



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

Case Reference : **CAM/00MD/OLR/2018/0129**

Property : **38 Laburnham Grove, Slough,
Berkshire SL3 8QU**

Applicant : **Mr A Oyinka
Ms A K Owusu**

Representative : **In person**

Respondent : **Judeglen Limited**

Representative : **Mr S Gallagher - Counsel**

Type of Application : **Determination of the terms of the
extended lease and costs under the
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mrs S F Redmond BSc (Econ)
MRICS**

**Venue and Date of
hearing** : **Slough Magistrates Court on 12th
December 2018**

Date of Decision : **14th December 2018**

DECISION

DECISION

The Tribunal approves the terms of the extended lease in the form included in the bundle before us at tab 6 pages 51 to 59 with the deletion of the wording "(For the avoidance of doubt the porch to the side of the building of which the Property forms part is NOT included in this demise)".

The Tribunal determines that the sum payable by the Applicants in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,732.50 inclusive of all disbursements and VAT.

BACKGROUND

1. This is an application for the determination of the terms of the extended lease and the costs payable by the Applicants to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act).
2. In the papers before us we had copies of the Notice and Counter-Notice and the application. In addition to a Points in Dispute schedule we were supplied with two copies of the travelling draft lease, the first at pages 51 to 59 of the bundle and the second at pages 60 to 69. In addition the bundle contained a witness statement of the Applicants and a letter from the managing agents instructed to act on behalf of the Respondent, who are Marlborough Holdings. The bundle contained copies of emails and letters passing between the parties, which we shall refer to as necessary in the course of this Decision.
3. The premium had been agreed at £15,000 and would appear to have taken into account that the flat has the benefit of an enclosed porch, a matter to which we shall return. The legal costs were claimed at £3,926.40 inclusive of VAT and disbursements. The valuation fee of Wallakers Chartered Surveyors was agreed at £690 and forms part of the total costs above.
4. The application was originally to determine the premium payable and other terms of acquisition.
5. On the question of the lease we noted the findings we made in July 2018 on an application by the Respondent seeking a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 under case reference CAM/00MD/LBC/2018/0008. In that decision we said this concerning the porch.

34 We turn then to the question of the porch which is more problematic. We note all that Mr Gallagher says about the lease plan and accept that there is some weight to that argument. However, we are an expert tribunal. Our view is that the materials used to

construct the porch predate 1999. Although Mr Gallagher said at if he were trying to argue that the porch had been erected in 1970 then he may have a difficulty because the materials it could be argued were not in existence at that time. However, as he merely seeks to argue that the porch was erected after 1999, he does not have that problem. Whilst we hear what he says, as an expert tribunal we are entitled to consider the porch construction. We are satisfied that the aluminium singled-glazed sliding door, the plastic roof and the brickwork are indicative of works carried out before 1999. We also have the concern that the porch appears to have been erected over part of the common parts, albeit that affording access to the maisonette and therefore is not an extension of the demised premises as such, although we would have to accept that it is an amendment to the plan/elevation for which on the face of it consent would have to be required.

35 However, again it seems to us that the burden of proof rests with the Applicant. They have owned the freehold of this property since January of 1989. In that time, we would have thought that they would have inspected on a fairly regular basis and should have known before 2016, as that appears to be the time the breach came to their attention, that a porch had been constructed. Using our knowledge and experience we are of the view that the porch was on the balance of probability likely to have been constructed before the date of the new lease in 1999. In those circumstances, therefore, we are not satisfied that the construction of the porch constitutes a breach of the lease.

36. For the reasons set out above we conclude that the Applicants have not proved their case and we therefore dismiss the application.

37. As a matter of comment, we would perhaps add, although this is not strictly within our jurisdiction, that it seems to us the Applicants were aware of the breach in respect of the porch and the windows by November of 2016 as they wrote to the Respondents at that time. The letter is marked without prejudice but it was in the bundle and was not objected to by Mr Gallagher. We understand from Mr Oyinka that he has paid a ground rent it having been demanded from him in August of 2017. Again, a matter not challenged.

38 In addition also, it seems to us that the erection of the porch is more than 12 years ago which may give rise to adverse possession arguments. Further, the limitation period relating to forfeiture would seem to be 12 years from the date of such breach.

6. In the Notice served under s42 of the Act there is no reference to the porch being included within the proposed demise. In the Notice the terms proposed by the Applicants is on the same terms as the Lease, defined as being the one dated 19th February 1999 and the Property is described by reference to a plan attached which appears to exclude the area upon which, it is accepted, a porch has, in the past, been built.

7. Mr Gallagher, for the Respondent was at pains to confirm that the Respondent was not seeking to be difficult. It accepted that the decision made in July 2018 concerning the alleged breach was binding on it. The concern was that if the Respondent acquiesced to the request of the Applicants and explicitly included the porch in the demise this would expose the Respondent to a claim by the lessee of the upper flat that there had been a derogation of grant by conveying away part of the common parts to the Applicants. Further the lessee of the upper flat was not a party to these proceedings.
8. We set out below our findings on the lease terms
9. Mr Gallagher confirmed he was instructed to deal with the claim for costs on behalf of the Respondent. He told us that Marlborough Holdings (MH) and Judeglen Limited (JL) were "related" in that MH was a partnership, the partners of which were the directors of JL. One in particular, Mr Bazin had considerable experience in property matters and was an Estate agent but had no professional qualification. His hourly rate was £225, although no evidence was supplied as to how this rate had been settled upon. Mr Gallagher confirmed he would be happy for us to assess the costs on the basis of what we considered would be a suitable hourly rate gleaned from the HMCTS Guidelines on Solicitors charging rates.
10. On the question of his own fees for advising the Respondent on the lease terms he confirmed that his hourly rate was £300 and that two invoices had been rendered totalling £500 plus VAT, the second, it seems, being a request for confirmation that the first one was correct. It also included drafting a response to the Tribunal, which he quite rightly pointed out to us should not be payable by the Applicant as it related to proceedings before us and the fee of £300 should therefore be halved, giving a total claim for Counsel's fee of £350 plus VAT.
11. We also questioned Mr Gallagher on the appropriateness of the recovery of fees for the notice of a deposit and access. His view was that in respect of the deposit this was part of the conveyancing costs recoverable under s60 (1)(c). On the question of the Notice seeking access, he confirmed that this was not common and there was no evidence that the Applicants had indicated an unwillingness to grant the Respondent's valuer access to the property. He was not able to help us on the heading referring to General Correspondence and conceded that on the face of the costs schedule there appeared to be duplication in respect of the drafting of the lease for which MH claimed £650 to include the Counter-Notice, and the fees of TWM LLP solicitors of £600 plus VAT for dealing with the lease.
12. We have noted all that has been said in the Points of Dispute, which has been completed by both sides.

THE LAW

13. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

14. On the terms of the extended lease we accept Mr Gallagher's concerns in respect of the derogation of grant and the involvement of the lessee of the upper flat. In fact, we do not consider it is necessary to become involved in that issue. The Notice served under s42 of the Act does not refer to the porch. Instead it refers to the existing 1999 lease and to a plan annexed, which follows the lease plan and the extent of the property registered at HM Land Registry. Our findings in July 2018 on the breach of covenant point gives the Applicants the security of an unappealed decision.
15. Accordingly, we conclude that the lease should be agreed in the form before us excluding reference, in the positive or negative, relating to the porch. The lease should be silent on the point. On any sale the Applicants can rely on our findings. If any purchaser requires further support then some form of insurance may be available, although we wonder at the need. Mr Gallagher accepted that the Respondent is bound by our July decision. As to the maintenance of the porch it seems to us that as the Applicant has, in effect, a full repairing lease then the liability to maintain the porch will rest with them and their successors in title.
16. We turn then to the costs. The first point is the hourly rate of Mr Bazin. We understand he lives in or near Guildford, which is an area for which National Grade 1 would apply in respect of the Guidelines for Solicitors charges. Mr Gallagher accepted that the application of the Guide line rate would be reasonable. However, Mr Bazin is not a solicitor. We are given no details of the overheads upon which we could assess the rate applicable. Further, there is no certificate as required in the directions order confirming that the costs claimed are those payable by the Respondent. We bear in mind the close relationship between MH and JL but accept that the Respondent may make use of a managing agent in the enfranchisement process.
17. Against those shortcomings we do accept that Mr Bazin is experienced in residential matters and the documents produced by MH bear that out. The Respondent is entitled to recover the costs incurred in the lease extension process under section 60(1) but bearing in mind the provisions of the remainder of that section, in particular subsection (2), we conclude that the hourly rate, akin to a Grade A solicitor in the London Grade 3 to be excessive. The question we must answer is what is the appropriate rate, in the absence of any indication as to the overheads of MH and the shortcomings we highlighted above. Our decision is that it would be reasonable to allow the rate applicable

to paralegals and other fee earners in National Grade 1 of £118 per hour.

18. With that in mind we then considered the fees claimed as set out at page 186 of the bundle. The first element is the receiving of instructions and considering the Initial Notice. **We accept one hour being spent on this which gives a fee of £118.**
19. We are content with the time spent on instructing Wallakers to undertake the valuation, **which gives a fee of £47.20.**
20. In respect of the Notices for the deposit and deduction of title we find that the latter is allowable, the former is not. We do not consider that a notice requiring a deposit falls within s60 of the Act. **We therefore allow £41.30, being half the time claimed at the allowed rate.**
21. We do not consider that a Notice requiring Access was necessary. No evidence was adduced to show that the Applicants had blocked access to the Respondent's surveyor. This was an unnecessary expense and is disallowed in full under the provisions of s60(2).
22. The times spent in respect of instructing TVM LLP Solicitors, receiving title documents and considering the valuer's report are reasonable and allowed at the appropriate rate. **This gives a total claim for costs for these three matters of one hour at £118.**
23. In respect of the preparation and service of the Counter-Notice we have considered the document, which is simple and unremarkable. We consider 30 minutes would have been sufficient to produce such a document and therefore allow the sum of £59 (included in the total at para 24).
24. Whilst we note that the Counter-Notice has the draft lease attached we do not consider that the Respondent can have it both ways. Either MH produced the lease or TW M did. It would seem that MH produced an initial draft which was reviewed by TW M, as per their email dated 26th November 2018. Doing the best we can, and in the absence of any attendance at the hearing by MH or JL we conclude that the draft was a standard one, indeed that would seem to be the case as it contains nothing contentious. It is only when the question of the porch is raised that solicitors might have considered same. In fact they sought the opinion of Mr Gallagher so it is difficult to see what was done other than to complete the transaction. **In those circumstances we allow a further 30 minutes of time for Mr Bazin giving a further sum of £59, making the total payable for this element £118.**
25. We make no allowance for the claim in respect of General correspondence as we have no idea to what this related and there appears to be a duplicate in respect of the instructions of TW M, we

having already allowed an amount for this element at paragraph 22 above.

26. The fees of Wallakers are agreed at £690. **As to Mr Gallagher's fees we are minded to allow the first fee of £200 plus VAT.** However, we disallow the second which appeared, as confirmed by Mr Gallagher, to be nothing more than confirmation and drafting a letter to the Tribunal, neither of which we find fall with the provisions of section 60.
27. Finally the fees of TWM. If we accept that MH produced the first draft there is little required of TWM, and that which was, required Counsel's opinion. No fee note has been produced although there are emails confirming that the fee will be restricted to £600 plus VAT. Again doing the best we can we conclude that the **fees of TWM should be reduced to £300 plus VAT**, which we consider sufficient to deal with the instructing of Counsel, the minor amendment to the lease and handling clients money.

SUMMARY

Paragraph 18	£118
Paragraph 19	£47.20
Paragraph 20	£41.30
Paragraph 22	£118
Paragraph 24	£118
Paragraph 26	£690 and £240
Paragraph 27	<u>£360</u>
Total	£1,732.50.

Standing back and reviewing it seems to us that a fee of £1,732.50 is proportionate to the premium payable of £15,000, and although that is not the basis upon which we have assessed the costs, it is, we find a reasonable sum payable under the provisions of s60 of the Act,

Andrew Dutton

Tribunal Judge Dutton

14th December 2018

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).

The Relevant Law

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 a leasehold valuation 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.