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

Case reference : LON/00AW/OLR/2015/0487

Property : 71 St Quintin Avenue, London
W10 6PB

Applicant : Peachdrive Properties Ltd
("the tenant")

Representatives : Woodford LLP, Solicitors

Respondents: : Brandon Whitcher, Enrica Bellone
and Serine Hamwazi
("the landlords")

Representatives : Wallace LLP, Solicitors

Type of application : A determination of reasonable
costs under Sections 33(1) of the
Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal members : Angus Andrew
Duncan Jagger MRICS

**Date and venue of
hearing** : 15 March 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 11 April 2017

DECISION

Decision

1. Pursuant to section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 statutory costs of £5,520 plus VAT are payable by the tenant to the landlords.

The application and hearing

2. By its application received on 2 December 2016 the tenant sought a determination under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) of the landlords’ statutory costs incurred in the tenant’s collective enfranchisement claim.
3. At the hearing on 15 March 2017 the landlords were represented by Fleur Neale a solicitor and the tenant by Louisa Nye, a barrister.

Background

4. The property comprises four flats. The landlords own a leasehold interest in two of the flats and previously owned the freehold reversionary interest. The tenant owned a leasehold interest in the other two flats. The tenant originally claimed new extended leases of the two flats that it owned and the claims were well advanced when the tenant changed tack, abandoned its lease extension claims and claimed the right to acquire the freehold interest in the property. It is apparent that the tenant’s claim to the freehold reversion, following the abandonment of its lease extension claims, generated a degree of friction between the parties.
5. The tenant’s freehold claim notice was given on 24 July 2015 and proposed a total premium of £96,250.
6. By two deeds dated 23 September 2015 and 8 October 2015 the landlords extended the two leases that they owned to 999 years. On 15 October 2015 they gave a counter-notice admitting the freehold claim and proposed a premium of £113,429.
7. On 6 April 2016 an application was made to the tribunal to determine the premium. The premium was agreed on 8 August 2016 and a hearing listed for 16 and 17 August 2016 was vacated. The premium was agreed at £101,500 and the agreed form of transfer recorded the tenant as the transferee.
8. By letter of 18 August 2016 the landlords sent an engrossment of the transfer for execution together with a completion statement that included legal costs of £7,612.20 and surveyor’s fees of £2,400.
9. On 1 November 2016 the tenant gave notice that 71 St Quintin Ltd was to be substituted as the nominee purchaser. The landlords submitted a revised

engrossment and the transfer of the freehold reversionary interest was completed on 2 December 2016 with the disputed costs being held by the tenant's solicitor pending this determination.

10. Directions were issued by the tribunal on 5 December 2016 that required the landlords to prepare "a schedule of costs sufficient for summary assessment".

The landlords' costs

11. The landlords changed their professional team shortly after the tenant abandoned the new lease claims. At the hearing both parties confirmed that the landlords' costs relating to the two original new lease claims had been agreed and paid in full. The only costs in dispute related to the collective enfranchisement claim.
12. In preparation for the hearing the landlords prepared a six page, seven column schedule of the claimed legal costs itemising all the activities completed during the transaction. The schedule however did not include a summary of the costs. We adjourned for half an hour to enable Ms Neale to prepare such a summary and it is incorporated in the following table:

Attendances			
Fee earner	Time in hours	Hourly rate	Cost
Assistant solicitor Grade A	1.6	£330	528
Assistant solicitor Grade A	0.4	£350	140
Paralegal	<u>0.1</u>	£200	<u>20</u>
Sub-totals	2.1		£688
Correspondence			
Fee earner	Time in hours	Hourly rate	Cost
Assistant solicitor Grade A	5.1	£330	1,683
Assistant solicitor Grade A	<u>2.5</u>	£350	<u>875</u>
Sub-totals	7.6		£2,558
Documents			
Fee earner	Time in hours	Hourly rate	Cost
Assistant solicitor Grade A	6.1	£330	2,013
Assistant solicitor Grade A	2.0	£350	700
Assistant solicitor Grade A	1.5	£330	495
Paralegal	<u>0.2</u>	£200	<u>40</u>
Sub-totals	9.8		£3,248
Total time and cost ex VAT			
	19.5		£6,494

13. By way of further explanation Wallace LLP increased their charge out rates on 1 August 2016 when the hourly rate for an assistant solicitor was increased from £330 to £350.

14. In addition to the legal costs the landlords also claimed Chestertons' valuation fees of £2,000 plus VAT. The work was undertaken by Mr Eric Shapiro and a letter explaining the claimed fees was included in the hearing bundle. He said that his valuation fee was based on an hourly rate of £400, equating to 5 hours work. This included 1.5 hours for an inspection, 1.5 hours for reading the background material including the valuations obtained in respect of the abortive new lease claims, 1 hour for producing his calculations and a further hour for producing his report.
15. Consequently by the date of the hearing the landlord's claimed legal costs of £6,494 plus VAT and valuation costs of £2,000 plus VAT.

The Tenant's proposed costs

16. The tenant had offered to pay legal costs of £2,500 plus VAT and valuation cost of £1,500 plus VAT.
17. At the hearing Ms Nye on behalf of the tenant challenged both the hourly rates charged by the landlords' solicitors and the time claimed to have been spent. Mr Hemingway was the tenant's solicitor and is a grade A fee earner. His hourly charging rate was £250 and he had spent 10.5 hours to completion of the transfer that he said included registration of title but not the cost dispute. Ms Nye also drew our attention to the guideline hourly rates issued by the Supreme Courts Costs Office (as it used to be). They indicate an hourly rate of £317 in London 2 for a grade A fee earner, in contrast to the £332 and £350 claimed by the landlords.

Statutory framework

18. The Tenant's liability for payment of the Landlords' costs is governed by sections 33 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.

Reasons for our decision

19. Before turning to the specific costs we make three preliminary points. The first relates to the time spent by the landlords' professional team that was at the heart of this dispute. In assessing a reasonable time to undertake the tasks identified in sections 33(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.
20. The second relates to the basis of our assessment. We remind ourselves that we are not assessing costs on either the standard basis or the indemnity basis. The landlords' costs must nevertheless be reasonable and this has been described as a limited test of proportionality.
21. Thirdly this tribunal has neither the expertise nor the resources to conduct a detailed assessment. We can only assess the costs in the round.

Legal costs

22. We deal firstly with the claimed hourly rates. The guideline rates issued by the old Supreme Court Costs Office are not relevant to the assessment of statutory costs. In any event the last guideline hourly rates were published in 2010 and when inflation is taken into account the hourly rates claimed by the landlords' solicitor are not out of line with the guideline rates issued seven years ago. Ms Nye accepted that Ms Neale, who undertook most of the work, is a recognised enfranchisement specialist and Wallace LLP has a reputation as a niche practice in that field. Consequently we are satisfied that the hourly rates claimed are reasonable and that a privately paying landlord would accept them.
23. However, we have considerably more difficulty with the time said to have been spent in completing the task identified in section 33(1).

24. For a person of Ms Neale's experience and expertise this was a simple transaction. It was the acquisition of the freehold reversion of a building comprising four flats. Putting aside the abortive lease extension claims that are not the subject of this dispute there were no unusual features. The transfer itself was in a standard form. The premium was relatively modest. The 19.5 hours claimed is excessive and cannot be justified. With respect to Ms Neale she cannot "have it both ways". She cannot rely on her undoubted reputation and expertise when justifying her hourly rate whilst at the same time spending an excessive amount of time in the completion of the transaction.

25. By way of example we give the following three examples:-

- a. Having regard to the standard nature of the transfer we agree with Ms Nye that the 2.3 hour claimed for its preparation is "manifestly excessive".
- b. Equally we find impossible to justify the 48 minutes spent in preparing the simplest completion statement even allowing for the fact that a slight alteration was required immediately prior to completion.
- c. Some of the claimed time does not relate to the identified tasks. 0.9 hours is claimed for correspondence with the surveyor after the counter-notice was given. Realistically that could have only related to ongoing negotiations.

26. Mr Hemmingway is a useful comparator. He spent 10.5 hours in completing the identified tasks. That is consistent with our own experience to which we have referred. We accept that Ms Neale may have had to spend some additional time in bringing herself up to speed by reading the documents relating to the abortive lease extension claims. Nevertheless looking at the time claimed in the round we consider that a landlord would only be prepared to pay for 12 hours of an experienced assistant solicitor's time for the completion of the identified tasks. We allow that time at a blended hourly rate of £335 to reflect the increase in hourly rates on 1 August 2016. We therefore allow legal costs of £4,020 plus VAT.

Valuation costs

27. The landlords' offered Mr Shapiro two appointments to attend and inspect the property. He ignored both offers and instead turned up at the property on 18 September 2015 without warning. Unsurprisingly he was unable to gain access.

28. Ms Neale suggested that Mr Shapiro only ever intended to carry out an external inspection of the property. However that explanation is not consistent with Mr Shapiro letter justifying his fee. In that letter he states that he "*was unable to gain access to the premises and I therefore proceeded to prepare my report without an inspection of the interior ...*".

29. No landlord would either expect or be prepared to pay a valuer out of his own money for an abortive site inspection undertaken without a prior appointment especially when two offered appointments had been ignored. That Mr Shapiro

may have gained some assistance from an external inspection is beside the point. His conduct was unacceptable and the resultant cost should be not be visited either on a privately paying landlord or the tenant.

30. The inspection accounted for £600 plus VAT. As the tenant conceded valuation costs of £1,500 plus VAT we allow that sum notwithstanding that £100 of the conceded costs clearly relates to the abortive inspection.

Total costs

31. On the basis of the above we allow statutory costs of £5,520 plus VAT.

Name: Angus Andrew

Date: 11 April 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).