

4287

PROPERTY CHAMBER

LONDON RESIDENTIAL PROPERTY

FIRST-TIER TRIBUNAL

APPEAL BY THE APPLICANT – Nigel Spencer Sloam & James Patrick Tye as Trustees of the JPT Pension Scheme

Decision to be appealed: 23 August 2016

IN THE MATTER of the property known as 395a & 397a High Road, Leyton, London, E10 5NA (Flat)

BETWEEN:

Nigel Spencer Sloam & James Patrick Tye as Trustees of the JPT Pension Scheme

-and-

Mazhar Hussain

Nasreen Hussain

Applicant

LONDON RENT

20 SEP 2016

ASSESSMENT PANEL

Respondents

Applicant's Grounds for Appeal

1. I, Mark Armstrong am a Costs Lawyer of the firm Winckworth Sherwood LLP, the Solicitors for the Applicant and have responsibility for this case.
2. I now refer you to exhibit "MA1" and numbers in "[Exhibit 1-8]" refer to page numbers in that exhibit. The Tribunal will also be required to refer to the documentation already provided during the original costs determination to include the hearing bundles.
3. To assist the Tribunal the Applicant has provided this Statement of Case in support of the application for permission to appeal the decision dated 23 August 2016.

Background

4. This matter relates to a Statutory Lease Extension claims made by the Respondents pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in relation to 395a & 397a High Road, Leyton, London, E10 5NA which without Landlord's consent have been sub-divided to create 8 flats out of the original two ("the Properties").
5. The two Statutory Lease Extension Claim Notices were served on the Applicant by the Respondents on 17 June 2015 on behalf of the tenants in respect of each property. One Section 42 Notice was served on the Applicant in respect of 395a and another in respect of 397a..
6. The Lease Extension Claims were not straight forward and required consideration as to the extent of the demise and whether separate claims were required in respect of each of the 4 flats comprised in each of the two properties, the potential effect on valuation and related issues such as the lack of Landlord's licence and the assignment of the benefit of the two claims. As a result further investigations had to be carried out to determine the validity of the tenant's notices and Counsel's advice had to be obtained in respect of the same in order to adequately protect the interests of the Applicant. Investigations were also required to determine title.
7. Counsel's advice also had to be obtained in relation to the possible and likely outcomes of a Court application by the tenants to amend their claim notices and further work had to be done in respect of the outstanding issues associated with determining the extent of the demise due to the creation of 4 flats per property. All these issues were relevant to the validity of the Section 42 Notice served. Further work was also required in respect of planning consents and unauthorised alterations. With assistance from Counsel the Section 42 Notice was deemed invalid.
8. Work was required to obtain the valuation to be inserted into the Counter Notice and this was complex due to the validity issues of the Section 42 Notice and determination of the extent of the demise and creation of 4 flats per property.
9. A Counter Notice was served on 12 August 2015 by the Applicant to protect the Applicant's position and without prejudice to the defective Section 42 Notices in respect of each separate property. On 22 March 2016, the Applicant wrote to the Respondent, to inform them that due to the lack of response to the Counter Notices, the claim is deemed withdrawn in respect of both properties. The Applicant then provided a schedule of costs for the work undertaken in respect of each Section 42 Notice.

10. On 22 June 2016 the Applicant submitted an application for the determination of costs to the Tribunal in respect of each property. Two separate applications for a costs determination were submitted. The Applicant's Section 60 Schedule of Costs totalled £5,715.82 inclusive of VAT for each property. The total claim for costs in respect of both properties was £11,431.64. No response was submitted by the Respondents to the Schedule of Costs and therefore the Tribunal were required to provide a decision on paper. The Tribunal provided its decision on the costs determination on 23 August 2016. This application for permission to appeal is in respect of this decision.

Original Costs Claim

11. Two schedules of costs were submitted one in respect of each of 395a & 397a. Each schedule of costs totalled £5,715.82 inclusive of VAT. The total costs claimed in dealing with both Section 42 Notices was £11,431.64 inclusive of VAT. The total costs claimed included two surveyor's fees at £750.00 plus VAT in respect of each Section 42 Notice. The claim also included Counsel's fees which were also incurred in respect of both properties. Counsel's fees totalled £747.50 plus VAT for each property which provided an overall total of £1,495.00 plus VAT. All work undertaken by the Applicants' solicitors was divided equally between the two schedules of costs to claim for costs incurred resulting from the two separate Section 42 Notices. Such costs claimed are as below:

Property 395a High Road, Leyton, London, E10 5NA – Section 42 Notice

Section 60(1)(a)

Winckworth Sherwood LLP - £2,047.50 plus VAT

Counsel's fees: £747.50 plus VAT

Disbursements - £53.35 plus VAT

Section 60(1)(b)

Winckworth Sherwood LLP - £845.00 plus VAT

Surveyor's fees: £750.00 plus VAT

Section 60(1)(c)

Winckworth Sherwood LLP - £325.00 plus VAT

Grand Total - £5,715.82

Property 397a High Road, Leyton, London, E10 5NA – Section 42 Notice

Section 60(1)(a)

Winckworth Sherwood LLP - £2,047.50 plus VAT

Counsel's fees: £747.50 plus VAT

Disbursements - £53.35 plus VAT

Section 60(1)(b)

Winckworth Sherwood LLP - £845.00 plus VAT

Surveyor's fees: £750.00 plus VAT

Section 60(1)(c)

Winckworth Sherwood LLP - £325.00 plus VAT

Grand Total - £5,715.82

Costs Awarded by way of Determination on 23 August 2016

12. The costs awarded by the Tribunal on 23 August 2016 are as follows:

Property 395a & 397a High Road, Leyton, London, E10 5NA – Section 42 Notices

Section 60(1)(a)

Winckworth Sherwood LLP - £877.50 (no VAT awarded on solicitors costs)

Counsel's fees: £747.50 plus VAT

Disbursements - £31.00

Total - £1,805.55 inclusive of VAT on Counsel's fees

Section 60(1)(b)

Winckworth Sherwood LLP - £357.50 (no VAT awarded on solicitors costs)

Surveyor's fees: £750.00 plus VAT

Total - £1,257.50 inclusive of VAT on surveyor's fees

Section 60(1)(c)

Winckworth Sherwood LLP - £325.00 (no VAT awarded on solicitors costs)

Total - £325.00

Grand Total - £3,388.05

It should be noted that despite the above breakdown awarded within the decision for the costs allowed by the Tribunal the following incorrect values were provided at the end of the determination:

Section 60(1)(a) - £1,678.25
Section 60(1)(b) - £357.50
Section 60(1)(c) - £325.00
Grand Total - £2,360.75

Grounds for Appeal

13. The Applicant relies on Part 6 of The Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 in order to apply for permission to appeal the costs determination decision by the Tribunal dated 23 August 2016.

14. This statement of case is to be accepted as the Applicant's written application to the Tribunal for permission to appeal pursuant to Section 52(1). The Applicant requests the Tribunal to review the decision dated 23 August 2016 pursuant to Section 53(1), Section 55 and overriding objective in rule 3.

15. The Applicant relies on the following grounds of appeal in respect of the Tribunal's decision on 23 August 2016:
 - (a) The decision shows that the First-tier Tribunal wrongly interpreted or wrongly applied the relevant law;
 - (c) The First-tier Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect.

Incorrect Calculations

16. The Tribunal's decision on 23 August 2016 confirmed the costs which were to be accepted but the totals awarded at the end of the decision are not in accordance with the same. The decision provides an incorrect breakdown for what is to be finally awarded in respect of the costs claimed within sections (a), (b) and (c). Although the Applicant believes it has grounds to challenge the costs to be awarded in respect to all three sections it should be noted that the decision based on the costs accepted should provide the following totals:

Section 60(1)(a) - £1,805.55
Section 60(1)(b) - £1,257.50
Section 60(1)(c) - £325.00
Grand Total - £3,388.05

As a result, the Tribunal have incorrect calculations in respect of Section (a) and (c).

Two Separate Section 42 Claims in respect of 395a & 397a High Road, Leyton

17. It is the Applicant's case that the Tribunal in determining its decision dated 23 August 2016 did not give adequate consideration to the total costs claimed in respect of both properties by way of separate Section 42 claims having been made in respect of property 395a & 397a High Road, Leyton. This includes how the Tribunal dealt with the total claim in respect of the surveyor's fees and Counsel's fees. The Tribunal refers to the total claim for costs at £11,431.64 but then accepts only one of the costs schedules for consideration when determining the total costs to be awarded on the basis that the second schedule of costs was duplication. The Applicant considers this view on duplicated costs to be incorrect and unreasonable. As a result significant costs have not been considered or awarded.
18. This costs claim was the result of two Section 42 Claims which were commenced with two separate Section 42 Notices served by the Respondents in respect of each property. Two separate applications were also submitted to the Tribunal as a result of the two Section 42 claims for Lease extensions. It was entirely reasonable for the Applicant to prepare one schedule for each separate Section 42 Notice, especially when there had been Counsel's advice and separate valuations of each property. The alternative would have been to prepare one schedule of costs which totalled £11,431.64 in claim of all costs. The Landlord should not be penalised on the basis of having two schedules. The costs of acting solicitors for the Applicant were split evenly between the two properties in the two costs schedules. As the Tribunal rejected one of the costs schedules as duplication, 50% of the costs were rejected at this point which the Applicant deems to be unreasonable and incorrect.
19. The Applicant refers to the statutory provisions being Section 60 of the Leasehold, Reform and Urban Development Act 1993. This act refers to costs which are incurred in connection with a new lease to be paid by the tenant. Section 60 provides for the following:
- (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;

20. The Act refers to costs being recoverable where a Notice is given under Section 42. As a result, costs will be recoverable in respect of each separate Notice served by the tenants. It is reasonable that costs will be incurred in respect of each separate Section 42 Notice and that two valuations by a surveyor would be required. The Landlord would need to investigate and determine the right to a new lease by the tenant in respect to both properties. The tenants without consent created 4 flats within each property. Such issues had to be determined in order to conclude the defective status of the Section 42 claims. As a result the costs claimed on work on documents within Section 60(a) would have justifiably been higher than usual. In respect of Section B two separate valuations were required. Further, if the claims for a lease extension had not become abortive and withdrawn then two leases would have been granted in respect of each property. It is therefore reasonable for the Applicant to have prepared two schedules of costs which divided the total costs incurred in respect of Section A, B and C between the two properties. As a result, it is submitted that Section A, B and C costs were not duplicated across the two schedules as determined by the Tribunal.

21. The basis for assessment of the costs by the Tribunal was with reference to the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd [2010] UKUT 81 (LC), LRA/58/2009*. This case established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections 60(1)(a), (b) and (c). All total costs claimed within the two schedules represented the reasonable costs pursuant to the two notices. Each property had a separate Lease which required consideration. As a result the costs claimed are in accordance with the guidance in the case law referred to by the Tribunal in making its decision once it accepts that one of the schedules does not represent duplicated costs. The costs claimed in total are within the protection afforded to the tenants by way of Section 60(2) which limits recoverable costs to those that the Respondent Landlord would be prepared to pay if it was using its own money rather than being paid by the Tenants. The Landlord would be prepared to pay for two separate valuations of the two properties and also work undertaken by Counsel and acting solicitors to protect the interests in respect of the two Section 42 Notices. The costs claimed therefore are in accordance to both statutory provisions and case law principles in respect to the reasonable costs to be deemed recoverable.

22. With further reference to the decision in the case of *Drax* it is confirmed that the Applicant did make submissions to explain the fact that the two schedules did not include duplication and the total costs claimed represented all the work undertaken in respect of both properties. Therefore, in accordance with this case the Applicant should receive its costs as such costs were substantiated. The invoices issued by acting solicitors to the Applicant Landlord included costs incurred in respect of both properties and therefore included all Counsel and

Surveyor's fees. It is not accepted that the same invoices are evidence of duplication when such duplication did not occur. Duplication would only occur if Counsel issued one invoice for £747.50 plus VAT and the claim was for £1,495.00 plus VAT but this was not the case as Counsel's fees were in fact £1,495.00 plus VAT and evidence by the invoice. The surveyor's fees are also evidence that the invoices issued by acting solicitors were not duplicated costs. Such invoices simply support the total claim for costs in respect of both schedules of costs.

23. The Tribunal when assessing the Section 60(b) costs claimed in only one of the costs schedules did not allow any costs for work on documents. The Applicant considers it has sufficient grounds for appeal of this aspect of the decision as it is necessary and reasonable for the Applicant to consider the surveyor's valuation and agree the valuation to be submitted within the Counter Notice. It was also apparent that the Tenants had undertaken some unauthorised alterations to the demise to create 4 flats within each property. This needed to be considered by acting solicitors and the surveyor. It would not provide adequate protection to the Landlord if the acting solicitors were not permitted to consider the valuation and basis for the same. The costs claimed or at least a proportion of the costs claimed in work on documents should have been awarded by the Tribunal. Such costs claimed are within the statutory provisions and case law guidance referred to in the decision by the Tribunal.

Surveyor's fees

24. Both properties required a separate valuation. It was reasonable for the Applicant to require two separate valuations as it would have not been known to the Applicant Landlord the configuration of the two properties which could have differed significantly in layout and condition resulting in two different valuations. Further issues included the creation by the tenants of 4 flats within each property. Such alterations would have an impact on valuation and added further justification for two separate valuations. Instructing the Surveyor to value both 395a & 397a separately was reasonable given the circumstances of the case and should not be viewed as duplication. It is the Applicants' position that the Tribunal was incorrect in only awarding costs in respect of one of the surveyor's valuations when both were required. The Tribunal accepted that the Surveyor's fees should be recoverable in full when considering one of the schedule of costs. As a result, both surveyor's fees were reasonable and recoverable. The Tribunal should have awarded £1,500.00 plus VAT and not only £750.00 plus VAT as outlined in the decision. It should also be noted that two separate invoices were submitted by the surveyor in respect of the two properties.

Counsel's fees

25. Counsel was instructed to provide advice in respect of both properties given the complexities of the two Section 42 Notices and to determine the validity of the same in light of the

unauthorised works to include the creation of 4 flats within each property. This naturally added complexities to the determination of whether the Section 42 claims were to be treated as being defective and protect the interests of the Applicant Landlord. These costs were a necessity. Such instruction of Counsel was required and justified as the Section 42 Notices were later withdrawn by the Tenants as defective. Counsel also had to consider issues in relation to unauthorised alterations by the Tenants and implications of the same on the claim for a Lease extension. The instruction of Counsel was justified in order to provide adequate protection for the Applicant Landlord. The fees charged by Counsel for the advice in respect of both properties were £1,495.00 plus VAT. These Counsel fees were split evenly between the two schedules of costs as the advice was relevant to both Section 42 Notices. It is therefore not correct for the Tribunal to determine that the Counsel's fees on one of the schedule of costs amounted to duplication. There was no duplication of Counsel's fees and as a result of the approach adopted by the Tribunal only 50% of Counsel's were awarded. The Tribunal did accept Counsel's fees to be recoverable in full when considering only one of the schedules of costs and therefore the Counsel's fees should be deemed reasonable in total and awarded in full.

Results to be achieved

26. The Applicant submits the following results are required in light of the permission of appeal to the decision dated 23 August 2016: (A review of the Tribunal's Decision is required)
- i) The second schedule of costs is not to be determined as duplicated costs and considered in full when assessing the costs overall. Both properties were subject to separate Section 42 Notices and the costs assessment should be conducted in accordance with the same notices. Section 60(a), (b) and (c) costs to be reassessed without the duplication restriction.
 - ii) Surveyor's fees on both schedules to be allowed in full.
 - iii) Counsel's fees on both schedules to be allowed in full.
 - iv) Costs claimed on work on documents in respect of Section 60(a) to be reconsidered.
 - v) Work on documents in respect of Section 60(b) to be considered with reasonable costs being awarded in respect of the same.

Statement of Truth

27. The Applicant believes the facts contained in my statement are true.

Dated this 20th day of September 2016

Signed M. D. Amstrong
Applicant's Costs Lawyer



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00BH/OC9/2016/0265

Property : 395a & 397a High Road, London
E10 5NA

Applicants : N. Sloam & J. Tye
Trustees of JPT Pension Scheme

Representative : Winckworth Sherwood

Respondent : M. Hussain & N. Hussain

Representative : Howard Kennedy

Type of application : Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal members : N. Martindale

Date of determination
and venue : 23 August 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 23 August 2016

DECISION

Summary of the Tribunal's decisions

1. The Tribunal determines that the Section 60 statutory costs payable by the leaseholder applicants of flats 395a and of 397a are £2360.75, in total, allocated as £1180.38 to each.

Background

2. This is one application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of flats 395a and 397a High Road London E10 5NA.
3. The application is made by the trustees for the landlords, "the Applicants", for the determination of the reasonable costs payable to them under section 60(1) of the Act. It follows service of Notices of Claim to acquire a new lease for each of these two flats. The freehold title of each property is subject to a number of occupational long leases. There is apparently no overriding headlease.
4. In or around July 2015 the Respondents, made claims to acquire a new lease of each of these two flats by way of separate notices of claim. On or around 12 August 2015, the recipient of the notices, through their representative solicitors Winckworth Sherwood LLP, notified the leaseholder's solicitors that it considered both notices were defective and invalid. They argued that the applicant in each case had failed to correctly identify the property which was the subject of the claim as it was alleged that each flat had at some previous date been subdivided without permission of the landlord, so as to form four flats in all.
5. On 23 August 2015, Winckworth Sherwood LLP served counter-notices in respect of both flats on the Respondents' solicitors at that time, Quality Solicitors Harris Waters. These were served without prejudice to the contention that both notices of claim were invalid and of no effect. Winckworth Sherwood LLP stated that no further response was received from the Respondents' representatives and that no application to determine the terms of acquisition of a new lease was made to the Property Chamber. As such, the notices of claimed were deemed withdrawn on 22 March 2016.
6. On 24 June 2016 Winckworth Sherwood made an application to the First tier Tribunal Property Chamber, seeking a determination of the costs payable by the Respondents under s.60 of the Act in respect of flat 397a High St. in the total sum of £5,715.82. 'as set out in the attached schedules of costs'.
7. At or about the same date, but undated and unsigned, Winckworth Sherwood made an application to the First tier Tribunal Property Chamber, seeking a determination of the costs payable by the Respondents under s.60 of the Act in respect of flat 395a High St. in the total sum of £5,715.82 'as set out in the attached schedules of costs'.
8. The Tribunal has considered these two separate applications and has treated them as one, with a grand total claim for costs £11,431.64. It confirmed this back to the parties on 29 June 2016, attaching standard directions. These stipulated that **one** bundle be prepared by the Applicant and sent to the Tribunal by 10 August 2016.

9. Despite this the Applicant prepared two sets of all but identical bundles, one in respect of 395a and the other for 397a. Both bundles contained separately prepared and signed off 'Applicant's Statements of Case' one clearly in respect of 395a and the clearly stated for 397a. Each referred to the same items, dates, costs and disbursements and grand total of claim. In effect each statement asserted that the flats had been treated completely separately; when for example the notice had been received and considered; when the issue of unauthorised alterations had been considered; or even when Counsel's advice had been obtained.
10. No representations in response to the directions sent them in June 2016 by the Tribunal, were received from the Respondents named in this application to either bundle.
11. The bundle submitted for 397a High Road, contained at p. 65, the 'Applicant's Statement of Case' in respect of 'the property known as 397a High Road'. At page 57 it included a copy letter dated 3 June 2016, from Winckworth Sherwood to Howard Kennedy. That letter was headed 'Statutory Lease Extension of 395a and 397a High Road Leyton..'. Enclosed with it was 'the statement of costs referred to' in their earlier letter to the same representative dated 27 April 2016. The 'Breakdown of Landlord's Costs' then refers solely to '**397a High Road Leyton...**' being the work done from 3 July 2016, as follows:

12. **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 (see schedule A)	
Investigating the tenant's right to a new lease	
4 hours 36 minutes at £325 per hour	£1495.00
Disbursements	
Counsels fees: plus VAT	£747.50
Photocopying charges plus VAT	£22.35
Land Registry charges no VAT	£31.00
Sub Total	£2848.35

13. **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 (see Schedule B)	
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	£1595.00

14. **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	
Grant of a new lease.	
42 mins at £325/hour	£227.50
Sub Total	£325.00

Total Costs	£4768.35
VAT @20% where applicable	£947.47

GRAND TOTAL **£5,715.82**

15. Schedule A, B and C then set out work undertaken solely to 397a High Road on several dates in July August and September 2015.
16. **The bundle submitted for 395a High Road**, contained at page 61, the 'Applicant's Statement of Case' in respect of 'the property known as 395a High Road'. Apart from one digit when the address was referred to, they appeared to be identical, but were clearly intended, by the Applicant's representative, to be in respect of different costs and disbursements which the client had incurred.

The statutory provisions

17. Section 60 of the Act provides:

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 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.

Directions and the schedules of costs

18 The Tribunal issued its standard costs directions on 29 June 2016, providing for the landlords to send the leaseholders a detailed schedule of costs for summary assessment by 13 July 2016; for the leaseholders to provide a statement of case in relation to those costs by 27 July 2016, and for the landlords to send any statement in response by 16 February. It was the Applicants' responsibility to file hearing bundles by 3 August 2016. The Tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing, in which case the matter would be dealt with at a hearing 24 August 2015. No party requested a hearing and the application was determined on the papers in the week of 22 August 2016.

The tenants' case

19 The firm named in the application, as representing the tenants, Howard Kennedy solicitors, wrote to the Tribunal on 27 July 2016 stating that they did not represent them and directing correspondence to Quality Solicitors Harris Waters. The applicant's representatives wrote to this firm of solicitors on 1 August 2016 including a copy of the schedule of costs for both 395a and 397a High Road, formerly sent to Howard Kennedy and the Tribunal was copied in. The Tribunal received no correspondence from either Howard Kennedy or from

Harris Waters. Therefore no tenants case has been made out in respect either of 395a or 397a High Road.

The landlords' case

- 20 The landlords' solicitors made detailed submissions on costs. The initial partner's charging rate was a grade A fee earner was £325 per hour. No work was carried out by more junior staff, or if it was, it was not billed
- 21 The statement from Winckworth at p.65 in the bundle for 397a refers to exhibits MV1 amongst others. There are no exhibits with these labels in the bundle. The claim for costs, it was emphasized in the prepared statement, were in order to deal solely with the notice in respect of 397a High Road, a statement contradicted by the invoices referred to above.
- 22 Besides the usual investigation of title, it was stated that there was an issue of unauthorised alterations to the demise; the true number of claims; the effect on value; the validity of the notice and service of counter-notice, planning history, all had to be considered. The case was regarded as than straightforward.
- 23 The leaseholders failed to pursue their claim and the notice was deemed to have been withdrawn in 2016. A claim for landlords costs was duly prepared and sent to the leaseholders but was not settled.
- 24 The costs of £4768.35 plus VAT are stated by the landlord's representative as 'minimal, proportionate and reasonable', and that the 'acting solicitors for the Applicant have ensured that costs were kept to a minimum throughout the matter'. The schedule, it is stated only included costs recoverable under S.60.

The principles

- 25 The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

- 26 In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
- 27 It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

The Tribunal’s determination and reasons

- 28 There was no challenge from the leaseholders made in response to the directions from the Tribunal. However the Applicant has now sought a “determination of the reasonable costs.”
- 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 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 this work is of sufficient complexity and importance in work 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.

Name: Neil Martindale

Date: 23 August 2016