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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AH/OC9/2015/0458**

Property : **281, Church Road, London, SE19
2QQ**

Applicant : **Samuel James Hoban**

Representative : **Bennett Welch**

Respondents : **Charles Edward Vere Packe – First
Respondent
C.P. Property Management Limited
– Second Respondent**

Representative : **Irwin Mitchell LLP**

Type of application : **Section 33 of the Leasehold
Reform, Housing and Urban
Development Act 1993 (1993 Act)**

Tribunal member : **Mrs Helen Bowers MRICS**

**Date of determination
and venue** : **14 December 2016 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **14 December 2016**

DECISION

The Tribunal determines that the Respondents' costs under section 33 are as follows:

- **Legal Fees - £5,315.00 plus VAT**
 - **Disbursements - £2,730.00 including VAT**
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REASONS

Background

1. This matter arises from an application made by the Applicant, in the capacity of nominee purchaser in respect of 281, Church Road, London, Se19 2QQ (the subject property). The application is dated 5 November 2015.
2. The Tribunal issued Directions on 18 October 2016 in respect of the statutory costs. These Directions allocated the matter to be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties.
3. The section 33 of the costs being claimed are the legal costs of £9,232.00 plus VAT and disbursements for plan fees of £250 plus VAT, land registry fees of £30.00 and valuation fee of £2,400. Totalling £13,808.40.

The Law

4. Sections 33 and 91 are reproduced in the Appendix to this decision.

Costs Claimed

5. It is explained that the fee earners dealing with this case were a partner with a charging rate of £405 per hour, a senior associate with a charging rate of £350 per hour and two trainees, each with a charging rate of £125 per hour. The schedule of work undertaken describes the tasks undertaken from 13 May 2015 to 18 October 2016. The time claimed for this work is 24.1 hours. Additionally, a further 4.5 hours is claimed for anticipated work to complete this matter.

Matters Agreed:

6. It is stated that the following matters are agreed by the Applicant, namely the partner's charging rate of £405 per hour, the senior associate's charging rate of £350 per hour and the total disbursements of £2,730.
7. In response to the Applicant's submissions the Respondent now accepts the following items:

Items 1 and 2 – amount claimed £552.50 – agreed £350

Item 15 – amount claimed £81.00 – agreed £0.

Applicant's Case

8. It is submitted that the First Respondent had derogated from his grant by selling land that formed part of the freehold title and contained 8 parking spaces and ancillary accommodation that had been used by the leaseholders of the subject property. The First Respondent had the right to re-locate the parking spaces, but had failed to exercise that right. Consequentially the s. 13 notice was served to reflect the existing terms of the relevant leases. It was after the service of the s.13 notice that the First Respondent had exercised his right to re-allocate the parking spaces. Accordingly, additional work and therefore extra costs had been incurred. If the First Respondent had re-allocated the parking prior to May 2015 then the Initial Notice would have been served to reflect the revised rights.
9. The applicant made specific comments in respect of the schedule of work undertaken and these are noted in paragraph 13 below.
10. In summary the Applicant considers that the cost recoverable should be £5,315.00 plus VAT and including disbursements this would total £9,108.00 including VAT.

Respondents' Case

11. The Respondents explained the unusual circumstances of this case. The First Respondent sold land at the rear of subject property that was included under title number SGL615400. This land ('development strip') was combined with other land and was subsequently developed as a scheme called Woodview Mews. It is claimed that the leaseholders of the subject property were offered the land under the provisions of the Landlord and Tenant Act 1987, but the offer was not accepted by the requisite majority. In 2013 the 'development strip' was combined with other land under title number SGL736792. In May 2015 at the time the

Initial Notice was served the Woodview Mews development had been substantially completed. The occupational leases in the subject property had certain rights over the 'development strip' including 8 parking spaces. Three of the spaces were allocated to particular flats. The First Respondent had the right to provide alternative car spaces within the boundaries of the subject property. It is claimed that the spaces were little used and that hard standing in front of the subject property is used for parking. The Initial Notice sought the right to acquire the land originally under SGL615400 including the 'development strip'. The counter-notice stated that alternative parking or other rights will be granted. The right to provide alternative parking was formally exercised in a letter sent to the leaseholders on 25 June 2015. It is suggested that to reflect the terms of the counter-notice it was necessary to draft a detailed TP1 and a deed of easement with detailed plans. The deeds have been subject to some negotiation and those costs should be recoverable under the the provisions of s.33.

12. It is denied that the sale of the 'development strip' amounted to a derogation of grant as the leaseholders were invited to purchase the area but this offer was declined. It is acknowledged that the formal notice given to the leaseholders did post date the service of the Initial Notice. However, the leaseholders would have been aware of the situation and should not have been surprised that the landlord exercised his rights under s.1(3)(b) of the 1993 Act. As such the landlord should not be penalised for the costs arising.

Schedule of Work Undertaken:

13. Below are the specific items from the schedule with each party's comments.
 - Items 5-9 & 35. Claimed: Time 1.5 hours, Costs £187.50. The work described is the downloading, saving and printing of various documents. The Applicant states that these items are work that should be undertaken by a secretary and as such the costs should not be allowed. The Respondent states that it is not unusual for a trainee to undertake this type of work and that secretarial support is not always available. The Tribunal considers that these are secretarial tasks and that the Applicant should not bear the costs of the individual working arrangements of the Respondents' solicitors. Cost allowed £0
 - Items 11 & 12. Claimed: Time 2.5 hours, Costs £891.50. This work is described as review of 8 leases, prepare a schedule of parking and other rights, consider how rights could be replicated and the extent of the freehold to be conveyed. The Applicant states that there is a duplication in the work described under item 4 deals with the initial review of the leases. Also it is claimed that the work would have been necessary if the First Respondent had considered the re-allocation of the parking rights at an earlier stage. The Applicant considers that a sum of £350 should

be allowed for this work. The Respondent states that there is no duplication as the partner and senior associate have different roles. In the opinion of the Respondent the Applicant should have anticipated that there would need to be a replication of the parking rights. The Tribunal considers that the First Respondent has had the benefit of selling the land at the rear of the site and to facilitate that arrangement should have made appropriate arrangements to ensure proper provision of the leaseholders' rights under the terms of the leases at the time the land was sold or soon thereafter. The Tribunal accepts the Applicant's position that if the revised had arrangements had been known at the date of the Initial Notice, then the notice would have been served in a manner that reflected the revised arrangements. Therefore, this is not a cost that should be properly recoverable under s. 33 of the 1993 Act. The Tribunal adopts the Applicant's suggestion of £350 as being recoverable under this heading.

- Items 18-27. Claimed: Time 6.1 hours, Costs £2,206.50. The schedule states that this work is the first draft of the counter notice and subsequent review, seeking input in respect of the rights and other transfer terms and seeking instructions on the land to be conveyed and consideration of the valuation. The Applicant considers that 6.1 hours in the preparation and service of the counter-notice is excessive and suggests that 2 hours is appropriate with an allowable sum of £700. The Respondent states that the whole sum is recoverable. It is explained that the counter-notice was complex. Some of the time involved in the preparation of the counter-notice related to the extent of the land to be included in the transfer. As noted in the previous point, the First Respondent had had the benefit of the sale of part of the land and in the course of completing that transaction should have taken the necessary steps to secure the leaseholders' rights. As such the Tribunal consider that the sums claimed are excessive. The Tribunal accepts the Applicant's position that a sum of two hours would be appropriate for this work at an hourly rate of £350, providing a total sum of £700 for these items.
- Items 28-34. Claimed: Time 6.9 hours, Costs £2,613.00. The works is described as the draft and revision of the TP1 and the deed of easement. The Applicant claims that the maximum time for this work should be three hours and as such the costs recoverable is limited to £1,215.00. The Respondents state that as with the counter-notice this matter was complex and that the 6 hours reflects the work undertaken. As noted above the Tribunal consider that as the Respondent has had the benefit of the sale of the land, they should not recover any associated cost under that matter. Therefore, the Tribunal accepts the Applicant's submission that three hours should be recoverable and allow £1,215.00.
- Items 39 & 49. Claimed: Time 4.5 hours, Costs £810.00. These items are the anticipated costs to complete the matter including the replies to requisitions, circulating engrossments, preparing the completion

statement, completion itself and accounting for the completion monies and rent authority letters to the tenants. The Applicant suggests that as the residents' company is responsible for the insurance and maintenance of the subject property it is only the ground rent that will require any apportionment and there will be no final accounting needed in respect of service charges. As such the sum recoverable should be £810.00. The Respondents suggest that 4.5 hours is a fair pre-estimate of the time taken to complete this matter. The Tribunal note that although the Respondents claim 4.5 the actual sum claimed is £810. It is noted that completion of this matter should be straightforward given the issues listed by the Applicant. The Tribunal that 4.5 hours is excessive to complete this matter and that 2 hours is a reasonable time estimate. The Tribunal therefore confirms the sum claimed of £810.00.

14. The total amount to be deducted in accordance with the above bullet points is £3,917.00. Therefore, the Tribunal determines that the cost recoverable should be £5,315.00 plus VAT. Including VAT and disbursements this would total £9,108.00.

Name: Chairman - Helen Bowers **Date:** 14 December 2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S33.— Costs 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 purposes 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.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser'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) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

S91.— Jurisdiction of tribunals.

(1) [Any] question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal] .

(2) Those matters are—

(a) the terms of acquisition relating to—

- (i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or
- (ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

“*the nominee purchaser*” and “*the participating tenants*” have the same meaning as in Chapter I;

“*the terms of acquisition*” shall be construed in accordance with section 24(8) or section 48(7), as appropriate

(12) For the purposes of this section, “*appropriate tribunal*” means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.