



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

**HMCTS CODE** : **PAPER REMOTE**

**Case reference** : **JM/LON/00BK/OC9/2022/0047**

**Property** : **Flat 22 Oslo Court, London NW8  
7EN**

**Applicant** : **Brickfield Properties Limited**

**Representative** : **Wallace LLP**

**Respondent** : **Paul Simpson and Margaret  
Simpson**

**Representative** : **Attwells Solicitors**

**Type of application** : **An application under section  
91(2)(d) of the Leasehold Reform,  
Housing and Urban Development  
Act 1993 for a determination as to  
costs to be paid under s60 (1) of the  
Act**

**Tribunal members** : **Judge Dutton**

**Date of determination** : **25 May 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 205 pages, the contents of which I have noted.

### **Background**

1. This is an application made by the applicant landlord pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the reasonable costs to be paid under the provisions of sections 91(2)(d) and 60(1) of the Act in respect of the abortive attempt at a lease extension for the property being flat 22 Oslo Court, London NW8 7EN.
2. The application is dated 18 February 2022. Directions were issued dated 23 February 2022 providing for the matter to be dealt with on the papers. The matter came before me for determination on 25 May 2022.
3. I had before me a bundle containing the Applicant’s statement of costs, the response from the Respondent, further submissions from the Applicant and exhibits, a submission on the valuation costs and correspondence.
4. I have read the contents of the bundle.
5. It appears that this case got no further than the issue of a notice under s42 of the Act and a counter notice under s45. The initial notice proposed a premium of £35,000 and was dated 10 December 2020. The proposal suggested no new lease terms other than that it complied with s57 of the Act. The Counter Notice dated 11 February 2021, which was a single page, proposed a premium of £124,959 and attached a 25-page draft lease. An email withdrawing the s42 notice was sent to the Respondent’s solicitors on 24 March 2021.
6. The Statement of costs sets out the time spent, the fee earner and the fee charged. The total costs for the solicitors are £2,139.50 plus VAT and land registry fees of £18 plus VAT, giving a total of £2,589.
7. The fees of Chestertons are set out in an invoice dated 25 March 2021, totalling £2,100. The breakdown of fees shows Mit Kotak charging £350 per hour and spending some 5.5 hours on the case.
8. The Respondent filed points of dispute. As to the solicitors fees these were essentially a challenge to the use of a partner and the lack of lower grade fee earners involvement, that the fees charged were excessive, that excessive and unnecessary time was spent on the case. As to the

valuers fees there was a challenge to the hourly rate, excessive time with specific challenges to the attendance of Mit Kotak and the familiarity that the valuers should have had of the block. I have noted all that was said.

9. In a somewhat generic response reference is made to the fee rates, the history of acting for the Applicant landlord, steps to be taken by Wallace LLP on behalf of the Applicant, a number of First-tier Tribunal cases that have support the costs being claimed in this case and a response to the challenge to the valuer's fees. The response goes on to deal with the Points in Dispute raised by the Respondent. Again, I have noted all that has been said.
10. I have noted the response by Mik Kotak to the challenge to the valuation fees.
11. The provisions of s60 of the Act are set out below and have been borne in mind by me in reaching this decision.

### **The tribunal's determination**

12. **The tribunal determines that the costs payable under the provisions of s60(1) of the Act are £3,411.60 inclusive of VAT and disbursements**

### **Reasons for the tribunal's determination**

13. I have considered all that has been said on behalf of the parties. I find that the Points in Dispute have, in some cases merit. I agree that the sole use of a senior partner with a charge out rate of £495 for 3.7 hours seems a tad excessive. For example, I can see no reasons for a partner to be obtaining office copies, emailing the valuer with the title papers and emailing licences to alter. These could and should have been done by a much lower fee earner. In addition, I do not see why the costs of preparing a draft lease of some 20 plus pages was necessary at the point of serving the Counter Notice. The Notice under s42 raises no anomalies concerning the lease to be extended. I am also concerned at the time spent on 8 and 11 February 2021, when combined with the original preparation of the Counter Notice I think in January 2021, although it is not always easy to tell as the lines on the costs schedule do not clearly correlate.
14. I intend to take a broad-brush approach. I consider that the hourly rate of Ms Bone to be reasonable for the experience she brings to this work. I accept that the Applicant's solicitor of choice is Wallace LLP. However, I find that some items of work could and should have been done by a far lower grade of fee earner. The preparation of a lengthy lease, which admittedly only seems to have taken 8 units, was perhaps

unnecessary at the point of the Counter Notice, but it seems to me to something of a standard document, the more so as the Applicant has been involved in several lease extensions since it acquired the freehold in, it would seem, 2010. I accept that the fee for this is at the lower rate of Shamin Kashem, but even that is an hourly rate of £385. The time spent on the Counter Notice is excessive, given that it is a simple one-page document and something that would have been very familiar to the solicitors, given their involvement with the Applicant.

15. The total costs for dealing with the works is £2,139.50. There is no counter proposal from the Respondent. For the reasons stated above I propose to reduce those costs to £1,600. I consider this to be a reasonable fee for what, on the face of it was a straightforward transaction and one that should have been familiar to the solicitors for the Applicant. It still represents in excess of three hours work at Ms Bone's hourly rate, which I find to be reasonable and reflective of the provisions of s60 of the Act.
16. I turn then to the valuers fees. I have carefully noted all that was said in the Points in dispute. The submissions from the Applicant make little comment on these fees other than to say they are consistent and recoverable.
17. Chestertons have responded to the challenges, and I have noted all Mik Kotak says in the response dated 21 April 2021. I fully appreciate that the costs of Mr Lester do not provide a guide to the costs of Chestertons for the reasons Mik Kotak states. The time suggested by the Respondent is not wholly clear. I do take the point on travel but there would presumably be a taxi fare to pay and time if that route were chosen. There is some confusion as to who inspected but I note the contents of an email from Ms Bone to Attwells dated 27 April 2022 explaining the inspection arrangements. There would need to be some consideration of comparable evidence but given the familiarity with the block I find one hour would be sufficient. I consider that a further hour for considering the premium and preparing a report is appropriate. The hourly rate seems high, but I do not propose to interfere with that. I therefore allow 3.5 hours at £350, giving a fee of £1,225 plus VAT of £245, making a total for the valuation fees of £1,470.
18. Accordingly, I determine that the solicitors' fees are £1,920 inclusive; the valuation fees £1,470 inclusive and disbursements of £21.60 being the Land Registry fees including VAT. This gives a total of £3,411.60.

**Name:** Tribunal Judge Dutton      **Date:** 25 May 2022

## **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.