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Residential  
Property  
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Ref: LON/00AW/OC9/2010/0012

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 91 of the LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993, IN RELATION TO  
COSTS UNDER SECTION 60**

**Property:** 93 SWAN COURT CHELSEA MANOR STREET  
LONDON SW3 5RY

**Applicants:** RIGHT HONOURABLE CHARLES GERALD JOHN  
EARL CADOGAN (1)  
CADOGAN HOLDINGS (2)

**Represented by:** Pemberton Greenish

**Respondent:** ZOE VARDA

**Represented by:** Summers, Solicitors

**Application date:** 11<sup>th</sup> March 2010

**Paper determination:** 5<sup>th</sup> May 2010

**Date of Tribunal's  
decision:** 5<sup>th</sup> May 2010

**Members of the Leasehold Valuation Tribunal:**

Mrs T I Rabin JP  
Mrs J Clarke JP

**93 SWAN COURT CHELSEA MANOR STREET LONDON SW3 5RY (“The Property”)**

**FACTS**

1. This is an application by the landlord for the determination of the landlord’s reasonable costs under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”).
2. The Applicants, the Right Honourable Charles Gerald John Earl Cadogan and Cadogan Holdings Limited, are the landlords of the Property and the Respondent, Ms Zoe Varda, is the tenant. The application relates to the costs incurred by the Applicants in the grant of an extended lease of the Property. The Applicants have made this application for the Tribunal to determine the reasonableness of their Section 60 costs in connection. The Tribunal dealt with the application on consideration of the documents only and without a hearing.

**SUBMISSIONS**

3. Both parties made written submissions and gave evidence to the Tribunal. The Applicants had provided a bundle of relevant documents. The Tribunal would have been assisted had the Applicants’ bundle been provided with an index. The Applicants submitted a breakdown of the solicitors’ and valuers’ costs in connection with the grant of an extended lease of the Property. The Applicants submitted that they were the freehold owners of a large and extremely valuable central London estate and they require all their leasehold enfranchisement work to be undertaken by a partner in their solicitors’ firm with full experience in this field of law. A partner whose normal charge rate was £320 per hour undertook the work in connection with the Section 42 Notice and the subsequent grant of the lease. She spent 9 hours and 30 minutes dealing with the application and the subsequent grant of the new lease. The actual costs were £3,040 including VAT and disbursements but the Applicants’ solicitors charge a reduced sum of £2,426.50.
4. The Respondent’s Section 42 Notice was invalid and this was pointed out by the Applicants’ solicitors, Messrs Pemberton Greenish, following which the

Respondent served a valid notice. The Applicants' solicitors have provided a copy of the draft new lease and it is apparent that there were substantial amendments to the draft lease and it was passed between the parties' representatives on more than one occasion.

5. The Applicants' valuers were WA Ellis and Co and a copy of the valuation was in the Applicants' bundle. There was a breakdown of the time spent the valuer which he calculated as 5.50 hours at a rate of £275 per hour. This made a total of £1,777.19 including VAT. There was a separate bill from Francis Lagan for the preparation of the lease plan at £450 plus VAT and disbursements making a total of £546.60.
6. The Respondent stated that she did not doubt that the Applicants' solicitors had spent the time claim but thought that some of the items for which a charge had been made were outside Section 60 of the Act. The Respondent did not consider that the time spent dealing with the invalid notice should be charged to her. She also claimed that the Applicants made substantial amendments to the new lease and there was no justification in including additional terms. Finally she considered that the charging rate should be £250 per hour and the amount of time limited to 4 and a half hours.
7. The Respondent considered that the valuation costs were excessive and proposed a figure of £1,250 plus VAT. The sum of £250 would be adequate for the preparation of the plan.

## **DECISION**

8. Section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993, a tenant who serves a section 42 notice becomes liable to pay the landlord's reasonable costs of and incidental to –
  - (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 the connection with the grant of a new lease.

9. By section 60(2), the costs imposed for professional services should only be regarded as reasonable –

if and to the extent 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 to pay the costs.

10. The reasonable expectation test was explained more fully by Professor Farrand in the **Chilveston** case when he stated –

... leasehold enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly it would be surprising if freeholders were expected to be further out of pocket in respect of the inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them ....

As to what is 'reasonable' in this context, it is merely provided that "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.

11. The Applicants' solicitors have acknowledged that the level of fees should be limited by making a charge of £255 per hour, rather than the full partner fee of £350, normally charged by their firm. The Tribunal has looked at the draft lease and note that the amendments referred to a number of items which were intended to bring the lease up to modern standards and arrange for consistency in all the leases in the building. Having said that, the Tribunal notes that of the nine and half hours claimed, four hours and a half hours were spent in considering the terms of the lease. The Tribunal considers that three hours would be adequate and one and a half hours at £255 per hour should be disallowed. Therefore the sum of **£382.50 plus VAT** at the appropriate rate is disallowed from the solicitor's costs as all other charges are found to be reasonable.

12. The Tribunal noted that the valuer charged at a rate of £275 per hour that the Tribunal consider excessive. A more appropriate fee would be £225 per hour and the Tribunal considers that it is not reasonable to charge at the full rate for travelling time. The Tribunal considers that an appropriate fee would be **£1,000**

**plus disbursements and VAT** at the appropriate rate.. The Tribunal allows the cost of plan at **£475.30 plus VAT** in full and the cost is reasonable for a plan of this quality.



**Mrs T I Rabin JP**

**4<sup>th</sup> May 2010**

**Chairman**