims had been made as a precautionary measure. The importance of the case to the landlord was considerable. It is a local housing authority that has lost the opportunity to increase its housing stock by 59 units by a process that has been described as

a form of compulsory purchase. The complexity of the corporate structure created to achieve the eventual acquisition of the freehold interest is not one that most practitioners undertaking enfranchisement work would ever encounter.

35. With respect to Mr Serota we consider that he seriously underestimates the time that a reasonably competent practitioner would spend in completing the identified tasks when faced with claims of this nature. The law would have to be researched and the client advised in detail before the valuer was instructed.

36. That said we agree with Mr Serota that the time claimed for the legal work appears excessive. We also agree with his overall approach to the assessment of the statutory costs relating to the new lease claims. That is, it was reasonable for a partner to undertake the initial work: to advise the client, instruct the valuer and complete the first counter-notice that would be used as a template for the other 58 claims. Equally we agree with Mr Serota's concession that although no detailed amendments to the standard form of new lease were proposed in the counter-notices it would have been reasonable for the supervising partner to consider the new lease and advise the landlord of its implications even if part of that work was been completed after the counter-notices were given.

37. Thereafter we agree with Mr Serota that it would be reasonable for the other 58 claim forms to be considered by a legal assistant who would also prepare the other 58 counter-notices, having regard to the valuations received from the landlord's valuer. Although largely an administrative task it would be more time consuming than Mr Serota allows. Each claim notice proposed a premium in the region of £70,000. A legal assistant would have to check the claim forms and draft lease to ensure that they were all consistent and take particular care in ensuring that the correct details including the proposed premiums were included in the counter-notices. We do not however agree with Mr Gordon's suggestion that the claim forms and the appended draft leases would have to be checked on a line by line basis.

38. As far as the new lease claims are concerned we accept that the 24 hours spent by Mr Gordon was reasonable and we allow that element in full. The time spent by the legal assistant and trainee is however excessive. A competent legal assistant should have been able to check each of the other 58 claim forms with the attached draft leases and complete the standard form counter-notice in 30 minutes. Thus we allow 29 hours of a legal assistant's time.

39. Turning to the enfranchisement costs and having regard in particular to the unusual nature of the claim and the large premium it was reasonable for a partner to undertake all the work. We accept the 28 hours claimed by Mr Gordon in particular having regard to the complex corporate structure that was created to facilitate the claim. However we disallow the time claimed for a legal assistant. It would have been reasonable to delegate a detailed investigation of the corporate structure including the commission of 29 company searches to a legal assistant but on the basis of the evidence before us that work was not

undertaken. No satisfactory explanation for the 47 hours claimed for a legal assistant was offered.

40. There was an incidental issue between the parties. Mr Serota said that the landlord could not recover the cost of negotiating the transfer and proposed only two hours for *"completing the transfer"*. Mr Gordon disagreed and claimed the cost of negotiating the transfer. Included in the hearing bundle was a copy of the Upper Tribunal decision in Sinclair Gardens Investments (Kensington) Limited v Paul Kenneth Charles Wisbey and others [2016] UKUT 203 (LC). In that new lease claim the Upper Tribunal allowed the cost of negotiating the new-lease. We see no reason why that principle should not be applied to an enfranchisement claim and we allow the cost of negotiating the transfer that is included in our assessment of 28 hours.

41. Taking each of these factors into account and having regard to the statutory provisions referred to above and in particular the requirement that the landlord may only recover costs that it would be prepared to pay if it were using its own money we allow legal costs of £14,115 in the accordance with the following table:

	Hourly rate	**Time**	**Cost**	
New lease claims				
Partner	200	23 hours	4,600	
Legal assistant	135	29 hours	3,915	
Sub-total			£8,515	**£8,515**
Enfranchisement				
Partner	200	28 hours	£5,600	**£5,600**
Total legal costs				**£14,115**

Valuation costs

42. Mr Gordon largely relied on the fee structure agreed with the landlord and referred to above. During the hearing these agreed fees were referred to as *"fixed fees"*. That is a misnomer because the agreed fee structure comprises two elements: a fixed fee of either £240 or £360 together with a value element calculated by reference to the final agreed premium. There is also the additional difficulty that the agreed fee structure clearly includes the negotiations of the premium that cannot be recovered under either section 33 or section 60.

43. Furthermore the landlord's application of the agreed fees structure to the new lease and enfranchisement claims were inconsistent. It adopted the fixed fee "per report" for the new lease claims but included part of the value element for the enfranchisement claim. If any part of the value element was intended to be referable to the initial valuation then logically a value element should also have been included in the costs claimed for the new lease claims.

44. The agreed fee structure for new lease claims was clearly intended to cover the usual one-off new lease claims that are no doubt made on a fairly regular basis.

It cannot have been intended to cover a situation such as this where one tenant at the same time makes 59 almost identical claims in respect of all the flats in one block.

45. In assessing the reasonableness of the valuation costs we must also have regard to the guidance contained in the Upper Tribunal decision in an appeal by Michael Frederick Clive Fitzgerald [2010] UKUT 37 (LC). The member's decision in that case relies heavily on the previous Upper Tribunal decision of Blendcrown Ltd v The Church Commissioners for England [2004] 1 EGLR 143. In Blendcrown P H Clarke FRICS specifically disapproved of valuation costs that are assessed by reference to *"the size of the valuation"*. That approach was endorsed by N J Rose FRICS in Fitzgerald.

46. It is however clear from both cases that a genuine fixed fee is permissible, indeed desirable, provided that it is based *"on a reasonable amount of valuation work costed at reasonably hourly rate"*.

47. Turning to the new lease claims both Mr Gordon and Mr Serota proposed a fixed fee. The landlord claimed fixed fee £240 per flat and the tenant proposed a fixed of £150 per flat. Unfortunately there was little evidence before us to support either of these fixed fees save for the agreed fee structure that, for the reasons set out above, we discount.

48. Neither Mr Gordon nor Mr Soreta suggested a reasonably hourly rate. Mr Gordon offered no evidence of the time taken to complete the new lease valuations. Mr Soreta suggested that it would have taken 3 days: one day for the inspections, a second to complete the valuation of one flat and a third day to complete the valuations of the other flats, which should be routine. From this he conceded a fixed fee of £150 per flat that, on the basis of a seven hour day, implies an hourly rate of £421.

49. Taken in the round we prefer the evidence of Mr Soreta because he did at least offer an assessment of one of the two components to be used in the calculation of a fixed fee. Furthermore we agree that both his time assessment and implied hourly rate are reasonable and we adopt them. Accordingly as far as the new lease claims are concerned we agree with his valuation costs of £150 per flat and we allow a total valuation fee of £8,850 plus VAT.

50. An assessment of the enfranchisement valuation cost is equally problematical. Although Lambeth Smith Hampton offered a discount to the agreed fee structure the resultant fee is based almost entirely on the size of the valuation, an approach that was specifically rejected in the two Upper Tribunal cases to which we have referred. Mr Soreta was a little closer to the mark when he said: *"having already provided valuations in respect of 59 lease claims it is difficult to see how more than two hours work could have been required to prepare a valuation for the collective enfranchisement claim and the Respondent submits that the valuation fees for the collective enfranchisement claim should be limited to £1,000 plus VAT"*.

51. It is self evident from Mr Soreta's observation that he accepts that an hourly rate of £500 plus VAT is reasonable for valuation work of this type. We agree with that assessment. The increase from the implied hourly rate for the new lease claims is justified by the premium and the consequent cost of professional indemnity insurance.

52. Although Mr Soreta is a highly experienced enfranchisement solicitor he is not a valuer and we do not accept his estimate of two hours to complete the enfranchisement valuation. It is not simply a case of updating the new lease valuations. There is more work than Mr Soreta suggests. The two valuation dates were some three and a half months apart and that would require considerable extra work, almost new work, investigating the later valuation date. The market would have to be researched and the enfranchisement valuation completed. The ultimate valuation of more than £5,000,000 is such that it is reasonable to expect a competent valuer to double check his earlier figures after the enfranchisement claim was made. We allow half a day for researching the market and a further half day for completing the valuation. We therefore allow 7 hours at £500 per hour. Consequently we allow a fee of £3,500 plus VAT for the enfranchisement valuation.

53. Finally we deal briefly with the landlord's claim for Andrew Priddle's costs of £2,750 plus VAT. During the hearing we understood Mr Gordon to concede that these fees could not be recovered from the tenant. The work appears to relate entirely to the negotiation of the premium following the service of the counter-notice and that cost cannot be recovered from the tenant. To the extent that the account does include any work relating to the initial valuation of the enfranchisement price the landlord cannot claim a second fee having already paid its usual valuer for that work.

Total costs

54. On the basis of the above we allow the following statutory costs of £26,465 plus VAT that are payable by the tenant to the landlord:

Description	Cost
New lease claims	
Legal costs	**£8,515**
Valuation costs	**£8,850**
Enfranchisement	
Legal costs	**£5,600**
Valuation costs	**£3,500**
Total statutory costs	**£26,465**

Name: Angus Andrew **Date: 14 February 2017**

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).